

# Stellar MLS

## Broker Data Release Agreement

**STELLAR MLS strongly urges Broker to consider carefully any authorization Broker gives to anyone to use Broker's listings and to grant such authorizations subject to written agreements that protect Broker's rights. STELLAR MLS also strongly urges Broker to seek legal counsel when evaluating any such agreement.**

This Broker Data Release Agreement ("**Agreement**") is made and entered into by My Florida Regional Multiple Listing Service, Inc., a Florida corporation, dba Stellar MLS ("**STELLAR MLS**"); with offices at 247 Maitland Ave Suite #2000 Altamonte Springs, FL 32701; and the brokerage firm identified as "Broker" on the signature page below ("**Broker**").

### BACKGROUND

A. Broker has entered or will enter business relationships with third parties under which Broker wishes to provide access to data content relating to its own real estate listings to the third parties.

B. STELLAR MLS wishes to facilitate the transmission of listings for Broker but does not intend to assume any liability on its own behalf with regard to the listing content or the transmission.

C. This Agreement is intended to establish a feed of data relating to the listings of Broker that Broker can make available at Broker's own risk to third parties.

### AGREEMENT

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

**Broker Contribution:** Those portions of the STELLAR MLS Data entered into STELLAR MLS's databases by or on behalf of Broker and its contractors, employees, and affiliated licensees.

**Data Interface:** The transport protocols and data storage formats STELLAR MLS typically provides for use for data feeds of the kind which is the subject of this Agreement, which STELLAR MLS may modify in its sole discretion from time to time.

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

**STELLAR MLS Subscriber:** Any real estate broker, appraiser, or other professional that purchases multiple listing services from STELLAR MLS.

**2. Access; License.** STELLAR MLS agrees to provide access to Broker Contribution to Broker. In the event STELLAR MLS owns copyrights in any portion of Broker Contribution, STELLAR MLS grants to Broker a license to copy, distribute, perform, and display the Broker Contribution, and to create derivative works of the Broker Contribution, including the right to sublicense it to others through multiple tiers. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. STELLAR MLS retains all rights not expressly granted herein.

**3. Compliance inquiry.** In its roles as enforcer of certain rights of STELLAR MLS Subscribers, STELLAR MLS may from time to time inquire of Broker whether a use of listings in the Broker Contribution by a third party is occurring with Broker's permission. Broker shall respond within 72 hours of any such inquiry by STELLAR MLS.

**4. Data Interface.** During the term of this Agreement, STELLAR MLS shall provide to Broker (a) access to the Broker Contribution via the Data Interface; and (b) seven days' advance notice of changes to the Data Interface or the data structure of the Broker Contribution when STELLAR MLS has knowledge of such anticipated changes.

**5. Broker acknowledgements.** Broker acknowledges that STELLAR MLS provides the Broker Contribution on an as-is, as available basis. STELLAR MLS shall not be liable to Broker for any claim arising from inaccuracies in the Broker Contribution or any failure, whether on the part of Broker or of STELLAR MLS, to update the data promptly. Broker is responsible for any liability or loss of goodwill associated with problems in data integrity, accuracy, or timeliness arising from Broker's use of the Broker Contribution.

**6. Third party access.** Broker shall be responsible for providing access to the Data Interface to the third parties with whom Broker deals. STELLAR MLS will not provide technical or other support to third parties under this Agreement.

**7. Fees.** Broker shall pay any fees established by STELLAR MLS for the services STELLAR MLS provides under this Agreement. STELLAR MLS may implement fees (if none exist on the Effective Date) and modify fees upon 30 days advance notice to Broker. Fees may include periodic maintenance fees, technical support fees, and any other fees adopted by STELLAR MLS.

**8. Term.** The term of this Agreement begins on the date that STELLAR MLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) 30 days after any party's notice to the other of its intent to terminate;

January 19, 2017

(b) immediately upon termination of Broker's participatory rights in STELLAR MLS; (c) 10 days after STELLAR MLS's notice to Broker that Broker has breached this Agreement, provided the breach remains uncured.

**9. Limitation of liability/exclusion of warranties. IN NO EVENT SHALL STELLAR MLS BE LIABLE TO BROKER FOR ANY COSTS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF STELLAR MLS HAS BEEN ADVISED OF THE**

**POSSIBILITY OF SUCH DAMAGES; BROKER'S SOLE REMEDIES AGAINST STELLAR MLS HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF THE AMOUNTS BROKER HAS PAID TO STELLAR MLS HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR BREACH. THIS PARAGRAPH SETS OUT BROKER'S EXCLUSIVE REMEDIES, AND UNDER NO CIRCUMSTANCES SHALL BROKER BE ENTITLED TO EQUITABLE REMEDIES. STELLAR MLS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE PREVIOUS SENTENCE, STELLAR MLS DISCLAIMS ANY WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR USE.**

**10. Indemnification.** Broker shall indemnify and defend STELLAR MLS, its subsidiaries and affiliated companies, and all its 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 arising from the Broker Contribution or STELLAR MLS's distribution of the Broker Contribution under this Agreement. Broker shall (a) promptly notify Indemnified Parties in writing of any claim and give the Indemnified Parties the opportunity to defend or negotiate a settlement of any such claim at Broker's expense, and (b) cooperate fully with Indemnified Parties, at Broker's expense, in defending or settling any such claim. The Indemnified Parties shall be entitled to engage their own local counsel at Broker's expense.

**11. Applicable law.** The laws of the State of Florida shall govern this Agreement and its interpretation. Any action to enforce or interpret this Agreement shall have venue in Orange County, Florida, and the parties hereby submit to personal jurisdiction in that venue.

**12. Survival of obligations.** Paragraphs 9 through 17 shall survive termination or expiration of this Agreement.

**13. Attorney's fees.** If STELLAR MLS 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.

**14. 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.

**15. 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.

**16. Relationship of the Parties.** The relationship of STELLAR MLS to Broker is that of independent contractor. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of STELLAR MLS or have any authority to make any agreements or representations on the behalf of STELLAR MLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

**17. 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. STELLAR MLS may amend this Agreement by giving notice to Broker of proposed amendments; if Broker continues using the services described herein 30 days after the date of the notice, Broker shall be deemed to have assented to the proposed amendments.

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STELLAR MLS Broker Data Release Agreement

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>STELLAR MLS: My Florida Regional Multiple Listing Service, Inc.</b></p> <p>_____ Signature</p> <p>_____ Name</p> <p>Date: _____ ("Effective Date" of this Agreement)</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____ _____</p>	<p><b>Broker</b></p> <p>_____ Firm name</p> <p>_____ Signature of owner or officer</p> <p>_____ Name of owner or officer</p> <p>Date: _____</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____ _____</p>
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