

# Unlock MLS Participant Agreement

This **AGREEMENT** is made and entered into by Austin/Central Texas Realty Information Service dba Unlock MLS ("**Unlock MLS**") both with offices at 4800 Spicewood Springs, Austin, TX 78759, and the "**Firm Participant**" identified below.

## DEFINITIONS AND USAGE

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

**ABOR Website:** The web pages located at [www.abor.com](http://www.abor.com) owned, developed, and maintained by Austin Board of REALTORS® (ABOR) and Unlock MLS.

**Client:** A Customer with which Participant has entered into a professional relationship governed by brokerage or appraisal license law.

**Customer:** A person or entity to which Participant provides services. For purposes of this Agreement, a "Customer" does not include a County Assessment District established under Section 6.01 of the Texas Tax Code or any of its officers, employees, or contractors acting in their capacity of appraising the values of properties for purposes of taxation, but it does include any consumer appealing a property tax assessment by any such County Assessment District.

**Individual Participants:** The natural person, identified as "Individual Participant" in the signature block below, who is responsible for Firm Participant's conduct under Unlock MLS Policies with regard to each office of Firm Participant and who is a "participant" as that term is defined in the Unlock MLS Policies.

**Other Participants and Subscribers:** All participants, subscribers, and users of Unlock MLS not party to this Agreement.

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

**Participant Contribution:** All data that the Subscribers submit, contribute, or input in the Unlock 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 Unlock MLS System for their own later use that is not intended by them to be available to Other Participants and Subscribers, including client prospect and contact information.

**Schedule of Fees:** Unlock MLS's document that establishes the fees for Unlock MLS Service.

**Subscribers:** All persons defined as "Subscribers" in Unlock MLS Policies who are affiliated with Firm Participant, plus, solely for purposes of this Agreement, Firm Participant's employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

**Unlock MLS Affiliates:** Unlock MLS Affiliates means Unlock MLS, ABOR, and their respective officers, directors, employees, agents, representatives, licensors, and shareholders.

**Unlock MLS Database:** All data available to Firm Participant on the Unlock MLS System, including the Participant Contribution, Participant Compilation Contribution, and all other photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information.

**Unlock MLS Policies:** Unlock MLS's then-current bylaws, rules and regulations, policies and procedures adopted by the Unlock MLS or ABOR Board of Directors or their authorized delegates, as amended by them from time to time; and the ABOR Website Terms of Use located at <https://www.abor.com/terms-of-use> and ABOR Privacy Policy located at <https://www.abor.com/privacy-policy>, each as amended from time to time in ABOR's sole discretion.

**Unlock MLS Service:** The services Unlock MLS provides to Firm Participant under this Agreement, including the Leasing Management Service (as described in Unlock MLS Policies), and similar services Unlock MLS provides to third parties under similar agreements, including any access or license to the Unlock MLS Software, the Unlock MLS Database, the Unlock MLS System, and the ABOR Website.

**Unlock MLS Software:** Unlock MLS's proprietary web browser interface(s), including [www.matrix.abor.com](http://www.matrix.abor.com), to the Unlock MLS System.

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

## UNLOCK MLS'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the Unlock MLS Policies, Unlock MLS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the Unlock MLS service by virtue of this Agreement or another license agreement; and Individual Participants for which Firm Participant is responsible shall have all rights and obligations of a participant in Unlock MLS as set forth in the Unlock MLS Policies. Unlock MLS may require Individual Participant to change Individual Participant's password at any time. The user ID and password will provide Individual Participants access to all data and functions in the Unlock MLS Service to which Individual Participants are entitled under the Unlock MLS Policies. Unlock MLS makes no warranties, however, that the Unlock MLS Service will be available at all times. Unlock MLS may use a third party contractor, determined in Unlock MLS's sole discretion, to facilitate its responsibilities under this Agreement.

## FIRM PARTICIPANT ACKNOWLEDGMENTS.

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

5. **Editorial control.** Unlock MLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the Unlock 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, Unlock 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 Unlock MLS Policies, or infringement of intellectual property rights. Additionally, Unlock 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 Participant must at all times have an Individual Participant designated for each office. Firm Participant shall ensure that at all times Individual Participants for which Firm Participant is responsible under this Agreement satisfy the prerequisites for participation in the Unlock MLS Service as set out in the Unlock MLS Policies. Subscribers must be affiliated with an Individual Participant at all times during the term of this Agreement. Firm Participant and Individual Participant will comply at all times with (a) Unlock MLS Policies, and (b) 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.). Individual Participant and Firm Participant will ensure Subscribers' compliance with the foregoing.

7. **Saved Information.** Saved Information may not always be available to Firm Participant and may become available to unauthorized persons. Unlock MLS is not liable for unauthorized access to or loss of Saved Information. Firm 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.** Unlock MLS reserves the right to distribute to third parties certain information about Firm Participant, including Firm Participant's and Individual Participants' names and business addresses, phone numbers and email addresses. Unlock MLS reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and Subscribers' use of the Unlock MLS Service, but not about Firm Participant's or Individual Participants' use specifically unless required by law.

9. **Non-MLS uses.** Firm Participant acknowledges that Unlock MLS may also use or permit the use of Participant Contribution for non-MLS purposes, all of which are listed on the webpage at <https://www.abor.com/MLS-data-use-notice>. If Firm Participant does not want the Participant Contribution used for any such purposes, Firm Participant may opt out by following the instructions on that page.

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

11. **IDX and VOW data access subject to separate agreement; third-party TOU.** Firm Participant acknowledges that access to Unlock MLS's IDX or VOW database and data feeds can occur only upon execution of a separate written agreement between Unlock MLS, Firm Participant and Subscriber, as applicable. Firm Participant acknowledges that access to third-party software offered via Unlock MLS Services may be subject to separate third-party terms of use ("Other TOUs"). For avoidance of doubt, Firm Participant shall be subject to the terms and conditions of this Agreement as well as any Other TOUs for those products and services to which they apply.

## FIRM PARTICIPANT'S OBLIGATIONS.

12. **Unlock MLS Policies; Use limited; Compensation.** Firm Participant agrees to be bound by Unlock MLS Policies. Firm Participant shall use the Unlock MLS Service solely for the purpose of serving Clients and Customers in selling, listing, leasing, valuing, and appraising real estate, strictly as permitted by the Unlock MLS Policies. Except as expressly provided in this Agreement and the Unlock MLS Policies, Firm Participant shall not copy, create derivative works of, distribute, perform, or display the Unlock MLS Service or any part of it, except the Participant Contribution. Firm Participant acknowledges the following statements and may not communicate with any consumer in any manner that contradicts any of the following statements or brings them into doubt:

- (a) A broker's compensation and fees for services are not set by law and are fully negotiable.
- (b) A broker's compensation for services rendered to a seller or for services rendered to a buyer is solely a matter of negotiation between the broker and their client, and is not fixed, controlled, recommended, or maintained by any persons not a party to the brokerage service agreement.
- (c) The compensation paid by a listing broker to a cooperating broker in respect to any listing is established by the listing broker and/or seller and is not fixed, controlled, recommended, or maintained by any persons other than the listing broker and/or seller.

13. **Confidentiality.** Firm Participant shall maintain the confidentiality of its user ID and password, and the Unlock MLS Database. Unlock MLS issues each Subscriber a separate and unique ID and password. Firm Participant shall ensure that (a) its Subscribers maintain the confidentiality of their user IDs and passwords, (b) Subscribers do not share their user IDs or passwords, and (c) that no one but authorized Subscribers obtains access to the Unlock MLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the Unlock MLS Database, and the Unlock MLS System, Firm Participant shall take the greater of reasonable care or the care it takes to protect its own confidential information. Firm Participant and Individual Participant shall not make any user IDs, passwords, the Unlock MLS Database, or the Unlock MLS System available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement or the Unlock MLS Policies. Failure to comply with this provision will result in a significant fine, as set forth in the Unlock MLS Policies. Firm Participant may disclose confidential information under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, the disclosing Firm Participant first gives reasonable notice to Unlock MLS to permit Unlock MLS to seek a protective order.

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

15. **Participant Contribution.** With regard to any Subscriber making a Participant Contribution to the Unlock MLS Service, Firm Participant warrants that the information submitted complies with all applicable laws, statutes, ordinances and regulations and the Unlock 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. Firm Participant warrants that the Participant Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation or proceeding pending or threatened with respect to the Participant Contribution.

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

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

18. **List of Subscribers.** Firm Participant shall ensure Unlock MLS has a current list of all of its Subscribers; Firm Participant shall inform Unlock MLS in writing of any change in the Subscribers within 24 hours of the change or the timeframe in the Unlock MLS Policies, whichever is greater.

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

## INTELLECTUAL PROPERTY.

20. **Election regarding copyrights in Participant Contributions.** Firm Participant must select either Option I or Option II in the Intellectual Property Election paragraph below. If no election is indicated, or if both options are checked, then Participant is deemed to have selected Option II.

### OPTION I

(a) **Assignment from Participant.** Firm Participant hereby unconditionally assigns to Unlock MLS all right, title and interest in the Participant Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; Firm Participant warrants that it has or will have the authority to make this assignment at the time the Participant Contribution is entered into the Unlock MLS Database. Firm Participant acknowledges that once it has made the election agreeing to this section, all copyrights in all portions of the Participant Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in Unlock MLS. If for any reason the foregoing assignment fails, Firm Participant grants to Unlock MLS a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution. Firm Participant warrants that it has the authority to grant this license.

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

### OPTION II

(a) **License from Participant.** Firm Participant hereby grants to Unlock MLS a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution. Firm Participant warrants that it has the authority to grant this license.

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

21. **Other provisions.** Consistent with the Unlock MLS Policies that establish Unlock MLS as the owner of compilation of the Unlock MLS Database, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of Unlock 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, Firm Participant agrees to assign and hereby does assign to Unlock MLS all right, title, and interest in the PCC including, without limitation, any copyrights therein under United States and international copyright law. Unlock MLS hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the Unlock MLS Software and the Unlock MLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the Unlock MLS Policies and only to deliver real estate brokerage or appraisal services to Firm Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the Unlock MLS Policies are prohibited. Title to the Licensed Materials remains at all times in Unlock MLS and shall not pass to Firm Participant.

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

23. **Limitations on use by Unlock MLS.** Unlock MLS will use the Participant Contribution only in manners consistent with Unlock MLS Policies. Unlock 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 Unlock MLS Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after Unlock MLS has provided notice of its intention to provide the Participant Contribution to the third party. If Unlock MLS enters a data sharing agreement with any other multiple listing service (as that term is defined in Unlock MLS Policies) Unlock MLS may license and distribute the Participant Contribution to the other multiple listing service in the data share and its users without obtaining any consent from Firm Participant.

## FEES AND PAYMENT TERMS.

24. **Applicable fees.** Firm Participant shall pay the fees set forth in Unlock MLS's published Schedule of Fees, which Unlock MLS may amend at any time subject to the terms of Paragraph 29.

25. **Payment terms.** Firm Participant shall pay the fees and other amounts according to the terms set out in the Unlock MLS Policies and Schedule of Fees.
26. **No refunds.** Unlock MLS need not refund or pro-rate fees in the event of termination or suspension of this Agreement unless the Unlock MLS Policies provide otherwise. Initiation or set-up fees, if any, are not refundable.
27. **Taxes.** All fees for the Unlock 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, Firm Participant shall pay all such taxes and levies other than any tax or levy on the net income of Unlock MLS.
28. **Fee increases.** Unlock MLS may amend the Schedule of Fees at any time at its sole discretion. Unlock MLS shall provide written notice to Participant at least thirty days in advance of the effective date of any fee increase. If Participant objects to the increase, Participant may terminate this Agreement by written notice to Unlock MLS at any time before the effective date of the increase.
29. **Fines.** Unlock MLS may collect fines from Firm Participant and from Individual Participants for violation of the Unlock MLS Policies by Firm Participant, Individual Participant and Subscribers. Payment terms for fines are set out in the Unlock MLS Policies. Unlock 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 date it is executed by Individual Participant set forth below and shall continue thereafter on a month-to-month basis until terminated.
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 Unlock MLS Policies.** Paragraph 32 notwithstanding, Unlock MLS may terminate this Agreement if Firm Participant fails to comply with the Unlock MLS Policies; if Firm Participant fails to comply with the Unlock MLS Policies, violates or is alleged to have violated the Unlock MLS Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or appeal rights of Firm Participant have expired as provided in the Unlock MLS Policies. If in Unlock MLS's judgment, however, a violation or alleged violation of the Unlock MLS Policies is resulting in a continuing harm to Unlock MLS or Other Participants or Subscribers, Unlock MLS may suspend Firm Participant's access to the Unlock MLS Database during the pendency of any hearing or appeal.
33. **Termination for failure to pay.** In the event Firm Participant fails to pay any fees required under this Agreement, Unlock MLS may terminate service without being subject to arbitration. In its sole discretion, Unlock MLS may suspend its performance under this Agreement rather than terminating it, in the event that Firm 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 ninety days' written notice to the other party.
35. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) Unlock MLS shall deactivate Firm Participant's and Individual Participants' applicable user ID and password issued pursuant to this Agreement, and Firm Participant and Individual Participants shall have no further access to the Unlock MLS Service; (b) Firm Participant shall purge all copies of the Unlock MLS Software and the Unlock MLS Database (except the Participant Contribution) from Firm Participant's personal computers, and other electronic device and internal or external (including cloud) storage, and shall cause Individual Participants and Subscribers to do the same; and (c) all licenses granted hereunder, except the license to the Participant Contribution in Paragraph 21 Option I(b) and Paragraph 21 Option II(a), if any, shall immediately terminate.
36. **Effect on Subscribers.** In the event of any termination of this Agreement, all Subscriber license and access agreements will automatically terminate; the intellectual property option selected by Firm Participant in this Agreement will survive termination. In the event of any suspension of this Agreement, upon Unlock MLS notice to Subscriber acting pursuant to this Agreement, Unlock MLS may in its sole discretion suspend all Subscriber access to Unlock MLS System. If Unlock MLS does not exercise its right to suspend Subscriber access to the Unlock MLS System, the applicable Subscriber license and access agreement shall continue in force with the intellectual property option selected by Firm Participant in this Agreement.

## **DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.**

37. **DISCLAIMER OF WARRANTIES.** UNLOCK MLS PROVIDES THE UNLOCK MLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE UNLOCK MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE UNLOCK MLS SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE UNLOCK MLS AFFILIATES DO NOT WARRANT THAT THE UNLOCK MLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE UNLOCK MLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE UNLOCK MLS SERVICE. THE UNLOCK MLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE UNLOCK MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE UNLOCK MLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Unlock MLS Service may contain third-party content, including hyperlinks to web sites operated by parties other than Unlock MLS; Unlock MLS does not control such third party content, including web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the third party content providers, including any web sites' operators.
38. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE UNLOCK MLS AFFILIATES SHALL BE LIABLE TO FIRM PARTICIPANT OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE UNLOCK MLS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE UNLOCK MLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE UNLOCK 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 UNLOCK MLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.
39. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL UNLOCK MLS BE LIABLE TO FIRM PARTICIPANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT HAS PAID UNLOCK MLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100.

40. **Indemnification.** Firm Participant shall defend, indemnify and hold the Unlock 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 any of the Unlock MLS Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the Unlock MLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the Unlock 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.** Firm Participant acknowledges that Unlock 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 Participant acknowledges and agrees that the Unlock MLS Software and Unlock MLS Database are confidential and proprietary products of Unlock MLS and that in the event there is an unauthorized disclosure of them by Firm Participant, no remedy at law will be adequate. Firm Participant therefore agrees that in the event of such unauthorized disclosure of Unlock MLS Software or Unlock MLS Database, Unlock MLS may obtain injunctive relief or other equitable remedies against Participant in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

43. **Dispute resolution.** In the event Unlock MLS claims that Firm Participant has violated the Unlock MLS Policies, Unlock MLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the Unlock MLS Policies, provided MLS does not also base a claim that Firm Participant has breached this Agreement on the same facts. Firm Participant acknowledges that Unlock MLS Policies may limit Firm Participant's legal rights with regard to disputes with other customers of Unlock MLS. Except as provided in this paragraph and in Paragraph 34, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by agreement of the parties or, lacking agreement, 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 Travis County, Texas, except that it may be held by telephone or video conference where the Arbitration Rules expressly so permit. Firm 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 Travis County, Texas.

44. **Liquidated damages.** Firm Participant acknowledges that damages suffered by Unlock MLS from access to the Unlock MLS Service by an unauthorized third party as a result of disclosure of Firm Participant's password or an unauthorized disclosure by Firm Participant of the Unlock MLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to Unlock MLS to enter into this Agreement with Firm Participant, Firm Participant agrees that (a) in the event that any disclosure of Firm Participant's or Individual Participants' password results in access to the Unlock MLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Firm Participant shall be liable to Unlock MLS for liquidated damages in the amount of \$5,000 (or the amount established in the Unlock MLS Policies, whichever is greater) and termination of this Agreement; and (b) in the event that Firm Participant makes unauthorized disclosure of any portion of the Unlock MLS Database to any third party, Firm Participant shall be liable for liquidated damages in the amount of \$5,000 (or the amount established in the Unlock 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 Unlock MLS and Firm Participant, or Unlock MLS and any Subscriber, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or arbitration. If Unlock MLS is the prevailing party in an action against a Subscriber, Firm Participant shall be obligated to pay these costs on the Subscriber's behalf.

## **MISCELLANEOUS.**

46. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by Unlock MLS and Firm Participant, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association (other than ABOR, Unlock MLS's parent organization), or other third party.

47. **Interpretation and amendment.** Firm Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). Unlock MLS may amend this Agreement by providing thirty days' advance notice of the amendment to Firm Participant. If Firm Participant or any Subscriber continues to use the Unlock MLS Service or Unlock MLS Database after the expiration of the thirty-day notice period, Firm 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 Participant. Any purported assignment or delegation 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 38 through 42 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm Participant's access to the Unlock 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 Texas applicable to contracts made and performed in Texas, 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.

52. **Authority to Bind.** Individual Participant herein represents and warrants that they have all necessary power and authority to bind Firm Participant and to execute this Agreement on Firm Participant's behalf.

**Intellectual Property Election.** In accordance with Paragraph 20, Firm Participant must elect from the following options. If no election is indicated, or if both options are checked, then Firm Participant is deemed to have selected Option II.

- Option I: Assignment from Participant - Firm Participant assigns Participant Contribution to Unlock MLS
- Option II: License from Participant - Firm Participant licenses Participant Contribution to Unlock MLS

Having read this Agreement, Individual Participant expresses Individual Participant's and Firm Participant's assent to the terms of this Agreement by setting their signature below.

**Firm Participant name:** \_\_\_\_\_

**Typed signature of Individual Participant:** \_\_\_\_\_

**Individual Participant name:** \_\_\_\_\_

**Individual Participant title:** \_\_\_\_\_