



## Carolina Multiple Listing Services, Inc. Non-Participant License Agreement

This Non-Participant License Agreement ("Agreement") is made and entered into by and between Carolina Multiple Listing Services, Inc., d/b/a Canopy MLS ("Canopy MLS"), a North Carolina corporation with offices at 1120 Pearl Park Way, Suite 200 Charlotte, NC 28204 and the individual and/or company whose name and address are set forth on the signature page of this Agreement ("Licensee"). Canopy MLS and Licensee are each individually referred to herein as a "Party" and jointly as the "Parties".

### RECITALS

A. Canopy MLS operates a Multiple Listing Service (as defined below) and collects, compiles, maintains and licenses a proprietary database of real estate listings and other information for the benefit of its Authorized Users.

B. Licensee desires to access and use the Content for inclusion in or development of certain business products, services and/or applications for the exclusive use and benefit of Licensee Customers.

C. Canopy MLS is willing to grant to Licensee the right to access and use the Content contained in the Compilation for Licensee's business products, services and/or applications subject to the terms and conditions of this Agreement.

D. Licensee understands that a signed copy of this Agreement will be provided by Canopy MLS to MLS Technology Platform, LLC d/b/a MLS GRID and that Licensee expressly consents thereto.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances and mutual covenants and promises contained herein and intending to be legally bound, the Parties agree as follows:

### 1. DEFINITIONS

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

- (a) **"Agreement"** means this Agreement, including all exhibits attached hereto and any subsequent or additional amendments, exhibits or addenda to this Agreement that may be adopted by the Parties.
- (b) **"Authorized User"** means a Participant or Subscriber, as such term is described or defined in the Governing Documents, or Licensee, including appropriate and necessary employees authorized to use or have access to the Licensed Content in accordance with the terms of this Agreement and the Governing Documents.
- (c) **"Automated Valuation Model" or "AVM"** means a product that provides automated real property valuations using mathematical modeling combined with a database.
- (d) **"Compilation"** means Canopy MLS's collected and compiled Content, maintained in electronic form from which Canopy MLS provides Licensed Content pursuant to this Agreement.
- (e) **"Confidential Information"** means all confidential or proprietary information of Canopy MLS including, without limitation, user names, IP addresses, access codes, source code, passwords, software, tools, designs, plans or any other information relating to any project, work in process, future development, marketing or business plan relating to Canopy MLS' present or future products, sales, suppliers, customers, employees, members or

business, which information is disclosed by or on behalf of Canopy MLS to Licensee or Consultant whether tangible or intangible and whether or not disclosed in oral, written, graphic, photographic or electronic form and whether marked "confidential" or not. All information received in the course of the Parties' relationship is considered Confidential Information, unless marked otherwise by Canopy MLS. The Content, the Licensed Content and the Compilation are all deemed to be Confidential Information. The specific terms of this Agreement shall also be deemed Confidential Information. The term "Confidential Information" does not include information that (i) is or becomes generally available to the public through no fault of either Party; (ii) can be demonstrated by credible evidence as having been rightfully known to the receiving Party prior to the time of its disclosure, or to have been independently developed by the receiving Party; (iii) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; or (iv) was required to be disclosed by operation of law or a court order.

- (f) **"Consumer(s)"** means any member of the general public who uses Licensee Offerings as provided herein.
- (g) **"Content"** means, all information contained within the MLS provided by Participants to the MLS and aggregated and distributed by the MLS to Participants including, but not limited to, information relating to on-market listings, sold listings, pending sales, personally identifiable information of buyers and sellers and any other individuals or entities, off-market listings, text, images, maps, audio, video, software and other informational content and data, Authorized User information and any and all compilations, collections or combinations of any of the foregoing.
- (h) **"Data Interface"** means those protocols and formats typically provided by Canopy MLS for use by other licensees of the Canopy MLS Data, which Canopy MLS may modify in its sole discretion from time to time without advance notice to Licensee.
- (i) **"Display"** means the visual representation of the Licensed Data by means of Licensee Offerings, whether in print, electronic or other form, which at all times is subject to the Governing Documents and any and all additional rules set forth in this Agreement.
- (j) **"Effective Date"** means the date Canopy MLS manually or electronically executes this Agreement which is the date this Agreement commences.
- (k) **"Governing Documents"** means Canopy MLS's Rules and Regulations (including all of Canopy MLS's interpretations thereof), Bylaws, the National Association of Realtors® (NAR) Multiple Listing Policies, and any and all other governing documents and/or operating policies of Canopy MLS as may be amended by Canopy MLS, at any time and without notice, all of which are available for review on [www.CarolinaRealtors/Home.com](http://www.CarolinaRealtors/Home.com) or upon request. In the event of any conflict between the Governing Documents and this Agreement, Canopy MLS shall determine which shall govern.
- (l) **"Intellectual Property Rights"** means any and all rights existing from time to time under patent, trademark, service mark, copyright, trade secret, unfair competition, moral rights, publicity rights or privacy rights law, and any and all other similar proprietary rights and any renewals and extensions thereof now or hereafter in force and effect in the United States or anywhere throughout the world.
- (m) **"Licensed Content"** means that subset of the Content licensed for Licensee's use(s) and purpose(s) under this Agreement as described in Exhibit A (and not otherwise prohibited in this Agreement) and, further, including all software and interfaces provided by Canopy MLS in connection with the periodic transmission of the Licensed Content to Licensee and also includes periodic updates and changes to the Licensed Content as made from time to time.
- (n) **"Licensee"** means the person or company referred to in the first paragraph of this Agreement and identified on the Licensee Information Signature Page hereof.

- (o) **"Licensee Customer(s)"** means only those Canopy MLS Participants/Subscribers with whom Licensee has contracted to provide the Licensee Offerings.
- (p) **"Licensee Offerings"** means those business products, services and/or applications created and developed by Licensee using the Licensed Content to be provided only to or for the sole use and benefit of Licensee Customers, as more fully described in Exhibit A attached hereto and incorporated herein.
- (q) **"Licensee's System"** means the Licensee's own computers, networks or servers.
- (r) **"Monitor"** means a method by which Canopy MLS tracks the Seeded or Watermarked Licensed Content used by Licensee to ensure compliance with the letter and spirit of this Agreement.
- (s) **"Multiple Listing Service" or "MLS"** means (i) a facility for the orderly correlation and dissemination of listing information so Participants may better serve their clients, customers and the public; (ii) a means by which Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law); (iii) a means of enhancing cooperation among Participants; (iv) a means by which information is accumulated and disseminated to enable Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; and (v) a means by which Participants engaging in real estate appraisal contribute to common databases.
- (t) **"Participant"** shall have the meaning ascribed to it in the Governing Documents.
- (u) **"RETS"** means Real Estate Transaction Standard and is a framework used by the real estate industry to facilitate the exchange of data.
- (v) **"Seed"** means a method by which Canopy MLS may code the Licensed Content such that its access, use and integration can be Monitored.
- (w) **"Subscriber"** shall have the meaning ascribed to it in the Governing Documents.
- (x) **"Term"** means the period during which this Agreement is in full force and effect.
- (y) **"Watermark"** means an identification code embedded into digital data, digital signal or pattern carrying information about the copyright owner, the creator of a work, authorized consumers and other pertinent information that will assist Canopy MLS in Monitoring use of the Licensed Content.

## 2. GRANT OF LICENSE

Subject to the terms and conditions of this Agreement, Canopy MLS grants to Licensee, during the Term of this Agreement, a limited, non-exclusive, non-transferable, revocable License to access and use, in the manner authorized by Canopy MLS herein, the Licensed Content for the sole purpose of integrating the Licensed Content into the Licensee Offerings and marketing and distributing Licensee Offerings to Licensee Customers only to the extent necessary to achieve Licensee's purposes as set forth in Exhibit A. Canopy MLS retains all rights not expressly so granted.

Nothing herein shall be construed as a grant of any other right or license to Licensee to access or use the Licensed Content, or the Compilation, except as expressly set forth herein, without Canopy MLS's prior specific written permission, which permission may be withheld in Canopy MLS's sole and absolute discretion.

## 3. DELIVERY OF LICENSED CONTENT

- (a) **Delivery.** During the term of this Agreement, Canopy MLS shall provide to Licensee (i) access to the Licensed Content via the Data Interface; and (ii) seven (7) days' advance notice of changes to the Data Interface. The

Licensed Content will be delivered or made available to Licensee via Canopy MLS's RETS-compatible database and servers, or other authorized access as may be available from time to time. Upon request by Licensee, Canopy MLS agrees to assist Licensee with up to five (5) hours of free technical and engineering support. Additional technical and engineering support may be available to Licensee, at its request at the rate of Two Hundred Dollars (\$200) per hour.

- (b) **Suspension of Delivery.** Canopy MLS reserves the right to limit the frequency of data delivery, or the quantity of data delivered within any given time period. Licensee's data delivery privileges may be suspended if, in the opinion of Canopy MLS, such activity impacts the operation of the Canopy MLS data servers or the data delivery program.
- (c) **Discontinuance of Delivery.** Notwithstanding anything herein to the contrary, Canopy MLS may discontinue delivery of portions of the Licensed Content if Canopy MLS is legally prohibited from delivering such portions of the Licensed Content to Licensee, or if Canopy MLS discontinues collecting portions of the Licensed Content in connection with the conduct of its business operations. If the Licensed Content is materially reduced, Canopy MLS and Licensee agree, in good faith, to negotiate an appropriate adjustment to the affected fees payable by Licensee hereunder.

#### **4. LICENSEE'S ACKNOWLEDGEMENTS**

- (a) Licensee acknowledges that it has read, and will comply with, the Governing Documents in connection with its rights to access and use the Licensed Content. Licensee shall notify Licensee Customers of all rights, rules, limitations and restrictions that are applicable to the permitted use of Licensee Offerings in conjunction with the Licensed Content, and provide evidence that it has done so if and when requested by Canopy MLS.
- (b) Licensee acknowledges that Canopy MLS provides the Licensed Content on an as-is, as-available basis. Canopy MLS shall not be liable to Licensee for any claim arising from inaccuracies in the Licensed Content or any failure, whether on the part of Licensee or of Canopy MLS, to update the Licensed Content promptly.
- (c) Licensee acknowledges that, as between the Parties to this Agreement, Canopy MLS possesses all right, title, and/or interest in all copyrights and all other Intellectual Property Rights in the Licensed Content, the Compilation and all of the Confidential Information.
- (d) Licensee acknowledges that it is responsible for any liability resulting from, or loss of goodwill associated with, problems in data integrity, accuracy or timeliness arising from Licensee's use of the Licensed Content.
- (e) Licensee acknowledges that the listings of some Participants or Subscribers may not be included in the Licensed Content if such Participant or Subscriber's permission is required in order for such listings to be distributed to Licensee and no such permission has been granted.

#### **5. LICENSEE'S OBLIGATIONS**

- (a) Licensee shall comply with this Agreement in all respects at all times during the Term of this Agreement and shall take all steps necessary to ensure that all persons working or acting under Licensee's control or direction shall also comply with this Agreement at all such times. Licensee shall not make the Licensed Content available to any third party, except in such manner as may be allowed hereunder or by other written authorization of Canopy MLS, which authorization Canopy MLS may grant or withhold in its sole discretion. In the event of any conflict between the Governing Documents and this Agreement, Canopy MLS shall determine which shall govern.
- (b) Licensees shall comply with all applicable privacy and information security laws including but not limited to security breach notification laws. In the event a security breach of Licensee's computerized system containing

Licensed Content results in access or use by an unauthorized third party, Licensee shall notify Canopy MLS by confirmed email or confirmed telephone within twelve (12) hours of its discovery by Licensee. Licensee shall also take all reasonable steps and employ all measures available to prevent “data piracy” and protect the security and privacy of the Licensed Content from unauthorized access, use or disclosure. From time to time, Canopy MLS may, in its sole discretion, specify particular security measures Licensee must take.

- (c) Licensee assumes ultimate responsibility for maintaining the integrity of the Licensed Content licensed hereunder and acknowledges that its use of the Licensed Content is subject to all limitations set forth in this Agreement. Licensee, upon notice by Canopy MLS, shall immediately cease and cure any breach of this Agreement or violation of the Governing Documents, within its control, whether committed by Licensee or any party acting under Licensee’s control or direction. Licensee shall hold Canopy MLS harmless from any and all liability arising out of such breach.

## **6. RULES, LIMITATIONS AND OTHER RESTRICTIONS**

- (a) **Use of Licensed Content.** Except as may be permitted under the Governing Documents and as contemplated by this Agreement, Licensee shall not distribute, publically display, convey, make available to any party or permit any party to access or use the Licensed Content, or any portion thereof, other than in the ordinary course of Licensee’s business and as expressly permitted by this Agreement. Licensee shall not use the Licensed Content to contact property owners and/or any client of any Participant or Subscriber for any purpose.
- (b) **Acts of Authorized Users.** Licensee, by the execution of this Agreement, does hereby acknowledge its understanding and agreement that Licensee shall be responsible for the acts of any Authorized User employed by or acting as independent contractors of Licensee. All acts of Authorized Users or any other third party shall be deemed to be the acts of Licensee for all purposes hereunder.
- (c) **Trademarks.** Licensee shall not use or refer to Canopy MLS or any trademark, service mark, logo or trade name belonging to Canopy MLS, in any advertising or marketing materials or in any form or fashion without Canopy MLS’s prior express written permission.
- (d) **AVM Opt-out.** Some sellers may opt-out of AVM usage. For sellers opting out of AVM usage, Licensee shall filter Licensed Content based on such specific criteria.

- (e) **Damages.** This Agreement does not convey or grant to Licensee any interest in the Compilation or the Licensed Content but only a limited right to use and display the Licensed Content revocable in accordance with the terms hereof. In the event of any claim for infringement or misappropriation of the Compilation or the Licensed Content, all damages awarded and other awards and recoveries shall be the exclusive property of Canopy MLS and all such amounts shall be paid to Canopy MLS. In the event Licensee obtains possession or control of any such damages or awards, it agrees to hold all such funds in trust for the exclusive benefit of Canopy MLS. Licensee agrees that it will not challenge or take any action inconsistent with Canopy MLS's rights to the Compilation or Licensed Content.
- (f) **Marketing Material Review.** Canopy MLS shall have the right to review the content and methods of Licensee's advertising, marketing and solicitations pertaining to Licensee Offerings. Canopy MLS may disallow specific content, methods and/or frequency of Licensee's advertising, marketing and solicitations if deemed objectionable by Canopy MLS in the exercise of its business judgment and discretion. In addition, Licensee shall promptly respond to requests or complaints made by Participants or Subscribers pertaining to Licensee Offerings or to any advertising, marketing or solicitation with respect to such Licensee Offerings.
- (g) Except as specifically provided in Exhibit A attached hereto or as may be expressly authorized in writing by Canopy MLS and in addition to those restrictions and prohibitions set forth above, the Licensee shall be subject to the following further restrictions:
- (i) **Restrictions Regarding Canopy MLS Participants and Subscribers.** Licensee acknowledges that any Licensee Customer who is no longer a Participant or Subscriber, or whose status with Canopy MLS is inactive, or whose real estate/appraisal license has been revoked or suspended, is deemed to be a third party and therefore shall not be granted access to the Licensed Content or Licensee Offerings. Licensee must verify no less than weekly that each Licensee Customer continues to remain an active Participant or Subscriber, and Licensee shall suspend from access to the Licensed Content in the Licensee Offerings any Licensee Customer who becomes inactive until such time that the Licensee Customer is again verified to be an active Participant or Subscriber. Licensee also acknowledges that information of Participants or Subscribers is Confidential Information, as defined herein, and that the review of Participants' or Subscribers' active or inactive status is the ONLY purpose for which Participant or Subscriber information may be used by Licensee, and that all other uses are strictly prohibited.
  - (ii) **Restriction on Transfer.** Licensee shall not sublicense, sell, transfer, distribute, publish, loan, lease, exchange, store or give, or promote access to, the Licensed Content or the Compilation to anyone, including, without limitation, any parent, subsidiaries, affiliated entities or contractors of Licensee.
  - (iii) **Restriction on Access and Internet Display.** Licensee shall not allow access, use or display, or permit others to access, use or display, any Licensed Content or any part of the Compilation on any third party Internet websites, or profit by or accept any consideration for enabling any third party to access, use or display Licensed Content through links to or by framing such Content or data from a website owned or operated by or for the benefit of Licensee.
  - (iv) **Restriction on Integrating Licensed Content.** Licensee shall not process or combine or permit to be processed or combined, the Licensed Content or the Compilation or any portion thereof, with any other data or information.
  - (v) **Restriction on Compensation.** Licensee shall not request or receive any form of compensation for allowing access to the Licensed Content or the Compilation based solely on the value of such access or for purposes unrelated to Licensee Offerings.
  - (vi) **Restriction on Competition.** Licensee shall not use the Licensed Content in any manner as part of or similar to a Multiple Listing Service business.

- (vii) **Restriction on Consumer Eligibility Evaluation.** Licensee shall not use or permit use of the Licensed Content or the Compilation for the purpose of establishing an individual's eligibility for credit or insurance; evaluating an individual for employment purposes, determining an individual's eligibility for a government license or permit; or in any other manner that would cause such use of the Licensed Content to be construed as a consumer report by any authority having jurisdiction over either of the Parties.
- (viii) **Restriction on Violation of Laws.** Licensee shall not use the Licensed Content or the Compilation, for any purpose or in any manner that infringes on any third parties' Intellectual Property Rights or violates any federal or state law, statute, ordinance or regulation, including, without limitation, the Real Estate Settlement Procedures Act and laws governing unfair competition, unfair and deceptive practices, anti-discrimination and false advertising.
- (ix) **Restriction on Consultants.** Licensee shall not permit any independent consultants or contractors, whether affiliated with Licensee or not, to access or use the Licensed Content or the Compilation unless Licensee has engaged them to assist Licensee in connection with Licensee Offerings and Licensee has delivered to Canopy MLS within three (3) days of Licensee's engagement of such independent consultant or contractor, a fully executed Consultant Agreement in the form and format attached hereto and incorporated herein as Exhibit B.
- (x) **Restriction on Consumer Information.** In the event Licensee Offerings include website development, Licensee understands and agrees that neither Licensee nor Licensee Customers may provide the identity of any Consumers to any third party for compensation.
- (xi) **Restriction on Disclosure.** Licensee shall not violate any applicable disclosure guidelines as set forth by the North Carolina Real Estate Commission or the South Carolina Real Estate Commission, whichever may be applicable.
- (xii) **Restriction on Outdated Data.** Licensee shall not use or continue to use or distribute any data, listing or other material that it has reason to believe is outdated, no longer valid or inaccurate.
- (xiii) **Restriction on Use of Membership Data.** Licensee shall not use any of Canopy MLS's membership data contained in the Licensed Content for any purpose inconsistent with the intent of this Agreement.

## 7. AUDITS OF COMPLIANCE

- (a) **Audit and Review of Content Use.** Canopy MLS has the right and authority, or at its option may engage an independent third party to, audit and review Licensee's use of the Licensed Content and the Database in connection with Licensee's rights and obligations under this Agreement; test and inspect the books, records, equipment and facilities of Licensee, including Licensee's System; and perform tests of Licensee's controls, systems and procedures as often as deemed necessary by Canopy MLS, including, without limitation, (i) external attempts to penetrate any firewalls established in connection with Licensee's System and protection of the Licensed Content, (ii) viewing all displays of the Licensed Content on Licensee's System or printouts, as applicable, (iii) using Licensee's System to initiate and execute searches, (iv) using all other features and functions available on Licensee's System, and if any of the features or functions of Licensee's System are protected by a user authentication device, such as a password, or require registration or similar function, then using all of such features and functions. If any features or functions of Licensee's System require registration or other information, Canopy MLS may input inaccurate information in order to access the feature or function. Licensee shall not attempt to block or otherwise interfere with Canopy MLS's monitoring or review of, attempts to penetrate, or access Licensee's System or other systems and controls. Each such audit shall be performed in accordance with audit standards and procedures established by Canopy MLS, in its sole discretion, and shall be performed to monitor and review the adequacy of Licensee's internal controls; the adequacy of Licensee's security system and procedures; Licensee's compliance with any term of this Agreement; and Licensee's

compliance with applicable laws. The costs of such audits and tests shall be at Canopy MLS's expense, except that if at any time an audit discloses that Licensee is not in full compliance and has otherwise not met the audit standards established by Canopy MLS, Licensee shall pay all costs of the audit, including Canopy MLS's internal costs, the independent auditor costs and other out-of-pocket expenses incurred by Canopy MLS.

- (b) **Audit and Review of Licensee Offerings.** Licensee shall make its Licensee Offerings and associated records, files and responsible personnel accessible to Canopy MLS upon request for purposes of Canopy MLS's review of Licensee's full compliance with this Agreement. Licensee shall also provide access to Display formats to Canopy MLS upon request, and Canopy MLS may review Licensee Offerings and related records and files from time to time to ensure that Displays are and continue to be acceptable to Canopy MLS. If unacceptable Displays are found, Canopy MLS will notify Licensee in writing of the specific unacceptable Displays, and Licensee shall have five (5) business days in which to change the Displays so they are acceptable. In the event Licensee does not change the Displays to be acceptable to Canopy MLS, then Canopy MLS reserves the right to suspend or terminate this Agreement in accordance with its terms and conditions.
- (c) **Suspension or Termination.** Licensee expressly understands that Canopy MLS may seed, watermark and monitor the Licensed Content and the Compilation and Canopy MLS reserves the right to suspend or immediately terminate this Agreement upon notice to Licensee pending investigation of any evidence or allegation that either Licensee or a Licensee Customer has breached the terms and conditions of this Agreement, or that notice has been received that Licensee is in breach of any governmental rules, regulations or statutes, and that such breach may interfere with the Parties' proper performance of this Agreement. Promptly upon notification from Canopy MLS that a Licensee Customer has breached its agreement or the Governing Documents or is in breach of applicable law, Licensee agrees to suspend and/or terminate such Licensee Customer's access to or use of the Licensee Offerings or be subject to suspension or termination in accordance with the terms and conditions of this Agreement.

## 8. FEES

Licensee shall pay to Canopy MLS the fees, charges and other sums described in the Fee Schedule marked Exhibit C attached hereto and made part hereof. The fees may include but are not limited to the following:

- (a) **Set-up and License fees.** Shall be in the amounts and payable as set forth below and as set forth on Exhibit C.
- (b) **Payment Terms.** Fees invoiced to Licensee will be due on the date of invoice and payable within ten (10) days of that date. Overdue amounts shall accrue a late fee charge equal to one and one-half percent (1 1/2%) per month, which charge may be added monthly to all overdue amounts. If Licensee is more than ten (10) days delinquent in payment of any invoice hereunder, and if such delinquency continues for more than ten (10) days, Licensee's access to or delivery of the Licensed Content may be suspended until all delinquent amounts are paid in full. During any such suspension, Licensee will not be permitted to use any Licensed Content, and the Licensee shall continue to be liable for all fees accruing during such suspension. Notwithstanding these provisions pertaining to overdue payments, Licensee's delinquency in the payment of required fees hereunder will be considered a material breach of this Agreement and Canopy MLS's remedies for any such breach shall be as provided herein.
- (c) **Taxes.** Fees are exclusive of, and Licensee shall be responsible for payment of any and all sales, use, excise, personal property and similar taxes or charges incurred in connection with this license granted to Licensee and the ownership or use of Licensee Offerings described in this Agreement.

## 9. PROPRIETARY RIGHTS

- (a) **Canopy MLS Property.** This Agreement is a license agreement and not an agreement of sale. The selection, compilation and arrangement of the Licensed Content and other data comprising the Compilation is the



proprietary, copyrighted property of Canopy MLS, and all rights, title and interest in the selection and arrangement of listing information, comparable and statistical data and other information maintained in the Compilation, including the copyrights therein, shall at all times remain with Canopy MLS. As between the Parties, all right, title and interest in and to the Compilation, the Licensed Content, and all other Intellectual Property Rights of the Canopy MLS, or its licensors, and all versions, copies, components, modifications, enhancements and derivatives thereof, are and shall remain the sole and exclusive property of Canopy MLS and its licensors, including all copyrights and other Intellectual Property Rights inherent therein and pertinent thereto. Licensee shall have only the limited rights with respect to the Licensed Content and the Compilation as are expressly granted by this Agreement, and all rights not expressly granted by Canopy MLS are reserved. Licensee agrees that only Canopy MLS shall have the right to alter, maintain, enhance, or otherwise modify the Licensed Content, except as expressly provided herein, and any alterations by Licensee shall be at Licensee's sole risk and liability. If and to the extent Licensee or any party acting on its behalf obtains any ownership interest in any of Canopy MLS's Intellectual Property Rights, Licensee agrees to assign, and hereby does assign, to Canopy MLS, all such interest.

- (b) **Canopy MLS Copyright.** Licensee shall include and not alter or remove any attribution, trademark, copyright, other notices, or any other disclaimers located or used on or in connection with the Licensed Content. Licensee shall, on all Displays of Licensed Content include: "Property Information © [current year] Canopy MLS, Inc. All rights reserved. Certain information contained herein is derived from information which is the property of, and copyrighted by, Canopy MLS, Inc."
- (c) **Licensee Property.** Title to, and ownership of the Licensee Offerings shall at all times remain with Licensee. Any and all Intellectual Property Rights relating specifically to such Licensee Offerings are and shall belong to Licensee.

## 10. TREATMENT OF CONFIDENTIAL INFORMATION

- (a) **Rights and Restrictions.** Licensee acknowledges that Confidential Information will be disclosed to Licensee during the course of this Agreement. To prevent the unauthorized duplication or disclosure of Confidential Information, Licensee agrees to exercise the same degree of care it takes to protect its own proprietary information and, in no event, less than reasonable care, at all times that the Confidential Information is in the possession or under the control of Licensee. Confidential Information may be disclosed to Licensee's officers, directors, employees, attorneys, accountants or authorized contractors who need to have access to the Confidential Information for the Licensee to perform its obligations hereunder, provided that such persons are informed by Licensee that the Confidential Information is subject to nondisclosure obligations and use restrictions under this Agreement. Licensee may use the Confidential Information only in connection with the exercise of its rights and the performance of its duties and obligations under this Agreement. Licensee may disclose Confidential Information if law, court order or regulation requires such disclosure; provided, however, that Licensee notifies Canopy MLS in writing in advance of such disclosure.
- (b) **Responsibility for Misuse.** Licensee shall be responsible for any misuse by its officers, directors, agents, employees or representative of the Confidential Information, including any unauthorized access to or use of such Confidential Information by means of Licensee's personnel, systems, equipment, products or applications.

## 11. TERM AND TERMINATION

- (a) **Term.** The initial Term of this Agreement is one (1) year, unless earlier terminated in accordance with the provisions of this Agreement. Upon expiration of the initial Term, this Agreement will automatically renew on a month-to-month basis but may be terminated thereafter for any reason by either Party upon thirty (30) days written notice to the other Party. In case this Agreement is terminated by Canopy MLS without cause during the initial Term, Licensee shall be entitled to a refund of the pro-rated portion of the License fees paid hereunder.

The Term of this Agreement begins on the latest date executed by either Party (either manually or electronically) and shall remain in full force and effect until such time as it is terminated hereunder.

- (b) **Termination.** This Agreement may be terminated at any time during the Term (i) thirty (30) days after either Party's written notice to the other of its intent to terminate, (ii) three (3) days after either Party's written notice that the other has breached a material term or provision of this Agreement or the Governing Documents, provided the breach remains uncured; (iii) immediately after either Party's written notice to the other that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the Party giving notice irreparable harm; (iv) immediately after either Party's written notice to the other, if the other Party makes a general assignment for the benefit of its creditors, has a receiver appointed for all, or a substantial part of its business or assets, or a bankruptcy proceeding is brought by or against such other Party involving such other Party as a debtor. Canopy MLS may also terminate this Agreement at any time if, in Canopy MLS's sole judgment, the Licensee has failed to use the Licensed Content within a reasonable period of time after having been granted access to the Licensed Content. Following termination hereof, this Agreement may be reinstated upon payment by Licensee to Canopy MLS of any reinstatement fee that may be required to be paid to Canopy MLS and upon satisfaction of such other conditions as may be determined in the sole and absolute discretion of Canopy MLS.
- (c) **Disposition of Property Upon Termination.** Upon termination of this Agreement, the license granted herein shall similarly terminate. Licensee shall, within 10 days, return to Canopy MLS all materials comprising the Confidential Information and Licensed Content, including all copies, excerpts, extracts, data and records of such information in its possession or under its control, and Licensee shall modify, disable and delete the Licensed Content from the Licensee Offerings and disable the Licensed Offerings from permitting access to, downloading, displaying or using the Licensed Content. When Confidential Information is destroyed, the Licensed Content is deleted from the Licensee Offerings and access to the Licensee Offerings is disabled for Participants and Subscribers, Licensee shall provide Canopy MLS with an executed affidavit of the chief executive officer of Licensee confirming such destruction, deletion and disabling.
- (d) **Suspension Due to Licensee Breach.** In the event Licensee breaches this Agreement and Canopy MLS terminates the privileges of Licensee hereunder, Canopy MLS may, in its sole discretion, suspend its performance instead of terminating this Agreement. Canopy MLS may make this election by notice to Licensee within three (3) days after the initiation of suspension. Licensee's obligations under this Agreement continue during any period of suspension. In the event of any suspension and termination of this Agreement, Licensee shall make no further use of Licensed Content until and unless Licensee's rights under this Agreement are restored by Canopy MLS.

## 12. LIABILITY PROVISIONS AND LIMITATIONS

- (a) **No Warranties or Representations.** CANOPY MLS MAKES NO WARRANTIES OR REPRESENTATIONS WHATSOEVER, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND CANOPY MLS DISCLAIMS ANY RESPONSIBILITY REGARDING THE NON-INFRINGEMENT, TIMELINESS, COMPLETENESS, QUALITY, CURRENTNESS, OR ACCURACY OF THE LICENSED CONTENT OR THE COMPILATION OR ITS SUITABILITY FOR LICENSEE'S PURPOSES. The Licensed Content is provided "AS IS", without any express or implied representations or warranty of any kind. In this regard, Licensee represents that it is familiar with Canopy MLS's computer system/equipment, the Compilation and the MLS services provided to Participants and Subscribers, and that Licensee Offerings and related services are compatible with the computer system/equipment, services and Compilation of Canopy MLS for the purposes of Licensee.
- (b) **Force Majeure.** Neither Party shall be liable for nonperformance or delays of its services or obligations under this Agreement, except payment obligations, which are due to acts of God or any other cause that is beyond the reasonable control of a Party.
- (c) **Limitation of Liability/Exclusion of Warranties.** IN NO EVENT SHALL CANOPY MLS BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF CANOPY MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CANOPY MLS' TOTAL LIABILITY AND LICENSEE'S SOLE REMEDY AGAINST CANOPY MLS HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF THE GREATER OF (a) AMOUNTS LICENSEE HAS PAID TO CANOPY MLS HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM OR BREACH, AND (b) \$1,000. CANOPY MLS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. THIS PARAGRAPH SETS OUT LICENSEE'S EXCLUSIVE REMEDIES. CANOPY MLS MAKES NO WARRANTY, INCLUDING THOSE OF TITLE, AVAILABILITY, OR NON-INFRINGEMENT, REGARDING MARKS LICENSED UNDER THIS AGREEMENT, IF ANY. The limitations in this section shall apply to all causes of action and all legal theories, including breach of contract, negligence, strict liability and other torts, and any other causes of action, however stated. The limitations and exclusions of damages set forth in this section are independent of the exclusive remedy set forth herein, and shall survive in the event such remedy fails of its essential purpose or is otherwise deemed to be unenforceable.
- (d) **Other Limitations.** Any action arising out of this Agreement, or because of its breach, must be commenced within one (1) year after the cause of action accrues. In addition, because of the unique proprietary nature of the Licensed Content and the Licensee Offerings, in any suit by a Party seeking injunctive relief in the event of default or a breach of a duty by the other Party, the plaintiff need not provide a security bond or prove that its remedies at law are inadequate.
- (e) **Injunctive Relief.** Due to the unique nature of the Licensed Content and Confidential Information, Licensee acknowledges and agrees that, in the event Licensee breaches or threatens any breach of this Agreement, Canopy MLS would suffer irreparable harm and that monetary damages would be inadequate to compensate Canopy MLS for a breach. Canopy MLS is therefore entitled to, in addition to all other forms of relief, injunctive relief to restrain any threatened, continuing or further breach by Licensee without showing or proving any actual damages sustained by Canopy MLS and without posting any bond.
- (f) **Liquidated Damages.** Licensee acknowledges that damages suffered by Canopy MLS by virtue of access to the Licensed Content by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the Licensed Content to a third party would be speculative and difficult to quantify.

Accordingly, as a material inducement to Canopy MLS to enter into this Agreement, Licensee agrees that, in the event Licensee or any other person acting on behalf of Licensee discloses any password and/or credentials to access the Licensed Content or discloses the Licensed Content itself to any third party, regardless of whether such disclosure is intentional or negligent, Licensee shall be liable to Canopy MLS for liquidated damages in an amount up to \$15,000.00 for each such disclosure as well as immediate termination of this Agreement.

- (g) **No Responsibility for Canopy MLS Participants/Subscribers.** Canopy MLS shall not be liable for any damages occasioned by the acts or omissions or wrongful conduct of Participants or Subscribers.
- (h) **Indemnification.** Licensee hereby agrees to indemnify and hold Canopy MLS and any and all parent, subsidiary and affiliated companies and each of their respective employees, directors, officers, members, licensees, agents and each of their respective successors and assigns (the "Indemnified Parties") from and against any and all lawsuits, proceedings, losses, damages, costs, claims, demands, liabilities and actions, including the payment of all expenses and all attorney's fees and costs, arising out of or connected with any of the following claims, whether such claim is for a direct or indirect liability (each, a "Claim"): (a) any Claim for infringement or misappropriation of any copyright, patent, trade secret or other intellectual or other property right of any kind or nature whatsoever, arising under or in connection with this Agreement based upon acts or omissions of Licensee including, without limitation, any Claim in connection with the use, display, sublicensing or distribution of the Licensed Content, the use of any technology or processes, including computer software programs, computer hardware or business methods in connection with the use, display or distribution of the Licensed Content; (b) any breach of any provision of this Agreement or of any representation or warranty made by Licensee under this Agreement; and (c) use or misuse of its Licensee Offerings. The Indemnified Parties shall each have the right to control its, his, her or their own defense and to engage legal counsel acceptable to such Indemnified Party or Indemnified Parties, in its, his, her, or their sole discretion. If any Claim is made or, in Canopy MLS's reasonable opinion is likely to be made, Canopy MLS may, upon ten (10) days written notice to Licensee, terminate this Agreement, but such termination shall not relieve Licensee of its indemnification obligations hereunder. Canopy MLS shall have the right to participate in the defense and settlement of any action under this section using its own counsel at its own cost.
- (i) **Suspension.** Without prejudice to any other rights of Canopy MLS, if Licensee is in breach of any term of this Agreement, Canopy MLS shall have the right to suspend Licensee's access to the Licensed Content until such time as Canopy MLS is satisfied that no further breach will occur. During any such suspension, Licensee will not be permitted to use any Licensed Content, and Licensee shall continue to be liable for all fees accruing during such suspension.

### 13. GENERAL PROVISIONS

- (a) **Privacy Acknowledgement and Disclaimer.** Licensee acknowledges that the federal government and certain states have enacted or may enact laws, which place restrictions upon or allow consumers to place restrictions on the use of personally identifiable information. Canopy MLS disclaims any warranty or representation, express or implied, that personally identifiable information which may be contained in the Licensed Content or Compilation has been identified in or deleted from Licensed Content or Compilation supplied to Licensee hereunder.
- (b) **Applicable law.** The laws of the State of North Carolina shall govern this Agreement and its interpretation. Any action to enforce or interpret this Agreement shall have venue in Charlotte, North Carolina, and the Parties hereby submit to personal jurisdiction in that venue. At the option of Canopy MLS, any dispute arising hereunder may be submitted to binding arbitration or mediation to be conducted in Charlotte, North Carolina by an arbitration or mediation officer of Canopy MLS's choosing.
- (c) **Authority.** Each Party warrants that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to

enter into this Agreement. Each Party further acknowledges that it has read this Agreement and agrees to be bound by it.

- (d) **Survival of Obligations.** Upon any termination of this Agreement, all rights and obligations of the Parties under the Agreement shall terminate, except the rights set forth regarding fees, as they relate to periods to time prior to the termination of the Agreement and the following Paragraphs: 6(h)(vi) – Restriction on Competition, 9 - Proprietary Rights, 10 – Treatment of Confidential Information, 11 – Term and Termination, 12 – Liability Provisions and Limitations, 13 – General Provisions.
- (e) **Attorney’s Fees.** The prevailing Party in any dispute or legal action between the Parties with respect to this Agreement or any provision hereof, may be, in accordance with applicable law, entitled to recover its reasonable attorney’s fees and costs incurred in connection with or as a result of such dispute or legal action.
- (f) **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the Parties at their respective addresses set forth herein or such other address of which any Party may advise the others in writing during the Term of this Agreement; and shall be effective upon the earlier of the date of receipt or three (3) days after mailing or other transmission.
- (g) **No Waiver.** No delay or failure of a Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such Party’s right thereafter to exercise or enforce each and every right and provision of this Agreement. To be valid, any waiver or modification of this Agreement or any of its terms shall be reduced to writing and signed by the Party who is alleged to have waived its rights or to have agreed to a modification.
- (h) **Assignment.** Licensee may not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of Canopy MLS. Any purported assignment or delegation in contravention of this paragraph is null and void and shall immediately cause this Agreement to terminate.
- (i) **Entire Agreement.** This Agreement, together with the Governing Documents as they may change from time to time, comprise the full and complete understanding of the Parties hereto regarding the subject matter of this Agreement and supersedes all prior agreements, representations and understandings, whether oral, written or implied, relating to the same subject matter. This Agreement may be modified only by a written instrument signed by an authorized representative of each Party, provided, however, that the Governing Documents may be revised at any time by Canopy MLS.
- (j) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same document. Signatures of Parties on copies transmitted by facsimile or by electronic mail shall be considered as signed original documents.
- (k) **Relationship of the Parties.** The Parties hereto shall have the relationship of independent contractors. Neither Party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, legal representative or employee of the other Party and neither shall have any authority to make any agreements or representations on the behalf of the other Party. Each Party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.
- (l) **Interpretation of Agreement.** The Parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor or against either Party and that an ambiguity shall not be interpreted against the drafting Party.
- (m) **Severability.** Each provision of this Agreement is severable from the whole and, if one provision is declared invalid or unenforceable, in whole or in part, the other provisions shall remain in full force and effect. In the event

a court having jurisdiction over the Parties holds any provision of this Agreement invalid or unenforceable, the Parties shall negotiate in good faith to replace the invalid or unenforceable provision, if possible, with a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

- (n) **Precedence.** In the event of any conflict between the terms of the main body of this Agreement and any Exhibit to this Agreement, the terms of the body of the Agreement shall prevail.
- (o) **Review and Approval of Agreement.** Each Party represents that it has taken all required corporate and other action to approve this Agreement and authorize its execution, and that it has had an opportunity to have this Agreement reviewed by professional advisors and counsel of its own choice before executing it.

In consideration of the mutual covenants set forth in this Agreement, the parties affirm and adopt this Agreement by setting their signatures below.

**CANOPY MLS**

Carolina Multiple Listing Services, Inc.

By: \_\_\_\_\_  
Anne Marie DeCatsye, Esq.

Title: Chief Executive Officer

Date: \_\_\_\_\_

**Contact for notices and operations matters**

Name: Steve Byrd, VP/CIO  
Phone: (704) 940-3141  
Email: steve.byrd@carolinahome.com  
Mailing: 1120 Pearl Park Way, Suite 200, Charlotte, NC 28204

**LICENSEE**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Contact for notices and operations matters**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Mailing: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**  
**LICENSEE OFFERINGS**

*Describe the Licensee Offerings of Licensee. Describe in detail the intended use of Licensed Content in conjunction with the Licensee Offerings, i.e., how Licensed Content is to be used, how Licensee Offerings are to be used, whether intended to be combined with any other data from any other sources (in which case such must be clearly identified), who is to have access (including staff and contractors), etc. Attach additional pages as needed.*

**Enter description below. You must include example displays and reports. Attach additional pages as needed:**



**EXHIBIT B (if applicable)**  
**LICENSEE – CONSULTANT AGREEMENT**

Consultant Name (Individual or Company): \_\_\_\_\_  
"Consultant"

Name of Primary Contact: \_\_\_\_\_

E-mail Address of Primary Contact: \_\_\_\_\_

Consultant Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

As or on behalf of Consultant, it is hereby represented and agreed as follows:

1. Consultant has received a copy of the complete Canopy MLS Non-Participant License Agreement between \_\_\_\_\_ ("Licensee") and Carolina Multiple Listing Services, Inc. ("Canopy MLS"), and the Consultant has read and will comply with same. The signor is duly authorized by Consultant to enter into this Licensee – Consultant Agreement ("Agreement") with Licensee and will be the Consultant's contact person with Canopy MLS for the purposes of this Agreement.
  
2. Consultant has been engaged by Licensee to assist Licensee in connection with the development of its Licensee Offerings (as such term is defined in the Canopy MLS Non-Participant License Agreement). A description of the services to be provided by Consultant to Licensee is as follows:
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
3. Consultant and Licensee understand and agree that Consultant will have a limited, nontransferable, personal right and license to access the Licensed Content, as defined in the Canopy MLS Non-Participant License Agreement, only for the purpose of assisting Licensee in the development of the Licensee's Licensed Offerings. By such access and use, Consultant understands and agrees to be subject to all of the terms, conditions, rules and restrictions set forth in the Canopy MLS Non-Participant License Agreement and in the Governing Documents available at Canopy MLS's website and upon request, as may be amended from time to time. The receipt of the above is acknowledged by execution of this Agreement. Consultant will not access or use the Licensed Content in any manner for itself or on behalf of any third-party other than Licensee, without the prior written permission of Canopy MLS.
  
4. Consultant understands and agrees that it acquires no rights in or to the Licensed Content other than pursuant to the limited license granted herein, and that such limited license may be terminated by Canopy MLS, in its discretion, at any time upon notice to Consultant and Licensee.

Entered into this \_\_\_\_ day of \_\_\_\_\_ on behalf of Consultant by:

Signature: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**Licensee Approval**

*Licensee agrees to notify Canopy MLS immediately upon change of relationship with this Consultant.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**Accepted by Canopy MLS**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**EXHIBIT C**  
**FEE SCHEDULE**

**Set up Fee.** Upon execution of this Agreement, Licensee shall pay Canopy MLS a non-refundable set-up fee as set forth below.

**License Fee.** Licensee shall pay Canopy MLS a non-refundable monthly Licensee fee in the amount set forth below and according to the terms set forth in Section 8 of this Agreement. Such License fees may be billed to a credit card placed on file with Canopy MLS. Returned or rejected credit card charges are subject to late fees and/or penalties as defined in Paragraph 8 of this Agreement.

**Fee Schedule for Licensee Products/Services:**

|                        |                                       |
|------------------------|---------------------------------------|
| Set-Up Fee:            | \$1,000.00                            |
| Licensee Fee:          | \$1,200.00/quarter                    |
| Technical Support Fee: | \$150.00/hour (as needed by Licensee) |