

RMLS

Participant License and Access Agreement

**This agreement is a binding contract and includes terms that limit your legal rights and RMLS's liability to you.
Consult your attorney before signing if you do not understand any of the terms here.**

This Participant License and Access Agreement ("Agreement") is made as of the Effective Date below between Regional Multiple Listing Service of Minnesota, Inc., d/b/a NorthstarMLS and NorthstarMLS.com ("RMLS"); the undersigned participant ("**Participant**"), on his/her own behalf and on behalf of the firm named under Participant's signature below ("**Participant's Firm**"). The parties, intending to be legally bound, hereby agree as follows.

1. Definitions and usage.

(a) Definitions.

"**RMLS Affiliates**" means RMLS, Association, and their officers, directors, employees, agents, representatives, licensors and shareholders.

"**RMLS Database**" means all data available to Participant Affiliates on the RMLS System, including the Participant Contribution and all other text, binary, and photographic image data.

"**RMLS Policies**" means RMLS's bylaws, policies and procedures manual, and rules and regulations, as RMLS amends them from time to time.

"**RMLS Service**" means the services RMLS provides to Participant Affiliates under this Agreement and similar services RMLS provides to third parties under similar agreements, including any access or license to the RMLS Software, the RMLS Database, and the RMLS System.

"**RMLS Software**" means RMLS's proprietary web browser interface(s) to the RMLS System.

"**RMLS System**" means the aggregate of all hardware and telecommunications systems that RMLS maintains in order to make access to the RMLS Database available to Participant.

"**Association**" means the **REALTOR® Association** through which Participant Affiliates receive the RMLS Service.

"**Participant Affiliates**" means Participant, Participant's Firm, and their employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

"**Participant Contribution**" means all data that the Participant Affiliates submit, contribute, or input in the RMLS System, including text, binary, and photographic image data.

"**Saved Information**" means information that Participant Affiliates store in the RMLS System for their own later use that is not intended by them to be available to RMLS's other customers, including client prospect and contact information.

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

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

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

(iii) Wherever the term "law" is used, it means all statutes, regulations, and common 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.

2. RMLS's obligations.

RMLS shall authorize Association to provide one unique user ID and password to each of the Participant Affiliates that is authorized to obtain access to the RMLS service by virtue of this Agreement or another license and access agreement. The user ID and password will provide Participant Affiliates access to all data and functions in the RMLS Service to which Participant Affiliates are entitled under the RMLS Policies. RMLS makes no warranties, however, that the RMLS Service will be available at all times.

3. Participant acknowledgments.

(a) **Modifications to service; new products.** RMLS may, but is not required to, modify the RMLS 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 RMLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

(b) **Editorial control.** RMLS is not required to, and does not, review, edit, or exercise editorial control over the RMLS 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, RMLS may take any steps necessary in its judgment, including deleting the Participant Contribution or portions thereof, to avoid or remedy any violation of the RMLS Policies, any violation of law, and any infringement of intellectual property right.

(c) **Conditions of service.** Participant's continued compliance with all the terms of this Agreement is a condition to each and every performance of RMLS hereunder.

(d) **Saved Information.** Saved Information may not always be available to Participant Affiliates and may become available to unauthorized persons. RMLS is not liable for unauthorized access to or loss of Saved Information; Participant Affiliates are responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

(e) **Disclosure to third parties.** RMLS reserves the right to distribute to third parties certain information about Participant Affiliates, including Participant Affiliates' names and business addresses, phone numbers and email addresses. RMLS reserves the right to distribute to third parties aggregated information about RMLS customers' use of the RMLS Service, but not about Participant Affiliates' use specifically.

(f) **Disclosure to government.** Participant and Participant's Firm acknowledge that RMLS may provide government agencies access to the RMLS Service at any time in RMLS's sole discretion.

(g) **Priority of agreements.** Participant and Participant's Firm must enter into this Agreement before any other Participant Affiliate may obtain access to the RMLS Service. Subscriptions of other Participant Affiliates are dependent on this Agreement;

any termination or suspension of this Agreement will result in termination or suspension of dependent Participant Affiliate agreements. Participant Affiliates may enter and retrieve active listing information on the RMLS Service only if Participant is capable of offering compensation to and accepting compensation from other principal brokers.

(h) **If Participant is an appraiser or Participant's Firm an appraisal firm,** Participant acknowledges that certain information in the RMLS Database, including information about listings currently for sale, may be withheld from Participant Affiliates pursuant to the RMLS Policies.

(i) **Feedback for RMLS's use.** RMLS shall be free to use, disclose, and publish any feedback or other information Participant Affiliates provide RMLS in the course of RMLS providing products and services hereunder ("Feedback"); provided, however, that RMLS shall have no rights to Feedback to the extent that Participant clearly designates it as confidential and proprietary and Participant takes reasonable steps to keep it confidential.

4. Participant's obligations.

(a) **Use limited.** Participant Affiliates shall use the RMLS Service solely for the purpose of selling, listing, leasing, and appraising real estate and at all times subject to the RMLS Policies. Except as expressly provided in this Agreement and the RMLS Policies, Participant Affiliates shall not copy, create derivative works of, distribute, perform, or display the RMLS Service or any part of it except the Participant Contribution.

(b) **Confidentiality.** Participant shall maintain the confidentiality of its user ID and password and the RMLS Database; Participant Affiliates shall not provide their IDs and passwords to any other Participant Affiliate or to any third party. Participant shall ensure that the Participant Affiliates maintain the confidentiality of their user IDs and passwords and the RMLS Database and that no one but authorized Participant Affiliates obtains access to the RMLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the RMLS Database, and the RMLS System, Participant Affiliates shall take the greater of reasonable care or the care they take to protect their own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the RMLS Policies. Participant and Participant's Firm 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, Participant or Participant's Firm first gives reasonable notice to RMLS to permit RMLS to seek a protective order.

(c) **Equipment.** Participant Affiliates shall acquire and maintain all personal computers, modems, telecommunications connections, and computer software, other than the RMLS Software, necessary for Participant Affiliates' use of the RMLS Service.

(d) **Participant Contribution.** When making a Participant Contribution to the RMLS Service, Participant Affiliates shall ensure that the information submitted complies with the RMLS Policies with regard to (i) which listings must be submitted; (ii) required data fields; (iii) format of submission; and (iv) procedures for submission.

(e) **Affiliate agreements.** Participant shall ensure that each Participant Affiliate enters into a license and access agreement with RMLS before obtaining access to the RMLS System or RMLS Database.

(f) **Affiliate supervision.** Participant shall ensure that all Participant Affiliates comply at all times with the RMLS Policies and with applicable laws. Participant is liable for any Participant

Affiliate's breach of any agreement between the Participant Affiliate and RMLS relating to the RMLS Service or violation of any of the RMLS Policies as if Participant itself had committed it.

(g) **List of affiliates.** Participant shall provide to Association a current list of all of Participant Affiliates; Participant shall inform Association in writing of any change in the Participant Affiliates within 24 hours of the change.

(h) **Accurate information.** Participant shall use reasonable care to ensure the accuracy of the Participant Contribution and its compliance with all laws. Participant shall ensure that any changes to the Participant Contribution are made on the RMLS System within 24 hours or within such other time as RMLS shall provide in the RMLS Policies.

5. Intellectual property.

Election regarding copyrights in Participant Contribution. Participant must elect from the following options. If no election is indicated, then Participant is deemed to have selected Option I.

OPTION I

(a) **Joint Ownership of Copyrights.** Participant and Participant's Firm agree to assign and hereby do assign to RMLS, and RMLS agrees to assign and hereby does assign to Participant's Firm, a sufficient quantum of ownership in the copyrights in each component of the Participant Contribution such that RMLS owns a one-quarter (25%) undivided interest and Participant's Firm owns a three-quarters (75%) undivided interest in each and every copyright in the Participant Contribution. RMLS, Participant and Participant's Firm warrant that they have the authority to make this assignment. Participant and Participant's Firm further warrant that (i) the Participant Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (ii) Participant has the written consent of any party necessary to provide the Participant Contribution to RMLS. Participant acknowledges that once it has made the election agreeing to this section, the one-quarter (25%) interest in all copyrights in all portions of the Participant Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in RMLS. RMLS acknowledges that Participant's Firm, as joint owner of the Participant Contribution, may make unfettered and unrestricted use of the Participant Contribution in perpetuity.

(b) **RMLS Obligations.** RMLS shall secure the rights of Participant hereunder by obtaining assignments and licenses from Participant Affiliates and others as necessary. RMLS shall make quarterly registrations of the copyrights in the RMLS Database, including the Participant Contribution; RMLS shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Participant's permission.

OPTION II

(a) **License from Participant.** Participant hereby grants to RMLS 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. Participant warrants that it has the authority to grant this license. Participant further warrants that (i) the Participant Contribution does not infringe on the copyright or other intellectual property rights of any third

party; and (ii) Participant has the written consent of any party necessary to provide the Participant Contribution to RMLS.

(b) **RMLS has no obligations to protect.** Participant acknowledges that: (i) RMLS makes no grant of license or assignment to Participant of any rights in the RMLS Database except as set forth in subsection (e); (ii) RMLS will make no effort to register the copyrights in the Participant Contribution, and 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) *RMLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Participant's permission*; and (v) RMLS will make no effort to secure for Participant the right to use copyright works created by Participant Affiliates or third parties.

(c) **Limitation of RMLS's use.** RMLS 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 RMLS Service, unless Participant has indicated in writing or via the RMLS System its desire to provide the Participant Contribution to a third party. For purposes of the previous sentence, brokers participating in any MLS in the data sharing cooperative among MLSs in Minnesota and Wisconsin are subscribers to the RMLS Service.

(d) **Accounting.** No party to this Agreement shall be required to account for profits or revenues obtained from licensure of the Participant Contribution.

(e) **Other licenses.** RMLS hereby grants Participant Affiliates a license to use the RMLS Software and the RMLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), subject to the following terms:

(i) **Scope.** License to the Licensed Materials is personal, non-exclusive, non-transferable, and royalty-free. Participant Affiliates may use the Licensed Materials only to the extent expressly permitted by this Agreement and the RMLS Policies and only to deliver real estate brokerage or appraisal services to Participant's bona fide customers.

(ii) **Duration.** The licenses to the Licensed Materials terminate upon termination of this Agreement.

(iii) **Restrictions.** All uses of the Licensed Materials not expressly authorized in this Agreement and the RMLS Policies are prohibited, including (A) assigning, timesharing, selling, leasing, lending or renting the Licensed Materials or access to the RMLS Database; (B) causing or permitting the reverse engineering, reformatting, recasting, disassembly or decompilation of the Licensed Materials; and (C) disclosing, demonstrating and displaying the Licensed Materials to anyone.

(iv) **Title.** Title to the Licensed Materials remains at all times in RMLS and its co-owners and shall not pass to any Participant Affiliate.

6. Fees and payment terms.

(a) **Periodic fees.** No fees are due directly to RMLS hereunder. Association is solely responsible for establishing the fees it charges for access to the RMLS Service and for determining the means of collecting those fees. RMLS does not control or fix the fees that brokers and salespersons pay to Association (or other

REALTOR[®] associations) for access to the RMLS Service. Participant and Participant's Firm agree to pay all applicable fees to Association when they come due according to Association's policies. Association may revise its schedule of fees at its sole discretion at any time, subject to its own policies. Association may suspend services to Participant Affiliates for failure to pay according to Association's policies.

(b) **Fines.** RMLS may collect fines from Participant and from Participant's Firm for violation of the RMLS Policies. Payment terms for fines are set out in the RMLS Policies. RMLS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

7. Term and termination.

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

(b) **Termination for breach.** RMLS may terminate this Agreement with notice to Association if Participant or Participant's Firm fails to comply with the terms of this Agreement or of the RMLS Policies.

(c) **Termination without Fault.** Any party may terminate this Agreement upon 30 days' written notice to the other parties and to Association.

(d) **Events upon termination.** Promptly upon any termination of this Agreement, (i) RMLS or Association shall deactivate the user IDs and passwords of the Participant Affiliates, and they shall have no further access to the RMLS Service; (ii) Participant Affiliates shall purge all copies of the RMLS Software and the RMLS Database, except the Participant Contribution, from their personal computers; and (iii) all licenses granted hereunder shall immediately terminate.

(e) **Affect on Participant Affiliates.** Upon termination of this Agreement the license and access agreements of all other Participant Affiliates shall also immediately terminate.

(f) **Termination upon resignation of Participant or transfer of Participant's firm.** In the event Participant, who is a party to this Agreement as an individual, leaves Participant's Firm upon resignation or transfer of the firm to another individual, this Agreement shall terminate. In order to sustain services to Participant's Firm and Participant Affiliates, a new qualifying participant must execute a participant agreement with RMLS.

8. Disclaimer, limitation of liability, and indemnification.

(a) **DISCLAIMER OF WARRANTIES.** RMLS PROVIDES THE RMLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE RMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE RMLS SERVICE ARE AT THE SOLE RISK OF THE PARTICIPANT AFFILIATES. THE RMLS AFFILIATES DO NOT WARRANT THAT THE RMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE RMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE RMLS SERVICE. THE RMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE RMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE RMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(b) **Limitations and exclusions of liability.** None of the RMLS Affiliates shall be liable to Participant or anyone else for any

indirect, incidental, special, or consequential damages that result from the use of, or inability to use, the RMLS service, including reliance by any Participant Affiliate on any information obtained through use of the RMLS Service; mistakes, omissions, deletions or delays in transmission of such information; interruptions in telecommunications connections to the RMLS Service; and viruses or failures of performance; whether caused in whole or part by negligence, acts of God, telecommunications failure, or theft of, destruction of, or unauthorized access to the RMLS Service and related information, records and programs.

(c) **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL THE LIABILITY OF THE RMLS AFFILIATES ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY PARTICIPANT AFFILIATES HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM.

(d) **Indemnification.** Subject to Section 8(c) each party (the "Indemnifying Party") shall defend, indemnify and hold the other party (the "Indemnified Party") harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim alleging or arising from a breach by the Indemnifying Party.

(e) **Acknowledgment.** Participant and Participant's Firm acknowledge that RMLS 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.

9. Disputes and remedies.

(a) **Injunctive relief.** Participant and Participant's Firm acknowledge and agree that the RMLS Software and RMLS Database are confidential and proprietary products of RMLS and that in the event there is an unauthorized disclosure of them by Participant Affiliates, no remedy at law will be adequate. Participant and Participant Affiliates therefore agree that in the event of such unauthorized disclosure of RMLS Software or RMLS Database, RMLS may obtain injunctive relief or other equitable remedies against Participant Affiliates in addition to all available remedies at law.

(b) **Dispute resolution.** 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 all effective as of September 15, 2005 (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Ramsey County, Minnesota, except that it may be held by telephone where the Arbitration Rules expressly so permit. Participant and Participant's Firm agree to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the courts of the State of Minnesota sitting in Ramsey County.

(c) **Liquidated damages.** Participant and Participant's Firm acknowledge that damages suffered by RMLS from access to the RMLS Service by an unauthorized third party as a result of disclosure of Participant Affiliates' passwords or an unauthorized disclosure by Participant Affiliates of the RMLS Database to a

third party would be speculative and difficult to quantify. Accordingly, as a material inducement to RMLS to enter into this Agreement with Participant and Participant's Firm, Participant and Participant's Firm agree that (i) in the event that any disclosure of a Participant Affiliate's password results in access to the RMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Participant shall be liable to RMLS for liquidated damages in the amount of \$1,000 (or the amount established in the RMLS Policies, whichever is greater) and termination of this Agreement; and (ii) in the event that Participant Affiliates make unauthorized disclosure of any portion of the RMLS Database to any third party, Participant shall be liable for liquidated damages in the amount of \$1,000 (or the amount established in the RMLS Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

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

10. Miscellaneous.

(a) **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, RMLS, Participant, and Participant's Firm, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, or other third party. The foregoing notwithstanding, Association is a third-party beneficiary of this Agreement and the parties agree that Association may enforce those covenants herein of which Association is beneficiary.

(b) **Interpretation and amendment.** This Agreement may not be amended except by written instrument executed by both parties. Should any purchase order, confirmation or acknowledgment of Participant contain additional or different terms, those terms shall be considered proposals by Participant or Participant's Firm which are hereby rejected.

(c) **Assignment.** Neither Participant nor Participant's Firm may assign or delegate this Agreement or any obligations or duties hereunder. Any purported assignment or delegation in contravention of this section is null and void.

(d) **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.

(e) **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota applicable to contacts made and performed in Minnesota, without regard to its conflicts of law and choice of law provisions.

(f) **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (i) U.S. Mail, postage paid and return receipt requested; (ii) express mailing service with confirmation of receipt; or (iii) facsimile transmission, provided sender obtains confirmation of transmission. All notices are effective on the date of receipt.

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

PLEASE FILL IN THE FOLLOWING:

Designated Broker:

Office Name:

Office Address:

Office ID:

**Regional Multiple Listing Service of Minnesota, Inc.
d/b/a NorthstarMLS and NorthstarMLS.com ("RMLS")**

Participant

By:

John Mosey, President

Signature

Effective Date

Print name

Participant's Firm