

CHECKLIST OF ISSUES TO ADDRESS IN MLS DATA LICENSE AGREEMENTS

This checklist includes a variety of topics and issues that an MLS and its participants may want to address in a licensing agreement with a third-party software vendor. This checklist is not exhaustive but should provide the MLS and its participants with a good foundation for understanding the terms of such an agreement.

For the purposes of this checklist, the MLS is referred to as “MLS,” the MLS participant is referred to as “Participant,” the third-party software vendor as “Vendor,” and the data feed provided by MLS as the “Licensed Data”.

- I. Scope of and Access to Licensed Data
 - a. What is the specific data being licensed by MLS to Participant and Vendor? Is it clearly and narrowly defined?
 - b. Can MLS change the definition of Licensed Data, i.e. limit the number of fields or number of listings being provided, during the term of the agreement? If so, must MLS provide notice prior to doing so?
 - c. Does the agreement identify the format and manner in which MLS will provide the Licensed Data?
 - d. Does MLS reserve the right to change the format and method of delivery of the Licensed Data?
 - e. What happens if the Licensed Data is unavailable due to interruptions to or the unavailability of MLS’s servers?
 - f. Under what conditions may MLS suspend or discontinue delivery of the Licensed Data?

- II. Use of Licensed Data
 - a. Does the grant of license properly describe the manner in which Participant and Vendor may use the Licensed Data?
 - b. Is a sample product attached as an exhibit to the agreement, for example, a sample AVM?
 - c. Do the usage terms expressly prohibit use of the Licensed Data for any purpose other than the permitted use?
 - d. Which website, if any, will feature Licensed Data or the product, for example, an AVM?
 - e. Is Vendor prohibited from using the Licensed Data to contact property owners?

Pay attention to all key words included in the license and understand their implications. For example: sublicensable versus non-sublicensable; perpetual versus limited; irrevocable versus revocable; exclusive versus non-exclusive; fully paid or royalty-free.

- III. Protection of Licensed Data
 - a. Which individuals will have access to the Licensed Data? Is Vendor permitted to use subcontractors?
 - b. What mechanisms do Participant and Vendor have in place to prevent unauthorized access of the Licensed Data?
 - c. How will Participant and Vendor monitor the security of their systems and the Licensed Data?
 - d. What steps must Participant and/or Vendor take in the event of misuse or unauthorized access to Licensed Data?
 - e. Is Participant responsible and liable for any unauthorized access or misuse of the Licensed Data caused by Vendor?
 - f. Which party is responsible for complying with all federal and state privacy and information security laws, including breach notification?
 - g. In what circumstances can Participant suspend Vendor's receipt of the Licensed Data?
 - h. Does the agreement require Participant and Vendor to acknowledge the MLS Rules and agree to be bound by and comply with the Rules?
 - i. Does MLS reserve the right to modify the MLS Rules at any time? If so, are Participant and Vendor required to comply with the modified MLS Rules within a certain amount of time?

- IV. Intellectual Property and Ownership Rights
 - a. How does the agreement describe the intellectual property and ownership rights of the Licensed Data?
 - b. Does the agreement prohibit the parties from challenging or taking any action inconsistent with the intellectual property or ownership rights expressed?
 - c. Is Participant required to display a copyright notice with the Licensed Data? If so, does the agreement set forth the appropriate language for the notice?
 - d. Does the agreement require Participant to identify MLS as the source of the Licensed Data? If so, does MLS grant Participant permission to use MLS's name or trademark(s)?

- V. Fees
 - a. Is there a fee associated with the license? If so, which party is responsible for paying it?
 - b. Does the agreement require payment in a certain number of days?
 - c. What happens if the fee is not paid?

- VI. Audits and Compliance
 - a. How will MLS and Participant ensure compliance with the terms of the agreement?
 - b. Does MLS have the right to audit Participant's and Vendor's systems to ensure compliance with the license restrictions and security measures? If so, under what terms and with what notice?
 - c. Is Participant liable for Vendor's breach of the agreement?

- d. Does MLS have the authority to force Participant and/or Vendor to investigate and respond to alleged violations?
 - e. What remedies are available in the event the Licensed Data is used or accessed in an unauthorized manner? May a party seek injunctive relief?
- VII. Confidential Information
- a. Is Confidential Information defined within the agreement?
 - b. Does the agreement require appropriate safeguards for Confidential Information?
 - c. What are Participant's obligations in relation to Confidential Information when the agreement is terminated?
- VIII. Warranties and Representations
- a. Do the parties warrant and represent that they will comply with all federal and state laws?
 - b. Do Participant and Vendor warrant and represent that their use of the Licensed Data does not infringe an intellectual property right of any third party?
 - c. Does MLS provide any warranties or representations regarding the Licensed Data?
- IX. Indemnification and Limitation of Liability
- a. Does the agreement require any party to indemnify another party from any claims related to delivery, display, or use of the Licensed Data?
 - b. Does Vendor agree to indemnify Participant from any claims that Vendor infringes the intellectual property right of any third party -- including patent infringement?
 - c. Does the agreement include a cap on liability?
- X. Term and Termination
- a. What is the term of the agreement? Does it automatically renew?
 - b. How can the agreement be terminated?
 - i. May MLS or Participant terminate the agreement at any time for any reason?
 - ii. May MLS cease providing feeds to Participant or Vendor at any time for any reason?
 - c. What happens to the Licensed Data after termination? Is it destroyed?
 - d. What is the time period for compliance with post-termination requirements?