

Consultant's Data Access Agreement For Internet Data Exchange (IDX)

This form is a legally binding document between you and the bridgeMLS

By submitting this contract to bridgeMLS, you, the Vendor or Consultant is intending to become an Internet Data Exchange Consultant to provide an IDX website for active bridgeMLS Participants and/or Subscribers. Please refer to the bridgeMLS IDX Program Policy available at <http://www.bridgemls.com> for further details. Each licensed agent of the firm who wishes to obtain IDX data must ensure this contract is filled out completely and signed by the MLS Participant (See Paragraph 3 for definitions) for their firm. There are no exceptions. Once you have filled out the last page of this contract and obtained all of the required signature, please mail or fax the last page (page 7) to

Bridge MLS
2855 Telegraph Ave. Suite 600
Berkeley, CA, 94705
Fax: 510.848.2439

Within three (3) business days of receipt of this completed Agreement, we will send you or your consultant a copy of the executed Agreement along with instructions for IDX listing or data access.

AGREEMENT

1. This **AGREEMENT** is made and entered into by the among bridgeMLS and the Participant whose name and contact information appear on the signature page of the Agreement designating
 - a. The Participant information and signature
 - b. The Subscriber information and signature
 - c. The Consultant information and signature
2. Participant/Subscriber wishes to obtain, and the bridgeMLS wishes to provide, data for Participant/Subscriber public website, namely the listing data of other real estate brokerages participating in the IDX Program. Participant/Subscriber may wish to engage Consultants (i.e. other companies or individuals who are not employees of the Firm) to perform data downloading, manipulations 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.

Consultant: A consultant is defined as a person company or entity who is not an employee of the Participant of subscriber who acts to assist an IDX Participant or Subscriber in performing downloading, manipulation or formatting or receiving, presenting, housing, as well as programming and web design or distributing the IDX data over the Internet or by any other method to members of the public. Such consultants must agree to comply with this Agreement.

Consumer: A consumer is a member of the public, an end user, who has access to the IDX data through the public website of an IDX Participant or Subscriber and who is seeking a property for their own use or is seeking general information for their personal use but not for a business use.

Firm: The entity under which the Participants/Subscriber is doing business.

IDX Database (IDXdb): The current aggregate compilation of approved listings of all Internet Data Exchange Participants of the bridgeMLS, Bay East (BEAR), Contra Costa Associations of REALTORS® (CCAR) MLS and MLSListings Inc. Those listings where the property seller has opted out of Internet publication by so indicating on the listing agreement are excluded. The bridgeMLS, BEAR, CCAR MLS and MLSListings Inc. own the IDXdb Data originating from their respective MLS's and the IDXdb compilations are protected under copyright law.

Internet Data Exchange Participant (IDX): The Participant who has not declined to give permission to other IDX's and their agents to display its active, pending, and limited sold listings on their web sites in return for their permission to advertise their listings on its public web site.

IDX Data: The data supplied by the MLS specifically for the by the IDX Participant/Subscriber on their public websites. It includes only those data fields from the MLS that are approved for distribution to the public by Participants/Subscribers as outlined in Appendix C of the bridgeMLS IDX Policy.

Listings: For the purpose of is document, listings are defines as active, pending, and limited sold listings. Active listings are listings that are not pending, sold, withdrawn, off market, or expired status. Pending listings are listings that have a ratified contract but have not yet closed escrow. Sold listings are listings that are off market and recorded in the MLS under sold status. No other off market statuses are allowed for IDX display.

IDX-EZ: A proprietary program that allows IDX data to be displayed on a Participant/Subscriber's public web site in a framed window without the need to download the data.

Multiple Listing Service (MLS): A service or entity for colleting and disseminating information about real property that is or has been for sale, including a means for real estate brokers to make offers of cooperation and compensation to each other. Multiple Listing Service may also include, without limitation, the provision of data processing, technical support, consulting, and other information technology services to real estate brokers and appraisers in connection with the sale and appraisals of real property.

MLS Data: The compilation of data relating to real estate entered into the MLS database by the Participants and Subscribers of bridgeMLS, the Bay East Association of REALTORS® MLS, the Contra Costa Association of REALTORS® MLS, and MLSListings Inc. and protected under copyright law.

Participant: A Broker Participant (Broker of Record) is defined as any individual broker who applies and is accepted by the MLS and meets the requirements listed in the bridgeMLS Rules and Regulations.

Receiving Party: A Participant, Subscriber or their Consultant or any one of them acting in accordance with the MLS guidelines regarding IDX.

Rules: The bridgeMLS Rules and Regulations, IDX Program Policy and any operating policies of the MLS as amended from time to time.

Subscriber: An individual, usually a Broker or an Agent who is operating subordinate to a Broker Participant who applies and is accepted by the MLS, and meets the requirements of the bridgeMLS Rules and Regulations.

bridgeMLS' OBLIGATION

4. During the term of this Agreement, the MLS grants to Participant/Subscriber a revocable non-exclusive license, in each case subject to the Rules, to:
 - a. Display the IDX Data on Participant public web site, and
 - b. Make copies of the IDX Data to the extent necessary to deliver the IDX Data to consumers on Participant/Subscriber's public web site, or
 - c. Use an IDX-EZ link assigned by the MLS
5. During the term of this Agreement, the MLS agrees to provide to Participant/Subscriber and their Consultants:
 - a. Access to the IDX Data via the Internet using the Real Estate Transaction Standard ("RETS"), or through an assigned IDX-EZ link.
 - b. Seven (7) days advanced notice of changes to the file and record formats of the IDX Data; and
 - c. Seven (7) days advanced notice of changes to the IDX rules

PARTICIPANT/SUBSCRIBER'S OBLIGATION

6. **As the IDXdb includes IDX data from the bridgeMLS, BEAR MLS, and the CCAR MLS, Participants/Subscribers shall comply with the IDX Rules of bridgeMLS, BEAR, CCAR, and MLSListings Inc. at all times. The Participant/Subscriber shall also comply with the MLS Rules and Regulations.**
7. Participant/Subscriber acknowledges the MLS's ownership of the copyrights on the MLS Data and the IDX Data.
8. Participant/Subscriber shall keep all displayed data current and update their public website at least every 72 hours.
 - a. For Active listings: Listings that are no longer active must be removed from the Participant/Subscriber public website as an 'active' listing within 72 hours of removal of the listing as active from the IDX data.

- b. For Sold listings: Listings with a closing date of less than 3 years in the past may be displayed.
9. Participant/Subscriber shall comply with the requirements relating to Confidential Information set forth below.
 10. Limit to Updates: daily update downloads shall be limited to no more than 6 times a day. Full downloads may be pulled only after 6:00pm Monday through Friday. No time restrictions for weekends.
 11. In the event that Participant/Subscriber desires to use a Third Party, for the development and maintenance of the Participant/Subscriber public website, Participant/Subscriber agrees to require the Consultant to enter into an 'IDX contact with the MLS and become a Consultant as defined herein.
 12. If the MLS notifies Participant/Subscriber of a breach of the Rules of this Agreement and Participant/Subscriber does not immediately cure such breach, Participant/Subscriber agrees that the MLS may seek cure by any and all appropriate legal means necessary. In addition, the MLS may immediately, at its sole discretion, terminate Participant/Subscriber's access to the MLS/IDX and the Consultant's access to IDX Data.
 13. Participant/Subscriber shall notify the MLS within three (3) business days of any change to the information relating to Participant/Subscriber on the Information and Signature pages attached.
 14. A Broker Participant or R.E. Subscriber may co-mingle the listings of other Participants with listings from other MLS sources on its website, provided all such displays are consistent with these rules. Co-mingling is (a) the ability for a visitor to the website to execute a single search that searches any portion of the IDX database at the same time it searches listing data from any other source(s); or (b) the display on a single web page or any portion of the IDX database and listing data from any other source.
 15. Participant/Subscriber shall indemnify, defend and hold harmless bridgeMLS, BEAR, and CCAR MLS's from any and all claims, damages, liabilities, costs and expenses, including, without limitation, attorney's fees and costs, arising from or related to Participant/Subscriber and/or Consultant's business operations, including without limitation, use for misuse of the IDX Data and MLS Data.
 16. Participant/Subscriber remains responsible at all times for any breach by Consultant.
 17. Intention of IDX Display. IDX is solely intended to allow Participants and Subscribers to display limited active, pending, and sold MLS Data on their public internet sites. Display of this information is strictly limited to internet sites accessible by the public. IDX is in no way intended to negate prohibitions contained within these rules, or the Realtor Code of Ethics, which prohibits advertising of another agent's listings. Nor is IDX intended in any way to empower Subscriber or Participants to allow direct access to downloaded data on their individual computers, networks, or intranet sites by any individual (including buyers and sellers) who are not current Participants or Subscribers of bridgeMLS.
 18. No portion of IDX-EZ shall be modified or reverse engineered. This includes the initial search screen (layout, background, text, text placement, etc) and the results screens (layout, background, text, text placement, etc).

CONSULTANT'S OBLIGATION

19. If the MLS notifies Participant/Subscriber of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, the MLS may contact Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with the MLS and act immediately upon notification by the MLS of an uncured breach by Participant/Subscriber or Consultant.
20. Each Consultant acknowledges the MLS's ownership of the copyrights on the MLS Data and the IDX Data.
21. Each Consultant shall comply with the requirements related to the Confidential Information requirements as set forth below. The Participant/Subscriber remains responsible for the compliance of their Consultant in any activity performed by their Consultant regarding the IDX Data or its elements and systems
22. Each Consultant shall notify the MLS within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page attached.
23. Limit to Updates: daily update downloads shall be limited to no more than 6 times a day. Full downloads may be pulled only after 6:00pm Monday through Friday. No time restrictions for weekends.
24. Consultant agrees to not modify or reverse engineer any portion of IDX-EZ. This includes the initial search screen (layout, background, text, text placement, etc) and the results screens (layout, background, text, text placement, etc).
25. Registered IDX Consultants are required to provide bridgeMLS with a monthly report of their current bridgeMLS customer list. This report shall be emailed to idx@bridgempl.com no later than the 5th of each month. A template will be provided for this purpose.
26. Consultant will be required to pay the MLS a set-up fee of \$100.00 for every new bridgeMLS user that is onboarded.

CONFIDENTIAL INFORMATION

27. **"Confidential Information"** is information or material proprietary to the MLS or designated "confidential" by the MLS and not generally know to the public, that This includes the initial search screen (layout, background, text, text placement, etc) and the results screens (layout, background, text, text placement, etc). or Consultants or any one of them (the "Receiving Party"_) may obtain knowledge of or access to as a result of delivery or access under his 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 MLS Data including photographs, except the IDX Data to the extent to which this Agreement and the Rules permit disclosure and that is provided in the RETS Data from the MLS;
 - 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, IDX-EZ links, access codes and passwords; and
 - f. Any information that the MLS obtains from any third party that the MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by the MLS.
 - g. Firm, Participant and Subscriber roster information that appears in the MLS Database
28. **Exceptions.** The Confidential Information does not include information that:
- a. Is in the public domain at the time of disclosure;
 - b. Is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to the MLS prompt notice of any such order.
29. **Title.** The Receiving Party acknowledges that title to and the ownership of the Confidential Information remains at all times with the MLS or with the third parties in whom title and ownership existed prior to this Agreement or prior to disclosure by the MLS.
30. **Restrictions on Use – Scope of Use.** The Participant/Subscriber will use or access the Confidential Information only as expressly permitted under this Agreement and the Rules and the Participant/Subscriber 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 disclosure at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care.
31. **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 the MLS to do so. At no time and under no circumstances will the Receiving Party reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. The Receiving party will not incorporate the Confidential Information into any other work or product.
32. **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 the MLS. If the MLS grants consent, the Receiving Party will execute an agreement with the third party that imposes at least as strict a confidentiality obligation on the third party as that imposed by this Agreement on the Receiving Party.
33. **Restrictions on Use – Location Restriction.** The Receiving Party will not remove the Confidential Information from its principal place of business without the MLS’s prior written consent. IN the event that MLS grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.
34. **Termination and Return of Materials.** Within five (5) days of the end of the term of this Agreement or receipt of notice of termination by the MLS, the Receiving Party will return to the MLS all Confidential Information and all other materials provided by the MLS 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. Upon the request of the MLS, an officer of the Receiving Party will certify in writing that all materials have been returned to the MLS and all magnetic or computer data has been destroyed.

TERM AND TERMINATION

35. **Term and Termination.** The term of this Agreement begins on the “Effective Date” set forth on the “bridgeMLS Information and Signature Page” attached. The MLS 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. The MLS’s notice to Firm that this Agreement is terminated.
 - b. Firm’s notice to the MLS that it no longer intends to display IDX Data on its web site
 - c. Termination of Firm’s privileges as a Participant/Subscriber of the MLS for any reason, including non-payment of MLS dues or fines
 - d. Upon Agreement of the Parties

GENERAL PROVISIONS

36. **Survival of Obligations.** The obligations of Participant/Subscriber set forth under “Participant/Subscriber” above and the obligations of Consultants under “Consultants’ Obligations” above, and the provisions regarding “Confidential Information” shall survive the termination or expiration of this Agreement.

37. **The MLS’s Remedies.** Because of the unique nature of the MLS Data and Confidential Information, Firm and Consultants acknowledge that the MLS would suffer irreparable harm in the event that any of them breaches its obligation under this Agreement, and that monetary damages would be inadequate to compensate the MLS for a breach. The MLS is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Firm or Consultants or any one of them, without showing or proving any actual damages sustained by the MLS.

38. **Attorney’s fees.** If the MLS prevails in any action to enforce or interpret this Agreement or any provision hereof, the party against whom enforcement or interpretation was sought will pay the MLS’s reasonable attorney’s fees and costs for such legal action.

39. **Limitation of Liability.** The MLS’s liability to Participant/Subscriber and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by the Participant/Subscriber and Consultants to the MLS, if any, under this Agreement. The Participant/Subscriber’s and Consultants’ only other remedy shall be termination of this Agreement. The MLS shall not be liable for any incidental or consequential damages under any circumstances, given if the MLS

has been advised of the possibility of such damages. The MLS shall have no liability for inaccuracies in the IDX Data or the MLS Data and Participant/Subscriber accepts the IDX Data and MLS Data on an “AS IS” basis. THE MLS MAKES NO WARRANTY WITH RESPECT TO THE MLS DATA OR THE IDX DATA, WHETHER EXPRESS OR IMPLIED. THE MLS SPECIFICALLY EXCLUDES AND DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

40. **Notice.** All notices to be given under this Agreement shall be mailed, emailed or faxed 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. They will be deemed given when received and acknowledged by the MLS. The Participant/Subscriber is encouraged to verify the MLS’s receipt of their notice.

41. **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.

42. **No Assignment.** Neither Participant/Subscriber nor Consultant, 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 the MLS.

43. **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 understanding whether oral or written. The previous sentence notwithstanding, the Rules are expressly incorporated into this Agreement by reference.

44. **Applicable Law.** This Agreement is governed by and enforced according to the laws of the State of California, including Arbitration in accordance with the MLS Rules and Regulations of the bridgeMLS

