



NEW MEXICO Multi-Listing Service
NEW MEXICO MLS PARTICIPANT AGREEMENT
(Revised January 2018)

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 Realtors Association of New Mexico (RANM) (the “NM MLS”).

1. **Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 25 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.
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 hereby grants to NM MLS a non-exclusive, irrevocable, worldwide, royalty free license to use, copy, publish, display, and reproduce the Listing Content, to prepare derivative works of the Listing Content, and to distribute the Listing Content or any derivative works thereof. Such license shall be deemed granted as of the moment of

creation without the necessity of any further action on the part of either party. Participant represents and warrants to NM MLS with respect to the Listing Content for each of Participant's Listings that the Listing Content, and the license of rights in and to the Listing Content to NM MLS, do not infringe or violate any copyrights, trade secrets, or other intellectual or proprietary rights of any third party.

- C. Participant agrees not to challenge NM MLS's rights in and to the NM MLS Database or to take any action inconsistent with the license granted to the Listing Content under this Agreement. Participant agrees to take all action and execute and deliver to NM MLS all documents requested by NM MLS in connection with the license granted to NM MLS in and to the Listing Content. Participant further agrees to take all action and execute and deliver to NM MLS all documents requested by NM MLS in connection with the copyright application and registration of the NM MLS Database.
- D. Participant shall indemnify NM 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 OR LICENSES FROM THE AUTHORS OF ANY PORTIONS OF THE LISTING CONTENT, INCLUDING USERS, SELLERS AND THIRD-PARTY CONTRIBUTORS, AS NECESSARY FOR PARTICIPANT TO LICENSE THE LISTING CONTENT TO NM 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 NM MLS FOR THE COST OF DEFENDING NM 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 NM MLS to opt out of inclusion with respect to Listings submitted by such participant as set forth in the Bylaws and/or Rules and Regulations, Participant acknowledges and agrees that NM MLS may use and license, or otherwise grant rights in or to the NM MLS Database or any or all of the Listings included in the NM MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by NM MLS, unless otherwise limited by a separate agreement between NM MLS and the applicable Broker or by the Bylaws and/or 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. **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 Exhibit A attached hereto and may be changed by NM MLS at any time effective upon forty-five (45) days prior written notice to Participant.
- 6. **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”).
- 7. **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.
- 8. **Security Levels.** Each Participant and use is 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.
9. **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.
10. **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.
11. **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.
12. **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 seven (7) 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.

- 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.

13. **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.

14. **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.
15. **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.
16. **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.
- 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.
17. **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.

18. **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.
19. **Injunction.** NM MLS and Participant agree that a breach or violation of Sections 10, 13, and 19.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.
20. **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 19.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 19.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. Upon termination of this agreement, any remaining dues paid for the annual dues year **WILL NOT BE RETURNED OR REFUNDED.**
21. **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.
22. **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.
23. **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.

24. **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 9, 16, or 17 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, 9, 13, 16, 17, 18, 19.G, 20, 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 the Participant (Qualifying Broker and/or Designated REALTOR®). 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 will occur. Payment of the Re-Instatement fee, 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.

25. **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.
- B. **Broker** means a principal real estate broker or broker in charge.
- 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 Listings** means only the Listings of Participant.
- Q. **Rules and Regulations** mean the NM MLS Rules and Regulations established by NM MLS, as amended by NM MLS from time to time.
- R. **Seller** means the seller(s) or lessor(s) of a property which is the subject of a Listing at issue under this Agreement.
- S. **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.
- T. **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 October 2013)

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 RANM, the New Mexico NM MLS, Inc. (a subsidiary corporation of RANM) 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: _____

Telephone Number: 505-395-4567

E-Mail Address: admin@nmmls.net

Mailing Address: 150 Washington Street, Suite 201, Santa Fe, NM 87501



NEW MEXICO MLS FEE SCHEDULE EXHIBIT A

ANNUAL PARTICIPATION FEE - \$32.00/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 SERVICE CHARGE - \$150.00/MONTH + tax

A monthly service charge of \$150.00 plus tax per feed will be charged to all NM MLS Participants and 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** charge. The IDX charge will be prorated with the first month of use.

ANNUAL DATA LICENSING 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 Users who subscribe to AVM / VOW DATA LICENSING. This fee will be billed on an annual basis. This is a **PER-DATA LICENSING** charge. The charge will be prorated with the first month of use.

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 \$2005.00 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 seven (7) days.

NM MLS BILLING POLICY

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

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

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

NEW OFFICE FEE \$200.00 + tax

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

NEW MEMBER FEE \$75.00 + tax

A new member fee of \$75.00 + tax will be charged for all new NM MLS Participants. 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. Assistants 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 and 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 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 will occur. Payment of the re-instatement fee 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 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.

REINSTATEMENT FEE - \$150.00 + tax

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

RETURNED CHECKS - \$50.00 per check

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 - \$75.00 + tax

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

VIOLATION - \$200.00 per violation

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



NEW MEXICO MLS OFFICE/TEAM USER LIST FORM EXHIBIT B

Note: This form is used to list ALL 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, 150 Washington St. Suite 201, Santa Fe, New Mexico 87501

Participant's Name (Qualifying Broker): _____

Office Name: _____

Office Address: _____

Office Phone: _____ Office Fax: _____

City: _____ Zip Code: _____

TEAM NAME: _____ TEAM LEADER: _____

-
- A. **LICENSEES, APPRAISERS, OR AFFILIATES.** Names and Last 4 Digits of Social Security Numbers of **LICENSEES, 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.)

Last 4 Digits SSN#

NAME: _____

EMAIL ADDRESS: _____

NRDS# _____ NMREC# _____

CELL: _____

NAME: _____

EMAIL ADDRESS: _____

NRDS# _____ NMREC# _____

CELL: _____

- B. **UNLICENSED ASSISTANTS.** Names and Last 4 Digits of Social Security Numbers of **UNLICENSED** Secretaries, 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. **TEAMS.** Names and Last 4 Digits of Social Security Numbers of **TEAM MEMBERS** who will be a member of the team.

NAME: _____

EMAIL ADDRESS: _____

NRDS# _____ NMREC# _____

NAME: _____

EMAIL ADDRESS: _____

NRDS# _____ NMREC# _____

(Participant's Signature – Qualifying Broker)

(Date)



NEW MEXICO MLS USER AGREEMENT EXHIBIT C

Note: This form needs to be completed by all 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.

Signature of User (Broker): _____ Date _____

Signature of Participant
(Qualifying Broker): _____ Date _____

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

PLEASE SEND PAGES 11,12,15,16 to:

**New Mexico MLS
150 Washington, Suite 201
Santa Fe, NM 87501**

**Telephone Number: 505-395-4567
E-Mail Address: admin@nmmls.net**