

**DATA ACCESS AND LICENSE AGREEMENT**

This Data Access and License Agreement (“Agreement”) is entered into on \_\_\_\_\_, 20\_\_\_\_, (“Effective Date”) by and between:

MLS Technology, Inc. (“MLS Tech”), an Oklahoma corporation and wholly owned subsidiary of the Greater Tulsa Association of REALTORS®, Inc. (“GTAR”), an Oklahoma corporation with a place of business at 11505 East 43rd Street, Tulsa, Oklahoma 74147-0603; and

\_\_\_\_\_, \_\_\_\_\_, with a place<sub>a</sub> of business at \_\_\_\_\_ (“Participant”); and

\_\_\_\_\_, \_\_\_\_\_, with a place<sub>a</sub> of business at \_\_\_\_\_ (“Contractor”).

**Please Provide Your Website (required):**

IDX Website Address: \_\_\_\_\_

**WHEREAS**, MLS Tech owns, operates and/or maintains multiple listing service databases and datafeeds (collectively, the “MLS Databases”) that provide real estate listing data, photographs and related information owned and copyrighted by GTAR (collectively the “MLS Content”) that can be displayed or accessed across the Internet and via various platforms and technologies by MLS Tech Participants, Users and Unlicensed Assistants;

**WHEREAS**, Participant desires to display, access and/or use MLS Content in its Internet Data Exchange (IDX) and has contracted with Contractor to permit limited access to the MLS Content through the Participant’s IDX; and

**WHEREAS**, subject at all times to the terms and conditions of this Agreement, MLS Tech is willing to allow Participant and its Contractor to access and use the MLS Databases and the MLS Content for such limited purpose.

**NOW, THEREFORE**, in consideration of the covenants and premises set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties, intending to be legally bound, hereby agree as follows:

1. **Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms shall be defined as follows:

(a) “Access” means the non-exclusive non-transferable access rights to the MLS Databases and the MLS Content granted to Participant and its Contractor pursuant to this Agreement.

(b) “License” means the license rights more particularly set forth in Section 2 of this Agreement.

(c) “Participants”, “Users” and “Unlicensed Assistants” shall have the same meaning as set forth in the MLS Tech Rules and Regulations, including any changes, amendments and additions as may be made from time to time and without advanced notice.

(d) “MLS Tech Rules and Regulations” means, collectively, the then current MLS Tech policies, bylaws and rules and regulations, including any changes, amendments and additions as may be made from time to time and without advanced notice.

(e) “Contractor” means the individual specified on the attached “MLS Data and Content Request” attached to and made a part of this Agreement. Such request shall include the purpose and how the MLS Databases and MLS Content shall be used by the Contractor and Participant and shall be signed by both the Contractor and the Participant.

(f) “Participant’s IDX” means Participant’s Internet Data Exchange developed by Participant and Contractor that will display the MLS Content in accordance with the MLS Tech Rules and Regulations, including any changes, amendments and additions as may be made from time to time and without advanced notice.

(g) “Transient Download” means MLS Content remains on the MLS Tech server. Queries from consumers are received by a IDX and only information responsive to the query is extracted from the MLS Tech’ server and transferred to the IDX where it is then formatted as desired by the IDX's software, and then transmitted for viewing by a consumer.

(h) “Persistent Download” means the electronic transmission of data from the MLS servers to Participant’s servers in order to use the data to generate information for a consumer.

2. **License.** Subject at all times to the terms and conditions of this Agreement, and the MLS Tech Rules and Regulations, Participant is hereby granted for the Term of this Agreement a non-exclusive and non-transferable limited license to access MLS Databases and the MLS Content solely for the purpose of integrating the MLS Content with Participant’s IDX. Any Internet Web Site used for publication of the IDX or any portion thereof must be controlled by a Participant and advertised as Participant’s Internet Web Site. The MLS Databases and MLS Content that are such to this limited license shall include only authorized active listings. Expired listing and listings for which written notice that the electronic data display is not consented to shall be excluded from the MLS Databases and MLS Content and at no time displayed on Participant’s IDX. The access granted hereby to Participant and Contractor shall be limited to the transient or persistent download process provided by MLS Tech. Unless otherwise agreed to in advance by MLS Tech in writing, Participant shall not market or permit access to Participant’s IDX to any person or entity that is not authorized to receive or view such under the MLS Tech Rules and Regulations or under applicable laws governing the providing of real estate services.

3. **Fees.** As consideration for the License granted by this Agreement, Participant shall pay MLS Tech the following fees (collectively the “Fees”):

Set Up and Monitoring Fee \$150.00 set up; \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Fees may be increased from time to time, but no more frequently than twice in any calendar year. MLS Tech shall provide advance written notice or email at least thirty (30) days prior to the effective date of any such increase.

4. **Security Measures.** Both Participant and its Contractor shall utilize appropriate security protection, including adequate firewalls, and other reasonable and customary efforts to secure, protect and prevent the MLS databases and the MLS Content from unauthorized access and use by third parties. Participant shall maintain an audit trail of activity on the IDX site and agrees to make such information available for inspection by MLS, in the event MLS reasonably suspects or otherwise has reason to believe that a Participant's IDX site has caused or permitted a breach in the security of the MLS Databases or MLS Content or is being operated or maintained in a violation of this Agreement or MLS Tech Rules and Regulations, as may be changed,

amended or modified from time to time. In particular, but without limiting the foregoing, Participant shall change all such access and/or security codes or passwords in the event an employee or agent of Participant is terminated or resigns. In the event the Contractor is terminated or resigns, the Participant shall immediately notify MLS Tech and MLS Tech shall terminate the Contractor's access and/or security codes or passwords. Participant shall provide MLS Tech with access to the Participant's IDX such that MLS Tech can, but is not obligated to monitor access to and use of the MLS Databases and the MLS Content via the Participant's IDX (such access may, for example, be provided via permanent access codes and/or passwords to Participant's IDX). Participant shall cooperate with MLS Tech, as requested by MLS Tech, in order to assist MLS Tech with monitoring access to and use of the MLS Databases and the MLS Content via the Participant's IDX

MLS Tech shall issue to Participant's Contractor the security codes and/or password to be used by Participant's Contractor to access the MLS Databases and the MLS Content. MLS Tech shall have the right, but not the obligation, to monitor the Contractor's use of the MLS Databases and the MLS Content and in the event MLS Tech determines, in its sole discretion, that the MLS Databases or the MLS Content is being misused or threaten to be misused by the Contractor, MLS Tech may terminate the Contractor's access rights, without prior notice.

#### 5. **Termination of License.**

In the event Participant fails to pay any Fees when due or MLS Tech, in its sole discretion, determines that Participant or its Contractor have failed to comply with any term or condition of this Agreement or the MLS Tech Rules and Regulations, MLS Tech shall provide Participant with written notice of such non-payment or non-compliance, and Participant shall have five (5) business days from the date of receipt of the notice, to modify, correct and/or remedy such non-payment or non-compliance. Should Participant fail to pay such amounts due or remedy, to MLS Tech' satisfaction, such non-compliance within the five (5) day period, MLS Tech shall have the right to terminate Participant's License, and Access, immediately and without further notice.

In the event MLS Tech determines, in its sole discretion, that Participant or its Contractor have failed to comply with any terms or conditions of this Agreement or the MLS Tech Rules and Regulations and that such non-compliance may materially or adversely affect the integrity of the MLS Databases and/or the MLS Content, MLS Tech shall have the right to terminate Participant's License, and Access, immediately and without prior notice to Participant.

MLS Tech may reconnect Participant's Access to the MLS Content if: (i) Participant pays the applicable Reconnection Fees; and (ii) MLS Tech has determined, in its sole discretion, that Participant has remedied any non-compliance issues and has taken the necessary steps to ensure such issues will not occur again. MLS Tech reserves the right to refuse to reconnect Participant in the event MLS Tech determines Participant's Access may adversely affect the integrity of the MLS Databases and/or the MLS Content. MLS Tech' right to terminate Participant's License, and Access, and to collect Reconnection Fees are in addition to, and not in lieu of, any other rights or remedies available to MLS Tech pursuant to this Agreement, at law or in equity against Participant and/or the Contractor. "Reconnection Fees" means an amount equal to: (i) all owed but unpaid Fees, plus (ii) the costs of enforcing this Agreement and/or collecting any Fees owed hereunder (including, without limitation, reasonable attorneys' fees, whether or not a court action is commenced).

6. **Agreement Term.** Unless terminated as provided for above, this Agreement shall have an initial term of one (1) year commencing on the Effective Date, and, therefore, this Agreement shall renew automatically for additional one (1) year period, unless either party provides the other party with written notice that it does not wish to renew the Agreement, such notice to be provided no less than thirty (30) days prior to the expiration of the then current term. The initial term and each renewal term are collectively referred to herein as the "Term."

7. **Incorporation.** The Terms and Conditions set forth on the attached Exhibit "A," and any addendums hereto that are signed and dated by both parties, are hereby made a part of and incorporated into the terms and conditions of this Agreement.

8. **Agreement to be Bound.** Contractor hereby agrees that: (i) it is bound by the terms, conditions and obligations contained in this Agreement, in addition to the MLS Tech Rules and Regulations; (ii) it will immediately notify MLS Tech in the event it discovers that Participant has violated any terms, conditions or provision of this Agreement (including, without limitation, the MLS Tech Rules and Regulations); and (iii) it will cooperate with MLS Tech, as directed by MLS Tech, in enforcing MLS Tech' rights against Participants pursuant to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

"MLS Tech"  
MLS Technology, Inc.

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

"Participant"

\_\_\_\_\_

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

"Contractor"

\_\_\_\_\_

By: David Dely

## EXHIBIT "A"

### STANDARD TERMS AND CONDITIONS

1. Ownership. The MLS Databases (and all software computer systems and technologies related thereto) and the MLS Content, together with all intellectual property rights therein, are and shall remain the exclusive property of GTAR and MLS Tech or its licensors, as applicable. Other than the limited license rights described herein, neither Participant nor Contractor has any rights, title or interests in or to the MLS Databases or the MLS Content. Without in any way limiting the generality of the foregoing, Participant and Contractor acknowledges and agrees that the compilation of the MLS Content as presented in the MLS Databases is protected under Federal and State Laws and that Participant's or Contractor's unauthorized access to and use of the MLS Databases or the MLS Content shall constitute a willful infringement and violation of such Laws.

2. Unauthorized Use. Neither Participant nor Contractor shall, nor shall either knowingly allow any third party to, permit access, display or use in any way the MLS Databases or the MLS Content in a manner that exceeds, is contrary or in violation of the specific Access and License rights granted herein. Neither Participant nor Contractor shall transmit or permit access, display or use in any way the MLS Databases or the MLS Content on any Website except the Participant's IDX.

3. Responsibilities of Participant. Participant acknowledges and agrees that Participant is solely responsible for: (a) the development, manufacture, marketing and support of Participant's IDX; (b) the use and/or integration of the MLS Content into and/or with Participant's IDX; (c) the actions of the Contractor in the creation or modification of the Participant's IDX; and (d) the prompt and complete cooperation with NORES as described herein.

4. Participant Warranties and Representations. Participant represents and warrants that: (a) Participant has the power and authority to enter into this Agreement; and (b) the Participant's IDX does not and will not infringe any trade name, trademark, trade secret, patent, or copyright or other intellectual property or other rights of any third party. Participant agrees to defend, indemnify and hold MLS Tech (and/or its parent, subsidiaries, affiliates, agents, owners, employees and

directors) harmless from any and all claims or suits against MLS Tech (and/or its parent, subsidiaries, affiliates, agents, owners, employees and directors) arising out of or related to Participant's IDX, the use of Participant's IDX, and/or any breach or alleged breach of any of the foregoing representations or warranties. Participant will pay all costs, damages, losses, and expenses (including, without limitation, reasonable attorneys' fees) incurred by MLS Tech (its parent, subsidiaries, affiliates, agents, owners, employees and managers) together with any award, judgment or agreed upon settlement, with respect to any such claims or suits.

5. Warranties of GTAR and MLS Tech. GTAR and MLS Tech hereby warrants and represents that it has full power and authority to enter into and consummate the transactions contemplated in this Agreement and to grant the License and Access rights set forth herein.

6. Disclaimer of Warranties. **EXCEPT AS EXPLICITLY PROVIDED HEREIN, GTAR AND MLS Tech EXPRESSLY AND SPECIFICALLY DISCLAIMS AND REJECTS ANY AND ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING THE ACCURACY, RELIABILITY, COMPLETENESS AND/OR TIMELINESS OF THE MLS DATABASES OR THE MLS CONTENT, OR ANY WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, MLS Tech CANNOT AND DOES NOT WARRANT THAT THE MLS DATABASES OR THE CONTENT WILL BE AVAILABLE AT ALL TIMES OR ON A CONSISTENT BASIS.**

7. Limitation of Liability. **IN NO EVENT WILL MLS Tech OR GTAR BE LIABLE TO PARTICIPANT OR CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST DATA OR LOST PROFITS) ARISING OUT OF PARTICIPANT'S ACCESS TO OR USE OF THE MLS DATABASES OR THE MLS CONTENT, EVEN IF MLS Tech AND/OR GTAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NORES'S**

**LIABILITY TO PARTICIPANT FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION WILL BE STRICTLY LIMITED TO THE FEES THAT HAVE ACTUALLY BEEN PAID BY PARTICIPANT TO MLS Tech DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT CAUSED SUCH DAMAGE.**

8. Non-Disclosure and Confidentiality. (a) Each party hereunder may disclose to the other certain Confidential Information of such party or of such party's associated companies, suppliers, or Participants. The Term "Confidential Information" means the MLS Databases and the MLS Content, as well as any other information or data that is of value to its owner, that is clearly designated (in writing) as being confidential and is otherwise treated by its owner as confidential. Notwithstanding the foregoing, Confidential Information does not include information that is (i) generally available to the public; (ii) already in the possession of the recipient without restriction; (iii) received from a third party without an obligation of confidentiality; (iv) developed independently by the recipient without reference to the discloser's Confidential Information; (v) subject to written consent of the party which supplied such information authorizing disclosure; or (vi) required to be disclosed by the receiving party by applicable law or legal process, provided that the receiving party shall immediately notify the other party so that it can take steps to prevent its disclosure.

(b) The recipient of Confidential Information: (i) will not disclose the Confidential Information to any third party or use the Confidential Information except as required by law or as is necessary to perform its obligations hereunder; (ii) will use reasonable means to protect and maintain the secrecy of such Confidential Information; and (iii) will return all Confidential Information to its owner upon request or once this Agreement is terminated. In the event a party breaches the confidentiality obligations hereunder, the parties agree that the aggrieved party will suffer irreparable harm and the total amount of monetary damages for any injury to the non-breaching party will be impossible to calculate and would therefore be an inadequate remedy. Accordingly, the parties agree that the non-breaching party may be entitled to, without the necessity of posting a bond, temporary, preliminary and permanent injunctive relief against the breaching party, its officers or employees, in addition to such other rights and remedies to which it may be entitled at law or in equity.

9. Discontinuation of Services Late Payments and

Taxes. MLS Tech may charge interest on any overdue amounts at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less, commencing with the date such amounts were due. Nothing in this Agreement shall be interpreted to mean that Participant has any right not to pay all amounts owed when due. The remedies described herein are in addition to any other legal and/or equitable remedies available to MLS Tech. Participant shall be responsible for all sales taxes and other taxes, levies and assessments related to or arising from Participant's access to and use of the MLS Databases and the MLS Content, except for taxes based on the net income of MLS Tech. Participant shall promptly pay such taxes, levies or assessments or, if MLS Tech has paid any such amounts, reimburse MLS Tech for all such taxes, levies or assessments.

10. Termination. Upon the expiration or termination of this Agreement, as provided for herein, both parties shall promptly return all Confidential Information of the other then in its possession, and Participant shall immediately return or destroy (as directed by MLS Tech) any and all copies of the MLS Database and the MLS Content, as well as all access codes and/or passwords used to access the MLS Database and the MLS Content. Participant shall certify in writing to MLS Tech that all such copies have been returned and/or destroyed, as applicable, within ten days of MLS Tech' request. Sections 2, 4, 5, 6 of the main body of this Agreement and Sections 1-8 of this Exhibit "A" shall survive termination or expiration of this Agreement.

11. Entire Agreement. This Agreement expresses the complete and final understanding with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous written and oral agreements and communications relating hereto.

12. Assignment. Participant may not assign, transfer or pledge this Agreement, or any interest, license or rights herein, in any manner, without the prior written consent of MLS Tech. This Agreement shall be binding upon, and inure to the benefit of, the parties' successors and permitted assigns.

13. Independent Contractor. GTAR and MLS Tech and Participant are independent contractors and this Agreement shall not be construed to create any employment partnership, joint venture, or agency relationship between the parties or authorize any party to bind or commit the other.

14. Non-Waiver. Any failure by either party to detect, protest, or remedy any breach of this Agreement shall not constitute a waiver or impairment of any such term or condition, or the right of such party at any time to avail itself of any remedies it may have for any breach or breaches of such term or condition.

15. Severability. If any provision hereof is declared illegal, invalid or unenforceable by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect. Furthermore, in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement another provision or term as similar to the illegal, invalid or unenforceable provision as may be possible and that is legal, valid and enforceable.

16. Force Majeure. Neither party shall be in default by reason of any failure in performance of this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such party, including but not limited to, acts of God, U.S. or foreign governmental acts (in either a sovereign or contractual capacity) labor strikes, fire, flood, epidemic, acts of war, terrorist acts and/or freight embargoes.

17. Notice. All communications between the parties which are required or permitted to be in writing shall be (i) by hand delivery, with receipt obtained, or (ii) by prepaid, first class U.S. postal service mail, certified return receipt requested, or (iii) by email or facsimile with confirmation of delivery, and sent to the attention of the person executing this Agreement at the address specified in the first page of this Agreement. By written notice pursuant to this Section, either party may designate a different recipient or address for purposes hereof. Notice shall be deemed received when actually received or five (5) business days after such notice is mailed in accordance with this Section, whichever occurs first.

18. Governing Law, Venue and Waiver of Jury Trial. The interpretation of and performance under this Agreement will be construed in accordance with the laws of the State of Oklahoma and the exclusive jurisdiction and venue for all disputes related hereto shall be in the appropriate state or federal court in Tulsa County, Oklahoma. In any such action, suit, or proceeding, such court shall have personal jurisdiction

over all the parties hereto, and service of process upon them under any applicable statutes, laws and rules shall be deemed valid and good. **Each party to this Agreement waives any right to a trial by jury in any action or proceeding 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, and agrees that any such action or proceeding shall be tried before a court and not before a jury.**

19. Attorneys' Fees. In an action brought to enforce the terms and conditions of this Agreement the prevailing party shall be entitled to recover from the nonprevailing party all costs and expenses including reasonable attorneys' fees, incurred by the prevailing party in enforcing the Agreement.