



CLINTON COUNTY BOARD OF REALTORS®
APPLICATION FOR REALTOR® MEMBERSHIP

NAME: _____ **Date:** _____

Date of Birth: _____

To the Clinton County Board of REALTORS® (CCBR), I hereby apply for REALTOR® Membership in the above-named Board and am enclosing my check in the amount of \$ 500.00 for a one-time application fee. I understand that as part of my membership, I agree to pay Annual Dues to NAR, NYSAR and CCBR in the amount determined by NAR, NYSAR and the CCBR Board (pro-rated per month of application) and Annual Fees to the ACVMLS in the amount determined by the MLS Board (pro-rated per month of application). My application fee and dues will be returned to me in the event of non-election. In the event of my election, I agree to abide by the Code of Ethics of the National Association of REALTORS®, and the Constitution, Bylaws and 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 examination as required on such Code, Constitutions, Bylaws and Rules and Regulations. I consent that the Board, through its Membership Committee or otherwise, may invite and receive information and comment about me from any member or other person, and I further agree that any information and comment furnished to the Board by any person in response to the invitation shall be conclusively deemed to privileged and not form the basis of any action by me for slander, libel, or defamation of character. I understand membership brings certain privileges and obligations that require compliance. Membership is provisional and may be revoked should completion of requirements, such as the orientation, not be completed within times indicated in the Bylaws.

NOTE: Applicant acknowledges that if accepted as a member and he/she subsequently resigns from the Board/Council or otherwise causes membership to terminate with an ethics complaint pending, the Board of Directors may condition renewal of membership upon applicant's certification that he/she will submit to the pending ethics proceeding and will abide by the decision of the hearing panel. If applicant resigns or otherwise causes membership to terminate, the duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided the dispute arose while applicant was a REALTOR®.

Real Estate/Appraisal License # (Unique ID): _____ **Expiration Date:** _____

Office Name: _____

Office Address: _____

Office Email _____

Office Phone: _____ Fax: _____

Home Address: _____

Home Phone: _____ Personal Email: _____

Mobile Phone: _____ Mobile Phone Company: _____

Do you hold yourself out to the general public as being actively engaged in the real estate business? _____

1. How long with current real estate firm? _____ Previous real estate firm (if applicable): _____

2. Are you a member of any other real estate Board/Council of REALTORS®? _____

If yes, name of Board/Council and type of membership held: _____

3. Have you previously held membership in any other Board/Council? _____

If yes, name of Board/Council and type of membership held: _____

If you are now or have ever been a REALTOR®, indicate your NAR membership (National REALTOR ID)

DESIGNATED BROKERS/BRANCH MANAGERS please complete the following information. Other applicants proceed to signature block.

Does your office comply with Department of State requirements? _

Company information: ___ Individual ___ DBA ___ Partnership ___ Corporation

Your Position: ___ Principal ___ Partner ___ Corporate Officer ___ Trustee Employee

___ Independent Contractor ___ Other: _____

Names of Principals/Partners/Officers/Trustees of your firm: _____

Have you ever been refused membership in any other real estate Board/Council? Yes/No

If yes, state the basis for each such refusal and detail the circumstances related thereto:

Is the Office Address, as stated, your principal place of business? Yes/No

If not, or if you have any branch offices, please indicate and give address:

Principals, please list institution in which you maintain your escrow account:

Do you hold, or have you ever held, a real estate license in any other state? Yes/No

Name of State: _____

Have there been any complaints, within the last five years, against you or the firm with which you are associated?

If so, please specify: _____

ALL APPLICANTS:

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 Clinton County Board of REALTORS® are not deductible as charitable contribution. Such payments may, however, be deductible as an ordinary and necessary business expense. Dues and MLS fees are not refundable after membership approval.

Dated: _____ Signature: _____

Mail to: Clinton County Board of REALTORS®
6 Pond Street, Suite 2, Plattsburgh, NY 12901
Phone: (518) 561-8777 Fax: (518) 561-0107 E-mail: ae@ccbr.us

Adirondack-Champlain Valley Multiple Listing Service, Inc.
Participant Agreement

This **AGREEMENT** is made and entered into by Adirondack-Champlain Valley Multiple Listing Service, Inc. ("**ACVMLS**"), with offices at 6 Pond Street, Suite 2, Plattsburgh, New York 12901; 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.

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

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

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

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

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

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

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

Other Participants and Subscribers: All Participants and Subscribers of ACVMLS not party to this Agreement.

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

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

Schedule of Fees: ACVMLS's document that establishes the fees for ACVMLS Service.

Subscribers: Firm Participant's employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

Saved Information: Information that Subscribers store in the ACVMLS 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.

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.

ACVMLS'S OBLIGATIONS.

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

FIRM PARTICIPANT ACKNOWLEDGMENTS.

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

5. **Editorial control.** ACVMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the ACVMLS 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, ACVMLS 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 ACVMLS Policies or infringement of intellectual property right. Additionally, ACVMLS 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 ACVMLS Service. The prerequisites are set out in the ACVMLS 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 ACVMLS 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. ACVMLS 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.** ACVMLS 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. ACVMLS reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and

Subscribers' use of the ACVMLS Service, but not about Firm Participant's or Individual Participants' use specifically.

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

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

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

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

FIRM PARTICIPANT'S OBLIGATIONS.

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

14. **Confidentiality.** Firm Participant shall maintain the confidentiality of its user ID and password. ACVMLS 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 ACVMLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the ACVMLS Database, and the ACVMLS 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 ACVMLS 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 ACVMLS to permit ACVMLS 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 ACVMLS Software, necessary for Participant's use of the ACVMLS Service.

16. **Participant Contribution.** With regard to any Subscriber making a Participant Contribution to the ACVMLS Service, Firm Participant warrants that the information submitted complies with the ACVMLS 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 ACVMLS System or ACVMLS Database, enters into a Subscriber agreement with ACVMLS. 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 ACVMLS Policies and with applicable laws. Firm Participant is liable for any Subscriber's breach of any agreement between the Subscriber and ACVMLS relating to the

ACVMLS Service or violation of any of the ACVMLS Policies as if Firm Participant had committed it.

19. **List of Subscribers.** Firm Participant shall ensure ACVMLS has a current list of all of Subscribers; Firm Participant shall inform ACVMLS 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 ACVMLS System within such time as ACVMLS shall provide in the ACVMLS Policies. Pursuant to the ACVMLS Policies, Firm Participant shall provide to ACVMLS all documentation ACVMLS 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 ACVMLS 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 ACVMLS.

(b) **ACVMLS Obligations.** ACVMLS 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 ACVMLS Database relating to Firm Participant's listings. ACVMLS shall make quarterly registrations of the ACVMLS's copyrights in the ACVMLS Database; ACVMLS 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 ACVMLS 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) **ACVMLS has no obligations to protect.** Firm Participant acknowledges that: (i) ACVMLS makes no grant of license or assignment to Firm Participant of any rights in the ACVMLS Database except as set forth in paragraph 22; (ii) ACVMLS 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) **ACVMLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm**

Participant's permission; (v) ACVMLS 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 ACVMLS Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of ACVMLS, which shall be deemed the PCC's author for purposes of copyright law. ACVMLS hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the ACVMLS Software and the ACVMLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the ACVMLS 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 ACVMLS Policies are prohibited. Title to the Licensed Materials remains at all times in ACVMLS 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 ACVMLS.

24. **Limitations on use by ACVMLS.** ACVMLS 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 ACVMLS Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after ACVMLS 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 ACVMLS that includes an offer of interbroker compensation are subscribers to the ACVMLS Service.

FEES AND PAYMENT TERMS.

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

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

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

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

30. **Fines.** ACVMLS may collect fines from Firm Participant and from Individual Participants for violation of the ACVMLS Policies by Firm Participant, Individual Participant and Subscribers. Payment terms for fines are set out in the ACVMLS Policies. ACVMLS 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 ACVMLS Policies.** Paragraph 32 notwithstanding, ACVMLS may terminate this Agreement if Firm Participant fails to comply with the ACVMLS Policies; if Firm Participant violates or is alleged to have violated the ACVMLS 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 ACVMLS Policies. If in ACVMLS's judgment, however, a violation or alleged violation of the ACVMLS Policies is resulting in a continuing harm to ACVMLS or Other Participants or Subscribers, ACVMLS may suspend Firm Participant's access to the ACVMLS 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, ACVMLS may terminate service without being subject to arbitration. In its sole discretion, ACVMLS 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) ACVMLS 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 ACVMLS Service; (b) Firm Participant shall purge all copies of the ACVMLS Software and the ACVMLS 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 ACVMLS notice to Subscriber, ACVMLS may in its sole discretion suspend Subscriber access to ACVMLS System or terminate Subscriber license and access agreements. If ACVMLS does not exercise its right to suspend Subscriber access to the ACVMLS 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.** ACVMLS PROVIDES THE ACVMLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE ACVMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ACVMLS SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE ACVMLS AFFILIATES DO NOT WARRANT THAT THE ACVMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE ACVMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE ACVMLS SERVICE. THE ACVMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE ACVMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ACVMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The ACVMLS Service may contain hyperlinks

to web sites operated by parties other than ACVMLS; ACVMLS 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 ACVMLS 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 ACVMLS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE ACVMLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE ACVMLS 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 ACVMLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

40. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL ACVMLS BE LIABLE TO FIRM PARTICIPANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT HAS PAID ACVMLS, 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 ACVMLS 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 ACVMLS Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the ACVMLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the ACVMLS 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 ACVMLS 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 ACVMLS Software and ACVMLS Database are confidential and proprietary products of ACVMLS 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 ACVMLS Software or ACVMLS Database, ACVMLS 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 ACVMLS claims that Firm Participant has violated the ACVMLS Policies, ACVMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the ACVMLS Policies, provided ACVMLS 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 Clinton County, New York, 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 Clinton County, New York.

45. **Liquidated damages.** Firm Participant acknowledges that damages suffered by ACVMLS from access to the ACVMLS 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 ACVMLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to ACVMLS 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 ACVMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Firm Participant shall be liable to ACVMLS for liquidated damages in the amount of \$5,000 (or the amount established in the ACVMLS 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 ACVMLS 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 ACVMLS 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 ACVMLS and Firm Participant, or ACVMLS 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 ACVMLS 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 ACVMLS 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). ACVMLS 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 ACVMLS Service or ACVMLS 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 ACVMLS Service shall immediately terminate.

51. **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in New York, 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.

Adirondack-Champlain Valley Multiple Listing Service, Inc.

Firm Participant

Signature

Firm Participant name

Michael Coughlin

Print name

Signature of principal

Effective Date

Print name of principal