

Regional Multiple Listing Service of Minnesota, Inc.

Subscriber Agreement

This agreement is a binding contract and includes terms limiting your legal rights and RMLS's liability to you. Consult your attorney before accepting if you do not understand any of the terms here.

This Subscriber License and Access Agreement ("Agreement") is made as of the Effective Date below between Regional Multiple Listing Service of Minnesota, Inc., d/b/a NorthstarMLS and NorthstarMLS.com ("RMLS") and the undersigned subscriber ("Subscriber"), who, intending to be legally bound, hereby agree as follows.

DEFINITIONS AND USAGE

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

Association: The REALTOR® Association through which Subscriber receives the RMLS Service.

Other Participants and Subscribers: All Participants and Subscribers of RMLS not party to this Agreement, including Participants' employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

Firm Participant: The brokerage or appraisal company to which Individual Participants are affiliated and has executed a Participant Agreement with RMLS.

Individual Participant: With regard to each office of Firm Participant, the principal broker or appraiser manager that supervises Subscriber's real estate activities and on whose behalf Subscriber conducts those real estate activities.

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

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

RMLS Policies: RMLS's bylaws, rules and regulations, and policies and procedures adopted by RMLS's board of directors or authorized delegates, as RMLS amends them from time to time.

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

RMLS Software: RMLS's proprietary web browser interface(s) to the RMLS System.

RMLS System: The aggregate of all hardware and data connection systems that RMLS maintains in order to make access to the RMLS Database available to Subscriber.

Saved Information: Information that Subscriber stores in the RMLS System for his own later use that is not intended by him/her to be available to RMLS's Other Participants and Subscribers, including client prospect and contact information.

Subscriber Contribution: All data that the Subscriber submits, contributes, or inputs in the RMLS System, including text, photographs, images, and other materials, in any form now known or hereafter discovered.

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 interchangeable.
- (c) Wherever the term "law" is used, it means all statutes, regulations, and common 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.

RMLS'S OBLIGATIONS

3. RMLS shall provide one unique user ID and password to Subscriber. The user ID and password will provide Subscriber access to all data and functions in the RMLS Service to which Subscriber is entitled under the RMLS Policies. RMLS makes no warranties, however, that the RMLS Service will be available at all times.

SUBSCRIBER ACKNOWLEDGMENTS

4. Modifications to service. RMLS may, but is not required to, modify the RMLS 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 RMLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. Editorial control. RMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the RMLS Database or the Subscriber Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, RMLS may take any steps necessary in its judgment, including deleting the Subscriber Contribution or portions thereof, to avoid or remedy any violation of law, breach of the RMLS Policies or infringement of intellectual property right.

6. Conditions of service. Subscriber must be affiliated with Individual Participant and Firm Participant at all times during the term of this Agreement. Subscriber may enter and retrieve active listing information on the RMLS Service only if Firm Participant offers compensation to and accepts compensation from other principal brokers.

7. Saved Information. Saved Information may not always be available to Subscriber and may become available to unauthorized persons. RMLS is not liable for unauthorized access to or loss of Saved Information. Subscriber is responsible for retention of any information that may be necessary to

reconstruct Saved Information if it is lost or destroyed. Subscriber 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. RMLS reserves the right to distribute to third parties certain information about Subscriber, including Subscriber's name and business address, phone number and email address. RMLS reserves the right to distribute to third parties aggregated information about Subscriber's, Firm Participant's and Other Participants' and Subscribers' use of the RMLS Service, but not about Firm Participant's or Subscriber's use specifically.

9. Disclosure to government. Subscriber acknowledges that RMLS may provide government agencies access to the RMLS Service at any time in RMLS's sole discretion.

10. Priority of agreements. Subscriber's access to the RMLS Service is subject at all times to the limitations set out in the RMLS Policies and the Participant Agreement between RMLS and Firm Participant. In the event of an apparent conflict between those documents and this Agreement, Subscriber's obligations and rights shall be determined, in order of precedence, by the RMLS Policies, the Firm Participant Agreement between RMLS and Firm Participant, and by this Agreement.

11. IDX and VOW data access subject to separate agreement. Subscriber acknowledges that access to RMLS's IDX or VOW database and data feeds can occur only subject to a separate written agreement between RMLS and Subscriber, as applicable.

SUBSCRIBER'S OBLIGATIONS

12. Use limited. Subscriber shall use the RMLS Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate strictly as permitted by the RMLS Policies. Except as expressly provided in this Agreement and the RMLS Policies, Subscriber shall not copy, create derivative works of, distribute, perform, or display the RMLS Service or any part of it.

13. Confidentiality. Subscriber shall maintain the confidentiality of its user ID and password and the RMLS Database; Subscriber shall not provide its ID and password to any third party. To maintain the confidentiality of all user IDs, passwords, the RMLS Database, and the RMLS System, Subscriber 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 RMLS Policies. Subscriber 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, Subscriber first gives reasonable notice to RMLS to permit RMLS to seek a protective order.

14. Equipment. Subscriber shall acquire and maintain all personal computers, modems, data connections, and computer software, other than the RMLS Software, necessary for Subscriber's use of the RMLS Service.

15. Subscriber Contribution. When making a Subscriber Contribution to the RMLS Service, Subscriber warrants that the information submitted complies with the RMLS 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. Subscriber warrants that the Subscriber 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 Subscriber Contribution.

INTELLECTUAL PROPERTY

16. Assignment from Subscriber. Depending on the election Firm Participant has made in Section 21 of the Participant Agreement between Firm Participant and RMLS, the following shall apply:

(a) If Firm Participant has selected Option I, Subscriber hereby unconditionally assigns to RMLS all right, title and interest in the Subscriber Contribution, including, without any limitation, any copyrights therein under U.S. and international copyright law. To the extent that Subscriber has also purported to assign its interests in the Subscriber Contribution to Firm Participant, the assignment in this paragraph is null and void. To the extent that Subscriber does not possess the rights to permit the foregoing assignment, Subscriber hereby grants to RMLS 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 Subscriber Contribution.

(b) If Firm Participant has selected Option II, Subscriber hereby grants to RMLS 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 Subscriber Contribution and those portions of the RMLS Database relating to Subscriber's listings.

17. Warranty. Subscriber warrants that it has the authority to make the assignment in Paragraph 16. Subscriber warrants that (a) the Subscriber Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to Firm Participant or RMLS.

18. License. RMLS hereby grants Subscriber a license to use the RMLS Software and the RMLS Database during the term of this Agreement, subject to the permission of Firm Participant and according to the terms of the RMLS Policies. All other uses are prohibited.

FEES AND PAYMENT TERMS

19. Applicable fees. No fees are due directly to RMLS hereunder. Association is solely responsible for establishing the fees it charges for access to the RMLS Service and for determining the means of collecting those fees. RMLS does not control or fix the fees that brokers and salespersons pay to Association (or other REALTOR® associations) for access to the RMLS Service.

20. Payment terms. Subscriber agrees to pay all applicable fees to Association when they come due according to Association's policies. Association may revise its schedule of fees at its sole discretion at any time, subject to its own policies. Association may suspend Subscriber's access to the RMLS service at any time if Subscriber, Firm Participant, or Individual Participant fails to pay fees due to Association according to its policies.

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

22. Taxes. All fees for the RMLS 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, Subscriber shall pay all such taxes and levies other than any tax or levy on the net income of RMLS.

23. Fines. RMLS may collect fines from Subscriber and from Firm Participant on Subscriber's behalf for violation of the RMLS Policies. Payment terms for fines are set out in the RMLS Policies. RMLS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION

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

25. Termination for breach. RMLS may terminate this Agreement with notice to Association if Subscriber fails to comply with the terms of this Agreement or of the RMLS Policies.

26. Termination of Participant. In the event of any termination or suspension of Participant Agreement, upon RMLS notice to Subscriber, RMLS may in its sole discretion suspend Subscriber access to RMLS System or terminate Subscriber license and access agreements, including this Agreement. If RMLS does not exercise its right to suspend Subscriber access to the RMLS System or terminate this Agreement, this Agreement shall continue in full force, and the subparagraph of Section 16 of this Agreement in effect at the time of the termination or suspension of the Participant Agreement shall be binding on the parties to this Agreement for its duration..

27. Termination for failure to pay. In the event Subscriber fails to pay to Association any fees required under this Agreement, RMLS may terminate service without being subject to arbitration. In its sole discretion, RMLS may suspend its performance under this Agreement rather than terminating it, in the event that Subscriber fails to pay to Association any fees required under this Agreement.

28. Termination without fault. Either party may terminate this Agreement upon 30 days' written notice to the other party and to Association. Subscriber may not terminate this Agreement so long as Subscriber remains affiliated with Individual Participant for which Firm Participant is responsible subject to a Participant Agreement with RMLS.

29. Events upon termination. Promptly upon any termination of this Agreement, (a) RMLS or Association shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the RMLS Service; (b) Subscriber shall purge all copies of the RMLS Software and the RMLS Database from Subscriber's personal computers; (c) all licenses granted hereunder shall immediately terminate, except the license to the Subscriber Contribution in Paragraph 16(b) and (d) Subscriber will not be permitted to be affiliated with Firm Participant or any other participant of RMLS unless a new subscriber agreement between Subscriber and RMLS is executed.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION

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

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

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

33. Indemnification. Subscriber shall defend, indemnify and hold the RMLS 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 RMLS Affiliates or Other Participants and Subscribers arising from any acts of Subscriber, including (a) putting inaccurate information into the RMLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the RMLS 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.

34. Acknowledgment. Subscriber acknowledges that RMLS 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

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

36. Dispute resolution. In the event RMLS claims that Subscriber has violated the RMLS Policies, RMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the RMLS Policies, provided RMLS does not also base a claim that Subscriber has breached this Agreement on the same facts. Except as provided in this paragraph and in Paragraph 28, 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 Ramsey County, Minnesota, except that it may be held by telephone where the Arbitration Rules expressly so permit. Subscriber 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 Ramsey County, Minnesota.

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

38. Legal fees. In the event of legal action or arbitration between RMLS and 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.

MISCELLANEOUS

39. No third-party beneficiaries. This Agreement is entered into solely between, and may be enforced only by, RMLS and Subscriber, 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. The foregoing notwithstanding, Association is a third-party beneficiary of this Agreement and the parties agree that Association may enforce those covenants herein of which Association is beneficiary.

40. Interpretation and amendment. Subscriber expressly consents to the execution of amendments by electronic means (such as web site “click through” agreements). RMLS may amend this agreement by providing 30 days’ advance notice of the amendment to Subscriber. If Subscriber continues to use the RMLS Service or RMLS Database after the expiration of the 30-day notice period, Subscriber 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.

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

42. 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 Paragraph 31 through 35 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber’s access to the RMLS Service shall immediately terminate.

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

44. 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.

45. Google Maps Terms, Privacy Policy, Legal Notices and Acceptable Use Policy.

By entering into this Agreement, you hereby accept and agree to be bound by the [Google Maps Terms](#) (or other URL as may be provided by Google), [Privacy Policy](#) (or other URL as may be provided by Google), [Legal Notices](#) (or other URL as may be provided by Google), and [Acceptable Use Policy](#) (or other URL as may be provided by Google).

Having read this Agreement, you assent to its terms by clicking the checkbox next to “I have read and accepted the terms of this agreement” and then clicking the “I Accept” button in this dialog box.