

IDX AGREEMENT

This IDX Agreement (the "Agreement") is between the Santa Barbara Multiple Listing Service ("SBMLS"), Constellation Web Solutions ("Vendor"), and a member of SBMLS that has retained Vendor, _____ ("Client") as of _____ (the "Effective Date"). This Agreement is entered into at Santa Barbara, California.

BACKGROUND

- A. The purpose of this Agreement is to establish the terms and conditions upon which Vendor may access on behalf of Client the multiple listing database (the "Content") maintained by SBMLS. The Content does not include those listings for which the property seller or broker member has opted out of broker reciprocity.
- B. Vendor agrees to use the Content solely for the purpose of accessing the Content on an Internet site or in-house multiple listing system for the Client. All of Vendor's clients that use the Content must be current members in good standing with SBMLS and its multiple listing service.

AGREEMENT

SBMLS, Vendor and Client hereby agree as follows:

1. VENDOR'S CLIENT

Vendor and Client both represent and warrant that Vendor has been engaged by Client and that Client is a member of SBMLS and its multiple listing system in good standing, that Client (or Client's broker) has opted in to Broker Reciprocity; and, that Vendor has been hired by Client to develop, modify, enhance or manage Client's in house multiple listing system or Internet site which uses the Content pursuant to Client's membership with SBMLS (the "Client Site"). Vendor and Client shall notify SBMLS within five (5) days of any change in these representations and warranties.

2. RULES AND REGULATIONS OF SBMLS

Vendor represents and warrants that it has been provided and agrees to read and abide by the rules and regulations of SBMLS and its multiple listing service with the same force and effect as those rules and regulations apply to Client.

3. LICENSE

SBMLS hereby grants to Vendor a non-exclusive and non-transferable license (the "License") solely to copy, display, reproduce the Content in digital form and to combine digitized versions of the Content with other digitized images, photographs, animation, video, audio, text, software and other Content (the "Modified Content") exclusively for use on the Client Site. Vendor may use the License for the purpose of copying, reproducing, transmitting, communicating, displaying or distributing the Content and/or the Modified Content exclusively as part of the Client Site, but only to the extent allowed by and subject to the restrictions, limitations and obligations Client has to SBMLS. SBMLS shall have the

right to review the implementation and placement of the Content on the Client Site at any time. Furthermore, Vendor may not use the content or any derivative of the content on any other site or for any other purpose than described herein. All additional Vendor Clients wishing to use the content require a separately executed contract.

4. TERM

The term of this agreement shall begin as of the Effective Date and end on December 31 and, unless terminated earlier, shall automatically renew for successive one year terms beginning January 1 of each successive year.

5. TERMINATION

SBMLS shall have the right to terminate the License at any time for any breach of the terms and conditions of this Agreement, for the termination of Vendor by Client, or for a breach of Client's membership in SBMLS (e.g. for nonpayment of dues). SBMLS may also terminate this Agreement, upon thirty (30) days written notice to Vendor, in the event SBMLS is charged a fee from its MLS system vendor for making the Content available to Vendor. Vendor may terminate this Agreement at any time. SBMLS also reserves the right to terminate this agreement without cause subject to the provisions below. Upon termination of the License by either party:

- 5.1 The Vendor shall purge all of the Content and the Modified Content from its computers and destroy all of the copies of the Content and the Modified Content maintained by the Vendor on whatever medium;
- 5.2 The Vendor shall certify to SBMLS that it has purged and destroyed all the Content and the Modified Content and all copies thereof in accordance herewith; and,
- 5.3 The Vendor shall cease all use of the Content and the Modified Content whether on the Client's System or in any other location or usage.
- 5.4 If terminated by SBMLS without cause, any fees or payments by Vendor will be prorated and returned.

The termination of this agreement by any party shall not constitute or be deemed to constitute a waiver or release by any party of any right or claim such party may have against any other party to this agreement based on any act or omission of such other party occurring on or before termination.

5. SBMLS OWNERSHIP OF MODIFIED CONTENT

Vendor hereby irrevocably assigns to SBMLS all of Vendor's rights in the Modified Content, including, without limitation, the images and text which are viewable on the Client's Site. All such materials shall belong exclusively to SBMLS and Vendor agrees to assist SBMLS in the perfection and enforcement of any of SBMLS's rights pursuant to this Agreement. Nothing in this Agreement shall constitute a transfer of title to the Content or the Modified Content, including all photographs, images and data therein, to Vendor. Vendor hereby acknowledges and agrees that SBMLS owns and retains all rights, title and interest in and to the Content and the Modified Content, including all photographs,

images and data therein, and that Vendor shall have no right to retain or use any of the Content or the Modified Content following the termination of this Agreement. Furthermore, Vendor agrees not to challenge any intellectual property right claimed by SBMLS in or to the Content or the Modified Content, including any effort by SBMLS to obtain and hold in its name copyrights, registration or other protection that may be appropriate for the protection of the Content and the Modified Content, and any extensions or renewals of such protections.

6. CONFIDENTIALITY

Vendor hereby agrees that all of the material accessed by or disclosed by SBMLS to the Vendor, including the Content and the Modified Content, shall be presumed to be confidential trade secrets of SBMLS and proprietary information of SBMLS. Vendor agrees to use its best efforts to maintain and preserve the confidentiality of all such materials and to not disclose such information to third parties other than the Client, and then only to the extent as is covered by or subject to the Client's rights as a member of SBMLS and its Multiple Listing system. Vendor shall not make any other disclosure of such information without the prior written consent of SBMLS.

7. NO WARRANTY

THE CONTENT AS PROVIDED BY SBMLS IS "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SBMLS ALSO DOES NOT WARRANT THE ACCURACY OF THE INFORMATION IN THE CONTENT. VENDOR HEREBY RELEASES AND DISCHARGES SBMLS, ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES FROM ANY AND ALL CLAIMS ARISING FROM OR BASED UPON THE OWNERSHIP, RIGHT TO USE OR ACCURACY OF ANY OF THE CONTENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL SBMLS, ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR IN CONNECTION WITH THIS AGREEMENT OR VENDOR'S USE OF THE CONTENT.

8. NO ASSIGNMENT

Vendor may not transfer any of its rights in this Agreement to any party without the prior written consent of SBMLS.

9. INDEMNIFICATION

Vendor agrees to indemnify, defend and hold harmless SBMLS, its members, officers, directors, employees, agents and representatives from and against all claims arising out of Vendor's use of the Content, the Modified Content and/or this Agreement.

10. GOVERNING LAW

This Agreement shall be governed by, and construed under, the laws of the State of California. Any legal action pertaining to this agreement shall be brought in the Santa Barbara Superior Court.

11. BINDING UPON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and inure to the benefit of any permitted successors, executors, heirs, representatives, administrators and assigns of the parties to this Agreement.

12. ENTIRE AGREEMENT

This Agreement sets forth the entire Agreement between Vendor, Client and SBMLS concerning Vendor's use of the Content and/or the Modified Content.

13. AMENDMENT

This agreement may not be amended or modified in any manner except by a written agreement signed by SBMLS, Vendor and Client.

14. NO JOINT VENTURE

Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between SBMLS, Vendor and/or Client. Except as expressly set forth in this Agreement, none of the parties are authorized by virtue of this Agreement to act as an agent, employee or legal representative of any of the others, and the relationships of the parties are, and at all times will continue to be, that of Independent Contractors (other than all pre-existing and on-going relationships between Client and SBMLS which are governed by separate agreements, rules and regulations).

15. WAIVER

No waiver of any right or obligation under this Agreement by any party at any occasion shall be deemed to operate as a waiver of any such right or obligation on any subsequent occasion.

16. SEVERABILITY

If any provision of this Agreement shall be held to be void or unenforceable, such provision shall be considered by all parties to be severed from this Agreement. All remaining provisions of the Agreement shall be considered by all parties to remain in full force and effect.

17. SURVIVAL OF VENDOR'S OBLIGATION AFTER TERMINATION

Notwithstanding any termination of the License, Vendor's obligations upon termination, of confidentiality, of indemnification and for attorney's fees shall survive the termination of this Agreement.

18. INTERPRETATION

Each party this agreement represents that they have been represented by independent legal counsel and the rule of construction that this agreement shall be interpreted against the drafting party shall not apply.

19. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall be considered the same agreement.

20. ATTORNEY'S FEES

In the event of any lawsuit or other legal proceeding concerning this Agreement between the parties, the prevailing party shall be entitled to its reasonable attorney's fees, expenses and costs in addition to any damages and injunctive or other relief.

21. FEES

Vendor agrees to pay SBMLS 10% per year of all revenues generated from selling IDX products or services to the Client. Vendor agrees to report all client fees received, and submit the 10% payment to SBMLS on an annual basis. Reports shall be submitted on the form attached as exhibit "A", beginning January 1 each year. Payment for members that purchase IDX products between January and December are due January 1. For vendors that do not charge the client for IDX products or services, SBMLS will charge a \$50 annual license fee per client. Any payment that is not received within 10 days of the due date will incur a 10% late charge. If the outstanding balance is not received within 30 days of the due date, IDX services will be terminated.

VENDOR Signature: David Dilly

Title: Data & Compliance Manager

Dated: _____

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

CLIENT Signature: _____

Dated: _____

I, _____, Broker for Client, hereby concur in Client's authority to enter into this Agreement.

BROKER Signature: _____

Dated: _____

SANTA BARBARA MULTIPLE LISTING SERVICE, INC.

Signature: _____

Title: _____

Dated: _____