

# MLS TECHNOLOGY, INC.

## MULTIPLE LISTING SERVICE PARTICIPANT/USER AGREEMENT

This Multiple Listing Service Participant/User Agreement (“Agreement”) is made as the date written below between MLS Technology, Inc. and the undersigned Participant or User. In consideration of the mutual covenants and conditions contained herein, and intending to be legally bound, the parties agree as follows:

### **1. Definitions.**

“**MLS Tech**” means MLS Technology, Inc. and its officers, directors, employees, agents, representatives and shareholders.

“**MLS Tech Policies**” means MLS Tech’s Bylaws, Policies, Procedures, and Rules and Regulations, including all amendments thereto as may be made from time to time.

“**GTAR**” means the Greater Tulsa Association of REALTOR®, Inc., and its officers, directors, employees, agents, representatives and shareholders.

“**MLS**” means the Multiple Listing Service of MLS Tech as is defined in the MLS Tech Bylaws.

“**Participant**” means the REALTOR® member of GTAR or any other Board/Association of REALTORS®, or Nonmember, as such term is more specifically described in the MLS Tech Bylaws.

“**User**” means non-principal brokers, sales licensees, licensed and certified real estate appraisers and licensed trainee appraisers affiliated with a Participant, as such term is more specifically described in the MLS Tech’s Bylaws.

“**P/U**” means Participant and User, or Participant or User.

“**P/U Contribution**” means all information, content and material that a P/U submits, contributes or inputs into the MLS, including any text and photographic or video image data.

**2. Grant of License.** MLS Tech hereby grants to P/U, a personal, revocable, nonexclusive, nontransferable license to access and use the MLS, conditioned on the continued compliance with this Agreement, MLS Tech Policies, GTAR Bylaws, the Oklahoma Real Estate Commission License Code and Rules, National Association of REALTORS® Code of Ethics, all of which as may be amended from time to time.

Access and use of the MLS is to (i) facilitate the dissemination of information to other P/U regarding the unilateral offers of compensation to other P/U; (ii) assist P/U in the listing, selling, and leasing of real property; (iii) enable P/U to prepare appraisals and other valuations of real property; and (iv) allow P/U engaging in real estate appraisal to contribute to a common database.

Access and use of the MLS also allows for the orderly correlation and dissemination of listing information among P/U

so that they may better serve their clients and the public.

**3. Modification to MLS.** MLS Tech may, but is not required to, modify the MLS, including removing information and making additional information available, and adding and removing system functions. MLS Tech is not required to, and does not review, edit, or exercise editorial control over the MLS or P/U Contribution. However, MLS Tech may, but is not required to, take any steps necessary in its sole discretion, including deleting the P/U Contribution or portions thereof, to avoid or remedy any violation of the MLS Tech Policies, any violation of law, or any infringement of intellectual property rights or copyright violation.

**4. ID and Password.** Access and use of the MLS requires the P/U to use a unique login information (“ID”) and a password. The ID and password are assigned by MLS Tech. P/U may thereafter create a different password. The ID and password are to be used only by P/U to whom they are assigned. P/U are expressly prohibited from allowing or permitting the use of their ID and password at any time and for any reason by any other person, regardless of whether they are an agent, sales associate, employee, or vendor of the P/U.

P/U agree to immediately notify MLS Tech if they become aware of the loss or theft of their ID and password or any unauthorized use of their ID and password.

Actual or attempted unauthorized use of the MLS may result in criminal and/or civil prosecution by MLS Tech. Improper use by a P/U or the failure to comply with this Agreement and MLS Tech Policies may result in the immediate termination of this Agreement and disciplinary action as provided for in the MLS Tech Policies. MLS Tech has the right to view, monitor, and record activity on the MLS by any P/U, or any other party or person, at any time and without notice.

**5. Use Limitations.** P/U shall not, nor allow or permit any person or party to, modify, copy, download, distribute, transmit, reproduce, publish, license, transfer, sell, mirror, frame, or otherwise use any information, content or material from the MLS, except as expressly authorized by this Agreement or the MLS Tech Policies.

**6. No Guaranty.** MLS Tech does not guarantee the accuracy, quality or reliability of any information, content or material, contained on, distributed through, linked, downloaded, or otherwise accessed from MLS. Nothing contained in the MLS shall be construed or interpreted as the giving of legal or other

professional advice by MLS Tech.

**7. Confidentiality on the Internet.** Access to the MLS is through the Internet. Use of the Internet is at the sole risk of P/U, and is subject to applicable local, state, national, and international laws and regulations. While MLS Tech has taken reasonable measures for the MLS to be a secure and reliable site, the confidentiality of any communication or material transmitted to or from MLS is not guaranteed by MLS Tech.

**8. Links to Other Sites.** MLS Tech through the MLS may provide links, in its sole discretion, to other websites on the World Wide Web for the convenience of the P/U in locating related information and services. The websites have not been reviewed by MLS Tech and are maintained by third parties over which MLS Tech has no control. MLS Tech expressly disclaims any and all liability for any information, content, product, service or material described, offered, provided or advertised on such websites.

**9. Copyright.** All information, content and material on the MLS, including text, graphics, logos, button icons, images, and compilation (the collection, arrangement and assembly) of content is owned, copyrighted or licensed by MLS Tech and protected by all applicable laws. All software used on the MLS is owned or and licensed by MLS Tech, and its use is protected by all applicable laws.

P/U hereby represent and warrant to MLS Tech that (i) the P/U Contribution does not infringe on the copyright or other intellectual property rights of any third party; (ii) once the P/U Contribution has been added to the MLS by P/U, or on their behalf, that such information becomes proprietary information owed by MLS Tech and subject to protection under all applicable laws; and (iii) P/U has the written consent of any party necessary to provide the P/U Contribution to MLS and has the right to authorize the P/U Contribution be made a part of the MLS, be published anywhere the MLS is intended to be published, and be available for use by other P/Us.

The content and software on the MLS may only be used as permitted pursuant to this Agreement. Any other use, including the reproduction, modification, distribution, transmission, republication, or display of the information, content or material on the MLS is strictly prohibited.

**10. Events Beyond MLS Tech's Control.** MLS Tech will not be liable for any loss resulting from an action, event, occurrence or cause over which it does not have direct control, including but not limited to, failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, computer viruses, unauthorized access, theft, operator errors, severe weather, earthquakes, or other natural disasters, strikes or other labor problems, wars, or governmental restrictions.

**11. Fees and Payment Terms.** P/U shall pay the fees as set forth on MLS Tech's schedule of fees. All fees paid are non-refundable. MLS Tech may amend its schedule of fees at any

time at its sole discretion. MLS Tech shall provide written notice to P/U at least thirty (30) days in advance of the effective date of any fee increase. If fees are not paid in accordance with the schedule of fees, MLS Tech shall have the right to suspend and terminate P/U's access to the MLS without notice.

**12. Term and Termination.**

(a) This Agreement shall continue on a month-to-month basis subject to the compliance by P/U with this Agreement, including the payment of fees.

(b) Either party may terminate this Agreement with or without cause upon thirty (30) written notice provided to the other party. MLS Tech may terminate this Agreement without notice if P/U fails to comply with this Agreement or the MLS Tech Policies.

(c) Upon termination or expiration of this Agreement (i) MLS Tech shall deactivate the ID and password of P/U, and P/U shall have not further access to MLS; (ii) P/U shall purge all copies of the copyrighted information, content or materials obtained from the MLS from P/U's computers; and (iii) all licenses granted hereunder to P/U shall immediately terminate.

**13. Warranty Disclaimers and Limitation of Liability.** P/U assumes the sole and entire risk of the use and reliance on the information, content and material on the MLS. MLS Tech provides all information, content and materials contained on the MLS on an "AS IS," "AS AVAILABLE" basis.

**MLS Tech makes no warranty or representation, expressed or implied, that the MLS access will be uninterrupted or error-free or about the suitability, legality, or accuracy of the information, content and materials described or contained in the MLS. All information, content and materials in the MLS is provided without warranty of any kind, including all implied warranties of merchantability, fitness for a particular purpose, title, and noninfringement, and all such warranties are hereby expressly disclaimed and excluded.**

**In no event shall MLS Tech be liable for any indirect, punitive, incidental, special, or consequential damages arising out of or in any way connected with the use of the MLS or with the delay or inability to use the MLS, or for any information, content and materials obtained through the MLS, or otherwise arising out of the utilization of the MLS, whether based on contract, tort, strict liability, or otherwise, even if MLS Tech has been advised of the possibility of damages. In no event shall MLS Tech's liability to P/U for any reason whatsoever related to use of the MLS or arising out of this Agreement exceed the sum of One Hundred Dollars (\$100.00).**

**14. Indemnity.** P/U agrees to indemnify and hold harmless MLS Tech and its respective affiliates, officers, directors, shareholders, legal representatives, employees, successors, assigns, and agents from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including reasonable attorneys' fees and litigation expenses), relating to or arising from P/U's use of the MLS, including the placing of any P/U Contribution on the MLS.

**15. Dispute Resolution.**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oklahoma. The parties hereby agree that any legal action concerning this Agreement, the relationship, rights or obligations of the parties, or in any way involving matters between the parties arising under or related to this Agreement shall be brought in a State or Federal court in the County of Tulsa, State of Oklahoma. Each party irrevocably submits to the jurisdiction of such courts for itself and in respect of its property with respect to such action. The parties irrevocably agree that venue would be proper in such court, and hereby waive any objection that such court is an improper or inconvenient forum for the resolution of such action.

(b) P/U acknowledge and agree that the MLS is confidential and proprietary information owed by MLS Tech and that in the event there is an unauthorized disclosure of such information by P/U no remedy at law will be adequate. P/U therefore agree that in the event of an unauthorized disclosure or use of the MLS, MLS Tech may obtain injunctive relief, without the necessity of a posting of a bond, in addition to all other available remedies at law.

(c) **Each party to this Agreement agrees that any action or proceeding, whether arising in contract, tort, or otherwise, to enforce or defend any rights under or relating to this Agreement, or any amendment, instrument, document or agreement delivered or which may in the future be**

**delivered in connection with this Agreement, or arising from any course of conduct, course of dealing, statements (whether verbal or written), actions of any of the parties to this Agreement or any other relationship existing in connection with this Agreement, shall be tried before a court and not before a jury.**

(d) In an action brought to enforce this Agreement the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred in such action.

**16. Waiver.** Failure to insist on strict compliance with this Agreement will not operate as a waiver of any subsequent default or failure of performance. No waiver by MLS Tech of any right under this Agreement will be deemed to be either a waiver of any other such right or provision or a waiver of that same right or provision at any other time.

**17. Notice.** All notices required under this Agreement shall be in writing and shall be delivered in person, or sent by email, facsimile, or express overnight delivery to the address set forth below or any other address a party provides written notice of.

**18. Severability.** If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement shall continue in full force and effect.

**Participant/Users**

SIGNATURE \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Email \_\_\_\_\_

**MLS Technology, Inc.**

11505 East 43<sup>rd</sup> Street  
Tulsa, Oklahoma 74147-0325  
Fax Number 918-663-8815  
Email: MemberServices@tulsarealtors.com

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

Date \_\_\_\_\_

\_\_\_\_\_  
Name and Title