Regional Multiple Listing Service of Minnesota, Inc.
Participant Agreement

This **AGREEMENT** is made and entered into by Regional Multiple Listing Service of Minnesota. Inc. ("**RMLS**"), with offices at 11100 Bren Rd W, Ste 2, Minnetonka MN 55343; and _____ ("**Firm Participant**"), with offices at _____. You, _____, Individual Participant, on behalf of yourself and Firm Participant, agree to the following terms and conditions.

DEFINITIONS AND USAGE.

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

Association: The REALTOR® Association or Associations through which Firm Participant and Individual Participant receive the RMLS Service.

Individual Participants: The natural person, identified as "Individual Participant" in the signature block below, who is responsible for Firm Participant's conduct under RMLS Policies with regard to each office of Firm Participant and who is a "participant" as that term is defined in the RMLS Policies.

Other Participants and Subscribers: All participants, subscribers, and users of RMLS Service not party to this Agreement.

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

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

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

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

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

RMLS Service: The services RMLS provides to Firm Participant 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: RMLS's proprietary web browser interface(s) to the RMLS System.

RMLS System: The aggregate of all hardware, software, and telecommunications systems that RMLS maintains, or that RMLS contractors maintain on its behalf, in order to make access to the RMLS Database available to Firm Participant.

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

Subscribers: All persons defined as "Subscribers" in RMLS Policies who are affiliated with Firm Participant, plus, solely for purposes of this Agreement, Firm Participant's employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

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

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

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

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

RMLS'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the RMLS Policies, RMLS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the RMLS service by virtue of this Agreement or another license agreement; and Individual Participants for which Firm Participant is responsible shall have all rights and obligations of a participant in RMLS as set forth in the RMLS Policies. RMLS may require Individual Participant to change Individual Participant's password at any time. The user ID and password will provide Individual Participants access to all data and functions in the RMLS Service to which Individual Participants are entitled under the RMLS Policies. RMLS makes no warranties, however, that the RMLS Service will be available at all times. RMLS may use a third party contractor, determined in RMLS's sole discretion, to facilitate its responsibilities under this Agreement.

FIRM PARTICIPANT ACKNOWLEDGMENTS.

4. **Modifications to service**. 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.

5. **Editorial control**. RMLS is not required to, and assumes no responsibility to, 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 law, breach of the RMLS Policies or infringement of intellectual property rights. Additionally, RMLS shall have the right to alter and/or remove metadata and copyright management information contained in the Participant Contribution.

6. **Conditions of service**. Firm Participant must at all times have an Individual Participant designated for each office. Firm Participant shall ensure that at all times Individual Participants for which Firm Participant is responsible under this Agreement satisfy the prerequisites for participation in the RMLS Service as set forth in the RMLS Policies. Subscribers must be affiliated with an Individual Participant at all times during the term of this Agreement. Firm Participant and Individual Participant will comply at all times with (a) RMLS Policies, and (b) all applicable laws, statutes, ordinances, and regulations in performance of their respective obligations under this Agreement, including the Fair Housing Act (42 U.S.C. §3601 et. seq.) and the Americans with Disabilities Act (42 U.S.C. §12101 et. seq.). Individual Participant and Firm Participant will ensure Subscribers' compliance with the foregoing.

7. **Saved Information**. Saved Information may not always be available to Firm Participant and may become available to unauthorized persons. RMLS is not liable for unauthorized access to or loss of Saved

Information. Firm Participant is responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

8. **Disclosure to third parties**. RMLS reserves the right to distribute to third parties certain information about Firm Participant, including Firm Participant's and Individual Participants' names and business addresses, phone numbers and email addresses. RMLS reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and Subscribers' use of the RMLS Service, but not about Firm Participant's or Individual Participants' use specifically.

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

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

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

12. **IDX and VOW data access subject to separate agreement; third-party TOU**. Firm Participant acknowledges that access to RMLS's IDX or VOW database and data feeds can occur only upon execution of a separate written agreement between RMLS, Firm Participant and Subscriber, as applicable. Firm Participant acknowledges that access to third-party software offered via RMLS Services may be subject to separate third-party terms of use ("Other TOUs"). For avoidance of doubt, Firm Participant shall be subject to the terms and conditions of this Agreement as well as any Other TOUs for those products and services to which they apply.

FIRM PARTICIPANT'S OBLIGATIONS.

13. **Use limited; Compensation Disclaimer**. Firm Participant shall use the RMLS Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate, strictly as permitted by the RMLS Policies. Except as expressly provided in this Agreement and the RMLS Policies, Firm Participant shall not copy, create derivative works of, distribute, perform, or display the RMLS Service or any part of it, except the Participant Contribution. Firm Participant acknowledges the following statements and may not communicate with any consumer in any manner that contradicts any of the following statements or brings them into doubt:

(a) A broker's compensation and fees for services are not set by law and are fully negotiable.

(b) A broker's compensation for services rendered to a seller or for services rendered to a buyer is solely a matter of negotiation between the broker and their client, and is not fixed, controlled, recommended, or maintained by any persons not a party to the brokerage service agreement.

(c) The compensation paid by a listing broker to a cooperating broker in respect to any listing is established by the listing broker and/or seller, and is not fixed, controlled, recommended, or maintained by any persons other than the listing broker and/or seller.

14. **Confidentiality**. Firm Participant shall maintain the confidentiality of its user ID and password. RMLS issues each Subscriber a separate ID and password. Firm Participant shall ensure that (a) its Subscribers maintain the confidentiality of their user IDs and passwords, (b) Subscribers do not share their user IDs or passwords, and (c) that no one but authorized Subscribers 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, Firm Participant shall take the greater of reasonable care or the care it takes to protect its own confidential information. Firm Participant and Individual Participant shall not make any user IDs, passwords, the RMLS Database, or the RMLS System available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement or the RMLS Policies. Failure to comply with this provision will result in a significant fine, as set forth in the RMLS Policies. Firm Participant may disclose confidential information under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, the disclosing Firm Participant first gives reasonable notice to RMLS to permit RMLS to seek a protective order.

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

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

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

18. **Subscriber supervision**. Firm Participant shall ensure that all Subscribers comply at all times with the RMLS Policies and with applicable laws. Firm Participant is liable for any Subscriber's breach of any agreement between the Subscriber and RMLS relating to the RMLS Service or violation of any of the RMLS Policies as if Firm Participant had committed it.

19. **List of Subscribers**. Firm Participant shall ensure RMLS has a current list of all of Subscribers; Firm Participant shall inform RMLS in writing of any change in the Subscribers within twenty-four hours of the change or the timeframe in the RMLS Policies, whichever is greater.

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

INTELLECTUAL PROPERTY.

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

□ OPTION I

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

(b) **RMLS Obligations**. RMLS hereby grants to Firm Participant a non-exclusive, perpetual, world-wide, royalty-free, license to reproduce, prepare derivative works of, distribute, display,

perform and license (including sublicenses through multiple tiers) the Participant Contribution and those portions of the RMLS Database relating to Firm Participant's listings. RMLS shall use reasonable efforts to make quarterly registrations of the RMLS's copyrights in the RMLS Database; RMLS shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Firm Participant's permission.

□ OPTION II

(a) **License from Participant**. Firm Participant hereby grants to 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. Firm Participant warrants that it has the authority to grant this license.

(b) **RMLS has no obligations to protect**. Firm Participant acknowledges that: (i) RMLS makes no grant of license or assignment to Firm Participant of any rights in the RMLS Database except as set forth in paragraph 22; (ii) RMLS will make no effort to register the copyrights in the Participant Contribution, and Firm Participant will be responsible for all costs and efforts associated with registration; (iii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; (iv) ***RMLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm Participant's permission***; (v) RMLS will make no effort to secure for Firm Participant the right to use copyright works created by Subscribers or third parties.

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

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

24. **Limitations on use by RMLS**. 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 if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after RMLS has provided notice of its intention to provide the Participant Contribution to the third party. If RMLS enters a data sharing agreement with any other multiple listing service (as that term is defined in RMLS Policies) RMLS may license and distribute the Participant Contribution to the other multiple listing service in the data share and its users without obtaining any consent from Firm Participant.

FEES AND PAYMENT TERMS.

25. **Applicable 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.

26. **Payment terms**. Firm Participant agrees 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 Firm Participant, Individual Participants, Subscribers, and their employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers) for failure to pay according to Association's policies.

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

28. **Taxes**. All fees for the RMLS Service are exclusive of federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and, accordingly, Association and Firm Participant shall pay all such taxes and levies other than any tax or levy on the net income of RMLS.

29. **Fines**. RMLS may collect fines from Firm Participant and from Individual Participants for violation of the RMLS Policies by Firm Participant, Individual Participant and Subscribers. 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.

TERM AND TERMINATION.

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

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

32. **Termination for breach of RMLS Policies**. Paragraph 31 notwithstanding, RMLS may terminate this Agreement if Firm Participant fails to comply with the RMLS Policies; if Firm Participant violates or is alleged to have violated the RMLS Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or appeal rights of Firm Participant have expired as provided in the RMLS Policies. If in RMLS's judgment, however, a violation or alleged violation of the RMLS Policies is resulting in a continuing harm to RMLS or Other Participants or Subscribers, RMLS may suspend Firm Participant's access to the RMLS Database during the pendency of any hearing or appeal.

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

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

35. **Events upon termination**. Promptly upon any termination or expiration of this Agreement, (a) RMLS or Association shall deactivate Firm Participant's and Individual Participants' user ID and password, and Firm Participant and Individual Participants shall have no further access to the

RMLS Service; (b) Firm Participant shall purge all copies of the RMLS Software and the RMLS Database (except the Participant Contribution) from Firm Participant's personal computers, and shall cause Individual Participants and Subscribers to do the same; and (c) all licenses granted hereunder, except the license to the Participant Contribution in Paragraph 21 Option I(b) and Paragraph 21 Option II(a), if any, shall immediately terminate.

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

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

37. **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 FIRM PARTICIPANT. 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. The RMLS Service may contain third-party content, including hyperlinks to web sites operated by parties other than RMLS; RMLS does not control such third-party content, including web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the third-party providers, including web sites' operators.

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

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

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

41. **Acknowledgment**. Firm Participant acknowledges 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.

DISPUTES AND REMEDIES.

42. **Injunctive relief**. Firm Participant acknowledges and agrees 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 Firm Participant, no remedy at law will be adequate. Firm Participant therefore agrees 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 in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

43. **Dispute resolution**. In the event RMLS claims that Firm Participant has violated the RMLS Policies, RMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the RMLS Policies, provided MLS does not also base a claim that Firm Participant has breached this Agreement on the same facts. Except as provided in this paragraph and in Paragraph 33, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Hennepin County, Minnesota, except that it may be held by telephone where the Arbitration Rules expressly so permit. Firm Participant agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Hennepin County, Minnesota.

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

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

MISCELLANEOUS.

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

47. **Interpretation and amendment**. Firm Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). RMLS may amend this Agreement by providing thirty days' advance notice of the amendment to Firm Participant. If Firm Participant or any Subscriber continues to use the RMLS Service or RMLS Database after the expiration of the thirty-day notice period, Firm Participant will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties. All amendments to this agreement must be approved by the RMLS Board of Directors prior to their effective date. Should any purchase order, confirmation or acknowledgment of Firm Participant contain additional or different terms, those terms shall be considered proposals by Firm Participant which are hereby rejected.

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

49. **Integration and severability**. This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. In the event of any dispute regarding the interpretation of the terms of this Agreement, it shall not be construed for or against any party on the grounds that the Agreement was prepared by any one of the parties. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. The foregoing notwithstanding, if any provision of Paragraphs 37 through 41 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm Participant's access to the RMLS Service shall immediately terminate.

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

51. **Notice**. Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation of receipt; (c) facsimile transmission, provided sender obtains confirmation of transmission; or (d) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

52. **Authority to Bind**. Individual Participant herein represents and warrants that they have all necessary power and authority to bind Firm Participant and to execute this Agreement on Firm Participant's behalf.

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

Regional Multiple Listing Service of Minnesota. Inc.	**Firm Participant**
_____	_____
Signature	Firm Participant name
_____	_____
Print name	Signature of Individual Participant
_____	_____
Effective Date	Print name of Individual Participant
	_____
	Signature Date