



HOUSTON ASSOCIATION OF REALTORS®

www.har.com • 3693 Southwest Freeway • Houston, Texas 77027-7597 • Telephone (713) 629-1900 • Fax (713) 629-8878

Nancy Furel • Chair of the Board • nancyfurel@hars.com | C. Robert Hale III • President & CEO • chrohale@hars.com

HRIS MULTIPLE LISTING SERVICE SUBSCRIBER LICENSE AND ACCESS AGREEMENT

This Subscriber License and Access Agreement (“Agreement”) is made as of the Date on the signature page below between (i) HOUSTON REALTORS INFORMATION SERVICE, INC. (“HRIS”), a Texas corporation, which owns and operates a MULTIPLE LISTING SERVICE (“HRIS/MLS”), with offices at 3693 Southwest Freeway, Houston, Texas 77027, and (ii) the undersigned Subscriber (“Subscriber”) described in Exhibit B, who, intending to be legally bound, hereby agree as follows:

1. INTRODUCTION

HRIS/MLS offers an online, interactive real estate information service (the “HRIS/MLS Service”), which is accessible via the Internet through personal computers using a third-party vendor’s proprietary software. Subscriber wishes to obtain, and HRIS/MLS agrees to make available to Subscriber, access to HRIS/MLS Service all in accordance with the terms and conditions of this Agreement. Subscriber shall comply with all HRIS/MLS Rules and Regulations provided to Subscriber in connection with Subscriber’s use of the HRIS/MLS Service.

2. HRIS/MLS SERVICE

2.1 Information. HRIS/MLS maintains real estate information, as more fully described in Section 4, in electronic form on one or more centralized computers (the “HRIS/MLS System”) and makes such information available for access and retrieval by Subscribers and other authorized users through the HRIS/MLS Service. HRIS/MLS does not review or edit the information or exercise any other form of editorial control over the information. Subscriber agrees that the information obtained through the HRIS/MLS Service shall not be reproduced or electronically manipulated for any other purpose than the selling, listing or appraising of real estate, and may not be resold, licensed or otherwise distributed without the written consent of HRIS/MLS except for listing information owned by the undersigned Subscriber for which Subscriber has the right to use in any way Subscriber chooses. Under no circumstances shall Subscriber receive any form of compensation for this information from third parties.

2.2 Evaluation of Information. Subscriber acknowledges that HRIS/MLS does not investigate or confirm any information which may be accessed and retrieved through the HRIS/MLS Service and, as more fully provided in Section 5, HRIS/MLS neither warrants nor endorses any such information for any purpose.

2.3. Public and Private ID. Upon execution of this Agreement, HRIS/MLS shall assign to Subscriber one (1) unique alphanumeric Public and Private ID. The assigned Public and Private ID shall be personal to Subscriber and may not be used by any person other than Subscriber. Subscriber shall be responsible for properly using the Public and Private ID to access and use the HRIS/MLS Service, and Subscriber shall be responsible for payment of all fees specified in this Agreement which result from such use.

2.4. Security. Subscriber is responsible for safeguarding and maintaining the confidentiality of the Public and Private ID and is liable for any consequences that may result from its disclosure, including but not limited to immediate termination of this Agreement and liability for liquidated damages in accordance with Section 9 in connection with the use of the HRIS/MLS Service by any unauthorized person through Subscriber’s Public and Private ID.

2.5 Equipment. Subscriber is responsible for obtaining and maintaining in proper working order all personal computers, Internet connections, and computer software that may be necessary or useful for accessing and using the HRIS/MLS Service and for the proper use thereof. Subscriber shall not be entitled to refund of Service Fees (as hereinafter provided in Section 6) or exemption from HRIS/MLS fines for a personal computer or Internet connection that is unable to access the HRIS/MLS System.

2.6 Modifications. HRIS/MLS reserves the right to modify the HRIS/MLS Service and make access to and use of any information available through the HRIS/MLS Service subject to additional terms or conditions. Subscriber shall have the right to terminate this Agreement at any time without refund or pro rata fee adjustment if any modification to the HRIS/MLS Service or to the terms and conditions under which information is made available are unacceptable to Subscriber.

2.7 Subscriber Information. HRIS/MLS reserves the right to distribute to prospective subscribers and other third parties certain nonconfidential information concerning Subscriber such as name and address. In addition, HRIS/MLS may collect and compile information regarding frequency of use of, or specific uses, of the HRIS/MLS Service by all users, but will not distribute, publish or disclose any information concerning frequency of use of, or specific uses, of the HRIS/MLS Service specifically by Subscriber.

2.8 HRIS/MLS Service Marks and Logos. Subscriber shall have the right, during the term of this Agreement, to use the HRIS/MLS trade name and the service mark and logo for the HRIS/MLS Service in advertising, promotion and marketing materials solely for the purpose of announcing Subscriber's use of the HRIS/MLS Service to prospective customers. Subscriber may republish any description of the HRIS/MLS Service which has been published by HRIS/MLS, provided the description is republished on a verbatim basis; but shall not, under any circumstances, make any unauthorized representations or warranties regarding the HRIS/MLS Service or any information which may be accessed and retrieved through the HRIS/MLS Service.

2.9 Limited Publication. Subscriber shall not knowingly publish any information about the HRIS/MLS Service to competitors or potential competitors of HRIS/MLS.

3. ACCESS TO HRIS/MLS SERVICE.

3.1 Access. Subscriber shall access the HRIS/MLS Service through an Internet connection and software furnished to Subscriber by the HRIS/MLS third-party vendors upon the terms and conditions required by third-party vendor software provider.

4. REAL ESTATE INFORMATION.

4.1 Listing Information. If Subscriber is a listing agent for real property, Subscriber shall be entitled to submit to HRIS/MLS listing information for listed properties and Subscriber's personal listing agent information. Personal listing information shall include the particular data specified on Exhibit B and shall be submitted in the format, and according to the procedures set forth on Exhibit B. Subscriber shall obtain written consent to include any photographs, floor plans or other information pertaining to listed properties that Subscriber includes in the HRIS/MLS System from the owner of such photographs, floor plans or other information if owned by other than Subscriber. Subscriber authorizes HRIS/MLS to reproduce and distribute such listing information through the HRIS/MLS Service electronically and in such other form or manner and to such third parties as HRIS/MLS deems appropriate. Subscriber shall use reasonable care to ensure the accuracy of such submitted information and shall be responsible for submitting listing information, correcting and updating all information Subscriber has submitted in accordance with the HRIS/MLS Rules and Regulations. HRIS/MLS may, in its sole discretion, charge special fees for any listing information beyond the standard listing.

4.2 Optional Information. From time to time, the HRIS/MLS Service may, but shall not be obligated to, make available information other than real estate listing information, which HRIS/MLS determines is relevant to subscribers. Such information may include, but need not be limited to, public records data (such as property tax, assessment, title, mortgage and census information), mortgage qualification data and amortization schedule data.

4.3 HRIS/MLS Database. The term "HRIS/MLS Database" includes, but is not limited to the HRIS/MLS Database, all printouts of information from the HRIS/MLS Database and any publication of information from the HRIS/MLS Database.

4.4 Proprietary Rights and Restrictions. Subscriber acknowledges that the information available through the HRIS/MLS Service may include textual, statistical, financial, photographic, video and audio components which are protected by United States Copyright Law. Subscriber acknowledges that this information is confidential and its use is restricted to Subscribers and Participant Subscribers of the HRIS/MLS Service. Subscriber shall not reproduce, redistribute, publish, display, retransmit, broadcast, sell or license or allow anyone else to reproduce, redistribute, publish, display, retransmit, broadcast, sell or license any such HRIS/MLS Database information in any format to anyone. Subscriber agrees to comply with any additional use restrictions which may be announced by HRIS/MLS at any time regarding specific information in the HRIS/MLS Database.

4.5 Copyright Ownership. All rights, title and interest in each and every HRIS/MLS Database compilation created by HRIS/MLS, and in the ownership of the copyright therein, shall at all times remain vested in HRIS. HRIS shall have the right to license such compilations or portions thereof and any data contained therein to any entity pursuant to the terms agreed upon by the HRIS Board of Directors.

4.6 Consent to Use Information. Subscriber acknowledges that the information available through the HRIS/MLS Service and its availability through the HRIS/MLS Service are subject to the continued consent of any supplying third party. If at any time any supplying third party consent is withdrawn, all information supplied by such party shall be removed from the HRIS/MLS Database.

5. **WARRANTY DISCLAIMER.**

SUBSCRIBER EXPRESSLY AGREES THAT THE HRIS/MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE HRIS/MLS SERVICE IS PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, AND THAT USE OF THE HRIS/MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE HRIS/MLS SERVICE ARE AT THE SOLE RISK OF SUBSCRIBER. HRIS/MLS DOES NOT WARRANT THAT THE HRIS/MLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND HRIS/MLS AND ITS THIRD-PARTY INFORMATION SUPPLIERS MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE HRIS/MLS SERVICE. HRIS/MLS AND ITS THIRD-PARTY INFORMATION SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE HRIS/MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE HRIS/MLS SERVICE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. **SERVICE FEES.**

6.1 Fees. In consideration for the rights to access and use the HRIS/MLS Service, Subscriber shall pay HRIS/MLS the following charges in accordance with the rates set forth on the Schedule of Fees and Charges included herein as Exhibit A:

(a) Initial Application Fee. A non-refundable initial application fee for issuance of the Public and Private ID; and

(b) Subscription Fee. A flat quarterly fee billed in advance for Subscriber's right to continuing access to the HRIS/MLS Service; and

(c) Additional Fees. Other fees and charges as set forth on Exhibit A; and

(d) Reinstatement Fee. A Reinstatement Fee shall be charged any Subscriber who desires to reactive his or her access to the HRIS/MLS Service following termination; and

(e) Uncollected Funds Fee. A service fee shall be charged by HRIS/MLS in the event HRIS/MLS is unable for any reason to debit Subscriber's checking/savings account or credit card; and

(f) Transfer Fee. A transfer fee shall be charged for any Subscriber who transfers from one Participant Subscriber to another.

6.2 Payment. Subscriber's checking/savings account or credit card shall be debited in advance effective on the first day of the month following Subscriber's activation date and quarterly thereafter in advance.

6.3 Taxes. All fees described herein are exclusive of all 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.

6.4 Changes. HRIS/MLS may change the Initial Application Fee, Subscription Fees and any of the Additional Fees at any time.

7. INDEMNIFICATION.

Subscriber shall protect, defend, indemnify and hold harmless HRIS, HRIS/MLS and its officers, directors, employees, agents, representatives and third-party information suppliers of and from any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) arising from any claim, demand, action or proceeding initiated by any third party against any of them based upon (a) inaccuracy of any listing information supplied for the HRIS/MLS Service by Subscriber or by any of Subscriber's licensed agents, (b) any unauthorized use of Subscriber's Public and Private ID, (c) any unauthorized use of the HRIS/MLS Database, or (d) infringement of any proprietary or contract right of any third party as a result of the availability of such information through the HRIS/MLS Service. Subscriber shall assist HRIS and HRIS/MLS, at Subscriber's expense, in the defense or settlement of any claim to which this indemnification obligation applies.

8. TERM; TERMINATION.

8.1 Term. The term of this Agreement shall commence upon the Date hereof and shall continue thereafter as long as Subscriber pays the quarterly subscription fees and any other charges to HRIS/MLS when due unless sooner terminated in accordance with Section 8.2. This Agreement shall continue subject to cancellation by either party upon written notice to the other party.

8.2 Termination. This Agreement and the rights granted hereunder may be terminated by either party in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement, provided, however, Subscriber may terminate at anytime for any reason by providing written notice to HRIS/MLS. Promptly upon any termination or expiration of this Agreement, HRIS/MLS shall deactivate Subscriber's Public and Private ID and Subscriber shall have no further access to the HRIS/MLS Service. Subscriber acknowledges that HRIS/MLS shall have no obligation to refund any fees or charges or any portion thereof paid to HRIS/MLS prior to termination.

8.3 Participant Subscriber Termination. Should Participant Subscriber terminate participation in HRIS/MLS, Subscriber shall also be terminated.

9. UNAUTHORIZED USE OF HRIS/MLS SERVICE.

9.1 Unauthorized Use of Subscriber's Public and Private ID. Subscriber acknowledges that damages suffered by HRIS/MLS from access to the HRIS/MLS Service by an unauthorized third party as a result of disclosure of Subscriber's Public and Private ID would be speculative and difficult to quantify. Accordingly, as a material inducement to HRIS/MLS to enter into this Agreement with Subscriber, Subscriber agrees that in the event that any disclosure of Subscriber's Public and Private ID results in access to the HRIS/MLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Subscriber shall be liable to HRIS/MLS, at HRIS/MLS's option, for liquidated damages as provided in HRIS/MLS Rules and Regulations.

9.2 Unauthorized Disclosure of HRIS/MLS Database by Subscriber. Subscriber acknowledges damages suffered by HRIS/MLS from access to the HRIS/MLS Database by an unauthorized disclosure to a third party by Subscriber would be speculative and difficult to quantify. Accordingly, as an inducement to HRIS/MLS to enter into this Agreement, Subscriber agrees that in the event any Subscriber makes such unauthorized disclosure of this information to any third party, Subscriber shall be liable, at HRIS/MLS's option, for liquidated damages as provided in HRIS/MLS Rules and Regulations.

10. EXCLUSION AND LIMITATION OF LIABILITY.

10.1 Limitations and Exclusions. NEITHER HRIS, HRIS/MLS NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES OR THIRD-PARTY INFORMATION SUPPLIERS SHALL BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE HRIS/MLS SERVICE, INCLUDING BUT NOT LIMITED TO, RELIANCE BY ANY SUBSCRIBER OR AUTHORIZED USER ON ANY INFORMATION OBTAINED THROUGH USE OF THE HRIS/MLS SERVICE OR THAT RESULT FROM MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION, INTERRUPTIONS IN TELECOMMUNICATIONS OR INTERNET CONNECTIONS TO THE HRIS/MLS SERVICE, VIRUSES OR FAILURES OF PERFORMANCE, WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS OR INTERNET FAILURE, THEFT OR DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO, THE HRIS/MLS SERVICE OR RELATED INFORMATION, RECORDS OR PROGRAMS.

10.2 Maximum Aggregate Liability. IN NO EVENT SHALL THE LIABILITY OF HRIS, HRIS/MLS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES AND THIRD-PARTY INFORMATION SUPPLIERS ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

10.3 Acknowledgment. SUBSCRIBER acknowledges that HRIS/MLS 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. SUBSCRIBER irrevocably waives all claims against HRIS and HRIS/MLS or any of its officers, directors, employees, agents, representatives and third-party information suppliers for any action in connection with the HRIS/MLS Service and particularly as to acts imposing liquidated damages upon SUBSCRIBER or revoking SUBSCRIBER's access to the HRIS/MLS Service.

11. REMEDIES.

Subscriber acknowledges and agrees that the third-party software comprising the HRIS/MLS Service and HRIS/MLS Database are confidential and proprietary products and that in the event there is an unauthorized disclosure of such by Subscriber, no remedy at law may be adequate. Therefore, Subscriber agrees that in the event of such unauthorized disclosure of third-party software comprising the HRIS/MLS Service or HRIS/MLS Database, HRIS/MLS may seek injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law.

12. LEGAL FEES AND COSTS.

In the event legal action is taken against Subscriber and HRIS or HRIS/MLS prevails in obtaining equitable relief or monetary damages, Subscriber will be obligated to reimburse HRIS/HRIS/MLS for the reasonable attorneys' fees, costs and expenses it incurred in pursuing such legal action. Subscriber will also be responsible for any legal fees and costs incurred by HRIS/MLS in enforcing any order or collecting a judgment.

13. MISCELLANEOUS.

Subscriber and Participant Subscriber agrees and acknowledges that HRIS/MLS may change the terms of this Agreement as the result of any amendments to the HRIS/MLS Rules and Regulations. This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas and the terms and conditions of this Agreement shall be performable in Harris County, Texas.