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KALISPELL, MT 59901
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1610 SOUTH 3RD STREET W., SUITE 201
MISSOULA, MT 59801
PHONE: 406.728.0560
FAX: 406.549.4307

APPLICATION FOR MLS PARTICIPATION & PARTICIPANT AGREEMENT

Participant Brokerage Name (office name): _____

Office Mailing Address _____
(City) (State) (Zip)

Office Street Address _____
(City) (State) (Zip)

Office Phone: _____ Office Fax: _____ Office E-mail _____

Web Page: _____

Brokerage is a: Corporation Partnership Sole Proprietorship LLC Other _____
Formed in the State of: _____ Number of Branch or Satellite Offices of Brokerage: _____
Locations of all Branch or Satellite Offices: _____

Individual's Information:

Print Applicant Name: _____ Cell Phone: _____

Applicant warrants that he/she is a (check one):

- Licensed Real Estate **Broker** Licensed **Appraiser** Certified **Appraiser**.

License Number: _____

Applicant warrants that he/she holds the following position in the Participant Brokerage (check one):

- Principal Partner Corporate Officer Branch Office Manager acting on behalf of Principal

I request that MLS Service begin on : _____
(month/date/year)

LOCK BOX KEY PROGRAMS (Select **ONE** Based on Where You Hold Primary Or Secondary Realtor Membership):

My Brokerage (**Check one**): **OPTS IN** or **OPTS OUT**

of the Lock box program offered by MOR or NMAR (which is determined based on where I hold my primary Realtor membership, and if I am not a primary member of either MOR or NMAR, then where I hold my secondary Realtor membership), which I understand is my decision made for the entire Brokerage; if I Opt In, I agree to pay the applicable monthly fees for all licensees affiliated with the Participant Brokerage regardless of whether they individual choose to use the Lock Box program.

As a primary REALTOR® Member of (Provide the Name of the Local Realtor Association where you belong as a Primary Realtor Member): _____

and principal, partner, or corporate officer designated by the brokerage firm to be responsible to the Association and MRMLS in accordance with the MRMLS Operating Agreement and Rules and Regulations, I hereby request participation in the Montana Regional MLS, LLC. I agree as a condition of participation to the following:

1. To abide by all relevant Governing Documents, including the Operating Agreement of MRMLS, the Rules and Regulations of MRMLS, the policies established by MRMLS, and the NAR Code of Ethics including the obligation to submit to ethics hearings and the duty to arbitrate disputes with other REALTORS® in accordance to the established procedures of MRMLS and its Member Associations. I understand that a violation of the MLS Rules and Regulations and/or a violation of the Code of Ethics & Arbitration guidelines may result in termination of my MLS privileges. I may be assessed an administrative fee in addition to any discipline imposed, including fines, to disconnect and/or reestablish my MLS Participation should that be allowed.
2. To pay all fees associated with the MLS Participation, including the one-time Participation Fee of \$750 (due at time of application), the recurring Participation Fee which is set annually by MRMLS Board of Governors times the number of licensed users affiliated with the Participant, pursuant to the MRMLS Rules and Regulations and NAR Policy, and applicable Satellite Office Fee(s). Additionally, I agree to pay any charges associated with setting up my office and all licensees therein, which may include (but not be limited to) MLS security set up fees.
3. That all licensees in my office will be subscribers in the MRMLS, that all licensees will complete the MRMLS Application and I will submit those to MRMLS, and that I will be billed the monthly recurring Fee for all REALTORS® in my office.
4. To authorize MRMLS and its Member Associations to send fax or email to the Participant Office and all licensees and support staff affiliated therewith. By signing below, I give my express written permission for fax or email communications to be sent. I also agree to keep all email addresses and licensee information current with MRMLS.
5. To comply with and enforce the SentiLock rules and regulations as adopted by my Member Association/MLS, and to pay any fees associated with our brokerage firm's SentiLock use in a timely manner. I understand that MRMLS may include SentiLock billing as a service to my member Association/MLS and I will pay MRMLS those fees, which will then remit those payments to my member Association/MLS.
To keep MRMLS apprised of all changes of office and license status of all Licensees affiliated with the Participant Brokerage. Licensees affiliated with this brokerage (and all Branch or Satellite offices are listed on the attachment).

On behalf of the Participant Brokerage indicated above, my signature indicates my understanding and agreement to the terms set forth above and to abide by all Rules and Regulations and Policies of MRMLS, which may be amended from time to time, and indicates and affirms my agreement to all terms and conditions set forth in the Participant Agreement (Exhibit A) which is attached hereto and incorporated herein.

Signed: _____

Date: _____

Please include a photo copy of U.S. Federal or State-issued photo ID (U.S. Passport, U.S. Military ID, Driver's License, etc.)

MRMLS OFFICE USE ONLY

Receipt of \$ 750 Participant Fee check # _____ or credit card
 NRDS # _____ RAMCO
 MLS Data Entered SentiLock

Exhibit A
Participant Agreement

This Participation Agreement (the "Agreement") is made and entered into by the Participant identified in the application attached hereto, completed by an individual principal real estate broker or broker in charge, or a real estate brokerage firm (the "Participant"), and the Montana Regional MLS, LLC, a Montana Limited Liability Company (the "MLS").

1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 24 of this Agreement.
2. Grant of Participation Rights in Multiple Listing Service. Subject to the terms and conditions of this Agreement and the Rules and Regulations, MLS agrees to make the MLS Database available for access by Participant, and Participant shall have all rights and obligations of a participant in MLS's multiple listing service as set forth under the Rules and Regulations. Access to the MLS Database shall be through a means determined by MLS. Participant may permit duly authorized employees or agents associated with his/her office to access the 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 MLS for use of the MLS Database by such employee or agent; and (b) promptly terminates access to the 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 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 MLS, and so long as Participant, the applicable Sales Licensee, and/or an applicable Vendor are not in default under this Agreement, the Rules and Regulations or any agreement with MLS, MLS will grant to Participant, the applicable Sales Licensee of Participant, or the applicable Vendor a license to the IDX Listings. The license will only be granted pursuant to a License Agreement. MLS has no obligation to grant a license to Participant, any Sales Licensee, or any Vendor which does not enter into a License Agreement. In addition to any applicable license fee payable by Participant, the Sales Licensee, and/or the Vendor, Participant shall pay to MLS all costs and expenses incurred by MLS in connection with any licenses and any services provided by MLS in connection with such licenses.
4. Intellectual Property Ownership; Enforcement.
 - a. Participant acknowledges and agrees that the MLS Database, and all copies, modifications, enhancements, and derivative works of the MLS Database, are the property of MLS, and all right, title, and interest in and to the MLS Database, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS. Participant hereby irrevocably assigns to MLS any and all rights which it may have or acquire in and to the MLS Database.
 - b. Participant hereby grants to MLS a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, 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 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 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 MLS's rights in and to the 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 MLS all documents requested by MLS in connection with the license granted to MLS in and to the Listing Content. Participant further agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the copyright application and registration of the MLS Database.
 - d. Participant shall indemnify MLS and each of MLS's participants and subscribers 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 SUBSCRIBERS, AFFILIATES, SELLERS AND THIRD-PARTY CONTRIBUTORS, AS NECESSARY FOR PARTICIPANT TO LICENSE THE LISTING CONTENT TO MLS AND TO OTHERWISE MAKE FULL USE OF THE LISTING CONTENT UNDER THIS AGREEMENT. IF PARTICIPANT FAILS TO DO SO, PARTICIPANT WILL ASSUME AND REIMBURSE MLS FOR THE COST OF DEFENDING MLS AND

EACH OF MLS'S PARTICIPANTS AND SUBSCRIBERS AGAINST INFRINGEMENT CLAIMS AND PAYING DAMAGES ON ANY SUCH CLAIMS.

- e. Without limiting the generality of this Section 4, but subject to the rights of participants in the MLS' multiple listing service to opt out of inclusion with respect to Listings submitted by such participant as set forth in the Rules and Regulations, Participant acknowledges and agrees that MLS may use and license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the applicable Broker or by the Rules and Regulations.
- f. Participant hereby grants to MLS all rights necessary for 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 MLS the right, and appoints 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 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 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 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 MLS, and the collection of any damages.
 - iv. Execute all documents, whether in the name of Participant and/or MLS, deemed appropriate by MLS to effect any of the foregoing.

Notwithstanding the foregoing, nothing in this Section 4.f requires 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 MLS's multiple listing service and for the services provided and licenses granted under this Agreement, Participant agrees to pay to MLS the fees (the "Fees") in the amount, and in accordance with the terms, established by MLS for participation by participants in MLS's multiple listing service, which amount and terms may be changed by MLS at any time effective upon thirty (30) days prior written notice to Participant.
6. Agreement With Sales Licensees. Participant agrees to cause all of Participant's Sales Licensees who will receive access to the MLS through Participant to enter into a subscriber agreement, in a form and substance acceptable to MLS (a "Subscriber Agreement"), in its sole discretion.
7. Responsibility for Subscribers. Participant shall be responsible and liable to MLS for the acts and omissions of its Subscribers, and shall be responsible for each Subscriber's compliance with the Rules and Regulations. Any failure to comply with the Rules and Regulations by a Subscriber shall be deemed a failure to comply by Participant, and Participant shall be responsible and liable to MLS for any damages incurred by MLS arising from or as a result of an Affiliate's noncompliance with the Rules and Regulations.
8. 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 Participant's rights, duties, or obligations under this Agreement shall be null and void.
9. Interruptions in Service. Participant acknowledges that access to the 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 MLS's website, or otherwise. Participant agrees that any modification of MLS's website, and any interruption or unavailability of access to the MLS Database shall not constitute a default of any obligations of MLS under this Agreement, and MLS shall have no liability of any nature to Participant for any such modifications, interruptions, unavailability, or failure of access.
10. Copies and Derivative Works. Except as otherwise expressly provided in this Agreement, a separate license agreement, or the 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 MLS Database, or any portion of the MLS Database, including any specific Listing Content included in the MLS Database;
 - b. Create any derivative works, enhancements, or other modifications of the MLS Database;
 - c. Download, distribute, export, or transmit the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database; or
 - d. Publicly display the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database.
11. 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 MLS under this Agreement 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 Rules and Regulations.
 - c. To the best of Participant's and any applicable Sales Licensee'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.
 - e. There is no claim, litigation or proceeding pending or threatened with respect to the Listing Content for any Participant's Listing.
 - f. The Listing Content, and the assignment of rights in and to Listing Content to MLS, do not infringe or violate any patents, copyrights, mask work rights, trademarks, trade secrets or other proprietary rights of any third party.
12. Submission of Listings. As a material condition to accessing the MLS Database, Participant agrees to submit to MLS all Listings in accordance with, and except as otherwise provided in, the Rules and Regulations. MLS may refuse to accept or include in, and may remove from, the MLS Database any Listing or Listing Content, or may require Participant to direct MLS to modify any Listing Content, as provided under the Rules and Regulations or if 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 Rules and Regulations, Participant acknowledges that MLS has no obligation to remove, modify or refuse to accept any Listing or Listing Content. MLS grants to Participant a limited, non-exclusive, personal license to input Listing Content in the MLS Database and to modify such Listing Content strictly in accordance with the terms and conditions of this Agreement 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 Subscribers may be accessible by other participants in or users of MLS's multiple listing service, and 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.
13. Confidential Information. Any information provided by MLS to any Participant, including without limitation, any password to the MLS Database, any printouts of the 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 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 and the Rules and Regulations.
14. Additional Representations and Warranties of Participant. If Participant is a Brokerage Firm, Participant represents and warrants to MLS that Brokerage Firm is managed by and under the control of a Broker, and such Broker (a) is a Realtor® in good standing; (b) holds a current, valid real estate broker's license; (c) is a member of a Board in good standing; and (d) will offer and accept cooperation and compensation to and from other participants in MLS's multiple listing service in accordance with the Rules and Regulations. Participant further represents and warrants to 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 Sales Licensees have entered into Subscriber Agreements.

15. Compliance with Governing Rules and Agreements.

- a. By entering into this Agreement, Participant represents and warrants to MLS that Participant, or its Broker if Participant is a Brokerage Firm, 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 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 Rules and Regulations is available upon request. In addition to all other rights and remedies available to MLS under this Agreement and the Rules and Regulations, Participant acknowledges that MLS may levy fines against Participant for noncompliance with the Rules and Regulations as provided in the Rules and Regulations.
- b. To the extent there is any conflict between this Agreement, the Rules and Regulations, and any applicable Subscriber Agreement, the Rules and Regulations shall govern. As between this Agreement and any Subscriber Agreement, this Agreement shall govern.

16. 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. 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, MLS DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY LISTING CONTENT, AND THEIR ACCURACY.

17. Limitation of Liability. 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 MLS DATABASE OR LISTING CONTENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY PARTICIPANT TO 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 MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MLS SHALL HAVE NO LIABILITY OF ANY NATURE TO SALES LICENSEES.

18. Injunction. 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 MLS. In such event, 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 MLS may have, including, without limitation, the right to seek monetary damages.

19. 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. 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 Sales Licensee, except as expressly provided in this Agreement; (3) Participant otherwise fails to comply in all respects with the Rules and Regulations, the applicable Board Rules and Regulations, or the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®; (4) Participant defaults under any material term or condition of any License Agreement; or (5) Participant defaults under any other material term or condition of this Agreement. Except as otherwise provided in this Agreement, termination pursuant to this Section 20.c of this Agreement shall be effective at any time after 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 MLS, the occurrence of any such event could result in irreparable harm to 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.

- c. This Agreement may also terminate as provided under Section 23.d of this Agreement.
 - d. In addition to all other rights and remedies available to MLS under this Agreement, if Participant fails to pay any Fees when due, or otherwise defaults under this Agreement, MLS may, in its sole discretion, temporarily suspend the license granted to Participant to access the MLS Database until all outstanding Fees have been paid in full or the default has been cured.
 - e. Notwithstanding anything to the contrary in this Agreement, if Participant violates or is alleged to have violated the 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 Rules and Regulations.
 - f. Upon termination of this Agreement, Participant agrees to immediately destroy any printouts of the MLS Database or Listing Content, and any copies of the MLS Database and Listing Content in Participant's possession or under Participant's control, including in possession of any Subscribers. No pre-paid Fees will be refunded to Participant for any termination of this Agreement.
 - g. 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 Subscribers to access or use the MLS Database pursuant to the Rules and Regulations or separate agreement with MLS shall automatically terminate, unless otherwise expressly provided with respect to Sales Licensees under an applicable Subscriber Agreement.
 - h. If, for any reason, any Subscriber Agreement is terminated, Participant agrees to either assign all Participant's Listings originated by the terminated Sales Licensee to another of Participant's Sales Licensees, or request that MLS terminate or change the status of Participant's Listings originated by the terminated Sales Licensee.
20. Indemnification.
- a. Indemnification of MLS. Participant agrees to indemnify and hold harmless 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 MLS of any Listing or Listing Content and the inclusion of any Listing or Listing Content by Participant in the MLS Database, including, without limitation, any claim that the access to, display of, and/or use of any Listing Content violates a fair housing law or 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. MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.
 - b. Indemnification of each MLS participant and subscriber. Participant agrees to indemnify and hold harmless each of MLS's participants and subscribers 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 Content including allegations that any of Participant's Listing Content violates a fair housing law or infringes on or constitutes a misappropriation of any patent, copyright, trade secret, or any other intellectual property right of any person or entity anywhere in the world. This provision is expressly provided for the benefit of and enforcement by each of MLS's participants and subscribers.
21. 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 MLS Database or any printouts of the MLS Database allowed under this Agreement.
22. IDX Advertising Consent. Unless Participant has made an express, written non-participation election for MLS's Internet Data Exchange (IDX) program as described in the Rules and Regulations, Participant expressly consents to other participants in MLS's IDX program advertising all of Participant's Listings in accordance with the IDX policy set forth in the Rules and Regulations.
23. 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 mailing address or e-mail maintained by MLS for Participant.
 - If to MLS: Montana Regional MLS, LLC
110 Cooperative Way
Kalispell, MT 59901

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 Montana. Participant acknowledges that by providing Listings to MLS and using the services provided under this Agreement, Participant has transacted business in the state of Montana. By transacting business in the state of Montana by agreement, Participant voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in Flathead County, state of Montana, 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 Rules and Regulations and any applicable License Agreement, (i) constitutes the entire agreement between MLS and Participant concerning the 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 MLS and Participant.
 - g. No Third Party Beneficiaries. Except as expressly provided herein, this Agreement is for the sole and exclusive benefit of MLS and Participant and is not intended to benefit any third party, including any Seller or Sales Licensee; and 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 23 of this Agreement shall survive any termination of this Agreement, including termination pursuant to Section 23.d of this Agreement.
24. Definitions. The following terms shall have the following meanings in this Agreement:
- a. Broker means a principal real estate broker or broker in charge.
 - b. Brokerage Firm means a real estate brokerage firm affiliated with 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 means the rules and regulations, as amended, of the Board of which a Participant is a member.
 - e. Exempted Listing means a Listing which the respective Seller has refused permission to be disseminated by MLS, or a Listing which is not required to be submitted to the MLS, in accordance with the Rules and Regulations.
 - f. IDX Listings means all of the Listings identified or defined as IDX listings in the Rules and Regulations.
 - g. License Agreement means a license agreement entered into between MLS and Participant, MLS and a Sales Licensee of Participant, or MLS and a third party at the request of Subscriber.
 - h. Listing mean a real estate listing of a participant in MLS's multiple listing service.
 - i. 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.
 - j. 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 MLS with respect to a Listing, excepting Exempted Listings.

- k. MLS Database means the compilation of Listings, including information for sold properties, known as the MLS Database, as modified from time-to-time by MLS, and which, as of the date of this Agreement, is available to Subscribers at www.mt.flexmls.com.
- l. Participant Listings means only the Listings of Participant.
- m. Rules and Regulations means the MLS Rules and Regulations established by MLS, as amended by MLS from time to time.
- n. Sales Licensee means a real estate sales licensee, agent, or non-principal broker who is engaged by Participant as a sales licensee of Participant, either as an employee or independent contractor of Participant.
- o. Seller means the seller(s) or lessor(s) of a property which is the subject of a Listing at issue under this Agreement.
- p. Subscriber means any licensee or support staff affiliated with the Participant, as identified in the list provided in the Participant Application.
- q. Subscriber Agreement has the meaning set forth in Section 6 of this Agreement.
- r. Vendor means any person or entity which has entered into a License Agreement for display of real estate listings for Participant or a Sales Licensee of Participant.

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