Regional Multiple Listing Service of Minnesota, Inc.
Standard Third-Party Data Access Agreement

This **AGREEMENT** is made and entered into by and between Regional Multiple Listing Service of Minnesota, Inc. ("**RMLS**"), with offices at 2550 University Ave. W, Suite 259S, St. Paul MN, 55114; and _____ ("**Licensee**"), a _____ individual/partnership/corporation/limited liability company with offices at _____.

DEFINITIONS

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

Confidential Information: "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): (a) all RMLS Data, except to the extent to which this Agreement permits its disclosure; (b) IP addresses, access codes and passwords; (c) any information the disclosing party obtains from any third party that the disclosing party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the disclosing party; and (d) 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 publicly available by other than 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.

Data Interface: The transport protocols and data storage formats described in Exhibit A, if any. If no such description appears in Exhibit A, then the Data Interface consists of those protocols and formats typically provided by RMLS for use by other licensees of the RMLS Data, which RMLS may modify in its sole discretion from time to time.

Licensed Data: That subset of the RMLS Data Licensed for use under this Agreement, which is more fully described in Exhibit A. If no such description appears in Exhibit A, then the Licensed Data consists of those records and fields typically provided by RMLS for use by other licensees of the RMLS Data, which RMLS may modify in its sole discretion from time to time.

Licensed Marks: Those trademarks, service marks, word marks, logos and distinctive marks of all other kinds, if any, set out in Exhibit A as Licensed Marks. If no Licensed Marks appear in Exhibit A, then there are no Licensed Marks.

Licensed Materials: The Licensed Data and Licensed Marks.

RMLS 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 the RMLS's databases by Subscribers and RMLS.

Subscriber: Any real estate broker, appraiser, or real-estate-related business professional that purchases multiple listing services from RMLS.

LICENSE

2. RMLS grants to Licensee the license to copy, distribute, and display the Licensed Materials, only to the extent necessary to achieve the purposes set out in Exhibit B, only during the term of this Agreement, and only to the extent permitted by and subject at all times to the terms and restrictions of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. RMLS retains all rights not expressly granted herein.

3. RMLS represents that RMLS has no actual knowledge that should reasonably cause RMLS to conclude that the Licensed Materials infringe the rights of any third party.

DATA ACCESS

4. During the term of this Agreement, RMLS shall provide to Licensee (a) access to the Licensed Data via the Data Interface; and (b) seven days' advance notice of changes to the Data Interface.

LICENSEE'S ACKNOWLEDGEMENTS

5. Licensee acknowledges that RMLS provides the Licensed Data on an as-is, as-available basis. RMLS shall not be liable to Licensee for any claim arising from inaccuracies in the Licensed Data or any failure, whether on the part of Licensee or of RMLS, to update the data promptly.

6. Licensee is responsible for any liability or loss of goodwill associated with problems in data integrity, accuracy, or timeliness arising from Licensee's use of the Licensed Data.

7. The listings of some Subscribers may not be included in the Licensed Data if the listing Subscriber's permission is required under RMLS's policies before its listings may be distributed to Licensee.

LICENSEE'S OBLIGATIONS

8. Licensee shall display the RMLS copyright notice on each display screen, web page (whether Internet- or Intranet-based), and printout displaying any part of the Licensed Data. The RMLS copyright notice may take either of the following two forms: (a) "Copyright 2014 Regional Multiple Listing Service of Minnesota, Inc." or (b) "© 2014 Regional Multiple Listing Service of Minnesota, Inc.". Licensee shall replace "2014" with the current year as of January 1 of each year.

9. Licensee shall employ reasonable measures to prevent "data piracy" and other unauthorized access and use of the Licensed Data; from time to time, RMLS may, in its sole discretion, specify particular reasonable security measures Licensee must take.

10. Licensee shall not make the Licensed Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement.

11. Licensee shall pay the initial and periodic fees and provide the other consideration set forth in Exhibit D, if any, according to the terms set forth therein. Licensee shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

12. Licensee acknowledges that, as among the parties to this Agreement, RMLS is sole owner of and possesses all right, title, and interest in all copyrights in the Licensed Data.

13. Licensee warrants that any use of the RMLS Data by Licensee will not constitute infringement of the patent or other intellectual property rights of any third party.

14. Licensee shall conform to the supplemental use restrictions set forth in Exhibit C, if any.

AUDITS OF COMPLIANCE

15. RMLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Licensee to the extent reasonably necessary to ascertain Licensee's compliance with this Agreement (an "Audit"). RMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Licensee's web sites and systems to ensure that Licensed Data is displayed in accordance with the RMLS Policies; using all features available to end-users of Licensee's systems that employ the Licensed Data; and posing as consumers to register and test services Licensee makes available to consumers using the Licensed Data. RMLS shall pay the costs it incurs, and the out-of-pocket costs Licensee incurs, as part of any Audit; Licensee shall be liable, however, for all costs of any Audit that discloses that Licensee has breached this Agreement.

CONFIDENTIAL INFORMATION

16. Each party shall protect the Confidential Information with the same degree of care it takes to protect its own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if law, court order, or regulation requires such disclosure; provided, however, that party makes commercially reasonable efforts to notify the other party in writing in advance of such disclosure.

17. Within five days after the termination of this Agreement, each party shall return to the other party all Confidential Information and all other materials provided by the other party hereunder. Licensee shall also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of either party, an officer of the other party shall certify in writing that all materials have been returned and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

18. The term of this Agreement begins on the date that RMLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) 30 days after either party's notice to the other of its intent to terminate; (b) 10 days after either party's notice to the other that the other has breached this Agreement, provided the breach remains uncured; (c) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm. In the event of any suspension or termination of this Agreement, Licensee shall make no further use of the Licensed Data or any derivative works based on it until and unless Licensee's rights under this Agreement are restored.

19. In the event Licensee breaches this Agreement and entitles RMLS to terminate under Paragraph 18, RMLS may in its sole discretion suspend its performance instead of terminating this Agreement. RMLS may make this election by notice to Licensee within three days after the initiation of the suspension. Licensee's obligations hereunder continue during any period of suspension.

GENERAL PROVISIONS

20. **Applicable law**. The laws of the State of Minnesota shall govern this Agreement and its interpretation. Any action to enforce or interpret this Agreement shall have venue in Hennepin County, Minnesota, and the parties hereby submit to personal jurisdiction in that venue.

21. **Survival of Obligations**. Paragraphs 1, 10, 12, 13, 16, and 17, and Paragraphs 20 through 32, and all Exhibits to which they refer, shall survive termination or expiration of this Agreement.

22. **RMLS's Remedies**. (a) Injunctive relief. Because of the unique nature of the RMLS Data and Confidential Information, Licensee acknowledges that RMLS would suffer irreparable harm in the event that Licensee breaches its obligations under this Agreement, and that monetary damages would be inadequate to compensate RMLS for a breach. RMLS 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 Licensee without showing or proving any actual damages sustained by RMLS, and without posting any bond or other security. (b) Liquidated damages: Licensee acknowledges that damages suffered by RMLS from access to the Licensed Data or Confidential Information by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the Licensed Data or Confidential Information to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to RMLS to enter into this Agreement, Licensee agrees that in the event Licensee discloses any password to access the Licensed Data or Confidential Information or discloses the Licensed Data or the Confidential Information to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Licensee shall be liable to RMLS for liquidated damages in the amount of $30,000 for each such disclosure and termination of this Agreement.

23. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL RMLS BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF RMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; LICENSEE'S SOLE REMEDIES AGAINST RMLS HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF THE AMOUNTS LICENSEE HAS PAID TO RMLS HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR BREACH. RMLS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. THIS PARAGRAPH SETS OUT LICENSEE'S EXCLUSIVE REMEDIES, AND UNDER NO CIRCUMSTANCES SHALL LICENSEE BE ENTITLED TO EQUITABLE REMEDIES, EXCEPT IN THE EVENT RMLS BREACHES OR THREATENS TO BREACH PARAGRAPH 16. RMLS makes no warranty, including those of title, availability, or non-infringement, regarding marks licensed under this Agreement, if any.

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

25. **Indemnification.** Subject to Paragraph 23, in the event any 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 Indemnifying Party's breach. Licensee shall indemnify RMLS, RMLS's Subscribers, and customers of RMLS and RMLS's Subscribers, to whom Licensee provides a product or service using RMLS Data, against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from any third-party claim of patent infringement. The Indemnified Parties shall (a) promptly notify the Indemnifying Party in writing 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 such claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

26. **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.

27. **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.

28. **No Assignment**. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement (each a "Transfer") to any other party without the prior written consent of the other party. Any purported Transfer in contravention of this paragraph is null and void.

29. **Entire Agreement**; **Amendment**. 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. RMLS may amend this agreement by providing 30 days' advance notice of the amendment to Licensee; if Licensee continues to use the

Data Interface or the RMLS Data after the expiration of the 30-day notice period, Licensee will be deemed to have agreed to the terms as amended.

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

31. **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 a court having jurisdiction over the parties holds any provision of this Agreement invalid or unenforceable, the parties shall negotiate in good faith to replace the invalid or unenforceable provision, if possible, with a valid provision that most closely approximates the intent and economic effect of the invalid provision. If any provision of the limitation of liability, exclusion of warranty, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate unless the parties agree to the contrary.

32. **Precedence.** In the event of any conflict between the terms of the main body of this Agreement and any Exhibit to this Agreement, the terms of the body of the Agreement shall prevail.

In consideration of the mutual covenants set forth in this Agreement, the parties affirm and adopt this Agreement by setting their signatures below.

RMLS	**LICENSEE**
Regional Multiple Listing Service of Minnesota, Inc.	_____
	Licensee name
_____	_____
Signature	Signature of owner or officer
_____	_____
Name	Name of owner or officer
Date: _____	Date: _____
(effective date of this Agreement)	
Contact for notices and operations matters	**Contact for notices and operations matters**
Name: _____	Name: _____
Phone:_____	Phone: _____
Email: _____	Email: _____
Mailing: _____	Mailing: _____
_____	_____

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<u>Exhibit A: Specification of Licensed Materials and Data Interface</u>

Licensed Data

Under no circumstances may Developer indicate or imply that RMLS endorses or promotes Developer or any of its products or services, unless the parties agree to enter an endorsement relationship

Data Interface

If at any time RMLS believes a Developer's request for MLS data is affecting RMLS server performance the Developer agrees to make modifications to reduce the load on the server or pay for the increased server capacity needed to support downloads. If the issues are not resolved, RMLS may suspend developer's data access until developer adequately addresses the issue.

Any Third Party access is subject to the following terms:
- The Third Party pays in advance for all services received.
- Participant, Contractor or Third Party hosting the RMLS Database or any portion thereof agree to provide RMLS with free access.
- Developer shall provide a list of all product or service users on a quarterly basis and at any time upon request of RMLS.
- RETS Access queries are limited to 2500 records per timed download between the hours of 7:00 A.M. and 7:00 P.M. Central Standard Time.

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Exhibit B: Licensee's Purpose and Use of Licensed Materials

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Exhibit C: Supplemental Restrictions on Licensee's Use of Licensed Materials

Pursuant to the requirements of this Agreement, Developer must include the following terms in its written agreement with each RMLS Subscriber or other Person authorized by RMLS to use the Developer Product. In the event, Developer may substitute its own defined terms for those used here (e.g., Developer, RMLS Subscriber, RMLS), and Developer may alter the language provided here so long as such alterations in no way decrease RMLS's rights or increase RMLS's obligations and liabilities.

1. RMLS Subscriber's access to the RMLS Database and the RMLS Service and use of the Developer Product are subject at all times to the rules and regulations and operating policies of RMLS. RMLS may change its policies at any time. Such changes may result in changes to the Developer Product, including a reduction or elimination of functionality or capabilities.

2. If at any time RMLS informs Developer that RMLS Subscriber is no longer a subscriber in good standing with RMLS, Developer will remove, with respect to the RMLS Subscriber, any components of the Developer Product that use the RMLS Database or the RMLS Service.

3. RMLS Subscriber is not permitted under any circumstances to make access to the RMLS Database or the Developer Product available to any person not authorized by RMLS to have that access.

4. Developer is not RMLS's agent and has no authority to enter into any agreement on RMLS's behalf. This agreement between Developer and RMLS Subscriber does not create any liability or obligations on the part of RMLS. RMLS Subscriber's sole recourse for damages or breach of this agreement is to Developer.

5. DISCLAIMER OF WARRANTIES: DEVELOPER MAKES NO WARRANTIES OF ANY KIND ON BEHALF OF RMLS. THE ENTIRE RISK ARISING OUT OF THE USE THE RMLS DATABASE AND SYSTEM REMAINS WITH RMLS SUBSCRIBER.

6. LIMITATION OF LIABILITY. IN NO EVENT SHALL RMLS BE HELD LIABLE FOR ANY INJURY TO RMLS SUBSCRIBER ARISING OUT OF THIS AGREEMENT OR USE OF THE DEVELOPER PRODUCT.

7. Indemnification: RMLS Subscriber shall indemnify, defend and hold RMLS, its directors, staff, shareholders, licensors and the RMLS Subscribers harmless from any and all claims, damages, losses, liabilities, costs and expenses (including reasonable fees of attorneys and other professionals) arising out of or in connection with this Agreement or use of the Developer Product.

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Exhibit D: Fees and Consideration

The Development Fee and Startup Fee are billed one time to new vendors and vendors returning after a period of inactivity. Monthly fees are billed based on number of customers using the data.

Development Fee (due prior to data access)	Startup Fee (due when moved to production)	Monthly Fee (Billed quarterly)
$1,000.00	$500.00	1-9 users: $100 10-100 users: $250 101+ users: $400

- Development period not to exceed 90 days from date of data access.

- Additional RETS support will be billed at $150/hr for time spent resolving inaccuracies, statistical methodology problems, authentication problems and special communication efforts not related to a RETS upgrade.