



DATA LICENSE AGREEMENT

This Data License Agreement (“Agreement”) is entered into by and between San Francisco Real Estate Board, a California corporation d/b/a San Francisco Association of REALTORS® (“SFAR”), and party or parties executing this Agreement (“Licensee”), each of which may be referred to individually as a “Party” or collectively as the “Parties.” This Agreement is effective as of the date of execution by SFAR below (“Effective Date”).

1. **DEFINITIONS.** Capitalized terms used in the Agreement but not defined in this Section shall have the meaning set forth in the Rules (defined below).

1.1 "**Affiliated VOW Partner**" or "**AVP**" means an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant's supervision, accountability and compliance with the VOW Policy.

1.2 "**Confidential Information**" means SFAR's confidential or proprietary information, including without limitation Licensed Information, information and material concerning or pertaining to SFAR's trade secrets or know-how, product plans, software, programs, network systems, data, inventions, processes, technology, designs, engineering, hardware configuration information, and/or projects or other materials, and that such information and material is confidential and proprietary to SFAR.

1.3 "**Licensed Information**" means the materials, data and information (whether or not reduced to writing and whether or not patentable or protectable by copyright), and all of the contents therein, which Licensee receives, in whole or in part, directly or indirectly, from SFAR following the Effective Date, including, without limitation:

(a) **if a IDX:** SFAR's standard IDX data feed, but the following data fields and information related to these data fields may only be used for viewing by Subscribers: (1) expiration date; (2) agent only remarks; (3) commission information; (4) selling office name; (5) selling agent name; (6) selling agent/office contact name; (7) occupant name and/or contact information; and, (8) showing instructions;

(b) **if a VOW/Broker Back Office:** SFAR's active listing data and SFAR's historical off-market data for the two (2) years preceding each separate transfer of this data to AVP;

(c) **if a Broker Tour:** SFAR special tour data feed; and

(d) IP addresses, access codes and passwords.

This excludes data for any listings for which the seller has withheld permission to have the listed property displayed on the Internet. Failure to mark any of the Licensed Information as confidential, copyrighted, proprietary or Licensed Information shall not affect its status as part of the Licensed Information.

1.4 "**Laws**" means applicable laws, statutes, codes, ordinances, regulations, guidelines, decrees, orders, judgments, rules, notices, directives or other requirements of any government agency or instrumentality, whether, foreign, federal, state or local, applicable to the use of the Licensed Information in the United States.

1.5 "**Licensed Trademarks**" means the trademarks "SFAR" and "San Francisco Association of Realtors®".

1.6 "**Participant**" means any individual who applies and is accepted by the MLS, meets and continues to meet all of the Rules requirements of either a broker Participant or an appraiser Participant as defined in the Rules and in good standing.

1.7 "**Person**" means any person or entity, including any individual, trustee, corporation, partnership, trust, unincorporated organization, limited liability company, business association, firm, joint venture or governmental agency.

1.8 "**Rules**" means the MLS Rules and Regulations (which can be downloaded from our website: http://my.sfrealtors.com/images/SFARMLS_RULES.pdf), and is incorporated herein as Exhibit A.

1.9 "**SFAR Parties**" means SFAR, its officers, directors, members, employees, agents, representatives, third-party licensees, and all persons acting for or on SFAR's behalf.

1.10 "**SFARMLS**" means SFAR's Multiple Listing Service available at <http://my.sfrealtors.com> / <http://www.sfarmls.com>.

1.11 "**Subscriber**" means an individual who applies and is accepted by the MLS, meets and continues to meet all of the Rules requirements of either a real estate Subscriber or appraiser Subscriber as defined in the Rules, in good standing, and if executing this Agreement does so with the consent of the Participant with whom they are affiliated as confirmed by that Participant also executing this Agreement.

1.12 "**Territory**" means the United States.

1.13 "**Third Party**" means a Person that is not a Party to this Agreement.

1.14 "**Non-AVP Vendor**" means a Vendor who is an entity or person that has entered or will enter into an agreement with each Participant to be provided Licensed Data under this Agreement (which agreement is in accordance with the terms and conditions herein), but who is not an AVP.

2. LICENSE.

2.1 **License Grant.** During the term of this Agreement, SFAR grants to Licensee, and Licensee hereby accepts, a limited, non-exclusive, revocable, non-transferable, non-sublicensable license in the Territory to display the Licensed Information. SFAR retains all rights not expressly granted by this License. The Licensed Information is distributed solely for use by authorized users according to the terms of this Agreement. Any use, reproduction, or redistribution of the Licensed Information not expressly authorized by the terms of this Agreement or the Rules is expressly prohibited, and other as set forth herein, Licensee agrees it will not have any right, title or interest in any information, content, or data provided, and shall not make any claim of ownership or interest thereof. The License shall terminate upon any termination of this Agreement.

2.2 **Scope of Use.** Licensee and Participant (if applicable) shall only display the Licensed information in accordance with the provisions of this Agreement and the Rules,

and neither Licensee nor any Participant may under any circumstances sell, grant access to, distribute or syndicate all or any part of the Licensed Information, or aid, assist, or allow anyone else to do so, including without limitation if requested to do so by a Participant or Subscriber.

2.3 License Restrictions. The Licensed Information is licensed, not sold, to Licensee. The Licensed Information, and any improvements or derivatives thereof, shall remain the exclusive property of SFAR and all rights not expressly granted to Licensee are reserved. Licensee agrees that: (i) it will not contest or deny the validity of, or the right or title of SFAR in or to the Licensed Information by reason of this Agreement; (ii) it will not encourage or assist others directly or indirectly to do so, either during the Term or after its expiration; and (iii) it will not utilize the Licensed Information in any manner that would diminish its value or harm the reputation of SFAR.

2.4 License Fee.

(a) **If a Vendor/SFAR-Only Agreement:** Licensee shall pay an annual license fee of \$2500.00 at the time of execution of this Agreement. Further, if Licensee has 300 or more customers, it shall pay such additional annual royalty to SFAR as may later be requested. Any such additional royalty shall be based upon the Licensee's total number of users and shall be due and payable within 30 days after the date of request or the Agreement shall terminate. Licensee shall pay any applicable taxes. Interest shall accrue on any unpaid amount at the maximum amount allowable under California law. No portion of any license fee paid by Licensee shall be refundable except if SFAR terminates this Agreement without cause. SFAR reserves the right to change the license fee on 30 days' notice to Licensee.

(b) Otherwise, SFAR reserves the right in its sole discretion to later charge license fees on 90 days' notice to Licensee.

2.5 Display of Copyright Notice and Disclaimer. Licensee shall:

(a) display a SFAR copyright notice on each display screen, web page (whether Internet or Internet-based), and printout displaying any part of the Licensed Information;

(b) display a data disclaimer on each display screen, web page (whether Internet or Internet-based), and printout displaying any part of the Licensed Information, in the form set forth at Section 12.9 of the Rules; and

(c) display a disclaimer of liability on each display screen, web page (whether Internet or Internet-based), and printout displaying any part of the Licensed Information, in the form set forth at Subsection 12.17.17 of the Rules;

SFAR reserves the right to require another form of disclaimer on 30 days' notice.

3. CONFIDENTIALITY.

3.1 Obligation. The confidentiality obligations in this Section supersede all previous communications, agreements, promises, representations, understandings, and negotiations, whether written or oral, between the Parties as to confidentiality, including the terms of any applicable non-disclosure agreement. Licensee acknowledges and

agrees that pursuant to this Agreement Licensee may have access to Confidential Information. Licensee may use the Confidential Information only for the purpose of this Agreement and in connection with the Agreement. Licensee shall: **(a)** hold Confidential Information in confidence and take reasonable precautions to protect such Confidential Information (including all precautions Licensee employs with respect to its own confidential materials); **(b)** not divulge any Confidential Information of SFAR to any Third Party (other than to employees, subcontractors, or independent contractors as set forth herein); and **(c)** not copy or reverse engineer any materials disclosed under this Agreement or remove any proprietary markings from any Confidential Information. Any employee, subcontractor, or independent contractor given access to any Confidential Information must have a legitimate "need to know" such information for the purposes of this Agreement and Licensee shall remain responsible for each such person's compliance with the terms of this Agreement.

3.2 Exclusions. The provisions of this Section shall not apply to any information or material which: **(a)** was in Licensee's possession before receipt from SFAR, **(b)** is or becomes a matter of public knowledge through no fault of Licensee, **(c)** was rightfully disclosed to Licensee by a Third Party without restriction on disclosure or **(d)** is developed by Licensee without use of the Confidential Information and such independent development can be shown by documentary evidence. Licensee may make disclosures to the extent required by law or court order provided Licensee uses diligent efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed SFAR to participate in the proceeding.

3.3 Conclusion of Services. Licensee's obligations with respect to Confidential Information under this Agreement shall expire 5 years from the termination of this Agreement (except that with respect to any trade secrets the obligations shall be perpetual). Upon written request by SFAR, Licensee shall: **(a)** cease using the Confidential Information, **(b)** return or destroy the Confidential Information and all copies, notes or extracts thereof to the SFAR within 7 business days of receipt of request, and **(c)** upon SFAR's request, confirm in writing that Licensee has complied fully with these obligations.

3.4 Breach of Confidentiality Obligations. IF ALL OR ANY PART OF THE LICENSED INFORMATION IS DISCLOSED BY LICENSEE OTHER THAN AS EXPRESSLY ALLOWED BY THIS AGREEMENT, LICENSEE SHALL BE LIABLE TO SFAR FOR THE SUM OF \$100,000.00 FOR EACH AND EVERY SUCH BREACH, AS LIQUIDATED DAMAGES. LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT SFAR'S DAMAGES, IN THE EVENT OF SUCH A BREACH OF THIS AGREEMENT BY LICENSEE, WOULD BE DIFFICULT AND EXPENSIVE TO DETERMINE OR A MATTER REQUIRING EXPERT WITNESS OPINION EVIDENCE. THE AFORESAID AMOUNT IS THUS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES SFAR WOULD SUFFER IN THE EVENT OF ANY SUCH BREACH, AND SUCH AMOUNT IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT NO PAYMENT SHALL BE DUE AND PAYABLE FOR LIQUIDATED DAMAGES UNLESS AND UNTIL JUDGMENT IS ENTERED AGAINST LICENSEE.

4. TRADEMARK LICENSE

4.1 License

(a) **License Grant.** SFAR hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable, limited license to use the Licensed Trademarks on and in connection with the Licensed Information in the Territory, while this Agreement is in effect and subject to its terms.

(b) **Restrictions on Grant.**

(i) **Business and Domain Name Restrictions.** Without SFAR's prior written consent, Licensee shall not use the Licensed Trademarks (or any mark confusingly similar thereto), individually or in combination, as part of (a) its corporate or trade name; or (b) any domain name.

(ii) **Sublicensing.** Licensee shall not grant sublicenses under this Agreement.

(c) **Reservation of Rights.** SFAR expressly reserves all rights in the Licensed Trademarks not expressly granted to Licensee under this Agreement.

4.2 Use of Licensed Trademarks.

(a) **Compliance with SFAR's Directions.** Licensee acknowledges and is familiar with the high standards, quality, style and image of SFAR, and Licensee shall, at all times, conduct its business and use the Licensed Trademarks in a manner consistent with these standards, quality, style and image. All Licensed Information and related products used by Licensee in the Territory shall carry the Licensed Marks. Licensee shall comply strictly with the directions of SFAR regarding the Licensed Marks, including their promotion, distribution, sale, and application to products using the Licensed Information. SFAR shall have the sole and exclusive right to determine whether Licensee is maintaining the standards of quality established by SFAR. Licensee shall not use the Licensed Trademarks with any prefix, suffix, or other modifying words, terms, designs, or symbols or any modified form, nor may Licensee use the Licensed Trademarks in any manner not expressly authorized by SFAR.

(b) **No Other Marks.** No rights are granted to Licensee to use any trademarks, trade name, design, copyright, symbol, logo, or other identifying indicia or proprietary right of SFAR except the limited permission for Licensee to use the Licensed Trademarks solely in connection with the Licensed Information. Licensee agrees that from and after the expiration or termination of the term of this Agreement, Licensee shall not use any identical or confusingly similar trademark or any service mark, trade name, advertising, logo, insignia, symbols or decorative designs identical or confusingly similar to the Licensed Trademarks or other items used by SFAR in the conduct of its business, in any manner or for any purpose.

(c) **Further Licensee Restrictions.** Licensee agrees that it shall not directly or indirectly: (i) do, omit to do, or permit to be done, any act which will or may dilute the Licensed Trademarks or tarnish or bring into disrepute the reputation of or goodwill

associated with the Licensed Trademarks or SFAR or which will or may invalidate or jeopardize any registration of the Trademarks; (ii) apply for, or obtain, or assist any Person in applying for or obtaining any registration of the Licensed Trademarks, or any trademark, service mark, trade name or other indicia confusingly similar to the Trademarks in any country; or (iii) grant or attempt to grant a security interest in, or otherwise encumber, the Licensed Trademarks or record any such security interest or encumbrance against any application or registration regarding the Licensed Trademarks in the United States Patent and Trademark Office or elsewhere.

(d) **Trademark Notices.** Licensee shall ensure that all Licensed Information, and all related quotations, specifications and descriptive literature, and all other materials carrying the Licensed Trademarks, be marked with the appropriate trademark notices in accordance with SFAR's instructions.

(e) **Compliance with Laws.** In exercising its rights under this Agreement, Licensee shall comply with, and shall ensure that Licensee's products using the Licensed Information or otherwise supplied by Licensee complies with, all applicable Laws. Licensee shall promptly provide SFAR with copies of all communications, relating to the Licensed Trademarks, Licensed Information and related products, with any governmental, regulatory or industry authority.

(f) **Complaints.** Licensee shall promptly provide SFAR with details of any complaints it has received relating to the Licensed Information or Licensee's related products together with reports on the manner in which such complaints are being, or have been, dealt with and shall comply with any reasonable directions given by SFAR in respect thereof.

4.3 Ownership and Maintenance

(a) **Acknowledgement of Ownership.** Licensee acknowledges that SFAR is the owner of the Licensed Trademarks. Licensee shall use the Licensed Trademarks only in connection with the Licensed Information, and agrees to maintain the standards of quality established by SFAR, and further agrees that SFAR retains the right to use or license the use of the Licensed Trademarks for any and all goods or services it chooses.

(b) Licensee recognizes the great value of the goodwill associated with the Licensed Trademarks and acknowledges that the Licensed Trademarks and all rights therein and goodwill pertaining thereto belong exclusively to SFAR and that the Licensed Trademarks have a secondary meaning in the mind of the public. Licensee acknowledges and agrees that all use of the Licensed Trademarks and any goodwill established thereby shall inure to the exclusive benefit of SFAR in the United States and throughout the world and that this Agreement does not confer any goodwill or other interest in the Licensed Trademarks upon Licensee. Any unauthorized use of the Licensed Trademarks by Licensee or any use not in compliance with this Agreement shall constitute an infringement of the rights of SFAR in and to the Licensed Trademarks.

(c) **Maintenance of Registrations.** SFAR shall at its own expense take all reasonable steps to maintain the existing registrations of the Licensed Trademarks and prosecute to registration any pending applications for so long as the Licensed Marks is

being used in commerce as required by applicable Law. Licensee shall provide, at the request of SFAR and at SFAR's expense, all necessary assistance with such maintenance and prosecution.

4.4 Protection of the Licensed Trademarks.

(a) **Notification.** Licensee shall immediately notify SFAR in writing giving reasonable detail if any of the following matters come to its attention: (i) any actual, suspected or threatened infringement of the Licensed Trademarks; (ii) any actual, suspected or threatened claim that the Licensed Trademarks is invalid; (iii) any actual, suspected or threatened opposition to the Licensed Trademarks; (iv) any actual, suspected or threatened claim that use of the Licensed Trademarks infringes the rights of any Third Party; (v) any person applies for, or is granted, a registered trademark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to Licensee under this Agreement; or (vi) any other actual, suspected or threatened claim to which the Licensed Trademarks may be subject.

(b) **Actions.** With respect to any of the matters listed in this Section: (a) SFAR shall decide, in its sole discretion, what action if any to take; (b) SFAR shall have exclusive control over, and conduct of, all claims and proceedings; (c) Licensee shall provide SFAR with all assistance that SFAR may reasonably require in the conduct of any claims or proceedings; and (d) SFAR shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

4.5 No Assumption of Liability. Licensee agrees that its use of the Licensed Trademarks is at its own risk and that SFAR shall have no liability, and Licensee will indemnify, defend, and hold SFAR harmless against any and all damages, liabilities, attorneys' fees or costs incurred by SFAR in defending against any third-party claims or threats of claims arising from Licensee's use of the Licensed Trademarks.

5. LICENSED INFORMATION TRANSFER. SFAR shall transfer the Licensed Information to Licensee by a means and method at SFAR determines, in its sole discretion, on an "as-is, as-available" basis. SFAR shall have no duty to modify its servers, software or other property in connection with the performance of its obligations under this Agreement.

6. USE OF PERSONAL INFORMATION. If the Licensed Information contains the personal information (e.g., email, phone number and address) of SFAR members, Licensee agrees not to use such information to market or contact any SFAR member, nor will Licensee sell or supply such information to any third party for any reason, nor will it display such information except for the purpose of using such information on Licensee's website(s) where such real estate listing information is normally published.

7. TERM AND TERMINATION.

7.1 Term; Survival. The term of this Agreement shall commence on its Effective Date and expire 12 months thereafter, subject to the Parties' right to terminate as provided below ("Term"). The following Agreement terms shall survive any termination or expiration of this Agreement: 3, 6, 7, 8, 9, 11, 13, 14, 15, and 16.

7.2 Termination.

(a) **Termination by SFAR.** SFAR may terminate this Agreement **without cause** upon 30 days prior written notice to Licensee. SFAR may terminate this Agreement **for cause** immediately upon written notice to Licensee (i) in the event SFAR ceases to operate SFARMLS in its sole discretion, including without limitation, due to merger, sale, assignment or any other business reason, or (ii) upon suspension or termination of Licensee under the Rules.

(b) **Termination by Licensee.** Licensee may terminate this Agreement **without cause** upon 30 days prior written notice to Licensee. Licensee may terminate this Agreement **for cause** immediately upon written notice to SFAR if SFAR fails to perform, fulfill, or comply with any of its obligations under this Agreement, and such non-conformance is not cured within 5 days.

8. WARRANTY DISCLAIMER. The LICENSED INFORMATION IS PROVIDED ON AN "AS IS" BASIS AND SFAR MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND AS TO ANY OF THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING, OR TRADE USAGE, INCLUDING WITHOUT LIMITATION WITH RESPECT TO AVAILABILITY OF DATA AND NON-INFRINGEMENT. EACH PARTY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. INDEMNITY. Licensee shall indemnify, defend, and hold harmless the SFAR Parties from and against any claims, demands, liabilities, costs, fees, including without limitation reasonable defense attorney's fees, actions or judgments, arising from or related to any breach of the terms and conditions of this Agreement by Licensee. Licensee shall notify SFAR immediately upon notice of such claim and cooperate fully in the defense of such claim. SFAR shall have full and exclusive control of any such defense and settlement of such claim.

10. INSURANCE. Licensee agrees to maintain a comprehensive general liability policy with such riders as are necessary to cover it for claims arising from the use of the Licensed Information, including but not limited to claims for violation of the right to privacy and defamation. This coverage shall be in a commercially reasonable amount but in no event less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. SFAR shall be named as an additional insured in said policy, and reserves the right within 30 days of the commencement of this Agreement and thereafter at regular 12 month intervals to inspect the policy and related documents and require insurance coverage in a different amount of a different scope or from a different insurance carrier.

11. LIMITATION OF REMEDIES AND DAMAGES. TO THE EXTENT NOT PROHIBITED BY LAW, AND EXCEPT FOR LOSSES OR LIABILITIES DIRECTLY RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL THE SFAR PARTIES BE LIABLE TO LICENSEE UNDER THIS AGREEMENT FOR ANY LOSSES OR LIABILITIES (WHETHER IN CONTRACT, TORT, OR OTHERWISE), , CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES,

INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS AND/OR BUSINESS INTERRUPTION, HOWEVER CAUSED, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR PERFORMANCE THEREUNDER, OR FROM ANY BREACH OR PARTIAL BREACH OR POTENTIAL BREACH OF THE PROVISIONS OF THIS AGREEMENT OR ARISING OUT OF ANY ACT OR OMISSION, WHETHER BASED ON INDEMNITY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EVEN IF LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSEE'S EXCLUSIVE REMEDY AS AGAINST THE SFAR PARTIES SHALL BE TO TERMINATE THE AGREEMENT AND IMMEDIATELY STOP USING THE LICENSED INFORMATION.

12. SECURITY STANDARDS AND REVIEW. Licensee will take all reasonable precautions to protect the Licensed Information. Licensee shall use best efforts to prevent any unauthorized distribution, copying, use, or pirating of the Licensed Information, including without limitation, implementation and maintenance of reasonable security standards and procedures and firewalls.

13. AUDIT. Licensee shall keep accurate books of account and records, including computer files, covering all transactions relating to the license herein granted at its principal place of business, and agrees that SFAR or its duly authorized representatives shall have the right at regular business hours of the day, upon five days prior notice, to examine such books, records and files, and all other documents and materials (including data, software, security and facilities) in the possession, custody, or control of Licensee with respect to the subject matter and the terms of this Agreement, and such right shall include the right to make copies or extracts. Licensee need only retain such books, records and files for a two-year period following the expiration or earlier termination of this Agreement.

14. REPRESENTATIONS, WARRANTIES AND COVENANTS

14.1 Licensee represents, warrants and covenants to SFAR that:

(a) **Organization and Authority.** Licensee is a corporation duly organized and validly existing under the laws of its state of incorporation. Licensee has full corporate power, right and authority to enter into and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement by it does not require the consent, authorization, approval or waiver of rights by any party.

(b) **No Conflict.** The execution and delivery of this Agreement by Licensee and the performance by Licensee of its obligations under this Agreement will not violate, conflict with or constitute a default under or breach of any provisions of any contract, agreement or other instrument to which it is a party or by which it is bound.

(c) **Compliance with Laws.** Licensee is in compliance with, and shall remain in compliance with during the Term, all applicable Laws with respect to the manufacture, development, production, use and/or sale of products using the Licensed Information. Licensee has not received and does not expect to receive any notice of

noncompliance with any applicable Laws with respect to the manufacture, development, production, use and/or sale of products using the Licensed Information.

14.2 Litigation. There are no claims, whether involving a Third Party or any Governmental Authority, actions or proceedings pending or, to the best knowledge of Licensee, threatened against or involving Licensee or the business, properties or assets of Licensee which would be likely, either individually or in the aggregate, to affect materially and adversely the ability of Licensee to satisfy its obligations under this Agreement.

15. DISPUTE RESOLUTION.

15.1 General. Except for intellectual property disputes, any action seeking a temporary restraining order or injunction, or any action seeking equitable relief, or suit to compel compliance with this dispute resolution process or otherwise as set forth in this Section, the Parties agree to use the dispute resolution procedures set forth in this Section with respect to all disputes, disagreements, claims, or controversies between the parties arising out of or relating to this Agreement or the breach thereof (“Disputed Matter”).

15.2 Internal Escalation. First, within ten (10) business days after receipt of written notice of a Disputed Matter and demand to invoke this Dispute Resolution, the Disputed Matter will be referred jointly to senior executives of each of the Parties. If such executives do not agree upon a resolution within thirty (30) days after referral of the matter to them, the complaining party may proceed to arbitration as set forth below. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Discussion and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information exchanged for purposes of settlement, exempt from discovery and production, which shall not be admissible in any lawsuit, proceeding, or arbitration without concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in any proceeding. With respect to the Disputed Matter sessions, the Parties specifically agree as follows: Evidence of anything said or of any admission made in the course of the Disputed Matter sessions is not admissible evidence, and disclosure of any such evidence shall not be compelled in any action, referenced proceeding, or arbitration in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the Disputed Matter sessions, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action or arbitration in which, pursuant to law, testimony can be compelled to be given.

15.3 Arbitration. In the event that the Disputed Matter has not been resolved through the Disputed Matter sessions, the complaining party may submit the Disputed Matter to binding arbitration before JAMS pursuant to its Comprehensive Arbitration Rules and Procedures then in effect. Demand for arbitration shall be filed in writing with JAMS and served upon the other Parties. A demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen and shall

include all claims, disputes, and matters which are the subject of the Disputed Matter. In no event shall the demand for arbitration be made after the date when legal or equitable proceedings based upon such claim, dispute, or matter in question must be instituted under the applicable statutes of limitation. The arbitrator will have the authority to render any award or remedy allowed by law. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error. The arbitrator shall prepare in writing and provide to the Parties an award including factual findings, and the basis on which the decision and award is based. The Parties agree that any arbitration award whereby damages are awarded shall identify in writing the injury to which each portion of the award relates and shall specify the amount and nature of damages (compensatory damages, future damages, and so forth) for each injury, if any. The arbitrator shall have no authority to change, add to, or subtract from this Agreement. All disputes will be decided by a single neutral arbitrator. The arbitrator will be selected from the JAMS neutrals panel, and the arbitration hearing will be conducted in San Francisco, California. If the Parties are unable to agree, JAMS shall select the arbitrator from its panel. The cost of the arbitration proceeding will be shared equally by the Parties, but the prevailing party in any arbitration proceeding shall be awarded its reasonable attorneys' fees, costs, and expenses incurred in connection with the arbitration ("Fee Award") so long as with five (5) days after the Fee Award they make a showing to the arbitrator's satisfaction that their financial condition (without consideration of any funds obtained from an insurer, borrowed from any source or invested after the outset of the Disputed Matter) would have allowed for them to pay a Fee Award against them had that event occurred from cash on hand within thirty days without being rendered insolvent.

(a) **Governing Law; Arbitration Proceedings.** The arbitration shall be governed by and construed in accordance with the domestic laws of the state of California, excluding any conflicts-of-laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. The Parties and the arbitrator shall agree to an arbitration schedule before the start of the arbitration hearings. Such schedule shall include the date on which the arbitrator's decision shall be rendered. Any and all necessary delays in the schedule may extend the date on which the arbitrator's decision will be rendered on a day for day basis. The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the basis on which the decision and award is based. The arbitrator's decision is final and without right of appeal.

(b) **Interim Decision; Confidentiality.** The arbitrator shall have the power to issue an interim decision and to retain jurisdiction in the event he or she determines that a Party is entitled to an opportunity or further opportunity to rectify a Disputed Matter, and to thereafter decide all disputes concerning the sufficiency or performance of any rectification or cure of a Disputed Matter.

(c) **Equitable Relief.** Notwithstanding the foregoing, each Party acknowledges that any breach of the confidentiality provisions of this Agreement may cause irreparable harm for which monetary damages are an insufficient remedy and

therefore that any such breach need not first be subject to this dispute resolution procedure and the non-breaching Party may immediately pursue injunctive or other equitable relief without the posting of a bond in addition to whatever remedies it might have at law. Nothing in this Section will prevent either Party from resorting to judicial proceedings in the San Francisco Superior Court or the United States District Court for the Northern District of California, San Francisco Division, if interim relief from a court is necessary to prevent serious and irreparable injury to a Party or to others.

16. GENERAL PROVISIONS.

16.1 Independent Contractors; No Third Party Beneficiaries. The Parties enter into this Agreement as, and will remain throughout the Term, independent contractors. This Agreement shall not be construed to create a relationship of employer and employee, a partnership, or joint venture between the Parties, and no Party shall have any right to obligate or bind the other in any manner. No Party shall hold itself out as an authorized agent with power to bind the other Parties in any manner. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give to any person or entity other than the Parties any rights or remedies by reason of this Agreement or any transaction or activity contemplated herein, except as expressly and specifically provided in this Agreement.

16.2 Notices. All notices and other communications provided for under this Agreement shall be in writing and shall be delivered by hand or by FedEx, UPS, or other reputable overnight courier service, mailed by certified or registered mail, or sent by electronic communication as follows:

(a) **To SFAR:** Address: 301 Grove Street, San Francisco, CA 94102-4497; Telephone No.: Attn. Walter Baczkowski, Jr., CEO; Telephone No.: 415-431-8500; E-Mail: Walt@sfrealtors.com. With a copy to SFAR counsel: Alexander M. Weyand, Weyand Law Firm, 531 Howard Street, 1st Floor, San Francisco, CA 94105; Telephone No.: 415-536-1818; E-Mail: awayand@wynlaw.com.

(b) **To Licensee:** Address: as set forth below at the signature page of this Agreement.

(c) **To Participant** (if applicable): as separately provided to SFAR in connection with membership in the association or participation MLS.

(d) **To Vendor** (if applicable): as set forth below at the signature page of this Agreement.

(e) Notices sent by hand or by overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received (or refused). Notices and other communications to a Party delivered or furnished by electronic communication by way of the foregoing e-mail addresses shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient, provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

16.3 Entire Agreement; Interpretation; Governance of Rules. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, agreements, promises, representations, understandings, and negotiations, whether written or oral, between the Parties with respect to the subject matter of this Agreement, including with respect to confidentiality. The Parties' obligations under this Agreement shall also be subject to and governed by the Rules. In the event of a conflict between the provisions of this Agreement and the specific provisions set forth in the Rules, the provisions of the Rules shall control.

16.4 No Waiver. No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a Party to provide a waiver in the future except to the extent specifically set forth in writing. Any waiver given by a Party shall be null and void if the Party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested. The failure of a Party to notify the other Party of any default under the Agreement shall not be deemed to be a waiver by such Party of any continuing default by the other Party nor of the Party's right to declare a default of any such continuing breach, and the failure of such Party to insist upon strict performance of any of the terms, covenants, or conditions of the Agreement shall not be construed as a waiver or relinquishment of the Party's right to declare a default of any breach for the future of any such terms, covenants, conditions, or options, but the same shall be and remain in full force and effect.

16.5 Amendments and Modifications. No amendment, modification, or supplement, including those by custom, usage of trade, or course of dealing, of any provisions of this Agreement shall be binding on the Parties unless it is in writing and signed by both Parties at the time of the amendment, modification, or supplement and which specifically references this Agreement and the provisions that are amended, modified, or supplemented. No oral order, objection, claim, or notice by any Party to the other shall affect or modify any of the terms or obligations contained in the Agreement.

16.6 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall remain in effect and be enforceable to the fullest extent permitted by law.

16.7 Successors and Assigns. Each Party binds itself, and its successors and permitted assigns, to the other Party and to the successors and permitted assigns of such other Party with respect to all covenants, agreements, and obligations contained in this Agreement. Neither Party may assign this Agreement to a separate legal entity, without the other Party's written consent. Nothing herein shall limit SFAR's right to assign its right to receive and collect payments hereunder. Any assignment or transfer not permitted by this Section shall not be effective and shall constitute a breach of this Agreement.

16.8 Governing Law. This Agreement and all of the transactions contemplated by it, as well as all matters arising out of or relating to it, including without limitation claims as to its validity, interpretation, construction, performance, and all claims sounding in tort, are governed by and shall be construed in accordance with the domestic laws of the State of California excluding any conflicts-of-laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction.

16.9 Remedies Cumulative. Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which any Party may have under this Agreement or applicable law. All rights and remedies of any Party, whether under this Agreement or applicable law, shall be cumulative.

16.10 Force Majeure. Except for the payment of fees, neither Party shall be liable under this Agreement because of a failure or delay in performing its obligations hereunder on account of any force majeure event, such as strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such Party.

16.11 Authority to Enter Agreement; Counterparts and Electronic Transmission. Each of the persons signing below, and each Party for whom they sign, hereby represents and warrants that she/he is fully and duly authorized on behalf of the Party for whom they sign to execute this Agreement and bind the Party to all of this Agreement's terms and conditions without any further act or resolution whatsoever. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document by the Parties. This Agreement may be executed in duplicate originals and each original shall fully bind each Party who has executed it. Executed copies and signatures transmitted by electronic means shall be deemed enforceable and binding.

IN WITNESS WHEREOF, the Parties have each caused its duly authorized representative, for and on its behalf, to execute this Agreement as of the date set forth below.

SAN FRANCISCO ASSOCIATION OF REALTORS

Name: Walter Baczkowski, Jr. Signature: _____
Title: CEO
Effective Date: _____.

VENDOR, Constellation Web Solutions, a (check one)
(clearly print, we will reject non-legible printed names)
 corporation limited liability company partnership sole proprietor or
 individual (if a corporation, limited liability company or partnership, the State in which
LICENSEE was formed is: Delaware,
USA).

By: _____
Signature: Dan Dlhhy
Printed Name: Dan Dlhhy
Title: Data & Compliance Manager
Date: _____

Address: 6737 West Washington Street, Suite 2120, Milwaukee, WI
Zip Code: 53214 .

Primary Contact Person for Purposes of Notice (Section 16.2) - *please print legibly*

Printed Name: Dan Dlhhy
Email Address: brokersolutions@constellationws.com .

Type of feed Requested (REQUIRED)

IDX Data Feed VOW Broker Back Office (Full)

PARTICIPANT (or managing broker), _____
(clearly print, we will reject non-legible printed names)

SFAR Member Number: _____

By: _____
Signature: _____

Date: _____.

SFARMLS APPROVED IDX VENDOR Blanket Approval Option

*As a Participant or Managing Broker, I authorize the use of this SFARMLS Approved IDX vendor for all Agents within my office. This option can only be selected if the **Vendor IS recognized as SFAR Approved and is an IDX Vendor.***

SUBSCRIBER (agent member), _____
(ONLY IF APPLICABLE – clearly print, we will reject non-legible printed names)

SFAR Member Number: _____

By: _____
Signature: _____

Date: _____.