

## **MFRMLS Enrollment and Participant/Subscriber Agreement**

This MLS Enrollment and Participant/Subscriber Agreement (this "Agreement") is entered into by and between the Mid-Florida Regional MLS, d/b/a My Florida Regional MLS (MFRMLS) and the Participant or Subscriber as the case may be, to be effective immediately upon the clicking of acceptance by the Participant or Subscriber.

**The terms of this Agreement are subject to change by MFRMLS at any time in its discretion. Participant/Subscribers use of the System after such changes are implemented constitutes acceptance of the changes. Please consult the terms and conditions of this Agreement regularly. The terms and conditions of this Agreement were last updated: September 7, 2010**

### **RECITALS**

- A. MFRMLS operates a real estate Multiple Listing Service ("MLS") in the State of Florida.
- B. Participant/Subscriber wishes to access and utilize the MLS System (the "System") and the MLS content (the "Content") contained within the System through a Participant Broker ("Participant"). For purposes of this Agreement the term "Participant" shall mean the principal broker that supervises Subscriber's real estate activities and on whose behalf Subscriber conducts those real estate activities or a Participant engaged in real estate appraisal, and the term "Content" shall include, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property.
- C. MFRMLS and Participant/Subscriber acknowledge and agree that they both have an interest in protecting the security of the System and Content.
- D. MFRMLS and Participant/Subscriber desire to set forth the terms under which Participant/Subscriber may access and use the MLS, System and Content.

Now, therefore, in consideration of receiving access to the MLS System and Content, Participant/Subscriber agrees to abide by the mutual covenants, promises, terms and conditions as set forth herein.

### **AGREEMENT**

1. The Participant/Subscriber agrees to abide by all MLS rules, and policies ("MLS Policy"), MLS and MFRMLS Rules and Regulations, MFRMLS Bylaws and MFRMLS policies, as they may be amended and updated from time to time (including the fines and penalties for infractions thereof), including but not limited to payment of fees and those MLS Rules, regulations, bylaws or policies specifically set forth herein. Capitalized terms not otherwise defined in this Agreement shall have the meaning ascribed to them in the applicable MLS Policy, MLS and MFRMLS Rules and Regulations and MFRMLS Bylaws.

(a) The Participant agrees and the Subscriber understands that the Participant takes full responsibility for actions taken by any of his/her Subscribers, including but not limited to following the MLS rules, regulations, bylaws and policies and payment of fees.

(b) The Participant agrees to take full responsibility for any persons contracted or employed by the Participant or his/her Subscribers, including but not limited to office assistants, agent assistants and clerical staff, and acknowledges that these persons do not have any independent rights within the MLS and may not take independent actions or make independent requests of the MLS. The Participant acknowledges that upon acceptance of this Agreement by an authorized user other than a Subscriber, that Participant is accepting responsibility for compliance with the terms of this Agreement on behalf of that user.

2. The Participant/Subscriber agrees to prohibit access to the System by those not authorized to use the System, and agrees to keep confidential any security features, including but not limited to password and/or answers to security questions. In addition, Participant/Subscriber may not circumvent any technological measures or features of the MLS that are intended to or effectively control access to the System and the Content.

3. Except as expressly provided in this Agreement, MLS Rules and Regulations, MLS Policy, or an IDX/RETS Agreement, or upon the express prior written consent of MFRMLS, Participant/Subscriber may not modify, copy, distribute, transmit, display, perform, reproduce, publish, upload, post license, frame in another website, use on any other website, create derivative works of, transfer, sell, and/or exploit for commercial use, any content, software, real estate listings, databases or other lists, products or services provided through or obtained from the MLS, including by email or

other electronic means, except for appraisal or comparative market analysis purposes or the marketing of properties to prospective purchasers or tenants.

4. As a material condition to accessing the MLS Database, Participant/Subscriber agrees to submit to MLS, all Listings in accordance with, and except as otherwise provided in, the MLS Rules and Regulations. MLS may refuse to accept or include in, and may remove from, the MLS Database any Listing or Listing Content, or may require Participant/Subscriber to direct MLS to modify any Listing Content, as provided under the Rules and Regulations or if MLS determines, in its sole discretion, that such Listing or Listing Content may violate or infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as provided in the Rules and Regulations, Participant/Subscriber acknowledges that MLS has no obligation to remove, modify or refuse to accept any Listing or Listing Content.

(a) Participant/Subscriber agrees to maintain listing information in a complete, accurate and timely manner and to take full responsibility for the information entered, including but not limited to required fields, virtual tour and photo requirements.

(b) Participant/Subscriber grants a license to the MLS to reproduce, distribute and transform all photographic images entered into the MLS, as well as place an MFRMLS copyright legend on the image. Participant/Subscriber represents that he/she has the right to authorize the MLS to utilize any such image and agrees to indemnify and hold the MLS harmless from and against any liability that the MLS may incur as a result of any claim that the MLS did not have the right to utilize any such image according to the license herein granted.

5. Participant/Subscriber acknowledges and agrees that the trademarks of MFRMLS, the MLS, the Listing Content, the compilation of real estate listings, and the content and look and feel of the MLS website, to the extent protectable, are proprietary, original works of authorship of MFRMLS, or licensors of MFRMLS, protected under United States and worldwide copyright, trademark, and trade secret laws. Without the prior written consent of MFRMLS, Participant/Subscriber's modification of the Content, use of the Content on any other website or networked computer environment, or use of the Content for any purpose other than as granted herein, violates the copyrights, trademarks or other intellectual property rights of MFRMLS or its licensors, and is prohibited. Except as expressly provided under this Agreement, Participant/Subscriber may not use on any website or on any other materials, the trademarks or copyrighted materials appearing on the MLS, including without limitation, any logos, without the express prior written consent of the owner of the mark or copyright.

6. Participant/Subscriber hereby grants to MFRMLS a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, publish display, and reproduce the Listing Content or any derivative works thereof. Such license shall be deemed granted as of the moment of creation without the necessity of any further action on the part of either party. Participant/Subscriber represents and warrants to MFRMLS with respect to the Listing Content for each of Participant/Subscriber's listings that the Listing Content, and the license of rights in and to the Listing Content to MFRMLS, do not infringe or violate any copyrights, trade secrets, or other intellectual or proprietary rights of any third party.

7. MFRMLS hereby grants Participant/Subscriber a revocable, limited, nonexclusive license to use the MLS System and Content, (and in the case of Subscribers, subject also to the permission of Participant), adherence to the MLS Policy, the terms of this Agreement, and according to the terms of the IDX/RETS Agreement between MFRMLS and the Participant. All other uses are prohibited. MFRMLS hereby grants Participant/Subscriber a revocable, limited, nonexclusive license to use the MLS Database, subject to adherence to the MLS Policy, the terms of this Agreement and according to the terms of the Broker Reciprocity/IDX Agreement ("IDX Agreement) between MFRMLS and the Participant. Failure to comply with this provision will result in a significant fine and possible loss of System access.

8. The term of this Agreement shall commence as soon as Participant/Subscriber has completed the click through acceptance. This Agreement shall continue in full force and effect until such time as Participant/Subscriber is no longer eligible to receive the MLS services provided under this Agreement in accordance with applicable MLS Policy, MFRMLS Rules and Regulations and MFRMLS Bylaws, or until such time as membership or access has been terminated in accordance with this Agreement, the IDX Agreement, and the MLS Policy. Participant/Subscriber understands that, upon the termination of this Agreement, his/her Agent ID and password will no longer be valid and he/she will not be able to access or use the System and will not be eligible to receive any other MLS services or products.

9. Participant/Subscriber understands and expressly agrees to the following:

- a) Participant/Subscriber's use of and reliance upon any and all content and services, including with respect to any real estate listing, contained in or provided through the MLS is at Participant/Subscriber's sole risk.

Such content and services are provided on an "as is" and "as available" basis. MFRMLS makes no express or implied representations, warranties or guarantees with respect to the appropriateness, accuracy, sufficiency, correctness, veracity, value, completeness, availability, or timeliness of the MLS Content or methods contained in or provided through the MLS. MFRMLS does not warrant the functions contained in the MLS website will be uninterrupted or error-free or the server that makes the content available will be free of viruses or other harmful components. MFRMLS expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement.

- b) In no event will MFRMLS be liable to Participant/Subscriber, any user of the System or Participant's or Subscriber's website, or any third party for any decision made or action taken in reliance upon the Content contained in or provided through the MLS. Any Content Participant/Subscriber downloads or otherwise obtains through the use of the System, or any linked website, is at his/her own risk, and Participant/Subscriber will be solely responsible for any damage to his/her equipment, software, website, loss of data, theft, destruction, unauthorized access to or alteration of personal records, the reliance upon or use of the Content, opinions or other materials appearing on the MLS or a linked website, or other personal loss that results from the download or use of any material on the MLS or a linked website.
- c) TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL MFRMLS BE LIABLE TO PARTICIPANT/SUBSCRIBER, OR ANY USER OF THE MLS OR SUBSCRIBER'S WEBSITE, OR TO ANY THIRD PARTY FOR ANY LOSS, EXPENSE, OR DAMAGE, OF ANY NATURE, INCLUDING CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, AND INCLUDING LOST PROFITS OR LOST REVENUE, CAUSED DIRECTLY OR INDIRECTLY BY THE USE OR RELIANCE UPON CONTENT OR SERVICES OBTAINED BY OR PROVIDED THROUGH THE MLS SYSTEM, OR FOR ANY ERROR OR OMISSION, OR OTHERWISE IN ANY WAY CONNECTED WITH USE OF THE MLS SYSTEM, WHETHER BASED ON CONTRACT OR TORT, EVEN IF MFRMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.** Participant/Subscriber agrees to indemnify, defend and hold harmless MFRMLS, its officers, directors, employees, shareholders, agents, affiliates, suppliers, successors and assigns from and against any and all liability, loss, claim, demand, suit, proceeding, damage, cost and expense, including reasonable attorneys fees and costs, arising out of or resulting from (a) any violation by Participant/Subscriber of this Agreement; (b) the content of Participant/Subscriber's website; or (c) any negligent acts, errors, or omissions of Participant/Subscriber or his/her agents or contractors.

**11.** Participant and Subscriber represents and warrants to MLS that this Agreement, when executed by Participant, will be valid, binding and enforceable with respect to Participant in accordance with its terms; (a) the provisions of the services provided under this Agreement and the fulfillment of Participant's obligations as contemplated under this Agreement are proper and lawful and (b) Participant is 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 further represents and warrants that all of Participant's Sales Licensees have entered into Subscriber Agreements.

**12.** If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney fees, including such costs and fees on appeal. Participant voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in Orange County, Florida, as to all matters relating to or arising from this Agreement.

**13.** MLS and Participant agree that a breach or violation of certain Sections of this Agreement will result in immediate and irreparable injury and harm to MFRMLS. In such event, MFRMLS shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to 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 MFRMLS may have, including, without limitation, the right to seek monetary damages.

**14. Participant/Subscriber Acknowledgement.** By accepting this agreement via electronic click through authorization, Participant/Subscriber acknowledges that he/she has read and fully understands all of the terms and conditions set forth in this Agreement and hereby agrees to abide by the terms and conditions hereof.