

REALTORS® Association of Northeast Wisconsin MLS, Inc.

AVM Data Access Agreement

This AGREEMENT is made and entered into by REALTORS® Association of Northeast Wisconsin MLS, Inc. ("RANW MLS"), with offices at W6124 Aerotech Drive, Appleton, WI 54914; the real estate brokerage firm identified as "Firm" on the signature page below ("Firm"); and the individual or business association identified as "Consultant" on the signature page below, if any ("Consultant").

DEFINITIONS

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

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

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

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

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

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

Participant: This term has the meaning given to it in the RANW MLS Policies. For purposes of this Agreement, "Participant" does not apply to participants of MLSs other than RANW MLS.

RANW MLS Data: Data relating to real estate for sale, previously sold, or listed for sale, and to RANW MLS Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into RANW MLS's databases by RANW MLS Participants and RANW MLS, or on their behalf, excluding those fields designated as confidential in the MLS database.

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

RANW MLS'S OBLIGATIONS

2. RANW MLS grants to Firm a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the RANW MLS 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 RANW MLS 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. RANW MLS retains all rights not expressly granted herein.

3. RANW MLS agrees to provide to Firm and Consultant, during the term of this Agreement, (a) access to the RANW MLS Data via the Data Interface under the same terms and conditions RANW MLS offers to other RANW MLS Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the RANW MLS Policies. RANW MLS does not undertake to provide technical support for the Data Interface or the RANW MLS Data. The Data Interface, together with access to the RANW MLS 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 RANW MLS Data shall not constitute a default by RANW MLS under this Agreement.

FIRM'S OBLIGATIONS

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

5. Firm shall use the RANW MLS Data obtained under this Agreement for Firm AVM use only. Any other use is strictly prohibited. Firm shall not make the RANW MLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

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

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

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

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

CONSULTANT'S OBLIGATIONS

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

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

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

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

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

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

AUDITS OF COMPLIANCE

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

CONFIDENTIAL INFORMATION

17. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party

shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

18. The term of this Agreement begins on the date that RANW MLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in RANW MLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide Firm AVM services to it; (g) as provided in Paragraphs 28 and 31.

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

GENERAL PROVISIONS

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

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

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

Agreement. Liability of Firm and Consultant under this paragraph is joint and several.

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

24. **Dispute resolution; Attorney's fees.** In the event RANW MLS claims that Firm or Consultant has violated the RANW MLS Policies, RANW MLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the RANW MLS Policies, provided RANW MLS does not also base a claim that Firm or Consultant has breached this Agreement on the same facts. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Wisconsin located in Outagamie 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 RANW MLS's disciplinary procedures. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

25. **Indemnification.** Subject to Paragraph 23, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. Consultant indemnifies RANW MLS, Firm or customers of RANW MLS, Firm, or to whom Consultant provides a product or service using RANW MLS Data, against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from any third party claim of patent infringement. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

26. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

27. **No Waiver.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by

the party who is alleged to have waived its rights or to have agreed to a modification.

28. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

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

30. **Relationship of the Parties.** The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of RANW MLS or have any authority to make any agreements or representations on the behalf of RANW MLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

31. **Severability.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

