

San Antonio Board of REALTORS® MLS Data Access Agreement

This AGREEMENT is made and entered into by The San Antonio Board of Realtors®MLS with offices located at 9110 IH 10 W. San Antonio, Texas 78230.

_____ (“Firm”),
with offices at _____;
and _____ (“Consultant”),
with offices at _____.

DEFINITIONS

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.

SABOR MLS Data: Data relating to real estate for sale, previously sold, or listed for sale and data relating to Subscribers (including text, photographs, and all other data formats now known or hereafter invented) entered into SABOR’s databases by Subscribers and SABOR, or on their behalf.

SABOR Policies: The SABOR’s MLS Rules and Regulations and Terms and Conditions of Use, as amended from time to time, and any operating policies relating to the SABOR’s Data promulgated by SABOR.

Confidential Information: “Confidential Information” means information or material proprietary to SABOR or designated “confidential” by SABOR and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all SABOR Data, except to the extent to which this Agreement and the SABOR Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that SABOR obtains from any third party that SABOR treats as proprietary or designates as Confidential Information, whether or not owned or developed by SABOR; and (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

Data Interface: The transport protocols and data storage formats provided by SABOR for use by Firm and Consultant; SABOR may modify the Data Interface in its sole discretion from time to time.

Firm Affiliates: Consultant, if any, and employees of Firm who are not real estate licenses or broker/managers.

Subscriber: Any licensed real estate broker who is a Participant (as the term is defined in the SABOR Rules and Regulations) together with salespersons and broker associates licensed to the Participant, for whom the Participant is responsible under the laws of the State of Texas.

SABOR’S OBLIGATIONS

2. SABOR grants to Firm a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the SABOR Data, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement; any other use of the SABOR’s Data is hereby prohibited. All licensees hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. SABOR retains all rights not expressly granted herein.

3. SABOR agrees to provide to Firm and Consultant, during the term of this Agreement, (a) access to the SABOR Data via the Data

Interface under the same terms and conditions SABOR offers to other Subscribers; (b) seven days’ advance notice of changes to the Data Interface; and (c) seven days’ advance notice of changes to the SABOR Policies. SABOR undertakes no obligation to provide technical support for the Data Interface or the SABOR Data.

FIRM’S OBLIGATIONS

4. Firm shall comply with the SABOR MLS Rules and Regulations at all times. In the event of any perceived conflict between the SABOR MLS Rules and Regulations and this Agreement, the SABOR MLS Rules and Regulations shall prevail and govern.

5. Firm shall use the SABOR Data obtained under this Agreement only for the purposes set out in Exhibit A – “Permitted Uses.” Any other use is strictly prohibited. Firm shall not make the SABOR Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm may display the SABOR Data on a web site available to the public only to the extent permitted by the SABOR MLS Rules and Regulations and then only on a site resident at the second-level domain indicated on the signature page of this Agreement.

6. Firm acknowledges that SABOR possesses all right, title, and interest in all copyrights in the SABOR Data.

7. If SABOR notifies Firm of a breach of the SABOR Rules and Regulations or this Agreement and Firm does not immediately cure the breach, Firm shall hold Consultant harmless from any liability arising from Consultant’s cooperation with SABOR under paragraph 12.

8. Each reproduction or display of the SABOR Data, or any portion of it, including display on any web page, to persons other than Subscribers shall be accompanied by the following notice or one substantially similar and appropriate to the circumstances: “Based on information from the San Antonio Board of REALTORS® (alternatively, from SABOR) for the period [date] through [date]. The SABOR does not guarantee or is in any way responsible for its accuracy. All data is provided ‘AS IS’ and with all faults. Data maintained by the SABOR MLS may not reflect all real estate activity in the market.”

9. Firm shall display the SABOR copyright notice on each display screen, web page (whether Internet or intranet), and printout displaying SABOR Data. The SABOR MLS copyright notice must take the following form: “Copyright 2010 San Antonio Board of REALTORS®.”

10. Firm shall pay the initial and periodic fees, if any, that SABOR customarily charges other Subscribers for data access. Firm acknowledges receipt of SABOR’s current schedule of such fees, if any. SABOR may in its sole discretion establish or modify its schedule of fees upon 30 days’ written notice to Firm.

11. Firm shall stand as surety for Consultant’s performance under this Agreement.

CONSULTANT’S OBLIGATIONS

12. Consultant shall immediately correct any breach of this Agreement or violation of the SABOR Policies within its control, whether committed by Firm or Consultant, upon notice from SABOR.

13. Consultant acknowledges that SABOR possesses all right, title, and interest in all copyrights in the SABOR Data.

14. Consultant shall not make the SABOR Data or the Confidential Information available to any third party, except on behalf of Firm and in a manner consistent with Firm’s obligations under Paragraphs 4 through 11 of this Agreement; nor shall it make any other use of the SABOR Data, whether commercial or personal.

15. Consultant shall notify SABOR within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

Please initial here: _____

CONFIDENTIAL INFORMATION

16. Firm and Consultant shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law, court order or regulation; provided, however, that such party makes commercially reasonable efforts to notify SABOR in writing in advance of such disclosure.

17. Within five days after the termination of this Agreement, the receiving party shall return to SABOR all confidential Information and materials provided by SABOR to the receiving party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage, including system backups. Upon SABOR's request an officer of the receiving party shall certify in writing that all materials have been returned to SABOR or destroyed.

TERM AND TERMINATION

18. The term of this Agreement begins on the date that SABOR signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Subscriber; (b) 30 days after any party's notice to the others of its intent to terminate; (c) one day after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured. In the event Firm's privileges as a Subscriber are terminated while this Agreement is in effect and SABOR subsequently reinstates those privileges, this Agreement shall automatically be reinstated if SABOR resumes its obligations under paragraphs 2 and 3.

GENERAL PROVISIONS

19. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of Texas, without regard to its conflicts and choice of law provisions. The parties agree that any action to enforce or interpret this Agreement shall have venue in Bexar County, Texas, and the parties hereby submit to personal jurisdiction in that venue.

20. **Survival of Obligations.** The obligations of Firm set forth under "Firm's Obligations" above and the obligations of Consultant under "Consultant's Obligations" above shall survive the termination or expiration of this Agreement for five years. The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity.

21. **SABOR's Remedies.** Because of the unique nature of the SABOR Data and Confidential Information, Firm and Consultant acknowledge and agree that SABOR would suffer irreparable harm in the event that either of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate SABOR for a breach. SABOR is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any threatened, continuing or further breach by Firm or Consultant or any one of them, without showing or proving any actual damages sustained by SABOR, and without posting any bond.

22. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL SABOR BE LIABLE TO FIRM OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF SABOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL SABOR BE LIABLE TO FIRM OR CONSULTANT FOR ANY

AMOUNT IN EXCESS OF THE FEES FIRM AND CONSULTANT HAVE PAID SABOR, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES. FIRM ACKNOWLEDGES THAT SABOR PROVIDES THE SABOR DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY. SABOR SHALL NOT BE LIABLE TO FIRM FOR ANY CLAIM ARISING FROM INACCURACIES IN THE SABOR DATA, ANY FAILURE TO UPDATE THE SABOR DATA PROMPTLY, OR THE SABOR DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL.

23. **Attorney's fees.** If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

24. **Indemnification.** Subject to paragraph 22, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim.

25. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, 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.

26. **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.

27. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

28. **Entire Agreement.** Subject to SABOR Policies, 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.

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

30. **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. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision

Please initial here: _____

**San Antonio Board of REALTORS, MLS
Participant Data Access Agreement Signature Page**

<p style="text-align: center;">NOTE:</p> <p>Under this Agreement, FIRM IS PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE. If Firm chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with SABOR and each such consultant.</p> <p>Under this Agreement, CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM NAMED HERE. Consultant may not use data obtained under this Agreement to provide any services to other brokerage firms. Consultant must enter into a new version of this Agreement with SABOR and each such brokerage firm.</p> <p>If Firm will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box before returning this Agreement to SABOR.</p>	<p>FIRM</p> <p>_____</p> <p>Firm name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>_____</p> <p>Name of owner or officer</p> <p>Date: _____</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>2nd Level Domain: _____</p>
<p>SABOR</p> <p>San Antonio Board of Realtors, MLS.</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name</p>	<p>CONSULTANT</p> <p>_____</p> <p>Consultant name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>_____</p> <p>Name of owner or officer</p>

<p>Date: _____</p> <p>(effective date of this Agreement)</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p>	<p>Date: _____</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p>
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Participant Data Access Agreement

Exhibit A –Permitted Uses (to contain description of product or service)

Please initial here: _____

San Antonio Board of REALTORS® MLS Data Access Agreement

Participant Data Access Agreement

Exhibit B – Data Access Fees*

Fees are due upon signing contract and before the Data Feed can become active. Make checks payable to San Antonio Board of Realtors. Or you may choose to pay by credit card.

1. Quarterly fee - \$200 plus applicable tax. (fee will be prorated monthly if applicable)

Please initial here: _____

* Fees are subject to sales tax.

1 MLS Rules and Regulations

1.1.1.1 Revised March 2019

VOW/IDX MLS Rules

Section 18-Internet Data Exchange (IDX): IDX affords MLS Participants the ability to authorize limited electronic display and delivery of their listings by other participants via the following authorized mediums under the participant's control: websites, mobile apps, and audio devices. As used throughout these rules, "display" includes "delivery" of such listings. (Amended 5/17) M

Section 18.1-Authorization: Participants' consent for display of their listings by other Participants pursuant to these rules and regulations is presumed unless a Participant affirmatively notifies the MLS that the Participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of that Participant's listings, that Participant may not download, frame or display the aggregated MLS data of other Participants. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display or other electronic forms of display or distribution. (Amended 5/12) (Amended 2017)

Section 18.2-Participation: Participation in IDX is available to all MLS Participants who are REALTORS® and who consent to display of their listings by other Participants.

Section 18.2.1 -Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. (Amended 5/12)

Section 18.2.2 -MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines.

Section 18.2.3 –Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing brokers to withhold their listing or the listing’s property address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs).

Section 18.2.4 -Participants may select the listings they choose to display through IDX based only on objective criteria including, but not limited to, factors such as geography or location (“uptown”, “downtown”, etc.), list price, type of property, (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed IDX must be independently made by each Participant. (Amended 05/17)

Section 18.2.5 - Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads not less frequently than every 12 hours. (Amended 11/14)

Section 18.2.6 -Except as provided in the IDX policy and these rules, an IDX site or a Participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity. (Amended 5/12)

Section 18.2.7- Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface not smaller than the median used in the display of listing data. (Amended 11/17) M

. For purposes of the IDX policy and these rules, “control” means the ability to add, delete modify and update information as required by the IDX policy and MLS rules. (Amended 5/12)

Section 18.2.8 –Any IDX display controlled by a participant or subscriber that

- a. allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

Either or both of those features shall be disabled or discontinued for the seller’s listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants’.. Except for the forgoing and subject to Section 18.2.9, a participant’s IDX display may communicate the participant’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller.

18.2.9 –Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. (Amended 5/12)

Section 18.2.10 - An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14)

Section 18.2.11 - Participants shall not modify or manipulate information relating to other participants listings. MLS Participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized fields. M.

Section 18.2.12 - All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data.* (Amended 05/17) **M**

* Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the devices application. (Amended 5/17)

Section 18.3-Display: Display of listing information pursuant to IDX is subject to the following rules:

Section 18.3.1-Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS Participants and users (e.g. cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed.

Section 18.3.1.1 -The Type of Listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed (Amended 5/12)

(Moved to Section 18.3.3 to 18 2.2.12 and Classified as Mandatory)

Section 18.3.4- All listings displayed pursuant to IDX shall identify the listing agent.

Section 18.3.5- Non-principal brokers and sales licensees affiliated with IDX Participants may display information available through IDX on their own websites subject to their Participant's consent and control and the requirements of state law and/or regulation.

Section 18.3.6- Deleted November 2006.

Section 18.3.7- All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 5/12)

Section 18.3.8- Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers' personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc. of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 5/12)

Section 18.3.9- The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than one hundred (100) listings or five percent (5%) of the listings available for IDX display, whichever is fewer. (Amended 11/09)

Section 18.3.10- The right to display other participants' listings pursuant to IDX shall be limited to a participant's office(s) holding participatory rights in this MLS.

Section 18.3.11 – Listings obtained through IDX feeds from REALTOR® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources, Listings obtained from other sources (e.g. from other MLS's from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc. of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 11/14)

Note: An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display.

Section 18.3.12 – Display of expired, withdrawn, and sold listings is prohibited (Amended 11/09)

Section 18.3.13 – Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and e-mail address(es) is prohibited.

Section 18.3.14 – Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information is larger than that of any third party. (Adopted 11/09)

Section 18.4 Service Fees and Charges - Service fees and charges for participation in IDX shall be as established annually by the Board of Directors. (Amended 5/05)

SECTION 19 – Virtual Office Websites (VOW's)

Section 19.1 (a): A Virtual Office Website ("VOW") is a Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant's oversight, supervision, and accountability.

(b) As used in Section 19 of these Rules, the term "Participant" includes a Participant's affiliated non-principal brokers and sales licensees – except when the term is used in the phrases "Participant's consent" and "Participant's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner ("AVP") on behalf of a Participant.

(c) "Affiliated VOW Partner" ("AVP") refers to an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant's supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Listing Information except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS Listing Information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW.

(d) As used in Section 19 of these Rules, the term "MLS Listing Information" refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

Section 19.2 (a): The right of a Participant's VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.

(b) Subject to the provisions of the VOW Policy and these Rules, a Participant's VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange ("IDX").

(c) Except as otherwise provided in the VOW Policy or in these Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant's VOW.

Section 19.3 (a): Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:

(i) The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.

(ii) The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.

(iii) The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

(b) The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

(c) If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of MLS Listing Information or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.

(d) The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:

i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;

ii. That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;

- iii. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
- iv. That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;
- v. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

(e) The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

(f) The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

Section 19.4: A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

Section 19.5: A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

Section 19.6 (a): A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

(b) A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision:

Seller Opt-Out Form

1. Please check either Option a or Option b

a. I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.

OR

b. [] I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.

2. I understand and acknowledge that, if I have selected option a, consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.

initials of seller

(c) The Participant shall retain such forms for at least one year from the date they are signed, or one year from the date the listing goes off the market, whichever is greater.

Section 19.7:

(a) Subject to subsection (b), a Participant's VOW may allow third-parties (i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii)

display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

(b) Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 19.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

Section 19.8: A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

Section 19.9: A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

Section 19.10: Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

Section 19.11: A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

Section 19.12: A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

Section 19.13: A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

Section 19.14: A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the Participant.

Note: Adoption of Sections 19.15 –19.19 is at the discretion of the MLS. However, if any of the following sections are adopted, an equivalent requirement must be imposed on Participants' use of MLS Listing Information in providing brokerage service through all other delivery mechanisms.

Section 19.15: A Participant's VOW may not make available for search by, or display to, Registrants any of the following information:

- a. Expired and withdrawn listings.
- b. The compensation offered to other MLS Participants.
- c. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- d. The seller's and occupant's name(s), phone number(s), or e-mail address(es).

e. Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property.

f. Sold information

Section 19.16: A Participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields

Section 19.17: A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

Section 19.18: A Participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

Section 19.19: A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than 500 current listings and not more than 500 sold listings in response to any inquiry.

Note: The number of listings that may be viewed, retrieved, or downloaded should be specified by the MLS in the context of this rule, but may not be fewer than five hundred (500) listings or fifty percent (50%) of the listings in the MLS, whichever is less. M

Section 19.20: A Participant shall require that Registrants' passwords be reconfirmed or changed every 120 days.

(Note: The number of days passwords remain valid before being changed or reconfirmed must be specified by the MLS in the context of this rule and cannot be shorter than 90 days. Participants may, at their option, require Registrants to reconfirm or change passwords more frequently.)

Section 19.21: A Participant may display advertising and the identification of other entities ("co-branding") on any VOW the Participant operates or that is operated on his or her behalf. However, a Participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this Section, co-branding will be presumed not to be deceptive or misleading if the Participant's logo and contact information (or that of at least one Participant, in the case of a VOW established and operated on behalf of more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

Section 19.22: A Participant shall cause any listing displayed on his or her VOW that is obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

Section 19.23: A Participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

Section 19.24: Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

Section 19.25: Where a seller affirmatively directs their listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within 48 hours.