

# AIR CRE Research & Listings Application

Powered by Xceligent

Application Date (Valid 60 days)	Xceligent Rep	Service Area	Term (12 mo. Minimum)		
		Southern California			
<b>BILLING START DATE</b>		Unless otherwise stated in a supplemental addendum, billing start date will be based on Xceligent's acceptance/execution of this agreement.			
MEMBER CONTACT INFORMATION		BILLING CONTACT INFORMATION			
Company Name:		Company Name:			
Contact Person:		Contact Person:			
Email Address:		Email Address:			
Web Address:		Web Address:			
Street Address:		Street Address:			
City, State, Zip:		City, State, Zip:			
Phone:		Phone:			
Fax:		Fax:			
IDENTIFICATION INFORMATION: At least one form of ID info required prior to service activation					
Federal Tax ID:		Drivers License #:	State:		
PRODUCTS		SERVICE ACTIVATION FEE			
<input type="checkbox"/> CDX Pro		CDX Pro:			
<input type="checkbox"/> Direct Plus ( <input type="checkbox"/> Market / <input type="checkbox"/> Company)		Direct Plus:			
PRICING					
Seat #	Monthly Price	Extended Rate	Subscriber Type	Number	Monthly Amount
			Brokers/Agents		
			Admin		
			Direct+		
			<b>Total Monthly Rate&gt;&gt;</b>		
<input type="checkbox"/> An addendum has been made a part of this agreement.					
PAYMENT METHOD					
Credit Card			ACH (Bank Draft)		
<input type="checkbox"/> Monthly	<input type="checkbox"/> Semi-Annual	<input type="checkbox"/> VISA	<input type="checkbox"/> Monthly	<input type="checkbox"/> Semi-Annual	
<input type="checkbox"/> Quarterly	<input type="checkbox"/> Annual	<input type="checkbox"/> Master Card	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Annual	
		<input type="checkbox"/> AMEX			
Cardholder's Name:			Name of Financial Institution:		
Card Billing Address:			FI – Account Number:		
Card Billing City/ST/Zip:			FI – ABA / Routing Number		
Account #:			(Voided check required.)		
Exp Date:		CCV:			
Invoice: <input type="checkbox"/> Semi-Annual / <input type="checkbox"/> Annual If Member opts to pay for service via invoice, only semi-annual and annual options are available. Note that payment must be received before system access will be provided.					

Other terms and conditions of the CDX Service are set forth on the following pages of this Agreement. If Member is an entity, the undersigned represents that he or she is a duly authorized representative of the entity.

**Member**

**Signature:**

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Xceligent**

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

Name (Print): \_\_\_\_\_

**AIR Commercial Real Estate Association**

Signature: \_\_\_\_\_

Name (Print): Tim Hayes

Title: Executive Director

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AIR CRE, Inc., a California corporation (“AIR”) has entered into an agreement (the “Vendor Agreement”) with Xceligent, Inc., a Delaware corporation (“Xceligent”), under which Xceligent will host the CDX, a commercial real estate data exchange system for AIR and its members.

## 1. TERMS AND CONDITIONS

- 1.1 The Terms and Conditions are incorporated herein, and Member acknowledges that it has been given the opportunity to read, understand and agree to the Terms and Conditions and agrees to be bound thereby.
- 1.2 All parties hereto agree that facsimile signatures shall be binding and as effective as originals.

## 2. DEFINITIONS

- 2.1 **Access Code:** The log in code and password combination assigned to each Subscriber allowing access to the CDX Service.
- 2.2 **CDX (Commercial Data Exchange):** The CDX Application and the Database Content that is available as part of the CDX Service.
- 2.3 **CDX Application:** Xceligent’s proprietary software application used to provide the CDX Service.
- 2.4 **CDX Service:** Xceligent’s standard web-based commercial real estate service offered by AIR through Xceligent that provides Subscribers a means to profile commercial real estate property, listing and transaction information and exchange such information with other AIR members.
- 2.5 **Database Content:** Any compilation of commercial real estate property listings, transaction information and images entered into the CDX.
- 2.6 **Derivative Works:** Reports or other products produced utilizing or derived from Database Content.
- 2.7 **Subscribers:** Those designees of Member with Access Codes registered to access the CDX, as set forth on the CDX web site.

## 3. FEES AND PAYMENT

- 3.1 The following personnel associated with Member are required to be Subscribers: (a) real estate professionals that derive their income from the sale, lease, development, brokerage, or appraisal of commercial real estate (including real estate brokers and agents); and (b) within the offices of owners and developers, all real estate professionals engaged in the sale or lease of commercial real estate, regardless of whether they hold real estate licenses.
- 3.2 **ASSOCIATION MEMBERSHIP REQUIREMENT: TO ENJOY THE BENEFITS OF THE LOWER RATES FOR AIR MEMBERS, MEMBER MUST HOLD AND MAINTAIN MEMBERSHIP WITH AIR BY SIGNING THE ATTACHED AIR MEMBER AGREEMENTS. IF MEMBER CHOOSES NOT TO JOIN AIR OR FAILS TO MAINTAIN MEMBERSHIP WITH AIR, MEMBER SHALL NOT BE ELIGIBLE FOR SUCH LOWER RATES AND WILL BE CHARGED AT FULL RATES.**
- 3.3 The Monthly Subscription Fee for access to the CDX Services for the Initial Term (as defined below) is set forth on page 1 of this Agreement. Such Monthly Subscription Fee may be changed from time to time during any Renewal Term (as defined below). Xceligent will provide written notice to Member a minimum of 60 days in advance of any adjustment to the Monthly Subscription Fee. The Monthly Subscription Fee is incurred in advance, and is due at time of billing. All fees are non-refundable. AIR shall bill Member for amounts paid under this Agreement.
- 3.4 AIR, or Xceligent on AIR’s behalf, may audit Member’s Subscriber count as recorded with local and/or state agencies (but no more than 2 times in any calendar year) to determine if Member’s Subscriber count is accurate. In the event that a discrepancy is identified, the Subscriber count shall be adjusted and the Monthly Subscriber Fee shall also be retroactively adjusted.
- 3.5 If Member defaults in any of its payment obligations hereunder, in addition to any of its other rights or remedies, Xceligent reserves the right to suspend Member’s (and its Subscribers’) access to the CDX Service, without liability, until such amounts are paid in full.

## 4. TERM AND TERMINATION

- 4.1 The term of this Agreement shall commence on the Billing Start Date and shall remain in effect for a period no less than stated on page 1 of this Subscriber Agreement (the “Initial Term”). **IF NOT OTHERWISE TERMINATED AS HEREIN PROVIDED, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE-YEAR PERIODS FOLLOWING THE END OF THE INITIAL TERM (ANY SUCH RENEWAL TERMS, TOGETHER WITH THE INITIAL TERM IS REFERRED TO AS THE “TERM”). EITHER PARTY MAY TERMINATE THIS AGREEMENT WITH WRITTEN NOTICE SIXTY (60) DAYS PRIOR TO THE END OF THE CURRENT TERM.**
- 4.2 Xceligent may provide notice of termination of this Agreement and exercise its rights and remedies provided in this Agreement and by law in the event of a material breach by Member which remains uncured after 30 days written notice of such breach. The cure period will not apply to any breach by Member of Sections 5.1, 7.1 or 7.5 of this Agreement. Additionally, Member shall not have more than two (2) notice and cure opportunities in any twelve month period.
- 4.3 Xceligent may terminate this Agreement if any of the following occurs: (a) Member becomes insolvent, (b) voluntary or involuntary proceedings by or against Member are instituted in bankruptcy or under any insolvency law, (c) a receiver or custodian or similar agent is appointed for Member, (d) proceedings are instituted by or against Member for corporate reorganization or the dissolution of such party, which proceedings, if involuntary, shall not have been dismissed within 30 days after the date of filing, (e) Member makes an assignment for the benefit of creditors, (f) all or substantially all of the assets of Member are seized or attached and not released within 30 days thereafter, or (g) Member has ceased its on-going business operations.
- 4.4 Except as specifically provided herein, termination of this Agreement shall be without prejudice to any right of the party seeking termination to also sue for damages resulting from any breach of this Agreement.
- 4.5 Upon the expiration or termination of this Agreement: (a) all rights granted to Member under this Agreement will cease, except the following Sections of this Agreement will survive: 2, 3.3, 4.5, 7, 8, 9, 10 and 11, (b) Member shall immediately pay all amounts owed under this Agreement, and (c) Member shall and shall cause all of its Subscriber to cease using the CDX Service and no longer utilize and promptly destroy all Database Content not entered into by Member or its Subscribers received hereunder.

## 5. CDX SERVICE

- 5.1 Xceligent will give an Access Code to each Subscriber. Member shall comply with (and shall cause all Subscribers to comply with) (i) all AIR and Xceligent security procedures to maximize the security of the CDX Service, including prevention of sharing Access Codes and unauthorized access to the CDX Service, and (ii) Xceligent’s terms and conditions on the CDX web site.
- 5.2 Xceligent may from time to time change, update or enhance the CDX Service, by posting a notice of the change on the CDX web site.
- 5.3 Member and each Subscriber is solely responsible for acquiring and installing all equipment, hardware, software (including web browser software), telecommunications lines, Internet access connections and other items (the “Access Systems”) necessary to use the CDX Service.

## 6. NON-COMPETE AND COMMITMENTS

- 6.1 Member agrees not to compete with Xceligent in the development and marketing of a software or database application that will offer a computerized data service for commercial real estate during the term of this Agreement.
- 6.2 No more than twice in any 12 month consecutive period, Xceligent may audit Member during normal business hours for the purpose of ensuring Member’s compliance with the terms and conditions of this Agreement, upon at least ten days prior written notice; provided, however, that the limit on the number of audits per year shall not apply if an audit indicates any non-compliance under this Agreement.

## 7. CONTENT AND PROPRIETARY RIGHTS

- 7.1 Member will be solely responsible for the accuracy and completeness of the Database Content submitted by or on its behalf or on behalf of its Subscribers. Member represents that it has the right to grant to AIR and Xceligent the rights set forth in this Agreement and the rights in the Database Content submitted by Member and its Subscribers and that no submission will violate the rights of any third party, whether those rights arise by contract or otherwise. Member and its Subscribers may not submit any image to the CDX if Member or Subscriber has granted exclusive rights to the image to a third party, nor may Member or any of its Subscribers submit any image to the CDX and thereafter grant exclusive rights to the image to a third party. Member and its Subscribers may not submit any image obtained from the CDX to a third party if a requirement of submitting the image is the granting of exclusive rights to the image. Either AIR or Xceligent may reject or refuse to use, distribute or display any Database Content that it considers to be defective, libelous, inaccurate, incomplete or the proprietary property of a third party. Neither Member nor any Subscriber may submit any property descriptions, photographs, images, financial, transactional, tenant, contact or other information to the CDX unless Member or such Subscriber has legal rights to publish, advertise and distribute that information.
- 7.2 Member hereby grants to AIR and Xceligent a non-exclusive license to develop, use, display, distribute and sell Derivative Works utilizing Database Content entered into the CDX by or on behalf of Member and its Subscribers.
- 7.3 Member shall (and shall ensure that its Subscribers) enter Database Content in the format specified by Xceligent. If an error in the Database Content or in any information contained in the CDX is caused by AIR and/or Xceligent, Member’s sole remedy will be the correction of the error after notice to Xceligent. Member shall ensure that the information it and its Subscribers transmit complies with all applicable laws and regulations, the CDX Users Guide and CDX web site and that no submission will violate the right of any third party, whether those rights arise by contract or otherwise. AIR or Xceligent may modify or suspend access to the CDX Services (a) as necessary to comply with any law or regulation as reasonably determined by AIR or Xceligent, (b) to comply with any court order or instruction or (c) if deemed reasonably necessary

by AIR or Xceligent to prevent substantial harm to AIR or Xceligent or their businesses. Member agrees to comply with (and to cause its Subscribers to comply with) the confidentiality and proprietary rights provisions contained on the CDX Service web site.

7.4 Xceligent shall retain all right, title and propriety interest (including without limitation all copyrights, trademarks, patents, and trade secrets) in and to the CDX Service (other than Member's Database Content), CDX Application and CDX including the designs, user interfaces, protocols, the "look and feel" of all screens and the organization and presentation of any of its components and Member shall not acquire any proprietary rights thereto. Member and AIR acknowledge that the development of the CDX Service, CDX Application and CDX involved the expenditure of substantial time and money. Except as expressly provided herein, Xceligent does not grant any rights to AIR, Member or any of Member's Subscribers under any patents, copyrights, trademarks or trade secret information. Member shall not alter or remove Xceligent's name, trademarks, copyright notices, disclaimers or other restrictive legends on the CDX Service, CDX Application and CDX, any component thereof.

Member acknowledges that the following are strictly prohibited: (i) the license, grant, transfer, sale, assignment, and distribution of the CDX Service (and the Database Content not entered into by Member or Member's Subscribers) or otherwise making the CDX Service (and the Database Content not entered into by Member or Member's Subscribers) available to, or utilizing for, any third party; (ii) redistribution to any third party any Database Content not entered into by Member or Member's Subscribers; and (iii) developing a competitive product or service or building a product using the same features and functions of the CDX Service or similar ideas, features, functions, or graphics.

## **8. WARRANTIES**

8.1 Member represents, warrants and covenants that, and Member will comply with all applicable laws, rules and regulations. Member represents, warrants and covenants that (i) neither the execution of this Agreement by Member nor its performance of its obligations hereunder violates any agreement to which it is a party or by which it is bound, (ii) it has the right to enter into this Agreement and perform its obligations hereunder and to grant to Xceligent the rights set forth in this Agreement and the rights in the Database Content submitted by Member and its Subscribers, (iii) no submission of Database Content will violate the rights of any third party, whether those rights arise by contract or otherwise, and (iv) Member will comply with all applicable laws, rules and regulations with regard to the performance of its obligations hereunder and the use of the CDX Service.

8.2 **EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, AIR AND XCELIGENT DISCLAIM ALL WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES PROVIDED, WHETHER EXPRESSED OR IMPLIED, ARISING BY LAW, CUSTOM, ORAL OR WRITTEN STATEMENTS OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, FREEDOM OF INTERFERENCE WITH ENJOYMENT, MERCHANTABILITY, QUALITY, ACCURACY, COMPLETENESS, FITNESS OF RESULTING WORK PRODUCT AND FITNESS FOR A PARTICULAR PURPOSE OR THAT THE CDX APPLICATION OR THE CDX WILL GENERATE CERTAIN RESULTS, WORK IN COMBINATION WITH OTHER COMPONENTS OR AS AN INTEGRATED SYSTEM OR WILL FULFILL ANY MEMBER'S PARTICULAR NEEDS.**

8.3 **ACCESS BY MEMBER AND MEMBER'S SUBSCRIBERS TO DATABASE CONTENT AND MODIFICATIONS OR ADDITIONS THERETO AND RELATED DOCUMENTATION, REGARDLESS OF FORM, IS PROVIDED "AS IS" AND WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH MEMBER AND ITS SUBSCRIBERS.**

## **9. INDEMNITY**

9.1 Member shall indemnify AIR and Xceligent and their directors, officers, employees and affiliates (collectively, the "Covered Entities") and defend and hold harmless the Covered Entities from and against any and all losses, damages, expenses and liabilities suffered by any of them or to which any of them become subject, resulting from, arising out of or relating to: (1) any claim, action or demand with respect to the business, resources, technology or services of Member (including the Database Content of Member) for: (a) infringement or misappropriation of any intellectual property rights; (b) defamation, libel, slander, obscenity, pornography or violation of the rights of privacy or publicity; or (c) spamming or any other offensive, harassing or illegal conduct or violation of the acceptable use guidelines of the CDX; or (2) the business, resources or services of Member (including the Database Content of Member). Member shall not enter into any settlement that adversely affects AIR's or Xceligent's rights or interests without first obtaining the prior written consent of AIR and Xceligent, as applicable.

## **10. LIMITATIONS OF LIABILITY**

10.1 AIR's and Xceligent's liability under this Agreement will not exceed, in the aggregate, the Monthly Subscription Fees paid by AIR pursuant to this Agreement for the three-month period preceding the date of the action or omission giving rise to Member's claim.

10.2 AIR and Xceligent will not be liable for delays or failure in performance where the delay or failure is due to an event beyond AIR's or Xceligent's control, including acts of God, war, terrorism, civil disturbance, disruption of Internet service or otherwise.

10.3 **AIR AND XCELIGENT WILL NOT BE LIABLE FOR ANY INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF PROFITS OR REVENUES, LOST DATA, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.**

10.4 The limitations of liability set forth in this Agreement are independent and will survive any failure of any remedy.

## **11. GENERAL**

11.1 Member may not assign this Agreement without the prior written consent of AIR and Xceligent.

11.2 This Agreement may not be amended or modified except in a written document signed by an authorized representative of all parties.

11.3 Member acknowledges that a violation of this Agreement by it may cause substantial and irreparable injury to AIR and Xceligent for which AIR and Xceligent's remedies at law may not be adequate. Accordingly, Member agrees that AIR and Xceligent shall be entitled to seek injunctive relief with respect to any breach, or threatened breach, of this Agreement, and that such right shall be in addition to, and not in limitation of, any other rights or remedies to which AIR and Xceligent may be entitled at law or in equity. The rights and remedies provided for in this Agreement are cumulative and shall be in addition to any other rights and remedies provided by law or in equity.

11.4 All notices relating to this Agreement must be in writing and either delivered personally, mailed (first class mail, postage paid) certified mail, return receipt requested, by overnight courier or transmitted by facsimile to the addresses set forth herein or to such other address as any party may substitute by written notice to the other parties.

11.5 This Agreement and all of the transactions contemplated hereby will be governed by and construed in accordance with the laws of the state of Missouri, without regard to any conflict or choice of law principles. The parties expressly agree to submit all disputes concerning this Agreement to the exclusive personal jurisdiction and venue of the federal and state courts sitting in Kansas City, Missouri.

11.6 If any provision of this Agreement is for any reason held unenforceable or invalid, then this Agreement shall be construed as if such provision were not contained herein.

11.7 The parties to this Agreement are independent contractors. No party has any right or authority to act on behalf of any other party.

11.8 This Agreement, the CDX User's Guide and the CDX web site constitute the entire agreement, and supersedes all prior agreements, between the parties with respect to the subject matter hereof. In the event of a conflict between the terms of this Agreement and any other source, the provisions of this Agreement shall control. No representations other than those in this Agreement have been made by any party. No party may disclose the terms and conditions of this Agreement except to persons with a need to know. Notwithstanding the foregoing, nothing in this Agreement modifies, supersedes or terminates in any manner the Subscription Agreement dated January 13, 2014 between AIR and Xceligent.

