

MULTIPLE LISTING SERVICE OF ELKHART COUNTY, INC IDX DATA FEED CONTRACT

CONTRACT:

Access to IDX Data Feed

Note: This form is a legally binding contract between you and ECMLS. This form/contract must be filled out completely and signed by an owner of your firm. There are no exceptions. Once you have filled it out and signed it, fax or mail it to Elkhart County Multiple Listing Service at 57225 Alpha Drive, Goshen, IN 46528, Fax: 574-875-7174. ECMLS will sign the form/contract and return a copy to you with information on how to access the data feed.

AGREEMENT

1. This **AGREEMENT** is made and entered into by and among MLS of Elkhart County, Inc. (“**ECMLS**”), 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 ECMLS wishes to provide, data for Firm’s web site, including the listing data of other real estate brokerages participating in ECMLS. Firm may wish to engage Consultants, i.e., other companies or individuals who are not employees of Firm, to perform data 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.

Affiliated Association: Any association or board of REALTORS® that purchases Multiple Listing Services from ECMLS for resale to its members.

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

Participant: A Participant who gives permission to other Participants 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 data 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 ECMLS, as amended from time to time, and any operating policies relating to the IDX DATA promulgated by ECMLS.

ECMLS'S OBLIGATIONS

4. During the term of the Agreement, ECMLS grants to Firm a license to:
 - a. display the IDX Data on Firm's web site, and
 - b. make copies of the IDX Data to the extent necessary to deliver the IDX Data to consumers on Firm's web site.
5. During the term of this Agreement, ECMLS agrees to provide to Firm and its Consultants:
 - a. access to the IDX Data via the Internet using File Transfer Protocol ("FTP"), under the same terms and conditions ECMLS offers to other Participants & agents;
 - b. seven (7) days' advance notice of changes to the file and record formats of the IDX Data; 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 ECMLS's ownership of the copyrights in the IDX Data.
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 or the Confidential Information available to any third party, Firm agrees to require such third party to execute this Agreement and become a Consultant.
10. If ECMLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that ECMLS may seek cure from the Consultants, or any one of them.
11. Firm shall notify ECMLS within five (5) business days of any change to the information relating to Firm on the Firm Information and Signature page below.

CONSULTANT'S OBLIGATIONS

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

CONFIDENTIAL INFORMATION

17. **“Confidential Information”** is information or material proprietary to ECMLS or designated “confidential” by ECMLS 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 IDX Data, except 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 ECMLS obtains from any third party that ECMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by ECMLS.
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 ECMLS, to the extent of such consent;
 - d. becomes known to the Receiving Party from a source other than ECMLS 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 ECMLS; or
 - e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to ECMLS prompt notice of any such order.
19. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with ECMLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by ECMLS.
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 ECMLS 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 ECMLS. If ECMLS 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 ECMLS’s prior written consent. In the event ECMLS 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 ECMLS, the Receiving Party will return to ECMLS all Confidential Information and all other materials provided by ECMLS 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 ECMLS, an officer of the Receiving Party will certify in writing that all materials have been returned to ECMLS and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

25. The term of this Agreement begins on the “Effective Date” set forth on the “ECMLS Information and Signature Page” below. ECMLS 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. ECMLS’s notice to Firm that this Agreement is terminated.
 - b. Firm’s notice to ECMLS that it no longer intends to display IDX Data on its web site.
 - c. Termination of Participant or agents’ privileges either by ECMLS or the Affiliated Association from which Firm purchases Multiple Listing Services.
 - d. Non-payment of any fees associated with the IDX Program.

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. **ECMLS’s Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Firm and Consultants acknowledge that ECMLS would suffer irreparable harm in the event that any of them breaches its obligations under this Agreement, and that monetary damages would be inadequate to compensate ECMLS for a breach. ECMLS 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 ECMLS.
28. **Attorney’s fees.** If ECMLS 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 ECMLS’s reasonable attorney’s fees and costs for such legal action.
29. **Limitation of Liability.** ECMLS has no liability to Firm and Consultants for damages under this Agreement, whether in contract or tort. Firm’s and Consultants’ only remedy shall be termination of this Agreement. ECMLS shall not be liable for any incidental or consequential damages under any circumstances, even if ECMLS has been advised of the possibility of such damages. ECMLS shall have no liability for inaccuracies in the IDX Data.
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 ECMLS.

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 Indiana.

[The remainder of this page is left blank intentionally.]

IDX Contract
Participant/Agent Information and Signature Form

Firm Name: _____ Firm MLS ID: _____

Participant Name: _____ Participant MLS ID: _____

*E-mail Address: _____

Receiving Agent (if applicable): _____ Agent MLS ID: _____

*Agent E-mail Address (if applicable): _____

*ECMLS will use e-mail as the primary communication tool and the e-mail address must be supplied.

Firm Street Address: _____

Firm City, ST, ZIP: _____

Firm Phone: _____ Fax: _____ Voice Mail: _____

Are you using a Consultant? Yes No Name of Consultant: _____

Contact Name & email address: _____

*If yes, please return Consultant Information & Signature form in addition to this form.

____ User has elected to apply for the Smart Frame solution and pay a \$50.00 non-refundable set-up fee

____ User has elected to apply for RETS Access and pay a \$150.00 non-refundable set-up fee and quarterly fee of \$75.00

____ User has elected to apply for FTP access and pay a \$150.00 non-refundable set-up fee and quarterly fee of \$75.00

The ECMLS Listing Data will be displayed on the following website: _____

*Please supply the URL of the website where the IDX data will display

Entered into on behalf of Firm by:

Participant Signature

Date Signed

Print Name

Title

Agent Signature

Date Signed

Print Name

The User agrees to pay a non-refundable set-up fee and quarterly payments (if applicable). The set-up fee must be attached. MLS Participant authorizes ECMLS to provide IDX access to the agent listed on this form. The Participant also agrees to be held Responsible for Participant and agent's compliance with all IDX Rules and Regulations. Failure to comply with IDX Rules and Regs could result in termination of data feed.

User agrees to notify the MLS at mls@ecbor.com upon completion of website. MLS must approve the IDX site prior to the site's release to the public.

**IDX Contract
Consultant Information and Signature**

Please check ONLY ONE:

_____ I elect the ftp data feed

_____ I elect the RETS data feed

_____ I elect smart framing

Consultant (company or individual) Name: _____

E-mail address: _____

Web Site address: _____

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

Consultant Street Address: _____

Consultant City, ST, ZIP: _____

Phone: _____ Fax: _____

Name of Brokerage/Agent you are working with: _____

Address of Brokerage/Agent: _____

Contact Name & e-mail address: _____

Brokerage/Agent Website Address (URL): _____

NOTICE TO CONSULTANT: The MLS requires the Consultant to sign a Contract with each firm/individual for whom IDX service is provided.

Entered into on behalf of Consultant by

Consultant Signature

Consultant Print Name

Consultant Title

Date Signed

NOTE TO CONSULTANT: Be sure to enter into this Access to IDX data feed contract with ECMLS and every real estate broker to which you provide services. If you sign only one request and that Firm's access to the IDX Data is terminated, you will not be able to get the data for your other clients. By signing this agreement, Consultant agrees to comply with all the Rules & Regulations governing this program. Failure to comply with these Rules & Regulations will result in termination of access to the MLS data.

Consultant agrees to notify MLS at mls@ecbor.com immediately upon completion of website. The MLS must approve all IDX content on the website prior to the sites release to the public release.