



Subscription Agreement

This Subscription Agreement (the "Agreement") is made and entered into by and between the Sunflower MLS, Inc. (the "MLS"), and an individual real estate agent, sales licensee, or non-principal broker affiliated with a Participant in the MLS (the "Sales Licensee").

1. **Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Definition Section of this Agreement.
2. **Grant of Subscriber Rights in Multiple Listing Service.** Subject to the terms and conditions of this Agreement and the Rules and Regulations, MLS agrees to make the MLS Database available for access by Sales Licensee, and Sales Licensee shall have all rights and obligations of a subscriber in MLS's multiple listing service as set forth under the Rules and Regulations. Sales Licensee may permit duly authorized employees or agents associated with his/her office to access the MLS Database on Sales Licensee's behalf and pursuant to the terms of this Agreement; provided that, Sales Licensee (a) accepts full responsibility, and shall be liable to MLS for use of the MLS Database by such employee or agent; and (b) promptly terminates access to the MLS by such employee and agent upon such employee or agent ceasing to be authorized as set forth in this provision. Access to the MLS Database shall be through a means determined by MLS.
3. **Intellectual Property Ownership.**
 - a. Sales Licensee acknowledges and agrees that the MLS Database, and all copies, modifications, enhancements, and derivative works of the MLS Database, are the property of MLS, and all right, title, and interest in and to the MLS Database, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS. Sales Licensee hereby irrevocably assigns to MLS any and all rights which it may have or acquire in and to the MLS Database.
 - b. Sales Licensee acknowledges and agrees that the Listing Content, and all copies, modifications, enhancements, and derivative works of the Listing Content, are proprietary, confidential, original works of authorship of MLS, or have been assigned or licensed to MLS, and are protected under United States copyright, trademark, and trade secret laws of general applicability. Sales Licensee acknowledges and agrees that all right, title, and interest in and to the Listing Content, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS or its licensors. Sales Licensee hereby irrevocably assigns to MLS any and all rights not assigned to Broker which it may have or acquire in and to the Listing Content. Nothing in this Agreement or the Rules and Regulations shall be deemed to convey to Sales Licensee an interest in or to the MLS Database or Listing Content, but only a limited right of access and use, revocable in accordance with the terms of this Agreement.
 - c. Sales Licensee agrees not to challenge MLS's rights in and to the Listing Content or the MLS Database or to take any action inconsistent with the provisions of this Section of this Agreement. Sales Licensee agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the copyright application and registration of the Listing Content and the MLS Database.
 - d. Without limiting the generality of this paragraph, Sales Licensee acknowledges and agrees that MLS may license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the applicable broker/brokerage firm or by the Rules and Regulations.
4. **Fees.** In consideration for subscriber rights in MLS's multiple listing service and for the services provided and licenses granted under this Agreement, Sales Licensee agrees to pay to MLS the fees ("Fees") in the amount, and in accordance with the terms, established by MLS for subscribers to MLS's multiple listing service, which amount and terms may be changed by MLS at any time effective upon thirty (30) days prior written notice to Subscriber.

5. **No Assignment by Sales Licensee.** Sales Licensee agrees that this Agreement is personal to Sales Licensee, and Sales Licensee may not assign or transfer this Agreement, including any license granted under this Agreement, or transfer any rights or delegate any duties under this Agreement, to any third party. Any attempt to assign, transfer, or delegate any of Sales Licensee's rights, duties, or obligations under this Agreement shall be void.
6. **Interruptions in Service.** Sales Licensee acknowledges that access to the MLS Database may from time-to-time be unavailable to Sales Licensee, whether because of technical failures or interruptions, intentional downtime for service or changes to MLS's website, or otherwise. Sales Licensee agrees that any modification of MLS's website, and any interruption or unavailability of access to the MLS Database shall not constitute a default of any obligations of MLS under this Agreement, and MLS shall have no liability of any nature to Sales Licensee for any such modifications, interruptions, unavailability, or failure of access.
7. **Copies and Derivative Works.** Except as otherwise expressly provided in this Agreement or the Rules and Regulations, Sales Licensee may not do any of the following, either directly or indirectly, including assist any other person to do, or otherwise contribute in any way to any of the following:
 - a. Make any copies of the MLS Database, or any portion of the MLS Database, including any specific Listing Content included in the MLS Database;
 - b. Create any derivative works, enhancements, or other modifications of the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database;
 - c. Download, distribute, export, or transmit the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database; or
 - d. Publicly display the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database.
8. **Representations and Warranties Regarding Listings.** Sales Licensee represents and warrants with respect to each Broker's Listing or change to a Broker's Listing submitted by Sales Licensee to Broker, the following:
 - a. Sales Licensee and the respective Seller have assigned in writing all of Seller's and Sales Licensee's rights, title and interest, including all copyright rights and other intellectual property rights, in and to the Listing Content to Broker.
 - b. The Broker's Listing complies in all respects with the Rules and Regulations.
 - c. To the best of Sales Licensee's knowledge and after reasonable due diligence to verify the accuracy of all information in the Broker's Listing, all information included in the Broker's Listing is accurate and not misleading.
 - d. The Listing Content for each Broker's Listing is an original work of authorship of the Broker, or has been assigned to Broker pursuant to an enforceable assignment. Except for Broker, no other person or entity, including Sales Licensee or any Seller, has any rights of any nature in or to any of the Listing Content for any Broker's Listing.
 - e. There is no claim, litigation or proceeding pending or threatened with respect to the Listing Content for any Broker's Listing.
9. **Submission of Listings.** As a material condition to accessing the MLS Database, Sales Licensee agrees to submit to MLS on behalf of Broker, all Listings for properties listed for sale by Sales Licensee, in accordance with, and except as otherwise provided in, the Rules and Regulations. MLS may refuse to accept or include in, and may remove from, the MLS Database, any Listing, or any Listing Content, or may require Sales Licensee, on behalf of Broker, to direct MLS to modify any Listing Content, as provided under the Rules and Regulations or if MLS determines, in its sole discretion, that any such Listing Content may violate or infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as provided in the Rules and Regulations, Sales Licensee acknowledges that MLS has no obligation to remove or modify any Listing or Listing Content. MLS grants to Sales Licensee a limited, non-exclusive, personal license to input Listing Content in the MLS Database, and modify such Listing Content, only on behalf of Broker and strictly in accordance with the terms and conditions of this Agreement and the Rules and Regulations. Sales Licensee acknowledges and agrees that any Listing or Listing Content, or any prospective Listing or Listing Content, submitted to MLS may be accessible by other users of MLS's multiple listing service, and MLS shall have no liability to Sales Licensee for providing such other users access to any Listing or Listing Content, or any prospective Listing or Listing Content.

10. **Confidential Information.** Any information provided by MLS to any Sales Licensee, including without limitation, any password to the MLS Database, any printouts of the MLS Database as provided under this Agreement, and all Listing Content, including personal information of a Seller (collectively “Confidential Information”) shall be maintained by Sales Licensee as confidential and available exclusively for use by the Sales Licensee as provided in this Agreement. Sales Licensee shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law. Sales Licensee shall not disclose any Confidential Information pursuant to a court order or as required by law until Sales Licensee has given MLS ten (10) days prior written notice and an opportunity to oppose such disclosure. Notwithstanding the foregoing, Sales Licensee may disclose Listing Content for individual Listings strictly in accordance with this Agreement and the Rules and Regulations.
11. **Additional Representations and Warranties of Sales Licensee.** Sales Licensee represents and warrants the following to MLS: (a) Sales Licensee is a real estate Sales Licensee licensed and in good standing; (b) Sales Licensee is a member of a Board in good standing; (c) Broker has consented to Sales Licensee entering into this Agreement; (d) this Agreement, when executed by Sales Licensee, will be valid, binding and enforceable with respect to Sales Licensee in accordance with its terms; (e) the provisions of the services provided under this Agreement and the fulfillment of Sales Licensee’s obligations as contemplated under this Agreement are proper and lawful; (f) Sales Licensee is not and shall not be under any disability, restriction or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement.
12. **Compliance with Governing Rules and Agreements.**
- a. By entering into this Agreement, Sales Licensee represents and warrants to MLS that he or she has read and understands, and shall be bound by and at all times fully comply with and perform all of Sales Licensee’s obligations under this Agreement, the Rule and Regulations, as may be amended from time to time by MLS, the applicable Board Rules and Regulations, and the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®. In addition to all other rights and remedies available to MLS under this Agreement and the Rules and Regulations, Sales Licensee acknowledges that MLS may levy fines against Sales Licensee for noncompliance with the Rules and Regulations as provided in the Rules and Regulations. A copy of the then-current version of the Rules and Regulations is available upon request.
 - b. To the extent there is any conflict between this Agreement, an applicable Participation Agreement, and the Rules and Regulations, the Rules and Regulations shall govern. As between this Agreement and any applicable Participation Agreement, this Agreement shall govern.
13. **No Warranty.** THE SERVICES PROVIDED AND LICENSE GRANTED TO SALES LICENSEE UNDER THIS AGREEMENT ARE PROVIDED ON AN “AS IS” BASIS, WITHOUT ANY WARRANTY OF ANY NATURE. MLS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, MLS DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY LISTING CONTENT, AND THEIR ACCURACY.
14. **Limitation of Liability.** MLS’S ENTIRE AND CUMULATIVE LIABILITY TO SALES LICENSEE, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MLS DATABASE OR LISTING CONTENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY SALES LICENSEE TO MLS DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT SHALL MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
15. **Injunction.** MLS and Sales Licensee agree that a breach or violation of Sections 7, 10, and 16.e of this Agreement will result in immediate and irreparable injury and harm to MLS. In such event, MLS shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that, this shall in no way limit any other remedies which MLS may have, including, without limitation, the right to seek monetary damages.
16. **Term and Termination.**
- a. Either party may terminate this Agreement at any time for any reason upon thirty (30) days prior written notice to the other party.
 - b. MLS may terminate this Agreement upon the occurrence of any of the following events: (1) Participant requests in writing to MLS that this Agreement be terminated; (2) Sales Licensee fails to pay any Fees when due; (3) Sales

Licensee discloses any Confidential Information, including, without limitation, any password of Sales Licensee, except as expressly provided in this Agreement; (4) Sales Licensee otherwise fails to comply in all respects with the Rules and Regulations, the applicable Board Rules and Regulations, or the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®; (5) Sales Licensee defaults under any material term or condition of any License Agreement; or (6) Sales Licensee defaults under any other material term or condition of this Agreement. Except as otherwise provided in this Agreement, termination pursuant to this paragraph of this Agreement shall be effective at any time after MLS has given ten (10) business days notice to Sales Licensee of any such event, and such event has not been cured within such ten (10) day period. Notwithstanding the foregoing sentence, if, in the reasonable discretion of MLS, the occurrence of any such event could result in irreparable harm to MLS, termination shall be effective immediately, without prior written notice to Sales Licensee, provided that notice shall be delivered to Sales Licensee within ten (10) business days following such termination.

- c. This Agreement shall automatically terminate upon termination of the Participation Agreement; except that if Broker, and not Brokerage Firm, entered into the terminated Participation Agreement, this Agreement shall continue in effect provided that another Broker or his/her Brokerage Firm enters into a Participation Agreement within thirty (30) days after termination of the terminated Participation Agreement. If another Participation Agreement is not entered into within such thirty (30) day period, this Agreement shall automatically terminate upon expiration of such thirty (30) day period.
 - d. In addition to all other rights and remedies available to MLS under this Agreement, if Sales Licensee fails to pay any Fees when due, or otherwise defaults under this Agreement, MLS may, in its sole discretion, temporarily suspend the license granted to Sales Licensee to access the MLS Database until all outstanding Fees have been paid in full or the default has been cured.
 - e. Upon termination of this Agreement, Sales Licensee agrees to immediately destroy any printouts of the MLS Database or Listing Content, and any copies of the MLS Database and Listing Content in Sales Licensee's possession or under Sales Licensee's control. Upon termination of this Agreement, all licenses granted and all services provided to Sales Licensee under this Agreement shall terminate. No pre-paid Fees will be refunded to Sales Licensee for any termination of this Agreement.
17. **Indemnification.** Sales Licensee agrees to indemnify and hold harmless MLS, and its officers, directors, employees, shareholders from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorney's fees and costs, arising out of or connected with any Listing Agreement, this Agreement, submission to MLS of any Listing or Listing Content and the inclusion of any Listing or Listing Content by Sales Licensee in the MLS Database, including, without limitation, any claim that the access to, display of, and/or use of any Listing Content infringes on or constitutes a misappropriation of any patent, copyright, or trade secret, or any other intellectual property right of any person or entity anywhere in the world, including any claims by Sellers. MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.
18. **Proprietary and Other Notices.** Sales Licensee agrees that it will not alter or remove any trademarks or copyright notices or other notices and disclaimers located or used on, or in connection with, the MLS Database or any printouts of the MLS Database allowed under this Agreement.

19. **General.**

- a. **Notices.** All notices, demands, or consents required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, by a reputable overnight courier service, or by e-mail, if the sender receives and maintains a copy of a certified mail receipt and a copy is mailed within (1) business day after notice is delivered by e-mail, to the appropriate party at the following addresses:

If to Sales Licensee:

At the street address or e-mail maintained by MLS for Sales Licensee.

If to MLS:

*Sunflower MLS, Inc.
2130 S.W. 37th Street
Topeka, KS 66611-2571*

The foregoing addresses may be changed from time-to-time by delivering notice of such change, referencing this Agreement, to the parties to this Agreement.

- b. **Governing Law; Submission to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the state of Kansas. Sales Licensee acknowledges that by using the services provided under this Agreement, Sales Licensee has transacted business in the state of Kansas. By transacting business in the state of Kansas by agreement, Sales Licensee voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in Shawnee County, state of Kansas, as to all matters relating to or arising from this Agreement.
 - c. **Costs of Litigation.** If any action is brought by either party to this Agreement against the other party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney's fees, costs, and expenses of litigation.
 - d. **Severability.** Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement.
 - e. **No Waiver.** The waiver by either party of, or the failure of either party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement. The subsequent acceptance of any payment due under this Agreement by any party shall not be deemed to be a waiver of any preceding breach of the party making payment with respect to any term, covenant or condition contained in this Agreement.
 - f. **Entire Agreement; Modifications Only in Writing.** This Agreement, together with the Rules and Regulations and any applicable License Agreement, (i) constitutes the entire agreement between MLS and Sales Licensee concerning the MLS Database, Listing Content, and all other subject matter of this Agreement, (ii) supersedes any contemporaneous or prior proposal, representation, agreement, or understanding between the parties, and (iii) may not be amended except in writing signed by MLS and Sales Licensee.
 - g. **No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of MLS and Sales Licensee and is not intended to benefit any third party, including any Seller or Sales Licensee. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement.
20. **Definitions.** The following terms shall have the following meanings in this Agreement:
- a. **Broker** means the principal real estate broker/broker in charge who is a Realtor® in good standing, and who has engaged Sales Licensee as an agent/sales licensee of broker, either as an employee or independent contractor.
 - b. **Brokerage Firm** means the real estate brokerage firm affiliated with Broker.
 - c. **Broker Listings** means only the Listings of Broker.
 - d. **Board** means a Board of REALTORS® or association of REALTORS® established and operated in accordance with the applicable rules and regulations of the NATIONAL ASSOCIATION OF REALTORS®.
 - e. **Board Rules and Regulations** means the rules and regulations, as amended, of the Board of which a Sales Licensee is a subscriber.
 - f. **Exempted Listing** means a Listing which the respective Seller refuses to have disseminated by MLS pursuant to a written certification, or any other Listing which is not required to be filed with MLS as provided under the Rules and Regulations.
 - g. **License Agreement** means a license agreement entered into between MLS and Sales Licensee or MLS and a third party at the request of the Subscriber.
 - h. **Listing** means a real estate listing of a participant in MLS's multiple listing service.
 - i. **Listing Agreement** means an enforceable, written, and fully executed agreement between Broker and a Seller whereby, among other things, Broker agrees to provide real estate sales services to Seller, and Seller agrees to pay compensation for services provided, including compensation to a cooperating Broker, if applicable, all in accordance with applicable law.

- j. **Listing Content** means all content, including without limitation, all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information submitted by Broker to MLS with respect to all Broker’s Listings except Exempted Listings.
- k. **MLS Database** means the compilation of Listings, including information for sold properties, known as the MLS Database, as modified from time-to-time by MLS, and which, as of the date of this Agreement, is available to Subscribers at <http://topekamls.paragonrels.com>.
- l. **Participation Agreement** means a participation agreement, in a form acceptable to MLS in its sole discretion, entered into between MLS and Broker or Brokerage Firm (the “Participant”), which grants participation rights in MLS’s multiple listing service to Broker or Brokerage Firm.
- m. **Seller** means the seller(s) or lessor(s) of a property which is the subject of a Listing at issue under this Agreement.
- n. **Vendor** means any person or entity which has entered into a License Agreement to perform duties related to establishing a web-site, software and other services related thereto to assist in marketing properties for Sales Licensee.

Dated effective _____, _____.

Sunflower MLS, Inc.

Sales Licensee

By: _____

By: _____

