



**WASHINGTON COUNTY
BOARD OF REALTORS®**

1070 West 1600 South, Suite A101
St. George, UT 84770
(435) 628-7374 • Fax (435) 634-1113
wcb.org • wcb@infowest.com

Internet Data Exchange Agreement

Note: This form is a legally binding contract between you and the Washington County Board of REALTORS® (WCBR). This form/contract must be filled out completely and signed by an authorized representative of your brokerage. There are no exceptions. Once you have filled it out and signed it, please fax or mail it to:

**Washington County Board of REALTORS®
1070 West 1600 South, Suite A-101
St. George, Utah 84770
Fax # 1-435-634-1113**

WCBR will sign the form/contract and return a copy to you with information on how to access the data feed.

AGREEMENT

1. This AGREEMENT is made and entered into by and among Washington County Board of REALTORS®(WCBR), a Utah non-profit corporation, the real estate 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 name and contact information appear on the signature pages of this AGREEMENT designated "CONSULTANT Information and Signature" (collectively, "the CONSULTANTS"), if any.

RECITALS

2. FIRM wishes to obtain, and WCBR wishes to provide, non-exclusive access to data for FIRM's web site, including the listing data of other real estate brokerages participating in the WCBRMLS IDX. 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. WCBR reserves the right to charge for the costs of adding or enhancing their "downloading" capacity to enable FIRM to operate a "Internet Data Exchange Web site" (IDX) as defined hereafter. Assessments will reasonably relate to actual costs incurred by the WCBRMLS.

DEFINITIONS

1. For the purpose of this AGREEMENT, the following terms shall have meanings set forth below.

Broker Reciprocity Database or BR Data: The current aggregate compilation of all active exclusive right to sell listings of all Broker Reciprocity Subscribers except those listings where the property seller has opted out of Internet publication by so indicating on the listing contract. WCBR owns the BR Data.

Broker Reciprocity Subscriber or BRS: A subscriber who gives permission to other Subscribers to display its active listings on their web sites in return for their permission to advertise their listings on its web site.

Washington County Board of REALTORS® Multiple Listing Service or WCBRMLS: A local Association of real estate professionals who have collectively created an organization providing benefits and services to its members in good standing including, but not limited to, 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 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 Procedures of the WCBR, as amended from time to time, and any operating policies relating to the IDX Data and IDX Subscriber's promulgated by the WCBR.

Subscriber: The REALTOR® principal of any firm, partnership, corporation, or the branch office manager designated by said firm, partnership, or corporation who is an active Participant in WCBRMLS as defined by the WCBRMLS Bylaws, Rules and Procedures.

Subscriber Data: Data relating to real estate for sale, previously sold, or listed for sale, including the Internet Data Exchange Web site Database, and data relating to Subscribers and Affiliated Associations, entered into the Financial Business Systems (FBS) by Subscribers, the Affiliated Associations, and WCBRMLS. WCBR owns the Subscriber Data specifically including the intellectual and intangible property rights.

WCBRMLS's OBLIGATIONS

2. During the term of this AGREEMENT, WCBRMLS grants to FIRM a non-exclusive license to:
 - (A) display the IDX Data on FIRM's web site, and
 - (B) make copies of the IDX Data to the extent necessary to deliver the IDX Data to consumers on the FIRM's web site

3. During the term of this AGREEMENT, WCBRMLS agrees to provide to FIRM and its consultants:
 - (A) access to the BR Data via the Internet using the "framed solution" provided by REALTOR.com IDX, under the same terms and conditions WCBRMLS offers to other Subscribers
 - (B) seven (7) days advance notice of changes to the file and record formats of the VOW Data; and
 - (C) seven (7) days advance notice of changes to the Rules

FIRM's OBLIGATIONS

4. FIRM shall comply with all Rules at all times. This includes but is not limited to the NAR Policy governing the use of MLS Data in connection with Internet brokerage services offered by MLS Participants as adopted by WCBRMLS and may be subject to change from time to time. A copy of the Policy is attached hereto and made a part thereof as EXHIBIT A.

5. FIRM acknowledges WCBR's ownership of the copyrights and intellectual property rights in the Subscriber Data and the IDX Data.

6. FIRM shall comply with the requirements relating to Confidential Information set forth below.

7. In the event that FIRM desires to make IDX Data or the Confidential Information available to any third party, FIRM agrees to require such third party to execute this AGREEMENT and become a Consultant.

8. If WCBRMLS notifies FIRM of a breach of the Rules of this AGREEMENT by either the FIRM or Consultant, and FIRM does not immediately cure such breach, FIRM agrees that WCBRMLS may seek cure from the Consultant, if applicable.

9. FIRM shall notify WCBRMLS within five (5) business days of any change to the information relating to FIRM on the FIRM Information and Signature page below.

CONSULTANT's OBLIGATIONS

1. If WCBRMLS notifies FIRM of a breach of the Rules of this AGREEMENT and FIRM does not immediately cure such breach, WCBRMLS may contact Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with WCBRMLS and act immediately upon notification by WCBRMLS of an uncured breach by FIRM.
2. Each Consultant acknowledges WCBRMLS's ownership of the copyrights and intellectual property rights in the Subscriber Data and IDX Data.
3. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
4. Each Consultant shall notify WCBRMLS within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page below.

CONFIDENTIAL INFORMATION

5. "Confidential Information" is information or material proprietary to WCBRMLS or designated "confidential" by WCBRMLS and not generally known to the public, that FIRM 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 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;
 - (D) IP addresses, access codes and passwords;
 - (E) any information that WCBRMLS obtains from any third party that WCBRMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by WCBRMLS.
6. **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 WCBRMLS, to the extent of such consent;
 - (D) becomes known to the Receiving Party from a source other than WCBRMLS 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 any confidentiality agreement with WCBRMLS; or

- (E) is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to WCBRMLS prompt notice of any such order.
7. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with WCBRMLS or with the third parties in whom title existed prior to this AGREEMENT or prior to disclosure by WCBRMLS.
 8. **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.
 9. **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 WCBRMLS 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.
 10. **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 WCBRMLS. If WCBRMLS grants consent, the Receiving Party will execute an agreement with the third party that imposes at least as strict a confidentiality obligation on the third party as imposed by this AGREEMENT on the Receiving Party.
 11. **Restrictions on Use - Location Restriction.** The Receiving Party will not remove the Confidentiality Information from its principal place of business without WCBRMLS's prior written consent. In the event WCBRMLS grants consent, the Receiving Party is not relieved of any of its obligations under this AGREEMENT.
 12. **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 WCBRMLS, the Receiving Party will return to WCBRMLS all Confidential Information and all other materials provided by WCBRMLS 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. Upon the request of WCBRMLS, an officer of the Receiving Party will certify in writing that all materials have been returned to WCBRMLS and all magnetic or computer data have been destroyed.

TERM AND CONDITION

13. The term of this AGREEMENT begins on the "Effective Date" set forth on the "WCBRMLS Information and Signature Page" below. WCBRMLS 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) WCBRMLS's notice to FIRM that this AGREEMENT is terminated.
 - (B) FIRM's notice to WCBRMLS that it no longer intends to display IDX Data on its web site.
 - (C) Termination of FIRM's privileges as a Subscriber by WCBRMLS.

GENERAL PROVISIONS

14. **Survival of Obligations.** The obligations of FIRM set forth under "FIRM's Obligations" above and the obligations of Consultants under "Consultants Obligations" above shall survive the termination or expiration of this AGREEMENT.
15. **WCBRMLS Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, FIRM and Consultants acknowledge that WCBRMLS would suffer irreparable harm in the event that any of the FIRM or Consultants breaches its obligation under this AGREEMENT, and that monetary damages would be inadequate to compensate WCBRMLS for a breach. WCBRMLS 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 FIRM or Consultants or any one of them, without showing or proving any actual damages sustained by WCBRMLS.
16. **Attorney's Fees.** If WCBRMLS 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 WCBRMLS's reasonable attorney's fees and costs of such legal action.
17. **Limitation of Liability.** WCBRMLS's liability to FIRM and Consultants for damages under this AGREEMENT, whether in contract or tort, shall be limited to the aggregate amounts paid by FIRM and Consultants only to WCBRMLS, if any, under this AGREEMENT. FIRM and Consultants only other remedy shall be termination of this AGREEMENT. WCBRMLS shall not be liable for any incidental or consequential damages under any circumstances, even if WCBRMLS has been advised of the possibility of such damages. WCBRMLS shall have no liability for inaccuracies in the IDX Data or the Subscriber Data. The FIRM specifically acknowledges that the WCBRMLS does not warranty and has not made any representations concerning the accuracy of the data.
18. **Notice.** All notices to be given under this AGREEMENT shall be mailed, sent via facsimile transmission, or electronically mailed to their respective addresses set forth below or such other address of which any party may advise others in writing during the term of this AGREEMENT.

Washington County Board of REALTORS
1070 West 1600 South, Suite A-101
St. George, Utah 84770

1-435-628-7374 (office)
1-435-634-1113 (fax)
wcbcr@infowest.com

19. **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 have agreed to a modification.
20. **No 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 WCBRMLS.
21. **Entire Agreement.** This AGREEMENT contains the full and complete understanding of the parties regarding the subject matter of this AGREEMENT and supercedes all prior representations and understandings whether oral or written. The previous sentence notwithstanding, the Rules are expressly incorporated into this AGREEMENT by reference.
22. **Applicable Law.** This AGREEMENT is governed by and enforced according to the Laws of the State of Utah.
23. **Jurisdiction and Venue.** As a material part of the consideration of this AGREEMENT, the parties expressly agree that the Fifth Judicial Court in and for Washington County, State of Utah, shall be the exclusive forum for jurisdiction and venue enforcing this AGREEMENT.

AUTHORIZED SIGNATURES

24. **Entered into on behalf of WCBRMLS by:**

_____	_____
Signature	Print Name

Effective Date	

25. **Entered into on behalf of:** _____

_____	_____
Signature	Print Name

Effective Date	

Consultant Information and Signature

NOTE TO FIRM/AGENT: Reproduce this page for each individual/company to whom 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 WCBRMLS's principal means of communicating with you for notices under this Agreement.)

Consultant Street Address:

6737 W. Washington Street, Suite 2120

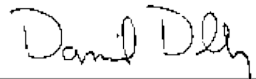
Consultant City, State, Zip:

Milwaukee, WI 53214

Phone: 425-636-6910

Fax:

Entered into on behalf of Consultant by:



Signature

Dan Dlh

Print Name

Data & Compliance Manager

Title

NOTE TO CONSULTANT: Be sure to enter into this Access to VOW Data Feed Contract with WCBRMLS and every real estate broker to which you provide services. If you sign only one and that FIRM/AGENT's access to the VOW Data is terminated, you will not be able to get the data for your other clients.

MLS AUTHORIZATION FOR FBS DATA SYSTEMS TO PROVIDE DATA VIA RETS

Option 1: Confidential RETS Data (All Statuses)

Permission Level for Confidential Data

- MLS (all MLS listings)
- Company (Company listings only)
- Office (Office listings only)
- Member (Member listings only)

Option 2: Standard IDX (Used for display on Public web sites)

Option 3: VOW (Used for display on VOW web sites)

The undersigned MLS authorizes Financial Business Systems, Inc. ("FBS") to provide the MLS approved IDX database by RETS (Real Estate Transaction Standard) to the MLS member indicated below (IDX Participant). MLS understands that once the data has been transferred to the IDX Participant, FBS has no control or responsibility for how such data is used or displayed, and MLS holds FBS harmless from any and all liability related to the provision of such data or use or display by the IDX Participant.

MLS Name

MLS Authorized Personnel (President, EO, etc.)

Signature

Date

IDX Participant's Name (MLS, Company, Office, Member)

flexmls Login ID (xxx.company, xxx.office, xxx.member)

brokersolutions@constellationws.com

Webmaster E-Mail Address

Web Site URL Address for this data

(The URL Address listed is the only site which this data is approved for use)

Please send this form to rets-support@fbsdata.com or Fax to 701-234-0224 Attn: RETS

Revised 06/05/2009

EXHIBIT A

Policy Governing Use of MLS Data for IDX's

I. Definitions and Scope of Policy.

1. For purposes of this policy, the term Internet Data Exchange Web site ("IDX") refers to a Participant's Internet Web site, or a feature of a Participant's Internet Web site, through which the Participant provides real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search for MLS data, subject to the Participants' oversight, supervision, and accountability. As used herein "Participants' IDXs" and "IDXs" also refers to such web sites, operated by non-principal brokers and sales licensees affiliated with MLS Participants, where permitted by this policy.
2. The right to display listings in response to consumer searches is limited to display of MLS data supplied by the MLS in which the Participant has participatory rights. This does not preclude a firm with offices participating in different MLSs from operating a master Web site with links to such offices IDXs.
3. Participants' Internet Web sites may also provide other features, information, or services in addition to the IDX, which other features, information, or services are not subject to this policy. Unless state law or regulations provides otherwise (such as, but not limited to, broker Internet activity being deemed to be advertising), use of MLS active listing data on an IDX does not require separate permission from the listing brokers whose listings will be available to consumers via an IDX. Notwithstanding, a listing broker may independently elect to opt out of the IDX's of all other Participants in the MLS ("Blanket opt out").

II. Policies Applicable to Participants' IDX's

1. Participants' IDXs should obtain the identity of each Registrant and obtain each Registrant's agreement to Terms of Use of the IDX, as follows:
 - a. A Registrant must provide his or her name, telephone number, a valid e-mail address, and, at the option of the MLS, a street address.
 - c. The Registrant must be required to affirmatively express agreement to a "Terms of Use" provision that requires the registrant to open and view an agreement that provides at least the following:

- i.** That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
- ii.** That all data obtained from the IDX is intended only for the Registrant's personal, non-commercial use;
- iii.** That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the IDX;
- iv.** That the Registrant will not copy, redistribute, or retransmit any of the data or information provided;
- v.** That the Registrant acknowledges the MLS's ownership of and the validity of the copyright in the MLS database.

After the Registrant has opened for viewing the Terms of Use agreement, a "mouse click" is sufficient to acknowledge agreement to those terms. The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. The Terms of Use agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the IDX for the sole purpose of monitoring compliance with MLS rules.

d. An agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled, and may not be accepted solely by mouse click. The Registrant must also receive a subsequent confirmation of the terms of the agreement and the agreement may not become effective until the Registrant acknowledges acceptance of those terms, by mouse click or otherwise. Prior to entering into a representation agreement, the Participant must ask the Registrant whether the Registrant is a party to an existing exclusive representation agreement.

3. A participant's IDX must protect the MLS data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" or other unauthorized access, reproduction, or use of the MLS database

4. A Participant's IDX may not make available for search by or display to registrants the following data intended exclusively for other MLS participants and their affiliated licensees:

- a.** Expired, withdrawn, pending or sold listings.
- b.** The compensation offered to other MLS participants.
- c.** The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- d.** The seller(s) and occupant(s) name(s), phone number(s) and e-mail address(es), where available.
- e.** Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.

5. A participant's IDX must comply with the following additional requirements:
- a. No advertising may be visible when displaying any portion of the listings of other Participants, except the name, address, phone number, and company logo of the Participant operating the IDX, and any other information required by state law, is not prohibited advertising.
 - b. MLS data fields authorized for display may not be changed. The MLS data may be augmented with additional data so long as the source of such other data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the listings or fewer authorized data fields.
 - c. The IDX must display a notice on all MLS data displayed indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. Furthermore, a Participant's IDX may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.
 - d. Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly accessible Web sites or IDXs) shall not be accessible to Registrants. Notwithstanding the foregoing, listing brokers may display on their IDXs or other Web site(s) the listing or property address of a consenting seller.
 - e. Non-principal brokers or sales licensees affiliated with Participants may operate IDXs if their Participant consents, such IDX to be subject to the control of the Participant. In such cases both the Participant and the non-principal shall be accountable for compliance with these policies.
 - f. MLS data on a IDX shall be refreshed not less frequently than every seven (7) days.
 - g. Except as provided elsewhere in this policy or elsewhere in an MLS's Rules and Regulations, an IDX or a Participant operating an IDX may not distribute, provide, or make any portion of the MLS database accessible to any person or entity.
 - h. Any listing displayed on a IDX shall identify the listing firm in typeface not smaller than the median used in the display of listing data..
 - i. A Participant's IDX must display a privacy policy that informs Registrants of the ways in which information obtained from them will be used.
 - j. A Participant may exclude listings from display on the Participant's IDX based only on objective criteria such as geography, list price, type of property, or cooperative compensation offered by listing brokers.

k. A Participant may not provide the identity of a Registrant to any other entity for compensation. Notwithstanding the foregoing, a Participant may provide the identity of a Registrant to another broker for compensation if (1) the Participant's residential real estate brokerage activities principally consist of listing or selling the types of property required to be filed with the MLS, (2) the Registrant is seeking property of a type, price range, or in a location for which the Participant does not ordinarily provide real estate brokerage services, and (3) the number of Registrant identities provided or the corresponding revenue generated is an insubstantial portion of the Participant's real estate brokerage activities. (For purposes of this paragraph, selling does not include making referrals of prospective purchasers to other real estate brokers and listing does not include making referrals of prospective sellers to other real estate brokers.)

l. MLS Participants must notify the MLS of their intention to establish an IDX and make their IDX directly accessible to the MLS for the purposes of monitoring/ensuring compliance with applicable rules and policies.

APPENDIX “A”

Sanctions Available for MLS Rules Violations and Data Misappropriation

Internal Remedies for MLS Rules Violations

1. A fine of up to \$5,000.
2. Suspension of MLS privileges
3. Termination of MLS privileges

Judicial Remedies for Data Misappropriation and Copyright Infringement

1. Injunctive relief
2. Statutory damages, which may range from \$750 to \$30,000, in the discretion of the court, or up to \$150,000 if the infringement is willful.
3. Actual damages and lost profits.
4. Attorneys fees and costs, at the discretion of the court.
5. Potential criminal penalties.