

East Central Iowa Multiple Listing Service, Inc.

Subscriber Agreement

This agreement is a binding contract and includes terms limiting your legal rights and ECIMLS's liability to you. Consult your attorney before signing if you do not understand any of the terms here.

This "Agreement" is made between East Central Iowa Multiple Listing Service, Inc. ("ECIMLS") with offices at 1828 Carter Rd., Dubuque, IA 52001, and you ("You" or "Subscriber"). By clicking "I Agree", You agree to the following terms:

DEFINITIONS AND USAGE

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

ECIMLS Affiliates: ECIMLS Affiliates means ECIMLS and its officers, directors, employees, agents, representatives, licensors, and shareholders.

ECIMLS Database: All data available to Subscriber on the ECIMLS System, including the Subscriber Contribution and all other text, binary, and photographic image data, in any form now known or hereafter discovered.

ECIMLS Policies: ECIMLS's then current bylaws, rules and regulations, and policies and procedures promulgated by ECIMLS, as ECIMLS amends them from time to time.

ECIMLS Service: The services ECIMLS provides to Subscriber under this Agreement and similar services ECIMLS provides to third parties under similar agreements, including any access or license to the ECIMLS Software, the ECIMLS Database, and the ECIMLS System.

ECIMLS Software: ECIMLS's proprietary web browser interface(s) to the ECIMLS System.

ECIMLS System: The aggregate of all hardware, software, and data connection systems that ECIMLS maintains, or that ECIMLS contractors maintain on its behalf, in order to make access to the ECIMLS Database available to Subscriber.

Firm Participant: The brokerage or appraisal company to which Individual Participants are affiliated and has executed a Participant Agreement with ECIMLS.

Individual Participant: With regard to each office of Firm Participant, the principal broker or appraiser manager that supervises Subscriber's real estate activities and on whose behalf, Subscriber conducts those real estate activities.

Other Participants and Subscribers: All participants, subscribers, and users of ECIMLS not party to this Agreement, including solely for purposes of this Agreement, Firm Participants' employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

Saved Information: Information that Subscriber stores in the ECIMLS System for his/her own later use that is not intended by him/her to be available to ECIMLS's Other Participants and Subscribers, including client prospect and contact information.

Schedule of Fees: ECIMLS's document that establishes the fees for ECIMLS Service.

Subscriber Compilation Contribution or "SCC." All selection, coordination, and arrangement by Subscriber of listing information submitted, contributed, or input in the ECIMLS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the ECIMLS System. SCC does not include original text or photographs.

Subscriber Contribution: All data that the Subscriber submits, contributes, or inputs in the ECIMLS System, including text, photographs, images, and other materials, in any form now known or hereafter discovered, except the SCC.

2. Usage. The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

(a) Wherever the term "including" is used, it means "including, but not limited to."

(b) The singular and plural numbers and masculine, feminine, and neuter genders of words are interchangeable.

(c) Wherever the term "law" is used, it means all statutes, regulations, and common law, both state and federal, as they are amended. Without limiting the generality of the foregoing, "law" expressly includes all state and federal fair housing statutes and regulations.

ECIMLS'S OBLIGATIONS

3. ECIMLS shall provide one unique user ID and password to Subscriber. The user ID and password will provide Subscriber access to all data and functions in the ECIMLS Service to which Subscriber is entitled under the ECIMLS Policies. ECIMLS may require Subscriber to change Subscriber's password at any time. ECIMLS makes no warranties, however, that the ECIMLS Service will be available at all times. ECIMLS may use a third party contractor, determined in ECIMLS's sole discretion, to facilitate its responsibilities under this Agreement.

SUBSCRIBER ACKNOWLEDGMENTS

4. **Modifications to service.** ECIMLS may, but is not required to, modify the ECIMLS Service, including removing information and making additional information available, and adding and removing system functions. Certain products and services made available in conjunction with the ECIMLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control.** ECIMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the ECIMLS Database or the Subscriber Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, ECIMLS may take any steps necessary in its judgment, including deleting the Subscriber Contribution or portions thereof, to avoid or

remedy any violation of law, breach of the ECIMLS Policies or infringement of intellectual property rights. Additionally, ECIMLS shall have the right to alter and/or remove metadata and copyright management information contained in the Subscriber Contribution.

6. Conditions of service. Subscriber must be affiliated with Individual Participant and Firm Participant at all times during the term of this Agreement. Subscriber may enter and retrieve active listing information on the ECIMLS Service only if Firm Participant meets the qualifications in the ECIMLS Policies. Subscriber will comply at all times with (a) the ECIMLS Policies, and (b) all applicable laws, statutes, ordinances and regulations in performance of their obligations under this Agreement, including the Fair Housing Act (42 U.S.C. §3601 et. seq.) and the Americans with Disabilities Act (42 U.S.C. §12101 et. seq.).

7. Saved Information. Saved Information may not always be available to Subscriber and may become available to unauthorized persons. ECIMLS is not liable for unauthorized access to or loss of Saved Information. Subscriber is responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

8. Disclosure to third parties. ECIMLS reserves the right to distribute to third parties certain information about Subscriber, including Subscriber's name and business address, phone number and email address. ECIMLS reserves the right to distribute to third parties aggregated information about Subscriber's, Firm Participant's and Other Participants' and Subscribers' use of the ECIMLS Service, but not about Firm Participant's or Subscriber's use specifically.

9. Disclosure to government. Subscriber acknowledges that ECIMLS may provide government agencies access to the ECIMLS Service at any time in ECIMLS's sole discretion.

10. Priority of agreements. Subscriber's access to the ECIMLS Service is subject at all times to the limitations set out in the ECIMLS Policies and the Participant Agreement between ECIMLS and Firm Participant. In the event of an apparent conflict between those documents and this Agreement, Subscriber's obligations and rights shall be determined, in order of precedence, by the ECIMLS Policies, the Firm Participant Agreement between ECIMLS and Firm Participant, and by this Agreement.

11. IDX and VOW data access subject to separate agreement; third party TOU. Subscriber acknowledges that access to ECIMLS's IDX or VOW database and data feeds can occur only upon execution of a separate written agreement between ECIMLS and Subscriber, as applicable. Subscriber acknowledges that access to third-party software offered via ECIMLS Service may be subject to separate third-party terms of use ("Other TOUs"). For the avoidance of doubt, Subscriber shall be subject to the terms and conditions of this Agreement as well as any Other TOUs for those products and services to which they apply.

SUBSCRIBER'S OBLIGATIONS

12. Use limited; Compensation Disclaimer. Subscriber shall use the ECIMLS Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate strictly as permitted by the ECIMLS Policies. Except as expressly provided in this Agreement and the ECIMLS Policies, Subscriber shall not copy, create derivative works of, distribute, perform, or display the ECIMLS Service or any part of it. Subscriber acknowledges the following statements and may not communicate with any consumer in any manner that contradicts any of the following statements or brings them into doubt:

(a) A broker's compensation and fees for services are not set by law and are fully negotiable.

(b) A broker's compensation for services rendered to a seller or for services rendered to a buyer is solely a matter of negotiation between the broker and their client, and is not fixed, controlled, recommended, or maintained by any persons not a party to the brokerage service agreement.

(c) The compensation paid by a listing broker to a cooperating broker in respect to any listing is established by the listing broker and/or seller, and is not fixed, controlled, recommended, or maintained by any persons other than the listing broker and/or seller.

13. Confidentiality. Subscriber shall maintain the confidentiality of its user ID and password and the ECIMLS Database and not provide its user ID and password to any third party. To maintain the confidentiality of all user IDs, passwords, the ECIMLS Database, and the ECIMLS System, Subscriber shall take the greater of reasonable care or the care it takes to protect its own confidential information. Subscriber shall not make any user IDs, passwords, the ECIMLS Database, or the ECIMLS System available to any third party, including without limitation affiliates, franchisors, subsidiaries, or Other Participants and Subscribers, unless expressly authorized to do so under this Agreement or the ECIMLS Policies. Failure to comply with this provision will result in a significant fine, as set forth in the ECIMLS Policies. Subscriber may disclose confidential information under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, Subscriber first gives reasonable notice to ECIMLS to permit ECIMLS to seek a protective order.

14. Equipment. Subscriber shall acquire and maintain all personal computers, modems, data connections, and computer software, other than the ECIMLS Software, necessary for Subscriber's use of the ECIMLS Service.

15. Subscriber Contribution. When making a Subscriber Contribution to the ECIMLS Service, Subscriber warrants that the information submitted complies with all applicable laws, statutes, ordinances and regulations and the ECIMLS Policies in all respects, including with regard to (a) required data fields; (b) format of submission; (c) permitted and required listing types; and (d) procedures for submission. Subscriber warrants that the Subscriber Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation, or proceeding pending or threatened with respect to the Subscriber Contribution.

INTELLECTUAL PROPERTY

16. Subscriber license. Subscriber hereby grants to ECIMLS 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) the Subscriber Contribution and those portions of the ECIMLS Database relating to Subscriber's listings.

17. Warranty. Subscriber warrants that it has the authority to grant the license in Paragraph 16. Subscriber warrants that (a) the Subscriber Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to Firm Participant and ECIMLS.

18. Other terms. Pursuant to the ECIMLS Policies, the SCC shall be a work made for hire by Subscriber for the benefit of ECIMLS, which shall be deemed the SCC's author for purposes of copyright law. If for any reason the SCC cannot be provided as a work made for hire, you agree to assign and

hereby do assign to ECIMLS all right, title and interest in the SCC, including, without any limitation, any copyrights therein under United States and international copyright law. ECIMLS hereby grants Subscriber a license to use the ECIMLS Software and the ECIMLS Database during the term of this Agreement, subject to the permission of Firm Participant and according to the terms of the ECIMLS Policies. All other uses are prohibited.

FEES AND PAYMENT TERMS

19. **Applicable fees.** Subscriber shall pay the fees set forth in ECIMLS's official Schedule of Fees which ECIMLS may amend at any time subject to the terms of Paragraph 23.

20. **Payment terms.** Subscriber shall pay the fees according to the terms set out in the ECIMLS Policies.

21. **No refunds.** ECIMLS need not refund or pro-rate fees in the event of termination or suspension of this Agreement unless the ECIMLS Policies provide otherwise. Initiation fees, if any, are not refundable.

22. **Taxes.** All fees for the ECIMLS Service are exclusive of federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and, accordingly, Subscriber shall pay all such taxes and levies other than any tax or levy on the net income of ECIMLS.

23. **Fee increases.** ECIMLS may amend the Schedule of Fees at any time at its sole discretion. ECIMLS shall provide written notice to Subscriber at least thirty days in advance of the effective date of any fee increase. If Subscriber objects to the increase, Subscriber may terminate this Agreement by written notice to ECIMLS at any time before the effective date of the increase.

24. **Fines.** ECIMLS may collect fines from Subscriber and from Firm Participant on Subscriber's behalf for violation of the ECIMLS Policies. Payment terms for fines are set out in the ECIMLS Policies. ECIMLS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION

25. **Term.** This Agreement shall commence when you click "I Agree" set forth below and shall continue thereafter on a month-to-month basis until terminated.

26. **Termination for breach.** ECIMLS may terminate this Agreement with notice if Subscriber fails to comply with the terms of this Agreement or of the ECIMLS Policies.

27. **Termination of Participant.** In the event of any termination of Firm Participant's Participant Agreement, all affiliated subscriber licenses and access agreements, including this Subscriber Agreement, will automatically terminate. In the event of any suspension of Firm Participants Participant Agreement, ECIMLS may in its sole discretion suspend Subscriber access to ECIMLS System. If ECIMLS does not exercise its right to suspend Subscriber access to the ECIMLS System, this Agreement shall continue in full force. The subparagraph of Section 16 of this Agreement in effect at the time of the termination or suspension of Firm Participant's Participant Agreement shall be binding on the parties to this Agreement for its duration.

28. **Termination for failure to pay.** In the event Subscriber fails to pay any fees required under this Agreement, ECIMLS may terminate service without being subject to arbitration. In its sole discretion, ECIMLS may suspend its performance under this Agreement rather than terminating it, in the event that Subscriber fails to pay any fees required under this Agreement.

29. **Termination for convenience.** Either party may terminate this Agreement upon thirty days' written notice to the other party. Subscriber may not terminate this Agreement so long as Subscriber remains affiliated with Individual Participant for which Firm Participant is responsible subject to a Participant Agreement with ECIMLS, except as otherwise permitted under ECIMLS Policies.

30. **Events upon termination.** Promptly upon any termination of this Agreement, (a) ECIMLS shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the ECIMLS Service; (b) Subscriber shall purge all copies of the ECIMLS Software and the ECIMLS Database from Subscriber's personal computers; (c) all licenses granted hereunder shall immediately terminate, except the license to the Subscriber Contribution in Paragraph 16; and (d) Subscriber will not be permitted to be affiliated with Firm Participant or any other participant of ECIMLS unless a new subscriber agreement between Subscriber and ECIMLS is executed.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION

31. **DISCLAIMER OF WARRANTIES.** ECIMLS PROVIDES THE ECIMLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE ECIMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ECIMLS SERVICE ARE AT THE SOLE RISK OF SUBSCRIBER. THE ECIMLS AFFILIATES DO NOT WARRANT THAT THE ECIMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE ECIMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE ECIMLS SERVICE. THE ECIMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE ECIMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ECIMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The ECIMLS Service may contain third party content, including hyperlinks to web sites operated by parties other than ECIMLS; ECIMLS does not control such third party content, including web sites, is not responsible for their contents, does not endorse the third party content providers, including web sites or contents, and may have no relationship with the sites' operators.

32. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE ECIMLS AFFILIATES SHALL BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE ECIMLS SERVICE, INCLUDING RELIANCE BY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE ECIMLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE ECIMLS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, DATA CONNECTION FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE ECIMLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

33. MAXIMUM AGGREGATE LIABILITY. IN NO EVENT SHALL ECIMLS BE LIABLE TO SUBSCRIBER FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM PARTICIPANT, INDIVIDUAL PARTICIPANT, OR SUBSCRIBER HAS PAID ECIMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100.

34. Indemnification. Subscriber shall defend, indemnify and hold the ECIMLS Affiliates and Other Participants and Subscribers harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the ECIMLS Affiliates or Other Participants and Subscribers arising from any acts of Subscriber, including (a) putting inaccurate information into the ECIMLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the ECIMLS Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any term of this Agreement; and (f) violating this or any other agreement or any law.

35. Acknowledgment. Subscriber acknowledges that ECIMLS has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

DISPUTES AND REMEDIES

36. Injunctive relief. Subscriber acknowledges and agrees that the ECIMLS Software and ECIMLS Database are confidential and proprietary products of ECIMLS and that in the event there is an unauthorized disclosure of them by Subscriber, no remedy at law will be adequate. Subscriber therefore agrees that in the event of such unauthorized disclosure of ECIMLS Software or ECIMLS Database, ECIMLS may obtain injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

37. Dispute resolution. In the event ECIMLS claims that Subscriber has violated the ECIMLS Policies, ECIMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the ECIMLS Policies, provided MLS does not also base a claim that Subscriber has breached this Agreement on the same facts. Except as provided in this paragraph and in Paragraph 28, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Dubuque County, Iowa, except that it may be held by telephone where the Arbitration Rules expressly so permit. Subscriber agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Dubuque County, Iowa.

38. Liquidated damages. Subscriber acknowledges that damages suffered by ECIMLS from access to the ECIMLS Service by an unauthorized third party as a result of disclosure of Subscriber's password or an unauthorized disclosure by Subscriber of the ECIMLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to ECIMLS to enter into this Agreement with Subscriber, Subscriber agrees that (a) in the event that any disclosure of Subscriber's password results in access to the ECIMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Subscriber shall be liable to ECIMLS for liquidated damages in the amount of \$5,000 (or the amount established in the ECIMLS Policies, whichever is greater) and termination of this Agreement; and (b) in the event that Subscriber makes unauthorized disclosure of any portion of the ECIMLS Database to any third party, Subscriber shall be liable for liquidated damages in the amount of \$5,000 (or the amount established in the ECIMLS Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

39. Legal fees. In the event of legal action or arbitration between ECIMLS and Subscriber, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or arbitration.

MISCELLANEOUS

40. No third-party beneficiaries. This Agreement is entered into solely between, and may be enforced only by, ECIMLS and Subscriber, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party.

41. Interpretation and amendment. Subscriber expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). ECIMLS may amend this Agreement by providing thirty days' advance notice of the amendment to Subscriber. If Subscriber continues to use the ECIMLS Service or ECIMLS Database after the expiration of the thirty-day notice period, Subscriber will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

42. Assignment. Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Subscriber. Any purported assignment or delegation in contravention of this section is null and void.

43. Integration and severability. This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. In the event of any dispute regarding the interpretation of the terms of this Agreement, it shall not be construed for or against any party on the grounds that the Agreement was prepared by any one of the parties. 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. The foregoing notwithstanding, if any provision of Paragraph 31 through 35 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber's access to the ECIMLS Service shall immediately terminate.

44. Governing law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Iowa applicable to contracts made and performed in Iowa, without regard to its conflicts of law and choice of law provisions.

45. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation of receipt; (c) facsimile transmission, provided sender obtains confirmation of transmission; or (d) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

Having read this Agreement, You assent to its terms by clicking "I Agree".