

## TERMS OF SERVICE

Please read these Terms of Service (the “Agreement”) carefully. This is a legal Agreement between you and Keller Williams Realty, Inc. and its affiliates (as applicable based on the Services), which include but are not limited to, KW Worldwide, Ltd., KW Accelerator Studios, LLC, KW Insurance, Ltd., Keller Offers, Ltd, Keller Mortgage, LLC, Business MAPS, Ltd., Keller Williams, LLC and Livian, LLC (“we,” “us,” or “KWRI”) governing your access and use of any website or mobile application provided by us, including kw.com, KW Command (also known as Command or Keller Command), KW Marketplace, Keller Cloud and Livian.com (collectively, the “Services”). “You” and “your” mean both an individual using the Services and an entity if you are using the Services on behalf of, or for the benefit of an entity (for example, a Market Center).

By registering an account, clicking, or tapping any button or box marked “accept,” “agree” or “OK”, or by using the Services, you agree to this Agreement and any changes to it.

**THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION THAT, AS DESCRIBED IN SECTION 16 BELOW, REQUIRES USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN BY JURY TRIALS OR ANY OTHER COURT PROCEEDINGS, OR CLASS ACTIONS OR CLASS ARBITRATIONS.**

### 1. EFFECTIVE DATE.

The “Last Updated” legend shows when this Agreement was last changed. We may change this Agreement by notifying you by any reasonable means, including posting a revised Agreement through the Services.

Subject to applicable data privacy laws, we may, at any time and without liability: (a) modify or discontinue all or part of the Services; or (b) charge, modify, or waive any fees required to use the Services.

### 2. LICENSE TO USE THE SERVICES.

We grant you a limited, revocable, non-exclusive license to use the Services and we provide the Services for your personal use only, unless we agree otherwise. The Services, and all its elements, are owned by us or licensed to us by third parties (a non-KWRI service provider). We and the third party licensors retain all right, title, and interest in the Services, including all patent, copyright, trademark, and trade secret rights therein.

The Services may not work with all hardware or devices. You are responsible for obtaining, maintaining and paying for all hardware and all telecommunications and other services needed for you to use the Services. The Services may include software applications that may make available additional products and services (these are collectively referred to as the “Apps”). You may be required to download or use specific software and Apps for certain components of the Services to function properly.

### 3. REGISTRATION; USERNAMES AND PASSWORDS.

You may have to register an account with us to use the Services. If you decide to register an account with us, you will provide us with your name, email address, username, password, and other registration information to create and access your account. We may reject, or require that you change, any username, password or other information that you provide to us in registering your account. Your username and password are for your personal use only and must be kept confidential.

You are responsible for the security of your account and all actions associated with it. You must promptly notify us of any confidentiality breach or unauthorized use of your username or password, or your Services account. You may not sell or otherwise transfer your account to another individual or entity without our prior written consent.

We may use electronic means to communicate when you use the Services, send us emails, and when we post a notice on the Services or send you emails. You (a) consent to receive communications, including notifications, from us in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if they were in a hard copy writing.

#### **4. INFORMATION COLLECTED THROUGH THE SERVICES.**

With respect to the information you provide to us through the Services, you promise that:

- you have and will comply with all laws applicable to any information you provide or access through the Services, including information that is uploaded or synchronized with the Apps for which you have given consent to use;
- information you provide is and will remain accurate and complete, and you will maintain and update the information as needed; and
- you have all necessary rights and permissions to authorize the processing of such information under this Agreement.

For clarity, you agree that we may share the information we collect through the Services, including personally identifiable information, with our Affiliated Entities (as defined in Section 13) and other third parties. Additionally, you agree that we may collect, transmit, and process information collected by the Services consistent with our Privacy Policy located at <https://www.kw.com/kw/privacypolicy>, as updated over time. You will always be able to download and take your contacts database.

#### **5. YOUR CONDUCT. YOU MUST NOT:**

- Use the Services in any way or for any purpose that is unlawful, violates any federal or state laws or regulations (including but not limited to the federal Telephone Consumer Protection Act 47 U.S.C. § 227 (“TCPA”)) or any KWRI policies and guidelines (including, but not limited to, the KWRI Policies and Guidelines Manual) that apply to the dissemination of unsolicited email and faxes to the use of telephone calls, text messages, artificial or prerecorded messages, automatic telephone dialing systems, automatic dialing and announcing devices and any other communication to market services or to solicit listings or prospective buyers or to engage in any other telemarketing or telephone solicitation or other commercial communication or to any other purpose that is fraudulent, or otherwise tortious.
- Post, transmit or make available any materials that are or may be: (a) threatening, harassing, degrading, hateful or intimidating, or otherwise fail to respect the rights and dignity of others; (b) defamatory, libelous, fraudulent or otherwise tortious; (c) obscene, indecent, pornographic or otherwise objectionable; or (d) protected by copyright, trademark, trade secret, right of publicity or privacy or any other proprietary right, without the express prior written consent of the applicable owner.

- Introduce any virus, worm, Trojan horse, Easter egg, time bomb, spyware or other computer code, file or program that is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of, any hardware, software or equipment.
- Link, integrate, or provide access to the Services or related infrastructure without KWRI's prior explicit permission.
- Impersonate someone else in relation to your activities on the Services.
- Transmit any spam, chain letters or other unsolicited communications.
- Harvest or collect information about users of the Services.
- Interfere with the operation or content of the Services, or the servers or networks used to make the Services available (for example, by hacking or defacing any portion of the Services), or violate any requirement, procedure or policy of such servers or networks.
- Inhibit any other person from using the Services.
- Reproduce, modify, adapt, translate, create derivative works of, sell, rent, lease, loan, timeshare, distribute or otherwise exploit any portion of the Services.
- Reverse engineer, decompile or disassemble any portion of the Services.
- Remove or alter any copyright, trademark or other proprietary rights notice from the Services.
- Frame or mirror any portion of the Services or incorporate any portion of the Services into any product or service.
- Systematically download or store Services content.
- Tamper with or circumvent any security technology associated with the Services.
- Use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or otherwise gather Services content (including Submissions), or reproduce or circumvent the navigational structure or presentation of the Services, without our express prior written consent.

We may monitor your use of the Services to determine compliance with this Agreement. We may remove or refuse any data or material included in the Services, in whole or in part, for any reason. We may disclose information regarding your access to and use of the Services, and the circumstances surrounding such access and use.

You agree to be solely responsible for becoming aware of understanding and complying with the most recent versions of all applicable laws, regulations and KWRI policies that relate to your use of the Services.

You acknowledge that you are solely responsible for identifying, interpreting, understanding and complying with all applicable federal and state laws and regulations regarding your use of the Services, including selecting and engaging any legal counsel you may deem necessary to ensure compliance therewith.

NOTE: If you copy and paste an individual's contact information (e.g. a phone number) from the Command Mobile App and insert such information into your mobile device for the purpose of

communicating with that individual, you must comply with all applicable federal and state laws and regulations (including but not limited to the TCPA) or any KWRI policies and guidelines (including, but not limited to, the KWRI Policies and Guidelines Manual) that apply to the dissemination of unsolicited email and faxes and to the use of telephone calls, text messages, artificial or prerecorded messages, automatic telephone dialing systems, automatic dialing and announcing devices and any other communication to market services or to solicit listings or prospective buyers or to engage in any telemarketing or telephone solicitation or other commercial communication.

## **6. THIRD PARTY MATERIALS; LINKS**

Some of the Services' functionality may be provided by third parties, including Apps ("Third Party Materials"), or allow for the routing or transmission of such Third Party Materials, including via links. By using such functionality, you are directing us to access, route and transmit to you the applicable Third Party Materials.

We will only provide information to Third Parties to enhance the Services or provide additional functionality and will only do so in compliance with our Privacy Policy located at <https://www.kw.com/kw/privacypolicy>. We do not endorse, and make no representations or warranties related to, any aspect of the Third Party Materials. The third party App providers may present you with their own terms, conditions, and policies (the "Third Party Terms"). You are responsible for complying with any Third Party Terms you agree to. For your and the Services' security, we may block or disable access to any Third Party Materials (in whole or in part) through the Services at any time.

## **7. TRANSACTIONS.**

You may have the ability to purchase products, services or access to Apps through the Services (each a "Transaction"). To make a Transaction, you may be asked to supply information, such as your credit card number and its expiration date and your billing address. You promise that you have the right to use the credit card you use in connection with a Transaction, and you grant to us the right to provide such information to third parties for purposes of facilitating Transactions. Verification of information may be required prior to the acknowledgment or completion of any Transaction.

We may (a) impose conditions on the honoring of any coupon, discount or similar promotion; (b) prevent any user from making any Transaction; and (c) refuse to provide any user with any product, service or App. Unless otherwise specifically stated. Transactions are final, non-cancellable, and non-refundable. You must pay all charges incurred by you or on your behalf at the prices in effect when such charges are incurred. Additionally, you are responsible for any taxes applicable to your Transactions.

## **8. SUBSCRIPTIONS; PAYMENT AUTHORIZATION.**

If you purchase an App, product, or service through an App, or if you start a free trial for an App, product or service, that is a "Subscription", your Subscription may renew automatically at the regular subscription price and at the frequency stated when you made the purchase or began the free trial, unless you are otherwise notified in writing. UNLESS YOU SET A SUBSCRIPTION TO STOP AUTOMATICALLY RENEWING PRIOR TO ITS RENEWAL DATE, OR CANCEL A FREE TRIAL BEFORE IT ENDS, EACH IN THE MANNER SPECIFIED BY THE APP OR THE SUBSCRIPTION TERMS, YOU AUTHORIZE US (WITHOUT FURTHER NOTICE TO YOU, UNLESS OTHERWISE REQUIRED BY APPLICABLE LAWS) TO CHARGE THE PAYMENT METHOD YOU HAVE PROVIDED TO US IN THE AMOUNT OF THE THEN-CURRENT SUBSCRIPTION FEES AND ANY APPLICABLE TAXES, ON A MONTHLY BASIS OR AT ANY

OTHER FREQUENCY SPECIFIED BY THE APP OR THE SUBSCRIPTION TERMS AND AGREED TO BY YOU. If we cannot charge your payment method for any reason, such as an expired payment method or insufficient funds, you remain responsible for any uncollected amounts. We may attempt to charge your payment method again as you update your payment information. We may terminate a subscription, or change the terms of subscriptions, at any time. If we terminate a subscription, you will receive a prorated refund if applicable.

## **9. FEEDBACK**

If you provide to us any ideas, proposals, suggestions or other materials (“Feedback”), such Feedback will be deemed a Submission, and you hereby acknowledge and agree that such Feedback is not confidential, and that your provision of such Feedback is gratuitous, unsolicited and without restriction, and does not place us under any fiduciary or other obligation.

## **10. SUBMISSIONS.**

Users may make available through the Services posts, blogs, reviews, comments or similar content (“Submissions”). For each Submission, you grant to us an unlimited, worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable, transferable and fully sublicensable (through multiple tiers) license, without additional consideration to you or any third party, to reproduce, distribute, perform and display (publicly or otherwise), create derivative works of, adapt, modify and otherwise use, analyze and exploit such Submission (provided that our use and other processing of Personal Information as defined in the Privacy Policy does not violate the Privacy Policy), in any format or media.

## **11. KELLER WILLIAMS' PROPRIETARY RIGHTS.**

We and our suppliers own the Services, which are protected by United States and international intellectual property and proprietary rights and laws. Our trade names, trademarks and service marks include Keller Williams, KW, Livian, and any associated logos. All trade names, trademarks, service marks, logos, copyrightable works and other content, information and materials on or made available through the Services that are not owned by us are the property of their respective owners. You may not use our trade names, trademarks, service marks or logos in connection with any product or service that is not ours, or in any manner that is likely to cause confusion. Nothing contained on the Services should be construed as granting any right to use any trade names, trademarks, service marks, logos, copyrightable works or other content, information and materials without the express prior written consent of the owner.

## **12. DISCLAIMER OF WARRANTIES.**

THE SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OR CONDITION OF ANY KIND AND WE DO NOT PROVIDE ANY WARRANTY THAT THE SERVICES WILL BE FREE FROM ERRORS OR INTERRUPTION. YOUR USE OF THE SERVICES IS AT YOUR OWN RISK. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## **13. LIMITATION OF LIABILITY.**

NEITHER WE, NOR OUR AFFILIATES AND ANY RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS (COLLECTIVELY, THE “AFFILIATED ENTITIES”) WILL BE LIABLE FOR: (A) ANY LOST PROFITS, REVENUES, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COST OF COVER, OR PUNITIVE DAMAGES; OR (B) AGGREGATE LIABILITY OF ALL AFFILIATED ENTITIES, WHETHER IN CONTRACT, TORT OR

OTHERWISE, EXCEEDING THE GREATER OF (I) THE TOTAL AMOUNT PAID BY YOU TO US IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CAUSE OF ACTION FOR DAMAGES, OR (II) FIFTY DOLLARS (\$50.00). YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SERVICES (INCLUDING ANY APPS OR THIRD PARTY MATERIALS) IS TO STOP USING THE SERVICES. ALL LIMITATIONS OF LIABILITY OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THIS AGREEMENT) ARE MADE ON BEHALF OF BOTH US AND THE AFFILIATED ENTITIES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

#### **14. INDEMNITY.**

You will defend, indemnify and hold harmless us and the Affiliated Entities, and their respective successors and assigns, from and against all claims, liabilities, damages, judgments, awards, losses, costs, expenses and fees (including attorneys' fees and expenses) arising out of or relating to: (a) your use of, or activities in connection with, the Services (including all Submissions); and (b) any violation or alleged violation of this Agreement by you. Without limiting the foregoing, you expressly acknowledge and agree that as an independent contractor, you are solely legally and financially responsible for any alleged violation of the federal TCPA, it implementing regulation, 47 C.F.R. § 64.1200, and all similar state laws and regulations; you do not have authority to send any communication on behalf of KWRI; and KWRI does not control and is not responsible for your actions related to any telephone, text, email or other communication.

#### **15. TERMINATION.**

This Agreement is effective until terminated. We may terminate or suspend your use of the Services at any time and without prior notice, for any or no reason, including if we believe that you have violated or acted inconsistently with this Agreement. Upon any such termination or suspension, your right to use the Services will immediately cease, and we may, without liability to you or any third party, immediately deactivate or delete your username, password and account, and all associated materials, without any obligation to provide any further access to such materials. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the parties contained herein will survive the expiration or termination of this Agreement; and (b) any provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or termination of this Agreement for the period of time necessary to give proper effect to the intent of the provision.

#### **16. GOVERNING LAW; ARBITRATION; CLASS ACTION WAIVER.**

This Agreement and your activities under it, are governed solely by and shall be construed solely in accordance with the laws of the United States and the State of Texas, U.S.A., without regard to its principles of conflicts of law regardless of your location.

Except for disputes that qualify for small claims court, any controversy or claim arising out of or related to this Agreement will be resolved through final and binding arbitration before a neutral arbitrator instead of in a court by a judge or jury. You agree that any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted. You agree that we and you are each waiving the right to trial by a jury, and you are agreeing to give up any legal right you may have to participate in a class arbitration or class action. If you do not want to be bound by this arbitration provision, you may opt out without prejudice or penalty. In order to opt out of this arbitration provision, you must notify us in writing that you do not want to resolve disputes with us by arbitration, and such notice should be delivered by e-mail to

legal@kw.com or by mail to 1221 S. Mopac Expressway, Suite 400, Austin, Texas 78746, Attn: Legal Department, within thirty (30) days of the earlier of: (a) the date you first use or access the Services; and (b) the date you click or tap any button or box marked “accept,” “agree” or “OK” (or a similar term) in connection with this Agreement (including registering your account).

Arbitrations conducted pursuant to this Agreement will be administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules and Mediation Procedures (Commercial Rules). In the event the Commercial Rules conflict with any provision of this Agreement, the terms of this Agreement will control. A party will initiate an arbitration under this Agreement by providing notice and a demand for arbitration to the other party according to the Commercial Rules. The parties will work together to agree on the appointment of an arbitrator within twenty (20) days of the initiation of the arbitration. If the parties cannot agree on an arbitrator, one will be appointed according to the Commercial Rules.

For arbitrations outside of California, the arbitrator shall have the authority to award attorney's fees and costs to the prevailing party if such an award is allowed under applicable law. For arbitrations within California, the arbitrator shall not have the authority to award attorney's fees and costs to a claimant who does not prevail against.

#### **17. INFORMATION OR COMPLAINTS.**

If you have a question or concern regarding the Services, please send an e-mail to support@kw.com. You may also contact us by calling us at (833) 592-7548. Please note that e-mail communications are not necessarily secure. Accordingly, you should not include personal or payment information or other sensitive information in your e-mail correspondence with us. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

#### **18. COPYRIGHT INFRINGEMENT CLAIMS.**

The Digital Millennium Copyright Act of 1998 (DMCA) provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that materials available through the Services infringe your copyright, you (or your agent) may send us a written notice by mail, e-mail or fax, requesting that we remove such material or disable access to it. If you believe in good faith that someone has wrongly submitted to us a notice of copyright infringement involving content that you made available through the Services, you may send us a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA. See <https://www.copyright.gov/> for details. Notices and counter-notices must be sent in writing to our Designated Agent as follows:

Keller Williams Realty, Inc.

Legal Department

1221 S. Mopac Expressway, Suite 400

Austin, Texas 78746

E-mail: Legal@kw.com

Telephone: (512) 327-3070

We suggest that you consult your legal advisor before sending a DMCA notice or counter-notice. It is our policy to terminate, in appropriate circumstances, a user's right to use the Services if we decide they are repeat infringers.

#### **19. EXPORT CONTROLS; INTERNATIONAL USE.**

You are responsible for complying with United States export controls and for any violation of such controls, including any United States embargoes or other federal rules and regulations restricting exports. You represent, warrant and covenant that you are not: (a) located in, or a resident or a national of, any country subject to a U.S. government embargo or other restriction, or that has been designated by the U.S. government as a "terrorist supporting" country; or (b) on any of the U.S. government lists of restricted end users.

We make no representation that the Services are appropriate or available for use in locations outside the United States, and access to the Services from territories where such Services are illegal is prohibited. If you choose to access the Services from locations outside the United States, you do so at your own risk and are solely responsible for compliance with applicable local laws and regulations. Additionally, if you access or use the Services from outside the United States, your information may be transferred to, stored, and processed in the United States where our servers may be located, and you hereby consent to such transfer, storage, and processing of your information to and in the United States.

The Services are not intended for distribution to, or use by, any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation, or that would subject us or our Affiliated Entities to any registration requirement within such jurisdiction or country.

#### **20. MISCELLANEOUS.**

This Agreement does not, and will not be construed to, create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between you and us. You acknowledge and agree that, except as otherwise expressly provided in this Agreement, there will be no third party beneficiaries to this Agreement. If any provision of this Agreement is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provision. You may not assign, transfer or sublicense any or all of your rights or obligations under this Agreement without our express prior written consent. We may assign, transfer or sublicense any or all of our rights or obligations under this Agreement without restriction. No waiver by either party of any breach or default under this Agreement will be deemed to be a waiver of any other breach or default. Any heading, caption or section title contained herein is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular will have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term "including" or variations thereof in this Agreement will be construed as if followed by the phrase "without limitation." This Agreement, including any terms and conditions incorporated herein and any addenda hereto, is the entire agreement between you and us regarding its subject matter, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between you and us relating to such subject matter. Notices to you (including notices of changes to this Agreement) may be made via posting to the Services or by e-mail (including in each case via links) to the most recent e-mail address that you have provided to us, or by regular mail to the most recent mailing address that you have provided to us. Without limitation, a printed version of this Agreement and of any notice given in electronic form will be admissible in



judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. We will not be responsible for any failure to fulfill any obligation due to any cause beyond our reasonable control.

Last Updated: October 14, 2021