



ASSOCIATION OF REALTORS®

7021 Koll Center Parkway
Pleasanton, CA 94566
Office: 925.730.4060
justinb@bayeast.org

2490 Mariner Square Loop, Suite 200
Alameda, CA 94501
Office: 510.523.7229
justinb@bayeast.org

Vendor Data Access Agreement for Internet Data Exchange (IDX)

Company Name: _____

Name of Primary Contact: _____

Address: _____ Suite: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

IP address (where data is being pulled from): _____

Company URL / Website address _____

E-mail address _____

(You must supply an e-mail address here. This address will be the Association’s principal means of communicating with you for notices under this agreement.)

Please read and initial items below:

_____ Bay East Association of REALTORS® reserves the right to charge for RETS feeds. Parties will be notified in writing prior to any change in pricing.

_____ I fully understand and acknowledge that the RETS Feed provided is solely for the purpose of adding IDX information for pre-approved Bay East members.

_____ I fully acknowledge prior to providing MLS IDX data on Bay East agent’s websites, the IDX application needs to be completed and approval sent by Bay East.

_____ I fully acknowledge that we are to supply Bay East a list of IDX members the 1st of each month. **(Must have:** Full name, member number, website address, firm name, approval date, status)

_____ I fully acknowledge I must notify Bay East of any change(s) in the product/services that we provide.

Please provide a list of all products and services the IDX data is going to be used for:

<u>Name of the product/services:</u>	<u>Description:</u>	<u>Approved Yes/No</u> <u>(Bay East Use Only)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



Data Access Agreement for Internet Data Exchange (IDX)

THIS AGREEMENT is entered into by and between Bay East Association of REALTORS®, and _____ (hereafter referred to as "Consultant") Consultant who services 1 or more IDX for approved Participants/Subscribers effective the date set forth on the signature blocks.

RECITALS

Participant desires to obtain from the Bay East Association of REALTORS® MLS the listing data of other real estate brokerages through an IDX (Internet Data Exchange) feed. Participant has engaged the services of Consultant to perform data downloading, manipulation, web design, programming and formatting. Consultant may retain the services of others to perform a portion of the services and provide a finished product for Participant.

Participant is the broker of record for approved (Subscriber). If the services and products to be delivered by Consultant are for use by Subscriber, this agreement shall also be executed by Subscriber. It is the intention of the parties that both Subscriber and Participant shall be jointly and severally liable for performance of all terms and provisions of this agreement. Wherever the term "Participant" is used it shall also mean "Subscriber".

1. DEFINITIONS:

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

Association. The Bay East Association of REALTORS®.

Cooperating MLSs, The Cooperating MLSs are the multiple listing services as defined by California Civil Code, Section 1087, and operated separately by (a) Bay East, and (b) CCAR for the California counties of Alameda and Contra Costa. The Cooperating MLSs operate and maintain a proprietary database of real property listings, including both active and historical information of such listings. The Cooperating MLSs have Participants and Subscribers who use the MLS Data to market and sell real property.

Confidential Information Any confidential or proprietary information of MLS including, without limitation, source codes, software, tools, designs, plans, or any other information relating to any research project, work in process, future development, marketing or business plan or financial or personnel matter relating to MLS present or future products, sales, suppliers, customers, employees, members, or business, which information is disclosed by or on behalf of Association to Participant or Consultant, whether tangible or intangible, and whether or not disclosed in oral, written, graphic, photographic, or electronic form and whether marked "confidential" or "proprietary" or not. All such information received in the course of the parties' relationship is considered confidential unless marked otherwise. The MLS Data and the Database, including its structure or arrangement, shall be considered Confidential Information for all purposes of this Agreement. The specific terms of this Agreement also shall be considered Confidential Information. The term "Confidential Information" does not include information that (i) is or becomes generally available to the public through no fault of the receiving Party; (ii) can be demonstrated by credible evidence as having been rightfully known to the receiving Party prior to the time of its disclosure, or to have been independently developed by the receiving Party; (iii) is subsequently learned from a third party not under a confidentiality obligation to the disclosing Party, or (iv) was required to be disclosed by operation of law or a court order.

Consultant. A consultant is defined as a person, company or entity who is not an employee of the Participant or Subscriber who acts to assist an IDX Participant or Subscriber in performing downloading, manipulation or formatting or receiving, presenting, housing as well as programming and web design or distributing the IDX data over the Internet or by any other method to members of the public. Such consultants must agree to comply with this Agreement. A "Consultant" is sometimes referred to as a Secondary Participant and Consultant.

Consumer. A consumer is a member of the public, an end user, who has access to the IDX data through the web site of an IDX Participant or Subscriber and who is seeking a property for their own use or is seeking general information for their personal use but not for a business use.

Content. Separately or collectively as applicable, all information provided by Participants of the MLS including but not limited to personally identifiable information of buyers and sellers and any other individuals or entities, pending sales, off market listings, text, images, maps, audio, video, software and other informational content and data, MLS Participant/Subscriber information and any compilation, collection or combination of any of the foregoing.

Firm. The entity under which the Participant/Subscriber is doing business.

Internet Data Exchange Data Base (IDXdb). The current aggregate compilation of only **ACTIVE**, **PENDING**, and **SOLD** listings of all Internet Data Exchange Participants of the Bay East Association of REALTORS[®], MLS, the Contra Costa Association of REALTORS[®] MLS and the bridgeMLS (combined as the MLS Database). Those listings where the property seller has opted out of Internet publication, and this has been so indicated by the listing agent on the listing input information submitted to the MLS, are excluded. The Bay East Association of REALTORS[®], the Contra Costa Association of REALTORS[®] and the bridgeMLS. MLSs own the IDXdb Data originating from their respective MLSs, and the compilation of that data is protected under copyright law.

Internet Data Exchange Participant (IDXP). The Participant who has not declined to give permission to other IDXPs and their agents to display its active, Pending, and sold listings on their websites in return for their permission to advertise their listings on its website and using application for mobile devices that said participating Broker and R.E. Subscribers control.

IDX Data. The data supplied by the MLS specifically for use by the IDX Participants/Subscribers on their websites and using application for mobile devices that said participating Broker and R.E. Subscribers control. The provided data includes only those data fields from the MLS that are approved by the Association for distribution to the public by Participants/Subscribers.

Listings. For the purpose of this Agreement, listings are defined as Active, Pending, and Sold listings. Active listings are listings that are not in an off-market status, such as pending, sold, withdrawn, or expired. Pending listings are listings that are off-market and recorded in the MLS under Pending Status. Sold listings are listings that are off-market and recorded in the MLS under Sold Status. No other off-market statuses are allowed for IDX display.

Multiple Listing Service (MLS). A service or entity as defined in *California Civil Code*, Section 1087, and collects and disseminates information about real property that is or has been for sale, including a means for real estate brokers to make offers of cooperation and compensation to each other. Multiple Listing Service may also include, without limitation, the provision of data processing, technical support, consulting and other information technology services to real estate brokers and appraisers in connection with the sale and appraisal of real property.

MLS Data. The compilation of data and content relating to real estate entered into the MLS database by the MLS Participants and Subscribers of the Bay East Association of REALTORS[®] MLS (BEAR), the Contra Costa Association of REALTORS[®] MLS (CCAR), and bridgeMLS and protected under copyright law.

Participant. A Broker Participant (often the Designated Broker for a firm) is defined as any individual broker who applies and is accepted by the MLS and meets the requirements listed in the Association's MLS Rules and Regulations.

Receiving Party. A Participant, Subscriber or their Consultant or any one of them acting in accordance with the Association's MLS IDX Rules and Regulations.

Rules. The Bay East Association of REALTORS[®], MLS Rules and Regulations and any operating policies of the Association relating to IDX, as amended from time to time.

Secondary Participant and Consultant. See definition for a Consultant.

Subscriber. An individual, usually a Broker or Agent who is operating subordinate to a Designated Broker (Participant) who applies and is accepted by the MLS and meets the requirements of the Association's MLS Rules and Regulations. For purposed of this agreement, all references to Participant shall include Subscriber, and the obligations, liability and performance of this agreement shall be jointly and severally as between Participant and Subscriber.

2. GRANT OF LICENSE:

- a) Subject to the terms and conditions of this Agreement, Association hereby grants to Participant and Consultant during the Term a limited, revocable, non-exclusive, non-transferable License to access and use, in the manner authorized by Association herein, the MLS Data for the sole purpose of integrating the MLS Data into the Participant and Consultant Offerings for the benefit of Participant and for no other purpose. The Offerings and specific use of the MLS Data provided herein is set forth on Exhibit "A", attached hereto and incorporated by this reference.
- b) Consultant is subject to a one-time Grant of License fee of \$2000.00 to access and use the MLS data for the sole purpose of integrating the MLS Data into the Participant or Subscriber's websites.
- c) Nothing herein shall be construed as a grant of any other right or license to Participant and Consultant to access or use the MLS Data, or the Database, except as expressly set forth herein, without Association's prior specific written permission, which permission may be withheld in Association's sole and exclusive discretion.
- d) In the event Participant and/or Consultant deem it appropriate to employ the efforts of a secondary consultant to assist in developing the product or service sought by Participant, the secondary consultant shall be bound by all of the terms and provisions of this Agreement, and Participant and Consultant shall be jointly and severally liable for secondary consultant's compliance with the terms and provisions of this Agreement. Secondary Consultant shall be specifically instructed, without exception, that Secondary Consultant shall have a limited, nontransferable, nonexclusive right to access the MLS Database solely for the purpose of assisting Consultant in the development of the Consultant's authorized product content. Secondary Consultant shall execute whatever documents Association requires and to be subject to all of the terms and conditions, rules and restrictions set forth in this Agreement and any other agreements between Association and Consultant, including, but not limited to, the MLS Rules and regulations of Association, display policies and such other policies and rules which may be in effect during the period Secondary Consultant is performing services or providing products and using the MLS Database. Secondary Consultant shall not be allowed to save or bank data, transfer or convey data by any means or in any manner use the data, in whole or in part, for any other application than the application covered by the terms of this Agreement.

3. CONDITIONS OF USE.

- a) Acknowledgement of MLS Rules and Data Use Policy. Participant and Consultant acknowledges that it has read, and will comply with, the MLS Rules and the Data Use Policy available through Association, either at its website or by request, as amended from time to time, in connection with its rights to access and use the MLS Data.
- b) Consumer Privacy and Information Security. Participant and Consultant shall comply with all applicable privacy and information security laws including but not limited to security breach notification laws. In the event a security breach of the computerized system used by Participant or Consultant containing MLS Data results in access or use by an unauthorized third party, Participant and Consultant shall notify Association by confirmed email or confirmed telephone within twenty-four (24) hours of its discovery by Participant and Consultant. Participant and Consultant shall also take all reasonable steps, in accordance with commercially reasonable security practices, to protect the security and privacy of the MLS Data from unauthorized access, use or disclosure. Other than as necessary to perform its rights and obligations under this Agreement, Participant and Consultant shall not use or disclose the MLS Data without the prior consent of Association.
- c) Suspension or Termination. Participant and Consultant expressly understand that the MLS Data and the Database may be Seeded, Watermarked and Monitored by Association and Association hereby reserves the right to suspend or immediately terminate this Agreement upon notice to Participant and Consultant pending investigation of any evidence or allegation that Participant and Consultant have breached the terms and conditions of this Agreement, or that notice has been received that Participant and Consultant are in breach of any governmental rules, regulations or statutes, and that such breach may interfere with the Parties' performance of this Agreement.
- d) Audit and Review of Content Use. Association has the right and authority to audit and review Participant and Consultant's use of the MLS Data and the Database, in connection with Participant and Consultant's rights and obligations under this Agreement. Participant and Consultant shall make its Offerings and associated records, files and responsible personnel accessible to Association upon request for purposes of Association's review of Participant and Consultant's full compliance with this Agreement.

e) **No Modification or Derivative Works.** Participant and Consultant shall neither modify nor create derivative works based on or containing the MLS Data unless specifically authorized in writing by Association. Participant and Consultant may reformat the MLS Data or display fewer than all data elements of the MLS Data provided to Participant and Consultant. If any modifications or derivative works are authorized by Association, they shall remain the sole and exclusive property of Association, and Participant and Consultant agrees to and hereby does assign any and all rights to such modifications and works to Association. To the extent permitted herein or authorized in writing by Association, other data may be added to or combined with the MLS Data, provided in each case the source of such other data is clearly identified.

f) **Broker Permissions.** Participant and Consultant understand and agree that proper broker authorization is required for all Participant and Consultant Offerings that incorporate MLS Content. Participant and Consultant shall provide to Association an executed copy of all agreements between Participant and Consultant, and all agreements between Consultant and any subcontractors used by Consultant. Participant and Consultant shall comply with the MLS Rules and the Rules Applicable to the Display of MLS Data.

g) **No Intellectual Property Rights.** This Agreement does not convey or grant to Participant and Consultant an interest in the Database or the MLS Data but only a limited right to use and display the MLS Data revocable in accordance with the terms hereof. In the event of any claim for infringement or misappropriation of the Database or the MLS Data, all damages awarded and other awards and recoveries shall be the exclusive property of Association and all such amounts shall be paid to Association. In the event Participant and Consultant obtains possession or control of any such damages or awards, it agrees to hold all such funds as trustee in trust of the exclusive benefit of Association. License agrees that it will not challenge or take any action inconsistent with Association's rights to the Database or the MLS Data.

h) **Trademarks.** Participant and Consultant shall not use or refer to Association or any trademark, service mark, logo or trade name belonging to Association, in any advertising or marketing materials or customer solicitation, without Association's prior express written permission.

i) **Marketing.** Consultant may not utilize (1) the MLS Data nor (2) any Firm, User, and Subscriber roster information that appears in the MLS Database to market any services except as specified in section 1 below. In the event the Consultant is in breach of section 1, Consultant agrees to the following remedies: (1) The Consultant shall pay the Bay East Association of REALTORS® a fine of \$5,000, which shall be due and payable no later than fifteen (15) business days after such breach first occurred and (2) This Agreement may be terminated at the sole discretion of Association.

1. **Approved Marketing.** Consultant may utilize (1) the MLS Data and/or (2) any Firm, User, and Subscriber roster information that appears in the MLS Database to solely market the Consultants services as set forth in Exhibit A and subject to:
 - a) Prior written consent from the Association in regard to the distribution, content, frequency, and timing of all marketing, promotional and product update communications to Participants and Subscribers
 - b) All communications must include the option for Participants and Subscribers to Opt-Out of all future communications from the User, in a location and manner that is easily identifiable to the Participants and Subscribers

j) **Restriction on Transfer.** Participant and Consultant shall not sublicense, sell, transfer, distribute, publish, loan, lease, exchange, store or give, or provide access to, the MLS Data or the Database to anyone, including, without limitation, any parent, subsidiaries, affiliated entities or contractors of Participant or Consultant except as expressly authorized in writing by Association.

k) **Restriction on Violation of Laws.** Participant and Consultant shall not use the MLS Data or the Database, for any purpose or in any manner that infringes on any third parties' Intellectual Property Rights or violates any federal or state law, statute, ordinance or regulation, including, without limitation, the Real Estate Settlement Procedures Act and laws governing unfair competition, unfair and deceptive practices, anti-discrimination and false advertising.

l) **Restriction on Consultants.** Participant and Consultant shall not permit any independent consultants or contractors, whether affiliated with Participant or Consultant or not, to access or use the MLS Data or the Database unless Participant or Consultant has engaged them to assist Participant or Consultant in connection with work which is the subject of this agreement and Participant and Consultant have delivered to Association within three (3) days of engagement of such independent consultant or contractor the Secondary Contractor Agreement. Every such contract shall contain specific language that such independent consultant or contractor shall comply with and be directly liable to Association for

compliance with and full performance of this agreement.

m) Charges for service. Association reserves the right to charge for any service provided under this agreement. Association shall advise Participant and Consultant of such charges and any changes in such charges. Failure to pay any such charges within the time frame set by Association on its billings shall constitute a breach of this agreement and, at the sole and exclusive discretion of Association, allow for immediate termination.

n) The RETS Feed is provided solely for the purpose of providing IDX information for pre-approved Association MLS Participants and Subscribers. The products and services provided herein by Association may be terminated immediately upon the termination of Participant's access to the MLS Data.

o) Participant shall provide to Association on or before the first day of each month during the term of this agreement a list of current IDX members. Participant shall notify Association of any change(s) in the product/services provided by Participant or Consultant at least thirty (30) days prior to any such change(s).

4. ASSOCIATION OBLIGATIONS:

a) During the term of this Agreement, the Association grants to Participant a license, in each case subject to the Rules, to:

1) Display the IDX Data on Participant/Subscriber public website and using application for mobile devices that said participating Broker and R.E. Subscribers control, and

2) Make copies of the IDX Data to the extent necessary to deliver the IDX Data to consumers on Participant/Subscriber's public website and using application for mobile devices that said participating Broker and R.E. Subscribers control.

b) During the term of this Agreement, the Association agrees to provide to Participant/Subscriber and their Consultants:

1) Access to the IDX Data via the Internet using Real Estate Transaction Standard ("RETS") or Application Program Interface ("API") at the discretion of the Association, under the same terms and conditions the Association offers to other IDXP's;

2) Seven (7) days' notice of changes to the file and/or record formats of the IDX Data; and

3) Seven (7) days' notice of changes to the MLS Rules.

5. PARTICIPANT'S/SUBSCRIBER'S OBLIGATIONS

a) As the IDXdb includes IDX data from the Bay East MLS, bridgeMLS and the CCAR MLS, Participants and Subscribers shall comply with the IDX Rules of Bay East at all times. The Participant and Subscriber shall also comply with the Rules at all times.

b) Participant and Subscriber acknowledge the Association's ownership of the copyrights on the MLS Data and IDX Data.

c) Participant and Subscriber shall keep all displayed data current and update their public website and using application for mobile devices that said participating Broker and R.E. Subscribers control at least every 72 hours.

1) For Active listings: Listing that are no longer active must be removed from the Participant/Subscriber public website within 12 hours of removal of the listing from the IDX data.

2) For Pending Listings: Listing that are no longer pending must be removed from the Participant/Subscriber public website within 12 hours of removal of the listing from the IDX data.

3) For Sold listings: Listings older than January 1, 2012 may not be displayed.

d) Daily update downloads to be no more than 3 times a day.

- e) Full downloads may be pulled only after 6:00 p.m., Monday through Friday. No time restriction for weekends.
- f) Participant and Subscriber shall comply with the requirements relating to Confidential Information set forth below.
- g) In the event that Participant and Subscriber desire to use a third party for the development and maintenance of the Participant's/Subscriber's public website, Participant and Subscriber agree to require such party to execute this Agreement and become a Consultant as defined herein.
- h) If Participant, Subscriber or Consultant breach this agreement or any MLS Rule or Regulation and do not cure such breach within three (3) business days following receipt of Notice given pursuant to the provisions of this agreement, Participant/Subscriber and Consultant agree the Association may seek cure by any and all appropriate legal means necessary. In addition, the Association may immediately, at its sole discretion, terminate access to IDX Data to Participant, Subscriber and Consultant, irrespective of which party breached the agreement.
- i) Participant/Subscriber shall notify the MLS within three (3) business days of any change in the information relating to Participant/Subscriber on the Information and Signature pages attached.
- j) A Broker Participant or R.E. Subscriber may co-mingle the listings of other Participants with listings from other MLS sources on its website, provided all such displays are consistent with these rules. Co-mingling is (a) the ability for a visitor to the website to execute a single search that searches any portion of the IDX database at the same time it searches listing data from any other source(s); or (b) the display on a single web page or any portion of the IDX database and listing data from any other source.
- k) Participant/Subscriber shall be jointly and severally responsible at all times for any breach of this agreement by Consultant.
- l) IDX is solely intended to allow Subscribers and Participants to display IDX Data on their public internet sites and using application for mobile devices that said participating Broker and R.E. Subscribers control. IDX is in no way intended to negate prohibitions contained within the MLS rules, or the REALTOR[®] Code of Ethics, which prohibits advertising of another agent's listings. Notwithstanding anything to the contrary contained herein, Participant and Subscriber shall be jointly and severally liable for all acts and omissions of Consultant.

6. CONSULTANT'S OBLIGATIONS

- a) If there is a breach of this agreement, the MLS Rules and Regulations or any other rule governing the access to the MLS Data, irrespective of the party committing the breach, the Association may, at its sole and exclusive discretion, directly contact the Consultant, to discuss cure of the breach. Consultant agrees to cooperate with the Association and immediately respond to any contact by the Association, including, but not limited to, responding to an uncured breach by Participant or Consultant.
- b) Consultant acknowledges the Association's ownership of the copyrights and proprietary rights of Association to the MLS Data and the IDX Data, and Consultant specifically agrees not to commit any act or omission which might compromise Association's copyrights and proprietary rights to the MLS Data.
- c) Daily update downloads shall not be more than 3 times a day.
- d) Full downloads may be pulled only after 6:00 p.m., Monday through Friday. There is no time restriction for weekends.
- e) Consultant shall comply with the Confidential Information requirements as set forth below. Notwithstanding anything to the contrary contained herein, Participant remains responsible for the compliance of their Consultant in any activity performed by their Consultant regarding the IDX data or its elements and systems.
- f) Each Consultant shall notify the MLS within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page attached. Consultant shall be obligated to assure full compliance with each and every provision of this agreement, including, but not limited to, obligations of Participant and Subscriber.

7. CONFIDENTIAL INFORMATION

a) 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):

- 1) All MLS Data including photographs, except the IDX Data to the extent to which this Agreement and the Rules permit disclosure and that is provided in the data contained in the IDX RETS data feed from the MLS;
- 2) All documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;
- 3) Software, source code, object code, diagrams, and flow charts;
- 4) Techniques, procedures;
- 5) IP addresses, access codes, passwords;
- 6) Any information that the Association obtains from any third party that the Association treats as proprietary or designates as Confidential Information, whether or not owned or developed by the Association; and
- 7) Firm, Participant, and Subscriber roster information that appears in the MLS Database.

b) Title. The Receiving Party acknowledges that title to and ownership of the Confidential Information remains at all times with the Association or with the third parties in whom title and ownership existed prior to this Agreement or prior to disclosure by the Association. Notwithstanding anything to the contrary contained herein, nothing contained in this agreement shall be deemed to be a conveyance of title or ownership to any intellectual property, proprietary right or other property, including, but not limited to the MLS Data or any listing information.

c) Restrictions on Use – Scope of Use. The Participant/Subscriber will use or access the Confidential Information only as expressly permitted under this Agreement and the Rules, and the Participant/Subscriber will not use its access or the Confidential Information for any other purpose. The Receiving Party will employ care and measures to protect the Confidential Information from disclosure at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care.

d) Restrictions on Use – Unauthorized Uses. The Receiving Party will not make copies of the Confidential Information. The Receiving Party will not directly or indirectly disclose, display, provide, transfer or otherwise make available the Confidential Information to any person or entity, unless the Receiving Party has received prior written consent of the Association to do so. At no time and under no circumstances will the Receiving Party reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. The Receiving Party will not incorporate the Confidential Information into any other work or product.

e) Restrictions on Use – No Third-Party Access. Only the Receiving Party's own employees will access the Confidential Information on a need to know basis. The Receiving Party will not provide access to the Confidential Information to third parties, including consultants or independent contractors, without prior written consent from the Association. If the Association grants consent, the Receiving Party will execute an agreement with the third party that imposes at least as strict a confidentiality obligation on the third party as that imposed by this Agreement on the Receiving Party.

f) Restrictions on Use – Location restriction. The Receiving Party will not remove the Confidential Information from its principal place of business without the Association's prior written consent. In the event the Association grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.

g) Terminations and Return of Materials. Within five (5) days of the end of the term of this Agreement or upon termination of this Agreement, the Receiving Party will return to the Association all Confidential Information and all other materials provided by the Association to the Receiving Party. The Receiving Party will also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of the Association, an officer of the Receiving Party will certify in writing that all materials have been returned to the Association and all magnetic or computer data have been destroyed.

8. TERM AND TERMINATION

Term and Termination. The term of this Agreement begins on the "Effective Date". The Effective Date is the date Association dates and signs this agreement. The Association has the right at any time without notice and in its sole and exclusive discretion to terminate this Agreement. In addition, this Agreement shall terminate upon the occurrence of any of the following events:

- a) The Association's notice to Participant and Consultant this Agreement is terminated,
- b) Notice to the Association from either Participant or Consultant of termination,
- c) Termination of Participant or Subscriber's privileges as a Participant or Subscriber of the Multiple Listing Service of the Association for any reason, including non-payment of MLS dues or fines.
- d) Upon agreement of the parties,
- e) Upon any breach by Participant, Consultant or any independent contractor of Consultant of any term or provision of this agreement.

9. GENERAL PROVISIONS:

- a) **Survival of Obligations.** The obligations of Participant/Subscriber set forth under "Participant/Subscriber" above and the obligations of Consultants under "Consultants' Obligations" above, and the provisions regarding "Confidential Information" shall survive the termination or expiration of this Agreement.
- b) **The Association's Remedies.** Because of the unique nature of the MLS Data and Confidential Information, Firm and Consultant acknowledge that the Association would suffer irreparable harm in the event that any of them breaches its obligation under this Agreement, and that monetary damages would be inadequate to compensate the Association for a breach. The Association is therefore entitled in addition to all other forms of relief, injunctive relief as may be necessary to restrain any continuing or further breach by Firm or Consultants or any one of them, without showing or proving any actual damages sustained by the Association.
- c) **Attorney's fees.** In the event it becomes necessary to enforce the terms and provisions of this agreement through arbitration or litigation, the prevailing party shall be entitled to all costs of arbitration or litigation, including but not limited to court or arbitration costs and attorneys' fees.
- d) **Limitation of Liability.** The Association's liability to Participant/Subscriber and Consultant for damages under this Agreement, whether it is contract or tort, shall be limited to the aggregate amounts paid by the Participant/ Subscriber and Consultant to the Association, if any, under this Agreement. The Participant's/Subscriber's and Consultant's only other remedy shall be termination of this Agreement. The Association shall not be liable for any incidental or consequential damages under any circumstances, even if the Association has been advised of the possibility of such damages. The Association shall have no liability for inaccuracies in the IDX Data or the MLS Data. THE ASSOCIATION MAKES NO WARRANTY WITH RESPECT TO THE MLS DATA OR THE IDX DATA, WHETHER EXPRESS OR IMPLIED. THE ASSOCIATION SPECIFICALLY EXCLUDES AND DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- e) **Notice.** In the event it is necessary or deemed otherwise appropriate to provide Notice to a party to this agreement, such Notice shall be deemed given If personally delivered to a party during normal business hours or when delivered by an overnight courier service providing tracking and proof of delivery and addressed as follows:

To Association:

Bay East Association of REALTORS®
7021 Koll Center Parkway
Pleasanton, CA 94566
Attention: CEO

To Consultant:

Secondary Consultant:

f) 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.

g) No Assignment. Neither Participant/Subscriber nor Consultant, nor any of them, may assign or otherwise transfer any of their rights under this Agreement to any party without the prior written consent of the Association.

h) Entire Agreement. 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. The previous sentence notwithstanding, the Rules are expressly incorporated into this Agreement by reference.

i) Applicable law. This Agreement is governed by and enforced according to the laws of the State of California, including Arbitration in accordance with the MLS Rules and Regulations of the Bay East Association of REALTORS®. Any action shall be brought in Alameda County, California.

IN WITNESS WHEREOF the parties execute this agreement as of the date set forth below.

This Agreement is being entered into this _____ day of _____, 20__ by the MLS and the Party or Parties executing the IDX Signature Pages(s) attached hereto and incorporated herein.

Consultant:

CEO Print Name _____

CEO Signature _____

Association/MLS: Bay East Association of REALTORS®, a California nonprofit mutual benefit corporation

CEO/CASO Print Name _____

CEO/CASO Signature _____

Only complete the
“Secondary Contractor
Agreement” if you have
someone else
normalize the data for
you.

SECONDARY CONTRACTOR AGREEMENT

In consideration for being allowed access to the MLS Data and Licensed Content provided by Bay East Association of REALTORS®(Association/MLS) to _____(Consultant) as part of the Data Access Agreement (the “agreement”) for Internet Data Exchange (IDX) dated_____, the undersigned agrees to be bound by all terms and conditions of the agreement.

The undersigned provides the following information as a condition for being allowed access to the MLS Data and Content:

Secondary Consultant Name (Individual or Company) _____

Name of Primary Contact _____

Email Address of Primary Contact: _____

Secondary Consultant Address: _____

Phone: _____ FAX _____

Secondary Consultant represents and agrees as follows:

1. Secondary Consultant has received a copy of the MLS Data Access Agreement (the “Agreement) dated _____between_____ (“Consultant”) and Association/MLS. Secondary Consultant has read the Agreement and Secondary Consultant agrees it is bound to comply with each and every term of said Agreement as though the undersigned were a signatory to the Agreement. The person executing the Secondary Consultant Agreement on behalf of Secondary Consultant is duly authorized by Secondary Consultant to enter into this Secondary Consultant Agreement and will be Secondary Consultant’s primary contact person with Association/MLS for the purposes of assuring performance and compliance of the Agreement and this Secondary Consultant Agreement.
2. Secondary Consultant has been engaged by Consultant to assist Consultant in connection with the development of the authorized product content as described in Exhibit “A” of the Agreement.
3. Secondary Consultant understands Secondary Consultant will have a limited, nontransferable, personal right and license to access Cooperating MLS’s Database only for the purpose of assisting Consultant in the development of the Consultant’s authorized product content. By such access and use, Secondary Consultant agrees to be subject to all of the terms, conditions, rules and restrictions set forth in the Agreement and in the MLS Rules and Regulations of Association and data display policies, as may be amended from time to time. The receipt of the above is acknowledged by execution of this Secondary Consultant Agreement. Secondary Consultant will not access or use the Database in any manner for itself or on behalf of any clients other than Participant, as defined in the agreement, without the prior written permission of Association in each such case. Secondary Consultant shall take all commercially reasonable steps to assure each and every employee, agent, subcontractor and others working on the Agreement and performing the acts necessary to perform its agreement with Consultant complies with the Agreement and this Secondary License Agreement, including, but not limited to the provisions pertaining to nondisclosure and confidentiality.
4. Secondary Consultant understands and agrees that it acquires no rights in or to the authorized content other than pursuant to the limited license granted herein, and that such limited license may be terminated by Association, at its discretion, at any time upon notice to Consultant and Secondary Consultant.

Entered into as of _____, 2018 on behalf of Secondary Consultant by:

CEO Print Name _____

CEO Signature _____

Service to be provided to Consultant by Secondary Consultant (attach separate sheet if necessary)

Consultant Approval:

Consultant Agrees to notify Cooperating MLS immediately upon change of relationship with this Secondary Consultant

CEO Print Name _____

CEO Signature _____

Association/MLS: Bay East Association of REALTORS®, a California nonprofit mutual benefit corporation

CEO/COO Print Name _____

CEO/COO Signature _____