

INTERNATIONAL YACHT BROKERS ASSOCIATION

CONTRACT: Access to IYBA Vessel Portal & Yacht Broker Reciprocity data feeds

Note: This form is a legally binding contract between you and the International Yacht Brokers Association ("IYBA"). Under IYBA Rules, if a Participant is qualified to be a Yacht Broker Reciprocity Participant (YBRP), then the Participant is presumed to participate in the Yacht Broker Reciprocity Program (YBR Program). See the IYBA Rules and Regulations for further details. This form/contract must be filled out completely and signed by the Participant or Participant's designee authorized to bind the Firm. There are no exceptions. Once it is completed and signed, fax or mail it to IYBA, 1845 Cordova Rd Suite 205, Fort Lauderdale, FL 33316 or Fax: 1-954-764-0697. An authorized representative of IYBA will sign the contract and return a copy to you with information on how to access the data feed.

RECITALS

1. This **AGREEMENT** is made and entered into by and among International Yacht Brokers Association ("**IYBA**"), the yacht brokerage firm whose name and contact information appear on the signature page of this Agreement designated "Firm Information and Signature" (the "**Firm**"), and the companies/individuals whose names and contact information appear on the signature pages of this Agreement designated "Consultant Information and Signature" (collectively, "the Consultants"), if any.

2. Firm wishes to obtain, and IYBA wishes to provide, certain vessel data for display on Firm's Web Site, including the listing data of other vessel brokerages participating in YBRP. Firm may wish to engage Consultants, i.e., other companies or individuals who are not employees of Firm, to perform data downloading, manipulation, and formatting, as well as programming and web design.

DEFINITIONS

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

Yacht Broker Reciprocity Data or YBR Data: The current aggregate compilation of all active listings of all Yacht Broker Reciprocity Participants except those listings that the seller has declined to allow the YBR Participant to display as part of the YBR Data.

Yacht Broker Reciprocity Participant or YBRP: A Participant who gives permission to other Participants to display its active listings on their web sites in return for their permission to advertise their listings on its web site.

Firm Website: A website on the World Wide Web wholly owned or exclusively controlled by a Participant that promotes the products or services of the Participant's vessel brokerage, and on which YBR Data is accessible to website visitors.

Intellectual Property Rights: Intangible property rights including copyright, trademark, patent, trade secret, trade dress, fair competition, and contract rights prohibiting unauthorized disclosure, copying, or use of data.

IYBA Computer System: Computer hardware and software owned by Vessel Portal Management, LLC and exclusively licensed to IYBA that contains vessel information in electronic format, including, but not limited to, YBR Data, that is accessible to, and usable by Participants for purposes permitted under IYBA's Rules and Regulations and other policies and procedures.

Member Listing Service: A means for collecting and disseminating information about vessel property that is or has been for sale to be used by vessel brokers to make offers of cooperation and compensation to each other, and a means to provide data processing, technical support, consulting, and other information technology services to vessel brokers and appraisers in connection with the sale and valuation of vessel property.

Rules: The Rules and Regulations promulgated by IYBA, as amended from time to time, and any other IYBA operating policies relating to the YBR Data and YBRPs.

Participant: Vessel brokerage offices (whether an entity or sole proprietorship) represented by IYBA Membership (active professional or charter member) who is a principal, partner, or corporate officer, or branch office manager acting on behalf of the principal and has an active yacht broker's license.

Participant Data: Data relating to vessels for sale, previously sold or listed for sale, including YBR Data, and data relating to Participants that are entered into the IYBA Computer System by Participants.

IYBA's COVENANTS

4. During the term of this agreement, IYBA grants to Firm a non-exclusive and limited license to:
 - display the YBR Data on Firm's Web Sites, and
 - copy the YBR Data to the extent necessary to deliver the YBR Data to consumers from Firm's Web Site.
5. During the term of this Agreement, IYBA agrees to provide to Firm and its Consultants:
 - access to the YBR Data via the Internet using HTTP Json API ("**API**"), or other method approved by IYBA, under the same terms and conditions IYBA offers to other YBRPs;
 - seven (7) days' advance notice of changes to the file and record formats of the YBR Data; and
 - seven (7) days' advance notice of changes to the Rules affecting Yacht Broker Reciprocity.

FIRM'S COVENANTS

6. Firm shall comply with the Rules at all times.
7. Firm acknowledges and agrees that, as between Firm and IYBA, IYBA owns all Intellectual Property Rights in or to the YBR Data, Participant Data, and any other data, information or content accessible from the IYBA Computer System. Firm shall not contest IYBA's Intellectual Property Rights claims nor assist others in doing so. Firm shall cooperate with IYBA on reasonable terms and conditions in any efforts by IYBA to enforce its Intellectual Property Rights against actual or potential infringers.
8. Firm shall comply with the requirements relating to Confidential Information set forth below.
9. In the event that Firm desires to make available to any third party the YBR Data other than as permitted by the Rules, or the Confidential Information, Firm shall require such third party to execute this Agreement and become a Consultant.
10. If IYBA notifies Firm of a breach of the Rules, or of this Agreement, and Firm does not immediately cure such breach, Firm agrees that IYBA may seek cure from the Consultants, or any one of them. Firm agrees that IYBA may immediately terminate the Firm's or the Consultant's access to the data feed, or the ability to frame the IYBA Website, whichever is applicable, until the breach is cured.
11. Firm shall notify IYBA of any change to the information relating to Firm on the Firm Information and Signature page below within five (5) business days after the facts giving rise to the change occur.
12. Firm shall defend, indemnify and hold harmless IYBA from any claims or demands asserted by third parties based upon Firm's display of YBR Data on the Firm Web Site, including any judgments, damages, interest, penalties, attorneys fees at all levels, and litigation costs and expenses.

CONSULTANT'S OBLIGATIONS

13. If IYBA notifies Firm of a breach of the Rules or of this Agreement and Firm does not immediately cure such breach, IYBA may require Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with IYBA and act immediately upon notification from IYBA of an uncured breach. Consultant agrees that IYBA may immediately terminate the Consultant's access to data feed, or the ability of the Consultant to frame the IYBA Website, whichever is appropriate, until the breach is cured.
14. Each Consultant acknowledges and agrees that, as between Consultant and IYBA, IYBA owns all Intellectual Property Rights in or to the YBR Data, the Participant Data, and any other data, information or content accessible from the IYBA Computer System. Consultant shall not contest IYBA's Intellectual Property Rights claims nor assist others in doing so. Consultant shall cooperate with IYBA on reasonable terms and conditions in any effort by IYBA to enforce its Intellectual Property Rights against actual or potential infringers.
15. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
16. Each Consultant shall notify IYBA within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page below.

CONFIDENTIAL INFORMATION

17. Each Consultant shall defend, indemnify and hold harmless IYBA from any claims or demands by third parties arising from Consultant's access to and use of YBR Data on behalf of Firm, including any judgments, damages, interest, penalties, attorneys fees at all levels, and litigation costs and expenses.

18. **"Confidential Information"** is information or material proprietary to IYBA or designated "Confidential" by IYBA and not generally known to the public, to which Firm or Consultants or any one of them (the "Receiving Party") may obtain access 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 Participant Data, except the YBR Data that this Agreement and the Rules permit to be disclosed;
- 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;
- d. techniques, procedures;
- e. IP addresses, access codes, and passwords; and
- f. any information that IYBA obtains from any third party that IYBA treats as proprietary or designates as

Confidential information, whether or not owned or developed by IYBA. The 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;
- c. is used or disclosed by the Receiving Party with the prior written consent of IYBA, to the extent of such consent;
- d. becomes known to the Receiving Party from a source other than IYBA 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 confidentiality agreement with IYBA; or
- e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to IYBA prompt notice of any such order.

The Receiving Party acknowledges that as between the Receiving Party and IYBA, all Intellectual Property Rights in or to the Confidential Information remain at all times with IYBA

19. Restrictions 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 or the Confidential Information for any other purpose. The Receiving Party will employ measures to protect the Confidential Information from unauthorized disclosure to the same extent as it protects its own trade secrets, but in no event using less than reasonable care.

20. Restrictions 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 of IYBA, which IYBA may grant, condition or withhold in its sole discretion. At no time and under no circumstances will the Receiving Party reverse engineer, decompile, or disassemble any software constituting or containing any Confidential Information. The Receiving Party will not incorporate the Confidential Information into any other work or product.

21. Restrictions on Use - No Third Party Access. Only the Receiving Party's own employees will access the Confidential Information. The Receiving Party will not provide access to the Confidential Information to third parties, including consultants or independent contractors, without prior written consent from IYBA, which IYBA may grant, withhold or condition in its sole discretion. If IYBA grants consent, the Receiving Party will execute an agreement with the third party that imposes on the third party a confidentiality obligation that is at least as strict as is imposed by this Agreement on the Receiving Party.

22. **Restrictions on Use - Location restriction.** The Receiving Party will not remove the Confidential Information from its principal place of business without IYBA's prior written consent, which IYBA may grant, condition or withhold in its sole discretion. In the event IYBA grants such consent, the Receiving Party is not relieved of any of its obligations under this Agreement.

23. **Termination and Return of Materials.** Within five (5) days of the end of the term of this Agreement or receipt of notice of termination from IYBA, the Receiving Party will return to IYBA all Confidential Information and all other materials provided by IYBA to the Receiving Party. The Receiving Party will also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. An officer of the Receiving Party will certify in writing that all materials have been returned to IYBA and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

24. The term of this Agreement begins on the "Effective Date" set forth on the "IYBA Information and Signature Page" below. IYBA 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) IYBA's notice to Firm that this Agreement is terminated.
- b) Firm's notice to IYBA that it no longer intends to display YBR Data on its web site.
- c) Termination by IYBA of Firm's privileges as a Participant
- d) The Participating Firm's failure to remain eligible for Member Listing Service services.
- e) The Participant's failure to remain eligible to be a YBR Participant.

GENERAL PROVISIONS

25. **Survival of Obligations.** The Firm's and Consultant's Covenants shall survive the termination or expiration of this Agreement.

26. **IYBA's Remedies.** Because of the unique nature of the Participant Data and Confidential Information, Firm and Consultants acknowledge that IYBA would suffer irreparable harm in the event any of them breach their obligations under this Agreement, and that monetary damages would be inadequate to compensate IYBA for such a breach.

IYBA is therefore entitled, in addition to all other forms of relief, to temporary or permanent injunctive relief as may be necessary to restrain any continuing or further breach by Firm or Consultants, or any one of them, without the need to show that its remedies at law are inadequate.

27. **Attorney's fees.** If IYBA prevails in any action to enforce or interpret this Agreement or any provision hereof, IYBA shall be entitled to an award of its reasonable attorney's fees and costs in such action.

28. **Limitation of Liability.** IYBA shall not be liable to Firm or Consultant for damages of any type under this Agreement, whether in contract or tort. Firm's and Consultant's only remedy shall be termination of this Agreement.

29. **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 below or such other address of which any party may advise the others in writing during the term of this Agreement.

30. **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.

31. **Assignment.** Neither Firm nor 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 IYBA.

32. **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.

33. **Applicable law.** This Agreement is governed by and enforced according to the laws of the State of Florida applicable to contracts entered into and performed entirely with the State.

34. **Stopping of the Data Feed.** If any provision of this Agreement is breached by the Firm or the Consultant, IYBA may immediately terminate the Firm's or Consultant's data feed, or the ability to frame, the IYBA Website, whichever is appropriate, until the breach is cured.

35. **Disclaimers of Warranties:** IYBA disclaims any warranty concerning the accuracy or reliability of the YBR Data or Participant Data. IYBA further disclaims any warranty of merchantability or fitness of the YBR Data or Participant Data for a particular purpose. Firm and Consultant(s) acknowledge and agree that IYBA is providing the YBR Data or Participant Data on an "as is" basis. [The remainder of this page is left blank intentionally.]

IYBA Information and Signature

Entered into on behalf of the International Yacht Brokers Association by

Signature

Print Name

Effective Date

Brokerage Information and Signature

Brokerage Name: _____

YBRP Broker Name: _____

Active Professional or Charter IYBA Member ID: _____

Email Address: _____

Firm Address: _____

Firm Phone: _____

Firm Fax: _____

Entered into on behalf of Brokerage by:

Signature

Print Name

Title

Consultant Information and Signature

NOTE TO FIRM: Reproduce this page for each individual/company to whom you intend to provide access to the YBR Data under this agreement.

Consultant (company or individual) Name: _____

Email address: _____

Consultant Address: _____

Phone: _____

Fax: _____

Entered into on behalf of Consultant by

Signature

Print Name

Title

NOTE TO CONSULTANT: Be sure to enter into this Access to Yacht Broker Reciprocity data feed contract with IYBA and every vessel broker to which you provide services. If you sign only one and that Firm's access to YBR Data is terminated, you will not be able to get the data for your other clients.