

East Central Iowa Multiple Listing Service, Inc.

Participant Agreement

This **AGREEMENT** is made and entered into by East Central Iowa Multiple Listing Service, Inc. ("**ECIMLS**"), with offices at 1828 Carter Rd., Dubuque, IA 52001; and _____ ("**Firm Participant**"), with offices at _____. You, _____, Individual Participant, on behalf of yourself and Firm Participant, agree to the following terms and conditions.

DEFINITIONS AND USAGE.

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

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

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

ECIMLS Policies: ECIMLS's then current bylaws, rules and regulations, and policies and procedures promulgated by ECIMLS, as ECIMLS amends them from time to time.

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

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

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

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

Other Participants and Subscribers: All participants, subscribers, and users of ECIMLS Service not party to this Agreement.

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

Participant Contribution: All data that the Subscribers submit, contribute, or input in the ECIMLS 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 ECIMLS 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: ECIMLS's document that establishes the fees for ECIMLS Service.

Subscribers: All persons defined as "Subscribers" in ECIMLS 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).

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.

ECIMLS'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the ECIMLS Policies, ECIMLS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the ECIMLS 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 ECIMLS as set forth in the ECIMLS Policies. ECIMLS 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 ECIMLS Service to which Individual Participants are entitled under the ECIMLS Policies. ECIMLS makes no warranties, however, that the ECIMLS Service will be available at all times. ECIMLS may use a third party contractor, determined in ECIMLS's sole discretion, to facilitate its responsibilities under this Agreement.

FIRM PARTICIPANT ACKNOWLEDGMENTS.

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

5. **Editorial control.** ECIMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the ECIMLS 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, ECIMLS 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 ECIMLS Policies or infringement of intellectual property rights. Additionally, ECIMLS 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 ECIMLS Service. 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) the ECIMLS 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. ECIMLS 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.** ECIMLS 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. ECIMLS reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and Subscribers' use of the ECIMLS Service, but not about Firm Participant's or Individual Participants' use specifically.

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

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

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

12. **IDX and VOW data access subject to separate agreement; third-party TOU.** Firm Participant acknowledges that access to ECIMLS's IDX or VOW database and data feeds can occur only upon execution of a separate written agreement between ECIMLS, Firm Participant and Subscriber, as applicable. Firm Participant acknowledges that access to third-party software offered via ECIMLS 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.

13. **Use limited; Compensation Disclaimer.** Firm Participant shall use the ECIMLS Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate, strictly as permitted by the ECIMLS Policies. Except as expressly provided in this Agreement and the ECIMLS Policies, Firm Participant shall not copy, create derivative works of, distribute, perform, or display the ECIMLS 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.

14. **Confidentiality.** Firm Participant shall maintain the confidentiality of its user ID and password. ECIMLS issues each Subscriber a separate 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 ECIMLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the ECIMLS Database, and the ECIMLS 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 ECIMLS Database, or the ECIMLS System available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement or the ECIMLS Policies. Failure to comply with this provision will result in a significant fine, as set forth in the ECIMLS 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 ECIMLS to permit ECIMLS to seek a protective order.

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

16. **Participant Contribution.** With regard to any Subscriber making a Participant Contribution to the ECIMLS Service, Firm Participant warrants that the information submitted complies with all applicable laws, statutes, ordinances and regulations and the ECIMLS 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.

17. **Subscriber agreements.** Firm Participant shall ensure that each Subscriber who will have access to the ECIMLS System or ECIMLS Database, enters into a Subscriber agreement with ECIMLS.

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

19. **List of Subscribers.** Firm Participant shall ensure ECIMLS has a current list of all of Subscribers; Firm Participant shall inform ECIMLS in writing of any change in the Subscribers within twenty-four hours of the change or the timeframe in the ECIMLS MLS Policies, whichever is greater.

20. **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 ECIMLS System within such time as provided in the ECIMLS Policies. Pursuant to the ECIMLS Policies, Firm Participant shall provide to ECIMLS all documentation ECIMLS requests of Firm Participant to ascertain Firm Participant's compliance with this Agreement.

INTELLECTUAL PROPERTY.

21. License from Participant for Participant Contributions.

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

22. **Other provisions.** Pursuant to the ECIMLS Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of ECIMLS, which shall be deemed the PCC's author for purposes of copyright law. If for any reason the PCC cannot be provided as a work made for hire, you agree to assign and hereby do assign to ECIMLS all right, title and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law. ECIMLS hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the ECIMLS Software and the ECIMLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the ECIMLS 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 ECIMLS Policies are prohibited. Title to the Licensed Materials remains at all times in ECIMLS and shall not pass to Firm Participant.

23. **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 ECIMLS.

24. **Limitations on use by ECIMLS.** ECIMLS 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 ECIMLS Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after ECIMLS has provided notice of its intention to provide the Participant Contribution to the third party. If ECIMLS enters a data sharing agreement with any other multiple listing service (as that term is defined in ECIMLS Policies) ECIMLS 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.

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

26. **Payment terms.** Firm Participant shall pay the fees according to the terms set out in the ECIMLS Policies.

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

28. **Taxes.** All fees for the ECIMLS 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 ECIMLS.

29. **Fee increases.** ECIMLS may amend the Schedule of Fees at any time at its sole discretion. ECIMLS 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 ECIMLS at any time before the effective date of the increase.

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

TERM AND TERMINATION.

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

32. **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.

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

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

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

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

37. **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 ECIMLS notice to Subscriber, ECIMLS may in its sole discretion suspend Subscriber access to ECIMLS System and Subscriber license and access agreements. If ECIMLS does not exercise its right to suspend Subscriber access to the ECIMLS System, the 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.

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

39. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE ECIMLS 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 ECIMLS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE ECIMLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE ECIMLS 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 ECIMLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

41. **Indemnification.** Firm Participant shall defend, indemnify and hold the ECIMLS Affiliates and Other Participants and Subscribers harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the ECIMLS Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the ECIMLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the ECIMLS 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.

42. **Acknowledgment.** Firm Participant acknowledges that ECIMLS 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.

43. **Injunctive relief.** Firm Participant acknowledges and agrees that the ECIMLS Software and ECIMLS Database are confidential and proprietary products of ECIMLS 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 ECIMLS Software or ECIMLS Database, ECIMLS 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.

44. **Dispute resolution.** In the event ECIMLS claims that Firm Participant has violated the ECIMLS Policies, ECIMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the ECIMLS Policies, provided MLS does not also base a claim that Firm Participant has breached this Agreement on the same facts. 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 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 Dubuque County, Iowa, except that it may be held by telephone 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 Dubuque County, Iowa.

45. **Liquidated damages.** Firm Participant acknowledges that damages suffered by ECIMLS from access to the ECIMLS 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 ECIMLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to ECIMLS 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 ECIMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Firm Participant shall be liable to ECIMLS for liquidated damages in the amount of \$5,000 (or the amount established in the ECIMLS 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 ECIMLS 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 ECIMLS Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

46. **Legal fees.** In the event of legal action or arbitration between ECIMLS and Firm Participant, or ECIMLS 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 ECIMLS 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.

47. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by ECIMLS 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, or other third party.

48. **Interpretation and amendment.** Firm Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). ECIMLS 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 ECIMLS Service or ECIMLS 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.

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

50. **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 ECIMLS Service shall immediately terminate.

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

52. **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.

53. **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.

Having read this Agreement, the parties express their will to be bound by its terms by setting their signatures below.

East Central Iowa Multiple Listing Service, Inc.

Firm Participant

Signature

Firm Participant name

Print name

Signature of Individual Participant

Effective Date

Print name of Individual Participant

Signature Date