

PARTICIPANT AGREEMENT

This Participant Agreement (the “**Agreement**”) is made and entered into and is effective as of the date Participant accepts this Agreement (the “**Effective Date**”), and is between Nolan County Board of REALTORS®, Inc., (“**NCBR**”), a Texas corporation having its principal offices at 1115 San Jacinto Blvd, Suite 200, Austin, TX 78701 and the undersigned individual principal real estate broker and/or real estate brokerage firm and/or appraiser, more fully described on the signature page hereof, having its principal offices at the address as set forth on the signature page hereof as may be changed from time to time (“**Participant**”). NCBR and Participant are individually referred to in this Agreement as a “**Party**” and jointly as the “**Parties.**” This Agreement is made with reference to the following facts and circumstances:

1. RECITALS.

1.1 NCBR owns and operates a multiple listing service as it is defined in its Rules and Regulations.

1.2 NCBR collects, primarily from real estate professionals, certain information including, but not limited to all data, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information about real properties and businesses in certain geographic regions of the State of Texas and then aggregates and compiles this data into its proprietary listing content compilation (“**MLS Compilation**”), as hereinafter defined, and displays, maintains and distributes the MLS Compilation principally for the benefit of those same real estate professionals.

1.3 Participant is a real estate broker or appraiser licensed in the State of Texas and has applied to participate in the NCBR Services.

1.4 The Parties desire to enter this Agreement which, in addition to the NCBR MLS Rules, will govern the use of the MLS Compilation, the NCBR System, and the NCBR Services, all as defined herein, by Participant and its licensed agents.

1.5 Capitalized terms not defined in this Agreement shall have the meaning set forth in the Rules.

NOW, THEREFORE, in consideration of the Recitals, and the mutual promises and covenants contained herein and intending to be legally bound, each Party agrees as follows:

2. DEFINITIONS

Capitalized terms in this Agreement shall have the meanings set forth opposite each, respectively, as follows:

2.1 “**IDX Display(s)**” means a Member’s electronic Internet Data Exchange (IDX) display of the MLS Compilation on authorized websites or mobile applications in accordance and compliance with the Rules.

2.2 “License Holder(s)” means all licensed employees or independent contractors of Participant as disclosed in the Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board records who have not applied to participate in NCBR Services.

2.3 “Listing Content” means certain information about real properties offered for sale or rent throughout the State of Texas, including without limitation all data, photographs, images, graphics, drawings, audio, video recordings, virtual tours, written descriptions, remarks, narratives, and pricing information, that is submitted to NCBR by Participant and other Members.

2.4 “Login” means any and all usernames, passwords, tokens, and other credentials or authenticators used by Participant to access the NCBR Services and NCBR System.

2.5 “Members” means, collectively, NCBR Participants and Subscribers.

2.6 “MLS Compilation” means (i) the aggregation and compilation of all Listing Content, and (ii) certain information about Members, including without limitation name, office information, and contact information.

2.7 “Rules” means the rules and regulations of NCBR MLS, established and adopted by the Executive Board of NCBR, as may be amended from time to time, which regulate Members’ access to and use of the MLS Compilation, NCBR Services, and NCBR System.

2.8 “Subscribers” mean non-principal brokers, salespersons, and licensed or certified real estate appraisers affiliated with a NCBR Participant and who have applied to participate or are participating in the NCBR Services.

2.9 “NCBR Participant(s)” means individuals who hold current, valid real estate brokers’ licenses in the state of Texas and offer or accept compensation to and from other NCBR Participants or are registered, licensed, or certified by the Texas Appraiser Licensing and Certification Board to engage in the appraisal of real property and who have applied to participate or are participating in the NCBR Services.

2.10 “NCBR Services” means the display, maintenance, and distribution of the MLS Compilation principally to Members together with other products and services offered by NCBR or made available through the NCBR System which facilitate the business of Members.

2.11 “NCBR System” means the technology, software, and hardware systems that support access to and use of the MLS Compilation and NCBR Services.

2.12 “Term” means the period during which the provisions, terms, and conditions of this Agreement are in full force and effect.

2.13 “Virtual Office Website” or “VOW” means an Internet website through which a Member provides real estate brokerage services to consumers where the consumer can search the MLS Compilation, subject to the Member’s oversight, supervision, and accountability.

3. GRANT OF PARTICIPATION RIGHTS.

Subject to the provisions, terms, and conditions of this Agreement and the Rules, NCBR hereby grants to Participant during the Term a limited, non-exclusive, non-transferable, non-sublicensable revocable license to access and use the MLS Compilation, NCBR Services, and NCBR System for the purpose of: (a) adding, editing, and reviewing Participant's Listing Content, (b) researching and retrieving the MLS Compilation, and (c) using the NCBR Services to conduct Participant's ordinary real estate activities.

4. GRANT OF ACCESS.

4.1 Method of Access. Participant shall access the MLS Compilation, NCBR Services, and NCBR System through various types of electronic communications furnished to Participant by NCBR and/or third-party vendors via Participant's Login, upon the terms and conditions required by NCBR and the third-party vendor. Participant acknowledges it may be required to execute a license agreement with, or accept the term and conditions of, a third-party service provider to access the NCBR System and agrees to comply with the terms of such agreement. Participant understands and agrees that it must execute a separate agreement with NCBR and Participant's internet display developer for authority to display the MLS Compilation on an IDX Display or VOW.

4.2 Access Login. NCBR shall provide Participant with a unique Login used to participate in and access the MLS Compilation, NCBR Services, and NCBR System. The Login shall be personal to Participant and shall not be used by any other individuals, including without limitation any individuals in Participant's office. Participant acknowledges it is responsible for obtaining a separate unique Login for all Subscribers and Staff in its office that use the NCBR Services.

4.3 Availability. Participant acknowledges that access to the MLS Compilation or NCBR Services may be unavailable from time to time, whether due to technical failure, telecommunications interruptions, intentional downtime for maintenance, unavailability attributable to the NCBR System service provider, or otherwise. Participant agrees that any interruptions in or unavailability of the MLS Compilation shall not constitute a breach of this Agreement, and NCBR shall have no liability of any nature to Participant for any such interruptions, unavailability, or failure of access.

4.4 Modifications to the Service. NCBR may, in its sole discretion, modify the NCBR Services, including without limitation adding or removing information, products, services, or offerings available through the NCBR Services, at any time without notice or obligation to Participant.

5. SUBMISSION OF PARTICIPANT'S LISTING INFORMATION.

5.1 Grant of Rights to NCBR. Participant, as the acquirer and provider of Participant's and its Subscribers' Listing Content relating to real estate properties for sale, hereby grants to NCBR a nonexclusive, sublicensable, perpetual, worldwide, royalty-free license to use, copy, publish, advertise, display, transmit, reproduce, distribute, broadcast, sublicense through multiple tiers, prepare derivatives of, and integrate into the MLS Compilation all Listing Content entered by Participant and its Subscribers into the NCBR System or third-party system that accepts Listing Content on behalf of NCBR. As a material condition to participating in the NCBR Services, Participant agrees to submit to NCBR all Listing Content for properties listed for sale by Participant or its Subscribers, in accordance with and except as otherwise provided in, the Rules.

5.2 Submitted Information. Participant hereby warrants that it will have a valid listing agreement prior to submitting any Listing Content to NCBR and warrants that, where applicable, buyers, sellers, Subscribers, photographers, videographers, architects, and other third-parties have authorized Participant to license and provide all Listing Content, including without limitation all virtual tours, photographs, images, drawings, audio, videos, floor plans, remarks, descriptions, pricing information, or other listing information to NCBR and other Members for the purposes set forth in this Agreement. Participant further represents and warrants that: (a) any Listing Content submitted to NCBR by Participant does not infringe any third-party rights, including without limitation any copyrights or trade secrets; (b) Participant's Listing Content complies with the Rules; (c) to the best of Participant's knowledge, the Listing Content is accurate; and (d) to Participant's knowledge, there is no claim, litigation, or proceeding pending with respect to Participant's Listing Content. Participant agrees Listing Content shall be submitted in the form and format and according to the procedures set forth in the Rules and shall use reasonable care to ensure the accuracy and completeness of such submitted Listing Content and shall be responsible for correcting and updating all submitted information in accordance with the Rules. Participant acknowledges NCBR may but is not obligated to and assumes no responsibility to, modify, edit, refuse to accept or include in, and may remove from, the MLS Compilation any Listing Content if NCBR determines, in its sole discretion, that such Listing Content may violate or infringe upon the rights of a third-party or is not in compliance with the Rules.

5.3 Copyright. NCBR may edit, manipulate, and/or compile the Listing Content and tangible or intangible property items provided by Participant in accordance with the Rules. Participant acknowledges that the manipulation or compilation being performed by NCBR will result in a database of MLS Compilation containing various compilations of real estate data which are copyrightable material. By the act of submitting any Listing Content to NCBR, Participant hereby acknowledges its Listing Content will be compiled into the MLS Compilation which is copyrighted by NCBR. Participant consents to the use of its contributions in such copyrighted material and warrants it will not challenge, interfere with, or violate such copyright, and will not seek compensation therefor. Participant acknowledges that selection, coordination, and arrangement of its Listing Content, including without limitation any updates or changes thereto, shall be a work made for hire, as that term is defined under 17 U.S.C. § 101, owned by NCBR. In the event it is determined that the selection, coordination, and arrangement of Participant's Listing Content does not qualify as a work made for hire, Participant hereby irrevocably assigns and transfers to NCBR all right, title, and interest in the selection, arrangement, and coordination of its Listing Content.

5.4 Internet Display and Other Third-Party Use. NCBR may use, or may arrange for third-parties to use, the MLS Compilation in products and services including, but not limited to, reference materials, books, brochures, flyers, electronic transmissions, advertisements, Internet or other computer network displays, on-line data, computer programming, and software, regardless of the form, whether printed, electronic, digital, magnetic media, or otherwise. By the act of submitting any Listing Content to NCBR, Participant hereby provides to NCBR a limited, irrevocable, non-exclusive license to allow Internet display and other third-party use of the Listing Content in the MLS Compilation and consents to such uses and warrants that it will not challenge, interfere with, or violate such uses and warrants that it will not seek compensation therefor.

5.5 Enforcement. Participant hereby grants to NCBR all rights necessary for NCBR to protect and enforce all intellectual property rights and to prevent the misuse, infringement or misappropriation of the Listing Content licensed to NCBR by Participant in this Section 5, including without limitation, the right to
(a) add watermarks, proprietary notices, or other means of identification to the Listing Content; (b) monitor usage of the Listing Content; (c) send demand letters to investigate and/or prosecute alleged

infringers; (d) arbitrate or litigate potential claims of infringement or misappropriation; (e) execute all documents deemed appropriate by NCBR; (f) collect applicable damages; and (g) any other actions reasonably necessary to protect NCBR's rights in the MLS Compilation, NCBR Services, and NCBR System, in NCBR's sole discretion.

6. CONDITIONS, PROHIBITIONS AND LIMITATIONS ON ACCESS.

6.1 Access to NCBR System. Participant shall be responsible for assuring that all of its Staff and Subscribers that have access to the NCBR Services and NCBR System have executed appropriate documentation as required by NCBR. If a Subscriber becomes delinquent in payment of any fees due to NCBR hereunder, Participant shall pay said delinquent fees. Participant shall ensure that all Subscribers and Staff who use and/or access the MLS Compilation, NCBR Services, and NCBR System in any manner comply with the terms of this Agreement, the Rules, and any other applicable NCBR policy. Participant shall provide NCBR with a current list of all its Subscribers, License Holders, and Staff at the execution of this Agreement and shall notify NCBR in a timely manner of any changes to Participant's Subscribers, License Holders, and Staff. Participant shall assume full responsibility for the acts of its Subscribers and Staff and the acts of its License Holders in all of Participant's offices as well as for any financial obligations for all Subscribers, License Holders, and Staff which may arise by virtue of said acts by any of them.

6.2 License Holders and Staff. Participant acknowledges and understands that its License Holders and other Staff not participating in NCBR are prohibited from accessing or using the MLS Compilation, NCBR Services, and/or NCBR System. Participant must submit a Waiver Form to NCBR certifying that any of Participant's License Holders or Staff that do not participate in NCBR will not access or use the MLS Compilation, NCBR Services, or NCBR System. Participant acknowledges the Waiver Form must be accompanied by evidence of a License Holder's participation in another MLS. It is Participant's sole responsibility to submit the Waiver Form to NCBR annually and within seven (7) days of any changes to Participant's affiliation with its Subscribers and License Holders. PARTICIPANT ACKNOWLEDGES IT MAY BE RESPONSIBLE FOR FINES, PENALTIES, AND/OR BACK PARTICIPATION FEES IN THE EVENT ANY LICENSE HOLDER OR NON-SUBSCRIBER STAFF ACCESSES THE MLS COMPILATION, NCBR SERVICES, OR NCBR SYSTEM, OR IN THE EVENT PARTICIPANT FAILS TO TIMELY SUBMIT THE WAIVER FORM TO NCBR.

6.3 Compliance with Rules and Notification of Changes. Participant certifies it has read a copy of the Rules and agrees to comply with such Rules, as may be amended from time to time. Failure to comply with the Rules and/or this Agreement may result in discipline or probation, including without limitation warnings, fines, suspension, and/or termination of Participant's participation in NCBR. Participant agrees to submit disputes for arbitration to the NCBR in accordance with the *Code of Ethics and Arbitration Manual* of the National Association of REALTORS®. Participant shall notify NCBR within seven (7) days of relocating, changing office information, or changing REALTOR® Board/Association affiliation, if any.

6.4 Compliance with Third-Party Terms. Participant acknowledges certain products or services offered by third-parties (the "**Third-Party Service Providers**") may provide Participant with access to the MLS Compilation, NCBR Services, or NCBR System, or may allow Participant to modify or add additional content to its Listing Content, including without limitation adding or modifying data, showing instructions, photographs, or video tours. Participant shall comply with the agreements, policies, or terms of any Third-Party Service Provider.

6.5 Advertising to Members. Participant shall only use the MLS Compilation, NCBR Services, and products or services offered by Third-Party Service Providers in connection with Participant's real estate brokerage activities and not for any other purpose, including without limitation to solicit, recruit, or market other products or services to Members.

6.6 Use Prohibitions. Participant agrees that it will not, and will not allow any third-party to, copy, download, reproduce, redistribute, publish, display, retransmit, broadcast, electronically manipulate, sell, license, rent, transmit, create derivatives of, or in any manner commercially exploit the MLS Compilation or any portion thereof, in any format to anyone for any purpose other than the selling, listing, or appraising of real estate. Information in the MLS Compilation and NCBR Services cannot be used to create a competing database or service. Under no circumstances shall Participant receive any form of compensation for the MLS Compilation, except as part of Participant's ordinary real estate brokerage services, nor may Participant receive any compensation for unauthorized access to the MLS Compilation from any third-party for any reason. Participant acknowledges that the MLS Compilation is confidential and its use is restricted to Participant and Participant's authorized Staff and Subscribers. Participant shall not disclose the MLS Compilation to any third-party, except as permitted in the Rules or other NCBR policy.

6.7 Certain Data Subject To Consent Withdrawal. Participant acknowledges that certain data contained in the MLS Compilation are subject to the continued consent of supplying third-parties. If at any time any supplying third-party's consent is withdrawn, all information supplied by such party shall be removed from the MLS Compilation. The MLS Compilation may be changed from time to time, without notice or liability to Participant.

6.8 Consumer Privacy. Participant agrees to comply with all applicable consumer privacy and information security laws. The MLS Compilation or other information provided through the NCBR Services may contain personally identifiable information about consumers, Subscribers, or other third-parties. Participant acknowledges it is only permitted to use such personally identifiable information for purposes authorized by this Agreement or the Rules and is prohibited from using any personally identifiable information for any other purpose, including without limitation any advertising or other commercial use, and shall not disclose personally identifiable information to any third-party.

6.9 Information Security. Participant shall use commercially reasonable measures to protect from unauthorized access or use: (a) any MLS Compilation downloaded to Participant's storage drives or devices, and (b) Participant's Login. In the event of a breach of Participant's computer network containing MLS Compilation by unauthorized persons or in the event of a loss of Participant's Login or storage drive or device which may contain the MLS Compilation, Participant agrees to notify the Chief Executive Officer of NCBR within twenty-four (24) hours of discovery of such event. At any time upon written notice to Participant, NCBR may dictate reasonable security measures, practices, and procedures that Participant must implement to safeguard and protect its Login and the MLS Compilation.

6.10 Participation Status. Participant acknowledges that if Participant no longer participates in NCBR, or if Participant's status with NCBR is inactive, neither Participant nor its Subscribers or Staff shall be granted access to the MLS Compilation, NCBR Services, or System until Participant's status is returned to active. Access to the MLS Compilation, NCBR Services, and NCBR System shall be disabled for any Subscribers in Participant's office whose subscription status with NCBR is suspended.

6.11 Internet Advertising. Unless Participant has actively withdrawn from participation in NCBR's IDX program as defined in the Rules, Participant hereby expressly consents to the online

advertising of Participant's Listing Content by NCBR Participants and Subscribers on authorized IDX Displays.

6.12 Responsible for Staff. Participant acknowledges it is responsible for supervising all use of the MLS Compilation, NCBR Services, and NCBR System by Participant's Subscribers and other authorized Staff in Participant's office, regardless of whether such Staff are employees or independent contractors. Participant shall: (a) issue appropriate instructions to its authorized Subscribers and Staff concerning the restrictions contained herein, (b) be responsible for Subscribers' and Staff's compliance with the Rules and the terms of their MLS access agreement, and (c) be responsible for any unauthorized use of the MLS Compilation or NCBR Services by License Holders.

7. FEES AND EXPENSES.

7.1 Fees. In consideration for the rights to access and/or use the MLS Compilation, the NCBR Services, and the NCBR System, Participant shall pay NCBR the participation and other fees in the amount and in accordance with the terms established by the Executive Board and set forth in the NCBR Schedule of Fees, incorporated into this Agreement by reference and as may be changed from time to time, including without limitation license fees and participation fees for each licensed broker, licensed sales associate, and licensed or certified appraiser who is employed by or affiliated as an independent contractor with Participant, unless Participant has submitted a Waiver Form for such individual. NCBR reserves the right to change its fees at any time upon notice to Participant. Participant acknowledges that failure to pay participation fees on time may result in late fees, suspension, or termination of participation in NCBR.

7.2 Fines. Participant acknowledges the failure of Participant, Subscribers, or Staff to comply with the Rules or other NCBR policies may result in the assessment of fines to Participant's account, and Participant acknowledges it is ultimately responsible for the payment of such fines.

7.3 Expenses. Participant is responsible for obtaining and maintaining all personal computers, devices, Internet connections, and computer software and shall bear all programming, technology, and methodology expenses relating to the integration of MLS Compilation into an IDX Display or VOW, or any costs that may be necessary or useful for maintaining the IDX Display or VOW, accessing and using the MLS Compilation, the NCBR Services, and the NCBR System, and for the proper use thereof.

7.4 No Refunds. Participant acknowledges all fees are nonrefundable.

7.5 Taxes. All fees are exclusive of, and Participant shall be responsible for any applicable sales, use, value-added, or other taxes, withholdings, or other obligations related to the fees paid by Participant pursuant to this Agreement or the Rules.

8. PROPRIETARY RIGHTS.

8.1 Ownership. Participant acknowledges that the MLS Compilation, the NCBR Services, and the NCBR System are valuable commercial products, the development of which has involved the expenditure of substantial time and money. The MLS Compilation and all copies, modifications, enhancements, and derivatives of the MLS Compilation are the property of NCBR, and all right, title, and interest in and to the MLS Compilation, together with all copies, modifications, enhancements, and derivatives thereof, including all copyright and other proprietary rights shall remain vested in NCBR. Except

for the rights granted Participant herein, Participant agrees and understands that NCBR shall remain the exclusive owner of all rights, title, and interest in the MLS Compilation, the NCBR Services, and the NCBR System licensed hereunder and all copyrights and renewals thereof, heretofore and hereafter secured therein. All publication, dissemination, and other rights in and to the MLS Compilation licensed hereunder are reserved for NCBR in all languages, formats and media throughout the world for the sole and exclusive use or any other disposition by NCBR, its respective assignees or grantees at any time and from time to time without obligation or liability to Participant.

8.2 Proprietary Notices. Participant agrees not to not alter, remove, or obscure any proprietary notice, watermark, disclaimer, or other notices displayed on or in connection with the MLS Compilation or any printouts of the MLS Compilation.

9. CONFIDENTIALITY.

Participant acknowledges that, as a result of its participation in NCBR, Participant shall have access to confidential information of NCBR, its Members, vendors, customers, and service providers, including without limitation trade secrets, personally identifiable information, participation roster, financials, confidential fields in the MLS Compilation, and other material marked ‘confidential’ or which, by its nature, should be known to be confidential (collectively, the “**Confidential Information**”). Confidential Information shall include the MLS Compilation to the extent its disclosure is prohibited in this Agreement and the Rules, and Participant’s Login. Participant shall treat the Confidential Information as private, confidential, and personal, and shall safeguard and maintain its security and confidentiality using the same level of care it protects its own confidential information, but no less than reasonable care. Participant shall issue appropriate instructions to its authorized Subscribers and Staff concerning the restrictions contained herein and shall initiate strict security measures to prevent the disclosure or unauthorized use of the Confidential Information. Participant shall be liable for any consequences that may result from unauthorized disclosure or use of the Confidential Information, whether intentional, negligent, or inadvertent, including but not limited to immediate termination of this Agreement and assessment of fines in accordance with the Rules. Participant acknowledges that NCBR may monitor Participant’s use of the NCBR Services and NCBR System on a regular random basis such that violations of the security of Participant’s Login will be detected. This obligation to maintain confidentiality shall survive the termination of this Agreement.

10. USE OF PARTICIPANT INFORMATION.

10.1 NCBR’s Use of Information. NCBR reserves the right to distribute to prospective Members and other third-parties certain non-confidential information concerning Participant. In addition, NCBR may collect and compile information regarding frequency of use of, or specific uses of, the MLS Compilation, NCBR Services, and NCBR System by all users, including Participant.

10.2 Third-Party Use of Information. Participant acknowledges certain third-party products and services made available via the NCBR Services may collect personal and non-personal information of Participant and its Subscribers, including without limitation name, address, real estate license number, internet protocol (IP) address, and geolocation data. Some third-party products and services require personal information from Participants and Subscribers to function correctly. A third-party’s use of Participant’s or its Subscribers’ personal and non-personal information is governed by the third-party’s applicable privacy policy and/or terms of use. NCBR is not responsible for use of personal or non-personal information by any Third Party Service Provider.

11. TERM AND TERMINATION.

11.1 Term. The Term of this Agreement shall commence upon the Effective Date and shall automatically renew and extend for one (1) year terms on January 1st of each year, unless earlier terminated in accordance with Section 11.2 or 11.3 hereof, or upon cancellation by either Party upon twenty-four (24) hours written notice to the other Party.

11.2 Termination.

11.2.1 This Agreement and the rights granted hereunder may be terminated by either Party in the event that: (a) the other Party has not performed any material obligation or has otherwise breached any material term of this Agreement, and the breach remains uncured ten (10) days after receiving written notice thereof, or the timeline set forth in the Rules, if applicable; (b) the other Party has materially breached this Agreement, and such breach is not capable of being cured; (c) Participant is no longer licensed to practice real estate or to engage in the appraisal of real property in the State of Texas; (d) Participant displays a pattern of repeated violations of the Rules or other NCBR policy; or (e) Participant fails to pay any fine when due.

11.2.2 Promptly upon any termination of this Agreement: (a) NCBR shall deactivate Participant's Login, (b) Participant shall have no further access to the MLS Compilation, NCBR Services, or NCBR System, (c) the MLS Compilation shall be removed from Participant's IDX Display and VOW, if applicable, (d) Participant shall delete all MLS Compilation from its computers, disks, drives, and devices and shall destroy any printouts of the MLS Compilation, (e) Participant shall pay any outstanding fees or fines due to NCBR, and (f) the NCBR subscription of any Subscribers in Participant's office shall be terminated. Participant acknowledges that NCBR shall have no obligation to refund any fees or charges or any portion thereof paid to NCBR prior to termination.

11.3 REALTOR® Membership Termination. Should Participant terminate its REALTOR® membership with Participant's REALTOR® Association, this Agreement shall terminate and the rights to access the MLS Compilation, NCBR Services, and NCBR System for all Participant's Staff and Subscribers shall also be terminated.

12. NCBR SERVICE MARKS AND LOGOS.

12.1 License. NCBR hereby grants to Participant, during the term of this Agreement, a limited nonexclusive, nontransferable revocable license to use the NCBR trade name, logo, and other trademarks (collectively, the "Trademarks") for the NCBR Services as available, in advertising, promotion, and marketing materials solely for the purpose of announcing Participant's use of and participation in the NCBR Services to prospective customers. Participant may re-publish any description of the NCBR Services which have been published by NCBR, provided the description is re-published on a verbatim basis but shall not, under any circumstances, make any unauthorized representations or warranties regarding the NCBR Services or the MLS Compilation.

12.2 Restrictions. Participant understands it is prohibited from: (a) altering or modifying the Trademarks, (b) using the Trademarks for any purpose not authorized by this Agreement, the Rules, or other NCBR policy, (c) allow any third-party to use or display the Trademarks without NCBR's prior consent, or (d) using the Trademarks in any manner that suggests Participant is sponsored or endorsed by NCBR.

13. WARRANTY DISCLAIMER.

PARTICIPANT EXPRESSLY AGREES THAT THE MLS COMPILATION, NCBR SERVICES, AND THE NCBR SYSTEM ARE PROVIDED ON AN “AS IS,” “AS AVAILABLE” BASIS, AND THAT USE OF THE MLS COMPILATION, NCBR SERVICES, AND NCBR SYSTEM ARE AT THE SOLE RISK OF PARTICIPANT. NCBR DOES NOT WARRANT THAT THE NCBR SERVICES OR TRANSMISSION OF THE MLS COMPILATION WILL BE UNINTERRUPTED OR ERROR-FREE, AND NCBR MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, OR RELIABILITY OF THE MLS COMPILATION. NCBR AND ITS LICENSORS DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, OR QUIET ENJOYMENT. NCBR DOES NOT WARRANT THAT THE MLS COMPILATION WILL MEET PARTICIPANT’S REQUIREMENTS. PARTICIPANT IS NOT ENTITLED TO A REFUND FOR ELECTRONIC TRANSMISSION ERRORS OR OUTAGES AT ANY TIME UNDER ANY CIRCUMSTANCES.

14. LIMITATION OF LIABILITY.

14.1 Limitations and Exclusions. NEITHER NCBR NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, OR REPRESENTATIVES SHALL BE LIABLE TO PARTICIPANT OR ANYONE ELSE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF REVENUE, BUSINESS INTERRUPTION, LOST DATA, OR COST OF SUBSTITUTE DATA, THAT RESULT FROM: (A) THE USE OF, OR INABILITY TO USE, THE MLS COMPILATION, NCBR SERVICES, AND/OR THE NCBR SYSTEM, (B) RELIANCE BY PARTICIPANT, ITS SUBSCRIBERS, OR STAFF ON ANY INFORMATION, INCLUDING BUT NOT LIMITED TO THE MLS COMPILATION OBTAINED THROUGH USE OF THE NCBR SYSTEM OR THE NCBR SERVICES, (C) MISTAKES, OMISSIONS, DELETIONS, OR DELAYS IN TRANSMISSION OF SUCH INFORMATION, INTERRUPTIONS IN TELECOMMUNICATIONS OR INTERNET CONNECTIONS TO THE NCBR SYSTEM AND THE NCBR SERVICES, (D) VIRUSES, WORMS, TROJAN HORSES, OR FAILURES OF PERFORMANCE, OR (E) ACTS BEYOND ITS REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION ACTS OF GOD, TELECOMMUNICATIONS OR INTERNET FAILURE, THEFT OR DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO, THE MLS COMPILATION, NCBR SERVICES, AND/OR THE NCBR SYSTEM.

14.2 Third-Party Liability. PARTICIPANT ACKNOWLEDGES AND UNDERSTANDS THAT NEITHER NCBR, NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, OR REPRESENTATIVES SHALL BE LIABLE TO PARTICIPANT FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF ANY THIRD-PARTY PRODUCT OR SERVICE, INCLUDING BUT NOT LIMITED TO ANY THIRD-PARTY PRODUCTS OR SERVICES THAT INTEGRATE THE MLS COMPILATION OR ANY ACTION OF A THIRD-PARTY SERVICE PROVIDER. NCBR SHALL NOT BE RESPONSIBLE FOR ANY MISUSE, INFRINGEMENT, OR UNAUTHORIZED DISPLAY OF PARTICIPANT’S LISTING CONTENT BY ANY THIRD-PARTY. PARTICIPANT UNDERSTANDS IT IS PARTICIPANT’S SOLE RESPONSIBILITY TO REVIEW SUCH THIRD-PARTY PRODUCTS AND/OR SERVICES PRIOR TO ENTERING INTO AN AGREEMENT OR ACCEPTING SUCH PRODUCTS AND/OR SERVICES FROM A THIRD-PARTY SERVICE

PROVIER, AND USE OF SUCH THIRD-PARTY PRODUCTS AND/OR SERVICES SHALL BE AT PARTICIPANT'S SOLE RISK.

14.3 Maximum Aggregate Liability. IN NO EVENT SHALL ANY LIABILITY OF NCBR, ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, OR REPRESENTATIVES ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY PARTICIPANT HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

15. LIQUIDATED DAMAGES FOR UNAUTHORIZED USE.

Participant acknowledges that damages suffered by NCBR from access to the MLS Compilation, NCBR Services, or the NCBR System by an unauthorized third-party as a result of disclosure of Participant's username and/or password would be speculative and difficult to quantify. Accordingly, as a material inducement to NCBR to enter into this Agreement with Participant, Participant agrees that in the event that any disclosure of Participant's Login results in access to the NCBR System and the NCBR Services by an unauthorized third-party or in the event Participant makes unauthorized disclosure of MLS Compilation regardless of whether such disclosure is intentional, negligent, or inadvertent, Participant shall be liable to NCBR, at NCBR's option, for liquidated damages in the amount of Fifteen Thousand Dollars (\$15,000.00) per incident or the amount set forth in NCBR's Rules, whichever is greater.

16. PARTICIPANT REPRESENTATIONS AND WARRANTIES.

In addition to the warranties made by Participant in Section 5 of this Agreement, Participant represents and warrants to NCBR that: (a) Participant is a REALTOR[®] in good standing; (b) Participant holds a current, valid real estate license or an appraiser's license in the State of Texas and is authorized to provide real estate brokerage or appraisal services; and (c) Participant is duly authorized to enter into this Agreement and, if applicable, the Agreements by and between NCBR and Participant's Subscribers.

17. INDEMNIFICATION BY PARTICIPANT.

Participant shall protect, defend, indemnify and hold harmless NCBR and its officers, directors, employees, shareholders, agents, representatives and/or other Members from any and all liability, damages, loss, or expense, including reasonable fees of attorneys and other professionals, arising from any claim, demand, action or proceeding initiated by any third-party arising out of or relating to: (a) the negligent, intentional, or illegal acts of Participant, (b) inaccuracy of any Listing Content supplied to NCBR by Participant or by any of Participant's Subscribers or Staff, (b) unauthorized use of Participant's or its Subscribers' Logins, (c) Participant's unauthorized use of the MLS Compilation, (d) infringement of any contract or proprietary right of any third-party by Participant or its Listing Content, or (e) Participant's breach of this Agreement, any Third-Party Service Provider terms or conditions, or violation of applicable law. Participant shall assist NCBR, at Participant's expense, in the defense or settlement of any claim to which these indemnification obligations apply. These indemnification provisions shall survive the termination of Participant's participation in NCBR and the termination of this Agreement.

18. INJUNCTIVE REMEDIES.

Participant acknowledges and agrees that the MLS Compilation, NCBR Services, and NCBR System are confidential and proprietary products and that in the event there is an unauthorized disclosure of such

by Participant, no remedy at law may be adequate. Therefore, Participant agrees that in the event of such unauthorized disclosure or use of the MLS Compilation, NCBR Services, and NCBR System, NCBR may seek injunctive relief or other equitable remedies against Participant in addition to all available remedies at law, without posting a bond or security of any kind.

19. LEGAL FEES AND COSTS.

In the event of any legal action between Participant and NCBR relating to this Agreement, the Rules, or other NCBR policy where NCBR is the prevailing party, NCBR shall be entitled to recover its reasonable attorneys' fees, costs, and expenses incurred in such action or proceeding from Participant. Participant will also be responsible for any legal fees and costs incurred by NCBR in enforcing any order or collecting a judgment.

20. MISCELLANEOUS.

Participant agrees and acknowledges that NCBR may change the terms of this Agreement as the result of any amendments to the Rules or other NCBR policy, which shall be effective immediately upon the adoption of such Rule or policy change by NCBR. In the event of any discrepancy between this Agreement or the Rules, the Rules shall govern. No waiver of any provision of this Agreement shall be effective unless in a writing signed by the waiving Party. Waiver by NCBR of any breach of any provision of this Agreement by Participant shall not be construed as a waiver of any subsequent breach. Any notices required or permitted to be given hereunder shall be: (a) delivered personally, (b) sent to each Party at the addresses as set forth in this Agreement by certified mail, return receipt requested, with delivery tracking, (c) sent by reputable overnight or two-day courier, or (d) sent via confirmed email. Notices shall be sent to Participant at the address or email address on file with NCBR and to NCBR at:

Mail: Texas Association of REALTORS
Attn: General Counsel
1115 San Jacinto Blvd, Suite 200
Austin, TX 78701

Email: general.counsel@texasrealtors.com

Notices shall be effective: (i) upon delivery, when sent by personal delivery, certified mail, or courier, and (ii) one (1) business day after sending, if sent via email. If any term or provision of this Agreement shall be found to be illegal or unenforceable then the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken. This Agreement contains the entire understanding of the Parties and supersedes all previous oral and written agreements on the subject hereof. NCBR shall not be liable for any delay or failure in performance resulting from causes beyond NCBR's reasonable control, including without limitation acts of war, terrorism, riots, strikes, embargos, lockouts, government action or interference, pandemics, endemics, fires, or natural disasters. This Agreement cannot be assigned without the prior written consent of NCBR. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. Any action to enforce or interpret this Agreement shall be brought in the federal or state courts located in Travis County, Texas.

[Remainder of page left intentionally blank. Signature page follows.]

