

MLS Data Access Agreement

This AGREEMENT is made and entered into by the Bryan-College Station Regional Multiple Listing Service ("BCSRMLS"), 1901 Greenfield Plaza, Bryan, TX 77802, and

BCSRMLS Subscriber ("Subscriber")

Email Address

3rd Party Consultant ("Consultant")

Email Address

DEFINITIONS

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

BCSRMLS 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 BCSRMLS's databases by Subscribers and BCSRMLS or on their behalf.

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

Confidential Information: "Confidential Information" means information or material proprietary to BCSRMLS or designated "confidential" by BCSRMLS 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 BCSRMLS Data, except to the extent to which this Agreement and the BCSRMLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that BCSRMLS obtains from any third party that BCSRMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by BCSRMLS 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

Subscriber: Any licensed real estate broker or agent who is part of a member Firm (as the term is defined in the BCSRMLS Rules and Regulations).

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

Consultant: A third party vendor contracted by the subscriber to provide a data solution, be it internal or public facing.

BCSRMLS'S OBLIGATIONS

2. BCSRMLS grants to Subscriber a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the BCSRMLS 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 BCSRMLS'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. BCSRMLS retains all rights not expressly granted herein.

3. BCSRMLS agrees to provide to Subscriber and Consultant, during the term of this Agreement, (a) access to the BCSRMLS Data via the Data Interface under the same terms and conditions BCSRMLS 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 BCSRMLS Policies. BCSRMLS undertakes no obligation to provide technical support for the Data Interface or the BCSRMLS Data.

SUBSCRIBER'S OBLIGATIONS

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

5. Subscriber shall use the BCSRMLS Data obtained under this Agreement only for the purposes set out in Exhibit A - "Permitted Uses." Any other use is strictly prohibited. Subscriber shall not make the BCSRMLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Subscriber may display the BCSRMLS Data on a web site available to the public only to the extent permitted by the BCSRMLS 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. Subscriber acknowledges that BCSRMLS possesses all right, title, and interest in all copyrights in the BCSRMLS Data.

7. If BCSRMLS notifies Subscriber of a breach of the BCSRMLS Rules and Regulations or this Agreement and Subscriber does not immediately

cure the breach, Subscriber shall hold Consultant harmless from any liability arising from Consultant's cooperation with BCSRMLS.

8. Each reproduction or display of the BCSRMLS 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 Bryan-College Station Regional Multiple Listing Service (alternatively, from BCSRMLS) for the period from _____ through _____. BCSRMLS does not guarantee or is in any way responsible for its accuracy. All data is provided by BCSRMLS "AS IS and with all faults" for use by Firm, Subscriber, and/or Consultant; data maintained by the BCSRMLS may not reflect all real estate activity in the Market." BCSRMLS may modify the Data Interface in its sole discretion from time to time.

9. Subscriber shall display the BCSRMLS copyright notice on each display screen, web page (whether Internet or intranet), and printout displaying BCSRMLS Data. The BCSRMLS MLS copyright notice copyright notice should take one of the following forms: "Copyright 2018 Bryan College Station Regional Multiple Listing Service, a Texas for-profit corporation" or "© 2018 Bryan College Station Regional Multiple Listing Service, a Texas for-profit corporation". Subscriber and/or Consultant shall replace "2018" with the current year as of January 1st each year.

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

11. Subscriber 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 BCSRMLS Policies within its control, whether committed by Subscriber or Consultant, upon notice from BCSRMLS.

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

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

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

CONFIDENTIAL INFORMATION

16. Subscriber 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 BCSRMLS in writing in advance of such disclosure.

17. Within five days after the termination of this Agreement, the receiving party shall return to BCSRMLS all confidential Information and materials provided by BCSRMLS 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 BCSRMLS's request an officer of the receiving party shall certify in writing that all materials have been returned to BCSRMLS or destroyed.

LIMITATIONS ON LICENSE

18. Except as expressly permitted by the License Grant, Subscriber and/or Consultant 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 data feed, 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, MLS Listing Information, or other data feed 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.

19. Consultant agrees to take all reasonable steps necessary to protect the Licensed Data from unauthorized access, distribution, copying, or use.

20. Consultant and Subscriber shall comply at all times with the MLS Rules and NAR Multiple Listing Policy. Upon receipt of notice that MLS or NAR contend that Consultant's or Subscriber's use of Licensed Data does not comply with the MLS Rules or NAR Multiple Listing Policy, Consultant and Subscriber shall cease such use and cooperate with MLS to modify Consultant's and Subscriber's use thereof to ensure compliance.

21. Consultant may not use the Licensed Data to contact property owners and/or Subscriber's clients.

22. Consultant may only allow its employees to access the Licensed Data for the limited purpose of creating Automated Valuation Models ("AVMs"), or other approved proprietary products for Subscriber. Consultant may not allow any other third party, including independent contractors, access to the Licensed Data.

23. Subscriber 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.

TERM AND TERMINATION

24. The term of this Agreement begins on the date that BCSRMLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Subscriber's privileges as a Subscriber; (b) 30 days after any party's notice to the others of its intent to terminate; or (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 Subscriber's privileges as a Subscriber are terminated while this Agreement is in effect and BCSRMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if BCSRMLS resumes its obligations under paragraphs 2 and 3 above.

GENERAL PROVISIONS

25. **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 Brazos County, Texas, and the parties hereby submit to personal jurisdiction in that venue.

26. **Survival of Obligations.** The obligations of Subscriber set forth under "Subscriber'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.

27. **BCSRMLS's Remedies.** Because of the unique nature of the BCSRMLS Data and Confidential Information, Subscriber and Consultant acknowledge and agree that BCSRMLS 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 BCSRMLS for a breach. BCSRMLS 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 Subscriber or Consultant or any one of them, without showing or proving any actual damages sustained by BCSRMLS, and without posting any bond.

28. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL BCSRMLS BE LIABLE TO SUBSCRIBER OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF BCSRMLS 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 BCSRMLS BE LIABLE TO SUBSCRIBER OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE FEES SUBSCRIBER AND CONSULTANT HAVE PAID BCSRMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES. SUBSCRIBER ACKNOWLEDGES THAT BCSRMLS PROVIDES THE BCSRMLS 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. BCSRMLS SHALL NOT BE LIABLE TO SUBSCRIBER FOR ANY CLAIM ARISING FROM INACCURACIES IN THE BCSRMLS DATA, ANY FAILURE TO UPDATE THE BCSRMLS DATA PROMPTLY, OR THE BCSRMLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL.

29. **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.

30. **Indemnification.** Subject to paragraph 28, 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.

31. **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.

32. **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.

33. **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.

34. **Entire Agreement.** Subject to BCSRMLS 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.

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

36. **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: _____

(Subscriber / Consultant)

BRYAN-COLLEGE STATION REGIONAL MULTIPLE LISTING SERVICE Subscriber Data Access Agreement Signature Page

NOTE:

Under this Agreement, **SUBSCRIBER IS PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Subscriber chooses to engage a different consultant or additional consultants, Subscriber must enter into a new version of this Agreement with BCSRMLS and each such consultant.

Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY ACCESS THE DATA FEED FOR THE SUBSCRIBER NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to other brokerage Subscribers. Consultant must enter into a new version of this Agreement with BCSRMLS and each such Subscriber.

If Subscriber will perform its own technical work and there is no Consultant party to this Agreement, Subscriber should cross out the Consultant signature box before returning this Agreement to BCSRMLS.

BCSRMLS will not sign this agreement until subscriber and consultant parties do so.

SUBSCRIBER

Subscriber name

Signature of Subscriber

Email of Subscriber

Date: _____

Contact for notices and operations matters

Name: _____

Phone: _____

Email: _____

Mailing: _____

2nd Level Domain: _____

BCSRMLS

Bryan-College Station Regional Multiple Listing Service

Signature

Name

Date: _____

(effective date of this Agreement)

Contact for notices and operations matters

Name: _____

Phone: _____

Email: _____

CONSULTANT

Consultant name

Signature of owner or officer

Name of owner or officer

Date: _____

Contact for notices and operations matters

Name: _____

Phone: _____

Email: _____

Subscriber Data Access Agreement

Exhibit A –Permitted Uses/Statuses

- Display listings/data on agent/firm public facing website
- Import listings for internal company MLS
 - Office has access – broker affirms that non-members of BCSRMLS do not have access to product/tool
- Back office management system
 - Office has access – broker affirms that non-members of BCSRMLS do not have access to product/tool
- AVM (Automated Valuation Model)
 - Feed to include sold data
 - For use only within the back-end AVM system and data is not to be displayed publicly.
 - Only accessible by vendor, broker, and/or agent using product
- VOW (Virtual Office Website)
 - Feed to include sold data
 - Broker/agent must adhere to BCSRMLS Rules & Regulations concerning VOW data distribution
- Third party tool for valuations – CMA products such as Top Producer, etc.
- Other – specify on final page
- Please confirm which statuses are being requested in feed: (check all that apply)
 - _____ On Market (Active, Contingency Contract, Exclusive Agency)
 - _____ Pending (Option Contract, Under Contract, Under Contract Taking Backups, Offer Pending Signatures)
 - _____ Sold (See above for uses of sold data)

Please initial here: _____

(Subscriber / Consultant)

Bryan-College Station Regional Multiple Listing Service Data Access Agreement Subscriber Data Access Agreement

Exhibit B – Data Access Fee

Administrative Fee for Feeds including Sold Data - \$100

*IDX Feeds containing sold data will not be activated until the administrative fee is paid.
Pay by credit card via phone at (979)846-3751 or by check at 1901 Greenfield Plaza Bryan TX 77802 payable to BCSRMLS.*

Please initial here: _____

(Subscriber / Subscriber)

Multiple Listing Service RETS Feed Authorization

The undersigned hereby authorize the Bryan-College Station Regional Multiple Listing Service to provide a RETS data feed to the Consultant stated below. The undersigned plans to use this RETS feed for the following purpose(s):

- Broker IDX (public facing) Agent IDX (public facing)
- Virtual Office Website (VOW – to include sold data) AVM (to include sold data)
- Internal office product (to include sold data)
- Other (*please explain*) _____

The undersigned hereby agrees to abide by the Bryan-College Station Regional Multiple Listing Service Rules and Regulations. The RETS data is authorized to be used solely for the purpose(s) stated above. Any other unauthorized use, dissemination, or distribution of this data is strictly prohibited.

Consultant's Information:

Name of Consultant: _____
Contact Name: _____
Telephone/Email: _____ / _____
Signature: _____
Date: _____

Broker's Information:

Company Name: _____
Broker Name: _____
Telephone/Email: _____ / _____
Website: _____
Signature: _____
Date: _____

Subscriber – Agent Name:

Subscriber Name: _____
Telephone/Email: _____ / _____
Website: _____
Signature: _____
Date: _____