



*REALTOR® ASSOCIATION OF
SOUTHERN MINNESOTA*

RASM MLS Company Application

I _____, _____,
(Name) (Title)
of _____,
(Company Name and Address)

declare that I am presently a member in good standing of

the _____,
(Board/Association Name and Address)

the Minnesota Association of REALTORS®, and the NATIONAL ASSOCIATION OF REALTORS®. HENCE, I hereby make application to become a member of the Southern Minnesota Multiple Listing Service (MLS). The initial application fee of \$325.00 is enclosed.

This company actively endeavors as part of its real estate business to list real property of the type listed on the RASM MLS and/or accept offers of cooperating and compensation made by listing brokers or agents in the MLS.

Broker Initial _____

I agree to notify the MLS office of all persons selling or soliciting listings for my firm. I also agree to promptly inform the MLS office of all resignations and terminations of persons no longer affiliated with my firm. (Section 4.3)

The following persons are licensed to my company:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Participants shall be governed by the Code of Ethics and MLS policy of the NATIONAL ASSOCIATION OF REALTORS® and the RASM MLS Rules and Regulations, and the Bylaws of the REALTOR® Association of So. Minnesota. Whenever any conflict develops as to a particular provision in the MLS Rules and Regulations and/or Bylaws, the Bylaws shall prevail. I hereby agree to uphold the REALTOR® Code of Ethics and abide by and uphold the Rules and Regulations of the MLS. I understand that a violation of the Code of Ethics may result in termination of any MLS privileges and that I may be assessed an administrative processing fee which may be in addition to any discipline, including fines, that may be imposed.

I also understand that _____ will be upon acceptance, designated as Participant in the
MLS and will represent our firm as such. (Broker)

I agree to pay any charges and fees when due. I also agree to settle any disputes with fellow REALTORS® in accordance with the policies set by the Association Bylaws. I further understand and agree that I will be individually responsible for the prompt payment of all MLS membership dues, service charges and fees incurred by myself and/or other members of my firm during the period in which I am an MLS Participant. I agree that my responsibility will continue even if I should terminate my association with my present firm.

The Current Fee Structure is as Follows:

- \$30.00 Office Fee Per Month
- \$30.00 Branch Office Fee Per Month
- \$45.00 Agent Fee Per Month
- \$10.00 Insertions (Non-computerized offices)
- \$3.00 Listing Changes (Non-computerized offices)

MY FIRM IS A BROKER RECIPROCALITYSM SUBSCRIBER. I understand that I am hereby giving every other Broker ReciprocitySM Subscriber in the RASM MLS permission to advertise my active MLS listings on its own website, subject to the Rules and Regulations of the RASM MLS. I understand that other BRSs are not obligated to display my listings. I authorize RASM MLS to distribute my active listing data to other Broker ReciprocitySM Subscribers pursuant to its Rules and Policies.

MY FIRM IS NOT A BROKER RECIPROCALITYSM SUBSCRIBER. I understand that this means that other Broker ReciprocitySM Subscribers will not be permitted to display my listings on their websites. I further understand that my firm will receive no benefits under the Broker ReciprocitySM program of the RASM MLS. My firm is not allowed to display the listings of other brokers unless I receive permission from them individually to do so.

Signature of Participant

Date

GENERAL OFFICE INFORMATION – PLEASE COMPLETE

Company Name: _____

Company Address: _____

Company Phone: _____

Company Fax: _____

Company E-mail: _____

Company Website: _____

Would you like to receive association communications and publications sent via fax, mail, and e-mail?

Yes

No



*REALTOR® ASSOCIATION OF
SOUTHERN MINNESOTA*

Agent Data Worksheet

Name: _____
(Last Name) (First Name) (Middle Initial)

Home Address: _____
(Street)

City: _____ State: _____ Zip: _____

Preferred Phone: Home Office Cell: _____

Office Name: _____

Office Address: _____
(Street)

City: _____ State: _____ Zip: _____

Office Phone: _____

Preferred Mailing: Home Office

Mail Publications to: Home Office

Preferred E-mail Address: _____

Birth Date: ____/____/____

Real Estate License # _____ License Date: _____

Agent Designation(s): GRI CRS CRB ABR Other: _____

If you are now or have been a REALTOR Member before, please provide your previous NAR Membership (NRDS) number: _____



Authorization Level

Paragon

As Broker, I authorize that the following agent licensed with my firm be allowed Paragon access to perform the following functions.

- User has full access to system except Input/Maintenance functions and can perform a Firm Inventory of their own listings.

- User has full access to system and may access the Input/Maintenance functions for their own listings.

- User may enter and maintain any listings in their office and perform a Full Firm Inventory.

Agent Name: _____

Firm Name: _____

Broker Signature: _____

Date: _____



*REALTOR® ASSOCIATION OF
SOUTHERN MINNESOTA*

MLS Security Agreement

Broker / Agent

MLS passwords are distributed exclusively to those brokers and their agents who are participants of the REALTOR® Association of Southern Minnesota MLS, and those REALTOR® agents associated with them. These passwords are **not** to be distributed, loaned, or given to any other individual. Violations of this policy are to be promptly reported to the MLS Committee in writing. Fines for giving out code words to **anyone** are:

1 st Offense:	\$500.00
2 nd Offense:	\$1,000.00
Subsequent Offenses:	Subject to suspension or termination by the Board of Directors of the REALTOR® Association of Southern Minnesota.

I agree to abide by the rules and regulations concerning MLS Passwords. I understand that if I violate this policy, I will be subject to the above listed fines.

Date: _____

Signature: _____

Company: _____

REALTOR® Association of Southern Minnesota, Inc.

Participant Agreement

This AGREEMENT is made and entered into by REALTOR® Association of Southern Minnesota, Inc. ("RASM"), with offices at 2115 Rolling Green Lane, North Mankato, MN 56003; and _____ ("Firm Participant"), with offices at _____.

DEFINITIONS AND USAGE.

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

Individual Participants: With regard to each office of Firm Participant, the individual responsible for Firm Participant's conduct under RASM Policies that is a "participant" as that term is defined in the RASM Policies.

Other Participants and Subscribers: All Participants and Subscribers of RASM 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 RASM System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the RASM System. PCC does not include original text or photographs.

Participant Contribution: All data that the Subscribers submit, contribute, or input in the RASM System, including text, photographs, images, and other materials, in any form now known or hereafter discovered, except the PCC.

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

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

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

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

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

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

Saved Information: Information that Subscribers store in the RASM 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: RASM's document that establishes the fees for RASM Service.

Subscribers: 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.

RASM'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the RASM Policies, RASM shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the RASM 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 RASM as set forth in the RASM Policies. The user ID and password will provide Individual Participants access to all data and functions in the RASM Service to which Individual Participants are entitled under the RASM Policies. RASM makes no warranties, however, that the RASM Service will be available at all times.

FIRM PARTICIPANT ACKNOWLEDGMENTS.

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

5. **Editorial control.** RASM is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the RASM 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, RASM 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 RASM Policies or infringement of intellectual property right. Additionally, RASM 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 RASM Service. The prerequisites are set out in the RASM Policies; at present, they include a requirement that Individual Participants either (a) hold a real estate broker's license, be actively engaged in real estate brokerage, and offer and receive offers of compensation from other brokerage firms; or (b) be licensed or certified by an appropriate regulatory agency to engage in the appraisal of real property. Individual Participants must maintain active membership in a REALTOR® association at all times during the term of this Agreement. Subscribers may enter and retrieve active listing information on the RASM Service only if Firm Participant offers compensation to or accepts compensation from other principal brokers.

7. **Saved Information.** Saved Information may not always be available to Firm Participant and may become available to unauthorized persons. RASM 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.** RASM 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. RASM reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and Subscribers' use of the RASM Service, but not about Firm Participant's or Individual Participants' use specifically.

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

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

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

12. **IDX and VOW data access subject to separate agreement.** Firm Participant acknowledges that access to RASM's IDX or VOW database and data feeds can occur only subject to a separate written agreement between RASM, Firm Participant and Subscriber, as applicable.

FIRM PARTICIPANT'S OBLIGATIONS.

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

14. **Confidentiality.** Firm Participant shall maintain the confidentiality of its user ID and password. RASM issues each Subscriber a separate ID and password, and Participant must not facilitate sharing of passwords among Subscribers. Firm Participant shall ensure that the Subscribers maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscribers obtains access to the RASM Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the RASM Database, and the RASM System, Firm Participant shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the RASM Policies. Firm Participant may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, the disclosing Firm Participant first gives reasonable notice to RASM to permit RASM 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 RASM Software, necessary for Participant's use of the RASM Service.

16. **Participant Contribution.** With regard to any Subscriber making a Participant Contribution to the RASM Service, Firm Participant warrants that the information submitted complies with the RASM 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 RASM System or RASM Database, enters into a Subscriber agreement with RASM. Firm Participant is liable for all fees due under each Subscriber agreement.

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

19. **List of Subscribers.** Firm Participant shall ensure RASM has a current list of all of Subscribers; Firm Participant shall inform RASM in writing of any change in the Subscribers within 24 hours of the change.

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

INTELLECTUAL PROPERTY.

21. **Election regarding copyrights in Participant Contributions.** Firm Participant must elect from the following options. If no election is indicated, or if both options are checked, then Participant is deemed to have selected Option 2.

OPTION I

(a) **Assignment from Participant.** Firm Participant hereby unconditionally assigns to RASM 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 the authority to make this assignment. 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 RASM.

(b) **RASM Obligations.** RASM 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 RASM Database relating to Firm Participant's listings. RASM shall make quarterly registrations of the RASM's copyrights in the RASM Database; RASM 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 RASM 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) **RASM has no obligations to protect.** Firm Participant acknowledges that: (i) RASM makes no grant of license or assignment to Firm Participant of any rights in the RASM Database except as set forth in paragraph 22; (ii) RASM 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) *RASM will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm Participant's permission*; (v) RASM 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 RASM Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of RASM, which shall be deemed the PCC's author for purposes of copyright law. RASM hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the RASM Software and the RASM Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the RASM 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 RASM Policies are prohibited. Title to the Licensed Materials remains at all times in RASM 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 RASM.

24. **Limitations on use by RASM.** RASM 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 RASM Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after RASM has provided notice of its intention to provide the Participant Contribution to the third party. For purposes of the previous sentence, brokers participating in any MLS in a data sharing relationship with RASM that includes an offer of interbroker compensation are subscribers to the RASM Service.

FEES AND PAYMENT TERMS.

25. **Applicable fees.** Firm Participant shall pay the fees set forth in RASM's official Schedule of Fees, which RASM 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 RASM Policies.

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

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

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

30. **Fines.** RASM may collect fines from Firm Participant and from Individual Participants for violation of the RASM Policies by Firm Participant, Individual Participant and Subscribers. Payment terms for fines are set out in the RASM Policies. RASM 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 RASM Policies.** Paragraph 32 notwithstanding, RASM may terminate this Agreement if Firm Participant fails to comply with the RASM Policies; if Firm Participant violates or is alleged to have violated the RASM 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 RASM Policies. If in RASM's judgment, however, a violation or alleged violation of the RASM Policies is resulting in a continuing harm to RASM or Other Participants or Subscribers, RASM may suspend Firm Participant's access to the RASM 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, RASM may terminate service without being subject to arbitration. In its sole discretion, RASM 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) RASM 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 RASM Service; (b) Firm Participant shall purge all copies of the RASM Software and the RASM 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 Option I(b) and Paragraph 21 Option II(a), if any, shall immediately terminate.

37. **Effect on Subscribers.** In the event of any termination or suspension of this Agreement, upon RASM notice to Subscriber, RASM may in its sole discretion suspend Subscriber access to RASM System or terminate Subscriber license and access agreements. If RASM does not exercise its right to suspend Subscriber access to the RASM System or terminate Subscriber license and access agreements, the Subscriber license and access agreement shall continue in force with the intellectual property option selected by Firm Participant in the terminated agreement.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

38. **DISCLAIMER OF WARRANTIES.** RASM PROVIDES THE RASM SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE RASM SERVICE AND THE INFORMATION AVAILABLE THROUGH THE RASM SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE RASM AFFILIATES DO NOT WARRANT THAT THE RASM SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE RASM AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE RASM SERVICE. THE RASM AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE RASM SERVICE AND THE INFORMATION AVAILABLE

THROUGH THE RASM SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The RASM Service may contain hyperlinks to web sites operated by parties other than RASM; RASM does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

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

40. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL RASM BE LIABLE TO FIRM PARTICIPANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT HAS PAID RASM, 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 RASM 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 RASM Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the RASM Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the RASM Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any warranty under this Agreement; and (f) violating this or any other Agreement or any law.

42. **Acknowledgment.** Firm Participant acknowledges that RASM 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 RASM Software and RASM Database are confidential and proprietary products of RASM 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 RASM Software or RASM Database, RASM 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 RASM claims that Firm Participant has violated the RASM Policies, RASM may, at its option, resolve such a claim according to the disciplinary procedures set out in the RASM 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 Nicollet County, Minnesota, 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 Nicollet County, Minnesota.

45. **Liquidated damages.** Firm Participant acknowledges that damages suffered by RASM from access to the RASM 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 RASM Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to RASM 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 RASM Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Firm Participant shall be liable to RASM for liquidated damages in the amount of \$5,000 (or the amount established in the RASM 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 RASM 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 RASM 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 RASM and Firm Participant, or RASM 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 RASM 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 RASM 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). RASM may amend this agreement by providing 30 days' advance notice of the amendment to Firm Participant. If Firm Participant or any Subscriber continues to use the RASM Service or RASM Database after the expiration of the 30-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. 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 RASM Service shall immediately terminate.

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

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.

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

REALTOR® Association of Southern Minnesota, Inc.

Firm Participant

Signature

Firm Participant name

Print name

Signature of principal

Effective Date

Print name of principal

