



## 5. Keyholder Agreements

DisplayKEYS or eKEYS, which are necessary to access the electronic LockBoxes, will be issued to individual qualifying members affiliated with Participant, contingent on both Broker and individual submitting a signed LockBox KEY Agreement, and agreeing to all terms and conditions therein, and subject to the terms and restrictions of those Agreements and the Rules and Regulations of the MLS, as from time to time amended.

## 6. Payment and Fees:

### a. Participant -- Access fees

The monthly MLS access fee for access to and use of the LockBox system is calculated per licensee in each participating office, whether or not the licensee has a KEY (either DisplayKEY or eKEY). Invoices will be sent to each Participant monthly and shall be due from the Participant to the MLS. Access fees must be paid PRIOR to the beginning of each service period. Failure to pay the access fee when due will result in the interruption/termination of access. Payments received after the due date will reactivate authorization back to the beginning of the then current service period. There shall be no refunds for partial service periods for those who terminate participation. For new Participants beginning during a service period, the fee will be prorated on the same basis as the MLS service fee.

### b. Keyholder – DisplayKEY

During the initial conversion period of the SuperKey to the DisplayKEY system, an exchange of a DisplayKEY will be offered at no additional fee to members who hold an active SuperKey in good working order. Following the conversion period, the initial fee to sublease a DisplayKEY and DisplayKEY cradle from MLS is \$250 per member in advance. The initial fee to license eKEY Software, an optional alternative to the DisplayKEY, is available at fees set forth by Supra, plus any applicable monthly service fee charged by Supra, payable to Supra according to the terms and conditions of the License between Keyholder and Supra. Keyholders may sublease a DisplayKEY or license eKEY software; they may not hold both. Keyholders utilizing either the DisplayKEY or the eKEY software will continue to be responsible to pay to the MLS through the Keyholder's company, the MLS monthly service fee applicable to the MLS lockbox service and the information contained within the System. Fees are subject to change.

In the event of failure by an associate of a Participating Broker or Appraiser to pay any fees owed in connection with the use of the system, the Participating Broker/Appraiser shall be responsible for payment in accordance with the terms set forth herein and in the Rules of the MLS. eKEY Keyholders are responsible for payment of all System Fees in accordance with the terms and conditions of the eKEY Keyholder Agreement.

## 7. Responsibility of Participant

Participant acknowledges and agrees that Participant is responsible for the adherence by all persons in Participant's Company, to the Rules and Regulations of the RANW Multiple Listing Service, Inc., as from time to time amended, including but not limited to the LockBox Security and System Requirements; the terms of the LockBox Lease Agreement and the Keyholder Agreement; and the Supra User Guide; and shall make all reasonable efforts to ensure their compliance, such compliance to include payment of any and all fees applicable to Participant and Keyholders.

### Report of Prior Criminal Arrests or Convictions:

Participant acknowledges that if any individual, including the Participant, files a "Keyholder Application / Lease Agreement" from and through Participant's office, and reports to the MLS an arrest and/or conviction for any criminal activity, felony or misdemeanor, the Participant will actively participate in the MLS Board of Directors determination process, investigating the circumstances and giving reasons recommending whether the individual be granted, or be granted with limitation, privileges of access to the LockBox system.

***NOTE: Brokers are cautioned and reminded that under fair employment laws, arrest and conviction records may be used for employment purposes (including affiliation as an independent contractor) only if a pending criminal charge or past conviction involves circumstances that substantially relate to the circumstances of the particular job. Brokers are encouraged to consult with private legal counsel in the event they have any questions whatsoever in this area.***

## 8. Termination of Service and Return of Equipment

a. Participant may terminate this Agreement at any time by returning the Equipment to MLS and paying MLS and Supra any amounts owing prior to such termination, including (i) any applicable damages for the failure to return the Equipment as set forth by the MLS, and (ii) any System Fees owing prior to such termination which remain unpaid. Any unused portion of any fee for use of the Service previously paid shall be forfeited by Participant.

b. The MLS may terminate this Agreement upon termination of the Master Agreement for any reason, including without limitation, a default by MLS under the Master Agreement or an upgrade of the Service by the MLS, or for any other reason provided for in the Agreement. Upon termination, Participant shall be obligated to satisfy all obligations herein.

c. **ALL LOCKBOXES AND LOCKBOX SYSTEM EQUIPMENT MUST BE RETURNED UPON TERMINATION OF SERVICE FOR ANY REASON, INCLUDING EXPIRATION OF THE TERM OF THIS AGREEMENT.** In such event, the Participant shall immediately return to the MLS, the iBOXES and EQUIPMENT with all Software and any components included with the Service that have been leased to Participant and associates pursuant to this Agreement, in good condition, repair and working order, ordinary wear and tear excepted.

In the event that Participant fails to return all Equipment leased to Participant upon termination of this Agreement or at the expiration of the Term, Participant acknowledges that it is impractical and difficult to assess actual damages to MLS, and therefore agrees to pay to MLS as liquidated damages for such failure to return the Equipment, an amount equal to replacement cost or as otherwise provide for in this Agreement. In addition, Participant shall not be entitled to any refund of any unused portion of the System Fee for use of the Service previously paid.

## 9. Violations

**PARTICIPANT ALLOWING THE USE OF THE SYSTEM BY UNAUTHORIZED PERSON(S), OR OTHERWISE VIOLATING THIS AGREEMENT OR THE RULES OF THE MLS, OR ABUSING THE SYSTEM'S SECURITY WILL BE SUBJECT TO LOSS OF ACCESS TO THE SYSTEM, AND IMPOSITION OF UP TO \$5000.00 LIQUIDATED DAMAGES FORFEITURE, OR BOTH, AS DETERMINED BY THE RULES AND REGULATIONS OF THE MLS AND POLICY OF THE NATIONAL ASSOCIATION OF REALTORS AS FROM TIME TO TIME AMENDED. HOWEVER, NOTHING SHALL PREVENT THE MLS FROM SEEKING DAMAGES BY A COURT OF COMPETENT JURISDICTION.**

## 10. Breach (A Breach of this Agreement is an Event of Default)

A breach of this Agreement shall occur in the event that (a) the iBOXES or other System Equipment are lost or stolen; (b) Participant permits an unauthorized person or entity to possess System Equipment or use the Service; (c) the Participant fails to pay an amount in connection with the use or financing of the Service when due; (d) the Participant breaches, fails to observe, keep or perform these Rules and Regulations or any obligation or provision of any agreement executed and delivered by the Participant in connection with the use or financing of the Service; or (e) RANW MLS in its sole discretion determines that it must take appropriate action for security purposes.

## 11. Rights and Remedies

a. Upon the occurrence of a Breach of this Agreement, or an Event of Default by Participant, MLS may, at its sole option and without limitation or election as to other remedies available under this Agreement or at law or in equity, exercise one or more of the following remedies without any liability for hardship to the Participant.

- (i) Terminate this Agreement and demand the return of any Equipment to MLS;
- (ii) Terminate one or both of Participant's sub-licenses to use the Network and to use the Software;
- (iii) Direct Supra to deactivate Participant's access to the Service or any component of the Service;
- (iv) Bill the Participant for any outstanding amounts owed under this Agreement, including any applicable liquidated damages for the failure to return the Equipment;
- (v) Take any and all actions necessary to collect all amounts currently due and owing under this Agreement, including any and all costs and expenses of every kind or nature (including reasonable attorneys' fees, whether incurred at the trial or appellate level, in an arbitration proceeding, or in bankruptcy, including any adversary proceeding, contested matter or motion, or otherwise) incurred by MLS in connection with the exercise of its rights and remedies under this Agreement;
- (vi) Pursue any other remedy at law or in equity.

b. Upon the occurrence of an Event of Default by MLS or termination of this Agreement, all of Participant's obligations under this Agreement shall terminate, except that Participant shall be required to return the Equipment to MLS and to pay MLS any outstanding amounts owed under this Agreement, including any damages for the failure to return the Equipment.

c. If MLS deactivates the Service because of a breach by Participant under this Agreement, but does not otherwise terminate this Agreement, Participant will be entitled to seek to have the Service reactivated. In order to so, Participant shall be required to cure any and all existing breaches, and to pay any and all outstanding amounts owed under this Agreement and the reasonable costs and attorneys' fees incurred by MLS in connection with collecting under this Agreement. After confirmation of the curing of such breaches and the receipt of payment of such amounts, MLS shall direct Supra to reactivate the Equipment within a reasonable period of time. MLS reserves the right to impose an administrative fee to reactivate the service.

d. In the event that MLS institutes any action for the collection of amounts due and payable hereunder, Participant shall pay, in addition to the amounts due and payable under this Agreement, all reasonable costs and attorneys fees incurred by the MLS in connection with collecting under this Agreement. Participant expressly waives all rights to possession or use of the Service or Equipment or any component thereof after the occurrence of an Event of Default, and waives all claims or losses caused by or related to any repossession or termination of use.

e. MLS's failure or delay in exercising any right or remedy under this Agreement shall not operate as a waiver thereof or of any subsequent breach or of such right or remedy. MLS's rights and remedies are cumulative, not exclusive, and no exercise of any remedy shall preclude the exercise of another remedy.

## 12. Software License

No title or ownership of any Software or any of its components is transferred to the Participant, and the Participant's use of any Software in connection with the Service constitutes a revocable license. Title to all applicable rights in patents, copyrights, trademarks, and other intellectual property rights shall remain with SUPRA, and the Participant agrees to take appropriate action to maintain the confidentiality of such intellectual property, the Software, and its components.

## 13. Indemnity, Waiver and Reimbursement: Representations and Covenants

Participant covenants and agrees:

a. If Participant breaches this Agreement, or if any action or inaction of Participant in using the Service results in any third party bringing an action against RANW, RANW MLS and/or Supra relating to such misuse, Participant agrees to indemnify, defend and hold harmless RANW, RANW MLS and/or Supra, and their respective directors, officers, agents, representatives, employees, successors and assigns, from and against any and all claims, demands, actions, losses, damages, injuries, obligations, liabilities and costs and expenses of every kind or nature (including reasonable attorneys' fees, whether incurred at the trial or appellate level, in an arbitration proceeding, in bankruptcy, including without limitation, any adversary proceeding, contested matter or motion or otherwise) incurred by RANW, RANW MLS and/or Supra in such proceeding. The provisions of this paragraph shall survive indefinitely.

b. That neither Supra nor RANW nor RANW MLS shall be liable to Participant for any lost business, direct, incidental, special or consequential damages or any other claim arising from or relating to the use, misuse, administration, or the cost incurred in the recovery of the KEY, or maintenance or implementation of the Service.

c. **That neither RANW, RANW MLS nor Supra shall be liable for any compensatory, indirect, incidental, consequential, punitive, reliance or special damages, including, without limitation, damages for lost profits, advantage, savings or revenues of any kind or increased cost of operations, arising out of the use or inability to use the Service for any purpose whatsoever whether or not Participant has been advised of the possibility of such damages.**

d. That Participant will not (i) use or gain access to the source code for the Software; (ii) alter, reproduce, modify, adapt, translate, reverse engineer, de-compile, disassemble or prepare derivative works based upon the Software; or (iii) provide or otherwise make available the Software or any part or copies thereof to any third party.

e. That Participant or Participant applicant agrees to waive any claim against RANW MLS or RANW for investigation and decision regarding the rules of this Agreement or the Keyholder Agreement, and authorizes anyone to provide information to the MLS and/or Association in regard to such investigation.

f. To provide MLS and Supra with written notice of any legal proceeding or arbitration in which Participant is named as a defendant and that alleges defects in the System/Equipment within five (5) days after Participant receives written notice of such action.

g. That Participant will reimburse RANW MLS and/or RANW for any and all expenses incurred in attempting to enforce any or all terms and conditions herein against Participant as a result of Participant's failure to act in accordance with this Agreement. In the event RANW MLS or RANW commences legal proceedings against Participant to enforce or interpret any of the provisions of this Agreement, Participant agrees to pay all costs incurred together with reasonable attorney's fees as determined by a court of competent jurisdiction both at trial and on any appeal.

h. The obligations set forth in this Section shall survive termination of this Agreement.

## 14. Warranties and Limitations

WARRANTY: The Service/Equipment is warranted by Supra against defects in workmanship and/or materials, to be fit for its intended purpose and to conform in all material respects to its written specifications for the term of the Agreement. Supra shall, without

charge, repair or replace such defective or nonconforming component for the term of the Agreement. Participant must return any defective system component under warranty to MLS at Participant's sole cost and expense and MLS shall provide all repaired or replacement Equipment to Participant. This warranty does not extend to any damage caused by accident, abuse, neglect or misuse of system components. Participant agrees to cooperate with MLS and Supra by performing diagnostic tests provided to Participant when Participant initially seeks warranty service.

THE WARRANTY SET FORTH ABOVE IS EXCLUSIVE OF AND IN LIEU OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, AS REGARDS THE SERVICE/EQUIPMENT. MLS makes no representation or warranty that the service, including the software or equipment such as LockBoxes and KEYS, may not be compromised or circumvented, or that products will prevent any loss by burglary or other criminal action, compromise or circumvention. The LockBox Service is not designed or marketed as a security system. Any loss, abuse or misuse of the LockBox/KEY/Component will compromise the integrity of the LockBox Service.

In the event any of the malfunction or failure of any KEY or LockBox component, or of the LockBox Service, the sole remedy shall be as set forth above being repair or replacement. In no event shall MLS be liable for any lost business, or any direct, incidental, special or consequential damages, or any other claims arising from or relating to the use, the inability to use, or the implementation of the KEY/LockBox/LockBox System Services Program.

**17. General Provisions**

- a. This Agreement constitutes the entire agreement between MLS and Participant relating to the Agreement of Equipment and use of the Service.
- b. This Agreement shall be effective and binding when fully executed by both parties. This Agreement may be executed in a number of counterparts, each of which will be deemed an original and when taken together shall constitute one agreement.
- c. This Agreement shall be amended only by a written agreement signed by the parties, except where the amendment is by Rules and Regulations.
- d. Any waiver or consent by any party to any breach by the other, whether express or implied, shall not constitute a consent to or waiver of any other or subsequent breach.
- e. All agreements, representations and warranties contained in this Agreement shall survive the expiration or other termination of this Agreement.
- f. If any provision of this Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remaining provisions of this Agreement.
- g. This Agreement shall be governed by the laws of the State of Wisconsin.
- h. This Agreement shall be binding upon and inure to the benefit of MLS, and its successors and assigns, and Participant and its permitted successors and assigns.

I understand that by providing below my email address, telephone number and fax number, I consent to receive communications sent from RANW and RANW-MLS via US email, telephone or facsimile at these number(s)/location(s). \_\_\_\_\_ Yes \_\_\_\_\_ No

\_\_\_\_\_  
Signature of MLS Participant Printed Participant Name

Date \_\_\_\_\_

\_\_\_\_\_  
Company Name Company ID#

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
PO Box

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Email

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax