PrimeMLS, Inc.

Internet Data Exchange

What Is Internet Data Exchange (IDX)?

Internet Data Exchange (IDX) affords PrimeMLS Participants the option of authorizing display of their active, active under contract, pending, leased & closed listings on other Participants' Internet Electronic Displays. "Participant Internet Electronic Displays" are those internet electronic displays over which PrimeMLS participants have actual and apparent control, as further described in item seven (7) later in this document.

Simply stated, IDX is a system where brokers give each other permission to display their above described listings on each other's Internet Electronic Displays. Brokers [on behalf of their office] who participate in the program (called "Internet Data Exchange Participants" or "IDXPs") can display each other's active, active with contract, pending, leased & closed listings. If you choose <u>not</u> to participate, no other broker will be permitted to display your listings via this IDX agreement, nor can you display their listings. You can include your listings in the Internet Data Exchange database even without having your own Participant Internet Electronic Display.

(Note: Participants' consent for display of their above-described listings and data fields by other Participants pursuant to the IDX Rules and Regulations is <u>presumed,</u> and therefore you are automatically opted in, unless otherwise specified in the "Internet Data Exchange" form on page 17 of this Agreement. If you DON'T want to participate in the IDX program, you <u>must</u> indicate such on the "Internet Data Exchange" form and submit the form to PrimeMLS.)

If you do not complete and submit the form now, you may still do so at any time later. After your form has been received, your data will stop appearing in the IDX Database the next business day. However, be aware that depending on how often any particular IDX display updates your listings could still appear on their displays until updated.

In summary, being an IDX Participant just means that you give all other IDXPs permission to display your above-described listings on their Participant Internet Electronic Display according to the Internet Data Exchange Rules and Regulations. In so doing, you obtain permission from all other IDXPs to display their above-described listings. You give permission and get permission in the same act.

Even where Participants have given blanket authority for other Participants to display their above-described listings on IDX Participant Internet Electronic Displays, such consent may be withdrawn on a listing-by-listing basis as

instructed by the seller/lessor in writing, by means of the Internet Y/N field in listing maintenance. Selecting "N" will prohibit the listing from being included in the data feed (or API).

Listings or property addresses of sellers/lessors who have directed their listing brokers to withhold their listing or property address from display on the Internet shall not be accessible via IDX Participant Internet Electronic Displays.

Participants, who choose to have an IDX Participant Internet Electronic Display, must notify the MLS of their intention to establish an IDX Participant Internet Electronic Display and must make their Participant Internet Electronic Display directly accessible to PrimeMLS for purposes of monitoring/ensuring compliance with applicable Rules and Regulations and Policy regarding IDX.

Fees

There is no fee to be an Internet Data Exchange Participant.

There is also no fee for an IDXP to receive an IDX data feed (or API) from PrimeMLS, provided you use one of the standard methods for accessing that data.

The following fees will apply for IDX data provided at the request of an IDXP to a third-party Consultant working on behalf of the IDXP. Fees below are subject to change by PrimeMLS, and a late fee shall be assessed for any invoice not paid in full on or before the due date. The late fee shall be 10% of the invoice amount, and the amount assessed shall be not less than $15 and not more than $500. Late fees are due immediately upon assessment.

1) A new Consultant receiving access to the PrimeMLS IDX data feed (or API) for the first time, or not having access to the PrimeMLS IDX data feed (or API) for more than one (1) year preceding this agreement, will be assessed a one-time administrative start-up fee of $150, in addition to any fees applicable below.

2) Consultants who provide IDX services to **only** one PrimeMLS IDXP will be given access to the IDX data feed (or API) without an annual fee as if the feed (or API) was being provided directly to the IDXP.

3) Consultants who provide IDX services to **more than** one PrimeMLS IDXP will be given access to the IDX data feed (or API) at an annual cost of $1,200.

RULES & REGULATIONS OF INTERNET DATA EXCHANGE (IDX)

To the extent that this document supplements PrimeMLS Rules and Regulations relating to IDX, it is an appendix of MLS' policy regarding such matters.

Under no circumstance shall any IDXP scrape or otherwise obtain any photos or other information from the www.PrimeMLS.com website.

TERMS DEFINED:

"Internet Data Exchange (IDX)" is a means by which each broker [on behalf of their office] subscribing to the program (the "IDX Participant" or "IDXP") permits the display of its active, active with contract, pending, leased & closed listings appearing in MLS on each other's Participant Internet Electronic Displays.

"Participant Internet Electronic Displays" are those Internet Electronic Displays over which PrimeMLS participants have actual and apparent control, as further described in item seven (7) later in this document.

The "Internet Data Exchange Database" is the current aggregate compilation of all above-described listings of all IDX Participants except those listings where the property seller/lessor has opted out of Internet publication by so indicating on the listing contract.

OPERATING PROCEDURES:

1. All electronic display of IDX information conducted pursuant to this agreement must comply with state law and regulations, and MLS rules. Participants may select the listings they choose to display on their IDX Participant Internet Electronic Displays based <u>only</u> 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, residential, multi-family), or type of listing (e.g., exclusive right-to-sell, exclusive agency, open listing). Selection of listings displayed on any IDX Participant Internet Electronic Display must be independently made by each Participant, and **the objective criteria used by the IDXP <u>must</u> be revealed to PrimeMLS upon request by PrimeMLS**. The resulting display of selected IDX listings shall include the disclaimer below verbatim:

"This display of listings may or may not be the entire Compilation from the PrimeMLS database, and PrimeMLS does not guarantee the accuracy of such information."

Additionally, upon any display of data from the offers of compensation fields, the following disclaimer (or something similar) must also be displayed:

"The listing broker's offer of compensation is made only to other real estate licensees who are participant members of PrimeMLS."

As previously stated Participants <u>must</u> notify PrimeMLS of their intention to establish an IDX Participant Internet Electronic Display and at no cost to

PrimeMLS, the IDXP or Consultant, shall provide all instructions, directions, software (if any), URL's and log-in credentials (if any) necessary for PrimeMLS to be granted access to and view the display of data for the purpose of determining and ensuring that the data being displayed is safeguarded in accordance with this Agreement and in compliance with applicable Rules and Regulations and policies.

2. An Internet Display of another IDXP's listing shall not contain more information than has been approved by the PrimeMLS Board of Directors.

3. Participation in IDX is available to all PrimeMLS Participants engaged in real estate brokerage who consent to display of their above-described listings by other IDX Participants.

4. The IDXP shall update the information on his/her Participant Internet Electronic Display not less frequently than every twelve (12) hours.

5. An IDXP shall not modify or manipulate the data relating to another IDXP's listing. (This is not a limitation on the design of the Participant Internet Electronic Display, but refers to the actual data.)

An IDX Participant can do anything desired to the data relating to his/her own listings, subject to other PrimeMLS Rules, Regulations, policies, requirements and applicable law. However, an IDXP can do with other brokers' listings only what these rules authorize. **IDX Participants are strictly prohibited from modifying the data in the IDX Database from another IDXP**. An IDXP may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display. The source(s) of the information must be clearly identified in immediate proximity to such data. This requirement does not restrict the format of the MLS data display or displays of fewer than all of the available listings or fewer authorized fields.

For example: if an IDXP geocodes the listings on his/her Participant Internet Electronic Display, and then ties demographic or other data to them, the IDXP will want to be cautious about displaying such data on the same screen as another IDXP's listings. An IDX Participant should make efforts to distinguish the data he/she has supplied from the IDX Database data. Segregating such data "geographically" on the screen and including a credit in the non-IDX data (such as "Demographic data courtesy of ABC Title Company") would be a good way to accomplish this.

6. On each and every page of an IDX Participant's Internet Electronic Display(s), on which PrimeMLS data is displayed (other than displays of minimal information, e.g., index of listings, thumbnails, text messages, tweets, etc., of 200 characters or less) the following PrimeMLS copyright notice must appear, and the IDX Participant must display the notice on any listing data of another IDXP. The above described exception for minimal information displays applies

only when that minimal information display is linked directly to a full display that includes all required disclosures.

This notice must appear exactly:

"Copyright (insert current year 20XX) PrimeMLS, Inc. All rights reserved. This information is deemed reliable, but not guaranteed. The data relating to real estate displayed on this display comes in part from the IDX Program of PrimeMLS. The information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing. Data last updated (insert date MM/DD/YY.)"

Along with the above notice, an official PrimeMLS logo <u>must</u> be inserted near the notice. (Note - the PrimeMLS approved logo is available at www.PrimeMLS.com or contact PrimeMLS.)

7. Any Participant Internet Electronic Displays used for display of the IDX Database or any portion thereof must be under the Actual and Apparent Control of the IDX Participant and be advertised as that IDXP's Participant Internet Electronic Display. Upon request from PrimeMLS, an IDX Participant or Consultant must cooperate and provide information necessary to aid PrimeMLS in the determination of compliance with the Actual and Apparent Control requirement as those terms are defined below.

This is an important limitation on third party Consultants' building displays for IDXPs. In order to participate in Internet Data Exchange, a display must be advertised, marketed and branded as the IDXP's Participant Internet Electronic Display.

- **"Actual Control"** means that the IDX Participant has either built the Participant Internet Electronic Display(s) for his/her own use with internal resources or obtained technology for the Participant Internet Electronic Display under an agreement with a third-party Consultant that provides the IDX Participant final control over the operations of the Participant Internet Electronic Display. IDX Participant must have the ability to add, delete, modify and update information as required by this policy. Actual control further requires that the IDXP has the authority to determine what listings will be displayed, and how those listings will be displayed.

- **"Apparent Control"** means that a reasonable consumer viewing the Participant Internet Electronic Display(s) will understand that the display is the Participant's and would conclude that it is under the control of the IDX Participant. Factors evidencing control include, but are not limited to, clear, conspicuous, written or verbal identification of the name of the brokerage firm under which the participant operates in a readily visible color and typeface. When examining the issue of Apparent Control some

(but not all) other factors that will be considered include that the Participant Internet Electronic Display is **not co-branded**, and that the overall branding on the Participant Internet Electronic Display distinguishes the IDX Participant from non-participating firms or franchisors, or other third parties. The key factor, therefore, in satisfying the "Apparent Control" element of the IDX Policy, is that the branding on the Participant Internet Electronic Display creates the **clear impression** to consumers that the IDX Data is being displayed by, or on behalf of, the PrimeMLS participant, and **not** by, or on behalf of, any third party.

8. PrimeMLS Participants may not use IDX provided listings or data fields for any purpose other than display on Participant's Internet Electronic Display(s). This does not require Participants to prevent indexing of IDX listings by recognized search engines.

9. An IDX Participant or Consultant must make changes/corrections to the Participant's Internet Electronic Display(s) necessary to cure a violation of PrimeMLS' Rules and Regulations and policies within three (3) business days of notice from PrimeMLS of the violation. If an IDXP or Consultant does not comply with this requirement, PrimeMLS reserves the right to discontinue the IDX data feed (or API) without further notice (after a 20-day period for requesting a hearing has expired). An IDXP may also be subject to fines from PrimeMLS.

10. No portion of the Internet Data Exchange Database shall be used or provided to a third party for any purpose.

This section expressly prohibits distribution of the IDX Database or any portion of it for **ANY** purpose other than those expressly permitted by PrimeMLS' Rules and Regulations. This includes distribution to other IDXPs or franchises. In other words, a brokerage firm cannot sell or provide access to the IDX Data to other brokers, franchises or any other businesses, whether or not they are Participants in PrimeMLS.

Likewise, a Consultant is expressly prohibited from distributing the IDX Database or any portion of it for **ANY** purpose other than those expressly permitted by PrimeMLS' Rules and Regulations. This includes distribution to other Consultants or Data Consultants. Since the IDXP chooses the particular Consultant or Data Consultant, the IDXP can be held responsible for any violations of the Consultant or Data Consultant.

11. No portion of the IDX Database shall be co-mingled with any non-MLS listings on the IDX Participant Internet Electronic Display.

If an IDXP takes listings from consumers but does not put them into an MLS system, they cannot appear on any thumbnail display or as part of any search results with the IDX Database data. If the property in question appears in an

MLS other than the PrimeMLS, it may be co-mingled, but clearly identified as being from another MLS.

12. Any IDX Participant using a third-party Consultant to develop/design/host his/her Participant Internet Electronic Display must have a written agreement with that third party Consultant in the form prescribed by PrimeMLS. Therefore, PrimeMLS requires that the third-party Consultant and Data Consultant (if applicable) gaining access to the IDX Database, sign this Agreement. <u>IDXP's take note that providing login credentials to access the PrimeMLS IDX Database is a serious violation and will be treated the same as providing login credentials to the MLS system. PrimeMLS Rules & Regulations provide for a fine of $500.00 per each such violation and possible suspension from the MLS</u>.

13. The following rule has been incorporated into PrimeMLS' Internet Data Exchange policy and adherence is required to conform to IDX Policy:

a. The listing office must be identified on any listing.

b. The listing agent must be identified on any listing.

c. The selling office must be identified on any closed listing.

d. When applicable, the responsible auctioneer and that auctioneer's license number must be identified on any listing.

e. The email or phone number provided by the listing office must be included on any listing.

The above required information must appear on the first page on which any listing data is displayed (other than displays of minimal information (e.g., index of listings, thumbnails, text messages, tweets, etc., of 200 characters or less). The names must be in a readily visible color and the typeface/font may not be smaller than the median typeface/font being used in the display of the listing data.

A viewer should not have to scroll vertically or horizontally in order to see the above required attribution when the listing is viewed on a common desktop computer screen.

f. The information displayed from the IDX Database cannot be modified.

g. The source of listings being displayed from other MLSs must be indicated.

h. Participants are required to refresh all downloads and to refresh all data *at least* once every twelve (12) hours but may refresh data more often.

i. With respect to any IDX Participant Internet Electronic Display(s) that:

(i) 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

(ii) displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing.

The IDX Participant Internet Electronic Display shall disable or discontinue either or both of these features as to the seller's/lessor's listing at the request of the seller/lessor. Such request will be so indicated via the Blog Y/N and AVM Y/N data fields. Except for the foregoing and subject to paragraph (j) below, an IDX Participant Internet Electronic Display(s) may communicate the Participant's professional judgment concerning any listing. Nothing shall prevent a Participant Internet Electronic Display(s) from notifying its customers that a particular feature has been disabled at the request of the seller/lessor.

j. An IDX Participant shall maintain a means (e.g., email address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the IDX Participant beyond that supplied by PrimeMLS and that relates to a specific property displayed on the IDX Participant Internet Electronic Display. The IDX Participant 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 that property explaining why the data or information displayed is incorrect. However, the IDX Participant shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice or professional judgment.

k. PrimeMLS prohibits the display of confidential and internal system information fields intended for cooperating brokers/agents rather than consumers.

l. The data consumers can retrieve or download in response to an inquiry shall be determined by PrimeMLS but in no instance shall the data be limited to fewer than five hundred (500) listings or fifty percent (50%) of the listings available for IDX display, whichever is fewer.

14. Regarding download options: If performance is adversely affected as a result of excessive downloading of PrimeMLS data PrimeMLS can do one or both of the following: (1) restrict the number and frequency of queries and the amount of PrimeMLS Data to be retrieved, or (2) require each data retrieval application to authenticate itself and be approved by PrimeMLS to prevent unauthorized applications to gain access. PrimeMLS shall have the right under this Agreement to discontinue access by any IDXP, Consultant or Data Consultant who, after written notice, continues to access the system in any manner that adversely impacts the performance of the system, software and/or servers.

Access to Internet Data Exchange Data Feed (or API)

Note: This form is a legally binding agreement.

Simultaneously or prior to submitting this Agreement, you must become an Internet Data Exchange Participant (IDXP). See PrimeMLS' IDX information (attached above) for further details. **This Agreement must be completed and signed by the designated broker of your office. There are no exceptions.** The completed Agreement can be returned by fax, email or mail to PrimeMLS at 45 Constitution Ave. Concord, NH 03301, Fax 603-228-9735 or data@PrimeMLS.com.

AGREEMENT

1. This AGREEMENT is made and entered into by and among PrimeMLS, Inc. ("PrimeMLS"), f/k/a New England Real Estate Network, Inc., the PrimeMLS Participant whose name and contact information appear on the appropriate signature page of this Agreement as the Designated Broker (the "BROKER" or "IDXP"), and the companies/individual(s) whose names and contact information appear on the appropriate signature pages of this Agreement as "Consultant and/or Data Consultant" (collectively, the "Consultants", if any).

RECITALS

2. IDXP wishes to obtain, and PrimeMLS wishes to provide, data for IDXP's Internet Electronic Display(s), including the listing data of other real estate brokerages participating in this IDX program.

DEFINITIONS

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

   Consultant: This is the non-Participant company or individual who will provide technical services to the IDXP, and who signs page 18 of this agreement, and agrees to be bound by the Rules, Regulations and policies of PrimeMLS relating to IDX information.

   Data Consultant: This is a non-Participant company or individual who will **actually be accessing** the PrimeMLS database to retrieve the data (**if the Consultant is not performing this function**), and who signs page 19 of this Agreement and agrees to be bound by the Rules, Regulations and policies of PrimeMLS relating to IDX information.

Downloading: Means electronic transmission of data from PrimeMLS servers to IDX Participants' or Consultant's servers.

Internet Data Exchange Database or IDX Data: The current aggregate compilation of all active, active under contract, pending, leased & closed listings of all IDX Participants, except those listings where the property seller/lessor has opted out of Internet publication by so indicating on the listing agreement. PrimeMLS owns the IDX Data.

Internet Data Exchange Participant or IDXP: An IDX Participant who gives permission to other IDX Participants to display their active, active under contract, pending, leased & closed listings on their Participant Internet Electronic Display(s) in return for their permission to advertise their above-described listings on his/her Display(s).

Participant Internet Electronic Display(s): Are Internet Electronic Displays over which PrimeMLS IDX Participants have Actual and Apparent Control as further described in item seven (7) in the document attached hereto above.

Multiple Listing Service (MLS): A means for collecting and disseminating information about real property that is or has been for sale/lease, including a means for real estate brokers to make offers of cooperation and compensation to each other. Multiple Listing Services 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, lease and appraisal of real property.

Office: Wherever "Office" is referred to in these documents, it is intended to mean the firm, office, or agent (with permission of IDX Participant) wishing to utilize the IDX program.

Rules: The Rules and Regulation of PrimeMLS, as amended from time to time, and any operating policies relating to the IDX Data and IDXPs promulgated by PrimeMLS.

Participant: Any entity meeting the criterion of PrimeMLS membership as stated in PrimeMLS by-laws that subscribes to PrimeMLS directly and maintains active membership.

Participant Data: Data relating to real estate listed for sale/lease that was entered into the MLS System by Participants.

PrimeMLS' OBLIGATIONS

4. During the term of this Agreement, PrimeMLS grants to the IDXP a license to:

   a. Display the IDX Data on IDXP's Participant Internet Electronic Display, and

   b. Make copies of the IDX Data to the extent necessary to deliver the IDX Data to consumers on IDXP's Participant Internet Electronic Display.

5. During the term of this Agreement, PrimeMLS agrees to provide to IDXP and its Consultants:

   a. Access to the IDX Data via the Internet under the same terms and conditions PrimeMLS offers to other IDX Participants;

   b. Seven (7) days' advance notice of changes to the file and record formats of the IDX Data; and

   c. Seven (7) days' advance notice of changes to the Rules.

IDXP'S OBLIGATIONS

6. IDXP shall comply with the Rules at all times.

7. IDXP acknowledges PrimeMLS' ownership of the copyrights in the PrimeMLS compilation which includes the Participant Data and the IDX Data.

8. IDXP shall comply with the requirements in relation to Confidential Information set forth below.

9. In the event that IDXP desires to make the IDX Data or the Confidential Information available to any third party, IDXP agrees to require such third party to execute this Agreement and become a Consultant and/or Data Consultant in accordance with the terms hereof.

10. If PrimeMLS notifies IDXP of a breach of the Rules or this Agreement and IDXP does not immediately cure such breach, IDXP agrees that PrimeMLS may seek to cure the breach from the Consultants and/or Data Consultants or any one of them, or otherwise terminate the IDXP's, Consultants' and/or Data Consultants' rights under this Agreement. Since the IDXP chooses the particular Consultants or Data Consultants, the IDXP can be held responsible for any violations of the Consultant or Sub-Consultant.

11. IDXP shall notify PrimeMLS within five (5) business days of any change to the information relating to IDXP on the Signature page below.

CONSULTANT'S OBLIGATIONS

12. If PrimeMLS notifies IDXP of a breach of the Rules or this Agreement and IDXP does not immediately cure such breach, PrimeMLS may contact Consultant to cure any such breach that is within Consultant's control, including either directly or indirectly through sub-contract or other arrangements with a Sub-Consultant. If not immediately cured, PrimeMLS may terminate the IDXP's and/or Consultant's and/or Data Consultant's rights under this Agreement. Consultant agrees to cooperate with PrimeMLS and act immediately upon notification by PrimeMLS of an uncured breach by IDXP.

13. Consultant acknowledges PrimeMLS' ownership of the copyrights in the PrimeMLS compilation which includes the Participant Data and the IDX Data.

14. Consultant shall comply with the requirements relating to Confidential Information set forth below.

15. In the event that Consultant desires to make the IDX Data or the Confidential Information available to any other Data Consultant, sub-vendor, or other third party, Consultant acknowledges that neither IDX Data nor Confidential Information can be made available to anyone without PrimeMLS' prior written consent. Therefore, Consultant agrees to require any such Data Consultant, sub-vendor, or other such third party to execute this Agreement with PrimeMLS prior to making either IDX Data or Confidential Information available. Otherwise PrimeMLS may terminate the IDXP's and/or Consultant's and/or Data Consultant's rights under this Agreement.

16. Consultant shall notify PrimeMLS within five (5) business days of any change to the information pertaining to it on the Consultant signature page below.

DATA CONSULTANT'S OBLIGATIONS

17. If PrimeMLS notifies IDXP of a breach of the Rules or this Agreement and IDXP does not immediately cure such breach, PrimeMLS may contact Data Consultant to cure any such breach that is within Data Consultant's control. Data Consultant agrees to cooperate with PrimeMLS and act immediately upon notification by PrimeMLS of an uncured breach by IDXP.

18. Data Consultant acknowledges PrimeMLS' ownership of the copyrights in the PrimeMLS compilation which includes the Participant Data and the IDX Data.

19. Data Consultant shall comply with the requirements relating to IDX Data and Confidential Information set forth in this Agreement.

20. Data Consultant acknowledges that neither IDX Data nor Confidential Information can be made available to anyone without PrimeMLS' prior written consent.

21. Data Consultant shall notify PrimeMLS with five (5) business days of any change to the information pertaining to it on the Data Consultant Information and signature page at the end of this Agreement.

CONFIDENTIAL INFORMATION

22. **"Confidential Information"** is information or material proprietary to PrimeMLS or designated "confidential" by PrimeMLS and not generally known to the public that IDXP, Consultants or Data Consultants or any one of them (the Receiving Party") may obtain knowledge of or access to as a result of access under 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, electronic or other form):

    a. All Participant Data, except the IDX Data to the extent to which this Agreement and the Rules permit its disclosure. Note that some data fields are provided for non-display permission settings, such as AVM Y/N and Blog Y/N as examples;

    b. All documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawing, specifications, models and related information;

    c. Software, source code, object code, diagrams and flow charts;

    d. Techniques and procedures;

    e. IP addresses, access codes and passwords; and

    f. Any information that PrimeMLS obtains from any third party that PrimeMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by PrimeMLS.

23. **Exceptions:** Confidential Information does not include information that:

    a. Is in the public domain at the time of disclosure;

    b. Is known to the Receiving Party at the time of disclosure, or is used or disclosed by the Receiving Party with the prior written consent of PrimeMLS, to extent of such consent;

    c. Becomes known to the Receiving Party from a source other than PrimeMLS without breach of this Agreement by the Receiving Party and provided that such source is not known by the Receiving Party to be bound by a similar agreement or confidentiality agreement with PrimeMLS; or

    d. Is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to PrimeMLS prompt notice of any such order.

24. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with PrimeMLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by PrimeMLS.

25. **Restriction on Use - Scope of Use.** The Receiving Party will use or access the Confidential Information only as expressly permitted under this Agreement and the Rules, and the Receiving Party will not use its access to 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 confidential and proprietary information or trade secrets, but in no event less than reasonable care.

26. **Restriction 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 from PrimeMLS to do so. At no time and under no circumstances will the Receiving Party reverse engineer, recompile 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.

27. **Restrictions on Use - No Third-Party Access.** Only the Receiving Party's own employees, who have a need to know, will access the Confidential Information. The Receiving Party will not provide access to the Confidential Information to any other third parties, including

consultants or independent contractors, without prior written consent from PrimeMLS. If PrimeMLS 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.

28. **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 PrimeMLS, the Receiving Party will return to PrimeMLS all Confidential Information and all other materials provided by PrimeMLS to the Receiving Party. The Receiving Party will also erase, delete, or destroy any Confidential Information stored on electronic or magnetic media or other computer storage, including system backups. Upon the request of PrimeMLS, an officer of the Receiving Party will certify in writing that all materials have been returned to PrimeMLS and all electronic or magnetic or computer data have been destroyed.

TERM AND TERMINATION

29. The term of this Agreement begins on the "Effective Date" set forth on the signature page below. PrimeMLS 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. PrimeMLS' notice to IDXP that this Agreement is terminated.

   b. IDXP's notice to PrimeMLS that it no longer intends to display IDX Data on its Participant Internet Electronic Display.

   c. Termination of IDXP's privileges as a Participant with PrimeMLS.

GENERAL PROVISIONS

30. **Survival of Obligations.** The obligations of IDXP set forth under "IDXP's Obligations" above and the obligations of Consultants under "Consultant's Obligations" above and the obligations of Sub-Consultant under "Data Consultant's Obligations" above shall survive the termination or expiration of this Agreement.

31. **PrimeMLS' Remedies.** Because of the unique nature of the Participant Data, IDX Data and Confidential Information, IDXP, Consultants and Data Consultants acknowledge that PrimeMLS 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 PrimeMLS for a breach. PrimeMLS 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 IDXP,

Consultants or Data Consultants or any one of them, without showing or proving any actual damages sustained by PrimeMLS.

32. **Attorney's Fees.** If PrimeMLS 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 PrimeMLS' reasonable attorney's fees and costs for such legal action.

33. **Limitation of Liability.** PrimeMLS' liability to IDXP, Consultants and Data Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by IDXP, Consultants and Data Consultants to PrimeMLS under this Agreement, if any, for the twelve months immediately prior to any conduct by PrimeMLS that gave rise to liability. PrimeMLS shall not be liable for any incidental, exemplary, punitive, special or consequential damages under any circumstances, even if PrimeMLS has been advised of the possibility of such damages. PrimeMLS shall have no liability for inaccuracies in the IDX Data or the Participant Data.

34. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically emailed to the parties at their respective addresses set forth below or such address of which any party may advise the others in writing during the term of this Agreement.

35. **No Waiver.** No waiver or modification of the 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.

36. **No Assignment.** Neither IDXP, nor Consultants, nor Data Consultants, 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 PrimeMLS.

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

38. **Applicable Law.** This Agreement is governed and enforced according to the laws of the State of New Hampshire.

Internet Data Exchange (IDX)

This form must be completed and signed by the Designated Broker for your office. There are no exceptions. Once this has been completed and signed, fax to PrimeMLS at 603-228-9735 or email to data@PrimeMLS.com.

⟹ _____

** URL address which will display the IDX Data**

_____
Temporary URL address for development (if applicable)

Office Name: _____ Firm/Office ID: _____

Office Phone: _____

You are automatically opted in. Check box below if you desire to opt out:

I authorize PrimeMLS to distribute my listing data to other IDX Participants pursuant to its Rules and Policies.

By checking the box below, you are agreeing to the understandings indicated next to it.

❑ I OPT OUT. MY OFFICE IS <u>NOT</u> AN INTERNET DATA EXCHANGE PARTICIPANT. I understand that this means that other IDX Participants will not be permitted to display my listings on their Participant Internet Electronic Display. I further understand that my office will receive no benefits under the IDX program of PrimeMLS. My office is not allowed to display the listings of other brokers unless I receive permission from them to individually do so.

I am the Designated Broker for the PrimeMLS office whose ID number first appears above.

Signature: _____ Date: _____

Print Name: _____

Person(s) Requesting IDX: _____

E-mail Address: _____

** Important **
Once this office has been approved to receive and display IDX Data, a new signed Agreement for each and every additional URL <u>within this office is NOT required, so long as PrimeMLS is notified in advance</u> of the additional URL addresse(s). **Failure to notify PrimeMLS in advance can result in termination of this Data feed (or API).**

PrimeMLS

<u>Consultant</u> Information and Signature

NOTE TO CONSULTANT: Be sure to enter into this Internet Data Exchange access contract with PrimeMLS and with _every real estate broker to which you provide services._

Consultant Business Name: _____

Contact Name: _____

Email Addresses for RETS Updates: _____

Billing Email Address: _____

Consultant Address: _____

_____

Phone: _____

Consultant Signature: _Dan Dilby_____

PrimeMLS Member's Office Name: _____
(As stated on page 17)

** Important **
Once the member office has been approved to receive and display IDX Data, a new signed Agreement for each and every additional URL **within** that office is NOT required, so long as PrimeMLS is notified in advance of the additional website addresse(s). **Failure to notify PrimeMLS in advance can result in termination of this Data feed (or API).**

Data Consultant Information and Signature

Complete this page only if needed:

If there is only one Consultant in this contract, then this page does **not** need to be completed or signed.

This is a company that will either be accessing the PrimeMLS database to retrieve the data on behalf of the Consultant identified on page 18, or in some other way have access to the Data for the purposes of assisting the Consultant provide IDX services to the IDXP.

Data Consultant Business Name: _____

Contact Name: _____

E-mail Address: _____
 (You **must** supply an e-mail address here. This address will be PrimeMLS' principal means of communicating with you for notice under this Agreement.)

Data Consultant Address: _____

_____

Phone: _____

Data Consultant Signature: _____

Reminder to Data Consultant:

Data Consultant agrees to cooperate with PrimeMLS and act immediately upon notification by PrimeMLS of an uncured breach by IDXP.

Data Consultant acknowledges PrimeMLS' ownership of the copyrights in the PrimeMLS compilation which includes the Participant Data and the IDX Data.

Data Consultant shall comply with the requirements relating to IDX Data and Confidential Information set forth in this Agreement.

Data Consultant acknowledges that neither IDX Data nor Confidential Information can be made available to anyone without PrimeMLS' **prior** written consent.

Data Consultant shall notify PrimeMLS with five (5) business days of any change to the information pertaining to it on this page.