

Southeast Minnesota REALTORS® Multiple Listing Service, Inc.

Participant Agreement

This **AGREEMENT** is made and entered into by Southeast Minnesota REALTORS® Multiple Listing Service, Inc. ("**SEMR MLS**"), with offices at 3400 E River Road, Rochester, MN 55906; and _____ ("**Firm Participant**"), with offices at _____.

DEFINITIONS AND USAGE.

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

Individual Participants: With regard to each office of Firm Participant, the individual responsible for Firm Participant's conduct under SEMR MLS Policies that is a "participant" as that term is defined in the SEMR MLS Policies.

Other Participants and Subscribers: All Participants and Subscribers of SEMR MLS not party to this Agreement.

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

Saved Information: Information that Subscribers store in the SEMR MLS 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.

Schedule of Fees: SEMR MLS's document that establishes the fees for SEMR MLS Service.

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

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

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

SEMR MLS Service: The services SEMR MLS provides to Firm Participant under this Agreement and similar services SEMR MLS provides to third parties under similar agreements, including any access or license to the SEMR MLS Software, the SEMR MLS Database, and the SEMR MLS System.

SEMR MLS Software: SEMR MLS's proprietary web browser interface(s) to the SEMR MLS System.

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

Subscribers: 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.

SEMR MLS'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the SEMR MLS Policies, SEMR MLS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the SEMR MLS 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 SEMR MLS as set forth in the SEMR MLS Policies. The user ID and password will provide Individual Participants access to all data and functions in the SEMR MLS Service to which Individual Participants are entitled under the SEMR MLS Policies. SEMR MLS makes no warranties, however, that the SEMR MLS Service will be available at all times.

FIRM PARTICIPANT ACKNOWLEDGMENTS.

4. **Modifications to service.** SEMR MLS may, but is not required to, modify the SEMR MLS 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 SEMR MLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control.** SEMR MLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the SEMR MLS 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, SEMR MLS 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 SEMR MLS Policies or infringement of intellectual property right. Additionally, SEMR MLS 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 SEMR MLS Service. The prerequisites are set out in the SEMR MLS Policies; at present, they include a requirement that Individual Participants either (a) hold a real estate broker's license, be actively engaged in real estate brokerage, and offer and receive offers of compensation from other brokerage firms; or (b) be licensed or certified by an appropriate regulatory agency to engage in the appraisal of real property. Individual Participants must maintain active membership in a REALTOR® association at all times during the term of this Agreement. Subscribers may enter and retrieve active listing information on the SEMR MLS Service only if Firm Participant offers compensation to or accepts compensation from other principal brokers.

7. **Saved Information.** Saved Information may not always be available to Firm Participant and may become available to unauthorized persons. SEMR MLS 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.** SEMR MLS 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. SEMR MLS reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and Subscribers' use of the SEMR MLS Service, but not about Firm Participant's or Individual Participants' use specifically.

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

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

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

12. **IDX and VOW data access subject to separate agreement.** Firm Participant acknowledges that access to SEMR MLS's IDX or VOW database and data feeds can occur only subject to a separate written agreement between SEMR MLS, Firm Participant and Subscriber, as applicable.

FIRM PARTICIPANT'S OBLIGATIONS.

13. **Use limited.** Firm Participant shall use the SEMR MLS Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate, strictly as permitted by the SEMR MLS Policies. Except as expressly provided in this Agreement and the SEMR MLS Policies, Firm Participant shall not copy, create derivative works of, distribute, perform, or display the SEMR MLS Service or any part of it, except the Participant Contribution.

14. **Confidentiality.** Firm Participant shall maintain the confidentiality of its user ID and password. SEMR MLS issues each Subscriber a separate ID and password, and Participant must not facilitate sharing of passwords among Subscribers. Firm Participant shall ensure that the Subscribers maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscribers obtains access to the SEMR MLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the SEMR MLS Database, and the SEMR MLS System, Firm Participant 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 SEMR MLS Policies. Firm Participant 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, the disclosing Firm Participant first gives reasonable notice to SEMR MLS to permit SEMR MLS 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 SEMR MLS Software, necessary for Participant's use of the SEMR MLS Service.

16. **Participant Contribution.** With regard to any Subscriber making a Participant Contribution to the SEMR MLS Service, Firm Participant warrants that the information submitted complies with the SEMR MLS 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 SEMR MLS System or

SEMR MLS Database, enters into a Subscriber agreement with SEMR MLS. 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 SEMR MLS Polices and with applicable laws. Firm Participant is liable for any Subscriber's breach of any agreement between the Subscriber and SEMR MLS relating to the SEMR MLS Service or violation of any of the SEMR MLS Policies as if Firm Participant had committed it.

19. **List of Subscribers.** Firm Participant shall ensure SEMR MLS has a current list of all of Subscribers; Firm Participant shall inform SEMR MLS in writing of any change in the Subscribers within 24 hours of the change.

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 SEMR MLS System within such time as SEMR MLS shall provide in the SEMR MLS Polices. Pursuant to the SEMR MLS Policies, Firm Participant shall provide to SEMR MLS all documentation SEMR MLS 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 2.

OPTION I

(a) **Assignment from Participant.** Firm Participant hereby unconditionally assigns to SEMR MLS 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 SEMR MLS.

(b) **SEMR MLS Obligations.** SEMR MLS 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 SEMR MLS Database relating to Firm Participant's listings. SEMR MLS shall make quarterly registrations of the SEMR MLS's copyrights in the SEMR MLS Database; SEMR MLS 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 SEMR MLS 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) **SEMR MLS has no obligations to protect.** Firm Participant acknowledges that: (i) SEMR MLS makes no grant of license or assignment to Firm Participant of any rights in the

SEMR MLS Database except as set forth in paragraph 22; (ii) SEMR MLS 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) **SEMR MLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm Participant's permission**; (v) SEMR MLS will make no effort to secure for Firm Participant the right to use copyright works created by Subscribers or third parties.

22. **Other licenses.** SEMR MLS hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the SEMR MLS Software and the SEMR MLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the SEMR MLS 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 SEMR MLS Policies are prohibited. Title to the Licensed Materials remains at all times in SEMR MLS 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 SEMR MLS.

24. **Limitations on use by SEMR MLS.** SEMR MLS 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 SEMR MLS Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after SEMR MLS has provided notice of its intention to provide the Participant Contribution to the third party. For purposes of the previous sentence, brokers participating in any MLS in a data sharing relationship with SEMR MLS that includes an offer of interbroker compensation are subscribers to the SEMR MLS Service.

FEES AND PAYMENT TERMS.

25. **Applicable fees.** Firm Participant shall pay the fees set forth in SEMR MLS's official Schedule of Fees, which SEMR MLS may amend at any time subject to the terms of Paragraph 29.

26. **Payment terms.** Firm Participant shall pay the fees according to the terms set out in the SEMR MLS Policies.

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

28. **Taxes.** All fees for the SEMR MLS 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, Firm Participant shall pay all such taxes and levies other than any tax or levy on the net income of SEMR MLS.

29. **Fee increases.** SEMR MLS may amend the Schedule of Fees at any time at its sole discretion. SEMR MLS shall provide written notice to Participant at least thirty days in advance of the effective date of any fee increase. If Participant objects to the increase, Participant may terminate this Agreement by written notice to SEMR MLS at any time before the effective date of the increase.

30. **Fines.** SEMR MLS may collect fines from Firm Participant and from Individual Participants for violation of the SEMR MLS Policies by Firm Participant, Individual Participant and Subscribers. Payment terms

for fines are set out in the SEMR MLS Policies. SEMR MLS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION.

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

32. **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 if the breach or nonperformance has not then been remedied.

33. **Termination for breach of SEMR MLS Policies.** Paragraph 32 notwithstanding, SEMR MLS may terminate this Agreement if Firm Participant fails to comply with the SEMR MLS Policies; if Firm Participant violates or is alleged to have violated the SEMR MLS 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 SEMR MLS Policies. If in SEMR MLS's judgment, however, a violation or alleged violation of the SEMR MLS Policies is resulting in a continuing harm to SEMR MLS or Other Participants or Subscribers, SEMR MLS may suspend Firm Participant's access to the SEMR MLS Database during the pendency of any hearing or appeal.

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

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

36. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) SEMR MLS 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 SEMR MLS Service; (b) Firm Participant shall purge all copies of the SEMR MLS Software and the SEMR MLS 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.

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

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

38. **DISCLAIMER OF WARRANTIES.** SEMR MLS PROVIDES THE SEMR MLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE SEMR MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE SEMR MLS SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE SEMR MLS AFFILIATES DO NOT WARRANT THAT THE SEMR MLS SERVICE

WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE SEMR MLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE SEMR MLS SERVICE. THE SEMR MLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE SEMR MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE SEMR MLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The SEMR MLS Service may contain hyperlinks to web sites operated by parties other than SEMR MLS; SEMR MLS does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

39. LIMITATIONS AND EXCLUSIONS OF LIABILITY. NONE OF THE SEMR MLS 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 SEMR MLS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE SEMR MLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE SEMR MLS 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 SEMR MLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

41. Indemnification. Firm Participant shall defend, indemnify and hold the SEMR MLS 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 SEMR MLS Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the SEMR MLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the SEMR MLS Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any warranty under this Agreement; and (f) violating this or any other Agreement or any law.

42. Acknowledgment. Firm Participant acknowledges that SEMR MLS 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.

43. Injunctive relief. Firm Participant acknowledges and agrees that the SEMR MLS Software and SEMR MLS Database are confidential and proprietary products of SEMR MLS 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 SEMR MLS Software or SEMR MLS Database, SEMR MLS 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.

44. Dispute resolution. In the event SEMR MLS claims that Firm Participant has violated the SEMR MLS Policies, SEMR MLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the SEMR MLS 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 34, 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 Olmstead 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 Olmstead County, Minnesota.

45. Liquidated damages. Firm Participant acknowledges that damages suffered by SEMR MLS from access to the SEMR MLS 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 SEMR MLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to SEMR MLS 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 SEMR MLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Firm Participant shall be liable to SEMR MLS for liquidated damages in the amount of \$5,000 (or the amount established in the SEMR MLS 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 SEMR MLS 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 SEMR MLS Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

46. Legal fees. In the event of legal action or arbitration between SEMR MLS and Firm Participant, or SEMR MLS 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 SEMR MLS 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.

47. No third-party beneficiaries. This Agreement is entered into solely between, and may be enforced only by SEMR MLS 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.

48. Interpretation and amendment. Firm Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). SEMR MLS may amend this agreement by providing 30 days' advance notice of the amendment to Firm Participant. If Firm Participant or any Subscriber continues to use the SEMR MLS Service or SEMR MLS Database after the expiration of the 30-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.

49. **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.

50. **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. The foregoing notwithstanding, if any provision of Paragraphs 38 through 42 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm Participant's access to the SEMR MLS Service shall immediately terminate.

51. **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.

52. **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.

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

**Southeast Minnesota REALTORS®
Multiple Listing Service, Inc.**

Firm Participant

Signature

Firm Participant (Office) name

Print name

Signature of principal

Effective Date

Print name of principal