

# Midwest Real Estate Data, LLC Subscriber Agreement

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

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:

## DEFINITIONS AND USAGE

1. **Definitions.** For purposes of this Agreement, the following terms shall 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 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.

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 shall provide one unique user ID and password to Subscriber. The user ID and password will provide Subscriber access to all data and functions in the 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 shall 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 shall 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 shall not copy, create derivative works of, distribute, perform, or display the MRED Service or any part of it.

13. **Confidentiality.** Subscriber shall maintain the confidentiality of its user ID and password and the MRED Database; Subscriber shall 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 shall 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 shall 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 Section 21 of the Participant Agreement between Firm Participant and MRED, the following shall 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 in Paragraph 16. 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, non-sublicensable, revocable, worldwide](#) license [during the term of this Agreement only](#) to use the MRED Software and the MRED Database during the term of this Agreement, subject to the permission of Firm Participant and according to the terms of the MRED Policies. All other uses are prohibited.

## 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 (or other REALTOR® associations) 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.** MRED shall 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 shall 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 shall commence upon the Effective Date set forth below and shall continue thereafter on a month-to-month basis until terminated.

25. **Termination for breach.** MRED may terminate this Agreement with notice if Subscriber fails to comply with the terms of this Agreement or of the MRED Policies.

26. **Termination of Participant.** In the event of any termination or suspension of Participant Agreement, upon MRED notice to Subscriber, MRED may in its sole discretion suspend Subscriber access to MRED System or terminate Subscriber license and access agreements, including this Agreement. If MRED does not exercise its right to suspend Subscriber access to the MRED System or terminate Subscriber license and access agreements, this Agreement shall continue in full force, and the subparagraph of Section 16 of this Agreement in effect at the time of the termination or suspension of the Participant Agreement shall 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 upon 30 days' written notice to the other party 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 shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the MRED Service; (b) Subscriber shall purge all copies of the MRED Software and the MRED Database from Subscriber's personal computers; (c) all licenses granted hereunder shall immediately terminate except the license to the Participant Contribution in Paragraph 16(b); 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.** MRED PROVIDES THE MRED SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS" "AS AVAILABLE" BASIS. USE OF THE MRED SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MRED SERVICE ARE AT THE SOLE RISK OF SUBSCRIBER. THE MRED AFFILIATES DO NOT WARRANT THAT THE MRED SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE MRED AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE MRED SERVICE. THE MRED AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE MRED SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MRED SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. 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.** NONE OF THE MRED AFFILIATES SHALL BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE 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; 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.

32. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL 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 ~~shall, 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 ~~and all liability, damages, loss or expense~~ liabilities, losses, costs, and expenses (including, ~~but not limited to~~, reasonable attorney fees of attorneys and other professionals) in costs) (collectively, "Losses") resulting from any claim, demand, suit, action, or proceeding initiated brought by ~~any~~ a third-party against ~~the MRED Affiliates or Other Participants and Subscribers~~ any Indemnitee resulting from or arising from in connection with any acts of Subscriber, ~~Subscriber's commonly owned or operated firm,~~ or use of MRED ~~Systems or MRED Database Service~~ by Subscriber, including ~~but not limited to~~ (a) putting inaccurate information into the MRED Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the MRED ~~Database 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; ~~and~~ (f) [submitting or causing another to submit content to the MRED Database without sufficient rights; and \(g\) violating this Agreement](#) or any other ~~Agreement~~[agreement](#) or ~~any~~ law.

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. **Injunctive relief.** Subscriber acknowledges and agrees that the MRED Software and MRED Database are confidential and proprietary products of MRED and that in the event there is an unauthorized disclosure of them by Subscriber, no remedy at law will be adequate. Subscriber therefore agrees that in the event of such unauthorized disclosure of MRED Software or MRED Database, MRED may obtain injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

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 shall have 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. **Liquidated damages.** Subscriber acknowledges that damages suffered by MRED from access to the MRED Service by an unauthorized third party as a result of disclosure of Subscriber's password or an unauthorized disclosure by Subscriber of the MRED Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to MRED to enter into this Agreement with Subscriber, Subscriber agrees that (a) in the event that any disclosure of Subscriber's password results in access to the MRED Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Subscriber shall be liable to MRED for liquidated damages in the amount of \$15,000 (or the amount established in the MRED Policies, whichever is greater) and termination of this Agreement; and (b) in the event that Subscriber makes unauthorized disclosure of any portion of the MRED Database to any third party, Subscriber shall be liable for liquidated damages in the amount of \$15,000 (or the amount established in the MRED Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

38. **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 shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action.

## MISCELLANEOUS

39. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, MRED and Subscriber, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party. 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.

40. **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.

41. **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Subscriber. Any purported assignment or delegation in contravention of this section is null and void. MRED may assign this Agreement in its sole discretion.

42. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. The foregoing notwithstanding, if any provision of Paragraph 31 through 35 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber's access to the MRED Service shall immediately terminate.

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

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

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

Document comparison by Workshare 10.0 on Monday, May 15, 2023 8:15:37 PM

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Description	#17549090v6<AFDOCS> - MRED Subscriber Agreement Clickthrough - Updated May 2023
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