

## San Antonio Board of REALTORS® Broker Back Office Data License 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 (“SABOR Data”):** Data relating to real estate for sale, previously sold, or listed for sale and data relating to Subscribers (including but not limited to text, numeric data, and photographs) entered into SABOR’s General Listing database by Subscribers and SABOR, or on their behalf.

**BBO Data:** SABOR Data or subset of SABOR Data to which SABOR, at its sole discretion, has granted access to Firm/Consultant, under this agreement.

**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.

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**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.

**Broker Back Office:** The type of use by the Firm, of SABOR Data, for the benefit and in service of Firm’s clients. Broker Back Office Use shall be limited to the following:

- a. **Internal Brokerage Management Systems:** the compilation of General Listing Database listings that may be used for internal brokerage management and only expose the BBO Data to Participants and Subscribers within the Firm. Such Tools include but are not limited to accounting software and proprietary internal software not viewed by a client or consumer.
- b. **Customer Relationship Management and Transaction Management Tools:** the compilation of General Listing Database listings that may be used for agent/broker/client interactions for the purpose of establishing, maintaining, and executing the deliverables requisite from an agent-customer relationship. Such Tools may only expose the BBO Data to Participant, Subscribers affiliated with Participant, and their bona-fide clients as established under state law. Such Tools include but are not limited to CRMs, and Transaction Management Systems (TMSs).
- c. **Agent and Firm Productivity and Ranking Tools:** the compilation of General Listing Database listings or BBO Data that may be used for the purpose of creating agent, office, or Firm transaction analytics for internal use only, except such analytics that are aggregated demonstrations of market share or for comparisons of Firms may be published for public display in accordance with the NAR [Handbook of Multiple Listing Policy](#) Policy Statement 7.80 ).
- d. **Marketplace Statistical Analysis:** the compilation of General Database Listings or BBO Data that may be used by Firm for the purpose of:

(i) **Comparative Market Analysis:** supporting an estimate of value on a particular property for distribution to, and use by, only a single, specific client (i.e., not for public display or use) to which only information that has been deemed non-confidential and necessary to support the estimate may be reproduced and attached to the estimate as supporting documentation. For the avoidance of doubt, an automated valuation model (AVM) is considered a Comparative Market Analysis.

(ii) **Real Estate Market Analytics:** creating real estate market analytics for internal, public display, or third party use, provided that for any public display or third party use, such analytics must only include truthful, non-disparaging, and non-misleading information, as well as a statement identifying the time period for which SABOR Data is displayed.

e. **My Brokerage Listings:** Firm's own listings contained in the SABOR Data for use in any manner Firm deems appropriate, including but not limited to public display or use. This use aligns with NAR's Participant Data Access Policy requirements (PDAP).

**Broker Tools Use:** The following broker tool usage options, as selected by the Firm on Exhibit A: (a) Internal Brokerage Management Systems, (b) Customer Relationship Management and Transaction Management Tools, (c) Agent and Brokerage Productivity and Ranking Tools, (d) Marketplace Statistical Analysis ; and (e) My Brokerage Listings.

## SABOR'S OBLIGATIONS

2. SABOR grants to Firm and Consultant a non-exclusive, non-transferable, non-assignable, non-sublicensable, world-wide license to 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. For the avoidance of doubt, nothing in this Agreement grants Firm or Consultant the right to use SABOR Data for any marketing or promotional purposes whatsoever.

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; (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

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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. Notwithstanding anything to the contrary, property specific sold data other than Broker Listings Use shall not be used in any publication or marketing materials utilized by Firm.

5. Firm shall use the SABOR Data obtained under this Agreement only for the purpose of Broker Tools Use for only the usage options identified and agreed upon by SABOR, Firm, and Consultant as detailed 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 not display the SABOR Data on a web site available to the public or Consultant.

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, within three (3) days from such notice, Firm shall be in breach of this Agreement. hold Consultant harmless from any liability arising from Consultant's cooperation with SABOR under paragraph 12.

8. Each reproduction or display, if any, 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 Firm shall not alter the SABOR Data to remove or modify any SABOR copyright notice. 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 employ commercially reasonable measures designed to prevent third parties from unauthorized access to and/or use of the SABOR Data. These measures must include, but are not limited to, protection against data mining by scraping or similar means, implementation of security policies and procedures, restriction of network traffic to necessary ports and protocols, use of secure protocols for maintenance, implementation of intrusion prevention systems, configuration and security patching of servers based on best practices, implementation of a program to manage software vulnerabilities so as to conform with generally accepted industry standards such as those promulgated by the Open Web Application Security Project (OWASP - [www.owasp.org](http://www.owasp.org)), implementation of physical security measures such that Licensed Content is not transported outside of secure data centers or other secure facilities, software security testing taking place monthly and when major releases are performed, and engaging a third party to perform a security audit at least annually. Firm shall further prohibit any third party, including Consultant, from viewing, monitoring, altering the SABOR Data. Notwithstanding the foregoing, this restriction is not meant to limit use of Broker Use Tools created by Firm with SABOR Data. Firm shall stand as surety for Consultant's performance of all Firm's obligations under this Agreement.

### **CONSULTANT'S OBLIGATIONS**

12. Consultant agrees that at all times during this Agreement it shall abide by SABOR MLS Rules and/or Policies. Consultant shall immediately correct, or cause to be corrected, any breach of this Agreement or violation of the SABOR MLS Rules and/or Policies, whether committed by Firm or Consultant, upon notice from SABOR. Notwithstanding anything to the contrary, property specific sold data shall not be used in any publication or marketing materials utilized by Consultant.

13. Consultant acknowledges that SABOR possesses all right, title, and interest in all copyrights in the SABOR Data. Consultant shall be under the same obligations as the Firm related to any and all copyrights of SABOR Data.

14. Consultant shall not make any of the SABOR Data or the Confidential Information available to any third party nor shall it directly access or make any other use of the SABOR Data or Confidential Information, beyond the Permitted Uses, whether commercial or personal.

15. Consultant shall notify SABOR within three (3) days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

### **ADDITIONAL OBLIGATIONS**

16. Neither Firm nor Consultant shall:

(a) Modify or remove URLs contained in the SABOR Data, or employ any framing, or add any links or meta-tags, that constitute an alteration of any listings in the SABOR Data that are presented or distributed via the Internet by Firm in a manner not permitted by this Agreement.

(b) Violate any applicable disclosure guidelines as set forth by the applicable local, county, and state real estate regulatory agencies;

(c) Add any name, mark or other material that may cause consumers or others to believe that Firm is the listing agent or broker for a property when, in fact, such is not the case;

(d) Use or continue to use or distribute any data, listing or other material that it has reason to believe is outdated, no longer valid or inaccurate;

(e) Modify any listing data (including SABOR Data), except for Firm's own listings;

(f) Use, distribute, publicly display, convey, make available to any party or permit any party to access the SABOR Data, or any portion thereof, for any purpose other than for Broker Tools Use or that is otherwise inconsistent with the intent of this Agreement and the SABOR Rules;

(g) Except as expressly permitted under this Agreement, sell, license, sublicense, assign, transfer, alter, modify, change or create any derivative works of the SABOR Data, in any manner (other than reformatting), without the written consent of SABOR;

(h) Use SABOR Data to create, host, or support any website or other internet-based technology or application available to the public that contains a database comprised on whole or in part of the SABOR Data;

(i) Use SABOR Data to contact property owners, except for Firm's own listings;

17. The following Additional Obligations apply as follows:

(a) Consultant shall not provide services in connection with the SABOR Data to Firm if Firm is in breach of its representations, warranties and obligations. If Consultant fails to comply with the provisions of this Section, SABOR has

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the right to terminate Consultant's access to the SABOR Data under this or any other Agreement.

(b) Consultant shall pay the Fees, if any, that SABOR invoices Consultant pursuant to this Agreement. Consultant acknowledges receipt of SABOR's current schedule of such Fees. SABOR may in its sole discretion modify its schedule of Fees upon thirty (30) days' written notice to Consultant. Consultant shall be liable for all costs, including reasonable attorney's fees, associated with collecting unpaid amounts due under this Agreement plus interest at the rate of 5% per 12 months. All Fees paid under this Agreement by Consultant to SABOR are non-refundable.

(c) Consultant shall provide SABOR on a monthly basis, or at SABOR's request, a written report that details the Firms with which Consultant has contracted and is current using to perform services to support Broker Tools Use, and other fields of information as SABOR requests in its sole discretion.

(d) Consultant shall provide SABOR with reports on usage and other statistics concerning the SABOR Data, with the fields, format, and frequency described in the SABOR Rules.

(e) Consultant shall use its best efforts to use well-formed database queries and minimize its impact on the Data Interface. If, in the sole discretion of SABOR, Consultant's queries are causing unreasonable loads on the servers, SABOR shall, at its discretion, suspend or terminate Consultant's access to the SABOR Database.

## CONFIDENTIAL INFORMATION

18. 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.

19. Within five (5) 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

20. The term of this Agreement begins on the last date that a Party signs it. This Agreement shall terminate upon the

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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.

## GENERAL PROVISIONS

21. **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.

22. **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.

23. **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.

24. **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.**

25. **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.

26. **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.

27. **Notice.** All notices to be given under this Agreement shall be sent certified mail, return receipt requested, 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 (3) days after mailing or other transmission.

28. **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.

29. **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.

30. **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.

31. **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.

32. **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

SIGNATURES ON FOLLOWING PAGE

Please initial here: \_\_\_\_\_

**San Antonio Board of REALTORS, MLS  
 Broker Back Office Data License Agreement Signature Page**

<p style="text-align: center;"><b>NOTE:</b></p> <p>Under this Agreement, <b>FIRM IS PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.</b> 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, <b>CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM NAMED HERE.</b> 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><b>FIRM</b></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><b>Contact for notices and operations matters</b></p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>License Number: _____</p>
<p><b>SABOR</b></p> <p>San Antonio Board of Realtors, MLS.</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name</p>	<p><b>CONSULTANT</b></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>

Date: \_\_\_\_\_

(effective date of this Agreement)

**Contact for notices and operations matters**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Mailing: \_\_\_\_\_

Date: \_\_\_\_\_

**Contact for notices and operations matters**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Mailing: \_\_\_\_\_

**Broker Back Office Data License Agreement**

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

Check all that apply:

a) Internal Brokerage Management Systems

Accounting Software

Proprietary Internal-Only Systems

(b) Customer Relationship Management and/or Transaction Management Systems

Third party CRM Software

Name: \_\_\_\_\_

Proprietary CRM Software

Third Party Transaction Management System

Name: \_\_\_\_\_

Proprietary Transaction Management System

(c) Agent and Firm Productivity and Ranking Tools

Agent/Office/Firm Production Compilation Details

Agent/Office/Firm Analytics for Marketshare

(d) Marketplace Statistical Analysis

Comparative Market Analysis (CMA) services

Real Estate Market Analysis services

(e) My Brokerage Listings

Office MLS ID(s): \_\_\_\_\_

Detailed Product Description:

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SABOR Internal Purposes Only

Product/Service Demonstration Date:

Does Product/Service match use case in Exhibit A?:

Does Product/Service align with SABOR Policies and MLS Rules?

Reviewed by:

Legal Approval:

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Please initial here: \_\_\_\_\_



## **San Antonio Board of REALTORS® MLS Data Access Agreement**

### **Participant Data Access Agreement**

#### Exhibit B – Data Access Fees\*

Fees are due from Firm/Consultant (circle one) upon signing contract and before data access credentials will be delivered. Make checks payable to San Antonio Board of Realtors. Or you may choose to pay by credit card via IMS.

1. Quarterly fee - \$216.50 including applicable tax
2. There are no fees for Data Access when My Brokerage Listings is the only licensed use.

\* Fees are subject to sales tax.

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