Cincy Data Access Agreement

This **AGREEMENT** is made and entered into by MLS of Greater Cincinnati ("**CINCYMLS**"), with offices at 14 Knollcrest Drive, Cincinnati, OH 45237; the real estate brokerage firm identified as "Firm" on the signature page.Exhibit A ("**Firm**"); the Licensees affiliated with Firm that are identified on the signature page, Exhibit A, if any (collectively, the "**Licensee Party**"); and the individual or business association identified as "Third Party Vendor" on the signature page, Exhibit A, if any ("**Third Party Vendor**").

DEFINITIONS

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

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

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

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

Firm-Related Persons: Third Party Vendor, if any, and employees of Firm who are not Licensees or broker/managers.

IDX: Use and display of portions of the CINCYMLS Data under the Internet Data Exchange provisions of the CINCYMLS Policies.

CINCYMLS Data: Data relating to real estate for sale, previously sold, or listed for sale, and to CINCYMLS Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into CINCYMLS's databases by CINCYMLS Participants and CINCYMLS, or on their behalf. **CINCYMLS Policies:** CINCYMLS's Rules and Regulations, as amended from time to time, and any operating policies promulgated by CINCYMLS.

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

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

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".).

THIRD PARTY VENDOR: the individual or business association identified as "Third Party Vendor" on the signature page, Exhibit A

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

CINCYMLS'S OBLIGATIONS

2. CINCYMLS grants to Firm and Licensee Party a non-exclusive, worldwide license to make copies of,display, perform, and make derivative works of the CINCYMLS 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 CINCYMLS 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. CINCYMLS retains all rights not expressly granted herein. This license does not permit Firm, Licensee Party, or Third Party Vendor to store, download, frame, or "scrape" any of the CINCYMLS Data except as expressly provided in this Agreement.

3. CINCYMLS agrees to provide to Firm, Licensee Party, and Third Party Vendor, during the term of this Agreement, (a) access to the CINCYMLS Data via the Data Interface under the same terms and conditions CINCYMLS offers to other CINCYMLS Participants; CINCYMLS does not undertake to provide technical support for the Data Interface or the CINCYMLS Data. The Data Interface, together with access to the CINCYMLS 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 CINCYMLS Data shall not constitute a default by CINCYMLS under this Agreement.

FIRM'S OBLIGATIONS

4. Firm and Licensee Party shall comply with the CINCYMLS Policies at all times. In the event of anyperceived conflict between the CINCYMLS Policies and this Agreement, the CINCYMLS Policies shall govern.

5. Firm shall use the CINCYMLS Data obtained under this Agreement for Firm Internal Use, IDX, and VOWuse only. Licensee Party shall use the CINCYMLS Data obtained under this Agreement for IDX and VOW use only. Any other use is strictly prohibited. Firm and Licensee Party shall not make the CINCYMLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Licensee Party may display the CINCYMLS Data on web sites only to the extent permitted by the CINCYMLS Policies and then only on a site or sites resident at the secondlevel and thirdlevel domain(s) indicated on the signature page, 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 Licensee Party acknowledge that ownership and use rights relating to copyrights in theCINCYMLS Data are defined in the CINCYMLS Policies or in the terms of the participant and subscriber agreements between CINCYMLS Firm and Licensee Party, or both. Firm and Licensee Party shall not challenge or take any action inconsistent with CINCYMLS's ownership of or rights in the CINCYMLS Data.The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If CINCYMLS notifies Firm or Licensee Party of a breach of the CINCYMLS Policies or this Agreementand Firm or Licensee Party does not immediately cure the breach, Firm and Licensee Party shall hold Third Party Vendor harmless from any liability arising from Third Party Vendor's cooperation with CINCYMLS under Paragraph 10.

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

9. Firm is surety for Licensee Party's and Third Party Vendor's obligations under this Agreement. Theprovisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

THIRD PARTY VENDOR'S OBLIGATIONS

10. Third Party Vendor shall immediately correct any breach of this Agreement or violation of the CINCYMLSPolicies within its control, whether committed by Firm, Licensee Party, or Third Party Vendor, upon notice from CINCYMLS.

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

12. Third Party Vendor shall not make the CINCYMLS Data or the
Confidential Information available to any third party, except on behalf of Firm and Licensee Party and in a manner consistent with Firm's and Licensee Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the CINCYMLS Data, whether commercial or personal. **In the event that Vendor provides services to Participants other than Firm (or to Licensees affiliated with Firm other than the Licensee Party) Vendor must enter separate Agreements with CINCYMLS. Third
Party Vendor must ascertain, using the Data Interface on a daily basis, that each Participant to which
Vendor provides services remains an eligible Participant; and in the case of Licensees, that each Licensee Party
remains affiliated with Firm. Failure to comply with the provisions of this paragraph will result in CINCYMLS
terminating all of the Third Party Vendor's access to the CINCYMLS Data under this Agreement and all similar
Agreements. *By signing this Agreement, THIRD PARTY VENDOR acknowledges that it shall be responsible to
secure an executed version of this Agreement with CINCYMLS, the Firm and Licensee and each additional
Participant to add additional Licensees affiliated with Firm as Licensee Parties. The failure of the THIRD PARTY
VENDOR to secure this new additional Agreement shall constitute a material breach of the terms hereof and
entitle CINCYMLS to immediately terminate access to the data feed.*** The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

13.   Third Party Vendor is surety for Firm's and Licensee 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. Third Party Vendor shall notify CINCYMLS 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

14.   CINCYMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activitiesmay include, without limitation, obtaining full access to Firm's, Licensee Party's, and Third Party Vendor's web sites and systems to ensure that CINCYMLS Data is displayed in accordance with the CINCYMLS Policies; using all features available to end-users of Firm's, Licensee Party's, and Third Party Vendor's systems that employ the CINCYMLS Data; and posing as consumers to register and test services Firm, Licensee Party, and Third Party Vendor make available to consumers using the CINCYMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

15.   The parties shall protect the Confidential Information with the same degree of care they take to protecttheir 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

16.   The term of this Agreement begins on the date that CINCYMLS signs it. This Agreement shall terminateupon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in CINCYMLS; (b) 5 days after any party's notice to the others of its intent to terminate, with or without cause; (c) immediately upon any party's notice to another that the other has breached this

Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (d) immediately upon Firm's notice to a Third Party Vendor that Third Party Vendor is no longer designated to provide IDX or VOW services to it; (e) with regard to any Licensee Party, immediately upon any event that results in the Licensee Party no longer being affiliated with Firm; (f) as provided in Paragraphs 25 and 28.

17.   In the event Firm's privileges as a Participant (or Licensee Party's privileges of affiliation with Firm) areterminated while this Agreement is in effect, and CINCYMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if CINCYMLS resumes its obligations under Paragraphs 2 and 3. In the event Firm, Licensee Party, or Third Party Vendor breaches this Agreement and entitles CINCYMLS to terminate under Paragraph

16. CINCYMLS may in its sole discretion suspend its performance instead of terminating this Agreement. CINCYMLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Licensee Party's, and Third Party Vendor's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, Firm, Licensee Party, and Third Party Vendor shall make no further use of the CINCYMLS 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 Licensee Party's rights under this Agreement are restored.

GENERAL PROVISIONS

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

19. **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.

20. **CINCYMLS's Remedies**. (a) Injunctive relief: Because of the unique nature of the CINCYMLS Data and Confidential Information, Firm, Licensee Party, and Third Party Vendor acknowledge and agree that CINCYMLS 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 CINCYMLS for a breach. CINCYMLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Licensee Party, or Third Party Vendor, or any one of them, without showing or proving any actual damages sustained by CINCYMLS, and without posting any bond. (b)

Liquidated damages: Firm, Licensee Party, and Third Party Vendor acknowledge that damages suffered by CINCYMLS from access to the CINCYMLS Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the CINCYMLS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to CINCYMLS to enter into this Agreement, Firm, Licensee Party, and Third Party Vendor agree that in the event Firm, Licensee Party, FirmRelated Persons, or Third Party Vendor, or its employees, agents, or contractors, disclose any password to access the CINCYMLS Data or disclose the CINCYMLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Licensee Party, and Third Party Vendor shall be liable to CINCYMLS for liquidated damages in the amount of $15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Licensee Party, and Third Party Vendor under this paragraph is joint and several.

21. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL CINCYMLS BE LIABLE TO FIRM, LICENSEE PARTY, OR THIRD PARTY VENDOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF CINCYMLS 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 CINCYMLS BE LIABLE TO FIRM, LICENSEE PARTY, OR THIRD PARTY VENDOR FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM. LICENSEE PARTY, AND THIRD PARTY VENDOR HAVE PAID CINCYMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) $100. FIRM, LICENSEE PARTY, AND THIRD PARTY VENDOR ACKNOWLEDGE THAT CINCYMLS PROVIDES THE CINCYMLS DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NONINFRINGEMENT, AND ACCURACY. CINCYMLS SHALL NOT BE LIABLE TO FIRM, LICENSEE PARTY, OR THIRD PARTY VENDOR FOR ANY CLAIM ARISING FROM INACCURACIES IN THE CINCYMLS DATA, ANY FAILURE TO UPDATE THE CINCYMLS DATA PROMPTLY, OR THE CINCYMLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. CINCYMLS makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.**

22.   **Dispute resolution; Attorney's fees**. In the event CINCYMLS claims that Firm, Licensee Party, or Third Party vendor has violated the CINCYMLS Policies, CINCYMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the CINCYMLS Policies. Except as set forth in the preceding sentence, any controversy or claim shall have venue before the state or federal courts in Knox County Ohio. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Ohio located in Knox 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 CINCYMLS's disciplinary procedures. If CINCYMLS 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.

23.   **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.

24.   **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.

25.   **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.

26.   **Entire Agreement**. Subject to CINCYMLS 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.

27.   **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 CINCYMLS or have any authority to make any agreements or representations on the behalf of CINCYMLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

28.   **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.

Under this Agreement, FIRM AND LICENSEE PARTY ARE PERMITTED TO WORK ONLY WITH THE THIRD PARTY VENDOR THAT IS PARTY TO THIS AGREEMENT and is listed in Exhibit A on the Questionnaire form.
If Firm or Licensee Party chooses to engage a different Third Party Vendor or additional Third Party Vendors, Firm hereby agrees to execute a new version of this Agreement with CINCYMLS and each such Third Party Vendor. Under this Agreement, **THIRD PARTY VENDOR IS PERMITTED TO WORK ONLY WITH THE FIRM AND LICENSEE PARTY** whose signatures through authorized representatives are affixed herein below. Third Party Vendor may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Licensees affiliated with Firm, except the Licensee Party. By signing this Agreement, THIRD PARTY VENDOR acknowledges that it shall be responsible to secure an executed version of this Agreement with CINCYMLS, the Firm and Licensee and each additional Participant to add additional Licensees affiliated with Firm as Licensee Parties. The failure of the THIRD PARTY VENDOR to secure this new additional Agreement shall constitute a material breach of the terms hereof and entitle CINCYMLS to immediately terminate access to the data feed.
If Firm or Licensee Party will perform its own technical work and there is no Third Party Vendor to this Agreement, Firm should cross out the Third Party Vendor signature box. If this Agreement is for the services to Firm only, and there is no Licensee Party, Firm should cross out the Licensee Party signature box.

THIS INFORMATION WILL BE COLLECTED IN THE QUESTIONNAIRE FORM. ONLY PARTIES TO THIS AGREEMENT WILL BE REQUIRED TO COMPLETE THEIR PORTION IN THE QUESTIONNAIRE FORM

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

☐ IDX - Website URL_____   ☐ VOW - Website URL _____
☐ Firm Internal Use (Data Download) – (specify) _____.

CINCYMLS: MLS of Greater Cincinnati _____ _____Sharon Chard, MLS Manager *or* Tim Hauger, Systems Specialist Date: _____ (effective date of this Agreement) **Contact for these matters** Name: Tim Hauger, Systems Specialist Phone: 513-842-3036 Email: thauger@cincymls.com	**Third Party Vendor** Name of Corporation _____ Mailing Address_____ _____ By (Signature) _____ (Date) _____ (Phone) _____ (Printed Name) _____ (Title) _____ (Contact e-mail) ***Required** _____
FIRM _____ Firm name MLS ID _____ Signature of Principle Broker Date _____ Name of Principle Broker **Contact for notices and operations matters** Name: _____ Phone: _____ *Email: _____ **(*Required - Email is the principal means for CINCYMLS to communicate with Firm.)**	**LICENSEE PARTY** _____ Licensee Party name MLS ID _____ Signature of Licensee Party Date: _____ **Contact for notices and operations matters** Name: _____ Phone: _____ *Email: _____ **(*Required - Email is the principal means for CINCYMLS to communicate with Licensee Party.)**