

# ONEKEY MLS, LLC

## Vendor Data Access Agreement

This AGREEMENT is made and entered into by and between ONEKEY MLS, LLC ("ONEKEY MLS"), with offices at 400 Broadhollow Road, Farmingdale, NY 11735; and

\_\_\_\_\_ ("Vendor"), a \_\_\_\_\_ individual/partnership/corporation/limited liability company with offices at \_\_\_\_\_.

### DEFINITIONS

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

**Confidential Information:** "Confidential Information" means information and material proprietary to the disclosing party, or designated "confidential" by the disclosing party, and not generally known to the public that the receiving party 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 and other information of a similar nature (whether in oral, visual, audio, written or other form): (a) all ONEKEY MLS Data, except to the extent to which this Agreement permits its disclosure; (b) IP addresses, access codes and passwords; (c) any information the disclosing party obtains from any third party that the disclosing party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the disclosing party; and (d) any information designated as confidential or private from time to time 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; is independently developed by the receiving party; is received from a third party who has lawfully obtained and disclosed it without breaching any confidentiality agreement; or is already known by the receiving party at the time of its disclosure.

**Data Interface:** The transport protocols and data storage formats described in Exhibit A, if any. If no such description appears in Exhibit A, then the Data Interface consists of those protocols and formats typically provided by ONEKEY MLS for use by other licensees of the ONEKEY MLS Data, which ONEKEY MLS may modify in its sole discretion from time to time.

**Licensed Data:** That subset of the ONEKEY MLS Data Licensed for use under this Agreement, which is more fully described in Exhibit A. If no such description appears in Exhibit A, then the Licensed Data consists of those records and fields typically provided by ONEKEY MLS for use by other licensees of the ONEKEY MLS Data, which ONEKEY MLS may modify in its sole discretion from time to time.

**Licensed Marks:** Those trademarks, service marks, word marks, logos and distinctive marks of all other kinds, if any, set out in Exhibit A as Licensed Marks. If no Licensed Marks appear in Exhibit A, then there are no Licensed Marks.

**Licensed Materials:** The Licensed Data and Licensed Marks.

**ONEKEY MLS Data:** Data relating to real estate for sale, previously sold, or listed for sale and data relating to Subscribers (including text, photographs, and all other data formats now known or hereafter invented) entered into the ONEKEY MLS's databases by Subscribers and ONEKEY MLS.

**Subscriber:** Any real estate broker, appraiser, or real-estate-related business professional that purchases multiple listing services from ONEKEY MLS.

### LICENSE

2. ONEKEY MLS grants to Vendor the license to copy, distribute, and display the Licensed Materials, only to the extent necessary to achieve the purposes set out in Exhibit B, only during the term of this Agreement, and only to the extent permitted by and subject at all times to the terms and restrictions 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 represents that ONEKEY MLS has no actual knowledge that should reasonably cause ONEKEY MLS to conclude that the Licensed Materials infringe the rights of any third party.

### DATA ACCESS

4. During the term of this Agreement, ONEKEY MLS shall provide to Vendor (a) access to the Licensed Data via the Data Interface; and (b) seven days' advance notice of changes to the Data Interface.

### VENDOR'S ACKNOWLEDGEMENTS

5. Vendor acknowledges that ONEKEY MLS provides the Licensed Data on an as-is, as-available basis. ONEKEY MLS shall not be liable to Vendor for any claim arising from inaccuracies in the Licensed Data or any failure, whether on the part of Vendor or of ONEKEY MLS, to update the data promptly.

6. Vendor is responsible for any liability or loss of goodwill associated with problems in data integrity, accuracy, or timeliness arising from Vendor's use of the Licensed Data.

7. The listings of some Subscribers may not be included in the Licensed Data if the listing Subscriber's permission is required under ONEKEY MLS's policies before its listings may be distributed to Vendor.

### VENDOR'S OBLIGATIONS

8. Vendor shall display the ONEKEY MLS copyright notice on each display screen, web page (whether Internet- or Intranet-based), and printout displaying any part of the Licensed Data. The ONEKEY MLS copyright notice may take either of the following two forms: (a) "Copyright 20XX ONEKEY MLS, LLC" or (b) "© 20XX ONEKEY MLS, LLC". Vendor shall replace "2014" with the current year as of January 1 of each year.

9. Vendor shall employ reasonable measures to prevent "data piracy" and other unauthorized access and use of the Licensed Data; from time to time, ONEKEY MLS may, in its sole discretion, specify particular reasonable security measures Vendor must take.

10. Vendor shall not make the Licensed Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement.

11. Vendor shall pay the initial and periodic fees and provide the other consideration set forth in Exhibit D, if any, according to the terms set forth therein. Vendor shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

12. Vendor acknowledges that, as among the parties to this Agreement, ONEKEY MLS is sole owner of and possesses all right, title, and interest in all copyrights in the Licensed Data.

13. Vendor warrants that any use of the ONEKEY MLS Data by Vendor will not constitute infringement of the patent or other intellectual property rights of any third party.

14. Vendor shall conform to the supplemental use restrictions set forth in Exhibit C, if any.

## AUDITS OF COMPLIANCE

15. 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 Vendor to the extent reasonably necessary to ascertain Vendor's compliance with this Agreement (an "Audit"). ONEKEY MLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Vendor's web sites and systems to ensure that Licensed Data is displayed in accordance with the ONEKEY MLS Policies; using all features available to end-users of Vendor's systems that employ the Licensed Data; and posing as consumers to register and test services Vendor makes available to consumers using the Licensed Data. ONEKEY MLS shall pay the costs it incurs, and the out-of-pocket costs Vendor incurs, as part of any Audit; Vendor shall be liable, however, for all costs of any Audit that discloses that Vendor has breached this Agreement.

## CONFIDENTIAL INFORMATION

16. Each party shall protect the Confidential Information with the same degree of care it takes to protect its own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if law, court order, or regulation requires such disclosure; provided, however, that party makes commercially reasonable efforts to notify the other party in writing in advance of such disclosure.

17. Within five days after the termination of this Agreement, each party shall return to the other party all Confidential Information and all other materials provided by the other party hereunder. Vendor shall also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of either party, an officer of the other party shall certify in writing that all materials have been returned and all magnetic or computer data have been destroyed.

## TERM AND TERMINATION

18. 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) 30 days after either party's notice to the other of its intent to terminate; (b) 10 days after either party's notice to the other that the other has breached this Agreement, provided the breach remains uncured; (c) 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. In the event of any suspension or termination of this Agreement, Vendor shall make no further use of the Licensed Data or any derivative works based on it until and unless Vendor's rights under this Agreement are restored.

19. In the event Vendor breaches this Agreement and entitles ONEKEY MLS to terminate under Paragraph 18, ONEKEY MLS may in its sole discretion suspend its performance instead of terminating this Agreement. ONEKEY MLS may make this election by notice to Vendor within three days after the initiation of the suspension. Vendor's obligations hereunder continue during any period of suspension.

## GENERAL PROVISIONS

20. **Applicable law.** The laws of the State of New York shall govern this Agreement and its interpretation. Any action to enforce or

interpret this Agreement shall have venue in Westchester County, New York, and the parties hereby submit to personal jurisdiction in that venue.

21. **Survival of Obligations.** Paragraphs 1, 10, 12, 13, 16, and 17, and Paragraphs 20 through 32, and all Exhibits to which they refer, shall survive termination or expiration of this Agreement.

22. **ONEKEY MLS's Remedies.** (a) Injunctive relief. Because of the unique nature of the ONEKEY MLS Data and Confidential Information, Vendor acknowledges that ONEKEY MLS would suffer irreparable harm in the event that Vendor breaches 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 as may be necessary to restrain any threatened, continuing, or further breach by Vendor without showing or proving any actual damages sustained by ONEKEY MLS, and without posting any bond or other security. (b) Liquidated damages: Vendor acknowledges that damages suffered by ONEKEY MLS from access to the Licensed Data or Confidential Information by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the Licensed Data or Confidential Information to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to ONEKEY MLS to enter into this Agreement, Vendor agrees that in the event Vendor discloses any password to access the Licensed Data or Confidential Information or discloses the Licensed Data or the Confidential Information to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Vendor shall be liable to ONEKEY MLS for liquidated damages in the amount of \$30,000 for each such disclosure and termination of this Agreement.

23. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL ONEKEY MLS BE LIABLE TO VENDOR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF ONEKEY MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; VENDOR'S SOLE REMEDIES AGAINST ONEKEY MLS HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF THE AMOUNTS LICENSEE HAS PAID TO ONEKEY MLS HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR BREACH. ONEKEY MLS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. THIS PARAGRAPH SETS OUT LICENSEE'S EXCLUSIVE REMEDIES, AND UNDER NO CIRCUMSTANCES SHALL LICENSEE BE ENTITLED TO EQUITABLE REMEDIES, EXCEPT IN THE EVENT ONEKEY MLS BREACHES OR THREATENS TO BREACH PARAGRAPH 16. ONEKEY MLS makes no warranty, including those of title, availability, or non-infringement, regarding marks licensed under this Agreement, if any.**

24. **Attorney's fees.** If any party prevails in any action to enforce or interpret this Agreement or any provision hereof, it shall be entitled to its reasonable attorney's fees and costs for such legal action.

25. **Indemnification.** Subject to Paragraph 23, in the event any party breaches any provision of this Agreement, that party (the "Indemnifying Party") shall indemnify and defend 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 Indemnifying Party's breach. Vendor shall indemnify and defend ONEKEY MLS, customers of ONEKEY MLS, and Subscribers, Firms and Salespersons (as defined in Exhibit A) to whom Vendor provides a product or service using ONEKEY MLS Data, against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from any third-party claim of intellectual property infringement, except for

such claims that are based solely on the Licensed Data. The Indemnified Parties shall (a) promptly notify the Indemnifying Party in writing 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 such claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

26. **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.

27. **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.

28. **No Assignment.** Vendor may not assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement (each a "Transfer") to any other party. Any purported Transfer in contravention of this paragraph is null and void.

29. **Entire Agreement; Amendment.** 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 subject matter. ONEKEY MLS may amend this agreement by providing 30 days' advance notice of the amendment to Vendor; if Vendor continues to use the Data Interface or the ONEKEY MLS Data after the expiration of the 30-day notice period, Vendor will be deemed to have agreed to the terms as amended.

30. **Relationship of the Parties.** The relationship of ONEKEY MLS to the Vendor is that of independent contractor. 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.

31. **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 a court having jurisdiction over the parties holds any provision of this Agreement invalid or unenforceable, the parties shall negotiate in good faith to replace the invalid or unenforceable provision, if possible, with a valid provision that most closely approximates the intent and economic effect of the invalid provision. If any provision of the limitation of liability, exclusion of warranty, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate unless the parties agree to the contrary.

32. **Precedence.** In the event of any conflict between the terms of the main body of this Agreement and any Exhibit to this Agreement, the terms of the body of the Agreement shall prevail.

In consideration of the mutual covenants set forth in this Agreement, the parties affirm and adopt this Agreement by setting their signatures below.

<p><b>ONEKEY MLS</b> ONEKEY MLS, LLC</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name</p> <p>Date: _____ (effective date of this Agreement)</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____</p>	<p><b>VENDOR</b></p> <p>_____</p> <p>Vendor name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>_____</p> <p>Name of owner or officer</p> <p>Date: _____</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____</p>
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# ONEKEY MLS, LLC Vendor Data Access Agreement

## Exhibit A: Definitions and Specification of Licensed Materials and Data Interface

### Definitions

These definitions apply to Exhibits A – D.

**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.

**Firm:** Real estate brokerage firm participating in ONEKEY MLS that has executed a PDAA.

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

**Firm Internal Use:** Any use of those portions of the ONEKEY MLS Data relating to Firm’s own listings; and any use of those portions of the 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 the ONEKEY MLS Policies.

**IDX:** Use and display of portions of the ONEKEY MLS Data under the ONEKEY MLS’s IDX provisions of the ONEKEY MLS Policies.

**Mobile Applications:** Any displays of IDX data authorized by ONEKEY MLS Policies that are not web sites.

**ONEKEY MLS Policies:** ONEKEY MLS’s Rules and Regulations, as amended from time to time, and any operating policies promulgated by ONEKEY MLS.

**Participant:** This term has the meaning given to it in the ONEKEY MLS Policies. For purposes of this Agreement, “Participant” does not apply to participants of MLSs other than ONEKEY MLS.

**PDAA or Participant Data Access Agreement:** The agreement under which Firms and Salespersons may receive data feeds from ONEKEY MLS that may be utilized by Vendor as permitted by this Agreement.

**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 and has executed a PDAA.

**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”).

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

### Licensed Data

Only those portions of ONEKEY MLS Data necessary for Vendor to provide IDX, VOW, or Firm Internal Use services/products to Firms and Salespersons.

## **Licensed Marks**

**None.**

## **Data Interface**

ONEKEY MLS agrees to provide to Vendor access to the Licensed Data via RETS feed or API feed, as determined by the MLS.

ONEKEY MLS does not undertake to provide technical support for the Data Interface or the ONEKEY MLS Data. The Data Interface, together with access to the 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 or unavailability of access to the Data Interface or ONEKEY MLS Data shall not constitute a default under this Agreement.

# ONEKEY MLS, LLC

## Vendor Data Access Agreement

### Exhibit B: Vendor's Purpose and Use of Licensed Materials

1. Vendor may use the Licensed Data obtained under this Agreement (a) only to provide products or services to Firms and Salespersons solely for (check all that apply):

- IDX
- VOW
- Firm Internal Use.

Product Details / Specify: \_\_\_\_\_

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Any other use is strictly prohibited. Vendor may display the Licensed Data via the Internet to the public only to the extent permitted by the ONEKEY MLS Policies and subject to the restrictions in this Agreement.

# ONEKEY MLS, LLC

## Vendor Data Access Agreement

### Exhibit C: Supplemental Restrictions on Vendor's Use of Licensed Materials

1. Vendor shall immediately correct any breach of this Agreement or violation of the ONEKEY MLS Policies within its control, whether committed by Firm, Salesperson, or Vendor, as soon as it becomes aware of such breach or violation whether it becomes aware upon notice from ONEKEY MLS or otherwise.
2. Vendor shall not challenge or take any action inconsistent with ONEKEY MLS's and Participants' ownership of or rights in the ONEKEY MLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.
3. Vendor shall not make the Licensed Data or the Confidential Information available to any third party, except on behalf of Firms and Salespersons and in a manner consistent with Firms' and Salespersons' obligations under Exhibit B; nor shall it make any other use of the ONEKEY MLS Data, whether commercial or personal. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.
4. Vendor shall provide ONEKEY MLS on a quarterly basis, or at ONEKEY MLS's request, a written report including ONEKEY MLS Firms and Salespersons receiving Licensed Data under this Agreement, and those Firms' and Salespersons' Second Level Domain and Third Level Domain names of resident sites, Mobile Application, or Audio Device names where the Licensed Data obtained under this agreement is displayed. The written report shall take the form of an Excel spreadsheet, to include agent names, agent ID numbers, office names, office ID numbers, city, phone number, and domain names for each Firm and Salesperson.

# **ONEKEY MLS, LLC**

## **Vendor Data Access Agreement**

### Exhibit D: Fees and Consideration

Vendor shall pay the fees, if any, that ONEKEY MLS customarily charges other non-participant licensees for the same type of data access. Vendor acknowledges 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 Vendor. Vendor shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.