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### **DATA LICENSE AGREEMENT**

This Data License Agreement (the Agreement) is made and entered into on \_\_\_\_\_, 201\_\_ (“Effective Date”) by and among \_\_\_\_\_ (“MLS”), \_\_\_\_\_, a licensed real estate broker or brokerage company and a Participant in the MLS (“Participant”), and \_\_\_\_\_ (“Vendor”).

This Agreement is made with reference to the following facts:

1. MLS collects, compiles, maintains and licenses a proprietary database of real estate listings and other information.
2. Participant is entering or has entered into a business relationship with Vendor under a separate agreement, under which Vendor will provide Participant with access to software programs to enable Participant to provide automated valuation models (“AVMs”) to Participant’s customers and clients (“End Users”) having an interest in automated reports on property valuation or market conditions.
3. A sample copy of the AVM report or product is attached as an exhibit to this Agreement.
4. Vendor wishes to obtain and MLS wishes to license the Licensed Data, as defined herein, for use in creating and delivering AVMs to Participant’s customers and clients as more fully described in this Agreement.

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, MLS, Participant, and Vendor agree as follows:

#### **I. DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth herein, and shall be equally applicable to the singular and plural forms.

- A. “Automated Valuation Model” or “AVM” means a product that provides automated real property valuations using mathematical modeling combined with a database.
- B. “Confidential Information” means information and material proprietary to the disclosing party, or designated “confidential” by the disclosing party, and not generally known to the public that the receiving party 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 and other information of a similar nature (whether in oral, visual, audio, written or other form): (i) all MLS Listing Information, except in the manner and to the extent to

which this Agreement permits its disclosure; (ii) IP addresses; (iii) access codes and passwords; (iv) any information the disclosing party obtains from any third party that the disclosing party treats as proprietary and designates as Confidential Information, whether or not owned or developed by the disclosing party; and (v) any information designated as confidential or private from time to time by any applicable state, federal, local or other law, regulation, or directive. Confidential Information does not include information that is or becomes publically known information other than by unauthorized disclosure by the receiving party; is independently developed by the receiving party; is received from a third party who has lawfully obtained and disclosed it without breaching any confidentiality agreement; or is already known by the receiving party at the time of its disclosure.

- C. “Licensed Data” means that subset of the MLS Listing Information licensed for use under this Agreement.
- D. “MLS Listing Information” means the compilation of listing information provided by Participants to MLS and aggregated and distributed by the MLS to Participants, including information relating to active listings, properties that have sold, are subject to a pending contract, or for which the listing agreements expired or were otherwise withdrawn from the market after being listed.
- E. “MLS Server” means the computer server or servers, including both hardware and software, maintained by MLS which contains the MLS Listing Information and provides the means for Vendor or Participant to access the MLS Listing Information.
- F. “NAR” means the National Association of REALTORS®.
- G. “MLS Rules” means the MLS’s Rules and Regulations, as amended from time to time; any applicable access standards and technology standards; and any operating policies relating to the MLS Listing Information.

## II. LICENSE

- A. License Grant. Subject to the terms and conditions of this Agreement, MLS hereby grants to Vendor a limited, revocable, non-exclusive, non-transferable License to receive from MLS an electronic data feed of the Licensed Data for use solely and exclusively in connection with the creation of AVMs for use by Participant in connection with Participant’s real estate brokerage services. Nothing herein shall be construed as a grant of any other right or license to Vendor to access or use the Licensed Data, the MLS Listing Information, or Confidential Information, except as expressly set forth herein. MLS reserves all right, title and interest in and to the Licensed Data.
- B. Limitations on License.
  - 1. Except as expressly permitted by the License Grant, Participant and/or Vendor shall not, and shall not facilitate, cause, or allow any third party to, do any of the following: (a) use, display, access, distribute, transfer, alter, or modify the Licensed Data or any other MLS Listing Information, or otherwise create any derivative works thereof; (b) download, distribute, export, deliver, or transmit any of the MLS Listing Information, including to any computer or other electronic device, except Licensed Data as is necessary pursuant to the License Grant; or (c)

sell, grant access to, or sublicense the MLS Listing Information, or any portion thereof, to any third party, including to any End User.

2. Vendor agrees to take all reasonable steps necessary to protect the Licensed Data from unauthorized access, distribution, copying, or use.
  3. Vendor and Participant shall comply at all times with the MLS Rules and NAR Multiple Listing Policy. Upon receipt of notice that MLS or NAR contend that Vendor's or Participant's use of Licensed Data does not comply with the MLS Rules or NAR Multiple Listing Policy, Vendor and Participant shall cease such use and cooperate with MLS to modify Vendor's and Participant's use thereof to ensure compliance.
  4. Vendor may not use the Licensed Data to contact property owners and/or Participant's clients.
  5. Vendor may only allow its employees to access the Licensed Data for the limited purpose of creating AVMs for Participant. Vendor may not allow any other third party, including independent contractors, access to the Licensed Data.
  6. Participant may not display the AVMs or Licensed Data on any website other than that which is under its direct ownership or control, and may not directly or indirectly facilitate the display of the AVMs on any other publicly accessible website.
- C. Vendor Support. Vendor shall provide (or cause a third party to provide) all hardware, software, telecommunications, and other equipment, technology and resources necessary to perform its obligations under this Agreement.
- D. License Fees and Payment; Expenses. In consideration for the License Grant set forth in this Agreement, [Vendor/ Participant] agrees to pay to MLS license fees and other fees ("Fees") described on the attached Schedule A to this Agreement. The Fees shall be payable as provided on Schedule A. [Optional terms if Vendor is selected as primary party responsible for payment: "Participant may, upon behalf of Vendor, pay Fees and any other amounts owing under this Agreement, except that if Participant fails to pay any such amounts when due, Vendor shall be liable to MLS for such amounts until paid. Vendor agrees to pay all costs of collection of all unpaid amounts owing to MLS under this Agreement, including reasonable attorney's fees and costs. Vendor shall be responsible for its own expenses and costs under this Agreement, and MLS shall have no obligation to reimburse Vendor for any expenses or costs incurred by Vendor in the exercise of Vendor's rights or the performance of Vendor's duties under this Agreement."]
- E. No Warranties. THE LICENSE GRANTED UNDER THIS AGREEMENT, INCLUDING ACCESS AND USE OF THE LICENSED DATA, IS PROVIDED "AS IS," AND, EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION VII OF THIS AGREEMENT, MLS DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**III. CONFIDENTIALITY.** Each party (the “Receiving Party”) acknowledges that in the course of performing this Agreement, they may receive or be exposed to Confidential Information of the one or more other parties (the “Disclosing Party”). The Receiving Party acknowledges and agrees that the Disclosing Party’s Confidential Information may constitute valuable trade secrets and that all of this information will be received and held by the Receiving Party in confidence, will be used only for the purposes set forth in this Agreement, and will not be disclosed to any person or entity without the prior written consent of the Disclosing Party, and the Receiving Party will take all precautions necessary to safeguard the confidentiality and security of the Disclosing Party’s Confidential Information including, at a minimum, those precautions taken by the Receiving Party to protect its own confidential information, which will never be less than a reasonable degree of care. The Receiving Party acknowledges and agrees that its protection of the Disclosing Party’s Confidential Information is essential to this Agreement. All Confidential Information shall (i) remain the sole property of the Disclosing Party and (ii) be used by the Receiving Party only as authorized herein. The Receiving Party agrees to provide the Disclosing Party with prompt written notice of receipt of any subpoena or other demand from a court, government agency, or arbitration panel seeking production or disclosure of the Disclosing Party’s Confidential Information, and will cooperate with the Disclosing Party on reasonable terms and conditions in any efforts by the Disclosing Party to quash or limit such a subpoena or demand, or secure an appropriate protective order.

#### **IV. COMPLIANCE AND SECURITY**

- A. MLS Rules. Participant and Vendor acknowledge that MLS has provided each with a copy of the MLS Rules and each agrees to be bound by and comply with the MLS Rules. The MLS Rules may include terms and limitations in addition to those set forth in this Agreement. In the event of any inconsistency, the content of the MLS Rules will govern. MLS may modify the MLS Rules at any time, in its sole discretion. MLS agrees to deliver to Participant and Vendor any modification of the MLS Rules, and Participant and Vendor shall comply with such modification not later than five (5) business days after receipt of such modification.
- B. Means of Accessing the MLS Listing Information. Access by Vendor to the Licensed Data shall be exclusively by the means designated by MLS, including without limitation the format and method of delivery. MLS may, in its sole discretion and upon thirty (30) days prior written notice to Vendor and Participant, change the means, method of delivery and nature of accessing the MLS Listing Information.
- C. Authorization to Access the MLS Listing Information. Vendor hereby acknowledges and agrees that (i) Vendor has no independent participation rights in the MLS by virtue of this license; (ii) Vendor shall not use MLS Listing Information except as permitted in the License Grant; and (iii) access by Vendor to MLS Listing Information is derivative of the rights of Participant.
- D. Privacy and Information Security. Vendor shall comply with all applicable privacy and information security laws including, but not limited to, security breach notification laws. Vendor shall use measures to protect the security and privacy of the Licensed Data, including from unauthorized access, use, or disclosure, that are equal to or higher than those Vendor uses to protect the security and privacy of its own data and Confidential Information. Vendor shall also take all reasonable steps, in accordance with commercially reasonable security practices, to protect the security and privacy of the Licensed Data from unauthorized access, use, or disclosure, including “data piracy” and other unauthorized access to or use of the Licensed Data.

From time to time, MLS may, in its sole discretion, specify particular reasonable security measures Vendor must take to ensure compliance of the terms set forth herein.

- E. Changes to MLS's Server. MLS shall not be obligated to make any changes to MLS's Server, including any software running on MLS's Server, the configuration, applicable protocols, or any other aspect of MLS's Server for any reason. Participant and Vendor acknowledge that the MLS Server, together with access to the MLS Listing Information, may from time-to-time be unavailable to Vendor, whether because of technical failures or interruptions, intentional downtime for service or changes to the MLS Server, or otherwise. Participant and Vendor agree that any modification of the MLS Server, any interruption or unavailability of access to the MLS Server, or access to or use of the Licensed Data shall not constitute a default by MLS under this Agreement. MLS shall have no liability of any nature to Participant or Vendor for, and Participant and Vendor waive all claims arising out of, any such modifications, interruptions, unavailability, or failure of access to the MLS Server.
- F. Compliance Audits. MLS reserves the right to review, inspect and test the books, records, equipment and facilities of Participant and/or Vendor to the extent reasonably necessary to ascertain Participant's and/or Vendor's compliance with this Agreement (an "Audit"). MLS may conduct an Audit upon notice of three (3) business days to Participant and/or Vendor. Audit activities may include, without limitation, obtaining access to Participant's and/or Vendor's websites and systems as necessary to ensure that the Licensed Data is used and displayed in accordance with this Agreement and the MLS Rules; using all features available to end-users of Participant's systems that employ the Licensed Data; and posing as consumers to register and test services Participant and/or Vendor make available to consumers using the Licensed Data. MLS may engage an independent third party to conduct the Audit and shall be responsible for the costs related thereto. In the event MLS identifies a breach of the contract by Participant and/or Vendor during the course of an Audit, then the Vendor and Participant shall be equally liable for the costs of the Audit.

## V. OWNERSHIP

- A. Ownership of Intellectual Property. Vendor and Participant acknowledge and agree that the MLS Listing Information is proprietary, is an original work of authorship of MLS, consists of information for which MLS has sufficient rights to grant this license, and components of which are protected under United States copyright law. Vendor and Participant further acknowledge and agree that all right, title, interest in and to the database compilation of the Licensed Data and any modifications or enhancements of such compilation are and shall remain with MLS. This Agreement does not convey or grant to Vendor an interest in or to the MLS Listing Information, but only a limited right to access and use the Licensed Data in accordance with this Agreement. Vendor and Participant agree that they will not challenge or take any action inconsistent with MLS's claims of ownership of or rights to the MLS Listing Information as described herein.
- B. Proprietary and Other Notices. Vendor and Participant shall include and not alter or remove any attribution, trademark, copyright, other notices, or any disclaimers located or used on or in connection with the Licensed Data. Participant and/or Vendor shall display the MLS copyright notice on each display screen, web page, and/or printout displaying any part of the Licensed Data and/or AVMs. The MLS copyright notice should take one of the following forms: "Copyright 2014 <MLS full legal name>" or "© 2014 <MLS full legal name>". Participant

and/or Vendor shall replace “2014” with the current year as of January 1<sup>st</sup> each year. [Possible Participant Attribution Language: Vendor shall provide the following attribution language on each AVM: “Information in this Report provided in connection with [Participant name.]”]

## **VI. TERM AND TERMINATION**

- A. The term of this Agreement shall be one (1) year from the Effective Date. This Agreement will automatically renew upon expiration of the Initial Term for successive twelve (12) month terms (each a “Renewal Term” and collectively, with the Initial Term, the “Term”) unless any party provides notice to the others no less than thirty (30) days prior to renewal that it does not wish to renew the Agreement.
- B. MLS or Participant may, by delivery of written notice to all other parties hereto, terminate this Agreement effective immediately upon the occurrence of any of the following events:
1. Vendor giving MLS or Participant written notice of the termination;
  2. Participant giving notice to MLS that it no longer intends to use Vendor’s technology to create and deliver AVMs to End Users; written notice of which shall be provided by Participant to MLS within five (5) days of Participant’s de-designation of Vendor;
  3. Participant ceasing to remain a Participant in the MLS;
  4. Vendor accessing, downloading, or using MLS Listing Information in a manner not authorized by this Agreement, or that hinders the ability of other MLS participants to access, download, or use the MLS Listing Information;
  5. Participant’s or Vendor’s failure within ten (10) business days of MLS’ written notice of MLS’ reasonable belief that Participant or Vendor have misused the Licensed Data or have violated the MLS Rules or the NAR Multiple Listing Policy to cure such violation by taking such steps as prescribed in MLS’ written notice of violation; or
  6. Participant’s or Vendor’s failure to make required payments to the MLS.
- C. Vendor and Participant agree that upon termination of this Agreement, Vendor’s and Participant’s license to use the Licensed Data pursuant to this Agreement immediately terminates and Vendor and Participant shall immediately cease all use thereof. Upon termination, Vendor and Participant shall remove all MLS Listing Information from all of their servers within one (1) business day of termination and within one (1) business day thereafter Vendor and Participant shall provide MLS with a written statement that they have done so.

## **VII. WARRANTIES, ACKNOWLEDGEMENTS, INDEMNIFICATION AND LIMITATION OF LIABILITY**

- A. General. Each party represents and warrants to the other parties as follows: (a) this Agreement, when executed by such party, will be valid, binding and enforceable with respect to such party in accordance with its terms; and (b) the execution of this Agreement and/or the

performance of such party's obligations under this Agreement will not constitute a default, under any other agreement by which such party is bound; and (c) each party is not under any disability, restriction, or prohibition related to its execution of this Agreement and its performance of its obligations under this Agreement.

- B. Acknowledgements. Vendor and Participant acknowledge that MLS provides the Licensed Data on an as-is, as-available basis. MLS shall not be liable to Vendor or Participant for any claim arising from inaccuracies in the Licensed Data, alleged infringement, or any failure, whether on the part of Vendor or MLS, to update the data promptly. Vendor is responsible for any liability or loss of goodwill associated with problems in the Licensed Data's integrity, accuracy, or timeliness arising from Vendor's use of the Licensed Data.
- C. Indemnification. Vendor and Participant agree to indemnify, hold harmless and defend MLS and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by the Indemnified Party arising out of any third party claim alleging: (i) a material breach or non-fulfillment of any representation, warranty or covenant of this Agreement by Vendor and/or Participant; (ii) that any action undertaken under this Agreement infringes any U.S. patent, copyright or trademark, or constitutes a misappropriation of a trade secret or other intellectual property of a third party; (iii) any grossly negligent or more culpable act or omission of Vendor and/or Participant (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement; or (iv) any failure by Vendor and/or Participant to materially comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement.
- D. Limitation of Liability. IN NO EVENT SHALL A PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## VIII. REMEDIES

- A. Injunctive Relief. MLS, Participant and Vendor each agree that a breach of this Agreement could result in immediate and irreparable injury and harm to a non-breaching party. In the event of Participant's or Vendor's actual or potential breach of this Agreement, MLS shall have the right to immediately terminate Vendor's and Participant's access to the MLS Listing Information and to apply to a court of competent jurisdiction for an injunction, temporary and permanent, specific performance, or other equitable relief to prevent the violation of this Agreement. A party's pursuit of injunctive or equitable relief shall not in any way limit any other remedies of that party based upon another party's conduct, including, without limitation, the right to seek monetary damages.
- B. Costs of Litigation. If any action is brought by any party to this Agreement against another party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, its reasonable attorneys' fees, costs, and expenses of prosecuting or defending such action, including on appeal and in bankruptcy.

**IX. GENERAL PROVISIONS**

A. Governing Law; Submission to Jurisdiction. This Agreement is governed by and enforced according to the laws of the State of \_\_\_\_\_. Each party agrees to submit and consent to, and waive any defense to the jurisdiction of courts located in the County of \_\_\_\_\_, in the State of \_\_\_\_\_, as to all matters relating to or arising from this Agreement.

B. Notices. All notices to be given under this Agreement shall be made in writing and delivered by U.S. certified mail, UPS or FedEx return receipt requested, or email to the appropriate party at the address provided below.

If to MLS:

[Name]

[Address]

[Email]

If to Participant:

[Name]

[Address]

[Email]

If to Vendor:

[Name]

[Address]

[Email]

C. The foregoing addresses may be changed from time-to-time by delivering notice of such change to the parties to this Agreement. Notice shall be effective upon receipt or refusal to receive.

D. No Joint Venture. Nothing in this Agreement shall be construed to create a partnership or joint venture between MLS and Vendor or MLS and Participant.

E. Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement.

F. No Waiver. The waiver by either party of, or the failure of either party to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement.

G. No Assignment. None of the Parties may assign or otherwise transfer any rights or duties under this Agreement to any third party without the prior written consent of the non-assigning parties. Any attempted assignment of this Agreement in violation of this section shall be null and void, and be without any legal force or effect.

H. Survival. The obligations of the parties in the following sections of this Agreement shall survive the termination of this Agreement: Definitions; No Warranties; Acknowledgments; Privacy and Information Security; Ownership of Intellectual Property; Term and Termination; Confidentiality; Indemnification; Limitation on Liability; Remedies; and all Sections under General Provisions.

I. Execution and Amendment. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument. Electronic and facsimile signatures are deemed to be equivalent to original signatures for the purposes of this Agreement. This Agreement may not be amended except in writing signed by Participant, Vendor, and MLS.

**IN WITNESSTH THEREOF**, the parties have executed this Agreement by their authorized representatives.

**MLS**

**PARTICIPANT**

\_\_\_\_\_  
**Name of MLS**

\_\_\_\_\_  
**Name of Participant**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

—

**VENDOR**

\_\_\_\_\_  
**Name of Vendor**

By: \_\_\_\_\_  
(Signature)

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

Title: \_\_\_\_\_

—

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

—

SAMPLE

**SCHEDULE A**

**[Insert Payment terms here]**

SAMPLE

**EXHIBIT**

**[Attach sample AVM report]**

SAMPLE