

TCMLS Data License Service

Active TCMLS Broker-Participants and Subscribers may request permission from TCMLS to use MLS data for real estate related products and services.

What are the available data plans and fees?

Data license is billed on a per licensee (agent/broker) and data plan basis.

- 1.) **IDX.** Access to a subset of MLS approved public fields (Active, Pending, Closed listings) for display at internet search website or mobile product controlled by TCMLS members in accordance with TCMLS rules and IDX policies. IDX data license is billed on a PER AGENT (for personal website) or PER BROKER (for company website) basis. Developers servicing multiple TCMLS members must maintain a list of clients and shall provide monthly client count for subscription calculation. \$7/month per licensee.
- 2.) **VOW.** Access to a subset of MLS approved public fields (Active, Pending, Closed listings) for display at virtual office website controlled by TCMLS member in accordance with TCMLS rules and VOW policy. VOW data license is billed on a PER AGENT (for personal website) or PER BROKER (for company website) basis. Developers servicing multiple TCMLS members shall maintain a list of clients and provide monthly client count for subscription calculation. \$7/month per licensee.
- 3.) **Property Valuation.** Access to subset of MLS approved public fields (Active, Pending, Closed listings) for valuation purposes by TCMLS members in accordance with TCMLS rules and property valuation policies. See Exhibit B of TCMLS Data License Agreement. Property valuation data license is billed on a PER BROKER (for company use) or PER AGENT (for agent-only use) basis. Developers servicing multiple TCMLS members shall maintain a list of clients and provide monthly client count for subscription calculation. \$30/month per licensee.
- 4.) **Firm Back Office.** Access to MLS data for use by TCMLS brokers in accordance with MLS rules and Back-office policies (MLS rule 11.15). Brokerage management systems, transaction management, productivity and ranking tools that only expose MLS data to TCMLS members and customer relationship management (CRM) tools that only exposes MLS data to their bona fide clients are permitted for use. Marketplace statistical analysis and reports in conformance with NAR MLS Policy Statement 7.8 for certain public distribution is permitted. Back-office data license is billed on a PER BROKER (for company use) basis. Developers servicing multiple TCMLS members shall maintain a list of clients and provide monthly client count for subscription calculation. \$125/month per licensee
- 5.) **Firm Data Use.** Access to broker or agent's own data. Data request shall include MLSID of agent (tcm.XXXXX), Office MLSID (tcm.ofcXXXXX) or Company MLSID (tcm.cofcXXXXX). Brokers with multiple offices in the MLS are recommended to use the Company MLSID to retrieve all listings from all offices. Broker approval required. \$0/month per licensee.

What is the most common requested data license?

IDX is the most common data license. IDX is a MLS data access policy (also known as "Broker Reciprocity") where Broker-Participants exchange consent to display each other's approved listings on websites and mobile applications that Broker-Participants control. Broker-Participants agree to credit listing agent & office and shall not display agent-only 'confidential' information nor alter the data in the display. Participation in IDX is presumed unless the broker-participants opt-out of the service. Broker-Participants may opt-out on a per listing basis by check marking the 'Excluding the listing from being displayed on the internet' option in the 'Broker Distribution' tab of each listing of TCMLS.

What IDX services are available?

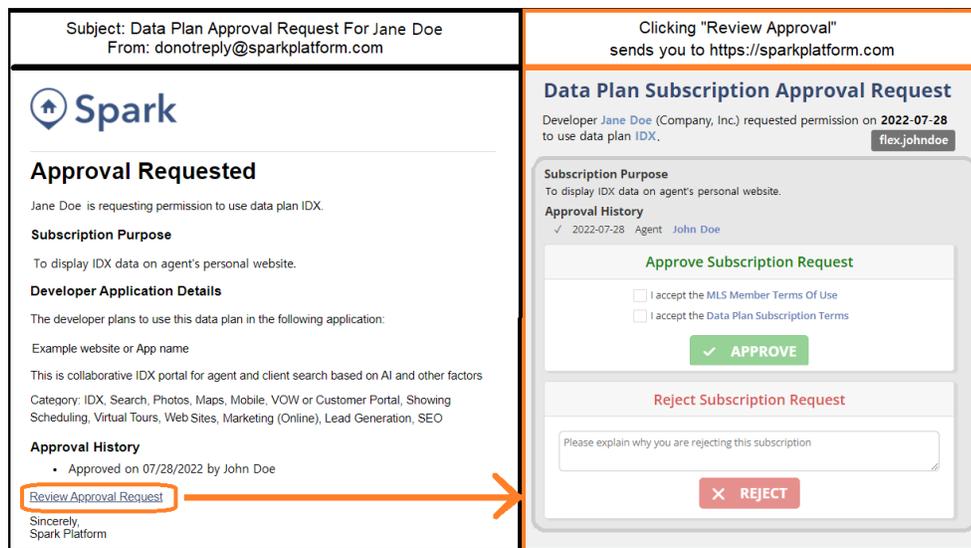
There are 4 types of IDX services available for TCMLS members.

- **IDX Lite 2.0.** Free service provided by membership to TCMLS that will allow the member to generate a URL that can be added to an agent's profile, website, email signature, etc. to display the agent's listings and saved searches with limited search tools. Members may generate the IDX Lite URL by going to MENU > IDX MANAGER and clicking on 'Retrieve IDX Lite Link' at the bottom of the page.
- **Smartframe or WordPress Plugin.** Paid services offered by FBS FlexMLS that will allow the member to add IDX home searches and lead capture tools to the agent/office website. Members can learn more by going to MENU > IDX MANAGER, emailing idxsales@flexmls.com or calling 866-320-9977. Members are responsible for the fees FBS FlexMLS charges for their services.
- **3rd Party Vendor.** Paid services offered by 3rd party vendors to build agent/office search websites for member use. Vendors are not affiliated with TCMLS but at the request of the member, may be granted access to MLS data for display at the member's website. Members are advised to have their vendor register as a developer if access to MLS data is required. Vendor is billed for data licensing fees for each licensee being serviced.
- **Self-Managed.** Paid service where TCMLS members access MLS data directly by registering as a developer and subscribing to IDX data plan for display at agent/office website. Members are responsible for the data licensing fees.

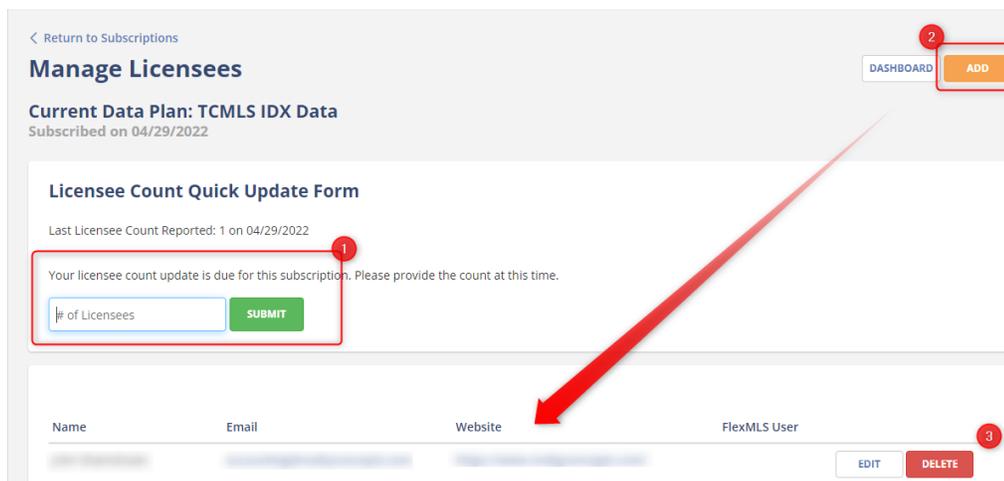
How is MLS data accessed?

Spark® API (<http://sparkplatform.com/docs/overview/api>) is the real estate data transport protocol for TCMLS. Vendors and TCMLS members who plan to access MLS data via the Spark® API are encouraged to visit the website (<https://landing.sparkplatform.com/>) to review pricing, documentation (<http://sparkplatform.com/docs/overview/api>) and join as a developer. Please follow the instructions below:

1. Visit Spark (<https://landing.sparkplatform.com/>) and click "Signup" in the upper right-hand corner.
2. Complete the Developer Registration form and click "Sign Up" at the bottom of the page.
3. Once your registration has been approved, you'll need to sign up for a data plan to access live data. Start by logging into your new developer account (<https://sparkplatform.com/ticket>).
4. Under the Datamart menu on the left, click "View Developer Datamart".
5. Find the MLS and data plan (IDX, VOW, etc.) you'd like to subscribe to and click "Plans and Pricing" to view the licensing costs and Terms and Conditions.
6. Click the "I accept the Terms and Conditions" checkbox.
7. Select the application(s) that will use the data.
8. Indicate whether you are building a product for a specific broker or agent or, if the product is available to multiple brokers or agents.
Note: A login name for the agent/broker (tcm.XXXX), office (tcm.ofcXXXX) or company (tcm.cofcXXXX) is required if building a product for a specific party. Leave the section blank if the product is available to other brokers or agents in the MLS.
9. Click "Purchase With Approval". Clicking "Purchase With Approval" initiates the approval process. Depending on required approvals, the agent, office, association, and MLS may need to approve the subscription (see sample email).



10. After all approvals have been completed, 1.) you will receive an email from Spark with your data access instructions, 2.) you will see your subscriptions on your Spark dashboard (<https://sparkplatform.com/appstore/admin>), and 3.) your payment will be processed. **Please contact Spark support (api-support@fbsdata.com) if you need technical assistance.**
11. Developers servicing multiple TCMLS members must maintain a list of clients and provide monthly client count for subscription calculation within the Spark platform. Developers must update the licensee count (item#1) and include the licensee information (name, email and website URL if applicable) when clients are added (item#2) or removed (item#3). By subscribing to the data plan(s) and updating the licensee count in the Spark platform, developers and TCMLS members agree to the terms of the data licensing agreement.



Tulare County Multiple Listing Service Data License Agreement

This **AGREEMENT** is made and entered into by Tulare County Association of REALTORS® dba Tulare County Multiple Listing Service (“**TCMLS**”), with offices at 2424 E Valley Oaks Drive, California 93292; the real estate brokerage firm identified as “**Firm**” (“**Firm**”); the Salespersons affiliated with Firm, if any (collectively the “**Salesperson Party**”); and the individual or business association identified as “**Consultant**”, if any (“**Consultant**”).

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 TCMLS Data, except to the extent to which this Agreement and the TCMLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that TCMLS obtains from any third party that TCMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by TCMLS; (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 TCMLS for use by Firm, Salesperson Party, and Consultant; TCMLS may modify the Data Interface in its sole discretion from time to time.

Firm Back Office: Use and display of portions of the TCMLS Data by Firm under the Brokerage Back Office Data Feed provisions of the TCMLS Policies.

Firm Data Use: Any use of those portions of the TCMLS Data relating to Firm’s own listings under the Data Portability provisions of the TCMLS Policies.

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

IDX: Use and display of portions of the TCMLS Data under the Internet Data Exchange provisions of the TCMLS Policies.

Mobile Applications: Any displays of IDX data authorized by TCMLS Policies that are not web sites. “Mobile Applications” does not include mass media display of TCMLS Data.

Participant: This term has the meaning given to it in the TCMLS Policies. For purposes of this Agreement, “Participant” does not apply to participants of MLSs other than TCMLS. Where applied in this Agreement to Participants other than Firm, “Participant” also includes Salespersons affiliated with those Participants for whom the Participants are responsible under the laws of the State of California

Property Valuation: Use and display of portions of the TCMLS Data by Firm for Valuation purposes subject to the provisions of Exhibit B of this Agreement.

Salesperson: Any person holding a real estate license in California who is not a Participant but who is subject to a Participant’s supervision under the laws of California.

Second Level Domain: “Second Level Domain” has the meaning given to it in this paragraph. “**URL**” means a web address, including the “**http://**” and any material appearing after a slash in the address. “**Domain Name**” means a URL, less the “**http://**” and any material appearing to the right of the next slash (“/”) 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**” means the portion of the Domain Name to the right of the right-most period. (In the example, “**COM**”). “**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 right, if any, plus the Top Level Domain. (In the example, “**ABCREALTY.COM**”). “**Third Level Domain**” means that portion of a domain name to the left of the second period from the right, if any, up to the third period from the right, if any, plus the Second Level Domain. (In the example, “**JANESMITH.ABCREALTY.COM**”).

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

TCMLS Policies: TCMLS’s Rules and Regulations, as amended from time to time, and any operating policies promulgated by TCMLS.

Valuation: An automated valuation model (AVM), broker price opinion (BPO), comparative (or comparable) market analysis (CMA) or similar product or service using TCMLS Data and possibly other data, provided it can fairly be characterized as a valuation of real property, and only to the extent permitted by the TCMLS Policies. An AVM need not include any human judgment or analysis.

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

TCMLS’S OBLIGATIONS

2. TCMLS grants to Firm and Salesperson Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the TCMLS Data, and the right to sublicense the same to Consultant, 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 TCMLS 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. TCMLS retains all rights not expressly granted herein.

3. TCMLS agrees to provide to Firm, Salesperson Party, and Consultant, during the term of this Agreement, (a) access to the TCMLS Data via the Data Interface under the same terms and conditions TCMLS offers to other TCMLS Participants; (b) seven days’ advance notice of changes to the Data Interface; and (c) seven days’ advance notice of changes to the TCMLS Policies. TCMLS does not undertake to provide technical support for the Data Interface or the TCMLS Data. The Data Interface, together with access to the TCMLS Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or TCMLS Data shall not constitute a default by TCMLS under this Agreement.

FIRM’S OBLIGATIONS

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

5. Firm and Salesperson Party shall use the TCMLS Data obtained under this Agreement for Firm Back Office, Firm Data Use, IDX, Property Valuation, and VOW use only. Any other use is strictly prohibited. Firm and Salesperson Party shall not make the TCMLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Salesperson Party may display the TCMLS Data on web sites and Mobile Applications only to the extent permitted by the TCMLS Policies and then only on a site or sites resident at the Second Level and Third Level domain(s) and Mobile Applications of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Salesperson Party acknowledge that ownership and use rights relating to copyrights in the TCMLS Data are defined in the TCMLS Policies or in the terms of the participant and subscriber agreements between TCMLS Firm and Salesperson Party, or both. Firm and Salesperson Party shall not challenge or take any action inconsistent with TCMLS’s ownership of or rights in the TCMLS Data. The provisions of this paragraph shall survive the

expiration or other termination of this Agreement in perpetuity.

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

8. Firm and Salesperson Party shall pay the fees, if any, that TCMLS (or its shareholder associations/MLSs) customarily charges other TCMLS Participants for data access. Firm and Salesperson Party acknowledge receipt of TCMLS's current schedule of such fees, if any. Fees, if any, must be paid in advance, are non-transferable and non-refundable. TCMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Salesperson Party. Firm and Salesperson Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Salesperson 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 TCMLS Policies within its control, whether committed by Firm, Salesperson Party, or Consultant, upon notice from TCMLS.

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

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

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

14. Consultant shall pay the fees, if any, that TCMLS customarily charges other consultants for data access. Fees, if any, must be paid in advance, are non-transferable and non-refundable. Consultant acknowledges receipt of TCMLS's current schedule of such fees, if any. TCMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Consultant. Consultant shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

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

AUDITS OF COMPLIANCE

16. TCMLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities TCMLS Data License Agreement

of Firm, Salesperson Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Salesperson Party's, and Consultant's compliance with this Agreement ("Audit"). TCMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Salesperson Party's, and Consultant's web sites, Mobile Applications, and systems to ensure that TCMLS Data is displayed in accordance with the TCMLS Policies; using all features available to end-users of Firm's, Salesperson Party's, and Consultant's systems that employ the TCMLS Data; and posing as consumers to register and test services Firm, Salesperson Party, and Consultant make available to consumers using the TCMLS Data. TCMLS shall pay the costs it incurs, and the out-of-pocket costs Firm, Salesperson Party, and Consultant incur, as part of any Audit; provided, however, Firm or Salesperson Party shall be liable for all costs of any Audit that discloses that Firm, Salesperson 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

17. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

18. The term of this Agreement begins on the date that TCMLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in TCMLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide Back Office, Firm Data Use, IDX, VOW, or Property Valuation services to it; (f) with regard to any Salesperson Party, immediately upon any event that results in the Salesperson Party no longer being affiliated with Firm; (g) as provided in Paragraphs 28 and 31.

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

GENERAL PROVISIONS

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

21. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its

termination or expiration in perpetuity. Other provisions shall survive according to their terms.

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

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

24. **Dispute resolution; Attorney's fees.** In the event TCMLS claims that Firm, Salesperson Party, or Consultant has violated the TCMLS Policies, TCMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the TCMLS Policies, provided TCMLS does not also base a claim that Firm, Salesperson Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any controversy or claim to which Consultant is not a party arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), 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 California located in Tulare County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to TCMLS'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.

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

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

27. **No Waiver.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.

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

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

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

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

Exhibit B – Property Valuation Data Use Requirements

This Exhibit governs any use of the TCMLS Data licensed under this Agreement for use in Property Valuations.

B.1. Firm and Salesperson Party may provide Property Valuation services to Registrants with whom Firm and Salesperson Party establishes a broker-customer or broker-client relationship, if such a relationship is required and defined by state law; including completion of all actions required by state law in connection with providing real estate brokerage services to 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 necessary for performing Valuation services, and Consultant may facilitate such actions where permitted by state law. Where state law does not require the establishment of a broker-customer or broker-client relationship for providing Property Valuation services, the transaction must still occur between the Firm and Registrant, but may be facilitated by Consultant.

B.2. Registrants may include financial institutions, mortgage lenders, mortgage bankers, mortgage brokers, mortgage loan servicers, title or mortgage insurers, insurers of payments owed to owners of mortgage backed securities, Government Sponsored Entities (GSEs), or such other businesses or institutions having an interest in automated reports on property valuation or market conditions.

B.3. Firm and Salesperson Party, or Consultant on behalf of Firm and Salesperson Party where permitted by state law, must obtain the name of and a valid e-mail address for each Registrant that is an individual and the name of and a valid email address for each authorized user if the Registrant is an entity. Each Registrant must agree to the terms of use described in Section B.4 of this Exhibit or substantially similar terms of use. Firm and Salesperson Party must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use. Firm and Salesperson Party may utilize Consultant's technology platform to facilitate and fulfill its obligations under Sections B.3, and B.4, and B.5.

B.4. Firm and Salesperson Party, or Consultant on behalf of Firm and Salesperson Party where permitted by state law, shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms-of-use agreement or other form of written contract that provides at least the following:

B.4.1 :that Registrant acknowledges entering into a lawful consumer-broker relationship with Firm and Salesperson Party, if such a relationship is required by state law, or that Registrant acknowledges purchasing the Property Valuation from Firm and Salesperson Party, if a consumer-broker relationship is not required by state law.

B.4.2 : that all information obtained by Registrant from Property Valuation is intended only for Registrant's business purposes related to (1) mortgage loan foreclosure or default risk assessment, or the review of the quality or accuracy of real estate appraisals or other valuations (2) use in evaluating or engaging in a potential financing or other transaction relating to the subject property, (3) distribution to an actual or potential borrower of funds the repayment of which is secured by a mortgage lien on the subject property, or to the borrower's financial or legal advisors, (4) the purchase or sale of mortgage servicing rights, (5) the purchase or sale of performing, re-performing or non-performing loans, or (6) the purchase, sale or rental of properties whether property is intended to be used as a residence or for investment and whether the purchaser or seller is an individual or institution.

B.4.3 : except as provided in Section B.4.2, that Property Valuations may not be used for any other purposes, including display on publicly accessible websites, and that Registrant shall not resell Property Valuation and will not copy, redistribute, or retransmit or otherwise use any of the TCMLS Data provided in Property Valuation.

B.4.4 : that Registrant acknowledges, as between the parties, TCMLS's ownership of and the validity of the TCMLS's copyright in the TCMLS Data.

B.5. The terms-of-use agreement described in Section B.4 shall also expressly authorize TCMLS and other Participants or their duly authorized representatives to access and review the form used by Firm and Salesperson Party for any Property Valuation for the purposes of verifying compliance with TCMLS Policies and monitoring use of TCMLS Data by the Property Valuation. To the extent that Registrant breaches the terms-of-use agreement described in Section B.4, Firm, Salesperson Party and Consultant shall be liable to TCMLS as if Firm and Salesperson Party or Consultant had breached the terms-of-use agreement itself. The agreement may also include such other provisions as may be agreed to between Firm, Salesperson Party and Registrant.

B.6. Firm and Salesperson Party may utilize Consultant's technology platform and services to facilitate the fulfillment of Property Valuations services to Registrants, subject to and as permitted by state law.

B.7. Firm and Salesperson Party's right to use TCMLS Data in any Property Valuation is subject to the applicable office of Firm and Salesperson Party being a Participant in TCMLS. In other words, an office of Firm that is not a Participant of TCMLS may not use TCMLS Data in any Valuation provided to any third party.

B.8. Firm and Salesperson Party must protect the TCMLS Data from misappropriation by employing reasonable efforts to monitor for and prevent scraping or other unauthorized accessing, reproduction, or use of the TCMLS Data and Valuations.

B.9. Firm and Salesperson Party must make a copy of any type of Property Valuation sold by Firm and Salesperson Party available to TCMLS for purposes of verifying compliance with this Agreement and TCMLS Policies.

B.10. TCMLS shall exclude from the Data Interface all "User Confidential Data." "User Confidential Data" consists of those portions of TCMLS Data that Participants are prohibited from providing to customers orally and by all other delivery mechanisms. In the event that TCMLS includes User Confidential Data in the Data Interface, Firm and Consultant shall ensure that it is not disclosed to Registrants or any other third party.

B.11. Firm and Salesperson Party shall maintain an audit trail of Firm and Salesperson Party's delivery to Registrant of all Property Valuations and make that information available to TCMLS if TCMLS has reason to believe that any Registrant has caused or permitted a breach of the terms of use or comparable agreement.

B.12. Firm and Salesperson Party shall cause to be placed on any Property Valuation or terms of use a notice indicating that the TCMLS Data displayed on the Property Valuation is not guaranteed accurate by the TCMLS or other Participants.

B.13. In any display of TCMLS Data to any Registrant, Firm and Salesperson Party shall display the copyright notice of TCMLS or substantially similar. The copyright notice should take one of the following forms: "Copyright 20XX Tulare County Multiple Listing Service" or "© 20XX TCMLS". Firm shall replace "20XX" with the current year as of January 1 each year.