

M.L.S. OF NAPLES, INC.

CONTRACT: Access to Broker Reciprocity™ data feed

Note: This form is a legally binding contract between you and M.L.S. of Naples, Inc. (“M.L.S.N.”). Under M.L.S.N. Rules, if a Participant is qualified to be a Broker Reciprocity™ Participant (BRP), then the Participant is presumed to participate in the Broker Reciprocity™ Program (BR Program). See the M.L.S.N. Rules and Regulations for further details. This form/contract must be filled out completely and signed by the Participant or Participant’s designee authorized to bind the Firm. There are no exceptions. Once it is completed and signed, fax or mail it to M.L.S. of Naples, Inc., 1455 Pine Ridge Road, Naples, FL 34109 or Fax: 941-597-7725. An authorized representative of M.L.S. of Naples, Inc. will sign the contract and return a copy to you with information on how to access the data feed.

RECITALS

1. This **AGREEMENT** is made and entered into by and among M.L.S. of Naples, Inc. (“M.L.S.N.”), 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.
2. Firm wishes to obtain, and M.L.S.N. wishes to provide, certain real estate data for display on Firm’s Web Site, including the listing data of other real estate brokerages participating in M.L.S.N. 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.

Broker Reciprocity™ Data or **BR Data**: The current aggregate compilation of all active listings of all Broker Reciprocity™ Participants except those listings that the seller has declined to allow the BR Participant to display as part of the BR Data.

Broker Reciprocity™ Participant or **BRP**: 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.

Firm Website: A website on the World Wide Web wholly owned or exclusively controlled by a Participant that promotes the products or services of the Participant’s real estate brokerage or appraisal firm, and on which BR Data is accessible to website visitors.

Intellectual Property Rights: Intangible property rights including copyright, trademark, patent, trade secret, trade dress, fair competition, and contract rights prohibiting unauthorized disclosure, copying, or use of data.

M.L.S.N. Computer System: Computer hardware and software owned by, or licensed to, M.L.S.N. that contains real estate information in electronic format, including, but not limited to, BR Data, that is accessible to, and usable by Participants for purposes permitted under M.L.S.N.’s Rules and Regulations and other policies and procedures.

Multiple Listing Service or **MLS**: A means for collecting and disseminating information about real property that is or has been for sale to be used by real estate brokers to make offers of cooperation and compensation to each other, and a means to provide data processing, technical support, consulting, and other information technology services to real estate brokers and appraisers in connection with the sale and valuation of real property.

Rules: The Rules and Regulations promulgated by M.L.S.N., as amended from time to time, and any other M.L.S.N. operating policies relating to the BR Data and BRPs.

Participant: Real estate offices (whether an entity or sole proprietorship) represented by a REALTOR® (principal broker) who is a principal, partner, or corporate officer, or branch office manager acting on behalf of the principal and has an active real estate broker’s license.

Participant Data: Data relating to real estate for sale, previously sold or listed for sale, including BR Data, and data relating to Participants that are entered into the M.L.S.N. Computer System by Participants.

M.L.S.N.'s COVENANTS

4. During the term of this Agreement, M.L.S.N. grants to Firm a non-exclusive and limited license to:
 - a. display the BR Data on Firm's Web Site, and
 - b. copy the BR Data to the extent necessary to deliver the BR Data to consumers from Firm's Web Site.
5. During the term of this Agreement, M.L.S.N. agrees to provide to Firm and its Consultants:
 - a. access to the BR Data via the Internet using File Transfer Protocol ("FTP"), or other method approved by M.L.S.N., under the same terms and conditions M.L.S.N. offers to other BRPs;
 - b. seven (7) days' advance notice of changes to the file and record formats of the BR Data; and
 - c. seven (7) days' advance notice of changes to the Rules affecting Broker Reciprocity™.

FIRM'S COVENANTS

6. Firm shall comply with the Rules at all times.
7. Firm acknowledges and agrees that, as between Firm and M.L.S.N., M.L.S.N. owns all Intellectual Property Rights in or to the BR Data, Participant Data, and any other data, information or content accessible from the M.L.S.N. Computer System. Firm shall not contest M.L.S.N.'s Intellectual Property Rights claims nor assist others in doing so. Firm shall cooperate with M.L.S.N. on reasonable terms and conditions in any efforts by M.L.S.N. to enforce its Intellectual Property Rights against actual or potential infringers.
8. Firm shall comply with the requirements relating to Confidential Information set forth below.
9. In the event that Firm desires to make available to any third party the BR Data other than as permitted by the Rules, or the Confidential Information, Firm shall require such third party to execute this Agreement and become a Consultant.
10. If M.L.S.N. notifies Firm of a breach of the Rules, or of this Agreement, and Firm does not immediately cure such breach, Firm agrees that M.L.S.N. may seek cure from the Consultants, or any one of them. Firm agrees that M.L.S.N. may immediately terminate the Firm's or the Consultant's access to the data feed, or the ability to frame the M.L.S.N. Website, whichever is applicable, until the breach is cured.
11. Firm shall notify M.L.S.N. of any change to the information relating to Firm on the Firm Information and Signature page below within five (5) business days after the facts giving rise to the change occur.
12. Firm shall defend, indemnify and hold harmless M.L.S.N. from any claims or demands asserted by third parties based upon Firm's display of BR Data on the Firm Web Site, including any judgments, damages, interest, penalties, attorneys fees at all levels, and litigation costs and expenses.

CONSULTANT'S OBLIGATIONS

13. If M.L.S.N. notifies Firm of a breach of the Rules or of this Agreement and Firm does not immediately cure such breach, M.L.S.N. may require Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with M.L.S.N. and act immediately upon notification from M.L.S.N. of an uncured breach. Consultant agrees that M.L.S.N. may immediately terminate the Consultant's access to data feed, or the ability of the Consultant to frame the M.L.S.N. Website, whichever is appropriate, until the breach is cured.
14. Each Consultant acknowledges and agrees that, as between Consultant and M.L.S.N., M.L.S.N. owns all Intellectual Property Rights in or to the BR Data, the Participant Data, and any other data, information or content accessible from the M.L.S.N. Computer System. Consultant shall not contest M.L.S.N.'s Intellectual Property Rights claims nor assist others in doing so. Consultant shall cooperate with M.L.S.N. on reasonable terms and conditions in any effort by M.L.S.N. to enforce its Intellectual Property Rights against actual or potential infringers.
15. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
16. Each Consultant shall notify M.L.S.N. 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. Each Consultant shall defend, indemnify and hold harmless M.L.S.N. from any claims or demands by third parties arising from Consultant's access to and use of BR Data on behalf of Firm, including any judgments, damages, interest, penalties, attorneys fees at all levels, and litigation costs and expenses.

18. "**Confidential Information**" is information or material proprietary to M.L.S.N. or designated "Confidential" by M.L.S.N. and not generally known to the public, to which Firm or Consultants or any one of them (the "Receiving Party") may obtain access as a result of 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 Data, except the BR Data that this Agreement and the Rules permit to be disclosed;
- 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 M.L.S.N. obtains from any third party that M.L.S.N. treats as proprietary or designates as Confidential Information, whether or not owned or developed by M.L.S.N.

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 M.L.S.N., to the extent of such consent;
- d. becomes known to the Receiving Party from a source other than M.L.S.N. 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 M.L.S.N.; or
- e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to M.L.S.N. prompt notice of any such order.

The Receiving Party acknowledges that as between the Receiving Party and M.L.S.N., all Intellectual Property Rights in or to the Confidential Information remain at all times with M.L.S.N.

19. **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 unauthorized disclosure to the same extent as it protects its own trade secrets, but in no event using less than reasonable care.

20. **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 M.L.S.N., which M.L.S.N. may grant, condition or withhold in its sole discretion. At no time and under no circumstances will the Receiving Party reverse engineer, decompile, or disassemble any software constituting or containing any Confidential Information. The Receiving Party will not incorporate the Confidential Information into any other work or product.

21. **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 M.L.S.N., which M.L.S.N. may grant, withhold or condition in its sole discretion. If M.L.S.N. grants consent, the Receiving Party will execute an agreement with the third party that imposes on the third party a confidentiality obligation that is at least as strict as is imposed by this Agreement on the Receiving Party.

22. **Restrictions on Use – Location restriction.** The Receiving Party will not remove the Confidential Information from its principal place of business without M.L.S.N.'s prior written consent, which M.L.S.N. may grant, condition or withhold in its sole discretion. In the event M.L.S.N. grants such consent, the Receiving Party is not relieved of any of its obligations under this Agreement.

23. **Termination and Return of Materials.** Within five (5) days of the end of the term of this Agreement or receipt of notice of termination from M.L.S.N., the Receiving Party will return to M.L.S.N. all Confidential Information and all other materials provided by M.L.S.N. 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. An officer of the Receiving Party will certify in writing that all materials have been returned to M.L.S.N. and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

24. The term of this Agreement begins on the "Effective Date" set forth on the "M.L.S.N. Information and Signature Page" below. M.L.S.N. 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. M.L.S.N.'s notice to Firm that this Agreement is terminated.
- b. Firm's notice to M.L.S.N. that it no longer intends to display BR Data on its web site.
- c. Termination by M.L.S.N. of Firm's privileges as a Participant
- d. The Participating Firm's failure to remain eligible for MLS services.
- e. The Participant's failure to remain eligible to be a BR Participant.

GENERAL PROVISIONS

25. **Survival of Obligations.** The Firm's and Consultant's Covenants shall survive the termination or expiration of this Agreement.

26. **M.L.S.N.'s Remedies.** Because of the unique nature of the Participant Data and Confidential Information, Firm and Consultants acknowledge that M.L.S.N. would suffer irreparable harm in the event any of them breach their obligations under this Agreement, and that monetary damages would be inadequate to compensate M.L.S.N. for such a breach. M.L.S.N. is therefore entitled, in addition to all other forms of relief, to temporary or permanent injunctive relief as may be necessary to restrain any continuing or further breach by Firm or Consultants, or any one of them, without the need to show that its remedies at law are inadequate.

27. **Attorney's fees.** If M.L.S.N. prevails in any action to enforce or interpret this Agreement or any provision hereof, M.L.S.N. shall be entitled to an award of its reasonable attorney's fees and costs in such action.

28. **Limitation of Liability.** M.L.S.N. shall not be liable to Firm or Consultant for damages of any type under this Agreement, whether in contract or tort. Firm's and Consultant's only remedy shall be termination of this Agreement.

29. **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.

30. **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.

31. **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 M.L.S.N.

32. **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.

33. **Applicable law.** This Agreement is governed by and enforced according to the laws of the State of Florida applicable to contracts entered into and performed entirely with the State.

34. **Stopping of the Data Feed.** If any provision of this Agreement is breached by the Firm or the Consultant, M.L.S.N. may immediately terminate the Firm's or Consultant's data feed, or the ability to frame, the M.L.S.N. Website, whichever is appropriate, until the breach is cured.

35. **Disclaimers of Warranties.** M.L.S.N. disclaims any warranty concerning the accuracy or reliability of the BR Data or Participant Data. M.L.S.N. further disclaims any warranty of merchantability or fitness of the BR Data or Participant Data for a particular purpose. Firm and Consultant(s) acknowledge and agree that M.L.S.N. is providing the BR Data or Participant Data on an "as is" basis. [The remainder of this page is left blank intentionally.]

M.L.S.N. Information and Signature

Entered into on behalf of M.L.S.N. by

Signature

Michael Richardson, CEO

Print Name

Effective Date

This box is for M.L.S.N.'s use only. M.L.S.N. will fill out the information in it after signing this Agreement. M.L.S.N. will then return a copy of this Agreement to Firm and Consultants. The contents of this box are Confidential Information under this Agreement.

FTP URL: _____

FTP User ID: _____

FTP Password: _____

Consultants Identified: _____

Consultant(s) Name(s): _____

Listing Office ID: _____

Listing Office Name: _____

Participant or Contact Person: _____

Firm Information and Signature

Firm Name: _____

MLS Participant Name: _____ Firm MLS Broker Code: _____

E-mail address: _____

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 BR Data under this Agreement.

Consultant (company or individual) Name: _____

E-mail address: _____

(You **must** supply an e-mail address here. This address will be M.L.S.N'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 Broker Reciprocity™ data feed contract with M.L.S.N and every real estate broker to which you provide services. If you sign only one and that Firm's access to the BR Data is terminated, you will not be able to get the data for your other clients.