

## PRO Biz, Inc. Participant Data Access Agreement

This AGREEMENT is made and entered into by PRO Biz, Inc. ("PRO Biz"), with offices at 4590 Ulmerton Road, Clearwater, FL 33762; \_\_\_\_\_ ("Firm"), with offices located at \_\_\_\_\_; the Sales Associates affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the "Sales Associate Party"); and \_\_\_\_\_ ("Consultant"), with offices at \_\_\_\_\_.

### DEFINITIONS

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

**Confidential Information:** "Confidential Information" means information or material proprietary to a party or designated "confidential" by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all PRO Biz Data, except to the extent to which this Agreement and the PRO Biz Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that PRO Biz obtains from any third party that PRO Biz treats as proprietary or designates as Confidential Information, whether or not owned or developed by PRO Biz; (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 PRO Biz for use by Firm, Sales Associate Party, and Consultant; PRO Biz may modify the Data Interface in its sole discretion from time to time.

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

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

**IDX:** Use and display of portions of the PRO Biz Data under the PRO Biz IDX provisions of the PRO Biz Policies.

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

**PRO Biz Data:** Data relating to real estate for sale, previously sold, or listed for sale and data relating to PRO Biz Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into PRO Biz's databases by PRO Biz Participants and PRO Biz, or on their behalf.

**PRO Biz Policies:** PRO Biz's Rules and Regulations, as amended from time to time, and any operating policies promulgated by PRO Biz.

**Sales Associate:** Any person holding a real estate license in Florida who is not a Participant (as the term is defined in the MLS Policies) but who is subject to a Participant's supervision under the laws of Florida.

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

### PRO BIZ'S OBLIGATIONS

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

3. PRO Biz agrees to provide to Firm (and Sales Associate Party, where applicable) and Consultant, during the term of this Agreement, (a) access to the PRO Biz Data via the Data Interface under the same terms and conditions PRO Biz offers to other PRO Biz Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the PRO Biz Policies. PRO Biz does not undertake to provide technical support for the Data Interface or the PRO Biz Data.

### FIRM'S OBLIGATIONS

4. Firm and Sales Associate Party shall comply with the PRO Biz Policies at all times. In the event of any perceived conflict between the PRO Biz Policies and this Agreement, the PRO Biz Policies shall prevail and govern.

5. Firm and Sales Associate Party shall use the PRO Biz Data obtained under this Agreement for Firm Internal Use, IDX, or VOW use. Any other use is strictly prohibited. Firm and Sales Associate Party shall not make the PRO Biz Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Sales Associate Party may display the PRO Biz Data on a web site available to the public only to the extent permitted by the PRO Biz Policies and then only on a site or sites resident at the second-level and third-level domain(s) indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Sales Associate Party acknowledge that ownership and use rights relating to copyrights in the PRO Biz Data are defined in the PRO Biz Policies or in the terms of the participant and subscriber agreements between PRO Biz Firm and Sales Associate Party, or both. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

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

8. Firm and Sales Associate Party shall pay the fees, if any, that PRO Biz customarily charges other PRO Biz Participants for data access. Firm and Sales Associate Party acknowledge receipt of PRO Biz's current schedule of such fees, if any. PRO Biz may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Sales Associate Party. Firm and Sales Associate Party shall be liable for all costs,

including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Sales Associate Party's and 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 PRO Biz Policies within its control, whether committed by Firm, Sales Associate Party, or Consultant, upon notice from PRO Biz.

11. Consultant acknowledges that (as among the parties to this Agreement) Firm and PRO Biz possess all right, title, and interest in all copyrights in the PRO Biz Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

12. Consultant shall not make the PRO Biz Data or the Confidential Information available to any third party, except on behalf of Firm and Sales Associate Party and in a manner consistent with Firm's and Sales Associate Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the PRO Biz Data, whether commercial or personal. In the event that Consultant provides services to Participants other than Firm (or to Sales Associates affiliated with Firm other than the Sales Associate Party), Consultant must enter separate contracts with PRO Biz. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant; and in the case of Sales Associates, that each Sales Associate Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in PRO Biz terminating all of Consultant's access(es) to the PRO Biz 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 shall notify PRO Biz within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

### AUDITS OF COMPLIANCE

14. PRO Biz may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Sales Associate Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Sales Associate Party's, and Consultant's compliance with this Agreement ("Audit"). PRO Biz may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Sales Associate Party's, and Consultant's web sites and systems to ensure that PRO Biz Data is displayed in accordance with the PRO Biz Policies; using all features available to end-users of Firm's, Sales Associate Party's, and Consultant's systems that employ the PRO Biz Data; and posing as consumers to register and test services Firm, Sales Associate Party, and Consultant make available to consumers using the PRO Biz Data. PRO Biz shall pay the costs it incurs as part of any Audit; provided, however, Firm or Sales Associate Party shall be liable for all costs of any Audit that discloses that Firm, Sales Associate Party, 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

15. 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

16. The term of this Agreement begins on the date that PRO Biz signs the Agreement. This Agreement shall terminate upon the occurrence of any of the following events: (a) 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 IDX or VOW services to it; (f) with regard to any Sales Associate Party, immediately upon any event that results in the Sales Associate Party no longer being affiliated with Firm; (g) as provided in Paragraphs 26 and 29.

17. In the event Firm's privileges as a Participant (or Sales Associate Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and PRO Biz subsequently reinstates those privileges, this Agr immediately upon termination of Firm's privileges as a Participant in PRO Biz; (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) eement shall automatically be reinstated if PRO Biz resumes its obligations under Paragraphs 2 and 3. In the event Firm, Sales Associate Party, or Consultant breaches this Agreement and entitles PRO Biz to terminate under Paragraph 16, PRO Biz may in its sole discretion suspend its performance instead of terminating this Agreement. PRO Biz may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Sales Associate Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, neither Firm, Sales Associate Party, nor Consultant shall make any further use of the PRO Biz 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 Sales Associate Party's rights under this Agreement are restored.

### GENERAL PROVISIONS

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

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

20. **PRO Biz's Remedies.** (a) Injunctive relief: Because of the unique nature of the PRO Biz Data and Confidential Information, Firm, Sales Associate Party, and Consultant acknowledge and agree that PRO Biz 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 PRO Biz for a breach. PRO Biz is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Sales Associate Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by PRO Biz, and without posting any bond. (b) Liquidated damages: Firm, Sales Associate Party, and Consultant acknowledge that damages suffered by PRO Biz from access to the PRO Biz Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the PRO Biz Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to PRO Biz to enter into this Agreement, Firm, Sales Associate Party, and Consultant agree that in the event Firm, Sales

Associate Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the PRO Biz Data or disclose the PRO Biz Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Sales Associate Party, and Consultant shall be liable to PRO Biz for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Sales Associate Party, and Consultant under this paragraph is joint and several.

21. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL PRO BIZ BE LIABLE TO FIRM, SALES ASSOCIATE PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF PRO BIZ 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 PRO BIZ BE LIABLE TO FIRM, SALES ASSOCIATE PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM AND CONSULTANT HAVE PAID PRO BIZ, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, SALES ASSOCIATE PARTY, AND CONSULTANT ACKNOWLEDGE THAT PRO BIZ PROVIDES THE PRO BIZ 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. PRO BIZ SHALL NOT BE LIABLE TO FIRM, SALES ASSOCIATE PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE PRO BIZ DATA, ANY FAILURE TO UPDATE THE PRO BIZ DATA PROMPTLY, OR THE PRO BIZ DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. PRO BIZ makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.

22. **Dispute resolution; Attorney's fees.** In the event PRO Biz claims that Firm, Sales Associate Party, or Consultant has violated the PRO Biz Policies, PRO Biz may, at its option, resolve such a claim according to the disciplinary procedures set out in the PRO Biz Policies, provided PRO Biz does not also base a claim that Firm, Sales Associate Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, may be settled by arbitration administered by a mutually agreed upon arbitrator, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Florida located in Pinellas County or the federal court of the United States situated in the Middle District of Florida Tampa Division, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to PRO Biz's disciplinary procedures or to arbitration. 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.

23. **Indemnification.** Subject to Paragraph 21, 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. 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.

24. **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.

25. **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.

26. **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.

27. **Entire Agreement.** Subject to PRO Biz Policies, this Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same.

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

29. **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.

## PRO Biz, Inc. Participant Data Access Agreement

Under this Agreement, **FIRM AND SALES ASSOCIATE PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Sales Associate Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with PRO Biz and each such consultant. Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM AND SALES ASSOCIATE PARTY NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Sales Associates affiliated with Firm except the Sales Associate Party. Consultant must enter into a new version of this Agreement with PRO Biz and each additional Participant or amend this Agreement with PRO Biz to add additional Sales Associates affiliated with Firm as Sales Associate Parties. All domains and second, third, or other level domains where the data will appear must be listed on this agreement. (See Exhibit A for definition of domains.)

If Firm or Sales Associate Party will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box before returning this Agreement to PRO Biz. If this Agreement is for services to Firm only, and there is no Sales Associate Party, Firm should cross out the Sales Associate Party signature box before returning this Agreement to PRO Biz.

<p><b>FIRM</b></p> <p>_____</p> <p>Firm name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>_____</p> <p>Name of owner or officer</p> <p>Date: _____</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____</p> <p>Domain: _____</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>	<p><b>SALES ASSOCIATE PARTY</b></p> <p>(If there is more than one, have each named and sign on Exhibit A.)</p> <p>_____</p> <p>Sales Associate Party name</p> <p>_____</p> <p>Signature of Sales Associate Party</p> <p>Date: _____</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____</p> <p>Domain: _____</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>
<p><b>PRO BIZ</b></p> <p>PRO Biz, Inc.</p> <p>_____</p> <p>Signature</p> <p><u>Ann Guiberson, President/CEO</u></p> <p>Name</p> <p>Date: _____</p> <p>(effective date of this Agreement)</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: <u>Matthew Simmons</u> _____</p> <p>Phone: <u>727-347-7655 x 3003</u> _____</p> <p>Email: <u>msimmons@tampabayrealtor.com</u> _____</p> <p>Mailing: <u>4590 Ulmerton Road</u> _____</p> <p><u>Clearwater, FL 33762</u> _____</p>	<p><b>CONSULTANT</b></p> <p>_____</p> <p>Consultant name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>_____</p> <p>Name of owner or officer</p> <p>Date: _____</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____</p>

# PRO Biz, Inc.

## Participant Data Access Agreement

### Exhibit A – Services Requested and Charges

**1. Participant requests the following ftp services:**

- IDX Feed
- VOW Feed

**2. Fees (all fees are subject to change annually)**

Set-up Fee (one-time fee)	\$ 200
Annual Fee per IDX single broker agreement	\$ 600
Annual Fee per 3-4 broker aggregated franchise agreement	\$1,500
Annual Fee per 5 or more broker aggregated franchise agreement	\$2,500
Annual Fee per VOW agreement (no aggregated feeds) (Annual fee includes maintenance, system support, and monitoring)	\$ 600

Note: MLS Policies and Rules may be viewed in the MLS Reference Center on [www.tampabayrealtor.com](http://www.tampabayrealtor.com) and may be accessed via the sidebar in the Suncoast MLS.

**URL:** "URL" means a web address, including the "http://" and any material appearing after a slash in the address.  
**Domain Name:** "Domain Name" means a URL, less the "http://" and any material appearing to the right of the first '/' in the address. (So for example, in the URL "Http://janesmith.abcrealty.com/homepage.html", the Domain Name is "JANESMITH.ABCREALTY.COM".)  
**Top Level Domain:** "Top Level Domain" means the portion of the Domain Name to the right of the right-most period. (In the example, "COM".)  
**Second-Level Domain:** "Second Level Domain" means that portion of a domain name to the left of the right-most period, up to the second period from the left, if any, plus the Top Level Domain. (In the example, "ABCREALTY.COM".)  
**Third-Level Domain:** "Third Level Domain" means that portion of a domain name to the left of the second period from the left, if any, up to the third period from the left, if any, plus the Second Level Domain. (In the example, "JANESMITH.ABCREALTY.COM".).





## **PRO Biz, Inc. Participant Data Access Agreement**

### **Exhibit D – IDX Rules**

#### **Section 16.1: Internet Data Exchange**

Internet Data Exchange (IDX) is a program that provides Participants and Subscribers with specifically-approved MLS active listing information that may be displayed on their public Web sites. Advertising other Participants' active listings in any other media or through any means outside the IDX program is prohibited.

#### **Section 16.2: IDX Authorization**

Participants' consent for display of their active listings by other Participants pursuant to these rules and regulations is presumed unless a Participant affirmatively notifies the MLS that the Participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of that Participant's listings, that Participant may not download or frame the aggregated MLS data of other Participants. Even where Participants have given blanket authority for other Participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis as instructed by the seller.

Participant's consent to display of their listings by other Participants is required in order to have their listings transmitted by the MLS to aggregators/publishers of real property ads.

#### **Section 16.3: IDX Participation**

Participation in IDX is available to all MLS Participants engaged in real estate brokerage who consent to display of their listings by other Participants. This requirement can be met by maintaining an office or Internet presence from which Participants are available to represent real estate sellers or buyers (or both).

#### **Section 16.4: Accessing IDX**

A. IDX is available by selecting one of the following two options:

- Download the IDX database created especially for this purpose through an MLS-approved File Transfer Protocol (FTP) interface (data feed) and place the IDX database on the Participant's Web site. This option is available to Participants only; however Participants may provide a framed solution to their affiliated Subscribers.
- Use an MLS-approved framed IDX product such as PRO-IDX or FAR's IDX

The following IDX rules apply to both options above.

B. Participants and Subscribers are prohibited from acquiring access to the IDX database, or any of the information it contains, through methods other than those stated above, including, but not limited to:

- using the process of "screen scraping"
- direct links from the MLS system through auto-notification, downloads from the MLS, or other similar technology to extract MLS active listing information from the MLS
- other Participant's IDX sites
- other Web sites on which MLS information may be found. This includes national, regional or local Web sites, whether public or private, with whom the MLS may have contracted for the display of aggregated MLS active listing information.

#### **Section 16.5: Reporting and Monitoring URLs for IDX Sites**

Participants must notify the MLS of their intention to establish an IDX site and must make their site directly assessable to the MLS for the purposes of monitoring and ensuring compliance with applicable rules and policies. Participants must provide the MLS with all URLs that point to their sites.

If Participants choose an FTP download option, Participants (Principal Brokers only) may develop and rebrand their own IDX product to provide to their affiliated Subscribers, provided that data content conforms to these IDX rules. The Participant is required to maintain a list of all of the URL's where the IDX database appears and to provide a current copy to the MLS.

All Subscriber Web sites used to display the IDX database or any portion of it must be approved by and controlled by the Participant. It is the Participant's responsibility to ensure Subscriber Web sites conform to these rules, including ensuring the Web sites are properly identified as a real estate brokerage Web site. The Participant is required to notify the MLS of the intention to establish a Subscriber IDX site, to maintain a list of all of the URLs where the IDX database appears, and to provide the MLS with all URLs that point to Subscriber sites.

**Note:** Web sites must comply with Section 14.22 and 14.23 of MLS Participants standard of Conduct as well as any NAR, FAR or state real estate law.

### **Section 16.6: Protecting IDX Information**

Participants must protect IDX information from misappropriation by employing reasonable efforts to monitor and prevent "scraping" or other unauthorized accessing, reproduction, or use of the MLS database.

### **Section 16.7: Listings or Property Addresses**

Listings or property addresses of sellers who have directed their listing Participants to withhold their listing or property address from display on the Internet shall not be accessible via IDX sites. Notwithstanding this prohibition, listing Participants may display on their IDX sites or their Web site(s) the listing or property address of consenting sellers.

### **Section 16.8: Refreshing MLS Data**

Participants must refresh all MLS downloads and refresh all MLS data at least once every seven (7) days.

### **Section 16.9: Sharing the IDX Database**

Except as provided in these rules, an IDX site or a Participant or user operating an IDX site may not distribute, provide, or make any portion of the MLS database available to any other person or entity. Participants are prohibited from sharing any portion of the MLS compilation or the IDX database or display with any third party in a manner not authorized by these MLS Rules and Regulations.

### **Section 16.10: Third Party Contractors**

Participants who use a third party vendor or contractor to design or host their Web site that will display the IDX database or that will program an IDX display must enter into a written license agreement with the MLS and the third party using the forms and agreements prescribed by the MLS. This agreement will govern the terms and conditions upon which the MLS will permit the third party to download or frame the IDX database on behalf of the Participants.

It is strictly prohibited to provide a third party supplier, vendor, or contactor with the Participant's or Subscriber's logon information.

The Participant must provide the third party provider with the rules governing display of IDX listings.

### **Section 16.11: Service Charges**

Service Fees and Charges: Service fees and charges for IDX services shall be as established annually by the PRO Biz, Inc. Board of Directors. The MLS reserves the right to establish a limit to the data that consumers can retrieve or download in response to a single search inquiry to fifty (50) listings.

### **Section 16.12: Violations**

If the MLS determines through appropriate procedures for enforcing the MLS Rules and Regulations that Participants or affiliated Subscribers have operated their IDX site or used the IDX database in a manner not

permitted by this section, Participants and/or Subscribers must make the required changes to the IDX site or sites in question as directed by the MLS; and the required changes must be made within two business days from the date the MLS sends a written notice which may be by letter, fax or e-mail, to the Participant.

Failure to remove the data, all links and all web pages from the public site or sites will incur an automatic \$1,000 fine for the first violation. If the violation persists beyond two business days, MLS services will be suspended for at least thirty days or until the situation is remedied. For second and succeeding violations, there will be immediate assessment of a \$5,000 fine and suspension of MLS services for thirty days. Service will not be restored until all requirements are met. For continuing violations of this rule, the Participant and/or subscriber will be required to attend a hearing to determine whether MLS services should be suspended, terminated, or other appropriate action taken.

## **Display of the IDX Database**

### **Section 16.13: Rules for Display**

Display of listing information pursuant to IDX is subject to the following rules.

### **Section 16.14: Confidential Data Fields**

Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Prohibited fields are confidential fields intended only for other MLS Participants and Subscribers and fields with sensitive information. Examples:

- Cooperative compensation offers
- Showing instructions
- Property security information may not be displayed on IDX sites
- Seller's and/or occupant's names, phone numbers, and e-mail addresses.
- Realtor<sup>®</sup> Remarks

**Note:** Property address may be chosen as a data field to be displayed on PRO IDX as determined by MLS Participant or MLS Subscriber.

### **Section 16.15: Modification of IDX Data**

Participants shall not modify or manipulate information relating to other Participants' listing. (This is not a limitation on site design, but refers to changes to actual listing data.) MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.

### **Section 16.16: Identify Listing Firm**

All listings displayed pursuant to IDX shall identify the listing firm in a readily visible color and typeface not smaller than the median used in the display of listing data. Each full detail listing display of another Participant's IDX listing record must include the following statement:

"Courtesy of { name of listing office. }

### **Section 16.17: Identify Source of Data**

All listings displayed pursuant to IDX shall show the MLS as the source of the information.

Listings obtained through IDX must be displayed separately from listing obtained from other sources, including information provided by other MLSs. Listings obtained from other sources (e.g. from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained.

### **Section 16.18: Display Disclaimers**

Participants and Subscribers must include an MLS-approved IDX icon next to each thumbnail display of listings of other Participants. The MLS copyright notice must be displayed on every Web page containing IDX listings.

Participants and Subscribers shall indicate on their Web sites that IDX information is provided exclusively for consumer's personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect Participants and/or the MLS from liability.

**Section 16.19: Right to Display**

The right to display other Participants' listings pursuant to IDX shall be limited to a Participant's office(s) holding participatory rights in this MLS.

**Section 16.20: Display of Expired, Withdrawn, and Pending Listings**

Display of expired, withdrawn (both conditional and unconditional), and pending listings is prohibited.

**Section 16.21: Limit for Single Search Inquiry**

The MLS reserves the right to establish a limit to the data that consumers can retrieve or download in response to a single search inquiry to fifty (50) listings.

**Section 16.22: Selection of Listings**

Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown," etc.), list price, type of property (e.g. condominiums, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell, exclusive brokerage, or open listings ), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each participant.

**PRO Biz, Inc.**  
**Participant Data Access Agreement**  
**Exhibit E – Virtual Office Website (VOW) Rules**

**Section 11.2: Confidential Information**

A Participant or subscriber may not make available in any format (including but not limited to oral, written, printed, Internet display or download, or Internet search) to consumers, clients, or customers any of the following information:

- a. The compensation offered to other MLS Participants.
- b. Seller(s) and occupant(s) name(s), phone number(s), and email address(es).
- c. Realtor® Remarks
- d. Showing Instructions
- e. Security System

Confidential information is intended for use by participants and subscribers only.

**Section 17.1**

**(a):** A Virtual Office Website (“VOW”) is a Participant’s Internet website, or a feature of a Participant’s website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant’s oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant’s consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant’s oversight, supervision, and accountability.

**(b)** As used in Section 19 of these Rules, the term “Participant” includes a Participant’s affiliated non-principal brokers and sales licensees – except when the term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability”. References to “VOW” and “VOWs” include all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner (“AVP”) on behalf of a Participant.

**(c)** “Affiliated VOW Partner” (“AVP”) refers to 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. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Listing Information except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS Listing Information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW.

**(d)** As used in Section 19 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by by Participants to the MLS and aggregated and distributed by the MLS to Participants.

**Section 17.2**

**(a):** The right of a Participant’s VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.

**(b)** Subject to the provisions of the VOW Policy and these Rules, a Participant’s VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange (“IDX”).

(c) Except as otherwise provided in the VOW Policy or in these Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant's VOW.

### Section 17.3

(a): Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:

(i) The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.

(ii) The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.

(iii) The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

(b) The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

(c) If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of MLS Listing Information or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.

(d) The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:

- i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
- ii. That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;
- iii. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
- iv. That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;
- v. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

(e) The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

(f) The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

**Section 17.4:** A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-

principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

**Section 17.5:** A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

### Section 17.6

**(a):** A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

**(b)** A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision:

#### Seller Opt-Out Form

1. Please check either Option a or Option b

a.  I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.

OR

b.  I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.

2. I understand and acknowledge that, if I have selected option a, consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.

\_\_\_\_\_  
initials of seller

**(c)** The Participant shall retain such forms for at least one year from the date they are signed, or one year from the date the listing goes off the market, whichever is greater.

### Section 17.7:

**(a)** Subject to subsection (b), a Participant's VOW may allow third-parties (i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

**(b)** Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 19.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**Section 17.8:** A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within 48 hours following

receipt of a communication from the listing broker explaining why the data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 17.9:** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 17.10:** Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

**Section 17.11:** A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

**Section 17.12:** A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

**Section 17.13:** A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

**Section 17.14:** A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the Participant.

**Section 17.15:** A Participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields

**Section 17.16:** A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

**Section 17.17:** A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than 250 current listings and not more than 250 sold listings in response to any inquiry.

**Section 17.18:** A Participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

**Section 17.19:** A Participant may display advertising and the identification of other entities ("co-branding") on any VOW the Participant operates or that is operated on his or her behalf. However, a Participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this Section, co-branding will be presumed not to be deceptive or misleading if the Participant's logo and contact information (or that of at least one Participant, in the case of a VOW established and operated on behalf of more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

**Section 19.20:** A Participant shall cause any listing displayed on his or her VOW that is obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

**Section 19.21:** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.