

SOUTHERN ADIRONDACK MULTIPLE LISTING SERVICE, INC.
PARTICIPATION AND SUBSCRIPTION MASTER LICENSE AGREEMENT

AGREEMENT made this _____ day of _____, 20____, by and between SOUTHERN ADIRONDACK MULTIPLE LISTING SERVICE, INC., with offices located at 296 Bay Road, Queensbury, New York (hereinafter referred to as "SAMLS") and _____, with offices located at _____ (hereinafter, referred to as either "Participant" or "Subscriber").

WHEREAS, SAMLS is the owner of a compilation of real estate data stored in a computer database; and

WHEREAS, SAMLS operates a multiple listing service which facilitates offers of cooperation by and between licensed real estate brokers and their agents with respect to residential and commercial real property; and

WHEREAS, SAMLS compiles, formats and distributes information relating to real property to its participants, subscribers and others, all for various commercial purposes; and

WHEREAS, Participant or Subscriber is anxious to utilize or continue to utilize the facilities of SAMLS in order to distribute information and offers of cooperation to other licensed real estate brokers; and

WHEREAS, Participant or Subscriber is anxious to obtain SAMLS data and information with respect to residential and commercial real property; and

WHEREAS, all of the parties hereto recognize the mutual benefit in the accomplishment of the above goals and aspirations;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. For the purpose of this Agreement the following definitions shall apply:

"Access Authorization: or "Access" shall mean the authority granted by SAMLS under a license to User.

"Agency/Agency Relationship" shall mean the fiduciary relationship which results from a listing agreement entered into by and between a Participant and the owner of real property.

"Data" shall mean all information and elements of information input, output, stored or manipulated by a computer in general and by the computer owned and operated by SAMLS in particular or an out source under contract with SAMLS to store such information and elements of information input and output in particular.

"Data" shall mean the logical structure within which data is stored in the computer equipment housed at SAMLS (hereinafter referred to as the "Designated Host Equipment").

"Downloading" shall mean the electronic copying of data from the Designated Host Equipment to electromagnetic media of an intelligent. Workstation/computer registered under an Access Authorization.

"Format" shall mean the general makeup of input screens and output displays or printouts including arrangements, layouts and location of all information.

“Property Data Section” shall mean the documents designed by SAMLs which set forth information with respect to the real property being sold or rented; i.e., the size of the parcel of real property, the number of rooms, the taxes, the purchase price or rent, etc.

“Listing/Listing Agreement” shall mean a written contract of employment between a Participant and an owner or landlord of real property whereby the owner or landlord hires the participant to act as the owner’s or landlord’s exclusive agent for the purpose of selling or renting said real property and authorizes the participant to enter such information into the SAMLs database.

“Participant” shall mean a licensed real estate broker who is a subscriber of SAMLs pursuant to the Rules and Regulations of SAMLs who accesses the data for the purpose of acting as a broker as defined by Article 12A of the Real Property Law of the State of New York in facilitating the sale or rental of real property.

“Program” shall mean instructions, statements or functions embodied in hardware, firmware, or software, or in any other form acceptable to a computer which causes, directly or indirectly, data or programs to be transmitted, received, stored, retrieved, manipulated, displayed, printed, error checked, encoded or decoded.

“Program Property” shall mean each program or part thereof and all formats, forms, documentation and descriptions pertaining thereto, whether operative in/on the host file servers, term servers, host modems, remote modems, remote protocallers, remote terminals or remote computer.

“Software” (I) shall mean a computer program; a set of instructions written in a specific language that command the computer to perform various operations on data contained in the program or supplied by the user as well as the intellectual creation comprising the programs, procedures, rules and any associated documentation pertaining to the operation of a data processing system.

“Subscriber” shall mean a licensed real estate broker who is a Participant and has agreed to be bound by the terms of this Agreement together with each salesperson, associate broker or broker associate licensed to such Participant and for whom the Participant is responsible under the laws of the State of New York.

“Use” shall mean accessing or activation any portion of the program property, the data or database.

“User” shall mean any individual who shall cause the program properly to be used.

“Workstation” shall mean a terminal device capable of accessing or activation the program property.

2. SAMLs hereby acknowledges that each agency relationship created by a listing agreement is the sole property of the Participant and that SAMLs is not a party to such relationship and has no rights or duties with respect thereto.

3. Participant and Subscriber agree to enter into the SAMLs computer database information as required by the rules, regulations and policies of SAMLs concerning real property listed by the Participant pursuant to an exclusive agreement with the property owners requesting that their property be marketed with the assistance of participating brokers of SAMLs.

4. The Participant and/or Subscriber acknowledges that when the information contained on the property data section is inputted into the SAMLs database or otherwise delivered to SAMLs it shall be entered into the data compilation of real estate information owned exclusively by SAMLs and may thereafter be utilized by the Participant and/or Subscriber only in accordance with these terms and conditions of this Agreement. The act of Participant or Subscriber entering such information into the SAMLs compilation shall transfer all ownership rights to such data to SAMLs to the same extent as if said data was obtained by the Participant or Subscriber as a work for hire for SAMLs.

5. SAMLs hereby grants Participant and/or Subscriber a limited non-exclusive license to receive and use information either mechanically or electronically from SAMLs' database or by the delivery of written information from SAMLs to the participant or Subscriber, whether in the form of daily updates, listing compilations, or published listing books, including the information supplied to SAMLs by the participant or Subscriber, for the sole and exclusive purpose of utilizing said information in order to facilitate the dissemination of information about real property for sale or rental, to facilitate the rental or sale of such real property or for internal use within the office of the Participant for the purpose of planning and developing marketing strategies related to the sale or rental of real property and other in office administrative functions. Such use of database shall be limited by and is subject to the provisions of the Rules and Regulations of SAMLs, which SAMLs reserves the right to change, amend and modify. All other rights or uses of the said information are expressly reserved to SAMLs and Participant and Subscriber agree into to use the same except as expressly authorized by this Agreement or by written authorization of SAMLs received in advance of such use.

6. For the sole purposes set forth in Paragraph 5 above, SAMLs hereby grants the Participant and/or Subscriber a limited non-exclusive license to electronically transfer information from SAMLs' database to the participant's own database and to use and manipulate such data so as to be able to use the same solely for the purposes set forth in Paragraph 5 hereof and for no other purpose. Participant and Subscriber also acknowledge that this license to use and manipulate the aforesaid data and information shall only exist during such time as the Participant or the Subscriber maintains a relationship with SAMLs as a Participant or Subscriber and as a member of SAMLs. Upon the termination of such relationship, each Subscriber or Participant shall immediately comply with Paragraph 18 of this agreement.

7. Notwithstanding the provisions of Paragraph 4 above, Participant shall have the right to designate certain information contained on the property data section as confidential when such information in fact relates to the person or persons who own the real property as distinguished from the real property itself and where such information is not generally available to the public, i.e., an unlisted telephone number where the owner specifically requests the participant not to divulge the number to persons other than real estate brokers who are acting as agents of the participant or subagents of the owner. SAMLs reserves the right, however, to designate those fields of data which may not be designated as confidential.

8. Nothing herein shall be construed so as to prevent a Participant or Subscriber from disseminating parts of the database to persons who the Participant believes in good faith are interested in listing their property for sale with the Participant or Subscriber or are interested in purchasing through the Participant or Subscriber properties listed with the Participant or with other Participants of SAMLs. It is the intention of this paragraph to allow each Participant and/or Subscriber full latitude to disseminate so much of the SAMLs data or database to third parties who are the broker's services either to purchase, rent or sell property as may be reasonably necessary in order to induce such third party to list their property for sale or rent with the Participant or Subscriber or rent or purchase real property utilizing the services of the Participant or Subscriber. Such dissemination of data or use of the database shall be limited by and is subject o the provisions of the Rules and Regulation of SAMLs.

9. All data and information as provided to Participant through access to the SAMLs data and/or database shall be considered confidential and proprietary information of SAMLs even though not stamped with a proprietary information stamp or similar legend or marking. All information and data transferred or sent to or copied by Participant as part of this Agreement will remain solely within the possession and control of the Participant. Participant agrees to protect the confidentiality of all SAMLs data, database and information and not to publish or disclose such data, database and/or information to any third party without prior written permission from SAMLs except for the limited purposes set forth in Paragraphs 5 and 8 hereof.

10. To the extent that the Participant and/or Subscriber develops its own computer software programs for the manipulation, storage or other use of the SAMLs data or database such Participant and/or Subscriber acknowledges that it shall be restricted in its use and manipulation of such data or database solely for the purposes set forth in Paragraph 5 through 8 inclusive hereof. Other than as permitted in Paragraphs 5 through 8 hereof, neither Participant nor Subscriber shall create any derivative work. Where SAMLs data and non SAMLs data are so integrated in Participant's or Subscriber's computer software program so as to prevent its segregation from the operation of such software program, this restriction shall apply to all the data manipulated or processed by such computer whether the data is supplied by SAMLs or others.

11. The ownership of SAMLs data and the strict confidentiality of the same shall not be compromised, voided or otherwise affected because it may be processed by Participant's own computer (as opposed to an on-line terminal) and in a format different than it appears on SAMLs' on-line system.

12. In the event that Participant desires to hire a third party to assist Participant in the development of Participant's software, or to perform other services which requires such third party to access the SAMLs data, database, program or program property information, data and/or database, Participant shall notify SAMLs of said third party and shall obtain SAMLs' written consent for such access. Such consent shall be conditioned upon further consents required by SAMLs by its vendors as set forth more particularly in Paragraph 14 hereof as well as said third party executing a copy of this Agreement binding the third party, its employees, agents and assigns to the terms hereof or the signing by said third party of other agreements satisfactory to SAMLs.

Participant hereby warrants that the name(s) of all third parties who are not employees of Participant will be filled in as a party to this Agreement. Participant agrees not to permit such third party to take, and the third party agrees not to take, any or all of the SAMLs program, program property information or data from participant's possession or control either during the time the third party is performing services for Participant, or thereafter. Further third party agrees to be bound by and liable for the same trade secret, data, database and information confidentiality provisions set forth herein.

13. Participant and/or Subscriber agrees to establish necessary security measures, including applicable policies and standards to safeguard and control the disclosure of such data to unauthorized persons. Unauthorized persons include but are not limited to all persons and firms who are not either Participants or Subscribers. Participant and/or Subscriber agree to employ their best efforts to prohibit third-party consultant from violating the confidential and proprietary nature of the database and data. Nothing herein contained is intended to restrict the participant from co-brokering the Participant's listing with a licensed real estate broker who is not a Participant.

14. Participant and/or Subscriber acknowledges that SAMLs may now or in the future develop and/or market programs or program property (also referred to as "Software") which will perform the same or similar functions as software developed or being developed by the Participant and/or Subscriber and which may be in competition with such SAMLs software. Participant and/or Subscriber and SAMLs acknowledge that information which SAMLs may have gathered from Participant and/or Subscriber may have contributed to the development of such software and may be a component thereof. In this context, the participant and/or Subscriber or any consultant or other third party hired by the participant and/or Subscriber agree that the use of any such information by SAMLs in the development of present or future software is hereby expressly permitted and furthermore that SAMLs shall not be obligated to the participant and/or any of Participant's agents or employees and/or Subscriber or consultants or third parties for any royalty, consideration, license fee or other thing of value as a result of the utilization of such software by SAMLs.

15. In order to assist SAMLs in the development of SAMLs programs or program properties, Participant agrees to do the following:

A. Notify SAMLs of any difficulty, problems or deficiencies in either the SAMLs program or program property or the SAMLs data or database. Said notices shall be in writing and shall specifically detail such defect, deficiency and problem to the full extent known to the Participant and/or consultant.

B. Allow SAMLs consultants and employees full access to and use of the software system being developed by Participant.

16. In the event SAMLs is required to obtain the consent of any vendor or supplier prior to granting permission to Participant or Subscriber or third-party consultant to access, use or otherwise, manipulate any of the SAMLs program or program property, the, and in such event, SAMLs will so notify the participant and/or Subscriber and make reasonable application to the person, firm or entity whose consent needs to be obtained. Participant and/or Subscriber shall fully cooperate with SAMLs in the making of such application and shall supply to SAMLs any and all information required by such third-party vendor. If such consent is obtained from the SAMLs third-party vendor, the participant and/or Subscriber shall access the program or program property only in strict compliance with any conditions or limitations contained in said consent. Furthermore, said participant and/or Subscriber shall fully protect the proprietary interest of said third-party vendor in the aforesaid program or program property and shall do nothing to in any way compromise the same and shall affirmatively act at all times in such a way as to protect such proprietary interest. In the event said third party vendor refuses to consent to the proposed use of the Participant or Subscriber, the Participant or Subscriber shall refrain from accessing the SAMLs programs or program properties for the purposes set forth in the request for approval by SAMLs and shall not access said programs or program properties for any purpose other than as set forth in this Agreement without obtaining the consent of SAMLs thereto.

17. Participant shall not knowingly let any person use an access code or other identifier belonging to Participant, another Participant, or any other Subscriber. Participant acknowledges that all listing data inputted into the SAMLs listing compilation shall be personally inputted by a Subscriber who has signed this Agreement or by an agent or employee of a Subscriber who has signed this Agreement and who is authorized by the Subscriber to submit such listing information to SAMLs. Participant and Subscriber agree that should the Subscriber elect to have listing information inputted in the SAMLs database by an agent (i.e., the office secretary), then and in such event, the acts of such agents shall be deemed for the purposes of this Agreement the authorized act of the Participant and Subscriber including but not limited to the authorization to acknowledge that any creative material inputted into the SAMLs database and created by the agent shall be deemed to have been created by the agent as a work for hire for SAMLs. To the extent that any person licensed to a Participant or employed by a Participant makes a claim against SAMLs contesting the right of SAMLs to place such inputted data into its real estate listing compilation and to thereafter commercially utilize such compilation and all parts thereof, including said inputted data, as the exclusive copyrighted intellectual property of SAMLs, based upon the fact that such person is not a signatory to this Agreement, then and in such event, participant agrees to indemnify and hold SAMLs harmless from any such claim. Said indemnification shall include any and all costs and attorney's fees reasonably incurred by SAMLs to protect its intellectual property rights in such inputted data as well as the loss suffered by SAMLs in the event such person is successful in defeating the claimed rights of SAMLs.

18. This Agreement assumes that Participant is in good standing as a Participant in SAMLs in accordance with its By-Laws and Rules and Regulations. This Agreement shall terminate: (a) simultaneously with the termination of the Participant's relationship with SAMLs and/or its multiple listing service; (b) upon 30 days notice by Participant or Subscriber to SAMLs; or (c) as provided by the Rules and Regulations of SAMLs. Upon such termination, the Participant and all Subscribers licensed to such participant shall deliver to and leave with SAMLs any and all objects, materials, devices or substances including without limitation all documents, records, notebooks, recordings, drawings,

prototypes, models, schematic diagrams, computer programs (regardless of the medium on which they are stored) and similar repositories of information, or objects which describe, depict, contain, constitute, reflect or record SAMLs program, program property, data or database and all copies thereof then in Participant's or Subscriber's possession or under his/her control to SAMLs. The provisions of this paragraph may be satisfied by participant and/or Subscriber purging or destroying all such SAMLs program, program property or data so that the Participant or Subscriber no longer has access to such information and SAMLs being given the opportunity to verify that such is the case.

19. Participant or Subscriber shall not directly or indirectly use, disseminate, lecture or publish articles concerning or otherwise disclose to anyone any of the above without first obtaining the prior written consent of SAMLs. The restriction shall be in effect for three (3) years after the termination of this Agreement.

20. Participant or Subscriber agree to pay to SAMLs such fees for this license as are from time to time determined by the Board of Directors of SAMLs and to abide by such Rules and Regulations as are adopted by said Board of Directors. Participant or Subscriber acknowledge and agree that in the event of a failure to pay such fees or comply with such rules, SAMLs may suspend this license and the services provided to participant or Subscriber in accordance with such Rules.

21. In the event that a Participant or Subscriber is determined by the Rules Committee, the Executive Committee or the Board of Directors of SAMLs to be in possible violation of this Agreement, SAMLs shall provide a Notice to the Participant demanding that the Participant and any Subscriber employed directly or indirectly by such Participant to cease and desist from the activity specified. Such Notice shall be given by facsimile or by overnight delivery service or certified or registered mail, return receipt requested. The parties hereto specifically agree that in the event of a breach of any of the provisions of this Agreement by the Subscriber or Participant irreparable harm will be suffered by SAMLs and remedies at law will not adequately compensate SAMLs for such breach. Therefore, and in addition to any available legal remedies, if the Participant and/or Subscriber has failed to cease and desist from the activity specified within three days of the issuance of such Notice, SAMLs shall be entitled to obtain injunctive or other equitable relief against Participant who has executed this Agreement and any Subscriber and/or any third party for whom such Participant is responsible pursuant to Article 12A of the Real property Law of the State of New York. Any restraining order or injunction so obtained by SAMLs shall be subject to dispute resolution pursuant to Articles 27 and 28 hereof.

22. In any litigation arising from this Agreement, the prevailing party will be entitled to recover all reasonable costs and attorneys' fees including costs and fees on appeal. The rights and obligations under this Agreement shall, in all respects, be governed by the laws of the State of New York and venue in any legal action shall exist exclusively in the appropriate courts of Warren County, State of New York.

23. The provisions of this Agreement shall not be construed as limiting any rights or remedies that SAMLs may otherwise have under applicable law. In case anyone or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been obtained herein. If, moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to time, duration, scope, activity or subject by a court of competent jurisdiction, such court shall exercise discretion in reforming the provisions of this Agreement to the end that Participant and Subscriber shall be subject to provisions and restrictions which are reasonable under the circumstances and enforceable by SAMLs.

24. All parties to this Agreement warrant to each other that each has the power and authority to enter into this License Agreement and bind itself to the promises contained herein. No other warranties, expressed or implied, are made by either party including, but not limited to, a warranty of merchantability, a warranty of fitness for a particular purpose or a warranty that the data is accurate. Participant and Subscriber do warrant to SAMLs that the listing data is pursuant to a valid listing agreement with all of the owners of the property.

25. Participant and Subscriber agree that if they are served with any subpoena or other compulsory judicial or administrative process calling for production of any of SAMLS' programs, program property, data or database, they will immediately notify SAMLS in order that SAMLS may take such action as it deems necessary to protect its interest.

26. This Agreement may not be assigned by the Participant or the Subscriber. Nothing herein shall prevent SAMLS from assigning all or part of its obligations or benefits under this Agreement.

27. The merits of any dispute arising under, out of, in connection with, or in relation to this Agreement, or the making or validity thereof, or its interpretation, or any breach thereof, shall be determined and settled by arbitration before an arbitrator in Glens Falls, New York, pursuant to the Commercial Arbitration Rules then obtaining of the American Arbitration Association. If the parties hereto are unable to agree upon the selection of an arbitrator, such arbitrator shall be selected by the American Arbitration Association. Any award rendered shall be final and conclusive upon the parties hereto and a judgment thereon may be entered in the highest court of the State of New York having jurisdiction.

28. Before submitting a dispute to arbitration, the parties shall first attempt to resolve the dispute amicably. In the event that the parties hereto are unable to resolve the dispute amicably, either party may give notice for a mediation session before a mediator appointed by mutual agreement (hereinafter the "Mediator"). If the parties are unable to agree upon the selection of a Mediator, such mediation shall be held before the American Arbitration Association. The Mediator shall make a recommendation to the parties in the form of a written mediated settlement agreement. The parties to the dispute shall either sign such agreement within ten (10) days after receipt of same or immediately file a demand for arbitration, and the parties shall proceed to arbitration in accordance with the previous paragraph. All costs of the arbitration and the legal action to confirm and enforce the arbitrator's award, as the case may be, including the reasonable legal fees and disbursements of both parties shall be paid by the party refusing to accept the recommendation of the Mediator, unless such party receives relief greater than the Mediator's recommendation in which event each party shall be responsible for its own legal expenses and disbursements. If neither party serves a notice of unwillingness to accept the Mediator's recommendation and a demand for arbitration (both must be served by a party unwilling to agree to the Mediator's recommendations), such recommendation shall become the agreement of the parties. Nothing contained herein shall restrict SAMLS from applying to a court of competent jurisdiction for injunctive relief to which it is entitled pursuant to the terms of Article 21 hereof.

29. Except as otherwise provided in this Agreement any notice, demand, or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) delivered personally to the party or to an executive officer of the party to whom such notice, demand or other communication is directed or (b) sent by express, registered or certified mail, postage prepaid, addressed to the Participant of SAMLS at his, her or its address set forth in this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given three (3) business days after the date it was deposited in a regularly maintained receptacle for the deposit of United States mail, addresses and sent as set forth in this Section.

30. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the parties with respect thereto, whether or not relied or acted upon. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the parties, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect any party's obligations pursuant to this Agreement or any rights and remedies of a party pursuant to this Agreement. No amendment to this Agreement shall be effective unless made in a writing duly executed by all parties and specifically referring to each provision of this Agreement being amended.

31. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

32. No failure of a party to exercise, and no delay by a party in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a party of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by the waiving party and specifically referring to each such right or remedy under this Agreement to be waived.

33. This Agreement shall be binding upon and inure to the benefit of all parties as well as any subsidiaries, affiliates or companies related to any party hereto.

34. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute once and the same instrument.

IN WITNESS WHEREOF, the individuals and entities signing this Agreement below conclusively evidence their agreement to the terms and conditions of this Agreement by so signing this Agreement.

SOUTHERN ADIRONDACK MULTIPLE
LISTING SERVICE, INC.

By: _____

Participant/Subscriber

Print Name

Company Affiliation

Street Address

City, State, Zip Code