



# PARTICIPATION AGREEMENT

between

SARED.co.za  
(hereinafter referred to as "SARED")

and

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(hereinafter referred to as "Member")

## 1. DEFINITIONS

In this agreement, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them hereunder:

- 1.1. "CREATIVE HILL t/a SARED" shall mean the owner and operator of the computer network system;
- 1.2. "SARED Website" shall mean the internet website used to place the data on;
- 1.3. "SARED System" shall mean the way members operate in their geographical areas under leadership of their committee;
- 1.4. "The Listing Agent" shall mean the member who places the property on the network system;
- 1.5. "The Selling Agent" shall mean the member who sells the property;
- 1.6. "Member" shall mean the Estate Agency / Firm that has signed the standard participation agreement and whose application to SARED has been approved;
- 1.7. "The Client" shall mean the person who grants the mandate to the listing agent;
- 1.8. "Area" shall mean the geographical area as, from time to time, defined by SARED, and stated on the Application Form;
- 1.9. "Committee" shall mean 3 (three) or more members elected by their peers in the specific geographical area and whose duties it is to administer the SARED System in their particular area.

## 2. INTERPRETATION

- 2.1. words importing natural persons shall include a reference to body corporate and other legal personae and vice versa;
- 2.2. words importing the masculine shall include a reference to the feminine and other genders;
- 2.3. words importing the singular shall include a reference to the plural and vice versa;
- 2.4. annexes to this agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;

- 2.5. Where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter; this includes the 72 hour notification period.
- 2.6. a reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- 2.7. the captions appearing in this agreement are for reference purposes only and shall not affect the interpretation hereof;
- 2.8. if any provision is a definition (or under this heading "Interpretation" and/or any other heading in this agreement) and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 2.9. Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.

### 3. MEMBERSHIP

- 3.1. All prospective members are to complete the Application Form which upon completion will be referred to as annexure A of this agreement;
- 3.2. An applicant's membership is subject to the following:
  - 3.2.1. A clear record at the Estate Agents Board;
  - 3.2.2. Possession of a Fidelity Fund Certificate, a copy of which is to be attached to the application, including all working agents.
  - 3.2.3. Must have been a principal of a company for at least 18 months in the area specified by this agreement. Should this not be the case, a supporting letter is to be submitted with the application which will be forwarded to the relevant area committee for approval. Should the committee decline such application the committee is to provide the SARED System with valid reasons as to their rejection.
  - 3.2.4. All new members are subjected to a 6 month probation period. The Committee's decision to allow or reject the member's participation after the 6 months' probation will be final without any recourse.
  - 3.2.5. Payment of a non-refundable joining fee in the amount of R5500.00 (Five Thousand Five Hundred Rand) which is to be paid within 5 (FIVE) days of notification of approval of the application, which amount is subject to an increase as determined by SARED from time to time.
  - 3.2.6. Payment of a monthly fee of R550.00, paid on or before the 1st day of each month, in advance, and which amount is subject to a discretionary annual increase of 10% by the SARED System.

- 3.2.7. Should payment not be received by the 5th of the month, the member's password will be suspended and a re-connection fee of R200.00 levied. Should payment not be forthcoming within 30 days of the amount being due, the member's membership shall forthwith be cancelled unless prior arrangements have been made with SARED for the late payment.
  - 3.2.8. The SARED system is only available to paying members. Non-payment will result in suspension and subsequent cancellation of membership.
- 3.3. Should a member company change ownership, a new application is to be completed which application is to be submitted with all documents and fees as more fully described in 3.2.1; 3.2.2 and 3.2.5 here above.
- 3.4. New applications will be made available on the SARED Website for 7 days in which the area members can send their comments regarding the specific application to the committee.

## 4. TERMS AND CONDITIONS

### 4.1. DUTIES ON MEMBERS

- 4.1.1. All members shall at all times ensure that they and their employees comply with the contents of this agreement, the Code of Conduct of Estate Agents promulgated in terms of the Estate Agents Act and furthermore ensure that they continue to qualify for participation in terms of the SARED criteria for participation.
- 4.1.2. Members must, as part of their office equipment, have a computer which will enable them to be linked to the internet and the SARED website.
- 4.1.3. The members undertake that they will co-operate with each other in regard to matters arising out of their participation in the SARED System including but not limited to the generality of the foregoing to refrain in any way from denigrating the SARED System or its activities
- 4.1.4. No member shall be entitled to be part of any other multi listing system similar to SARED in the area as specified by this agreement, nor shall a member be entitled to share its listing with any non-member.
- 4.1.5. Members are prohibited from placing any property onto the SARED website which falls outside the areas on the system of which they are members.
- 4.1.6. All members must at all times adhere to the rules and regulations laid down by the Local Authority for Estate Agents.
- 4.1.7. Any member who ceases to be a member shall remain liable to the other members and Creative Hill Digital Designs t/a SARED and the committee

for all their obligations arising out of this agreement, including but without being limited to, obligations arising out of the sale of any property placed onto the SARED website and sold prior to the date of termination of that member's participation in the SARED System.

## 4.2. DUTIES ON SARED

- 4.2.1. SARED undertakes to maintain the SARED Website and do such things necessary to ensure that its members have reasonable access thereto.
- 4.2.2. SARED undertakes to upgrade the website from time to time and to notify its members timeously of such upgrades and provide the necessary support and training in utilising any upgraded features.
- 4.2.3. SARED undertakes to notify its members timeously should any routine maintenance be required and should such maintenance result in a temporary shutdown.
- 4.2.4. SARED undertakes to place the agenda for meetings and the minutes of meetings held on the website.

## 4.3. DUTIES ON COMMITTEE

- 4.3.1. The committee is to act as the communication channel between the members and SARED.
- 4.3.2. The committee is to screen all new applications and provide reasons to the SARED System for approval or declining such applications;
- 4.3.3. To call regular meetings at which meetings a delegate of all member companies and SARED is to be present.
- 4.3.4. A committee member shall chair such meeting and provide SARED with the agenda for the meeting at least 72 (seventy-two) hours prior to enable SARED to place same on the website.
- 4.3.5. A nominated person shall take the minutes of the meeting as well as noting the parties present and those that are absent so that the necessary penalties may be imposed. Copies of the minutes are to be transmitted to SARED no more than 72 (seventy-two) hours post meetings.
- 4.3.6. To attend to all complaints lodged and notify any member of any sanction imposed on it. A copy of all complaints received, if not discussed at the meetings, is to be immediately transmitted to SARED.
- 4.3.7. To attend to a yearly performance evaluation, which evaluation shall take place in October. The evaluation shall include, but not be limited to, the

following criteria:

- 4.3.7.1. Number of properties listed;
- 4.3.7.2. Number of properties sold;
- 4.3.7.3. Open house attendance;
- 4.3.7.4. Meeting attendance;
- 4.3.7.5. General participation.

#### 4.4. DUTIES ON THE LISTING AGENT

- 4.4.1. The listing agent shall place the property onto the SARED Website by entering the data within 12 (twelve) days after signature of the mandate and allowing for the necessary cooling off period to have elapsed.
- 4.4.2. Only the listing agents may initiate changes to the data in respect of any property placed onto the SARED Website within 24 (twenty-four) hours after information has been received.
- 4.4.3. The listing agency shall advise his fellow members via the message board of any changes to a listing within 24 (twenty-four) hours, once the documentation has been received.
- 4.4.4. If an Agreement of Sale is subject to the sale of another property, then the listing agent is to ensure a "72 (seventy-two) Hour Clause" is attached. This clause can only be withdrawn once confirmation that all suspensive conditions have been met. The "72 (seventy-two) Hour Clause" excludes weekends and public holidays. Commencing and expiration date and time must be stipulated. Also see clause 2.5.
- 4.4.5. The maximum bond approval period is 14 (fourteen) working days. Any extension will only be granted with an applicable "72 (seventy-two) Hour Clause" and with written consent of the listing agent.
- 4.4.6. Member companies must add a minimum of 2 (two) listings per agent in a 6 (six) month period.
- 4.4.7. No deviation from seller's attorneys as per mandate (clause 12 on mandate) is allowed.
- 4.4.8. When an Agreement of Sale is concluded and the balance/ full amount of the purchase price is in cash against transfer, then the selling agent is to ensure that the purchaser shall within 14 (fourteen) working days from date of acceptance by seller, furnish the conveyancer with guarantees for payment on transfer, which must be acceptable to the transferring attorney.
- 4.4.9. A list of all members operating in the area in which the property is situated shall be made available by the listing agent to the client on request.

#### 4.5. DUTIES ON THE SELLING AGENT

- 4.5.1. The selling agent shall within 24 (twenty-four) hours forward information to the listing agent of the sale of the property. The selling agent shall also fax both Agreement of Sale and the signed Mandatory Checklist to the listing agent within 24 (twenty-four) hours.
- 4.5.2. If an Agreement of Sale is subject to the sale of another property, then the selling agent is to ensure a "SARED 72 (seventy-two) Hour Clause" is attached. This clause can only be withdrawn once confirmation that all suspensive conditions have been met. The "72 (seventy-two) Hour Clause" excludes weekends and public holidays. Commencing and expiration date and time must be stipulated. Also see clause 2.5.
- 4.5.3. The maximum bond approval period is 14 (fourteen) working days. Any extension will only be granted with an applicable "72 (seventy-two) Hour Clause" and with written consent of the listing agent.
- 4.5.4. When an Agreement of Sale is concluded and the balance/ full amount of the purchase price is in cash against transfer, then the selling agent is to ensure that the purchaser shall within 14 (fourteen) working days from date of acceptance by seller, furnish the conveyancer with guarantees for payment on transfer, which must be acceptable to the transferring attorney.
- 4.5.5. When taking an offer on a property, the signed Mandatory Checklist from the seller must also be signed by the purchaser and forwarded together with the OTP to the listing agent within 24 (twenty-four) hours.
- 4.5.6. No deviation from seller's attorneys as per mandate (clause 12 on mandate) is allowed.
- 4.5.7. No extension of the above time frames without the listing agent's approval will be allowed and if approved by listing agent, the 72 hour clause must be included.

#### 4.6. COMMITTEE, VOTING AND MEETINGS

- 4.6.1. A members meeting will be called in February of each year at which time a new committee is to be elected.
- 4.6.2. The candidates will be nominated by their peers to stand for election.
- 4.6.3. Only 1 (one) principal per member company will be accepted.
- 4.6.4. A minimum of 3 (three) and a maximum of 5 (five) candidates are to be selected to form the committee for their given geographical area and will prevail through majority vote.

- 4.6.5. Only one vote per member company will be allowed and such vote is only to be executed by the principal of such company unless a proxy is given to such party as said principal may elect to vote on his/ her behalf.
- 4.6.6. The committee may, over and above the general meetings, call meetings from time to time.
- 4.6.7. Attendance at all meetings shall be compulsory. Failure by a member company to send at least one delegate to such meetings shall result in a fine being levied against the member company unless the member company has timeously notified the chairman and faxed through a list of changed stock at least 24 (twenty) hours prior to the meeting.
- 4.6.8. The committee shall vote upon the issue of admission, suspension or termination of membership which decision is to be submitted, with reasoning, to the SARED System, which will make the final decision.

#### 4.7. PROCESS OF COMPLAINTS/ DISPUTES AND APPEALS

- 4.7.1. Any complaints/ disputes must be in correspondence between principals/ other party relating to matter in question and they must resolve the issue within 7 (seven) days.
- 4.7.2. If the complaining principal/ other party is not satisfied resolving the matter within 7 (seven) days the matter can be referred to the Committee who will have a decision/ response within 7 (seven) days. The Committee's decision will be placed on the system within 48 (forty-eight) hours.
- 4.7.3. If the defaulting party is unsatisfied with the Committee's decision, they can within 7 days lodge an appeal which will be referred to a principals meeting for voting on the Committee's decision and the majority vote is final.

#### 4.8. MANDATE

- 4.8.1. No property shall be placed on the SARED Website unless a written mandate as provided in standard format by SARED System, setting out the terms and conditions which have been agreed upon between the client and the listing agent is in existence. The SARED System reserves the right to delete any listing without mandates without any further notice.
- 4.8.2. SARED Members must undertake to place the property on the SARED Website on the date specified by the client, which date is to be no later than 12 (twelve) days from commencement of the mandate period. Should the



property not be captured on the SARED Website within the specified time, the mandate shall lapse and be deemed null and void.

- 4.8.3. A copy of the signed mandate referred to in Clause 4.8.1 shall be given by the listing agent to the client forthwith and a copy of the mandate shall be displayed on the website. All members who intend to work on the mandate shall be entitled to view the mandate at all times.
- 4.8.4. Members, other than the listing agent, shall not approach the client before the expiry of the period of any existing mandate to discuss obtaining a mandate for themselves and/ or re-listing of the property onto the SARED Website.
- 4.8.5. When taking a mandate on a property, the signed Mandatory Checklist from the seller must be attached.
- 4.8.6. Member companies are not allowed to deviate from the mandated dates as prescribed on the mandate by the listing agent. Therefore, no participant is allowed to contact the seller, start advertising or working on the property unless the listing agent gave prior permission. No participant except for the mandate holder will be allowed to reveal the sellers address on any advertising methods used.

#### 4.9. OPEN HOUSES

- 4.9.1. SARED Members are to specify on the Sole Mandate Contract when the Open House will be scheduled, which date is to be no later than 12 (twelve) days from the commencement of the mandate period. The Listing Agent undertakes to timeously advise fellow participants when the Agents Open House is to be held.
- 4.9.2. No late entries will be accommodated on the Open House Schedule or on the Message Board.
- 4.9.3. Unless prior written permission has been obtained from the listing agent, no other member may hold a show day, neither may any other member place any "For Sale" boards or banners on the property other than a "Sold Board".
- 4.9.4. Members shall not take or send prospective buyers to any property which is "on show" without the permission of the member who is conducting such a show day.
- 4.9.5. It is compulsory that at least one person per agency will attend the open houses in which the company is subscribed to on SARED. In the case where an agency cannot be present at the open house, an apology must be given to the listing agent for not attending.

#### 4.10. COMMISSION

- 4.10.1. The listing agent shall agree with the client on the split of brokerage between the listing agent and the selling agent and the percentage of brokerage. A 50/50 split is however recommended and will be deemed the agreed split unless there is a written agreement between the listing and the selling agent to the contrary. The maximum commission may not exceed 8.55 % incl. VAT. If agreed at less than 5.7% (VAT inclusive where applicable) a split of 60/40 in favour of the selling agent must apply.
- 4.10.2. Where the conveyancer who is attending to the registration of transfer of a property has been appointed to attend to payment of estate agent's commission then the said conveyancer shall be requested in writing in the deed of sale by the selling agent, simultaneously with the issue of the transfer instructions to the said conveyancer, to attend to the distribution of commission to both the listing and selling agents. Where however the selling agent is attending to the finances, by virtue of a deposit held by the aforesaid agent, liability for any share of the gross brokerage shall arise and be paid by the selling agent to the listing agent on the same day of the selling agent receiving his commission. In the event of a breach of the terms of this clause, then interest will be paid by the breaching selling agent to the agent entitled to payment at the prime overdraft rate of the listing agent's bankers plus 3% thereon from date of registration of transfer.
- 4.10.3. If a selling agent agrees to a reduction of brokerage without the written authority of the listing agent, any such reduction shall be deducted from the selling agent's share of the gross brokerage.

#### 5. FINES

- 5.1. Non-compliance with all clauses under the Terms and Conditions shall be finable.
- 5.2. A fine of R500.00 per violation will be levied.
- 5.3. Payment of the fine amount is to be paid to SARED within 7 days, thereafter the member's password will be disabled until such time as the fine has been settled. Should payment of the fine amount be overdue by 30 days or more, the membership to the SARED System shall forthwith be cancelled unless prior arrangements have been made with SARED for the late payment.
- 5.4. Monies received by SARED in lieu of fines shall be utilised for the upgrade of the system, functions or in any other manner SARED may deem necessary.

## 6. CONFIDENTIALITY

- 6.1. All members shall at all times keep confidential all information relating to the SARED System, which information they obtained through being a member, and shall not use such information in any way other than as authorised by the SARED System.
- 6.2. "Confidential Information" shall, for the purpose of this agreement include, without limitation, any personal information, documentation, discussions, property and any private information which may be construed as part thereof and which may or may not cause SARED any damage, whether financial or not, if disclosed.
- 6.3. The member agrees that it shall protect the confidential information disclosed pursuant to the provisions of this agreement using the same standard of care that the member applies to safeguard its own proprietary, secret, private or confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.
- 6.4. All members shall refrain from any action which may place SARED in disrepute and shall refrain from uttering any defamatory statements.
- 6.5. SARED reserves its rights to institute action against any member who fails to comply with clause 6.1, 6.2, 6.3 and 6.4 here above which claim shall include, but not be limited to, an action for damages.

## 7. CANCELLATION

Any member wishing to cancel their membership with SARED is required to give 30 (thirty) days written notice of such intention to SARED.

## 8. ADDRESSES AND NOTICES

- 8.1. For the purpose of this agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose domicilium citandi et executandi ("domicilium") as per the application form.
- 8.2. A party may at any time change its domicilium by notice in writing, provided that the new domicilium is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.
- 8.3. Any notice given in connection with this agreement may be delivered by hand; or be sent by prepaid registered post; or by email; to the domicilium chosen by the party concerned. Any notice or process delivered on any party in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the domicilium chosen

by any party and it shall not be necessary to hand such process or notice to any party personally.

8.4. A notice given as set out above shall be presumed to have been duly delivered:

8.4.1. on the date of delivery if delivered by hand or email;

8.4.2. on the fourth day from the date of posting including the date of posting if posted by pre-paid registered post from within the Republic of South Africa; and

8.4.3. on the fourteenth day from the date of posting including the date of posting if posted from outside the Republic of South Africa.

## 9. AMENDMENTS

9.1. No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless reduced in writing and signed by all parties.

9.2. Suggested amendments are to be forwarded to the SARED System whose decision on imposing an amendment or not will be final and binding.

9.3. Clauses of the participation agreement may be changed at a meeting of principals. Notice of the meeting will be posted on the message board on the SARED Website at least 14 days before the meeting.

9.4. At least 80% of all principals must be present at the meeting, either in person or by proxy. At the meeting at least 80% of the principals present must approve a change in the participation agreement. Any principal that does not cast a vote at the meeting has deemed to have voted in favour of the change.

9.5. If at a meeting less than 80% principals are present, then after 30 minutes the meeting will be cancelled and held the next day at the same time at the same venue. If again less than 80% principals are present at the second meeting, it will be considered that the principals present at that meeting in person or proxy can vote and such decisions taken will be deemed legal according to the participation agreement as if 80% of the principals were present.

9.6. Any decision passed at a principal meeting will take effect from the next working day. A decision that was passed by the principals must be published on the SARED website by the next working day.

## 10. ENFORCEMENT

The failure by the disclosing party to enforce or to require the performance at any time of any of the provisions of this agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this agreement or any part hereof or the right of the disclosing party to enforce the provisions of this agreement.

## 11. REPRESENTATIONS & WARRANTIES

Each party represents that it has authority to enter into this agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this agreement.

## 12. ENTIRE AGREEMENT

This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreements between the parties, whether written or oral, with respect to the subject matter of this agreement.

## 13. GOVERNING LAW

This agreement and the relationship of the parties in connection with the subject matter of this agreement and each other shall be governed and determined in accordance with the laws of the Republic of South Africa.

## 14. SUBMISSION

The parties hereby submit to the non-exclusive jurisdiction of the Cape Town Magistrates Court.

## 15. DISCLAIMER AND SPECIAL CONDITIONS

- 15.1. Neither SARED, nor the area committee shall, under any circumstances, be liable to any member for any loss or damage (including, without limitation, consequential loss) which is caused by or arises out of (whether directly or indirectly) any act or omission SARED or the committee, whether negligent or otherwise, or any act or omission of any member, or any breakdown of any computer system or failure to perform its function. Nothing in this clause shall prevent a member from instituting proceedings against any other member for recovery of brokerage, provided that no member shall involve SARED or the SARED System in any such proceedings.
- 15.2. Disciplinary proceedings instituted against any member by the committee shall be done in the absence of SARED and any decision reached at such hearing shall be binding. Should the member wish to appeal any decision made by a committee such notice is to be transmitted to the chairman no

more than 7 (seven) days after the hearing, failing which the decision reached will stand.

- 15.3. All decisions made by the committee are done so in the absence of SARED and thus no member will have any right of recourse against SARED or its members.

## 16. INDULGENCES

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded from as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

# SARED Application Form

Area: \_\_\_\_\_

## Personal Particulars

Surname: \_\_\_\_\_  
Full Names: \_\_\_\_\_  
ID Number: \_\_\_\_\_  
Cell Number: \_\_\_\_\_

## Business Particulars

Business Name: \_\_\_\_\_ (hereinafter referred to as "Member")  
No. of Employees: \_\_\_\_\_  
Physical Address: \_\_\_\_\_  
Postal Code: \_\_\_\_\_  
Work Telephone: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
VAT Number: \_\_\_\_\_

I, \_\_\_\_\_  
the applicant, herewith declare that my record with the PPRA is in good standing and that all the above information is correct.

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_