

ONEKEY MLS, LLC

Participant Data Access Agreement

This **AGREEMENT** is made and entered into by ONEKEY MLS, LLC (“**ONEKEY MLS**”), with offices at 400 Broadhollow Road, Farmingdale, NY 11735; the real estate brokerage firm identified as “**Firm**” on the signature page below (“**Firm**”); and the Salespersons affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the “**Salesperson Party**”).

DEFINITIONS

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.

Audio Device: Any audio delivery of IDX data authorized by ONEKEY MLS Policies and listed in Exhibit A that are not web sites or Mobile Applications. “Audio Device” does not include mass media delivery of ONEKEY MLS Data.

Confidential Information: “Confidential Information” means information or material proprietary to a party or designated “confidential” by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all ONEKEY MLS Data, except to the extent to which this Agreement and ONEKEY MLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that ONEKEY MLS obtains from any third party that ONEKEY MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by ONEKEY MLS; and (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

Data Interface: The transport protocols and data storage formats provided by ONEKEY MLS for use by Firm, Salesperson Party, and Vendor; ONEKEY MLS may modify the Data Interface in its sole discretion from time to time.

Firm-Related Persons: Vendor, if any, and employees of Firm who are not Salespersons or broker/managers.

Firm Internal Use: Any use of those portions of ONEKEY MLS Data relating to Firm’s own listings; and any use of those portions of ONEKEY MLS Data relating to listings of Participants other than Firm that exposes ONEKEY MLS Data only to Firm-Related Persons and to Salespersons affiliated with Firm, subject to ONEKEY MLS Policies.

IDX: Use and display of portions of ONEKEY MLS Data under the Internet Data Exchange (“IDX”) provisions of ONEKEY MLS Policies.

Mobile Applications: Any displays of IDX data authorized by ONEKEY MLS Policies and listed in Exhibit A that are not web sites.

ONEKEY MLS Data: Data relating to real estate for sale, previously sold, or listed for sale, and to ONEKEY MLS Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into ONEKEY MLS’s databases by ONEKEY MLS Participants and ONEKEY MLS, or on their behalf.

ONEKEY MLS Policies: ONEKEY MLS’s Rules and Regulations, as amended from time to time, and any operating policies promulgated by ONEKEY MLS, including but not limited to its VOW and IDX policies.

Participant: This term has the meaning given to it in ONEKEY MLS Policies. For purposes of this Agreement, “Participant” does not Participant Data Access Agreement

apply to participants of MLSs other than ONEKEY MLS. Where applied in this Agreement to Participants other than Firm, “Participant” also includes Salespersons affiliated with those Participants for whom the Participants are responsible under the laws of the State of New York.

Salesperson: Any person holding a real estate license in New York who is not a Participant but who is subject to a Participant’s supervision under the laws of New York.

Second Level Domain: “Second Level Domain” has the meaning given to it in this paragraph. “URL” means a web address, including the “http://” and any material appearing after a slash in the address. “Domain Name” means a URL, less the “http://” and any material appearing to the right of the next slash (“/”) in the address. (So for example, in the URL “Http://janesmith.abcrealty.com/homepage.html”, the Domain Name is “JANESMITH.ABCREALTY.COM”.) “Top Level Domain” means the portion of the Domain Name to the right of the right-most period. (In the example, “COM”.) “Second Level Domain” means that portion of a domain name to the left of the right-most period, up to the second period from the right, if any, plus the Top Level Domain. (In the example, “ABCREALTY.COM”.) “Third Level Domain” means that portion of a domain name to the left of the second period from the right, if any, up to the third period from the right, if any, plus the Second Level Domain. (In the example, “JANESMITH.ABCREALTY.COM”).

Vendor: The individual or business association, if any, that provides products or services to Participant or Salesperson Party pursuant to a VDAA.

VDAA or Vendor Data Access Agreement: The agreement between Vendor and ONEKEY MLS that governs Vendor’s provision of IDX, VOW, or Firm Internal Data use services or products to Participant and Salesperson Party, if applicable.

VOW: Use and display of portions of ONEKEY MLS Data under the Virtual Office Website provisions of ONEKEY MLS Policies.

ONEKEY MLS’S OBLIGATIONS

2. ONEKEY MLS grants to Firm and Salesperson Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the ONEKEY MLS Data, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement; any other use of ONEKEY MLS Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. ONEKEY MLS retains all rights not expressly granted herein.

3. ONEKEY MLS agrees to provide to Firm, Salesperson Party, and Vendor, during the term of this Agreement, (a) access to ONEKEY MLS Data via the Data Interface under the same terms and conditions ONEKEY MLS offers to other ONEKEY MLS Participants; (b) seven days’ advance notice of changes to the Data Interface; and (c) seven days’ advance notice of changes to ONEKEY MLS Policies. ONEKEY MLS does not undertake to provide technical support for the Data Interface or ONEKEY MLS Data. The Data Interface, together with access to ONEKEY MLS Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or ONEKEY MLS Data shall not constitute a default by ONEKEY MLS under this Agreement.

FIRM’S OBLIGATIONS

4. Firm and Salesperson Party shall comply with ONEKEY MLS Policies at all times. In the event of any perceived conflict between ONEKEY MLS Policies and this Agreement, ONEKEY MLS Policies shall govern.

5. Firm and Salesperson Party shall use the ONEKEY MLS Data obtained under this Agreement for Firm Internal Use, IDX, and VOW use only. Any other use is strictly prohibited. Firm and Salesperson Party shall not make ONEKEY MLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Salesperson Party may display or deliver ONEKEY MLS Data on web sites, Mobile Applications, and Audio Devices only to the extent permitted by ONEKEY MLS Policies and then only on a site or sites resident at the Second Level and Third Level Domain(s), Mobile Applications, and Audio Devices indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Salesperson Party acknowledge that ownership and use rights relating to copyrights in ONEKEY MLS Data are defined in ONEKEY MLS Policies or in the terms of the participant and subscriber agreements between ONEKEY MLS Firm and Salesperson Party, or in ONEKEY MLS Master License Agreement. Firm and Salesperson Party shall not challenge or take any action inconsistent with ONEKEY MLS's ownership of or rights in ONEKEY MLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If ONEKEY MLS notifies Firm or Salesperson Party of a breach of ONEKEY MLS Policies or this Agreement and Firm or Salesperson Party does not immediately cure the breach, Firm and Salesperson Party shall hold Vendor harmless from any liability arising from Vendor's cooperation with ONEKEY MLS to cure such breach.

8. Firm and Salesperson Party shall pay the fees, if any, that ONEKEY MLS customarily charges other ONEKEY MLS Participants for data access. Firm and Salesperson Party acknowledge receipt of ONEKEY MLS's current schedule of such fees, if any. ONEKEY MLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Salesperson Party. Firm and Salesperson Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Salesperson Party's obligations under this Agreement and Vendor's obligations under its VDAA. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

AUDITS OF COMPLIANCE

10. ONEKEY MLS may, or at its option may engage an independent third party to, review, inspect and test the books, records, equipment and facilities of Firm and Salesperson Party to the extent reasonably necessary to ascertain Firm's and Salesperson Party's compliance with this Agreement ("Audit"). ONEKEY MLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's and Salesperson Party's web sites, Mobile Applications, Audio Devices and systems to ensure that ONEKEY MLS Data is displayed in accordance with ONEKEY MLS Policies; using all features available to end-users of Firm's and Salesperson Party's systems that employ ONEKEY MLS Data; and posing as consumers to register and test services Firm and Salesperson Party make available to consumers using ONEKEY MLS Data. ONEKEY MLS shall pay the costs it incurs and the out-of-pocket costs Firm and Salesperson Party incur, as part of any Audit; provided, however, Firm or Salesperson Party shall be liable for all costs of any Audit that discloses that Firm or Salesperson Party has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

11. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required Participant Data Access Agreement

by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

12. The term of this Agreement begins on the date that ONEKEY MLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in ONEKEY MLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) with regard to any Salesperson Party, immediately upon any event that results in the Salesperson Party no longer being affiliated with Firm; (f) immediately with ONEKEY MLS's notice to Firm or Salesperson party if the VDAA has been terminated. (g) as provided in Paragraphs 22 and 23.

13. In the event Firm's privileges as a Participant (or Salesperson Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect and ONEKEY MLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if ONEKEY MLS resumes its obligations under Paragraphs 2 and 3. In the event Firm or Salesperson Party breaches this Agreement, or Vendor breaches the VDAA, and entitles ONEKEY MLS to terminate under Paragraph 12, ONEKEY MLS may in its sole discretion suspend its performance instead of terminating this Agreement. ONEKEY MLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's and Salesperson Party's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, Firm and Salesperson Party shall make no further use of ONEKEY MLS Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Salesperson Party's rights under this Agreement are restored.

GENERAL PROVISIONS

14. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of New York, without regard to its conflicts and choice of law provisions.

15. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

16. **ONEKEY MLS's Remedies.** (a) Injunctive relief: Because of the unique nature of the ONEKEY MLS Data and Confidential Information, Firm and Salesperson Party acknowledge and agree that ONEKEY MLS would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate ONEKEY MLS for a breach. ONEKEY MLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm or Salesperson Party without showing or proving any actual damages sustained by ONEKEY MLS, and without posting any bond. (b) Liquidated damages: Firm and Salesperson Party acknowledge that damages suffered by ONEKEY MLS from access to ONEKEY MLS Data by an unauthorized third party as a result of disclosure of any passwords

or an unauthorized disclosure of ONEKEY MLS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to ONEKEY MLS to enter into this Agreement, Firm and Salesperson Party agree that in the event Firm, Salesperson Party, or Firm-Related Persons, or its employees, agents, or contractors, disclose any password to access ONEKEY MLS Data or disclose ONEKEY MLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm and Salesperson Party shall be liable to ONEKEY MLS for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm and Salesperson Party under this paragraph is joint and several.

17. Limitation of liability/exclusion of warranties. IN NO EVENT SHALL ONEKEY MLS BE LIABLE TO FIRM OR SALESPERSON PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF ONEKEY MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL ONEKEY MLS BE LIABLE TO FIRM OR SALESPERSON PARTY FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, SALESPERSON PARTY AND CONSULTANT HAVE PAID ONEKEY MLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM AND SALESPERSON PARTY ACKNOWLEDGE THAT ONEKEY MLS PROVIDES ONEKEY MLS DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY. ONEKEY MLS SHALL NOT BE LIABLE TO FIRM OR SALESPERSON PARTY FOR ANY CLAIM ARISING FROM INACCURACIES IN ONEKEY MLS DATA, ANY FAILURE TO UPDATE ONEKEY MLS DATA PROMPTLY, OR ONEKEY MLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. ONEKEY MLS makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.

18. Dispute resolution; Attorney's fees. In the event ONEKEY MLS claims that Firm or Salesperson Party has violated ONEKEY MLS Policies, ONEKEY MLS may, at its option, resolve such a claim according to the disciplinary procedures set out in ONEKEY MLS Policies. The parties irrevocably agree, consent and submit themselves to personal jurisdiction in the courts of the State of New York located in Westchester County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to ONEKEY MLS's disciplinary procedures. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, the arbitration award may include reasonable attorney's fees and costs for the legal action.

19. Indemnification. Subject to Paragraph 17, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

20. Notice. All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth herein or such other address

of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

21. 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.

22. No Assignment. Neither Firm or Salesperson Party may assign or otherwise transfer any rights or obligations under this Agreement. Any purported assignment or delegation by Firm or Salesperson Party in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

23. Entire Agreement; Amendment. Subject to ONEKEY MLS Policies, this Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same. ONEKEY MLS may amend this agreement by providing 30 days' advance notice of the amendment to all other parties; if any party continues to use the Data Interface or ONEKEY MLS Data after the expiration of the 30-day notice period, that party will be deemed to have agreed to the terms as amended.

24. Relationship of the Parties. The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of ONEKEY MLS or have any authority to make any agreements or representations on the behalf of ONEKEY MLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

25. Severability. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

ONEKEY MLS, LLC

Participant Data Access Agreement

Under this Agreement, **FIRM AND SALESPERSON PARTY ARE PERMITTED TO WORK ONLY WITH THE VENDOR LISTED BELOW.** If Firm or Salesperson Party chooses to engage a different vendor or additional vendors, Firm must enter into a new version of this Agreement with ONEKEY MLS and for each such vendor.

If Firm or Salesperson Party will perform its own technical work and there is no Vendor, Firm should cross out the Vendor information box. If this Agreement is for services to Firm only, and there is no Salesperson Party, Firm should cross out the Salesperson Party signature box.

This Agreement is for the following uses (check all that apply): **IDX** **VOW** **Firm Internal Use.**

<p>ONEKEY MLS: ONEKEY MLS, LLC</p> <p>_____ Signature</p> <p>_____ Name</p> <p>Date: _____ (effective date of this Agreement)</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____</p>	<p>FIRM</p> <p>_____ Firm name</p> <p>_____ Signature of owner or officer</p> <p>_____ Name of owner or officer</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p> <p>_____ Primary Domain, Mobile Application, or Audio Device: _____ <input type="checkbox"/> IDX <input type="checkbox"/> VOW</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>
<p>SALESPERSON PARTY</p> <p>(If there is more than one, have each named and sign on Exhibit A.)</p> <p>_____ Salesperson Party name</p> <p>_____ Signature of Salesperson Party</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p> <p>_____ Primary Domain, Mobile Application or Audio Device: _____ <input type="checkbox"/> IDX <input type="checkbox"/> VOW</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>	<p>VENDOR</p> <p>_____ Vendor company name</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p> <p>_____</p>

ONEKEY MLS, LLC
Participant Data Access Agreement
Exhibit A – Additional Requirements

1. **Additional Domains.** In addition to the Primary Domain specified on the signature page Firm and Salesperson Party may display ONEKEY MLS Data subject to the terms of this Agreement, and such display may be facilitated by Vendor subject to the terms of the VDAA, at the following Second and Third Level Domains, Mobile Applications, and Audio Devices (attach additional pages if necessary):

_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW

2. **Additional Salesperson Parties:** If there are two or more Salesperson Parties, each Salesperson Party after the first is identified by name here, and each must sign this Agreement. Each Salesperson Party listed here consents to ONEKEY MLS making communications and notices under this Agreement to Firm only. (Attached additional pages if necessary.)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
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