

**Midwest Real Estate Data, LLC
Subscriber Agreement**

This “Agreement” is made between Midwest Real Estate Data, LLC (“MRED”) and you (“You” or “Subscriber”). By clicking “I Agree”, You agree to the following terms:

This Agreement is a binding contract and includes terms limiting your legal rights and MRED’s liability to you.

DEFINITIONS AND USAGE

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

(a) **Firm Participant:** The brokerage or appraisal company to which Individual Participants are affiliated and has executed a Participant Agreement with MRED.

(b) **Individual Participant:** With regard to each office of Firm Participant, the individual “participant” as that term is defined in the MRED Policies that supervises Subscriber’s real estate activities and on whose behalf Subscriber conducts those real estate activities.

(c) **MRED Affiliates:** MRED Affiliates means MRED and its officers, managers, employees, agents, representatives, licensors, and shareholders.

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

(e) **MRED Policies:** MRED’s then current operating agreement, rules and regulations, and policies and procedures adopted by MRED’s Board of Managers, as MRED amends them from time to time.

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

(g) **MRED Software:** MRED’s proprietary web browser interface(s) to the MRED System.

(h) **MRED System:** The aggregate of all hardware and data connection systems that MRED maintains in order to make access to the MRED Database available to Subscriber.

(i) **Other Participants and Subscribers:** All Participants and Subscribers of MRED not party to this Agreement, including Participants’ employees, broker associates, appraisers, and assistants (whether licensed or unlicensed as real estate brokers or appraisers).

(j) **Reseller:** The REALTOR® Association or other organization through which Subscriber receives the MRED Service.

(k) **Saved Information:** Information that Subscriber stores in the MRED System for his/her own later use that is not intended by him/her to be available to MRED's Other Participants and Subscribers, including client prospect and contact information.

(l) **Subscriber Contribution:** All data that the Subscriber submits, contributes, or inputs in the MRED System, including text, photographs, images, and other materials, in any form now known or hereafter discovered, and whether submitted directly by Subscriber or on behalf of Subscriber by another.

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.

MRED'S OBLIGATIONS

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

SUBSCRIBER ACKNOWLEDGMENTS

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

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

6. **Conditions of service.** Subscriber must be affiliated with Individual Participant and Firm Participant at all times during the term of this Agreement. ~~Subscriber may enter and retrieve active listing information on the MRED Service only if Firm 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. MRED is not liable for unauthorized access to or loss of Saved Information. Subscriber is responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

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

9. **Disclosure to government.** Subscriber acknowledges that MRED may provide government agencies access to the MRED Service if required by court order or subpoena.

10. **Priority of agreements.** Subscriber's access to the MRED Service is subject at all times to the limitations set out in the MRED Policies and the Participant Agreement between MRED and Firm Participant. In the event of an apparent conflict between those documents and this Agreement, Subscriber's obligations and rights will be determined, in order of precedence, by the MRED Policies, the Participant Agreement between MRED and Firm Participant, and by this Agreement.

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

SUBSCRIBER'S OBLIGATIONS

12. **Use limited.** Subscriber and Subscriber's assistants will use the MRED Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate strictly as permitted by the MRED Policies. Except as expressly provided in this Agreement and the MRED Policies, Subscriber will not copy, create derivative works of, distribute, perform, or display the MRED Service or any part of it.

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

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

15. **Subscriber Contribution.** When making a Subscriber Contribution to the MRED Service, Subscriber warrants that the information submitted complies with the MRED 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.

INTELLECTUAL PROPERTY

16. **Assignment from Subscriber.** Depending on the election Firm Participant has made in Paragraph 21 of the Participant Agreement between Firm Participant and MRED, the following will apply:

(a) If Firm Participant has selected Option I, Subscriber hereby unconditionally assigns to MRED all right, title and interest in the Subscriber Contribution, including, without any limitation, and copyrights therein under U.S. and international copyright law. To the extent that Subscriber has also purported to assign its interests in the Subscriber Contribution to Firm Participant, the assignment in this paragraph is null and void. To the extent that Subscriber does not possess the rights to permit the foregoing assignment, Subscriber hereby grants to MRED a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Subscriber Contribution.

(b) If Firm Participant has selected Option II, Subscriber hereby grants to MRED a non-exclusive, perpetual, world-wide, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Subscriber Contribution and those portions of the MRED Database relating to Subscriber's listings.

17. **Warranty.** Subscriber warrants that it has the authority to make the assignment or to grant the license in Paragraph 16, as applicable. Subscriber warrants that (a) the Subscriber Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to Firm Participant or MRED.

18. **License.** MRED hereby grants Subscriber a limited, nonexclusive, nonsublicenseable, revocable, worldwide right and license during the term of this Agreement only to use the MRED Software and the MRED Database (collectively, the "**Licensed Materials**"), subject to the permission of Firm Participant and according to the terms of the MRED Policies. Subscriber may not use, aggregate, modify, or store the Licensed Materials for any other purpose than in the preceding sentence, and Subscriber may not use the Licensed Materials in any manner other than in the preceding sentence. MRED retains all rights not expressly granted herein.

FEES AND PAYMENT TERMS

19. **Applicable fees.** No fees are due directly to MRED hereunder. Reseller is solely responsible for establishing the fees it charges for access to the MRED Service and for

determining the means of collecting those fees. MRED does not control or fix the fees that brokers and salespersons pay to Reseller for access to the MRED Service.

20. **Payment terms.** Subscriber agrees to pay all applicable fees to Reseller when they come due according to Reseller's policies. Reseller may revise its schedule of fees at its sole discretion at any time, subject to its own policies. Reseller may suspend Subscriber's access to the MRED service at any time if Subscriber, Firm Participant, or Individual Participant fails to pay fees due to Reseller according to its policies.

21. **No refunds.** If any fees are paid to MRED, then MRED will not refund or pro-rate fees in the event of termination or suspension of this Agreement unless the MRED Policies provide otherwise. Initiation fees, if any, are not refundable.

22. **Taxes.** All fees for the MRED 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 will pay all such taxes and levies other than any tax or levy on the net income of MRED.

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

TERM AND TERMINATION

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

25. **Termination for breach.** Subscriber may terminate this Agreement upon 30 days' notice to MRED in the event that MRED has breached this Agreement and such breach has remained uncured for such 30-day period. MRED may terminate this Agreement at any time upon notice to Subscriber.

26. **Termination of Participant.** In the event of any termination or suspension of Participant Agreement, upon MRED's notice to Subscriber, MRED may in its sole discretion suspend Subscriber's access to the MRED System or terminate Subscriber's license and access agreements, including this Agreement. If MRED does not exercise its right to suspend Subscriber's access to the MRED System or terminate Subscriber's license and access agreements, this Agreement will continue in full force, and the subparagraphs of Paragraph 16 of this Agreement in effect at the time of the termination or suspension of the Participant Agreement will be binding on the parties to this Agreement for its duration.

27. **Termination for failure to pay.** In the event Subscriber fails to pay to Reseller any fees required under this or any Reseller Agreement, MRED or Reseller may terminate service. In its sole discretion, MRED may suspend its performance under this Agreement rather than

terminating it, in the event that Subscriber fails to pay to Reseller any fees required under this or any Reseller Agreement.

28. **Termination without fault.** .Either party may terminate this Agreement with or without cause, upon 60 days' written notice to the other and to Reseller. Subscriber may not terminate this Agreement so long as Subscriber remains affiliated with Individual Participant for which Firm Participant is responsible subject to a Participant Agreement with MRED.

29. **Events upon termination.** Promptly upon any termination of this Agreement, (a) MRED or Reseller will deactivate Subscriber's user ID and password, and Subscriber will have no further access to the MRED Service; (b) Subscriber will purge all copies of the MRED Software and the MRED Database from Subscriber's computers and databases; (c) all licenses granted hereunder will immediately terminate except the license to the Participant Contribution in Paragraph 16(b), if any; and (d) Subscriber will not be permitted to be affiliated with Firm Participant or any other participant of MRED unless a new subscriber agreement between Subscriber and MRED is executed.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION

30. **DISCLAIMER OF WARRANTIES.** EXCEPT AS PROVIDED ABOVE, MRED AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE SUBJECT MATTER OF THIS AGREEMENT AND EXPRESSLY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED. EXCEPT AS PROVIDED ABOVE, THE MRED SERVICE IS PROVIDED AS IS AND AS AVAILABLE WITHOUT WARRANTY OF ANY KIND AND MRED AFFILIATES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY THAT THE MRED SERVICE IS ERROR FREE. SUBSCRIBER IS RESPONSIBLE FOR ANY LIABILITY OR LOSS OF GOODWILL ASSOCIATED WITH PROBLEMS IN DATA INTEGRITY, ACCURACY, OR TIMELINESS ARISING FROM SUBSCRIBER'S USE OF THE MRED SERVICE. The MRED Service may contain hyperlinks to web sites operated by parties other than MRED; MRED 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.

31. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** IN NO EVENT WILL MRED AFFILIATES BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT AND/OR THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE MRED SERVICE, INCLUDING RELIANCE BY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE MRED SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE MRED SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE, EVEN IF SUCH MRED AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, DATA CONNECTION FAILURE, OR

THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE MRED SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS. SUBSCRIBER'S SOLE REMEDIES AGAINST ANY MRED AFFILIATES FOR BREACH HEREUNDER WILL BE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF THE AMOUNTS FIRM PARTICIPANT, INDIVIDUAL PARTICIPANT, AND SUBSCRIBER HAVE PAID TO MRED HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR BREACH. NOTHING IN THIS AGREEMENT WILL EXCLUDE OR LIMIT SUBSCRIBER'S LIABILITY FOR: (I) FOR DEATH OR PERSONAL INJURY DUE TO NEGLIGENCE; (II) FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT; (III) BREACH OF CONFIDENTIALITY OBLIGATIONS; (IV) INDEMNIFICATION OBLIGATIONS, (V) LIQUIDATED DAMAGES DESCRIBED IN SECTION 35, OR (VI) ANY OTHER MATTER IN RESPECT OF WHICH LIABILITY CANNOT LAWFULLY BE LIMITED OR EXCLUDED.

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

33. **Indemnification.** Subscriber, at its sole expense, will defend, indemnify and hold the MRED Affiliates and Other Participants and Subscribers (each an "**Indemnitee**") harmless from and against any damages, liabilities, losses, costs, and expenses (including, but not limited to, reasonable attorney fees and costs) (collectively, "**Losses**") resulting from any claim, suit, action, or proceeding brought by a third party against any Indemnitee resulting from or arising in connection with any acts of Subscriber, Subscriber's commonly owned or operated firm, or use of MRED Service by Subscriber, including (a) putting inaccurate information into the MRED Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the MRED Service; (d) infringing any proprietary or contract right of any third party (including but not limited to submitting to the MRED Database Subscriber Contributions without complying with the terms of this Agreement); (e) breaching any warranty under this Agreement; (f) submitting or causing another to submit content to the MRED Database without sufficient rights; and (g) violating this Agreement or any other agreement or law. For avoidance of doubt, Subscriber, at its sole expense, will defend, indemnify, and hold any Indemnitee harmless from and against any Losses resulting from any claim, suit, action, or proceeding brought by a third party against such Indemnitee that claims the Subscriber Contribution infringes such third party's intellectual property or is inaccurate as a result of Subscriber's knowing, reckless, or negligent action (excluding claims that arise from the use of the Subscriber Contribution in a modified or unauthorized manner). Notwithstanding any terms to the contrary in this Agreement, the failure to give notice to Subscriber within a reasonable time of the commencement of any claim under this paragraph will relieve Subscriber of any liability to such Indemnitee under this paragraph, only to the extent that such failure materially prejudices Subscriber's ability to defend such claim.

34. **Acknowledgment.** Subscriber acknowledges that MRED 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

35. **MRED's remedies.** Because of the unique nature of the MRED Software and the MRED Database, Subscriber acknowledges that MRED would suffer irreparable harm in the event that Subscriber breaches its obligations under this Agreement, and that money damages would be an inadequate remedy to compensate MRED for a breach. MRED is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any threatened, continuing, or further breach by Subscriber without showing or proving any actual damages sustained by MRED, and without posting any bond or other security. Subscriber acknowledges that damages suffered by MRED from access to the MRED Software and the MRED Database by an unauthorized third party as a result of disclosures of any passwords to access the MRED Software or the MRED Database or disclosures of the MRED Software or the MRED Database in breach of this Agreement, regardless of whether such disclosure is intentional or negligent, Subscriber will be liable to MRED for liquidated damages in the amount of \$30,000 for each such disclosure, which is a reasonable estimate of the damages to MRED, and MRED will have the right to immediately terminate this Agreement.

36. **Dispute resolution.** In the event MRED claims that Subscriber has violated the MRED Policies, MRED may, at its option, resolve such a claim according to the disciplinary procedures set out in the MRED Policies, provided MRED does not also base a claim that Subscriber has breached this Agreement on the same facts. Any dispute, claim, or proceeding under this Agreement will have exclusive jurisdiction and venue of the state and federal courts sitting in DuPage County, Illinois, and the parties hereby submit to personal jurisdiction in that venue.

37. **Legal fees.** In the event of legal action between MRED and Subscriber on account of or in respect to this Agreement, if MRED is the prevailing party in such action, it will be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action.

MISCELLANEOUS

38. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, MRED and Subscriber, and this Agreement will not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party. The foregoing notwithstanding, Reseller is a third-party beneficiary of this Agreement and the parties agree that Reseller may enforce those covenants herein of which Reseller is beneficiary.

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

40. **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 paragraph is null and void. MRED may assign this Agreement in its sole discretion.

41. **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 will remain in full force and effect. The foregoing notwithstanding, if any provision of Paragraphs 31 through 35 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber's access to the MRED Service will immediately terminate.

42. **Governing law.** MRED and Subscriber each agrees that this Agreement will be governed by the laws of the State of Illinois, without consideration to conflict and choice of law provisions.

43. **Notice.** Any notice required or permitted to be given under this Agreement by Subscriber will be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation of receipt; or (c) electronic mail, provided sender requests a delivery receipt. MRED may provide notice electronically. All notices are effective on the date of transmission.

44. **Representations and Warranties.** Each party represents and warrants to the other party that (a) it has full corporate or partnership authority, as applicable, to execute, deliver and perform its obligations under this Agreement (including, without limitation, to grant the rights provided herein); (b) the rights that it grants under this Agreement do not violate any contracts to which it is a party; and (c) it will comply with all applicable laws, rules and regulations in the course of performing its obligations under this Agreement

Having read this Agreement, it is binding between You and MRED by You clicking "I Agree".