

INTERMOUNTAIN MULTIPLE LISTING SERVICE, INC.

THIRD PARTY ACCESS, CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS THIRD PARTY ACCESS, CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT ("AGREEMENT") is entered on this ___ day of _____, 20___, by and between INTERMOUNTAIN MULTIPLE LISTING SERVICE, INC. ("IMLS"), and _____, a third party participant ("LICENSEE") with reference to the following facts.

RECITALS:

1. IMLS operates an online computerized real estate multiple listing service for the Southwestern Idaho Region, which territory includes Ada, Canyon, Elmore, Gem, Payette, and Washington Counties in Idaho, and Malheur County in Southeast Oregon. IMLS provides such multiple listing data and other information (hereinafter referred to as the "SERVICE" or the "SYSTEM") solely to its participants, subscribers and other parties authorized by IMLS ("END USER" or "END USERS") and only such END USERS are and shall be authorized to utilize the SERVICE.
2. IMLS has a protectable interest in the operation of the SERVICE and all such data and information received by IMLS and/or incorporated into the SERVICE.
3. END USERS of the SERVICE are authorized to reproduce data and distribute to prospective purchasers, a reasonable number of single copies of property listing data contained in the SERVICE compilation which relate to any properties in which the prospective purchasers may, in the judgment of such END USER, be interested in and/or which the participant is attempting to promote such interest. In addition, as a subscriber of the SERVICE, the END USER is authorized to reproduce and distribute off-market property listing data contained in the SERVICE compilation for the purpose of determining market value of other comparable properties.
4. LICENSEE is a vendor of computer software product(s) and desires access to the SYSTEM for the sole purpose creating computer software designed for the benefit of END USERS of the SERVICE. Such computer software created by LICENSEE shall be limited to allowing END USERS exclusively, the ability to distribute MLS property data via LICENSEE's product(s) to END USERS and END USER's customers and clients.

5. IMLS is willing to grant LICENSEE access to the SERVICE pursuant to the terms and subject to the conditions contained in this AGREEMENT.
6. The IMLS SERVICE is operated in accordance with IMLS Rules and Regulations, and in accordance with guidelines set forth by the National Association of REALTORS®, which may be amended from time to time.

IT IS AGREED:

1. Access to SYSTEM: IMLS hereby permits LICENSEE to access the SYSTEM to retrieve property listing information from the SYSTEM for the exclusive purpose of allowing END USERS, and only END USERS, to distribute IMLS data from the SERVICE to their clients and customers through LICENSEE's product(s).
 - a. Limitations on License: except as expressly set forth in this AGREEMENT, no rights are granted to LICENSEE to do any of the following, and LICENSEE shall not, and shall not cause or allow anyone else, to do any of the following: (a) use, display, access, distribute, transfer, alter, or modify the listings or data compiled by the SERVICE, or otherwise create any derivative works of the listings or data compiled by the SERVICE, (b) download, distribute, export, deliver, or transmit any of the listings or data compiled by the SERVICE, including to any computer or other electronic device, except as permitted under this AGREEMENT, or (c) sell, grant access to, or sublicense the listings or data compiled by the SERVICE, or any portion of the listings or data compiled by the SERVICE, to any third party. LICENSEE agrees to take all reasonable steps necessary to protect the listings or data compiled by the SERVICE from unauthorized access, distribution, copying or use.
2. No Right to SERVICE Data: This AGREEMENT shall not be construed to grant LICENSEE any ownership interest in the SERVICE or the data compiled by IMLS and the SERVICE, and expressly prohibits LICENSEE from remarketing, advertising and/or disseminating the data to any other person or entity, except as specifically authorized by this AGREEMENT.
3. Rules, Regulations and Guidelines: The IMLS and LICENSEE acknowledge that the SERVICE is operated in accordance with IMLS Rules and Regulations, and in accordance with guidelines set forth by the National Association of REALTORS®, which may be amended from time to time. LICENSEE hereby acknowledges and agrees that LICENSEE has received, or has been given the opportunity to receive and review such rules, regulations and guidelines, and by this AGREEMENT agrees to abide by those rules, regulations and guidelines now in effect and as they may be amended from time to time. Further, LICENSEE acknowledges and agrees that it has the obligation to discover, keep current, and comply with all such rules, regulations and guidelines as they may be amended from time to time.

4. Duration: This AGREEMENT shall commence upon execution, as indicated by the date set forth above, and shall remain in full force and effect for a period of twelve (12) months from said date. Upon the expiration of such term this AGREEMENT shall terminate. LICENSEE and IMLS shall have the right to renew this AGREEMENT upon the mutual consent of the parties which shall be evidenced in writing.

5. Confidentiality and Nondisclosure: LICENSEE hereby acknowledges that it may be exposed to confidential and proprietary information of IMLS, including, but not limited to, the SERVICE or SYSTEM, or relating to IMLS's affairs, business information, or other information designated as confidential ("Confidential Information"). LICENSEE agrees that it shall not disclose, nor permit any of its agents or employees to disclose, any Confidential Information or proprietary aspect of the SERVICE or product(s) prepared or created by LICENSEE for END USERS to any unauthorized third party without first obtaining written consent of the IMLS.
 - a. Such Confidential Information may not be used by LICENSEE in any manner except for the purposes of creating the software products contemplated by this AGREEMENT.
 - b. LICENSEE agrees to protect the confidentiality of IMLS's Confidential Information in the same manner it protects the confidentiality of its own proprietary and confidential information of like kind. Access to the Confidential Information shall be restricted to LICENSEE's personnel engaged in creating the software products contemplated by this AGREEMENT. LICENSEE agrees to inform such personnel of the confidential nature of the information, that such information is subject to this AGREEMENT, and shall require such personnel to abide by the terms of this AGREEMENT. LICENSEE shall not otherwise, in any manner, copy, disclose, publish, release, reproduce, transmit, transfer or make available Confidential Information of IMLS without IMLS's prior written consent.
 - c. All Confidential Information of IMLS in the possession of LICENSEE, in whatever form such Confidential Information is possessed by LICENSEE, including copies thereof, shall be returned to IMLS upon the first to occur: (a) completion of the purpose referred to above, or (b) written request by IMLS, or (c) termination of this AGREEMENT. LICENSEE shall immediately notify IMLS upon learning of any unauthorized use or disclosure of the Confidential Information of IMLS.

- 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 LICENSEE's reasonable knowledge, under an obligation to IMLS not to disclose such information, or (iv) which is or becomes publicly available through no breach by LICENSEE of this AGREEMENT.
6. The parties also acknowledge that dissemination of IMLS's Confidential Information will cause irreparable harm to IMLS, and agree that any breach of this AGREEMENT entitles the party not in breach to an injunction and may entitle such party to damages.
7. LICENSEE Rights: LICENSEE shall retain all rights, title and interest in the product(s) and their related documentation, 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 LICENSEE.
8. IMLS Rights: IMLS shall retain its rights, title and interest in the SERVICE, any data or information compiled by IMLS for the SERVICE, and any other software system which may be provided to or accessed by LICENSEE hereunder, including all functionality, copyright and patent rights as provided under state and federal law. Any modifications or improvements made to the SERVICE or any other IMLS software shall remain the property of the IMLS.
 - a. Intellectual Property. LICENSEE acknowledges and agrees that the SERVICE and the multiple listing data are proprietary, original works of authorship of IMLS, or licensed to IMLS, protected under United States copyright, trademark, patent and trade secret laws of general applicability. LICENSEE further acknowledges and agrees that all right, title, and interest in and to the SERVICE and multiple listing data, together with all modifications, enhancements, and derivative works of the SERVICE, including all copyright rights, are and shall remain with IMLS. Notwithstanding the prohibition against modification of the SERVICE, in the event LICENSEE makes any such modification, then any modifications to the SERVICE, shall be the sole property of IMLS. LICENSEE hereby assigns to IMLS any and all modifications to the SERVICE made by LICENSEE, or anyone within the control of LICENSEE. LICENSEE agrees to execute all documents and take all action reasonably requested by IMLS in connection with the assignment of rights to IMLS. This Agreement does not convey or grant to LICENSEE an interest in or to the SERVICE or multiple listing data, but only a limited right to access and display the multiple listing data, revocable in accordance with the terms of this Agreement. In the event of any claim for infringement or misappropriation of the SERVICE or

multiple listing data, all damages awarded and other awards and recoveries shall be the exclusive property of IMLS, and all such amounts shall be paid to IMLS. In the event, for any reason, LICENSEE obtains possession or control of any such damages or awards, LICENSEE agrees to hold all such funds as trustee in trust for the exclusive benefit of IMLS. LICENSEE agrees that it will not challenge or take any action inconsistent with IMLS's rights to the SERVICE or multiple listing data.

9. LICENSEE'S Obligations: As a material part of the consideration for this AGREEMENT, LICENSEE and IMLS hereby jointly and severally agree that LICENSEE and IMLS:
- a. Will not knowingly permit any access to the SERVICE through the connection or otherwise by any person(s) or entity other than END USERS that have executed valid subscriber agreements with IMLS;
 - b. Will not make any use, alteration, adaptation, addition, change or revision of the data in the SERVICE, other than to make it available to END USERS that have executed valid subscriber agreements with IMLS;
 - c. LICENSEE will notify IMLS within a reasonable time before making any change in the electronic connection between the SERVICE and LICENSEE;
 - d. LICENSEE will design and maintain the connection in such a way that it does not impair or damage the performance of the SERVICE in any way;
 - e. LICENSEE 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 SERVICE, or any portion thereof, to any party other than END USERS that have executed a valid subscriber agreement with IMLS; and
 - f. LICENSEE will not subcontract, assign, delegate or otherwise transfer any right or obligation under this Agreement without first obtaining IMLS's prior written consent; and
 - g. LICENSEE 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 SERVICE, except by END USERS that have executed a valid subscriber agreement with IMLS.

10. Warranties:
 - a. LICENSEE hereby warrants that it is the sole owner of the software product(s) created by LICENSEE in contemplation of this AGREEMENT, and that it shall not have any ownership interest in the SERVICE or the data compiled by IMLS and the SERVICE. Licensee agrees to defend, indemnify and hold IMLS harmless against any action against IMLS 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 LICENSEE. IMLS shall have the right to participate, at its own expense, in the defense of any such action.
 - b. IMLS hereby warrants that it is the sole owner of the SERVICE and the connection to the SERVICE.
11. Disclaimer: Each party hereby disclaims any and all representations made by the other party and/or the other party's employees or representatives and further disclaims all implied warranties of merchantability and fitness for a particular purpose of the SERVICE and/or the product(s).
12. Payment: LICENSEE shall pay to IMLS, a one-time fee of \$100 and a monthly fee of \$50 for access to the SYSTEM. If a custom feed is required, LICENSEE shall pay to IMLS a one-time fee of \$250 and a monthly fee of \$50 for access to the SYSTEM. This paragraph does not override any reseller agreement that may exist between LICENSEE AND IMLS.
13. Indemnification: LICENSEE hereby agrees to indemnify and hold harmless IMLS, and 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 material breach by LICENSEE of any of the terms and conditions of this Agreement, including any breach of any representation or warranty set forth in this Agreement, and the use and display, and in the case of print media, distribution of the listing data. IMLS shall have the right to control its own defense and engage legal counsel acceptable to IMLS.
14. Termination: Either party may terminate this agreement for cause or otherwise 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.
15. Limitation of Liability: TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, IMLS'S ENTIRE AND CUMULATIVE LIABILITY TO LICENSEE, 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 MULTIPLE LISTING DATA, INCLUDING ANY TORT, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE FEE PAID, IF ANY, TO IMLS UNDER THIS AGREEMENT. IN NO EVENT SHALL IMLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF IMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

16. 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.
17. Applicable Law: This AGREEMENT shall be construed, interpreted and applied, and the rights and obligations hereunder determined, in accordance with the laws of the State of Idaho.
18. 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 LICENSEE and IMLS, there is no other agreement, contract or understanding, whether written or oral, between or among any of the parties with respect to access to the SERVICE.
19. 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.
20. 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.
21. Authorization/Agency Representation: LICENSEE represents and warrants that LICENSEE's signatory hereto is duly authorized as the agent to represent LICENSEE and to enter into this AGREEMENT, and that the LICENSEE is bound by the terms and conditions of this AGREEMENT. The signatory hereby acknowledges that he 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.

INTERMOUNTAIN MULTIPLE LISTING SERVICE, Inc.

LICENSEE: _____

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____