

This Participation Agreement (the “Agreement”) is made and entered into by and between the undersigned Participant, an individual principal real estate broker partner, corporate officer or branch office manager acting on behalf of a principal (the “Participant”), and New Mexico Multiple Listing Service, Inc., a New Mexico For-Profit Corporation organized as a subsidiary corporation of the New Mexico REALTORS® Association (NMAR) the “NM MLS”).

1. **Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 26 of this Agreement.
2. **Grant of Participation Rights in Multiple Listing Service.** Subject to the terms and conditions of this Agreement, the Bylaws and the Rules and Regulations, NM MLS agrees to make the NM MLS Database available for access by Participant, and Participant shall have all rights and obligations of a participant in the NM MLS as set forth under the Bylaws and Rules and Regulations. Access to the NM MLS Database shall be through a means determined by NM MLS. Participant may permit duly authorized employees or agents associated with his/her office to access the NM MLS Database on Participant’s behalf and pursuant to the terms of this Agreement; provided that, Participant (a) accepts full responsibility, and shall be liable to NM MLS for use of the NM MLS Database by such employee or agent; and (b) promptly terminates access to the NM MLS by such employee and agent upon such employee or agent ceasing to be authorized as set forth in this provision. Participant agrees to take all reasonable steps to protect the NM MLS Database from unauthorized access, copying, or use.
3. **License to IDX Listings.** Upon the receipt of a written request from Participant, in a form acceptable to NM MLS, and so long as Participant, applicable Associate Brokers, and/or applicable Vendors are not in default under this Agreement, the Bylaws and Rules and Regulations or any other agreement with NM MLS, NM MLS will grant to Participant, applicable Associate Brokers, and/or the applicable Vendors a license to the IDX Listings. The license will only be granted pursuant to a separate IDX License Agreement. NM MLS has no obligation to grant a license to the IDX listings to Participant, any Associate Brokers of Participant, or any Vendors which do not enter into a separate IDX License Agreement. In addition to any applicable license fee payable by Participant, the Associate Broker and/or the Vendor, Participant shall pay to the NM MLS all costs and expenses incurred by the NM MLS in connection with any licenses and any services provided by the NM MLS in connection with such licenses.
4. **Intellectual Property Ownership; Enforcement.**
 - A. Participant acknowledges and agrees that the NM MLS Database, and all copies, modifications, enhancements, and derivative works of the NM MLS Database, are the property of NM MLS, and all right, title, and interest in and to the NM MLS Database, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with NM MLS. Participant

hereby irrevocably assigns to NM MLS any and all rights which it may have or acquire in and to the NM MLS Database.

- B. Participant and MLS shall jointly own the Listing Content, including all copyright rights and other intellectual property rights. Accordingly, Participant hereby assigns and transfers to MLS joint and co-equal ownership of all right, title and interest, including all copyright rights and other intellectual property rights, and any renewals and extensions thereof, which Participant may have or acquire in and to any and all of the Listing Content for the Participant's Listings. Such rights, title, and interest shall be deemed jointly owned as of the moment of creation without the necessity of any further action on the part of either party. Participant and MLS shall each have the right to bring all actions and causes of action related to the foregoing, and all damages, profits, and other recoveries related thereto, and to otherwise exploit the Listing Content. Either Participant or MLS may, in its discretion and at its own expense, take such action from time to time as may be reasonable or appropriate, in its judgment, to protect and preserve any applicable title and interest in and to the Listing Content, including all copyright rights and other intellectual property rights. Participant represents and warrants to MLS with respect to the Listing Content for each of Participant's Listings that the Listing Content, and the assignment and transfer of joint ownership in and to the Listing Content to MLS, do not infringe or violate any copyrights, trade secrets, or other intellectual or proprietary rights of any third party. Neither Participant nor NM MLS must account to the other for any claims, damages, royalties, fees, profits, recovery, or any other benefit from the use of the Listing Content.
- C. Participant agrees not to challenge MLS's rights in and to the MLS Database or Listing Content or to take any action inconsistent with the transfer of joint ownership to MLS. Participant agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the rights, including joint ownership, transferred to MLS in and to the Listing Content, and with the copyright application and registration of the MLS Database.
- D. Participant shall indemnify MLS against all damages, costs, and liabilities, including reasonable attorney fees, arising from any claim that the Listing Content or any portion of the Listing Content infringes the rights of any third party. PARTICIPANT ACKNOWLEDGES THAT THE FOREGOING SENTENCE MEANS THAT PARTICIPANT MUST OBTAIN ASSIGNMENTS FROM THE AUTHORS OF ANY PORTIONS OF THE LISTING CONTENT, INCLUDING SELLERS, AFFILIATES AND THIRD-PARTY CONTRIBUTORS AS NECESSARY FOR PARTICIPANT TO LICENSE THE LISTING CONTENT TO MLS AND TO OTHERWISE MAKE FULL USE OF THE LISTING CONTENT UNDER THIS AGREEMENT. IF PARTICIPANT FAILS TO DO SO, PARTICIPANT WILL ASSUME AND REIMBURSE MLS FOR THE COST OF DEFENDING MLS AGAINST INFRINGEMENT CLAIMS AND PAYING DAMAGES ON ANY SUCH CLAIMS.
- E. Without limiting the generality of this Section 4, but subject to the rights of participants in the MLS' multiple listing service to opt out of inclusion with respect to Listings submitted by such participant as set forth in the Rules and Regulations, Participant acknowledges and agrees that MLS may use and

license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the applicable Broker or by the Rules and Regulations.

- F. Participant hereby grants to NM MLS all rights necessary for NM MLS to protect and enforce all intellectual property rights associated with the Listing Content, including all copyrights. In accordance with the grant of such rights, Participant hereby irrevocably authorizes, empowers and vests in NM MLS the right, and appoints NM MLS as Participant's attorney in fact, to do the following:
- i. Add watermarks or other means of identification to any and all Listings, regardless of whether such means of identification is visible, and take any and all other action deemed appropriate by NM MLS to identify the source of any misuse, infringement, or misappropriation of any Listing Content;
 - ii. Send demand letters, exercise rights under any applicable license agreements, and take any and all other action deemed appropriate by NM MLS to prevent the misuse, infringement, or misappropriation of any Listing Content;
 - iii. Enforce and compromise any and all intellectual property rights in the Listing Content, including all copyrights, whether such rights are held in the name of Participant or others, and take all action deemed necessary and appropriate by NM MLS in connection with the enforcement of all such rights, including, without limitation, the filing and prosecution of litigation or binding arbitration with respect to any potential claim of infringement, misappropriation, or other similar claim, the naming of any parties deemed appropriate by NM MLS, and the collection of any damages; and
 - iv. Execute all documents, whether in the name of Participant and/or NM MLS, deemed appropriate by NM MLS to affect any of the foregoing.

Notwithstanding the foregoing, nothing in this Section 4.F requires NM MLS to take any action against any person, firm, partnership or other entity that Participant claims may be infringing any Listing Content.

5. **License to Participant's Listing.** MLS hereby grants to Participant a limited, non-exclusive, and personal license to use Listing Content only for purposes and as expressly allowed under Participant's certification or licensure, the Rules and Regulations, and any applicable License Agreement. Participant agrees to take all reasonable steps to protect the Listing Content from unauthorized access, copying, or use.
6. **Fees.** In consideration for participation in NM MLS and for the services provided and licenses granted under this Agreement, Participant agrees to pay to NM MLS the fees (the "Fees") in the amount, and in accordance with the terms, established by NM MLS for participation by participants in the NM MLS, which amount and terms shall

be set forth in Exhibit A attached hereto and may be changed by NM MLS at any time effective upon thirty (30) days prior written notice to Participant.

7. Participant's Users.

- A. Participant shall complete a User List Form attached hereto as Exhibit B (a "User List") identifying all Users in the Participant's office who will receive access to the NM MLS through Participant. Participants hereby warrants that all Users identified on the User List are eligible to participate in the NM MLS as defined in the Bylaws governing the NM MLS.
- B. Participant shall cause each User in Participant's office who will receive access to the NM MLS through Participant to enter into a NM MLS User Agreement, attached hereto as Exhibit C (a "User Agreement").
- C. Participant agrees to cause all of Participant's Sales Licensees who will receive access to the NM MLS through Participant to enter into a subscriber agreement, in a form and substance acceptable to the NM MLS in its sole discretion.
- D. Participant agrees to cause all of Participant's Assistants who will receive access to the NM MLS through Participant to enter into a NM MLS User Agreement, attached hereto as Exhibit C. Each office is allowed two assistants of which they do not paid annual dues. There is a one-time fee per assistant.

8. Responsibility for Users. Participant shall be responsible and liable to NM MLS for the acts and omissions of its Users and shall be responsible for each User's compliance with this Agreement and the Bylaws and Rules and Regulations. Any failure to comply with this Agreement, the Bylaws and Rules and Regulations by a User shall be deemed a failure to comply by Participant, and Participant shall be responsible and liable to NM MLS for any damages incurred by NM MLS arising from or as a result of a User's noncompliance with this Agreement, the Bylaws and/or the Rules and Regulations.

9. Security Levels. Each Participant and User are assigned a security level based on their agent type.

- A. Security Level One (1) - Export/RETS Vendors. Denied access to NM MLS.
- B. Security Level Two (2) - Affiliated members. Used for Appraisers who hold an affiliated membership and are not full REALTOR® members.
- C. Security Level Three (3) - Appraisers. Can view active and sold listings only but cannot add listings.
- D. Security Level Four (4) - Associate Brokers. Able to view, add and maintain listings under Qualifying Broker.
- E. Security Level Five (5) - Qualifying Brokers and Secretaries. Has access to view, add and maintain their own and their Associate Broker's listings. Each active office is allowed up to two (2) security level 5's.

- F. Security Level Six (6) - Qualifying Brokers. Has branch offices and gives capability of producing reports.
10. **No Assignment by Participant.** Participant agrees that this Agreement is personal to Participant, and Participant may not assign or transfer this Agreement, including any license granted under this Agreement, or transfer any rights or delegate any duties under this Agreement, to any third party. Any attempt to assign, transfer, or delegate any of Participants rights, duties, or obligations under this Agreement shall be null and void.
11. **Interruptions in Service.** Participant acknowledges that access to the NM MLS Database may from time-to-time be unavailable to Participant, whether because of technical failures or interruptions, intentional downtime for service or changes to NM MLS's website, or otherwise. Participant agrees that any modification of NM MLS's website, and any interruption or unavailability of access to the NM MLS Database shall not constitute a default of any obligations of NM MLS under this Agreement, and NM MLS shall have no liability of any nature to Participant for any such modifications, interruptions, unavailability, or failure of access.
12. **Copies and Derivative Works.** Except as otherwise expressly provided in this Agreement, a separate license agreement, the Bylaws or Rules and Regulations, Participant may not do any of the following, either directly or indirectly, including assist any other person to do, or otherwise contribute in any way to any of the following:
- A. Make any copies of the NM MLS Database, or any portion of the NM MLS Database, including any specific Listing Content included in the NM MLS Database;
 - B. Download, distribute, export, or transmit the NM MLS Database, or any portion of the NM MLS Database, including any Listing Content included in the NM MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the NM MLS Database, or any portion of the NM MLS Database, including any Listing Content included in the NM MLS Database; or
 - C. Publicly display the NM MLS Database, or any portion of the NM MLS Database, including any Listing Content included in the NM MLS Database.
13. **Representations and Warranties Regarding Listings.** Participant represents and warrants with respect to each Participant's Listing or change to a Participant's listing submitted to NM MLS under this Agreement, Bylaws and the Rules and Regulations, the following:
- A. The respective Seller has assigned or licensed in writing all of Seller's rights, title and interest, including all copyright rights and other intellectual property rights, in and to the Listing Content to Participant;
 - B. The Participant's Listing complies in all respects with the Bylaws and Rules and Regulations;

- C. To the best of Participant's and any applicable Associate Broker's knowledge and after reasonable due diligence to verify the accuracy of all information in the Participant's Listing, all information included in the Participant's Listing is accurate and not misleading;
- D. The Listing Content for each Participant's Listing is an original work of authorship of Participant, or Participant is the assignee or licensee of such Listing Content pursuant to an enforceable assignment or license. Except for Participant and any person or entity, which has assigned his, her or its rights in accordance with Section 4 of this Agreement, no other person or entity has any rights of any nature in or to any of the Listing Content for any Participant's Listing;

Along with the listing content, listing brokers are required to submit a minimum of one primary photo that accurately depicts the listed property except where sellers expressly direct that photographs of their property not appear in NM MLS compilations. Where the seller has expressly directed that a photo(s) not be included, the listing broker shall submit a NM MLS Required Photo Waiver Form signed by the listing broker and the seller(s) within two (2) days of entering the listing into the NM MLS. Listing brokers who fail to submit a photo as provided in this Subsection 10.3.1 will be fined as set forth in the Participation Agreement. Photos shall not contain any forwarding remarks or logos, including, but not limited to brokerage signs and company names and/or logos. Should only one photo be submitted, then the photo shall be of the front of the house, business, or property.

- E. There is no claim, litigation or proceeding pending or threatened with respect to the Listing Content for any Participant's listing; and
- F. The Listing Content, and the assignment of rights in and to Listing Content to NM MLS, do not infringe or violate any patents, copyrights, mask work rights, trademarks, trade secrets or other proprietary rights of any third party.

14. **Submission of Listings.** As a material condition to accessing the NM MLS Database, Participant agrees to submit to NM MLS all Listings in accordance with, and except as otherwise provided in, the Bylaws and/or Rules and Regulations. NM MLS may refuse to accept or include in, and may remove from, the NM MLS Database any Listing or Listing Content, or may require Participant to direct NM MLS to modify any Listing Content, as provided under the Bylaws and/or Rules and Regulations or if NM MLS determines, in its sole discretion, that such Listing or Listing Content may violate or infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as provided in the Bylaws and/or Rules and Regulations, Participant acknowledges that NM MLS has no obligation to remove, modify or refuse to accept any Listing or Listing Content. NM MLS grants Participant a limited, non-exclusive, personal license to input Listing Content in the NM MLS Database and to modify such Listing Content strictly in accordance with the terms and conditions of this Agreement, the Bylaws and the Rules and Regulations. Participant acknowledges and agrees that any Listing or Listing Content, or any prospective Listing or Listing Content, submitted by Participant or its Users may be accessible by other participants in or users of NM MLS's multiple listing service, and NM MLS shall have

no liability to Participant for providing such other participants or users access to any Listing or Listing Content, or any prospective Listing or Listing Content.

15. **Confidential Information.** Any information provided by NM MLS to any Participant, including without limitation, any password to the NM MLS Database, any printouts of the NM MLS Database as provided under this Agreement, and all Listing Content, including personal information of a Seller (collectively “Confidential Information”) shall be maintained by Participant as confidential and available exclusively for use by Participant as provided in this Agreement. Participant shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law. Participant shall not disclose any Confidential Information pursuant to a court order or as required by law until Participant has given NM MLS ten (10) days prior written notice and an opportunity to oppose such disclosure. Notwithstanding the foregoing, Participant may disclose Listing Content for individual Listings strictly in accordance with this Agreement, the Bylaws and the Rules and Regulations.
16. **Additional Representations and Warranties of Participant.** Participant represents and warrants the following to NM MLS: (a) Participant is a REALTOR® in good standing; (b) Participant holds a current, valid real estate broker’s license; (c) Participant is a member of a Board in good standing; and (d) Participant is capable of offering and accepting cooperation and compensation to and from other participants in NM MLS in accordance with the Bylaws and Rules and Regulations. Participant further represents and warrants to NM MLS that this Agreement, when executed by Participant, will be valid, binding and enforceable with respect to Participant in accordance with its terms; (a) the provisions of the services provided under this Agreement and the fulfillment of Participant’s obligations as contemplated under this Agreement are proper and lawful; (b) Participant is not and shall not be under any disability, restriction or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement; and (c) all of Participant’s Users have entered into User Agreements.
17. **Compliance with Governing Rules and Agreements.**
 - A. By entering into this Agreement, Participant represents and warrants to NM MLS that Participant has read and understands, and Participant shall be bound by and at all times fully comply with and perform all of Participant’s obligations under this Agreement, the Bylaws and the Rules and Regulations, the applicable Board Rules and Regulations, and the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®. A copy of the then-current version of the Bylaws and Rules and Regulations is available upon request. In addition to all other rights and remedies available to NM MLS under this Agreement, the Bylaws and the Rules and Regulations, Participant acknowledges that NM MLS may levy fines against Participant for noncompliance with this Agreement, the Bylaws and/or the Rules and Regulations as provided in this Agreement and/or the Rules and Regulations. All governing documents may be found in the Governance tab on the Homepage of Paragon.
 - B. To the extent there is any conflict between this Agreement, Bylaws, the Rules and Regulations, and any applicable User Agreement, the Bylaws shall govern.

To the extent there is any conflict between this Agreement, the Rules and Regulations, and any applicable User Agreement, the Rules and Regulations shall govern. As between this Agreement and any User Agreement, this Agreement shall govern.

18. **No Warranty.** THE SERVICES PROVIDED AND LICENSE GRANTED TO PARTICIPANT UNDER THIS AGREEMENT ARE PROVIDED ON AN “AS IS” BASIS, WITHOUT ANY WARRANTY OF ANY NATURE. NM MLS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, NM MLS DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY LISTING CONTENT, AND THEIR ACCURACY.
19. **Limitation of Liability.** NM MLS’S ENTIRE AND CUMULATIVE LIABILITY TO PARTICIPANT, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NM MLS DATABASE OR LISTING CONTENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY PARTICIPANT TO NM MLS DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT SHALL NM MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF NM MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NM MLS SHALL HAVE NO LIABILITY OF ANY NATURE TO SALES LICENSEES.
20. **Injunction.** NM MLS and Participant agree that a breach or violation of Sections 11, 14, and 20.G of this Agreement will result in immediate and irreparable injury and harm to NM MLS. In such event, NM MLS shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that, this shall in no way limit any other remedies which NM MLS may have, including, without limitation, the right to seek monetary damages.
21. **Term and Termination.**
 - A. The initial term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided in this Agreement, shall continue for a period of one (1) year. This Agreement shall automatically renew for additional one (1) year terms unless either party gives written notice to the other party of non-renewal at least thirty (30) days prior to the expiration of the then-current term or this Agreement is otherwise terminated as provided in this Agreement.
 - B. Either party may terminate this Agreement at any time for any reason upon thirty (30) days prior written notice to the other party.
 - C. NM MLS may terminate this Agreement, upon the occurrence of any of the following events: (1) Participant fails to pay any Fees when due; (2) Participant discloses any Confidential Information, including, without limitation, any password of Participant or a User, except as expressly provided in this Agreement; (3) Participant otherwise fails to comply in all

respects with the Bylaws and/or Rules and Regulations, the applicable Board Rules and Regulations, or the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®; (4) Participant defaults under any material term or condition of any License Agreement; or (5) Participant defaults under any other material term or condition of this Agreement.

Except as otherwise provided in this Agreement, termination pursuant to this Section 20.C of this Agreement shall be effective at any time after NM MLS has given **ten (10) business days' notice to Participant of any such event, and such event has not been cured within such ten (10) day period.** Notwithstanding the foregoing sentence, if, in the reasonable discretion of NM MLS, the occurrence of any such event could result in irreparable harm to NM MLS, termination shall be effective immediately, without prior written notice to Participant, provided that notice shall be delivered to Participant within ten (10) business days following such termination.

- D. This Agreement may also terminate as provided under Section 24.D of this Agreement.
- E. In addition to all other rights and remedies available to NM MLS under this Agreement, if Participant fails to pay any Fees when due, or otherwise defaults under this Agreement, NM MLS may, in its sole discretion, temporarily suspend the license granted to Participant to access the NM MLS Database until all outstanding Fees have been paid in full or the default has been cured.
- F. Notwithstanding anything to the contrary in this Agreement, if Participant violates or is alleged to have violated the Bylaws and/or Rules and Regulations, Participant shall not be terminated in accordance with Section 20.C of this Agreement until any hearing or appeal rights of Participant have expired as provided in the Bylaws or Rules and Regulations.
- G. Upon termination of this Agreement, Participant agrees to immediately destroy any printouts of the NM MLS Database or Listing Content, and any copies of the NM MLS Database and Listing Content in Participant's possession or under Participant's control, including in possession of any Users. **No pre-paid Fees will be refunded to Participant for any termination of this Agreement.**
- H. Upon termination of this Agreement, all licenses granted, and all services provided to Participant under this Agreement shall terminate. In addition, any and all rights granted to Users to access or use the NM MLS Database pursuant to the Bylaws and/or Rules and Regulations shall automatically terminate.
- I. If for any reason, any Subscriber Agreement is terminated, Participant agrees to either assign all Participant's Listings originated by the terminated User to another of Participant's Users, or request that the NM MLS terminate or change the status of Participant's Listings originated by the terminated User.
- I. **Upon termination of this agreement, any remaining dues paid for the annual dues year WILL NOT BE RETURNED OR REFUNDED.**

22. **Indemnification.** Participant agrees to indemnify and hold harmless NM MLS, and its officers, directors, employees, shareholders and agents, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorney's fees and costs, arising out of or connected with any Listing Agreement, this Agreement, submission to NM MLS of any Listing or Listing Content and the inclusion of any Listing or Listing Content by Participant in the NM MLS Database, including, without limitation, any claim that the access to, display of, and/or use of any Listing Content infringes on or constitutes a misappropriation of any patent, copyright, or trade secret, or any other intellectual property right of any person or entity anywhere in the world, including any claims by Sellers. NM MLS shall have the right to control its own defense and engage legal counsel acceptable to NM MLS.
23. **Proprietary and Other Notices.** Participant agrees that it will not alter or remove any trademarks or copyright notices or other notices and disclaimers located or used on, or in connection with, the NM MLS Database or any printouts of the NM MLS Database allowed under this Agreement.
24. **IDX Advertising Consent.** Unless Participant has made an express, written non-participation election for NM MLS's Internet Data Exchange (IDX) program as described in the Bylaws or Rules and Regulations, Participant expressly consents to other participants in NM MLS's IDX program advertising all of Participant's Listings in accordance with the IDX policy set forth in the Bylaws or Rules and Regulations.
25. **General.**
- A. **Notices.** All notices, demands, or consents required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, by a reputable overnight courier service, or by e-mail, if the sender receives and maintains a copy of a certified mail receipt and a copy is mailed within one (1) business day after notice is delivered by e-mail, to the appropriate party at the following addresses:
- If to Participant: At the street address or e-mail maintained by NM MLS for Participant.
- If to NM MLS: 150 Washington Street, Suite 201, Santa Fe, NM 87501
- Or email: admin@nmmls.net
- The foregoing addresses may be changed from time-to-time by delivering notice of such change, referencing this Agreement, to the parties to this Agreement.
- B. **Governing Law; Submission to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the state of New Mexico. Participant acknowledges that by providing Listings to NM MLS and using the services provided under this Agreement, Participant has transacted business in the state of New Mexico. By transacting business in the state of New Mexico by agreement, Participant voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in Santa Fe

County, state of New Mexico, as to all matters relating to or arising from this Agreement.

- C. **Costs of Litigation.** If any action is brought by either party to this Agreement against the other party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney's fees, costs, and expenses of litigation.
- D. **Severability.** Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement; except that if any provision of Sections 10, 17, or 18 of this Agreement, or any other limitation of liability or exclusion of warranty set forth in this Agreement, is determined to be invalid or unenforceable, then this Agreement shall immediately terminate without notice.
- E. **No Waiver.** The waiver by either party of, or the failure of either party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement. The subsequent acceptance of any payment due under this Agreement by any party shall not be deemed to be a waiver of any preceding breach of the party making payment with respect to any term, covenant or condition contained in this Agreement.
- F. **Entire Agreement.** Modifications Only in Writing. This Agreement, together with the Bylaws and Rules and Regulations and any applicable License Agreement, (i) constitutes the entire agreement between NM MLS and Participant concerning the NM MLS Database, Listing Content, and all other subject matter of this Agreement, (ii) supersedes any contemporaneous or prior proposal, representation, agreement, or understanding between the parties, and (iii) may not be amended except in writing signed by NM MLS and Participant.
- G. **No Third-Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of NM MLS and Participant and is not intended to benefit any third party, including any Seller or User. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement.
- H. **Survival.** The provisions of Sections 3, 5, 7, 10, 14, 17, 18, 19, 20.G, 21, and 24 of this Agreement shall survive any termination of this Agreement, including termination pursuant to Section 24.D of this Agreement.
- I. **Dues.** The annual dues year starts July 1 through June 30. Payment of NM MLS fees for new Users must be prepaid and will be prorated for the current dues year by the month the service started. Billing of NM MLS fees for existing Users for the next dues year will be sent to each individual subscriber/user. Payment of the NM MLS fees for existing Users for the next dues year MUST be PAID prior to July 1 of the incoming Dues Year. Failure to pay for the NM MLS fees prior to July 1 will result in deactivation and a Re-

Instatement fee plus late fees will occur. Payment of the Re-Instatement fee and late fees, along with full payment of dues must be paid to be re-activated. Paid dues will transfer with the User should the User move to another Brokerage. Dues are not assignable. Dues are not returned or refunded once the dues year has begun.

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

- A. **Associate Broker** means a real estate broker or non-principal broker who is engaged by Participant as a sales licensee of Participant, either as an employee or independent contractor of Participant. Associate Broker is also considered a Subscriber and/or User.
- B. **Broker** means a principal real estate broker or broker in charge. Broker is also considered a Designated REALTOR® and/or a Participant and/or a User.
- C. **Board** means a Board of REALTORS® or association of REALTORS® established and operated in accordance with the applicable rules and regulations of the NATIONAL ASSOCIATION OF REALTORS®.
- D. **Board Rules and Regulations** mean the rules and regulations, as amended, of the Board of which a Participant is a member.
- E. **Bylaws** means the NM MLS Bylaws established by NM MLS, as amended by NM MLS from time to time.
- F. **Data Licensing or Automated Valuation Model or AVM** means a product that provides automated real property valuations using mathematical modeling combined with a database.
- G. **Exempted Listing** means a Listing which the respective Seller has refused permission to be disseminated by NM MLS, or a Listing which is not required to be submitted to the NM MLS, in accordance with the Rules and Regulations.
- H. **IDX Listings** means all of the Listings identified or defined as IDX listings in the Rules and Regulations.
- I. **License Agreement** means a license agreement entered into between NM MLS and Participant, NM MLS and a Sales Licensee of Participant, or NM MLS and a third party at the request of Subscriber.
- J. **Listing** means a real estate listing of a participant in NM MLS's multiple listing service.
- K. **Listing Agreement** means an enforceable, written, and fully executed agreement between Participant and a Seller whereby, among other things, Participant agrees to provide real estate sales services to Seller, and Seller agrees to pay compensation for services provided.
- L. **Listing Content** means all data and content, including without limitation, all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information submitted

by Participant to NM MLS with respect to a Listing, excepting Exempted Listings.

- M. **NM MLS Database** means the compilation of Listings, including information for sold properties, known as the NM MLS Database, as modified from time-to-time by NM MLS.
- N. **Non-Member Subscriber** means the Subscriber /User is not a member of the NM MLS, nor a REALTOR® member but is a Licensed Real Estate Broker/Agent and has paid a one-time fee to enter a property into the NM MLS system for a specific amount of time. Certain requirements apply.
- O. **Non-Member Subscriber Listings** means only the Listings of Non-Member Subscriber.
- P. **Participant** Where the term REALTOR® is used in this explanation of policy in connection with the word member or the word participant, it shall be construed to mean the REALTOR® principal or principals, of this or any other association, or a firm comprised of REALTOR® principals participating in a multiple listing service owned and operated by the board. Participatory rights shall be held by an individual principal broker unless determined by the association or MLS to be held by a firm. It shall not be construed to include individuals other than a principal or principals who are REALTOR® members of this or any other association, or who are legally entitled to participate without association membership. However, under no circumstances is any individual or firm, regardless of membership status, entitled to MLS membership or participation unless they hold a current, valid real estate broker's license and offer or accept cooperation and compensation to and from other participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by an association multiple listing service is strictly limited to the activities authorized under a participant's licensure(s) or certification and unauthorized uses are prohibited.

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm offers or accepts cooperation and compensation means that the participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and ongoing basis during the operation of the participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a participant or potential participant that operates a real estate business on a part-time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a participant or potential participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the participant or potential participant as long as the level of service satisfies state law.

The key is that the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a participant or potential participant that operates a "Virtual Office Website" (VOW) (including a VOW that the participant uses to refer customers to other participants) if the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may

evaluate whether a participant or potential participant actively endeavors during the operation of its real estate business to offer or accept cooperation and compensation only if the MLS has a reasonable basis to believe that the participant or potential participant is in fact not doing so. The membership requirement shall be applied in a nondiscriminatory manner to all participants and potential participants.

Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed by or published by an association multiple listing service where access to such information is prohibited by law. Additionally, the foregoing does not prohibit association multiple listing services, at their discretion, from categorizing non-principal brokers, sales licensees, licensed and certified appraisers and others affiliated with the MLS members or participants as users or subscribers and, holding such individuals personally subject to the rules and regulations and any other governing provisions of the MLS and to discipline for violations thereof. MLSs may, as a matter of local determination, limit participatory rights to individual principal brokers, or to their firms, and to licensed or certified appraisers, who maintain an office or Internet presence from which they are available to represent real estate sellers, buyers, lessors or lessees or from which they provide appraisal services.

Where the terms subscriber or user are used in connection with a multiple listing service owned or operated by an association of Realtors®, they refer to non-principal brokers, sales licensees, and licensed and certified real estate appraisers affiliated with an MLS participant and may, as a matter of local option, also include a participant's affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers provided that any such individual is under the direct supervision of an MLS participant or the participant's licensed designee. If such access is available to unlicensed or uncertified individuals, their access is subject to the rules and regulations, the payment of applicable fees and charges (if any), and the limitations and restrictions of state law. None of the foregoing shall diminish the participant's ultimate responsibility for ensuring compliance with the rules and regulations of the MLS by all individuals affiliated with the participant.

Under the Board of Choice policy, MLS participatory rights shall be available to any REALTOR® (principal) or any firm comprised of Realtors® (principals) irrespective of where they hold primary membership subject only to their agreement to abide by any MLS rules or regulations; agreement to arbitrate disputes with other participants; and payment of any MLS dues, fees, and charges. Participatory rights granted under Board of Choice do not confer voting privileges or eligibility for office as an MLS committee member, officer, or director, except as granted at the discretion of the local board and/or MLS.

The universal access to services component of Board of Choice is to be interpreted as requiring that MLS participatory rights be available to REALTOR® principals, or to firms comprised of REALTOR® principals, irrespective of where primary or secondary membership is held.

The MLS may charge participants and subscribers not holding primary or secondary membership in a REALTOR® association that owns the MLS a different amount than charged to members of the association, provided that such charge is reasonably related to the actual costs of serving those members.

None of the foregoing shall be construed as requiring an association to grant MLS participatory rights, under Board of Choice, where such rights have been previously terminated by action of that association's board of directors.

- Q. **Participant Listings** means only the Listings of Participant.
- R. **Rules and Regulations** mean the NM MLS Rules and Regulations established by NM MLS, as amended by NM MLS from time to time.
- S. **Seller** means the seller(s) or lessor(s) of a property which is the subject of a Listing at issue under this Agreement.
- T. **Users** mean associate brokers, non-principal brokers, appraisers, and any other agents or employees of Participant who may have access to the NM MLS Database subject to the Rules and Regulations and any applicable agreements with NM MLS. A current User List is attached as Exhibit B to this Agreement and is incorporated into this Agreement by this reference. Upon the addition or removal of any User, Participant shall update the attached Exhibit B and provide the updated Exhibit to NM MLS within five (5) days following any such change.
- U. **Vendor** means any person or entity which has entered into a License Agreement for display of real estate listings for Participant or an Associate Broker of Participant.

Dated effective _____, _____



NEW MEXICO MLS
PARTICIPANT AGREEMENT
(Revised January 2023)

This is an agreement between the undersigned Participant and the New Mexico's Multiple Listing Service (NM MLS), doing business as the New Mexico Multiple Listing Service Inc., herein referred to as the NM MLS or the Service. This agreement will become effective when signed by both parties.

The NM MLS is a statewide information network for use by qualified persons through an agreement among the New Mexico NM MLS, Inc. and BLACK KNIGHT FINANCIAL SERVICES. Any use or attempted use of the NM MLS is subject to the terms and conditions set forth in this agreement and to the Bylaws and Rules and Regulations of the Service.

PARTICIPANT

Name of Office or Firm: _____

Name of Participant (Qualifying Broker): _____

Signature of Participant (Qualifying Broker): _____

Date: _____

Telephone Number: _____

Fax Number: _____

Participant's (Qualifying Broker) E-Mail Address: _____

Mailing Address: _____

Participant's NRDS Number: _____

Name of Participant's Local Board or Association: _____

NAME OF TEAM: _____

Fill out only if signing up a team

Telephone Number: 505-231-0224
E-Mail Address: admin@nmmls.net
Mailing Address: 7 Caliente Road, Suite A11-PO 1001, Santa Fe, NM 87508

ANNUAL PARTICIPATION FEE - \$39.00/MONTH + tax

The annual Participation Fee must be paid by each Participant for all licensees who are associated with that Participant who have not received a waiver from the New Mexico Multi-Listing Service (NM MLS) Board of Directors. The Annual Participation fee is prorated based on the month the user joins. Requests for waivers for licensed or unlicensed Brokers, office managers, personal assistants or secretaries must be submitted in writing by the Participant on the form provided.

All changes in the number of existing Users within a given office must be sent to the NM MLS on the Office NM MLS User List Form or in writing with the signature of the Participant and must be received by the NM MLS. The monthly Participation Fee for new Users will be prorated with the first month of use.

ANNUAL IDX RETS SERVICE CHARGE - \$15.00/MONTH + tax

A monthly service charge of \$15.00 plus tax per feed will be charged to all NM MLS Participants and Subscribers/Users who subscribe to IDX and who download NM MLS data on their websites. This fee will be billed on an annual basis. This is a **PER-IDX FEED** RETS charge. The IDX charge will be prorated based on the month the service begins.

ANNUAL IDX API SERVICE CHARGE - \$75.00/MONTH + tax

A monthly service charge of \$75.00 plus tax per feed will be charged to all NM MLS Participants and Subscribers/Users who subscribe to IDX and who download NM MLS data on their websites. This fee will be billed on an annual basis. This is a **PER-IDX FEED API** charge. The IDX charge will be prorated based on the month the service begins.

ANNUAL DATA LICENSING RETS CHARGE - \$50.00/MONTH + tax

A monthly service charge of \$50.00 plus tax per feed will be charged to all NM MLS Participants and Subscribers/Users who subscribe to AVM / VOW DATA LICENSING. This fee will be billed on an annual basis. This is a **PER-DATA LICENSING RETS** charge. The charge will be prorated with the first month of use.

ANNUAL DATA LICENSING API CHARGE - \$90.00/MONTH + tax

A monthly service charge of \$75.00 plus tax per feed will be charged to all NM MLS Participants and Subscribers/Users who subscribe to AVM / VOW DATA LICENSING. This fee will be billed on an annual basis. This is a **PER-DATA LICENSING API** charge. The charge will be prorated with the first month of use.

CONVENIENCE FEE

A 3% Convenience Fee (plus GRT) will be charged on all credit card transactions. Convenience Fees will not be charged on PayPal transactions or on payments submitted by check.

LATE FEE

Fees are considered late after 30 days from invoice date. A late fee of equal to 10% of the amount due for each day the amount remains unpaid. Failure to pay any service charge(s) or fee(s), including any late-fee charges(s) within one (1) month of the date due, and provided that at least ten (10) days' notice has been given, the Service shall be suspended until ALL service charges or fees, including any late-fee charges are paid in full.

MANDATORY PHOTO REQUIREMENT VIOLATION - \$200.00 per violation

A \$200.00 fee will be assessed if, when entering a listing, either 1) not using a primary photo of the listing, or, 2) using a photo and/or graphic that does not depict the listing or 3) not submitting a Photo Waiver Form within two (2) days.

NM MLS BILLING POLICY

The New Mexico Multi-Board NM MLS will send all bills to each NM MLS Subscriber/User and will bill only for the following services:

- Annual Participation Fee for NM MLS Participants and Subscribers/Users in the Participant's office;
- Annual IDX Service Charge for NM MLS Participants and Subscribers/Users

All other fees must be received at the time that the product or service is requested/ordered.

NEW OFFICE FEE \$300.00 + tax

A new office fee of \$200.00 + tax will be charged for all new NM MLS Participating Offices. This is a one-time fee.

NEW MEMBER FEE \$100.00 + tax

A new member fee of \$100.00 + tax will be charged for all new NM MLS Participants and Subscribers. This is a one-time fee.

NEW SECRETARY FEE \$250.00 + tax

A new secretary fee of \$250.00 + tax will be charged for all new assistants for NM MLS Participants. Secretaries do not pay an annual participation fee. This is a one-time fee.

NEW TEAM FEE \$200.00 + tax

A new Team fee of \$200.00 + tax will be charged for all new Teams. There is no fee for additions to and/or deletions from a team roster. This is a one-time fee.

ONE TIME LISTING \$199.00 + tax

Non-member Real Estate licensees may pay a fee of \$199 + tax to list a single property for a specific amount of time within the NM MLS. Certain requirements pertain. This is a per listing fee. One-time listing may be renewed for a discounted price.

PAYMENTS & REFUNDS

Payment of New Mexico MLS fees for new Users must be prepaid and will be prorated for the current dues year by the month the service started. Billing of NM MLS fees for existing Users for the next dues year will be sent to the Participant (Qualifying Broker and/or Designated REALTOR®). Payment of NM MLS Fees for existing Subscribers/Users for the next dues year MUST be PAID prior to July 1 of the incoming Dues Year. Failure to pay for NM MLS Fees prior to July 1 will result in deactivation and a re-instatement fee with late charges and interest will occur. Payment of the re-instatement fee, late charges and interest along with full payment of dues must be paid to be re-activated. Paid dues will transfer with the User should the User move to another brokerage. Dues are not returned or refunded once the dues year has begun.

NM MLS PARTICIPANTS WHO CANCEL NM MLS USERS AT ANYTIME WITHIN A YEAR WILL NOT RECEIVE A REFUND OR CREDIT OF NM MLS FEES ALREADY PAID. Participants and/or Subscribers who are delinquent can be suspended or terminated from the NM MLS. NM MLS ANNUAL fees may be paid by check, money order or credit card. Cash is not accepted.

REINSTATEMENT FEE - \$150.00 + tax

A fee of \$150.00 plus tax will be charged to reinstate the listings of a terminated Participant or Subscriber. Additional fees and penalties may be assessed by the NM MLS Board of Directors on any NM MLS Participant or Subscriber who is suspended more than two times in any 12-month period.

RETURNED CHECKS - \$50.00 per check + tax

A charge of \$50.00 will be assessed for any returned check on a single occurrence. If the same check is return more than once, a charge will be assessed each time.

TRANSFER FEE - \$100.00 + tax

A transfer fee of \$75.00 + tax will be charged for all NM MLS Participants and Subscribers who transfer offices.

VIOLATION - \$200.00 per violation + tax

A \$200.00 fee will be assessed if, in violation of a listing Rule or Regulation.



NEW MEXICO MLS
NEW OFFICE/MEMBER/ EAM USER LIST FORM
EXHIBIT B

Note: This form is used to list ALL SUBSCRIBERS/USERS of the New Mexico Multi-Listing Service (NM MLS) System when signing up for NM MLS services. The Participant's signature is required. Please make a copy for your records and send the original to the NM MLS Office, Attn: New Mexico MLS, 7 Caliente Road, Suite A11-PO 1001, Santa Fe, NM 87508

Participant's Name (Qualifying Broker): _____

Office Name: _____

Office Address: _____

Office Phone: _____ Office Fax: _____

City: _____ Zip Code: _____

TEAM NAME: _____ TEAM LEADER: _____

.....
A. NEW USERS, APPRAISERS, OR AFFILIATES. Names of NEW MEMBERS, APPRAISERS OR AFFILIATES in your office who will be utilizing the NM MLS System. (Note: You must complete and submit waiver forms for licensees or appraisers who will not be utilizing the NM MLS System.) **THIS SECTION MUST BE FILLED OUT!**

NAME: _____

EMAIL ADDRESS: _____

NRDS# _____ LICENSE# _____

CELL: _____

NAME: _____

EMAIL ADDRESS: _____

NRDS# _____ LICENSE# _____

CELL: _____

B. NEW UNLICENSED ASSISTANTS. Names of UNLICENSED Assistants, Personal Assistants or Office Managers who will be utilizing the NM MLS System and who need to be granted an automatic, permanent waiver from NM MLS Participation Fees:

NAME: _____

EMAIL ADDRESS: _____

NAME: _____

EMAIL ADDRESS: _____

C. NEW TEAMS. Names of TEAM MEMBERS who will be a member of the team.

NAME: _____

EMAIL ADDRESS: _____

NRDS# _____ LICENSE# _____

NAME: _____

EMAIL ADDRESS: _____

NRDS# _____ LICENSE# _____

(Participant's Signature - Qualifying Broker)

(Date)



NEW MEXICO MLS USER AGREEMENT EXHIBIT C

Note: This form needs to be completed by all USERS, LICENSEES AND NON-LICENSEES who will be utilizing the New Mexico Multi-Listing Service (NM MLS) or will be working with the NM MLS System.

Name: _____

Email Address: _____

Office Name: _____

Office Address: _____

Office Phone: _____

User NRDS#: _____

Primary Board or Association: _____

I agree as a condition of participation in the NM MLS to abide by all relevant Bylaws, Rules and Regulations and other obligations of participation including payment of fees. I further agree to be bound by the NAR Code of Ethics, including the obligation to submit to ethics hearings and the duty to arbitrate contractual disputes in accordance with the procedures established in the Bylaws and Rules and Regulations of the Service.

I agree to not disclose, share or give out my User Login ID and password access code to the NMMLS to anyone, including but not limited to third parties that have not been granted permission by the NMMLS, unapproved assistants, another NMMLS member, a person associated with another member or any other person associated with the member's office, and acknowledges that any disclosure will seriously jeopardize the security of the entire MLS system and may cause irreparable injury to NMMLS, its members and all other users. In the event of disclosure and/or use of the password by anyone other than an approved person by the NMMLS a violation fine will be assessed per the New Mexico MLS Rules and Regulations.

By signing below, I acknowledge I have read and understand the Participant Agreement, the functionality and limits of my access to the NMMLS online system and agree to abide by these parameters including all rules and regulations set forth by NMMLS.

Signature of User (Broker): _____ Date _____

Signature of Participant
(Qualifying Broker): _____ Date _____

Signature of Team Leader
(Team Leader): _____ Date _____

PLEASE SEND PAGES 15, 16, 19, and 20 with payment to:

New Mexico MLS
7 Caliente Rd., Suite A11-PO 1001
Santa Fe, NM 87501

Telephone Number: 505-231-0224
E-Mail Address: admin@nmmls.net