

APPLICATION PROVIDER LICENCE AGREEMENT

This Application Provider Licence Agreement (“**Agreement**”) is made as of the ____ day of _____, 20__ (the “**Effective Date**”) by and between The British Columbia Real Estate Association, having its offices at 1425 - 1075 Georgia St. W., Vancouver, BC, V6E 3C9 (“**BCREA**”) and [◆] having its offices at [◆] (the “**Provider**”).

WHEREAS:

- A. BCREA is the author and owner, solely [or jointly in conjunction with The Canadian Bar Association BC Branch (“**CBABC**”), of all rights, title and interest in and to the standardized forms and standardized clauses for use in real estate transactions listed in Schedule A, as amended from time to time (collectively, the “**Forms**”);
- B. The Provider is a software application service provider;
- C. The Provider wishes to obtain from BCREA and BCREA wishes to grant to the Provider the right to use the Forms for the Purposes (defined below), subject to and in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Term

The term of this Agreement commences on the Effective Date and continues thereafter for a period of one year (the “**Initial Term**”). Upon expiration of the Initial Term, this Agreement shall automatically renew for additional successive one year terms unless either party provides written notice of non-renewal at least 60 days prior to the end of the then-current term (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”), or unless sooner terminated as provided in Section 11.

2. Licence

2.1 Licence Grant. Subject to Section 2.2 and other terms and conditions of this Agreement, BCREA hereby grants to the Provider a limited, non-exclusive, non-transferable, sublicensable (only in accordance with Section 2.3) right and licence to produce, reproduce, publish, display, modify and otherwise use the Forms solely to:

- (a) make the Forms available to members of the BCREA (“**Members**”) or licensed REALTORS® in good standing in British Columbia and who are part of a BCREA member board (the “**REALTORS®**”), through a software application offered by the Provider (the “**Application**”), provided that each such Members and REALTORS® has first executed the End Use Licence Agreement in accordance with Section 2.4;
- (b) market the Application to Members and REALTORS®;
- (c) grant sublicense to Authorized Users (defined below) as described in Section 2.3; and
- (d) train and instruct Authorized Users on the use of the Application; and
- (e) make the Forms available to non-Authorized Users solely for educational purposes, provided that the Forms are (i) in a locked format that prevents any non-Authorized User to produce, reproduce or modify the Forms in any manner and (ii) clearly watermarked with BCREA’s name for BCREA solely owned Forms [and with BCREA’s and CBA’s names for BCREA and CBABC jointly owned Forms].

- 2.2 Security. Prior to or concurrent with the execution of this Agreement, the Provider shall deliver to BCREA a performance bond or cash deposit in the amount of \$5,000 or other security satisfactory to BCREA (the "**Security**"), to be held by BCREA as security for the Provider's performance of its obligations hereunder. BCREA may draw on the Security to cover Losses (as defined in Section 10.1) incurred itself or by any of its member boards arising directly or indirectly from, out of or relating to any breach by the Provider of any of its obligations under this Agreement. No right or licence under Section 2.1 will be granted to the Provider until the Provider delivers the Security in full to BCREA. BCREA will return to the Provider any unused Security upon termination of this Agreement so long as the Provider is not then in breach of its obligations hereunder.
- 2.3 Sublicence. Subject to Section 2.4, the Provider shall have the right to sublicense the following rights to Authorized Users (defined below) and other person, on a non-exclusive and non-transferable basis, and only to be exercised in accordance with the End User Licence Agreement (defined below):
- (a) the right to download from the Application and to reproduce and otherwise use the Forms and User-Created Forms (defined below) solely in connection with the disposition or acquisition of, or transaction involving, an interest in real estate by sale, purchase, agreement for purchase and sale, exchange, option, lease, charge, rental or otherwise, an offer or attempt to list real estate for the purpose of such disposition, acquisition or transaction and any act, advertisement, conduct or negotiation, directly or indirectly in furtherance of any such disposition, acquisition, transaction, offer or attempt (collectively, the "**Transactions**");
 - (b) to complete the relevant terms of a Form and to affix electronic signatures to a Form, in each case, solely as necessary in connection with a Transaction (such form, document or agreement created by an Authorized User which includes a Form or part thereof, a "**User-Created Form**"); and
 - (c) to store copies of completed and executed User-Created Forms in Canada or the United States or both as required by, and in compliance with, applicable laws.
- 2.4 End Use Licence. The Provider must ensure that, prior to and as a condition of accessing and using the Forms through the Application by the Members and REALTORS®, each of them has executed a written agreement with the Provider that contain, at a minimum, terms that are substantially similar to those set out in Schedule C (the "**End Use Licence Agreement**" and such Members and REALTORS®, "**Authorized Users**"). The Provider's form of end user licence agreement is subject to BCREA's prior approval. The Provider shall:
- (a) maintain records sufficient to prove that all Authorized Users are bound by End User Licence Agreements and, [(i) with respect to the Forms that are jointly owned by BCREA and CBA, as set forth in Schedule A, make such records available to BCREA and CBA upon request, and (ii) with respect to all other Forms,] make such records available to BCREA upon request;
 - (b) strictly enforce the terms of the End User Licence Agreement with each Authorized User;
 - (c) on the event of a breach or suspected breach of any material term or condition of an End User Licence Agreement by an Authorized User, promptly notify BCREA [and CBA, if required by BCREA], terminate the End User Licence Agreement with the offending Authorized User; and
 - (d) name BCREA as a third-party beneficiary, and BCREA shall have the right to enforce each End User Licence Agreement directly against the Authorized User to the extent that may deem such enforcement necessary or advisable to protect its rights thereunder, as if BCREA was a party to the End User Licence Agreement.

2.5 Restrictions. Except as may be expressly set out in this Agreement, the Provider shall not:

- (a) use, copy or distribute or permit any third party to use, copy or distribute the Forms or any User-Created Form for any purpose other than the Purposes;
- (b) distribute the Forms or any User-Created Forms by any means other than by use of the Application;
- (c) amend or modify the Forms in any manner including, but not limited to, removing or altering or permit any other person to remove or alter, any Trademark (defined below) or proprietary notices included on any Forms, or create derivative works thereof;
- (d) make the Forms or any User-Created Form available to any person who is not an Authorized User;
- (e) assign, transfer or sell (or purport to assign, transfer or sell) the Forms, or any part thereof, or any User-Created Forms or any rights therein, to any person;
- (f) claim, or enable any third party to claim any intellectual property rights in the Forms;
- (g) use or authorize the use of the Forms or any User-Created Forms in any manner which (in the sole opinion of BCREA) may expose BCREA [and/or the CBA] (including their officers, directors, employees, and agents) to criminal or civil liability; or
- (h) make any representations or warranties of any kind on behalf of BCREA regarding the Forms or any User-Created Forms or the use thereof.

3. **Approval and Security of Application**

3.1 Testing and Approval. BCREA shall have the right, but not the obligation, to access and test the Application prior to it being put into production, so as to ensure that it complies with the terms and conditions of this Agreement. No Application will be put into production unless and until it has been approved by BCREA, or BCREA has waived its right to approve the Application. Testing shall be at BCREA's sole discretion, and testing, approval or waiver of its rights to approve shall not in any way alleviate or diminish the Provider's liability for a failure to comply with any provision governing the use of the Forms.

3.2 Security. The Provider shall limit and control access to and use of the Application and the Forms offered therefrom by using access control and security precautions at least as stringent as the British Columbia industry standard or as otherwise approved by BCREA. The Provider shall permit BCREA to inspect such access controls and security precautions from time to time on at least 24 hours prior notice, and will provide all such reasonable assistance as BCREA may require. To assist the Provider in complying with this Section, BCREA shall use commercially reasonable efforts to cause its member boards to: (a) provide to the Provider lists of REALTORS® who are active members of the applicable member boards; and (b) inform the Provider any changes to such lists.

4. **Modifications of Forms**

4.1 Modifications. BCREA may from time to time provide the Provider with amendments, updates or modifications ("**Modifications**") to the Forms. In accordance with the date specified in such notice or such other date BCREA may provide in writing, the Provider shall implement the Modifications by discontinuing use of the affected Forms (other than Forms that have been previously completed and executed by Authorized Users as permitted under an End User Licence Agreement (the "**Permitted Forms**") and commencing the use of such updated Forms.

4.2 Urgent Changes. Notwithstanding Section 4.1, in the event that BCREA advises the Provider of a Modification (or pending Modification) or of a Form that must be removed from use on an urgent basis (whether due to statutory amendment or otherwise), the Provider shall use its best efforts as soon as possible, and in any event within 24 hours after BCREA advising of same, to implement such Modification or, if no Modification is provided or BCREA advises the Form is to be removed, to cease use of the affected Form as directed by BCREA until such time as an Modification is provided.

5. **Proprietary Rights**

5.1 Definitions.

- (a) **“Intellectual Property Rights”** means any and all proprietary rights provided under trademark law, copyright law and any other applicable statutory provision or common law principle, including trade secret law, that may provide a right in works of authorship, ideas, concepts, or know-how, or the expression or use thereof, and all applications, registrations and grants to any of the foregoing.
- (b) **“Trademarks”** means the trademarks, certificate marks and tradenames of BCREA, CBA and/or The Canadian Real Estate Association.

5.2 Forms. The Provider acknowledges and agrees that BCREA is and shall remain the owner, solely [or in conjunction with CBA], of the Forms and any other materials provided by BCREA hereunder, including all Intellectual Property Rights therein. Except for the limited licences expressly provided in this Agreement or an End User Licence Agreement, neither the Provider nor any Authorized User or other person obtains any rights or interests in or to the Forms.

5.3 User-Created Forms. An Authorized User's rights in any User-Created Forms that he/she creates are limited to ownership of the text of any permitted changes, amendments or modifications, and remain subject at all times to BCREA's [and CBA's] ownership of the Forms.

5.4 Trademarks and Proprietary Rights Notices. Except for the limited right to copy and display the Trademarks in conjunction with the use of the Forms as permitted hereunder, nothing in this Agreement grants the Provider, Authorized Users or any other person any right, title or interest in or to the Trademarks, or any right to advertise, display or otherwise use the Trademarks in association with any goods or services. All use of the Trademarks shall ensure to the benefit of BCREA or its respective owner. The Provider shall not and shall ensure that the Authorized Users do not remove, obscure or amend any trademark, copyright or proprietary rights notices which appear in or on any Forms.

5.5 Enforcement. Upon request by BCREA, the Provider shall assign to BCREA or the owner of the affected Intellectual Property Rights any or all rights, claims and causes of action that the Provider has or may obtain against any Authorized User or other third party which relate to the infringement or misappropriation of Intellectual Property Rights in and to the Forms. BCREA or the applicable owner may, at its absolute discretion, commence such action or take such steps against such Authorized User or third party relating to infringement of the Intellectual Property Rights as it deems advisable as if it was the Provider, and the Provider agrees to provide all such reasonable assistance as BCREA, or the owner may request.

5.6 Equitable Relief. The Provider acknowledges that a breach by it of this Agreement may cause BCREA irreparable damages, for which an award of damages would not be adequate compensation, and agrees that, in the event of such breach or threatened breach, BCREA will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which BCREA may be entitled at law or in equity. Such remedies are not exclusive but are in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

6. Representations and Warranties; Disclaimer

6.1 Mutual Representations and Warranties. Each party represents and warrants to the other as follows:

- (a) it is duly formed and validly existing in its jurisdiction of incorporation or formation, as applicable;
- (b) it has the power and authority to enter into and perform its obligations pursuant to this Agreement; and
- (c) this Agreement is a valid, legal and binding obligation on it, enforceable in accordance with its terms.

6.2 Provider Representations and Warranties. The Provider represents, warrants and covenants to BCREA as follows:

- (a) in the performance of its obligations hereunder, the Provider shall comply with all applicable laws;
- (b) the Provider is not under any current obligation or restriction, nor will it knowingly assume any such obligation or restriction, that does or could interfere or conflict with the performance of the Provider's obligations hereunder; and
- (c) the Provider will conduct its business dealings in relation to the Forms in a professional and competent manner that will reflect favourably on the good name and reputation of BCREA.

6.3 Provider Acknowledgement. The Provider acknowledges and agrees as follows:

- (a) the Forms (including all Modifications) are provided "as is", the use or other exploitation thereof or the reliance upon any Forms or any User-Created Forms by the Provider, any Authorized User or any party to a Transaction in which any Forms or User-Created Forms are used (any of them, a "**Content User**") is at the sole risk of the Content User;
- (b) each Content User shall be solely responsible for any content inserted or any changes made by or for it to a Form, whether or not permitted under this Agreement or an End User Licence Agreement;
- (c) the Provider shall ensure that each Authorized User is solely responsible for any User-Created Forms created by or for it, and that each Authorized User shall be solely responsible for its use, misuse or inability to use any such forms or for any results (or lack thereof) achieved through its use thereof (including in any Transaction); and
- (d) BCREA shall have no liability arising under or in connection with the use of the Application by any person and, as between BCREA and the Provider, the Provider shall be solely responsible for the Application and the operation, use and misuse thereof.

6.4 Disclaimer. To the fullest extent permitted by applicable law, BCREA and CBA make and hereby expressly disclaim any and all representations, warranties, conditions or covenants of any kind, whether express, implied, statutory or arising by custom or usage or otherwise, regarding the Forms or any other materials provided by or made available to the Provider hereunder, or the use or exploitation thereof including, without limitation, any representation, warranty, condition or covenant:

- (a) regarding the accuracy or reliability of the Forms, or that the Forms are complete, correct, current and free from errors, defects, omissions or deficiencies of any kind;
- (b) that errors, defects, omissions or deficiencies in the Forms (if any) can or will be corrected;

- (c) that the Forms are applicable, adequate or suitable for use in any particular Transaction;
- (d) regarding the merchantability or fitness of the Forms for a particular purpose; and
- (e) regarding the non-infringement or misappropriation of any third party rights (including Intellectual Property Rights) by virtue of use or other exploitation of any Forms by any Content User.

Neither BCREA nor CBABC shall have any liability of any kind arising from or in connection with any Content User's use of the Forms (including all Modifications).

7. Fees and Audit Rights

- 7.1 Fees. In consideration of the rights granted herein, the Provider agrees to pay BCREA the fees set out in Schedule B at such times as required thereby.
- 7.2 Audit. BCREA shall have the right, but not the obligation, to audit the Provider's compliance with the terms of this Agreement upon reasonable notice to the Provider. In connection with the exercise of BCREA's rights pursuant to this section, the Provider will provide BCREA and its auditors with reasonable access to the Provider's records, personnel and facilities, and will permit BCREA and its auditors to copy and use any relevant records solely for the purpose of confirming the Provider's performance in accordance with this Agreement.

8. Insurance

- 8.1 During the Term and for a period of 24 months thereafter, the Provider shall subscribe to and maintain in effect, from a reliable insurance company, an errors and omissions liability insurance policy with an insured limit of at least \$5,000,000.00 per claim covering all damages and liabilities arising from professional negligent acts, and errors or omissions, by the Provider or any other person engaged by the Provider in the exercise of the rights granted in this Agreement
- 8.2 Policy Requirements. The policy required by Section 8.1 shall name BCREA as an additional insured with respect to the exercise of the Provider's rights under this Agreement. Each such policy shall also include a cross liability clause and a severability of interests clause and shall stipulate that they may not be cancelled, be materially amended, or become invalid for any reason whatsoever unless the insurer provides BCREA thirty (30) days prior written notice.
- 8.3 Evidence. Upon the execution of this Agreement (or at any time at BCREA's request during the Term), the Provider shall provide BCREA with evidence of the aforementioned insurance coverage in the form of a certificate of insurance acceptable to BCREA, or a certified copy of the relevant insurance policy. The Provider shall not permit any such insurance policy to lapse during the Term. If the Provider cancels such insurance policy, it will provide not less than thirty (30) days' notice to BCREA prior to cancelling the policy and will promptly replace such policy in accordance with Section 8.2 without a lapse in coverage. Failure of BCREA to demand such certificate or other evidence of full compliance with these insurance requirements or failure of BCREA to identify a deficiency from evidence provided will not be construed as a waiver of the Provider's obligation to maintain such insurance.

9. Confidentiality; Personal Information; Non-Compete

- 9.1 Confidential Information. The term "**Confidential Information**" means any business, marketing, technical, or other information disclosed by a party hereto (the "**Discloser**") to the other party (the "**Recipient**") which, at the time of disclosure, is designated as confidential, is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential or proprietary. The terms and conditions of this Agreement shall be considered Confidential Information. Confidential Information shall not include information which: (a)

was lawfully known or received by the Recipient prior to disclosure, as evidenced by its business records; (b) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through breach of this Agreement; (c) was disclosed to the Recipient by a third party, provided that such third party is not in breach of any confidentiality obligation in respect of such information; or (d) is independently developed by the Recipient as evidenced by its business records.

9.2 Confidentiality Obligations.

- (a) All Confidential Information, whether disclosed to the Recipient prior to or after the Effective Date, shall be retained in confidence by the Recipient and shall be used and disclosed solely for the Purposes and in accordance with the terms and conditions of this Agreement. The Recipient shall use the same degree of care in protecting the Confidential Information as it uses to protect its own confidential information of a similar nature, but in no circumstances less than a reasonable degree of care, to prevent the unauthorized use, disclosure, or publication of the Confidential Information.
- (b) The Recipient shall not disclose Confidential Information to any person except: (i) to its employees and contractors who have a need to know such information for the sole purpose of allowing the Recipient to exercise and perform its rights and obligations hereunder, provided that prior to such disclosure, the applicable employees and contractors have entered into written agreements with the Recipient which protect the confidentiality of the Confidential Information to at least the same degree as it is protected hereunder; (ii) to its professional advisors (as required); (iii) as expressly permitted by the Discloser in writing; (iv) to the extent required by applicable law; or (v) as may be required during the course of, or in connection, with any litigation, arbitration or other proceeding, based upon or in connection with the subject matter of this Agreement; provided that, in both (iv) and (v), the Recipient shall give the Discloser reasonable notice prior to such disclosure and shall comply with any applicable protective order granted in respect of the Confidential Information.

9.3 Personal Information. When collecting, using or disclosing any Personal Information from or through BCREA, the Provider will strictly comply with (i) the *Personal Information Protection Act* of British Columbia and all other applicable privacy legislation; and (ii) BCREA's privacy policy (copy of which is available from BCREA's Privacy Officer). The term "Personal Information" means any information about an identifiable individual provided to the Provider by the BCREA or a BCREA member board. Without limitation to the foregoing or any of the Provider's obligations under Section 9.2, the Provider will:

- (a) use and disclose Personal Information only for the purpose of permitting Authorized Users to use the Application as specifically contemplated hereunder; however, the Provider may also use and disclose Personal Information about its customers for the purposes of customer communication including notices of system upgrades, system outages, product enhancements and other customer support related information, but only to the extent authorized by its customers in writing;
- (b) hold all Personal Information in strict confidence, and take all reasonable security measures to protect it against loss, theft and unauthorized access, collection, use disclosure, copying, modification and destruction;
- (c) cease using, and return to BCREA or another party or parties designated by BCREA, all Personal Information upon request;
- (d) correct Personal Information within five business days of being instructed to do so by BCREA;
- (e) immediately advise BCREA of any unauthorized access to or modification, use or disclosure of any Personal Information;

- (f) immediately advise BCREA of any requests the Provider receives for access to or correction of any Personal Information, and for withdrawals of consent regarding the collection, use or disclosure of any Personal Information; and
- (g) ensure its employees, contractors and representatives comply with the above obligations.

9.4 Non-Compete. The Provider acknowledges and agrees that the Forms are of material importance to BCREA and its business, and that BCREA and the co-owner(s) of the Forms have spent, and continue to spend, considerable time, money and effort in the development of the Forms. The Provider agrees that it shall not, during the Term and for a period of one (1) year thereafter, develop or use (or sublicense or assist other any other person to develop or use) standardized forms for use in Transactions that compete with the Forms, or which could be used as substitutes for the Forms (in whole or in part).

10. Indemnification; Limitation of Liability

10.1 Provider Indemnification. The Provider shall indemnify, defend and hold harmless BCREA [and CBA] (including their respective officers, directors, employees and agents) from and against any and all actions, causes of actions, liabilities, claims, demands, suits or injuries (“**Claims**”) and damages, losses, liability (whether accrued, actual contingent, latent or otherwise), costs, fees and expenses (including interest, court costs and reasonable fees and expenses of lawyers, accountants and other experts and professionals) as incurred by BCREA or any of its member boards (collectively, “**Losses**”) arising directly or indirectly from, out of or relating to:

- (a) any breach by the Provider or any Authorized User of any term of this Agreement or an End User Licence Agreement;
- (b) misuse of the Forms;
- (c) any wrongful, negligent or unlawful act or omission of the Provider or any Authorized User;
- (d) any failure by the Provider or Authorized User to comply with any applicable laws;
- (e) any Transactions involving the Forms; or
- (f) any actual or alleged infringement or misappropriation of any User-created Form of any third party Intellectual Property Rights.

10.2 No Liability. Use of the Forms and any other materials made available by BCREA hereunder is at the user’s sole risk. Under no circumstances will BCREA (including its officers, directors, employees or agents) be liable to the Provider, any Authorized User or any third party for any direct damages or any consequential, indirect, incidental, exemplary, special, or punitive damages whatsoever, including any damages for business interruption, loss of use, revenue or profit, cost of capital, loss of business opportunity, loss of goodwill, whether arising out of breach of contract, tort (including negligence), any other theory of liability, or otherwise, regardless of whether such damages were foreseeable and whether or not BCREA was advised of the possibility of such damages.

10.3 Sole and Exclusive Remedy. The Provider’s sole and exclusive remedy for a breach of this Agreement by BCREA shall be the termination of this Agreement in accordance with Section 11.1(a)(ii).

11. Termination

11.1 Termination for Cause.

- (a) A party hereto may terminate this Agreement effective immediately:

- (i) if the other party (A) makes a general assignment for the benefit of its creditors; (B) commences any proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation or dissolution of its debts or such proceedings are commenced against it; (C) seeks appointment of a receiver, trustee, custodian or other similar official for itself or for all or any substantial part of its property, or such an appointment is made by a third person provided that such party fails to obtain a dismissal of any such proceeding, action or appointment within sixty (60) days of such filing, entry or appointment; or (D) ceases conducting business in the ordinary course; and
 - (ii) if the other party breaches a term or condition of this Agreement in a material manner and the breach remains uncured to the satisfaction of the non-breaching party within thirty (30) days of receipt of written notice of such breach (or such other period of time as may be agreed between the parties).
- (b) BCREA shall have the right to terminate this Agreement effective immediately if BCREA is requested or required or otherwise wishes to assign ownership of the Forms to any statutory or regulatory body or organization.
- 11.2 Termination for Convenience. Either party may terminate this Agreement for convenience upon sixty (60) days written notice to the other party.
- 11.3 Effect of Termination. Upon the termination of this Agreement,
- (a) the Provider shall and shall require all Authorized Users to wind down use of the Forms and User-Created Forms within ten (10) days, whereupon all licences granted by BCREA shall immediately terminate (except the right granted under Section 2.3(c) with respect to the Permitted Forms), and the Provider and Authorized Users shall immediately cease all further use of the Forms and any other materials provided by BCREA;
 - (b) the Provider shall and shall require all Authorized Users to remove the Forms from all their computer systems and servers (including from the Application), but excluding the Permitted Forms;
 - (c) the Provider shall and shall require all Authorized Users to delete the Forms (including all copies and all Modifications thereof), but excluding the Permitted Forms;
 - (d) each party as the Recipient shall delete or return to the other (at the Discloser's option) all Confidential Information in the Recipient's possession except for the Permitted Forms;
 - (e) the Provider shall continue to comply with all requirements of applicable laws regarding the collection, use and retention of personal information and (to the extent applicable), all requirements of the *Real Estate Services Act* and, with respect to all use of the Permitted Forms, with all requirements of the End User Licence Agreement and Section 9; and
 - (f) no party hereto shall be released from any liability which, at the time of termination, has already accrued to the other party or which is attributable, prior to such termination, nor will any party be prohibited from pursuing any rights and remedies it may have hereunder at law or in equity with respect to any breach of this Agreement prior to termination.
- 11.4 Survival. The following provisions will survive the termination of this Agreement: Sections 2.5, 5, 6.3, 6.4, 9, 10, 11.3, 11.4, 12 and any other provisions which, by their nature, should survive.

12. Miscellaneous

- 12.1 Compliance with Laws. The Provider must comply with all applicable laws, rules and regulations in the performance of its obligations hereunder. Without limiting the generality of the foregoing, the Provider must obtain and maintain in good standing all required licences and permits applicable to the operation of its business, and comply with all applicable laws regarding privacy, electronic transactions, and the use of electronic documents and electronic signatures.
- 12.2 Assignment. The Provider may not sell, assign or transfer this Agreement (or its rights and obligations hereunder) including by operation of law or otherwise nor undergo a change of control, without the prior written consent of BCREA. BCREA shall be free to assign this Agreement (or its rights and obligations hereunder) without the need to obtain prior consent from the Provider. The rights and obligations of the parties will bind and enure to the benefit of the parties' respective and permitted successors and assigns.
- 12.3 Amendment. Any amendment or other modification of any provision of this Agreement shall only be effective if in writing and signed by the authorized representatives of the parties.
- 12.4 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, excluding that body of laws known as conflicts of law. Except as expressly provided in Section 5.6, any legal action or proceeding arising under this Agreement will be brought exclusively in the courts in Vancouver, British Columbia and the parties hereby consent to the personal jurisdiction and venue thereof.
- 12.5 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto, and their respective successors and permitted assigns, any rights, benefits or remedies of any kind whatsoever, and no person will be deemed to be a third party beneficiary under or by reason of this Agreement.
- 12.6 Severability. If, for any reason, a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable in whole or in part, that provision of the Agreement will be enforced only to the maximum extent permissible, and the other provisions of this Agreement will remain in full force and effect.
- 12.7 Paramountcy. In the event of any conflict or inconsistency between the terms and conditions contained in the main body of this Agreement, and any terms or conditions set out in the Schedules hereto, the terms and conditions set out in the main body of this Agreement shall prevail unless specifically stated otherwise in the Schedule(s).
- 12.8 Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.
- 12.9 Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party to the other in accordance with this Section:

To BCREA:

To Provider: [◆]

British Columbia Real Estate Association
1425 – 1075 Georgia St. W,
Vancouver, BC, V6E 3C9
Attention:

Fax: [◆]
Email: [◆]

- 12.10 Relationship of Parties. The parties hereto are independent contractors, and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other party, or to incur obligations on the other's behalf, without the other party's prior written consent.
- 12.11 Entire Agreement. This Agreement (including its Schedules) constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.
- 12.12 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates set out below, but with the intention that it be effective as of the Effective Date.

BRITISH COLUMBIA REAL ESTATE ASSOCIATION ◆

Per: _____
Name:
Title:
Date:

Per: _____
Title: Date:

For Review Only

**Schedule A
Forms**

BCREA Solely Owned Standard Forms



[BCREA – CBA Jointly Owned Standard Forms]



BCREA Standard Clauses



For Review Only

**Schedule B
Fees and Payment**

The fees payable under this Agreement are as follows:

- (a) Performance Bond. Prior to or concurrent with the execution of this Agreement, the Provider shall deliver to BCREA a performance bond or cash deposit in the amount of \$5,000 or other security satisfactory to BCREA (see 2.2).
- (b) Initial Licensing Fee. Upon the execution of this Agreement, the Provider will pay an initial fee of \$7,500.00 (the “**Initial Fee**”) plus applicable taxes to BCREA. [The Initial Fee includes the Initial Customization Services specified below.]
- (c) Annual Licence Fees. The Provider will pay an annual licence fees of \$2,500.00, prorated for first year, (the “**Annual Fees**”) plus applicable taxes to BCREA, on or before each anniversary of the Effective Date.
- (d) Additional Fees. If BCREA [or one of its member board] supply services [other than the Initial Customization Services to the Provider], then unless otherwise agreed in writing by the parties, the Provider will pay additional fees at the rate of \$150.00 per hour (the “**Additional Fees**”) plus applicable taxes to BCREA. BCREA will invoice the Provider the Additional Fees monthly in arrears, and such invoice shall be due and payable 30 days following receipt of the invoice by the Provider.
- (e) Changes. BCREA may change the amount of the Annual or Additional Fees from time-to-time upon 30 days’ written notice to the Provider.

Schedule C Sample End User Licence Terms

This End User Agreement (“**Agreement**”) is a binding legal Agreement between you (“**You**”) and **[NAME OF PROVIDER]** (“**Provider**”) and states the terms and conditions under which You may access and use the **[NAME OF APPLICATION]** (“**Application**”) and the forms accessible through the Application (“**Forms**”).

By clicking “I Agree” You are indicating Your agreement to be bound by and comply with the terms and conditions of this Agreement.

1. LICENCE

- (a) Subject to the terms and conditions of this Agreement, Vendor grants You the following personal, non- exclusive, non-transferable licence: (i) to access and use the Application; (ii) to download and reproduce the Forms using the Application and to use the Forms in Transactions; (iii) to modify and amend the Forms (in accordance with the terms and conditions of this Agreement) to create User-created Forms; and (iv) to download, reproduce and use User-created Forms in Transactions. Apart from the licences expressly granted herein, no other licence, right, title, or interest in and to the Application or Forms is granted to You under this Agreement.
- (b) For the purpose of this Agreement, (i) “**Forms**” means the standardized forms and standard clauses for use in real estate transactions made available, in whole or in part, through the Application, and shall include all modifications thereof (other than by You); (ii) “**Transaction**” means a disposition or acquisition or transaction in real estate by sale, purchase, agreement for purchase and sale, exchange, option, lease, rental or otherwise, any offer or attempt to list real estate for the purpose of such disposition, acquisition or transaction and any act, advertisement, conduct or negotiation, directly or indirectly in furtherance of any such disposition, acquisition, transaction, offer or attempt; and (iii) “**User-Created Form**” means any form, document or agreement created by You (in whole or in part and whether jointly or severally with others) which includes (in whole or in part) the Forms.

2. RESTRICTIONS

- (a) You agree that You shall only use the Application, the Forms and any User-Created Forms in accordance with the terms and conditions of this Agreement and only for use by You in Transactions. Any use or other exploitation of the Application, the Forms or any User-Created Forms which is not expressly permitted under this Agreement is strictly prohibited;
- (b) Without limiting the generality of the foregoing, You agree that You shall not:
 - (i) Use the Forms or any User-created Forms for any purpose other than in Transactions;
 - (ii) distribute or provide access to any Forms or any User-created Forms to any Person who is not party to a Transaction for which You have entered into an agreement with a buyer or seller;
 - (iii) permit any Person who is not a member of the British Columbia Real Estate Association (“**BCREA**”) or a REALTOR® who is part of a BCREA member board in good standing to access or use the Forms or any User-created Forms, except for the provision of any Form or User-created Form which is provided to any Person who is a party to a Transaction for which You have entered into an agreement with a buyer or seller, and which is used in said Transaction; or
 - (iv) remove, obscure or amend any watermark, trademarks or any copyright or proprietary rights notices which appear in or on any Forms.

3. USER-CREATED FORMS

You are entitled to change, modify and amend the Forms by (i) completing the customizable portions of such Forms, or (ii) changing, amending or deleting the pre-set or non-customizable portion of any Form or clause provided that in respect of any change or alteration to any pre-set portion of any Form such change is clearly identified as a change to the original Form as provided to You. For the purpose of clarity, a change in which is in handwritten form, or which is highlighted, underlined or black-lined shall be considered clearly identified as a change.

4. UPDATES

You acknowledge and agree that BCREA [or The Canadian Bar Association BC Branch (“CBA”)], from time-to-time and at any time, without notice, may update, change or amend the Forms (including discontinuing publication of the Forms in whole or in part). Once a Form has been updated or amended You shall discontinue use of any previous version of such Form or Clause and use only the updated Form. In the event that You are advised by Provider or BCREA that any Forms must be updated or removed from usage on an urgent basis (whether due to statutory amendment or otherwise), You shall immediately cease use of the affected Form(s) or Clause(s) as directed by Provider or BCREA. You acknowledge and agree that there are no obligations to update Forms by [either CBA nor] BCREA and shall have no liability to You or to any other Person in respect of any change or amendment to the Forms (including for any discontinuance thereof).

5. PROPRIETARY RIGHTS

- (a) The Application and the Forms and the use thereof are protected by copyright and other laws. You acknowledge and agree that:
 - (i) the Application (and all rights therein including all intellectual property rights therein) is owned by Provider (and its licensors) and shall remain the sole and exclusive property of Vendor at all times;
 - (ii) the Forms (and all rights therein including all intellectual property rights therein) are owned by BCREA (and its licensor), [alone or jointly with CBA], and BCREA (and its licensor) [and CBA] shall retain all their respective rights, title and interest in and to the Forms; and
 - (iii) Your rights in any User-Created Form(s), are strictly limited to ownership of the text of any changes, amendments or modifications You make to any Forms and remain subject, at all times, to BCREA's, its licensor's [and CBA's] ownership of the Forms (and all elements thereof including all elements of the Forms contained or included in any User-created Form).
- (b) You agree that You shall not do anything inconsistent with BCREA's (and its licensor's) [or CBA's] ownership of the Forms during or subsequent to the Term of this Agreement.

6. REGISTRATION

- (a) You agree to provide accurate, current and complete information about yourself as prompted during the registration process to access and use the Application and to maintain and promptly update such information to keep it accurate, current and complete. Provider's use of any personally identifiable information (“**Your Information**”) you provide as part of the registration process is governed by the terms of its Privacy Policy. You acknowledge and agree that Provider is entitled to share Your Information with BCREA [and/or CBA] for purposes of administration of the Forms and the enforcement of BCREA [and CBA's] related rights.
- (b) Your account is personal to You. You must not share Your account with others or allow others to access or use the Application or the Forms using Your account. You are responsible for maintaining the confidentiality of Your password and account information, and are responsible

for all activities that occur under Your password or account. You agree to notify Provider immediately of any unauthorized use of Your password or account or any other breach of security, and to ensure that You exit Your account at the end of each session.

7. REPRESENTATIONS, WARRANTIES AND DISCLAIMER

- (a) You represent, warrant and covenant that You are a BCREA Member or a BC REALTOR® in good standing who is part of a BCREA Member board;
- (b) The Provider, BCREA [nor CBA] makes no (and there are no) representations, warranties, conditions or covenants of any kind, whether express, implied, statutory or arising by custom or usage or otherwise, regarding the Forms (or the use thereof) including, without limitation, any representation, warranty, condition or covenant:
 - (i) regarding the accuracy or reliability of the Forms or that the Forms are complete, correct, current and free from errors, defects, omissions or deficiencies of any kind;
 - (ii) that errors, defects, omissions or deficiencies in the Forms (if any) can or will be corrected;
 - (iii) that the Forms are applicable, adequate or suitable for use in any particular Transaction or will meet Your requirements or the requirements of any other party for use in any Transaction;
 - (iv) regarding the merchantability or fitness of the Forms for a particular purpose, and;
 - (v) regarding the non-infringement of any third party rights (including Intellectual Property Rights) by virtue of use or other exploitation of any Forms by any party.
- (c) PROVIDER, BCREA [AND CBA] HEREBY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR ARISING BY CUSTOM OF USAGE OR OTHERWISE REGARDING THE FORMS AND THE USE THEREOF TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW.

8. ACKNOWLEDGEMENT

You acknowledge and agree as follows:

- (a) the Forms are provided “as is” and that the use or the reliance upon the Forms (including by You or any other Person, in any Transaction) is at Your sole risk;
- (b) You are solely responsible for Your use, misuse or inability to use the Forms or any User-Created Forms and for any results (or lack thereof) achieved through the use thereof or reliance thereon (including in any Transaction);
- (c) You are solely responsible for any changes, amendments or modifications made by You (in whole or in part, or jointly or severally with others) to any Forms and for any User-created Form and for Your use, misuse or inability to use any User-Created Forms and for any results (or lack thereof) achieved through the use thereof or reliance thereon (including in any Transaction);
- (d) the Forms have been created for general usage in the Province of British Columbia only and, as such, may not be applicable, adequate or suitable for use in every Transaction or in any specific Transaction (including Transactions not governed by the laws of the Province of British Columbia, in Transactions in which the Parties to the Transaction are not domiciled or a resident in the Province of British Columbia) or in Transactions where the real property subject of the Transaction is not located in the Province of British Columbia); and

- (e) the Forms (and the provision or licensing thereof by [CBA and] BCREA) do not constitute legal, accounting or other professional advice of any nature and that the Provider, BCREA [nor CBA] shall [not] have any liability to You whatsoever in respect of Your use, misuse, inability to use or reliance upon the Forms or any User-Created Forms (including in any Transaction).

9. LIABILITY AND INDEMNIFICATION

- (a) Neither BCREA [nor CBA] shall have any liability to You or any third person in respect of any actions, causes of actions, liabilities, claims, demands, suits, or injuries (“**Claims**”) or damages, losses, liability, costs, fees and expenses (including interest, court costs and reasonable fees and expenses of lawyers, accountants and other experts and professionals) (“**Losses**”) arising directly or indirectly from, out of, or relating to any of the following:
 - (i) Your use of or reliance upon the Forms or any User-Created Forms (including in any Transaction);
 - (ii) Your misuse or inability to use any Forms or any User-Created Forms (including in any Transaction);
 - (iii) any failure of the Forms or any User-Created Forms to be accurate, complete, correct or current; or
 - (iv) any error, defect, omission or deficiency in the Forms or any User-created Forms.
- (b) You agree to indemnify, defend and hold harmless BCREA [and CBA] (including their respective officers, directors, employees and/or agents) from and against any and all Claims and Losses arising directly or indirectly from, out of or relating to:
 - (i) Your breach of any term, condition, representation or warranty of this Agreement;
 - (ii) any wrongful, negligent or unlawful act or omission committed by You in the exercise of the rights granted herein, or in any Transaction;
 - (iii) any failure by You to comply with any applicable law applicable to Your exercise of the rights granted herein, or in any Transaction; or
 - (iv) any infringement, violation or misappropriation of any third party Intellectual Property (including any Intellectual Property Rights therein) arising from or in respect of the creation, use, or other exploitation of any User-created Form.

10. LIMITATION OF LIABILITY

Under no circumstances will BCREA [or CBA] (including their respective officers, directors, employees or agents) be liable to You or any other Authorized User or other Person for any Losses whatsoever including without limitation any Losses of the following nature, whether arising in contract, (including fundamental breach), tort (including negligence), strict liability, or under any other legal or equitable theory, whether or not BCREA was advised of the possibility of such Losses whether or not such Losses were foreseeable:

- (a) direct damages, in any amount whatsoever (including direct damages in the nature of lost or anticipated profits);
- (b) any indirect, special, incidental or consequential damages (including, without limitation, damages in the nature of lost or anticipated profits); or
- (c) any costs, expenses, penalties or punitive damages.

11. TERM AND TERMINATION

- (a) This Agreement shall enter into effect upon Your acceptance of the terms and conditions set out herein by clicking "I Agree" and shall continue in force and effect until terminated in accordance with the terms and conditions set out herein (the "Term").
- (b) This Agreement shall terminate immediately if at any point you cease to be an BCREA Member or BC REALTOR® in good standing who is a member of a BCREA Member board.
- (c) Provider shall have the right to terminate this Agreement effective immediately if You breach of any term or condition of this Agreement.
- (d) Provider shall have the right to terminate this Agreement without cause upon ten (10) days' notice to You in accordance with the terms and conditions of this Agreement.
- (e) You are entitled to terminate this Agreement without cause upon ten (10) days' notice to Provider in accordance with the terms and conditions of this Agreement.
- (f) In the event of termination of this Agreement the following shall apply:
 - (i) If Provider terminates this Agreement for breach, You must immediately cease all further access to and use of the Application, the Forms and User-created Forms;
 - (ii) If Provider terminates this Agreement without cause, You shall have ten (10) days to wind down Your use of the Application, the Forms and any User-created Forms, following which all licences granted herein shall terminate and You shall cease all further use of the Application, the Forms and User-created Forms;
 - (iii) You will not be released from any liability which, at the time of termination, has already accrued to the other party or which is attributable, prior to such termination, nor will any party be prohibited from pursuing any rights and remedies it may have hereunder at law or in equity with respect to any breach of this Agreement prior to termination; and
 - (iv) No party will be liable to the other party for any compensation, reimbursement or damages for the mere reason of termination of this Agreement.

12. GENERAL

- (a) This Agreement does not create any relationship between You and Provider other than as licensee and licensor. You shall not act in a manner which expresses or implies any other relationship, nor bind or purport to bind Vendor, BCREA [or CBA] in any way. You agree that BCREA [and CBA] are third party beneficiaries of this Agreement and shall have the right to enforce this Agreement directly to the extent that it may deem such enforcement necessary or advisable to protect its rights hereunder, as if BCREA [and CBA] were parties to this Agreement.
- (b) You acknowledge that a breach of this Agreement may cause Provider, BCREA [and/or CBA] irreparable harm, for which an award of damages may not be adequate compensation. You acknowledge and agree that in the event of Your breach of this Agreement, Provider, BCREA [and CBA] (as appropriate) shall be entitled to an injunction enjoining any further breach or threatened breach (in addition to any other relief to which Provider, BCREA [or CBA] may be entitled at law or in equity).
- (c) Any notice or other communication to be given to You in connection with this Agreement shall be sent by email to the address You provide in the registration process or by registered mail to the physical address you provide during the registration process. Provider may also provide notice to You by way of message posted or otherwise made available to You in the Application.

Notification by email shall be deemed to have been received the business day following transmission of the notice. Notification by posting or message through the Application shall be deemed to have been received the business day following Your first access to the Application after the notice is posted or transmitted. If mailed at any time other than during a general discontinuance of postal service due to strike, lock-out or otherwise, notice sent by registered mail shall be deemed to have been received on the fifth (5th) business day after mailing. Notice can be sent to Provider by email to the following address [PROVIDER TO INSERT] or by registered mail sent to [PROVIDER TO INSERT NAME AND ADDRESS OF ITS CONTACT].

- (d) This Agreement is personal to You. You may not assign or transfer this Agreement (or Your rights and obligations hereunder) without the prior written consent of Provider. The rights and obligations of the parties under this Agreement will bind and enure to the benefit of the parties' respective and permitted successors and assigns.
- (e) If, for any reason, a court of competent jurisdiction finds any term or provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect unaffected.
- (f) This Agreement, and any action related thereto, shall be governed, controlled, interpreted and defined by and under the laws of the Province of British Columbia and the federal laws of Canada applicable therein. The Parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods. You attorn to the jurisdiction of the courts located in the City of Vancouver.
- (g) This Agreement constitutes the entire agreement between You and Provider with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.
- (h) Notwithstanding the termination of this Agreement for any reason, the following provisions shall survive the termination: Sections 2(b), 5, 7(b), 7(c), 8, 9, 10, 11(f), 12(a), 12(b), 12(g) and 12(i).
- (i) You shall comply with all applicable law while exercising the rights granted herein.