



Participation Application and Agreement

Office Details

Name of Firm: _____

Complete Office Address _____

Office Phone: _____ Office Fax: _____

Office Website URL: _____

Participant Details

Participant Name: _____
(Broker)

Cell Phone: _____ Email: _____

Primary Board of Realtors®: _____ NRDS# _____

Secondary Board of Realtors®: _____

State of Licensure: _____ License # _____

Position with Firm: Principal Partner Corporate Officer Branch Office Manager Other

Access Type

HB Head Broker Access with the ability to Add, Modify listings for the entire firm
Able to perform all standard MLS functionality

BR Broker Access with the ability to Add, Modify listings for their individual Office
Able to perform all standard MLS functionality

RP Broker Appraiser Access
Able to perform all standard MLS functionality with the exclusion of Add/Edit listings and images

Where My Listings Go

No Direct Agreement; Send my listings to:

<input type="checkbox"/> Homefinder.com	<input type="checkbox"/> Realtor.com	<input type="checkbox"/> Homesnap
<input type="checkbox"/> Homes.com	<input type="checkbox"/> Zillow Group	<input type="checkbox"/> IDX
<input type="checkbox"/> ImmoViewer		

My firm has a direct Agreement with:

<input type="checkbox"/> Zillow Group
<input type="checkbox"/> Homes.com

Staffing

State the names and titles of all other principals, partners, or corporate officers of your firm.

Name: _____ Title: _____

Name: _____ Title: _____

Name: _____ Title: _____

List or attach a full office roster of all non-principal brokers, sales associates, licensed and/or certified appraiser(s) affiliated with Broker/Participant

1. _____ 2. _____

3. _____ 4. _____

5. _____ 6. _____

7. _____ 8. _____

9. _____ 10. _____

Payment Information

Would you like to sign up for AutoPay? Yes No

Type of Card: American Express Discover Mastercard Visa

Name on Credit Card: _____

Credit Card Number: _____

Expiration Date: _____ Payment Amount: \$ _____

I hereby apply for Participation Membership in the SmartMLS, Inc. By providing my credit card information I authorize SmartMLS to charge my account a one time \$200 office application fee and applicable subscriber fees set forth on Schedule I hereto. I understand these fees will be returned to me in the event I am not accepted to membership. Upon successful completion of this transaction an electronic receipt will be emailed to the Subscribers primary email address.

I have read and understand all pages of the Participation Application and Agreement and agree to abide by its terms and conditions.

Signature of Participant: _____ Date: _____
(Broker)

Participation Application and Agreement

THIS AGREEMENT is made and entered into by and between Smart MLS, INC. (“MLS”) and the Participant identified in the attached Participant Application (“Participant”) as the Designated REALTOR® of the Firm identified in the attached Participant Application (“Firm”)

BACKGROUND

- A. MLS has been organized to provide on-line multiple listing services (the “MLS Services”) to REALTORS® who are duly licensed or certified real estate brokers, sales agents, appraisers (collectively “Subscribers”) and non-licensed administrative assistants (“Users”) who are affiliated with Participant.
- B. Participant desires to subscribe to the MLS Services and MLS agrees to provide the MLS Services to Participant, and to Subscribers and Users affiliated with the Participant, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Participant and MLS agree as follows:

1. **REALTOR® Membership:** Participant certifies that he/she is a member in good standing of a local Board/Association of REALTORS® and that he/she is actively engaged in the Real Estate profession for compensation in one or more of the following activities: buying, selling, exchanging, renting or leasing, appraising for others for compensation, counseling or building, developing or subdividing.
2. **Conditions of Participation:** Participant agrees as a condition of participation in the MLS to abide by all applicable Bylaws, Rules and Regulations, and other obligations of participation, as amended from time to time, including payment of fees and fines as authorized by the Bylaws, Rules and Regulations of the MLS and administered by the MLS Board of Directors.
3. **Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 27 of this Agreement.
4. **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 agrees to take all reasonable steps to protect the MLS Database from unauthorized access, copying, or use.
5. **Intellectual Property Ownership; Enforcement:**
 - A. All data, information, text, photographs, and virtual tours, submitted to the MLS by Participant in connection with the listing and sale of property on the MLS (collectively the “Listing Data”) is, to the extent recognized by law, the intellectual property of the Participant. By submitting Listing Data to the MLS, Participant grants to MLS a limited, non-exclusive, irrevocable, worldwide, royalty free license to use, publish, display, and reproduce, the Listing Data, to prepare derivative works of the Listing Data, and to distribute the Listing Data or any derivative works thereof to Participants and Subscribers of MLS for the purpose of marketing the listed property and communicating the offer of cooperation and compensation made by Participant to other active Participants in MLS. Dissemination of Participant’s Listing Data, or the use of such Listing Data in any form of advertising, is subject to compliance with all applicable MLS Rules and Regulations, and with applicable Regulations of the Connecticut Real Estate Commission.
 - B. Participant acknowledges and agrees that the compilation of Listing Data submitted by all Participants which comprises the MLS Database (the “MLS Database”), and all copies modifications, enhancements, and derivative works of the MLS Database, are the property of the MLS, and all right, title, and interest in and to the MLS Database, together with all copies, modifications, enhancements, and derivative works,

including all copyright and other intellectual property rights are and shall remain with MLS. Participant hereby irrevocably assigns to MLS any and all rights which it may have or acquire in and to the MLS Database. Statistical analyses and historical compilations of Listing Data (including sold and withdrawn information) (collectively “Historical Data”) are, to the extent recognized by law, the intellectual property of MLS. MLS grants to Participant a limited, non-exclusive, irrevocable, worldwide, royalty free license to use the Historical Data in the conduct of his/her real estate brokerage and appraisal business to long as Participant is a participant in the MLS. Participant shall not, however, have the right to publish or otherwise disseminate or make available to third parties all or any portion of the MLS Database or the Historical Data, except with respect to comparative market analyses or appraisals of individual properties made in the conduct of Participant’s real estate brokerage and appraisal business and otherwise in accordance with all applicable MLS Rules and Regulations.

- C. Participant agrees not to challenge MLS’s rights in and to the MLS Database or to take any action inconsistent with the license granted to the Listing Content under this Agreement. Participant agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the license granted to MLS in and to the Listing Content. Participant further agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection 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 OR LICENSES FROM THE AUTHORS OF ANY PORTIONS OF THE LISTING CONTENT, INCLUDING SALES LICENSEES AND SELLERS, 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. f. Participant hereby grants to MLS all rights necessary for MLS to protect and enforce all intellectual property rights associated with the Listing Content, including all copyrights. In accordance with the grant of such rights, Participant hereby irrevocably authorizes, empowers and vests in MLS the right, and appoints MLS as Participant’s attorney in fact, to do the following:
 - a) Add watermarks or other means of identification to any and all Listings, regardless of whether such means of identification is visible, and take any and all other action deemed appropriate by MLS to identify the source of any misuse, infringement, or misappropriation of any Listing Content.
 - b) Send demand letters, exercise rights under any applicable license agreements, and take any and all other action deemed appropriate by MLS to prevent the misuse, infringement, or misappropriation of any Listing Content.
 - c) Enforce and compromise any and all intellectual property rights in the Listing Content, including all copyrights, whether such rights are held in the name of Participant or others, and take all action deemed necessary and appropriate by MLS in connection with the enforcement of all such rights, including, without limitation, the filing and prosecution of litigation or binding arbitration with respect to any potential claim of infringement, misappropriation, or other similar claim, the naming of any parties deemed appropriate by MLS, and the collection of any damages.
 - d) Execute all documents, whether in the name of Participant and/or MLS, deemed appropriate by MLS to effect any of the foregoing.

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

6. **Fees.** In consideration for participation in MLS's multiple listing service and for the services provided and licenses granted under this Agreement, Participant agrees to pay to MLS the fees (the "Fees") in the amount, and in accordance with the terms, established by MLS for participation by participants in MLS's multiple listing service, which amount and terms may be changed by MLS at any time effective upon thirty (30) days prior written notice to Participant.
7. **Agreement with Sales Licensees.** Participant agrees to cause all of Participant's Sales Licensees who will receive access to the MLS through Participant to enter into a subscriber agreement, in a form and substance acceptable to MLS (a "Subscriber Agreement"), in its sole discretion.
8. **Responsibility for Affiliates.** Participant shall be responsible and liable to MLS for the acts and omissions of its Affiliates, and shall be responsible for each Affiliate's compliance with the Rules and Regulations. Any failure to comply with the Rules and Regulations by an Affiliate shall be deemed a failure to comply by Participant, and Participant shall be responsible and liable to MLS for any damages incurred by MLS arising from or as a result of an Affiliate's noncompliance with the Rules and Regulations.
9. **No Assignment by Participant.** Participant agrees that this Agreement is personal to Participant, and Participant may not assign or transfer this Agreement, including any license granted under this Agreement, or transfer any rights or delegate any duties under this Agreement, to any third party. Any attempt to assign, transfer, or delegate any of Participant's rights, duties, or obligations under this Agreement shall be null and void.
10. **Interruptions in Service.** Participant acknowledges that access to the MLS Database may from time-to-time be unavailable to Participant, whether because of technical failures or interruptions, intentional downtime for service or changes to MLS's website, or otherwise. Participant agrees that any modification of MLS's website, and any interruption or unavailability of access to the MLS Database shall not constitute a default of any obligations of MLS under this Agreement, and MLS shall have no liability of any nature to Participant for any such modifications, interruptions, unavailability, or failure of access.
11. **Copies and Derivative Works.** Except as otherwise expressly provided in this Agreement or the Rules and Regulations, Participant may not do any of the following, either directly or indirectly, including assist any other person to do, or otherwise contribute in any way to any of the following:
 - a. Make any copies of the MLS Database, or any portion of the MLS Database, including any specific Listing Content included in the MLS Database;
 - b. Create any derivative works, enhancements, or other modifications of the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database;
 - c. Download, distribute, export, or transmit the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database; or
 - d. Publicly display the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database.
12. **Representations and Warranties Regarding Listings.** Participant represents and warrants with respect to each Participant's Listing or change to a Participant's Listing submitted to MLS under this Agreement and the Rules and Regulations, the following:
 - a. Seller of the listed property has assigned in writing all of Seller's rights, title and interest, including all copyright rights and other intellectual property rights, in and to the Listing Content to Participant.

- b. The Listing complies in all respects with the Rules and Regulations.
 - c. To the best of Participant's and any applicable Sales Licensee's knowledge and after reasonable due diligence to verify the accuracy of all information in the Participant's Listing, all information included in the Participant's Listing is accurate and not misleading.
 - d. The Listing Content for each Participant's Listing is an original work of authorship of Participant, or Participant is the assignee of such Listing Data pursuant to an enforceable assignment no other person or entity has rights of any nature in or to any of the Listing Data.
 - e. There is no claim, litigation or proceeding pending or threatened with respect to the Listing Data for any Participant's listing.
 - f. Neither the Listing Data, or the assignment of rights in and to Listing Content to MLS, infringe upon or violate any patents, copyrights, mask work rights, trademarks, trade secrets or other proprietary rights of any third party.
- 13. Submission of Listings.** As a material condition to accessing the MLS Database, Participant agrees to submit to MLS, all Listings, or any of Participant's Sales Licensees, in accordance with, and except as otherwise provided in, the Rules and Regulations. MLS may refuse to accept or include in, and may remove from, the MLS Database any Listing or Listing Data, or may require Participant to direct MLS to modify any Listing Data, as provided under the Rules and Regulations or if MLS determines, in its sole discretion, that such Listing or Listing Data may violate or infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as provided in the Rules and Regulations, Participant acknowledges that MLS has no obligation to remove, modify or refuse to accept any Listing or Listing Data. MLS grants to Participant a limited, non-exclusive, personal license to input Listing Data in the MLS Database and to modify such Listing Data strictly in accordance with the terms and conditions of this Agreement and the Rules and Regulations. Participant acknowledges and agrees that any Listing or Listing Data, or any prospective Listing or Listing Data, submitted by Participant or its Affiliates may be accessible by other participants in or users of MLS's multiple listing service, and MLS shall have no liability to Participant for providing such other participants or users access to any Listing or Listing Data, or any prospective Listing or Listing Data.
- 14. Confidential Information.** Any information provided by MLS to any Participant, including without limitation, any password to the MLS Database, any printouts of the MLS Database as provided under this Agreement, and all Listing Data, including personal information of a Seller (collectively "Confidential Information") shall be maintained by Participant as confidential and available exclusively for use by Participant as provided in this Agreement. Participant shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law. Participant shall not disclose any Confidential Information pursuant to a court order or as required by law until Participant has given MLS ten (10) days prior written notice and an opportunity to oppose such disclosure. Notwithstanding the foregoing, Participant may disclose Listing Content for individual Listings strictly in accordance with this Agreement and the Rules and Regulations.
- 15. Additional Representations and Warranties of Participant.**
- a. If Participant is a Broker, Participant represents and warrants the following to MLS:
 - i. Participant is a Realtor[®] in good standing;
 - ii. Participant holds a current, valid real estate broker's license
 - iii. Participant is a member of a Board in good standing; and
 - iv. Participant is capable of offering and accepting cooperation and compensation to and from other participants in MLS's multiple listing service in accordance with the Rules and Regulations.

- b. If Participant is a Brokerage Firm, Participant represents and warrants to MLS that Brokerage Firm is managed by and under the control of a Broker, and such Broker:
 - i. is a Realtor[®] in good standing;
 - ii. holds a current, valid real estate broker's license;
 - iii. is a member of a Board in good standing; and
 - iv. is capable of offering and accepting cooperation and compensation to and from other participants in MLS's multiple listing service in accordance with the Rules and Regulations.
- c. Participant further represents and warrants to MLS that this Agreement, when executed by Participant:
 - i. will be valid, binding and enforceable with respect to Participant in accordance with its terms;
 - ii. that provisions of the services provided under this Agreement and the fulfillment of Participant's obligations as contemplated under this Agreement are proper and lawful;
 - iii. Participant is not and shall not be under any disability, restriction or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement; and
 - iv. all of Participant's Sales Licensees have entered into Subscriber Agreements.

16. Compliance with Governing Rules and Agreements.

- a. By entering into this Agreement, Participant represents and warrants to MLS that Participant, or its Broker if Participant is a Brokerage Firm, has read and understands, and Participant shall be bound by and at all times fully comply with and perform all of Participant's obligations under this Agreement, the Rules and Regulations, the applicable Board Rules and Regulations, and the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS[®]. A copy of the then-current version of the Rules and Regulations is available upon request. In addition to all other rights and remedies available to MLS under this Agreement and the Rules and Regulations, Participant acknowledges that MLS may levy fines against Participant for noncompliance with the Rules and Regulations as provided in the Rules and Regulations.
- b. To the extent there is any conflict between this Agreement, the Rules and Regulations, and any applicable Subscriber Agreement, the Rules and Regulations shall govern. As between this Agreement and any Subscriber Agreement, this Agreement shall govern.

17. No Warranty.

THE SERVICES PROVIDED AND LICENSE GRANTED TO PARTICIPANT UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY NATURE. MLS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, MLS DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, OR THE ACCURACY OF ANY LISTING DATA.

18. Limitation of Liability

MLS'S ENTIRE AND CUMULATIVE LIABILITY TO PARTICIPANT, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MLS DATABASE OR LISTING CONTENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY PARTICIPANT TO MLS

DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT SHALL MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MLS SHALL HAVE NO LIABILITY OF ANY NATURE TO SALES LICENSEES.

19. Injunction.MLS and Participant agree that a breach or violation of Sections 13, 16, and 22.f of this Agreement will result in immediate and irreparable injury and harm to MLS. In such event, MLS shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that, this shall in no way limit any other remedies which MLS may have, including, without limitation, the right to seek monetary damages

20. Term and Termination.

- a. Either party may terminate this Agreement at any time for any reason upon thirty (30) days prior written notice to the other party.
- b. MLS may terminate this Agreement, upon the occurrence of any of the following events:
 - i. Participant fails to pay any Fees when due;
 - ii. Participant discloses any Confidential Information, including, without limitation, any password of Participant or a Sales Licensee, except as expressly provided in this Agreement;
 - iii. Participant otherwise fails to comply in all respects with the Rules and Regulations, the applicable Board Rules and Regulations, or the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®;
 - iv. Participant defaults under any material term or condition of any License Agreement; or
 - v. Participant defaults under any other material term or condition of this Agreement.

Except as otherwise provided in this Agreement, termination pursuant to this Section 22 b. of this Agreement shall be effective at any time after MLS has given ten (10) business days notice to Participant of any such event, and such event has not been cured within such ten (10) day period. Notwithstanding the foregoing sentence, if, in the reasonable discretion of MLS, the occurrence of any such event could result in irreparable harm to MLS, termination shall be effective immediately, without prior written notice to Participant, provided that notice shall be delivered to Participant within ten (10) business days following such termination.

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

- d. Notwithstanding anything to the contrary in this Agreement, if Participant violates or is alleged to have violated the Rules and Regulations, Participant shall not be terminated in accordance with Section 22 b. of this Agreement until any hearing or appeal rights of Participant have expired as provided for in the Rules and Regulations.
 - e. Upon termination of this Agreement, Participant agrees to immediately destroy any printouts of the MLS Database or Listing Content, and any copies of the MLS Database and Listing Content in Participant's possession or under Participant's control, including in possession of any Affiliates. No pre-paid Fees will be refunded to Participant for any termination of this Agreement.
 - f. Upon termination of this Agreement, all licenses granted and all services provided to Participant under this Agreement shall terminate. In addition, any and all rights granted to Affiliates to access or use the MLS Database pursuant to the Rules and Regulations or separate agreement with MLS shall automatically terminate, unless otherwise expressly provided with respect to Sales Licensees under an applicable Subscriber Agreement.
 - g. If, for any reason, any Subscriber Agreement is terminated, Participant agrees to either assign all Participant's Listings originated by the terminated Sales Licensee to another of Participant's Sales Licensees, or request that MLS terminate or change the status of Participant's Listings originated by the terminated Sales Licensee.
21. **Indemnification.** Participant agrees to indemnify and hold harmless MLS, and its officers, directors, employees, shareholders and agents, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorney's fees and costs, arising out of or connected with any Listing Agreement, this Agreement, submission to MLS of any Listing or Listing Content and the inclusion of any Listing or Listing Content by Participant in the MLS Database, including, without limitation, any claim that the access to, display of, and/or use of any Listing Content infringes on or constitutes a misappropriation of any patent, copyright, or trade secret, or any other intellectual property right of any person or entity anywhere in the world, including any claims by Sellers. MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.
22. **Proprietary and Other Notices.** Participant agrees that it will not alter or remove any trademarks or copyright notices or other notices and disclaimers located or used on, or in connection with, the MLS Database or any printouts of the MLS Database allowed under this Agreement.
23. **Internet Listing Display Advertising Consent.** Unless Participant has made an express, written non-participation election for MLS's Internet Listing Display program as described in the Rules and Regulations, Participant expressly consents to other participants in MLS's Internet Listing Display program advertising all of Participant's Listings in accordance with the Internet Listing Display policy set forth in the Rules and Regulations.
24. **General.**
- a. **Notices.** All notices, demands, or consents required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, by a reputable overnight courier service, or by e-mail, if the sender receives and maintains a copy of a certified mail receipt and a copy is mailed within one (1) business day after notice is delivered by e-mail, to the appropriate party at the following addresses:

If to Participant: At the Participant's office address or e-mail address shown on page 1.

If to MLS:

Kathy Elson
 Chief Executive Officer
 Smart MLS, Inc.
 860 North Main Street Ext.
 Wallingford, CT 06492

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

- b. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the state of Connecticut. Participant acknowledges that by providing Listings to MLS and using the services provided under this Agreement, Participant has transacted business in the state of Connecticut. By transacting business in the state of Connecticut by agreement, Participant voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in the state of Connecticut, as to all matters relating to or arising from this Agreement.
- c. Costs of Litigation. If any action is brought by either party to this Agreement against the other party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney's fees, costs, and expenses of litigation.
- d. Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement; except that if any provision of Sections 12, 19, or 20 of this Agreement, or any other limitation of liability or exclusion of warranty set forth in this Agreement, is determined to be invalid or unenforceable, then this Agreement shall immediately terminate without notice.
- e. No Waiver. The waiver by either party of, or the failure of either party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement. The subsequent acceptance of any payment due under this Agreement by any party shall not be deemed to be a waiver of any preceding breach of the party making payment with respect to any term, covenant or condition contained in this Agreement.
- f. Entire Agreement; Modifications Only in Writing. This Agreement, together with the Rules and Regulations and any applicable License Agreement:
 - i. constitutes the entire agreement between MLS and Participant concerning the MLS Database, Listing Content, and all other subject matter of this Agreement,
 - ii. supersedes any contemporaneous or prior proposal, representation, agreement, or understanding between the parties, and
 - iii. may not be amended except in writing signed by MLS and Participant.
- g. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of MLS and Participant and is not intended to benefit any third party, including any Seller or Sales Licensee. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement.
- h. Survival. The provisions of Sections 6, 8, 10, 14, 17, 18, 19, 20, 21, and 24 of this Agreement shall survive any termination of this Agreement.

25. Definitions. *The following terms shall have the following meanings in this Agreement:*

- a. "Affiliate(s)" mean sales licensees, non-principal brokers, appraisers, and any other agents or employees of Participant who may have access to the MLS Database subject to the Rules and Regulations and any applicable agreements with MLS. Upon the addition or removal of any Affiliate, Participant shall notify MLS within seven (7) days following any such change.
- b. "Broker" means a principal real estate broker or broker in charge.

- c. “Brokerage Firm” means a real estate brokerage firm affiliated with a principal real estate broker or broker in charge.
- d. “Board” means a Board of REALTORS[®] or association of REALTORS[®] established and operated in accordance with the applicable rules and regulations of the NATIONAL ASSOCIATION OF REALTORS[®].
- e. “Exempt Listing” means a Listing which the respective Seller has refused permission to be disseminated by MLS, or a Listing which is not required to be submitted to the MLS, in accordance with the Rules and Regulations.
- f. “Internet Listing Display” Listings means all of the Listings identified or defined as Internet Listing Displaylistings in the Rules and Regulations.
- g. “License Agreement” means a license agreement entered into between MLS and Participant, MLS and a Sales Licensee of Participant, or MLS and a third party at the request of Subscriber.
- h. “Listing” means a real estate listing of a participant in MLS’s multiple listing service.
- i. “Listing Agreement” means an enforceable, written, and fully executed agreement between Participant and a Seller whereby, among other things, Participant agrees to provide real estate sales services to Seller, and Seller agrees to pay compensation for services provided.
- j. “Listing Data” means all data and content, including without limitation, all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information submitted by Participant to MLS with respect to a Listing, other than an Exempted Listing
- k. “MLS Database” means the compilation of Listings, including information for sold properties, known as the MLS Database, as modified from time-to-time by MLS, and which, as of the date of this Agreement, is available to Subscribers on the MLS web site.
- l. “Participant Listings” means only the Listings of Participant.
- m. “Rules and Regulations” mean the MLS Rules and Regulations established by MLS, as amended by MLS from time to time.
- n. “Sales Licensee” means a real estate sales licensee, agent, or non-principal broker who is engaged by Participant as a sales licensee of Participant, either as an employee or independent contractor of Participant.
- o. “Seller” means the seller(s) or lessor(s) of a property which is the subject of a Listing at issue under this Agreement.
- p. “Subscriber Agreement” has the meaning set forth in Section 9 of this Agreement.
- q. “Vendor” means any person or entity which has entered into a License Agreement for display of real estate listings for a Participant or Sales Licensee of Participant with Participant’s permission.