

Third Party Access, Confidentiality and Non-Disclosure Agreement

This Third Party Access, Confidentiality and Non-Disclosure Agreement (this "Agreement") is made effective this ____ day of _____, 200__ (the "Effective Date") by and between the Centralized Regional Information Services, Inc. ("CRIS MLS"), an Ohio Closed Corporation; and _____ ("Vendor").

RECITALS

WHEREAS, CRIS MLS maintains certain property listing information and data (the "Data Set") for the Multiple Listing Service, or "MLS," as defined below;

WHEREAS, Vendor desires to obtain limited access to the Data Set for the purpose of providing the following goods and services to CRIS MLS and end users of CRIS MLS:

Vendor to provide a list of "requested fields" in writing prior to activation of the data feed.

(the "Products");

WHEREAS, CRIS MLS is willing to grant Vendor limited access to the Data Set pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, it is hereby agreed as follows:

AGREEMENT

Section I **Definitions**

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

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

1.2 **Rules:** The Rules and Regulations of CRIS MLS, as amended from time to time, and any operating policies relating to the Data Set promulgated by CRIS MLS.

1.3 **Subscriber:** Any real estate broker, appraiser, or other real estate related business professional that purchases Multiple Listing Services from CRIS MLS directly.

1.4 **Subscriber Data:** Data relating to real estate for sale, previously sold or listed for sale, and data relating to Subscribers, entered into the current system by Subscribers and CRIS MLS. Subscriber Data is owned by CRIS MLS.

Section II **CRIS MLS's Covenants and Obligations**

2.1 **License.** During the term of this Agreement, CRIS MLS grants to Vendor a non-exclusive, non-transferable license to use and copy the Data Set or any part thereof for the purpose of providing interfaces and related services to CRIS MLS and its end users.

2.2 **Means of Access.** During the term of this Agreement, CRIS MLS agrees to provide to Vendor access to the Data Set via the Internet using the Real Estate Transaction Standard ("RETS").

Section III **Vendor's Covenants and Obligations**

3.1 **Rules.** Vendor agrees to comply with the CRIS MLS Rules at all times.

3.2 **Ownership of Data.** Vendor acknowledges CRIS MLS's ownership of the copyrights and all other intellectual property rights in the Data Set and agrees not to challenge such ownership.

3.3 **Confidential Information.** Vendor agrees to comply, and cause its employees and agents to comply, with the requirements relating to Confidential Information set forth in Section V below.

3.4 **Use.** Vendor agrees to access and use only the information contained in the Requested Fields.

3.5 **Modifications to Content.** Vendor agrees not to modify any content of the Data Set without the prior written consent of CRIS MLS.

3.5 **Breach.** If CRIS MLS notifies Vendor of a breach of the Rules or this Agreement and Vendor does not immediately cure such breach, Vendor agrees that CRIS MLS may pursue any and all legal remedies against Vendor.

3.6 **Company Information.** Vendor agrees to notify CRIS MLS within five (5) business days of any change to the information relating to Vendor on the Vendor Information and Signature page below.

Section IV

Confidential Information

5.1 **Definition.** “Confidential Information” is information or material proprietary to CRIS MLS or designated “confidential” by CRIS MLS and not generally known to the public, that Vendor 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 in any form:

- a. all Subscriber Data;
- b. all documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;
- c. software, source code, object code, diagrams, flow charts, techniques, procedures, IP addresses, access codes and passwords; and
- d. any information that CRIS MLS obtains from any third party that CRIS MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by CRIS MLS.

Confidential Information does not include information that:

- a. is in the public domain at the time of disclosure;
- b. is known to Vendor at the time of disclosure;
- c. is used or disclosed by Vendor with the prior written consent of CRIS MLS to the extent of such consent;
- d. becomes known to Vendor from a source other than CRIS MLS without breach of this Agreement by Vendor and provided that such source is not known by Vendor to be bound by a confidentiality agreement with CRIS MLS; and
- e. is required to be disclosed by judicial order or other compulsion of law, provided that Vendor provides to CRIS MLS prompt notice of any such order.

5.2 **Ownership/Title.** Vendor acknowledges and agrees that CRIS MLS will retain all right, title, and interest in and to its trademarks, service marks, and logos (“Marks”) worldwide. Subject to the terms and conditions of this Agreement, CRIS MLS hereby grants to Vendor a nonexclusive, nontransferable, worldwide license to use the Marks in connection with the Products during the term of this Agreement, provided that such use is in accordance with the then-current trademark guidelines of CRIS MLS. CRIS MLS may modify the Marks at any time upon written notice to Vendor. Vendor will not form combination marks with the Marks or modify the Marks without the prior written consent of CRIS MLS. Vendor hereby assigns to CRIS MLS all right, title and interest in the Marks, together with the goodwill attaching thereto, that may inure to Vendor in connection with this Agreement or from its use of the Marks hereunder. Vendor acknowledges and agrees that title to the Confidential Information remains

at all times with CRIS MLS including all copyright rights and other intellectual property or proprietary rights therein.

5.3 **Notices.** Vendor agrees to display CRIS MLS's copyright notice, disclosures and identifying logo (mark) on each page where content from the Data Set is displayed.

5.4 **Restrictions on Use – Scope of Use.** Vendor agrees that it will use or access the only the Confidential Information listed in the Requested Fields and only as expressly permitted under this Agreement and the Rules, and Vendor agrees that it will not use its access or the Confidential Information for any other purpose. Vendor agrees that it will employ measures to protect the Confidential Information from disclosure at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care. Vendor further agrees to cause its employees and agents to protect the Confidential Information and refrain from using the Confidential Information in any manner other than as expressly permitted in this Agreement.

5.5 **Restrictions on Use – Unauthorized Uses.** Vendor further agrees that it will not directly or indirectly disclose, display, frame, provide, transfer, co-brand, link or otherwise make available the Confidential Information to any person or entity, unless Vendor has received the prior written consent of CRIS MLS to do so. Vendor agrees that at no time and under no circumstances will it reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. Vendor agrees that it will not incorporate the Confidential Information into any other work or product unless approved in writing by CRIS MLS.

5.6. **Restrictions on Use – No Third Party Access.** Vendor agrees that only its own employees will access the Confidential Information. Vendor agrees not to provide access to the Confidential Information to third parties, including consultants or independent contractors, without the prior written consent from CRIS MLS. If CRIS MLS grants such consent, Vendor agrees to execute an agreement with the third party that imposes the confidentiality obligations contained in this Agreement on the third party.

5.7 **Restrictions on Use – Location restriction.** Vendor agrees that it will not remove the Confidential Information from its principal place of business without the prior written consent of CRIS MLS. The grant of such consent by CRIS MLS shall not relieve Vendor of any of its obligations under this Agreement.

5.8 **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 CRIS MLS, Vendor agrees that it will return to CRIS MLS all Confidential Information and all other materials provided by CRIS MLS to Vendor. Vendor further agrees that it will erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of CRIS MLS, an officer of Vendor will certify in writing that all materials have been returned to CRIS MLS and all magnetic or computer data have been destroyed.

5.9 **CRIS MLS's Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Vendor acknowledges and agrees that CRIS MLS would suffer irreparable harm in the event that any of them breaches its obligation under this Agreement, and that monetary damages would be inadequate to compensate CRIS MLS for a breach. CRIS MLS is therefore entitled, in addition to all other forms of relief, to injunctive relief as may

be necessary to restrain any continuing or further breach by Vendor without showing or proving any actual damages sustained by CRIS MLS.

Section V **Term and Termination**

6.1 **Generally.** The term of this Agreement begins on the Effective Date and shall continue in full force and effect for one (1) year unless terminated in accordance with this Agreement. This Agreement shall thereafter automatically renew for successive one (1) year periods unless terminated earlier in accordance with this Section VI. Vendor acknowledges and agrees that CRIS MLS may review and increase the monthly license fee on an annual basis upon each renewal.

6.2 **Termination by CRIS MLS.** Vendor agrees that CRIS MLS may terminate this Agreement at any time in its sole and absolute discretion.

6.3 **Events of Termination.** The parties agree that this Agreement shall terminate upon the occurrence of any of the following events:

- a. CRIS MLS provides notice of termination to Vendor;
- b. Vendor provides thirty (30) days advance written notice of termination to CRIS MLS; however, such termination shall not be effective until at least 30 days from the date the notice is received by CRIS MLS.

Section VI **Warranties and Liability**

7.1 **CRIS MLS Warranties.** CRIS MLS warrants that: (i) it has sufficient right and authority to enter into this Agreement and to grant to Vendor the rights granted under this Agreement; and (ii) to the best of CRIS MLS's knowledge, the Data Set, as delivered to Vendor by CRIS MLS, does not infringe the intellectual property rights of any other party.

7.2 **Vendor Warranties.** Vendor warrants that: (i) it has sufficient right and authority to enter into this Agreement and to carry out its obligations hereunder; (ii) to the best of Vendor's knowledge, Vendor's products and services to be used in connection with the Data Set do not infringe the intellectual property rights of any other party; and (iii) Vendor's use of the content contained in the Data Set will comply with all applicable laws, rules and regulations.

7.3 **Warranty Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO DATA SET, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, VENDOR EXPRESSLY ACKNOWLEDGES AND AGREES THAT CRIS MLS MAKES NO WARRANTY REGARDING THE ACCURACY, TIMELINESS OR COMPLETENESS OF ANY CONTENT OF THE DATA SET.

7.4 **Limitation of Liability.** CRIS MLS's liability to Vendor for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by Vendor to CRIS MLS, if any, under this Agreement. Vendor's only other remedy shall be termination of this Agreement. CRIS MLS shall not be liable for any incidental or consequential damages under any circumstances, even if CRIS MLS has been advised of the possibility of such damages. CRIS MLS shall have no liability for inaccuracies in any content of the Data Set.

Section VII Indemnification

8.1 **Infringement Claims.** Vendor agrees to indemnify, hold harmless, protect and defend CRIS MLS from and against any liability, claim, loss, cost, expense or damage (including reasonable attorneys' fees and costs) made against CRIS MLS for violation of intellectual property of third parties, which charge or suit is based on Vendor's use or use contemplated in this Agreement of the Data Set or any portion thereof.

8.2 **Indemnification by Vendor for Other Claims.** Vendor agrees to indemnify, hold harmless, protect and defend CRIS MLS and its officers, directors, trustees, shareholders, employees, and agents from and against any liability, claim, loss, cost, expense or damage (including reasonable attorneys' fees and costs) (the "Claims") claimed by a third party arising out of any willful or negligent act of Vendor or its agents, employees, contractors or representatives, in connection with the performance of its obligations hereunder other than special and consequential damages (excluding therefrom Claims arising from the negligence or wanton and willful misconduct of CRIS MLS).

8.3 **Indemnification by CRIS MLS.** CRIS MLS agrees to indemnify, hold harmless, protect and defend Vendor and its officers, directors, shareholders, employees and agents from and against any Claims claimed by a third party arising out of any willful or negligent act of CRIS MLS or its agents, employees, contractors or representatives, in connection with the performance of its obligations hereunder other than special and consequential damages (excluding therefrom Claims arising from the negligence or wanton and willful misconduct of Vendor).

Section VIII General Provisions

9.1 **Survival of Sections V and VIII.** The parties agree that sections V and VIII shall survive termination of this Agreement.

9.2 **Further Assurances.** Each party agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

9.3 **Relationship of the Parties.** CRIS MLS and Vendor are separate and independent entities. The relationship between CRIS MLS and Vendor is purely contractual.

CRIS MLS shall not be deemed to be the partner, agent or representative of Vendor, or vice versa. Nothing in this Agreement shall be construed so as to create a partnership, joint venture, or agency. Neither party to this Agreement shall be liable for the debts or obligations of the other except as otherwise set forth in this Agreement.

9.4 **Attorney's Fees.** If any party to this Agreement shall bring any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party all costs plus a reasonable sum for attorneys' fees incurred in bringing such suit and/or enforcing a judgment granted thereon, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

9.5 **Waiver.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by either party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

9.6 **Assignment.** Neither party shall voluntarily subcontract or assign any of their respective rights, duties or obligations hereunder without first obtaining the other party's written consent; provided, however, such consent shall not be unreasonably withheld.

9.7 **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), provided that a copy is mailed by certified mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and facsimile numbers set forth on the signature page (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties).

9.8 **Amendments and Modifications.** This Agreement may not be amended or modified orally, but only by an agreement in writing signed by the parties hereto.

9.9 **Governing Law.** This Agreement will be governed by the laws of the State of Ohio without regard to conflicts of laws principles excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this agreement to the substantive law of another jurisdiction.

9.10 **Arbitration.** Any and all disputes, controversies or claims arising under or in connection with this Agreement, including without limitation, fraud in the inducement of this Agreement, or the general validity or enforceability of this Agreement, shall be governed by the laws of the State of Ohio, without giving effect to its conflict of laws provisions and shall be

submitted to binding arbitration before one arbitrator of and in accordance with the Commercial Arbitration Rules of the American Arbitration Association and conducted in a private manner in Washoe County, Ohio. All expenses of any arbitration shall be borne equally by the parties. All fees, including legal fees shall be borne by the party who incurred said fees. The award of the arbitrator shall be final and enforceable in the courts of Ohio. All costs of enforcement are to be borne by the losing party. In reaching his or her decision, the arbitrator shall have no authority to change or modify any provision of this Agreement. Each party shall have the right to discovery in accordance with the Ohio Rules of Civil Procedure so long as all discovery is conducted under a confidentiality order issued by the arbitrator prohibiting the use of any information disclosed or delivered in the discovery process except for use within the Arbitration. Upon conclusion of the arbitration, all documents or tangible items disclosed must be returned to the party who produced the items.

9.11 **Jurisdiction.** Notwithstanding the arbitration clause above, any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against either of the parties in the courts of the State of Ohio, County of Washoe, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Ohio, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on either party anywhere in the world.

9.12 **Section Headings, Construction.** The headings of sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement unless otherwise specified. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

9.13 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.14 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

9.15 **Binding Effect.** Each covenant and condition of this Agreement shall be binding on and inure solely to the benefit of the parties hereto and their respective successors, assigns, heirs, and legal representatives, including any entity with which the Company may merge or consolidate or to which all or substantially all of its assets may be transferred.

9.16 **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date above first written above.

Centralized Real Estate Information Services, Inc.:

Entered into on behalf of the Centralized Real Estate Information Services, Inc. (CRIS MLS) by

Signature: _____

Print Name: Heather Shupe

Title: Membership & IDX Administrator Date: _____

Vendor Information and Signature:

Vendor Name: _____

E-mail address: _____

(You *must* supply an e-mail address here. This address will be CRIS MLS's principal means of communicating with you for notices under this Agreement.)

Vendor Street Address: _____

Vendor City, ST, ZIP: _____

Vendor Phone: _____ Fax: _____

Entered into on behalf of Vendor by:

Signature: _____

Print Name: _____

Title: _____ Date: _____

Member Signature:

By: _____

Name: _____

Title: _____

Email Address: _____

Date: _____

This box is for CRIS MLS's use only. CRIS MLS will Supply Vendor with the RETS address, login and password after full execution of this Agreement. CRIS MLS will then return a copy of this Agreement to Vendor. The contents of this box are Confidential Information under this Agreement.

RETS URL: _____

RETS User ID: _____

RETS Password: _____