

## ORION SUBSCRIPTION AGREEMENT

(PREA Broker ID # \_\_\_\_\_)

This **ORION SUBSCRIPTION AGREEMENT** ("Agreement") is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 2013 ("Effective Date"), by and between **ORION Commercial Services, LLC**, a Florida Limited Liability Company ("ORION"), with offices located at 1529 S. Dale Mabry Highway, Suite 100, Tampa, FL 33629, and \_\_\_\_\_, an \_\_\_\_\_ doing business in the state of \_\_\_\_\_ as **Prudential** \_\_\_\_\_ ("Subscriber") whose primary office is located at: \_\_\_\_\_.

### WITNESSETH:

**WHEREAS**, Subscriber has entered into a Residential Real Estate Brokerage Franchise Agreement with Prudential Real Estate Affiliates ("PREA"). In addition, to representing buyers and sellers of residential real estate, Subscriber may also represent buyers and sellers of commercial real estate, as permitted by the terms of Subscriber's franchise agreement with PREA.

**WHEREAS**, PREA and ORION are parties to that certain Service Provider Agreement, pursuant to which ORION has agreed to host and maintain its website (now at [www.orioncre.net](http://www.orioncre.net)) for the benefit of residential and commercial franchisees and to deliver additional services. Franchisee wishes to enter into this Agreement in order to avail itself of certain additional services not provided by PREA pursuant to the terms of its franchise agreement with PREA including those commercial real estate brokerage training, technology and consulting services more particularly described in Attachment I which is attached hereto and incorporated hereby by this reference.

**NOW THEREFORE**, in consideration of the foregoing facts and other valuable consideration, the receipt and adequacy of which is hereby acknowledge, the parties hereto do hereby agree as follows:

**1. SERVICES TO BE PROVIDED.** ORION shall make available to Subscriber the training, technology and consulting services as described in Attachment "1" ("Services"). Subscriber acknowledges that ORION may, with PREA's prior written consent, subcontract with another provider for the delivery of the Services. Subscriber shall be responsible for any travel, lodging, food, entertainment and miscellaneous costs incurred by Subscriber in connection with ORION's delivery of the service as well as any fees for additional training, products or services desired by Subscriber which are not included in the terms of this agreement and which may be agreed upon by the parties.

**2. SUBSCRIPTION FEE.** Subscriber shall pay to ORION an annual subscription fee of Two Thousand Five Hundred U.S. Dollars (\$2,500.00) when paid in a lump sum at the beginning of each subscription period. The subscription fee shall be made payable to **ORION Commercial Services, LLC**. Subscriber shall pay the first annual subscription fee upon the execution and delivery of this Agreement and on the first day of each additional subscription period. As used herein, the term "subscription period" shall mean the twelve (12) month period following the Effective Date and each additional twelve (12) month period thereafter. Subscriber acknowledges that ORION may adjust the annual subscription fee, from time to time, at ORION's sole discretion, however, in no event (a) shall ORION adjust the annual subscription fee more than one time in any subscription period and (b) any such adjustment shall not affect the then current remaining term of Subscriber's subscription.

**2. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL ORION OR ITS AFFILIATES BE LIABLE TO SUBSCRIBER FOR ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL LOSS OR DAMAGE (INCLUDING CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) HOWSOEVER CAUSED OR**

**ARISING OUT OF ORION'S DELIVERY OF THE SERVICES UNLESS SUCH LOSS OR DAMAGE IS CAUSED BY ORION'S GROSS NEGLIGENCE OR ORION'S ACTUAL INFRINGEMENT ON THE RIGHTS OF OTHERS IN THE COURSE OF ORION'S DELIVERY OF THE SERVICES.**

**4. ORION'S INTELLECTUAL PROPERTY RIGHTS.** Subscriber shall recognize and respect the rights of ORION in its' trademarks and trade names, and Subscriber shall not use any other trademarks or trade names in conjunction with the Subscribers without prior written consent of ORION. Subscriber shall supply to ORION samples of any labels or advertising material used by Subscriber and bearing any trademarks or trade names of ORION. Subscriber shall only be permitted to use ORION's logo and/or name in strict compliance with ORION's consent and approval. Subscriber shall also recognize and respect the rights of ORION in the ORION or other technology provided by ORION, as well as any related intellectual property including, but not limited to systems, processes, forms, templates and training materials and Subscriber shall not use such technology or intellectual property without the consent of ORION.

Section 4.01 – Ownership and Title: Title to the ORION Technology, including ownership rights to patents, copyrights, trademarks, systems, processes, forms, templates, education, training and trade secrets in connection therewith shall be the exclusive property of ORION.

Section 4.02 – Reverse Engineering: Customer shall not reverse engineer the Software and shall use reasonable efforts to prevent reverse engineering of the Software.

Section 4.03 – Modifications: Subscriber shall not copy the Software and Documentation and shall not allow the Software and Documentation to be copied without the prior written consent of ORION. Subscriber shall not modify the Software and Documentation and shall not allow the Software and Documentation to be modified without the prior written consent of ORION. If the Software or Documentation is modified, such modifications shall be the sole and exclusive property of ORION and ORION shall own any and all of the rights, title, and interests to such modifications, including (but not limited to) any and all copyrights, patents, and trade secrets related thereto.

Section 4.04 – Proprietary Information: Subscriber shall not disclose Proprietary Information except to Authorized Persons. Subscriber shall hold Proprietary Information in strict confidence and shall not duplicate, use or disclose Proprietary Information except as otherwise permitted under this Agreement. Subscriber hereby acknowledges and agrees that the Proprietary Information derives independent economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts under the circumstances to maintain its secrecy; and is a trade secret as defined under the Restatements.

Section 4.05 – No Contest: Subscriber shall not contest or aid in contesting the ownership or validity of the copyrights, trademarks, service marks and trade secrets of ORION in connection with the ORON Technology Platform and content.

Section 4.06 – Employee Pirating: Subscriber shall not induce or solicit (directly or indirectly) any Associate of ORION to leave the employ or hire of ORION or engage (directly or indirectly) the services of such Associates (as an employee, consultant, independent contractor or otherwise) without the prior written consent of ORION.

Section 4.07 – Noncompete: Subscriber shall not (directly or indirectly) promote, advertise, market or provide any product or service similar to or competitive with the Software or Services.

**5. TERMINATION.**

- (a) Either party may terminate this Agreement at any time upon at least thirty (30) days prior written notice to the other party.
- (b) This Agreement shall automatically terminate in the event that the Service Provider Agreement by and between PREA and ORION expires or is terminated for any reason.
- (c) ORION shall have the right to terminate this Agreement upon ten (10) days prior written notice in the event Subscriber fails to pay the annual subscription fee (or the quarterly installment of said fee if that option is chosen) referred to in paragraph 1 of this agreement within ten (10) days of its' due date.
- (d) Upon termination of this Agreement, Subscriber shall immediately cease using the technology provided by ORION and any related intellectual property, and shall immediately return to ORION all such technology, property, documents and other information provided by ORION. ORION shall immediately terminate Subscriber's access to ORION.

**6. ASSIGNABILITY.** Except to any person or entity to which Subscriber has assigned its franchise agreement with PREA (and said assignment is accepted by PREA) this Agreement shall not be assigned by Subscriber without the prior written consent of the ORION.

**7. NOTICES.** Any notice required or authorized be given pursuant to this Agreement, except for routine and typical shipment documentation, shall be served by overnight delivery courier or by certified letter, return receipt requested, addressed to ORION or Subscriber (as the case may be) at the applicable address stated in this Agreement. Notices required by this Agreement shall be addressed to any other addresses which may be specified by either party by written notice to the other.

**8 ENTIRE AGREEMENT AND MODIFICATIONS.** This Agreement, including any exhibits, constitutes the entire agreement between the parties with respect to the subject matter and supersedes and terminates all prior agreements between the parties relating to the same subject matter. Unless otherwise stated in this Agreement, any change, addition, deletion or waiver of the terms and conditions of this Agreement shall be binding upon the parties only if approved in writing by authorized representatives of the parties. The failure of either party to require the performance of any term or condition of this Agreement, or the waiver of either party of any breach of this Agreement, shall not prevent a later enforcement of such term or condition or be deemed a waiver of any later breach. If any provision or paragraph of this Agreement shall be deemed legally invalid, the other provisions and paragraphs shall remain in full force and effect.

**9. GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without giving effect to the conflict-of-laws provisions thereof. Any action, suit or proceeding in respect of or arising from or out of this Agreement shall be prosecuted as to any party hereto or thereto in Pasco County, Florida. Each party hereto consents to the exercise of jurisdiction over its person by any court situated in Pasco County, Florida and having jurisdiction over the subject matter of any action, suit or proceeding arising from or out of or in respect of this Agreement. Adequate notice of any such action, suit or proceeding in any such court shall conclusively be deemed to have been given to any party hereto against who the same is instituted if given to such party in accordance with the provisions of this Agreement or of the Florida Rules of Civil Procedure or otherwise in accordance with due process of law.

10. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first set forth above.

**ORION:**  
**ORION Commercial Services, LLC**

**SUBSCRIBER:**  
**Prudential** \_\_\_\_\_

By: \_\_\_\_\_  
Michael W. Fields, President

By: \_\_\_\_\_

Its: \_\_\_\_\_

# Attachment 1 to Basic Participation Agreement

## ORION Intranet Technology including:

- Complete Business Forms Inventory
  - Complete Listing System (PowerPoint & MS Word Presentations)
    - Sales & Leasing
      - Seller Representation
      - Buyer Representation
      - Landlord Representation
      - Tenant Representation
    - Build To Suit
  - Sample Listing/Representation & Commission Agreements
  - Confidentiality/Non-Disclosure/Non-Circumvention Agreements
  - Associate Business Planning & Review
    - Annual Associate Business Planning
    - Weekly Goals Setting
    - Quarterly Associate Performance Review
    - Market Segmentation Worksheet
  - Sample Disclosure Agreements
  - Property Management Forms
    - General Commercial
    - Residential/Apartment/Condo
    - Retail
  - Office Administration Forms
- National PRUDENTIAL PROPERTY SEARCH Module
- National PRUDENTIAL COMMERCIAL ASSOCIATE Search Module
- Listing syndication to industry commercial property data base providers
- Network Wide Announcements & Local Office Events Listings
- Digital property flyer creation
- Social media placement options
- Helpful Links – Common (and not so common) Commercial Real Estate Related Web Site Links
- Investment Analysis Forms
- Sample Property Profile Templates
  - Office
  - Industrial
  - Retail
  - Multi-Family
  - Vacant Land
  - Investment
- Sample RFP's, Proposals and Letters of Intent
- Sales Professional Recruiting & Interviewing System
- Listing Process w/ Integrated Presentations, Proposals & Reports
- Targeted Marketing Program
- Marketing Budget Rationale
- In-House Training Program
  - Four Weeks Toward Success™ New Associate Start-Up Program
  - CREST™ (Commercial Real Estate Success Training – 26 Modules)
  - Sales Tips
- Live, Web Based Admin. Training and Orientation for ORION
- PowerPoint Associate Orientation and Training for ORION