



PARTICIPANT AGREEMENT

This PARTICIPANT AGREEMENT, including the Application for Participation previously completed and signed by the Participant which is attached hereto and incorporated herein by reference, (the "Agreement") is made and entered into and is effective as of the date the last party executes this Agreement, is between SOUTH CENTRAL KANSAS MLS, INC. ("SCK MLS"), a Kansas corporation, having its principal offices at 540 South Broadway, Wichita KS 67202, and the undersigned Participant, having its principal offices at the address as set forth on the signature page and as may be changed from time to time ("Participant") and is made with reference to the following facts and circumstances:

1. RECITALS.

1.1 SCK MLS is a multiple listing service company ("MLS") as it is defined in the South Central Kansas Multiple Listing Service Rules & Regulations effective January 1, 2005 ("SCK MLS Rules").

1.2 SCK MLS collects, primarily from real estate professionals, certain information about real properties in the counties of Butler, Cowley, Harvey and Sedgwick and portions of other geographic areas in the state of Kansas (hereinafter defined as "SCK MLS Data"), and then aggregates, compiles, displays, maintains and distributes the SCK MLS Data, together with other products and services which facilitate the business of Participant (collectively, the "SCK MLS Services") principally for the benefit of those same real estate professionals. The SCK MLS Data includes data relating to commercial, multi-family and residential properties listed for sale or rent, those that have been sold, and those with respect to which the sale has been cancelled or has not closed, and includes unimproved and vacant properties.

1.3 The parties desire to enter this Agreement which, in addition to the SCK MLS Rules and SCK MLS Compliance Guidelines ("SCK MLS Guidelines"), will govern the use of the SCK MLS Services and SCK MLS Data by the Participant and its agents and/or appraisers licensees and those in its employ.

NOW, THEREFORE, in consideration of the Recitals, and the mutual promises and covenants contained herein and intending to be legally bound, each of parties agrees as follows:

2. GRANT OF ACCESS TO SCK MLS SERVICES AND SCK MLS DATA.

Subject to the provisions, terms and conditions of this Agreement and the SCK MLS Rules and SCK MLS Guidelines, SCK MLS hereby grants to Participant during the Term a non-exclusive, non-transferable license to access the SCK MLS Services and the SCK MLS Data for the purpose of adding, editing, reviewing, researching and retrieving the SCK MLS Data and using the SCK MLS Services to conduct the Participant's real estate or appraisal business.

3. METHOD OF ACCESS TO SCK MLS SERVICE.

Participant shall access the SCK MLS Data and SCK MLS Services through various types of electronic communications furnished to Participant by SCK MLS and/or third-party vendors, upon the terms and conditions required by SCK MLS and the third party vendor. Participant understands and agrees that it must execute a separate Agreement with SCK MLS and its website developer for authority to display SCK MLS Data on the Internet.

4. SUBMISSION OF PARTICIPANT'S DATA.

4.1 Grant of Rights to SCK MLS. Participant, as the acquirer and provider of information relating to real estate properties that are for sale or that have sold, including, if applicable, appraisal information, Participant's personal listing agent information, remarks, virtual tours, videos and photographs, hereby grants to SCK MLS a perpetual, worldwide, royalty-free license to use, display and copyright all such information entered by Participant into the SCK MLS Data and to reproduce, use, distribute, display and grant access to such SCK MLS Data through the SCK MLS Services electronically and in such other form or in such other manner and to such third parties as SCK MLS deems appropriate.

4.2 Submitted Information. Participant hereby warrants that if it is a licensed real estate broker, it will have a valid listing agreement prior to submitting any listing data to SCK MLS. Any information to be submitted to the SCK MLS Service shall include the particular data specified by the SCK MLS Service and shall be submitted in the form and format and according to the procedures set forth in the SCK MLS Rules and in accordance with the SCK MLS Guidelines. Participant shall use reasonable care to ensure the accuracy and completeness of such submitted information and shall be responsible for correcting and updating all submitted information in accordance with the SCK MLS Rules and SCK MLS Guidelines.

4.3 Required Consents. Participant shall obtain written consent to include any virtual tours, photographs, videos, floor plans or other information pertaining to properties that Participant submits for inclusion in the SCK MLS Service from the owner of such virtual tours, photographs, videos, floor plans or other information if owned by someone other than by Participant.

4.4 Copyright. SCK MLS may manipulate and/or compile the information, data, and tangible or intangible property items provided by the Participant in accordance with SCK MLS Rules. The Participant acknowledges that the manipulation or compilation being performed by SCK MLS will result in a database containing various compilations of real estate data which are copyrightable material. By the act of submitting any real estate data and information to SCK MLS, the Participant hereby assigns its right, title and interest to copyright the information in the compilation to SCK MLS and consents to the use of its contributions in such copyrighted material including the bringing of all actions and causes of actions and warrants it will not challenge, interfere with or violate such copyright, and warrants that it will not seek compensation therefor.

4.5 Internet Display And Other Third Party Use. SCK MLS may use, or may arrange for third parties to use its listing information, data, and tangible or intangible property items in products and services including, but not limited to, reference materials, books, brochures, flyers, electronic transmissions, advertisements, Internet or other computer network displays, on-line data, computer programming, and software, regardless of the form, whether printed, electronic, digital, magnetic media, or otherwise. By the act of submitting any listing data or other information to SCK MLS, the Participant hereby assigns its right, title and interest to allow Internet display and other third party use of the listing or other information in the SCK MLS compilation and consents to such uses and warrants that it will not challenge, interfere with or violate such uses and warrants that it will not seek compensation therefor.

5. CONDITIONS, PROHIBITIONS AND LIMITATIONS ON ACCESS.

5.1 Access to SCK MLS Service by Participant's Associates. Participant shall be responsible for assuring that all of its employed or associated real estate brokers, real estate sales agents, appraisers and staff, collectively referred to herein as "Staff" and all independent contractors of Participant who use or access the SCK MLS Service in any manner, collectively referred to herein as "Subscribers", subscribe to the SCK MLS Service individually by executing appropriate documentation as required by SCK MLS. A Schedule of Participant and Subscribers and a Schedule of non-licensed office Staff as of the effective date of this Agreement are both attached hereto and made a part hereof. If a Subscriber or Staff becomes delinquent in payment of any fees due to SCK MLS hereunder, Participant shall pay said delinquent fees. Participant shall ensure that all Subscribers and Staff who use or access the SCK MLS Service in any manner comply with the terms of this Agreement and the SCK MLS Rules and SCK MLS Guidelines. Participant shall provide the SCK MLS with a current list of all its Subscribers and Staff at the execution of this Agreement and shall update this list quarterly on December 15th, March 15th, June 15th and September 15th of each year commencing on the next quarterly date following the effective date of this Agreement, so that SCK MLS is regularly informed of

changes in Participant's Subscribers and Staff. Participant shall assume full responsibility for the acts of its Subscribers and Staff who have access to the SCK MLS Data and the SCK MLS Services in all of Participant's offices as well as for any financial obligations which may arise by virtue of said acts by any of them.

5.2 Compliance with Rules and Notification of Changes. Participant certifies it has received and read a copy of the SCK MLS Rules, Article 1 of the By-Laws and the SCK MLS Guidelines and agrees to comply with the SCK MLS Rules, Article 1 of the By-Laws and the SCK MLS Guidelines, all as may be amended from time to time. Participant agrees to submit commission disputes for arbitration in accordance with the Code of Ethics and Arbitration Manual of the National Association of Realtors®. Participant shall notify SCK MLS within seven (7) days of relocating, changing office information, or changing Realtor® Board/Association affiliation, if any.

5.3 Use Prohibitions. Participant agrees that it will not reproduce, redistribute, publish, display, retransmit, broadcast, electronically manipulate, sell, license, rent, transmit, or in any manner commercially exploit or allow anyone else to reproduce, redistribute, publish, display, retransmit, broadcast, electronically manipulate, sell, license, rent, transmit or in any manner commercially exploit any SCK MLS Data in any format to anyone for any purpose other than the selling, listing or appraising of real estate. Under no circumstances shall Participant receive any form of compensation for this information from any third party. Participant acknowledges that the SCK MLS Data is confidential and its use is restricted to Participant, Participant's authorized Staff and Subscribers.

5.4 Certain Data Subject To Consent Withdrawal. Participant acknowledges that certain of the SCK MLS Data available through the SCK MLS Service are subject to the continued consent of supplying third parties. If at any time any supplying third party's consent is withdrawn, all information supplied by such party shall be removed from the SCK MLS Data.

6. **Fees.** In consideration for the rights to access and use the SCK MLS Data and SCK MLS Services, Participant shall pay SCK MLS the following non-refundable fees as set forth on the Schedule of Fees and Charges attached hereto, incorporated herein and made a part hereof.

6.1 Application Fee. A non-refundable fee for administrative processing of Participant's Application form and issuance of the Participant's access identifications;

6.2 Quarterly Participation Fee. A flat fee, non-refundable and non-transferable, payable in advance for Participant's right to continuing access to the SCK MLS Data and SCK MLS Services. This fee will be billed to Participant quarterly each year and is deemed delinquent if unpaid on the first (1st) day of the month following the first (1st) day of the next calendar quarter, i.e. February 1, May 1, August 1 and November 1. Mid-year Participant applicants' fees will be pro-rated.

6.3 Reinstatement Fee. A reinstatement fee for reactivation of a Participant's access to the SCK MLS Service following termination by either SCK MLS or Participant. Reinstatement is only available so long as reinstatement is requested by Participant within the first twelve (12) months following the date of termination of its Participant;

6.4 Collection Fee. Collection fees include attorney fees and any and all costs incurred by SCK MLS if SCK MLS is unable for any reason to process Participant's check or if Participant's credit card is rejected or for any overdue payment;

6.5 Manual Input Fee. Manual input fee for fulfilling Participant's request that SCK MLS input listing information on Participant's behalf;

6.6 Responsibility for Subscriber Fees. If a Subscriber becomes delinquent in payment of any fees due to SCK MLS or under the Subscriber Agreement executed by Participant's Subscriber, Participant shall be billed for and pay to SCK MLS said unpaid Subscriber fees.

6.7 Changes. SCK MLS reserves the right to change the amounts of fees at any time.

6.8 Taxes. Participant will pay all applicable 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.

6.9 Set Up Costs. Participant is responsible for obtaining and maintaining in proper working order all personal computers, Internet connections, and computer software that may be necessary or useful for accessing and using the SCK MLS Data and SCK MLS Services and for the proper use thereof. Participant shall not be entitled to refund of any fees under any circumstances for any hardware, software or Internet connection that is unable to access the SCK MLS Service.

7. PROPRIETARY RIGHTS.

Participant acknowledges that the SCK MLS Data and SCK MLS Services are valuable commercial products, the development of which has involved the expenditure of substantial time and money, that the SCK MLS Data may include textual, statistical, financial, photographic, video and audio components which are proprietary information of SCK MLS under copyright, and have been furnished to Participant in trust. All rights, title and interest in the SCK MLS Data, including the ownership of the copyright therein, shall at all times remain vested in SCK MLS. Except for the rights granted Participant herein, Participant agrees and understands that SCK MLS shall remain the exclusive owner of all rights, title, and interest in the SCK MLS Data and SCK MLS Services licensed hereunder and all copyrights and renewals thereof, heretofore or hereafter secured therein. All publication, dissemination and other rights in and to the SCK MLS Data and SCK MLS Services licensed hereunder are reserved for SCK MLS in all languages, formats and media throughout the world for the sole and exclusive use or any other disposition by SCK MLS, its respective assignees or grantees at any time and from time to time without obligation or liability to Participant.

8. IDENTIFICATION NUMBERS.

8.1 Office ID. SCK MLS shall assign an identification number for access to the SCK MLS Data and SCK MLS Services for Participant's office identification ("Office ID"). An Office ID must be used to participate in and access SCK MLS Data and SCK MLS Services.

8.2 User ID and Password. SCK MLS shall also assign a user identification and password to each individual who participates in access to and use of the SCK MLS Data and SCK MLS Services. Each user ID and password shall be personal to the individual and may not be used by any other person. Each individual shall be responsible for the security and safe keeping of its password.

8.3 Secure Computing. SCK MLS reserves the right to establish security measures and establish practices and procedures to safeguard the SCK MLS Data and SCK MLS Services and Participant agrees to abide by such security measures and procedures to safeguard the SCK MLS Data and SCK MLS Services.

8.4 Confidentiality. Participant, Subscribers and Staff shall treat the access identifications as private, confidential and personal and shall safeguard and maintain their confidentiality. Use by any other person or entity shall be considered as theft. Participant shall be liable for any consequences that may result from unauthorized disclosure of Participant's or Subscriber's or Staff's access identification, whether intentional, negligent or inadvertent, including but not limited to immediate termination of this Agreement and liability for liquidated damages. Participant acknowledges that SCK MLS may seed the SCK MLS Data and undertake monitoring on a regular random basis such that violations of the security of Participant's access identifications will be detected. This obligation to maintain confidentiality shall survive the termination of this Agreement.

9. SCK MLS USE OF PARTICIPANT INFORMATION.

SCK MLS reserves the right to distribute to prospective participants and other third parties certain non-confidential information concerning Participant such as name and address. In addition, SCK MLS may collect and compile information regarding frequency of use of, or specific uses, of the SCK MLS Data and SCK MLS Services by all users, including Participant.

10. TERM AND TERMINATION.

10.1 Term. The term of this Agreement shall be one (1) year commencing upon the date Participant executes this Agreement on the signature page hereof and shall automatically extend for additional one (1) year terms unless sooner terminated in accordance with Section 10.2 or 10.3, or upon cancellation by either party upon twenty four (24) hours written notice to the other party.

10.2 Termination. This Agreement and the rights granted hereunder may be terminated by either party in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement. SCK MLS may immediately terminate this Agreement in the event Participant is no longer licensed to practice real estate in the State of Kansas.

10.2.1 Promptly upon any termination of this Agreement, SCK MLS shall deactivate Participant's access identification numbers, and Participant shall have no further access to the SCK MLS Data or SCK MLS Services.

10.3 REALTOR® Membership Termination. Should Participant terminate REALTOR® membership with their local association or board of REALTORS® or terminate participation in SCK MLS, this Agreement shall terminate and the rights to access the SCK MLS Data and SCK MLS Service of all their Staff and Subscribers shall also be terminated.

10.4 No Refund of Fees Upon Termination. In the event of termination of this Agreement, SCK MLS shall not be obligated to refund any fees for any unexpired portion of any term.

11. SCK MLS SERVICE MARKS AND LOGOS.

Participant shall have the right, during the term of this Agreement, to use the SCK MLS trade name and logo for the SCK MLS Services as available, in advertising, promotion and marketing materials solely for the purpose of announcing Participant's use of the SCK MLS Services to prospective customers. Participant may re-publish any description of the SCK MLS Services which have been published by SCK MLS, provided the description is re-published on a verbatim basis, but shall not, under any circumstances, make any unauthorized representations or warranties regarding the SCK MLS Services or any SCK MLS Data.

12. WARRANTY DISCLAIMER.

PARTICIPANT EXPRESSLY AGREES THAT THE SCK MLS SERVICES AND THE SCK MLS DATA ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, AND THAT USE OF THE SCK MLS SERVICES AND THE SCK MLS DATA ARE AT THE SOLE RISK OF PARTICIPANT. SCK MLS DOES NOT WARRANT THAT THE SCK MLS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND SCK MLS MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY SCK MLS DATA AVAILABLE THROUGH THE SCK MLS SERVICES. SCK MLS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SCK MLS DOES NOT WARRANT THAT THE SCK MLS DATA IS ERROR-FREE, NOR THAT IT WILL MEET PARTICIPANT'S REQUIREMENTS, NOR THAT ANY ELECTRONIC TRANSMISSION THEREOF WILL OPERATE IN AN ERROR-FREE MANNER.

13. LIMITATION OF LIABILITY.

13.1 Limitations and Exclusions. Neither SCK MLS nor any of its officers, directors, employees, agents, or representatives shall be liable to Participant or anyone else for any direct, indirect, incidental, special, or consequential damages that result from the use of, or inability to use, the SCK MLS Services, including but not limited to, reliance by any Participant or authorized user on any information obtained through use of the SCK MLS Service or that result from mistakes, omissions, deletions or delays in transmission of such information, interruptions in telecommunications or Internet connections to the SCK MLS Service, viruses or failures of performance, whether caused in whole or in part by negligence, acts of god, telecommunications or Internet failure, theft or destruction of, or unauthorized access to, the SCK MLS Service or related information, records or programs.

13.2 Maximum Aggregate Liability. In no event shall any liability of SCK MLS, its officers, directors, employees, agents, or representatives arising out of any claim related to this Agreement exceed the aggregate amount paid by Participant hereunder in the twelve (12) months immediately preceding the event giving rise to such claim.

14. LIQUIDATED DAMAGES FOR UNAUTHORIZED USE.

14.1 Unauthorized Use of Access Identification Numbers for SCK MLS Service. Participant acknowledges that damages suffered by SCK MLS from access to SCK MLS Services by an unauthorized third party as a result of disclosure of Participant's access identification number would be speculative and difficult to quantify. Accordingly, as a material inducement to SCK MLS to enter into this Agreement with Participant, Participant agrees that in the event that any disclosure of Participant's access identification number results in access to SCK MLS Services by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Participant shall be liable to SCK MLS, at SCK MLS's option, for liquidated damages in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00).

14.2 Unauthorized Disclosure of SCK MLS Data. Participant acknowledges damages suffered by SCK MLS from access to the SCK MLS Data by an unauthorized disclosure to a third party by Participant would be speculative and difficult to quantify. Accordingly, as a material inducement to SCK MLS to enter into this Agreement, Participant agrees that in the event Participant makes such unauthorized disclosure of SCK MLS Data to any third party, Participant shall be liable to SCK MLS, at SCK MLS's option, for liquidated damages in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00).

15. PARTICIPANT AUTHORIZATION TO ENTER THIS AGREEMENT.

Participant represents and warrants that the individual who executes this Agreement is duly authorized to enter into this Agreement and, if applicable, the Agreements by and between SCK MLS and Participant's Subscribers.

16. INDEMNIFICATION BY PARTICIPANT.

Participant shall protect, defend, indemnify and hold harmless SCK MLS and its officers, directors, employees, agents, or representatives from any and all liability, damages, loss or expense, including reasonable fees of attorneys and other professionals, arising from any claim, demand, action or proceeding initiated by any third party against any of them based upon the negligent, intentional or illegal acts of Participant, including but not limited to: (a) inaccuracy of any listing information supplied to SCK MLS by Participant or by any of Participant's Subscribers, (b) any unauthorized use of Participant's or Subscriber's access identification number, (c) any unauthorized use of the SCK MLS Data, or (d) infringement of any proprietary or contract right of any third party as a result of the availability of such information through the SCK MLS Service. Participant shall assist SCK MLS, at Participant's expense, in the defense or settlement of any claim to which this indemnification obligation applies. These indemnification provisions shall survive the termination of the Participant's Participation in the MLS and the termination of this Participation Agreement.

17. INJUNCTIVE REMEDIES.

Participant acknowledges and agrees that the SCK MLS Services and SCK MLS Data are confidential and proprietary products and that in the event there is an unauthorized disclosure of such by Participant, no remedy at law may be adequate. Therefore, Participant agrees that in the event of such unauthorized disclosure or use of the SCK MLS Services or SCK MLS Data, SCK MLS may seek injunctive relief or other equitable remedies against Participant without being required to post a bond in addition to all available remedies at law.

18. LEGAL FEES AND COSTS.

In the event legal action is taken against Participant, or against Participant and SCK MLS, and SCK MLS prevails in obtaining equitable relief or monetary damages, Participant will be obligated to reimburse SCK MLS for the reasonable attorneys' fees, costs and expenses it incurred in pursuing such legal action. Participant will also be responsible for any legal fees and costs incurred by SCK MLS in enforcing any order or collecting a judgment.

19. MISCELLANEOUS.

Participant agrees and acknowledges that SCK MLS may change the terms of this Agreement as the result of any amendments to the SCK MLS Rules or MLS Guidelines. This Agreement contains the entire understanding of the parties and supersedes all previous discussions, correspondence and oral and written agreements on the subject hereof.

This Agreement may not be assigned by Participant without the prior written consent of SCK MLS. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth below.

Participant:

SOUTH CENTRAL KANSAS MLS, Inc.

Name of Company/Individual (please print):

By: _____

Laura Raudonis
Chief Executive Officer

By: _____
Authorized Representative Signature

Date: _____, 20____

Address

Phone Facsimile

Email Address

Date: _____, 20____

**SOUTH CENTRAL KANSAS MLS
PARTICIPATION AGREEMENT**

**SCHEDULE OF FEES AND CHARGES
January 1, 2009**

<u>Description:</u>	<u>Amount</u>
Initial Application Fee	\$75.00
Quarterly Participation Fee	\$95.00
Agent / Staff transfer Fees	\$15.00
Reinstatement Fee. A reinstatement fee shall be charged to reactivate access to the SCK MLS Service following termination.	\$50.00
Collection Fee. If SCK MLS is unable for any reason to process Participant's check or credit card rejection for any due payment.	\$30.00
Manual Input Fee. Manual input fee for fulfilling Participant's request that SCK MLS input listing information on Participant's behalf.	\$10.00
Fee For Searches By SCK MLS Staff. Fee for fulfilling Participant's request that SCK MLS search for listing information on Participant's behalf.	\$20.00

**SOUTH CENTRAL KANSAS MLS
PARTICIPATION AGREEMENT
PARTICIPANT AND SUBSCRIBER INFORMATION**

PARTICIPANT Broker Name _____
Name of Company _____ Office ID _____
Office Address - Street _____
City _____ State _____ Zip Code _____
County _____ Phone # _____ Ext. _____
Fax # _____ Pager # _____ Cell Phone # _____
Email Address _____
My primary Association/Board is:

KANSAS REAL ESTATE LICENSE INFORMATION:

Type of License: _____
License Number: _____
Date Expires: _____

AGENTS'/APPRAISERS' INFORMATION:

I hereby certify that ONLY the following persons who are currently affiliated with our office as licensed real estate agents or licensed or certified real estate appraisers will have access to the SCK MLS Services:(Use additional sheet if needed.)

Agent/Appraiser Name	Agent/Appraiser Name
_____	_____
_____	_____
_____	_____
_____	_____

I assume responsibility for the acts of these Agents/Appraisers who have access to the SCK MLS Service through our office. I agree to notify SCK MLS immediately of any changes to this list, and to be responsible for any financial obligations which may arise. Agents/Appraisers are subject to the SCK MLS Rules and SCK MLS Guidelines and the limitations and restrictions of state law.

Participant Signature: _____
Date: _____

**SOUTH CENTRAL KANSAS MLS
PARTICIPANT AGREEMENT**

PARTICIPANT'S NON-LICENSED OFFICE STAFF

Participant hereby certifies that ONLY the following persons who are currently employed as non-licensed office staff will have access to the SCK MLS Service:

Staff Name	Office Location
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Participant assumes all responsibility for the acts of the non-licensed office Staff who have access to the SCK MLS Service. Participant agrees to notify SCK MLS immediately of any changes to this list, and to be responsible for any financial obligations which may arise. Non-licensed office Staff are subject to the SCK MLS Rules the terms and conditions in this Agreement and any and all limitations and restrictions of state law.

Participant Signature: _____

Print Name: _____

Date: _____