

State-Wide Multiple Listing Service, Inc

IDX Content License Agreement

Note: This form is a legally binding contract between you and State-Wide MLS. Please complete and fax/mail this document to State-Wide MLS at 100 Bignall Street, Warwick, RI 02888; Fax: 401-784-9337. State-Wide MLS will sign the contract and return a copy to you with information on how to access the content feed.

AGREEMENT

1. This **AGREEMENT** is made and entered into by and among State-Wide Multiple Listing Service, Inc. ("**MLS**"), the real estate firm whose name and contact information appear on the signature page of this Agreement designated "Firm Information and Signature" (the "**Firm**"), and the companies/individuals whose names and contact information appear on the signature pages of this Agreement designated "Consultant Information and Signature" (collectively, "**the Consultants**"), if any.

RECITALS

2. Firm wishes to obtain, and MLS wishes to provide, content for Firm's web site, including the listing data and respective images of other real estate brokerages participating in MLS' IDX program. Firm may wish to engage Consultants, i.e., other companies or individuals who are not employees of Firm, to perform content downloading, manipulation, and formatting, as well as programming and web design.

DEFINITIONS

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

Internet Data Exchange Database or IDX Content: The current aggregate compilation of all active exclusive right to sell listings of all IDX Participants except those listings where the property seller has opted out of Internet publication by so indicating on the listing contract. MLS owns the IDX listing content compilation.

IDX Participant or "IDXP": A Participant who gives permission to other Participant to display its active listings on their web sites in return for their permission to advertise their listings on its web site.

Multiple Listing Service: A means for collecting and disseminating information about real property that is or has been for sale, including a means for real estate brokers to make offers of cooperation and compensation to each other. Multiple Listing Services may also include, without limitation, the provision of content processing, technical support, consulting, and other information technology services to real estate brokers and appraisers in connection with the sale and appraisal of real property.

Rules: The Rules and Regulations of MLS, as amended from time to time, and any operating policies relating to the IDX Content and IDXP's promulgated by MLS.

Participant: A Realtor, irrespective of where he holds primary membership who is a principal, partner, corporate officer or trustee of a real estate brokerage firm and holds a current, active, valid real estate broker's license or current, active valid appraiser's license or certification.

Listing Content: Content relating to real estate for sale, previously sold or listed for sale, including the IDX Database, and content relating to Participants and Affiliated Associations, entered into the MLXchange system by Participants, the Affiliated Associations, and MLS. MLS owns the listing content compilation.

MLS'S OBLIGATIONS

4. During the term of this Agreement, MLS grants to Firm a license to:
 - a. display the IDX Content on Firm's web site, and
 - b. make copies of the IDX Content to the extent necessary to deliver the IDX Content to consumers on Firm's web site.
5. During the term of this Agreement, MLS agrees to provide to Firm and its consultants:
 - a. access to the IDX Content via the Internet using File Transfer Protocol ("FTP"), under the same terms and conditions MLS offers to other Participants;
 - b. seven (7) days' advance notice of changes to the file and record formats of the IDX Content; and
 - c. seven (7) days' advance notice of changes to the Rules.

FIRM'S OBLIGATIONS

6. Firm shall comply with the Rules at all times.
7. Firm acknowledges MLS's ownership of the copyrights in the Listing Content and the IDX Content.
8. Firm shall comply with the requirements relating to Confidential Information set forth below.
9. In the event that Firm desires to make the IDX Content or the Confidential Information available to any consulting third party, Firm agrees to require such third party to execute this Agreement and become a Consultant.
10. If MLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that MLS may seek cure from the Consultants, or any one of them.
11. Firm shall notify MLS within five (5) business days of any change to the information relating to Firm on the Firm Information and Signature page below.

SERVICE FEES

12. Participant agrees to pay State-Wide a one-time set-up fee of one-hundred dollars (\$100) due payable with the submittal of this Agreement, and a monthly service fee of fifty (\$50) billed monthly.

Participant shall be invoiced in advance for each period of service until such time as this contract is terminated. The Participant agrees to pay each invoice prior to the Invoice Due Date outlined on the invoice. If the Participant fails to pay an invoice by the Invoice Due Date outlined on the invoice, State-Wide shall be entitled to unilaterally terminate this agreement and discontinue the service to the Participant. The Participant shall be held liable for any amount due, interest, legal and collection fees associated with late payment.

CONSULTANT'S OBLIGATIONS

13. If MLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, MLS may contact Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with MLS and act immediately upon notification by MLS of an uncured breach by Firm.
14. Each Consultant acknowledges MLS's ownership of the copyrights in the Participant Content and the IDX Content.
15. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
16. Each Consultant shall notify MLS within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page below.

CONFIDENTIAL INFORMATION

17. "**Confidential Information**" is information or material proprietary to MLS or designated "confidential" by MLS and not generally known to the public, that Firm or Consultants or any one of them (the "Receiving Party") may obtain knowledge of or access to as a result of access under this Agreement. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether in oral, visual, audio, written or other form):

- a. all Participant Content, except the IDX Content to the extent to which this Agreement and the Rules permit its disclosure;
 - b. all documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;
 - c. software, source code, object code, diagrams, flow charts;
 - d. techniques, procedures;
 - e. IP addresses, access codes and passwords; and
 - f. any information that MLS obtains from any third party that MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by MLS.
18. **Exceptions.** The Confidential Information does not include information that:
- a. is in the public domain at the time of disclosure;
 - b. is known to the Receiving Party at the time of disclosure;
 - c. is used or disclosed by the Receiving Party with the prior written consent of MLS, to the extent of such consent;
 - d. becomes known to the Receiving Party from a source other than MLS without breach of this Agreement by the Receiving Party and provided that such source is not known by the Receiving Party to be bound by a confidentiality agreement with MLS;
 - e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to MLS prompt notice of any such order.
19. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with MLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by MLS.

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

21. Restrictions on Use - Unauthorized Uses. The Receiving Party will not make copies of the Confidential Information. The Receiving Party will not directly or indirectly disclose, display, provide, transfer or otherwise make available the Confidential Information to any person or entity, unless the Receiving Party has received prior written consent of MLS to do so. At no time and under no circumstances will the Receiving Party reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. The Receiving Party will not incorporate the Confidential Information into any other work or product.

22. Restrictions on Use - No Third Party Access. Only the Receiving Party's own employees will access the Confidential Information. The Receiving Party will not provide access to the Confidential Information to third parties, including consultants or independent contractors, without prior written consent from MLS. If MLS grants consent, the Receiving Party will execute an agreement with the third party that imposes at least as strict a confidentiality obligation on the third party as that imposed by this Agreement on the Receiving Party.

23. Restrictions on Use - Location restriction. The Receiving Party will not remove the Confidential Information from its principal place of business without MLS's prior written consent. In the event MLS grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.

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

TERM AND TERMINATION

25. The term of this Agreement begins on the "Effective Date" set forth on the "MLS Information and Signature Page" below. MLS has the right at any time and in its sole discretion to terminate this Agreement. This Agreement shall terminate upon the occurrence of any of the following events:

- a. MLS's notice to Firm that this Agreement is terminated.
- b. Firm's notice to MLS that it no longer intends to display IDX Content on its web site.
- c. Termination of Firm's privileges as a Participant either by MLS or the Affiliated Association from which Firm purchases Multiple Listing Services.

GENERAL PROVISIONS

26. **Survival of Obligations.** The obligations of Firm set forth under “Firm’s Obligations” above and the obligations of Consultants under “Consultants’ Obligations” above shall survive the termination or expiration of this Agreement.

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

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

29. **Limitation of Liability.** MLS’s liability to Firm and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by Firm and Consultants to MLS, if any, under this Agreement. Firm’s and Consultants’ only other remedy shall be termination of this Agreement. MLS shall not be liable for any incidental or consequential damages under any circumstances, even if MLS has been advised of the possibility of such damages. MLS shall have no liability for inaccuracies in the IDX Content or the Listing Content.

30. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth below or such other address of which any party may advise the others in writing during the term of this Agreement.

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

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

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

34. **Applicable law.** This Agreement is governed by and enforced according to the laws of the State of Rhode Island

FIRM INFORMATION AND SIGNATURE

Firm Name: _____ Firm MLS ID: _____

Designated Broker Name: _____ Broker MLS ID: _____

E-mail address: _____

(You *must* supply an e-mail address here. This address will be MLS's principal means of communicating with you for notices under this Agreement.)

Firm Street Address: _____

Firm City, ST, ZIP: _____

Firm Phone: _____ Fax: _____

Entered into on behalf of Firm by

Signature

Print Name

Title

CONSULTANT INFORMATION AND SIGNATURE

NOTE TO FIRM: Reproduce this page for each individual/company to whom you intend to provide access to the IDX Content under this Agreement.

Consultant (company or individual) Name: _____

E-mail address: _____

(You *must* supply an e-mail address here. This address will be MLS's principal means of communicating with you for notices under this Agreement.)

Consultant Street Address: _____

Consultant City, ST, ZIP: _____

Phone: _____ Fax: _____

Entered into on behalf of Consultant by

Signature

Print Name

Title

NOTE TO CONSULTANT: Be sure to enter into this Access to IDX content feed contract with MLS and every real estate broker to which you provide services. If you sign only one and that Firm's access to the IDX Content is terminated, you will not be able to get the content for your other clients.

MLS INFORMATION AND SIGNATURE

Entered into on behalf of MLS by

Signature

Print Name

Effective Date

THIS BOX IS FOR CONSULTANTS USE ONLY.

Consultant must complete the information below after this form is signed by the subscribing Broker. MLS will then return a copy of this Agreement to both the Firm and Consultant(s). The contents of this box are Confidential Information under this Agreement.

FTP URL: _____

FTP User ID: _____

FTP Password: _____

Consultant(s) Name(s): _____

State-Wide Multiple Listing Service, Inc
IDX Content License - Consultant Nondisclosure Agreement

Whereby _____ (“CONSULTANT”), desires to have access to the on-line listing database which is owned and operated by Statewide Multiple Listing Service, Inc. (“MLS”) to facilitate operation by those end users who are also MLS participants or Participants, and the MLS desires to provide such access.

In consideration of being provided with access to the MLS’s on-line IDX listing database for the limited purpose described in the above paragraph, CONSULTANT acknowledges that the content as a whole is proprietary to the MLS, and agrees to the following:

1. CONSULTANT will protect as confidential any and all written or verbal information regarding the content that is now or will subsequently be in its possession and will not reproduce or disclose this information or content to any third party or parties without the prior express written permission of the MLS. CONSULTANT acknowledges that such information is the sole and exclusive property of the MLS and agrees that CONSULTANT will return such information promptly to the MLS upon request.
2. CONSULTANT will indemnify the MLS for any loss of profits, loss of use, incidental, consequential, or special damages sustained by the MLS as a result of CONSULTANT’ unauthorized use of the database or disclosure to third parties.
3. Either party may terminate this Agreement with thirty days’ written notice to the other party for any reason. In addition, the MLS reserves the right to terminate this agreement with no advance notice if CONSULTANT violates paragraph 1 of this Agreement.
4. The MLS agrees to make an attempt to notify CONSULTANT in advance of major programming changes that may affect their software. Major programming changes include record layout, search prompt, password, and format changes. The MLS disclaims any and all express and implied warranties, including but not limited to, fitness for a particular purpose. The parties agree that the MLS will not be held liable for any loss of profits, loss of use, incidental, consequential, or special damages sustained by CONSULTANT or the end users of CONSULTANT software resulting from the inability to use the third party CONSULTANT’S software.

We hereby agree to and understand the above. This agreement is executed on _____.

CONSULTANT

Statewide Multiple Listing Service, Inc.

Signature

Signature

Printed name and title

Printed name and title