

Dayton Area Board of REALTORS® - Multiple Listing Service Standard Non-Participant License Agreement

This AGREEMENT is made and entered into by and between Dayton Area Board of REALTORS®, Inc. ("DABR"), with offices at 1515 S. Main St., Dayton, OH 45409 and

_____ ("Licensee"),
an individual partnership corporation limited liability company
with offices at

_____.

DEFINITIONS

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

Confidential Information: "Confidential Information" means information or material proprietary to DABR or designated "confidential" by DABR and not generally known to the public that Licensee may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether in oral, visual, audio, written or other form): (a) all DABR Data, except to the extent to which this Agreement permits its disclosure; (b) IP addresses, access codes and passwords; (c) any information that DABR obtains from any third party that DABR treats as proprietary or designates as Confidential Information, whether or not owned or developed by DABR; and (d) any information designated as confidential or private from time to time by any applicable state, federal, local or other law, regulation or directive. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by Licensee; is independently developed by Licensee; is received from a third party who has lawfully obtained and disclosed it without breaching any confidentiality agreement; or is already known by Licensee at the time of its disclosure.

DABR Data: Data relating to real estate for sale, previously sold, or listed for sale and data relating to Subscribers (including text, photographs, and all other data formats now known or hereafter invented) entered into the DABR's databases by Subscribers and DABR.

Data Interface: The transport protocols and data storage formats described in Exhibit E, if any. If no such description appears in Exhibit E, then the Data Interface consists of those protocols and formats typically provided by DABR for use by other licensees of the DABR Data, which DABR may modify in its sole discretion from time to time.

Licensed Data: That subset of the DABR Data Licensed for use under this Agreement, which is more fully described in Exhibit B.

Subscriber: Any real estate broker, appraiser, or other real estate related business professional that purchases multiple listing services from DABR.

LICENSE

2. During the term of this Agreement, DABR grants to Licensee the license set forth in Exhibit A (the "License") only to the extent permitted by and subject at all times to the terms and restrictions of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. DABR retains all rights not expressly granted herein.

3. The License is strictly for the use and purposes set forth in Exhibit C.

DATA ACCESS

4. During the term of this Agreement, DABR agrees to provide to Licensee (a) access to the Licensed Data via the Data Interface; and (b) seven days' advance notice of changes to the Data Interface.

LICENSEE'S ACKNOWLEDGEMENTS

5. Licensee acknowledges that DABR provides the Licensed Data on an as-is, as-available basis. DABR shall not be liable to Licensee for any claim arising from inaccuracies in the Licensed Data or from any failure, whether on the part of Licensee or of DABR, to update the data promptly.

6. Licensee is responsible for any liability or loss of goodwill associated with problems in data integrity, accuracy, or timeliness arising from Licensee's use of the Licensed Data.

7. The listings of some Subscribers may not be included in the Licensed Data, as the listing Subscriber's permission is required before its listings may be distributed to Licensee.

LICENSEE'S OBLIGATIONS

8. Licensee shall display the DABR copyright notice on each display screen, web page (whether Internet or Intranet based), and printout displaying any part of the Licensed Data. The DABR copyright notice may take either of the following two forms: (a) "Copyright 2005 Dayton Area Board of REALTORS®, Inc." or (b) "© 2005 Dayton Area Board of REALTORS®, Inc."

9. Licensee shall employ reasonable measures to prevent "data piracy" and other unauthorized access and use of the Licensed Data; from time to time, DABR may, in its sole discretion, specify particular security measures Licensee must take.

10. Licensee shall not make the Licensed Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement.

11. Licensee shall pay the initial and periodic fees set forth in Exhibit F, according to the terms set forth therein.

12. As among the parties to this Agreement, Licensee acknowledges that DABR is sole owner of and possesses all right, title, and interest in all copyrights in the Licensed Data.

13. Licensee shall conform to the supplemental use restrictions set forth in Exhibit D, if any.

CONFIDENTIAL INFORMATION

14. Licensee shall protect the Confidential Information with the same degree of care it takes to protect its own sensitive business information of like kind, but in no event less than reasonable care. Licensee may disclose Confidential Information if such disclosure is required by law, court order or regulation; provided, however, that Licensee makes commercially reasonable efforts to notify DABR in writing in advance of such disclosure.

15. Within five days after the termination of this Agreement, Licensee shall return to DABR all Confidential Information and all other materials provided by DABR to Licensee. Licensee shall also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of DABR, an officer of Licensee shall certify in writing that all materials

have been returned to DABR and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

16. The term of this Agreement begins on the date that DABR signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) 30 days after either party's notice to the other of its intent to terminate; (c) 10 days after either party's notice to the other that the other has breached this Agreement, provided the breach remains uncured.

GENERAL PROVISIONS

17. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of Ohio. Any action to enforce or interpret this Agreement shall have venue in Montgomery County, Ohio, and the parties hereby submit to personal jurisdiction in that venue.

18. **Survival of Obligations.** Paragraphs 1, 10, 12, 14, and 15, and paragraphs 17 through 29 of this Agreement shall survive its termination or expiration.

19. **DABR's Remedies.** Because of the unique nature of the DABR Data and Confidential Information, Licensee acknowledges that DABR would suffer irreparable harm in the event that Licensee breaches its obligations under this Agreement, and that monetary damages would be inadequate to compensate DABR for a breach. DABR is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Licensee or Licensees or any one of them, without showing or proving any actual damages sustained by DABR, and without posting any bond or other security.

20. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL DABR BE LIABLE TO LICENSEE FOR DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT; LICENSEE'S SOLE REMEDIES AGAINST DABR HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT. DABR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.

21. **Attorney's fees.** If any party prevails in any action to enforce or interpret this Agreement or any provision hereof, it shall be entitled to its reasonable attorney's fees and costs for such legal action.

22. **Indemnification.** In the event any party breaches any provision of this Agreement, that party (the "Indemnifying Party") shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the "Indemnified Parties"), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the Indemnifying Party's breach. The Indemnified Parties shall (a) promptly notify the Indemnifying Party in writing of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any such claim.

23. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

24. **No Waiver.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and

signed by the party who is alleged to have waived its rights or to have agreed to a modification.

25. **No Assignment.** No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement (each a "Transfer") to any other party without the prior written consent of DABR. Any purported Transfer in contravention of this paragraph is null and void *ab initio*.

26. **Entire Agreement.** This Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same subject matter.

27. **Relationship of the Parties.** The relationship of DABR to the other parties hereunder is that of independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of DABR or have any authority to make any agreements or representations on the behalf of DABR. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

28. **Severability.** 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. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

29. **Precedence.** In the event of any conflict between the terms of the main body of this Agreement and any Exhibit to this Agreement, the terms of the body of the Agreement shall prevail.

Dayton Area Board of REALTORS[®], Inc. Standard Non-Participant License Agreement

Signature Page

| DABR | LICENSEE |
|---|--|
| Dayton Area Board of REALTORS [®] , Inc. | |
| | _____ Vendor Name |
| _____ Name | _____ Vendor Contact name |
| _____ Title | _____ Name of owner or officer |
| _____ Signature | _____ Signature of owner or officer |
| Date: _____ | Date: _____ |

This standard agreement is implemented pursuant to DABR Data Use and License Policy Statements 2005.04, 2005.07, 2005.10.

Dayton Area Board of REALTORS[®], Inc. Standard Non-Participant License Agreement - Exhibits

Exhibit A: License Granted

License is hereby granted for Licensee to use the MLS Licensed Data only for the expressed purpose outlined in Exhibit C.

Exhibit B: Specification of Licensed Data

Standard:

Licensed Data to included only MLS IDX Data fields and MLS photos, not including graphic images generated by any third party vendor (such as maps provided by MapQuest, Globe Xplorer) for which a separate data license has not been granted.

Additional:

Exhibit C: Licensee's Purpose and Use of Licensed Data

Describe the intended use of the Licensed Data:

Exhibit D: Supplemental Restrictions on Licensee's Use of Licensed Data

Exhibit E: Specification of Data Interface

Licensee is granted License to MLS Data as specified in this Agreement using the following Data Interface:

Real Estate Transaction Standard (RETS)

File Transfer Protocol (FTP)