



## MEMBER ACCESS AND LICENSE AGREEMENT

BETWEEN:

**THE MISSISSAUGA REAL ESTATE BOARD**

**(the "Board")**

**AND** \_\_\_\_\_

**(the "Member")**

**AND**

\_\_\_\_\_

**And**

\_\_\_\_\_

**(the "Member")**

**WHEREAS**, the Board owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board;

**AND WHEREAS**, the Board's Database constitutes a compilation of real estate listings within a specific geographic area (the "Database Compilation"), all rights in which are owned by the Board;

**AND WHEREAS**, each listing constitutes a compilation of text, photographs, images, and other geographic and property information (collectively, the "Content");

**AND WHEREAS**, all rights in the compilation of Content for each listing are also owned by the Board (the "Listing Compilation");

**AND WHEREAS**, the Content for each real estate listing is input by a Member using a copyright-protected and proprietary Data Input Form created by the Board, and pursuant to a User Authorization Agreement with the Board;

**AND WHEREAS**, all rights in the coding used to organize the Content, and in the encoded Content for each listing, are owned or controlled by the Board;

**AND WHEREAS**, the Member wishes to access the Board's Database, for the purpose of downloading the Member's listings in electronic form, for the specific purpose set out below;

**NOW THEREFORE**, in consideration of the following terms and conditions, the adequacy and sufficiency of which are hereby acknowledged, the parties agree and undertake as follows:

## **I. ACCESS, LICENSE AND RESTRICTIONS**

### **Access and License**

**(a)** Provided that the Member complies with the terms and conditions of this Agreement, the Board hereby:

- (i) agrees to permit the Member to access the Board's Database for the purpose of downloading that Member's real estate listings, that is, the Listing Compilations including the Content, as such listings may exist during the term of this Agreement (collectively, the "Member Listings"), and
- (ii) grants to the Member a non-exclusive, non-transferable license to download the Member Listings **(as approved by Broker of Record/Broker Manager if applicable)**, and to reproduce, reformat, modify, use, communicate and display the Member Listings on the Member's website located at \_\_\_\_\_, and for no other purpose (the "License").

**(b)** The Member will provide a technical contact (either the Member or another person in the Member's employment) who will be responsible for downloading, importing, decrypting, decompressing, interpreting and rendering the Content for use on the Member's website. If the technical contact is not the Member, then the

Member shall ensure that the technical contact agrees in writing to be bound by the terms and conditions of this Agreement regarding the use, protection and ownership of the Member Listings, and the Member shall promptly provide a copy of said agreement to the Board upon request.

**(c)** The Member will pay the Board a setup fee of \$250.00 plus HST. This charge includes a limited amount of basic technical support by e-mail.

## **Restrictions**

**(d)** The Member is specifically prohibited from doing any of the following:

- (i) using the Member Listings for any purpose other than as set out in this License, including without limitation seeking to sell, license, rent, remarket or commercialize the Member Listings;
- (ii) allowing or assisting a third party to access the Board's Database, or transferring any or all of the Member Listings to a third party other than as specifically permitted by this Agreement or authorized in writing by the Board; and
- (iii) sharing or disclosing any access codes or passwords provided by the Board for the purposes of this License.

**(e)** Nothing in this Agreement precludes a Member from using his or her own factual information, documents, images or photographs not obtained from the Board's Database for any purpose, including participation in a third party listing or advertising service.

## **II. PRIVACY**

**(a)** All Content is personal information within the meaning of the applicable privacy legislation and is therefore considered confidential information.

**(b)** The Member will not collect, use or disclose the Content in any manner not expressly permitted by this Agreement.

**(c)** The Member has implemented appropriate security measures to protect the Content.

**(d)** "Appropriate security measures" means technical, physical and procedural controls to protect personal information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by the Member, whether by accident or otherwise, especially where such personal information is transmitted over electronic networks under the control of or as authorized by the Member.

**(e)** The Member shall promptly provide written notice to the Board about:

- (i) any request for the disclosure of the Member Listings or Content, including requests by law enforcement authorities, without responding to the request unless required by law or judicial order; and
- (ii) any accidental or unauthorized access to, or disclosure of, the Member Listings or Content.

**(f)** The Member will promptly address and fully co-operate with all enquiries from the Board with respect to Licensee's use of the Member Listings and Content.

**(g)** The Member will treat the Member Listings and Content at all times as confidential information and will bind its employees and agents in writing to the same terms as set out in this Agreement.

**(h)** The Member will promptly return to the Board or destroy all Content which is no longer necessary to fulfill the purpose for which it was made available, unless otherwise instructed by the Board or required by law.

### **III. TERM**

**(a)** This Agreement will take effect upon execution by both parties and will remain in full force and effect until such time as the Board transition to the Corelogic Computer System (i.e., MATRIX), unless this Agreement is terminated as provided for herein, or unless the Member ceases to be a Member of the Board, in which case this Agreement shall terminate automatically.

### **IV. AVAILABILITY**

**(a)** The Board will permit the Member to access the Board's Database based on the technical procedure set out in Schedule "A" hereto.

**(b)** The Board will make reasonable efforts to provide the Member with access to the Board's Database at all times that the Board's Database is in operation, except

for those times required for normal and adequate maintenance of computer hardware and software or to address any security concerns. In no circumstances shall the Board be responsible or liable for any interruption in the provision of computer access to the Member, even if the interruption occurred as a result of the Board's own negligence.

**(c)** The Member acknowledges and agrees that the Board may at any time modify or change the software and/or hardware and/or the formatting, structure and organization of the Content employed by the Board, and that such changes may affect the Member's access to the Board's Database. In no circumstances shall the Board be responsible or liable as a result of any non-compatibility, and all costs associated with the redesign or modification to the Member's software to ensure compatibility shall be borne solely by the Member. The Board will make reasonable efforts to provide the Member with advance notice of any change or modification in the operation of the Board's Database that might affect the Member's access to the Board's Database.

**(d)** In the event that the Board believes, in its sole discretion, that the Member has breached any term or condition of this Agreement, the Board may, in addition to any other rights it may have, immediately suspend Member's access to the Board's Database until the breach has been remedied.

## **V.**

### **TERMINATION**

**(a)** This Agreement may be terminated:

- (i) At any time by either party, without cause, on 30 days written notice to the other;
- (ii) Immediately by the Board if the Board, in its sole discretion, determines that the Member or the Member's technical contact has used, transferred or disclosed the Member Listings or Content or has accessed the Board's Database in a manner which breaches this Agreement; or
- (iii) Immediately by either party if the other has breached any other material provision of this Agreement.

**VI. OBLIGATIONS ON TERMINATION**

**(a)** Upon termination of this Agreement for any reason, the Member agrees as follows:

- (i) the Member shall have no right to download the Member Listings, and shall immediately cease doing so; and
- (ii) the Member shall immediately cease any unauthorized or improper use, reproduction or distribution of the Member Listings in the Member's possession, power or control, and shall destroy any and all unauthorized copies thereof.

**VII. INTELLECTUAL PROPERTY RIGHTS**

**(a)** The Member acknowledges that the Board owns all right, title and interest, including all copyrights, trade marks and other proprietary rights, in and to the Board's Database including the Database Compilation, the Listing Compilation, and the Member Listings including the Content provided by the Board. The Board acknowledges that the Member owns all right, title and interest in each listing contract.

**(b)** The Member shall comply with, observe, and be bound by all restrictions, copyright notices or other limitations on access to the Board's Database and use of the Member Listings, as may be adopted by the Board from time to time; and

**(c)** The Member acknowledges that MLS<sup>®</sup>, Multiple Listing Service<sup>®</sup>, REALTOR<sup>®</sup>, and associated marks and logos are trade marks owned by CREA and used under license by the Board. Any use or display of these trade marks by the Member must comply with CREA's Rules, Regulations and Policies.

**VIII. LIMITATION OF LIABILITY AND INDEMNITY**

**(a)** The License is granted on a strictly "as is" basis in all respects. Access to the Board's Database and Content is solely at the risk of the Member, including without limitation the risk that the Content is inaccurate and/or incomplete, or that the

Content and the transmission thereof are corrupted or contain viruses, bugs or other defects.

**(b)** The Board makes no warranties, promises, conditions or representations of any kind, and specifically disclaims any and all warranties and conditions (including those of merchantability and fitness for any particular purpose), whether arising by statute, or operation of law, or from a course of dealing or usage of trade, or otherwise.

**(c)** In no event shall the Board be liable for any indirect, special, incidental, consequential or punitive damages, including but not limited to those for business interruption or loss of profits, even if the Board has been notified of the possibility of such damage.

**(d)** The Board's maximum liability arising from any and all claims in connection with this Agreement shall not exceed the greater of (i) all license fees and costs paid by the Member, and (ii) \$100.

**(e)** The Member shall indemnify the Board and its officers, directors, employees and agents, and CREA and its officers, directors, employees and agents, from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from the exercise by the Member of its rights under this Agreement.

**IX. ASSIGNMENT**

**(a)** The Member shall NOT assign this Agreement or any of its rights hereunder, nor shall the Member sub-license any of its rights hereunder, without the prior written consent of the Board, and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee enter into a new agreement with the Board. The Board may assign this Agreement or its rights hereunder upon written notice to the Member. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assigns.

**X. NOTICE**

**(a)** Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine addressed as follows:

**to the Board at:**

3450 Ridgeway Drive, Unit # 1, Mississauga, ON, L5L 0A2

**and to the Member at:**

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or at such other addresses as the Board and the Member may designate from time to time pursuant to the Board By-Law.

**(b)** Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by electronic facsimile or, if mailed, three (3) Business Days after the same is mailed, except in the event of a postal interruption or strike in which case notice shall be provided by personal delivery, prepaid courier or electronic facsimile.

**XI. SEVERABILITY**

**(a)** If any provision of this Agreement is held to be unenforceable or invalid by any Court of competent jurisdiction, the invalid provision shall be severable and the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. For any provision held unenforceable or invalid, the parties agree to substitute a provision as like in scope and effect as may be permitted by law.

**(b)** The failure by a party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision. Furthermore, the intentional waiver by a party of any one provision shall not be construed as the intentional waiver of any other provision.

**XII. ENTIRE AGREEMENT**

**(a)** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof. The Recitals and Schedules form part of this Agreement. This Agreement may be executed by fax and in counterparts.



**XIII. GOVERNING LAW**

(a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the Superior Court of the Province of Ontario to adjudicate any and all disputes regarding the validity, interpretation and/or enforcement of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement and agree to be bound by its terms.

**THE MISSISSAUGA REAL ESTATE BOARD**

**Per:**



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**Name: Ray Dubash**  
**Title: Executive Officer**

**Per:**



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**Name: Helen Goljak**  
**Title: President**

**I/We have the authority to bind the Corporation**

**NAME OF MEMBER:**

**Per:** \_\_\_\_\_

**Name:**

**Company:**

**Title:**

**(Above section if applicable)**

**I/We have the authority to bind the Corporation**

**Per:** \_\_\_\_\_

**Name: (Third Party IT Contact)**

**Company:**

**Title:**

**I/We have the authority to bind the Corporation**