



Brampton Real Estate Board Brokerage Administrator Application & Agreement

Please Return completed forms to:

BREB Membership

Fax: 905-791-9430

membership@breb.org

60 Gillingham Drive

Suite 401

Brampton

Major Intersection

Bovaird Drive & Hwy #10 (Main Street)

Office Hours: 8:30 a.m. to 5:00 p.m. Monday to Friday

NOTE: Allow 24 - 48 business hours for processing

Inquires can be directed to the Membership Department at
905-791-9913 Ext 222 or email to membership@breb.org



Brampton Real Estate Board Brokerage Administrator Application & Agreement

Instructions

IMPORTANT: This Application is to be completed respectively by the applicant (Administrator) and the Broker of Record/Manager. The Broker of Record/Manager assumes responsibility for ensuring that the Brokerage Administrator has carefully reviewed and understands all of the provisions, terms and conditions of this BROKERAGE ADMINISTRATOR APPLICATION AND AGREEMENT (“Application”).

- Fax or email completed application to 905-791-9430 or membership@breb.org
- The processing time for each application is between 24 and 48 business hours if received before 3:00 p.m. anything received after 3:00 p.m. may take up to 72 hours to process
- The Brokerage’s Administrator will be advised via email when the Authenticator is ready for pick up
- When picking up the Authenticator the Administrator must produce Government Issued Photo Identification
- The Broker of Record/Manager may pick up the Administrator’s authenticator at BREB providing the “original” photo ID (photo copies will not be accepted) belonging to the Office Administrator is presented. The Broker of Record/Manager are also required to present their Government issued Photo Identification.

Details

Please complete the following information:

<hr/>	
Brokerage Name	Broker Code
<hr/>	
Brokerage Complete Address	
<hr/>	
Phone	Fax
<hr/>	
Broker of Record’s Name	MLS® User ID
<hr/>	
Broker of Record’s Email	
<hr/>	
Administrator’s Name	Administrator’s Email Address
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For Completion by the Applicant

UPPER CASE

First Name:

Last Name:

MLS® Rule Policy P-503

The Broker of Record/Manager of a Brokerage may be issued one or more administrative user names for use by Office Administrators or support staff to a maximum of one (1) administrative password for every ten (10) salespersons or part thereof, based on the registered members in that office to a maximum of ten (10) passwords. Upon receipt by BREB of a properly completed application, the Brokerage shall pay a one-time fee, as determined by the Board of Directors from time to time for each administrative user name that is issued.

The Broker of Record/Manager agrees to pay all applicable fees plus HST as set out in BREB's Policies (these fees may vary from time to time).

By signing the signature page you, as Broker of Record/Manager, of the Brokerage named in this Agreement agree that the access code and password/Authenticator is to be used solely by your office staff in the administration of your office.

If it is discovered that this code and password/Authenticator is used for any other purpose, the Brokerage's Stratus™ access may be discontinued immediately.

Personal Information Statement, Certificate and Agreement

I do hereby acknowledge having read, understand and agree to be bound by all of the following:

PERSONAL INFORMATION STATEMENT FOR ADMINISTRATORS

The Brampton Real Estate Board uses the personal information provided verbally or in writing by Administrators upon application to BREB (and which may be provided in due course for different purposes to fulfill its mandate). These purposes include:

- Acting as a professional association in support of Members as REALTORS®, including the administration of its By-Laws and policies, and ensuring compliance with same;
- Providing products and services to Members;
- Providing continuing education to Members and educational courses to those seeking to become Members;
- Administering and operating the MLS® system, including ensuring compliance with the rules and regulations governing the MLS® system.
- Administering and facilitating membership in the Ontario Real Estate Association and the Canadian Real Estate Association, including ensuring compliance with the By-Laws rules, and regulations of those associations;
- Any legal or regulatory requirements;
- And such other purposes consistent with the foregoing purposes.

The collection, use and limited disclosure of any applicant's personal information will only be for the purpose of fulfilling BREB's mandate, including the provision of services, products and information to Members by BREB, or any organization authorized by BREB, and only in a manner consistent with this statement and the Board's Privacy Policy.

When an individual applies or chooses to participate in the activities of BREB or uses any service provided by BREB that individual consents to the collection, use and disclosure of personal information as set out in this statement and the Board's Privacy Policy.

Subject to applicable laws and with specific exceptions to protect the privacy of third parties, Administrators may access their personal information held by BREB and may submit comments and or corrections to such information for inclusion with the personal information held by BREB.

Applicants/Administrators who do not have a copy of the Board's Privacy Policy, may obtain a copy by contacting BREB at 905-791-9913.



Certificate and Agreement of Brokerage & Brokerage Administrator

I, the Applicant, confirm that the statements contained in this application are true and correct.

If accepted, I agree to be bound by the By-Laws and Policies of BREB, a copy of which, have been read and understood by me. In making the application for membership, I waive all claims against BREB, its officers, Directors and any and all members arising out of any act in connection with the consideration and acceptance or rejection of this application.

The Broker of Record/Manager by their signatures on the signature page(s) verifies that they are satisfied that the Applicant is fully aware of the responsibilities and obligations incurred in making this application.

Administrator Access to MLS® Data Policy

As per the BREB's Authorized User Agreement, personal access codes, log-on account number and/or passwords and user names issued to a Member (Administrator); in order to provide online access to the MLS® database and/or other Board information and services (collectively, the "Access Codes") are for the Administrator's Sole and exclusive use and their sale to, distribution or disclosure to, or use by any other person is prohibited.

Notwithstanding the above statement, a Member who is a Broker of Record or Manager may appoint an Administrator(s) as an Authorized User, and the MLS® provider (Brampton Real Estate Board "BREB") may extend MLS® Access Codes to the Administrator subject to the following requirements:

- i. The Administrator is an individual and not a Company or Corporate entity
ii. The Administrator is under an Administrative Service contract or an Administrative employee of the Broker of Record
iii. The Broker of Record will ensure that the Administrator complies with the MLS® Providers Authorized User Agreement and the MLS® Rules and Policies
iv. The Broker of Record shall pay a \$50.00 set up fee and an annual renewal fee of \$25.00 for each Administrator
v. The Broker of Record shall inform BREB immediately of any changes in Administrator's status (such as termination) as the Administrator Access Codes are exclusive, unique and non-transferable
vi. The Broker of Record shall be responsible for establishing and maintaining security procedures acceptable to the MLS® Provider to prevent unauthorized use of the Access Codes by their Administrator
vii. The Broker of Record represents and warrants that the Administrator is not trading in Real Estate and is in complete compliance with the provisions of the Real Estate and Business Brokers Act concerning trading in Real Estate and indemnifies BREB in this regard

Termination of an Administrator

- 1. A form "Termination of Brokerage Administrator" form is required
2. When an Administrator has left the Brokerage; it is the responsibility of the Broker of Record to provide the above as well as have the Authenticator returned to BREB's office
3. Authenticator's are not transferable and must be returned upon the Administrator's departure from the brokerage within 48 hours
4. A new Administrator Application must be filled out if a new Authenticator is required
5. In the event that an authenticator for a terminated administrator has not been returned to the Brampton Board a charge of \$30.00 + HST will be charged to the Brokerages Account.

By signing this signature page you, as Broker of Record/Manager of the Brokerage office indicated in this Application and the Brokerage Administrator agree that the access code and password/authenticator is to be used solely by the office staff in the Administration of the brokerage. By signing below, the Broker of Record/Manager and the Brokerage Administrator agree to be bound by all of the terms and conditions of this Application and its attachments.

Brokerage Administrator ("Applicant's") Name: _____

Brokerage Name: _____

Broker of Record/Manager Signature _____

Name and Title (please print): _____ Date _____

PART B – Guarantee and Indemnity

To: The Brampton Real Estate Board

For valuable consideration, the receipt of which is hereby acknowledged.

BREB acknowledges that the undersigned (herein referred to as the (“Guarantor”)) has agreed with the Authorized User that the Guarantor shall pay directly to the Brampton Real Estate Board (“BREB”) all of the payment obligations of the Authorized User in Section 6 of the Authorized User Agreement (“Agreement”), a copy of which is available from BREB should further copies be required.

1. The Guarantor hereby irrevocably and unconditionally guarantees to BREB the due performance of the obligations of Section 6 of the Agreement. This shall be a continuing guarantee, and shall secure all amounts now due, or that may hereafter become due, or be remaining due from time to time and at any time from the Authorized User to BREB pursuant to Section 6 of the Agreement, whether absolute or contingent. Upon receipt by BREB from the Guarantor of any executive notice of termination in the then current form as prescribed from time to time by the Board of Directors of BREB, which notice states that the Authorized User has been terminated from the Guarantor, then this Guarantee and Indemnity shall continue to apply to amounts that have already become due (“Already Due Amounts”) under Section 6 of the Agreement, but shall not apply to amounts that become due after receipt by BREB of such notice of termination to the extent such amounts do not relate in any manner to the Already Due Amounts.
2. No alteration or waiver of this Guarantee and Indemnity or of any of its terms provisions or conditions shall be binding on BREB unless made in writing over the signatures of two of BREB’s duly authorized officers.
3. BREB shall not be bound to exhaust its recourse against the Guarantor or other parties or other security it may hold, or to value such other security, before being entitled to payment from the Guarantor and the benefit of any statute of limitations affecting the liability of the Guarantor hereunder or the enforcement thereof is hereby waived to the extent permitted by law.
4. BREB may, without prejudice to or in any way diminishing the liability of the Guarantor, grant extensions of time or other indulgences to the Guarantor and give up or modify, vary, exchange, renew or abstain from perfecting or taking advantage of any security, and may discharge any party or parties, and accept or make any compositions or arrangements, and realize any security, when and in such manner as it may expedient and in no case shall BREB be responsible for any neglect or omission with reference to any such security.
5. BREB may, without prejudice to, or in any way diminishing the liability of the guarantor, revise, amend, vary modify or renew the Agreement by posting such amendment variation, modification or renewal on the message board of Stratus™. The posting thereof as aforesaid shall constitute sufficient notice thereof to the Guarantor and consent of the Guarantor for all purposes of this Guarantee and Indemnity. The Guarantor waives any rights it might have in common law or at equity to receive any notice of, or to consent or agree to, such amendment, variation, modification or renewal, and the Guarantor agrees that the posting thereof on the message board of Stratus™ as aforesaid shall be sufficient for such purposes.
6. In the event BREB makes a demand upon the Guarantor upon the Guarantee and Indemnity herein contained, as between BREB and the Guarantor, the Guarantor shall be held and bound to BREB directly as principal debtor in respect of the payment of the amounts hereby guaranteed. In the event Guarantor does not pay BREB any amount when due pursuant to Section 6 of the Agreement, the Guarantor shall indemnify and save BREB harmless against all charges, costs, expenses or any amounts incurred by or on behalf of BREB relating in any manner to the collection of such amounts by BREB.
7. In the event the Guarantor does not perform any of the following:
 - a. The Guarantor shall take all reasonable steps at all times to protect the integrity of the Data Base and Software, as those terms are defined in the Agreement, and to ensure appropriate use at all times of such Data Base and Software by Authorized User, and
 - b. The Guarantor shall immediately report to the Board of BREB any breach by Authorized User of the Agreement, which either comes to the attention, or should have come to the attention, of the Guarantor:the Guarantor shall indemnify and hold BREB harmless from all costs, damages, expenses or any amount arising from, and/or incurred by BREB relating to, any breach of the Authorized User of the Agreement.
8. The Guarantor hereby waives notice of the acceptance of this Guarantee and Indemnity and of presentment, demand, and protest, notice of dishonor, and any demand and notice required by law.
9. This Guarantee and Indemnity shall be construed in accordance with the laws of the Province of Ontario and in any action thereon the Guarantor shall be estopped from denying the same. The Guarantor hereby irrevocably atones to the jurisdiction of the courts of Ontario and agrees to be bound by any judgement thereof, provided that nothing herein shall limit BREB’s right to bring proceedings against the Guarantor elsewhere.
10. This Guarantee and Indemnity shall extend and endure to the benefit of the successors, legal representations and assigns of BREB and shall be binding upon the Guarantor and its successors and permitted assigns. The Guarantor shall not assign this Guarantee and Indemnity without the prior written consent of BREB.



Brampton Real Estate Board Brokerage Administrator Application & Agreement

By its signature, the Guarantor acknowledges and warrants that it has read, understands and agrees to be bound to the terms and conditions provided in this Guarantee and Indemnity, and that the person signing this Guarantee and Indemnity has the capacity and authority to sign on behalf of the Guarantor and to bind the Guarantor in this Guarantee and Indemnity.

The Authorized User referred to in this Guarantee and Indemnity is: _____
Applicant's Name

Brokerage Name: _____

Guarantor Signature (Broker of Record/Manager) _____

Name and Title (please print): _____ Date _____

Authorized User acknowledges, confirms and agrees that this Guarantee and Indemnity is being delivered by the Guarantor to secure Authorized User's performance under this Application and under Section 6 of the Authorized User Agreement.

Date _____ Member's ("Applicant's") Signature: _____

PART C – Authorized User Agreement

IMPORTANT PLEASE READ CAREFULLY

This **The Authorized User Agreement** along with all materials referenced herein ("Agreement") are a legal agreement between **YOU** (being designated in this Agreement as the "The Authorized User") and the Brampton Real Estate Board, a corporation incorporated pursuant to the laws of the Province of Ontario with offices at 60 Gillingham Drive, Unit 401, Brampton, Ontario L6X 0Z9 (hereinafter referred to as "BREB"). The Services, MLS® Database and BRS Database to which this Agreement relates are owned and operated by or on behalf of BREB and made available to The Authorized User only under the terms and conditions of this Agreement.

The Software and Documentation developed by or on behalf of BREB and owned by or licensed to BREB support the provision of the Services and access to the MLS® Database and the BRS Database.

This Agreement combined with BREB Requirements together with any amendments and updates that may be published by BREB or posted by it on the members' portion of Stratus™ from time to time collectively comprise the entire agreement between the Parties and supersede all prior agreements relating to the subject matter of this Agreement.

The rights granted to The Authorized User under this Agreement are personal to The Authorized User.

The Authorized User may not sell, assign, or otherwise transfer or agree to transfer all or any portion of those rights without the prior written consent of BREB, which consent may be withheld at the absolute discretion of BREB.

THE AUTHORIZED USER MUST READ THIS AGREEMENT CAREFULLY BEFORE INDICATING ACCEPTANCE BY SIGNING AT THE END OF THIS AGREEMENT. IF THE AUTHORIZED USER DOES NOT AGREE TO ANY OF THE TERMS OF THIS AGREEMENT, RETURN THE UNSIGNED AGREEMENT TO BREB AND THE AUTHORIZED USER WILL NOT BE PERMITTED TO ACCESS AND USE THE SERVICES. THE SERVICES, MLS® DATABASE AND BRS DATABASE MAY CONTAIN LINKS TO THIRD PARTY WEBSITES. BREB DOES NOT ENDORSE THE CONTENT CONTAINED IN ANY THIRD PARTY WEBSITE. BREB DOES NOT MAKE ANY REPRESENTATION, WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY OF ANY KIND REGARDING ANY THIRD PARTY WEBSITE, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING THE LEGALITY, ACCURACY, RELIABILITY, QUALITY, COMPLETENESS, TIMELINESS, NON INFRINGEMENT, SECURITY, OR SUITABILITY OF ANY CONTENT ON A THIRD PARTY WEBSITE OR WHETHER OR NOT ANY NECESSARY CONSENTS REQUIRED UNDER APPLICABLE LAWS FOR ANY ASPECT OF ANY THIRD PARTY WEBSITE HAVE BEEN PROPERLY OBTAINED. BREB DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OF ANY CONTENT, GOODS OR SERVICES ON OR MADE AVAILABLE THROUGH ANY THIRD PARTY WEBSITES. NOR DOES BREB MAKE ANY REPRESENTATION, WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY THAT THE OPERATION OF ANY THIRD PARTY WEBSITE WILL BE UNINTERRUPTED, FREE OF ERROR, VIRUSES OR ANY OTHER HARMFUL COMPONENTS. THE CONTENT, GOODS AND/OR SERVICES AVAILABLE ON OR THROUGH ANY THIRD PARTY WEBSITE ARE NOT UNDER BREB'S CONTROL AND IF YOU CHOOSE TO ACCESS ANY THIRD PARTY WEBSITE, YOU DO SO ENTIRELY AT YOUR OWN RISK.

1. DEFINITIONS:

In this Agreement:

- a) **"Application"** means any BREB then-current properly completed "Application for Membership", "Data Access Application" or other form or written application or agreement provided by The Authorized User to BREB in support of its requirement to access and use the Services and MLS® Database under the provisions of this Agreement.
- b) **"Authenticator/MobilePass"** means any handheld random password generator(s) that may be provided by BREB to YOU from time to time.

- c) **"The Authorized User"** mean YOU as the party having agreed to be contractually bound to BREB Under each and every one of the terms and conditions of this agreement.
- d) **"Acceptable Use Policy"** means BREB's established rules and prohibitions, as modified from time to time, that define acceptable use of the Services and MLS® Database any associated features. Unacceptable use is prohibited, and is grounds for loss of privileges, termination of the Agreement, as well as discipline or legal sanctions for violating any applicable laws.
- e) **"Agreement"** means this The Authorized User and any amendments thereto. Unless otherwise stated, all references to a Section shall refer to a Section of this The Authorized User Agreement.
- f) **"BRS Database"** means the aggregation of all Content as well as its or their selections, assembly and arrangement, that from time to time comprise the Internet base service currently known as the Buyer Registry Service (BRS) and any successor or replacement service thereto owned and operated by or on behalf of BREB.
- g) **"Business" or "business"** as referenced in Sections 2, 3 (b), 4, and 8 (c), means the business of trading in real estate as set out or otherwise utilized in the Real Estate and Business Brokers Act R.S.O. 1990, as amended under the Real Estate and Business Brokers Act, 2002 when proclaimed in force, and as may be further amended from time to time.
- h) **"Content"** means all information, comments, opinions, statements, advice, descriptions, services, offers, data, files, links, ideas, software, images, graphics, audio clips, video clips, icons, or any other form of content or information.
- i) **"Copies"** means hard copy print outs and electronic versions of the reports, results, and other information or materials generated from The Authorized User's access and use of the Service and MLS® Database.
- j) **"Documentation"** means the applicable online or hardcopy user documentation providing guidance and instruction for accessing and using the Service and MLS® Database.
- k) **"Intellectual Property"** means all applicable copyrights, patents, trademarks, trade secrets, and associated international laws, treaties, and conventions.
- l) **"License"** means the restricted license rights granted by BREB to The Authorized User under Section 2 and elsewhere in this Agreement.
- m) **"Member"** means a fully paid-up member in good standing of BREB.
- n) **"MLS® Database"** means the aggregation of all Content as well as its or their selection, assembly, and arrangements, that from time to time comprises the Internet based service currently known as the Multiple Listing Service (MLS®), and any successor or replacement service thereto owned and operated by or on behalf of BREB.
- o) **"Party" or Parties"** means if used in the singular, either The Authorized User or BREB, and if used in the plural, both The Authorized User and BREB.
- p) **"PIPEDA" and Personal Information"** shall have the meaning attributed to such term within the provisions of PART 1 of the Personal Information and Electronic Documents Acts of Canada ("PIPEDA") and any successor legislation and any legislation of similar effect in the Province of Ontario.
- q) **"Real Estate" or "real estate"** as referenced in Section 4 and 9 shall have the same meaning as set out or otherwise utilized in the Real Estate and Business Brokers Act, 2002 when proclaimed in force, and as may be further amended from time to time.
- r) **"Services"** means BREB's proprietary Internet-based system and associated technology that provides web-enabled display, search, retrieval, and uploading capabilities through the BREB Website to its MLS® Database and BRS Database and other related capabilities including , without limitation, customer information services.
- s) **"Software"** means BREB's proprietary backbone software applications that enable BREB to provide BREB Website access to and use of the Services, MLS® Database and BRS Database.
- t) **"Support"** means any diagnosis of errors and corrections or workarounds, guidance to remedy a user problem, and any implementation by BREB of updates, adjustments, additions or modifications to the Services as BREB may prescribe from time to time.
- u) **"Third Party Website"** means any site other than a BREB Website.
- v) **"Trade in Real Estate " or "Trading in Real Estate"** shall have the same meaning as set out or otherwise utilized in the Real Estate and Business Brokers Act R.S.O. 1990, as amended under the Real Estate and Business Brokers Act, 2002, when proclaimed in force, and as may be further amended from time to time.
- w) **"BREB Members"** mean members of BREB in good standing from time to time in accordance with BREB's Bylaws.
- x) **"BREB Requirements"** means any single combination, as the case may be, of BREB's:
 - a. **"MLS® Polices "**, or its successor document if any, which are in force from time to time;
 - b. **"MLS® Rules "**, or its successor document if any, which are in force from time to time;
 - c. **"Bylaws"** means the BREB By-Laws, as amended from time to time; and
 - d. **"Standards"** means the document created from time to time by the Board of Directors of BREB, relating to the technology needed to access the MLS® Database, the BRS Database and Software.

- y) **“BREM Website”** means the following web address through which The Authorized User’s may obtain logon access to the Services, MLS® Database and BRS Database through BREB issued Authenticator/MobilePass, “User ID” and “Password” and The Authorized User controlled “Password” www.torontoMLS®.net and any other associated or linked sites operated by or on behalf of BREB.

2. LICENSE GRANT:

Subject to the terms of this Agreement, BREB grants the Authorized User a non-exclusive, non-transferable license, without right to sublicense, to access and use the Services, MLS® Database and BRS Database in accordance with this agreement and in compliance with all applicable BREB requirements (“License”) solely for the purpose of and directly related to The Authorized User’s ordinary carrying on of its business. The Authorized User unconditionally agrees to access and use the Services, MLS® Database only in the manner and for the purposes expressly specified in this Agreement and for the exclusive and internal use by The Authorized User and by other Authorized Users that have a valid Authorized User Agreement in effect with BREB which has not been terminated or suspended. Any updates, modifications, enhancements to the Services, the underlying Software, Documentation, MLS® Database or BRS Database made available to the Authorized user by BREB, shall be subject to all of the terms and conditions contained in this agreement. BREB may at any time and for any reason elect to modify, discontinue, delete or restrict any aspect or feature the Services, MLS® Database and BRS Database without notice to The Authorized User or any liability to BREB or any third party; however BREB agrees to make commercially reasonable efforts to provide The Authorized User with prior posted notice by means of notice posted to The Authorized Users. No part of this agreement may be assigned or transferred in any manner without the prior written consent of BREB nor may The Authorized User rent, distribute, assign, sub-license or otherwise transfer any of The Authorized User’s rights, duties or obligations under this Agreement without the prior written consent of BREB.

The Authorized User shall maintain in confidence all provisions of this Agreement and shall not disclose any of same (including any of BREB’s pricing) to any third party or parties.

3. DOCUMENTATION AND COPIES:

Under the License, The Authorized User may

- a) use the Documentation in support of The Authorized User’s use of the Services, MLS® Database and BRS Database;
- b) And make Copies solely for the purpose of Business.

4. RESTRICTIONS ON USE:

The Authorized User acknowledges that the MLS® Database and BRS Database as formatted by BREB have substantial monetary value, have a special value due to access only by BREB Members and Users Authorized by BREB, and are considered the confidential property of BREB and that BREB retains ownership of all rights, title and interest to the services, the Software, the MLS® Database and the BRS Database. Except as expressly Authorized in this Agreement, Authorized User shall not:

- a) use either the MLS® Database, the BRS Database or the Services in any manner not directly related to the business of real estate as defined in the Real Estate and Business Brokers Act R.S.O 1990, as amended under the Real Estate and Business Broker Act, 2002, when proclaimed in force, and as may be further amended from time to time.
- b) use either the MLS® Database, the BRS Database or the Services for the benefit of anyone except directly related to the real estate business as defined in the Real Estate and Business Brokers Act R.S.O 1990, as amended under the Real Estate and Business Brokers Act, 2002, when proclaimed in force, and as may be further amended from time to time.
- c) circulate or copy either the MLS® Database, the BRS Database or the Services in any manner except to the Authorized Users who have a valid Authorized User Agreement which they have signed and delivered to BREB, which agreement has not been terminated or is suspended, and except to persons or entities who desire or may desire to acquire or dispose of certain of their rights respecting real estate;
- d) use, copy, reproduce or exploit either the MLS® Database, the BRS Database or the Services for creating, maintaining or marketing, or aiding in the creation, maintenance or marketing, of any MLS® Database or BRS Database which is competitive with the MLS® Database or the BRS Database or which is contrary to the By-Laws, the MLS® Rules and MLS® Policies, or the Real Estate and Business Brokers Act, 2002 when proclaimed in force, and as may be further amended from time to time.

The provisions of this Section shall not apply to that part of the MLS® Database, as formatted by BREB, which is publicly available without breach of any obligation by the Authorized User hereunder; or is lawfully obtained by the Authorized User from the third party who has a legal right to disclose it.

5. CONTENT SUBMISSION AND LICENSE:

All Content submitted by the Authorized User to BREB for inclusion in the MLS® Database or the BRS Database is accepted on the understanding that it is the right of the contributing the Authorized User to make the submission and that there are no legal restrictions preventing its submission or publication online or in any other media that BREB may utilize. The Authorized User agrees to grant BREB a perpetual, worldwide, royalty-free, non-exclusive, sub-licensable and transferable right and license (“Content License”) including all related intellectual Property rights:

- a) To use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, play and exercise all rights with respect to the Authorized User's Content contribution and to incorporate the Authorized User's Content Contribution in other works in any media now known or later developed as required and at BREB's discretion without further rights negotiation. If The Authorized User does not want to grant to BREB the rights set out above, The Authorized User agrees that it shall not submit its contribution to BREB; and
- b) To fully exploit such Content and to allow others to do so.

The Authorized User warrants, represents and agrees that it will not contribute any Content that is infringing, libelous, defamatory, obscene, pornographic, abusive, or offensive or otherwise violates any law or right of any third party. BREB reserves the right to remove any Content from the BREB Website at any time, for any reason including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if BREB is concerned that The Authorized User may have breached the immediately preceding sentence.

6. CHARGES:

As a condition of the rights granted in this Agreement, the Authorized User shall pay to BREB the charges as set forth and as amended by BREB from time to time. Payment of charges is due as set forth in the Bylaws and MLS® Rules and Policies. If BREB does not receive payment when due, interest shall be charged in accordance with the Bylaws and MLS® Rules and MLS® Polices until such charges, together with all applicable interest, is received by BREB.

7. INTELLECTUAL PROPERTY:

- a) The Services, MLS® Database, BRS Database Software and Documentation are proprietary and confidential to BREB, are protected by the Intellectual Property laws of Canada and international treaties and conventions, and shall remain the sole property of BREB. Notwithstanding anything in this Agreement to the contrary, BREB shall have sole and exclusive ownership of all right, title and interest in and to the Services and MLS® Database, BRS Database, Software and Documentation including all derivative works and all modifications and enhancements thereof and depreciative works regardless of the form or media in or on which the original and other copies may exist. No provision or clause in this Agreement shall be interpreted as an assignment or grant to Authorized User of any right, title, or interest in or to Intellectual Property, all privileges pertaining thereto are remaining the exclusive property of BREB (or in some cases, of its subcontractors).
- b) The Authorized User shall not obtain any rights in connection with any trade-marks or service marks of BREB. The Authorized User shall not remove or alter any trade-mark, logo, copyright or other proprietary notices, legends, symbols or labels in the MLS® Database Content, BRS Database Content, Copies and Documentation and each copy must contain all of the original proprietary notices.
- c) The Authorized User Shall
 - I. Reproduce and display all Notices or Copies Authorized User makes in accordance with this Agreement;
 - II. Not de-compile, reverse engineer, disassemble, modify, analyze or otherwise examine or otherwise reduce the Software to human readable form or create derivative works of Software, MLS® Database and or the BRS Database;
 - III. Not delete or in any manner alter any notices, disclaimers or other legends contained in the Software, Services, MLS® Database, or the BRS Database appearing on any screens, documents, reports, numeric results or other materials obtained by the Authorized User through the use of the Software and Services (" Notices "); and
 - IV. Not provide service bureau facilities or commercial time sharing services to any third party or supporting operations for any third party through the access and/or use of the Software and/or Services.

Authorized User shall not, at any time or times, during or after the term of this Agreement question or dispute any of BREB's right, title, ownership, license, Intellectual Property, and/or other interests in the Software , the Documentation, the Services, MLS® Database or BRS Database nor commit any act or omission which negates, reduces, or impairs any of BREB's rights or interests in any of same; nor file any patent, copyright, and/or other intellectual property application and/or registration relating to any portion of the Software copyright, and/or other intellectual Property application and/or registration relating to any portion of the Documentation.

- d) Authorized User shall promptly notify BREB if The Authorized User becomes aware of any:
 - a. error, bug, or security breach in the Services or Software;
 - b. unauthorized use, reproduction, or distribution of content, the MLS® Database, the BRS Database, the Software or Documentation; and
 - c. Breach of the terms of this Agreement. The Authorized User shall maintain all such information in confidence, only shall disclose the same to BREB, and shall not publicize, publically distribute, or publically display any such information.
- e) The Authorized User recognizes the validity of BREB's copyrights and trade secrets. Authorized User will cooperate in good faith to secure and preserve BREB's right and title to the copyrights and trade secrets for the Software and of all derivative works, as if said products were their own products.

- f) Authorized User acknowledges and agrees that the Software is, in all respects confidential information subject to the terms of this Subsection.
- g) Authorized User agrees upon termination of this Agreement to continue to protect BREB's copyrights and trade secret.

8. CONFIDENTIAL INFORMATION:

- a) "Confidential Information" means all confidential and/or trade secret information, knowledge, and/or data of every kind disclosed by one party to this Agreement ("Disclosing Party") to the other party ("Recipient Party") pursuant hereto.
- b) Confidential Information shall not include any information, knowledge, and/or data disclosed pursuant to this Agreement to the extent same:
 - I. is or hereinafter becomes part of the public domain through no wrongful act of the Recipient Party, or
 - II. is known to the Recipient Party free of any obligation of confidentiality at the time of first disclosure hereunder; or
 - III. is lawfully obtained by the Recipient Party from a third party without obligation of confidentiality, without breach of any obligation of confidentiality to the Disclosing Party, and without breach of this Agreement; or
 - IV. is disclosed pursuant to a court order provided that the Recipient Party provides a copy of such court order to the Disclosing Party, prior to such disclosure and Recipient Party takes all reasonable steps, consistent with such order, to maintain the confidentiality of same.
- c) Each Recipient Party shall:
 - i. receive and maintain all Confidential Information received hereunder in confidence;
 - ii. use Confidential Information received hereunder solely for the purposes of such Recipient Party, lawfully exercising its rights and/or performing its obligations hereunder and for no other purpose whatsoever;
 - iii. use the same degree of care to protect Confidential Information received hereunder as such Recipient Party itself uses to protect its own confidential information from unauthorized use, copying, and/or disclosure which standard shall be no less than reasonable care; and
 - iv. disclose Confidential Information received hereunder only to those of its directors, officers, employees, who have a direct need to know same for the purpose stated above and who are bound by written confidentiality obligations at least as restrictive as those contained herein.
- d) All ownership, license, Intellectual Property, moral and other rights to Confidential Information disclosed hereunder shall remain with the Disclosing Party and/or with such Disclosing Party's licensors.
- e) Each Recipient Party shall promptly cease all use of all Confidential Information received hereunder upon any termination or expiry of this Agreement and shall promptly return all such Confidential Information to the Disclosing Party by a secure means without delay.

9. PRIVACY:

- a) **Compliance with Personal Information Protection and Electronic Documents Act.** Authorized User shall at all times comply with all applicable laws and regulations. Without limiting the generality of the foregoing, Authorized User shall ensure that all Personal Information that may be collected by or on behalf of Authorized User in connection with the MLS® Database, the BRS Database and/or the Services will be collected, used disclosed and maintained strictly in accordance with the requirements of all applicable privacy legislation including, without limitation, the **Personal Information Protection and Electronic Documents Act** ("PIPEDA") of Canada and any successor of similar effect in the Province of Ontario as though that legislation were fully in force and fully applicable to The Authorized User.
- b) **Currency of Information and Listings.** Subject to Section 9 (a) above, Authorized User shall promptly, and in any event with 60 calendar days, destroy, erase or make anonymous Authorized User's records and file copies of all Authorized User's customer and client personal information that is no longer required to fulfill the identified purpose. Authorized User will, upon request from BREB, provide a written certification attesting to such destruction or erasure and will provide BREB with a copy of Authorized User's guidelines governing the destruction of personal information.
- c) **Consent.** Authorized User consents to and authorizes BREB to collect, retain, use and disclose all information provided to BREB relating to the MLS® Database and BRS Database and the Services (including, in each case, personally identifiable information) for all purposes related to the sale of real estate in Ontario and in the course of providing support for Members of BREB to carry on their real estate businesses in Ontario including, without limitation, collection, use and retention of Authorized User's personally identifiable information for BREB's own administrative purposes, collection, retention, use and disclosure of Authorized User's personally identifiable information in the form of a BREB membership roster that is compiled and disclosed to BREB's Members from time to time in paper and/or electronic formats and collection, retention and disclosure of all information submitted through the Services and

in the form of listing to the MLS® Database or information in the BRS Database including, without limitation, Authorized User's name and relationship to particular real estate transactions, all financial particulars of such transactions and disclosure of such information to all users of the MLS® Database or the BRS Database in any form whatsoever, and all calendar, contact or other information collected, used disclosed or maintained as part of Authorized User's use of the Services. For purpose of this 9 (c) "personally identifiable information" shall include, but not be limited to Authorized User's and its client's names, phone numbers, business and home addresses and employers.

- d) **Cessation of Use.** Subject to the provisions of this Agreement, Authorized User shall cease all use of all Personal Information received pursuant to this Agreement upon any termination or expiry of this Agreement.

10. CONDITIONS AND RESTRICTIONS ON USE:

- a) **Access.** BREB shall assign Passwords, as well as an Authenticator/MobilePass, to authorized use to enable Authorized User to access the Services, MLS® Database, BRS Database and Software. Authorized User agrees to be fully responsible for all activities that occur under Authorized User's Password or account and to not permit any person other than Authorized User to access Authorized User's Password or account or use Authorized User's Authenticator/MobilePass. In the event Authorized User discovers unauthorized access to or use of Authorized User's account, Authorized User must inform BREB's Membership Coordinator or Executive Officer immediately. BREB reserves the right from time to time to change the Passwords by notice to Authorized User, or to require Authorized User to change their Password or Authenticator/MobilePass. Authorized User must change their Password within one (1) day after notification of requirement to change the Password in order to continue to be entitled to access the Database and Software.
- b) **Performance.** The Authorized User understands and agrees that the operation and availability of the systems used for accessing and interacting with the Software and Services, including, the public telephone, computer networks and the Internet or to transmit information, whether or not supplied by The Authorized User or BREB, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the Software and Services. BREB shall not in any way be responsible for any such interference with or prevention of The Authorized User's access and/or use of the Software and Services.
- c) **Compliance with BREB Requirements.** Authorized User must comply with all provisions in the BREB Requirements. In order to continuously improve and update the quality of the Services that it provides, BREB reserves the right to change or modify the BREB Requirements from time to time. Such changes shall become effective.
- I. In the case of the Standards, six months; and
 - II. In the case of BREB's MLS® Policies and MLS® Rules, five days
- after BREB has either, in writing, notified Authorized User of such change, which writing may consist of, among other things, publishing on the BREB Website or otherwise or included notice of such change in the MLS® Database and/or BRS Database. If The Authorized User does not comply with the applicable BREB Requirements or does not comply with a change to any such applicable BREB Requirements after a change becomes effective, Authorized User may not be able to access the Services, MLS® Database or BRS Database and will furthermore be in breach of this Agreement. Changes to any of the Standards, BREB, MLS® Policies, or BREB's MLS® Rules shall be available for review at any time on reasonable notice during normal business hours at the offices of BREB. As well, any changes to the Standards shall be available electronically upon Authorized User accessing the MLS® Database or BRS Database. **The Authorized User accepts complete responsibility to ensure that it has the most current version of the Standards, BREB's MLS® Policies, and BREB's MLS Rules at all times.**
- d) **Non-Interference.** Authorized User shall not attempt to access any systems, programs or data of BREB that is not licensed under this Agreement, or otherwise made available by BREB for public use,
- e) **Suspension.** The License rights granted to Authorized User under Section 2 shall be suspended immediately upon Authorized User's brokerage delivering to BREB, in BREB'S then currently the Authorized form, a signed Notice of Transfer which Notice states or provides that Authorized User's license with the brokerage has been surrendered or terminated ("Suspension"). The License rights may be reinstated as if such Suspension had not occurred if at any time during or following such Suspension, the Board of Directors of BREB permits Authorized User a period of time to relocate with a new brokerage that is Member of BREB and that Broker of Record signs and delivers to BREB and in BREB's then currently the Authorized form, either
- I. A validly executed and current Guarantee and Indemnity (available as part of BREB's Application of Membership and Agreement form in support of Authorized User's or
 - II. A Notice of Transfer relating to Authorized User.

11. LIMITATION OF LIABILITY:

- a) **THE SERVICES, SOFTWARE, MLS® DATABASE AND BRS DATABASE ARE PROVIDED "AS IS" WITHOUT ANY GUARANTEE, REPRESENTATION, CONDITION OR WARRANTY OF ANY KIND, EITHER EXPRESSED, IMPLIED OR STATUTORY, USAGE OF TRADE OR COURSE OF DEALING INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BREB MAKES NO WARRANTIES AND ASSUMES NO LIABILITY**

WHATSOEVER REGARDING THE TRUTH OR ACCURACY, CURRENCY, OR COMPLETENESS OF THE SERVICES, SOFTWARE, MLS® DATABASE OR BRS DATABASE. THE AUTHORIZED USER AGREES THAT ANY USE OF THE MLS® DATABASE, BRS DATABASE AND/OR SOFTWARE BY OR ON BEHALF OF THE AUTHORIZED USER OR ANY PERSON OR ENTITY WHO ACQUIRES THE RIGHT OF SUCH USE, DIRECTLY OR INDIRECTLY BY OR THROUGH THE AUTHORIZED USER, IS DONE AT THE AUTHORIZED USER'S SOLE RISK.

- b) Authorized User acknowledges that neither BREB nor its directors, officers, employees or agents will assume any responsibility with respect to the use, copying or in any manner relating to how Authorized User, any of their employees, agents or any other person uses or relates to the BREB Website, Services, Software, MLS® Database, BRS Database or any Third Party Website or the results of any act or omission related thereto in any manner. BREB, its directors, officers, employees and agents, will not be liable to Authorized User or to Authorized User's clients or customers, any of their employees, and agents, or to any other party for any direct, indirect, special, consequential, incidental, contingent, punitive or exemplary damages, or damages of any nature including without limitation lost profits, howsoever caused, arising in contract, tort (including negligence), fundamental breach, breach of a fundamental term, or otherwise, or out of or in connection with this Agreement and/or the supply, use, performance or non-performance of the MLS® Database, the BRS Database, the Software or any Third Party Website or relating to the assistance provided by BREB, even if BREB or its employees or agents have been advised of the possibility of such damages, regardless of the form of action and whether or not such damages are foreseeable.
- c) Authorized User shall indemnify, defend and save harmless BREB, its partners and its and their respective directors, officers, employees and agents from and against all damages, cost and expenses relating in any manner, actual or threatened, to any claim, action, cause of action or any proceeding made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any injury, infringement or damage arising from:
- i. any and all negligent or reckless acts or omissions of The Authorized User, or its partners, or its or their respective directors, officers, employees, representatives or agents in the performance or purported performance of this Agreement;
 - ii. breach of this Agreement except directly by BREB; or
 - iii. breach of any Intellectual Property, moral or property rights related to the BREB Website, the Services, Software, MLS® Database, BRS Database or any Third Party Website by Authorized User, or its partners, or its or their respective directors, officers, employees, representative or agents, or any person or entity who gained access to the MLS® Database by or through Authorized User, directly or indirectly.
- d) Authorized User agrees to defend, indemnify and hold BREB as well as each of the directors, officers, agents, and employee of BREB harmless, from any losses, liabilities, damages, actions, claims or expenses (including reasonably lawyers' fees and court costs) arising or resulting from Authorized User's breach of any term of this Agreement or caused by acts or omissions performed by Authorized User or under Authorized User's Password or any password issued by Authorized User to Licensed Authorized Users or shared by either of them with others.
- e) Authorized User shall indemnify, hold harmless and at, the request of BREB, defend BREB, its affiliates and its and their respective officers, directors and employees from and against any and all costs, expenses, awards of damages or settlements made in relation to any proceedings, complaints, actions or claims, or in relation to compliance by BREB or its contractors with any orders or directions given against or to it or its affiliates by any privacy commissioner, tribunal, person or court, arising from any breach by Authorized User of any its obligations as set out in Section 9.

12. TERMINATION:

- a) In the event Authorized User is breach of:
- I. this Agreement;
 - II. Its payment obligations as set forth in Section 6 and any provision contained in the By-Laws, BREB Requirements or the Real Estate and Business Brokers Act R.S.O. 1990, as amended under the Real Estate and Business Brokers Act, 2002 when proclaimed in force, and as may be further amended from time to time;
- and, with respect to Section 12 (a) (i), if such breach is not cured within two weeks after notice from BREB, or with respect to Section 12 (a) (ii), if such breach is not cured immediately, then BREB has the right to invoke any or all of the rights contained in the BREB Requirements and Authorized User shall comply with the procedures and obligations as contained in the BREB Requirements.
- b) Authorized User may terminate this Agreement at any time, provided its gives BREB prior written notice, and provided that it complies with the termination procedures and obligations as set forth in the BREB Requirements.
- c) In the event BREB decides, at any time, not to continue to offer, maintain or develop the MLS® Database and/or BRS Database to meet the BREB Requirements and Standards, BREB may terminate this Agreement provided it gives Authorized User six months prior

written notice and The Authorized User shall comply with the termination procedures and obligations as contained in the BREB Requirements.

- d) If at any time after the time period permitted by BREB to permit The Authorized User time to relocate with a new brokerage, there is not in existence a validly executed and current Guarantee and indemnity relating to The Authorized User, in BREB's form which is available as per of BREB's Application of Membership and Agreement form, or a Notice of Transfer relating to Authorized User in the then current form as the authorized by BREB from time to time, which is executed by any type of Broker of Record who is a Member of BREB, then BREB may at any time thereafter terminate this Agreement by notice to The Authorized User.

13. INJUNCTIVE RELIEF.

The Authorized User acknowledges that a violation of Sections 4,7,8,9 and 10 of this Agreement would cause irreparable harm to BREB for which no adequate remedy at law exists and Authorized User therefore agrees that, in addition any other remedies available, BREB shall be entitled to see injunctive relief and to recover all costs and expenses, including lawyer's fees incurred because of any such legal action to enforce the terms of Sections 4,7,8,9, and 10.

14. NOTICES

- a) Any notice, direction or other instrument required or permitted to be given to a Party shall be in writing and shall be sufficiently given if delivered personally, mailed by prepaid registered mail, or transmitted by fax or other form of record communication to the Party as follows:
- I. In the case of BREB, at 60 Gillingham Drive Suite 401, Brampton, Ontario L6X 0Z9
Attention: Executive Officer
 - II. In the case of Authorized User, at Authorized User's business address as identified in the Application last filed by Authorized User with BREB, and to be addressed to the Attention of The Authorized User with a copy to the Attention of Authorized User's Broker of Record/Manager (as applicable) at the business address as last filed by such Broker of Record/Manager with BREB.
- b) Either party may change its address for service from time to time by notice given to the other Party in accordance with the foregoing.
- c) Provided that either Party may, at such Party's option, elect to provide electronic legal notices regarding this Agreement to the other party at the email address identified in the acceptance or signature block of the Agreement. It shall be the responsibility of the recipient Party to provide prompt notice to the other Party of any changes in email addresses.

16. MISCELLANEOUS.

- a) **Entire Agreement.** This Agreement constitutes the entire agreement by which the relationship between BREB and Authorized User will be governed. There are no oral agreements, arrangements, representations or understanding between the Parties and this Agreement may not be amended or modified except by an instrument in writing duly signed by both Parties. This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and cancels and supersedes any and all prior understanding, agreements, negotiations and discussions with respect thereto. There are no representations, warranties, terms, conditions, undertaking or collateral agreements or understanding, express or implied, between the parties other than as expressly set forth in this Agreement.
- b) **Time of the Essence.** Time shall be essence of this Agreement.
- c) **Governing Law.** This Agreement shall be construed in accordance with the laws of the Province of Ontario except that no choice of law doctrine shall be used to apply the laws of any other jurisdiction. The Parties further agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- d) **Consent to Jurisdiction.** Authorized User consents to the exclusive jurisdiction of the federal and provincial courts located in the Province of Ontario in connection with any action or proceeding to enforce, or arising out of, this Agreement and agrees that venue will be proper in such court on any such matter. The Parties agree that a summons and complaint may be served by mail or overnight courier service at their addresses first set forth above or at such other address as such party may have given written notice of in accordance with Section 14.
- e) **Waiver.** The waiver by either party of any breach or default by the other party in the performance of any obligation hereunder shall constitute a waiver of any subsequent breach or default.
- f) **Amendments.** BREB may amend, add or remove portions of this Agreement at any time and from time to time without notice to Authorized User and the then current version shall be posted to the BREB Stratus™ Information Page. Upon the posting of such version as aforesaid and Authorized User's use of the Software, MLS® Database or BRS Database thereafter, this Agreement shall be deemed to be so amended without further acknowledgment of The Authorized User.
- g) **Severability.** To the extent that any law, statute, treaty or regulation by its terms as determined by a court, tribunal or other governmental authority of competent jurisdiction, is in conflict with the terms of this Agreement, the conflicting terms of this



Brampton Real Estate Board Brokerage Administrator Application & Agreement

Agreement shall be superseded only to the extent necessary by terms required by such law, statute, treaty or regulation. If any provision of this Agreement shall be otherwise unlawful, void or for any reason unenforceable, then that provision shall be enforced to the maximum extent permissible so as to affect the intent of the parties. In either case, the remainder of this Agreement shall continue in full force and effect.

- h) **Currency.** All dollar amounts referred to in this Agreement, including the symbol \$, refer to lawful money of Canada.
- i) **Language.** This Agreement and any documents relating thereto have been prepared in the English language at the express request of the parties.
- j) **Headings.** The division of this Agreement into Sections and the use of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.
- k) **Gender and Number.** In this Agreement words importing a specific gender include all genders and words importing the singular include the plural and vice versa.
- l) **Force Majeure.** BREB will not be responsible for any failure to perform due to causes beyond its reasonable control, including, acts of God, acts of terrorism, war, riot, embargoes, acts of civil or military authorities, national disasters, strikes and the like.
- m) **Assignment and Corporate Reorganization.** The rights granted to Authorized User under this Agreement are personal in character. Neither this Agreement nor any rights granted hereby may be assigned by Authorized User voluntarily or by operation of law without BREB's prior written consent and any such attempted assignment shall be null and void. For the purpose of this Agreement, "assignment " shall be deemed to include the transfer of all or substantially all of the assets of or a majority interest in Authorized User or the voting stock of Authorized User, or the merger of Authorized User with one or more entities. This Agreement shall inure to the benefit of and be binding upon any successor or assign of BREB.
- n) **Parties.** Nothing contained in this Agreement is intended to confer upon any person other than the parties hereto and their respective successors and permitted assigns, any benefit, right or remedy under or by reason of this Agreement, except with respect to Parties who shall be deemed third party beneficiaries under this Agreement but solely with respect to those terms that specifically reference a Party or the Parties.

Dated this _____ Day of _____ 20 _____

ACCEPTED AND AGREED TO BY THE UNDERSIGNED:

Signature _____

USER NAME (Please Print) _____

Email Consent

By checking this box you agree to receive emails from the Brampton Real Estate Board specifically the weekly newsletter; event Invitations as well as being added to our Member Email Mailing List.