



Key West Association of REALTORS®, Inc.
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CONFIDENTIALITY, NONDISCLOSURE, AND DATA USE AGREEMENT

This **CONFIDENTIALITY, NONDISCLOSURE, AND DATA USE AGREEMENT** ("Agreement") is entered into this ____ day of _____, 20____, by and between **Key West Association of REALTORS®, INC.** (the "MLS"), and _____, a _____ (the "Vendor"), a provider of internet or other computer-based services to Brokers/Participants in the MLS (the "Brokers"), with reference to the following facts.

1. The MLS operates an online computerized real estate multiple listing service for much of the Florida Keys, Monroe County Florida. Part of the MLS's function is to provide multiple listing data and other information to its participants, subscribers and other parties authorized to receive such information by the MLS, including Brokers for whom Vendor provides services. The computerized system is maintained by the MLS (and the service provided by the MLS to its members) is variously referred to herein as the "System" and/or the "Service."
2. The MLS has a protectable interest in the operation of the System and the Service and all such data and information received by the MLS and/or incorporated into the System. Without limiting the generality of the protection available to the MLS, all or much of such information, and compilation of such information, is proprietary and copyrightable material.
3. Vendor is a vendor of computer software product(s) and desires access to the System for the sole purpose of creating computer software designed for the benefit of the Brokers. Such computer software created by Vendor shall be limited to allowing the Brokers the ability to display the MLS property data via Vendor's product(s) on the Internet, or to display MLS property data in a program to be used in the Brokers' office applications, all in accordance with the MLS policy regarding IDX (Internet Data Exchange).
4. The MLS is willing to grant Vendor a limited, non-exclusive access to the System pursuant to the terms and subject to the conditions contained in this Agreement.
5. The MLS System is operated in accordance with the MLS Rules and Regulations, and in accordance with the guidelines set forth by the National Association of REALTORS®, which may be amended from time to time.

IN CONSIDERATION OF THE COVENANTS, REPRESENTATIONS, AND PROMISES SET FORTH HEREIN, THE MLS AND THE VENDOR AGREE AS FOLLOWS:

1. **Access to the System:** MLS hereby permits the Vendor to receive an MLS data feed to retrieve listing information, and to distribute such MLS data from the System to the Broker's website or office applications of the Brokers for whom services will be provided.
2. **No Right to Data:** This Agreement shall not be construed to grant Vendor any ownership interest in the System or the Service or the data compiled by the MLS, and expressly prohibits Vendor from remarketing, advertising and/or disseminating the data to any other person or entity. All data compiled by the MLS is owned by the MLS. The Vendor shall only have a license to use the System or the Service or the data compiled by the MLS. Such license is revocable pursuant to the terms of this Agreement.
3. **Rules, Regulations, and Guidelines:** The MLS and the Vendor acknowledge that the System and the Service are operated in accordance with the MLS Rules and Regulations set forth by the National Association of REALTORS®, which may be amended from time to time. The Vendor hereby acknowledges and agrees that the Vendor has received, or has been given the opportunity to receive, and review such Rules and Regulations. And by this Agreement the Vendor agrees to abide by those Rules and Regulations now in effect, and as they may be amended from time to time. Further, the Vendor acknowledges and agrees that it shall have the obligation to discover, keep current, and comply with all such Rules and Regulations, as they may be amended from time to time.
4. **Confidentiality and Nondisclosure:** The Vendor hereby acknowledges that it may be exposed to confidential and proprietary information of the MLS relating to its affairs, business information, or other information designated as confidential and proprietary (the "Confidential Information"). The Vendor agrees that it shall not disclose, nor permit any of its agents or employees to disclose, any such Confidential Information to any unauthorized third party without first obtaining written consent of the MLS. The following additional terms shall pertain to the obligation of Vendor to protect Confidential Information:
 - a. Such Confidential Information may not be used by Vendor in any manner except for the purposes of creating the software products contemplated by this Agreement;
 - b. The Vendor agrees to protect the confidentiality of the MLS's Confidential Information in the same manner it protects the confidentiality of its own proprietary and confidential information. Access to the Confidential Information shall be restricted to the Vendor's personnel engaged in creating the software products contemplated by this Agreement. The Vendor agrees to inform such personnel of the confidential nature of the information and that such information is subject to this Agreement, and shall require such personnel to abide by the terms of this Agreement. The Vendor shall not otherwise, in any manner, copy, disclose, publish, release, reproduce, transmit, transfer or make available any Confidential Information of the MLS without the MLS's prior written consent.
 - c. All Confidential Information of the MLS in the possession of the Vendor, in whatever form, including copies thereof, shall be returned to the MLS upon the first of the following to occur: (i) completion of the purpose for which the Confidential Information is provided or held; or (ii) written request by the MLS; or (iii) termination of this Agreement. The Vendor shall immediately notify the MLS upon learning of any unauthorized use or disclosure of the Confidential Information to any unauthorized party.

- d. Nothing in this Agreement shall prohibit or limit either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) whereby such information was (i) previously known to it; (ii) independently developed by it; (iii) acquired by it from a third party which was not, to the best of the Vendor's reasonable knowledge, under an obligation to the MLS not to disclose such information; or (iv) publicly available through no breach by the Vendor of this Agreement or by breach of any other agreement by any third party.
1. **MLS Remedies on Violation:** The Vendor also acknowledges that dissemination of the MLS's Confidential Information will cause irreparable harm to the MLS, and agrees that any breach of this Agreement entitles the MLS to an injunction and may entitle the MLS to damages.
 2. **Vendor Rights:** The Vendor shall retain all right, title and interest in the product(s) and related documentation developed by the Vendor under its Agreement with the Brokers, including all functionality, copyright and patent rights as provided under state and federal law. Any modification or improvements made to the product(s) shall remain the property of the Vendor.
 3. **MLS Rights:** The MLS shall retain all right, title and interest in the System and the Service, any data or information compiled by the MLS for the System and/or the Service, and any other software system which may be provided to or accessed by the Vendor hereunder, including all functionality, copyright and patent rights as provided under state and federal law. Any modifications or improvements made to the System and/or the Service or any other MLS software shall remain the property of the MLS.
 4. **Vendor Obligations:** As a material part of the consideration for this Agreement, the Vendor hereby agrees as follows:
 - a. The Vendor will not knowingly permit any access to the System or the Service through the connection or otherwise by any person(s) or entity other than the Brokers for whom services will be provided. The Vendor understands that the rules governing the operation of the Service and the System provide specifically that MLS data may not be transmitted, re-transmitted, or provided in any manner to any unauthorized individual, office or firm;
 - b. The Vendor will not make any use, alteration, adaptation, addition, change or revision of the data in the System, other than to make it available to the Brokers for whom services will be provided;
 - c. The Vendor will not enter into any license, sublicense, access, electronic connection or other agreement or arrangement, the effect of which would be to permit access to the System or the Service, or any portion thereof, by any party other than the Brokers;
 - d. The Vendor will not subcontract, assign, delegate or otherwise transfer any right or obligation under this Agreement without first obtaining the MLS's prior written consent;
 - e. The Vendor will establish and maintain firewalls, filters, and such additional and/or complementary security systems as may be reasonably necessary in order to provide reasonable assurances that the data is secure and the connection may not be used to access the System or the Service, except by the Brokers for whom services will be provided;
 - f. The Vendor agrees that the MLS shall have the right to perform all reasonable and necessary investigations to ensure that the Vendor complies with the terms of this Agreement. The Vendor shall cooperate in all such investigatory efforts by the MLS or its agents or representatives; and

- g. Upon notice from the MLS, the Vendor shall terminate the MLS data feed to retrieve listing information, and to distribute such MLS data from the System to any agent who is listed as "inactive" by the MLS or changes to another Broker's office.
- h. The Vendor agrees to send a list of all their active customers (our members) quarterly.

5. Warranties:

- a. The Vendor hereby warrants that it is the sole owner of the software product(s) created by the Vendor in contemplation of this agreement, and that it shall not have any ownership interest in the System or the Service or the data compiled by the MLS. The Vendor agrees to defend, indemnify and hold the MLS harmless from any action against the MLS on account of violation of any patent, copyright or trade secret rights due to the use or licensing of product(s) or modifications to the product(s) as provided by the Vendor. The MLS shall have the right to participate, at its own expense, in the defense of any such action.
 - b. The MLS hereby warrants that, with its parent association, it is the sole operator of the System and the Service and has the sole right to enter into this Agreement.
6. **Disclaimer:** Each party hereby disclaims any and all representation made to the other party and/or the other party's employees or representatives which are not set forth in this Agreement, and further disclaims all implied warranties of merchantability and fitness for a particular purpose of the Service and/or the product(s).
7. **Payments:** The MLS, by this Agreement, grants the Vendor access to the Service and the System solely for the benefit of the Brokers for whom services are provided.
- a. The Vendor is required to pay an annual license fee (see Schedule A) to the MLS for access to the System or the Service in accordance with the terms of this Agreement. The annual license fee shall be due as outlined in Schedule A and shall be billed out to the Vendor to be payable on January 1st of each year. Vendors joining after the initial implementation period will pay an amount prorated on a quarterly basis and payable on January 1st of each year thereafter.
 - b. If Vendor payment is not received by the payment deadline, services (feeds) are suspended until issue is corrected, vendors and members will be notified in writing of such suspension.
8. **Termination:** Either party may terminate this Agreement at any time, with or without cause, upon fifteen (15) days written notice of such termination to the other. The right to termination of this Agreement shall be in addition to any other rights or remedies which either party may have at law or in equity. Additionally, this Agreement shall terminate automatically and without notice if the Vendor's agreement with all Brokers shall terminate for any reason whatsoever.
9. **Attorneys' Fees:** If any party is required to initiate or defend litigation with respect to the terms of this Agreement, the prevailing party in any such litigation shall be entitled to reasonable attorney's fees and costs incurred in connection with such litigation, including any appeal.
10. **Applicable Law – Venue:** This Agreement shall be construed, interpreted and applied, and the rights and obligations hereunder determined, in accordance with the laws of the State of Florida. The venue for any lawsuit between parties related to this Agreement shall be in Monroe County, Florida.

11. **Merger:** This Agreement sets forth the full and complete understanding of the parties with respect to the subject matter of this Agreement, and, except with respect to the agreement between the Vendor and the Brokers, there is no other agreement, contract or understanding, whether written or oral, between or among any of the parties with respect to the System and the Service.
12. **Severability:** In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or unenforceability of the remaining provisions shall not in any way be affected or impaired thereby.
13. **Time is of the Essence/No Waivers:** Time and the prompt performance of each and every obligation of the parties hereto are agreed to be of the essence. Any departure from the conditions and terms of this Agreement, or any delay in the enforcement of the same by either party, shall not operate to waive or be a waiver of the rights of either party to stand upon the strict letter or construction of this Agreement or to require performance in accordance with the express terms set forth herein.
14. **Authorization/Agency Representation:** The Vendor represents and warrants that the Vendor's signatory hereto is duly authorized as the agent to represent the Vendor and to enter into this Agreement, and that the Vendor is bound by the terms and conditions of this Agreement. The signatory hereby acknowledge that he/she has read and understands this Agreement and has received a copy of it.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date set forth above.

MLS: Key West Association of REALTORS®, Inc. Vendor: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

MLS AUTHORIZATION FOR FBS TO PROVIDE DATA VIA RETS

Check only *one* option below (Required)

Option 1: Confidential RETS Data (All Statuses)

Permission Level for Confidential Data

- MLS (all MLS listings)
 Company (Company listings only)
 Office (Office listings only)
 Member (Member listings only)

Option 2: RETS IDX Feed (Used for display on Public web sites)

Option 3: VOW (Used for display on VOW web sites)

The undersigned MLS authorizes Financial Business Systems, Inc. ("FBS") to provide the MLS approved IDX database by RETS (Real Estate Transaction Standard) to the MLS member indicated below (IDX Participant). MLS understands that once the data has been transferred to the IDX Participant, FBS has no control or responsibility for how such data is used or displayed, and MLS holds FBS harmless from any and all liability related to the provision of such data or use or display by the IDX Participant.

Please note: fields designated in red are required for FBS to process your paperwork, however, your MLS may mandate that the form be completed in its entirety to obtain approval.

MLS Name (Required)

MLS Authorized Personnel (President, EO, etc.) (Required)

Signature (Required)

Date (Required)

IDX Participant's Name (MLS, Company, Office, Member) (Required)

flexmls Login ID/Username (xxx.company, xxx.office, xxx.member)

Webmaster E-Mail Address (Required)

Web Site URL Address for this data

(The URL Address listed is the only site which this data is approved for use)

Please send this form to rets-support@fbsdata.com or Fax to 701-234-0224 Attn: RETS

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CONSULTANT INFORMATION FOR KWAR IDX ACCESS

(To be completed by Consultant)

The Consultant acknowledges receipt of a current copy of the Real Estate Company Contract for Access to IDX Data Feed agreement and a current copy of the Key West Association of Realtors MLS Rules and Regulations. By execution of this form the Consultant agrees to adhere to the terms of the Agreement and the MLS Rules and Regulations.

NOTE: The Consultant as noted below is providing services for the following Member Office/
Individual ONLY (A Consultant Information for KWAR IDX Access from must be submitted
for each Member Office/Individual for which the Consultant is providing service.)

Name of Company/Individual: _____

Company Website: _____

Name of Consultant (Firm/Individual): _____

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: _____

Consultant Static IP Address:

Consultant Signature:

Print Name: _____

Title: _____

Date: _____