Stellar MLS
Participant Agreement

DRAFT

NOTE: This agreement is a binding contract and includes terms limiting your legal rights and STELLAR MLS's liability. Consult your attorney before signing if you do not understand any of the terms here.

This agreement ("Agreement") is made between My Florida Regional Multiple Listing Service, Inc. dba Stellar MLS ("STELLAR MLS") with offices at 247 Maitland Avenue, Suite 2000, Altamonte Springs, FL 32701; and you as the Participant, individually, and on behalf of your Firm.

BY CLICKING "I AGREE", PARTICIPANT ACCEPTS THIS AGREEMENT AND AGREE THAT (I) PARTICIPANT AND FIRM ARE LEGALLY BOUND BY ITS TERMS; AND (B) PARTICIPANT HAS THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT INDIVIDUALLY AND ON BEHALF OF THE FIRM AND BIND PARTICIPANT AND FIRM TO THE FOLLOWING TERMS:

RECITALS

A. STELLAR MLS currently operates a real estate multiple listing service in the State of Florida.

B. Firm is a licensed real estate brokerage company or licensed appraisal company, with one or more offices, that has agreed to participate in STELLAR MLS via Participant (as defined below) in accordance with applicable STELLAR MLS Policies.

C. STELLAR MLS and Participant acknowledge and agree that they have an interest in protecting their respective rights in the STELLAR MLS System, the STELLAR MLS Database and the Participant Contribution.

D. STELLAR MLS and Participant desire to establish the terms under which Participant may access and use the STELLAR MLS System and the STELLAR MLS Database.

DEFINITIONS AND USAGE.

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

Participant : With regard to the office or each office of Firm (as designated by Participant in accepting this Agreement), the individual or individuals responsible for Firm's conduct under STELLAR MLS Policies that is a "participant" as that term is defined in the STELLAR MLS Policies.

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

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

STELLAR MLS Policies : STELLAR MLS's then current bylaws, rules and regulations, terms of use, privacy policies and other terms, policies and procedures adopted by STELLAR MLS's board of directors or authorized delegates, as STELLAR MLS amends them from time to time.

STELLAR MLS Service : The services STELLAR MLS provides to Participant under this Agreement, as may be modified from time to time by STELLAR MLS in its discretion, and similar services STELLAR MLS provides to third parties under similar agreements, including any access or license to the STELLAR MLS Software, the STELLAR MLS Database, and the STELLAR MLS System.

STELLAR MLS Software : STELLAR MLS's proprietary interface(s) to the STELLAR MLS System.

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

Other Participants and Subscribers : All Participants and Subscribers of STELLAR 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 STELLAR MLS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the STELLAR MLS System. PCC does not include original text or photographs.

DRAFT

Participant Contribution : All data that the Subscribers submit, contribute, or input in the STELLAR 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 STELLAR 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.

Subscribers : Firm's employees, contractors, salespeople, and assistants at the office of the Firm under the responsibility of Participant.

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.

STELLAR MLS'S OBLIGATIONS.

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

PARTICIPANT ACKNOWLEDGMENTS.

4. **Modifications to service**. STELLAR MLS may, but is not required to, modify the STELLAR MLS Service, including removing information and making additional information available, and adding and removing system functions. Certain products

DRAFT

and services made available in conjunction with the STELLAR MLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control**. STELLAR MLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the STELLAR 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, STELLAR 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 STELLAR MLS Policies or infringement of intellectual property right. Additionally, STELLAR MLS shall have the right to alter and/or remove metadata and copyright management information contained in the Participant Contribution.

6. **Conditions of service**. Firm must at all times have a Participant designated for each office. At all times, Participant shall satisfy the prerequisites for participation in the STELLAR MLS Service. The prerequisites are set out in the STELLAR 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 agrees to cooperate with other Participants (as the term “cooperate” or “cooperation” is defined in the STELLAR MLS Policies); or (b) be licensed or certified by an appropriate regulatory agency to engage in the appraisal of real property. Firm and Participant will comply with the STELLAR MLS Policies at all times. Additionally, Firm and Participant will comply with all applicable laws, statutes, ordinances and regulations in performance of their respective obligations under this Agreement, including the Fair Housing Act (42 U.S.C. §3601 et. seq.) and the Americans with Disabilities Act (42 U.S.C. §12101 et. seq.).

7. **Saved Information**. Saved Information may not always be available to Participant and may become available to unauthorized persons. STELLAR 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**. STELLAR MLS reserves the right to distribute to third parties certain information about Firm, including Firm's, Participant's, and Subscribers' names and business addresses, phone numbers and email addresses. STELLAR MLS reserves the right to distribute to third parties aggregated information about Firm's, Participant's, and Other Participants' and Subscribers' use of the STELLAR MLS Service, but not about Firm's or Participant's use specifically.

DRAFT

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

10. **Priority of agreements**. Participant must enter into this Agreement before any Subscriber may obtain access to the STELLAR MLS Service.

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

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

PARTICIPANT'S AND FIRM'S OBLIGATIONS.

13. **Use limited**. Participant and Firm shall use the STELLAR MLS Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate, strictly as permitted by the STELLAR MLS Policies. Except as expressly provided in this Agreement and the STELLAR MLS Policies, Participant and Firm shall not copy, create derivative works of, distribute, perform, or display the STELLAR MLS Service or any part of it, except the Participant Contribution. Notwithstanding anything herein or in the STELLAR MLS Policies to the contrary, Participant, Firm and Subscribers shall not use the STELLAR MLS Database, the STELLAR MLS System or the STELLAR MLS Services to create, facilitate, or support any mechanism (including, but not limited to, by providing listing information to an internet aggregators' website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives; provided that nothing herein shall be construed to prohibit Participant or Firm from displaying outside the STELLAR MLS System both (i) data or data feeds from STELLAR MLS and (ii) offers of compensation to buyer brokers or other buyer representatives but only on Participant's and Firm's own listings.

14. **Confidentiality**. Participant shall maintain the confidentiality of its user ID and password. STELLAR MLS issues each Subscriber a separate ID and password, and Participant must not facilitate sharing of passwords among Subscribers. Participant and Firm 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 STELLAR MLS Service or any part of it. To maintain the confidentiality of all user

DRAFT

IDs, passwords, the STELLAR MLS Database, and the STELLAR MLS System, Participant and Firm 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 STELLAR MLS Policies. Participant and Firm 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 STELLAR MLS to permit STELLAR MLS to seek a protective order.

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

16. **Participant Contribution**. With regard to any Subscriber making a Participant Contribution to the STELLAR MLS Service, Participant and Firm warrant that the information submitted complies with all applicable laws, statutes, ordinances and regulations and the STELLAR 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 and Firm further warrant that (e) the Participant Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; (f) that there is no claim, litigation or proceeding pending or threatened with respect to the Participant Contribution; and (g) Firm has the written consent of any party necessary to provide the Participant Contribution to STELLAR MLS.

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

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

19. **List of Subscribers**. Firm and Participant shall ensure REALTOR® association(s), if any, to which it is affiliated has a current list of all of Subscribers; and shall inform such associations, if any, in writing of any change in the Subscribers within 24 hours of the change. If Firm is are not affiliated with a REALTOR® association, it shall ensure STELLAR MLS has a current list of all of Subscribers;

DRAFT

Firm and Participant shall inform STELLAR MLS in writing of any change in the Subscribers within 24 hours of the change.

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

21. **Intellectual Property rights in Participant Contributions**. As a condition of this Agreement, Firm must elect Option I or Option II regarding the grant of intellectual property rights in the Participant Contribution as set forth in more detail in the Schedule Regarding Intellectual Property at the end of this Agreement.

22. **Other provisions**. Pursuant to the STELLAR MLS Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of STELLAR 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 STELLAR MLS all right, title and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law. STELLAR MLS hereby grants Firm and Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the STELLAR MLS Software and the STELLAR MLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the STELLAR MLS Policies and only to deliver real estate brokerage or appraisal services to Firm's and Participant's bona fide customers. ***All uses of the Licensed Materials not expressly authorized in this Agreement and the STELLAR MLS Policies are prohibited.*** Title to the Licensed Materials remains at all times in STELLAR MLS and shall not pass to Firm or Participant, and STELLAR MLS does not grant any other licenses to any other STELLAR MLS intellectual property, including but not limited to trade or service marks.

23. **Limitations on use by STELLAR MLS**. STELLAR 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 STELLAR MLS Service if Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after STELLAR MLS has provided notice of its intention to provide the Participant Contribution to the third party. For purposes of the

DRAFT

previous sentence, brokers participating in any other multiple listing service in a data sharing relationship with STELLAR MLS t are subscribers to the STELLAR MLS Service.

FEES AND PAYMENT TERMS.

24. **Applicable fees**. Firm and Participant shall pay applicable fees including, but not limited to, all fees due and owing from Subscribers as provided in Paragraph 17 above, which STELLAR MLS may amend at any time subject to the terms of Paragraph 28.

25. **Payment terms**. Firm and Participant shall pay the fees according to the terms set out in the STELLAR MLS Policies.

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

27. **Taxes**. All fees for the STELLAR 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 STELLAR MLS.

28. **Fee increases**. STELLAR MLS may amend its fees at any time at its sole discretion. STELLAR MLS shall provide notice to Participant of any fee changes in accordance with the STELLAR MLS Policies. If Participant objects to the change, Participant may terminate this Agreement by written notice to STELLAR MLS at any time before the effective date of the increase.

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

TERM AND TERMINATION.

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

DRAFT

31. **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.

32. **Termination for breach of STELLAR MLS Policies**. Paragraph 31 notwithstanding, STELLAR MLS may terminate this Agreement if Participant fails to comply with the STELLAR MLS Policies; if Participant violates or is alleged to have violated the STELLAR 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 STELLAR MLS Policies. If in STELLAR MLS's judgment, however, a violation or alleged violation of the STELLAR MLS Policies is resulting in a continuing harm to STELLAR MLS or Other Participants or Subscribers, STELLAR MLS may suspend Participant's access to the STELLAR MLS Database during the pendency of any hearing or appeal.

33. **Termination for failure to pay**. In the event Firm or Participant fails to pay any fees required under this Agreement, STELLAR MLS may terminate service without being subject to arbitration. In its sole discretion, STELLAR 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.

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

35. **Events upon termination**. Promptly upon any termination or expiration of this Agreement, (a) STELLAR MLS shall deactivate , Participant's and ' user ID and password, and Participant shall have no further access to the STELLAR MLS Service; (b) Participant shall purge all copies of the STELLAR MLS Software and the STELLAR MLS Database (except the Participant Contribution) from Firm's and Participant's personal computers,; 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.

36. **Effect on Subscribers**. In the event of any termination or suspension of this Agreement, upon STELLAR MLS notice to Subscriber, STELLAR MLS may in its sole discretion suspend Subscriber access to STELLAR MLS System or terminate Subscriber license and access agreements. If STELLAR MLS does not exercise its right to suspend Subscriber access to the STELLAR MLS System or terminate Subscriber license and access agreements, the Subscriber license and access

DRAFT

agreement shall continue in force with the intellectual property option selected by Participant in the terminated agreement.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

37. **DISCLAIMER OF WARRANTIES**. STELLAR MLS PROVIDES THE STELLAR MLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE STELLAR MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE STELLAR MLS SERVICE ARE AT THE SOLE RISK OF PARTICIPANT. THE STELLAR MLS AFFILIATES DO NOT WARRANT THAT THE STELLAR MLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE STELLAR MLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE STELLAR MLS SERVICE. THE STELLAR MLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE STELLAR MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE STELLAR MLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The STELLAR MLS Service may contain hyperlinks to web sites operated by parties other than STELLAR MLS; STELLAR 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.

38. **LIMITATIONS AND EXCLUSIONS OF LIABILITY**. NONE OF THE STELLAR MLS AFFILIATES SHALL BE LIABLE TO FIRM, PARTICIPANT, SUBSCRIBER OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE STELLAR MLS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE STELLAR MLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE STELLAR 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 STELLAR MLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

39. **MAXIMUM AGGREGATE LIABILITY**. IN NO EVENT SHALL STELLAR MLS BE LIABLE TO FIRM OR PARTICIPANT PURSUANT TO THIS AGREEMENT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE

DRAFT

FEES PARTICIPANT HAS PAID STELLAR MLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) $100.

40. **Indemnification**. Firm and Participant shall defend, indemnify and hold the STELLAR 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 STELLAR MLS Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the STELLAR MLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the STELLAR MLS Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any term of this Agreement; and (f) violating this or any other Agreement or any law.

41. **Acknowledgment**. Participant acknowledges that STELLAR 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.

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

43. **Dispute resolution**. In the event STELLAR MLS claims that Participant has violated the STELLAR MLS Policies, STELLAR MLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the STELLAR MLS Policies, provided STELLAR 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 33, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules (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

DRAFT

parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Orange County, Florida, 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 Orange County, Florida. Without limiting or waiving the foregoing requirement to arbitrate, any party may apply to any court of competent jurisdiction for the issuance of a temporary injunction pending and subject to a final award rendered in the arbitration proceeding. In the event that any party applies for such an injunction, it shall not be deemed to be a waiver of the party's obligation and right to arbitrate as contemplated in this Agreement.

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

45. **Legal fees**. In the event of legal action or arbitration between STELLAR MLS and Firm, or STELLAR MLS and Participant or 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 STELLAR MLS is the prevailing party in an action against Participant or a Subscriber, Firm and Participant, jointly and severally, shall be obligated to pay these costs on the Participant's or Subscriber's behalf.

MISCELLANEOUS.

46. **No third-party beneficiaries**. This Agreement is entered into solely between, and may be enforced only by STELLAR MLS, Firm and Participant, and this Agreement

DRAFT

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.

47. **Interpretation and amendment**. Firm and Participant expressly consent to the execution of amendments by electronic means (such as web site "click through" agreements). STELLAR 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 STELLAR MLS Service or STELLAR MLS Database after the expiration of the 30-day notice period, Firm and 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.

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

49. **Integration and severability**. This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. In the event of any dispute regarding the interpretation of the terms of this Agreement, it shall not be construed for or against any party on the grounds that the Agreement was prepared by any one of the parties. 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 37 through 41 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm's access to the STELLAR MLS Service shall immediately terminate.

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

51. **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.

DRAFT

SCHEDULE REGARDING INTELLECTUAL PROPERTY.

. **Election regarding copyrights in Participant Contributions.** Firm must elect from one of the following options:

Option I

(a) **Assignment from Participant**. Firm hereby unconditionally assigns to STELLAR MLS all right, title and interest in the Participant Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; Firm warrants that it has the authority to make this assignment. Firm 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 STELLAR MLS.

(b) **STELLAR MLS Obligations**. STELLAR MLS hereby grants to Firm 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 STELLAR MLS Database relating to Firm's listings. STELLAR MLS shall make quarterly registrations of the STELLAR MLS's copyrights in the STELLAR MLS Database; STELLAR MLS shall employ reasonable efforts, determined in STELLAR MLS's reasonable discretion, to detect and hinder third parties using the Participant Contribution without Firm's permission.

Option II

(a) **License from Participant**. Firm hereby grants to STELLAR MLS a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including

DRAFT

sublicenses through multiple tiers) the Participant Contribution. Firm warrants that it has the authority to grant this license.

(b) **STELLAR MLS has no obligations to protect**. Firm acknowledges that: (i) STELLAR MLS makes no grant of license or assignment to Firm of any rights in the STELLAR MLS Database except as set forth in paragraph 22; (ii) STELLAR MLS will make no effort to register the copyrights in the Participant Contribution, and Firm 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) ***STELLAR MLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm's permission*** ; (v) STELLAR MLS will make no effort to secure for Firm the right to use copyright works created by Subscribers or third parties.

Having read this Agreement, Participant assents to its terms individually and on behalf of the Firm by clicking "I Agree".

DRAFT