

MLSLISTINGS INC. PARTICIPANT AGREEMENT

This AGREEMENT is made and entered into by MLSListings, Inc. ("MLSL"), with offices at 740 Kifer Road, Sunnyvale, CA 94086 and _____ ("Participant") with offices at _____.

DEFINITIONS AND USAGE.

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

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

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

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

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

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

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

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

Participant Contribution: All data that the Subscribers submit, contribute, or input in the MLSL System, including text, binary, and photographic image data, in any form now known or hereafter discovered.

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

Subscribers: 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.

MLSL'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the MLSL Policies, MLSL shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the MLSL service by virtue of this Agreement or another license agreement; and Participant shall have all rights and obligations of a participant in MLSL as

set forth in the MLSL Policies. The user ID and password will provide Participant access to all data and functions in the MLSL Service to which Participant is entitled under the MLSL Policies. MLSL makes no warranties, however, that the MLSL Service will be available at all times.

PARTICIPANT ACKNOWLEDGMENTS.

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

5. **Editorial control.** MLSL is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the MLSL 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, MLSL 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 MLSL Policies or this Agreement, or infringement of intellectual property rights.

6. **Conditions of service.** Participant must at all times during the term of this Agreement satisfy the prerequisites for participation in the MLSL Service. The prerequisites are set out in the MLSL Policies; at present, they include a requirement that Participant 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. Subscribers may enter active listing information on the MLSL Service only if Participant offers compensation to and accepts compensation from other principal brokers.

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

8. **Disclosure to third parties.** MLSL reserves the right to distribute to third parties certain information about Participant, including Participant's name and business address, phone number and email address. MLSL reserves the right to distribute to third parties aggregated information about Participant's and Other Participants' and Subscribers' use of the MLSL Service, but not about Participant's use specifically.

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

10. **Priority of agreements; suspension.** Participant must enter into this Agreement before any other Subscriber may obtain access to the MLSL Service. Subscriptions of other Subscribers are dependent on this Agreement; any termination or suspension of this Agreement will result in termination or suspension of dependent Subscriber agreements. MLSL may suspend this Agreement in its sole discretion to avoid or remedy any potential violation of law, potential breach of the MLSL Policies or this Agreement, or potential infringement of intellectual property rights.

11. **Appraiser Participant.** If Participant is an appraiser or appraisal firm, Participant acknowledges that certain information in the MLSL Database, including information about listings currently for sale, may be withheld from Participant pursuant to the MLSL Policies.

12. **IDX and VOW data access subject to separate agreement.** Participant acknowledges that access to MLSL's IDX or VOW database and data feeds can occur only subject to a separate written agreement between MLSL and Participant.

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PARTICIPANT'S OBLIGATIONS.

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

14. **Confidentiality.** Participant shall maintain the confidentiality of its user ID and password; Participant shall not provide its ID and password to any other Subscriber or to any third party. 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 MLSL Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the MLSL Database, and the MLSL System, 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 MLSL Policies. 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, Participant first gives reasonable notice to MLSL to permit MLSL to seek a protective order.

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

16. **Participant Contribution.** When making a Participant Contribution to the MLSL Service, Participant warrants that the information submitted complies with the MLSL 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. 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.** Participant shall ensure that each real estate and appraisal licensee affiliated with Participant, and each non-licensee affiliated with Participant who will have access to the MLSL System or MLSL Database, enters into a Subscriber agreement with MLSL. Participant is liable for all fees due under each Subscriber agreement.

18. **Subscriber supervision.** Participant shall ensure that all Subscribers comply at all times with the MLSL Policies and with applicable laws. Participant shall be directly liable for any breach by Subscriber of any agreement between the Subscriber and MLSL relating to the MLSL Service, or Subscriber's violation of any of the MLSL Policies.

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

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

INTELLECTUAL PROPERTY.

22. **License to MLSL Service.** MLSL hereby grants Participant a personal, non-exclusive, non-transferable and royalty-free license during the term of this Agreement to use the MLSL Software and the MLSL Database (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the MLSL Policies and only to

deliver real estate brokerage or appraisal services to Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the MLSL Policies are prohibited. Title to the Licensed Materials remains at all times in MLSL and shall not pass to Participant.

23. **Limitations on use by MLSL.** MLSL shall have the right to license the MLSL Database as established by the MLSL Policies, subject to Participant's right to exclude or limit use of listing information as provided in the MLSL Policies.

FEES AND PAYMENT TERMS.

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

25. **Payment terms.** Participant shall pay the fees according to the terms set out in the MLSL Policies.

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

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

28. **Fee increases.** MLSL may amend the Schedule of Fees at any time at its sole discretion. MLSL 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 MLSL at any time before the effective date of the increase.

29. **Fines.** MLSL may collect fines from Participant for violation of the MLSL Policies by Participant and Subscribers. Payment terms for fines are set out in the MLSL Policies. MLSL may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION.

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

31. **Termination for breach.** Either party may terminate this Agreement in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement. Any such termination shall become effective three (3) days after written notice if the breach or nonperformance has not then been remedied.

32. **Termination for breach of MLSL Policies.** Paragraph 31 notwithstanding, MLSL may terminate this Agreement if Participant fails to comply with the MLSL Policies and any hearing or appeal rights of Participant have expired as provided in the MLSL Policies. If in MLSL's judgment, however, a violation or alleged violation of the MLSL Policies is resulting in a continuing harm to MLSL or Other Participants or Subscribers, MLSL may suspend Participant's access to the MLSL Database during the pendency of any hearing or appeal.

33. **Termination for failure to pay.** In the event Participant fails to pay any fees required under this Agreement, MLSL shall have the right, without being subject to arbitration, to (i) immediately terminate the Agreement, (ii) suspend Participant's and its Subscribers' access to the MLSL Services, and/or (iii) seek recovery of any amounts due in any court having jurisdiction.

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34. **Termination for convenience.** Either party may terminate this Agreement at any time with or without cause, upon thirty (30) days' written notice to the other.

35. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) MLSL shall deactivate Participant's user ID and password, and Participant shall have no further access to the MLSL Service; (b) Participant shall purge all copies of the MLSL Software and the MLSL Database (except the Participant Contribution) from Participant's personal computers; and (c) all licenses granted by MLSL hereunder, except the license to the Participant Contribution in Paragraph 21(b), if any, shall immediately terminate.

36. **Effect on Subscribers.** All Subscriber Agreements between MLSL and Participants Subscribers shall immediately terminate upon termination of this Agreement.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

37. **DISCLAIMER OF WARRANTIES.** MLSL PROVIDES THE MLSL SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE MLSL SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MLSL SERVICE ARE AT THE SOLE RISK OF PARTICIPANT. THE MLSL AFFILIATES DO NOT WARRANT THAT THE MLSL SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE MLSL AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE MLSL SERVICE. THE MLSL AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE MLSL SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MLSL SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The MLSL Service may contain hyperlinks to web sites operated by parties other than MLSL; MLSL 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 MLSL AFFILIATES SHALL BE LIABLE TO PARTICIPANT OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE MLSL SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE MLSL SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE MLSL 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 MLSL SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

41. **Indemnification.** Participant shall defend, indemnify and hold the MLSL 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 MLSL Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the MLSL Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the MLSL 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.** Participant acknowledges that MLSL 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.** Participant acknowledges and agrees that the MLSL Software and MLSL Database are confidential and proprietary products of MLSL and that in the event there is an unauthorized disclosure of them by Participant, no remedy at law will be adequate. Participant therefore agrees that in the event of such unauthorized disclosure of MLSL Software or MLSL Database, MLSL 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 MLSL claims that Participant has violated the MLSL Policies, MLSL may, at its option, resolve such a claim according to the disciplinary procedures set out in the MLSL Policies, provided MLSL does not also base a claim that 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 Santa Clara County, California, except that it may be held by telephone where the Arbitration Rules expressly so permit. 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 Santa Clara County, California.

45. **Liquidated damages.** Participant acknowledges that damages suffered by MLSL from access to the MLSL Service by an unauthorized third party as a result of disclosure of Participant's password or an unauthorized disclosure by Participant of the MLSL Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to MLSL to enter into this Agreement with Participant, Participant agrees that (a) in the event that any disclosure of Participant's password results in access to the MLSL Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Participant shall be liable to MLSL for liquidated damages in the amount of \$5,000 (or the amount established in the MLSL Policies, whichever is greater) and termination of this Agreement; and (b) in the event that Participant makes unauthorized disclosure of any portion of the MLSL Database to any third party, Participant shall be liable for liquidated damages in the amount of \$5,000 (or the amount established in the MLSL 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 MLSL and Participant, or MLSL 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 MLSL is the prevailing party in an action against a Subscriber, Participant shall be obligated to pay these costs on the Subscriber's behalf.

MLS LISTINGS INC. PARTICIPANT AGREEMENT

MISCELLANEOUS.

47. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by MLSL and 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.** Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). MLSL may amend this agreement by providing 30 days' advance notice of the amendment to Participant. If Participant or any Subscriber continues to use the MLSL Service or MLSL Database after the expiration of the 30-day notice period, 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 Participant. Any purported assignment in contravention of this section is null and void. Participation in MLSL is granted to the individual/REALTOR® principal of Participant's firm and is not subject to assignment upon change of ownership of Participant's firm.

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 Participant's access to the MLSL Service shall immediately terminate.

51. **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California applicable to contacts made and performed in California, 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.

MLSListings, Inc.

Participant

 Signature

 Signature of principal

 Print name

 Print name of principal

 Effective Date

 Participant firm name

 I am participating in MLSL as a:

- REAL ESTATE BROKER**

REAL ESTATE APPRAISER