

## Realtracs, Inc.

### MLS User Agreement

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

This MLS User Agreement (as the same may be amended or modified from time to time, collectively, "Agreement") is made between Realtracs, Inc. (together with its successors and/or assigns, "Realtracs") with offices at 301 Seven Springs Way, Suite 100, Brentwood, TN 37027, and you ("You" or "User"). By clicking "I Agree", You voluntarily agree to the following terms:

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

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

**Individual Participant:** With regard to each office of Firm Participant, the principal broker or appraiser manager that supervises User's real estate activities and on whose behalf User conducts those real estate activities.

**Other Participants and Users:** All participants and users of Realtracs not party to this Agreement, including Firm Participants' employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

**Participation Agreement:** The MLS Participation Agreement entered into by Realtracs and Firm Participant, as the same may be amended or modified from time to time.

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

**Realtracs Policies:** Realtracs' then current bylaws, rules and regulations, and policies and procedures adopted by Realtracs' board of directors or authorized delegates, as Realtracs amends them from time to time.

**Realtracs Service:** The services Realtracs provides to Firm Participant under this Agreement and similar services Realtracs provides to third parties under similar agreements, including any access or license to the Realtracs Software, the Realtracs Database, and the Realtracs System.

**Realtracs Software:** Realtracs' proprietary web browser interface(s) to the Realtracs System.

**Realtracs System:** The aggregate of all hardware and telecommunications systems that Realtracs maintains, or that Realtracs contractors maintain on its behalf, in order to make access to the Realtracs Database available to User.

**SCC:** All selection, coordination, and arrangement by User of listing information submitted, contributed, or input in the Realtracs System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the Realtracs System. SCC does not include original text or photographs

**User Contribution:** All data that the User submits, contributes, or inputs in the Realtracs System, including text, photographs, images, and other materials, in any form now known or hereafter discovered, except the SCC.

**2. Realtracs' obligations.** Subject to the terms and conditions of this Agreement and the Realtracs Policies, Realtracs shall provide one unique user ID and password to User. The user ID and password will provide User access to all data and functions in the Realtracs Service to which User is entitled under the Realtracs Policies. Realtracs makes no warranties, however, that the Realtracs Service will be available at all times.

**3. User's obligations.**

**(a) Compliance with rules:** User agrees to comply at all times with this Agreement and the Realtracs Policies, which are hereby incorporated by reference. User acknowledges that Realtracs may suspend User's access to the Realtracs Service in the event of User's breach of the Realtracs Policies.

**(b) Fees:** User shall pay the fees set forth in Realtracs' schedule of fees, which may be amended at any time by Realtracs in its sole discretion. Realtracs will provide User with written notice at least 30 days in advance of the effective date.

**(c) User Contributions:** User hereby represents and warrants that the User Contribution complies in all respects with the Realtracs Policies, and covenants that the User Contribution shall at all times comply with the Realtracs Policies.

**4. Intellectual property in User Contribution.** User acknowledges Firm Participant's election in Section 4 of the Participation Agreement and acknowledges that, depending on such election, the following shall apply:

**(a) Assignment from User:** If Firm Participant has selected Option 1 in Section 4 of the Participation Agreement, User hereby unconditionally assigns to Realtracs all right, title and interest in the User Contribution, including, without any limitation, any copyrights therein under U.S. and international copyright law. To the extent that User has previously assigned its interests in the User Contribution to Firm Participant, the assignment in this paragraph is null and void. To the extent that User does not possess the rights to permit the foregoing assignment, User hereby grants to Realtracs 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 User Contribution.

**(b) License from User:** If Firm Participant has selected Option 2 in Section 4 of the Participation Agreement, User hereby grants to Realtracs 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 User Contribution and those portions of the Realtracs Database relating to User's listings.

**5. Other intellectual property provisions.** Pursuant to the Realtracs Policies, the SCC shall be a work made for hire by User for the benefit of Realtracs, which shall be deemed the SCC's author for purposes of copyright law. If for any reason the SCC cannot be provided as a work made for hire, You shall immediately upon such determination, and hereby do, assign to Realtracs all right, title and interest in such SCC, including, without any limitation, any copyrights therein under United States and international copyright law. Realtracs hereby grants User a license to use the Realtracs Software and the Realtracs Database during the term of this Agreement, subject to the permission of Firm Participant and according to the terms of the Realtracs Policies. All other uses are prohibited.

**6. DISCLAIMER OF WARRANTIES.** REALTRACS PROVIDES THE REALTRACS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE REALTRACS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE REALTRACS SERVICE ARE AT THE SOLE RISK OF USER. REALTRACS DOES NOT WARRANT THAT THE REALTRACS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND REALTRACS MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE REALTRACS SERVICE. REALTRACS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE REALTRACS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE REALTRACS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**7. LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE REALTRACS NOR ITS AFFILIATES SHALL BE LIABLE TO USER, INDIVIDUAL PARTICIPANT, FIRM PARTICIPANT OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE REALTRACS SERVICE, INCLUDING RELIANCE BY USER ON ANY INFORMATION OBTAINED THROUGH USE OF THE REALTRACS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE REALTRACS 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 REALTRACS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

**8. MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL REALTRACS BE LIABLE TO USER FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM PARTICIPANT, INDIVIDUAL

PARTICIPANT, OR USER HAS PAID REALTRACS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100.

**9. Indemnification.** User shall defend, indemnify and hold Realtracs and Other Participants and Users harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against Realtracs or Other Participants and Users arising from any acts of User or any commonly owned or controlled firm, including but not limited to (a) putting inaccurate information into the Realtracs Service; (b) making unauthorized use of User's access credentials or password; (c) making unauthorized use of the Realtracs Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any representation or warranty under this Agreement; (f) submitting or causing another to submit content to Realtracs Database without sufficient rights; and (g) violating this or any other Agreement or any law.

**10. Acknowledgment.** User acknowledges that Realtracs 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.

#### **11. Miscellaneous**

**(a) Term; Termination; Suspension:** This Agreement shall commence when You click "I Accept" set forth below and shall continue thereafter on a month-to-month basis until terminated as described herein. This Agreement may be terminated (i) by either party 30 days after any party's written notice to the other of its intent to terminate, however User may not terminate this Agreement so long as User remains affiliated with Individual Participant for which Firm Participant is responsible subject to the Participation Agreement; (ii) immediately upon Realtracs's written notice to User if User fails to comply with this Agreement or with the Realtracs Policies (subject to any hearing or appeal rights of User as described in the Realtracs Policies); (iii) immediately upon Realtracs' written notice to User in the event of any termination of the Participation Agreement. Upon termination, all licenses granted hereunder shall immediately terminate, except the license to the User Contribution in Section 4(b). In the event of termination, User will not be permitted to be affiliated with Firm Participant or any other participant of Realtracs unless a new agreement between User and Realtracs is executed. In the event User breaches this Agreement and entitles Realtracs to terminate under this Paragraph 11(a), Realtracs may in its sole discretion suspend its performance instead of terminating this Agreement. Realtracs may make this election by notice to User within three days after the initiation of the suspension. User's obligations hereunder continue during any period of suspension.

**(b) Interpretation and amendment:** User expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). This Agreement may be amended by Realtracs's providing 30 days' advance written notice of a proposed amendment to User and User's continued use of the Realtracs Service or Realtracs Database after the expiration of the 30-day notice period, such continued use shall be deemed an acceptance to the terms of such amendment by User. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties, including by electronic means.

**(c) Assignment:** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by User. Any purported assignment or delegation in contravention of this section is null and void.

**(d) Integration and severability; conflict:** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements between the parties hereto on the subject hereof. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid by a court of competent jurisdiction, the other provisions shall remain in full force and effect. The foregoing notwithstanding, if any provision of Sections 6 through 10 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and User's access to the Realtracs Service shall immediately terminate. To the extent there is any conflict between this Agreement, an applicable Participation Agreement, and the Realtracs Policies, the Realtracs Policies shall govern. As between this Agreement and any applicable Participation Agreement, this Agreement shall govern.

**(e) Governing law; venue:** The laws of the State of Tennessee govern this Agreement and its interpretation, without regard to any conflict of laws principles. Any action arising under this Agreement may be litigated exclusively in confidential, single party (not class-based) arbitration under the American Arbitration Association (AAA) rules for expedited commercial dispute resolution, before a single arbitrator sitting in Davidson County, Tennessee, who is exclusively authorized to grant any relief related to this Agreement and to determine the arbitrability of any dispute. The prevailing party is entitled to recover its attorney fees and costs.

**(f) Notice:** Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (i) U.S. Mail, postage paid and return receipt requested; (ii) express mailing service with confirmation of receipt; or (iii) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

**(g) Survival:** The representations and warranties in this Agreement, the license to the User Contribution in Section 4(b) and the provisions of Sections 7, 8, 9 and 11(e) shall remain in full force and effect notwithstanding the termination of this Agreement.

**Having read this Agreement, You assent to its terms by clicking "I Agree".**