

## MLSLISTINGS INC. BROKER/APPRaiser PARTICIPANT AGREEMENT

This PARTICIPANT AGREEMENT, including the Participant/Subscriber Information Form and Schedule of Fees attached hereto and made a part hereof ("Agreement"), is made and entered into by and between MLSListings INC., a California non-profit mutual benefit corporation, located at 350 Oakmead Parkway, Sunnyvale, California, 94085 ("MLSListings"), and the undersigned participant, whose name and address are set forth on the signature page hereof ("Participant"), with reference to the following facts and circumstances:

### 1. RECITALS

1.1 MLSListings is a regional multiple listing service company ("MLS") within the meaning of California Civil Code section 1087.

1.2 MLSListings collects, through its computer technology and systems ("System") certain information including, but not limited to data, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, unilateral offers of compensation and pricing information about real properties throughout the State of California and other geographic regions ("Listing Information"). MLSListings aggregates and compiles the Listing Information ("Content") and displays, maintains and distributes the Content, principally to and for the benefit of those same real estate professionals together with other products and services which facilitate their real estate or appraisal business (collectively, "Services"). The Content includes data relating to residential and commercial, properties listed for sale, lease or rent, those that have been sold, and those with respect to which the sale has been cancelled or the listing withdrawn. The Content also includes business opportunities and undeveloped land.

1.3 The parties desire to enter into this Agreement which, in addition to the MLS Rules, the Data Use Policy and the online Terms of Service, posted on MLSListings web site, which may be amended from time to time, govern the use of the Listing Information, the System, the Services and the Content by Broker Participants and Appraiser Participants, their agents and associates and those in their employ ("Staff"), and parties authorized by Participant to provide third party services.

1.4 All capitalized terms used in this Agreement shall have the meaning set forth in the MLS Rules published on the MLSListings website, as may be amended from time to time.

**NOW, THEREFORE**, in consideration of the Recitals, and the mutual promises and covenants contained herein and intending to be legally bound, each of parties agrees as follows:

### 2. GRANT OF ACCESS TO MLSLISTINGS SYSTEM, SERVICES AND CONTENT

Subject to the provisions, terms and conditions of this Agreement, the MLS Rules, the Data Use Policy and the online Terms of Service, MLSListings hereby grants to Participant, during the term of this Agreement ("Term"), a limited, non-exclusive, non-transferable license to access the System, the Services and the Content for the purpose of adding, editing, reviewing, researching and retrieving the Content and using the System and the Services to conduct the Participant's real estate transactional or appraisal business.

### 3. METHOD OF ACCESS TO MLSListings

Participant will access the Content, the System and the Services through various types of electronic means furnished to Participant by MLSListings, broker owned/operated systems or third-party vendors, upon the terms and conditions required by MLSListings and authorized third party vendor. Participant understands and agrees that, if applicable, it and its third party service provider(s) must execute a separate Agreement with MLSListings for authority to display Content on the Internet.

#### 4. SUBMISSION OF PARTICIPANT'S LISTING DATA

4.1 Grant of Rights to MLSListings. Participant, as the acquirer and provider of Listing Information hereby grants to MLSListings a perpetual, worldwide, royalty-free license to use, display and copyright all Listing Information entered by Participant into the System and to reproduce, use, distribute, display and grant access to such Content through the System and the Services electronically and in such other form or in such other manner and to such third parties as MLSListings deems appropriate.

4.2 Submitted Listing Information. Participant hereby warrants that it will have a valid listing agreement prior to submitting any Listing Information to MLSListings and further warrants that buyers, sellers, Participant's agents, employees, photographers and all applicable third parties have assigned to Participant all applicable right, title and interest including all copyright rights and other intellectual property rights in and to all Listing Information submitted to MLSListings through the System. Participant agrees that Listing Information shall be submitted in the form and format and according to the procedures set forth in the MLS Rules and the Data Use Policy. Participant shall use reasonable care to ensure the accuracy and completeness of such submitted Listing Information and shall be responsible for correcting and updating all submitted information in accordance with the MLS Rules, the Data Use Policy and the online Terms of Service.

4.3 Copyright. MLSListings may edit, manipulate and/or compile the Listing Information and tangible or intangible property items provided by the Participant. The Participant acknowledges that such manipulation and/or compilation performed by MLSListings will result in a database containing various compilations of real estate data which are copyrightable material. By the act of submitting any Listing Information to MLSListings, the Participant hereby consents to the use of its contributions in such copyrighted material including all actions and causes of action and warrants it they will not challenge, interfere with or violate such copyright, and warrants that it will not seek compensation therefor.

4.4 Internet Display And Other Third Party Use. In support of the real estate or appraisal business MLSListings may use, or may arrange for third parties to use, the Content in products and services including, but not limited to, reference materials, books, brochures, flyers, electronic transmissions, advertisements, Internet or other computer network displays, online data, computer programming, and software, regardless of the form, whether printed, electronic, digital, magnetic media, or otherwise. By the act of submitting any Listing Information to MLSListings, the Participant hereby consents to such uses and warrants that it will not challenge, interfere with or violate such uses and warrants that it will not seek compensation therefor.

#### 5. CONDITIONS, PROHIBITIONS AND LIMITATIONS ON ACCESS

5.1 Access to the System by Participant's Associates and Staff. Participants are responsible for assuring that all of its employed real estate brokers, real estate sales agents, appraisers and all licensed independent contractors of Participant and their respective employees and contractors who use or access the System in any manner, subscribe to the Services individually by executing appropriate documentation and pay appropriate fees as required by MLSListings. MLSListings may charge Participant an additional fee for access to the System by their clerical and administrative staff as may be established from time to time. A list of Participant's licensed and non-licensed Staff including employees and contractors as of the effective date of this Agreement (Schedule A) is attached hereto and made a part hereof. Participant agrees to notify MLSListings within one business day of any and all changes to Schedule A and to update this list every twelve months by e-mail, fax or mail beginning on the first anniversary of this Agreement. Participant shall ensure that all Subscribers and Staff who use or access the Service in any manner comply with the terms of this Agreement, the MLS Rules and the online Terms of Service. Participant shall assume full responsibility for the acts of its licensed and non-licensed Staff who have access to the Content, the System and the Services in all of Participant's offices as well as for any financial obligations which may arise by virtue of said acts by any of them. ANY UNAUTHORIZED USE OF PARTICIPANT'S CREDENTIALS TO ACCESS THE

MLSLISTINGS SYSTEM OR THE MLSLISTINGS SERVICES, OR UNAUTHORIZED DISCLOSURE OF MLSLISTINGS CONTENT IS STRICTLY PROHIBITED AND IS SUBJECT TO THE CORRECTIVE ACTION, INCLUDING BUT NOT LIMITED TO, FINES, AS SET FORTH IN THE MLS RULES.

5.2 Compliance with MLS Rules, Data Use Policy, Online Terms of Service and Notification of Changes. Participant certifies it has read the MLS Rules, the Data Use Policy and online Terms of Service available at MLSListings's web site and agrees to comply with the same as may be amended from time to time. Participant agrees to submit commission disputes for arbitration in accordance with the Code of Ethics and Standard of Practice and Arbitration Manual of the National Association of Realtors® and the MLS Rules. Participant shall notify MLSListings within seven (7) days of relocating, changing office information, or changing Realtor® Board/Association affiliation, if any.

5.3 Use Prohibitions. Participant agrees that it will not reproduce, redistribute, publish, display, retransmit, broadcast, electronically manipulate, create derivative works or enhancements, sell, license, rent, transmit, or in any manner commercially exploit or allow anyone else to reproduce, redistribute, publish, display, retransmit, broadcast, electronically manipulate, sell, license, rent, transmit or in any manner commercially exploit any Content in any format to anyone for any purpose other than the selling, listing or appraising of real estate except as expressly set forth in this Agreement or as provided in the MLS Rules. Under no circumstances shall Participant receive any form of compensation for Content from any third party. Participant acknowledges that the Content is confidential and its use is restricted to Participant and its authorized Staff.

5.4 Certain Data Subject To Consent Withdrawal. Participant acknowledges that certain Content available through the System is subject to the continued consent of supplying third parties. If at any time any supplying third party's consent is withdrawn, all information supplied by such party shall be removed from the Content.

5.5 Consumer Privacy and Information Security. Participant agrees to comply with all applicable consumer privacy and information security laws including security breach notification laws. In the event of a breach of Participant's computer network or computerized systems, containing Content, by unauthorized persons or in the event of a loss of Participant's laptop computer or any other portable media device which may contain personally identifiable information or Content, Participant agrees to notify MLSListings within twenty-four (24) hours of discovery of such event. Participant agrees to use commercially reasonable security measures to protect the Content.

## **6. FEES**

In consideration for the rights to access and use the System, Content and Services, Participant shall pay MLSListings the non-refundable fees as established from time to time by MLSListings.

## **7. PARTICIPANT'S SET UP COSTS**

Participant is responsible for obtaining and maintaining in proper working order all personal computers, Internet connections, and computer software that may be necessary or useful for accessing and using the Content, the System and the Services and for the proper use thereof. Participant shall not be entitled to refund of any fees under any circumstances for any hardware, software or Internet connection that is unable to access the System or the Services.

## **8. PROPRIETARY RIGHTS**

Participant acknowledges that the Content, the System and the Services are valuable commercial products, the development of which has involved the expenditure of substantial time and money; that the Content may include textual, statistical, financial, photographic, video and audio components which are proprietary

information of MLSListings under copyright law, and have been furnished to Participant in trust. All rights, title and interest in the Content, the System and the Services, including the ownership of the copyright therein, shall at all times remain vested in MLSListings. Except for the rights granted Participant herein, Participant agrees and understands that MLSListings shall remain the exclusive owner of all rights, title, and interest in the Content, the System and the Services licensed hereunder and all copyrights and renewals thereof. All publication, dissemination and other rights in and to the Content, the System and the Services licensed hereunder are reserved for MLSListings in all languages, formats and media throughout the world for the sole and exclusive use or any other disposition by MLSListings, its respective assignees or grantees at any time and from time to time without obligation or liability to Participant.

## **9. IDENTIFICATION NUMBERS AND ACCESS CREDENTIALS**

9.1 Office ID. MLSListings will provide Participants with an identification number for each of Participant's offices. ("Office ID") which is used to track transactions on the System.

9.2 Access Credentials. MLSListings will provide Participants and their Staff unique credentials which may include, but are not limited to, a user name and password, authorizing access to and use of the Content, the System and Services ("Access Credentials"). All such credentials shall be personal to the individual and may not be used by any other person. Each individual shall be responsible for the security and safekeeping of their Access Credentials.

9.3 Secure Computing. MLSListings reserves the right to establish security measures and establish practices and procedures to safeguard the Content, the System and the Services and Participant agrees to abide by such security measures and procedures to safeguard the Content, the System and the Services.

9.4 Confidentiality of Participant's Access Credentials. Participant and Staff shall treat their Access Credentials as private, confidential and personal and shall safeguard and maintain their confidentiality. Use by any other person or entity not authorized under this Agreement shall be considered theft. Participant shall be liable for any consequences that may result from unauthorized disclosure of Participant's or Staff's Access Credentials, whether intentional, negligent or inadvertent, including but not limited to immediate termination of this Agreement. Participant acknowledges that MLSListings may seed the Content and watermark digital photographs, virtual tours or videos and undertake monitoring on a regular random basis such that security breaches may be detected. This obligation to maintain confidentiality shall survive the termination of this Agreement.

## **10. MLSLISTINGS' USE OF PARTICIPANT INFORMATION**

MLSListings reserves the right to distribute to third parties certain non-confidential information concerning Participant, subject to MLSListings privacy policy posted on MLSListings's web site. In addition, MLSListings may collect and compile information regarding frequency of use of, or specific uses, of the Content, the System and the Services by all users, including Participant.

## **11. TERM AND TERMINATION**

11.1 Term. The term of this Agreement shall be one (1) year commencing upon the date Participant executes this Agreement on the signature page hereof and shall automatically extend for additional one (1) year terms unless sooner terminated in accordance with Section 11.2 or 11.3 hereof, or upon cancellation by either party upon one (1) business day written notice to the other party.

11.2 Termination. MLSListings may terminate this Agreement and the rights granted hereunder in the event that Participant has not performed any material obligation or has otherwise breached any material term of this Agreement, including, but not limited to, non-payment of amounts due hereunder. MLSListings

may immediately terminate this Agreement in the event Participant is no longer licensed to practice real estate in the State of California.

11.2.1 Upon any termination of this Agreement, MLSListings will deactivate Access Credentials of the Participant and all Subscribers and Staff employed by or affiliated with Participant, and neither Participant nor Subscribers or Staff so employed or affiliated shall have further access to the Content or the Systems or the Services.

11.3 No Refund of Fees Upon Termination. In the event of termination of this Agreement, MLSListings shall not be obligated to refund any fees for any un-expired portion of any term.

## **12. MLSLISTINGS SERVICE MARKS AND LOGOS**

Participant shall have the right, during the term of this Agreement, to use the MLSListings trade name and logo for the Services as available, in advertising, promotion and marketing materials solely for the purpose of announcing Participant's use of the Services to prospective customers. Participant may re-publish any description of the Services which have been published by MLSListings, provided the description is re-published on a verbatim basis, but shall not, under any circumstances, make any unauthorized representations or warranties regarding the Services or any Content.

## **13. WARRANTY DISCLAIMER**

PARTICIPANT EXPRESSLY AGREES THAT THE SERVICES, THE SYSTEM AND THE CONTENT ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, AND THAT ANY USE OF THE SERVICES, THE SYSTEM AND THE CONTENT ARE AT THE SOLE RISK OF PARTICIPANT. MLSLISTINGS DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND MLSLISTINGS MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY CONTENT OR LISTING INFORMATION AVAILABLE THROUGH THE SYSTEM AND THE SERVICES. MLSLISTINGS MAKES NO WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MLSLISTINGS DOES NOT WARRANT THAT THE CONTENT IS ERROR-FREE, NOR THAT IT WILL MEET PARTICIPANT'S REQUIREMENTS, NOR THAT ANY ELECTRONIC TRANSMISSION THEREOF WILL OPERATE IN AN ERROR-FREE MANNER.

## **14. LIMITATION OF LIABILITY**

14.1 Limitations and Exclusions. Neither MLSListings nor any of its members, shareholders, officers, directors, employees, agents, or representatives shall be liable to Participant or anyone else for any direct, indirect, incidental, special, or consequential damages that result from the use of, or inability to use, the System and the Services, including but not limited to, reliance by any Participant or authorized user on any listing information obtained through use of the System and the Services or that result from mistakes, omissions, deletions or delays in transmission of such listing information, interruptions in telecommunications or Internet connections to the System and the Services, viruses or failures of performance, whether caused in whole or in part by negligence, acts of god, telecommunications or Internet failure, theft or destruction of, or unauthorized access to, the System and the Services or related information, records or programs.

14.2 Maximum Aggregate Liability. In no event shall any liability of MLSListings, its members, officers, directors, employees, agents, or representatives arising out of any claim related to this Agreement exceed the aggregate amount paid by Participant hereunder in the twelve (12) months immediately preceding the event giving rise to such claim.

## **15. PARTICIPANT'S AUTHORIZATION TO ENTER THIS AGREEMENT**

Participant represents and warrants that the individual who executes this Agreement is duly authorized to enter into this Agreement and is duly licensed to engage in real estate transactions, in case of the real estate broker, or appraise real estate, in case of the real estate appraiser, in the state of California.

## **16. INDEMNIFICATION BY PARTICIPANT**

Participant shall protect, defend, indemnify and hold harmless MLSListings and its members, shareholders, officers, directors, employees, agents, or representatives from any and all claims, demands, liability, damages, loss or expense, including reasonable fees of attorneys and other professionals fees, arising from any claim, demand, action or proceeding initiated by any third party against any of them based upon the negligent, intentional or illegal acts of Participant and their Staff, including but not limited to: (a) inaccuracy of any Listing Information supplied to MLSListings by Participant or its Subscribers or Staff, (b) any unauthorized use of Participant's or Subscriber's Access Credentials, (c) any unauthorized use of the Content, (d) infringement of any proprietary or contract right of any third party as a result of the availability of the Content through the System and the Services or (e) any damages resulting from violation of online Terms of Service. MLSListings shall have the right to control its own defense and engage legal counsel acceptable to MLSListings. Participant shall assist MLSListings, at Participant's expense, in the defense or settlement of any claim to which this indemnification obligation applies. These indemnification provisions shall survive the termination of the Participant's participation in MLSListings and the termination of this Participant Agreement.

## **17. INJUNCTIVE REMEDIES**

Participant acknowledges and agrees that the System, the Services and the Content are confidential and proprietary products and that in the event there is an unauthorized disclosure of such by Participant, no remedy at law may be adequate. Therefore, Participant agrees that in the event of such unauthorized disclosure or use of the System, the Services or the Content, MLSListings may seek injunctive relief or other equitable remedies against Participant in addition to all available remedies at law.

## **18. LEGAL FEES AND COSTS**

In the event legal action is taken against Participant, or against Participant and MLSListings, and MLSListings prevails in obtaining equitable relief or monetary damages, Participant will be obligated to reimburse MLSListings for the reasonable attorney's fees, costs and expenses it incurred in pursuing such legal action. Participant will also be responsible for any legal fees and costs incurred by MLSListings in enforcing any order or collecting a judgment resulting from such legal action.

## **19. ARBITRATION BETWEEN PARTICIPANTS/SUBSCRIBERS**

Participant agrees to the binding arbitration of disputes, in accordance with its MLS Rules, with any other participant or subscriber of MLSListings or any entity or person covered by the MLSListings MLS Rules, or with any other MLS with which MLSListings has a reciprocal agreement.

## **20. ARBITRATION BETWEEN MLSLISTINGS AND PARTICIPANT**

In the event that a dispute arises with respect to the terms or subject matter of this Agreement, the parties agree that such dispute shall be resolved by binding arbitration in Santa Clara County, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall follow applicable law, and the award of the arbitrator shall be in writing and may be enforced in any court of competent jurisdiction. Notwithstanding the foregoing, this agreement to arbitrate will not bar either party from seeking temporary, provisional or injunctive relief from any court of competent jurisdiction.

**21 MISCELLANEOUS**

Participant agrees and acknowledges that MLSListings may change the terms of this Agreement from time to time. This Agreement may not be assigned by Participant. No delay or failure of a party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing, signed by both parties. This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to or application of conflicts of law rules or principles. This Agreement with the all the documents attached hereto and incorporated herein by reference, contains the entire understanding of the parties relating to the subject matter and supersedes all prior agreements and contemporaneous understandings, both written and oral, regarding such subject matter. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same Agreement. If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall continue in full force and effect, and the parties shall substitute a valid provision with the same intent and economic effect. Each party shall perform its respective obligations under this Agreement in a manner that complies with applicable law and regulations. This Agreement shall be interpreted in accordance with its terms and without any strict construction in favor of or against either party.

**IN WITNESS WHEREOF**, MLSListings, by G. James Harrison, its CEO and President, and the Participant, executed this Agreement the date set forth below.

**Participant:**

_____	Address: _____
Name of Company/Individual (please print):	
By: _____	_____
Participant	
	Telephone: _____
DRE Number: _____	Facsimile: _____
Date: _____, 200__	E-mail: _____

