

MLSListings, Inc.

Subscriber Agreement and Terms of Service

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

This **AGREEMENT** is made and entered into by MLSListings, Inc. ("**MSL**"), with offices at 350 Oakmead Parkway, Sunnyvale, CA 94085; and _____ ("**Subscriber**"), with offices at _____.

DEFINITIONS AND USAGE

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

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

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

MSL Policies: MSL's bylaws, rules and regulations, and policies and procedures adopted by MSL's board of directors or authorized delegates, as MSL amends them from time to time.

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

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

MSL System: The aggregate of all hardware and telecommunications systems that MSL maintains in order to make access to the MSL Database available to Subscriber.

Other Participants and Subscribers: All Participants and Subscribers of MSL not party to this Agreement, including Participants' employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

Participant: The principal broker or appraiser manager that supervises Subscriber's real estate activities and on whose behalf Subscriber conducts those real estate activities.

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

Subscriber Contribution: All data that the Subscriber submits, contributes, or inputs in the MSL System, including text, binary, and photographic image data, in any form now known or hereafter discovered.

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.

MSL'S OBLIGATIONS

3. MSL 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 MSL Service to which Subscriber is entitled under the MSL Policies. MSL makes no warranties, however, that the MSL Service will be available at all times.

SUBSCRIBER ACKNOWLEDGMENTS

4. **Modifications to service.** MSL may, but is not required to, modify the MSL 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 MSL Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control.** MSL is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the MSL 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, MSL 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 MSL Policies or this Agreement, or infringement of intellectual property rights.

6. **Conditions of service.** Subscriber must be affiliated with Participant at all times during the term of this Agreement. Subscriber may enter active listing information on the MSL Service only if Participant offers compensation to and accepts compensation from other principal brokers.

7. **Saved Information.** Saved Information may not always be available to Subscriber and may become available to unauthorized persons. MSL is not liable for unauthorized access to or loss of Saved Information.

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

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

10. **Priority of agreements; suspension.** Subscriber's access to the MSL Service is subject at all times to the limitations set out in the MSL Policies and the Participant Agreement between MSL and 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 MSL Policies, the Participant Agreement between MSL and Participant, and by this Agreement. MSL may suspend this Agreement in its sole discretion to avoid or remedy any potential violation of law, potential breach of the MSL Policies or this Agreement, or potential infringement of intellectual property rights.

11. **IDX and VOW data access subject to separate agreement.** Subscriber acknowledges that access to MSL's IDX or VOW database and data feeds can occur only subject to a separate written agreement between MSL and Participant.

SUBSCRIBER'S OBLIGATIONS

12. **Use limited.** Subscriber shall use the MLSL Service solely for the purpose of selling, listing, leasing, and appraising real estate as provided in the MLSL Policies. Except as expressly provided in this Agreement and the MLSL Policies, Subscriber shall not copy, create derivative works of, distribute, perform, or display the MLSL Service or any part of it.

13. **Confidentiality.** Subscriber shall maintain the confidentiality of Subscriber's user ID and password and the MLSL Database; Subscriber shall not provide Subscriber's ID and password to any third party. To maintain the confidentiality of all user IDs, passwords, the MLSL Database, and the MLSL System, Subscriber shall take the greater of reasonable care or the care Subscriber takes to protect Subscriber's own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the MLSL Policies. Subscriber may disclose information confidential 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 MLSL to permit MLSL to seek a protective order.

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

15. **Subscriber Contribution.** When making a Subscriber Contribution to the MLSL Service, Subscriber warrants that the information submitted complies with the MLSL 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. Additionally, Subscriber warrants that the Subscriber Contribution does not contain, and that Subscriber will not upload, post, email, transmit or otherwise make available via the MLSL Service the following: (w) information that is harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, sexually explicit, libelous, invasive of another's privacy or confidentiality, hateful, or racially, ethnically or otherwise objectionable; (x) information that Subscriber does not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements); (y) unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; or (z) material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.

16. **Limitations on use of MLSL Service.** Except as authorized by the MLSL Policies and this Agreement, Subscriber shall not: (a) modify, copy, distribute, transmit, display, perform, reproduce, publish, upload, post, license, frame in another website, use on any other website, create derivative works of, transfer, sell or exploit for commercial use, the MLSL Service; (b) access the MLSL Service via a program or script for the purposes of bulk download or "screen scraping" the MLSL Database; (c) use any robot, spider, scraper or other automated means to access the MLSL Service; (d) bypass robot exclusion headers; (e) otherwise circumvent any technological measures or feature of the MLSL Service intended to control and restrict access to the MLSL Service; (f) take any action that imposes or may impose an unreasonable or disproportionately large load on the MLSL Service infrastructure; (g) interfere with or disrupt the MLSL Service or servers or networks connected to the MLSL Service, or disobey any requirements, procedures, policies or regulations of

networks connected to the MLSL Service; (h) harm minors in any way; (i) impersonate any person or entity, including, but not limited to, an MLSL official, forum leader, guide or host, or falsely state or otherwise misrepresent Subscriber's affiliation with a person or entity; (j) forge headers or otherwise manipulate identifiers in order to disguise the origin of any transmitted information; (k) violate any applicable local, state, national or international law, and any regulations having the force of law; (l) "stalk" or otherwise harass another; (o) collect or store personal data about other users except for legitimate non-commercial business purposes; or (p) individually email, or otherwise contact customers who have opted out of automated email solicitation, unless Subscriber first acquires their consent for such an email or contact.

17. **Terms for creation of link.** Subscriber may create a hypertext link from Subscriber's website to the home page of the MLSL Software, subject to the following conditions. Subscriber shall not: (a) "deep link" to content in the MLSL Service beyond the home page of the MLSL Software; (b) state or otherwise imply that MLSL endorses Subscriber, Subscriber's products or services or the content of Subscriber's website; (c) state or otherwise imply an affiliation between Subscriber and MLSListings without prior written permission; (d) present false or misleading impressions about the MLSL Service; (e) disparage the MLSL Service, or display the link to the MLSL Software in a manner that diminishes MLSL's goodwill; (f) display any material which is immoral, unethical, illegal or inappropriate for a professional website.

INTELLECTUAL PROPERTY

18. **Assignment from Subscriber.** Depending on the election Participant has made in Section 5 of the Participant Agreement between Participant and MLSL, the following shall apply:

- (a) If Participant has selected Option I, Subscriber hereby assigns to MLSL all right, title and interest, including all rights under U.S. and international copyright law, in the Subscriber Contribution, except to the extent that Subscriber previously has assigned his/her interests in the Subscriber Contribution to Participant. To the extent that Subscriber does not possess the rights to make the foregoing assignment to MLSL, Subscriber hereby grants to MLSL a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and sublicense (including through multiple tiers) the Subscriber Contribution.
- (b) If Participant has selected Option II, Subscriber hereby grants to MLSL a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and sublicense (including through multiple tiers) the Subscriber Contribution and those portions of the MLSL Database relating to Subscriber's listings.

19. **Warranty.** Subscriber warrants that it has the authority to make the assignment in Paragraph 18, and the written consent of any party necessary to provide the Subscriber Contribution to Participant or MLSL.

20. **License.** MLSL hereby grants Subscriber a license to use the MLSL Software and the MLSL Database during the term of this Agreement, subject to the permission of Participant and according to the terms of the MLSL Policies. All other uses are prohibited.

21. **MSL trademarks.** MLSListings, MLSListings.com, the MLSListings logo, and other MLSListings logos, product and service names are trademarks and service marks of MLSL. Subscriber agrees not to display or use in any manner, the MLSL's trademarks and service marks without MLSL's prior permission.

FEES AND PAYMENT TERMS

22. **Applicable fees.** Subscriber shall pay the fees set forth in MLSL's official Schedule of Fees which MLSL may amend at any time subject to the terms of Paragraph 26.

23. **Payment terms.** Subscriber shall pay the fees according to the terms set out in the MLSL Policies.

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

25. **Taxes.** All fees for the MLSL 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 MLSL.

26. **Fee increases.** MLSL may amend the Schedule of Fees at any time at its sole discretion. MLSL 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 MLSL at any time before the effective date of the increase.

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

TERM AND TERMINATION

28. **Term.** This Agreement shall commence upon the Effective Date set forth below and shall continue thereafter on a month-to-month basis until terminated.

29. **Termination for breach.** MLSL may terminate this Agreement immediately upon notice if Subscriber fails to comply with the terms of this Agreement or of the MLSL Policies.

30. **Termination of Participant.** This Agreement shall terminate immediately and without notice if the Participant Agreement between MLSL and Participant is terminated for any reason.

31. **Termination for failure to pay.** In the event Subscriber fails to pay any fees required under this Agreement, MLSL shall have the right, without being subject to arbitration, to (i) immediately terminate the Agreement, (ii) suspend Subscriber's access to the MLSL Services, and/or (iii) seek recovery of any amounts due in any court having jurisdiction.

32. **Termination for convenience.** Either party may terminate this Agreement at any time with or without cause upon thirty (30) days' written notice to the other party.

33. **Events upon termination.** Promptly upon any termination of this Agreement, (a) MLSL shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the MLSL Service; (b) Subscriber shall purge all copies of the MLSL Software and the MLSL Database from Subscriber's personal computers; and (c) all licenses granted by MLSL hereunder shall immediately terminate.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION

34. **DISCLAIMER OF WARRANTIES.** MLSL PROVIDES THE MLSL SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE MLSL SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MLSL SERVICE ARE AT THE SOLE RISK OF SUBSCRIBER. THE MLSL AFFILIATES DO NOT WARRANT THAT THE MLSL SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE MLSL AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE MLSL SERVICE. THE MLSL AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE MLSL SERVICE

AND THE INFORMATION AVAILABLE THROUGH THE MLSL SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The MLSL Service may contain hyperlinks to web sites operated by parties other than MLSL; MLSL does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

35. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE MLSL 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 MLSL SERVICE, INCLUDING RELIANCE BY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE MLSL SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE MLSL SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE MLSL SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

37. **Indemnification.** Subscriber shall defend, indemnify and hold the MLSL 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 MLSL Affiliates or Other Participants and Subscribers arising from any acts of Subscriber, including (a) putting inaccurate information into the MLSL Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the MLSL Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any warranty under this Agreement; and (f) violating this or any other Agreement or any law.

38. **Acknowledgment.** Subscriber acknowledges that MLSL 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

39. **Injunctive relief.** Subscriber acknowledges and agrees that the MLSL Software and MLSL Database are confidential and proprietary products of MLSL 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 MLSL Software or MLSL Database, MLSL 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.

40. **Dispute resolution.** In the event MLSL claims that Subscriber has violated the MLSL Policies, MLSL may, at its option, resolve such a claim according to the disciplinary procedures set out in the MLSL Policies, provided MLSL 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 31, 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 Santa Clara County, California, 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 Santa Clara County, California.

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

42. **Legal fees.** In the event of legal action or arbitration between MLSL 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

43. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, MLSL 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.

44. **Interpretation and amendment.** Subscriber expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). MLSL may amend this agreement by providing 30 days' advance notice of the amendment to Subscriber. If Subscriber continues to use the MLSL Service or MLSL Database after the expiration of the 30-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.

45. **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.

46. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. 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 34 through 38 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber's access to the MLSL Service shall immediately terminate.

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

48. **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, the parties express their will to be bound by its terms by setting their signatures below.

MLSListings, Inc.

Subscriber

Signature

Signature

Print name

Print name

Effective Date

Firm/office name

I am subscribing to MLSL as a:

- REAL ESTATE BROKER/SALESPERSON**
- REAL ESTATE APPRAISER**
- BROKER OR APPRAISER EMPLOYEE**
- BROKER OR APPRAISER CONTRACTOR**