

# New Smyrna Beach Board of REALTORS® MLS DATA ACCESS SUBSCRIBER AGREEMENT For RETS/FTP Server Access

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This Agreement is made and entered into as of \_\_\_\_\_, by and between the New Smyrna Beach Board of REALTORS® (“NSBBOR”), and (Brokerage Firm) \_\_\_\_\_, the “MLS Participant” who requests direct access to the NSBBOR RETS and/or FTP Server and/or who consents to allow the named MLS Subscriber of his firm to have direct access to the NSBBOR RETS and/or FTP Server, (Agent Name) \_\_\_\_\_, the “MLS Subscriber”, if any, who requests direct access to the NSBBOR RETS and/or FTP Server subject to the MLS Participant’s consent and control), and (Vendor Firm) \_\_\_\_\_, the “Consultant”, if any, who will assist the MLS Participant or MLS Subscriber in accessing the NSBBOR RETS and/or FTP Server subject to the MLS Participant’s and MLS Subscriber’s consent and control.

The MLS Participant or MLS Subscriber desires to directly access the NSBBOR RETS and/or FTP Server to retrieve MLS listings solely for the purpose of displaying MLS listing data on a publicly accessible IDX/VOW web site and/or the MLS Participant’s intranet site.

Solely for the purpose of assisting MLS Participant and/or MLS Subscriber in this effort, the Consultant will be issued a Login ID and Password for direct access to the NSBBOR RETS and/or FTP Server.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, NSBBOR, the MLS Participant, the MLS Subscriber, and the Consultant all agree as follows:

## 1. Access

**1.1 Direct access** to the NSBBOR RETS and/or FTP Server will be made available to the MLS Participant, MLS Subscriber, and/or Consultant pursuant to this Agreement only to the extent such may be necessary to retrieve MLS Listings for the purpose described above and in accordance with the NSBBOR MLS Rules and Regulations.

**1.2 Means of Access.** Access shall be exclusively by the means designated by NSBBOR, in its sole discretion. NSBBOR may, in its sole discretion and upon thirty (30) days prior written notice to parties to this Agreement, change the means and nature of access.

**1.3 Changes** to NSBBOR RETS and/or FTP Server. NSBBOR shall not be obligated to make any changes to NSBBOR RETS and/or FTP Server, including any software running on NSBBOR RETS and/or FTP Server, the configuration, applicable protocols, or any other aspect of NSBBOR RETS and/or FTP Server for any reason, including changes which any party to this Agreement believes may be necessary to facilitate access to the MLS Listings. Notwithstanding the forgoing, NSBBOR may, at any time, modify or replace NSBBOR RETS and/or FTP Server, in its sole discretion, and parties to this Agreement understand that a modification of NSBBOR RETS and/or FTP Server may require changes to any applicable websites, including, but not limited to hardware, software, or configurations to provide for access to the MLS Listings.

**1.4 Availability.** NSBBOR makes no representations or warranties with respect to the response time for access to the MLS Listings. Parties acknowledge that NSBBOR RETS and/or FTP Server, together with access to the MLS Listings may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to NSBBOR RETS and/or FTP Server, or otherwise. Parties agree that any modification of NSBBOR RETS and/or FTP Server, and any interruption or unavailability of access to NSBBOR RETS and/or FTP Server, or access to or use of the MLS Listings shall not constitute a default under this Agreement, and that NSBBOR shall have no liability of any nature to any party for any such modifications, interruptions, unavailability, or failure of access.

## 2. Specific Use

The MLS Participant, the MLS Subscriber, and the Consultant shall not use information from the NSBBOR RETS and/or FTP Server for their benefit, business purpose, or purposes other than as specifically allowed by this Agreement and in accordance with the NSBBOR MLS Rules and Regulations. Consultant may display NSBBOR IDX data only on the MLS Participant’s publicly available website and/or the MLS Participant’s intranet site. NSBBOR IDX data may not be directly displayed as a result of any search function on the Consultant’s site, or any other site under Consultant’s control. Consultant may not share, re-transmit, allow searching of or framing NSBBOR IDX data with any other site.

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## 3. Ownership & Intellectual Property

The NSBBOR RETS and/or FTP Server information shall be and remain the sole, absolute and exclusive property of NSBBOR. Parties acknowledge and agree that the compilation of MLS Listings in the MLS Database is a proprietary, original work of authorship of NSBBOR, or licensed to NSBBOR, protected under United States copyright, trademark, patent and trade secret laws of general applicability. Parties further acknowledge and agree that all right, title, and interest in the MLS Database and MLS Listings are and shall remain with NSBBOR. This Agreement does not convey or grant to Consultant an interest in or to the Database or MLS Listings, but only a limited right to access and display the MLS Listings, revocable in accordance with the terms of this Agreement. In the event of any claim for infringement or misappropriation of the Database or MLS Listings, all damages awarded and other awards and recoveries shall be the exclusive property of NSBBOR, and all such amounts shall be paid to NSBBOR. In the event, for any reason, Consultant obtains possession or control of any such damages or awards, Consultant agrees to hold all such funds as trustee in trust for the exclusive benefit of NSBBOR. Consultant agrees that it will not challenge or take any action inconsistent with NSBBOR's rights to the Database or MLS Listings.

## 4. MLS Participant (Brokerage Firm) Obligations

**4.1 Rules and Policies.** MLS Participant/Subscribers shall comply with the NSBBOR Rules and IDX/VOW Policies at all times; particularly the requirements and disclosures specified in NSBBOR MLS Rules & Regulations Sections 13, 18 & 19. In the event of any conflict or purported conflict between this Agreement and the NSBBOR Policies, the NSBBOR Policies shall govern this Agreement.

<https://nsbbor.getlamps.net/documents/MLS%20RULES%20AND%20REGULATIONS.pdf>

**4.2 Confidential Information.** MLS Participant shall comply with the requirements relating to Confidential Information set forth below.

**4.3 Third-Party Access.** In the event that MLS Participant desires to make the MLS Listing Data or the Confidential Information available to any third party, MLS Participant agrees to require such third party to execute this Agreement and become a Consultant; who must also execute a "Multiple Listing Service Standard Non-Participant (Vendor) License Agreement".

**4.4 Breach of Rules.** If NSBBOR notifies MLS Participant of a breach of the Rules or this Agreement and MLS Participant does not immediately cure such breach, MLS Participant agrees that NSBBOR may seek cure from the Consultants, MLS Participant, Subscriber, or any one or all of them. MLS Participant shall notify NSBBOR within five (5) business days of any change to the information provided by MLS Participant for purposes of this Agreement.

## 5. Consultant Obligations

**5.1 Rules and Policies.** Consultant shall comply with the NSBBOR Rules and IDX Policies at all times. In the event of any conflict or purported conflict between this Agreement and the NSBBOR Policies, the NSBBOR Policies shall govern this Agreement. Consultant must also execute a "Multiple Listing Service Standard Non-Participant (Vendor) License Agreement".

### Pursuant to the NSBBOR Policies:

**5.2 Data Usage.** Consultant shall use the NSBBOR MLS Listing Data obtained under this Agreement for MLS Participant's publicly available IDX/VOW web site or the MLS Participant's intranet site only; any other use is strictly prohibited.

**5.3 MLS Participant Permission.** Consultant and/or MLS Subscriber acknowledges that display of any listing on any IDX site operated with NSBBOR Data requires permission of the listing broker. Broker participation in IDX is an op-out choice.

**5.4 Consultant is responsible** for any liability or loss of goodwill associated with problems in data integrity, accuracy, or timeliness arising from Consultant's use of the NSBBOR Data.

**5.5 Data Piracy.** Consultant shall employ reasonable measures to prevent "data piracy" and other unauthorized access and use of the NSBBOR Data; from time to time, NSBBOR may, in its sole discretion, specify particular security measures Consultant must take.

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**5.6 Confidentiality.** Consultant shall not make the NSBBOR Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement.

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

**5.8 Breach.** If NSBBOR notifies MLS Participant of a breach of the NSBBOR Policies or this Agreement and Consultant does not immediately cure such breach, NSBBOR may seek cure from the Consultant, and/or MLS Participant, and/or MLS Subscriber, or all.

**5.9 Copyright Notice.** Consultant shall display the NSBBOR copyright notice on each display screen, web page (whether Internet or Intranet based), and printout displaying NSBBOR Data. The NSBBOR copyright notice may take either of the following two forms: (a) "Copyright [YEAR] New Smyrna Beach Board of REALTORS®, Inc." or (b) "© [YEAR] New Smyrna Beach Board of REALTORS®, Inc."

**5.10 Fees.** Consultant shall pay the initial and periodic fees, if any, that NSBBOR customarily charges other Data Subscribers for data access. Consultant acknowledges receipt of NSBBOR's current schedule of such fees, Exhibit A. NSBBOR may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Consultant.

**5.11 Notice.** Consultant shall notify NSBBOR within five (5) business days of any change to the information to the information provided by MLS Participant for purposes of this Agreement.

**6. Confidentiality** Consultant shall comply with the requirements relating to Confidential Information set forth below.

"Confidential Information" is information or material proprietary to NSBBOR or designated "confidential" by NSBBOR and not generally known to the public that MLS Participant or Consultants or any one of them (the Receiving Party") may obtain knowledge of or access to as a result of access under 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 Listing Data, except to the extent this Agreement and the Rules permit its disclosure;
- b. all documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;
- c. software, source code, object code, diagrams, flow charts;
- d. techniques, procedures;
- e. IP addresses, access codes and passwords; and
- f. any information that NSBBOR obtains from any third party that NSBBOR treats as proprietary or designates as Confidential Information, whether or not owned or developed by NSBBOR.

**7. Title.** The parties acknowledge that title to the Confidential Information remains at all times with NSBBOR or with the third parties in whom title existed prior to this Agreement or prior to disclosure by NSBBOR.

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

**9. Restrictions on Use – Unauthorized Uses.** The parties will not make copies of the Confidential Information and will not directly or indirectly disclose, display, provide, transfer or otherwise make available the Confidential Information to any person or entity, unless the party has received prior written consent of NSBBOR to do so. At no time and under no circumstances will the parties reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. The parties will not incorporate the Confidential Information into any other work or product, except as provided for in this Agreement.

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**10. Restrictions on Use – No Third Party Access.** Only the party's own employees will access the Confidential Information. The parties will not provide access to the Confidential Information to third parties, including consultants or independent contractors not named in this Agreement, without prior written consent from NSBBOR.

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

**12. Term.** The term of this Agreement begins on the Date set forth in this Agreement. NSBBOR has the right at any time and in its sole discretion to terminate this Agreement. This Agreement shall terminate upon the occurrence of any of the following events:

- a. NSBBOR's notice to MLS Participant that this Agreement is terminated.
- b. MLS Participant notice to NSBBOR that it no longer intends to access the NSBBOR RETS and/or FTP server.
- c. Termination of MLS Participant's privileges as a MLS Participant by NSBBOR.

**13. Survival of Obligations.** The obligations of MLS Participant set forth under Section 4 above and the obligations of Consultants under Section 5 above shall survive the termination or expiration of this Agreement.

**14. NSBBOR's Remedies.** Because of the unique nature of the MLS Listing Data and Confidential Information, MLS Participant and Consultants acknowledge that NSBBOR would suffer irreparable harm in the event that any of them breaches its obligation under this Agreement, and that monetary damages would be inadequate to compensate NSBBOR for a breach. NSBBOR is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by MLS Participant or Consultants or any one of them, without showing or proving any actual damages sustained by NSBBOR.

**15. Attorney's fees.** If NSBBOR prevails in any action to enforce or interpret this Agreement or any provision hereof, the party against whom enforcement or interpretation was sought will pay NSBBOR's reasonable attorney's fees and costs for such legal action.

**Limitation of Liability.** NSBBOR shall not be liable for any incidental or consequential damages under any circumstances, even if NSBBOR has been advised of the possibility of such damages. NSBBOR shall have no liability for inaccuracies in the MLS Listing Data.

**16. 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 below or such other address of which any party may advise the others in writing during the term of this Agreement.

**17. 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.

**18. No Assignment.** Neither MLS Participant nor Consultants, nor any of them, may assign or otherwise transfer any of their rights under this Agreement to any party without the prior written consent of NSBBOR.

**19. Entire Agreement.** This Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings whether oral or written. The previous sentence notwithstanding, the Rules are expressly incorporated into this Agreement by reference.

**20. Applicable law.** This Agreement is governed by and enforced according to the laws of the State of Florida.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

NOTE: Under this Agreement, MLS Participant/Subscriber is permitted to work only with the Consultant named here for a single URL. If MLS Participant/Subscriber chooses to engage a different consultant or additional consultants or additional URL, MLS Participant/Subscriber must enter into a new version of this agreement with NSBBOR and each such consultant and/or URL.

\_\_\_\_\_  
Name of Agent/Subscriber

\_\_\_\_\_  
Consultant (Firm name)

\_\_\_\_\_  
Signature of Agent/Subscriber

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
MLS Participant (Brokerage name)

\_\_\_\_\_  
Print Consultant Name

\_\_\_\_\_  
Signature of Designated Broker

\_\_\_\_\_  
Consultant Phone:

\_\_\_\_\_  
Cora Baker, Association Executive, NSBBOR

Participant site URL: \_\_\_\_\_

Consultant Mailing Address: \_\_\_\_\_

Consultant E-mail: \_\_\_\_\_

Consultant Web Address: \_\_\_\_\_

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## **Exhibit A**

### **Schedule of Fees**

Fees - \$225 one-time administrative setup/\$200 annual data/administrative per URL.

Fee exception - 3<sup>rd</sup> party vendors (Licensees) requesting/using persistent MLS data feeds (FTP/RETS) for multiple-agent services pay a (single) setup and annual data fee as previously established by NSBBOR (\$225 setup/\$200 annual). However, any eligible NSB agent(s) that wishes to use the RETS Server for a personal URL (3<sup>rd</sup> party vendor or otherwise) shall not be charged a fee but are still required to submit all required data request forms to the MLS for approval. (Adopted by BODs 5/20/09)

MLS Data as specified in this Agreement utilizes the following Data Interface:

1. Real Estate Transaction Standard (RETS Server)
2. ~~File Transfer Protocol (FTP)~~ (FTP no longer supported nor offered)