



**APPLICATION FOR MEMBERSHIP**  
**ABR SERVICES, INC.**  
**INFORMATION TECHNOLOGY**  
 Information Technology Service, 37 Montford Avenue, Asheville, NC 28801

Date:

I hereby make application for ACTIVE MEMBERSHIP in the MLS/Information Technology Service for the firm know as:

FIRM NAME:

BIC:

To add agents or staff/admin users to the MLS, please complete a Change Request for each MLS user. Forms can be obtained from the ABR website, <http://www.abr-nc.com>. Forms are located under the Membership tab or one can be requested by emailing [mls@abr-nc.com](mailto:mls@abr-nc.com). The form must be signed by the BIC (Broker-In-Charge).

Of which \_\_\_\_\_ shall be the Designated REALTOR® to exercise any voting privileges in the Information Technology Services. Typically the DR is the BIC.

I hereby pledge myself, firm and all associates and employees to conform with the Rules and Regulations of the Information Technology Service and agree to pay the required costs. The firm maintains an office at:

Street:

City:  State:  Zip:

Phone:  Fax:

Email Address:

Website Address:

Broker License #:  SSN:  Federal ID#:

**Mailing Address (if different):**

Street or PO Box:

City:  State:  Zip:

My check for \$700 initiation fee, payable at the time of application and \$ \_\_\_\_\_ annual dues is attached hereto.

Signature of Applicant

INTERNAL USE ONLY:

LO NUMBER:

Rev: 04/09

**ASHEVILLE BOARD OF REALTORS®, INC**

**INFORMATION TECHNOLOGY PARTICIPATION AGREEMENT**

(For IT access by REALTORS® (Principals) or a firm comprised of REALTORS® (Principals) who are **not** members of the Asheville Board of Realtors®, Inc.)

NAME \_\_\_\_\_

**FIRM NAME AND ADDRESS:**

Firm Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email address \_\_\_\_\_

Website \_\_\_\_\_

Mailing Address (if different)

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

PRIMARY BOARD ASSOCIATION \_\_\_\_\_

I agree as a condition of participation in IT Services to abide by all Bylaws, Rules and other obligations of participation including payment of fees. I understand that access to computerized database information shall be by coded password, and the use of such password by any person other than myself shall be cause for immediate termination of access privileges I further agree to be bound by the Code of Ethics on the same terms and conditions as Asheville Board of REALTORS® members including the obligation to submit to ethics hearings and the duty to arbitrate contractual disputes with other REALTORS® in accordance with the established procedures of the Asheville Board of REALTORS®. I understand that a violation of the Code of Ethics may result in termination of my IT privileges and that I may be assessed an administrative processing fee which may be in addition to any discipline, including fines, that may be imposed.

**SIGNATURE** \_\_\_\_\_

**DATE** \_\_\_\_\_

# ABRS MLS Change Request Form

IMPORTANT!

IMPORTANT!

Changes CANNOT be made without an AUTHORIZED signature PLEASE ONLY ONE CHANGE PER SHEET

PLEASE PRINT LEGIBLY TO ENSURE WE CAN READ YOUR INFORMATION

PLEASE FILL IN ALL INFORMATION. BLANK ENTRIES MAY DELAY YOUR REQUEST.

FAX TO: 828-255-0649 or email to mls@abr-nc.com

ABR Services, 37 Montford Avenue, Asheville, NC 28801

## FIRM INFORMATION

Date: \_\_\_\_\_ Listing Office # (4 Digits): \_\_\_\_\_

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

Company Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

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

Broker In Charge: \_\_\_\_\_

BIC Email Address: \_\_\_\_\_

## AGENT INFORMATION

Please check the appropriate box below.

**ADD**

ADD a New Agent/Administrator to your roster

**DELETE**

DELETE an Agent/Administrator/Company from the MLS  
(Note: Agent's Supra Key will automatically be deactivated)

Type of Member? (Check One):

AGENT

ADMINISTRATOR

Legal Name: \_\_\_\_\_ Nick Name: \_\_\_\_\_

Home Address: \_\_\_\_\_ City: \_\_\_\_\_ ST: \_\_\_\_\_ ZIP: \_\_\_\_\_

Office Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

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

PREVIOUS Company: \_\_\_\_\_ Listing Office # of Previous Company: \_\_\_\_\_

Real Estate/Appraiser License #: \_\_\_\_\_ NRDS #: \_\_\_\_\_

\*\*\*\*\* Have you ever been a member of another board elsewhere or prior member of ABR?:

  

YES  
NO

If yes, what board?: \_\_\_\_\_ City: \_\_\_\_\_ ST: \_\_\_\_\_

**BIC SIGNATURE:** \_\_\_\_\_

OFFICE USE ONLY

RAP  MLS  Karnes  Supra  Email

Input Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

**STATE OF NORTH CAROLINA**  
**COUNTY OF BUNCOMBE**

**ENROLLMENT AGREEMENT**

THIS ENROLLMENT AGREEMENT (the "Agreement") is made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between ABR Services, Inc., a North Carolina corporation with its principal office located at 37 Montford Avenue, Asheville, North Carolina ("ABRS"), and \_\_\_\_\_, a real estate brokerage office with its principal place of business located in \_\_\_\_\_ County, \_\_\_\_\_ (the "Participant"). ABRS and the Participant are hereinafter collectively referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, ABRS is a wholly owned subsidiary of the Asheville Board of Realtors®, Inc., a North Carolina non-profit corporation ("ABR"); and,

**WHEREAS**, the Participant is licensed to provide real estate brokerage services in the State of North Carolina, and is a member of the \_\_\_\_\_ Board of Realtors®; and,

**WHEREAS**, ABRS is a member of the Western North Carolina Regional MLS, LLC ("MLS"), which MLS provides multiple listing services to licensed real estate brokers participating through its member boards in the western region of North Carolina (the "MLS Service"), and,

**WHEREAS**, in addition to MLS Services, ABRS provides a suite of services ancillary to real estate brokerage, both directly by ABRS and through third party independent contractors, as more particularly set forth herein (collectively the "Ancillary Services"); and,

**WHEREAS**, Participant desires to receive MLS Services and Ancillary Services (collectively the "Service") from ABRS, and ABRS desires to provide Services to Participant, subject to the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants and conditions contained herein, the payment of the Service Fee (as such term is defined herein), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Enrollment**. Participant, on behalf of itself, and the licensed real estate brokers employed by, or affiliated with, the Participant, engaging in real estate brokerage transactions (collectively the "Subscribers") hereby enrolls in the Service. During the Term hereof, ABRS agrees to provide enrollment in the MLS Service and shall provide Ancillary Services, subject to the terms and conditions contained herein and in the Ancillary Agreements, as such term is defined herein.

2. **Payment.** In consideration for enrollment in the Service, and the Ancillary Services provided hereunder, Participant shall pay the following fees to ABRS, which fees shall be collectively referred to as the "Service Fee:"

a. **Enrollment Fee.** Concurrently with the execution of this Agreement, Participant shall tender to ABRS an enrollment fee in the amount set forth on Exhibit A attached hereto and incorporated herein by reference (the "Enrollment Fee").

b. **Monthly Service Fee.** During the Initial Term hereof, Participant agrees to pay ABRS a monthly Service Fee in the amount set forth on Exhibit A (the "Monthly Service Fee"). The Monthly Service Fee shall be due and payable monthly in advance, on or before the first day of each calendar month during the Term, based upon the number of Subscribers engaged by the Participant as of the fifteenth (15<sup>th</sup>) day of the preceding calendar month, as determined by ABRS. In the event the Monthly Service Fee is not remitted to ABRS by the fifth (5<sup>th</sup>) day of each calendar month during the Term, it shall be considered delinquent and shall be subject to a five percent (5%) late payment fee.

c. **Adjustment of Service Fee.** ABRS, in its sole discretion, may adjust the Service Fee to reflect changes in the Ancillary Services provided to Participants, including, without limitation, additions to or deletions from the suite of Ancillary Services provided, or changes in the cost structure of such Ancillary Services. The Participant shall be provided with written Notice of any modification to the Service Fee not less than thirty (30) days in advance of such change, which Notice shall be attached hereto as an amendment of Exhibit A.

3. **Term and Termination.**

a. **Term.** This Agreement shall begin on the Effective Date hereof and continue in full force and effect until terminated by ABRS or the Participant as provided herein (the "Term").

b. **Termination for Cause.** Upon the occurrence of any of the following events of default, in addition to any other remedies available to ABRS at law or in equity, the Participant's enrollment in the Service may be immediately suspended or terminated in the discretion of ABRS, and upon such suspension or termination, ABRS shall have no further obligation to the Participant hereunder:

- (i) The material breach of any covenant or obligation of this Agreement by Participant or Subscriber other than the non-payment of fees, which default if remediable, is not remedied within twenty (20) days of notice of such default;
- (ii) The non-payment of any sum due hereunder within the time provided, and the failure to cure such non-payment within five (5) calendar days after receipt of notice of such default;

(iii) Participant's or Subscriber's breach, including without limitation the late payment or non-payment of any sum due to ABRS, pursuant to any other agreement between the Parties hereto or any Ancillary Agreement; or,

(iv) Violation of the Realtor® Code of Ethics by the Participant or Subscriber.

c. Termination without Cause. This Agreement may be terminated by Participant upon thirty (30) days written notice to ABRS; or upon the mutual agreement of the Parties, expressed in writing.

4. **Obligations of Participant.** During the Term hereof, Participant agrees to the following:

a. Ancillary Agreements. Participant agrees to perform its obligations and to remain in full compliance with any collateral agreement by and between ABRS and Participant and between ABRS and any third party service provider providing Ancillary Services or any portion thereof (collectively the "Ancillary Agreements"), whether directly related to enrollment in the MLS Service, or any Ancillary Service, and further to take all reasonable measures to ensure that any Subscriber associated with the Participant remains in full compliance with the terms and conditions of such collateral agreements.

b. Compliance with Published Policies. At all times during the Term hereof, Participant and each Subscriber shall strictly adhere and submit to the Bylaws, rules, regulations, policies, procedures, and authority of the MLS including, without limitation, all rules and regulations related to the ownership, use, protection, and disclosure of the MLS's intellectual property, and other information of the deemed confidential by the MLS or ABRS, including without limitation the MLS database. Participant and each Subscriber shall submit to the disciplinary policies and procedures of the MLS, including reasonable sanctions imposed thereunder, related to participation in the MLS. Participant and Subscriber shall submit to the disciplinary policies and procedures of the Board of Realtors® in which the respondent in connection with any complaint arising out of an alleged violation of the Realtor® Code of Ethics is a member. Additionally, during the Term hereof, Participant and all Subscribers shall strictly adhere to the published policies and procedures of every other third party service provider, and such Participant's and Subscriber's host Board of Realtors®. The Participant agrees to execute, and to cause each Subscriber to execute, all additional and ancillary documents reasonably required by the MLS and each third party service provider offering Ancillary Services hereunder, including, without limitation, additional confidentiality and non-disclosure agreements as may be reasonably required by each. Participant acknowledges and agrees that it shall be solely responsible for ensuring that each Subscriber follow and abide by all such rules and regulations, and that the failure to do so shall be considered a breach of this Agreement, and shall be cause for immediate suspension or termination of the Participant's participation in the MLS Service and all Ancillary Services.

c. Realtor® Status, Licensure. At all times during the Term hereof, Participant shall maintain a valid North Carolina Real Estate Brokers license. Additionally, Participant shall remain a member in good standing with one or more Boards of Realtors®.

d. Indemnification. Participant hereby agrees to indemnify, defend, and hold ABRS harmless from any and all claims, causes of actions, demands, liabilities, and costs, including without limitation, reasonable attorney's fees, arising out of, or in any way related to the Participant's or Subscriber's enrollment in the MLS or the use of any Ancillary Service provider's services, including, without limitation, the negligent or willful acts or omissions of the Participant, the Subscribers, or any other real estate brokerage firm, sales person, or broker who may show listings of the Participant or the Subscriber in connection with such Services.

5. **Obligations of ABRS.**

(a) MLS Service Enrollment. During the Term hereof, ABRS shall provide the Participant and its Subscribers access to the MLS Service, subject to the terms and conditions contained herein, the MLS rules, and any Ancillary Agreement related to MLS Service.

(b) Access to Ancillary Services. In addition to enrollment in the MLS Service, ABRS shall provide access to such Ancillary Services as ABRS may determine, in its sole discretion, to compliment the MLS Service and/or be otherwise beneficial to the Participants. The Ancillary Services, or any portion thereof, may be modified or terminated by ABRS, in its sole discretion, at any time during the Term upon Notice to the Participant. The Parties acknowledge and agree that there shall be no warranty, either express or implied, regarding the scope and nature of Ancillary Services which may be offered hereunder. The Ancillary Services provided by ABRS as of the Effective Date hereof are attached hereto and incorporated herein by reference as Exhibit B.

6. **Limitation of Liability.** The maximum liability of ABRS to any person, firm, or corporation whatsoever arising out of or in connection with this Agreement and the obligations of ABRS hereunder shall in no event exceed the aggregate of the Service Fee received by ABRS from such person as of the date of the event giving rise, or allegedly giving rise, to such liability. **IN NO EVENT SHALL ABRS BE LIABLE TO ANY SUBSCRIBER OR PARTICIPANT FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, WHETHER FORSEEABLE OR NOT, INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS OR LOST PROFITS.**

7. **Notices.** All notices, offers, acceptances, waivers, and other communications under this Agreement shall be in writing, and shall be sufficiently given if delivered to the addressees in person or if sent by certified mail as follows:

To: ABRS at: 37 Montford Avenue, Asheville, North Carolina 28801

To: Participant at: \_\_\_\_\_

or to such address as any of them, by notice to the others, may designate from time to time. Except as otherwise provided in this Agreement, time shall be counted to or from the date of delivery or of mailing, as the case may be.

8. **Governing Law.** This Agreement shall be governed by the laws of the State of North Carolina. The venue for any action to enforce the Parties' rights and obligations hereunder shall be the Superior Court of Buncombe County, North Carolina.

9. **Binding Upon Successors.** This Agreement shall be binding upon the heirs, successors and assigns of the respective parties; provided, nothing herein shall be construed as permitting any assignment or transfer of an interest not expressly permitted in this Agreement.

10. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

11. **Severability.** Each section of this Agreement, except for references to other sections, is severable from the other sections; the invalidity of one section does not invalidate the other sections.

12. **Construction.** In construing and interpreting this Agreement, wherever the context requires or permits, gender shall be interchangeable and a singular number shall be deemed to include the plural and vice versa.

13. **Entire Agreement.** This Agreement contains the entire agreement of the Parties relating to the subject matter, and supersedes any previous understandings or agreements with respect to the subject matter hereof. This Agreement may not be modified in whole or in part except by written instrument, executed by each of the Parties hereto.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed the day and year first above written.

**PARTICIPANT:**

\_\_\_\_\_(SEAL)  
\_\_\_\_\_

**ABR SERVICES, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ President

**EXHIBIT A**

**Fee Schedule**

Initiation Fee	\$700.00
Annual Enrollment Fee	200.00
Monthly Service Fee (Includes MLS and ShowingTime)	58.00 per Subscriber.
Supra Key Lease Deposit Checks made payable to "NCMMLS" (a.k.a. WNCRMLS)	350.00 + tax per Subscriber
Set up Fee for Supra Key Checks made payable to "ABR Services"	50.00 per key
Annual Supra Access Fee Dues)	12.00 per month (applied to monthly MLS
Loss or Destruction of Supra Key Box	90.00 per key box

**EXHIBIT B**

**Ancillary Service Providers**

OPTIONAL:

Key Boxes

Provided by Supra, a division of GE Security, Inc.

MANDATORY:

ShowingTime  
Scheduling appointments

Provided by ShowingTime

# Participation Agreement

This Participation Agreement (the "Agreement") is made and entered into by and between \_\_\_\_\_, an individual principal real estate broker or broker in charge, or a real estate brokerage firm, as MLS may require (the "Participant"), and **WNC REGIONAL MLS, LLC**, a North Carolina limited liability company (the "MLS").

1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 25 of this Agreement.
2. Grant of Participation Rights in Multiple Listing Service. The Board through which the Participant subscribes to receive multiple listing services (the "Host Board") is a Member or a wholly owned subsidiary of a Member of the MLS. Participant is licensed to provide real estate brokerage services in the State of North Carolina, and is a Member of a Board. The Host Board offers a suite of services to its Brokers and Brokerage Firms, including access to the MLS Database. Accordingly, Participant has enrolled with the Host Board to receive various services, including access to the MLS Database. Therefore, subject to the terms and conditions of this Agreement, the Rules and Regulations, and any subscription agreement by and between the Participant and the Host Board (the "Board Subscription Agreement"), MLS agrees to make the MLS Database available for access by Participant, and Participant shall have all rights and obligations of a participant in MLS's multiple listing service as set forth under the Rules and Regulations. Access to the MLS Database shall be through a means determined by MLS.
3. License Grant. MLS hereby grants to Participant a limited, non-exclusive, and personal license to use Listing Content only for purposes and as expressly allowed under Participant's certification or licensure, the Rules and Regulations, the Board Subscription Agreement, and any applicable License Agreement. Participant agrees to take all reasonable steps to protect the MLS Database and Listing Content from unauthorized access, copying, or use.
4. Intellectual Property Ownership.
  - a. Participant acknowledges and agrees that the MLS Database, and all copies, modifications, enhancements, and derivative works of the MLS Database, are the property of MLS, and all right, title, and interest in and to the MLS Database, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS. Participant hereby irrevocably assigns to MLS any and all rights which it may have or acquire in and to the MLS Database.
  - b. Participant hereby grants to MLS a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, publish, display, and reproduce the Listing Content, to prepare derivative works of the Listing Content, and to distribute the Listing Content or any derivative works thereof. Such license shall be deemed granted of the moment of creation without the necessity of any further action on the part of either party. Participant represents and warrants to MLS with respect to the Listing Content for each of Participant's Listings that the Listing Content, and the license of rights in and to the

Listing Content to MLS, do not infringe or violate any copyrights, trade secrets, or other intellectual or proprietary rights of any third party.

c. Participant agrees not to challenge MLS's rights in and to the MLS Database or to take any action inconsistent with the license granted to the Listing Content under this Agreement. Participant agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the license granted to MLS in and to the Listing Content. Participant further agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the copyright application and registration of the MLS Database.

d. Participant shall indemnify MLS against all damages, costs, and liabilities, including reasonable attorney fees, arising from any claim that the Listing Content or any portion of the Listing Content infringes the rights of any third party. **PARTICIPANT ACKNOWLEDGES THAT THE FOREGOING SENTENCE MEANS THAT PARTICIPANT MUST OBTAIN ASSIGNMENTS OR LICENSES FROM THE AUTHORS OF ANY PORTIONS OF THE LISTING CONTENT, INCLUDING SALES LICENSEES AND SELLERS, AS NECESSARY FOR PARTICIPANT TO LICENSE THE LISTING CONTENT TO MLS AND TO OTHERWISE MAKE FULL USE OF THE LISTING CONTENT UNDER THIS AGREEMENT. IF PARTICIPANT FAILS TO DO SO, PARTICIPANT WILL ASSUME AND REIMBURSE MLS FOR THE COST OF DEFENDING MLS AGAINST INFRINGEMENT CLAIMS AND PAYING DAMAGES ON ANY SUCH CLAIMS.**

e. Without limiting the generality of this Section 4, but subject to the rights of participants in the MLS' multiple listing service to opt out of participation with respect to Listings submitted by such participant as set forth in the Rules and Regulations, Participant acknowledges and agrees that MLS may use and license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the Participant, or by the Rules and Regulations.

5. License to Participant's Listings. Upon the receipt of a written request from Participant, in a form acceptable to MLS, and so long as Participant, the applicable Sales Licensee, and/or an applicable Vendor are not in default under this Agreement, the Rules and Regulations or any agreement with MLS, MLS will grant to Participant, the applicable Sales Licensee of Participant, or the applicable Vendor a license to the Listing Content for Participant's Listings. The license will only be granted pursuant to a License Agreement. MLS has no obligation to grant a license to Participant, any Sales Licensee, or any Vendor which does not enter into a License Agreement. In addition to any applicable license fee payable by Participant, the Sales Licensee, and/or the Vendor, Participant shall pay to MLS all costs and expenses incurred by MLS in connection with any licenses and any services provided by MLS in connection with such licenses.

6. Fees. In consideration for participation in MLS's multiple listing service and for the services provided and licenses granted under this Agreement, Participant agrees to pay to the Host

Board all fees in accordance with the Board Subscription Agreement, and to otherwise comply with the terms and conditions thereof.

7. Agreement With Sales Licensees. Participant agrees to cause all of Participant's Sales Licensees who will receive access to the MLS through Participant to enter into a subscriber agreement, in a form and substance acceptable to MLS (a "Subscriber Agreement"), in its sole discretion.

8. Responsibility for Affiliates. Participant shall be responsible and liable to MLS for the acts and omissions of its Affiliates, and shall be responsible for each Affiliate's compliance with the Rules and Regulations. Any failure to comply with the Rules and Regulations by an Affiliate shall be deemed a failure to comply by Participant, and Participant shall be responsible and liable to MLS for any damages incurred by MLS arising from or as a result of an Affiliate's noncompliance with the Rules and Regulations.

9. No Assignment by Participant. Participant agrees that this Agreement is personal to Participant, and Participant may not assign or transfer this Agreement, including any license granted under this Agreement, or transfer any rights or delegate any duties under this Agreement, to any third party. Any attempt to assign, transfer, or delegate any of Participant's rights, duties, or obligations under this Agreement shall be null and void.

10. Interruptions in Service. Participant acknowledges that access to the MLS Database may from time-to-time be unavailable to Participant, whether because of technical failures or interruptions, intentional downtime for service or changes to MLS's website, or otherwise. Participant agrees that any modification of MLS's website, and any interruption or unavailability of access to the MLS Database shall not constitute a default of any obligations of MLS under this Agreement or the Board Subscription Agreement, and MLS shall have no liability of any nature to Participant for any such modifications, interruptions, unavailability, or failure of access.

11. Copies and Derivative Works. Except as otherwise expressly provided in this Agreement or the Rules and Regulations, Participant may not do any of the following, either directly or indirectly, including assist any other person to do, or otherwise contribute in any way to any of the following:

a. Make any copies of the MLS Database, or any portion of the MLS Database, including any specific Listing Content included in the MLS Database;

b. Create any derivative works, enhancements, or other modifications of the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database;

c. Download, distribute, export, or transmit the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database; or

d. Publicly display the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database.

12. Representations and Warranties Regarding Listings. Participant represents and warrants with respect to each Participant's Listing or change to a Participant's Listing submitted to MLS under this Agreement and the Rules and Regulations, the following:

a. The respective Seller has assigned in writing all of Seller's rights, title and interest, including all copyright rights and other intellectual property rights, in and to the Listing Content to Participant.

b. The Participant's Listing complies in all respects with the Rules and Regulations.

c. To the best of Participant's and any applicable Sales Licensee's knowledge and after reasonable due diligence to verify the accuracy of all information in the Participant's Listing, all information included in the Participant's Listing is accurate and not misleading.

d. The Listing Content for each Participant's Listing is an original work of authorship of Participant, or Participant is the assignee of such Listing Content pursuant to an enforceable assignment. Except for Participant and any person or entity, which has assigned his, her or its rights in accordance with Section 4 of this Agreement, no other person or entity has any rights of any nature in or to any of the Listing Content for any Participant's Listing.

e. There is no claim, litigation or proceeding pending or threatened with respect to the Listing Content for any Participant's Listing.

f. The Listing Content, and the assignment of rights in and to Listing Content to MLS, do not infringe or violate any patents, copyrights, mask work rights, trademarks, trade secrets or other proprietary rights of any third party.

13. Submission of Listings. As a material condition to accessing the MLS Database, Participant agrees to submit to MLS, all Listings, or any of Participant's Sales Licensees, in accordance with, and except as otherwise provided in, the Rules and Regulations. MLS may refuse to accept or include in, and may remove from, the MLS Database any Listing or Listing Content, or may require Participant to direct MLS to modify any Listing Content, as provided under the Rules and Regulations or if MLS determines, in its sole discretion, that such Listing or Listing Content may violate or infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as provided in the Rules and Regulations, Participant acknowledges that MLS has no obligation to remove, modify or refuse to accept any Listing or Listing Content. MLS grants to Participant a limited, non-exclusive, personal license to input Listing Content in the MLS Database and to modify such Listing Content strictly in accordance with the terms and conditions of this Agreement and the Rules and Regulations. Participant acknowledges and agrees that any Listing or Listing Content, or any prospective Listing or Listing Content, submitted by Participant or its Affiliates may be accessible by other participants in or users of MLS's multiple listing service, and MLS shall have no liability to Participant for providing such other participants or users access to any Listing or Listing Content, or any prospective Listing or Listing Content.

14. Confidential Information. Any information provided by MLS to any Participant, including without limitation, any password to the MLS Database, any printouts of the MLS Database as provided under this Agreement, and all Listing Content, including personal information of a Seller (collectively “Confidential Information”) shall be maintained by Participant as confidential and available exclusively for use by Participant as provided in this Agreement. Participant shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law. Participant shall not disclose any Confidential Information pursuant to a court order or as required by law until Participant has given MLS ten (10) days prior written notice and an opportunity to oppose such disclosure. Notwithstanding the foregoing, Participant may disclose Listing Content for individual Listings strictly in accordance with this Agreement and the Rules and Regulations.

15. Additional Representations and Warranties of Participant. If Participant is a Broker, Participant represents and warrants the following to MLS: (a) Participant holds a current, valid real estate broker’s license; (b) Participant is a member of a Board in good standing; and (c) Participant is capable of offering and accepting cooperation and compensation to and from other participants in MLS’s multiple listing service in accordance with the Rules and Regulations. If Participant is a Brokerage Firm, Participant represents and warrants to MLS that Brokerage Firm is managed by and under the control of a Broker, and such Broker (a) holds a current, valid real estate broker’s license; (b) is a member of a Board in good standing; and (c) is capable of offering and accepting cooperation and compensation to and from other participants in MLS’s multiple listing service in accordance with the Rules and Regulations. Participant further represents and warrants to MLS that this Agreement, when executed by Participant, will be valid, binding and enforceable with respect to Participant in accordance with its terms; (a) the provisions of the services provided under this Agreement and the fulfillment of Participant’s obligations as contemplated under this Agreement are proper and lawful; (b) Participant is not and shall not be under any disability, restriction or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement; and (c) all of Participant’s Sales Licensees have entered into Subscriber Agreements.

16. Compliance with Governing Rules and Agreements.

a. By entering into this Agreement, Participant represents and warrants to MLS that Participant, or its Broker if Participant is a Brokerage Firm, has read and understands, and Participant shall be bound by and at all times fully comply with and perform all of Participant’s obligations under this Agreement, the Rules and Regulations, the applicable Board Rules and Regulations, and the published policies and procedures of each third party service provider providing services to the Participant or MLS hereunder, including, without limitation, the execution of such additional confidentiality and non-disclosure agreements as may be reasonably required by such third parties. A copy of the current version of the Rules and Regulations is available upon request. .

b. By entering into this Agreement, Participant, or its Broker if Participant is a Brokerage Firm, hereby acknowledges and agrees to the authority and jurisdiction of the MLS in connection with the enforcement of the Rules and Regulations. This authority shall include, without limitation, the authority of the MLS to levy fines against Participant for noncompliance with the Rules and Regulations, as provided in the Rules and Regulations. The Participant, or

its Broker if Participant is a Brokerage Firm, hereby acknowledges and submits to the authority and jurisdiction of the Board in which the respondent is a member in connection with proceedings arising out of an alleged violation of the Realtor® Code of Ethics. This Authority shall include, without limitation, the authority of such Board to conduct a hearing and appeal, and impose sanctions, including without limitation the levy of a fine, in accordance with applicable procedures as set forth by the National Association of Realtors®.

c. To the extent there is any conflict between this Agreement, the Rules and Regulations, and any applicable Subscriber Agreement, the Rules and Regulations shall govern. As between this Agreement and any Subscriber Agreement, this Agreement shall govern.

17. No Warranty. THE SERVICES PROVIDED AND LICENSE GRANTED TO PARTICIPANT UNDER THIS AGREEMENT ARE PROVIDED ON AN “AS IS” BASIS, WITHOUT ANY WARRANTY OF ANY NATURE. MLS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, MLS DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY LISTING CONTENT, AND THEIR ACCURACY.

18. Limitation of Liability. MLS’S ENTIRE AND CUMULATIVE LIABILITY TO PARTICIPANT, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MLS DATABASE OR LISTING CONTENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY PARTICIPANT TO MLS DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT SHALL MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MLS SHALL HAVE NO LIABILITY OF ANY NATURE TO SALES LICENSEES.

19. Injunction. MLS and Participant agree that a breach or violation of Sections 11, 14, and 20.h of this Agreement will result in immediate and irreparable injury and harm to MLS. In such event, MLS shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that, this shall in no way limit any other remedies which MLS may have, including, without limitation, the right to seek monetary damages.

20. Term and Termination.

a. The initial term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided in this Agreement, shall continue for a period of one (1) year. This Agreement shall automatically renew for additional one (1) year terms unless either party gives written notice to the other party of non-renewal at least thirty (30) days prior

to the expiration of the then-current term or this Agreement is otherwise terminated as provided in this Agreement.

b. Notwithstanding the provisions of Section 20 a. of this Agreement, either party may terminate this Agreement at any time for any reason upon twenty (20) days prior written notice to the other party.

c. This Agreement shall immediately terminate upon the termination of the Board Subscription Agreement.

d. MLS may terminate this Agreement, upon the occurrence of any of the following events: (1) Participant discloses any Confidential Information, including, without limitation, any password of Participant or a Sales Licensee, except as expressly provided in this Agreement; (2) Participant otherwise fails to comply in all respects with the Rules and Regulations, the applicable Board Rules and Regulations; (3) Participant defaults under any material term or condition of any License Agreement; or (4) Participant defaults under any other material term or condition of this Agreement. Except as otherwise provided in this Agreement, termination pursuant to this Section 20.d of this Agreement shall be effective at any time after MLS has given ten (10) business days notice to Participant of any such event, and such event has not been cured within such ten (10) day period. Notwithstanding the foregoing sentence, if, in the reasonable discretion of MLS, the occurrence of any such event could result in irreparable harm to MLS, termination shall be effective immediately, without prior written notice to Participant, provided that notice shall be delivered to Participant within ten (10) business days following such termination.

e. This Agreement may also terminate as provided under Section 24.d of this Agreement.

f. In addition to all other rights and remedies available to MLS under this Agreement, if Participant defaults under this Agreement or the Board Subscription Agreement, MLS may, in its sole discretion or at the direction of the Host Board, temporarily suspend the license granted to Participant to access the MLS Database until the default has been cured.

g. Notwithstanding anything to the contrary in this Agreement, if Participant violates or is alleged to have violated the Rules and Regulations, Participant shall not be terminated in accordance with Section 20.d of this Agreement until any hearing or appeal rights of Participant have expired as provided in the Rules and Regulations.

h. Upon termination of this Agreement, Participant agrees to immediately destroy any printouts of the MLS Database or Listing Content, and any copies of the MLS Database and Listing Content in Participant's possession or under Participant's control, including in possession of any Affiliates. No pre-paid Fees will be refunded to Participant for any termination of this Agreement.

i. Upon termination of this Agreement, all licenses granted and all services provided to Participant under this Agreement shall terminate. In addition, any and all rights granted to Affiliates to access or use the MLS Database pursuant to the Rules and Regulations or

separate agreement with MLS shall automatically terminate, unless otherwise expressly provided with respect to Sales Licensees under an applicable Subscriber Agreement.

j. If, for any reason, any Subscriber Agreement is terminated, Participant agrees to either assign all Participant's Listings originated by the terminated Sales Licensee to another of Participant's Sales Licensees, or request that MLS terminate or change the status of Participant's Listings originated by the terminated Sales Licensee.

21. Indemnification. Participant agrees to indemnify and hold harmless MLS, and its officers, directors, employees, shareholders and agents, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorney's fees and costs, arising out of or connected with any Listing Agreement, this Agreement, submission to MLS of any Listing or Listing Content and the inclusion of any Listing or Listing Content by Participant in the MLS Database, including, without limitation, any claim that the access to, display of, and/or use of any Listing Content infringes on or constitutes a misappropriation of any patent, copyright, or trade secret, or any other intellectual property right of any person or entity anywhere in the world, including any claims by Sellers. MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.

22. Proprietary and Other Notices. Participant agrees that it will not alter or remove any trademarks or copyright notices or other notices and disclaimers located or used on, or in connection with, the MLS Database or any printouts of the MLS Database allowed under this Agreement.

23. IDX Advertising Consent. Unless Participant has made an express, written non-participation election for MLS's Internet Data Exchange (IDX) program as described in the Rules and Regulations, Participant expressly consents to other participants in MLS's IDX program to advertise all Participant's Listings in accordance with the IDX policy set forth in the Rules and Regulations.

24. General.

a. Notices. All notices, demands, or consents required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, by a reputable overnight courier service, or by e-mail, if the sender receives and maintains a copy of a certified mail receipt and a copy is mailed within one (1) business day after notice is delivered by e-mail, to the appropriate party at the following addresses:

If to Participant:

At the street address or e-mail maintained by MLS for Participant.

If to MLS:

WNC Regional MLS, LLC  
5030 Hendersonville Rd

Suite 1B  
Fletcher, NC 28732

The foregoing addresses may be changed from time-to-time by delivering notice of such change, referencing this Agreement, to the parties to this Agreement.

b. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Participant acknowledges that by providing Listings to MLS and using the services provided under this Agreement, Participant has transacted business in the State of North Carolina. By transacting business in the State of North Carolina by agreement, Participant voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in Buncombe, Haywood, Henderson, or Transylvania County, State of North Carolina, as to all matters relating to or arising from this Agreement.

c. Costs of Litigation. If any action is brought by either party to this Agreement against the other party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney's fees, costs, and expenses of litigation.

d. 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; except that if any provision of Sections 10, 17, or 18 of this Agreement, or any other limitation of liability or exclusion of warranty set forth in this Agreement, is determined to be invalid or unenforceable, then this Agreement shall immediately terminate without notice.

e. No Waiver. The waiver by either party of, or the failure of either party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement 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.

f. Entire Agreement; Modifications Only in Writing. This Agreement, together with the Rules and Regulations and any applicable License Agreement, (i) constitutes the entire agreement between MLS and Participant concerning the MLS Database, Listing Content, and all other subject matter of this Agreement, (ii) supersedes any contemporaneous or prior proposal, representation, agreement, or understanding between the parties, and (iii) may not be amended except in writing signed by MLS and Participant.

g. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of MLS and Participant and is not intended to benefit any third party, including any Seller or Sales Licensee. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement.

h. Survival. The provisions of Sections 4, 6, 8, 10, 14, 17, 18, 19, 20.h, 21, and 24 of this Agreement shall survive any termination of this Agreement, including termination pursuant to Section 24.d of this Agreement.

25. Definitions. The following terms shall have the following meanings in this Agreement:

a. Affiliates mean sales licensees, non-principal brokers, appraisers, and any other agents or employees of Participant who may have access to the MLS Database subject to the Rules and Regulations and any applicable agreements with MLS. A current list of all Affiliates shall be provided to MLS upon execution of this Agreement. Upon the addition or removal of any Affiliate, Participant shall update the list and provide the updated schedule to MLS within ten (10) days following any such change.

b. Broker means a principal real estate broker or broker in charge.

c. Brokerage Firm means a real estate brokerage firm affiliated with a principal real estate broker or broker in charge.

d. Board means: Asheville Board of Realtors, Inc.; Brevard Board of Realtors, Inc.; Haywood County Board of Realtors, Inc.; and Hendersonville Board of Realtors, Inc.

e. Board Rules and Regulations means the rules and regulations, as amended, of the Board of which a Participant is a member.

f. Exempted Listing means a Listing which the respective Seller has refused permission to be disseminated by MLS, or a Listing which is not required to be submitted to the MLS, in accordance with the Rules and Regulations.

g. License Agreement means a license agreement entered into between MLS and Participant, MLS and a Sales Licensee of Participant, or MLS and a third party at the request of Subscriber.

h. Listing mean a real estate listing of a participant in MLS's multiple listing service.

i. Listing Agreement means an enforceable, written, and fully executed agreement between Participant and a Seller whereby, among other things, Participant agrees to provide real estate sales services to Seller, and Seller agrees to pay compensation for services provided.

j. Listing Content means all data and content, including without limitation, all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information submitted by Participant to MLS with respect to a Listing, excepting Exempted Listings.

k. MLS Database means the compilation of Listings, including information for sold properties, known as the MLS Database, as modified from time-to-time by MLS, and which is available to Subscribers at the MLS website.

l. Participant Listings means only the Listings of Participant.

m. Rules and Regulations means the MLS Rules and Regulations established by MLS, as amended by MLS from time to time.

n. Sales Licensee means a real estate sales licensee, agent, or non-principal broker who is engaged by Participant as a sales licensee of Participant, either as an employee or independent contractor of Participant.

o. Seller means the seller(s) or lessor(s) of a property which is the subject of a Listing at issue under this Agreement.

p. Subscriber Agreement has the meaning set forth in Section 7 of this Agreement.

q. Vendor means any person or entity which has entered into a License Agreement for display of real estate listings for Participant or a Sales Licensee of Participant.

Dated effective \_\_\_\_\_, \_\_\_\_\_

MLS

WNC REGIONAL MLS, LLC

By \_\_\_\_\_

\_\_\_\_\_  
President

PARTICIPANT

\_\_\_\_\_

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

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

Title of signatory if Participant is a brokerage firm: \_\_\_\_\_

**ABR SERVICES, INC.**  
**SUBSCRIBER ACKNOWLEDGEMENT**

THIS SUBSCRIBER ACKNOWLEDGEMENT (the "Acknowledgement") is made this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by the undersigned individual licensed to provide real estate brokerage services in the State of North Carolina.

**SUBSCRIBER NAME AND ADDRESS:**  
(the "Subscriber")

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FIRM NAME AND ADDRESS:**  
(the "Participant")

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PRIMARY BOARD OF ASSOCIATION:**  
(the "Board")

\_\_\_\_\_

The undersigned hereby acknowledges and agrees that his or her participation in the Western North Carolina Regional MLS, (the "MLS Service"), and certain other ancillary services provided through ABR Services, Inc. ("ABRS") (such ancillary services being collectively referred to as the "Ancillary Services", and the MLS Service and Ancillary Services being collectively referred to as the "Service"), is subject to an enrollment agreement by and between ABRS and the Participant (the "Enrollment Agreement"). Subscriber acknowledges that he or she has had the opportunity to read and understand the Enrollment Agreement, and agrees to be bound to its terms. Without limiting the generality of the foregoing, Subscriber further acknowledges and agrees that the terms and conditions of the Enrollment Agreement may be amended by ABRS and Participant from time to time, and that Subscriber shall be bound by the terms and conditions of the Enrollment Agreement as so amended as if the same were in existence at the time of execution hereof. Further, Subscriber acknowledges and agrees that in the event Subscriber becomes affiliated with another Participant enrolled in the Service, that this Acknowledgement shall remain in full force and effect, and that Subscriber shall be bound by the terms and conditions of the Enrollment Agreement by and between ABRS and such subsequent Participant.

The undersigned acknowledges and agrees that his or her participation in the Service may be suspended or terminated, in the sole discretion of ABRS, upon the occurrence of any of the following: Subscriber's breach of the terms and conditions of this Acknowledgement, the Enrollment Agreement, the Enrollment Agreement by and between ABRS and any subsequent Participant with which Subscriber may become affiliated, any agreement between ABRS and any third party service provider providing Ancillary Services; the published rules and regulations of any such third party service provider; the policies, rules, and regulations of the Board or the Asheville Board of Realtors®, Inc.; or, a violation of the Realtor® Code of Ethics by Subscriber. The undersigned specifically acknowledges and agrees that he or she is bound by the Code of Ethics on the same terms and conditions as the members of the Asheville Board of Realtor's®, Inc., including without limitation the obligation to submit to ethics hearings and the duty to arbitrate contractual disputes with other Realtors® in accordance with the established policies and procedures of the MLS, the Board, and the Asheville Board of Realtors®, Inc.

Subscriber hereby agrees to indemnify, defend, and hold ABRS harmless from any and all claims, causes of actions, demands, liabilities, and costs, including without limitation, reasonable attorney's fees, arising out of, or in any way related to Subscriber's enrollment in the Service, including, without limitation, the negligent or willful acts or omissions of Subscriber, or any other real estate brokerage firm, sales person, or broker who may show listings of Subscriber in connection with such Service.

**SUBSCRIBER:**

\_\_\_\_\_(SEAL)

# Subscription Agreement

This Subscription Agreement (the “Agreement”) is made and entered into by and between \_\_\_\_\_, an individual real estate agent, sales licensee, or non-principal broker (the “Subscriber”), and **WNC REGIONAL MLS, LLC**, a North Carolina limited liability company (the “MLS”).

1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 22 of this Agreement.

2. Grant of Subscriber Rights in Multiple Listing Service. The Board through which the Broker subscribes to receive multiple listing services (the “Host Board”) is a Member or a wholly owned subsidiary of a Member of the MLS. Broker is licensed to provide real estate brokerage services in the State of North Carolina, and is a member of a Board. The Host Board offers a suite of services to its Brokers, including access to the MLS Database. Accordingly, Broker has enrolled with the Host Board to receive various services, including access to the MLS Database. Subscriber, an employee of or independent contractor with Broker, desires access to the MLS Database. Therefore, subject to the terms and conditions of this Agreement, the Rules and Regulations, and any subscription agreement by and between the Broker and Host Board (the “Board Subscription Agreement”), MLS agrees to make the MLS Database available for access by Subscriber, and Subscriber shall have all rights and obligations of a subscriber in MLS’s multiple listing service as set forth under the Rules and Regulations. Access to the MLS Database shall be through a means determined by MLS.

3. License Grant. MLS hereby grants to Subscriber a limited, non-exclusive, and personal license to use Listing Content only for purposes and as expressly allowed under Subscriber’s certification or licensure, the Rules and Regulations, the Board Subscription Agreement, and any applicable License Agreement. Subscriber agrees to take all reasonable steps to protect the MLS Database and Listing Content from unauthorized access, copying, or use.

4. Intellectual Property Ownership.

a. Subscriber acknowledges and agrees that the MLS Database, and all copies, modifications, enhancements, and derivative works of the MLS Database, are the property of MLS, and all right, title, and interest in and to the MLS Database, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS. Subscriber hereby irrevocably assigns to MLS any and all rights which it may have or acquire in and to the MLS Database.

b. Subscriber acknowledges and agrees that the Listing Content, and all copies, modifications, enhancements, and derivative works of the Listing Content, are proprietary, confidential, original works of authorship of MLS, or have been assigned or licensed to MLS, and are protected under United States copyright, trademark, and trade secret laws of general applicability. Subscriber acknowledges and agrees that all right, title, and interest in and

to the Listing Content, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS or its licensors. Subscriber hereby irrevocably assigns to MLS any and all rights not assigned to Broker which it may have or acquire in and to the Listing Content. Nothing in this Agreement or the Rules and Regulations shall be deemed to convey to Subscriber an interest in or to the MLS Database or Listing Content, but only a limited right of access and use, revocable in accordance with the terms of this Agreement.

c. Subscriber agrees not to challenge MLS's rights in and to the Listing Content or the MLS Database or to take any action inconsistent with the provisions of this Section 4 of this Agreement. Subscriber agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the copyright application and registration of the Listing Content and the MLS Database.

d. Without limiting the generality of this Section 4.d, Subscriber acknowledges and agrees that MLS may license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the Broker or by the Rules and Regulations.

5. License to Broker's Listings. Upon the receipt of a written request from Broker, in a form acceptable to MLS, and so long as Broker, Subscriber, and/or an applicable Vendor are not in default under this Agreement, the Rules and Regulations or any agreement with MLS, MLS will grant to Subscriber or the applicable Vendor a license to the Listing Content for Broker's Listings. The license will only be granted pursuant to a License Agreement. MLS has no obligation to grant a license to Subscriber or any Vendor which does not enter into a License Agreement. In addition to any applicable license fee payable by Subscriber and/or the Vendor, Subscriber shall pay to MLS all costs and expenses incurred by MLS in connection with any licenses and any services provided by MLS in connection with such licenses.

6. Fees. In consideration for subscriber rights in MLS's multiple listing service and for the services provided and licenses granted under this Agreement, Subscriber agrees to pay to Broker the fees ("Fees") in the amount, and in accordance with the terms, established by Broker and/or the Host Board in accordance with the Board Subscription Agreement, and to otherwise comply with the terms and conditions thereof.

7. No Assignment by Subscriber. Subscriber agrees that this Agreement is personal to Subscriber, and Subscriber may not assign or transfer this Agreement, including any license granted under this Agreement, or transfer any rights or delegate any duties under this Agreement, to any third party. Any attempt to assign, transfer, or delegate any of Subscriber's rights, duties, or obligations under this Agreement shall be void.

8. Interruptions in Service. Subscriber acknowledges that access to the MLS Database may from time-to-time be unavailable to Subscriber, whether because of technical failures or interruptions, intentional downtime for service or changes to MLS's website, or

otherwise. Subscriber agrees that any modification of MLS's website, and any interruption or unavailability of access to the MLS Database shall not constitute a default of any obligations of MLS under this Agreement or the Board Subscription Agreement, and MLS shall have no liability of any nature to Subscriber for any such modifications, interruptions, unavailability, or failure of access.

9. Copies and Derivative Works. Except as otherwise expressly provided in this Agreement or the Rules and Regulations, Subscriber may not do any of the following, either directly or indirectly, including assist any other person to do, or otherwise contribute in any way to any of the following:

a. Make any copies of the MLS Database, or any portion of the MLS Database, including any specific Listing Content included in the MLS Database;

b. Create any derivative works, enhancements, or other modifications of the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database;

c. Download, distribute, export, or transmit the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database; or

d. Publicly display the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database.

10. Representations and Warranties Regarding Listings. Subscriber represents and warrants with respect to each Broker's Listing or change to a Broker's Listing submitted by Subscriber to Broker, the following:

a. Subscriber and the respective Seller have assigned in writing all of Seller's and Subscriber's rights, title and interest, including all copyright rights and other intellectual property rights, in and to the Listing Content to Broker.

b. The Broker's Listing complies in all respects with the Rules and Regulations.

c. To the best of Subscriber's knowledge and after reasonable due diligence to verify the accuracy of all information in the Broker's Listing, all information included in the Broker's Listing is accurate and not misleading.

d. The Listing Content for each Broker's Listing is an original work of authorship of the Broker, or has been assigned to Broker pursuant to an enforceable assignment. Except for Broker, no other person or entity, including Subscriber or any Seller, has any rights of any nature in or to any of the Listing Content for any Broker's Listing.

e. There is no claim, litigation or proceeding pending or threatened with respect to the Listing Content for any Broker's Listing.

11. Submission of Listings. As a material condition to accessing the MLS Database, Subscriber agrees to submit to MLS on behalf of Broker, all Listings for properties listed for sale by Subscriber, in accordance with, and except as otherwise provided in, the Rules and Regulations. MLS may refuse to accept or include in, and may remove from, the MLS Database, any Listing, or any Listing Content, or may require Subscriber, on behalf of Broker, to direct MLS to modify any Listing Content, as provided under the Rules and Regulations or if MLS determines, in its sole discretion, that any such Listing Content may violate or infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as provided in the Rules and Regulations, Subscriber acknowledges that MLS has no obligation to remove or modify any Listing or Listing Content. MLS grants to Subscriber a limited, non-exclusive, personal license to input Listing Content in the MLS Database, and modify such Listing Content, only on behalf of Broker and strictly in accordance with the terms and conditions of this Agreement and the Rules and Regulations. Subscriber acknowledges and agrees that any Listing or Listing Content, or any prospective Listing or Listing Content, submitted to MLS may be accessible by other users of MLS's multiple listing service, and MLS shall have no liability to Subscriber for providing such other users access to any Listing or Listing Content, or any prospective Listing or Listing Content.

12. Confidential Information. Any information provided by MLS to any Subscriber, including without limitation, any password to the MLS Database, any printouts of the MLS Database as provided under this Agreement, and all Listing Content, including personal information of a Seller (collectively "Confidential Information") shall be maintained by Subscriber as confidential and available exclusively for use by the Subscriber as provided in this Agreement. Subscriber shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law. Subscriber shall not disclose any Confidential Information pursuant to a court order or as required by law until Subscriber has given MLS ten (10) days prior written notice and an opportunity to oppose such disclosure. Notwithstanding the foregoing, Subscriber may disclose Listing Content for individual Listings strictly in accordance with this Agreement and the Rules and Regulations.

13. Additional Representations and Warranties of Subscriber. Subscriber represents and warrants the following to MLS: (a) Subscriber is a real estate agent or broker licensed and in good standing; (b) Subscriber is a member of a Board in good standing; (c) Broker has consented to Subscriber entering into this Subscription Agreement; (d) this Agreement, when executed by Subscriber, will be valid, binding and enforceable with respect to Subscriber in accordance with its terms; (e) the provisions of the services provided under this Agreement and the fulfillment of Subscriber's obligations as contemplated under this Agreement are proper and lawful; (f) Subscriber is not and shall not be under any disability, restriction or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement.

14. Compliance with Governing Rules and Agreements.

a. By entering into this Agreement, Subscriber represents and warrants to MLS that he or she has read and understands, and shall be bound by and at all times fully comply with and perform all of Subscriber's obligations under this Agreement, the Rule and Regulations, as may be amended from time to time by MLS, the applicable Board Rules and Regulations, and the published policies and procedures of each third party service provider providing services to the Subscriber or MLS hereunder, including, without limitation, the execution of additional confidentiality and non-disclosure agreements as may be reasonably required by such third parties. In addition to all other rights and remedies available to MLS under this Agreement and the Rules and Regulations, Subscriber acknowledges that MLS may levy fines against Subscriber for noncompliance with the Rules and Regulations as provided in the Rules and Regulations. A copy of the then-current version of the Rules and Regulations is available upon request.

b. By entering into this Agreement, Subscriber hereby acknowledges and agrees to the authority and jurisdiction of the MLS in connection with the enforcement of the Rules and Regulations. This authority shall include, without limitation, the authority of the MLS to levy finds against Subscriber for noncompliance with the Rules and Regulations, as provided in the Rules and Regulations. The Subscriber hereby acknowledges and submits to the authority and jurisdiction of the Host Board in connection with proceedings arising out of an alleged violation of the Realtor<sup>®</sup> Code of Ethics. This Authority shall include, without limitation, the authority of the Host Board to conduct a hearing and appeal, and impose sanctions, including without limitation, the levy of a fine, in accordance with applicable procedures as set forth by the National Association of Realtors<sup>®</sup>.

c. To the extent there is any conflict between this Agreement, an applicable Participation Agreement, and the Rules and Regulations, the Rules and Regulations shall govern. As between this Agreement and any applicable Participation Agreement, this Agreement shall govern.

15. No Warranty. THE SERVICES PROVIDED AND LICENSE GRANTED TO SUBSCRIBER UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY NATURE. MLS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, MLS DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY LISTING CONTENT, AND THEIR ACCURACY.

16. Limitation of Liability. MLS'S ENTIRE AND CUMULATIVE LIABILITY TO SUBSCRIBER, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MLS DATABASE OR LISTING CONTENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY SUBSCRIBER TO MLS DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT SHALL MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. Injunction. MLS and Subscriber agree that a breach or violation of Sections 9, 12, and 18.h of this Agreement will result in immediate and irreparable injury and harm to MLS. In such event, MLS shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that, this shall in no way limit any other remedies which MLS may have, including, without limitation, the right to seek monetary damages.

18. Term and Termination.

a. The initial term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided in this Agreement, shall continue for a period of one (1) year. This Agreement shall automatically renew for additional one (1) year terms unless either party gives written notice to the other party of non-renewal at least thirty (30) days prior to the expiration of the then-current term or this Agreement is otherwise terminated as provided in this Agreement.

b. Notwithstanding the provisions of Section 18 a. of this Agreement, either party may terminate this Agreement at any time for any reason upon twenty (20) days prior written notice to the other party.

c. This Agreement shall immediately terminate upon the termination of the Board Subscription Agreement.

d. MLS may terminate this Agreement upon the occurrence of any of the following events: (1) Participant requests in writing to MLS that this Agreement be terminated; (2) Subscriber discloses any Confidential Information, including, without limitation, any password of Subscriber, except as expressly provided in this Agreement; (3) Subscriber otherwise fails to comply in all respects with the Rules and Regulations, the applicable Board Rules and Regulations; (4) Subscriber defaults under any material term or condition of any License Agreement; or (5) Subscriber defaults under any other material term or condition of this Agreement. Except as otherwise provided in this Agreement, termination pursuant to this Section 0 of this Agreement shall be effective at any time after MLS has given ten (10) business days notice to Subscriber of any such event, and such event has not been cured within such ten (10) day period. Notwithstanding the foregoing sentence, if, in the reasonable discretion of MLS, the occurrence of any such event could result in irreparable harm to MLS, termination shall be effective immediately, without prior written notice to Subscriber, provided that notice shall be delivered to Subscriber within ten (10) business days following such termination.

e. This Agreement shall automatically terminate upon termination of the Participation Agreement; except that if Broker, and not Brokerage Firm, entered into the terminated Participation Agreement, this Agreement shall continue in effect provided that another Broker or his/her Brokerage Firm enters into a Participation Agreement within thirty (30) days after termination of the terminated Participation Agreement. If another Participation Agreement is not entered into within such thirty (30) day period, this Agreement shall automatically terminate upon expiration of such thirty (30) day period.

f. This Agreement may also terminate as provided under Section 21.d of this Agreement.

g. In addition to all other rights and remedies available to MLS under this Agreement, if Subscriber defaults under this Agreement or the Board Subscription Agreement, MLS may, in its sole discretion or at the discretion of the Host Board, temporarily suspend the license granted to Subscriber to access the MLS Database until the default has been cured.

h. Upon termination of this Agreement, Subscriber agrees to immediately destroy any printouts of the MLS Database or Listing Content, and any copies of the MLS Database and Listing Content in Subscriber's possession or under Subscriber's control. Upon termination of this Agreement, all licenses granted and all services provided to Subscriber under this Agreement shall terminate. No pre-paid Fees will be refunded to Subscriber for any termination of this Agreement.

19. Indemnification. Subscriber agrees to indemnify and hold harmless MLS, and its officers, directors, employees, shareholders from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorney's fees and costs, arising out of or connected with any Listing Agreement, this Agreement, submission to MLS of any Listing or Listing Content and the inclusion of any Listing or Listing Content by Subscriber in the MLS Database, including, without limitation, any claim that the access to, display of, and/or use of any Listing Content infringes on or constitutes a misappropriation of any patent, copyright, or trade secret, or any other intellectual property right of any person or entity anywhere in the world, including any claims by Sellers. MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.

20. Proprietary and Other Notices. Subscriber agrees that it will not alter or remove any trademarks or copyright notices or other notices and disclaimers located or used on, or in connection with, the MLS Database or any printouts of the MLS Database allowed under this Agreement.

21. General.

a. Notices. All notices, demands, or consents required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, by a reputable overnight courier service, or by e-mail, if the sender receives and maintains a copy of a certified mail receipt and a copy is mailed within (1) business day after notice is delivered by e-mail, to the appropriate party at the following addresses:

If to Subscriber:

At the street address or e-mail maintained by MLS for Subscriber.

If to MLS:

WNC Regional MLS, LLC  
5030 Hendersonville Rd  
Suite 1B  
Fletcher, NC 28732

The foregoing addresses may be changed from time-to-time by delivering notice of such change, referencing this Agreement, to the parties to this Agreement.

b. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Subscriber acknowledges that by using the services provided under this Agreement, Subscriber has transacted business in the State of North Carolina. By transacting business in the State of North Carolina by agreement, Subscriber voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in Buncombe, Haywood, Henderson or Transylvania County, State of North Carolina, as to all matters relating to or arising from this Agreement.

c. Costs of Litigation. If any action is brought by either party to this Agreement against the other party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney's fees, costs, and expenses of litigation.

d. 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; except that if any provision of Sections 8, 15, or 15 of this Agreement, or any other limitation of liability or exclusion of warranty set forth in this Agreement, is determined to be invalid or unenforceable, then this Agreement shall immediately terminate without notice.

e. No Waiver. The waiver by either party of, or the failure of either party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement 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.

f. Entire Agreement; Modifications Only in Writing. This Agreement, together with the Rules and Regulations and any applicable License Agreement, (i) constitutes the entire agreement between MLS and Subscriber concerning the MLS Database, Listing Content, and all other subject matter of this Agreement, (ii) supersedes any contemporaneous or prior proposal, representation, agreement, or understanding between the parties, and (iii) may not be amended except in writing signed by MLS and Subscriber.

g. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of MLS and Subscriber and is not intended to benefit any third party, including any Seller or Subscriber. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement.

h. Survival. The provisions of Sections 4, 6, 8, 12, 15, 156, 17, 18.h, 19, and 21 of this Agreement shall survive the termination of this Agreement.

22. Definitions. The following terms shall have the following meanings in this Agreement:

a. Broker means the principal real estate broker/broker in charge and the real estate brokerage firm, if any, affiliated with such broker, and who has engaged Subscriber as an agent/sales licensee of Broker, either as an employee or independent contractor.

b. Reserved.

c. Broker Listings means only the Listings of Broker.

d. Board means: Asheville Board of Realtors, Inc.; Brevard Board of Realtors, Inc.; Haywood County Board of Realtors, Inc.; and Hendersonville Board of Realtors, Inc.

e. Board Rules and Regulations means the rules and regulations, as amended, of the Board of which a Subscriber is a member.

f. Exempted Listing means a Listing which the respective Seller refuses to have disseminated by MLS pursuant to a written certification, or any other Listing which is not required to be filed with MLS as provided under the Rules and Regulations.

g. License Agreement means a license agreement entered into between MLS and Subscriber or MLS and a third party at the request of Subscriber.

h. Listing mean a real estate listing of a participant in MLS's multiple listing service.

i. Listing Agreement means an enforceable, written, and fully executed agreement between Broker and a Seller whereby, among other things, Broker agrees to provide real estate sales services to Seller, and Seller agrees to pay compensation for services provided, including compensation to a cooperating Broker, if applicable, all in accordance with applicable law.

j. Listing Content means all data and content, including without limitation, all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information submitted by Broker to MLS with respect to all Broker's Listings except Exempted Listings. .

k. MLS Database means the compilation of Listings, including information for sold properties, known as the MLS Database, as modified from time-to-time by MLS, and which is available to Subscribers at the MLS website.

l. Participation Agreement means a participation agreement, in a form acceptable to MLS in its sole discretion, entered into between MLS and Broker, which grants participation rights in MLS's multiple listing service to Broker.

m. Seller means the seller(s) or lessor(s) of a property which is the subject of a Listing at issue under this Agreement.

n. Vendor means any person or entity which has entered into a License Agreement for display of real estate listings for Subscriber.

Dated effective \_\_\_\_\_, \_\_\_\_\_

MLS

**WNC REGIONAL MLS, LLC**

By \_\_\_\_\_

\_\_\_\_\_  
President

SUBSCRIBER

\_\_\_\_\_  
\_\_\_\_\_  
Individually

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