

North Alabama Multiple Listing Service, Inc. Participant Data Access Agreement

This AGREEMENT is made and entered into by North Alabama Multiple Listing Service, Inc. ("NALMLS"), with offices at 535 Monroe Street, Huntsville, AL 35801; the real estate brokerage firm identified as "Firm" on the signature page below ("Firm"); the Salespersons affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the "Salesperson Party"); and the individual or business association identified as "Consultant" on the signature page below, if any ("Consultant").

DEFINITIONS

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

AVM: An automated valuation model or similar service using mathematical modeling combined with NALMLS Data and possibly other data, provided it can fairly be characterized as a valuation of real property, and only to the extent permitted by the NALMLS Policies. An AVM need not include any human judgment or analysis. "AVM" includes broker price opinions (BPOs) and comparative (or comparable) market analyses (CMAs) to the extent they satisfy this definition.

Confidential Information: "Confidential Information" means information or material proprietary to a party or designated "confidential" by the party 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 NALMLS Data, except to the extent to which this Agreement and the NALMLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that NALMLS obtains from any third party that NALMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by NALMLS; (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims and evidence presented by any party in any arbitration under this Agreement. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

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

Firm AVM: Use and display of portions of the NALMLS Data by Firm for AVM purposes subject to the provisions of Exhibit B of this Agreement.

Firm-Related Persons: Consultant, if any, and employees of Firm who are not Salespersons or broker/managers.

Firm Internal Use: Any use of those portions of the NALMLS Data relating to Firm's own listings; and any use of those portions of the NALMLS Data relating to listings of Participants other than Firm that exposes NALMLS Data only to Firm-Related Persons and to Salespersons affiliated with Firm, subject to the NALMLS Policies.

IDX: Use and display of portions of the NALMLS Data under the IDX provisions of the NALMLS Policies.

Mobile Applications: Any displays of IDX data authorized by NALMLS Policies and listed in Exhibit A that are not web sites. "Mobile Applications" does not include mass media display of NALMLS Data.

NALMLS Data: Data relating to real estate for sale, previously sold, or listed for sale, and to NALMLS Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into

NALMLS's databases by NALMLS Participants and NALMLS, or on their behalf.

NALMLS Policies: NALMLS's Rules and Regulations, as amended from time to time, and any operating policies promulgated by NALMLS.

Participant: This term has the meaning given to it in the NALMLS Policies. For purposes of this Agreement, "Participant" does not apply to participants of MLSs other than NALMLS. Where applied in this Agreement to Participants other than Firm, "Participant" also includes Salespersons affiliated with those Participants for whom the Participants are responsible under the laws of the State of Alabama.

Salesperson: Any person holding a real estate license in Alabama who is not a Participant but who is subject to a Participant's supervision under the laws of Alabama.

Second Level Domain: "Second Level Domain" has the meaning given to it in this paragraph. "URL" means a web address, including the "http://" and any material appearing after a slash in the address. "Domain Name" means a URL, less the "http://" and any material appearing to the right of the next slash (/) in the address. (So for example, in the URL "http://janesmith.abcrealty.com/homepage.html", the Domain Name is "JANESMITH.ABCREALTY.COM".) "Top Level Domain" means the portion of the Domain Name to the right of the right-most period. (In the example, "COM".) "Second Level Domain" means that portion of a domain name to the left of the right-most period, up to the second period from the right, if any, plus the Top Level Domain. (In the example, "ABCREALTY.COM".) "Third Level Domain" means that portion of a domain name to the left of the second period from the right, if any, up to the third period from the right, if any, plus the Second Level Domain. (In the example, "JANESMITH.ABCREALTY.COM".)

VOW: Use and display of portions of the NALMLS Data under the Virtual Office Website (VOW) provisions of the NALMLS Policies.

NALMLS'S OBLIGATIONS

2. NALMLS grants to Firm and Salesperson Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the NALMLS 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 NALMLS Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. NALMLS retains all rights not expressly granted herein.

3. NALMLS agrees to provide to Firm, Salesperson Party, and Consultant, during the term of this Agreement, (a) access to the NALMLS Data via the Data Interface under the same terms and conditions NALMLS offers to other NALMLS Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the NALMLS Policies. NALMLS does not undertake to provide technical support for the Data Interface or the NALMLS Data. The Data Interface, together with access to the NALMLS Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or NALMLS Data shall not constitute a default by NALMLS under this Agreement.

FIRM'S OBLIGATIONS

4. Firm and Salesperson Party shall comply with the NALMLS Policies at all times. In the event of any perceived conflict between the NALMLS Policies and this Agreement, the NALMLS Policies shall govern.

5. Firm and Salesperson Party shall use the NALMLS Data obtained under this Agreement for Firm Internal Use, IDX, VOW, and Firm AVM use only. Any other use is strictly prohibited. Firm and Salesperson Party shall not make the NALMLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Salesperson Party may display the NALMLS Data on web sites and Mobile Applications only to the extent permitted by the NALMLS Policies and then only on a site or sites resident at the second-level and third-level domain(s) and Mobile Applications indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Salesperson Party acknowledge that ownership and use rights relating to copyrights in the NALMLS Data are defined in the NALMLS Policies or in the terms of the participant and subscriber agreements between NALMLS Firm and Salesperson Party, or both. Firm and Salesperson Party shall not challenge or take any action inconsistent with NALMLS's ownership of or rights in the NALMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If NALMLS notifies Firm or Salesperson Party of a breach of the NALMLS Policies or this Agreement and Firm or Salesperson Party does not immediately cure the breach, Firm and Salesperson Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with NALMLS under Paragraph 10.

8. Firm and Salesperson Party shall pay the fees, if any, that NALMLS customarily charges other NALMLS Participants for data access. Firm and Salesperson Party acknowledge receipt of NALMLS's current schedule of such fees, if any. NALMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Salesperson Party. Firm and Salesperson Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Salesperson Party's and Consultant's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

CONSULTANT'S OBLIGATIONS

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

11. Consultant acknowledges that (as among the parties to this Agreement) Firm and NALMLS possess all right, title, and interest in all copyrights in the NALMLS Data. Consultant shall not challenge or take any action inconsistent with NALMLS's and Firm's ownership of or rights in the NALMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

12. Consultant shall not make the NALMLS Data or the Confidential Information available to any third party, except on behalf of Firm and Salesperson Party and in a manner consistent with Firm's and Salesperson Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the NALMLS Data, whether commercial or personal. In the event that Consultant provides services to Participants other than Firm (or to Salespersons affiliated with Firm other than the Salesperson Party), Consultant must enter separate contracts with NALMLS. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant; and in the case of Salespersons, that each Salesperson Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in NALMLS terminating all of Consultant's access to the NALMLS Data under this Agreement and all similar agreements. The

provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

13. Consultant warrants that any effort or use of the NALMLS Data will not constitute patent infringement of any third party. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

14. Consultant shall pay the fees, as outlined in Exhibit B, that NALMLS customarily charges other consultants for data access. Consultant acknowledges receipt of NALMLS's current schedule of such fees, if any. NALMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Consultant. Consultant shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

15. Consultant is surety for Firm's and Salesperson Party's obligations to pay fees under Paragraph 8. The provisions of the preceding sentence shall survive the expiration or other termination of this Agreement in perpetuity. Consultant shall notify NALMLS within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

AUDITS OF COMPLIANCE

16. NALMLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Salesperson Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Salesperson Party's, and Consultant's compliance with this Agreement ("Audit"). NALMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Salesperson Party's, and Consultant's web sites, Mobile Applications, and systems to ensure that NALMLS Data is displayed in accordance with the NALMLS Policies; using all features available to end-users of Firm's, Salesperson Party's, and Consultant's systems that employ the NALMLS Data; and posing as consumers to register and test services Firm, Salesperson Party, and Consultant make available to consumers using the NALMLS Data. NALMLS shall pay the costs it incurs, and the out-of-pocket costs Firm, Salesperson Party, and Consultant incur, as part of any Audit; provided, however, Firm or Salesperson Party shall be liable for all costs of any Audit that discloses that Firm, Salesperson Party, or Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

17. The parties 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 or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

18. The term of this Agreement begins on the date that NALMLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in NALMLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) 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: (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide IDX, VOW, or AVM services to it; (f) with regard to any Salesperson Party, immediately upon any event that results in the Salesperson Party no longer being affiliated with Firm; (g) as provided in Paragraphs 28 and 31.

19. In the event Firm's privileges as a Participant (or Salesperson Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and NALMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if NALMLS resumes its obligations under Paragraphs 2 and 3. In the event Firm, Salesperson Party, or Consultant breaches this Agreement and entitles NALMLS to terminate under Paragraph 18, NALMLS may in its sole discretion suspend its performance instead of terminating this Agreement. NALMLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Salesperson Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, Firm, Salesperson Party, and Consultant shall make no further use of the NALMLS Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Salesperson Party's rights under this Agreement are restored.

GENERAL PROVISIONS

20. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of Alabama, without regard to its conflicts and choice of law provisions.

21. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

22. **NALMLS's Remedies.** (a) Injunctive relief: Because of the unique nature of the NALMLS Data and Confidential Information, Firm, Salesperson Party, and Consultant acknowledge and agree that NALMLS would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate NALMLS for a breach. NALMLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Salesperson Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by NALMLS, and without posting any bond. (b) Liquidated damages: Firm, Salesperson Party, and Consultant acknowledge that damages suffered by NALMLS from access to the NALMLS Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the NALMLS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to NALMLS to enter into this Agreement, Firm, Salesperson Party, and Consultant agree that in the event Firm, Salesperson Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the NALMLS Data or disclose the NALMLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Salesperson Party, and Consultant shall be liable to NALMLS for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Salesperson Party, and Consultant under this paragraph is joint and several.

23. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL NALMLS BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF NALMLS 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 NALMLS BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, SALESPERSON PARTY, AND

CONSULTANT HAVE PAID NALMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, SALESPERSON PARTY, AND CONSULTANT ACKNOWLEDGE THAT NALMLS PROVIDES THE NALMLS 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. NALMLS SHALL NOT BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE NALMLS DATA, ANY FAILURE TO UPDATE THE NALMLS DATA PROMPTLY, OR THE NALMLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. NALMLS makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.

24. **Dispute resolution; Attorney's fees.** In the event NALMLS claims that Firm, Salesperson Party, or Consultant has violated the NALMLS Policies, NALMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the NALMLS Policies, provided NALMLS does not also base a claim that Firm, Salesperson Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any controversy or claim to which Consultant is not a party arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Alabama located in Madison County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to NALMLS's disciplinary procedures or to arbitration. 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.

25. **Indemnification.** Subject to Paragraph 23, 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. Consultant indemnifies NALMLS, Firm, Salesperson Party, or customers of NALMLS, Firm, or Salesperson Party, to whom Consultant provides a product or service using NALMLS 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 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. 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 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.

29. **Entire Agreement; Amendment.** Subject to NALMLS 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. NALMLS may amend this agreement by providing 30 days' advance notice of the amendment to all other parties; if any party continues to use the Data Interface or the NALMLS Data after the expiration of the 30-day notice period, that party will be deemed to have agreed to the terms as amended.

30. **Relationship of the Parties.** The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of NALMLS or have any authority to make any agreements or representations on the behalf of NALMLS. 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 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. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

North Alabama Multiple Listing Service, Inc. Participant Data Access Agreement

Under this Agreement, **FIRM AND SALESPERSON PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Salesperson Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with NALMLS and each such consultant. Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM AND SALESPERSON PARTY NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Salespersons affiliated with Firm except the Salesperson Party. Consultant must enter into a new version of this Agreement with NALMLS and each additional Participant or amend this Agreement with NALMLS to add additional Salespersons affiliated with Firm as Salesperson Parties.

If Firm or Salesperson Party will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box. If this Agreement is for services to Firm only, and there is no Salesperson Party, Firm should cross out the Salesperson Party signature box.

This Agreement is for the following uses (check all that apply):

IDX **IDX (with sold)** **VOW** **Firm Internal Use** **Firm AVM.**

<p>NALMLS: North Alabama Multiple Listing Service, Inc.</p> <p>_____ Signature</p> <p>_____ Name</p> <p>Date: _____ (effective date of this Agreement)</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____</p>	<p>CONSULTANT</p> <p>_____ Consultant name</p> <p>_____ Signature of owner or officer</p> <p>_____ Name of owner or officer</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p>
<p>FIRM</p> <p>_____ Firm name</p> <p>_____ Signature of owner or officer</p> <p>_____ Name of owner or officer</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p> <p>_____ Second or Third Level Domain or Mobile Application:</p> <p><input type="checkbox"/> IDX <input type="checkbox"/> VOW (If more than one will be used, specify each in Exhibit A.)</p>	<p>Salesperson PARTY</p> <p>(If there is more than one, have each named and sign on Exhibit A.)</p> <p>_____ Salesperson Party name</p> <p>_____ Signature of Salesperson Party</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p> <p>_____ Second or Third Level Domain or Mobile Application:</p> <p><input type="checkbox"/> IDX <input type="checkbox"/> VOW (If more than one will be used, specify each in Exhibit A.)</p>

North Alabama Multiple Listing Service, Inc. Participant Data Access Agreement

Exhibit A – Licensee’s Purpose and Specific Use of Licensed Contents

(please select all that apply)

Display Data Content, under the Internet Data Exchange (IDX) program as outlined in the NALMLS IDX Policies, on _____ website or mobile device.

Display Data Content, under the Internet Data Exchange (IDX with sold) program as outlined in the NALMLS IDX Policies, on _____ website or mobile device.

Display MLS Content, under the Virtual Office Website (VOW) program as outlined in the NALMLS VOW Policies, on _____ website.

VOW - Firm must obtain the name of and a valid e-mail address for each Registrant. Each Registrant must agree to the terms of use described in Section B.3 of this Agreement. Firm must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use.

Non-Public Access and/or display MLS content via _____
Name of Product or Service

- **FIRM INTERNAL USE FEED (BACK OFFICE)**

Any use of those portions of the NALMLS Data relating to Firm’s own listings; and any use of those portions of the NALMLS Data relating to listings of Participants other than Firm that exposes NALMLS Data only to Firm Related Persons and to Salesperson affiliated with Firm, subject to NALMLS Policies. *Firm internal use is often used in applications such as; market-share analyses, showing scheduling services, etc.)*

- **FIRM AVM**

Use and display of portions of NALMLS Data by Firm for AVM purposes subject to the provisions of Exhibit B of the NALMLS Participant Agreement. *Firm AVMs enable brokers to use MLS data for automated valuations (AVMS, BPOs and CMA’s) where permitted by law).*

Other (be specific)

Please return this page!

**North Alabama Multiple Listing Service, Inc.
Participant Data Access Agreement**

Exhibit B – Consultants Data Licensing Fee Schedule

MLS Data License	Annual License Fee
Internet Data Exchange (IDX) Multiple Clients Active listings only	\$600.00 <i>(\$50.00 setup fee)</i>
Internet Data Exchange (IDX) Sold and Active listings	750.00 <i>(150.00 setup fee)</i>
Single Client - Internet Data Exchange (IDX) Active listings only	\$150.00 <i>(\$50.00 setup fee)</i>
Virtual Office Website (VOW)	\$1000.00 <i>(\$300.00 setup fee)</i>
Firm Internal Use for Back Office & Firm AVM	\$600.00 <i>(\$150.00 setup fee)</i>

A 10% late fee of the amount due (minimum of \$20.00) will be assessed for payments that are 10 days past the due date.

North Alabama Multiple Listing Service, Inc. Participant Data Access Agreement

Exhibit C – Additional Requirements

1. **Additional Domains and Mobile Applications.** In addition to the Second and Third Level Domains specified on the signature page Firm, Salesperson Party, and Consultant may display NALMLS Data subject to the terms of this Agreement at the following Second and Third Level Domains and Mobile Applications (attach additional pages if necessary):

_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm AVM
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm AVM
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm AVM
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm AVM
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm AVM
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm AVM

2. **Additional Salesperson Parties:** If there are two or more Salesperson Parties, each Salesperson Party after the first is identified by name here, and each must sign this Agreement. Each Salesperson Party listed here consents to NALMLS making communications and notices under this Agreement to Firm only. (Attached additional pages if necessary.)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

North Alabama Multiple Listing Service, Inc. Participant Data Access Agreement

Exhibit D – Firm AVM Data Use Requirements

This Exhibit governs any use of the NALMLS Data licensed under this Agreement for use in AVMs.

B.1. Firm may provide Firm AVM services to Firm's customers and clients with whom Firm has first established a broker-customer or broker-client relationship (as defined by state law); including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers ("Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements necessary for performing AVM services. Registrants may include financial institutions, mortgage lenders, mortgage bankers, mortgage brokers, mortgage loan servicers, title or mortgage insurers, insurers of payments owned to owners of mortgage backed securities, Government Sponsored Entities (GSEs), or such other businesses or institutions having an interest in automated reports on property valuation or market conditions.

B.2. Firm must obtain the name of and a valid e-mail address for each Registrant. Each Registrant must agree to the terms of use described in Section B.3 of this Exhibit. Firm must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use.

B.3. Firm shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms-of-use agreement that provides at least the following:

B.3.1: that Registrant acknowledges entering into a lawful consumer-broker relationship with Firm.

B.3.2: that all information obtained by Registrant from Firm AVM is intended only for Registrant's internal use and may not be disseminated or reproduced without permission from NALMLS.

B.3.3: that Registrant will not copy, redistribute, or retransmit any of the information provided, except in connection with Registrant's consideration of the purchase, sale, financing or other potential transaction related to the subject property of any AVM.

B.3.4: that Registrant acknowledges NALMLS's ownership of and the validity of the NALMLS's copyright in the NALMLS Data.

B.4. The terms-of-use agreement described in Section B.3 shall also expressly authorize NALMLS and other Participants or their duly authorized representatives to

access any Firm AVM for the purposes of verifying compliance with NALMLS Policies and monitoring use of Participants' listings by the Firm AVM. The agreement may also include such other provisions as may be agreed to between Firm and Registrant.

B.5. Firm's right to use NALMLS Data in any firm AVM is subject to the applicable office of Firm being a Participant in NALMLS. In other words, an office of Firm that is not a Participant of NALMLS may not use NALMLS Data in any AVM provided to any third party.

B.6. Firm must protect the NALMLS Data from misappropriation by employing reasonable efforts to monitor for and prevent scraping or other unauthorized accessing, reproduction, or use of the NALMLS Data.

B.7. Firm must make any Firm AVM readily accessible to NALMLS and to all NALMLS Participants for purposes of verifying compliance with this Agreement and NALMLS Policies.

B.8. NALMLS shall exclude from the Data Interface all "User Confidential Data." "User Confidential Data" consists of those portions of NALMLS Data that Participants are prohibited from providing to customers orally and by all other delivery mechanisms. In the event that NALMLS includes User Confidential Data in the Data Interface, Firm and Consultant shall ensure that it is not disclosed to Registrants or any other third party.

B.9. Firm shall maintain an audit trail of Registrants' activity on any Firm AVM and make that information available to NALMLS if NALMLS has reason to believe that any Firm AVM has caused or permitted a breach in the security of the data or a violation of applicable NALMLS Policies.

B.10. Firm shall cause to be placed on any Firm AVM a notice indicating that the NALMLS Data displayed on the Firm AVM is deemed reliable, but is not guaranteed accurate by the NALMLS or other Participants.

B.11. In any display of NALMLS Data to any Registrant, Firm shall display the copyright notice of NALMLS. The copyright notice should take one of the following forms: "Copyright 2015 North Alabama Multiple Listing Service, Inc." or "© 2015 North Alabama Multiple Listing Service, Inc.". Firm shall replace "2015" with the current year as of January 1 each year.

North Alabama Multiple Listing Service, Inc. Participant Data Access Agreement

Exhibit E – NALMLS Internet Data Exchange (IDX)

REFERENCE: Section 3, Policy Statement 7.87

MLSs are not required to transmit participants' listings to third-party aggregators or to

operate a public website displaying listing information. If an MLS transmits participants' listings to third-party aggregators and/or operates a public website displaying listing information, all exclusive listings, regardless of type, will be included in the data feed (unless a participant withholds consent for such transmission), except that MLSs may exclude from such data feed any listing where both of the following conditions are present:

- a. The listed property's street address or a graphic display of the property's specific location will be displayed to the public; and
- b. The seller displays on the property a "for sale by owner" sign or other sign or notice indicating that the seller is soliciting direct contact from buyers. (*Adopted 11/06*)

Section 18 IDX Defined

IDX affords MLS participants the ability to authorize limited electronic display of their listings by other participants. (Amended 2/13)

Section 18.1 Authorization

Participants' consent for display of their listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant's listings, that participant may not download, frame or display the aggregated MLS data of other participants. Even where participants have given blanket authority for other participants to display their listings on IDX site, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display. (Amended 2/13)

Section 18.2 Participation

Participation in IDX is available to all MLS participants engaged in real estate brokerage who consent to display of their listings by other participants. (Amended 11/09)

Section 18.2.1 IDX Display

Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. (Amended 05/12)

Section 18.2.2. Indexing of IDX Listings

MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines. (Amended 05/12)

Section 18.2.3 Property Address of IDX Display

Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing's property address from all display on the internet (including, but not limited to, publicly-accessible websites or VOWs). (Amended 05/12)

Section 18.2.4 Select Display of IDX Listings

Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown", etc.), list price, type of property (e.g. condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency). or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each participant. (Amended 11/06)

Section 18.2.5 Refresh MLS Downloads Requirement

Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours. (Amended 11/14)

Section 18.2.6 No Distribution of MLS Data

Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity. (Amended 05/12)

Section 18.2.7 Identity Brokerage Required

Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, "control" means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules. (Amended 05/12)

Section 18.2.8 Third Party Comments and AVM

Any IDX display controlled by a participant or subscriber that

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

either or both of those features shall be disabled or discontinued for the seller's listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants'. Except for the foregoing and subject to Section 18.2.9, a participant's IDX display may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller. (Adopted 05/12)

Section 18.2.9 Comment Section About Accuracy of Data

Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. (Adopted 05/12)

Section 18.2.10 Co-Mingle

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

Section 18.2.11 Advertising IDX Listings on Social Media

The following criteria must be met:

1. The listing you promote must be participating in the IDX program at the time of posting and at all times.
2. The post must link to a live full IDX display page, specific to that property, which complies with the NALMLS IDX Policy.
3. The post (Facebook, Twitter, etc.) must be less than 200 characters in length, excluding any link previews (that automatically generate) and the IDX URL.
4. Only 6 or less fields may be displayed (we consider address to be one field) in the post.
5. The social media post must be updated at least every 12 hours and display when the data was last updated, or if it can't be updated then removed (Tweets for example). All data must be verified to still be accurate.

NOTE: Keep in mind that advertising your own listings or having written permission to advertise someone else's listings is different and will not require the above guidelines. These guidelines only apply to limited displays like those used in social media. Whereas print and other displays have other rules.

Section 18.3 Display

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

Section 18.3.1 Confidential Fields

Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed on IDX sites. (Amended 05/12)

Section 18.3.2 Modify or Manipulate Data prohibited

Participants shall not modify or manipulate information relating to other participants' listings. (This is not a limitation on site design but refers to changes to actual listing data.) MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.

Section 18.3.3 Identify Of Listing Firm Location

All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 05/12)

Section 18.3.4 Non-Principal Brokers and Sales Licensees

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

Section 18.3.5 Terms of Use of IDX Data

Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers' personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability. Displays of minimal information (e.g., "thumbnails," text messages, "tweets," etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (4-13)

Section 18.3.6 MLS as Source of Data

All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures).(Amended 05/12)

Section 18.3.7 Co Mingle of IDX Data

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

Section 18.3.8 Download of MLS Data

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

Section 18.3.9 Off-Market Listings

Display of expired, withdrawn, and pending listings is prohibited. (Amended 11/14)

Note: If "sold" information is publicly accessible, display of "sold" listings may not be prohibited. (Adopted 11/14)

Section 18.3.10 Prohibited Data for Display

Display of following fields are prohibited from IDX Sites:

- a) Owner's / Occupant's Name
- b) Owner's / Occupant's Phone Number
- c) Showing Instructions
- d) Occupancy
- e) Commissions
- f) Private MLS Remarks
- g) Any type Financial (Mortgage) information
- h) Owner's / Occupant's Email Address

Section 18.3.11 Sellers Name

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

Section 18.3.12 Deceptive Advertising

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

Section 18.4 Service Fees and Charges

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