



## **APPRAISER PARTICIPATION AGREEMENT**

This APPRAISER PARTICIPATION AGREEMENT (the “Agreement”) is made and entered into and is effective as of the date the last party executes this Agreement (the “Effective Date”), is between MLSOK.com, Inc., an Oklahoma corporation having its principal offices at 3131 Northwest Expressway Oklahoma City, OK 73112, as may be changed from time to time (hereinafter referred to as “MLSOK”) and the undersigned appraiser, more fully described on the signature page hereof, having its principal offices at the address as set forth on the signature page hereof as may be changed from time to time (“hereinafter referred to as “Appraiser”), and is made with reference to the following facts and circumstances:

### **1. RECITALS.**

1.1 MLSOK is a multiple listing service company as it is defined in its Rules and Regulations.

1.2 MLSOK collects, primarily from real estate professionals, certain information including, but not limited to all data, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information about real properties and businesses in certain geographic regions of the State of Oklahoma and then aggregates and compiles this data into its proprietary database of MLS Content, as hereinafter defined, and displays, maintains and distributes the MLS Content principally for the benefit of those same real estate professionals.

1.3 Appraiser is engaged in the appraisal of real property as it is defined in Title 59, Section 858-703 of the Oklahoma Statutes, and desires to have access to the MLSOK System, MLSOK Services and MLS Content pursuant to this Agreement.

1.4 The parties desire to enter this Agreement which, in addition to the Rules and Compliance Guidelines, will govern the Appraiser’s participation in the MLSOK and access to the MLS Content, the MLSOK System and the MLSOK Services by Appraiser and its Subscribers and Licensees and those in its employ.

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

### **2. DEFINITIONS**

Capitalized terms in this Agreement shall have the meanings set forth opposite each, respectively, as follows:

2.1 “Access” means a right of entry to the MLSOK Services, MLS Content and MLSOK System.

2.2 “Business Day” means Monday through Friday 8:00 a.m. Eastern Time to 5:00 p.m. Central Time except for MLSOK holidays as follows: New Years Day, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after Thanksgiving, one-half (1/2) day Christmas Eve Day and Christmas Day, one-half (1/2) day New Years Eve, which holidays may be changed from time to time at the discretion of the Chief Executive Officer of MLSOK.

2.3 “Compliance Guidelines” means the guidelines established and adopted by the Board of Directors of MLSOK, as may be amended from time to time, to guide MLSOK’s Participants and Subscribers in their compliance with the MLSOK Rules and Regulations.

2.4 “Effective Date” means the date on which the last party executes this Agreement.

2.5 “IDX” and “Internet Data Exchange” both mean the terms created by the National Association of REALTORS® for the Broker Reciprocity program mandated in January of 2002, which program allows both agents and brokers to show each others’ listings on other agents and brokers’ IDX websites.

2.6 “Licensee(s)” means all licensed employees or independent contractors of a Participant as disclosed on the Oklahoma Real Estate Commission records who have not applied to participate in MLSOK Services.

2.7 “Listing Content” means data, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives and pricing information about real properties offered for sale in certain counties throughout the State of Oklahoma and real properties in other geographic regions.

2.8 “MLS Content” means the aggregation and compilation of all Listing Content and changes thereto.

2.9 “MLSOK Services” means the display, maintenance, and distribution of MLS Content principally to Participants and Subscribers together with other products and services which facilitate the business of Participants and Subscribers.

2.10 “MLSOK System” means its computers, technology and software and hardware system that support the technology and the MLSOK Services.

2.11 “Participant(s)” means Appraiser or individuals who are registered, licensed or certified by the appropriate state regulatory agency in the state of Oklahoma to engage in the appraisal of real property.

2.12 “Rules” means rules and regulations established and adopted by the Board of Directors of MLSOK, as may be amended from time to time, which regulate Participants and Subscribers in their access and use of the MLSOK System, MLSOK Services and MLS Content.

2.13 “Staff” means non-licensed employees or independent contractors who work for or with Appraiser.

2.14 “Subscriber(s)” mean all employees or independent contractors of a Participant who have applied to participate or are participating in MLSOK Services.

### **3. GRANT OF ACCESS.**

Subject to the provisions, terms and conditions of this Agreement and the Rules and Compliance Guidelines, MLSOK hereby grants to Appraiser during the Term a limited, non-exclusive, non-transferable license to access the MLSOK System, the MLSOK Services and the MLS Content for the purpose of reviewing, researching and retrieving the MLS Content and using the MLSOK System and the MLSOK Services to conduct Appraiser’s real estate appraisal business.

### **4. METHOD OF ACCESS.**

Appraiser shall access the MLSOK System, MLS Content, and the MLSOK Services through various types of electronic communications furnished to Appraiser by MLSOK and/or third-party vendors, upon the terms and conditions required by MLSOK and the third party vendor

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

5.1 Access to MLSOK System. Appraiser shall be responsible for assuring that all of its Staff and Subscribers that have access to the MLSOK Service, subscribe to MLSOK individually by executing appropriate documentation as required by MLSOK. Licensees are not allowed access to the MLSOK Services unless they become Subscribers. Appraiser shall be responsible and liable for use of or access to the MLSOK Services, MLSOK System or MLS Content by Subscribers. If a Subscriber becomes delinquent in payment of any fees due to MLSOK hereunder, Appraiser shall pay said delinquent fees. Appraiser shall ensure that all Subscribers and Staff who use or access the MLSOK System, the MLS Content and/or the MLSOK Service in any manner comply with the terms of this Agreement and the Rules and Compliance Guidelines. Appraiser shall assume full responsibility for the acts of its Subscribers and Staff who have access to the MLS Content, the MLSOK System and the MLSOK Services and the

acts of its Licensees in all of Appraiser's offices as well as for any financial obligations for all Subscribers, Licensees and Staff of which may arise by virtue of said acts by any of them.

5.2 Compliance with Rules and Notification of Changes. Appraiser certifies it has read a copy of the Rules and Compliance Guidelines and agrees to comply with the Rules and the Compliance Guidelines as may be amended from time to time. Appraiser agrees to submit commission disputes for arbitration in accordance with the Code of Ethics and Arbitration Manual of the National Association of REALTORS® to the Association of REALTORS® to which Appraiser belongs. If Appraiser does not belong to an Association of REALTORS®, Appraiser agrees to submit commission disputes to the Association of REALTORS® with jurisdiction where the non-REALTOR® Appraiser maintains its offices. Violations of the Rules or By-Laws shall be submitted to MLSOK within five (5) days of discovery of such violation. Appraiser shall notify MLSOK within seven (7) days of relocating, changing office information, or changing REALTORS® Board/Association affiliation, if any.

5.3 Use Prohibitions. Appraiser 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 MLS Content including but not limited to IDX feeds, in any format to anyone for any purpose other than the selling, listing or appraising of real estate. Under no circumstances shall Appraiser receive any form of compensation for this information from any third party. Appraiser acknowledges that the MLS Content is confidential and its use is restricted to Appraiser and Appraiser's authorized Staff and Subscribers.

5.4 Certain Data Subject To Consent Withdrawal. Appraiser acknowledges that certain data fields of the MLS Content available through the MLSOK System 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 MLS Content.

5.5 Consumer privacy and Information Security. Appraiser agrees to comply with all applicable consumer privacy and information security laws. In the event of a breach of Appraiser's computer network or computerized systems containing MLS Content by unauthorized persons, or in the event of a loss of Appraiser's laptop which may contain personally identifiable information or MLS Content, Appraiser agrees to notify MLSOK at [mlstechsupport@okcmar.org](mailto:mlstechsupport@okcmar.org) and the Chief Executive Officer of MLSOK within twenty-four (24) hours of discovery of such event. Appraiser agrees to use commercially reasonable security measures to protect the MLS Content.

## **6. FEES.**

In consideration for the rights to Access and/or use the MLS Content, the MLSOK System and MLSOK Services, Appraiser shall pay MLSOK all participation fees established by the Board of Directors and set forth in the MLSOK Schedule of Fees for each licensed broker, licensed sales associate, and licensed or certified appraiser who is employed by or affiliated as an independent contractor with such Appraiser or employed staff. MLSOK reserves the right to change its fees at any time.

## **7. SET UP COSTS.**

Appraiser 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 MLS Content, the MLSOK System and the MLSOK Services and for the proper use thereof. Appraiser 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 MLSOKS System or the MLSOK Services.

## **8. PROPRIETARY RIGHTS.**

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

## **9. IDENTIFICATION NUMBERS.**

9.1 Office ID. MLSOK shall provide Appraiser an identification number for Appraiser's office identification ("Office ID").

9.2 User ID and Password. MLSOK shall also provide Appraiser, Subscribers and Staff a user identification and password to each individual who participates in and therefore, has access to and use of the MLS Content, the MLSOK System and the MLSOK Services. Each authenticator, user ID and password shall be personal to the

individual and may not be used by any other person. Each individual shall be responsible for the security and safe keeping of its authenticator and its password.

9.3 Secure Computing. MLSOK reserves the right to establish additional security measures and establish practices and procedures to safeguard the MLS Content, the MLSOK System and the MLSOK Services and Appraiser agrees to abide by such security measures and procedures to safeguard the MLS Content, the MLSOK System and the MLSOK Services.

9.4 Confidentiality. Appraiser, Subscribers and Staff 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. Appraiser shall be liable for any consequences that may result from unauthorized disclosure of Appraiser's or Subscriber's or Staff's access identification, whether intentional, negligent or inadvertent, including but not limited to immediate termination of this Agreement and liability for liquidated damages. Appraiser acknowledges that MLSOK may seed the MLS Content and watermark digital photographs, virtual tours, videos or other media and undertake monitoring on a regular random basis such that violations of the security of Appraiser's access identifications will be detected. This obligation to maintain confidentiality shall survive the termination of this Agreement.

## **10. MLSOK USE OF APPRAISER INFORMATION.**

MLSOK reserves the right to distribute to prospective participants and other third parties certain non-confidential information concerning Appraiser. In addition, MLSOK may collect and compile information regarding frequency of use of, or specific uses, of the MLS Content, the MLSOK System and the MLSOK Services by all users, including Appraiser.

## **11. TERM AND TERMINATION.**

11.1 Term. The Term of this Agreement shall commence upon the Effective Date and shall automatically renew and extend for one (1) year terms on January 1<sup>st</sup> of each year, unless sooner terminated in accordance with Section 11.2 or 11.3 hereof, or upon cancellation by either party upon twenty-four (24) hours written notice to the other party.

### **11.2 Termination.**

11.2.1 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. MLSOK may immediately terminate this Agreement in the event Appraiser is no longer licensed to appraise real estate in the State of Oklahoma.

11.2.1 Promptly upon any termination of this Agreement, MLSOK shall deactivate Appraiser's access identification numbers, and Appraiser shall have no further access to the MLSOK System, the MLS Content or the MLSOK Services. Appraiser acknowledges that MLSOK shall have no obligation to refund any fees or charges or any portion thereof paid to MLSOK prior to termination.

11.3 REALTOR® Membership Termination. Should Appraiser terminate REALTOR® membership with its local association or board of REALTORS® or terminate participation in MLSOK, this Agreement shall terminate and the rights to access the MLSOK System, MLS Content and MLSOK Service for all Appraiser's Staff and Subscribers shall also be terminated. An application for non-REALTOR® participation would need to be submitted to MLSOK.

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

## **12. MLSOK SERVICE MARKS AND LOGOS.**

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

## **13. WARRANTY DISCLAIMER.**

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

## **14. LIMITATION OF LIABILITY.**

14.1 Limitations and Exclusions. Neither MLSOK nor any of its officers, directors, employees, shareholders, agents, or representatives shall be liable to Appraiser or anyone else for any direct, indirect, incidental, special, or consequential damages that result from the use of, or inability to use, the MLSOK System and/or the MLSOK Services, including but not limited to, reliance by any Participant or authorized user on any information, including but not limited to the MLS Content, obtained through use of the MLSOK System or the MLSOK Services or that result from mistakes, omissions, deletions or delays in transmission of such information, interruptions in telecommunications or Internet connections to the MLSOK System and the MLSOK Services, 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 MLSOK System and/or the MLSOK Services or related information, records or programs.

14.2 Third Party Liability. Appraiser acknowledges and understands neither MLSOK, nor any of its officers, directors, employees, shareholders, agents or representatives shall be liable to Appraiser for any direct, indirect, incidental, special, or consequential damages that result from the use of any third party product or service, including but not limited to any third party products or services that integrate the MLS Content. MLSOK shall not be responsible for any misuse, infringement, or unauthorized display of any information provided by Appraiser by any third party. Appraiser understands it is Appraiser's sole responsibility to review such third party products and/or services prior to entering into an agreement or accepting such products and/or services from a third party, and use of such third party products and/or services shall be at Appraiser's sole risk.

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

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

Appraiser acknowledges that damages suffered by MLSOK from access to the MLS Content, MLSOK System or the MLSOK Services by an unauthorized third party as a result of disclosure of Appraiser's access identification information would be speculative and difficult to quantify. Accordingly, as a material inducement to MLSOK to enter into this Agreement with Appraiser, Appraiser agrees that in the event that any disclosure of Appraiser's access identification information results in access to the MLSOK System and the MLSOK Services by an unauthorized third party or in the event Appraiser makes unauthorized disclosure of MLSOK Content, regardless of whether such disclosure is intentional, negligent or inadvertent, Appraiser shall be liable to MLSOK, at



MLSOK's option, for liquidated damages in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00).

**16. APPRAISER AUTHORIZATION TO ENTER THIS AGREEMENT.**

Appraiser represents and warrants that the individual who executes this Agreement is duly authorized to enter into this Agreement and, if applicable, the Agreements by and between MLSOK and Appraiser's Subscribers. Appraiser further represents and warrants that the individual who executes this Agreement is duly licensed by the State of Oklahoma to appraise real estate.

**17. INDEMNIFICATION BY APPRAISER.**

Appraiser shall protect, defend, indemnify and hold harmless MLSOK and its officers, directors, employees, shareholders, 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 Appraiser, including but not limited to: (a) inaccuracy of any information supplied to MLSOK by Appraiser or by any of Appraiser's Subscribers or Staff, (b) any unauthorized use of Appraiser's or Subscriber's access identification number, (c) any unauthorized use of the MLS Content, or (d) infringement of any proprietary or contract right of any third party as a result of the availability of the MLS Content through the MLSOK System and the MLSOK Services. Appraiser shall assist MLSOK, at Appraiser's expense, in the defense or settlement of any claim to which these indemnification obligations apply. These indemnification provisions shall survive the termination of Appraiser's participation in MLSOK and the termination of this Participation Agreement.

**18. INJUNCTIVE REMEDIES.**

Appraiser acknowledges and agrees that the MLSOK System, the MLSOK Services and MLS Content are confidential and proprietary products and that in the event there is an unauthorized disclosure of such by Appraiser, no remedy at law may be adequate. Therefore, Appraiser agrees that in the event of such unauthorized disclosure or use of the MLSOK System, the MLSOK Services or MLS Content, MLSOK may seek injunctive relief or other equitable remedies against Appraiser in addition to all available remedies at law.

**19. LEGAL FEES AND COSTS.**

In the event legal action is taken against Appraiser, or against Appraiser and MLSOK, and MLSOK prevails in obtaining equitable relief or monetary damages, Appraiser will be obligated to reimburse MLSOK for the reasonable attorneys' fees, costs and expenses it incurred in pursuing such legal action. Appraiser will also be responsible for any legal fees and costs incurred by MLSOK in enforcing any order or collecting a judgment.

**20. MISCELLANEOUS.**

Appraiser agrees and acknowledges that MLSOK may change the terms of this Agreement as the result of any amendments to the Rules or Compliance Guidelines. Waiver by MLSOK of any breach of any provision of this Agreement by Appraiser shall not be construed as a waiver of any subsequent breach. Any notices required or permitted to be given hereunder shall be delivered personally or sent to each party at the addresses as set forth in this Agreement by certified mail, return receipt requested, or by other accountable means such as Federal Express or UPS or by confirmed facsimile. 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 Appraiser without the prior written consent of MLSOK. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oklahoma

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

**Appraiser:**

**MLSOK.com, Inc.**

By: \_\_\_\_\_  
Authorized Representative Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Name of Authorized Representative (Please Print)

Title: \_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Facsimile

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

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

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