# Broker Public Portal

# MLS Data License Agreement

Draft version: August 10, 2015

This **Agreement** is made and entered into by and between Broker Public Portal (“**BPP**”) a Delaware Limited Liability Company and the multiple listing service (“**MLS**”) identified in the signature block of this Agreement. In consideration of mutual covenants and promises contained herein and intending to be legally bound, the Parties agree as follows:

DEFINITIONS

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

(a) **Active Listings:** All property listings that are currently for sale, auction, or lease.

(b) **BPP Properties:** The websites and mobile applications owned by, operated by, or under the control of BPP.

(c) **Confidential Information:** “Confidential Information” means information and material proprietary to the disclosing party, or designated “confidential” by the disclosing party, and not generally known to the public, that the receiving party 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 and other information of a similar nature (whether in oral, visual, audio, written or other form): (a) all MLS Data, except to the extent to which this Agreement permits its disclosure; (b) IP addresses, access codes and passwords; (c) any information the disclosing party obtains from any third party that the disclosing party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the disclosing party; and (d) any information designated as confidential or private from time to time 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; is independently developed by the receiving party; is received from a third party who has lawfully obtained and disclosed it without breaching any confidentiality agreement; or is already known by the receiving party at the time of its disclosure.

(d) **Data Interface:** A Real Estate Transaction Standard (RETS) data feed or another transport protocol and payload format mutually agreed upon by the parties.

(e) **IDX Data:** The portions of MLS Data that MLS provides to Participants for Participant’s use under the IDX provisions of the MLS Polices.

(f) **Licensed Data:** The following subset of the MLS Data licensed for use under this Agreement:

(i1) **Opt-out.** Licensed Data is provided on behalf of Participants on an **“opt-out”** basismeaning thatLicensed Data includes MLS Data of all MLS Participants, except those who have affirmatively indicated that MLS should not provide BPP their data (“opted out”). However, if MLS does not provide data on an opt-out basis to any other consumer facing website or app, MLS may provide MLS Data on an “opt-in” basis meaning that the License Data includes MLS Data of MLS Participants that affirmatively choose to send data to BPP (“opted in”).

(i2) **Statuses.** Licensed Data includes Active Listings, and Sold Listings if (1) MLS chooses to provide Sold Listings to BPP or (2) MLS provides Sold Listings to any other consumer facing website or app.

(ii) **Categories**. Licensed Data includes listings records of all categories, including but not limited to single family, multi-family, and condominium residential; lots and land; and commercial (or the equivalent categories).

(iii) **Fields.** Licensed Data includes all IDX Data fields as of the Effective Date, except those fields that are indicated as confidential or private. BPP acknowledges that MLS shall not be required to provide data fields that are no longer available in IDX display due to changes in MLS Policies or MLS’s rights to provide certain data to third parties.

(iv) **Media.** Licensed Data includes all photos and other media that MLS retains in its database or has links to for each listing, to the extent that MLS has the right to license them.

(v) **Roster Information.** Licensed Data includes person name, company name, physical address, email address, telephone number and other contact information retained in the MLS Data relating to each Participant and Subscriber. Roster Information shall be used by BPP only for the display purposes specified in this Agreement and for no other purpose.

(g) **Licensed Marks:** Those trademarks, service marks, word marks, logos and distinctive marks of all other kinds, if any, provided by MLS to BPP.

(h) **Licensed Materials:** The Licensed Data and Licensed Marks.

(i) **MLS Data:** Data relating to real estate for sale, previously sold, or listed for sale and data relating to Participants’ listings (including text, photographs, and all other data formats now known or hereafter invented), as well as Participants’ and Subscribers’ contact information, entered into the MLS’s databases by MLS Users.

(j) **MLS Policies**: MLS’s rules and regulations, as amended from time to time, and any operating policies promulgated by MLS.

(k) **MLS Users:** Participants, Subscribers, MLS staff persons, and other users of MLSs systems.

(l) **Off-Market Listings:** All property listings that are not Active Listings or Sold Listings.

(m) **Participant:** An individual or brokerage office participating in MLS as a principal broker.

(m2) **Sold Listings:** All property listings where a sale, auction, or lease is completed.

(n) **Subscriber:** An individual affiliated with a Participant as non-principal broker, salesperson, or real estate licensee.

MLS LICENSE

2. MLS grants to BPP a limited, worldwide, non-exclusive, non-transferable, royalty-free (except as provided in this Agreement) license to reproduce, sublicense (only for and to achieve the BPP’s permitted uses under this Agreement), distribute, publicly display and perform the Licensed Materials on and in connection with operation of BPP Properties and for internal development of the foregoing. MLS grants the foregoing license only to the extent necessary to achieve the purposes set out in this Agreement, only during the term of this Agreement, and only to the extent permitted by and subject at all times to the terms and restrictions of this Agreement, including Exhibit A. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. MLS retains all rights not expressly granted herein.

3. MLS represents that MLS has no actual knowledge that should reasonably cause MLS to conclude that any particular component or components of the Licensed Materials or the compilation of the Licensed Materials infringes the rights of any third party.

DATA ACCESS

4. During the term of this Agreement, MLS shall provide to BPP (a) access to the Licensed Data via the Data Interface; and (b) seven days’ advance notice of changes to the Data Interface. MLS may use a third party contractor, determined in MLS’s sole discretion, to facilitate the data access and any other responsibilities or rights of MLS under this Agreement. MLS does not undertake to provide technical support for the Data Interface or the MLS Data. The Data Interface, together with access to the 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 or unavailability of access to the Data Interface or MLS Data shall not constitute a default under this Agreement.

BPP’S ACKNOWLEDGEMENTS

5. BPP acknowledges that MLS provides the Licensed Data on an as-is, as-available basis. MLS shall not be liable to BPP for any claim arising from inaccuracies in the Licensed Data or any failure, whether on the part of BPP or of MLS, to update the data promptly.

6. BPP is responsible for any liability or loss of goodwill accruing to BPP associated with problems in data integrity, accuracy, or timeliness arising from BPP’s use of the Licensed Data.

7. The listings of some Participants and Subscribers may not be included in the Licensed Data if the listing Participant’s or Subscriber’s permission is required under MLS’s policies before their listings may be distributed to BPP.

BPP’S OBLIGATIONS

8. BPP shall display the MLS copyright notice on each display screen, web page (whether Internet- or Intranet-based), and printout displaying any part of the Licensed Data. The MLS copyright notice may take either of the following two forms: (a) “Copyright 20XX [MLS name]” or (b) “© 20XX [MLS name]”. BPP shall replace “20XX” with the current year as of January 1 of each year.

9. BPP shall employ reasonable measures to prevent “data piracy” and other unauthorized access and use of the Licensed Data, including efforts to prevent automated harvesting of Licensed Data (or portions of it) by third parties. Reasonable measures include industry-leading practices as generally used by companies of similar size and means to BPP. If a third party gains unauthorized access to Licensed Materials by scraping or other unauthorized data harvesting, BPP agrees to take reasonable measures, including legal measures, to prevent the third party’s use of Licensed Materials. If a third party gains unauthorized access to Licensed Materials, BPP will promptly notify MLS of such unauthorized access.

10. BPP shall not make the Licensed Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement.

11. BPP acknowledges that, as among the parties to this Agreement, MLS is sole owner of and possesses all right, title, and interest in all copyrights in the Licensed Data. (MLS acknowledges the rights of Participants and Subscribers in their listings; the previous sentence affects only relations between BPP and MLS.)

12. BPP warrants that any use of the MLS Data by BPP will not constitute infringement of the patent or other intellectual property rights of any third party.

13. BPP shall conform to the supplemental use restrictions set forth in Exhibit A.

MLS OBLIGATIONS

14. MLS shall pay the periodic fees set forth on BPP’s schedule of fees current as of the Effective Date (“Schedule of Fees”). BPP may amend the Schedule of Fees in its sole discretion upon 120 days’ advance notice to MLS. In the event that BPP amends the Schedule of Fees to increase fees due from MLS, MLS may terminate this Agreement by notice to BPP before the new Schedule of Fees goes into effect; MLS forfeits its right to terminate this Agreement under this Section if it fails to give notice of termination before the new Schedule of Fees goes into effect.

AUDITS OF COMPLIANCE

15. MLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of BPP to the extent reasonably necessary to ascertain BPP’s compliance with this Agreement (an “Audit”). MLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to BPP’s web sites and systems to ensure that Licensed Data is displayed in accordance with the MLS Policies; using all features available to end-users of BPP’s systems that employ the Licensed Data; and posing as consumers to register and test services BPP makes available to consumers using the Licensed Data. MLS shall pay the costs it incurs, and the out-of-pocket costs BPP incurs, as part of any Audit; BPP shall be liable, however, for all costs of any Audit that discloses that BPP has materially breached this Agreement.

CONFIDENTIAL INFORMATION

16. Each party shall protect the Confidential Information with the same degree of care it takes to protect its own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information to the extent law, court order, or regulation requires such disclosure; provided, however, that party makes commercially reasonable efforts to notify the other party in writing in advance of such disclosure.

17. Within five days after the termination of this Agreement, each party shall return to the other party all Confidential Information provided by the other party hereunder. BPP shall also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, except that BPP may retain copies of the Confidential Information of MLS that appears on backup media until such time as BPP would delete it in due course under BPP’s document retention polices or the backup media are destroyed. Upon the request of either party, an officer of the other party shall certify in writing that all materials have been returned and all magnetic or computer data have been destroyed except as provided in this paragraph.

TERM AND TERMINATION

18. **Development Term.** MLS acknowledges that BPP is currently developing methods to display MLS Licensed Data, and as such, this Agreement’s initial term (“Development Term”) is structured to enable BPP to conduct the development work. The Development Term begins on the Effective Date and will terminate upon first occurrence of either: (a) three (3) years after the Effective Date, or (b) when BPP releases BPP Properties to the general public.

19. **Operational Term.** The term, if any, after the Development Term is the “Operational Term,” which begins upon the end of the Development Term, if the Development Term ends as provided in Section 18(b). (There shall be no Operational Term in the event the Development Term ends as provided in Section 18(a).) The Operational Term shall be for one year, and unless this Agreement is terminated as provided in Section 20, shall auto-renew for one-year terms (“Renewal Terms”). The Development Term, Operational Term, and Renewal Term are generically referred to as “Term.”

20. **Termination.** This Agreement shall terminate upon the occurrence of any of the following events: (a) as provided in Section 14 or Section 18; (b) at the end of any Term so long as either party provides at least 30 days’ notice prior to the end of the Term to the other party of its intent to terminate the Agreement; (c) 10 days after either party’s notice to the other 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. In the event of any suspension or termination of this Agreement, BPP shall make no further use of the Licensed Data or any derivative works based on it until and unless BPP’s rights under this Agreement are restored.

21. **Suspension.** In the event BPP breaches this Agreement and entitles MLS to terminate under Section 20, MLS may in its sole discretion suspend its performance instead of terminating this Agreement. MLS may make this election by notice to BPP within three days after the initiation of the suspension. BPP’s obligations hereunder continue during any period of suspension.

GENERAL PROVISIONS

22. **Applicable law**. The laws of the state of MLS’s principal place of business shall govern this Agreement and its interpretation. Any action to enforce or interpret this Agreement shall have venue in the state and federal courts closest to the non-filing party’s principal place of business, and the parties hereby submit to personal jurisdiction in that venue.

23. **Survival of Obligations**. Sections 1, 10, 12, 13, 16, and 17, and Sections 22 through 32, and all Exhibits to which they refer, shall survive termination or expiration of this Agreement.

24. **Injunctive relief**. Because of the unique nature of the MLS Data and Confidential Information, BPP acknowledges that MLS would suffer irreparable harm in the event that BPP breaches its obligations under this Agreement, and that monetary damages would be inadequate to compensate MLS for a breach. MLS is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any threatened, continuing, or further breach by BPP without showing or proving any actual damages sustained by MLS, and without posting any bond or other security.

25. **Limitation of liability/exclusion of warranties.** **In no event shall EITHER PARTY be liable to THE OTHER for any indirect, special, incidental, consequential or punitive damages of any kind whatsoever arising from any breach of this Agreement, even if A PARTY has been advised of the possibility of such damages; EACH PARTY’S sole remedies against THE OTHER hereunder shall be termination of this Agreement and direct damages not in excess of the amounts MLS has paid to BPP hereunder in the 12 months immediately preceding the first event giving rise to any claim For breach. EACH PARTY disclaims ALL representations and warranties except those expressly set forth in this Agreement. This Section sets out EACH PARTY’S exclusive remedies, and UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE ENTITLED TO EQUITABLE REMEDIES, EXCEPT IN THE EVENT EITHER PARTY BREACHES OR THREATENS TO BREACH Section 16 OR SECTION 17 OR AS PROVIDED IN SECTION 24. EACH PARTY MAKES NO WARRANTY, INCLUDING THOSE OF TITLE, AVAILABILITY, OR NON-INFRINGEMENT, REGARDING MARKS LICENSED UNDER THIS AGREEMENT, IF ANY.**

26. **Attorney’s fees**. If any party prevails in any action to enforce or interpret this Agreement or any provision hereof, it shall be entitled to its reasonable attorney’s fees and costs for such legal action.

27. **Indemnification.** Subject to Section 25, in the event any party breaches any provision of this Agreement, that party (the “Indemnifying Party”) shall indemnify and defend 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 Indemnifying Party’s breach. BPP shall indemnify and defend MLS, customers of MLS, and Participants and Subscribers to whom BPP provides a product or service using MLS Data against any and all losses, damages, and costs (including reasonable attorneys’ fees) arising from any third-party claim of intellectual property infringement, except for such claims that are based solely on the Licensed Data. The Indemnified Parties shall (a) promptly notify the Indemnifying Party in writing 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 such claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party’s expense.

28. **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.

29. **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.

30. **No Assignment**. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement (each a “Transfer”) to any other party without the prior written consent of the other party. Any purported Transfer in contravention of this Section is null and void.

31. **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 subject matter.

32. **Relationship of the Parties**. The relationship of MLS to the BPP is that of independent contractor. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of MLS or have any authority to make any agreements or representations on the behalf of MLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees. Despite the other provisions of this Section, if MLS is a member of BPP, it is entitled to the governance rights set forth in the BPP LLC agreement.

33. **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 a court having jurisdiction over the parties holds any provision of this Agreement invalid or unenforceable, the parties shall negotiate in good faith to replace the invalid or unenforceable provision, if possible, with a valid provision that most closely approximates the intent and economic effect of the invalid provision. If any provision of the limitation of liability, exclusion of warranty, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate unless the parties agree to the contrary.

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In consideration of the mutual covenants set forth in this Agreement, the parties affirm and adopt this Agreement by setting their signatures below.

|  |  |
| --- | --- |
| **bpp**Broker Public Portal   Signature  NameDate:  (Effective Date of this Agreement)**Contact for notices and operations matters**Name: Phone: Email: Mailing:   | **MLS**  MLS name  Signature of officer  Name of officerDate: **Contact for notices and operations matters**Name: Phone: Email: Mailing:  **Contact for technical integration**Name: Phone: Email:  |

# Broker Public Portal

# MLS Data License Agreement

Exhibit A: Supplemental Restrictions on BPP’s Use of Licensed Materials

# DISPLAY OF LICENSED DATA

**(a) No paid placement:** Search results shall be displayed based on characteristics of properties or terms only. Search results will not be based on paid placement, and no “featured listings” or other paid placement will alter the display order of listings.

**(b) BPP must show contact information:** BPP must display the listing Participant and Subscriber contact information on any Detailed Listing Display, which at a minimum shall include Participant’s and Subscriber’s name, office name, address, email address, and phone number, and if provided by MLS, Subscriber’s team name. This information must be displayed in plain sight, requiring no additional click or scroll to reveal the information. As used in this Exhibit, a “Detailed Listing Display” is a display of a listing record from the Licensed Data where more than 20 fields of data or three or more photographs (or both) are displayed; or where only one listing record is being displayed on the page.

**(c) i. Prohibition on advertising on detailed displays by third parties:** BPP shall not display advertising for any third party or non-listing Participant or Subscriber on a Detailed Listing Display.

 **ii. BPP must clearly distinguish advertisements on non-detailed displays:** BPP may display advertisements on non-detailed displays, however, where advertisements for brokers other than the listing Participant or Subscriber are present, BPP must clearly distinguish between listing content and advertisement.

**(d) BPP will not allow comments:** Comments/blogging about listed properties will not be displayed on any page where Licensed Data is displayed.

**(e) [language deleted]**

**(f) Subscriber Reviews:** BPP shall not allow reviews of Participants or Subscribers on the BPP Properties, unless a Participant or Subscriber elects to allow reviews.

**(g) BPP will not alter Licensed Materials:** BPP may not alter Licensed Data without prior approval from MLS. This includes altering the content of any text data fields and altering any photo by cropping it or removing or altering metadata. BPP shall display listing photos on the BPP Properties in the order in which they are provided by MLS.

**(h) Source and copyright; update:** BPP shall accompany each Detailed Listing Display on a BPP Property with MLS’s copyright notice and identification of MLS as listing data source. Each such display shall also include the last date on which BPP updated the listing record from the Data Interface.

**(i) DMCA Safe harbor**. BPP shall register a designated agent with the U.S. Copyright Office for all of BPP Properties. BPP warrants it will comply with 17 U.S.C. 512 for removal of allegedly infringing content on BPP Properties. BPP shall promptly notify MLS of any claim that the Licensed Materials infringe any third party copyrights.

**(j) BPP must post a redirect link:** With each Detailed Listing Display on the BPP Properties, BPP must provide a link that directs consumers to the URL provided by listing Participant with each listing. (The link is usually to the corresponding listing detail page on Participant’s or Subscriber’s website but may be to a website operated by MLS).

**(k) [language deleted]**

**(l) BPP will not co-mingle FSBOs.** BPP must not co-mingle for sale by owner properties (FSBOs) with Licensed Data, including in search results and results displayed on a map.

**(m) BPP will brand leads:** Leads sent to Participants and Subscribers from BPP Properties will indicate that MLS is the source of the listing information that resulted in the lead.

**(n) BPP will not permit framing:** BPP will not permit any portion of its site to be framed by another, except to the extent expressly set out in Section 2.

**(o) Search engine optimization**: BPP shall not intentionally impede search engine indexing, valuing, ranking, or display of website links provided in Licensed Materials.

**(p) Applicable laws and Code of Ethics:** BPP shall alter its display of the Licensed Materials if and as necessary to comply with applicable laws and the Code of Ethics of the National Association of REALTORS®. (For example, if state law requires that a particular form of contact information for the Participant or Subscriber advertising, BPP shall include that contact information in any display of the Licensed Data.) BPP shall perform necessary alteration(s) within 10 days of notice to BPP by MLS of the legal requirement.

**(q) Communications regarding BPP Properties.** BPP may not provide consumers any interface, URL, or marketing language that purports to allow them to “search the MLS” or “search all homes for sale” or make any similar assertion about the completeness of the listing data.

# UPDATING AND ACCURACY

**(r) Priority of Licensed Data:** For purposes of display in the BPP Properties, BPP shall have Licensed Data trump all other data sources fed to BPP for a given property listing, if any.

**(s) BPP must promptly remove listings:** BPP must remove listing data that no longer appears in the Data Interface from BPP Properties within 2 hours after their absence from the Data Interface.BPP may not retain such data, formerly part of the Licensed Data, to compile historical or statistical information, unless expressly permitted in this Agreement.

**(t) BPP must promptly make changes:** Updates to Licensed Data, including but not limited to price changes, must be reflected on BPP Properties within 2 hours after they appear in the Data Interface, but BPP will use commercially reasonable efforts to incorporate such updates within 15 minutes after they appear in the Data Interface. BPP shall correct any inaccuracies in listing content on BPP Properties within 24 hours after they are reported to BPP by MLS or listing Participant or Subscriber.

# DATA USE RIGHTS

**(u) BPP must not syndicate:** BPP must not syndicate or distribute any portion of the Licensed Data outside of the BPP Properties. All Licensed Data received from MLS must remain resident on BPP’s server infrastructure at all times, and not on the equipment or servers of third parties, unless MLS consents in writing otherwise.

**(v) No charge for end users:** BPP shall not charge third parties any fee to access the Licensed Data via the BPP Properties.

**(w) No surrender of rights:** MLS grants a non-exclusive license under this Agreement and not an exclusive license or an assignment. BPP shall not attempt to obtain any assignment of Participant or Subscriber copyrights or any perpetual license to Licensed Data of a Participant or Subscriber by means of a “click through” or automated agreement. (BPP and Participants may enter into negotiated agreements for separate content licenses.)

**(x) No use for IDX or VOW:** BPP may not use the Licensed Data provided under this Agreement to provide VOW or IDX services (as those terms are defined in the MLS policies). BPP may be eligible to provide such services under separate agreements with MLS.

**(y) Non-compete:** BPP agrees that, during the Term of this Agreement and for one year thereafter, it shall not compete with MLS by providing a platform for real estate brokers to make or receive offers of cooperation and compensation or by providing a method or platform that effects the same purpose in the United States. If a court of competent jurisdiction finds this paragraph overbroad, the parties agree the court may reform the non-compete to be reasonable and protect the interests of MLS.

# SERVICES

**(z) BPP must provide leads:** Any display of a listing on the BPP Properties must make it possible for an interested consumer to connect with the listing Participant and Subscriber via email, telephone, or both without charge to the listing Participant, Subscriber or consumer. If BPP Properties have Subscriber profiles, they must auto-populate relevant information provided in the Licensed Materials. The listing Subscriber email must be included even if the Subscriber has not manually completed a profile on the BPP Properties.

**(aa) BPP must provide error reports:** BPP must provide MLS with detailed information regarding errors BPP identified when attempting to display Licensed Data on BPP Properties. Additionally, BPP must provide MLS the URL for each successfully posted property for tracking purposes, if BPP is displaying the Licensed Data on the BPP Properties.

**(bb) BPP must provide metrics:** BPP must provide MLS with listing-level page views and inquiries (such as emails, phone views or form completed, etc.) generated through the BPP Properties (“Traffic Data”), which will include, as of the Effective Date, the following metrics: search result impressions, views of full listings, leads delivered to listing Subscribers, lead method (phone, email or other), clicks to the broker website URL, the daily average number of listings from MLS that are displayed by BPP, source of the foregoing (mobile or computer and device type and operating system if available). BPP shall provide Traffic Data via (a) a user interface on the BPP Site accessible to MLS and its staff; and (b) an application programming interface (API) that permits MLS to draw the Traffic Data into MLS’s systems and make it available to Participants and Subscribers. The API shall include any information BPP makes available via the user interface. The API shall be RETS 1.8 or greater, unless BPP and MLS agree upon a different data format for the API.

**(cc) BPP must provide timely support:** BPP must respond to requests for support from MLS and its Participants and Subscribers within 24 hours.

# USE OF LICENSED MARKS

**(dd) No MLS endorsement:** Except as expressly provided in this Agreement, BPP shall not use MLS name or trademarks in conjunction with any BPP products or marketing.

**(ee)** BPP must display the Licensed Marks, if any, in conjunction with the Licensed Data in any product or service BPP delivers that incorporates the Licensed Data. Each such display shall conform to the requirements in this Agreement, including the following.

**(ff)** BPP may use the Licensed Marks only during the term of this Agreement.

**(gg)** BPP may use the Licensed Marks only on products and services incorporating the Licensed Data or a portion of it; on promotional materials directly related to such products; and not on any other material, including without limitation business cards, letterheads, office or yard signs, and other advertising.

**(hh)** If at any time this Agreement terminates or is suspended by MLS according to its terms, BPP will immediately and thenceforth eliminate the Licensed Marks from, and refrain from using the Licensed Marks in, any print or electronic publication or material, including web sites and brochures.

**(jj)** It is vitally important to the preservation of the Licensed Marks that Participants, Subscribers and the public consistently recognize the Licensed Marks as identifiers of MLS as a source of Licensed Data. To assure that the Licensed Marks are not used inadvertently and improperly, BPP may use the Licensed Marks only in a context in which they will be understood by the public to denote MLS as the source of the Licensed Data.

**(kk)** The BPP must use the Licensed Marks in the exact style and form provided by MLS. BPP shall not alter any of the Licensed Marks in any way during reproduction, except that BPP may alter the size of a Licensed Mark, provided the aspect ratio remains the same and each element of the Licensed Mark remains legible.

**(ll)** Without limiting the generality of the previous Section, BPP shall ***never*** make any of the following uses of the Licensed Marks:

(i) Redraw, round the corners, reshape, trace, tilt, intersect, photographically alter or otherwise distort the Licensed Marks.

(ii) Use any of the Licensed Marks as part of a company or individual name, or as any part of a domain name, URL, or web address.

(iii) Superimpose any of the Licensed Marks over any graphic pattern or design.

(iv) Combine any of the Licensed Marks with any other symbol or device.

(v) Outline or frame any of the Licensed Marks.

**(mm)** BPP may not use any of the Marks or any portion of them as part of any domain name or web site name of BPP. BPP may not use any of the Mark as a hypertext link, as such a use can suggest an endorsement or recommendation of the linked site by MLS. The only exception is to establish a link to MLS’s web site.