

---

*Providing our members with the resources to practice real estate ethically, proficiently and successfully in Berkshire County, MA*

## **Berkshire County Multiple Listing Service License for Access and Use of Raw MLS Data For MLS Participant**

Upon signature of the Broker holding participatory rights ("Participant") in the Berkshire County Multiple Listing Service ("MLS"), the MLS grants a License for Access and Use of Raw MLS Data ("License") to facilitate the display of MLS Listings on the Participant's website and/or via software for non-public displays, according to the rules governing data usage.

I, \_\_\_\_\_ of \_\_\_\_\_ am the Broker holding participatory rights in the Berkshire County Multiple Listing Service (MLS) and do hereby request a license to utilize limited MLS data for Participant / Office use.

**License Implementation:** Please disclose the contact details for the entity that will be receiving and integrating this data on your behalf, if applicable.

Name of Third Party Vendor (webmaster/software company): \_\_\_\_\_

Vendor Contact Name: \_\_\_\_\_

Vendor E-Mail: \_\_\_\_\_ Phone: \_\_\_\_\_

**Raw Data via FTP or RETS:** Please indicate which format you would like to receive the raw data. \* Note: FTP Service is provided via a contractual relationship with FBS and requires an initial setup fee of \$499 and \$600/year maintenance. RETS Server Access is provided for a fee of \$100 for initial setup, plus an annual fee of \$100 for monitoring. RETS fees will be billed by the MLS:

- Nightly FTP [File Transfer Protocol] Upload feed\* OR  
 RETS [Real Estate Transaction Standard] Server Access\*

**Data Contents:** Please indicate what data you would like to receive electronically

- Standard IDX data with no confidential fields, OR  
 Standard IDX data plus unlimited Participant data

**Data Use:** Please indicate where this data will be used: Note that public display of Standard IDX data can only be displayed on websites owned and operated by members. Non-public display can be made accessible and viewable only to: (1) authorized MLS users affiliated with the Participant, and (2) employees of Vendor in the execution of services for the Participant.

- Public display of standard IDX data and/or unlimited Participant data  
Website Address(es): \_\_\_\_\_
- Non-public display of limited MLS data and unlimited Participant data, on Participant's Intranet site  
 Non-public display of limited MLS data and unlimited Participant data, integrated with Vendor software  
 Non-public display of limited MLS data and unlimited Participant data, integrated with Vendor services  
Software/Service description: \_\_\_\_\_



**It is understood that:**

The MLS may terminate this license upon the occurrence of any of the following events:

- 1) Participant or Affiliated Agent fails to pay any fees when due;
- 2) Participant or Affiliated Agent discloses any confidential information, including, without limitation, passwords, source code, data;
- 3) Participant otherwise fails to comply in all respects with the Rules and Regulations, the applicable Board Rules and Regulations, or the Code of Ethics and Standards of Practice of the National Association of REALTORS®.

**The undersigned agrees that:**

- 1) This information will be used only in the manner authorized herewith;
- 2) If a third party is assisting in the display or use of raw data, the Participant will notify the MLS of such and ensure that the “Third Party Berkshire County MLS License Agreement” has been executed prior to commencement.
- 3) Only those REALTORS® in good standing with my firm will be granted non-public access
- 4) Public display of Standard IDX data can only be displayed on websites owned and operated by the Participant or their Affiliated Agents.
- 5) Participant has received a copy of the IDX Regulations, attached herewith

**The undersigned further acknowledges and agrees that:**

- 1) The Database is a protected under United States copyright, trademark, patent and trade secret laws of general applicability and all right, title, and interest in and to the Database, together with all modifications, enhancements, and derivative works of the Database, including all copyright rights, are and shall remain with MLS.
- 2) If there is any suspicion of misuse or fraud in relation to the data feeds delivered by the MLS, access to data will be immediately terminated pending investigation. Participant will be notified and afforded an opportunity to correct the issue or have the allegations reviewed by the MLS Board of Directors, as outlined and described in the bylaws, rules and regulations and policies of the MLS.
- 3) Staff shall provide random audits of datafeeds, including the changing of passwords, review of in-house systems and verification that the third party vendor (if applicable) is operating the business as originally cited in the agreements. Access and passwords, as needed, will be supplied to the MLS Staff by the Participant for such review and audits.

I hold supervisory responsibility for the above named office and will ensure adherence to all rules and regulations governing use of MLS data. I agree further, as a condition of use, to familiarize myself with and abide by the governing rules of the Multiple Listing Service, the Board of REALTORS and the Code of Ethics and the National Association of Realtors®, as from time to time amended.

x \_\_\_\_\_  
Signature of MLS Participant:

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date



## Berkshire County Multiple Listing Service License for Access and Use of Raw MLS Data For Third Party Vendor of MLS Participant

This License Agreement (“Agreement”) is made and entered into by and between the **Berkshire County Board of REALTORS® Multiple Listing Service** (“MLS”), and \_\_\_ (“Vendor”). MLS and Vendor agree as follows:

1. **License.** Subject to the terms and conditions of this Agreement, MLS hereby grants to Vendor a License to use limited MLS data on behalf of the Multiple Listing Service Participant \_\_\_ of \_\_\_ (“Participant”), in order to best utilize software or services of the Vendor. The license grants limited use of the following MLS data, hereinafter referred to as “the Database”.

- Public display of limited MLS data on Participant’s website
- Public display and/or use of unlimited Participant data
- Non-public display of limited MLS data and unlimited Participant data, on Participant’s Intranet site
- Non-public display of limited MLS data and unlimited Participant data, integrated with Vendor software
- Non-public display of limited MLS data and unlimited Participant data, integrated with Vendor services

Non-public display is to be made accessible and viewable only to: (1) authorized MLS users affiliated with the Participant, and (2) employees of Vendor in the execution of services for the Participant. Vendor agrees and acknowledges that MLS may modify the terms of this Agreement at any time, at its sole discretion.

2. **Limitations on License.** Except as expressly set forth in this Agreement, no rights are granted to Vendor to do any of the following, and Vendor shall not, and shall not cause or allow anyone else, to do any of the following: (a) display, access, distribute, or transfer the Database to a third party (b) alter or modify the Database, or otherwise create any derivative works of the Database, (c) download, distribute, export, deliver, or transmit any of the Database, including to any computer or other electronic device to any third party, or (d) sell, grant access to, or sublicense the Database, or any portion of the Database, to any third party. Vendor agrees to take all reasonable steps necessary to protect the Database from unauthorized access, distribution, copying or use.

3. **Intellectual Property.** Vendor acknowledges and agrees that the Database is a proprietary, original work of authorship of MLS, or licensed to MLS, protected under United States copyright, trademark, patent and trade secret laws of general applicability. Vendor further acknowledges and agrees that all right, title, and interest in and to the Database, together with all modifications, enhancements, and derivative works of the Database, including all copyright rights, are and shall remain with MLS.

4. **Term and Termination.** The initial term of this Agreement shall commence on the Effective Date, and may be terminated by either party at any time. Notice of Termination shall be provided in writing. Upon notice of termination, Vendor shall (i) permanently delete and remove all copies of the Database from all computers and other storage devices on which they were loaded or copied, and (ii) terminate the use and display of the Database, and (iii) deliver to MLS written certification acceptable to MLS of Vendor’s compliance with this provision.

\* \_\_\_\_\_  
Signature of Vendor:

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date:

\* \_\_\_\_\_  
Signature of MLS: Sandra J. Carroll, Chief Executive Officer

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date:



## MLS Internet Data Exchange (IDX) Rules & Regulations

### Section 18 - Internet Data Exchange ("IDX")

#### **Section 18 IDX Defined**

IDX affords MLS participants the option of authorizing display of their listings on other participants' Internet websites. *(Amended 11/09)*

#### **Section 18.1 Authorization**

Participants' consent for display of their listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant's listings, that participant may not download or frame the aggregated MLS data of other participants. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis as instructed by the seller.

#### **Section 18.2 Participation**

Participation in IDX is available to all MLS participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other participants.  
*(Amended 11/09)*

##### **Section 18.2.1**

Participants must notify the MLS of their intention to establish an IDX site and must make their site directly accessible to the MLS for purposes of monitoring/ensuring compliance with applicable rules and policies.

##### **Section 18.2.2**

MLS participants may not use IDX-provided listings for any purpose other than display on their websites. This does not require participants to prevent indexing of IDX listings by recognized search engines. *(Amended 11/09)*

##### **Section 18.2.3**

Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) shall not be accessible via IDX sites. *(Amended 11/09)*

##### **Section 18.2.4**

Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown," etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell, or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each participant. *(Amended 11/06)*

##### **Section 18.2.5**

Participants must refresh all MLS downloads and refresh all MLS data at least once every three (3) days. *(Amended 11/09)*

### **Section 18.2.6**

Except as provided in these rules, an IDX site or a participant or user operating an IDX site may not distribute, provide, or make any portion of the MLS database available to any person or entity.

### **Section 18.2.7**

When displaying listing content, a participant's or user's IDX site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.

### **Section 18.2.8**

Any IDX site that allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing, shall disable or discontinue either or both of those features as to the seller's listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all participants' websites. Except for the foregoing and subject to Section 18.2.9, a participant's IDX site may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX site from notifying its customers that a particular feature has been disabled at the request of the seller. *(Adopted 11/09)*

### **Section 18.2.9 Data Accuracy Adherence**

Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property displayed on the IDX site. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. *(Adopted 11/09)*

### **Section 18.2.10 Franchisor Display Limitations**

Participants may provide IDX information to their respective real estate franchise organizations ("franchisors") to be indexed for display on such franchisors' websites, subject to the following requirements and limitations. Failure of a franchisor to comply with the following requirements and limitations can, at the discretion of the MLS, result in suspension or termination of the participant's(s') authority to provide IDX information to the franchisor.

- Initial search results that provide minimal information (e.g., "thumbnails") are exempt from MLS-required disclosures (e.g., listing firm, listing agent, source of information, notice that information is deemed reliable but is not guaranteed accurate) provided that a direct link to a detailed ("full view") display that includes all required disclosures is provided.
- Consumers can link directly to a detailed ("full view") display that complies with disclosure/display rules of the source MLS.
- IDX information cannot be used for any unauthorized purpose.
- Inaccurate or incomplete information related to any listing must be promptly corrected by the franchisor at the request of the source MLS.
- No advertising may appear on pages displaying IDX information.
- IDX listing information cannot be modified, manipulated, or permanently retained.

**Note:** For purposes of this policy, "real estate franchisor" is defined as a company granting real estate brokerage franchises under the franchisor's trademarks pursuant to a franchise disclosure document meeting applicable Federal Trade Commission rules. *(Adopted 11/10)*



## **Section 18.3 Display**

Display of listing information pursuant to IDX is subject to the following rules:

### **Section 18.3.1**

Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed on IDX sites.

#### **Section 18.3.1.1**

The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed on IDX sites.

### **Section 18.3.2**

Participants shall not modify or manipulate information relating to other participants' listings. (This is not a limitation on site design but refers to changes to actual listing data.) MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.

### **Section 18.3.3**

All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data. *(Amended 11/09)*

### **Section 18.3.4**

All listings displayed pursuant to IDX shall identify the listing agent.

### **Section 18.3.5**

Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own Web sites subject to their participant's consent and control and the requirements of state law and/or regulation.

### **Section 18.3.7**

All listings displayed pursuant to IDX shall show the MLS as the source of the information.

### **Section 18.3.8**

Participants (and their affiliated licensees, if applicable) shall indicate on their Web sites that IDX information is provided exclusively for consumers' personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability.

### **Section 18.3.9**

The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than one hundred (100) listings or five percent (5%) of the listings available for IDX display, whichever is fewer. *(Amended 11/09)*

### **Section 18.3.10**

The right to display other participants' listings pursuant to IDX shall be limited to a participant's office(s) holding participatory rights in this MLS.

### **Section 18.3.11**

Listings obtained through IDX must be displayed separately from listings obtained from other sources, including information provided by other MLSs. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained.

### **Section 18.3.12**

Display of expired, withdrawn, pending, and sold listings is prohibited. *(Amended 11/09)*

### **Section 18.3.13**

Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and email address(es) is prohibited.

**Note:** The following Sections 18.3.14 and 18.3.15 may be adopted by MLSs that provide participants with a "persistent" download (i.e., where the MLS database resides on participants' servers) of the MLS database.

### **Section 18.3.14**

Participants are required to employ appropriate security protection such as firewalls, provided that any security measures required may not be greater than those employed by the MLS.

### **Section 18.3.15**

IDX operators must maintain an audit trail of consumer activity on the IDX site and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers.

### **Section 18.3.16**

Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information is larger than that of any third party.

*(Adopted 11/09)*

## **Section 18.4 Service Fees and Charges**

Service fees and charges for participation in IDX shall be as established annually by the Board of directors. *(Adopted 11/01, Amended 5/05)*

# **MLS Internet Data Exchange (IDX) & Data Usage General Policies**

## **Internet Data Exchange ("IDX")**

### **Misuse of the MLS Data Feeds or Compilation**

If Staff suspects, at any time, there is misuse or fraud in relation to the data feeds delivered by the MLS, the staff is granted all rights to immediately terminate the data feed pending investigation. Staff shall notify the Participant of the termination, and the reason for the shut-off. Staff can work with the Participant to clear up any misuse concerns, but the Participant is afforded, in no more than seven (7) days, to have the allegations administratively considered by the MLS Board of Directors, as outlined and described in the bylaws and rules and regulations of the service. It is to be noted that after termination of a data feed due to suspicious circumstances, the process will be handled according to governing documents of the organization for a violation of the regulations of the service.



### IDX Display Requirements:

1. The Multiple Listing Service grants all Participants, and all subscribers (upon their Participant’s written approval), a right to use a smart frame IDX solution.
2. Participants and subscribers are prohibited from framing the Board IDX website display, since custom links are available to the membership for free.
3. As outlined in paragraph 18 of the MLS Rules and Regulations, the requirement to include the listing firm encompass every occurrence where IDX listing information is display, including but not limited to, search results pages with listing information displayed in limited format and detail pages. Listing agent identifications is required to be included, at minimum, on a listing detail page that provides more than a thumbnail of the property.

Fields marked as ‘mandatory’ MUST be displayed in the IDX listing details. Fields marked ‘prohibited’ can NOT be displayed anywhere in an IDX listing. All fields that are not shown in this list can be displayed at the IDX user’s discretion.

| Main Field Name  | Display Policy   |
|--|--|
| MLS #  | Mandatory  |
| City   | Mandatory  |
| Listing Member   | Mandatory: <i>Display required on Detail page only</i> |
| Listing Office   | Mandatory:   |
| Street #*  | Conditional*   |
| Street Direction*  | Conditional*   |
| Street Ext*  | Conditional*   |
| Street Name*   | Conditional*   |
| <i>*Information can be displayed only if the listing agent checked “yes” to “Seller Consents to Show Street Name On IDX”</i> |  |
| Contract Information   | Display Policy   |
| BAC  | Prohibited   |
| NAC  | Prohibited   |
| SAC  | Prohibited   |
| List Date  | Prohibited   |
| Exp Date   | Prohibited   |
| Limited Service  | Prohibited   |
| List Price   | Mandatory  |
| Location, Tax & Legal  | Display Policy   |
| Map Ref  | Prohibited   |
| Page   | Prohibited   |
| Book   | Prohibited   |
| Seller(s)  | Prohibited   |
| General Description  | Display Policy   |
| Directions   | Prohibited   |
| Office Remarks   | Prohibited   |
| Realtor.com Type*  | Prohibited   |
| Realtor-to-Realtor   | Prohibited   |
| Showing Instructions   | Prohibited   |
| Telephone Pole Coord   | Prohibited   |





## Virtual Office Websites (VOW)

For purposes of this Policy, the term Virtual Office Website (“VOW”) refers to a Participant’s Internet website, or a feature of a Participant’s Internet website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS data, subject to the Participant’s oversight, supervision, and accountability. All regulations governing a Participant’s VOW are contained in the Rules and Regulations of the Service, and adhere to all policies adopted and approved by the National Association of REALTORS.

## MLS Raw Data Usage and Access

### **Data access and licensing limited to uses permitted by MLS policy.**

The Multiple Listing Service of the Berkshire County Board of REALTORS® complies with applicable laws and with the multiple listing policies of the National Association of REALTORS® (NAR) as set forth in the NAR Handbook on Multiple Listing Policy. NAR’s internet data exchange and virtual office website policies require MLS to provide limited data access and licensing to MLS participants under certain circumstances; but these are the only circumstances under which MLS can be compelled to license or provide access to MLS listing data content or membership information.

Furthermore, Participant and third party vendors engaged by a Participant are subject to all of the MLS’s other policies, including standard licensing and access agreements, MLS Bylaws, MLS Rules and Regulations, MLS Policies, NAR MLS polices, and by applicable law. Therefore, the MLS shall provide access to and license MLS listing and membership data content only where consistent with these policies.

### **Definitions:**

“Listing data” as used in the National Association’s multiple listing policies, including the model MLS rules and regulations, includes, 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.

“RETS” is defined as the “Real Estate Transaction Standard” programming language to aid in exchanging real estate transaction information. The MLS hosts a RETS server that is able to stream real-time data to a receiving computer equipped with RETS software that reads and translate the RETS data into a formatted display. RETS code / software is used by many real estate service providers to build websites, software systems for real estate companies and more.

### **Uses of MLS Listing Data**

There are several types of limited electronic content uses and formats. Each has specific prerequisites for downloading data, ongoing obligations for use and compliance with the MLS Rules, Regulations and Polices that govern the use of data:

- 1) Limited listing data provided via IDX smart frame, Open House smart frame and Office Listing smart frame for Participant use on office or agent websites
- 2) Limited listing data provided via an IDX RETS feed for Participant use on office or agent websites
- 3) Limited listing data provided via a RETS feed for Participant use in-house and in back-office systems
- 4) Comprehensive listing data for Participant’s own listings via a RETS feed for Participant use

- 5) Comprehensive listing data for Participant's own listings via a RETS feed for a third-party vendor, as requested by the Participant.

### **MLS responsibility for protecting data content.**

The MLS is responsible for obtaining and protecting intellectual property rights in the database content relating to listings on behalf of the listing broker. MLS will achieve this objective by taking all the following steps:

- Obtaining assignments from agents and third parties that contribute data content relating to listings.
- Granting a broad license to listing brokers to use content relating to their own listings.
- Granting a narrow license to all MLS participants to use the data content of other brokers to the limited extent permitted by the MLS rules.
- Enforcing MLS rules relating to use of listing content.
- Pursuing copyright infringers and database pirates to the extent possible, taking into consideration MLS's budget and staff resources.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.

Any use of MLS data content that is not expressly authorized in these policy statements or in the MLS rules and regulations is hereby prohibited.

### **Participant use of their own listing data**

Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant.

The listing broker has the right and complete freedom to use the database content (text and photos) relating to its active and off-market inventory; to the extent possible, subject to MLS policies. With due consideration for operational costs, MLS will attempt to facilitate transmission of the listing broker's content to recipients the listing broker specifies. MLS shall nonetheless impose the following conditions upon its cooperation with listing brokers in such matters:

- The requesting broker must agree that MLS is not liable for data content accuracy or for frequency of data updates.
- MLS will not assist in transmitting listing broker content to any third party that is apparently aggregating broker data in order to compete with the MLS service or with some aspect of it.
- Listing broker and its third party must sign MLS's standard access and license agreement, which includes provisions to protect MLS and listing broker.

### **Participant use of other broker's listing data, including online display.**

Participants, and those persons affiliated as licensees with such Participants, shall be permitted to display the MLS Compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS compilation. The Participant is permitted to provide prospective purchasers with listing data relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the participant is seeking to promote interest. The term reasonable, as used herein, should therefore be construed to permit only limited reproduction of property listing data intended to facilitate the prospective purchaser's decision-making process in the



consideration of a purchase. Factors which shall be considered in deciding whether the reproductions made are consistent with this intent and thus reasonable in number, shall include, but are not limited to, the total number of listings in the MLS compilation, how closely the types of properties contained in such listings accord with the prospective purchaser's expressed desires and ability to purchase, whether the reproductions were made on a selective basis, and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties which would be shown to the prospective purchaser.

Display of listing information is governed by IDX and VOW policies, the Code of Ethics and the National Association of REALTORS polices, as set forth in the Multiple Listing Service Rules and Regulations and Policy Manual, as from time to time amended and incorporated in these polices by reference.

### **Participant non-core uses including other brokers' listings.**

Each participant is entitled to receive a download of relevant portions of the MLS data content, including listing content of other brokers, for purposes of building in-house and back-office systems, provided all the following requirements are met:

- Only the staff and licensees of the Participant for whom applicable fees have been paid to MLS may access MLS data content.
- There is no financial or commercial advantage to the use of listing data (other than facilitating the sale of property listed in the service);
- The Participant, their agents or third party vendors must not be aggregating listing data in order to compete with the MLS service or some aspect of MLS service.
- The Participant, their agents or third party vendors must not use compiled listing data to target clients of other REALTORS® for communication or the solicitation of business in any way.
- Listing broker and its third party must sign MLS's standard access and license agreement, which includes provisions to protect MLS and listing broker.
- The Participant must enter into a standard download/license agreement with MLS.
- Any third party vendor working with, and having access to the listing data feed must enter into a standard download/use agreement with the MLS.
- The Participant must take responsibility for all data integrity issues arising from the download.
- The Participant must take steps to prevent the MLS data in its custody from being pirated.
- The Participant must provide the MLS staff with log-in information to review the final data feed integration for compliance
- The Participant must pay to MLS the fee established by MLS to recover its direct and indirect costs for the download.

### **Participant use implemented by third party providers to deliver services to participants.**

No third party or participant may use MLS content for purposes of delivering it back to authorized participants and subscribers, this being the exclusive role of the MLS. The MLS may nevertheless permit such a use under the following circumstances:

- MLS will provide access to the MLS content for this purpose only if the MLS in its sole discretion determines that the service is an important one that the MLS cannot feasibly offer on its own.
- MLS will perform thorough due diligence on the third party or broker proposing to use the MLS content in such a service.
- MLS determines that allowing a third party or participant to provide this service to other participants will not injure the business interests of MLS or of other participants.



## **Process for requests for Data Feeds.**

MLS staff will obtain the appropriate signed agreements, contact information, log-in access, verification information, third party vendor agreements, etc., as required according to these policy statements.

MLS staff will employ the following steps when dealing with requests not falling within these policy statements.

- Find the data use or category above that most closely approximates the use being requested. Identify the key differences between the use above and the requested use. Determine if factors support the use being requested, if for example:
  - (a) listing broker consent is required;
  - (b) end-users of the data for the use will be MLS subscribers and participants only;
  - (c) the use is designed to provide data content for purposes of enhancing real estate sales and not for some other commercial purpose; and
  - (d) if aggregated data is being made available for third party use, individual listings are not individually identifiable.
- Determine whether factors recommend against the use requested, if for example:
  - (a) end-users of the data for the use will be consumers;
  - (b) some financial or commercial advantage will accrue to the data user (other than encouraging the sale of property listed in the service);
  - (c) the data use requires the MLS data to be handled by third parties;
  - (d) the data use requires that a whole copy or nearly a whole copy of the MLS database must be delivered into the hands of a third party.
- Weigh the information obtained in the previous three steps and determine whether to permit the data use.
- If data use is denied by Staff, the Participant can elect to have the request brought to the MLS Board of Directors for reconsideration.
- Schedule a discussion about whether to adopt a policy regarding similar requests in the future.

## **Standard agreements.**

MLS Staff shall administer standard contract documents necessary to implement these policies. MLS staff is further directed to modify the standard contracts as necessary based upon experience of the MLS staff, the advice of counsel or changes or recommendations made by the National Association of REALTORS, to achieve the purposes set forth in these policies.

## **MLS structured access with listing broker permission.**

MLS may from time to time enter into agreements to license data content to participants and third parties, such as IDX, Realtor.com, commercial data services, etc. These licenses are subject to each of the following conditions:

- Listing broker permission must be obtained. MLS may presume listing broker permission provided MLS notifies listing brokers in advance and provides them an opportunity to “opt-out.”
- Listing brokers must be informed when they have the opportunity to opt out of a data use what revenues the MLS anticipates from the license deal (above MLS’s costs) and the means MLS will use to distribute any revenues.
- MLS will impose a data license agreement for each type of data use on the receiving participant and third party, if applicable.



## Ownership of Listing and Listing Content

By the action of submission of any property listing content to the Board MLS the Participant represents that they have been authorized to grant and also thereby does grant authority for the Board to include the property listing content in its copyrighted MLS compilation and also in any statistical report on "Comparable." Listing content includes but is not limited to photographs, images, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information and other details or information related to listed property. Participants consent to use of their listing data, provided that listing brokers are given adequate prior notice of any intended use unrelated to the defined purpose of MLS, and provided that they are given the opportunity to affirmatively withhold consent for that use. Participants consent to allow MLS storage, reproduction, compiling, and distribution of listings and listing information to the extent necessary to fulfill the defined purposes of MLS.

While individual Participant may hold intellectual property rights to their listing data, all right, title and interest in each copy of every Multiple Listing Compilation created and copyrighted by the Berkshire County Board of REALTORS®, and in copyrights therein, shall at all times remain vested in the Berkshire County Board of REALTORS®.

## Confidentiality of MLS Information

Any information provided by the multiple listing service to the participants shall be considered official information of the service. Such information shall be considered confidential and exclusively for the use of participants and real estate licensees affiliated with such participants and those participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such participants.

## Misuse of the MLS Data Feeds or Compilation

If Staff suspects, at any time, there is misuse or fraud in relation to the data feeds delivered by the MLS, the staff is granted all rights to immediately terminate the data feed pending investigation. Staff shall notify the Participant of the termination, and the reason for the shut-off. Staff can work with the Participant to clear up any misuse concerns, but the Participant is afforded, in no more than seven (7) days, to have the allegations administratively considered by the MLS Board of Directors, as outlined and described in the bylaws and rules and regulations of the service. It is to be noted that after termination of a data feed due to suspicious circumstances, the process will be handled according to governing documents of the organization for a violation of the regulations of the service.

## Monitoring and Review of Data feeds

Staff shall provide random audits of datafeeds, including the changing of passwords, review of in-house systems and verification that the third party vendor (if applicable) is operating the business as originally cited in the agreements.

**All electronic compilations of listing information that is displayed for use by prospective purchasers is limited to and shall be governed by the MLS Rules and Regulations and Policies relative to Internet Data Exchange (IDX) and Virtual Office Websites (VOW).**