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Participation Agreement

This Participation Agreement (the “Agreement”) is made and entered into by and between _____, an individual principal real estate broker or broker in charge, or a real estate brokerage firm, as MLS may require (the “Participant”), and _____, a _____ (the “MLS”).

1. **Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 24 of this Agreement.

2. **Grant of Participation Rights in Multiple Listing Service.** Subject to the terms and conditions of this Agreement and the Rules and Regulations, MLS agrees to make the MLS Database available for access by Participant, and Participant shall have all rights and obligations of a participant in MLS’s multiple listing service as set forth under the Rules and Regulations. Access to the MLS Database shall be through a means determined by MLS. Participant may permit duly authorized employees or agents associated with his/her office to access the MLS Database on Participant’s behalf and pursuant to the terms of this Agreement; provided that, Participant (a) accepts full responsibility, and shall be liable to MLS for use of the MLS Database by such employee or agent; and (b) promptly terminates access to the MLS by such employee and agent upon such employee or agent ceasing to be authorized as set forth in this provision. Participant agrees to take all reasonable steps to protect the MLS Database from unauthorized access, copying, or use.

3. **License to IDX Listings.** Upon the receipt of a written request from Participant, in a form acceptable to MLS, and so long as Participant, the applicable Sales Licensee, and/or an applicable Vendor are not in default under this Agreement, the Rules and Regulations or any agreement with MLS, MLS will grant to Participant, the applicable Sales Licensee of Participant, or the applicable Vendor a license to the IDX Listings. The license will only be granted pursuant to a License Agreement. MLS has no obligation to grant a license to Participant, any Sales Licensee, or any Vendor which does not enter into a License Agreement. In addition to any applicable license fee payable by Participant, the Sales Licensee, and/or the Vendor, Participant shall pay to MLS all costs and expenses incurred by MLS in connection with any licenses and any services provided by MLS in connection with such licenses.

4. **Intellectual Property Ownership; Enforcement.** [NOTE: Section 4 is a license, and is in compliance with NAR Policy. Included in Appendix A, at the end of this Agreement, are two other options, Assignment and Joint-Ownership; neither option is in compliance with NAR Policy.]

a. Participant acknowledges and agrees that the MLS Database, and all copies, modifications, enhancements, and derivative works of the MLS Database, are the

1 property of MLS, and all right, title, and interest in and to the MLS Database, together with all
2 copies, modifications, enhancements, and derivative works, including all copyright and other
3 intellectual property rights are and shall remain with MLS. Participant hereby irrevocably
4 assigns to MLS any and all rights which it may have or acquire in and to the MLS Database.

5 b. Participant hereby grants to MLS a non-exclusive, irrevocable, worldwide,
6 royalty free license to use, sublicense through multiple tiers, copy, publish, display, and
7 reproduce the Listing Content, to prepare derivative works of the Listing Content, and to
8 distribute the Listing Content or any derivative works thereof. Such license shall be deemed
9 granted as of the moment of creation without the necessity of any further action on the part of
10 either party. Participant represents and warrants to MLS with respect to the Listing Content for
11 each of Participant's Listings that the Listing Content, and the license of rights in and to the
12 Listing Content to MLS, do not infringe or violate any copyrights, trade secrets, or other
13 intellectual or proprietary rights of any third party.

14 c. Participant agrees not to challenge MLS's rights in and to the MLS
15 Database or to take any action inconsistent with the license granted to the Listing Content under
16 this Agreement. Participant agrees to take all action and execute and deliver to MLS all
17 documents requested by MLS in connection with the license granted to MLS in and to the
18 Listing Content. Participant further agrees to take all action and execute and deliver to MLS all
19 documents requested by MLS in connection with the copyright application and registration of the
20 MLS Database.

21 d. Participant shall indemnify MLS against all damages, costs, and liabilities,
22 including reasonable attorney fees, arising from any claim that the Listing Content or any portion
23 of the Listing Content infringes the rights of any third party. PARTICIPANT
24 ACKNOWLEDGES THAT THE FOREGOING SENTENCE MEANS THAT PARTICIPANT
25 MUST OBTAIN ASSIGNMENTS OR LICENSES FROM THE AUTHORS OF ANY
26 PORTIONS OF THE LISTING CONTENT, INCLUDING AFFILIATES, SELLERS AND
27 THIRD-PARTY CONTRIBUTORS, AS NECESSARY FOR PARTICIPANT TO LICENSE
28 THE LISTING CONTENT TO MLS AND TO OTHERWISE MAKE FULL USE OF THE
29 LISTING CONTENT UNDER THIS AGREEMENT. IF PARTICIPANT FAILS TO DO SO,
30 PARTICIPANT WILL ASSUME AND REIMBURSE MLS FOR THE COST OF DEFENDING
31 MLS AGAINST INFRINGEMENT CLAIMS AND PAYING DAMAGES ON ANY SUCH
32 CLAIMS.

33 e. Without limiting the generality of this Section 4, but subject to the rights
34 of participants in the MLS' multiple listing service to opt out of inclusion with respect to Listings
35 submitted by such participant as set forth in the Rules and Regulations, Participant acknowledges
36 and agrees that MLS may use and license, or otherwise grant rights in or to the MLS Database or
37 any or all of the Listings included in the MLS Database, including any and all Listing Content, to
38 any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise
39 limited by a separate agreement between MLS and the applicable Broker or by the Rules and
40 Regulations.

41 f. Participant hereby grants to MLS all rights necessary for MLS to protect
42 and enforce all intellectual property rights associated with the Listing Content, including all

1 copyrights. In accordance with the grant of such rights, Participant hereby irrevocably
2 authorizes, empowers and vests in MLS the right, and appoints MLS as Participant’s attorney in
3 fact, to do the following:

4 i. Add watermarks or other means of identification to any and all
5 Listings, regardless of whether such means of identification is visible, and take any and all other
6 action deemed appropriate by MLS to identify the source of any misuse, infringement, or
7 misappropriation of any Listing Content.

8 ii. Send demand letters, exercise rights under any applicable license
9 agreements, and take any and all other action deemed appropriate by MLS to prevent the misuse,
10 infringement, or misappropriation of any Listing Content.

11 iii. Enforce and compromise any and all intellectual property rights in
12 the Listing Content, including all copyrights, whether such rights are held in the name of
13 Participant or others, and take all action deemed necessary and appropriate by MLS in
14 connection with the enforcement of all such rights, including, without limitation, the filing and
15 prosecution of litigation or binding arbitration with respect to any potential claim of
16 infringement, misappropriation, or other similar claim, the naming of any parties deemed
17 appropriate by MLS, and the collection of any damages.

18 iv. Execute all documents, whether in the name of Participant and/or
19 MLS, deemed appropriate by MLS to effect any of the foregoing.

20 Notwithstanding the foregoing, nothing in this Section 4.f requires MLS to take any action
21 against any person, firm, partnership or other entity that Participant claims may be infringing any
22 Listing Content.

23 5. Fees. In consideration for participation in MLS’s multiple listing service and for
24 the services provided and licenses granted under this Agreement, Participant agrees to pay to
25 MLS the fees (the “Fees”) in the amount, and in accordance with the terms, established by MLS
26 for participation by participants in MLS’s multiple listing service, which amount and terms may
27 be changed by MLS at any time effective upon thirty (30) days prior written notice to
28 Participant.

29 6. Agreement With Sales Licensees. Participant agrees to cause all of Participant’s
30 Sales Licensees who will receive access to the MLS through Participant to enter into a subscriber
31 agreement, in a form and substance acceptable to MLS (a “Subscriber Agreement”), in its sole
32 discretion.

33 7. Responsibility for Affiliates. Participant shall be responsible and liable to MLS
34 for the acts and omissions of its Affiliates, and shall be responsible for each Affiliate’s
35 compliance with the Rules and Regulations. Any failure to comply with the Rules and
36 Regulations by an Affiliate shall be deemed a failure to comply by Participant, and Participant
37 shall be responsible and liable to MLS for any damages incurred by MLS arising from or as a
38 result of an Affiliate’s noncompliance with the Rules and Regulations.

1 8. No Assignment by Participant. Participant agrees that this Agreement is personal
2 to Participant, and Participant may not assign or transfer this Agreement, including any license
3 granted under this Agreement, or transfer any rights or delegate any duties under this Agreement,
4 to any third party. Any attempt to assign, transfer, or delegate any of Participants rights, duties,
5 or obligations under this Agreement shall be null and void.

6 9. Interruptions in Service. Participant acknowledges that access to the MLS
7 Database may from time-to-time be unavailable to Participant, whether because of technical
8 failures or interruptions, intentional downtime for service or changes to MLS's website, or
9 otherwise. Participant agrees that any modification of MLS's website, and any interruption or
10 unavailability of access to the MLS Database shall not constitute a default of any obligations of
11 MLS under this Agreement, and MLS shall have no liability of any nature to Participant for any
12 such modifications, interruptions, unavailability, or failure of access.

13 10. Copies and Derivative Works. Except as otherwise expressly provided in this
14 Agreement, a separate license agreement, or the Rules and Regulations, Participant may not do
15 any of the following, either directly or indirectly, including assist any other person to do, or
16 otherwise contribute in any way to any of the following:

17 a. Make any copies of the MLS Database, or any portion of the MLS
18 Database, including any specific Listing Content included in the MLS Database;

19 b. Download, distribute, export, or transmit the MLS Database, or any
20 portion of the MLS Database, including any Listing Content included in the MLS Database, to
21 any computer or other electronic device, or otherwise transmit electronically, or otherwise, the
22 MLS Database, or any portion of the MLS Database, including any Listing Content included in
23 the MLS Database; or

24 c. Publicly display the MLS Database, or any portion of the MLS Database,
25 including any Listing Content included in the MLS Database.

26 11. Representations and Warranties Regarding Listings. Participant represents and
27 warrants with respect to each Participant's Listing or change to a Participant's Listing submitted
28 to MLS under this Agreement and the Rules and Regulations, the following:

29 a. The respective Seller has assigned or licensed in writing all of Seller's
30 rights, title and interest, including all copyright rights and other intellectual property rights, in
31 and to the Listing Content to Participant.

32 b. The Participant's Listing complies in all respects with the Rules and
33 Regulations.

34 c. To the best of Participant's and any applicable Sales Licensee's
35 knowledge and after reasonable due diligence to verify the accuracy of all information in the
36 Participant's Listing, all information included in the Participant's Listing is accurate and not
37 misleading.

1 d. The Listing Content for each Participant’s Listing is an original work of
2 authorship of Participant, or Participant is the assignee or licensee of such Listing Content
3 pursuant to an enforceable assignment or license. Except for Participant and any person or
4 entity, which has assigned his, her or its rights in accordance with Section 4 of this Agreement,
5 no other person or entity has any rights of any nature in or to any of the Listing Content for any
6 Participant’s Listing.

7 e. There is no claim, litigation or proceeding pending or threatened with
8 respect to the Listing Content for any Participant’s Listing.

9 f. The Listing Content, and the assignment of rights in and to Listing
10 Content to MLS, do not infringe or violate any patents, copyrights, mask work rights,
11 trademarks, trade secrets or other proprietary rights of any third party.

12 12. Submission of Listings. As a material condition to accessing the MLS Database,
13 Participant agrees to submit to MLS all Listings in accordance with, and except as otherwise
14 provided in, the Rules and Regulations. MLS may refuse to accept or include in, and may
15 remove from, the MLS Database any Listing or Listing Content, or may require Participant to
16 direct MLS to modify any Listing Content, as provided under the Rules and Regulations or if
17 MLS determines, in its sole discretion, that such Listing or Listing Content may violate or
18 infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as
19 provided in the Rules and Regulations, Participant acknowledges that MLS has no obligation to
20 remove, modify or refuse to accept any Listing or Listing Content. MLS grants to Participant a
21 limited, non-exclusive, personal license to input Listing Content in the MLS Database and to
22 modify such Listing Content strictly in accordance with the terms and conditions of this
23 Agreement and the Rules and Regulations. Participant acknowledges and agrees that any Listing
24 or Listing Content, or any prospective Listing or Listing Content, submitted by Participant or its
25 Affiliates may be accessible by other participants in or users of MLS’s multiple listing service,
26 and MLS shall have no liability to Participant for providing such other participants or users
27 access to any Listing or Listing Content, or any prospective Listing or Listing Content.

28 13. Confidential Information. Any information provided by MLS to any Participant,
29 including without limitation, any password to the MLS Database, any printouts of the MLS
30 Database as provided under this Agreement, and all Listing Content, including personal
31 information of a Seller (collectively “Confidential Information”) shall be maintained by
32 Participant as confidential and available exclusively for use by Participant as provided in this
33 Agreement. Participant shall not disclose any Confidential Information to anyone, except as
34 ordered by a court of competent jurisdiction or as otherwise required by law. Participant shall
35 not disclose any Confidential Information pursuant to a court order or as required by law until
36 Participant has given MLS ten (10) days prior written notice and an opportunity to oppose such
37 disclosure. Notwithstanding the foregoing, Participant may disclose Listing Content for
38 individual Listings strictly in accordance with this Agreement and the Rules and Regulations.

39 14. Additional Representations and Warranties of Participant. If Participant is a
40 Broker, Participant represents and warrants the following to MLS: (a) Participant is a Realtor® in
41 good standing; (b) Participant holds a current, valid real estate broker’s license; (c) Participant is
42 a member of a Board in good standing; and (d) Participant is capable of offering and accepting

1 cooperation and compensation to and from other participants in MLS's multiple listing service in
2 accordance with the Rules and Regulations. If Participant is a Brokerage Firm, Participant
3 represents and warrants to MLS that Brokerage Firm is managed by and under the control of a
4 Broker, and such Broker (a) is a Realtor® in good standing; (b) holds a current, valid real estate
5 broker's license; (c) is a member of a Board in good standing; and (d) is capable of offering and
6 accepting cooperation and compensation to and from other participants in MLS's multiple listing
7 service in accordance with the Rules and Regulations. Participant further represents and
8 warrants to MLS that this Agreement, when executed by Participant, will be valid, binding and
9 enforceable with respect to Participant in accordance with its terms; (a) the provisions of the
10 services provided under this Agreement and the fulfillment of Participant's obligations as
11 contemplated under this Agreement are proper and lawful; (b) Participant is not and shall not be
12 under any disability, restriction or prohibition related to the execution of this Agreement and the
13 performance of its obligations under this Agreement; and (c) all of Participant's Sales Licenses
14 have entered into Subscriber Agreements.

15 15. Compliance with Governing Rules and Agreements.

16 a. By entering into this Agreement, Participant represents and warrants to
17 MLS that Participant, or its Broker if Participant is a Brokerage Firm, has read and understands,
18 and Participant shall be bound by and at all times fully comply with and perform all of
19 Participant's obligations under this Agreement, the Rules and Regulations, the applicable Board
20 Rules and Regulations, and the Code of Ethics and Standards of Practice of the NATIONAL
21 ASSOCIATION OF REALTORS®. A copy of the then-current version of the Rules and
22 Regulations is available upon request. In addition to all other rights and remedies available to
23 MLS under this Agreement and the Rules and Regulations, Participant acknowledges that MLS
24 may levy fines against Participant for noncompliance with the Rules and Regulations as provided
25 in the Rules and Regulations.

26 b. To the extent there is any conflict between this Agreement, the Rules and
27 Regulations, and any applicable Subscriber Agreement, the Rules and Regulations shall govern.
28 As between this Agreement and any Subscriber Agreement, this Agreement shall govern.

29 16. No Warranty. THE SERVICES PROVIDED AND LICENSE GRANTED TO
30 PARTICIPANT UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS,
31 WITHOUT ANY WARRANTY OF ANY NATURE. MLS EXPRESSLY DISCLAIMS ANY
32 AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT
33 LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS
34 FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, MLS
35 DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY LISTING
36 CONTENT, AND THEIR ACCURACY.

37 17. Limitation of Liability. MLS'S ENTIRE AND CUMULATIVE LIABILITY TO
38 PARTICIPANT, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING
39 FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO
40 THIS AGREEMENT, THE MLS DATABASE OR LISTING CONTENT SHALL NOT
41 EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY PARTICIPANT TO MLS
42 DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM

1 ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT
2 SHALL MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL,
3 SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN
4 ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MLS SHALL HAVE NO
5 LIABILITY OF ANY NATURE TO SALES LICENSEES.

6 18. Injunction. MLS and Participant agree that a breach or violation of Sections 10,
7 13, and 19.g of this Agreement will result in immediate and irreparable injury and harm to MLS.
8 In such event, MLS shall have, in addition to any and all remedies of law and other
9 consequences under this Agreement, the right to an injunction, specific performance or other
10 equitable relief to prevent the violation of the obligation under this Agreement; provided,
11 however, that, this shall in no way limit any other remedies which MLS may have, including,
12 without limitation, the right to seek monetary damages.

13 19. Term and Termination.

14 a. The initial term of this Agreement shall commence on the Effective Date
15 and, unless earlier terminated as provided in this Agreement, shall continue for a period of one
16 (1) year. This Agreement shall automatically renew for additional one (1) year terms unless
17 either party gives written notice to the other party of non-renewal at least thirty (30) days prior to
18 the expiration of the then-current term or this Agreement is otherwise terminated as provided in
19 this Agreement.

20 b. **[Optional:** Either party may terminate this Agreement at any time for any
21 reason upon thirty (30) days prior written notice to the other party.]

22 c. MLS may terminate this Agreement, upon the occurrence of any of the
23 following events: (1) Participant fails to pay any Fees when due; (2) Participant discloses any
24 Confidential Information, including, without limitation, any password of Participant or a Sales
25 Licensee, except as expressly provided in this Agreement; (3) Participant otherwise fails to
26 comply in all respects with the Rules and Regulations, the applicable Board Rules and
27 Regulations, or the Code of Ethics and Standards of Practice of the NATIONAL
28 ASSOCIATION OF REALTORS®; (4) Participant defaults under any material term or condition
29 of any License Agreement; or (5) Participant defaults under any other material term or condition
30 of this Agreement. Except as otherwise provided in this Agreement, termination pursuant to this
31 Section 20.c of this Agreement shall be effective at any time after MLS has given ten (10)
32 business days notice to Participant of any such event, and such event has not been cured within
33 such ten (10) day period. Notwithstanding the foregoing sentence, if, in the reasonable
34 discretion of MLS, the occurrence of any such event could result in irreparable harm to MLS,
35 termination shall be effective immediately, without prior written notice to Participant, provided
36 that notice shall be delivered to Participant within ten (10) business days following such
37 termination.

38 d. This Agreement may also terminate as provided under Section 23.d of this
39 Agreement.

1 e. In addition to all other rights and remedies available to MLS under this
2 Agreement, if Participant fails to pay any Fees when due, or otherwise defaults under this
3 Agreement, MLS may, in its sole discretion, temporarily suspend the license granted to
4 Participant to access the MLS Database until all outstanding Fees have been paid in full or the
5 default has been cured.

6 f. Notwithstanding anything to the contrary in this Agreement, if Participant
7 violates or is alleged to have violated the Rules and Regulations, Participant shall not be
8 terminated in accordance with Section 19.c of this Agreement until any hearing or appeal rights
9 of Participant have expired as provided in the Rules and Regulations.

10 g. Upon termination of this Agreement, Participant agrees to immediately
11 destroy any printouts of the MLS Database or Listing Content, and any copies of the MLS
12 Database and Listing Content in Participant's possession or under Participant's control, including
13 in possession of any Affiliates. No pre-paid Fees will be refunded to Participant for any
14 termination of this Agreement.

15 h. Upon termination of this Agreement, all licenses granted and all services
16 provided to Participant under this Agreement shall terminate. In addition, any and all rights
17 granted to Affiliates to access or use the MLS Database pursuant to the Rules and Regulations or
18 separate agreement with MLS shall automatically terminate, unless otherwise expressly provided
19 with respect to Sales Licensees under an applicable Subscriber Agreement.

20 i. If, for any reason, any Subscriber Agreement is terminated, Participant
21 agrees to either assign all Participant's Listings originated by the terminated Sales Licensee to
22 another of Participant's Sales Licensees, or request that MLS terminate or change the status of
23 Participant's Listings originated by the terminated Sales Licensee.

24 20. Indemnification. Participant agrees to indemnify and hold harmless MLS, and its
25 officers, directors, employees, shareholders and agents, from and against any and all claims,
26 demands, liabilities, and actions, including the payment of all legal expenses, including
27 reasonable attorney's fees and costs, arising out of or connected with any Listing Agreement, this
28 Agreement, submission to MLS of any Listing or Listing Content and the inclusion of any
29 Listing or Listing Content by Participant in the MLS Database, including, without limitation, any
30 claim that the access to, display of, and/or use of any Listing Content infringes on or constitutes
31 a misappropriation of any patent, copyright, or trade secret, or any other intellectual property
32 right of any person or entity anywhere in the world, including any claims by Sellers. MLS shall
33 have the right to control its own defense and engage legal counsel acceptable to MLS.

34 21. Proprietary and Other Notices. Participant agrees that it will not alter or remove
35 any trademarks or copyright notices or other notices and disclaimers located or used on, or in
36 connection with, the MLS Database or any printouts of the MLS Database allowed under this
37 Agreement.

38 22. IDX Advertising Consent. Unless Participant has made an express, written non-
39 participation election for MLS's Internet Data Exchange (IDX) program as described in the
40 Rules and Regulations, Participant expressly consents to other participants in MLS's IDX

1 program advertising all of Participant’s Listings in accordance with the IDX policy set forth in
2 the Rules and Regulations.

3 23. General.

4 a. Notices. All notices, demands, or consents required or permitted under
5 this Agreement shall be in writing and shall be delivered personally or sent by registered mail,
6 certified mail, return receipt requested, by a reputable overnight courier service, or by e-mail, if
7 the sender receives and maintains a copy of a certified mail receipt and a copy is mailed within
8 one (1) business day after notice is delivered by e-mail, to the appropriate party at the following
9 addresses:

10
11 If to Participant:

12
13 At the street address or e-mail maintained by MLS for Participant.

14
15 If to MLS:

16
17 _____
18 _____
19 _____
20

21 The foregoing addresses may be changed from time-to-time by delivering notice of such change,
22 referencing this Agreement, to the parties to this Agreement.

23
24 b. Governing Law; Submission to Jurisdiction. This Agreement shall be
25 governed by and construed in accordance with the laws of the state of _____. Participant
26 acknowledges that by providing Listings to MLS and using the services provided under this
27 Agreement, Participant has transacted business in the state of _____. By transacting business
28 in the state of _____ by agreement, Participant voluntarily submits and consents to, and
29 waives any defense to the jurisdiction of courts located in _____ County, state of
30 _____, as to all matters relating to or arising from this Agreement.

31 c. Costs of Litigation. If any action is brought by either party to this
32 Agreement against the other party regarding the subject matter of this Agreement, the prevailing
33 party shall be entitled to recover, in addition to any other relief granted, reasonable attorney’s
34 fees, costs, and expenses of litigation.

35 d. Severability. Any provision of this Agreement which is determined by a
36 court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or
37 make unenforceable any other provision of this Agreement; except that if any provision of
38 Sections 9, 16, or 17 of this Agreement, or any other limitation of liability or exclusion of
39 warranty set forth in this Agreement, is determined to be invalid or unenforceable, then this
40 Agreement shall immediately terminate without notice.

1 e. No Waiver. The waiver by either party of, or the failure of either party to
2 take action with respect to, any breach of any term, covenant or condition contained in this
3 Agreement shall not be deemed to be a waiver of such term, covenant or condition, or
4 subsequent breach of the same, or any other term, covenant or condition contained in this
5 Agreement. The subsequent acceptance of any payment due under this Agreement by any party
6 shall not be deemed to be a waiver of any preceding breach of the party making payment with
7 respect to any term, covenant or condition contained in this Agreement.

8 f. Entire Agreement; Modifications Only in Writing. This Agreement,
9 together with the Rules and Regulations and any applicable License Agreement, (i) constitutes
10 the entire agreement between MLS and Participant concerning the MLS Database, Listing
11 Content, and all other subject matter of this Agreement, (ii) supersedes any contemporaneous or
12 prior proposal, representation, agreement, or understanding between the parties, and (iii) may not
13 be amended except in writing signed by MLS and Participant.

14 g. No Third Party Beneficiaries. This Agreement is for the sole and
15 exclusive benefit of MLS and Participant and is not intended to benefit any third party, including
16 any Seller or Sales Licensee. No third party may claim any right or benefit under or seek to
17 enforce any of the terms and conditions of this Agreement.

18 h. Survival. The provisions of Sections 3, 5, 7, 9, 13, 16, 17, 18, 19.g, 20,
19 and 23 of this Agreement shall survive any termination of this Agreement, including termination
20 pursuant to Section 23.d of this Agreement.

21 24. Definitions. The following terms shall have the following meanings in this
22 Agreement:

23 a. Affiliates mean sales licensees, non-principal brokers, appraisers, and any
24 other agents or employees of Participant who may have access to the MLS Database subject to
25 the Rules and Regulations and any applicable agreements with MLS. A current list of all
26 Affiliates is attached as Schedule A to this Agreement, and is incorporated into this Agreement
27 by this reference. Upon the addition or removal of any Affiliate, Participant shall update the
28 attached Schedule A and provide the updated schedule to MLS within _____ days following any
29 such change.

30 b. Broker means a principal real estate broker or broker in charge.

31 c. Brokerage Firm means a real estate brokerage firm affiliated with a
32 principal real estate broker or broker in charge.

33 d. Board means a Board of REALTORS® or association of REALTORS®
34 established and operated in accordance with the applicable rules and regulations of the
35 NATIONAL ASSOCIATION OF REALTORS®.

36 e. Board Rules and Regulations means the rules and regulations, as amended,
37 of the Board of which a Participant is a member.

- 1 f. Exempted Listing means a Listing which the respective Seller has refused
2 permission to be disseminated by MLS, or a Listing which is not required to be submitted to the
3 MLS, in accordance with the Rules and Regulations.
- 4 g. IDX Listings means all of the Listings identified or defined as IDX listings
5 in the Rules and Regulations.
- 6 h. License Agreement means a license agreement entered into between MLS
7 and Participant, MLS and a Sales Licensee of Participant, or MLS and a third party at the request
8 of Subscriber.
- 9 i. Listing mean a real estate listing of a participant in MLS's multiple listing
10 service.
- 11 j. Listing Agreement means an enforceable, written, and fully executed
12 agreement between Participant and a Seller whereby, among other things, Participant agrees to
13 provide real estate sales services to Seller, and Seller agrees to pay compensation for services
14 provided.
- 15 k. Listing Content means all data and content, including without limitation,
16 all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions,
17 remarks, narratives, and pricing information submitted by Participant to MLS with respect to a
18 Listing, excepting Exempted Listings.
- 19 l. MLS Database means the compilation of Listings, including information
20 for sold properties, known as the MLS Database, as modified from time-to-time by MLS, and
21 which, as of the date of this Agreement, is available to Subscribers at
22 www._____.
- 23 m. Participant Listings means only the Listings of Participant.
- 24 n. Rules and Regulations means the MLS Rules and Regulations established
25 by MLS, as amended by MLS from time to time.
- 26 o. Sales Licensee means a real estate sales licensee, agent, or non-principal
27 broker who is engaged by Participant as a sales licensee of Participant, either as an employee or
28 independent contractor of Participant.
- 29 p. Seller means the seller(s) or lessor(s) of a property which is the subject of
30 a Listing at issue under this Agreement.
- 31 q. Subscriber Agreement has the meaning set forth in Section 6 of this
32 Agreement.
- 33 r. Vendor means any person or entity which has entered into a License
34 Agreement for display of real estate listings for Participant or a Sales Licensee of Participant.

35

1 Dated effective _____, _____

2

3 MLS

4 _____

5

6

7 By _____

8

9 _____

President

10

11

12 PARTICIPANT

13

14

15 Signature: _____

16 Printed Name: _____

17 Title of signatory if Participant is a brokerage firm: _____

SAMPLE

SCHEDULE A

Affiliates

SAMPLE

APPENDIX A:

OPTIONAL LANGUAGE FOR INSERTATION AFTER SECTION 4(a):

OPTION 1: ASSIGNMENT. Disclaimer: Not in compliance with the NATIONAL ASSOCIATION OF REALTORS'® policies.

b. Participant and MLS agree that to the extent permitted under applicable law, all Listing Content shall be considered a Work Made for Hire (as such term is defined under the Copyright Act, 17 U.S.C. Section 101 and following, as amended) (a "Work Made for Hire"). In the event that it should be determined that any of the Listing Content does not qualify as a Work Made for Hire, Participant hereby irrevocably assigns and transfers to MLS any and all right, title and interest, including all copyright rights and other intellectual property rights, and any renewals and extensions thereof, and all actions and causes of action related to the foregoing, and all damages, profits, and other recoveries related thereto, which Participant may have or acquire in and to any and all of the Listing Content for the Participant's Listings. Such rights, title, and interest shall be deemed assigned as of the moment of creation without the necessity of any further action on the part of either party. Participant represents and warrants to MLS with respect to the Listing Content for each of Participant's Listings that the Listing Content, and the assignment of rights in and to the Listing Content to MLS, do not infringe or violate any copyrights, trade secrets, or other intellectual or proprietary rights of any third party.

c. Participant agrees not to challenge MLS's rights in and to the Listing Content or the MLS Database or to take any action inconsistent with the assignment made under this Agreement. Participant agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the transfer and assignment of rights in and to the Listing Content to MLS, and the copyright application and registration of the Listing Content and the MLS Database.

d. If the foregoing assignment is determined to be unenforceable for any reason, Participant hereby grants to MLS an exclusive, non-revocable, worldwide, royalty-free copyright license to sublicense through multiple tiers, publish, display, and reproduce the Listing Content, to prepare derivative works of the Listing Content, and to distribute the Listing Content or any derivative works thereof.

e. Participant shall indemnify MLS against all damages, costs, and liabilities, including reasonable attorney fees, arising from any claim that the Listing Content or any portion of the Listing Content infringes the rights of any third party. PARTICIPANT ACKNOWLEDGES THAT THE FOREGOING SENTENCE MEANS THAT PARTICIPANT MUST OBTAIN ASSIGNMENTS FROM THE AUTHORS OF ANY PORTIONS OF THE LISTING CONTENT, INCLUDING AFFILIATES, SELLERS AND THIRD-PARTY CONTRIBUTORS, AS NECESSARY FOR PARTICIPANT TO ASSIGN THE LISTING CONTENT TO MLS AND TO OTHERWISE MAKE FULL USE OF THE LISTING CONTENT UNDER THIS AGREEMENT. IF PARTICIPANT FAILS TO DO SO, PARTICIPANT WILL ASSUME AND REIMBURSE MLS FOR THE COST OF DEFENDING MLS AGAINST INFRINGEMENT CLAIMS AND PAYING DAMAGES ON ANY SUCH CLAIMS.

f. Without limiting the generality of this Section 5, but subject to the rights of participants in the MLS to opt out of inclusion with respect to Listings submitted by such participant as set forth in the Rules and Regulations, Participant acknowledges and agrees that MLS may use and license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the applicable Broker or by the Rules and Regulations.

If you use this option you must also insert the following as a new section.

License to Participant's Listing. MLS hereby grants to Participant a limited, non-exclusive, and personal license to use Listing Content only for purposes and as expressly allowed under Participant's certification or licensure, the Rules and Regulations, and any applicable License Agreement. Participant agrees to take all reasonable steps to protect the Listing Content from unauthorized access, copying, or use.

If you use this option you must also insert the below definition in Section 24.

S. Work Made for Hire has the meaning set forth in Section 4.b of this Agreement.

OPTION 2: JOINT OWNERSHIP. Disclaimer: Not in compliance with the NATIONAL ASSOCIATION OF REALTORS'® policies.

b. Participant and MLS shall jointly own the Listing Content, including all copyright rights and other intellectual property rights. Accordingly, Participant hereby assigns and transfers to MLS joint and co-equal ownership of all right, title and interest, including all copyright rights and other intellectual property rights, and any renewals and extensions thereof, which Participant may have or acquire in and to any and all of the Listing Content for the Participant's Listings. Such rights, title, and interest shall be deemed jointly owned as of the moment of creation without the necessity of any further action on the part of either party. Participant and MLS shall each have the right to bring all actions and causes of action related to the foregoing, and all damages, profits, and other recoveries related thereto, and to otherwise exploit the Listing Content. Either Participant or MLS may, in its discretion and at its own expense, take such action from time to time as may be reasonable or appropriate, in its judgment, to protect and preserve any applicable title and interest in and to the Listing Content, including all copyright rights and other intellectual property rights. Participant represents and warrants to MLS with respect to the Listing Content for each of Participant's Listings that the Listing Content, and the assignment and transfer of joint ownership in and to the Listing Content to MLS, do not infringe or violate any copyrights, trade secrets, or other intellectual or proprietary rights of any third party. Neither Participant nor MLS must account to the other for any claims, damages, royalties, fees, profits, recovery, or any other benefit from the use of the Listing Content.

c. Participant agrees not to challenge MLS's rights in and to the MLS Database or Listing Content or to take any action inconsistent with the transfer of joint

ownership to MLS. Participant agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the rights, including joint ownership, transferred to MLS in and to the Listing Content, and with the copyright application and registration of the MLS Database.

d. Participant shall indemnify MLS against all damages, costs, and liabilities, including reasonable attorney fees, arising from any claim that the Listing Content or any portion of the Listing Content infringes the rights of any third party. PARTICIPANT ACKNOWLEDGES THAT THE FOREGOING SENTENCE MEANS THAT PARTICIPANT MUST OBTAIN ASSIGNMENTS FROM THE AUTHORS OF ANY PORTIONS OF THE LISTING CONTENT, INCLUDING SELLERS, AFFILIATES AND THIRD-PARTY CONTRIBUTORS AS NECESSARY FOR PARTICIPANT TO LICENSE THE LISTING CONTENT TO MLS AND TO OTHERWISE MAKE FULL USE OF THE LISTING CONTENT UNDER THIS AGREEMENT. IF PARTICIPANT FAILS TO DO SO, PARTICIPANT WILL ASSUME AND REIMBURSE MLS FOR THE COST OF DEFENDING MLS AGAINST INFRINGEMENT CLAIMS AND PAYING DAMAGES ON ANY SUCH CLAIMS.

e. Without limiting the generality of this Section 4, but subject to the rights of participants in the MLS' multiple listing service to opt out of inclusion with respect to Listings submitted by such participant as set forth in the Rules and Regulations, Participant acknowledges and agrees that MLS may use and license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the applicable Broker or by the Rules and Regulations.

If you use this option you must also insert the following as a new section.

License to Participant's Listing. MLS hereby grants to Participant a limited, non-exclusive, and personal license to use Listing Content only for purposes and as expressly allowed under Participant's certification or licensure, the Rules and Regulations, and any applicable License Agreement. Participant agrees to take all reasonable steps to protect the Listing Content from unauthorized access, copying, or use.