



MLS Subscriber Agreement

THIS MLS SUBSCRIBER AGREEMENT (together with any modification or amendments hereto in the manner provided herein, this "Agreement") is dated and effective as of the date this Agreement is accepted electronically by the Subscriber party hereto ("Subscriber"), and is between **Arizona Regional Multiple Listing Service, Inc.** ("ARMLS") and said Subscriber.

WHEREAS, ARMLS operates an on-line, computerized database of real property information for the benefit of its Subscribers (the "System" or "ARMLS System");

WHEREAS, the System stores and makes available to Subscribers digital information, including, but not limited to, software licensed by ARMLS from the System creator and from various vendors and suppliers, real property listing data, photographs, county assessor and property tax information, new homes and builder information, HUD/VA data, agent and office information, and other information (the "ARMLS Data");

WHEREAS, Subscriber is a member of, or is permitted access to the ARMLS System (subject to the requirements of ARMLS) through, one of the Shareholder Associations of REALTORS® or an Association of REALTORS® to which ARMLS provides services under a client/vendor relationship (collectively the "Associations" or individually an "Association") and the Associations receive certain services through ARMLS; and

WHEREAS, Subscriber desires to receive services in accordance with this Agreement, and in consideration of such services, Subscriber agrees to abide by the terms and conditions set forth herein.

IN CONSIDERATION of the foregoing recitals and of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. **REPRESENTATIONS OF SUBSCRIBER.** Subscriber represents, warrants and covenants as follows: (i) that, as of the effective date of this Agreement, Subscriber is a real estate licensee or an appraiser licensed or certified by the State of Arizona, who is affiliated with an ARMLS Participant who is in good standing with an Association, and (ii) Subscriber will continue in such capacity at all times while this Agreement is in effect. If Subscriber, at any time during the term of this Agreement, is no longer affiliated with an ARMLS Participant in good standing, Subscriber agrees to notify Subscriber's Association and ARMLS within five (5) days of separation.
2. **COMPLIANCE WITH ARMLS REGULATING DOCUMENTS.** Subscriber acknowledges that access to and use of the System is contingent on Subscriber's compliance with the terms of all of the following documents and materials (collectively, the "ARMLS Regulating Documents"): (i) this Agreement, (ii) ARMLS Rules and Regulations, (iii) all other documented ARMLS' policies and procedures, (iv) any other written materials promulgated by ARMLS and made applicable generally to Subscribers, (v) any published interpretations of any of the foregoing, and (vi) any modifications and amendments of any of the foregoing. Subscriber understands that failure to comply may result in a fine and/or suspension of ARMLS service, which includes loss of use of the System and deactivation of the key that is used to gain access to current lockboxes. Copies of the ARMLS Regulating Documents may be obtained from the ARMLS website (www.ARMLS.com).
3. **SYSTEM ACCESS.** ARMLS will issue one "Agent ID" number to Subscriber. Issuance of the Agent ID number will entitle Subscriber, during the terms of this Agreement, to (i) access and use the System through Subscriber's own System-compatible computer using Subscriber's own Internet connection, (ii) access and use the System through a System-compatible computer device and Internet connection provided by another person, and (iii) obtain an electronic key (for a separate fee and under a separate agreement) that can be used to access electronic keyboxes located on listed properties. THE AGENT ID NUMBER IS PROVIDED EXCLUSIVELY FOR THE PERSONAL USE OF SUBSCRIBER SOLELY DURING THE TERM OF THIS AGREEMENT AND MAY NOT BE USED BY ANY OTHER PERSON TO ACCESS THE SYSTEM THAT IS NOT EXPRESSLY AUTHORIZED BY THE ARMLS GOVERNING DOCUMENTS. SUBSCRIBER AGREES TO USE REASONABLE MEANS TO PROTECT THE CONFIDENTIALITY OF SUBSCRIBER'S AGENT ID NUMBER AND PASSWORD. Subscriber acknowledges that damages suffered by ARMLS from access to the System or ARMLS Data by an unauthorized third party using Subscriber's Agent ID number and password or Subscriber's unauthorized disclosure of any ARMLS Data to a third party would be speculative and difficult to quantify. Accordingly, and as a material inducement to ARMLS to enter into this Agreement, Subscriber agrees that if any disclosure of Subscriber's Agent ID number and/or password results in access to the ARMLS Data by an unauthorized third party or if Subscriber makes disclosure of ARMLS Data to an

unauthorized third party, regardless of whether such access or disclosure is intentional, negligent or inadvertent, then, in addition to any other remedies of ARMLS provided for in this Agreement, Subscriber shall be liable to ARMLS for liquidated damages in the amount of the greater of \$15,000 or the amount established in the ARMLS Regulating or Governing Documents for each real estate listing accessed or disclosed; and in any such case, this Agreement may be terminated. Subscriber agrees the amount of the foregoing liquidated damages bears a reasonable relationship to the anticipated damages that ARMLS will suffer by virtue of access to the System by an unauthorized third party.

4. **TERM AND TERMINATION.** The term of this Agreement shall commence as soon as Subscriber has electronically accepted this Agreement with ARMLS, and Subscriber has paid all fees that are due. The term of this Agreement shall continue in full force and effect until such time as (i) Subscriber is no longer eligible to receive the services provided under this Agreement, or (ii) ARMLS terminates this Agreement due to Subscriber's default in accordance with provisions herein or provisions of the ARMLS Regulatory or Governing Documents, or (iii) ARMLS, in its discretion, elects to terminate this Agreement in connection with the discontinuation by ARMLS of any of the ARMLS services generally provided hereunder to Subscribers. Further, Subscriber shall have the right to terminate this Agreement upon Subscriber's first use of the System following any amendment or modification of the ARMLS Regulating or Governing Documents, if Subscriber is not willing to agree to the terms of such amendment or modification. In that event, Subscriber shall notify ARMLS of their election to terminate and such termination shall become effective upon the receipt by ARMLS of such notice and the payment by Subscriber and receipt by ARMLS of all fees owing through the date of termination. Notwithstanding the foregoing, if Subscriber accesses or uses the System or otherwise avails themselves of ARMLS services provided pursuant to this Agreement at any time after Subscriber's receipt of an amendment or modification of the ARMLS Governing Documents (either pursuant to the procedure set forth in Section 14 of this Agreement or otherwise), such access to or use of the System or ARMLS services automatically shall constitute Subscriber's agreement to such amendment or modification and shall nullify Subscriber's right to terminate this Agreement by virtue of such amendment or modification. Subscriber understands that, upon the termination of this Agreement, Subscriber's Agent ID number will no longer be valid and Subscriber will not be able to access or use the System, will not be eligible to receive any other services or products under this Agreement and will not be able to use the electronic key, if Subscriber has one, to open electronic keyboxes located on listed properties. Promptly upon any termination of this Agreement, (i) ARMLS shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the ARMLS System; (ii) Subscriber shall purge all copies of the ARMLS Data from Subscriber's personal computers; (iii) all licenses granted hereunder shall immediately terminate; and (iv) Subscriber will not be able to use any electronic key to open lockboxes on listed properties.
5. **FEES.** Subscriber agrees to pay Subscriber fees to ARMLS within such times and in such amounts as are set forth in the ARMLS Regulating or Governing Documents or as are otherwise determined by the Board of Directors of ARMLS from time to time. Subscriber understands that such fees may be due in advance. THERE SHALL BE NO REFUND OR PRORATION OF ANY SUBSCRIBER FEES UPON THE TERMINATION OF THIS AGREEMENT.
6. **OWNERSHIP/MISUSES OF SYSTEM AND INFORMATION.** Subscriber acknowledges that all ARMLS Data, except for the text and photos that Subscriber submits ("Subscriber's Contribution"), is owned, leased or licensed by ARMLS and that ARMLS, and not Subscriber, shall retain all right, title and/or interest therein. Subscriber agrees to use such ARMLS Data only in connection with the pursuit of Subscriber's business of listing, selling, leasing and/or appraising real property and otherwise in a manner consistent with ARMLS' Regulating and Governing Documents. Subscriber agrees not to:
 - a. publish, reformat, recompile, resell, repackage, copy, reverse engineer, disclose or use in any manner whatsoever such ARMLS Data, except as permitted in this paragraph, without the prior written consent of ARMLS;
 - b. participate in the collection of large numbers of e-mail addresses, screen names, or other identifiers of others, a practice sometimes known as spidering or harvesting, or participate in the use of software (including "spyware") designed to facilitate this activity;
 - c. interfere with computer networking or telecommunications service to any user, host or network, including denial of service attacks, flooding of a network, overloading a service, improper seizing and abusing operator privileges, and attempts to "crash" a host;
 - d. transmit unsolicited bulk or commercial messages commonly known as "spam;" or
 - e. restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the ARMLS System, including posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of traffic, including excessive downloading of ARMLS data through any manual or automatic means, or interference sufficient to impede others' ability to use, send, or retrieve information.

Subscriber further acknowledges that:

- i. Regardless of whether any of ARMLS third party vendors set any limits on data consumption of the Service, ARMLS reserves the right to set its own limits;
- ii. Excessive downloading can affect the service levels provided to other customers. If ARMLS feels (int ARMLS' sole discretion) a Subscriber's use of the ARMLS System is excessive, ARMLS will contact the Subscriber to discuss this. If usage cannot be kept to an acceptable level after discussion, then ARMLS may suspend all rights of Subscriber to access and use the System, and Subscriber also will be subject, in ARMLS' sole discretion, to the fine and/or suspension described below in this Section.
- iii. In any situation where ARMLS, in its sole discretion, believes that any misuse of the System has occurred by Subscriber or by any party that ARMLS, in its sole discretion, believes may have accessed the System through Subscriber's Agent ID number and password, then ARMLS may suspend all rights of Subscriber to access and use the System pending a final determination by ARMLS as to the potential misuse of the System.

In addition to any other remedies provided to ARMLS in this Agreement, any Subscriber in default under this Section 6 shall, for each violation, be subject to either or both (as determined by ARMLS in its sole discretion) a fine of up to \$5,000 and a suspension of up to 90 days.

7. **PARTICIPANT AUTHORIZATION.** If Subscriber is also an ARMLS Participant, as defined by the ARMLS Governing Documents, Subscriber affirms that Subscriber is in good standing as an ARMLS Participant with an Association and that any licensee affiliated by licensure with Subscriber in its capacity as an ARMLS Participant is eligible to receive the services contemplated under this Agreement unless Subscriber specifically notifies ARMLS, in writing, to the contrary.
8. **ASSIGNMENT.** ARMLS may assign this Agreement and its assignee may also assign same. In the event of assignment, all rights of ARMLS shall be succeeded to by assignee. Subscriber may not assign or delegate this Agreement or any rights, obligations, or duties hereunder without the prior written approval of ARMLS, which may be withheld in the sole discretion of ARMLS. Any purported assignment or delegation in violation of this section shall be void from the time of such purported assignment or delegation.
9. **DEFAULT.** Failure of Subscriber to comply with any of the terms of this Agreement or of any of the other ARMLS Regulating or Governing Documents, including, but not limited to, payment of any penalties, fines or fees due to ARMLS or any Association, shall constitute a breach of this Agreement. Any such breach shall be an immediate default, without notice, unless notice and an opportunity to cure are expressly required for the applicable breach pursuant to this Agreement or any of the other ARMLS Regulating or Governing Documents, in which event, such breach shall not become a default unless it remains uncured after the giving of notice and expiration of the time allowed for cure. Notwithstanding the foregoing, each and every breach by Subscriber of Section 5 of this Agreement shall constitute an immediate default, without notice. Upon the occurrence of a default, ARMLS may pursue any and all remedies provided for in the ARMLS Regulating or Governing Documents or otherwise available at law or in equity. Subscriber also shall be liable to ARMLS for all costs reasonably incurred by ARMLS in the enforcement of this Agreement, including court costs, collection agency fees and reasonable attorneys' fees. After any default under this Agreement, Subscriber may reinstate eligibility for access to the System or ARMLS products or services at the end of any suspension period by doing all of the following: (i) bringing current all accounts with ARMLS and all Associations, (ii) paying all penalties, fines and costs as provided for herein or in any of the ARMLS Regulating or Governing Documents, (iii) curing all defaults under this Agreement, under the ARMLS Regulating or Governing Documents, and under any other agreements with ARMLS or an Association, all to the satisfaction of ARMLS or the applicable Association, and (iv) paying to ARMLS a "Reinstatement Fee" in an amount determined by the Board of Directors of ARMLS from time to time.
10. **NOTICE.** All notices required or permitted under this Agreement shall be mailed via certified mail, sent via hand delivery, or electronically mailed to the parties at their respective addresses set forth herein (in the signature block for Subscriber or below in this Section for ARMLS) or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission. The address of ARMLS for notices under this Agreement is as follows: 130 South Priest Drive, Suite 101, Tempe, AZ 85281 or Contracts@ARMLS.com.
11. **TAXES.** In addition to all other payments hereunder, Subscriber shall pay or reimburse ARMLS and ARMLS

suppliers or vendors for all state and local sales or other taxes of any kind assessed on the services provided hereunder, except income taxes and corporation license fees.

12. **DISCLAIMER OF WARRANTY, LIMITATION OF ARMLS' LIABILITY AND INDEMNIFICATION.** NEITHER ARMLS NOR ANY OF THE ASSOCIATIONS SHALL HAVE ANY LIABILITY FOR INACCURACIES IN DATA INPUT INTO THE SYSTEM BY ANYONE, INCLUDING SUBSCRIBER, ANY OTHER SUBSCRIBER OR ANY SYSTEM SUPPLIER OR VENDOR, OR FOR INACCURACIES IN OR INCOMPLETENESS OF DATA DISPLAYED BY THIRD-PARTY LICENSEES OF SUCH DATA. SUBSCRIBER UNDERSTANDS AND AFFIRMS THAT NEITHER ARMLS NOR ANY OF THE ASSOCIATIONS HAS ANY CONTROL OVER THE OPERATION OF THE SYSTEM OR SUBSCRIBER'S ABILITY TO GAIN ACCESS TO THE INTERNET. ACCORDINGLY, SUBSCRIBER HEREBY WAIVES ANY AND ALL CLAIMS WHICH SUBSCRIBER HAS OR MAY ACQUIRE AGAINST ARMLS OR ANY OF THE ASSOCIATIONS WITH RESPECT TO ANY FAILURE IN THE SYSTEM OR SYSTEM SOFTWARE, THE OPERATION OF THE SYSTEM ITSELF, SUBSCRIBER'S INABILITY TO GAIN ACCESS TO THE INTERNET OR THE SYSTEM AT ANY TIME AND FOR ANY REASON, OR ACTIVITIES RELATING TO OR THE PROVIDING OF PRODUCTS OR SERVICES BY VENDORS OR SUPPLIERS PURSUANT TO THIS AGREEMENT.

AS TO THE SYSTEM, SYSTEM SOFTWARE, TAX DATABASES, HUD/VA DATABASE, AND ALL DATA THEREIN (INCLUDING ALL ARMLS DATA), AND ANY OTHER PRODUCTS OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT WITH ARMLS, EXCEPT AS SPECIFICALLY STATED IN THIS AGREEMENT OR ANY OTHER WRITTEN AGREEMENT TO WHICH ARMLS AND SUBSCRIBER ARE PARTIES, ARMLS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE DATABASES ON THE SYSTEM AND ALL DATA THEREIN ARE MADE AVAILABLE ON AN "AS IS, AS AVAILABLE," BASIS AND ARMLS DOES NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF ANY SUCH DATA.

NEITHER ARMLS NOR ANY OF THE ASSOCIATIONS SHALL BE LIABLE FOR INCIDENTAL DAMAGES OR CONSEQUENTIAL DAMAGES UNDER ANY CIRCUMSTANCES, EVEN IF ARMLS HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. ARMLS' LIABILITY TO SUBSCRIBER FOR ANY REASON SHALL NOT EXCEED THE AGGREGATE AMOUNT OF SUBSCRIPTION FEES PAID BY SUBSCRIBER OR ON BEHALF OF SUBSCRIBER, TO ARMLS HEREUNDER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. SUBSCRIBER FURTHER AGREES THAT ARMLS WILL NOT BE LIABLE FOR ANY LOST PROFITS OR FOR ANY CLAIMS ASSERTED AGAINST SUBSCRIBER BY ANY OTHER PARTY.

SUBSCRIBER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS ARMLS AND EACH ASSOCIATION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FOR, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, COSTS, EXPENSES, LOSSES, LIABILITIES AND ACTIONS, INCLUDING THE PAYMENT OF REASONABLE ATTORNEY'S FEES AND COSTS, ARISING OUT OF OR IN CONNECTION WITH THE FAILURE OF SUBSCRIBER TO COMPLY WITH ANY OF SUBSCRIBER'S OBLIGATIONS OR RESPONSIBILITIES SET FORTH IN THIS AGREEMENT. SUBSCRIBER EXPRESSLY WAIVES, RELEASES AND AGREES TO HOLD HARMLESS ARMLS AND EACH ASSOCIATION FOR, FROM AND AGAINST ANY ACTUAL DAMAGES, CONSEQUENTIAL DAMAGES AND LOST BUSINESS AND ANY OTHER CLAIM ARISING FROM SUBSCRIBER'S USE OF OR INABILITY TO USE THE SYSTEM.

SUBSCRIBER AGREES TO INDEMNIFY AND HOLD HARMLESS EACH AND EVERY ARMLS PARTICIPANT AND OTHER SUBSCRIBER FOR, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, COSTS, EXPENSES, LOSSES, LIABILITIES, AND ACTIONS, INCLUDING THE PAYMENT OF REASONABLE ATTORNEY'S FEES AND COSTS, ARISING OUT OF OR IN CONNECTION WITH ANY OF SUBSCRIBER'S LISTING CONTENT, INCLUDING ALLEGATIONS THAT THE LISTING CONTENT VIOLATES A FAIR HOUSING LAW OR INFRINGES ON OR CONSTITUTES A MISAPPROPRIATION OF ANY PATENT, COPYRIGHT, TRADE SECRET, OR ANY OTHER INTELLECTUAL PROPERTY RIGHT OF ANY PERSON OR ENTITY ANYWHERE IN THE WORLD. THIS PROVISION IS EXPRESSLY PROVIDED FOR THE BENEFIT OF AND ENFORCEMENT BY EACH ARMLS PARTICIPANT AND OTHER SUBSCRIBER.

THE ASSOCIATIONS SHALL BE THIRD PARTY BENEFICIARIES OF THE AGREEMENTS AND UNDERTAKINGS SET FORTH IN THIS SECTION 12.

ALL OF THE INDEMNITY AND RELEASE AGREEMENTS OF SUBSCRIBER SET FORTH IN THIS AGREEMENT SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

13. **COPYRIGHT ASSIGNMENT.** Subscriber agrees to grant ARMLS a perpetual, royalty free, non-revocable, non-exclusive license in and to Subscriber's Contribution, including any copyrights relating to such text and photographs. The license will permit ARMLS to use and compile Subscriber's Contribution and to sublicense the use of Subscriber's Contribution to and distribute to other parties as permitted or contemplated by the ARMLS Regulating or Governing Documents, or in contractual relationships and licenses for such Subscriber's Contributions which ARMLS may enter into from time to time. Subscriber warrants that Subscriber has the authority to grant such license and that Subscriber's Contributions do not infringe on any copyright or other intellectual property rights of any third party. ARMLS is not required to review, edit, or exercise editorial control over the ARMLS System or ARMLS Data and use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, ARMLS may take any steps necessary in its judgment and sole discretion, including deleting ARMLS Data submitted by Subscribers, or portions of it, to avoid, minimize or remedy any actual or potential violation of law or infringement of intellectual property right.
14. **CHANGES TO THIS AGREEMENT.** The first time Subscriber uses the System after a change is made to this Agreement, the System will display a notice requesting Subscriber's agreement to the revised Agreement. Subscriber's use of the System will be conditioned on Subscriber's indication of agreement with the terms of the revised Agreement. Each time this Agreement is revised, Subscriber must signify agreement with the revised version of this Agreement in order to continue using the System. The provisions of the current form of this Agreement in place at any time and from time to time shall control and supersede any inconsistent provisions contained in previous versions of the Agreement.
15. **CONFLICT BETWEEN DOCUMENTS.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. This Agreement shall, if at all possible, be interpreted to be consistent with and supplemental to the other ARMLS Regulating and Governing Documents. If there is a direct conflict between this Agreement and any other ARMLS Regulating or Governing Documents, the terms and provisions of this Agreement shall prevail.
16. **SEVERABILITY.** 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.
17. **GOVERNING LAW.** The performance and interpretation of this Agreement shall be governed and enforced in accordance with the laws of the State of Arizona applicable to contracts made and performed in Arizona without reference to its choice of law provisions.