

BCFSA FORMS AND CLAUSES – TERMS OF USE FOR SOFTWARE APPLICATION PROVIDERS

These Terms of Use apply to any person (natural or legal) (a “**Provider**”) who incorporates BC Financial Services Authority (“**BCFSA**”) forms or clauses (respectively, the “**Forms**” and the “**Clauses**”) within or as part of any software application (including software as a service or a website) (an “**Application**”) offered by the Provider to third parties (“**Users**”). Your use of any Forms or Clauses in that manner indicates that you understand and accept these Terms of Use, and creates a legally binding agreement between you and BCFSA.

1. LICENCE

1.1 Licence Grant. Subject to these Terms of Use, BCFSA hereby grants to a Provider, and the Provider accepts, a limited, non-exclusive, non-transferable, sublicensable (only in accordance with section 1.2) right and licence to use, reproduce, publish, display, and distribute Forms and Clauses (collectively, “**Works**”) solely as necessary for the purpose of making Works available through, marketing and supporting an Application and sublicensing the Application to User in accordance with section 1.2.

1.2 Sublicence. The Provider shall have the right to sublicense the following rights to Users, on a non-exclusive and non-transferable basis:

- (a) the right to download from the Application and to reproduce and otherwise use the Works and User-Created Forms (as defined in section 1.2(b)) in connection with providing real estate services under the *Real Estate Services Act* (British Columbia), providing mortgage services under the *Mortgage Services Act* (British Columbia), or for educational purposes;
- (b) to fill in blank spaces on a document forming part of Works and to affix electronic signatures to a Work, as necessary in connection with providing real estate services under the *Real Estate Services Act* (British Columbia) or providing mortgage services under the *Mortgage Services Act* (British Columbia) (such document created by an User which includes the Works or part thereof, a “**User-Created Form**”); and
- (c) to store copies of completed and executed User-Created Forms as required by, and in compliance with, applicable laws including the *Real Estate Services Act* (British Columbia) and the *Mortgage Services Act* (British Columbia);

provided that the Provider shall not permit any User to commence use of the Works through the Application unless and until the User has agreed to be bound by an agreement (an “**End User License Agreement**”) pursuant to which the User agrees to use the Works and User-Created Forms only as permitted by this section 1.2 and which protects BCFSA from liability to the same extent as set forth herein.

1.3 Restrictions. Except as may be expressly set out in these Terms of Use, the Provider shall not, and shall not permit any other person to, use any Work on User-Created Form except as expressly permitted herein, alter any Work (including by removal of any trademarks or proprietary rights notices of BCFSA) except as expressly permitted herein, create derivative works of any Work, or make any representations or warranties of any kind on behalf of BCFSA regarding any Work or any User-Created Form or the use thereof. Notwithstanding the forgoing, Users may modify a Work except if that Work is a Form that is prescribed under the *Real Estate Services Act* (British Columbia) or the *Mortgage Services Act* (British Columbia).

2. WORKS

2.1 Modification of Works. From time to time, BCFSA may modify a Work (“**Modification**”). The Provider is responsible for monitoring BCFSA’s website for Modifications and adopting the Modifications in affected Works made available through the Application as soon as reasonably possible.

2.2 Ownership of Works. The Provider acknowledges and agrees that BCFSA is and shall remain the owner of the Works and any other materials provided by BCFSA hereunder, including all proprietary rights provided under trademark law, copyright law, and any other applicable statutory provision or common law principle (“**Intellectual Property Rights**”) therein. Except for the limited licences expressly granted under these Terms of Use or an End User Licence Agreement, neither the Provider nor any User or other person obtains any rights or interests in or to the Works.

2.3 Provider Acknowledgements. The Provider acknowledges and agrees as follows:

- (a) the Works (including all Modifications) are provided “as is”, and 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 Works are to the fullest extent permitted by law hereby disclaimed by BCFSa and waived by the Provider;

- (b) the use or other exploitation of any Work or the reliance upon any Work or any User-Created Form by the Provider, any User or any party to a transaction in which any Work or User-Created Form are used (any of them, a "**Content User**") is at the sole risk of the Content User;
- (c) the Provider shall ensure that each Content User is solely responsible and liable for any content inserted or any changes made by or for it to a Work, whether or not permitted under these Terms of Use or an End User Licence Agreement;
- (d) the Provider shall ensure that each User shall be solely responsible and liable for its use, misuse or inability to use any User-Created Form, and for any results (or lack thereof) achieved through its use thereof;
- (e) BCFSa shall not have any liability arising from or in connection with the use of the Application by any person and, as between BCFSa and the Provider, the Provider shall be solely responsible for the Application and the operation, use, and misuse thereof; and
- (f) these Terms of Use are for the grant of a limited licence to use the Works, and shall not be interpreted, construed or held out as an approval, endorsement or recommendation of the Provider or its products or services, including the Application, by BCFSa or the Superintendent of Real Estate, and the Provider shall not do or permit to be done anything that would suggest or imply the existence of any such approval, endorsement or recommendation.

3. INDEMNIFICATION; LIMITATION OF LIABILITY

3.1 Provider Indemnification. The Provider shall indemnify and save harmless BCFSa and BCFSa's directors, officers, employees, and agents from any loss, claim (including any claim of infringement of third-party intellectual property rights), damage award, action, cause of action, cost or expense that BCFSa or any of BCFSa's directors, officers, employees or agents may sustain, incur, suffer or be put to at any time (each a "**Loss**") to the extent the Loss is directly or indirectly caused or contributed to by:

- (a) any breach by the Provider or any User of these Terms of Use or an End User Licence Agreement;
- (b) misuse of the Works by the Provider or any User;
- (c) any wrongful, negligent or unlawful act or omission of the Provider or any User in connection with these Terms of Use;
- (d) any commercial transaction involving access or use of the Works through the Application; or
- (e) any actual or alleged infringement or misappropriation by any User-Created Form of any third party's Intellectual Property Rights.

3.2 No Liability In Connection With Works. Use of the Works and any other materials made available by BCFSa hereunder is at the Provider's sole risk. Under no circumstances will BCFSa (including its directors, employees, or agents) be liable to the Provider, any User, or any third party for any direct damages or for 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; or loss of goodwill, whether arising out of breach of contract, tort (including negligence and gross negligence), any other theory of liability, or otherwise, regardless of whether such damages were foreseeable and whether or not BCFSa was advised of the possibility of such damages.

4. GENERAL

4.1 Termination. BCFSa, in its sole discretion, may terminate the Provider's right to access or use the Works at any time for any reason. Upon termination, the Provider will remove the Works from the Application and cease all use of the Works, provided that Users may continue to use and store any User-Created Form created and executed prior to the effective date of termination in accordance with the terms of the applicable End User Licence Agreement.

4.2 Survival of Certain Provisions. Sections 2.2, 2.3, 3.1, 3.2 and 4.1 and this section 4.2 and any other sections of these Terms of Use which, by their terms or nature, are intended to survive the termination of these Terms of Use in relation

to a specific Provider, will continue in force indefinitely subject to any applicable limitation period prescribed by law, even after the termination of these Terms of Use.

- 4.3 Miscellaneous. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. If any provision of these Terms of Use or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of these Terms of Use and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law. These Terms of Use constitute the entire agreement between the parties with respect to the subject matter hereof. These Terms of Use are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or will confer upon any third party any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of these Terms of Use.
- 4.4 Governing Law. these Terms of Use are governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.