RMLS Subscriber License and Access Agreement

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

This Subscriber License and Access Agreement ("Agreement") is made as of the Effective Date below between Regional Multiple Listing Service of Minnesota, Inc., d/b/a NorthstarMLS and NorthstarMLS.com ("**RMLS**") and the undersigned subscriber ("**Subscriber**"), who, intending to be legally bound, hereby agree as follows.

1. Definitions and usage.
(a) **Definitions.**

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

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

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

"**RMLS Service**" means the services RMLS provides to Subscriber under this Agreement

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

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

"**Association**" means the **REALTOR® Association**, through which Subscriber receives the RMLS Service.

"**Participant**" means the principal broker or appraiser manager that supervises Subscriber's real estate activities and on whose behalf Subscriber conducts those real estate activities.

"**Saved Information**" means information that Subscriber stores in the RMLS System for his/her own later use that is not intended by him/her to be available to RMLS's other customers, including client prospect and contact information.

"**Subscriber Contribution**" means all data that the Subscriber submits, contributes, or inputs in the RMLS System, including text, binary, and photographic image data.

(b) **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.
    (i) Wherever the term "including" is used, it means "including, but not limited to."
    (ii) The singular and plural numbers and masculine, feminine, and neuter genders of words are fully interchangeable.
    (iii) Wherever the term "law" is used, it means all statutes, regulations, and common law, both state and federal, as they are amended. Without limiting the generality of the foregoing, "law" expressly includes all state and federal fair housing statutes and regulations.

2. RMLS's obligations.
RMLS shall authorize Association to provide one unique user ID and password to Subscriber. The user ID and password will provide Subscriber access to all data and functions in the RMLS Service to which Subscriber is entitled under the RMLS Policies. RMLS makes no warranties, however, that the RMLS Service will be available at all times.

3. Subscriber acknowledgments.
(a) **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.
(b) **Conditions of service.** Subscriber's continued compliance with all the terms of this Agreement is a condition to each and every performance of RMLS hereunder.
(c) **Saved Information.** Saved Information may not always be available to Subscriber and may become available to unauthorized persons. RMLS is not liable for unauthorized access to or loss of Saved Information.
(d) **Disclosure to third parties.** RMLS reserves the right to distribute to third parties certain information about Subscriber, including Subscriber's name and business address, phone number and email address. RMLS reserves the right to distribute to third parties aggregated information about RMLS customers' use of the RMLS Service, but not about Subscriber's use specifically.
(e) **Priority of agreements.** Subscriber's access to the RMLS Service is subject at all times to the limitations set out in the RMLS Policies and the Participant Access and License Agreement between RMLS and Participant. In the event of an apparent conflict between those documents and this Agreement, Subscriber's obligations and rights shall be determined, in order of precedence, by the RMLS Policies, the Participant Access and License Agreement between RMLS and Participant, and by this Agreement. Subscriber may enter and retrieve active listing information on the RMLS Service only if Participant is capable of offering compensation to and accepting compensation from other principal brokers.
(f) **Feedback for RMLS's use.** RMLS shall be free to use, disclose, and publish any feedback or other information Subscriber provides RMLS in the course of RMLS providing products and services hereunder ("Feedback"); provided, however, that RMLS shall have no rights to Feedback to the extent that Subscriber clearly designates it as confidential and proprietary and Subscriber takes reasonable steps to keep it confidential.

4. Subscriber's obligations.
(a) **Use limited.** Subscriber shall use the RMLS Service solely for the purpose of selling, listing, leasing, and appraising real estate as provided in the RMLS Policies. Except as expressly provided in this Agreement and the RMLS Policies, Subscriber shall not copy, create derivative works of, distribute, perform, or display the RMLS Service or any part of it.
(b) **Confidentiality.** Subscriber shall maintain the confidentiality of its user ID and password and the RMLS Database; Subscriber shall not provide its ID and password to any third party. To maintain the confidentiality of all user IDs, passwords, the RMLS Database, and the RMLS System, Subscriber shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the RMLS Policies. Subscriber may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, Subscriber first gives reasonable notice to RMLS to permit RMLS to seek a protective order.
(c) **Equipment.** Subscriber shall acquire and maintain all personal computers, modems, telecommunications connections, and computer software, other than the RMLS Software, necessary for Subscriber's use of the RMLS Service.
(d) **Subscriber Contribution.** When making a Subscriber Contribution to the RMLS Service, Subscriber shall ensure that the information submitted complies with the RMLS Policies with regard to (i) which listings must be submitted; (ii) required data fields; (iii) format of submission; and (iv) procedures for submission.

5. Intellectual property.
(a) **Assignment from Subscriber.** Subscriber hereby assigns to Participant all right, title and interest, including all rights under U.S. and international copyright law, in the Subscriber Contribution; Subscriber warrants that it has the authority to make this assignment. Subscriber warrants that (i) the Subscriber Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (ii) Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to Participant. Subscriber acknowledges that Participant will eventually share copyright ownership in the Subscriber Contribution with RMLS.
(b) **License.** RMLS hereby grants Subscriber a license to use the RMLS Software and the RMLS Database, subject to the permission of Participant and the RMLS Policies and according to the terms of the Participant License and Access Agreement between RMLS and Participant. All other uses are prohibited.

6. Fees and payment terms.

(a) **Periodic fees.** No fees are due directly to RMLS hereunder. Association is solely responsible for establishing the fees it charges for access to the RMLS Service and for determining the means of collecting those fees. RMLS does not control or fix the fees that brokers and salespersons pay to Association (or other REALTOR® associations) for access to the RMLS Service. Subscriber 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 Subscriber's access to the RMLS service at any time if Subscriber or Participant fails to pay fees due to Association according to its policies.

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

7. Term and termination.

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

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

(c) **Termination of Participant.** This Agreement shall terminate immediately and without notice if the Participant License and

Access Agreement between RMLS and Participant is terminated for any reason.

(d) **Termination without Fault.** Either party may terminate this Agreement upon 30 days' written notice to the other party and to Association. Subscriber acknowledges that he/she may not terminate this Agreement so long as he/she remains affiliated with

a broker/appraiser manager that is subject to a Participant License and Access Agreement with RMLS.

(e) **Events upon termination.** Promptly upon any termination of this Agreement, (i) RMLS or Association shall deactivate

Subscriber's user ID and password, and Subscriber shall have no further access to the RMLS Service; (ii) Subscriber shall purge all copies of the RMLS Software and the RMLS Database from Subscriber's personal computers; (iii) all licenses granted hereunder shall immediately terminate; and (iv) Subscriber will not be permitted to be affiliated with Participant or any other participant of RMLS unless a new subscriber agreement between Subscriber and RMLS is executed.

8. Disclaimer, limitation of liability, and indemnification.

(a) **DISCLAIMER OF WARRANTIES.** RMLS AND ASSOCIATION PROVIDE 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 SUBSCRIBER. THE RMLS AFFILIATIES DO NOT WARRANT THAT THE RMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE RMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE RMLS SERVICE. THE RMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE RMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE RMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(b) **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE RMLS AFFILIATES SHALL BE LIABLE TO SUBSCRIBER 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 SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE RMLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE RMLS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD,

TELECOMMUNICATIONS FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE RMLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

(c) **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL THE LIABILITY OF THE RMLS AFFILIATES ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID

BY SUBSCRIBER OR BY PARTICIPANT ON SUBSCRIBER'S BEHALF HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM.

(d) **ACKNOWLEDGMENT.** Subscriber 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.

9. Disputes and remedies.

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

10. Miscellaneous.

(a) **Third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, RMLS and Subscriber, 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.

(b) **Interpretation and amendment.** This Agreement may not be amended except by written instrument executed by both parties. Subscriber expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). Should any purchase order, confirmation or acknowledgment of Subscriber contain additional or different terms, those terms shall be considered proposals by Subscriber which are hereby rejected.

(c) **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Subscriber. Any purported assignment or delegation in contravention of this section is null and void.

(d) **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.

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

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

Having read this Agreement, you assent to its terms by clicking the checkbox next to "I have read and accepted the terms of this agreement" and then clicking the "I Accept" button in this dialog box.