

ARIZONA REGIONAL MULTIPLE LISTING SERVICE, INC.

MLS PHOTOGRAPHER PROGRAM AGREEMENT

This MLS Photographer Program Agreement (“**Agreement**”) is by and between Arizona Regional Multiple Listing Service, Inc. (“**ARMLS**”), with offices at 130 South Priest Drive, Suite 101, Tempe, AZ 85281, and _____ with an address at _____ (“**Photographer**”) and is made effective as of the date of the last signature hereto (“**Effective Date**”).

BACKGROUND

- A. ARMLS provides multiple listing and related services (the “**MLS Services**”) to real estate brokers, appraisers, agents, and real estate related business professionals that subscribe to the MLS Services (the “**Subscribers**”).
- B. Photographer provides photographic and media services and desires to provide such services to Subscribers.
- C. Photographer wishes to participate in the ARMLS Photographer Program (as defined below), and ARMLS agrees to include Photographer in such program on the terms and conditions of this Agreement.

For good and valuable consideration, receipt, and sufficiency of which are hereby acknowledged the parties agree as follows:

- 1. **DEFINITIONS.** For purposes of this Agreement, the following terms shall have the meanings set forth below.
 - a. ARMLS Photographer Program. The database of ARMLS preferred photography service providers that ARMLS maintains as a service for its Subscribers, as described in more detail at <https://armls.com/preferred-photographer-program>, and in this Agreement.
 - b. ARMLS Policies. ARMLS’s bylaws, rules and regulations, and policies and procedures, as made available by ARMLS from time to time, including all amendments thereto.
 - c. MLS System. The software system or systems by which Subscriber’s access property listings, other real estate content, and various products and services of the MLS.
 - d. Service Agreement. The separate agreements, terms and conditions, or services agreements that Photographer enters with Subscribers under which Photographer will provide photography services, including the provision of Works, to Subscribers.
 - e. Works. All photographs, images, video, data, graphics, visual records and other media that Photographer provides to ARMLS, or a Subscriber, in any form now known or hereafter discovered.

2. ARMLS Photographer Program

- a. Fees. The ARMLS Photographer Program fee schedule, if any, is detailed at ARMLS.com (“Fee Schedule”). Photographer shall pay the fees set forth in the Fee Schedule, if any, to become a part of the ARMLS Photographer Program. ARMLS may amend the Fee Schedule at any time and in its sole discretion, upon reasonable notice to Photographer.
- b. ARMLS Promotion of Photographer. During the Term of this Agreement (as defined below), Photographer will be listed on the ARMLS website as a member of the ARMLS Photographer Program. Photographer may receive other promotional opportunities to market their services as determined by ARMLS.
- c. Marketing Rights. In exchange for joining the ARMLS Photographer Program, Photographer may indicate on the Photographer’s website and marketing materials that they are a participant in the “ARMLS Photographer Program” and may display a certified ARMLS Photography Program logo, in the form expressly designated by ARMLS.

ARMLS retains the right to review any use of ARMLS name or logo and may require Photographer to discontinue any mention of ARMLS, the ARMLS Photography Program, or logo that ARMLS deems inappropriate, in ARMLS's sole discretion.

3. Service Agreements. Photographer must directly enter into Service Agreements with Subscribers to provide photography services to the Subscribers. In the event there is any inconsistency, conflict, or ambiguity between a Service Agreement with a Subscriber and this Agreement, this Agreement shall take precedence. Service Agreements will address fees and payment terms, delivery timelines, and other similar business terms as between the Photographer and the Subscriber.

4. Works.

a. Works Made for Hire. Unless otherwise expressly agreed upon by the Subscriber in the Services Agreement, all Works created for a Subscriber under a Services Agreement will be owned by Subscriber. Photographer hereby agrees to assign, transfer, and convey to Subscriber all right, title and interest in and to the Works, including all copyright, proprietary, other intellectual property rights therein. To the extent applicable, the Photographer agrees that Works are or will be deemed "Work Made For Hire" within the meaning of the United States Copyright Act, 17 U.S.C. § 101 that are created for the Subscriber. Photographer agrees to cooperate with Subscriber in executing any and all documents, and providing any assistance to Subscriber, as necessary to protect Subscriber's legal rights in and to the Works.

b. Retained Rights. Notwithstanding Section 4(a), a Subscriber may expressly agree in the Services Agreement that the Photographer will retain the copyright or other proprietary rights in and to the Works. To the extent the Photographer retains any such rights in and to the Works, then Photographer hereby grants to ARMLS a non-exclusive, perpetual, world-wide, royalty-free, unlimited license to reproduce, prepare derivative works of, distribute, publicly display, publicly perform, sublicense (including sublicenses to Subscribers and sublicenses through multiple tiers), and otherwise freely use in the ordinary course of ARMLS's business, all such Works submitted by Photographer to the MLS Systems.

c. Editorial Control. ARMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the Works in the MLS Service. Notwithstanding the foregoing, ARMLS may take any steps necessary in its judgment, including deleting the Works or portions thereof, to avoid or remedy any violation of law, breach of ARMLS Policies, or infringement of any intellectual property right. Additionally, ARMLS shall have the right to (i) alter and/or remove metadata and copyright management information contained in the Works; (ii) place watermarks on the Works; (iii) employ digital steganography or similar means in the Works; and (iv) remove the Works if they are inappropriate or noncompliant with the ARMLS Policies.

d. No Royalties or Credit. Photographer acknowledges and understands that no royalty or other consideration will be due to Photographer under this Agreement or by ARMLS at any time for any Works. Photographer agrees that ARMLS is under no obligation to credit Photographer for the Works.

e. Removal of Marks Identifying Photographer. Photographer will remove all watermarks and other identifying marks from Works prior to submitting such Works to the MLS System.

f. Photographer Warranty. Photographer warrants, and will warrant in Service Agreements, that (a) the Works do not and will not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party, including any privacy rights; (b) Photographer has and will have all right, title, or license in and to the Works to provide such Works to Subscriber under the terms of the Service Agreement; (c) the Works are not and will not be defamatory, offensive, or obscene; (d) Photographer is the owner of the copyright of the any Works; (e) the Works will not contain any virus or other code, program, or sub-program that could damages or interferes with the operation of the MLS System. Photographer understands and agrees that Photographer will be responsible for

the introduction of any of the foregoing items into the MLS Services, whether intentional or unintentional. Photographer further warrants that it shall comply with all applicable laws, statutes, ordinances and regulations in performance of its respective obligations under this Agreement.

5. Access to MLS System.

a. Limited License. ARMLS grants Photographer a limited, non-sublicensable, non-transferable license to access the MLS System for the sole purpose of submitting Works to the MLS System on behalf of a Subscriber with whom the Photographer has executed a Service Agreement. Photographer shall not access the MLS System for any purpose other than to submit such Works. ARMLS shall have the right to limit the scope of this license and Photographer's permissible access of the MLS Systems, in ARMLS's sole and exclusive discretion.

b. Credentials. ARMLS will provide one unique user ID to Photographer to access the features and functions of the MLS System as determined by ARMLS, in ARMLS's sole discretion. Photographer shall remain responsible for all uses of the Photographer's credentials and all access to the MLS System using such credentials, whether or not authorized by Photographer. Photographer must keep the access credentials confidential and must immediately notify ARMLS in the event of any unauthorized use of such credentials.

c. Training. Photographer will be required to watch a training video prior to accessing the MLS System. ARMLS may also require Photographer to review additional training materials from time to time during the Term. Photographer's failure to timely review such training materials may result in the suspension of Photographer's credentials and access to the MLS System or termination of this Agreement for cause pursuant to Section 8(c).

d. Restrictions. Photographer shall not remove or delete Works after such Works have been uploaded or submitted to the MLS System. Photographer shall make no commercial use of the MLS System except as expressly permitted herein.

e. Confidentiality. Photographer shall maintain the strict confidentiality of its user ID and password and the MLS System. Photographer shall not provide its ID and password to any third party. Photographer acknowledges that the data and information contained in the MLS System is confidential and shall not disclose any such information to any third party. ARMLS may in its sole discretion conduct periodic compliance reviews of Photographer's use of the MLS System under this Agreement. Photographer will respond within 24 hours of any compliance inquiry by ARMLS. Because of the unique nature of the MLS System, Photographer acknowledges and agrees that ARMLS would suffer irreparable harm in the event that it breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate ARMLS for a breach. ARMLS is therefore entitled, in addition to all other forms of relief, to seek injunctive relief to restrain any threatened, continuing or further breach by Photographer, without showing or proving any actual damages sustained by ARMLS, and without posting any bond.

f. Liquidated Damages. Photographer acknowledges that damages suffered by ARMLS from access to the MLS System by an unauthorized third party as a result of disclosure of Photographer's password to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to ARMLS to enter into this Agreement with Photographer, Photographer agrees that in the event that any disclosure of Photographer's password results in access to the MLS System by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, ARMLS shall have the right to terminate the Agreement for material breach and Photographer shall be liable to ARMLS for liquidated damages in the amount of \$5,000 per disclosure.

6. LIMITATION OF LIABILITY. IN NO EVENT SHALL ARMLS BE LIABLE TO PHOTOGRAPHER FOR ANY COSTS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF ARMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PHOTOGRAPHER'S SOLE REMEDIES AGAINST ARMLS HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF ONE HUNDRED (\$100) DOLLARS.

7. INDEMNIFICATION. PHOTOGRAPHER SHALL INDEMNIFY AND DEFEND ARMLS, ITS SHAREHOLDERS, SUBSIDIARIES AND AFFILIATED COMPANIES, AND ALL ITS RESPECTIVE EMPLOYEES, DIRECTORS, AGENTS, AND AUTHORIZED SUCCESSORS AND ASSIGNS, AND SUBSCRIBERS (THE "INDEMNIFIED PARTIES"), AGAINST ANY AND ALL LOSSES, DAMAGES, AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING FROM (A) ANY BREACH OF THIS AGREEMENT AND (B) ANY ALLEGATION OR CLAIM THAT THE WORKS INFRINGE THE INTELLECTUAL PROPERTY OR PROPRIETARY RIGHT OF ANY THIRD PARTY; (C) ANY MISUSE OR INFRINGEMENT OF ARMLS NAME OR LOGO; OR (D) ANY UNAUTHORIZED ACCESS TO THE MLS SYSTEM USING PHOTOGRAPHER'S CREDENTIALS.

8. TERM; TERMINATION

- a. Term. The term of this Agreement begins on the Effective Date and shall continue until terminated in accordance with the terms of Section 10(b) and 10(c) (the "Term").
- b. Termination for Convenience. Either party may terminate this Agreement at any time upon 30 days' notice to the other party of its intent to terminate. In the event ARMLS terminates under this Section, ARMLS will provide a pro-rata refund to Photographer of any unused, prepaid fees. In the event the Photographer terminates pursuant to this Section 10(b), Photographer shall not be entitled to any refund.
- c. Termination for Cause. In the event Photographer breaches this Agreement, ARMLS may terminate this Agreement upon 10 days' notice, provided the breach remains uncured during such time. ARMLS may immediately terminate this Agreement upon notice in the event the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm.
- d. Suspension. ARMLS may in its sole discretion suspend its performance instead of terminating this Agreement. ARMLS will provide notice of the suspension to the Photographer within a reasonable time. Photographer's obligations hereunder continue during any period of suspension. In the event of any suspension of this Agreement, Photographer shall make no further use of the MLS System during the suspension.
- e. Effect of Termination. In the event of any termination of this Agreement, Photographer shall make no further use of the MLS System. Upon termination of this Agreement, Photographer must immediately delete references of the ARMLS Photographer Program from Photographer's website and discontinue all use of the ARMLS name or logo, including the ARMLS Photography Program logo.

9. GENERAL

- a. Applicable Law. The laws of the State of Arizona shall govern this Agreement and its interpretation. Any action to enforce or interpret this Agreement shall have venue in Maricopa County, Arizona, and the parties hereby submit to personal jurisdiction in that venue.
- b. Attorneys' Fees. If ARMLS prevails in any action to enforce or interpret this Agreement or any provision hereof, it shall be entitled to its reasonable attorneys' fees and costs for such legal action.
- c. Third-Party Beneficiary. Subscribers are a third-party beneficiary of this Agreement. Photographer agrees that Subscribers may enforce those covenants herein of which Subscriber is a beneficiary.
- d. Assignment. Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Photographer. Any purported assignment or delegation in contravention of this section is null and void.
- e. Notice. All notices to be given under this Agreement shall be mailed via USPS certified return receipt requested, or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the Term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.
- f. 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.

g. Relationship of the Parties. The relationship of ARMLS and Photographer is that of independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of ARMLS or have any authority to make any agreements or representations on the behalf of ARMLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

h. Survival of Obligations. The following provisions expressly survive any termination or expiration of this Agreement: 1, 4, 5(c) – (e), 6, 7, 8(e), and 9.

i. Entire Agreement; Amendment. 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, relating to the same subject matter.

j. Severability. 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.

k. Interpretation. In the event of any dispute regarding the interpretation of the terms of this Agreement, it shall not be construed for or against any party on the grounds that the Agreement was prepared by any one of the parties.

l. Amendment. This Agreement may not be amended except by written instrument executed by both parties. Notwithstanding the foregoing, Photographer expressly consents to the execution of amendments by electronic means (such as web site “click through” agreements).

m. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

ARMLS

Name: _____

Title: _____

Signature: _____

Date: _____

Photographer

Name: _____

Title: _____

Signature: _____

Date: _____