

Triangle MLS, Inc. Subscriber Agreement

This agreement is a binding contract and includes terms limiting your legal rights and TMLS's liability to you. Consult your attorney before signing if you do not understand any of the terms here.

This **AGREEMENT** is made and entered into by Triangle MLS, Inc. ("**TMLS**"), with offices at 111 Realtors Way, Cary, NC 27513; and _____ ("**Subscriber**") under the supervision of ANN CAVALLITO (**Broker-in-Charge**), at PEAK, SWIRLES & CAVALLITO PROPERTIES (**firm name**), with offices at 3608 SHANNON ROAD, SUITE 100 DURHAM, NC 27707.

"law" expressly includes all state and federal fair housing statutes and regulations.

TMLS'S OBLIGATIONS

3. TMLS shall provide one unique user ID and password to Subscriber. The user ID and password will provide Subscriber access to all data and functions in the TMLS Service to which Subscriber is entitled under the TMLS Policies. TMLS makes no warranties, however, that the TMLS Service will be available at all times.

SUBSCRIBER ACKNOWLEDGMENTS

4. **Modifications to service.** TMLS may, but is not required to, modify the TMLS Service, including removing information and making additional information available, and adding and removing system functions. Certain products and services made available in conjunction with the TMLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control.** TMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the TMLS Database or the Subscriber Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, TMLS may take any steps necessary in its judgment, including deleting the Subscriber Contribution or portions thereof, to avoid or remedy any violation of law, breach of the TMLS Policies or infringement of intellectual property right.

6. **Conditions of service.** Subscriber must be affiliated with Participant at all times during the term of this Agreement. Subscriber may enter and retrieve active listing information on the TMLS Service only if Participant offers compensation to and accepts compensation from other principal brokers.

7. **Saved Information.** Saved Information may not always be available to Subscriber and may become available to unauthorized persons. TMLS is not liable for unauthorized access to or loss of Saved Information.

8. **Disclosure to third parties.** TMLS reserves the right to distribute to third parties certain information about Subscriber, including Subscriber's name and business address, phone number and email address. TMLS reserves the right to distribute to third parties aggregated information about Participant's and Other Participants' and Subscribers' use of the TMLS Service, but not about Subscriber's use specifically.

9. **Disclosure to government.** Subscriber acknowledges that TMLS may provide government agencies access to the TMLS Service at any time in TMLS's sole discretion.

10. **Priority of agreements.** Subscriber's access to the TMLS Service is subject at all times to the limitations set out in the TMLS Policies and the Participant Agreement between TMLS and Participant. In the event of an apparent conflict between those documents and this Agreement, Subscriber's obligations and rights shall be determined, in order of precedence, by the TMLS Policies, the Participant Agreement between TMLS and Participant, and by this Agreement.

11. **IDX and VOW data access subject to separate agreement.** Subscriber acknowledges that access to TMLS's IDX or VOW database and data feeds can occur only subject to a separate written agreement between TMLS and Participant.

DEFINITIONS AND USAGE

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below.

Other Participants and Subscribers: All participants and subscribers of TMLS not party to this Agreement, including Participants' employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

Participant: The principal broker or appraiser manager that supervises Subscriber's real estate activities and on whose behalf Subscriber conducts those real estate activities.

Saved Information: Information that Subscriber stores in the TMLS System for his own later use that is not intended by him/her to be available to TMLS's Other Participants and Subscribers, including client prospect and contact information.

Subscriber Contribution: All data that the Subscriber submits, contributes, or inputs in the TMLS System, including text, binary, and photographic image data, in any form now known or hereafter discovered.

TMLS Affiliates: TMLS Affiliates means TMLS and its officers, directors, employees, agents, representatives, licensors, and shareholders.

TMLS Database: All data available to Subscriber on the TMLS System, including the Subscriber Contribution and all other text, binary, and photographic image data, in any form now known or hereafter discovered.

TMLS Policies: TMLS's bylaws, rules and regulations, and policies and procedures adopted by TMLS's board of directors or authorized delegates, as TMLS amends them from time to time.

TMLS Service: The services TMLS provides to Subscriber under this Agreement and similar services TMLS provides to third parties under similar agreements, including any access or license to the TMLS Software, the TMLS Database, and the TMLS System.

TMLS Software: TMLS's proprietary web browser interface(s) to the TMLS System.

TMLS System: The aggregate of all hardware and telecommunications systems that TMLS maintains in order to make access to the TMLS Database available to Subscriber.

2. **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

- (a) Wherever the term "including" is used, it means "including, but not limited to."
- (b) The singular and plural numbers and masculine, feminine, and neuter genders of words are interchangeable.
- (c) Wherever the term "law" is used, it means all statutes, regulations, and common law, both state and federal, as they are amended. Without limiting the generality of the foregoing,

SUBSCRIBER'S OBLIGATIONS

12. **Use limited.** Subscriber shall use the TMLS Service solely for the purpose of selling, listing, leasing, and appraising real estate as provided in the TMLS Policies. Except as expressly provided in this Agreement and the TMLS Policies, Subscriber shall not copy, create derivative works of, distribute, perform, or display the TMLS Service or any part of it.

13. **Confidentiality.** Subscriber shall maintain the confidentiality of its user ID and password and the TMLS Database; Subscriber shall not provide its ID and password to any third party. To maintain the confidentiality of all user IDs, passwords, the TMLS Database, and the TMLS System, Subscriber shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the TMLS Policies. Subscriber may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, Subscriber first gives reasonable notice to TMLS to permit TMLS to seek a protective order.

14. **Equipment.** Subscriber shall acquire and maintain all personal computers, modems, telecommunications connections, and computer software, other than the TMLS Software, necessary for Subscriber's use of the TMLS Service.

15. **Subscriber Contribution.** When making a Subscriber Contribution to the TMLS Service, Subscriber warrants that the information submitted complies with the TMLS Policies in all respects, including with regard to (a) required data fields; (b) format of submission; (c) permitted and required listing types; and (d) procedures for submission. Subscriber warrants that the Subscriber Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation, or proceeding pending or threatened with respect to the Subscriber Contribution.

INTELLECTUAL PROPERTY

16. **Assignment from Subscriber.** Depending on the election Participant has made in Section 21 of the Participant Agreement between Participant and TMLS, the following shall apply:

(a) If Participant has selected Option I, Subscriber hereby assigns to TMLS all right, title and interest, including all rights under U.S. and international copyright law, in the Subscriber Contribution. To the extent that Subscriber has also purported to assign its interests in the Subscriber Contribution to Participant, the assignment in this paragraph is null and void. To the extent that Subscriber does not possess the rights to permit the foregoing assignment, Subscriber hereby grants to TMLS a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Subscriber Contribution.

(b) If Participant has selected Option II, Subscriber hereby grants to TMLS a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Subscriber Contribution and those portions of the TMLS Database relating to Subscriber's listings.

17. **Warranty.** Subscriber warrants that it has the authority to make the assignment in Paragraph 16. Subscriber warrants that (a) the Subscriber Contribution does not infringe the copyright or other intellectual property rights of any third party; (b) there is no claim, litigation, or proceeding pending or threatened with respect to the Subscriber Contribution; and (c) Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to Participant or TMLS.

18. **License.** TMLS hereby grants Subscriber a license to use the TMLS Software and the TMLS Database during the term of this Agreement, subject to the permission of Participant and according to the terms of the TMLS Policies. All other uses are prohibited.

FEES AND PAYMENT TERMS

19. **Applicable fees.** Subscriber shall pay the fees set forth in TMLS's official Schedule of Fees which TMLS may amend at any time subject to the terms of Paragraph 23. Participant may pay any fees on Subscriber's behalf.

20. **Payment terms.** Subscriber shall pay the fees according to the terms set out in the TMLS Policies. Participant may pay any fees on Subscriber's behalf.

21. **No refunds.** TMLS need not refund or pro-rate fees in the event of termination or suspension of this Agreement unless the TMLS Policies provide otherwise. Initiation fees, if any, are not refundable.

22. **Taxes.** All fees for the TMLS Service are exclusive of federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and, accordingly, Subscriber shall pay all such taxes and levies other than any tax or levy on the net income of TMLS.

23. **Fee changes.** TMLS may amend the Schedule of Fees at any time at its sole discretion. TMLS shall provide written notice to Subscriber at least thirty days in advance of the effective date of any fee increase. If Subscriber objects to the increase, Subscriber may terminate this Agreement by written notice to TMLS at any time before the effective date of the increase.

24. **Fines.** TMLS may collect fines from Subscriber and from Participant on Subscriber's behalf for violation of the TMLS Policies. Payment terms for fines are set out in the TMLS Policies. TMLS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION

25. **Term.** This Agreement shall commence upon the Effective Date set forth below and shall continue thereafter on a month-to-month basis until terminated.

26. **Termination for breach.** TMLS may terminate this Agreement with notice if Subscriber fails to comply with the terms of this Agreement or of the TMLS Policies.

27. **Termination of Participant.** This Agreement shall terminate immediately and without notice if the Participant Agreement between TMLS and Participant is terminated for any reason.

28. **Termination for failure to pay.** In the event Subscriber fails to pay any fees required under this Agreement, TMLS may terminate service without being subject to arbitration, and TMLS may bring any claims for fees to small claims court. In its sole discretion, TMLS may suspend its performance under this Agreement rather than terminating it, in the event that Subscriber fails to pay fees required under this Agreement.

29. **Termination without fault.** Either party may terminate this Agreement upon 30 days' written notice to the other party. Subscriber may not terminate this Agreement so long as Subscriber remains affiliated with Participant that is subject to a Participant Agreement with TMLS.

30. **Events upon termination.** Promptly upon any termination of this Agreement, (a) TMLS shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the TMLS Service; (b) Subscriber shall purge all copies of the TMLS Software and the TMLS Database from Subscriber's personal computers; (c) all licenses granted hereunder shall immediately terminate; and (d) Subscriber will not be permitted to be affiliated with Participant or any

other participant of TMLS unless a new Subscriber agreement between Subscriber and TMLS is executed.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION

31. **DISCLAIMER OF WARRANTIES.** TMLS PROVIDES THE TMLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE TMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE TMLS SERVICE ARE AT THE SOLE RISK OF SUBSCRIBER. THE TMLS AFFILIATES DO NOT WARRANT THAT THE TMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE TMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE TMLS SERVICE. THE TMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE TMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE TMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The TMLS Service may contain hyperlinks to web sites operated by parties other than TMLS; TMLS does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

32. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE TMLS AFFILIATES SHALL BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE TMLS SERVICE, INCLUDING RELIANCE BY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE TMLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE TMLS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE TMLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

33. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL TMLS BE LIABLE TO PARTICIPANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT HAS PAID TMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100.

34. **Indemnification.** Subscriber shall defend, indemnify and hold the TMLS Affiliates and Other Participants and Subscribers harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the TMLS Affiliates or Other Participants and Subscribers arising from any acts of Subscriber, including (a) putting inaccurate information into the TMLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the TMLS Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any warranty under this Agreement; and (f) violating this or any other Agreement or any law.

35. **Acknowledgment.** Subscriber acknowledges that TMLS has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

DISPUTES AND REMEDIES

36. **Injunctive relief.** Subscriber acknowledges and agrees that the TMLS Software and TMLS Database are confidential and proprietary products of TMLS and that in the event there is an unauthorized

disclosure of them by Subscriber, no remedy at law will be adequate. Subscriber therefore agrees that in the event of such unauthorized disclosure of TMLS Software or TMLS Database, TMLS may obtain injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

37. **Dispute resolution.** In the event TMLS claims that Subscriber has violated the TMLS Policies, TMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the TMLS Policies. Subscriber agrees to submit all other disputes or claims under this Agreement to the jurisdiction and venue of the state and federal courts sitting in Wake County, North Carolina.

38. **Liquidated damages.** Subscriber acknowledges that damages suffered by TMLS from access to the TMLS Service by an unauthorized third party as a result of disclosure of Subscriber's password or an unauthorized disclosure by Subscriber of the TMLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to TMLS to enter into this Agreement with Subscriber, Subscriber agrees that (a) in the event that any disclosure of Subscriber's password results in access to the TMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Subscriber shall be liable to TMLS for liquidated damages in the amount of \$15,000 (or the amount established in the TMLS Policies, whichever is greater) and termination of this Agreement; and (b) in the event that Subscriber makes unauthorized disclosure of any portion of the TMLS Database to any third party, Subscriber shall be liable for liquidated damages in the amount of \$15,000 (or the amount established in the TMLS Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

39. **Legal fees.** In the event of legal action or proceeding between TMLS and Subscriber, on account of or in respect to this Agreement, where TMLS is the prevailing party, TMLS shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or proceeding

MISCELLANEOUS

40. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, TMLS and Subscriber, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party.

41. **Interpretation and amendment.** Subscriber expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). TMLS may amend this agreement by providing 30 days' advance notice of the amendment to Subscriber. If Subscriber continues to use the TMLS Service or TMLS Database after the expiration of the 30-day notice period, Subscriber will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

42. **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Subscriber. Any purported assignment or delegation in contravention of this section is null and void.

43. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. The foregoing notwithstanding, if any provision of Sections 31 through 35 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber's access to the TMLS Service shall immediately terminate.

