

~ *Our Mission* ~

To offer leadership, involvement and support; encouraging the membership to
 Professionally achieve their goals and serve all in the spirit of the golden rule.

APPLICATION FOR NEW OFFICE MEMBERSHIP

Office Information

Office Membership Type: Broker Office Appraiser Office MLS Only

Primary Secondary Current NRDS # (if applicable): _____

If applying for Secondary membership, please name your primary association _____

Previous board/association membership? Yes No If yes, where/when? _____

Office License #: _____ Date Licensed: _____ Federal Tax ID #: _____

Office Name: _____

Office Physical Address: _____

Office Mailing Address: _____

City: _____ State _____ Zip _____

Office Phone: _____ Office Fax: _____ Other Number: _____

General Office Email: _____ Office Website URL: _____

Company Information: Sole Proprietor Partnership Corporation LLC (Limited Liability Company)

Broker Name (Responsible Member): _____ Member #: _____

Broker Position: Principal Partner Corporate Officer Branch Office Manager

Office Manager Name: _____ Preferred Email: _____

Specialty: Residential Commercial Resort International Other _____

Names of other Partners/Officers of your firm: _____

Have you ever been refused membership in any other Association of REALTORS®? Yes No
 If yes, provide in written details that state the basis for each such refusal and detail the circumstances related thereto.

Do you hold, or have you ever held, a real estate license in any other state? Yes No If so, where: _____

Have you or your firm been found in violation of state real estate licensing regulations within the last three years?
 Yes No If yes, provide written details.

Have you or your firm been convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of a felony or other crime? Yes No If yes, provide written details.

I have read, understand, and agree to abide by the R.A.S.E. Bylaws and Standing Rules. _____ *Initial*

I have read, understand, and agree to abide by the Auto Opt-Out statement for IDX. _____ *Initial*

I have read, understand, and agree to abide by the R.A.S.E. MLS Participation Agreement. _____ *Initial*

I have signed the R.A.S.E. MLS Participation Agreement and returned with my application. _____ *Initial*

ListHub: A marketing tool available to Designated Brokers through the REALTOR® Association of the Sioux Empire (RASE). ListHub forwards listing content from RASE MLS to over 30 destinations or websites, a.k.a. “Channels”. Only the single Designated/Managing Broker for an office can register the office with ListHub. Individual agents cannot send listing content anywhere via ListHub without the Designated Brokers express consent. That is how ListHub works! The Managing Broker will register the office on the ListHub site, and then they can pick and choose which Channels to send listing content to. These Channels can be enabled or disabled at any time by the Managing Broker. Additional permission can be extended to individual agents, but only by the Managing Broker. **None** of your office listings will be distributed via ListHub unless and until the Managing Broker registers on the ListHub website.

Once your office is registered with ListHub and you have chosen which Channels to send your office listings to, you can then send a request to ListHub Support to enable deep links to your own company website. Once this is enabled, consumers will be directed to your office website property pages instead of the ListHub property pages.

Please visit www.ListHub.com, or call 1-877-847-3394 x1 if you have questions or need assistance setting up the account for your office.

I have read, understand and agree to abide by ListHub if I choose to Participate. _____ *Initial*

To the REALTOR® Association of the Sioux Empire, Inc. (RASE), I hereby apply for REALTOR® Membership in the above named Board and am enclosing by payment in the amount of \$500.00 for my new office fee payable to R.A.S.E. I understand that my payment will only be refunded in the event I am not accepted for membership. In the event of my election, I agree to abide by the Code of Ethics of the National Association of the REALTORS®, which includes the duty to arbitrate, and the Constitution, Bylaws, and MLS Rules and Regulations of the above named Board, the State Association and the National Association, and if required, I further agree to satisfactorily complete a reasonable and non-discriminatory written examination on such Code, Constitutions, Bylaws and MLS Rules and Regulations. I understand membership brings certain privileges and obligations that require compliance. Membership is final only upon approval by the Board of Directors and may be revoked should completion of requirements, such as orientation, not be completed within timeframe established in the association’s bylaws. I understand that I will be required to complete periodic Code of Ethics training as specified in the association’s bylaws as a continued condition of my membership.

I hereby certify that the foregoing information furnished by me is true and correct, and I agree that failure to provide complete and accurate information as requested, or any misstatement of fact, shall be grounds for revocation of my membership if granted. I further agree that, if accepted for membership in the Board, I shall pay the fees and dues as from time to time established. **NOTE:** Payments to the REALTOR® Association of the Sioux Empire, Inc. are not deductible as charitable contributions. Such payments may, however, be deductible as an ordinary and necessary business expense. No refunds.

By signing below, I consent that the REALTOR® Associations (local, state, national) and their subsidiaries, if any (e.g., MLS, Foundation) may contact me at the specified address, telephone numbers, fax numbers, email address or other means of communication available. I am permitting them to contact me even if I am registered with the National Do Not Call Registry. This consent applies to changes in contact information that may be provided by me to the Association(s) in the future. This consent recognizes that certain state and federal laws may place limits on communications that I am waiving to receive all communications as part of my membership.

Dated: _____ Broker Printed Name: _____

Broker Signature: _____

Date: _____
Received _____

This Participation Agreement (the “Agreement”) is made and entered into by and between - _____, an individual principal real estate broker or broker in charge, or a real estate brokerage firm, as MLS may require (the “Participant”), and REALTOR® Association of the Sioux Empire, Inc., a Multiple Listing Service (the “MLS”).

1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 24 of this Agreement.
2. Grant of Participation Rights in Multiple Listing Service. Subject to the terms and conditions of this Agreement and the Rules and Regulations, MLS agrees to make the MLS Database available for access by Participant, and Participant shall have all rights and obligations of a participant in MLS’s multiple listing service as set forth under the Rules and Regulations. Access to the MLS Database shall be through a means determined by MLS. Participant may permit duly authorized employees or agents associated with his/her office to access the MLS Database on Participant’s behalf and pursuant to the terms of this Agreement; provided that, Participant (a) accepts full responsibility, and shall be liable to MLS for use of the MLS Database by such employee or agent; and (b) promptly terminates access to the MLS by such employee and agent upon such employee or agent ceasing to be authorized as set forth in this provision. Participant agrees to take all reasonable steps to protect the MLS Database from unauthorized access, copying, or use.
3. License to IDX Listings. Upon the receipt of a written request from Participant, in a form acceptable to MLS, and so long as Participant, the applicable Sales Licensee, and/or an applicable Vendor are not in default under this Agreement, the Rules and Regulations or any agreement with MLS, MLS will grant to Participant, the applicable Sales Licensee of Participant, or the applicable Vendor a license to the IDX Listings. The license will only be granted pursuant to a License Agreement. MLS has no obligation to grant a license to Participant, any Sales Licensee, or any Vendor which does not enter into a License Agreement. In addition to any applicable license fee payable by Participant, the Sales Licensee, and/or the Vendor, Participant shall pay to MLS all costs and expenses incurred by MLS in connection with any licenses and any services provided by MLS in connection with such licenses.
4. Intellectual Property Ownership; Enforcement.
 - a. MLS acknowledges and agrees that the Participant’s Listing Content, and all copies, modifications, enhancements, and derivative works of the Participant’s Listing Content, are the property of Participant, and all right, title, and interest in and to the Participant’s Listing Content, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with Participant. MLS hereby irrevocably assigns to Participant any and all rights which it may have or acquire in and to the Participant’s Listing Content.
 - b. Participant acknowledges and agrees that the MLS Database, and all copies, modifications, enhancements, and derivative works of the MLS Database, are the property of MLS, and all right, title, and interest in and to the MLS Database, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS. Participant hereby irrevocably assigns to MLS any and all rights which it may have or acquire in and to the MLS Database.
 - c. Participant hereby grants to MLS a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, copy, publish, display, and reproduce the Listing Content, to prepare

derivative works of the Listing Content, and to distribute the Listing Content or any derivative works thereof. Such license shall be deemed granted as of the moment of creation without the necessity of any further action on the part of either party. Participant represents and warrants to MLS with respect to the Listing Content for each of Participant's Listings that the Listing Content, and the license of rights in and to the Listing Content to MLS, do not infringe or violate any copyrights, trade secrets, or other intellectual or proprietary rights of any third party.

- d. Participant agrees not to take any action inconsistent with the license granted to the Listing Content under this Agreement. Participant agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the license granted to MLS in and to the Listing Content. Participant further agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the copyright application and registration of the MLS Database.
- e. Participant shall indemnify MLS against all damages, costs, and liabilities, including reasonable attorney fees, arising from any claim that the Listing Content or any portion of the Listing Content infringes the rights of any third party. PARTICIPANT ACKNOWLEDGES THAT THE FOREGOING SENTENCE MEANS THAT PARTICIPANT MUST OBTAIN ASSIGNMENTS OR LICENSES FROM THE AUTHORS OF ANY PORTIONS OF THE LISTING CONTENT, INCLUDING AFFILIATES, SELLERS AND THIRD-PARTY CONTRIBUTORS, AS NECESSARY FOR PARTICIPANT TO LICENSE THE LISTING CONTENT TO MLS AND TO OTHERWISE MAKE FULL USE OF THE LISTING CONTENT UNDER THIS AGREEMENT. IF PARTICIPANT FAILS TO DO SO, PARTICIPANT WILL ASSUME AND REIMBURSE MLS FOR THE COST OF DEFENDING MLS AGAINST INFRINGEMENT CLAIMS AND PAYING DAMAGES ON ANY SUCH CLAIMS.
- f. Without limiting the generality of this Section 4, but subject to the rights of participants in the MLS' multiple listing service to opt out of inclusion with respect to Listings submitted by such participant as set forth in the Rules and Regulations, Participant acknowledges and agrees that MLS may use and license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database, including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the applicable Broker or by the Rules and Regulations.
- g. Participant hereby grants to MLS all rights necessary for MLS to protect and enforce all intellectual property rights associated with the Listing Content, including all copyrights. In accordance with the grant of such rights, Participant hereby irrevocably authorizes, empowers and vests in MLS the right, and appoints MLS as Participant's attorney in fact, to do the following:
 - i. Add watermarks or other means of identification to any and all Listings, regardless of whether such means of identification is visible, and take any and all other action deemed appropriate by MLS to identify the source of any misuse, infringement, or misappropriation of any Listing Content.
 - ii. Send demand letters, exercise rights under any applicable license agreements, and take any and all other action deemed appropriate by MLS to prevent the misuse, infringement, or misappropriation of any Listing Content.
 - iii. Enforce and compromise any and all intellectual property rights in the Listing Content, including all copyrights, whether such rights are held in the name of Participant or others, and take all action deemed necessary and appropriate by MLS in connection with the enforcement

of all such rights, including, without limitation, the filing and prosecution of litigation or binding arbitration with respect to any potential claim of infringement, misappropriation, or other similar claim, the naming of any parties deemed appropriate by MLS, and the collection of any damages.

- iv. Execute all documents, whether in the name of Participant and/or MLS, deemed appropriate by MLS to affect any of the foregoing.

Notwithstanding the foregoing, nothing in this Section 4.f requires MLS to take any action against any person, firm, partnership or other entity that Participant claims may be infringing any Listing Content.

5. Fees. In consideration for participation in MLS's multiple listing service and for the services provided and licenses granted under this Agreement, Participant agrees to pay to MLS the fees (the "Fees") in the amount, and in accordance with the terms, established by MLS for participation by participants in MLS's multiple listing service, which amount and terms may be changed by MLS at any time effective upon thirty (30) days prior written notice to Participant.
6. Responsibility for Affiliates. Participant shall be responsible and liable to MLS for the acts and omissions of its Affiliates, and shall be responsible for each Affiliate's compliance with the Rules and Regulations. Any failure to comply with the Rules and Regulations by an Affiliate shall be deemed a failure to comply by Participant, and Participant shall be responsible and liable to MLS for any damages incurred by MLS arising from or as a result of an Affiliate's noncompliance with the Rules and Regulations.
7. No Assignment by Participant. Participant agrees that this Agreement is personal to Participant, and Participant may not assign or transfer this Agreement, including any license granted under this Agreement, or transfer any rights or delegate any duties under this Agreement, to any third party. Any attempt to assign, transfer, or delegate any of Participants rights, duties, or obligations under this Agreement shall be null and void.
8. Interruptions in Service. Participant acknowledges that access to the MLS Database may from time-to-time be unavailable to Participant, whether because of technical failures or interruptions, intentional downtime for service or changes to MLS's website, or otherwise. Participant agrees that any modification of MLS's website, and any interruption or unavailability of access to the MLS Database shall not constitute a default of any obligations of MLS under this Agreement, and MLS shall have no liability of any nature to Participant for any such modifications, interruptions, unavailability, or failure of access.
9. Copies and Derivative Works. Except as otherwise expressly provided in this Agreement, a separate license agreement, or the Rules and Regulations, Participant may not do any of the following, either directly or indirectly, including assist any other person to do, or otherwise contribute in any way to any of the following:
 - a. Make any copies of the MLS Database, or any portion of the MLS Database, including any specific Listing Content included in the MLS Database;
 - b. Download, distribute, export, or transmit the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database; or
 - c. Publicly display the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database.

10. Representations and Warranties Regarding Listings. Participant represents and warrants with respect to each Participant's Listing or change to a Participant's Listing submitted to MLS under this Agreement and the Rules and Regulations, the following:
- a. The respective Seller has assigned or licensed in writing all of Seller's rights, title and interest, including all copyright rights and other intellectual property rights, in and to the Listing Content to Participant.
 - b. The Participant's Listing complies in all respects with the Rules and Regulations.
 - c. To the best of Participant's and any applicable Sales Licensee's knowledge and after reasonable due diligence to verify the accuracy of all information in the Participant's Listing, all information included in the Participant's Listing is accurate and not misleading.
 - d. The Listing Content for each Participant's Listing is an original work of authorship of Participant, or Participant is the assignee or licensee of such Listing Content pursuant to an enforceable assignment or license. Except for Participant and any person or entity, which has assigned his, her or its rights in accordance with Section 4 of this Agreement, no other person or entity has any rights of any nature in or to any of the Listing Content for any Participant's Listing.
 - e. There is no claim, litigation or proceeding pending or threatened with respect to the Listing Content for any Participant's Listing.
 - f. The Listing Content, and the assignment of rights in and to Listing Content to MLS, do not infringe or violate any patents, copyrights, mask work rights, trademarks, trade secrets or other proprietary rights of any third party.
11. Submission of Listings. As a material condition to accessing the MLS Database, Participant agrees to submit to MLS all Listings in accordance with, and except as otherwise provided in, the Rules and Regulations. MLS may refuse to accept or include in, and may remove from, the MLS Database any Listing or Listing Content, or may require Participant to direct MLS to modify any Listing Content, as provided under the Rules and Regulations or if MLS determines, in its sole discretion, that such Listing or Listing Content may violate or infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as provided in the Rules and Regulations, Participant acknowledges that MLS has no obligation to remove, modify or refuse to accept any Listing or Listing Content. MLS grants to Participant a limited, non-exclusive, personal license to input Listing Content in the MLS Database and to modify such Listing Content strictly in accordance with the terms and conditions of this Agreement and the Rules and Regulations. Participant acknowledges and agrees that any Listing or Listing Content, or any prospective Listing or Listing Content, submitted by Participant or its Affiliates may be accessible by other participants in or users of MLS's multiple listing service, and MLS shall have no liability to Participant for providing such other participants or users access to any Listing or Listing Content, or any prospective Listing or Listing Content.
12. Confidential Information. Any information provided by MLS to any Participant, including without limitation, any password to the MLS Database, any printouts of the MLS Database as provided under this Agreement, and all Listing Content, including personal information of a Seller (collectively "Confidential Information") shall be maintained by Participant as confidential and available exclusively for use by Participant as provided in this Agreement. Participant shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law. Participant shall not disclose any Confidential Information pursuant to a court order or as required by law until

Participant has given MLS ten (10) days prior written notice and an opportunity to oppose such disclosure. Notwithstanding the foregoing, Participant may disclose Listing Content for individual Listings strictly in accordance with this Agreement and the Rules and Regulations.

13. Additional Representations and Warranties of Participant. If Participant is a Broker, Participant represents and warrants the following to MLS: (a) Participant is a Realtor® in good standing; (b) Participant holds a current, valid real estate broker's license; (c) Participant is a member of a Board in good standing; and (d) Participant is capable of offering and accepting cooperation and compensation to and from other participants in MLS's multiple listing service in accordance with the Rules and Regulations. If Participant is a Brokerage Firm, Participant represents and warrants to MLS that Brokerage Firm is managed by and under the control of a Broker, and such Broker (a) is a Realtor® in good standing; (b) holds a current, valid real estate broker's license; (c) is a member of a Board in good standing; and (d) is capable of offering and accepting cooperation and compensation to and from other participants in MLS's multiple listing service in accordance with the Rules and Regulations. Participant further represents and warrants to MLS that this Agreement, when executed by Participant, will be valid, binding and enforceable with respect to Participant in accordance with its terms; (a) the provisions of the services provided under this Agreement and the fulfillment of Participant's obligations as contemplated under this Agreement are proper and lawful; (b) Participant is not and shall not be under any disability, restriction or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement; and (c) all of Participant's Sales Licensees have entered into Subscriber Agreements.

14. Compliance with Governing Rules and Agreements.

- a. By entering into this Agreement, Participant represents and warrants to MLS that Participant, or its Broker if Participant is a Brokerage Firm, has read and understands, and Participant shall be bound by and at all times fully comply with and perform all of Participant's obligations under this Agreement, the Rules and Regulations, the applicable Board Rules and Regulations, and the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®. A copy of the then-current version of the Rules and Regulations is available upon request. In addition to all other rights and remedies available to MLS under this Agreement and the Rules and Regulations, Participant acknowledges that MLS may levy fines against Participant for noncompliance with the Rules and Regulations as provided in the Rules and Regulations.
- b. To the extent there is any conflict between this Agreement, the Rules and Regulations, and any applicable Subscriber Agreement, the Rules and Regulations shall govern. As between this Agreement and any Subscriber Agreement, this Agreement shall govern.

15. No Warranty. THE SERVICES PROVIDED AND LICENSE GRANTED TO PARTICIPANT UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY NATURE. MLS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, MLS DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY LISTING CONTENT, AND THEIR ACCURACY.

16. Limitation of Liability. MLS'S ENTIRE AND CUMULATIVE LIABILITY TO PARTICIPANT, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MLS DATABASE OR LISTING CONTENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES

PAID BY PARTICIPANT TO MLS DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT SHALL MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MLS SHALL HAVE NO LIABILITY OF ANY NATURE TO SALES LICENSEES.

17. Injunction. MLS and Participant agree that a breach or violation of Sections 10, 13, and 19.g of this Agreement will result in immediate and irreparable injury and harm to MLS. In such event, MLS shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that, this shall in no way limit any other remedies which MLS may have, including, without limitation, the right to seek monetary damages.
18. Term and Termination.
- a. This Agreement shall commence on the Effective Date. Either party may terminate this Agreement at any time for any reason upon thirty (30) days prior written notice to the other party.
 - b. MLS may terminate this Agreement, upon the occurrence of any of the following events:
 - i. Participant fails to pay any Fees when due;
 - ii. Participant discloses any Confidential Information, including, without limitation, any password of Participant or a Sales Licensee, except as expressly provided in this Agreement;
 - iii. Participant otherwise fails to comply in all respects with the Rules and Regulations, the applicable Board Rules and Regulations, or the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS® ;
 - iv. Participant defaults under any material term or condition of any License Agreement; or
 - v. Participant defaults under any other material term or condition of this Agreement. Except as otherwise provided in this Agreement, termination pursuant to this Section 20.c of this Agreement shall be effective at any time after MLS has given ten (10) business days notice to Participant of any such event, and such event has not been cured within such ten (10) day period. Notwithstanding the foregoing sentence, if, in the reasonable discretion of MLS, the occurrence of any such event could result in irreparable harm to MLS, termination shall be effective immediately, without prior written notice to Participant, provided that notice shall be delivered to Participant within ten (10) business days following such termination.
 - c. This Agreement may also terminate as provided under Section 23.d of this Agreement.
 - d. In addition to all other rights and remedies available to MLS under this Agreement, if Participant fails to pay any Fees when due, or otherwise defaults under this Agreement, MLS may, in its sole discretion, temporarily suspend the license granted to Participant to access the MLS Database until all outstanding Fees have been paid in full or the default has been cured.
 - e. Notwithstanding anything to the contrary in this Agreement, if Participant violates or is alleged to have violated the Rules and Regulations, Participant shall not be terminated in accordance with

Section 19.c of this Agreement until any hearing or appeal rights of Participant have expired as provided in the Rules and Regulations.

- f. Upon termination of this Agreement, Participant agrees to immediately destroy any printouts of the MLS Database or Listing Content, and any copies of the MLS Database and Listing Content in Participant's possession or under Participant's control, including in possession of any Affiliates. No pre-paid Fees will be refunded to Participant for any termination of this Agreement.
 - g. Upon termination of this Agreement, all licenses granted and all services provided to Participant under this Agreement shall terminate. In addition, any and all rights granted to Affiliates to access or use the MLS Database pursuant to the Rules and Regulations or separate agreement with MLS shall automatically terminate, unless otherwise expressly provided with respect to Sales Licensees under an applicable Subscriber Agreement.
 - h. If, for any reason, any Subscriber Agreement is terminated, Participant agrees to either assign all Participant's Listings originated by the terminated Sales Licensee to another of Participant's Sales Licensees, or request that MLS terminate or change the status of Participant's Listings originated by the terminated Sales Licensee.
19. **Indemnification.** Participant agrees to indemnify and hold harmless MLS, and its officers, directors, employees, shareholders and agents, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorney's fees and costs, arising out of or connected with any Listing Agreement, this Agreement, submission to MLS of any Listing or Listing Content and the inclusion of any Listing or Listing Content by Participant in the MLS Database, including, without limitation, any claim that the access to, display of, and/or use of any Listing Content infringes on or constitutes a misappropriation of any patent, copyright, or trade secret, or any other intellectual property right of any person or entity anywhere in the world, including any claims by Sellers. MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.
20. **Proprietary and Other Notices.** Participant agrees that it will not alter or remove any trademarks or copyright notices or other notices and disclaimers located or used on, or in connection with, the MLS Database or any printouts of the MLS Database allowed under this Agreement.
21. **IDX Advertising Consent.** Unless Participant has made an express, written non-participation election for MLS's Internet Data Exchange (IDX) program as described in the Rules and Regulations, Participant expressly consents to other participants in MLS's IDX program advertising all of Participant's Listings in accordance with the IDX policy set forth in the Rules and Regulations.
22. **General.**
- a. **Notices.** All notices, demands, or consents required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, by a reputable overnight courier service, or by e-mail, if the sender receives and maintains a copy of a certified mail receipt and a copy is mailed within one (1) business day after notice is delivered by e-mail, to the appropriate party at the following addresses:

If to Participant:

At the street address or e-mail maintained by MLS for Participant.

Participation Agreement

If to MLS:

REALTOR® Association of the Sioux Empire, Inc.
2415 W 57th Street
Sioux Falls, SD 57108

The foregoing addresses may be changed from time-to-time by delivering notice of such change, referencing this Agreement, to the parties to this Agreement.

- b. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the state of South Dakota. Participant acknowledges that by providing Listings to MLS and using the services provided under this Agreement, Participant has transacted business in the state of South Dakota. By transacting business in the state of South Dakota by agreement, Participant voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in Minnehaha County, state of South Dakota, as to all matters relating to or arising from this Agreement.
- c. Costs of Litigation. If any action is brought by either party to this Agreement against the other party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney's fees, costs, and expenses of litigation.
- d. Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement; except that if any provision of Sections 9, 16, or 17 of this Agreement, or any other limitation of liability or exclusion of warranty set forth in this Agreement, is determined to be invalid or unenforceable, then this Agreement shall immediately terminate without notice.
- e. No Waiver. The waiver by either party of, or the failure of either party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement. The subsequent acceptance of any payment due under this Agreement by any party shall not be deemed to be a waiver of any preceding breach of the party making payment with respect to any term, covenant or condition contained in this Agreement.
- f. Entire Agreement; Modifications Only in Writing. This Agreement, together with the Rules and Regulations and any applicable License Agreement, (i) constitutes the entire agreement between MLS and Participant concerning the MLS Database, Listing Content, and all other subject matter of this Agreement, (ii) supersedes any contemporaneous or prior proposal, representation, agreement, or understanding between the parties, and (iii) may not be amended except in writing signed by MLS and Participant.
- g. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of MLS and Participant and is not intended to benefit any third party, including any Seller or Sales Licensee. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement.

- h. Survival. The provisions of Sections 3, 5, 7, 9, 13, 16, 17, 18, 19.g, 20, and 23 of this Agreement shall survive any termination of this Agreement, including termination pursuant to Section 23.d of this Agreement.

23. Definitions. The following terms shall have the following meanings in this Agreement:

- a. Affiliates mean sales licensees, non-principal brokers, appraisers, and any other agents or employees of Participant who may have access to the MLS Database subject to the Rules and Regulations and any applicable agreements with MLS. A current list of all Affiliates is maintained by the MLS, and is incorporated into this Agreement by this reference. Upon the addition or removal of any Affiliate, Participant shall notify and provide the updated information to MLS within 3 business days following any such change.
- b. Broker means a principal real estate broker or broker in charge.
- c. Brokerage Firm means a real estate brokerage firm affiliated with a principal real estate broker or broker in charge.
- d. Board means a Board of REALTORS® or association of REALTORS® established and operated in accordance with the applicable rules and regulations of the NATIONAL ASSOCIATION OF REALTORS®.
- e. Board Rules and Regulations means the rules and regulations, as amended, of the Board of which a Participant is a member.
- f. Exempted Listing means a Listing which the respective Seller has refused permission to be disseminated by MLS, or a Listing which is not required to be submitted to the MLS, in accordance with the Rules and Regulations.
- g. IDX Listings means all of the Listings identified or defined as IDX listings in the Rules and Regulations.
- h. License Agreement means a license agreement entered into between MLS and Participant, MLS and a Sales Licensee of Participant, or MLS and a third party at the request of Subscriber.
- i. Listing mean a real estate listing of a participant in MLS's multiple listing service.
- j. Listing Agreement means an enforceable, written, and fully executed agreement between Participant and a Seller whereby, among other things, Participant agrees to provide real estate sales services to Seller, and Seller agrees to pay compensation for services provided.
- k. Listing Content means all data and content, including without limitation, all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information submitted by Participant to MLS with respect to a Listing, excepting Exempted Listings.
- l. MLS Database means the compilation of Listings, including information for sold properties,



Participation Agreement



known as the MLS Database, as modified from time-to-time by MLS, and which, as of the date of this Agreement, is available to Subscribers at <http://siouxempiremls.rapmls.com>.

- m. Participant Listings means only the Listings of Participant.
- n. Rules and Regulations means the MLS Rules and Regulations established by MLS, as amended by MLS from time to time.
- o. Sales Licensee means a real estate sales licensee, agent, or non-principal broker who is engaged by Participant as a sales licensee of Participant, either as an employee or independent contractor of Participant.
- p. Seller means the seller(s) or lessor(s) of a property which is the subject of a Listing at issue under this Agreement.
- q. Vendor means any person or entity which has entered into a License Agreement for display of real estate listings for Participant or a Sales Licensee of Participant.

Dated effective _____, 20_____

MLS

PARTICIPANT

Signature

Signature

Printed Name

Printed Name

Title

Title of signature if Participant is a brokerage firm

Participation Agreement

This Participation Agreement (the “Agreement”) is made and entered into by and between - _____, an individual principal real estate broker or broker in charge, or a real estate brokerage firm, as MLS may require (the “Participant”), and REALTOR® Association of the Sioux Empire, Inc., a Multiple Listing Service (the “MLS”).

1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 23 of this Agreement.
2. Grant of Participation Rights in Multiple Listing Service. Subject to the terms and conditions of this Agreement and the Rules and Regulations, MLS agrees to make the MLS Database available for access by Participant, and Participant shall have all rights and obligations of a participant in MLS’s multiple listing service as set forth under the Rules and Regulations. Access to the MLS Database shall be through a means determined by MLS. Participant may permit duly authorized employees or agents associated with his/her office to access the MLS Database on Participant’s behalf and pursuant to the terms of this Agreement; provided that, Participant (a) accepts full responsibility, and shall be liable to MLS for use of the MLS Database by such employee or agent; and (b) promptly terminates access to the MLS by such employee and agent upon such employee or agent ceasing to be authorized as set forth in this provision. Participant agrees to take all reasonable steps to protect the MLS Database from unauthorized access, copying, or use.
3. License to IDX Listings. Upon the receipt of a written request from Participant, in a form acceptable to MLS, and so long as Participant, the applicable Sales Licensee, and/or an applicable Vendor are not in default under this Agreement, the Rules and Regulations or any agreement with MLS, MLS will grant to Participant, the applicable Sales Licensee of Participant, or the applicable Vendor a license to the IDX Listings. The license will only be granted pursuant to a License Agreement. MLS has no obligation to grant a license to Participant, any Sales Licensee, or any Vendor which does not enter into a License Agreement. In addition to any applicable license fee payable by Participant, the Sales Licensee, and/or the Vendor, Participant shall pay to MLS all costs and expenses incurred by MLS in connection with any licenses and any services provided by MLS in connection with such licenses.
4. Intellectual Property Ownership; Enforcement.
 - a. MLS acknowledges and agrees that the Participant’s Listing Content, and all copies, modifications, enhancements, and derivative works of the Participant’s Listing Content, are the property of Participant, and all right, title, and interest in and to the Participant’s Listing Content, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with Participant. MLS hereby irrevocably assigns to Participant any and all rights which it may have or acquire in and to the Participant’s Listing Content.
 - b. Participant acknowledges and agrees that the MLS Database, and all copies, modifications, enhancements, and derivative works of the MLS Database, are the property of MLS, and all right, title, and interest in and to the MLS Database, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS. Participant hereby irrevocably assigns to MLS any and all rights which it may have or acquire in and to the MLS Database.
 - c. Participant hereby grants to MLS a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, copy, publish, display, and reproduce the Listing Content, to prepare

- (c.) The IDX shall update the information on its Internet web site not less frequently than every three (3) days (Amended 11/09). (Note: REALTOR® Association of the Sioux Empire, Inc. MLS strongly encourages you to update your web site with fresh IDX data DAILY. In the event you choose to update less frequently than daily, REALTOR® Association of the Sioux Empire, Inc. MLS encourages you to place a disclaimer on your web site indicating the frequency of update and the last update date.)
- (d.) An IDX may not modify or manipulate the data relating to another IDX's listing. (Note: This is not a limitation on the design of the site, but refers to actual data. You can do anything you want to (consistent with the Code of Ethics and applicable law) with data relating to your own listings. You can do with other brokers' listings only what these rules permit you to do. You are strictly prohibited from modifying the data in the IDX database from another IDX.)
- (e.) The REALTOR® Association of the Sioux Empire, Inc. approved icon and an explanation that those properties marked with the icon are provided courtesy of the REALTOR® Association of the Sioux Empire, Inc., Inc. MLS Internet Data Exchange Database must appear on the first page where any listing data is displayed.
- (f.) The thumbnail (or "one line") display of another IDX's listing may not include any contact information or branding of the IDX who owns the web site or any of its agents.
- (g.) A thumbnail display may only include the following: text data about the listing property, a photo of the listing property, and "buttons" providing links for additional information.
- (h.) Any search result producing a detailed display of another IDX's listing shall bear that IDX's name, the name of the IDX's firm, and the REALTOR® Association of the Sioux Empire, Inc. MLS copyright notice immediately following the property information. The IDX's name, agency name and copyright notice shall be at least as large as the largest type size used to display the listing data.
- (i.) A detailed display of another IDX's listing may not include any contact information or branding of the Participant who owns the web site or any of its agents within the "body" of the listing data. The "body" is defined as the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data. (Note: The prohibition on branding or contact information within the "body" of the listing data is intended to prevent any possible confusion on the part of the consumer as to the source of the listing.)
- (j.) Any result identifying another IDX's listing shall include the disclaimer, "Information Deemed Reliable but Not Guaranteed." (Note: In practice, you may want to display this disclaimer on your own listings as well.)
- (k.) Any Internet web site used for publication of the Internet Data Exchange Database or any portion thereof must be controlled by an IDX and advertised as that IDX's Internet web site.
- (l.) An IDX displaying the Internet Data Exchange Database or any portion thereof shall make reasonable efforts to avoid "scraping" of the data by third parties or displaying of that data on any other web site. Reasonable efforts shall include by not be limited to:
 - a. Monitoring the web site for signs that third party "scraping" data and;

- b. Prominently posting notice that any use of search facilities of data on the site, other than by a consumer looking to purchase real estate, is prohibited. (Note: This section places the burden on you and your web site host to monitor your web site. If it appears that a large number of hits are coming from a particular domain on the web and that these hits may be the result of an automated process designed to “scrape” data from your web site for use somewhere else for a commercial or unauthorized purpose, you must notify the REALTOR® Association of the Sioux Empire, Inc.) and;
 - c. Limiting the number of results from a search query to 50 (fifty) one-line displays per page.
-
- (m.) An IDXs must make changes to an Internet site necessary to cure a violation of REALTOR® Association of the Sioux Empire, Inc.’s MLS Rules and Regulations within five business days of notice from REALTOR® Association of the Sioux Empire, Inc. of the violation. (Note: The REALTOR® Association of the Sioux Empire, Inc. MLS reserves the right to discontinue the inclusion of the IDXs’s listings in the Internet Data Exchange Database and/or discontinue the data feed you receive without further notice if you do not comply with this requirement. You may also be subject to fines under the MLS Rules and Regulations.)
 - (n.) No portion of the Internet Data Exchange Database shall be used or provided to a third party for any purpose other than those expressly provided for in these rules. (Note: This section expressly prohibits distribution of the IDX Database or any portion of it for ANY purpose other than those expressly permitted in the REALTOR® Association of the Sioux Empire, Inc. MLS Rules and Regulations and/or Policies and Procedures. This includes distribution to other IDXs. In other words, a brokerage firm cannot sell access to the Internet Data Exchange Data to other brokers or any other businesses, whether or not they are participants in the REALTOR® Association of the Sioux Empire, Inc. MLS.)
 - (o.) No portion of the Internet Data Exchange Database shall be co-mingled with any non-MLS listings on the BRS’s Internet web site. (Note: If you take listings from consumers but do not put them into the MLS system they cannot appear on any thumbnail display or as part of any search results with the IDX Database data. If a property in question appears in an MLS other than the REALTOR® Association of the Sioux Empire, Inc. MLS, it may be co-mingled.)
 - (p.) Any IDXs using a third party to develop/design its web site will have a written agreement with that third party in the form prescribed by REALTOR® Association of the Sioux Empire, Inc. MLS. (Note: Third parties gaining access to the IDX Database must sign the standard contract (attached)). Providing a MLS password to an unauthorized recipient is a serious violation of the REALTOR® Association of the Sioux Empire, Inc. MLS Rules and Regulations, punishable by a fine of \$2,000 for each violation.)
 - (q.) Any IDX website must be under the control of a single BRS.
 - (r.) As regards to this policy, sites belonging to agents affiliated with an IDXs are deemed to be owned by the Broker.

Mandatory Disclosures:

These disclosures are required. With the exception of the copyright notices, the examples that appear here are merely suggestions. If you use these suggestions, you will be assured of compliance with applicable provisions of the REALTOR® Association of the Sioux Empire, Inc. MLS Rules and Regulations. However, you may use language of your own choosing as long as it achieves the same objectives.

Explanation of Data Source: Your web site must display a disclosure indicating the source of IDX Database data on your site. The following disclosure, appearing alongside the REALTOR® Association of the Sioux Empire, Inc. approved logo for Internet Data Exchange will satisfy this requirement:

“The data relating to real estate for sale on this web site comes in part from the Internet Data Exchange Program of the REALTOR® Association of the Sioux Empire, Inc., Multiple Listing Service. Real estate listings held by brokerage firms other than [insert your firm name here] are marked with the Internet Data Exchange™ logo or the Internet Data Exchange thumbnail logo (a little black house) and detailed information about them includes the name of the listing brokers.”

Accuracy Disclaimer: Your web site must display a disclosure indicating that data from other IDXs is “deemed reliable but not guaranteed.” Any similar language indicating both that the listing broker believes the data provided to be accurate but that it does not guarantee the data will be acceptable as an alternative. Some examples of acceptable alternatives:

“The broker(s) providing this data believes it to be correct, but advises interested parties to confirm the data before relying on it in a purchase decision.”

OR

“Listing broker(s) has attempted to offer accurate data, but buyers are advised to confirm all items.”

Copyright Notice: Your web site must display the REALTOR® Association of the Sioux Empire, Inc. copyright notice on any detailed listing data of another IDX. **This notice must appear exactly as in one of these two options:**

Option A: “Copyright xxxx REALTOR® Association of the Sioux Empire, Inc., Inc. Multiple Listing Service. All rights reserved.” [Where xxxx is the current year]

Option B: “© xxxx REALTOR® Association of the Sioux Empire, Inc., Inc. Multiple Listing Service. All rights reserved.” [Where xxxx is the current year.] (Note: You may not substitute a “c” in parentheses – “(c)” – for the copyright symbol – “©”. If your web site cannot display the copyright symbol, you must use Option A and spell out the word “Copyright”).

Recommended Disclosures:

Update frequency: If you choose to update data on your web site less frequently than daily, REALTOR® Association of the Sioux Empire, Inc. MLS advises that the site include a disclaimer indicating the frequency and days of update. Alternately, a “Data last updated: xx/xx/xx” on the search page could be effective. This may be wise even if you *do* update daily. It is a violation of South Dakota license law to advertise a property for sale that is not for sale. If you download a listing record on Monday, the property sells on Tuesday, and you don’t update the data until the next Monday, the property will show as available on your site for five days during which it was not available. It is unclear whether this would be a violation of SD license law; in order to be safe, however, the REALTOR® Association of the Sioux Empire, Inc. recommends that you disclose to consumers the frequency of data updates. For example:

On the data search page: “This data is updated not less frequently than every three (3) days. Some properties which appear for sale on this web site may subsequently have sold and may no longer be available.”

On the results page: “This data is up-to-date as of [fill in update date here]. For the most current information, contact [your firm name, phone number, and e-mail address].”

Aggregator Sites:

A listing does not need to be included in the Internet Data Exchange database for it to be transmitted to REALTOR.com, HomeViewSiouxFalls.com, or any other third-party aggregator sites supplied by the REALTOR® Association of the Sioux Empire, Inc. Multiple Listing Service.

Framing:

The REALTOR® Association of the Sioux Empire, Inc. MLS System Vendor will maintain a database containing selected fields of MLS listing information from Brokers who have agreed to participate in Internet Data Exchange and will offer a basic framing solution to be utilized by participants at no charge. Enhancements, including smart framing, are the option and expense of each participating Broker. Enhancements must be approved by the REALTOR® Association of the Sioux Empire, Inc. to ensure that they are in compliance with policy. **Brokers and their Sales Licensees utilizing this method must register the site name with the REALTOR® Association of the Sioux Empire, Inc.**

Download:

The REALTOR® Association of the Sioux Empire, Inc. will provide access to the Rapattoni RETS Server containing selected fields of MLS listing information from Brokers who have agreed to participate in Internet Data Exchange. Participating Brokers utilizing download capabilities will have access to this file at no charge. **Brokers and their Sales Licensees utilizing this method must register the site name with the REALTOR® Association of the Sioux Empire, Inc.** The process and procedure for downloading shall be by such equipment and procedure as may be

determined by REALTOR® Association of the Sioux Empire, Inc. from time to time at its sole discretion.

Force Majeure:

The REALTOR® Association of the Sioux Empire, Inc. will not be responsible for any failure in performance if such failure arises, directly or indirectly, out of causes reasonably beyond the control or foreseeability of the Association, including but not limited to, delay, fault or failure of subcontractors or suppliers of goods or services, common carriers, acts of God, governmental acts, natural disaster, fire, flood or strikes.

Contract: Access to Internet Data Exchange Data Feed (Download)

Note: This form is a legally binding contract between you and REALTOR® Association of the Sioux Empire, Inc. Upon subscription to the RASE Multiple Listing Service your consent for IDX display is presumed and you immediately become an Internet Data Exchange Subscriber (IDX). A Listing Broker must affirmatively notify the RASE MLS that the Listing Broker refuses to permit display (either on a blanket or on a listing-by-listing basis). See REALTOR® Association of the Sioux Empire, Inc. IDX Rules and Policies for further details. **This form/contract must be filled out completely and signed by an owner of your firm. There are no exceptions.** Once you have filled it out and signed it, deliver or fax it to the Association office at 2415 W 57th St, Sioux Falls, SD 57108, FAX: 605-335-8981. RASE MLS staff will contact you or your designated Consultants with information on how to access the RETS Server.

AGREEMENT

1. This AGREEMENT is made and entered into by and among REALTOR® Association of the Sioux Empire, Inc. (“Association”), the real estate firm whose name and contact information appear on the signature page of this Agreement designated “Firm Information and Signature” (“Firm”), and the companies/individuals whose names and contact information appear on the signature pages of this Agreement designated “Consultant Information and Signature” (collectively, “the Consultants”), if any.

RECITALS

2. Firm wishes to obtain, and Association wishes to provide, data for Firm’s web site, including the listing data of other real estate brokerages participating in Association’s MLS. Firm may wish to engage Consultants, i.e., other companies or individuals who are not employees of Firm, to perform data downloading, manipulation, and formatting, as well as programming and web design.

DEFINITIONS

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

Internet Data Exchange Database or IDX Data: The current aggregate compilation of all active exclusive right to sell listings of all Internet Data Exchange Subscribers except those listings where the property seller has opted out of Internet publication by so indicating on the listing contract. REALTOR® Association of the Sioux Empire, Inc. owns the IDX data.

Internet Data Exchange Subscriber or IDX: A Subscriber who gives permission to other Subscribers to display its active listings on their web sites in return for their permission to advertise their listings on its web site.

Multiple Listing Service: A means for collecting and disseminating information about real property that is or has been for sale, including a means for real estate brokers to make offers of cooperation and compensation to each other. Multiple Listing Services may also include, without limitation, the provision of data processing, technical support, consulting, and other information technology services to real estate brokers and appraisers in connection with the sale and appraisal of real property.

Rules: The Rules and Regulations of REALTOR® Association of the Sioux Empire, Inc. MLS, as amended from time to time, and any operating policies relating to the IDX Data and IDXs promulgated by REALTOR® Association of the Sioux Empire, Inc.

Subscriber: Any real estate broker, appraiser, or other real estate related business professional that purchases Multiple Listing Services from REALTOR® Association of the Sioux Empire, Inc.

Subscriber Data: Data relating to real estate for sale, previously sold or listed for sale, including the Internet Data Exchange Database, and data relating to Subscribers, entered into the Rapattoni MLS system by Subscribers and REALTOR® Association of the Sioux Empire, Inc. RASE owns the Subscriber data.

REALTOR® ASSOCIATION OF THE SIOUX EMPIRE, INC. OBLIGATIONS

4. During the term of this Agreement, REALTOR® Association of the Sioux Empire, Inc. grants to Firm a license to:
 - a. Display the IDX data on Firm's web site, and
 - b. Make copies of the IDX data to the extent necessary to deliver the IDX data to consumers on Firm's web site.
5. During the term of this Agreement, REALTOR® Association of the Sioux Empire, Inc. agrees to provide to Firm and its Consultants:
 - a. Access to the IDX Data via the Internet using the Rapattoni RETS Server;
 - b. The capability to frame the IDX Data;
 - c. Seven (7) days advance notice of changes to the file and record formats of the IDX Data; and,
 - d. Seven (7) days advance notice of changes to the Rules.

FIRM'S OBLIGATIONS

6. Firm shall comply with the Rules at all times.
7. Firm acknowledges REALTOR® Association of the Sioux Empire, Inc. ownership of the copyrights in the Subscriber Data and the IDX Data.
8. Firm shall comply with the requirements relating to confidential information set forth below.

9. In the event that Firm desires to make the IDX Data or the Confidential information available to any third party, Firm agrees to require such third party to execute this Agreement and become a Consultant.
10. If REALTOR® Association of the Sioux Empire, Inc. notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that REALTOR® Association of the Sioux Empire, Inc. may seek cure from the Consultants, or any one of them.
11. Firm shall notify REALTOR® Association of the Sioux Empire, Inc. within 3 (three) business days of any change to the information relating to Firm on the Firm Information and Signature page below.

CONSULTANT'S OBLIGATIONS

12. If REALTOR® Association of the Sioux Empire, Inc.® notifies Firm of a breach of the Rules of this Agreement and Firm does not immediately cure such breach, REALTOR® Association of the Sioux Empire, Inc. may contact Consultant to cure any such breach that is within the Consultant's control. Consultant agrees to cooperate with REALTOR® Association of the Sioux Empire, Inc. and act immediately upon notification by REALTOR® Association of the Sioux Empire, Inc. of an uncured breach by Firm.
13. Each Consultant acknowledges REALTOR® Association of the Sioux Empire, Inc. ownership of the copyrights in the Subscriber Data and the IDX Data.
14. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
15. Each Consultant shall notify REALTOR® Association of the Sioux Empire, Inc. within 3 (three) business days of any change to the information relating to it on the Consultant Information and Signature page below.

CONFIDENTIAL INFORMATION

16. **“Confidential Information”** is information or material proprietary to REALTOR® Association of the Sioux Empire, Inc. or designated “confidential” by REALTOR® Association of the Sioux Empire, Inc. and not generally known to the public, which Firm or Consultants, or any one of them (the “Receiving Party”) may obtain knowledge of or access to as a result of access under this Agreement. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether in oral, visual, audio, written or other form):
 - a. all Subscriber Data, except the IDX Data to the extent to which this Agreement and the Rules permit its disclosure;
 - b. all documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;
 - c. software, source code, object code, diagrams, flow charts;
 - d. techniques, procedures;
 - e. IP addresses, access codes and passwords; and
 - f. any information that REALTOR® Association of the Sioux Empire, Inc. obtains from any third party that REALTOR® Association of the Sioux Empire, Inc. treats

as proprietary or designates as Confidential Information, whether or not owned or developed by REALTOR® Association of the Sioux Empire, Inc.

17. **Exceptions.** The Confidential Information does not include information that:
 - a. is in the public domain at the time of disclosure;
 - b. is known to the Receiving Party as the time of disclosure;
 - c. is used or disclosed by the Receiving Party with the prior written consent of REALTOR® Association of the Sioux Empire, Inc., to the extent of such consent;
 - d. becomes known to the Receiving Party from a source other than REALTOR® Association of the Sioux Empire, Inc. without breach of this Agreement by the Receiving Party and provided such source is not known by the Receiving Party to be bound by a confidentiality agreement with REALTOR® Association of the Sioux Empire, Inc.; or
 - e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provided to REALTOR® Association of the Sioux Empire, Inc. prompt notice of any such order.

18. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with REALTOR® Association of the Sioux Empire, Inc. or with the third parties in whom title existed prior to this Agreement or prior to disclosure by REALTOR® Association of the Sioux Empire, Inc.

19. **Restrictions on Use – Scope of Use.** The Receiving Party will use or access the Confidential Information only as expressly permitted under this Agreement and the Rules and the Receiving Party will not use its access or the Confidential Information for any other purpose. The Receiving Party will employ measures to protect the Confidential Information from disclosure at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care.

20. **Restrictions on Use – Unauthorized Uses.** The Receiving Party will not make copies of the Confidential Information. The Receiving Party will not directly or indirectly disclose, display, provide, transfer or otherwise make available the Confidential Information to any person or entity, unless the Receiving Party has received prior written consent of REALTOR® Association of the Sioux Empire, Inc. to do so. At no time and under no circumstances will the Receiving Party reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. The Receiving Party will not incorporate the Confidential Information into any other work or product.

21. **Restrictions on Use – No Third Party Access.** Only the Receiving Party's own employees will access the Confidential Information. The Receiving Party will not provide access to the Confidential Information to third parties, including Consultants or independent contractors, without prior written consent for REALTOR® Association of the Sioux Empire, Inc. If REALTOR® Association of the Sioux Empire, Inc. grants consent, the Receiving Party will execute an agreement with the third party that imposes at least as strict a confidentiality obligation on the third party as that imposed by this Agreement on the Receiving Party.

22. **Restrictions on Use – Location Restriction.** The Receiving Party will not remove the Confidential Information from its principal place of business without REALTOR® Association of the Sioux Empire, Inc. s prior written consent. In the event REALTOR® Association of the Sioux Empire, Inc. grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.
23. **Termination and Return of Materials.** Within 3 (three) business days of the end of the term of this Agreement or receipt of notice of termination by REALTOR® Association of the Sioux Empire, Inc., the Receiving Party will return to REALTOR® Association of the Sioux Empire, Inc. all Confidential Information and all other materials provided by REALTOR® Association of the Sioux Empire, Inc. to the Receiving Party. The Receiving Party will also erase, delete or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of REALTOR® Association of the Sioux Empire, Inc., an officer of the Receiving Party will certify in writing that all materials have been returned to REALTOR® Association of the Sioux Empire, Inc. and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

24. The term of this Agreement begins on the “Effective Date” set forth on the “REALTOR® Association of the Sioux Empire, Inc. Information and Signature Page” below. REALTOR® Association of the Sioux Empire, Inc. has the right at any time and in its sole discretion to terminate this Agreement. This Agreement shall terminate upon the occurrence of any of the following events:
 - a. REALTOR® Association of the Sioux Empire, Inc.’s notice to Firm that this Agreement is terminated.
 - b. Firm’s notice to REALTOR® Association of the Sioux Empire, Inc. that it no longer intends to display IDX Data on its web site.
 - c. Termination of Firm’s privileges as a Subscriber by REALTOR® Association of the Sioux Empire, Inc. MLS.

GENERAL PROVISIONS

25. **Survival of Obligations.** The obligations of Firm set forth under “Firm’s Obligations” above and the obligations of Consultants under “Consultants’ Obligations” above shall survive the termination or expiration of this Agreement.
26. **REALTOR® Association of the Sioux Empire, Inc. Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Firm and Consultants acknowledge that REALTOR® Association of the Sioux Empire, Inc. would suffer irreparable harm in the event that any of them breaches its obligation under this Agreement, and that monetary damages would be inadequate to compensate REALTOR® Association of the Sioux Empire, Inc. for a breach. REALTOR® Association of the Sioux Empire, Inc. is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Firm or Consultants or any one of

them, without showing or proving any actual damages sustained by REALTOR® Association of the Sioux Empire, Inc.

27. **Attorney's Fees.** If REALTOR® Association of the Sioux Empire, Inc. prevails in any action to enforce or interpret this Agreement or any provision hereof, the party against whom enforcement or interpretation was sought will pay REALTOR® Association of the Sioux Empire, Inc.'s reasonable attorney fees and costs for such legal action.
28. **Limitation of Liability.** REALTOR® Association of the Sioux Empire, Inc.'s liability to Firm and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by Firm and Consultants to REALTOR® Association of the Sioux Empire, Inc., if any, under this Agreement. Firms and Consultants' only other remedy shall be termination of this Agreement. REALTOR® Association of the Sioux Empire, Inc. shall not be liable for any incidental or consequential damages under any circumstances, even if REALTOR® Association of the Sioux Empire, Inc. has been advised of the possibility of such damages. REALTOR® Association of the Sioux Empire, Inc. shall have no liability for inaccuracies in the IDX Data or the Subscriber Data.
29. **Notice.** All notices to be given under this Agreement shall be distributed via electronic mail (e-mail) to the parties at their respective addresses set forth below or such other address of which any party may advise the others in writing during the term of this Agreement.
30. **No Waiver.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.
31. **No Assignment.** Neither Firm nor Consultants, nor any of them, may assign or otherwise transfer any of their rights under this Agreement to any party without prior written consent of REALTOR® Association of the Sioux Empire, Inc.
32. **Entire Agreement.** This Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings whether oral or written. The previous sentence notwithstanding, the Rules are expressly incorporated into this Agreement by reference.
33. **Applicable Law.** This Agreement is governed by and enforced according to the laws of the State of South Dakota.

Individual Consultant/Web Developer Information and Signature

Note to Consultant: Be sure to enter into this Access to IDX data feed contract with REALTOR® Association of the Sioux Empire, Inc. and every real estate broker to which you provide services.

Consultant – Company Name: _____

Consultant – Company Website: _____

Consultant – Contact Person: _____

Consultant – Contact Phone: (_____) _____

Consultant – E-mail Address: _____
(You **must** supply an e-mail address here. This address will be RASE principal means of communicating with you for notices under this agreement.)

Consultant Street Address: _____

Consultant City, State, Zip: _____

Means of access requested for client listed below (check one): RETS or SmartFraming

This is for (check one): Mobile App Agent Website Broker/Office Website

If Agent website, please print agent's name: _____

Website Domain (URL): _____

Mobile App Name: _____

Entered into on behalf of Consultant by:

(Consultant Representative Signature)

(Print Name) (Title) (Date)

Agent Signature: _____

Designated Broker – Print Name and Office: _____

Designated Broker Signature: _____

Internet Data Exchange Subscriber Participation Change Form

This form permits you (a RASE MLS Member Office) to opt in or opt out of the Internet Data Exchange program. Upon subscription to the RASE Multiple Listing Service your consent for IDX display is presumed and you immediately become an Internet Data Exchange Subscriber (IDX). A Listing Broker must affirmatively notify the RASE MLS that the Listing Broker refuses to permit display (either on a blanket or on a listing-by-listing basis). If you have previously opted out of IDX and again want to opt in, you will again be considered an Internet Data Exchange Subscriber (IDX). Being an IDX does not cost you anything, and it does not require you to do anything else. It is only if you wish to display IDX Data on your web site that you need to take any further steps. See REALTOR® Association of the Sioux Empire, Inc.'s IDX Policy for more information. **This form is required whenever a member firm wants to opt out of IDX or opt back in to IDX.** Once you have filled it out, deliver or mail it to the Association office, 2415 W 57th St, Sioux Falls SD 57108, Fax: 606-335-8981.

Firm Name: _____

Designated Broker: _____

E-mail address: _____

(If you are becoming an IDX, you **must** have an e-mail address here. This address will be the Association's primary means of communicating with you about IDX developments.)

CHECK ONE OF THESE TWO BOXES. By doing so, you are agreeing to the understandings indicated next to it.

- MY FIRM IS AN INTERNET DATA EXCHANGE SUBSCRIBER. I understand that I am hereby giving every other Internet Data Exchange Subscriber in REALTOR® Association of the Sioux Empire, Inc. Multiple Listing Service permission to advertise my active MLS listings on their own web site, subject to the Rules and Regulations of REALTOR® Association of the Sioux Empire, Inc. MLS. Other IDXs are not obliged to display my listings. I authorize REALTOR® Association of the Sioux Empire, Inc. to distribute my active listing data to other IDXs pursuant to its Rules and Policies.

- MY FIRM IS NOT AN INTERNET DATA EXCHANGE SUBSCRIBER. I understand that this means that other IDXs will not be permitted to display my listings on their web sites. I further understand that my firm will receive no benefits under the IDX program of REALTOR® Association of the Sioux Empire, Inc. My firm is not allowed to display the listings of other brokers unless I receive permission from them individually to do so.

I am the Designated Broker for the MLS office whose name appears above. I represent that I have the authority to execute this form on behalf of my own office.

Designated Broker Signature: _____

Date: _____