

## **CONTRACT Access to Internet Data Exchange Data Feed (Agent)**

Note: **This is a legally binding contract between you and Nassau County Multiple Listing Service, Inc. (NCMLS).** Simultaneously or prior to submitting this Agreement, you must become an Internet Data Exchange Participant (IDXP). This Agreement must be filed out completely and signed by the qualifying broker of your Office and the third party vendor (if one is used). There are no exceptions. Once you have filled it out and signed it, mail or fax it to Nassau County Multiple Listing Service, Inc., 910 South 14th Street, Fernandina Beach, FL 32034-2918, Fax: 904-261-8998. NCMLS will send information to you regarding how to access the data feed.

### **AGREEMENT**

1. This **AGREEMENT** is made and entered into by and among Nassau County Multiple Listing Service, Inc. (**NCMLS**), the real estate Office whose name and contact information appear on the signature page of the Agreement designated "Office Information and Signature" (the "**Office**"), 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.

### **RECITALS**

2. Office wishes to obtain, and NCMLS wishes to provide, data for Office's web site, including the listing data of other real estate brokerages participating in NCMLS. Office may wish to engage Consultants, i.e., other companies or individuals who are not employees of Office, 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. **Internet Data Exchange Database** or **IDX Data**: The current aggregate compilation of all active exclusive right to sell listings of all Internet Data Exchange Participants except those listings where the property seller has opted out of Internet publication by so indicating on listing contract. **Internet Data Exchange Participant** or **IDXP**: 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. **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. **Rules:** The Rules and Regulations of NCMLS, as amended from time to time, and any operating policies relating to the IDX Data and IDXP's promulgated by NCMLS. **Participant:** Any real estate broker, appraiser, or other real estate related business professional that purchases Multiple Listing Services. **Participant Data:** Data relating to real estate for sale, previously sold or listed for sale, including the Internet Data Exchange Database, and data relating to Participants, entered into NCMLS's System by Participants and NCMLS.

#### **NCMLS'S OBLIGATIONS**

4. During the term of this Agreement, NCMLS grants to Office a license to:
  - a. display the IDX Data on Office's web site, and,
  - b. make copies of the IDX Data to the extent necessary to deliver the IDX Data to consumers on Office's web site.
  
5. During the term of this Agreement, NCMLS agrees to provide to Office and its Consultants:
  - a. Access to the IDX Data via the Internet using File Transfer Protocol ("**FTP**"), under the same terms and conditions NCMLS offers to other Participants;
  - b. Notice of changes to the file and record formats of the IDX Data; and
  - c. Notice of changes to the Rules.

#### **OFFICE'S/AGENT'S OBLIGATIONS**

6. Office shall comply with the Rules at all times.
7. Office acknowledges NCMLS Shareholder's copyrights in the Participant Data and the IDX Data.
8. Office shall comply with the requirements relating to Confidential Information set forth below.
9. In the event that Office desires to make the IDX Data or the Confidential Information available to any third party, Office agrees to require such third party to execute this Agreement and become a Consultant.
10. If NCMLS notifies Office of a breach of the Rules or this Agreement and Office does not immediately cure such breach, Office agrees that NCMLS may seek cure from the consultants, or any one of them.
11. Office shall notify NCMLS within five (5) business days of any change to the information relating to Office on the Office Information and Signature page.

#### **CONSULTANT'S OBLIGATIONS**

12. If NCMLS notifies Office of a breach of the Rules or this Agreement and Office does not immediately cure such breach, NCMLS may contact Consultant to cure any such breach that is within consultant's control. Consultant agrees to cooperate with NCMLS and act immediately upon notification by NCMLS of an uncured breach by Office.
13. Each consultant shall comply with the requirements relating to Confidential Information set forth below.
14. Each Consultant shall notify NCMLS within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page.

## **CONFIDENTIAL INFORMATION**

### **15. The Term “Confidential Information”**

**“Confidential Information”** is information or material proprietary to NCMLS or designated “Confidential” by NCMLS and not generally known to the public, that Office or 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 or other form):

- a. all Subscriber Data, except the IDX Data to the extent to which this Agreement and the Rules permit its disclosure;
- 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 NCMLS obtains from any third party that NCMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by NCMLS.

### **16. Exceptions.**

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 NCMLS, to the extent of such consent;
- d. becomes known to the Receiving Party from a source other than NCMLS 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 NCMLS; or
- e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to NCMLS prompt notice of any such order.

### **17. Title.**

The Receiving Party acknowledges that title to the Confidential Information remains at all times with NCMLS or with the third parties in which title existed prior to this Agreement or prior to disclosure by NCMLS.

### **18. 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 disclosure at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care.

**19. 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 NCMLS to do so. At no time and under no circumstances will the Receiving Party reverse engineer, decompile, 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.

**20. 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 NCMLS. If NCMLS grants consent, the Receiving Party will execute an agreement with the third party that imposes at least as strict a confidentiality obligation of the third party as that imposed by this Agreement on the Receiving Party.

**TERM AND TERMINATION**

21. The Term of this Agreement begins on the "Effective Date" set forth on the "NCMLS Information and Signature Page" below. NCMLS has the right at any time and at its sole discretion to terminate this Agreement. This Agreement shall terminate upon the occurrence of any of the following events:
- a. NCMLS's notice to Office that this Agreement is terminated.
  - b. Office's notice to NCMLS that it no longer intends to display IDX Data on its web site.
  - c. Termination of Office's privileges as a Subscriber either by NCMLS or the Affiliated Shareholder Association from which Office subscribes to Multiple Listing Services.

**GENERAL PROVISIONS**

22. The obligations of Office set forth under "Office's Obligations" above and the obligations of Consultants under "Consultants' Obligations" above shall survive the termination or expiration of this Agreement.

**23. NCMLS's Remedies.**

Because of the unique nature of the Subscriber Data and Confidential Information, Office and Consultant acknowledge that NCMLS 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 NCMLS for a breach. NCMLS 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 Office or Consultants or any one of them, without showing or proving any actual damages sustained by NCMLS.

**24. Attorney's Fees.**

If NCMLS 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 NCMLS's reasonable attorney's fees and costs for such legal action.

**25. Limitation of Liability.**

NCMLS's liability to Office and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by Office and Consultants to NCMLS, if any, under this Agreement. Office's and Consultants' only other remedy shall be termination of this Agreement. NCMLS shall not be liable for any incidental or consequential damages under any circumstances, even if NCMLS has been advised of the possibility of such damages. NCMLS shall have no liability for inaccuracies in the IDX Data or the Subscriber Data.

**26. 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.

**27. 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.

**28. No Assignment.**

Neither Office 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 NCMLS.

**29. 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.

**30. Applicable Law.**

This Agreement is governed by and enforced according to the laws of the State of Florida.

(The remainder of this page is left blank intentionally.)

## MLS Information and Signature

Entered into on behalf of MLS by

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Signature

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Print Name

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Effective Date

This area is for MLS's use only. MLS will fill out the information in it after signing this Agreement. MLS or its vendor will then return a copy of this Agreement to Firm and consultants. The contents of this area are Confidential Information under this Agreement.

FTP URL: \_\_\_\_\_

FTP USER ID: \_\_\_\_\_

FTP PASSWORD: \_\_\_\_\_

**Real Estate Agent Information and Signature**

Firm Name: \_\_\_\_\_ Firm MLS ID: \_\_\_\_\_

Designated Broker Name: \_\_\_\_\_ MLS ID: \_\_\_\_\_

Agent Name: \_\_\_\_\_ Agent MLS ID: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

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

Firm Street Address: \_\_\_\_\_

Firm City, ST, ZIP: \_\_\_\_\_

Firm Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Broker signature needed

Agent signature needed

Entered into on behalf of FIRM by

Entered into on behalf of Agent

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Print Name of Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Consultant Information and Signature**

**NOTE TO FIRM: Reproduce this page for each individual / company which you intend to provide access to the IDX Data under this Agreement**

Consultant (company or individual) Name: Constellation Web Solutions

E-mail address: brokersolutions@constellationws.com

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

Consultant Street Address: 6737 W. Washington St. Ste 2120

Consultant City, ST, ZIP: West Allis, WI 53214

Phone: 425-636-6910 Fax: 425-636-6938

Entered into on behalf of Consultant by:

*Daniel Dlh*  
Signature

Dan Dlh  
Print Name

Data and Compliance Manager  
Title

\_\_\_\_\_  
Date