



This SUBSCRIBER AGREEMENT, (the "Agreement") is made and entered into and is effective as of the date the last party executes this Agreement, is between SOUTH CENTRAL KANSAS MLS, INC. ("SCK MLS"), a Kansas corporation, having its principal offices at 170 South Dewey, Wichita KS 67202, and the undersigned Subscriber, having a principal place of business at the address as set forth on the signature page and as may be changed from time to time ("Subscriber") and is made with reference to the following facts and circumstances:

**1. RECITALS.**

1.1 SCK MLS is a multiple listing service company ("MLS") as it is defined in the South Central Kansas Multiple Listing Service Rules & Regulations effective January 1, 2005 ("SCK MLS Rules").

1.2 SCK MLS collects, primarily from real estate professionals, certain information about businesses and real properties in the counties of Butler, Cowley, Harvey and Sedgwick and portions of other geographic areas in the state of Kansas (hereinafter defined as "SCK MLS Data"), and then aggregates, compiles, displays, maintains and distributes the SCK MLS Data, principally for the benefit of those same real estate professionals together with other products and services which facilitate the business of Subscriber (collectively, the "SCK MLS Services"). The "SCK MLS Data" includes data relating to commercial, multi-family and residential properties listed for sale or rent, those that have been sold, and those with respect to which the sale has been cancelled or has not closed, and includes unimproved and vacant properties.

1.3 Subscriber is either a licensed real estate agent or an appraiser affiliated with a Participant who has access to the SCK MLS Services and SCK MLS Data as a direct result of Participant's participation in SCK MLS pursuant to the SCK MLS Participation Agreement.

1.4 The parties desire to enter this Agreement which, in addition to the SCK MLS Rules and SCK MLS Compliance Guidelines ("SCK MLS Guidelines"), will govern the use of the SCK MLS Services and SCK MLS Data by the Subscriber.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and intending to be legally bound, each of parties agrees as follows:

**2. GRANT OF ACCESS TO SCK MLS SERVICES AND SCK MLS DATA.**

Subject to the provisions, terms and conditions of this Agreement, the SCK MLS Rules and SCK MLS Guidelines, SCK MLS hereby grants to Subscriber during the Term a non-exclusive, non-transferable license to access the SCK MLS Services and the SCK MLS Data for the purpose of adding, editing, reviewing, researching, retrieving the SCK MLS Data and using the SCK MLS Services to conduct the Subscriber's real estate or appraisal business.

**3. METHOD OF ACCESS TO SCK MLS SERVICE.**

Subscriber shall access the SCK MLS Data and SCK MLS Services through various types of electronic communications furnished to Subscriber by SCK MLS and/or third-party vendors, upon the terms and conditions required by SCK MLS and the third party vendor.

#### **4. SUBMISSION OF SUBSCRIBER'S DATA.**

4.1 Grant of Rights to SCK MLS. Subscriber, as the acquirer and provider of information relating to real estate properties that are for sale or that have sold including Subscriber's personal listing agent information, remarks, virtual tours, photographs and videos hereby grants to SCK MLS a perpetual, worldwide, royalty-free license to use, display and copyright all such information entered by Subscriber into the SCK MLS Data and to reproduce, use, distribute, display and grant access to such SCK MLS Data through the SCK MLS Services electronically and in such other form or in such other manner and to such third parties as SCK MLS deems appropriate.

4.2 Submitted Information. Subscriber hereby warrants that if it is a licensed real estate agent, it will have a valid listing agreement prior to submitting listing data to SCK MLS. Any information to be submitted to the SCK MLS Service shall include the particular data specified by the SCK MLS Service and shall be submitted in the form and format and according to the procedures set forth in the SCK MLS Rules and in accordance with the SCL MLS Guidelines. Subscriber shall use reasonable care to ensure the accuracy and completeness of such submitted information and shall be responsible for correcting and updating all submitted information in accordance with the SCK MLS Rules and SCK MLS Guidelines.

4.3 Required Consents. Subscriber shall obtain written consent to include any virtual tours, photographs, videos, floor plans or other information pertaining to properties that Subscriber submits for inclusion in the SCK MLS Service from the owner of such virtual tours, photographs, videos, floor plans or other information if owned by someone other than by Subscriber.

4.4 Copyright. SCK MLS may manipulate and/or compile the information, data, and tangible or intangible property items provided by the Subscriber in accordance with SCK MLS Rules. The Subscriber acknowledges that the manipulation or compilation being performed by SCK MLS will result in a database containing various compilations of real estate data which are copyrightable material. By the act of submitting any real estate data and information to SCK MLS, the Subscriber hereby assigns its right, title and interest to copyright the information in the compilation to the Participant it is affiliated with who, Subscriber understands, assigns it to SCK MLS and consents to the use of its contributions, in such copyrighted material including the bringing of all actions and causes of action and warrants that it will not challenge, interfere with or violate such copyright and warrants that it will not seek compensation therefor.

4.5 Internet Display And Other Third Party Use. SCK MLS may use, or may arrange for third parties to use its listing information, data, and tangible or intangible property items in products and services including, but not limited to, reference materials, books, brochures, flyers, electronic transmissions, advertisements, Internet or other computer network displays, on-line data, computer programming, and software, regardless of the form, whether printed, electronic, digital, magnetic media, or otherwise. By the act of submitting any listing data or other information to SCK MLS, the Subscriber hereby assigns its right, title and interest to allow Internet display and other third party use of the listing or other information in the SCK MLS compilation and consents to such uses and warrants that it will not challenge, interfere with or violate such uses and warrants that it will not seek compensation therefor.

#### **5. CONDITIONS, PROHIBITIONS AND LIMITATIONS ON ACCESS.**

5.1 Compliance with Rules. Subscriber certifies it has received and read a copy of the SCK MLS Rules and Regulations and agrees to comply with the SCK MLS Rules and SCK MLS Guidelines, the By-Laws, all as may be amended from time to time.

5.2 Use Prohibitions. Subscriber agrees that it will not reproduce, redistribute, publish, display, retransmit, broadcast, electronically manipulate, sell, license, rent, transmit, or in any manner commercially exploit or allow anyone else to reproduce, redistribute, publish, display, retransmit, broadcast, electronically manipulate, sell, license, rent, transmit or in any manner commercially exploit any SCK MLS Data in any format to anyone for any purpose other than the selling, listing or appraising of real estate or its access to the SCK MLS Services or SCK MLS Data. Under no circumstances shall Subscriber receive any form of compensation for this information from any third party. Subscriber acknowledges that the SCK MLS Data is confidential and its use is restricted to Subscriber.

5.3 Certain Data Subject To Consent Withdrawal. Subscriber acknowledges that certain of the SCK MLS Data available through the SCK MLS Service are subject to the continued consent of supplying third parties. If at any time any supplying third party's consent is withdrawn, all information supplied by such party shall be removed from the SCK MLS Data.

6. **Fees.** In consideration for the rights to access and use the SCK MLS Data and SCK MLS Services, Subscriber shall pay SCK MLS the following non-refundable fees in accordance with the rates set forth on the Schedule of Fees and Charges attached hereto, incorporated herein and made a part hereof.

6.1 Application Fee. A non-refundable fee for administrative processing of Subscriber's access and issuance of the Subscriber's access identifications;

6.2 Reinstatement Fee. A reinstatement fee for reactivation of a Subscriber's access to the SCK MLS Service following termination by either SCK MLS or Subscriber. Reinstatement is only available so long as reinstatement is requested by Subscriber within the first twelve (12) months following the date of termination of its Subscriber;

6.3 Collection Fee. Collection fees include attorney fees and any and all costs incurred by SCK MLS if SCK MLS is unable for any reason to process Subscriber's check or if Subscriber's credit card is rejected or for any overdue payment;

6.4 Manual Input Fee. Manual input fee for fulfilling Subscriber's request that SCK MLS input listing information on Subscriber's behalf;

6.5 Changes. SCK MLS reserves the right to change the amounts of fees at any time.

6.6 Taxes. Subscriber will pay all applicable 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.

6.7 Set Up Costs. 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 SCK MLS Data and SCK MLS Services and for the proper use thereof. Subscriber shall not be entitled to refund of any fees under any circumstances for any hardware, software or Internet connection that is unable to access the SCK MLS Service.

## 7. PROPRIETARY RIGHTS.

7.1 Subscriber acknowledges that the SCK MLS Data and SCK MLS Services are valuable commercial products, the development of which has involved the expenditure of substantial time and money, that the SCK MLS Data may include textual, statistical, financial, photographic, video and audio components which are proprietary information of SCK MLS under copyright, and have been furnished to Subscriber in trust. All rights, title and interest in the SCK MLS Data, including the ownership of the copyright therein, shall at all times remain vested in SCK MLS. Except for the rights granted Subscriber herein, Subscriber agrees and understands that SCK MLS shall remain the exclusive owner of all rights, title, and interest in the SCK MLS Data and SCK MLS Services licensed hereunder and all copyrights and renewals thereof, heretofore or hereafter secured therein. All publication, dissemination and other rights in and to the SCK MLS Data and SCK MLS Services licensed hereunder are reserved for SCK MLS in all languages, formats and media throughout the world for the sole and exclusive use or any other disposition by SCK MLS, its respective assignees or grantees at any time and from time to time without obligation or liability to Subscriber.

## **8. IDENTIFICATION NUMBERS.**

8.1 User ID and Password. SCK MLS shall assign a user identification and password to Subscriber to access and use the SCK MLS Data and SCK MLS Services. The user ID and password are personal to Subscriber and may not be used by any other person at any time for any purpose. Subscriber shall be responsible for the security and safe keeping of its user identification and password.

8.2 Secure Computing. SCK MLS reserves the right to establish security measures and establish practices and procedures to safeguard the SCK MLS Data and SCK MLS Services and Subscriber agrees to abide by such security measures and procedures to safeguard the SCK MLS Data and SCK MLS Services.

8.3 Confidentiality. Subscriber shall treat the access identifications as private, confidential and personal and shall safeguard and maintain their confidentiality. Use by any other person or entity shall be considered as theft. Subscriber shall be liable for any consequences that may result from unauthorized disclosure of Subscriber's access identification, whether intentional, negligent or inadvertent, including but not limited to immediate termination of this Agreement and liability for liquidated damages. Subscriber acknowledges that SCK MLS may seed the SCK MLS Data and undertake monitoring on a regular random basis such that violations of the security of Subscriber's access identifications will be detected. This obligation to maintain confidentiality shall survive the termination of this Agreement.

## **9. SCK MLS USE OF SUBSCRIBER INFORMATION.**

SCK MLS reserves the right to distribute to prospective Subscribers and other third parties certain non-confidential information concerning Subscriber such as name and address. In addition, SCK MLS may collect and compile information regarding frequency of use of, or specific uses, of the SCK MLS Data and SCK MLS Services by all users, including Subscriber.

## **10. TERM AND TERMINATION.**

10.1 Term. The term of this Agreement shall be one (1) year commencing upon the date Subscriber executes this Agreement on the signature page hereof and shall automatically extend for additional one (1) year terms unless sooner terminated in accordance with Section 10.2 or 10.3, or upon cancellation by either party upon twenty four (24) hours written notice to the other party.

10.2 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. SCK MLS may immediately terminate this Agreement in the event Subscriber is no longer licensed to practice real estate in the State of Kansas or in the event the Participant with whom Subscriber is affiliated is no longer licensed to practice real estate in the State of Kansas or in the event Subscriber moves and affiliates with a non-Participant of SCK MLS. SCK MLS may terminate this Agreement on thirty (30) days written notice thereof or automatically and immediately in the event Subscriber violates the SCK MLS Rules or the SCK MLS Guidelines.

10.2.1 Promptly upon any termination of this Agreement, SCK MLS shall deactivate Subscriber's access identification numbers, and Subscriber shall have no further access to the SCK MLS Data or SCK MLS Services. Subscriber acknowledges that SCK MLS shall have no obligation to refund any fees or charges or any portion thereof paid to SCK MLS prior to termination.

10.3 REALTOR® Membership Termination. Should Subscriber terminate REALTOR® membership with their local association or board of REALTORS® or terminate its participation in the SCK MLS, this Agreement and the rights to access the SCK MLS Data and SCK MLS Service shall terminate.

10.4 No Refund of Fees Upon Termination. In the event of termination of this Agreement, SCK MLS shall not be obligated to refund any fees for any unexpired portion of any term.

## **11. SCK MLS SERVICE MARKS AND LOGOS.**

Subscriber shall have the right, during the term of this Agreement, to use the SCK MLS trade name and logo for the SCK MLS Services as available, in advertising, promotion and marketing materials solely for the purpose of announcing Subscriber's use of the SCK MLS Services to prospective customers. Subscriber may re-publish any description of the SCK MLS Services which have been published by SCK MLS, provided the description is re-published on a verbatim basis, but shall not, under any circumstances, make any unauthorized representations or warranties regarding the SCK MLS Services or any SCK MLS Data.

## **12. WARRANTY DISCLAIMER.**

SUBSCRIBER EXPRESSLY AGREES THAT THE SCK MLS SERVICES AND THE SCK MLS DATA ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, AND THAT USE OF THE SCK MLS SERVICES AND THE SCK MLS DATA ARE AT THE SOLE RISK OF SUBSCRIBER. SCK MLS DOES NOT WARRANT THAT THE SCK MLS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND SCK MLS MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY SCK MLS DATA AVAILABLE THROUGH THE SCK MLS SERVICES. SCK MLS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SCK MLS DOES NOT WARRANT THAT THE SCK MLS DATA IS ERROR-FREE, NOR THAT IT WILL MEET SUBSCRIBER'S REQUIREMENTS, NOR THAT ANY ELECTRONIC TRANSMISSION THEREOF WILL OPERATE IN AN ERROR-FREE MANNER.

## **13. LIMITATION OF LIABILITY.**

13.1 Limitations and Exclusions. Neither SCK MLS nor any of its officers, directors, employees, agents, or representatives 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 SCK MLS Services, including but not limited to, reliance by Subscriber on any information obtained through use of the SCK MLS Service or that result from mistakes, omissions, deletions or delays in transmission of such information, interruptions in telecommunications or Internet connections to the SCK MLS Service, viruses or failures of performance, whether caused in whole or in part by negligence, acts of god, telecommunications or Internet failure, theft or destruction of, or unauthorized access to, the SCK MLS Service or related information, records or programs.

13.2 Maximum Aggregate Liability. In no event shall any liability of SCK MLS, its officers, directors, employees, agents, or representatives arising out of any claim related to this Agreement exceed the aggregate amount paid by Subscriber hereunder in the twelve (12) months immediately preceding the event giving rise to such claim.

## **14. SUBSCRIBER AUTHORIZATION TO ENTER THIS AGREEMENT.**

Subscriber represents and warrants it is a duly licensed real estate professional in the State of Kansas and licensee of a SCK MLS Participant.

## **15. INDEMNIFICATION BY SUBSCRIBER.**

Subscriber shall protect, defend, indemnify and hold harmless SCK MLS and its officers, directors, employees, agents, or representatives 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 the negligent, intentional or illegal acts of Subscriber, including but not limited to: (a) inaccuracy of any listing information supplied to SCK MLS by Subscriber, (b) any unauthorized use of Subscriber's access identification number, (c) any unauthorized use of the SCK MLS Data, or (d) infringement of any proprietary or contract right of any third party as a result of the availability of such information through the SCK MLS Service. Subscriber shall assist SCK MLS, at Subscriber's expense, in the defense or settlement of any claim to which this indemnification obligation applies. These indemnification provisions shall survive the termination of the Subscriber's in the MLS and the termination of this Subscription Agreement.

## **16. LIQUIDATED DAMAGES FOR UNAUTHORIZED USE.**

16.1 Unauthorized Use of Access Identification Numbers for SCK MLS Service. Subscriber acknowledges that damages suffered by SCK MLS from access to SCK MLS Services by an unauthorized third party as a result of disclosure of Subscriber's access identification number would be speculative and difficult to quantify. Accordingly, as a material inducement to SCK MLS to enter into this Agreement with Subscriber, Subscriber agrees that in the event that any disclosure of Subscriber's access identification number results in access to SCK MLS Services by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Subscriber shall be liable to SCK MLS, at SCK MLS's option, for liquidated damages in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00).

16.2 Unauthorized Disclosure of SCK MLS Data. Subscriber acknowledges damages suffered by SCK MLS from access to the SCK MLS Data by an unauthorized disclosure to a third party by Subscriber would be speculative and difficult to quantify. Accordingly, as a material inducement to SCK MLS to enter into this Agreement, Subscriber agrees that in the event Subscriber makes such unauthorized disclosure of SCK MLS Data to any third party, Subscriber shall be liable to SCK MLS, at SCK MLS's option, for liquidated damages in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00).

## **17. INJUNCTIVE REMEDIES.**

Subscriber acknowledges and agrees that the SCK MLS Services and SCK MLS Data 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 or use of the SCK MLS Services or SCK MLS Data, SCK MLS may seek injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law.

## **18. LEGAL FEES AND COSTS.**

In the event legal action is taken against Subscriber, or against Subscriber and SCK MLS, and SCK MLS prevails in obtaining equitable relief or monetary damages, Subscriber will be obligated to reimburse SCK 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 SCK MLS in enforcing any order or collecting a judgment.

**19. MISCELLANEOUS.**

Subscriber agrees and acknowledges that SCK MLS may change the terms of this Agreement as the result of any amendments to the SCK MLS Rules or MLS Guidelines. This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof.

This Agreement may not be assigned by Subscriber without the prior written consent of SCK MLS. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Kansas.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year set forth below.

**Subscriber**

**SOUTH CENTRAL KANSAS MLS, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Name (please print)

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Facsimile

\_\_\_\_\_  
Email Address

Date: \_\_\_\_\_, 20\_\_\_\_

Participant Firm/Broker Name \_\_\_\_\_

Name of Company \_\_\_\_\_ Office ID \_\_\_\_\_

Office Address - Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

County \_\_\_\_\_ Phone # \_\_\_\_\_ Ext. \_\_\_\_\_

Fax # \_\_\_\_\_ Pager # \_\_\_\_\_ Cell Phone # \_\_\_\_\_

Email Address \_\_\_\_\_

Subscriber primary Association/Board is: \_\_\_\_\_

**KANSAS REAL ESTATE LICENSE / APPRAISER LICENSE INFORMATION:**

Type of License: \_\_\_\_\_

License Number: \_\_\_\_\_

Date Expires: \_\_\_\_\_

**SOUTH CENTRAL KANSAS MLS  
SUBSCRIBER AGREEMENT**

**SCHEDULE OF FEES AND CHARGES  
January 1, 2009**

<b><u>Description:</u></b>	<b><u>Amount</u></b>
<b>Initial Application Fee</b>	<b>\$75.00</b>
<b>Quarterly Subscription Fee</b>	<b>\$95.00</b>
<b>Reinstatement Fee.</b> A reinstatement fee shall be charged to reactivate access to the SCK MLS Service following termination.	<b>\$50.00</b>
<b>Collections Fee</b> – if SCK MLS is unable for any reason to process Participant’s check or credit card rejection for any due payment.	<b>\$30.00</b>
<b>Manual Input Fee.</b> Manual input fee for fulfilling Subscriber’s request that SCK MLS input listing information on Subscriber’s behalf.	<b>\$10.00</b>
<b>Fee For Searches By SCK MLS Staff.</b> Fee for fulfilling Subscriber’s request that SCK MLS search listing information on Subscriber’s behalf.	<b>\$20.00</b>