

## Trademark License Agreement

This Trademark License Agreement (the "Agreement") is made and entered into by and between Council of Multiple Listing Services, a Washington nonprofit corporation (the "CMLS"), and \_\_\_\_\_, a \_\_\_\_\_ (the "Licensee").

CMLS is the licensee of the mark sourceMLS™(WITH DESIGN)™. Licensee desires to use the mark to designate its display of real estate listings as complying with the standards established by CMLS for the display of real estate listings, all in accordance with the terms and conditions of this Agreement.

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, CMLS and Licensee agree as follows:

1. Grant of License. Subject to the terms and conditions of this Agreement, CMLS hereby grants to Licensee a revocable, non-exclusive, non-transferable limited license (the "License") to (a) use the trademark identified on the attached Exhibit A, which is incorporated into this Agreement by this reference (the "Licensed Mark"), on or in connection with the electronic display of individual sourceMLS™ Listings ("Individual Listings Only License"), including on the Internet, or applications for online and/or mobile devices ("Display Application"), that display listings of real property for sale, rent, or lease ("Listing") in connection with Approved Services, (b) and sublicense to (i) brokers in good standing who are participants in Licensee's multiple listing service, if Licensee is a multiple listing service, (ii) such broker's agents or associate brokers who are in good standing, and (iii) vendors of internet data exchange websites (IDX) for such brokers and agents who have a contractual relationship with Licensee for the provision of a listing feed to such vendor (collectively "Sublicensees"), use of the Licensed Mark on a limited non-exclusive and non-transferable basis in connection with the display of sourceMLS™ Listings on Display Applications in connection with Approved Services. Any sublicense granted will be made pursuant to a trademark sublicense agreement that is substantially in the form attached to this Agreement as Exhibit B, and is incorporated by reference ("Sublicense Agreement"). Licensee shall require Sublicensee to agree to all of the obligations and limitations on the use of the Licensed Mark provided in this Agreement. Licensee may not grant Sublicensee any greater rights than CMLS has granted to Licensee for sublicenses under this Section 1. Licensee agrees to use reasonable efforts to monitor the compliance of all Sublicensees with the terms of each Sublicense Agreement, and Licensee agrees to take appropriate and immediate action to remedy any breach of the Sublicense Agreement by Sublicensees up to and including termination of the Sublicense. Licensee agrees to deliver to CMLS no less frequently than one (1) time each calendar quarter a list of all Sublicensees, and if requested by CMLS, a copy of all Sublicense Agreements.

2. sourceMLS™ Listings.

(a) Notwithstanding anything to the contrary in this Agreement, Licensee shall use the Licensed Mark only as permitted in this Agreement, and may not use the Licensed Mark in connection with any Listing that is not a sourceMLS™ Listing. If all Listings displayed by Licensee on a specific Display Application are sourceMLS™ Listings, then Licensee may also use the Licensed Mark on such Display Application in connection with marketing and advertising sourceMLS™ Listings through Licensee's Approved Services ("Site License"). If at any time a Listing ceases to be a sourceMLS™ Listing, Licensee agrees to promptly remove the Licensed Mark from use in connection with that Listing, and in the case of a Site License, if any Listing displayed on a specific Display Application ceases to be a sourceMLS™ Listing, or the Display Application no longer qualifies for a Site License, Licensee agrees to promptly remove the Licensed Mark from the Display Application, except on individual sourceMLS™ Listings. Licensee shall not use or make any representations regarding the Licensed Mark in any manner that affirmatively states, suggests, or implies that any Listing is a sourceMLS™ Listing, if it is not a sourceMLS™ Listing, or that the Licensed Mark represents anything, except that the sourceMLS™ Listings satisfy the conditions of becoming sourceMLS™ Listings under the terms of this Agreement. Licensee shall use the Licensed Mark for the following:

\_\_\_\_\_ Individual Listings Only License  
\_\_\_\_\_ Site License

(b) "sourceMLS™ Listings" are Listings that fully comply with and satisfy all of the conditions set forth in the sourceMLS™ listing guidelines established by CMLS (the "sourceMLS™ Listing Guidelines"), and, in the case of a Sublicensee, sourceMLS™ Listings are limited to those Listings that are licensed to Sublicensee by Licensee in a written license agreement for the use and display of such Listings by Licensee. A copy of the sourceMLS™ Listing Guidelines effective as of the Effective Date is attached to this Agreement as Exhibit C, and is incorporated by reference. The sourceMLS™ Listing Guidelines may be modified by CMLS at any time in its sole discretion, and all modifications shall be binding on Licensee thirty (30) days after notice of such modification to Licensee. Notwithstanding the provisions of Section 18(a), notice of the changes to the sourceMLS™ Listing Guidelines may be given by CMLS posting revised or amended sourceMLS™ Listing Guidelines at <http://www.sourcemls.org>.

3. Representations and Covenants Regarding Licensee.

(a) Licensee represents and warrants that the following are true, accurate, and not misleading as of the Effective Date, and Licensee agrees to conduct its business and take all action necessary at all times during the term of this Agreement so that the

following remain true, accurate, and not misleading at all times during the term of this Agreement.

(i) Licensee is duly organized and in good standing as a business entity in the state of its formation, and all other jurisdictions where the qualification to do business is required for the conduct of Licensee's business in that jurisdiction.

(ii) The person signing this Agreement on behalf of Licensee is authorized to do so.

(iii) Upon the execution of this Agreement, this Agreement will be the valid and binding obligation of Licensee, enforceable in accordance with its terms.

(iv) As of the Effective Date, Licensee provides, and will continue to provide during the term of this Agreement, one or more of the following services ("Approved Services"), and display Listings only in connection with Approved Services:

- (1) Real estate brokerage services.
- (2) Real estate advertising and marketing services.
- (3) Online real estate marketing services.
- (4) Providing real estate information to consumers.
- (5) Multiple Listing Service.

a. Multiple Listing Service means (a) a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and customers and the public, (b) a means by which authorized participants make enforceable blanket unilateral offers of compensation to other participants, and (c) a means of enhancing cooperation among participants.

(b). Licensee shall comply and at all times conduct its business in accordance with all federal, state and local laws. If applicable, Licensee shall comply with the bylaws, policies, rules and regulations of the multiple listing service in which Licensee is a member. Licensee shall perform all of its obligations under all material contracts to which Licensee is a party or by which Licensee is bound.

(c) Licensee will cause each Sublicensee to make the foregoing representations and warranties and covenants, and conduct its business and take all action necessary at all times during the term of any Sublicense Agreement so that the representations and warranties remain true, accurate, and not misleading at all times during the term of the Sublicense Agreement.

4. License Fees. [In consideration for the grant of the License, Licensee agrees to pay to CMLS as an annual license fee (“License Fee”) in an amount equal to \_\_\_\_\_ dollars (\$\_\_\_\_.00) per year, plus an amount equal to \_\_\_\_\_ percent (\_\_\_%) of all fees paid by any Sublicensee to Licensee (“Sublicense Fees”) in connection with a Sublicense Agreement (“CMLS Sublicense Fees”). The License Fee shall be payable on the Effective Date, and on each anniversary of the Effective Date, and all CMLS Sublicense Fees shall be payable within thirty (30) days of the date any Sublicense Fees are paid by Sublicensee to Licensee.] [Alternative--In consideration for the grant of the License, Licensee agrees to pay to CMLS the membership fees required by CMLS when such membership fees are owing.

5. Audit and Reports. Licensee shall prepare and deliver to CMLS monthly reports on Sublicense Fees billed to and paid by Sublicensees. Such reports shall be delivered to CMLS no later than the fifteen 15<sup>th</sup> day of the month following the month during which Sublicense Fees were paid to Licensee. CMLS may at any reasonable time audit, inspect, and review the books and records of Licensee to determine Licensee’s compliance with the terms of this Agreement, at CMLS’ expense. If an audit discloses that Licensee has underpaid the Sublicense Fees, Licensee shall pay the amount of such underpayment, plus interest at the rate of ten percent (10%) per annum from the date such payment should have been made, within thirty (30) days of notice to Licensee of the underpayment. If an audit discloses an overpayment of Sublicense Fees, such overpayment shall be credited by CMLS to future payments of Sublicense Fees by Licensee.

6. Limitations on Licensed Mark License. CMLS does not grant Licensee any right, title, or interest in the Licensed Mark other than the rights expressly granted hereunder. Except as provided in Section 1, Licensee shall have no right to sublicense, transfer, assign or authorize others to use the Licensed Mark. Licensee will not enter into any agreement allowing another to perform any act that Licensee is prohibited from undertaking under the terms of this Agreement. Licensee agrees to use commercially reasonable efforts to safeguard and maintain the reputation and prestige of the Licensed Mark, and to use commercially reasonable efforts to prevent the Licensed Mark from negatively impacting CMLS’ reputation associated with the Licensed Mark.

7. Licensed Mark Usage. The display of the Licensed Mark by Licensee and all Sublicensees shall be a dynamic uniform resource locator provided by CMLS and shall be a link back to a page provided by CMLS. Each display of the Licensed Mark shall be exactly as shown on the attached Exhibit A. The Licensed Mark may not be displayed using a static graphical rendering of the Licensed Mark. Licensee agrees to use the Licensed Mark, and cause all Sublicensees to use the Licensed Mark, only in compliance with this Agreement, the applicable Sublicense Agreement, and all applicable laws, regulations, and ordinances and the sourceMLS™ Listing Guidelines, and to comply with all marking and notice provisions of the Lanham Act, and all other applicable laws.

Licensee is authorized to use the Licensed Mark in combination with the Licensee's trademarks and its company name. Licensee agrees that it will not use the Licensed Mark, or any variations thereof, in any manner that would give the impression that Licensee is affiliated in any way with CMLS, other than as Licensee of the Licensed Mark. Any use of the Licensed Mark by Licensee shall be in strict accordance with the requirements identified in this Agreement. Licensee shall not use or cause the Licensed Mark to be used in any way that is likely to reduce, diminish or damage the goodwill, value or reputation associated with CMLS or the Licensed Mark, in any manner as would violate the rights of any third parties, in any manner as would result in any third party claim or in any governmental investigation, claim or proceeding alleging unlawful or improper use of the Licensed Mark, on or in connection with any products or services other than the sourceMLS™ Listings and promotional materials pertaining to the sourceMLS™ Listings, or in any manner other than as a certification mark. Any use of the Licensed Mark by Licensee or a Sublicensee shall inure to the benefit of CMLS.

8. Marketing and Promotion. Licensee acknowledges that CMLS desires Sublicensees, and potential licensees and sublicensees, consumers, and others to become educated regarding the Licensed Mark and its use on sourceMLS™ Listings and to be aware of the sourceMLS™ Listing Guidelines. CMLS further desires to build and strengthen the goodwill of the Licensed Mark through appropriate use of the Licensed Mark. Accordingly, CMLS will deliver to Licensee a media kit with information regarding the Licensed Mark and promotion of the Licensed Mark in connection with sourceMLS™ Listings. Licensee agrees to use the media kit, and implement the programs described in the media kit, and use good faith efforts to promote the education and use of the Licensed Mark on sourceMLS™ Listings among Sublicensees, and potential licensees and sublicensees, consumers, and others.

9. Limitation of Liability. TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, CMLS' ENTIRE AND CUMULATIVE LIABILITY TO LICENSEE, ANY SUBLICONSEE, OR ANY THIRD PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE USE OF THE LICENSED MARK, INCLUDING ANY TORT, SUCH AS NEGLIGENCE, SHALL NOT EXCEED (A) AN AMOUNT EQUAL TO THE LICENSE FEES PAID TO CMLS UNDER THIS AGREEMENT, OR (B) IF THE LICENSE FEES ARE INCLUDED IN CMLS DUES AS PROVIDED IN SECTION 4, THEN ONE HUNDRED DOLLARS (\$100.00). WITHOUT WAIVER OF THE LIMITATIONS SET FORTH IN THIS SECTION, IN NO EVENT SHALL CMLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF CMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CMLS AND LICENSEE AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT REPRESENT BARGAINED FOR ALLOCATIONS OF RISK, AND THAT THE FEES, CHARGES, AND COSTS OWING UNDER THIS AGREEMENT, REPRESENT THE ALLOCATIONS OF SUCH RISK. LICENSEE AGREES TO CAUSE EACH SUBLICONSEE TO AGREE TO

LIMITATIONS OF LIABILITY FOR CMLS CONSISTENT WITH THE TERMS OF THIS SECTION.

10. Notices. Licensee shall comply with all reasonable trademark, trade name, and service mark notice markings required by CMLS. Licensee shall cause the symbol "™", or when the Licensed Mark is registered, the symbol ®, to be placed in all uses of the Licensed Mark, including all forms of advertising and promotion. Licensee agrees to fully cooperate with CMLS and take all reasonable action requested by CMLS, at CMLS' expense, in connection with any application for federal registration of the Licensed Mark, including any application by the licensor of the Licensed Mark to CMLS, or the maintenance of any federal registration of the Licensed Mark.

11. Right to the Licensed Mark. Licensee acknowledges and agrees that the Licensed Mark, and all associated goodwill, are the sole and exclusive property of CMLS, or its licensor, and Licensee will do nothing inconsistent with CMLS', or its licensor's, ownership of the Licensed Mark. Use by Licensee of the Licensed Mark shall inure to the benefit of CMLS, or its licensor. Licensee shall not, during or after the term of this Agreement, intentionally or recklessly engage in any conduct, directly or indirectly that would infringe upon, harm, or contest the validity of or of CMLS', or its licensor's, rights to the Licensed Mark. CMLS does not grant or convey any right, title, interest, or goodwill in or to the Licensed Mark, other than the rights of a license as provided herein. Licensee is prohibited from reserving, registering, or using any domain name comprised in whole or in part of the Licensed Mark, except as set forth in this Agreement. Licensee further agrees that it shall not use or seek to register any mark that contains the term "sourceMLS™" or any spelling variation thereof or any mark confusingly similar to the Licensed Mark.

12. Indemnification and Hold Harmless. Licensee shall indemnify, defend and hold harmless CMLS, its parent and affiliated companies, and their respective officers, directors, customers, employees, members, managers, agents, and representatives from and against any and all claims, losses, damages, costs, and expenses, including attorneys' fees and costs, and including any claims by CMLS' licensor, arising out of or related to Licensee's sale, offering for sale, promotion, advertisement, or provision of services under or in connection with the Licensed Mark, the failure of any Sublicensee to perform all of its obligations under a Sublicense Agreement, the misuse of the Licensed Mark by any Sublicensee, or any breach or default of any Sublicense Agreement by any Sublicensee. Licensee shall cause each Sublicensee to agree to indemnify CMLS on the same terms as Licensee agrees to indemnify CMLS in this Section. CMLS shall indemnify, defend and hold harmless Licensee, and its officers, directors, customers, employees, members, managers, agents, and representatives from and against any and all claims, losses, damages, costs, and expenses, including attorneys' fees and costs, for valid claims that the Licensed Mark infringes on the United States trademark rights of a third party.

13. No Representations and Warranties Regarding Licensed Property. Licensee agrees and acknowledges that the License is made without any representations or

warranties of any kind or nature. Notwithstanding that CMLS has agreed to indemnify Licensee as provided in Section 12, CMLS does not make any representations or warranties regarding title to the Licensed Mark, the rights of any other persons or entities to the Licensed Mark, or with regard to the enforceability of any rights to the Licensed Mark. Licensee expressly agrees and acknowledges that CMLS is a licensee of the Licensed Mark.

14. Control of Use Licensed Mark. CMLS, and its licensor, shall have absolute control over the use of the Licensed Mark, the conditions and process under which it may be licensed or used, and the qualifications for Listings becoming sourceMLS™ Listings. Licensee agrees that the nature and quality of all services provided by Licensee and Listings displayed under the Licensed Mark shall conform in all respects to the sourceMLS™ Listing Guidelines, and other terms of this Agreement. Licensee agrees and acknowledges that CMLS may take any action to cause the Licensed Mark to be used only in connection with sourceMLS™ Listings. Specifically, but without limitation, CMLS may at any time inspect, examine, test, and audit any feed of Listings, the Display Application through which the Listings are being displayed, including any passwords necessary for system access, and the display of such Listings to determine if the Listings are sourceMLS™ Listings, and Licensee and each Sublicensee is complying with the terms and conditions of this Agreement. Licensee agrees to fully cooperate with CMLS, and its service providers, and grant access to CMLS to Licensee's premises and electronic access for any such inspection, examination, test, or audit. Licensee further agrees to deliver to CMLS, at its request, specimens of the use of the Licensed Mark for any period of time requested by CMLS. The determination of compliance by Licensee of the covenants regarding the Licensed Mark shall be in the sole discretion of CMLS.

15. Infringement. If, at any time during the term of this Agreement, Licensee becomes aware of or receives notice of any infringement of any of CMLS', or its licensor's, rights in and to the Licensed Mark, misuse of the Licensed Mark, or breach of this Agreement by Licensee or breach of any Sublicense Agreement, Licensee agrees to give notice of such infringement, misuse, or breach to CMLS within forth-eight (48) hours of receipt of the notice or awareness of such event by Licensee. Licensee shall consult with CMLS regarding what action to take to enforce any breach of a Sublicense Agreement or to take action in connection with any claim of infringement or misuse of the Licensed Mark, and Licensee shall take no such action without the consent of CMLS. CMLS shall have no obligation to take any action against any person or entity infringing on or misusing the Licensed Mark, but may do so, in its sole discretion. As between CMLS and Licensee, any proceeds, awards, or damages awarded to CMLS, or its licensor, or any other amounts received by way of settlement, or otherwise, in connection with any alleged or actual infringement, shall be paid to CMLS and shall be the sole property of CMLS. Licensee shall have no claim to any such proceeds.

16. Term of License. The effective date of this Agreement and the License will commence on the date identified on the signature page as the effective date of this Agreement (the "Effective Date"), and will terminate on the first (1st) anniversary of the

Effective Date, unless renewed or earlier terminated in accordance with the terms and conditions of this Agreement. This Agreement shall automatically renew for additional one (1) year terms, unless either party gives notice of the termination of this Agreement at least thirty (30) days prior to the expiration of the then-current term.

17. Termination.

(a) Unless earlier terminated in accordance with the provisions of Section 16 of this Agreement, after thirty (30) days written notice to Licensee, CMLS may terminate this Agreement, and/or the License granted to Licensee upon the occurrence of any of the following:

(i) Licensee fails to perform any of its obligations or defaults under this Agreement, including, without limitation, payment of any License Fees or CMLS Sublicense Fees within ten (10) days of the date on which such fees are due.

(ii) Any claim or litigation is made or threatened against Licensee by any regulatory agency of any local, state, or the federal government, and such claim or litigation is not dismissed or fully settled upon terms acceptable to CMLS within ninety (90) days of the date of such claim or litigation.

(iii) If a default occurs, or any event occurs or condition exists, which with the passage of time, the giving of notice, or both, would constitute a default, on any obligation or under any agreement of Licensee to or with CMLS or any other person or entity.

(iv) Licensee is dissolved, becomes insolvent, or is terminated.

(v) If a petition in bankruptcy is filed against Licensee and such petition is not dismissed within one hundred twenty (120) days of filing or a petition in bankruptcy is filed by Licensee.

(vi) CMLS generally terminates the sourceMLS™ program.

(b) Unless earlier terminated in accordance with the provisions of Section 16 of this Agreement, CMLS may terminate this Agreement and/or the License granted to Licensee, without notice, upon the termination of the license agreement between CMLS and its licensor for the Licensed Mark.

(c) Licensee may terminate this Agreement at any time, and Licensee shall give CMLS prior written notice of such termination. Upon termination of this Agreement for any reason, all Sublicense Agreements shall immediately terminate without notice to Licensee or any Sublicensee.

(d) Upon termination of this Agreement, for any reason, Licensee agrees to immediately terminate all use of the Licensed Mark, and any word, symbol, or device



confusingly similar to the Licensed Mark, and to destroy all printed and electronic materials bearing the Licensed Mark, or within five (5) days of termination, certify in writing to CMLS the destruction of all such printed and electronic materials.

(e) CMLS and Licensee agree and acknowledge that if Licensee defaults under this Agreement, no adequate remedy may be available at law to compensate CMLS for its injury. Further, Licensee agrees that CMLS may suffer irreparable harm. As a result, Licensee agrees that if Licensee defaults under this Agreement, in addition to all other remedies available to CMLS, CMLS may seek and obtain, and Licensee will not oppose the granting of, a temporary restraining order and preliminary injunction requiring Licensee to perform its obligations under this Agreement.

18. General.

(a) Notices. Any notice required to be delivered under this Agreement shall be deemed sufficiently delivered or given when mailed by United States first class mail, postage fully prepaid, or registered or certified mail, return receipt requested, addressed to the party for whom such notice is intended at the addresses set forth below:

CMLS: Council of Multiple Listing Services  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: Sarah Carlton

With a copy to:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a copy to:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Washington Law Governs. This Agreement shall be governed by and construed in accordance with the laws of the state of Washington.

(c) Integrated Agreement. This Agreement constitutes the entire agreement between CMLS and Licensee with respect to the subject matter of this Agreement. All prior and contemporaneous oral and written agreements are merged into this Agreement. This Agreement may not be modified or amended, except in writing signed by CMLS and Licensee.

(d) Survival. The provisions of Sections 4, 11, 12, 13, 15, 17(d), 17(e), and 18 of this Agreement shall survive the termination of this Agreement.

(e) Time. Time is of the essence in this Agreement.

(f) Attorney Fees. Upon the occurrence of a default by Licensee under this Agreement, Licensee agrees to pay CMLS all of its costs and expenses incurred in connection with the default and enforcing CMLS' rights, including reasonable attorney fees and costs.

(g) Waiver. The waiver by any party of, or the failure of any party to take action with respect to, any breach of any term, covenant or condition in this Agreement contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement. The subsequent acceptance of any payment due under this Agreement by any party shall not be deemed to be a waiver of any preceding breach of the party making payment with respect to any term, covenant or condition contained in this Agreement, including the obligation to make such payments under this Agreement, other than the failure of the party making payment to make the particular payment so accepted, regardless of knowledge on the part of the party accepting such payment of such preceding breach at the time of such acceptance.

(h) Independent Contractor Status. Licensee is an independent contractor under this Agreement, and nothing in this Agreement shall be construed to create any partnership, joint venture, or agency relationship between the CMLS and Licensee.

(i) Assignability. Licensee shall not assign the License, this Agreement, nor of any of Licensee's rights under this Agreement. Licensee shall not delegate any of its duties under this Agreement. Any attempt by Licensee to assign or delegate any right or duty under this Agreement without the CMLS' prior written consent, which may be withheld in CMLS' sole discretion, shall be void.

(j) Binding Effect of Agreement. This Agreement will be binding upon and shall inure to the benefit of CMLS and Licensee, and their respective legal representatives, successors, and in the case of CMLS, its assigns.

(k) Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid, or otherwise unenforceable, shall not invalidate or make unenforceable any other provision of this Agreement.

[Signatures on following page]

Dated effective \_\_\_\_\_.

CMLS

COUNCIL OF MULTIPLE LISTING SERVICES

By \_\_\_\_\_  
President

LICENSEE

\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Exhibit A

Licensed Mark

TM



Exhibit B

Trademark Sublicense Agreement

Exhibit C

sourceMLS™ Listing Guidelines