

CONTENT PROVIDER AGREEMENT

(Provided under the Larson & Skinner Subscription Program to NCRMLS)

Basics

The Content Provider Agreement is intended for use by MLS to establish a content provider program. (Note: some MLSs may refer to such a program as a “photographer program,” however, given the various types of content and media that are being created and submitted to MLS with listings we thought using a broader term was appropriate.) Under a content provider program, MLS works directly with content providers to increase market options and transparency, reduce risk for involved parties, and create other benefits for the parties.

Overview

The agreement establishes the terms and conditions for a content provider's participation in MLS's program. The program is relatively simple but can be customized for your specific goals and business terms (see Implementation below). The "Provider" is the third-party that creates content for subscribers, such as a photographer, videographer, etc. The Provider grants MLS a license to all content that Provider creates for subscribers and is submitted to MLS, the "Works" (see Section 5).

In exchange, MLS will list the Provider in its content provider directory and designate the Provider as a "Verified Media Provider" (see Section 3). The directory can be a simple list on MLS's webpage or can be a more involved interface with searching capabilities. The Provider can also advertise themselves as participating in MLS's program.

Subscribers will still contract individually with Providers for Providers' services outside of this agreement . Subscribers are free to choose whatever Provider they would like to work with; the program contemplated under this agreement does not restrict subscribers and their choices. Rather, the program provides a list of content providers that have granted MLS a direct license.

The license that Provider grants to MLS allows MLS to use the Works as part of its MLS business. Obtaining a license directly from the Provider has some distinct

advantages for MLS. First, it places MLS and Provider in a direct contracting relationship. This allows MLS to obtain promises from the Provider specifically related to the Works, for example, that the Works are not infringing (see Section 4.8). Second, MLS can also allocate risk between Provider and MLS, see Section 7, which limits MLS liability to Provider, and Section 8 where Provider indemnifies MLS for the Works. Finally, MLS can help to mitigate the risk of copyright infringement for its subscribers, see Section 6, which requires Provider to follow a notice and take-down procedure if Provider thinks that any of its Works are being infringed by MLS or its subscribers. This procedure can help to resolve common copyright issues and may result in a reduction in litigation of those issues.

Implementation

Finally, we recommend that MLS display a disclaimer on its directory to help brokers and agents understand the scope of MLS's content provider program, including that MLS is not endorsing any content provider or preventing a broker or agent from using the content provider of their choice. The following is a sample disclaimer:

As a courtesy resource to you, MLS lists the name and contact information of photographers, content-producers, and media creators ("Content Providers") that participate in MLS's content provider program. The Content Providers listed in this directory are not endorsed by MLS and MLS makes no guarantees related to their content or services. The Content Providers have agreed to MLS's terms and conditions, which include an intellectual property license granted to MLS. MLS Subscribers may choose to use any content provider, including the Content Providers listed here, at their discretion.

NCRMLS RESPONSE, ROLLOUT AND NOTES:

NOTE FOR MEMBERS / CSOs: This is not an Affiliate program, but Larson & Skinner has written the Affiliate agreement which will augment this Content Provider Agreement. Please review the Affiliate agreement, as this agreement (drafted by NCRMLS Attorneys) is between you and the content providers.

The rollout is to be broken down into the following phases:

1. Members are to review the Affiliate Agreement, and let us know if there are any questions or if a conference with the NCRMLS attorneys is needed.
2. Photographers will be given the Content Provider Agreement for review
3. Content Provider Directory will be hosted (on NCRMLS.com website and/or in FlexMLS Dashboard) – other ideas are welcome
 - a. Content Providers can be designated as to what services they provide (Virtual tours / Photography Only)
 - b. Content Providers can be designated to counties of their choosing
4. Affiliate program perks will be agreed upon and executed with Members
 - a. FlexMLS provides a photographer credit field, which allows the agent to enter a listing, and send notification to photographer with system access only to upload photos and/or virtual tours
 - b. Other Affiliate program perks that are not MLS-data related rests purely between the Member and the Content Provider and is of no business of the MLS.
 - c. The MLS can provide Members educational and technology news updates for the affiliated content providers as a value-added perk – upon the Members' request.
5. Maintenance of the Directory is to be done on an annual, perhaps quarterly basis. Affiliates of Members will be maintained by the Members. If non-affiliates are found to be non-responsive or otherwise warrants removal from the content provider directory will be removed with adequate notice.

EOF

NORTH CAROLINA REGIONAL MLS, LLC MEDIA PROGRAM AGREEMENT

This Media Program Agreement (“**Agreement**”) is made and entered into by North Carolina Regional MLS, LLC (“**NCRMLS**”), with offices at 4024 Holly Shelter Rd, Castle Hayne, NC 28429; and the individual or company identified as “**Provider**” on the signature page below.

BACKGROUND

A. NCRMLS provides multiple listing services and related services (the “**MLS Services**”) to real estate brokers, appraisers, agents, and real estate related business professionals (the “**Subscribers**”) through local REALTOR® boards and associations (“**Associations**”), which are currently listed at <https://www.ncrmls.com/our-members>.

B. Provider provides content production services, for example, photography, videography, virtual tours, and other media creation services to Subscribers.

C. Provider wishes to participate in the NCRMLS Media Program as described in this Agreement.

D. If Provider is an affiliate member of an Association, then NCRMLS may provide Provider with access to the MLS System, defined below, solely so that Provider may directly upload content into the MLS database on behalf of Provider’s Subscriber clients, subject to the terms of this Agreement and Addendum A.

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. DEFINITIONS

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

- a. Affiliate Member. The membership program and services offered by an Association to individuals and companies not engaged in the real estate profession as determined by that Association’s policies.
- b. MLS System. The software that NCRMLS maintains and uses to make access to its MLS database available to its Subscribers and other authorized users.
- c. NCRMLS Media Program. The program and services that NCRMLS maintains as described in this Agreement.
- d. NCRMLS Policies. NCRMLS’s then current bylaws, rules and regulations, and policies and procedures adopted by NCRMLS’s board of directors or authorized delegates, as NCRMLS amends them from time to time. Media specific policies are currently located at <https://support.ncrmls.com/portal/en/kb/articles/exhibit>.
- e. Provider Compilation Contribution or “PCC.” All selection, coordination, and arrangement by Provider of the Works or other listing information submitted, contributed, or input in the MLS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the MLS System. PCC does not include original text, photographs, or other media.
- f. Service Agreement. The separate agreements, terms and conditions, or services contracts that Provider enters into with Subscribers under which Provider provides the Works to Subscribers.
- g. Works. All photographs, images, video, data, graphics, visual records, virtual tours, and other media that Provider provides to NCRMLS, or a Subscriber, in any form now known or hereafter discovered, except the PCC. “Works” also includes all photographs, images, video, data, graphics, visual records, virtual tours, and other media created by Provider pursuant to an agreement between Provider and

Subscriber that were previously provided to NCRMLS or submitted to NCRMLS by a Subscriber prior to this Agreement, except the PCC.

- h. Other terms are defined at their first usage.

2. NCRMLS MEDIA PROGRAM

The NCRMLS Media Program is offered by NCRMLS as a service to its Subscribers. During the term of this Agreement, Provider, as well as other participating content producers and media companies, will be (1) listed on the NCRMLS website and designated as a participant in the NCRMLS Media Program; (2) permitted to indicate on its own website and marketing materials that they participate in the “NCRMLS Media Program” subject to NCRMLS’s approval of such usage; (3) if Provider is also an Affiliate Member, then Provider may have access to the MLS System subject to Addendum A. Associations may, in their discretion, offer Provider additional benefits for participating in the NCRMLS Media Program, promotional opportunities to market Provider’s services to Subscribers affiliated with Association. Additional benefits for Affiliate Members are determined by each Association.

3. ACKNOWLEDGEMENTS

- a. Service agreements. NCRMLS acknowledges that Provider will enter into Service Agreements with Subscribers. Provider agrees that in the event there is any inconsistency, conflict, or ambiguity between a Service Agreement with a Subscriber and this Agreement, with regard to intellectual property or risk allocation (i.e., limitation of liability, warranties, indemnification) terms, this Agreement shall take precedence. Service Agreements may address fees and payment terms, delivery timelines, and other similar business terms.
- b. Editorial control. NCRMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the Works or use of the Works in the MLS Services. Notwithstanding the foregoing, NCRMLS may take any steps necessary in its judgment, including deleting the Works or portions thereof, to avoid or remedy any violation of law, breach of NCRMLS Policies, or infringement of any intellectual property right. Additionally, NCRMLS shall have the right to alter and/or remove metadata and copyright management information contained in the Works and the right to place a watermark on the Works.
- c. Disclosure to third parties. NCRMLS reserves the right to distribute to third parties Provider’s name, company name, business address, phone number, and email address.
- d. No royalties; credit. Provider acknowledges and understands that no royalty or other consideration will be due to Provider under this Agreement. Provider and Subscriber shall separately negotiate any fees due to Provider under a Service Agreement. Provider agrees that NCRMLS is under no obligation to credit Provider for the Works.

4. INTELLECTUAL PROPERTY

Provider must select one from the following two options. If no selection is indicated, or if both options are checked, then Provider is deemed to have selected Option 2.

Option 1 - Assignment

- a. Provider unconditionally assigns to NCRMLS all right, title and interest in the Works, including, without any limitation, any copyrights therein under U.S. and international copyright law. Provider warrants that it has the authority to make this assignment. If for some reason, Provider does not possess the rights to permit the foregoing assignment, Provider hereby grants to NCRMLS a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through

multiple tiers) all Works for use in the ordinary course of NCRMLS' multiple listing service business.

- b. If Option 1 is selected, NCRMLS hereby grants to Provider a non-exclusive, perpetual, world-wide, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) Works. NCRMLS shall, in its reasonable sole discretion, make efforts to file registration of NCRMLS' copyrights. NCRMLS shall employ commercially reasonable efforts determined in NCRMLS' sole discretion to detect and hinder unauthorized use of the Works.
- c. Pursuant to the NCRMLS Policies, the PCC shall be a work made for hire by Provider for the benefit of NCRMLS, which shall be deemed the PCC's author for purposes of copyright law. If for any reason the PCC cannot be provided as a work made for hire, Provider agrees to assign and hereby does assign to NCRMLS all right, title and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law.

Option 2 – License

- a. Provider hereby grants to NCRMLS a non-exclusive, perpetual, world-wide, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and sublicense (including sublicenses to Subscribers and sublicenses through multiple tiers) all Works for use in the ordinary course of NCRMLS' multiple listing service business. Provider warrants that it has the authority to grant this license. Provider remains the owner of the copyright of the Works.
- b. If Option 2 is selected, Provider acknowledges that: (i) NCRMLS will make no effort to register the copyrights in the Works, and Provider will be responsible for all costs and efforts associated with registration; (ii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; and (iii) NCRMLS is under no obligation to detect or hinder third parties using the Works without Provider's permission.
- c. Pursuant to the NCRMLS Policies, the PCC shall be a work made for hire by Provider for the benefit of NCRMLS, which shall be deemed the PCC's author for purposes of copyright law. If for any reason the PCC cannot be provided as a work made for hire, Provider agrees to assign and hereby does assign to NCRMLS all right, title and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law.

5. WARRANTY

Provider warrants that (i) the Works do not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; (ii) Provider has the written consent of any party necessary to provide the Works to NCRMLS and Subscribers; (iii) the Works are not defamatory, offensive, or obscene; (iv) that there is no claim, litigation, or proceeding pending or threatened with respect to the Works; (v) if Provider selected Option 1 in Section 4, that Provider is the owner of the copyright of the Works; (vi) the Works are compliant with the NCRMLS Policies; and (vii) it shall comply with all applicable laws, statutes, ordinances and regulations in performance of its respective obligations under this Agreement.

6. COPYRIGHT INFRINGEMENT PROCEDURE

If Provider believes that any of its copyrights have been violated in the MLS Services or by Subscribers, including display on their respective websites, then upon discovery of the alleged infringement, Provider

must provide written notice to NCRMLS that includes (i) a description of the copyrighted work and where the material is located; (ii) a statement under penalty of perjury that the information in the notice is accurate; (iii) that Provider is the owner of the copyright or authorized to act on the owner's behalf. Upon validation of the information provided in the notice, NCRMLS will use commercially reasonable efforts to remove or disable access to the infringing material (e.g., removal from a data feed; NCRMLS does not control Subscriber or third party website displays), however NCRMLS may request additional information before removing any infringing material. If NCRMLS uses commercially reasonable efforts to remove or disable access to the infringing material, then Provider agrees to waive any potential copyright infringement claims against NCRMLS. Provider agrees not to take any legal action against a Subscriber for an alleged copyright violation, unless Provider has first exhausted the procedure provided in this Agreement.

7. LIMITATION OF LIABILITY/EXCLUSION OF WARRANTIES

IN NO EVENT SHALL NCRMLS BE LIABLE TO PROVIDER FOR ANY COSTS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR STATUTORY DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF NCRMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDER'S SOLE REMEDIES AGAINST NCRMLS HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF \$1,000, OR THE LOWEST LEGAL LIMIT, WHICHEVER IS LESS. THIS PARAGRAPH SETS OUT PROVIDER'S EXCLUSIVE REMEDIES, AND UNDER NO CIRCUMSTANCES SHALL PROVIDER BE ENTITLED TO EQUITABLE REMEDIES. NCRMLS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE PREVIOUS SENTENCE, NCRMLS DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR USE.

8. INDEMNIFICATION

Provider shall indemnify and defend NCRMLS, its subsidiaries and affiliated companies, and all its respective employees, directors, agents, and authorized successors and assigns, and Subscribers (the "Indemnified Parties"), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from (i) any breach of this agreement and (ii) each claim of any third party arising from the Works or Provider's breach of this Agreement. Provider shall (a) promptly notify Indemnified Parties in writing of any claim and give the Indemnified Parties the opportunity to defend or negotiate a settlement of any such claim at Provider's expense, and (b) cooperate fully with Indemnified Parties, at Provider's expense, in defending or settling any such claim. The Indemnified Parties shall be entitled to engage their own local counsel at Provider's expense.

9. TERM; TERMINATION

- a. Term. The term of this Agreement begins on the date that NCRMLS signs it ("Effective Date") and shall continue until terminated in accordance with the terms of this Agreement.
- b. Termination. This Agreement shall terminate upon the occurrence of any of the following events: (i) 30 days after any party's notice to the other of its intent to terminate; (ii) 10 days after NCRMLS' notice to Provider that Provider has breached this Agreement, provided the breach remains uncured, or (iii) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm.

10. GENERAL

- a. Applicable law. The laws of the State of North Carolina shall govern this Agreement and its interpretation. Any action to enforce or interpret this Agreement shall have venue in New Hanover County, North Carolina, and the parties hereby submit to personal jurisdiction in that venue.
- b. Attorneys' fees. If NCRMLS prevails in any action to enforce or interpret this Agreement or any provision hereof, it shall be entitled to its reasonable attorneys' fees and costs for such legal action.
- c. No third-party beneficiaries. This Agreement is entered into solely between, and may be enforced only by NCRMLS and Provider, and this Agreement shall not create or be construed to create any rights in any third party. The foregoing notwithstanding, Subscribers are a third-party beneficiary of this Agreement and the parties agree that Subscribers may enforce those covenants herein of which Subscriber is a beneficiary.
- d. Notice. All notices to be given under this Agreement shall be mailed, or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.
- e. No waiver. No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.
- f. Relationship of the Parties. The relationship of NCRMLS to Provider is that of independent contractor. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of NCRMLS or have any authority to make any agreements or representations on the behalf of NCRMLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.
- g. Survival of Obligations. Paragraphs 1, 3(a), 3(d), 4 through 8, and 10 shall survive termination or expiration of this Agreement.
- h. Entire Agreement; Amendment. This Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same subject matter. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. This Agreement may not be amended except by written instrument executed by both parties.

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**NORTH CAROLINA REGIONAL MLS, LLC
MEDIA PROGRAM AGREEMENT**

Signature Page

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

NORTH CAROLINA REGIONAL MLS, LLC	PROVIDER
<p>_____ Signature</p> <p>_____ Print Name, Title</p> <p>Date: _____</p>	<p>_____ Company name or individual name, if not a company</p> <p>_____ Signature</p> <p>_____ Print Name, Title</p> <p>Date: _____</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____</p>