

ONEKEY® MLS, LLC Participant Agreement

This AGREEMENT is made and entered into by ONEKEY® MLS, LLC (“ONEKEY® MLS”), with offices at 300 Sunrise Highway, West Babylon, NY 11704; and _____ (“Participant”), with offices at _____.

DEFINITIONS AND USAGE.

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

ONEKEY® MLS Affiliates: ONEKEY® MLS Affiliates means ONEKEY® MLS and its officers, directors, employees, agents, representatives, licensors and shareholders.

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

ONEKEY® MLS Policies: ONEKEY® MLS’s then current bylaws, rules and regulations, and policies and procedures adopted by ONEKEY® MLS’s board of directors or authorized delegates, as ONEKEY® MLS amends them from time to time.

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

ONEKEY® MLS Software: ONEKEY® MLS’s proprietary web browser interface(s) to the ONEKEY® MLS System.

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

Other Participants and Subscribers: All Participants and Subscribers of ONEKEY® MLS not party to this Agreement.

Participant Compilation Contribution or “PCC.” All selection, coordination, and arrangement by Subscribers of the listing information submitted, contributed, or input in the ONEKEY® MLS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the ONEKEY® MLS System. PCC does not include original text or photographs.

Participant Contribution: All data that the Subscribers submit, contribute, or input in the ONEKEY® MLS System, including text, photographs, images, and other materials, in any form now known or hereafter discovered, except the PCC.

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

Schedule of Fees: ONEKEY® MLS’s document that establishes the fees for ONEKEY® MLS Service.

Subscribers: Participant’s employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

2. **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

(a) Wherever the term “including” is used, it means “including, but not limited to.”

(b) The singular and plural numbers and masculine, feminine, and neuter genders of words are fully interchangeable.

(c) Wherever the term “law” is used, it means all statutes, regulations, and case law, both state and federal, as they are amended. Without limiting the generality of the foregoing, “law” expressly includes all state and federal fair housing statutes and regulations.

ONEKEY® MLS’S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the ONEKEY® MLS Policies, ONEKEY® MLS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the ONEKEY® MLS service by virtue of this Agreement or another license agreement; and Participant shall have all rights and obligations of a participant in ONEKEY® MLS as set forth in the ONEKEY® MLS Policies. The user ID and password will provide Participant access to all data and functions in the ONEKEY® MLS Service to which Participant is entitled under the ONEKEY® MLS Policies. ONEKEY® MLS makes no warranties, however, that the ONEKEY® MLS Service will be available at all times.

PARTICIPANT ACKNOWLEDGMENTS.

4. **Modifications to service.** ONEKEY® MLS may, but is not required to, modify the ONEKEY® MLS Service, including removing information and making additional information available, and adding and removing system functions. Certain products and services made available in conjunction with the ONEKEY® MLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control.** ONEKEY® MLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the ONEKEY® MLS Database or the Participant Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, ONEKEY® MLS may take any steps necessary in its judgment, including deleting the Participant Contribution or portions thereof, to avoid or remedy any violation of law, breach of the ONEKEY® MLS Policies or infringement of intellectual property right. Additionally, ONEKEY® MLS shall have the right to alter and/or remove metadata and copyright management information contained in the Participant Contribution.

6. **Conditions of service.** Participant must at all times during the term of this Agreement adhere to ONEKEY® MLS Policies and satisfy the prerequisites for participation in the ONEKEY® MLS Service. The prerequisites are set out in the ONEKEY® MLS Policies; at present, they include a requirement that Participant either (a) hold a real estate broker’s license, be actively engaged in real estate brokerage, and offer and receive offers of compensation from other brokerage firms; or (b) be licensed or certified by an appropriate regulatory agency to engage in the appraisal of real property. Participant must maintain active membership in a REALTOR® association at all times during the term of this Agreement. Subscribers may enter and retrieve active listing information on the ONEKEY® MLS Service only if Participant offers compensation to or accepts compensation from other principal brokers.

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

of Saved Information. Participant is responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

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

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

10. **Priority of agreements.** Participant must enter into this Agreement before any Subscriber may obtain access to the ONEKEY® MLS Service. Subscriptions of Subscribers are dependent on this Agreement; any termination or suspension of this Agreement will result in termination or suspension of dependent Subscriber agreements.

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

12. **IDX and VOW data access subject to separate agreement.** Participant acknowledges that access to ONEKEY® MLS's IDX or VOW database and data feeds can occur only subject to a separate written agreement between ONEKEY® MLS, Participant and Subscriber, as applicable.

PARTICIPANT'S OBLIGATIONS.

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

14. **Confidentiality.** Participant shall maintain the confidentiality of its user ID and password. ONEKEY® MLS issues each Subscriber a separate ID and password, and Participant must not facilitate sharing of passwords among Subscribers. Participant shall ensure that the Subscribers maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscribers obtains access to the ONEKEY® MLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the ONEKEY® MLS Database, and the ONEKEY® MLS System, Participant shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the ONEKEY® MLS Policies. Participant may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, the disclosing Participant first gives reasonable notice to ONEKEY® MLS to permit ONEKEY® MLS to seek a protective order.

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

16. **Participant Contribution.** With regard to any Subscriber making a Participant Contribution to the ONEKEY® MLS Service, Participant warrants that the information submitted complies with the ONEKEY® MLS Policies in all respects, including with regard to (a) required data fields; (b) format of submission; (c) permitted and required listing types; and (d) procedures for submission. Participant warrants that the Participant Contribution does not infringe or violate any

patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation or proceeding pending or threatened with respect to the Participant Contribution.

17. **Subscriber agreements.** Participant shall ensure that each Subscriber who will have access to the ONEKEY® MLS System or ONEKEY® MLS Database, enters into a Subscriber agreement with ONEKEY® MLS. Participant is liable for all fees due under each Subscriber agreement.

18. **Subscriber supervision.** Participant shall ensure that all Subscribers comply at all times with the ONEKEY® MLS Policies and with applicable laws. Participant is liable for any Subscriber's breach of any agreement between the Subscriber and ONEKEY® MLS relating to the ONEKEY® MLS Service or violation of any of the ONEKEY® MLS Policies as if Participant had committed it.

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

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

INTELLECTUAL PROPERTY.

21. **Election regarding copyrights in Participant Contributions.** Participant must elect from the following options. If no election is indicated, or if both options are checked, then Participant is deemed to have selected Option II.

OPTION I

(a) **Assignment from Participant.** Participant hereby unconditionally assigns to ONEKEY® MLS all right, title and interest in the Participant Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; Participant warrants that it has the authority to make this assignment. Participant acknowledges that once it has made the election agreeing to this section, all copyrights in all portions of the Participant Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in ONEKEY® MLS.

(b) **ONEKEY® MLS Obligations.** ONEKEY® MLS hereby grants to Participant a non-exclusive, perpetual, world-wide, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution and those portions of the ONEKEY® MLS Database relating to Participant's listings. ONEKEY® MLS shall make quarterly registrations of the ONEKEY® MLS's copyrights in the ONEKEY® MLS Database; ONEKEY® MLS shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Participant's permission.

OPTION II

(a) **License from Participant.** Participant hereby grants to ONEKEY® MLS a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant

Contribution. Participant warrants that it has the authority to grant this license.

(b) **ONEKEY® MLS has no obligations to protect.** Participant acknowledges that: (i) ONEKEY® MLS makes no grant of license or assignment to Participant of any rights in the ONEKEY® MLS Database except as set forth in paragraph 22; (ii) ONEKEY® MLS will make no effort to register the copyrights in the Participant Contribution, and Participant will be responsible for all costs and efforts associated with registration; (iii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; (iv) **ONEKEY® MLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Participant's permission;** (v) ONEKEY® MLS will make no effort to secure for Participant the right to use copyright works created by Subscribers or third parties.

22. **Other provisions.** Pursuant to the ONEKEY® MLS Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of ONEKEY® MLS, which shall be deemed the PCC's author for purposes of copyright law. If for any reason the PCC cannot be provided as a work made for hire, you agree to assign and hereby do assign to ONEKEY® MLS all right, title and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law. ONEKEY® MLS hereby grants Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the ONEKEY® MLS Software and the ONEKEY® MLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the ONEKEY® MLS Policies and only to deliver real estate brokerage or appraisal services to Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the ONEKEY® MLS Policies are prohibited. Title to the Licensed Materials remains at all times in ONEKEY® MLS and shall not pass to Participant.

23. **Further Participant warranty.** Participant warrants that (a) the Participant Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) Participant has the written consent of any party necessary to provide the Participant Contribution to ONEKEY® MLS.

24. **Limitations on use by ONEKEY® MLS.** ONEKEY® MLS agrees during the term of this Agreement not to license or distribute the Participant Contribution to any third party that is not a real estate brokerage or appraisal subscriber to the ONEKEY® MLS Service if Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after ONEKEY® MLS has provided notice of its intention to provide the Participant Contribution to the third party. For purposes of the previous sentence, brokers participating in any MLS in a data sharing relationship with ONEKEY® MLS that includes an offer of interbroker compensation are subscribers to the ONEKEY® MLS Service.

FEES AND PAYMENT TERMS.

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

26. **Payment terms.** Participant shall pay the fees according to the terms set out in the ONEKEY® MLS Policies.

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

28. **Taxes.** All fees for the ONEKEY® MLS Service are exclusive of federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and, accordingly, Participant shall pay all such taxes and levies other than any tax or levy on the net income of ONEKEY® MLS.

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

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

TERM AND TERMINATION.

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

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

33. **Termination for breach of ONEKEY® MLS Policies.** Paragraph 32 notwithstanding, ONEKEY® MLS may terminate this Agreement if Participant fails to comply with the ONEKEY® MLS Policies; if Participant violates or is alleged to have violated the ONEKEY® MLS Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or appeal rights of Participant have expired as provided in the ONEKEY® MLS Policies. If in ONEKEY® MLS's judgment, however, a violation or alleged violation of the ONEKEY® MLS Policies is resulting in a continuing harm to ONEKEY® MLS or Other Participants or Subscribers, ONEKEY® MLS may suspend Participant's access to the ONEKEY® MLS Database during the pendency of any hearing or appeal.

34. **Termination for failure to pay.** In the event Participant fails to pay any fees required under this Agreement, ONEKEY® MLS may terminate service without being subject to arbitration. In its sole discretion, ONEKEY® MLS may suspend its performance under this Agreement rather than terminating it, in the event that Participant fails to pay any fees required under this Agreement.

35. **Termination for convenience.** Either party may terminate this Agreement with or without cause, upon thirty days' written notice to the other party.

36. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) ONEKEY® MLS shall deactivate Participant's user ID and password, and Participant shall have no further access to the ONEKEY® MLS Service; (b) Participant shall purge all copies of the ONEKEY® MLS Software and the ONEKEY® MLS Database (except the Participant Contribution) from Participant's personal computers, and shall cause Subscribers to do the same; and (c) all licenses granted hereunder, except the license to the Participant Contribution in Paragraph 21 Option I(b) and Paragraph 21 Option II(a), if any, shall immediately terminate.

37. **Effect on Subscribers.** In the event of any termination or suspension of this Agreement, upon ONEKEY® MLS notice to Subscriber, ONEKEY® MLS may in its sole discretion suspend Subscriber access to ONEKEY® MLS System or terminate Subscriber

license and access agreements. If ONEKEY® MLS does not exercise its right to suspend Subscriber access to the ONEKEY® MLS System or terminate Subscriber license and access agreements, the Subscriber license and access agreement shall continue in force with the intellectual property option selected by Participant in the terminated agreement.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

38. **DISCLAIMER OF WARRANTIES.** ONEKEY® MLS PROVIDES THE ONEKEY® MLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE ONEKEY® MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ONEKEY® MLS SERVICE ARE AT THE SOLE RISK OF PARTICIPANT. THE ONEKEY® MLS AFFILIATES DO NOT WARRANT THAT THE ONEKEY® MLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE ONEKEY® MLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE ONEKEY® MLS SERVICE. THE ONEKEY® MLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE ONEKEY® MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ONEKEY® MLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The ONEKEY® MLS Service may contain hyperlinks to web sites operated by parties other than ONEKEY® MLS; ONEKEY® MLS does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

39. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE ONEKEY® MLS AFFILIATES SHALL BE LIABLE TO PARTICIPANT OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE ONEKEY® MLS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE ONEKEY® MLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE ONEKEY® MLS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, DATA CONNECTION FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE ONEKEY® MLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

41. **Indemnification.** Participant shall defend, indemnify and hold the ONEKEY® MLS Affiliates and Other Participants and Subscribers harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the ONEKEY® MLS Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the ONEKEY® MLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the ONEKEY® MLS Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any warranty under this Agreement; and (f) violating this or any other Agreement or any law.

42. **Acknowledgment.** Participant acknowledges that ONEKEY® MLS has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this

Agreement and that the same form an essential basis of the bargain between the parties.

DISPUTES AND REMEDIES.

43. **Injunctive relief.** Participant acknowledges and agrees that the ONEKEY® MLS Software and ONEKEY® MLS Database are confidential and proprietary products of ONEKEY® MLS and that in the event there is an unauthorized disclosure of them by Participant, no remedy at law will be adequate. Participant therefore agrees that in the event of such unauthorized disclosure of ONEKEY® MLS Software or ONEKEY® MLS Database, ONEKEY® MLS may obtain injunctive relief or other equitable remedies against Participant in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

44. **Dispute resolution.** In the event ONEKEY® MLS claims that Participant has violated the ONEKEY® MLS Policies, ONEKEY® MLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the ONEKEY® MLS Policies, provided MLS does not also base a claim that Participant has breached this Agreement on the same facts. Except as provided in this paragraph and in Paragraph 34, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Suffolk County, New York, except that it may be held by telephone where the Arbitration Rules expressly so permit. Participant agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Suffolk County, New York.

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

46. **Legal fees.** In the event of legal action or arbitration between ONEKEY® MLS and Participant, or ONEKEY® MLS and any Subscriber, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or arbitration. If ONEKEY® MLS is the prevailing party in an action against a Subscriber, Participant shall be obligated to pay these costs on the Subscriber's behalf.

MISCELLANEOUS.

47. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by ONEKEY® MLS and Participant, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party.

48. **Interpretation and amendment.** Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). ONEKEY® MLS may amend this agreement by providing 30 days' advance notice of the amendment to Participant. If Participant or any Subscriber continues to use the ONEKEY® MLS Service or ONEKEY® MLS Database after the expiration of the 30-day notice period, Participant will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

49. **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Participant. Any purported assignment in contravention of this section is null and void.

50. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and

written agreements on the subject hereof. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. The foregoing notwithstanding, if any provision of Paragraphs 38 through 42 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Participant's access to the ONEKEY® MLS Service shall immediately terminate.

51. **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in New York, without regard to its conflicts of law and choice of law provisions.

52. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation of receipt; (c) facsimile transmission, provided sender obtains confirmation of transmission; or (d) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

Having read this Agreement, the parties express their will to be bound by its terms by setting their signatures below.

ONEKEY® MLS, LLC

Participant

Signature

Participant firm name

Print name

Signature of principal

Effective Date

Print name of principal