

GFC CMLS IDX Contract (version 3.1 effective 8/3/09)

Agreement to access the IDX data feeds

Note: By completing this agreement you are creating a legally binding contract between your brokerage firm (and optionally an agent affiliated with the firm), the GFC CMLS and the vendor, developer or consultant that will build and/or provide your firm with an IDX solution.. By submitting this agreement, you are becoming an Internet Data Exchange Subscriber (IDXs) and or authorizing an affiliated agent to provide IDX data on the agent's website. **This agreement must be filled out completely and signed by: (i.) the consultant/vendor, (ii.) an owner of the GFC CMLS member firm or its authorized representative (and affiliated agent when appropriate).** Once it has been filled out and signed, fax or mail it to the GFC CMLS at Suite 23, 101 Merritt 7 Corp. Park, Norwalk, CT 06851-6216, Fax: (203) 840-6678. The GFC CMLS 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 Greater Fairfield County CMLS, Inc. (GFC CMLS), the GFC CMLS member real estate firm (and affiliated agent when appropriate) whose name(s) and contact information appear on the signature page of this Agreement designated "Firm/Broker/Agent Information and Signature" (the "**Firm**"), and the companies/individuals whose names, contact information and signatures appear on the signature page of this Agreement designated "Consultant/Vendor Information and Signature" (collectively, "**the Consultants**").

RECITALS

2. The firm wishes to obtain, and the GFC CMLS wishes to provide, data for firm's or designated affiliated agent's website, including the listing data of other real estate brokerages participating in the GFC CMLS. The 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.

Affiliated Agent: A licensed sales agent affiliated with an owner/broker or appraiser (Participant) of a firm holding membership in the Greater Fairfield County CMLS, Inc.

IDX Subscriber (IDXs): The owner/broker or appraiser (Participant) of a firm holding membership in the Greater Fairfield County CMLS, Inc.

Internet Data Exchange Database or IDX Data: The current aggregate compilation of all active and recently sold exclusive listings and optionally public open house data and photos, of all Internet Data Exchange Subscribers except those listings where the property seller has opted out of Internet publication by so indicating on the listing contract. The GFC CMLS owns the IDX Data.

Internet Data Exchange Subscriber or IDXs: An IDX Subscriber who gives permission to other IDX Subscribers to display its active and recently sold listings and optional public open house data on their websites in return for their permission to advertise their listings on its website.

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 the GFC CMLS, as amended from time to time, and any operating policies relating to the IDX Data and IDXs promulgated by the GFC CMLS.

Subscriber Data: Data relating to real estate for sale, previously sold or scheduled for a public open house, including the IDX Data, and data relating to GFC CMLS Members and Subscribers, entered into the Compass System. The GFC CMLS owns the Subscriber Data.

GFC CMLS' OBLIGATIONS

4. During the term of this Agreement, the GFC CMLS grants to IDX or its Affiliated Agent, as appropriate, a license to:
 - a. Display the IDX Data on Firm's or Affiliated Agent's website, and
 - b. Make copies of the IDX Data to the extent necessary to deliver the IDX Data to consumers on Firm's or Affiliated Agent's website.
 - c. Use the "IDX Detail Logo" and the "IDX Thumbnail Logo".
5. During the term of this Agreement, the GFC CMLS agrees to provide to Firm or Affiliated Agent and its Consultants:
 - a. Access to the IDX Data via the Internet using File Transfer Protocol ("**FTP**"), under the same terms and conditions GFC CMLS offers to other Subscribers;
 - b. Seven (7) days' advance notice of changes to the file and record formats of the IDX Data;
 - c. Seven (7) days' advance notice of changes to the Rules and Regulations.

FIRM'S/AFFILIATED AGENT'S OBLIGATIONS

6. Firm and Affiliated Agent shall comply with the GFC CMLS Rules and Regulations at all times.
7. Firm and Affiliated Agent acknowledges the GFC CMLS' ownership of the copyrights in the Subscriber Data, the IDX Data, the "IDX Detail Logo" and the "IDX Thumbnail Logo".
8. Firm and Affiliated Agent shall comply with the requirements relating to Confidential Information set forth below.
9. In the event that Firm desires to make the 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.
10. If the GFC CMLS notifies the Firm or Affiliated Agent of a breach of the Rules or this Agreement and Firm or Affiliated Agent does not immediately cure such breach, Firm agrees that the GFC CMLS may seek cure from the Consultants, or any one of them.
11. Firm or Affiliated Agent shall notify the GFC CMLS within five (5) business days of any change to the information relating to Firm or Affiliated Agent on the Firm/Broker/Agent Information and Signature page below.

CONSULTANT'S OBLIGATIONS

12. If the GFC CMLS notifies the Firm of a breach of the Rules or this Agreement and the Firm does not immediately cure such breach, the GFC CMLS may contact Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with the GFC CMLS and act immediately upon notification by the GFC CMLS of an uncured breach by Firm.
13. The Consultant acknowledges the GFC CMLS' ownership of the copyrights in the Subscriber Data, the IDX Data, the "IDX Detail Logo" and the "IDX Thumbnail Logo".
14. The Consultant shall comply with the requirements relating to Confidential Information set forth below.
15. The Consultant shall notify the GFC CMLS within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page below.

CONFIDENTIAL INFORMATION

16. **“Confidential Information”** is information or material proprietary to the GFC CMLS or designated “confidential” by the GFC CMLS and not generally known to the public, that Firm, Affiliated Agent or Consultant 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 the GFC CMLS obtains from any third party that the GFC CMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by the GFC CMLS.
17. **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 the GFC CMLS, to the extent of such consent;
 - d. Becomes known to the Receiving Party from a source other than the GFC CMLS 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 the GFC CMLS; or
 - e. Is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to the GFC CMLS prompt notice of any such order.
18. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with the GFC CMLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by the GFC CMLS.
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 GFC CMLS Rules and Regulations 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.
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 the GFC CMLS 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.
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 the GFC CMLS. If the GFC CMLS 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 that 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 the GFC CMLS' prior written consent. In the event the GFC CMLS grants 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 by the GFC CMLS, the Receiving Party will return to the GFC CMLS all Confidential Information and all other materials provided by the GFC CMLS 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 the GFC CMLS, an officer of the Receiving Party will certify in writing that all materials have been returned to the GFC CMLS 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 "The GFC CMLS Information and Signature Page" below. The GFC CMLS 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. The GFC CMLS' notice to Firm that this Agreement is terminated.
 - b. Firm's notice to the GFC CMLS that it no longer intends to display IDX Data on its website.
 - c. Termination of Firm's or Affiliated Agent's GFC CMLS membership privileges.

GENERAL PROVISIONS

25. **Survival of Obligations.** The obligations of Firm/Affiliated Agent set forth under "Firm's/Affiliated Agent's Obligations" above and the obligations of Consultants under "Consultants' Obligations" above shall survive the termination or expiration of this Agreement.
26. **The GFC CMLS' Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Firm/Affiliated Agents and Consultants acknowledge that the GFC CMLS 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 the GFC CMLS for a breach. The GFC CMLS 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/Affiliated Agent or Consultants or any one of them, without showing or proving any actual damages sustained by the GFC CMLS.
27. **Attorney's fees.** If the GFC CMLS 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 the GFC CMLS' reasonable attorney's fees and costs for such legal action.
28. **Limitation of Liability.** The GFC CMLS' liability to Firm/Affiliated Agent and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by Firm and Consultants to the GFC CMLS, if any, under this Agreement. Firm's/Affiliated Agent's and Consultants' only other remedy shall be termination of this Agreement. The GFC CMLS shall not be liable for any incidental or consequential damages under any circumstances, even if the GFC CMLS has been advised of the possibility of such damages. The GFC CMLS shall have no liability for inaccuracies in the IDX Data or the Subscriber Data.
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. **No Assignment.** Neither Firm/Affiliated Agent 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 the GFC CMLS.
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 GFC CMLS Rules and Regulations 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 Connecticut.

Broker/Firm/Agent Information and Signature Page

PLEASE TYPE OR PRINT CLEARLY

Broker/Agent Name: _____

MLS/User ID: _____ Phone w/ Area Code: _____

Broker/Agent Email Address: _____

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

Firm/Company Name: _____

MLS/Office ID: _____ Phone w/ Area Code: _____

Address Line 1: _____

Address Line 2: _____

City: _____ State: _____ Zip: _____

Office Fax number w/area code: _____

Website URL(s) on which IDX will be displayed: _____

For Office websites only the Participant (Broker) must sign below.

For Agent websites both the Agent and the Participant (Broker) must sign below.

The parties signing below acknowledge and agree to comply with all GFC CMLS IDX policies and understand that IDX services will not be provided to Participants and Subscribers whose services have been suspended or terminated for any reason.

broker
signature
required:

Participant Signature

Date

agent
signature
required

Agent Signature

Date

GFC CMLS Information and Signature Page

The GFC CMLS will fill out the information required below after signing this Agreement. The GFC CMLS will then return a copy of this Agreement to Firm/Affiliated Agent and Consultant. The following information is Confidential Information under this Agreement.

Entered into on behalf of GFC CMLS by:

_____ *Signature*

_____ *Print Name*

_____ *Title*

_____ *Effective Date*

FTP URL: _____

FTP User ID: _____

FTP Password: _____

Consultant's Name: Constellation Web Solutions

Listing Office ID: _____

Listing Office Name: _____

Broker or Contact Person: _____

Affiliated Agent's Name (if applicable): _____

Affiliated Agent's MLS ID (if applicable): _____