

# Southeast Minnesota REALTORS® Multiple Listing Service, Inc. Subscriber Agreement

**This agreement is a binding contract and includes terms limiting your legal rights and SEMR MLS's liability to you. Consult your attorney before signing if you do not understand any of the terms here.**

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 \_\_\_\_\_ ("**Subscriber**"), with offices at \_\_\_\_\_.

## DEFINITIONS AND USAGE

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

**Firm Participant:** The brokerage or appraisal company to which Individual Participants are affiliated and has executed a Participant Agreement with SEMR MLS.

**Individual Participant:** With regard to each office of Firm Participant, the principal broker or appraiser manager that supervises Subscriber's real estate activities and on whose behalf Subscriber conducts those real estate activities.

**Other Participants and Subscribers:** All Participants and Subscribers of SEMR MLS not party to this Agreement, including Firm Participants' employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

**Saved Information:** Information that Subscriber stores in the SEMR MLS System for his own later use that is not intended by him/her to be available to SEMR MLS's 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 Subscriber on the SEMR MLS System, including the Subscriber Contribution and all other text, binary, and photographic image data, in any form now known or hereafter discovered.

**SEMR MLS Policies:** SEMR MLS's 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 Subscriber 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 data connection 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 Subscriber.

**Subscriber Contribution:** All data that the Subscriber submits, contributes, or inputs in the SEMR MLS System, including text, photographs, images, and other materials, in any form now known or hereafter discovered.

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 interchangeable.

(c) 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.

## SEMR MLS'S OBLIGATIONS

3. SEMR MLS shall 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 SEMR MLS Service to which Subscriber is entitled under the SEMR MLS Policies. SEMR MLS makes no warranties, however, that the SEMR MLS Service will be available at all times.

## SUBSCRIBER 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 Subscriber 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 Subscriber 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 Subscriber Contribution.

6. **Conditions of service.** Subscriber must be affiliated with Individual Participant and Firm Participant at all times during the term of this Agreement. Subscriber may enter and retrieve active listing information on the SEMR MLS Service only if Firm Participant offers compensation to and accepts compensation from other principal brokers.

7. **Saved Information.** Saved Information may not always be available to Subscriber and may become available to unauthorized persons. SEMR MLS is not liable for unauthorized access to or loss of Saved Information. Subscriber 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 Subscriber, including Subscriber's name and business address, phone number and email address. SEMR MLS reserves the right to distribute to third parties aggregated information about Subscriber's, Firm Participant's and Other Participants' and Subscribers' use of the SEMR MLS Service, but not about Firm Participant's or Subscriber's use specifically.

9. **Disclosure to government.** Subscriber 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.** Subscriber's access to the SEMR MLS Service is subject at all times to the limitations set out in the SEMR MLS Policies and the Participant Agreement between SEMR MLS and Firm 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 SEMR MLS Policies, the Firm Participant Agreement between SEMR MLS and Firm Participant, and by this Agreement.

11. **IDX and VOW data access subject to separate agreement.** Subscriber 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 and Subscriber, as applicable.

## SUBSCRIBER'S OBLIGATIONS

12. **Use limited.** Subscriber 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, Subscriber shall not copy, create derivative works of, distribute, perform, or display the SEMR MLS Service or any part of it.

13. **Confidentiality.** Subscriber shall maintain the confidentiality of its user ID and password and the SEMR MLS Database; Subscriber shall not provide its ID and password to any third party. To maintain the confidentiality of all user IDs, passwords, the SEMR MLS Database, and the SEMR MLS 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 SEMR MLS 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 SEMR MLS to permit SEMR MLS to seek a protective order.

14. **Equipment.** Subscriber shall acquire and maintain all personal computers, modems, data connections, and computer software, other than the SEMR MLS Software, necessary for Subscriber's use of the SEMR MLS Service.

15. **Subscriber Contribution.** When making a Subscriber Contribution to the SEMR MLS Service, Subscriber 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. Subscriber warrants that the Subscriber 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 Subscriber Contribution.

## INTELLECTUAL PROPERTY

16. **Assignment from Subscriber.** Depending on the election Firm Participant has made in Section 21 of the Participant Agreement between Firm Participant and SEMR MLS, the following shall apply:

(a) If Firm Participant has selected Option I, Subscriber hereby unconditionally assigns to SEMR MLS all right, title and interest in the Subscriber Contribution, including, without any limitation, any copyrights therein under U.S. and international copyright law. To the extent that Subscriber has also purported to assign its interests in the Subscriber Contribution to Firm Participant, the assignment in this paragraph is null and void. To the extent that Subscriber does not possess the rights to permit the foregoing assignment, Subscriber 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 Subscriber Contribution.

(b) If Firm Participant has selected Option II, Subscriber hereby grants to SEMR MLS 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 Subscriber Contribution and those portions of the SEMR MLS Database relating to Subscriber's listings.

17. **Warranty.** Subscriber warrants that it has the authority to make the assignment in Paragraph 16. Subscriber warrants that (a) the Subscriber Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to Firm Participant or SEMR MLS.

18. **License.** SEMR MLS hereby grants Subscriber a license to use the SEMR MLS Software and the SEMR MLS Database during the term of this Agreement, subject to the permission of Firm Participant and according to the terms of the SEMR MLS Policies. All other uses are prohibited.

## FEES AND PAYMENT TERMS

19. **Applicable fees.** Subscriber 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 23.

20. **Payment terms.** Subscriber shall pay the fees according to the terms set out in the SEMR MLS Policies.

21. **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.

22. **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, Subscriber shall pay all such taxes and levies other than any tax or levy on the net income of SEMR MLS.

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

24. **Fines.** SEMR MLS may collect fines from Subscriber and from Firm Participant on Subscriber's behalf for violation of the SEMR MLS Policies. 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

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

26. **Termination for breach.** SEMR MLS may terminate this Agreement with notice if Subscriber fails to comply with the terms of this Agreement or of the SEMR MLS Policies.

27. **Termination of Participant.** In the event of any termination or suspension of Participant 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, including this Agreement. If SEMR MLS does not exercise its right to suspend Subscriber access to the SEMR MLS System or terminate this Agreement, this Agreement shall continue in full

force, and the subparagraph of Section 16 of this Agreement in effect at the time of the termination or suspension of the Participant Agreement shall be binding on the parties to this Agreement for its duration.

28. **Termination for failure to pay.** In the event Subscriber 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 Subscriber fails to pay any fees required under this Agreement.

29. **Termination for convenience.** Either party may terminate this Agreement upon 30 days' written notice to the other party. Subscriber may not terminate this Agreement so long as Subscriber remains affiliated with Individual Participant for which Firm Participant is responsible subject to a Participant Agreement with SEMR MLS.

30. **Events upon termination.** Promptly upon any termination of this Agreement, (a) SEMR MLS shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the SEMR MLS Service; (b) Subscriber shall purge all copies of the SEMR MLS Software and the SEMR MLS Database from Subscriber's personal computers; (c) all licenses granted hereunder shall immediately terminate, except the license to the Subscriber Contribution in Paragraph 16(b) and (d) Subscriber will not be permitted to be affiliated with Firm Participant or any other participant of SEMR MLS unless a new subscriber agreement between Subscriber and SEMR MLS is executed.

## **DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION**

31. **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 SUBSCRIBER. 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.

32. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE SEMR MLS 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 SEMR MLS SERVICE, INCLUDING RELIANCE BY 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.

33. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL SEMR MLS BE LIABLE TO SUBSCRIBER FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM PARTICIPANT,

INDIVIDUAL PARTICIPANT, OR SUBSCRIBER HAS PAID SEMR MLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100.

34. **Indemnification.** Subscriber 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 Subscriber, 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.

35. **Acknowledgment.** Subscriber 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**

36. **Injunctive relief.** Subscriber 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 Subscriber, no remedy at law will be adequate. Subscriber 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 Subscriber in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

37. **Dispute resolution.** In the event SEMR MLS claims that Subscriber 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 SEMR MLS does not also base a claim that Subscriber has breached this Agreement on the same facts. Except as provided in this paragraph and in Paragraph 28, 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. Subscriber 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.

38. **Liquidated damages.** Subscriber 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 Subscriber's password or an unauthorized disclosure by Subscriber 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 Subscriber, Subscriber agrees that (a) in the event that any disclosure of Subscriber's password results in access to the SEMR MLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Subscriber 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 Subscriber makes unauthorized disclosure of any portion of the SEMR MLS Database to any third party, Subscriber 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.

39. **Legal fees.** In the event of legal action or arbitration between SEMR MLS and 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.

**MISCELLANEOUS**

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

41. **Interpretation and amendment.** Subscriber 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 Subscriber. If Subscriber continues to use the SEMR MLS Service or SEMR MLS Database after the expiration of the 30-day notice period, Subscriber 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.

42. **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.

43. **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 Paragraph 31 through 35 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber's access to the SEMR MLS Service shall immediately terminate.

44. **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.

45. **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.**

**Subscriber**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Effective Date

\_\_\_\_\_  
Firm/office name

I am subscribing to SEMR MLS as a:

- BROKER**
- SALESPERSON**
- APPRAISER**
- ADMINISTRATIVE/STAFF PERSON**