

## SUBSCRIBER AGREEMENT

This Subscriber Agreement (the “**Agreement**”) is made and entered into and is effective as of the date Subscriber accepts this Agreement, is between Bee County Board of REALTORS®, Inc. (“**BCBR**”), a Texas corporation having its principal offices at 1115 San Jacinto Blvd, Suite 200, Austin, TX 78701 and the undersigned individual Texas real estate license holder, having its principal place of business at the address as set forth on the signature page hereof, as may be changed from time to time (“**Subscriber**”), and the undersigned individual principal real estate broker, having its principal offices at the address as set forth on the signature page hereof as may be changed from time to time (“**Participant**”). BCBR, Subscriber, and Participant shall individually be referred to in this Agreement as a “**Party**” and jointly as the “**Parties**.” This Agreement is made with reference to the following facts and circumstances:

### 1. RECITALS.

1.1 BCBR owns and operates a multiple listing service as it is defined in its Rules and Regulations.

1.2 BCBR collects, primarily from real estate professionals, certain information including, but not limited to all data, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information about real properties and businesses in certain geographic regions of the State of Texas and then aggregates and compiles this data into its proprietary listing content compilation (“**MLS Compilation**”), as hereinafter defined, and displays, maintains and distributes the MLS Compilation principally for the benefit of those same real estate professionals.

1.3 Subscriber holds a real estate sales or appraisal license in the State of Texas and is employed by or affiliated with the undersigned Participant who has access to the BCBR Services and BCBR System as a direct result of Participant’s participation in BCBR pursuant to its Participant Agreement.

1.4 The Parties desire to enter this Agreement which, in addition to the Rules, will govern the use of the MLS Compilation, the BCBR System, and the BCBR Services, all as defined herein, by Subscriber.

1.5 Capitalized terms not defined in this Agreement shall have the meaning set forth in the Rules.

NOW, THEREFORE, in consideration of the Recitals, and the mutual promises and covenants contained herein and intending to be legally bound, each Party agrees as follows:

### 2. DEFINITIONS

Capitalized terms in this Agreement shall have the meanings set forth opposite each, respectively, as follows:

2.1 “IDX Display(s)” means a Member’s electronic Internet Data Exchange (IDX) display of the MLS Compilation on authorized websites or mobile applications in accordance and compliance with the Rules.

2.2 “Listing Content” means certain information about real properties offered for sale or rent throughout the State of Texas, including without limitation all data, photographs, images, graphics, drawings, audio, video recordings, virtual tours, written descriptions, remarks, narratives, and pricing information, that is submitted to BCBR by Subscriber and other Members.

2.3 “Login” means any and all usernames, passwords, tokens, and other credentials or authenticators used by Subscriber to access the BCBR Services and BCBR System.

2.4 “Members” mean, collectively, BCBR Participants and BCBR Subscribers.

2.5 “MLS Compilation” means (i) the aggregation and compilation of all Listing Content, and (ii) certain information about Members, including without limitation name, office information, and contact information.

2.6 “Rules” means the rules and regulations of BCBR MLS, established and adopted by the Executive Board of BCBR, as may be amended from time to time, which regulate Members’ access to and use of the MLS Compilation, BCBR Services, and BCBR System.

2.7 “BCBR Participant(s)” means individuals who hold current, valid real estate brokers’ licenses in the state of Texas and offer or accept compensation to and from other BCBR Participants or are registered, licensed, or certified by the Texas Appraiser Licensing and Certification Board to engage in the appraisal of real property and who have applied to participate or are participating in the BCBR Services.

2.8 “BCBR Services” means the display, maintenance, and distribution of the MLS Compilation principally to Members together with other products and services offered by BCBR or made available through the BCBR System which facilitate the business of Members.

2.9 “BCBR Subscriber(s)” mean all employees or independent contractors of a BCBR Participant who hold valid real estate licenses or appraisal licenses issued by the state of Texas and who have applied to participate or are participating in the BCBR Services.

2.10 “BCBR System” means the technology, software, and hardware systems that support access to and use of the MLS Compilation and BCBR Services.

2.11 “Term” means the period during which the provisions, terms, and conditions of this Agreement are in full force and effect.

2.12 “Virtual Office Website” or “VOW” means an Internet website through which a Member provides real estate brokerage services to consumers where the consumer can search the MLS Compilation, subject to the Member’s oversight, supervision, and accountability.

### **3. GRANT OF PARTICIPATION RIGHTS.**

Subject to the provisions, terms, and conditions of this Agreement and the Rules, BCBR hereby grants to Subscriber during the Term a limited, non-exclusive, non-transferable, non-sublicensable revocable license to access and use the MLS Compilation, BCBR Services, and BCBR System for the purpose of: (a) adding, editing, and reviewing Subscriber’s Listing Content, (b) researching and retrieving the MLS

Compilation, and (c) using the BCBR Services to conduct Subscriber's ordinary real estate business activities. Subscriber shall have all rights and obligations of a subscriber of BCBR's multiple listing service as set forth in the Rules.

#### **4. GRANT OF ACCESS.**

4.1 Method of Access. Subscriber shall access the MLS Compilation, BCBR Services, and BCBR System through various types of electronic communications furnished to Subscriber by BCBR and/or third-party vendors via Subscriber's Login, upon the terms and conditions required by BCBR and the third-party vendor. Subscriber acknowledges it may be required to execute a license agreement with, or accept the terms and conditions of, a third-party service provider to access the BCBR System and agrees to comply with the terms of such agreement. Subscriber understands and agrees that it must execute a separate agreement with BCBR, Participant, and Subscriber's internet display developer for authority to display the MLS Compilation on an IDX Display.

4.2 Access Login. BCBR shall provide Subscriber with a unique Login used to participate in and access the MLS Compilation, BCBR Services, and BCBR System. The Login shall be personal to Subscriber and shall not be used by any other individuals, including without limitation any individuals in Subscriber's office.

4.3 Availability. Subscriber acknowledges that access to the MLS Compilation or BCBR Services may be unavailable from time to time, whether due to technical failure, telecommunications interruptions, intentional downtime for maintenance, unavailability attributable to the BCBR System service provider, or otherwise. Subscriber agrees that any interruptions in or unavailability of the MLS Compilation shall not constitute a breach of this Agreement, and BCBR shall have no liability of any nature to Subscriber for any such interruptions, unavailability, or failure of access.

4.4 Modifications to the Service. BCBR may, in its sole discretion, modify the BCBR Services, including without limitation adding or removing information, products, services, or offerings available through the BCBR Services, at any time without notice or obligation to Subscriber.

#### **5. SUBMISSION OF LISTING CONTENT.**

5.1 Grant of Rights to BCBR. As a material condition to participating in the BCBR Services, Subscriber agrees to submit to BCBR, on behalf of its Participant, all Listing Content for properties listed for sale by Subscriber, in accordance with and except as otherwise provided in, the Rules. Subscriber acknowledges its Listing Content will be included in the MLS Compilation and sublicensed and disseminated to other Members and third-parties in accordance with the license granted to BCBR by Subscriber's Participant.

5.2 Submitted Information. Subscriber hereby warrants that it will have a valid listing agreement prior to submitting any Listing Content to BCBR and warrants that, where applicable, buyers, sellers, photographers, videographers, architects, and other third-parties have authorized Subscriber to license and provide all Listing Content, including without limitation all virtual tours, photographs, images, drawings, audio, videos, floor plans, remarks, descriptions, pricing information, or other listing information to BCBR and other Members for the purposes set forth in this Agreement. Subscriber further represents and warrants that: (a) any Listing Content submitted to BCBR by Subscriber does not infringe any third-party rights, including without limitation any copyrights or trade secrets; (b) Subscriber's Listing

Content complies with the Rules; (c) to the best of Subscriber's knowledge, the Listing Content is accurate; and (d) to Subscriber's knowledge, there is no claim, litigation, or proceeding pending with respect to Subscriber's Listing Content. Subscriber agrees Listing Content shall be submitted in the form and format and according to the procedures set forth in the Rules and shall use reasonable care to ensure the accuracy and completeness of such submitted Listing Content and shall be responsible for correcting and updating all submitted information in accordance with the Rules. Subscriber acknowledges BCBR may but is not obligated to and assumes no responsibility to, modify, edit, refuse to accept or include in, and may remove from, the MLS Compilation any Listing Content if BCBR determines, in its sole discretion, that such Listing Content may violate or infringe upon the rights of a third-party or is not in compliance with the Rules.

5.3 Copyright. BCBR may edit, manipulate, and/or compile the Listing Content and tangible or intangible property items provided by Subscriber in accordance with the Rules. Subscriber acknowledges that the manipulation or compilation being performed by BCBR will result in a database of MLS Compilation containing various compilations of real estate data which are copyrightable material. By the act of submitting any Listing Content to BCBR, Subscriber hereby acknowledges its Listing Content will be compiled into the MLS Compilation which is copyrighted by BCBR. Subscriber consents to the use of its contributions in such copyrighted material and warrants it will not challenge, interfere with, or violate such copyright, and will not seek compensation therefor.

5.4 Internet Display and Other Third-Party Use. BCBR may use, or may arrange for third-parties to use, the MLS Compilation in products and services including, but not limited to, reference materials, books, brochures, flyers, electronic transmissions, advertisements, Internet or other computer network displays, on-line data, computer programming, and software, regardless of the form, whether printed, electronic, digital, magnetic media, or otherwise. Subscriber hereby acknowledges that pursuant to the licenses granted to BCBR by Participant, BCBR is authorized to license internet display of the MLS Compilation, including Subscriber's Listing Content, to Members and other third-parties.

5.5 Enforcement. Subscriber understands BCBR may exercise all rights necessary for BCBR to protect and enforce all intellectual property rights and to prevent the misuse, infringement or misappropriation of the Listing Content, including without limitation, the right to (a) add watermarks, proprietary notices, or other means of identification to the Listing Content; (b) monitor usage of the Listing Content; (c) send demand letters to investigate and/or prosecute alleged infringers; (d) arbitrate or litigate potential claims of infringement or misappropriation; (e) execute all documents deemed appropriate by BCBR; (f) collect applicable damages; and (g) any other actions reasonably necessary to protect BCBR's rights in the MLS Compilation, BCBR Services, and BCBR System, in BCBR's sole discretion.

## **6. CONDITIONS, PROHIBITIONS AND LIMITATIONS ON ACCESS.**

6.1 Compliance with Rules and Notification of Changes. Subscriber certifies it has read a copy of and agrees to comply with the Rules, as may be amended from time to time. Failure to comply with the Rules and/or this Agreement may result in discipline or probation, including without limitation warnings, fines, suspension, and/or termination of Subscriber's participation in BCBR. Subscriber agrees to submit disputes for arbitration to BCBR in accordance with the *Code of Ethics and Arbitration Manual* of the National Association of REALTORS®. Subscriber shall notify BCBR within seven (7) days of relocating, changing office information, or changing REALTOR® Board/Association affiliation, if any.

6.2 Compliance with Third-Party Terms. Subscriber acknowledges certain products or services offered by third-parties (the “**Third-Party Service Providers**”) may provide Subscriber with access to the MLS Compilation, BCBR Services, or BCBR System, or may allow Subscriber to modify or add additional content to its Listing Content, including without limitation adding or modifying data, showing instructions, photographs, or video tours. Subscriber shall comply with the agreements, policies, or terms of any Third-Party Service Provider.

6.3 Advertising to Members. Subscriber shall only use the MLS Compilation, BCBR Services, and products or services offered by Third-Party Service Providers in connection with Subscriber’s real estate brokerage activities and not for any other purpose, including without limitation to solicit, recruit, or market other products or services to, Members.

6.4 Use Prohibitions. Subscriber agrees that it will not, and will not allow any third-party to, copy, download, reproduce, redistribute, publish, display, retransmit, broadcast, electronically enhance or manipulate, sell, license, rent, transmit, create derivatives of, or in any manner commercially exploit the MLS Compilation or any portion thereof, in any format to anyone for any purpose other than the selling, listing, or appraising of real estate. Information in the MLS Compilation and BCBR Services cannot be used to create a competing database or service. Under no circumstances shall Subscriber receive any form of compensation for the MLS Compilation, except as part of Subscriber’s ordinary real estate brokerage services, nor may Subscriber receive any compensation for unauthorized access to the MLS Compilation from any third-party for any reason. Subscriber acknowledges that the MLS Compilation is confidential and its use is restricted to Subscriber. Subscriber shall not disclose the MLS Compilation to any third-party, except as permitted in the Rules or other BCBR policy.

6.5 Certain Data Subject To Consent Withdrawal. Subscriber acknowledges that certain data contained in the MLS Compilation are subject to the continued consent of supplying third-parties. If at any time any supplying third-party’s consent is withdrawn, all information supplied by such party shall be removed from the MLS Compilation. The MLS Compilation may be changed from time to time, without notice or liability to Subscriber.

6.6 Consumer Privacy. Subscriber agrees to comply with all applicable consumer privacy and information security laws. The MLS Compilation or other information provided through the BCBR Services may contain personally identifiable information about consumers, BCBR Subscribers, or other third-parties. Subscriber acknowledges it is only permitted to use such personally identifiable information for purposes authorized by this Agreement or the Rules and is prohibited from using any personally identifiable information for any other purpose, including without limitation any advertising or other commercial use, and shall not disclose personally identifiable information to any third-party.

6.7 Information Security. Subscriber shall use commercially reasonable measures to protect from unauthorized access or use: (a) any MLS Compilation downloaded to Subscriber’s storage drives or devices, and (b) Subscriber’s Login. In the event of a breach of Subscriber’s computer network containing MLS Compilation by unauthorized persons or in the event of a loss of Subscriber’s Login or storage drive or device which may contain the MLS Compilation, Subscriber agrees to notify the Chief Executive Officer of BCBR within twenty-four (24) hours of discovery of such event. At any time upon written notice to Subscriber, BCBR may dictate reasonable security measures, practices, and procedures that Subscriber must implement to safeguard and protect its Login and the MLS Compilation.

6.8 Participation Status. Subscriber acknowledges that if Subscriber's status with BCBR is inactive or terminated, or if Participant's status with BCBR is inactive or terminated, Subscriber shall not be granted access to the MLS Compilation, BCBR Services, or System until Subscriber's status is returned to active.

6.9 Internet Advertising. Unless Subscriber has actively withdrawn from participation in BCBR's IDX program as defined in the Rules, Subscriber hereby expressly consents to the online advertising of Subscriber's Listing Content by BCBR Participants and BCBR Subscribers on authorized IDX Displays.

## **7. FEES AND EXPENSES.**

7.1 Fees. In consideration for the rights to access and/or use the MLS Compilation, the BCBR Services, and the BCBR System, Subscriber shall pay BCBR the participation and other fees in the amount and in accordance with the terms established by the Executive Board and set forth in the BCBR Schedule of Fees, incorporated into this Agreement by reference and as may be changed from time to time, including without limitation applicable participation fees and license fees. BCBR reserves the right to change its fees at any time upon notice to Subscriber. Subscriber acknowledges that failure to pay participation fees on time may result in late fees, suspension, or termination of participation in BCBR.

7.2 Fines. Subscriber acknowledges its failure to comply with the Rules or other BCBR policies may result in the assessment of fines to Subscriber or Participant, and Participant acknowledges it is ultimately responsible for the payment of such fines.

7.3 Expenses. Subscriber is responsible for obtaining and maintaining all personal computers, devices, Internet connections, and computer software and shall bear all programming, technology, and methodology expenses relating to the integration of MLS Compilation into an IDX Display or VOW, or any costs that may be necessary or useful for maintaining the IDX Display or VOW, accessing and using the MLS Compilation, the BCBR Services, and the BCBR System, and for the proper use thereof.

7.4 No Refunds. Subscriber acknowledges all fees are nonrefundable.

7.5 Taxes. All fees are exclusive of, and Subscriber shall be responsible for, any applicable sales, use, value-added, or other taxes, withholdings, or other obligations related to the fees paid by Subscriber pursuant to this Agreement or the Rules.

## **8. PROPRIETARY RIGHTS.**

8.1 Ownership. Subscriber acknowledges that the MLS Compilation, the BCBR Services, and the BCBR System are valuable commercial products, the development of which has involved the expenditure of substantial time and money. The MLS Compilation and all copies, modifications, enhancements, and derivatives of the MLS Compilation are the property of BCBR, and all right, title, and interest in and to the MLS Compilation, together with all copies, modifications, enhancements, and derivatives thereof, including all copyright and other proprietary rights shall remain vested in BCBR. Except for the rights granted Subscriber herein, Subscriber agrees and understands that BCBR shall remain the exclusive owner of all rights, title, and interest in the MLS Compilation, the BCBR Services, and the BCBR System licensed hereunder and all copyrights and renewals thereof, heretofore and hereafter secured therein. All publication, dissemination, and other rights in and to the MLS Compilation licensed hereunder

are reserved for BCBR in all languages, formats and media throughout the world for the sole and exclusive use or any other disposition by BCBR, its respective assignees or grantees at any time and from time to time without obligation or liability to Subscriber.

8.2 Proprietary Notices. Subscriber agrees not to not alter, remove, or obscure any proprietary notice, watermark, disclaimer, or other notices displayed on or in connection with the MLS Compilation or any printouts of the MLS Compilation.

## **9. CONFIDENTIALITY.**

Subscriber acknowledges that, as a result of its participation in BCBR, Subscriber shall have access to confidential information of BCBR, its Members, vendors, customers, and service providers, including without limitation trade secrets, personally identifiable information, participation roster, financials, confidential fields in the MLS Compilation, and other material marked 'confidential' or which, by its nature, should be known to be confidential (collectively, the “**Confidential Information**”). Confidential Information shall include the MLS Compilation to the extent its disclosure is prohibited in this Agreement and the Rules, and Subscriber's Login. Subscriber shall treat the Confidential Information as private, confidential, and personal, and shall safeguard and maintain its security and confidentiality using the same level of care it protects its own confidential information, but no less than reasonable care. Subscriber shall issue appropriate instructions to its assistants and staff concerning the restrictions contained herein and shall initiate strict security measures to prevent the disclosure or unauthorized use of the Confidential Information. Subscriber shall be liable for any consequences that may result from unauthorized disclosure or use of the Confidential Information, whether intentional, negligent, or inadvertent, including but not limited to immediate termination of this Agreement and assessment of fines in accordance with the Rules. Subscriber acknowledges that BCBR may monitor Subscriber's use of the BCBR Services and BCBR System on a regular random basis such that violations of the security of Subscriber's Login will be detected. This obligation to maintain confidentiality shall survive the termination of this Agreement.

## **10. USE OF SUBSCRIBER INFORMATION.**

10.1 BCBR's Use of Information. BCBR reserves the right to distribute to prospective Members and other third-parties certain non-confidential information concerning Subscriber. In addition, BCBR may collect and compile information regarding frequency of use of, or specific uses of, the MLS Compilation, BCBR Services, and BCBR System by all users, including Subscriber.

10.2 Third-Party Use of Information. Subscriber acknowledges certain third-party products and services made available via the BCBR Services may collect personal and non-personal information of Subscriber, including without limitation name, address, real estate license number, internet protocol (IP) address, and geolocation data. Some third-party products and services require personal information from Members to function correctly. A third-party's use of Subscriber's personal and non-personal information is governed by the third-party's applicable privacy policy and/or terms of use. BCBR is not responsible for use of personal or non-personal information by any Third -arty Service Provider.

## **11. TERM AND TERMINATION.**

11.1 Term. The Term of this Agreement shall commence upon the Effective Date and shall automatically renew and extend for one (1) year terms on January 1<sup>st</sup> of each year, unless earlier

terminated in accordance with Section 11.2 or 11.3 hereof, or upon cancellation by any Party upon twenty-four (24) hours written notice to the other Parties.

## **11.2 Termination.**

11.2.1 This Agreement and the rights granted hereunder may be terminated by any Party in the event that: (a) the other Party has not performed any material obligation or has otherwise breached any material term of this Agreement, and the breach remains uncured ten (10) days after receiving written notice thereof, or the timeline set forth in the Rules, if applicable; (b) the other Party has materially breached this Agreement, and such breach is not capable of being cured; (c) Participant or Subscriber is no longer licensed to practice real estate or to engage in the appraisal of real property in the State of Texas; (d) Subscriber displays a pattern of repeated violations of the Rules or other BCBR policy; or (e) Subscriber fails to pay any fine when due.

11.2.2 Promptly upon any termination of this Agreement: (a) BCBR shall deactivate Subscriber' Login, (b) Subscriber shall have no further access to the MLS Compilation, BCBR Services, or BCBR System, (c) the MLS Compilation shall be removed from Subscriber's IDX Display and VOW, if applicable, (d) Subscriber shall delete all MLS Compilation from its computers, disks, drives, and devices and shall destroy any printouts of the MLS Compilation, and (e) Subscriber or Participant shall pay any outstanding fees or fines due to by Subscriber to BCBR. Subscriber acknowledges that BCBR shall have no obligation to refund any fees or charges or any portion thereof paid to BCBR prior to termination.

11.3 REALTOR® Membership Termination. Should Subscriber terminate its REALTOR® membership with Subscriber's REALTOR® Association, this Agreement shall terminate and the rights to access the MLS Compilation, BCBR Services, and BCBR System shall terminate.

## **12. BCBR SERVICE MARKS AND LOGOS.**

12.1 License. BCBR hereby grants to Subscriber, during the term of this Agreement, a limited nonexclusive, nontransferable revocable license to use the BCBR trade name, logo, and other trademarks (collectively, the "Trademarks") for the BCBR Services as available, in advertising, promotion, and marketing materials solely for the purpose of announcing Subscriber's use of and participation in the BCBR Services to prospective customers. Subscriber may re-publish any description of the BCBR Services which have been published by BCBR, provided the description is re-published on a verbatim basis but shall not, under any circumstances, make any unauthorized representations or warranties regarding the BCBR Services or the MLS Compilation.

12.2 Restrictions. Subscriber understands it is prohibited from: (a) altering or modifying the Trademarks, (b) using the Trademarks for any purpose not authorized by this Agreement, the Rules, or other BCBR policy, (c) allow any third-party to use or display the Trademarks without BCBR's prior consent, or (d) using the Trademarks in any manner that suggests Subscriber is sponsored or endorsed by BCBR.

## **13. WARRANTY DISCLAIMER.**

SUBSCRIBER EXPRESSLY AGREES THAT THE MLS COMPILATION, BCBR SERVICES, AND THE BCBR SYSTEM ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, AND THAT USE OF THE MLS COMPILATION, BCBR SERVICES, AND BCBR SYSTEM ARE AT THE SOLE



RISK OF SUBSCRIBER. BCBR DOES NOT WARRANT THAT THE BCBR SERVICES OR TRANSMISSION OF THE MLS COMPILATION WILL BE UNINTERRUPTED OR ERROR-FREE, AND BCBR MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, OR RELIABILITY OF THE MLS COMPILATION. BCBR AND ITS LICENSORS DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, OR QUIET ENJOYMENT. BCBR DOES NOT WARRANT THAT THE MLS COMPILATION WILL MEET SUBSCRIBER'S REQUIREMENTS. SUBSCRIBER IS NOT ENTITLED TO A REFUND FOR ELECTRONIC TRANSMISSION ERRORS OR OUTAGES AT ANY TIME UNDER ANY CIRCUMSTANCES.

#### **14. LIMITATION OF LIABILITY.**

14.1 Limitations and Exclusions. NEITHER BCBR NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, OR REPRESENTATIVES SHALL BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF REVENUE, BUSINESS INTERRUPTION, LOST DATA, OR COST OF SUBSTITUTE DATA, THAT RESULT FROM: (A) THE USE OF, OR INABILITY TO USE, THE MLS COMPILATION, BCBR SERVICES, AND/OR THE BCBR SYSTEM, (B) RELIANCE BY SUBSCRIBER ON ANY INFORMATION, INCLUDING BUT NOT LIMITED TO THE MLS COMPILATION OBTAINED THROUGH USE OF THE BCBR SYSTEM OR THE BCBR SERVICES,

(C) MISTAKES, OMISSIONS, DELETIONS, OR DELAYS IN TRANSMISSION OF SUCH INFORMATION, INTERRUPTIONS IN TELECOMMUNICATIONS OR INTERNET CONNECTIONS TO THE BCBR SYSTEM AND THE BCBR SERVICES, (D) VIRUSES, WORMS, TROJAN HORSES, OR FAILURES OF PERFORMANCE, OR (E) ACTS BEYOND BCBR'S REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION ACTS OF GOD, TELECOMMUNICATIONS OR INTERNET FAILURE, THEFT OR DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO, THE MLS COMPILATION, BCBR SERVICES, AND/OR THE BCBR SYSTEM.

14.2 Third-Party Liability. SUBSCRIBER ACKNOWLEDGES AND UNDERSTANDS THAT NEITHER BCBR, NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, OR REPRESENTATIVES SHALL BE LIABLE TO SUBSCRIBER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF ANY THIRD-PARTY PRODUCT OR SERVICE, INCLUDING BUT NOT LIMITED TO ANY THIRD-PARTY PRODUCTS OR SERVICES THAT INTEGRATE THE MLS COMPILATION OR ANY ACTION OF A THIRD-PARTY SERVICE PROVIDER. BCBR SHALL NOT BE RESPONSIBLE FOR ANY MISUSE, INFRINGEMENT, OR UNAUTHORIZED DISPLAY OF SUBSCRIBER'S LISTING CONTENT BY ANY THIRD-PARTY. SUBSCRIBER UNDERSTANDS IT IS SUBSCRIBER'S SOLE RESPONSIBILITY TO REVIEW SUCH THIRD-PARTY PRODUCTS AND/OR SERVICES PRIOR TO ENTERING INTO AN AGREEMENT OR ACCEPTING SUCH PRODUCTS AND/OR SERVICES FROM A THIRD-PARTY SERVICE PROVIDER, AND USE OF SUCH THIRD-PARTY PRODUCTS AND/OR SERVICES SHALL BE AT SUBSCRIBER'S SOLE RISK.

14.3 Maximum Aggregate Liability. IN NO EVENT SHALL ANY LIABILITY OF BCBR, ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, OR REPRESENTATIVES

ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

**15. LIQUIDATED DAMAGES FOR UNAUTHORIZED USE.**

Subscriber acknowledges that damages suffered by BCBR from access to the MLS Compilation, BCBR Services, or the BCBR System by an unauthorized third-party as a result of disclosure of Subscriber's username and/or password would be speculative and difficult to quantify. Accordingly, as a material inducement to BCBR to enter into this Agreement with Subscriber, Subscriber agrees that in the event that any disclosure of Subscriber's Login results in access to the BCBR System and the BCBR Services by an unauthorized third-party or in the event Subscriber makes unauthorized disclosure of MLS Compilation regardless of whether such disclosure is intentional, negligent, or inadvertent, Subscriber shall be liable to BCBR, at BCBR's option, for liquidated damages in the amount of Fifteen Thousand Dollars (\$15,000.00) per incident or the amount set forth in BCBR's Rules, whichever is greater.

**16. SUBSCRIBER REPRESENTATIONS AND WARRANTIES.**

In addition to the warranties made by Subscriber in Section 5 of this Agreement, Subscriber represents and warrants to BCBR that: (a) Subscriber is a REALTOR® in good standing; (b) Subscriber holds a current, valid real estate license or an appraiser's license in the State of Texas and is authorized to provide real estate brokerage or appraisal services; and (c) Subscriber is duly authorized to enter into this Agreement.

**17. INDEMNIFICATION BY SUBSCRIBER.**

Subscriber shall protect, defend, indemnify and hold harmless BCBR and its officers, directors, employees, shareholders, agents, representatives and/or other Members from any and all liability, damages, loss, or expense, including reasonable fees of attorneys and other professionals, arising from any claim, demand, action or proceeding initiated by any third-party arising out of or relating to: (a) the negligent, intentional, or illegal acts of Subscriber, (b) inaccuracy of any Listing Content supplied to BCBR by Subscriber, (b) unauthorized use of Subscriber's Login, (c) Subscriber's unauthorized use of the MLS Compilation, (d) infringement of any contract or proprietary right of any third-party by Subscriber or its Listing Content, or (e) Subscriber's breach of this Agreement, any Third-Party Service Provider terms or conditions, or violation of applicable law. Subscriber shall assist BCBR, at Subscriber's expense, in the defense or settlement of any claim to which these indemnification obligations apply. These indemnification provisions shall survive the termination of Subscriber's participation in BCBR and the termination of this Agreement.

**18. INJUNCTIVE REMEDIES.**

Subscriber acknowledges and agrees that the MLS Compilation, BCBR Services, and BCBR System are confidential and proprietary products and that in the event there is an unauthorized disclosure of such by Subscriber, no remedy at law may be adequate. Therefore, Subscriber agrees that in the event of such unauthorized disclosure or use of the MLS Compilation, BCBR Services, and BCBR System, BCBR may seek injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law, without posting a bond or security of any kind.

## **19. LEGAL FEES AND COSTS.**

In the event of any legal action between Subscriber and BCBR relating to this Agreement, the Rules, or other BCBR policy where BCBR is the prevailing party, BCBR shall be entitled to recover its reasonable attorneys' fees, costs, and expenses incurred in such action or proceeding from Subscriber. Subscriber will also be responsible for any legal fees and costs incurred by BCBR in enforcing any order or collecting a judgment against Subscriber.

## **20. MISCELLANEOUS.**

Subscriber agrees and acknowledges that BCBR may change the terms of this Agreement as the result of any amendments to the Rules or other BCBR policy, which shall be effective immediately upon the adoption of such Rule or policy change by BCBR. In the event of any discrepancy between this Agreement or the Rules, the Rules shall govern. No waiver of any provision of this Agreement shall be effective unless in a writing signed by the waiving Party. Waiver by BCBR of any breach of any provision of this Agreement by Subscriber shall not be construed as a waiver of any subsequent breach. Any notices required or permitted to be given hereunder shall be: (a) delivered personally, (b) sent to each Party at the addresses as set forth in this Agreement by certified mail, return receipt requested, with delivery tracking, (c) sent by reputable overnight or two-day courier, or (d) sent via confirmed email. Notices shall be sent to Participant at the address or email address on file with BCBR and to BCBR at:

Mail: Texas Association of REALTORS  
Attn: General Counsel  
1115 San Jacinto Blvd, Suite 200  
Austin, TX 78701

Email: [general.counsel@texasrealtors.com](mailto:general.counsel@texasrealtors.com)

Notices shall be effective: (i) upon delivery, when sent by personal delivery, certified mail, or courier, and (ii) one (1) business day after sending, if sent via email. If any term or provision of this Agreement shall be found to be illegal or unenforceable then the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken. This Agreement contains the entire understanding of the Parties and supersedes all previous oral and written agreements on the subject hereof. BCBR shall not be liable for any delay or failure in performance resulting from causes beyond BCBR's reasonable control, including without limitation acts of war, terrorism, riots, strikes, embargos, lockouts, government action or interference, pandemics, endemics, fires, or natural disasters. This Agreement cannot be assigned without the prior written consent of BCBR. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. Any action to enforce or interpret this Agreement shall be brought in the federal or state courts located in Travis County, Texas.

*[Remainder of page left intentionally blank. Signature page follows.]*

**SUBSCRIBER AGREEMENT  
SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement the day and year set forth below, or as agreed to by electronic means.

**Subscriber:**

**Bee County Board of REALTORS®, Inc.:**

\_\_\_\_\_  
Name of Subscriber

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of Subscriber

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Subscriber's License No.

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PARTICIPANT INFORMATION**

Name: \_\_\_\_\_ Participant License No.: \_\_\_\_\_

Nickname: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Type of Business: (circle one):

Corporate   Limited Liability Company   Partnership   Sole Proprietor

Company License Number: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Participant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_