

CANOPY MLS SUBSCRIBER END-USER LICENSE AGREEMENT

This End-User License Agreement (“Agreement”) is a binding Agreement between you (“You”, “Your” or “Subscriber”) and Carolina Multiple Listing Services, Inc., a North Carolina Corporation (“Canopy MLS”). You are a member of, or are permitted access to the Canopy MLS Internet-based MLS system (the “Canopy MLS System”) and are (or are affiliated with) a Canopy MLS Member Participant or are permitted access to the Canopy MLS System through a wholesale arrangement with Canopy MLS. You are permitted access to the Canopy MLS System only by virtue of Your assent to the terms of this Agreement. If You decline to agree to the terms of this Agreement, Your participation in and subscription to the Canopy MLS System will terminate immediately.

1. Canopy MLS’s obligations.

In consideration of Your payment of the fees and any other amounts due to or assessed by Canopy MLS or any Realtor® Association to which You belong, and compliance with rules, regulations, and procedures of Canopy MLS (the “Canopy MLS Rules”), Canopy MLS makes the contents of the Canopy MLS System available to You and licenses it for Your use, subject at all times to the terms and conditions of this Agreement.

2. Intellectual property.

(a) Ownership and License. The Canopy MLS System and all intellectual property and other rights therein are owned exclusively by Canopy MLS and/or You. Nothing herein shall be construed to provide You with any ownership or other rights in or to either the Canopy MLS System or the data available to You on the Canopy MLS System, including the selection, coordination, and arrangement of such data (the “Compilation”) other than the limited license rights set forth in Sections 2(b) and 3 below. You grant to Canopy MLS a perpetual, royalty-free, non-exclusive, worldwide license to reproduce, prepare derivative works of, distribute, display, performance, license (including sublicenses through multiple tiers) use and modify any and all elements related to all data that You submit, contribute, or input into the Canopy MLS System, including, but not limited to text, photographs and other content, in any form now known or hereafter discovered, except the SCA (collectively the “Contribution”).

You warrant that (i) you have the authority to grant the license described herein and have the written consent of any party necessary to provide the Contribution to Canopy MLS; (ii) the Contribution complies with the Canopy MLS Rules in all respects and all applicable laws and regulations; and (iii) Contributions made by You to the Canopy MLS System do not infringe on any copyright or other intellectual property rights or other proprietary rights of any third party.

Pursuant to the Canopy MLS Rules, all selection, coordination, and arrangement by You of listing information submitted, contributed, or input into the Canopy MLS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the Canopy MLS System (collectively, the “SCA”) shall be a work made for hire under the U.S. Copyright Act (17 U.S.C. §101 et. Seq.) by You for the benefit of Canopy MLS, and You agree that Canopy MLS is the author of the SCA for the purposes of copyright. If for any reason the SCA cannot be provided as a work made for hire, You agree to assign the SCA to Canopy MLS. The SCA expressly excludes original text and photographs.

You further acknowledge and agree that the Compilation is protected under U.S. Copyright Act (17 U.S.C. §101 et. Seq.) and, as such, the unauthorized copying, distribution, modification and/or other use of the Compilation (or any portions thereof) shall constitute infringement of Canopy MLS' copyright rights, which will make You liable for damages and costs under the U.S. Copyright Act, such damages and costs being in addition to the other legal and equitable rights and remedies that Canopy MLS has pursuant to this Agreement or otherwise. Nothing in the foregoing shall prevent You from using any content that You submit to Canopy MLS regarding Your own listings, provided that such use complies with the Canopy MLS Rules.

(b) License from Canopy MLS. Canopy MLS hereby grants You during the term of this Agreement a revocable, limited, nonexclusive, non-transferable, non-sublicensable license to use the Compilation (which You acknowledge to be owned by Canopy MLS), including text and photographs, and the Contribution from the Canopy MLS System ("MLS Information"), subject to the limitations set forth in this Agreement, in the Canopy MLS Rules, and subject to a license agreement (if applicable). This is a non-exclusive license, not a sale, assignment, or exclusive license. All rights not expressly granted in this Agreement are reserved to Canopy MLS.

3. Your obligations and acknowledgements.

(a) Limited Use. You may use the Canopy MLS System and the MLS Information on the Canopy MLS site solely for the purpose of listing, selling, leasing, and/or appraising real estate or advising individual clients on real estate matters, strictly as permitted in Canopy MLS Rules. Your license to use the Canopy MLS System may be revoked immediately, without notice from Canopy MLS, if You (i) use the MLS Information for any purpose other than as set forth in the first sentence of this Section 3(a); (ii) violate any of the Canopy MLS Rules; (iii) disclose any of the MLS Information available on the Canopy MLS System to any third party except as permitted in this Agreement; or (iv) disclose Your user ID and password to any third party.

(b) Permitted disclosures. You may, during the term of this Agreement, disclose the MLS Information to consumers for their non-commercial use to the extent permitted by the Canopy MLS Rules.

(c) Canopy MLS Rules subject to change. The current version of the Canopy MLS Rules is available at www.CarolinaRealtors.com and such Rules, as they are revised from time to time, are incorporated into this Agreement by reference. Canopy MLS may in its sole discretion amend and revise the Canopy MLS Rules as provided in such Rules.

(d) Confidentiality. You shall maintain the confidentiality of Your user ID and password and may not provide Your user ID and password to any other person. Failure to maintain the confidentiality of Your user ID and password will result in a violation of this Agreement and the Canopy MLS Rules and applicable fines will be assessed.

(e) Editorial control. Canopy MLS is not required to review, edit, or verify user uploaded information to the Canopy MLS System or MLS Information and use of either is subject to the exclusions of warranties and limitations of liability set forth in this Agreement. The foregoing notwithstanding, Canopy MLS may take any steps necessary in its judgment, including deleting MLS Information submitted by You, or portions of it, to avoid or remedy any violation of law or infringement of intellectual property rights.

4. Fees.

This Agreement is at all times conditioned upon the payment of the fees and any other amounts due to or assessed by Canopy MLS or any Realtor® Association to which You belong. Failure to pay all fees and other amounts will result in immediate termination of this Agreement and of all accesses and licenses hereunder, without notice to You from Canopy MLS. There shall be no refund or proration of any fees upon the termination of this Agreement or the termination of Your right to use the Canopy MLS System.

5. Term and termination.

(a) Term and Termination. This Agreement shall continue until (i) You cease to be (or be affiliated with) a Canopy MLS Member Participant in good standing with Canopy MLS; (ii) You fail to pay fees or other amounts due to Canopy MLS or any Realtor® Association to which You may belong in accordance with applicable payment policies; or (iii) Canopy MLS terminates this Agreement by giving You notice.

(b) Modifications to Agreement. You hereby agree that Canopy MLS may, in its sole discretion, condition future access to the Canopy MLS System on Your acceptance of modified versions of this Agreement. You hereby agree that Your assent, via electronic means to any agreement, including this Agreement, shall function as Your signature on it and shall be fully binding on You.

(c) Events upon Termination. Promptly upon any termination or expiration of this Agreement (i) Canopy MLS shall deactivate Your user ID and password, and You shall have no further access to the Canopy MLS System; (ii) You shall purge all copies of the MLS Information from Your computers or other electronic storage media or devices; and (iii) all licenses granted hereunder shall immediately terminate.

6. Disputes and remedies.

(a) Injunctive Relief. You acknowledge and agree that the MLS Information is confidential and proprietary and that if, except as authorized in this Agreement, you make an unauthorized disclosure of any part of such MLS Information, no remedy at law will be adequate. You therefore agree in the event of such unauthorized disclosure that Canopy MLS may obtain injunctive relief or other equitable remedies against You in addition to all available remedies at law.

(b) Legal Fees. In the event of any legal action, arbitration, or informal dispute resolution proceeding (an "Action") between You and Canopy MLS on account of or with respect to this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs and expenses incurred in such Action.

(c) Liquidated Damages. You acknowledge that damages suffered by Canopy MLS by virtue of access to the MLS Information by an unauthorized third party using Your ID and password or Your unauthorized disclosure of any MLS Information to a third party or Your unauthorized use of MLS Information would be speculative and difficult to quantify. Accordingly, and as a material inducement to Canopy MLS to enter into this Agreement, You agree that if any disclosure of Your ID and password results in access to the MLS Information by an unauthorized third party or if You make disclosure of MLS Information to an unauthorized third party, or You make unauthorized use of MLS Information regardless of whether such unauthorized access, disclosure or use is intentional, negligent or inadvertent, You shall be liable to Canopy MLS for liquidated damages in the amount of the greater of \$1,000 or the amount established in the Canopy MLS Rules for each real estate listing accessed or disclosed; and in any such case, this Agreement may be terminated.

7. Disclaimer, limitation of liability, and indemnification.

(a) **DISCLAIMER OF WARRANTIES.** Canopy MLS PROVIDES THE Canopy MLS SYSTEM AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE," BASIS. USE OF THE Canopy MLS SYSTEM AND THE MLS INFORMATION AVAILABLE THROUGH IT ARE AT YOUR SOLE RISK. Canopy MLS MAKES NO WARRANTY THAT THE Canopy MLS SYSTEM WILL BE AVAILABLE ON AN UNINTERRUPTED BASIS. Canopy MLS AND ITS PARTICIPANTS AND OTHER SUBSCRIBERS MAKE NO WARRANTY TO YOU AS TO THE ACCURACY, COMPLETENESS, CURRENCY OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE Canopy MLS SYSTEM. Canopy MLS EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE Canopy MLS SYSTEM AND THE MLS INFORMATION AVAILABLE THROUGH IT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(b) **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** Canopy MLS SHALL NOT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM: THE USE OF, OR INABILITY TO USE, THE Canopy MLS SYSTEM OR ANY OF THE MLS INFORMATION AVAILABLE ON IT, OR RELIANCE BY YOU OR ANY CONSUMER ON ANY INFORMATION OBTAINED THROUGH USE OF THE Canopy MLS SYSTEM; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE Canopy MLS SYSTEM; OR 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 Canopy MLS SYSTEM OR RELATED INFORMATION, RECORDS OR PROGRAMS.

(c) **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL THE LIABILITY OF Canopy MLS ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT OR YOUR USE OF OR INABILITY TO USE THE Canopy MLS SYSTEM EXCEED THE AGGREGATE AMOUNT PAID BY YOU OR ON YOUR BEHALF TO Canopy MLS AS FEES DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

(d) **Indemnification.** You will defend, indemnify and hold Canopy MLS harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in connection with any claim, demand, action or proceeding initiated by any third party against Canopy MLS arising from any of Your acts, including without limitation (i) putting inaccurate information into the Canopy MLS System; (ii) making, or allowing another person to make, unauthorized use of Your password and ID; (iii) making unauthorized use of the Canopy MLS System, or the MLS Information; (iv) infringing any intellectual property proprietary or contract right of any third party; or (v) violating this Agreement, any other Agreement, any of the Canopy MLS Rules or any law.

(e) **Acknowledgment.** You acknowledge that Canopy MLS 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 You and Canopy MLS.

8. Miscellaneous.

(a) **Assignment.** You may not assign or delegate this Agreement or any rights, obligations or duties hereunder. Any purported assignment or delegation in violation of this section shall be void from the time of such purported assignment or delegation.

(b) Entire Agreement. This Agreement, the Member Participant Request for Canopy MLS and Acknowledgement form, and the Subscriber Request for Canopy MLS and Acknowledgement form (entered into previously between you and Canopy MLS) contain the entire understanding of the parties and supersede all previous oral and written agreements on the subject hereof. This Agreement, the Member Participant Request for Canopy MLS and Acknowledgement form and the Subscriber Request for Canopy MLS and Acknowledgement form shall, if at all possible, be interpreted to be consistent with and supplemental to one another. If there is a direct conflict between this Agreement and any of the other documents mentioned, the terms and provisions of this Agreement shall prevail.

(c) Severability. 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.

(d) Governing law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina applicable to contracts made and performed in North Carolina without reference to its choice of law provisions.

9. GOOGLE MAPS TERMS, PRIVACY POLICY, LEGAL NOTICES, AND ACCEPTABLE USE POLICY. By entering into this Agreement, you hereby accept and agree to be bound by the Google Maps Terms (http://maps.google.com/help/terms_maps.html or other URL as may be provided by Google), Privacy Policy (<http://www.google.com/privacy/privacy-policy.html> or other URL as may be provided by Google), Legal Notices (http://www.maps.google.com/help/legalnotices_maps.html or other URL as may be provided by Google), and Acceptable Use Policy (http://www.google.com/work/earthmaps/legal/us/maps_AUP.html or other URL as may be provided by Google).