



SOUTH BROWARD BOARD OF REALTORS® IDX Vendor License Agreement

This form must be completed and signed by each broker, licensee (if applicable) and vendor operating the IDX website stated within this agreement and a separate form must be completed for each IDX website to be operated.

Broker Name

Vendor Company Name

Brokerage Company Name

Vendor Website Address

Licensee Name (if applicable)

Brokerage Website Address

This IDX VENDOR License Agreement (the Agreement) is made and entered into by and between the South Broward Board of REALTORS® (hereinafter referred to as SBBOR), and the VENDOR whose name and contact information appears above and on the Signature Page of this Agreement.

RECITALS

VENDOR wishes to obtain, and SBBOR wishes to provide MLS Content, as defined in this Agreement, for use on Participant’s IDX Website **and for no other purpose**. Participant wishes to engage Vendor to operate Participant’s IDX website on behalf of Participant and subject to Participant’s supervision, accountability, and compliance with the MLS’s Rules, as defined in Definitions of this Agreement. Vendor wishes to and has or will enter into an agreement with Participant to operate Participant’s IDX website, and seeks to obtain access to the MLS Content for such purpose. In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged by SBBOR, Participant, Sales Licensee (If Applicable) and VENDOR agree as follows:

DEFINITIONS

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

- a. VENDOR means an entity or person designated by a Participant to operate a IDX website on behalf of the Participant, subject to the Participant’s supervision, accountability, and compliance with SBBOR IDX Website Policy and Licensing Rules (attached). For purposes of this Agreement, the Vendor is the company or individual(s) whose name and contact information appear on the Signature Page of this Agreement in the section designated “Vendor Information and Signature.” Additionally, any person or entity that creates and makes available, in any fashion, to any other person or entity, an IDX Website will be considered a Vendor. All VENDORS must have an active SBBOR License Agreement.
- b. MLS Content refers to listing information provided by Participants to SBBOR and aggregated and distributed by SBBOR to Participants, except for any listing for which the seller has withheld permission to have the listed property displayed on the Internet.
- c. MLS Server means the computer server or servers, including both hardware and software which contains the MLS Content and provides or provide the means for Participant to access the MLS Content.

I have read, understand and agree to comply with this page (____) (____) (____)

d. Participant means any REALTOR® or non-member who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal who participates in the Multiple Listing Service by agreeing to conform to the rules and regulations thereof. For purposes of this Agreement, a “Participant” may also be a non-principal broker or sales licensee affiliated with a principal who operates an IDX website with the principal’s consent. For purposes of this Agreement, the Participant is the real estate firm or individual whose name and contact information appear on the Signature Page of this Agreement in the section designated “Participant Broker Information and Signature.”

e. Rules refer to the MLS rules and regulations, as amended from time to time; any applicable access standards and technology standards; and any operating policies relating to the MLS Content.

f. IDX website refers to an MLS participant’s Internet website, through which the participant is capable of providing advertising of limited MLS data and other services to consumers. Each Participant’s website that receives MLS Content from SBBOR must have executed a separate SBBOR IDX License Agreement for each IDX website.

LICENSE

License Grant.

Subject to the terms and conditions of this Agreement, SBBOR hereby grants to VENDOR a License to receive from SBBOR an electronic data feed of the MLS Content for use solely and exclusively in connection with the display of MLS Content on a Participant’s IDX Website.

Limitations on License.

Except as expressly set forth in this Agreement Participant and/or VENDOR shall not facilitate, cause, or allow anyone else, to do any of the following: (a) use, display, access, distribute, transfer, alter, or modify the MLS Content, or otherwise create any derivative works of the MLS Content, (b) download, distribute, export, deliver, or transmit any of the MLS Content, including to any computer or other electronic device, except Participant’s IDX website as permitted under this Agreement, or (c) sell, grant access to, or sublicense the MLS Content, or any portion of the MLS Content, to any third party. Participant and/or VENDOR agree to take all reasonable steps necessary to protect the MLS Content from unauthorized access, distribution, scraping and copying or use.

License Fees and Payment; Expenses.

In consideration for the License granted under this Agreement, Participant agrees to pay to the Board the license fees and other fees described on the attached Schedule B to this Agreement (the Fees). The Fees shall be payable as provided on Schedule B. VENDOR may pay the Fees on behalf of Participant, except that if VENDOR fails to pay any such amounts when due, Participant shall be liable to the Board for such amounts until paid. Participant agrees to pay all costs of collection of all unpaid amounts owing to SBBOR under this Agreement, including reasonable attorneys’ fees and costs. Participant shall be responsible for its own expenses and costs under this Agreement, and SBBOR shall have no obligation to reimburse Participant for any expenses or costs incurred by Participant in the exercise of Participant’s rights or the performance of Participant’s duties under this Agreement.

No Warranties.

THE LICENSE GRANTED UNDER THIS AGREEMENT, INCLUDING ACCESS AND DISPLAY OF THE MLS CONTENT, IS PROVIDED “AS IS,” AND, EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, SBBOR DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

I have read, understand and agree to comply with this page (____) (____) (____)

COMPLIANCE

Rules.

Participant, VENDOR and Sales Licensee (If applicable) hereby acknowledge that the Board has provided each with a copy of the Boards Licensing Rules and Regulations (hereafter called Rules) and agree to be bound by and comply with the Rules (Schedule A).

- a. The Rules may include terms and limitations in addition to those set forth in this Agreement. In the event of any inconsistency, the terms of the Rules will govern.
- b. MLS may modify the Rules at any time, in its sole discretion. MLS agrees to deliver to Participant and VENDOR any modification of the Rules, and Participant and VENDOR shall comply with such modification not later than five (5) business days after receipt.

Means of Accessing the MLS IDX Listing Content.

Access by VENDOR to the MLS Content shall be exclusively by the means, including the format and method of delivery, designated by SBBOR. SBBOR may, in their sole discretion and upon thirty (30) days prior written notice to Participant and/or VENDOR, change the means and nature of accessing the MLS Content.

Authorization to Access the MLS Content.

VENDOR hereby acknowledges and agrees that (i) VENDOR has no independent participation rights in SBBOR by virtue of this license; (ii) VENDOR shall not use MLS Content except in connection with operation of the PARTICIPANT'S IDX website pursuant to this Agreement; and (iii) access by VENDOR to MLS Content is derivative of the rights of Participant.

Changes to MLS's Server.

SBBOR shall not be obligated to make any changes to MLS's Server, including any software running on MLS's Server, the configuration, applicable protocols, or any other aspect of MLS's Server for any reason. Participant and/or VENDOR acknowledge that the MLS Server, together with access to the MLS Content, may from time-to-time be unavailable to VENDOR, whether because of technical failures or interruptions, intentional downtime for service or changes to the MLS Server, or otherwise. Participant and/or VENDOR agree that any modification of the MLS Server, any interruption or unavailability of access to the MLS Server, or access to or use of the MLS Content shall not constitute a default under this Agreement. The Board shall have no liability of any nature to Participant and/or VENDOR for, and Participant and VENDOR waive all claims arising out of, any such modifications, interruptions, unavailability, or failure of access.

OWNERSHIP

Ownership of Intellectual Property.

Participant and VENDOR acknowledges and agrees that the MLS Content is proprietary, original works of authorship of SBBOR, may consist of information for which SBBOR has sufficient rights to grant this license, and is protected under United States copyright law. Participant and VENDOR further acknowledges and agrees that all right, title, and interest in and to the MLS Content and any modifications, enhancements, or derivative works of the MLS Content, are and shall remain with SBBOR. This Agreement does not convey or grant to Participant and/or VENDOR an interest in or to the MLS Content, but only a limited right to access and display the MLS Content, revocable in accordance with the terms of this Agreement. Participant and VENDOR agrees that it will not challenge or take any action inconsistent with SBBOR ownership of or rights to the MLS Content as described herein.

Trademark License.

SBBOR grants to Participant and/or VENDOR a limited, non-exclusive, revocable license to use SBBOR trademark(s) for the sole purpose of identifying SBBOR as the source of the MLS IDX Listing Content ("MLS Trademark"). Participant

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and/or VENDOR agrees that it shall not use the SBBOR Trademark, or any marks that are confusingly similar, assert any right, license, or interest with respect to any trademarks of SBBOR, or represent or suggest any affiliation between SBBOR and Participant or VENDOR. Participant and/or VENDOR agrees that it will not file any applications or assert any rights to the SBBOR Trademark in the United States, or any other country or territory. SBBOR may subsequently grant similar rights to Participant and/or VENDOR to use other trademarks of SBBOR, and Participant and/or Vendor's use thereof shall be subject to the provision of this paragraph as if they had been included.

Proprietary and Other Notices.

Participant and/or VENDOR agree that it will include and not alter or remove any trademark, copyright, other notices, or any disclaimers located or used on or in connection with the MLS Content. Participant and/or VENDOR agree to provide notice to any person with access to the display of the MLS Content that the source of the MLS Content is SBBOR.

TERM AND TERMINATION

The term of this Agreement shall commence on the "Effective Date" set forth on the "SBBOR Information and Signature Page." SBBOR may, by delivery of written notice to Participant and/or VENDOR, terminate this Agreement effective immediately upon the occurrence of any of the following events:

- a. VENDOR giving SBBOR and Participant written notice of the termination;
- b. Participant giving notice to SBBOR that it no longer intends to display the MLS Content on the website;
- c. VENDOR being no longer designated to provide IDX services to Participant;
- d. Participant ceasing to remain a participant in the South Broward Board of REALTORS® MLS or their service is terminated, suspended or discontinued for any reason, the feed will be cut off immediately (as defined below);
- e. VENDOR accessing or downloading data in a manner not authorized for Participants that hinders the ability of Participants to download data;
- f. Participant and/or VENDOR violating a IDX Policy or IDX Rule; or
- g. Participant and/or VENDOR failing to make required payments to the SBBOR.

Participant and/or VENDOR understands and agrees that immediate is in this instance considered to be within one (1) working day.

SBBOR acknowledges and agrees that it may not suspend or terminate Vendor's access to data for reasons other than those that would allow SBBOR to suspend or terminate Participant's access to data, or without giving the VENDOR and/or Participant prior notice of the process set forth in the applicable provisions of the Rules for suspension or termination of Participant's access.

No Fees, portion of the Fees, or other fees payable by Participant and/or VENDOR or real estate company under this Agreement will be refunded to Participant or VENDOR or real estate company upon termination of this Agreement for any reason.

I have read, understand and agree to comply with this page (____) (____) (____)

WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY

Mutual Representations and Warranties.

Each party represents and warrants to the others as follows: (a) this Agreement, when executed by such party, will be valid, binding and enforceable with respect to such party in accordance with its terms; (b) the execution of this Agreement and/or the performance of such party's obligations under this Agreement will not constitute a default, or an event which with the passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which such party is bound; and (c) Participant and/or VENDOR are not and shall not be under any disability, restriction, or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement. Participant and/or VENDOR further represents and warrants to SBBOR that the grant of the License to Participant and/or VENDOR and the fulfillment of Participant's and/or VENDOR's obligations as contemplated under this Agreement are proper and lawful.

Indemnification.

Participant and/or VENDOR indemnify and hold harmless SBBOR, its officers, directors, employees, and licensees, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorneys' fees and costs, arising out of or connected with any breach by Participant and/or VENDOR of any of the terms and conditions of this Agreement, including any breach of representation or warranty set forth in this Agreement, and the use and display of the MLS Content. SBBOR shall have the right to control its own defense and engage legal counsel acceptable to SBBOR.

Limitation of Liability.

TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, SBBOR'S ENTIRE AND CUMULATIVE LIABILITY TO PARTICIPANT OR VENDOR, OR ANY THIRD PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE USE OR DISPLAY OF THE MLS IDX LISTING CONTENT, INCLUDING ANY TORT, SUCH AS NEGLIGENCE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE FEE PAID TO SBBOR UNDER THIS AGREEMENT DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. WITHOUT WAIVER OF THE LIMITATIONS SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL SBBOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF SBBOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

REMEDIES

SBBOR, Participant, and/or VENDOR agree that a breach of this Agreement will result in immediate and irreparable injury and harm to SBBOR. In such event, SBBOR shall have the right to immediately terminate Participant and/or Vendor's access to the MLS Information and to obtain an injunction, specific performance, or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that this shall in no way limit any other remedies which SBBOR may have including, without limitation, the right to seek monetary damages.

Costs of Litigation. If any action is brought by any party to this Agreement against another party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees, costs, and expenses of litigation.

I have read, understand and agree to comply with this page (____) (____) (____)

GENERAL PROVISIONS

Governing Law: Submission to Jurisdiction. This Agreement is governed by and enforced according to the laws of the State of Florida. Participant and/or VENDOR hereby submit and consent to, and waive any defense to the jurisdiction of courts located in Broward County, Florida, as to all matters relating to or arising from this Agreement.

Notices. All notices to be given under this Agreement shall be made in writing and delivered by U.S. certified mail, facsimile transmission, or email to the appropriate party at the address provided on the Signature Page of this Agreement. The foregoing addresses may be changed from time-to-time by delivering notice of such change to the parties to this Agreement. Notice shall be effective upon receipt.

No Joint Venture. Nothing in this Agreement shall be construed to create a partnership or joint venture between SBBOR and its respective Multiple Listing Service (MLS), and Participant and/or VENDOR.

Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement.

No Waiver. The waiver by either party of or the failure of either party to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement.

No Assignment. Neither Participant nor VENDOR may assign or otherwise transfer any rights under this Agreement to any party without the prior written consent of the SBBOR.

Survival. The obligations of Participant and/or VENDOR set forth under this Agreement shall survive the termination of this Agreement.

Certification. I (we) agree to all the requirements that are set forth herein and will comply with all these Rules – and to any amendments of the Rules which I (we) receive notice. I (we) further understand that if any signatories to this agreement fail to comply with any request by SBBOR, all access to the MLS Content will be shut off without further notification.

As the responsible party, I will provide SBBOR with a completed IDX License Agreement for each and every website created that contains MLS Content data feed from SBBOR. I will also provide SBBOR a list of clients, upon request, that have been provided SBBOR MLS Content. SBBOR MLS Content is for the “Exclusive” purpose of operating an IDX website on behalf of SBBOR MLS Participants.

As the Designated REALTOR® I hereby authorize and will be responsible for the VENDOR as listed below who has been retained to accept the data feed from SBBOR for the “Exclusive” purpose of operating an IDX website on our behalf.

I the VENDOR have read this document and understand and agree to comply with all aspects of this agreement. If the sales licensee information is completed, I understand that I am hereby authorized As VENDOR listed herein to operate a IDX website and accept and accept joint responsibility for same.

Execution and Amendment. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument. Facsimile signatures are deemed to be equivalent to original signatures for the purposes of this Agreement. This Agreement may not be amended except in writing signed by Participant and/or VENDOR and SBBOR.

I have read, understand and agree to comply with this page (____) (____) (____)

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized representatives as of the Effective Date.

Effective Date: _____

SBBOR Information and Signature

Participant Broker Information and Signature

Signature

Signature

Name, Title

Name, Title

Board Name

Street Address

Address

City, State, Zip Code

City, State, Zip Code

Email Address

Email Address

Phone Number

Phone Number

Florida License Number

Sales Licensee Information (If Applicable)

VENDOR Information and Signature

Signature

Signature

Name, Title

Name, Title

Address

Company Name

City, State, Zip Code

Street Address

Email Address

City, State, Zip Code

Phone Number

Email Address

Florida License Number

Phone Number

IP Address

Program used to Receive Feed

Authorized URL for this contract

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SCHEDULE A

IDX Website Licensing Rules and Regulations

1. A Participant's VENDOR must protect the MLS Content from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" or other unauthorized accessing, reproduction, or use of the MLS database.
2. A Participant's IDX website must comply with the following additional requirements:
 - a. No VENDOR shall display listing or property address of any seller who has affirmatively directed its listing broker to withhold its listing or property address from display on the Internet. The listing broker or agent shall communicate to SBBOR that a seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a website may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listing or property address of a seller who has determined not to have the listing or address for its property displayed on the Internet.
 - b. A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that conforms to the SBBOR policy.
 - c. Each VENDOR shall refresh MLS data available on the website not less frequently than every 3 days.
 - d. Except as provided elsewhere in this Policy or in SBBOR Rules and Regulations, no portion of the MLS database may be distributed, provided, or made accessible to any person or entity.
 - e. A IDX website may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, or whether the listing broker is a REALTOR®.
6. A Participant who intends to operate a IDX website must notify SBBOR of its intention to establish a website and must make the website readily accessible to SBBOR for purposes of verifying compliance with this Policy and any other applicable Licensing Rules or Policies.
7. A Participant may operate more than one website itself or through a VENDOR. A Participant who operates a website itself shall not be precluded from also operating websites in conjunction with a VENDOR.
8. A non-principal broker or sales licensee, affiliated with a Participant, may, with the Participant's consent, operate a IDX website or have a IDX website operated on its behalf by a VENDOR. Such a website is subject to the Participant's oversight, supervision and accountability, terms of the IDX Website Policy and SBBOR Licensing Rules and Regulations.
9. All websites must clearly display that a listing, not contracted with their company, must have the statement: "This listing is courtesy of *name of real estate firm*". This must be in the average size font being used on each listing.
10. VENDOR must display their name on the first page of all their customer's IDX displays.
11. Each month, VENDOR will provide SBBOR a list of all their customers including the Internet URL's displaying the MLS Content.
12. Current SBBOR MLS Rules and Regulations are displayed on the South Broward Board website.

I have read, understand and agree to comply with this page (___) (___) (___)