



APPLICATION FOR MLS-ONLY PARTICIPATION
For Non-REALTOR® Brokers (Thompson Brokers)

Company information:			
<input type="checkbox"/> Sole Proprietor		<input type="checkbox"/> Partnership	
<input type="checkbox"/> Corporation		<input type="checkbox"/> LLC (Limited Liability Company)	
Your position in office:			
<input type="checkbox"/> Principal		<input type="checkbox"/> Partner	
<input type="checkbox"/> Corporate Officer		<input type="checkbox"/> Branch Officer Manager	
Name		License #	
Office Name		Office License or CQ#	
Office Physical Address			
City		State	Zip
Office Mailing Address (if different)			
City		State	Zip
Office Phone		Office Fax	
Personal Mailing Address			
City		State	Zip
Cell	Home		Personal Fax (if applicable)
Email		Website	
Preferred Phone	<input type="checkbox"/> Cell	<input type="checkbox"/> Office	<input type="checkbox"/> Home
Preferred Mailing	<input type="checkbox"/> Office	<input type="checkbox"/> Personal	
Optional Information			
Date of Birth		How long have you been engaged in the real estate business?	
How long with current real estate firm?		How long with previous real estate firm (if applicable)?	

Application for MLS-Only Participation (Thompson Broker)
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I, _____, hereby apply for participation in the Capital Area Technology and REALTOR® Services, Inc.'s (CATRS) Multiple Listing Service, as maintained by the Tallahassee Board of REALTORS® (TBR). I have included with my application appropriate payment to TBR. In the event of non-election, only my annual fees will be returned to me.

I hereby certify that the information furnished by me in this application is true and correct, and I agree that failure to provide complete and accurate information as requested, or any misstatement of fact, shall be grounds for revocation of my MLS subscription, if granted. I further agree that, if accepted, I shall pay the fees as from time to time established. Finally, my initial and continued payment of fees will serve as confirmation of my active Florida real estate license and commitment to abide by the CATRS MLS Rules and Regulations.

NOTE** Payments to CATRS or TBR are not deductible as charitable contributions. Such payments may be deductible as an ordinary and necessary business expense. **No refunds.

By signing below I consent that the Tallahassee Board of REALTORS® and its subsidiaries, (e.g., CATRS, Foundation) may contact me at the specified address, telephone numbers (voice/text), fax numbers, email address or other means of communication available. This consent applies to changes in contact information that may be provided by me to the Association(s) in the future. This consent recognizes that certain state and federal laws may place limits on communications that I am waiving to receive all communications as part of my membership.

Signature

Date

2021 MLS Education Requirement

MLS and Your Liability (3 hours CE credit)

Required of all new MLS participants and subscribers, this course provides agents a comprehensive look at the Tallahassee Board of REALTORS® MLS Rules and Regulations to further mitigate risk of liability to the agent, office, and Association.

Registration fee: \$80 advance; \$90 day of class. For your convenience you can register online at www.TBRnet.org for class.

Class time 1 – 4 p.m., at the TBR office or virtually

**2021: February 1, March 25, May 17, July 26, September 13, November 10*

Distance Learning Option (No CE Credit): \$125, Retake \$10. Call TBR to register.

I have read the above requirements and understand I must complete this mandatory class within the next four months, and to do so will need to attend the class on one of the dates listed below or complete the distance learning exam with a passing grade of 75%.

MLS & Your Liability: _____

Name (Please Print)

Date

Signature

*(*Class dates as of 11/16/2020)*

Capital Area Technology & REALTOR® Services, Inc.

MLS Participant Agreement

This AGREEMENT is made and entered into by Capital Area Technology & REALTOR® Services, Inc. ("CATRS"), with offices at 1029 Thomasville Rd, Tallahassee, FL 32303; and _____ ("Firm Participant"), with offices at _____.

DEFINITIONS AND USAGE.

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

CATRS Affiliates: CATRS Affiliates means CATRS and its officers, directors, employees, agents, representatives, licensors and shareholders.

CATRS Database: All data available to Firm Participant on the CATRS System, including the Participant Contribution and all other text, binary, and photographic image data, in any form now known or hereafter discovered.

CATRS Policies: CATRS's then current bylaws, rules and regulations, and policies and procedures adopted by CATRS's board of directors or authorized delegates, as CATRS amends them from time to time.

CATRS Service: The services that CATRS provides to Firm Participant under this Agreement and similar services CATRS provides to third parties under similar agreements, including any access or license to the CATRS Software, the CATRS Database, and the CATRS System.

CATRS Software: CATRS's proprietary web browser interface(s) to the CATRS System.

CATRS System: The aggregate of all hardware and telecommunications systems that CATRS maintains, or that CATRS contractors maintain on its behalf, in support of the Tallahassee Area Commercial MLS in order to make access to the CATRS Database available to Firm Participant.

Individual Participants: With regard to each office of Firm Participant, the individual responsible for Firm Participant's conduct under CATRS Policies that is a "participant" as that term is defined in the CATRS Policies.

Other Participants and Subscribers: All Participants and Subscribers of CATRS not party to this Agreement.

Participant Compilation Contribution or "PCC." All selection, coordination, and arrangement by Subscribers of the listing information submitted, contributed, or input in the CATRS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the CATRS System. PCC does not include original text or photographs.

Participant Contribution: All data that the Subscribers submit, contribute, or input in the CATRS System, including text, photographs, images, and other materials, in any form now known or hereafter discovered, except the PCC.

Saved Information: Information that Subscribers store in the CATRS System for their own later use that is not intended by them to be available to Other Participants and Subscribers, including client prospect and contact information.

Schedule of Fees: CATRS's document that establishes the fees for CATRS Service.

Subscribers: Firm Participant's employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

2. **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

(a) Wherever the term "including" is used, it means "including, but not limited to."

(b) The singular and plural numbers and masculine, feminine, and neuter genders of words are fully interchangeable.

(c) Wherever the term "law" is used, it means all statutes, regulations, and case law, both state and federal, as they are amended. Without limiting the generality of the foregoing, "law" expressly includes all state and federal fair housing statutes and regulations.

CATRS'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the CATRS Policies, CATRS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the CATRS service by virtue of this Agreement or another license agreement; and Individual Participants for which Firm Participant is responsible shall have all rights and obligations of a participant in CATRS as set forth in the CATRS Policies. The user ID and password will provide Individual Participants access to all data and functions in the CATRS Service to which Individual Participants are entitled under the CATRS Policies. CATRS makes no warranties, however, that the CATRS Service will be available at all times.

FIRM PARTICIPANT ACKNOWLEDGMENTS.

4. **Modifications to service.** CATRS may, but is not required to, modify the CATRS Service, including removing information and making additional information available, and adding and removing system functions. Certain products and services made available in conjunction with the CATRS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control.** CATRS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the CATRS Database or the Participant Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, CATRS may take any steps necessary in its judgment, including deleting the Participant Contribution or portions thereof, to avoid or remedy any violation of law, breach of the CATRS Policies or infringement of intellectual property right. Additionally, CATRS shall have the right to alter and/or remove metadata and copyright management information contained in the Participant Contribution.

6. **Conditions of service.** Firm Participant must at all times have an Individual Participant designated for each office. Firm Participant shall ensure that at all times Individual Participants for which Firm Participant is responsible under this Agreement satisfy the prerequisites for participation in the CATRS Service. The prerequisites are set out in the CATRS Policies; at present, they include a requirement that Individual Participants either (a) hold a real estate broker's license, be actively engaged in real estate brokerage, and offer and receive offers of compensation from other brokerage firms; or (b) be licensed or certified by an appropriate regulatory agency to engage in the appraisal of real property. Subscribers may enter and retrieve active listing information on the CATRS Service only if Firm Participant offers compensation to or accepts compensation from other principal brokers.

7. **Saved Information.** Saved Information may not always be available to Firm Participant and may become available to unauthorized persons. CATRS is not liable for unauthorized access to or loss of Saved Information. Firm Participant is responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

8. **Disclosure to third parties.** CATRS reserves the right to distribute to third parties certain information about Firm Participant, including Firm Participant's and Individual Participants' names and business addresses,

phone numbers and email addresses. CATRS reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and Subscribers' use of the CATRS Service, but not about Firm Participant's or Individual Participants' use specifically.

9. **Disclosure to government.** Firm Participant acknowledges that CATRS may provide government agencies access to the CATRS Service at any time in CATRS's sole discretion.

10. **Priority of agreements.** Firm Participant must enter into this Agreement before any Subscriber may obtain access to the CATRS Service.

11. **If Firm Participant is an appraisal firm,** Firm Participant acknowledges that certain information in the CATRS Database, including information about listings currently for sale, may be withheld from Firm Participant and Individual Participants pursuant to the CATRS Policies.

12. **IDX and VOW data access subject to separate agreement.** Firm Participant acknowledges that access to CATRS's IDX or VOW database and data feeds can occur only subject to a separate written agreement between CATRS, Firm Participant and Subscriber, as applicable.

FIRM PARTICIPANT'S OBLIGATIONS.

13. **Use limited.** Firm Participant shall use the CATRS Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate, strictly as permitted by the CATRS Policies. Except as expressly provided in this Agreement and the CATRS Policies, Firm Participant shall not copy, create derivative works of, distribute, perform, or display the CATRS Service or any part of it, except the Participant Contribution.

14. **Confidentiality.** Firm Participant shall maintain the confidentiality of its user ID and password. CATRS issues each Subscriber a separate ID and password, and Participant must not facilitate sharing of passwords among Subscribers. Firm Participant shall ensure that the Subscribers maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscribers obtains access to the CATRS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the CATRS Database, and the CATRS System, Firm Participant shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the CATRS Policies. Firm Participant may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, the disclosing Firm Participant first gives reasonable notice to CATRS to permit CATRS to seek a protective order.

15. **Equipment.** Firm Participant shall acquire and maintain all personal computers, modems, data connections, and computer software, other than the CATRS Software, necessary for Participant's use of the CATRS Service.

16. **Participant Contribution.** With regard to any Subscriber making a Participant Contribution to the CATRS Service, Firm Participant warrants that the information submitted complies with the CATRS Policies in all respects, including with regard to (a) required data fields; (b) format of submission; (c) permitted and required listing types; and (d) procedures for submission. Firm Participant warrants that the Participant Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation or proceeding pending or threatened with respect to the Participant Contribution.

17. **Subscriber agreements.** Firm Participant shall ensure that each Subscriber who will have access to the CATRS System or CATRS Database, enters into a Subscriber agreement with CATRS. Firm Participant is liable for all fees due under each Subscriber agreement.

18. **Subscriber supervision.** Firm Participant shall ensure that all Subscribers comply at all times with the CATRS Policies and with

applicable laws. Firm Participant is liable for any Subscriber's breach of any agreement between the Subscriber and CATRS relating to the CATRS Service or violation of any of the CATRS Policies as if Firm Participant had committed it.

19. **List of Subscribers.** Firm Participant shall ensure CATRS has a current list of all of Subscribers; Firm Participant shall inform CATRS in writing of any change in the Subscribers within 24 hours of the change.

20. **Accurate information.** Firm Participant warrants that the Subscribers have used and will use reasonable care to ascertain the accuracy of the Participant Contribution and its compliance with all laws. Firm Participant shall ensure that any changes to the Participant Contribution are made on the CATRS System within such time as CATRS shall provide in the CATRS Policies. Pursuant to the CATRS Policies, Firm Participant shall provide to CATRS all documentation CATRS requests of Firm Participant to ascertain Firm Participant's compliance with this Agreement.

INTELLECTUAL PROPERTY.

21. **Election regarding copyrights in Participant Contributions.** Firm Participant must elect from the following options. If no election is indicated, or if both options are checked, then Participant is deemed to have selected Option II.

OPTION I

(a) **Assignment from Participant.** Firm Participant hereby unconditionally assigns to CATRS all right, title and interest in the Participant Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; Firm Participant warrants that it has the authority to make this assignment. Firm Participant acknowledges that once it has made the election agreeing to this section, all copyrights in all portions of the Participant Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in CATRS.

(b) **CATRS Obligations.** CATRS hereby grants to Firm Participant a non-exclusive, perpetual, world-wide, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution and those portions of the CATRS Database relating to Firm Participant's listings. CATRS shall make quarterly registrations of the CATRS's copyrights in the CATRS Database; CATRS shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Firm Participant's permission.

OPTION II

(a) **License from Participant.** Firm Participant hereby grants to CATRS a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution. Firm Participant warrants that it has the authority to grant this license.

(b) **CATRS has no obligations to protect.** Firm Participant acknowledges that: (i) CATRS makes no grant of license or assignment to Firm Participant of any rights in the CATRS Database except as set forth in paragraph 22; (ii) CATRS will make no effort to register the copyrights in the Participant Contribution, and Firm Participant will be responsible for all costs and efforts associated with registration; (iii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; (iv) **CATRS will employ**

no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm Participant's permission; (v) CATRS will make no effort to secure for Firm Participant the right to use copyright works created by Subscribers or third parties.

22. **Other provisions.** Pursuant to the CATRS Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of CATRS, which shall be deemed the PCC's author for purposes of copyright law. If for any reason the PCC cannot be provided as a work made for hire, you agree to assign and hereby do assign to CATRS all right, title and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law. CATRS hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the CATRS Software and the CATRS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the CATRS Policies and only to deliver real estate brokerage or appraisal services to Firm Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the CATRS Policies are prohibited. Title to the Licensed Materials remains at all times in CATRS and shall not pass to Firm Participant.

23. **Further Participant warranty.** Firm Participant warrants that (a) the Participant Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) Firm Participant has the written consent of any party necessary to provide the Participant Contribution to CATRS.

24. **Limitations on use by CATRS.** CATRS agrees during the term of this Agreement not to license or distribute the Participant Contribution to any third party that is not a real estate brokerage or appraisal subscriber to the CATRS Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after CATRS has provided notice of its intention to provide the Participant Contribution to the third party. For purposes of the previous sentence, brokers participating in any MLS in a data sharing relationship with CATRS that includes an offer of interbroker compensation are subscribers to the CATRS Service.

FEES AND PAYMENT TERMS.

25. **Applicable fees.** Firm Participant shall pay the fees set forth in CATRS's official Schedule of Fees, which CATRS may amend at any time subject to the terms of Paragraph 29.

26. **Payment terms.** Firm Participant shall pay the fees according to the terms set out in the CATRS Policies.

27. **No refunds.** CATRS need not refund or pro-rate fees in the event of termination or suspension of this Agreement unless the CATRS Policies provide otherwise. Initiation fees, if any, are not refundable.

28. **Taxes.** All fees for the CATRS Service are exclusive of 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 and, accordingly, Firm Participant shall pay all such taxes and levies other than any tax or levy on the net income of CATRS.

29. **Fee increases.** CATRS may amend the Schedule of Fees at any time at its sole discretion. CATRS shall provide written notice to Participant at least thirty days in advance of the effective date of any fee increase. If Participant objects to the increase, Participant may terminate this Agreement by written notice to CATRS at any time before the effective date of the increase.

30. **Fines.** CATRS may collect fines from Firm Participant and from Individual Participants for violation of the CATRS Policies by Firm Participant, Individual Participant and Subscribers. Payment terms for fines are set out in the CATRS Policies. CATRS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION.

31. **Term.** This Agreement shall commence upon the Effective Date set forth below and shall continue thereafter on a month-to-month basis until terminated.

32. **Termination for breach.** Either party may terminate this Agreement in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement. Any such termination shall become effective upon the expiration of three days after written notice to the breaching party if the breach or nonperformance has not then been remedied.

33. **Termination for breach of CATRS Policies.** Paragraph 32 notwithstanding, CATRS may terminate this Agreement if Firm Participant fails to comply with the CATRS Policies; if Firm Participant violates or is alleged to have violated the CATRS Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or appeal rights of Firm Participant have expired as provided in the CATRS Policies. If in CATRS's judgment, however, a violation or alleged violation of the CATRS Policies is resulting in a continuing harm to CATRS or Other Participants or Subscribers, CATRS may suspend Firm Participant's access to the CATRS Database during the pendency of any hearing or appeal.

34. **Termination for failure to pay.** In the event Firm Participant fails to pay any fees required under this Agreement, CATRS may terminate service without being subject to arbitration. In its sole discretion, CATRS may suspend its performance under this Agreement rather than terminating it, in the event that Firm Participant fails to pay any fees required under this Agreement.

35. **Termination for convenience.** Either party may terminate this Agreement with or without cause, upon thirty days' written notice to the other party.

36. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) CATRS shall deactivate Firm Participant's and Individual Participants' user ID and password, and Firm Participant and Individual Participants shall have no further access to the CATRS Service; (b) Firm Participant shall purge all copies of the CATRS Software and the CATRS Database (except the Participant Contribution) from Firm Participant's personal computers, and shall cause Individual Participants and Subscribers to do the same; and (c) all licenses granted hereunder, except the license to the Participant Contribution in Paragraph 21 Option I(b) and Paragraph 21 Option II(a), if any, shall immediately terminate.

37. **Effect on Subscribers.** In the event of any termination or suspension of this Agreement, upon CATRS notice to Subscriber, CATRS may in its sole discretion suspend Subscriber access to CATRS System or terminate Subscriber license and access agreements. If CATRS does not exercise its right to suspend Subscriber access to the CATRS System or terminate Subscriber license and access agreements, the Subscriber license and access agreement shall continue in force with the intellectual property option selected by Firm Participant in the terminated agreement.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

38. **DISCLAIMER OF WARRANTIES.** CATRS PROVIDES THE CATRS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE CATRS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE CATRS SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE CATRS AFFILIATES DO NOT WARRANT THAT THE CATRS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE CATRS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE CATRS SERVICE. THE CATRS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE CATRS SERVICE AND THE INFORMATION AVAILABLE

THROUGH THE CATRS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The CATRS Service may contain hyperlinks to web sites operated by parties other than CATRS; CATRS does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

39. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE CATRS AFFILIATES SHALL BE LIABLE TO FIRM PARTICIPANT OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE CATRS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE CATRS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE CATRS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, DATA CONNECTION FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE CATRS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

40. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL CATRS BE LIABLE TO FIRM PARTICIPANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT HAS PAID CATRS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100.

41. **Indemnification.** Firm Participant shall defend, indemnify and hold the CATRS Affiliates and Other Participants and Subscribers harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the CATRS Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the CATRS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the CATRS Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any warranty under this Agreement; and (f) violating this or any other Agreement or any law.

42. **Acknowledgment.** Firm Participant acknowledges that CATRS has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

DISPUTES AND REMEDIES.

43. **Injunctive relief.** Firm Participant acknowledges and agrees that the CATRS Software and CATRS Database are confidential and proprietary products of CATRS and that in the event there is an unauthorized disclosure of them by Firm Participant, no remedy at law will be adequate. Firm Participant therefore agrees that in the event of such unauthorized disclosure of CATRS Software or CATRS Database, CATRS may obtain injunctive relief or other equitable remedies against Participant in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

44. **Dispute resolution.** In the event CATRS claims that Firm Participant has violated the CATRS Policies, CATRS may, at its option, resolve such a claim according to the disciplinary procedures set out in the CATRS Policies, provided MLS does not also base a claim that Firm Participant has breached this Agreement on the same facts. Except as provided in this paragraph and in Paragraph 34, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for

Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Leon County, Florida, except that it may be held by telephone where the Arbitration Rules expressly so permit. Firm Participant agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Leon County, Florida.

45. **Liquidated damages.** Firm Participant acknowledges that damages suffered by CATRS from access to the CATRS Service by an unauthorized third party as a result of disclosure of Firm Participant's password or an unauthorized disclosure by Firm Participant of the CATRS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to CATRS to enter into this Agreement with Firm Participant, Firm Participant agrees that (a) in the event that any disclosure of Firm Participant's or Individual Participants' password results in access to the CATRS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Firm Participant shall be liable to CATRS for liquidated damages in the amount of \$5,000 (or the amount established in the CATRS Policies, whichever is greater) and termination of this Agreement; and (b) in the event that Firm Participant makes unauthorized disclosure of any portion of the CATRS Database to any third party, Firm Participant shall be liable for liquidated damages in the amount of \$5,000 (or the amount established in the CATRS Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

46. **Legal fees.** In the event of legal action or arbitration between CATRS and Firm Participant, or CATRS and any Subscriber, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or arbitration. If CATRS is the prevailing party in an action against a Subscriber, Firm Participant shall be obligated to pay these costs on the Subscriber's behalf.

MISCELLANEOUS.

47. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by CATRS and Firm Participant, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party.

48. **Interpretation and amendment.** Firm Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). CATRS may amend this agreement by providing 30 days' advance notice of the amendment to Firm Participant. If Firm Participant or any Subscriber continues to use the CATRS Service or CATRS Database after the expiration of the 30-day notice period, Firm Participant will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

49. **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Firm Participant. Any purported assignment in contravention of this section is null and void.

50. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. 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. The foregoing notwithstanding, if any provision of Paragraphs 38 through 42 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm Participant's access to the CATRS Service shall immediately terminate.

51. **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida applicable to

contacts made and performed in Florida, without regard to its conflicts of law and choice of law provisions.

52. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation

of receipt; (c) facsimile transmission, provided sender obtains confirmation of transmission; or (d) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

Having read this Agreement, the parties express their will to be bound by its terms by setting their signatures below.

Capital Area Technology & REALTOR® Services, Inc.

Firm Participant

Signature

Firm Participant name

Print name

Signature of principal

Effective Date

Print name of principal