

Multiple Listing Service of the Greater Northwest Indiana Association of REALTORS®

Participant Data Access Agreement

This AGREEMENT is made and entered into by Multiple Listing Service of the Greater Northwest Indiana Association of REALTORS® ("GNIAR/MLS"), with offices at 800 East 86th Avenue, Merrillville, IN 46410; _____ ("Firm"), with offices at _____; the Subscribers affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the "Subscriber Party"); and Constellation Web Solutions _____ ("Consultant"), with offices at 6737 W. Washington St. Ste 2120 West Allis, WI 53214.

DEFINITIONS

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

Subscriber: Any person holding a real estate license in Indiana who is not a Participant (as the term is defined in the MLS Policies) but who is subject to a Participant's supervision under the laws of Indiana. This definition includes associate brokers and non-principal brokers.

Confidential Information: "Confidential Information" means information or material proprietary to a party or designated "confidential" by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all GNIAR/MLS Data, except to the extent to which this Agreement and the GNIAR/MLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that GNIAR/MLS obtains from any third party that GNIAR/MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by GNIAR/MLS; (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims and evidence presented by any party in any arbitration under this Agreement. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

Data Interface: The transport protocols and data storage formats provided by GNIAR/MLS for use by Firm, Subscriber Party, and Consultant; GNIAR/MLS may modify the Data Interface in its sole discretion from time to time.

Firm-Related Persons: Consultant, if any, and employees of Firm who are not Subscribers or broker/managers.

Firm Internal Use: Any use of those portions of the GNIAR/MLS Data relating to Firm's own listings; and any use of those portions of the GNIAR/MLS Data relating to listings of Participants other than Firm that exposes GNIAR/MLS Data only to Firm-Related Persons and to Subscribers affiliated with Firm, subject to the GNIAR/MLS Policies.

GNIAR/MLS Data: Data relating to real estate for sale, previously sold, or listed for sale and data relating to GNIAR/MLS Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into GNIAR/MLS's databases by GNIAR/MLS Participants and GNIAR/MLS, or on their behalf.

GNIAR/MLS Policies: GNIAR/MLS's Rules and Regulations, as amended from time to time, and any operating policies promulgated by GNIAR/MLS.

IDX: Use and display of portions of the GNIAR/MLS Data under the IDX provisions of the GNIAR/MLS Policies.

Participant: This term has the meaning given to it in the GNIAR/MLS Policies. For purposes of this Agreement, "Participant" does not apply to participants of MLSs other than GNIAR/MLS. Where applied in this Agreement to Participants other than Firm, "Participant" also includes Subscribers affiliated with those Participants for whom the Participants are responsible under the laws of the State of Indiana.

VOW: Use and display of portions of the GNIAR/MLS Data under the Virtual Office Website (VOW) provisions of the GNIAR/MLS Policies.

GNIAR/MLS'S OBLIGATIONS

2. GNIAR/MLS grants to Firm and Subscriber Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the GNIAR/MLS Data, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement; any other use of the GNIAR/MLS Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. GNIAR/MLS retains all rights not expressly granted herein.

3. GNIAR/MLS agrees to provide to Firm (and Subscriber Party, where applicable) and Consultant, during the term of this Agreement, (a) access to the GNIAR/MLS Data via the Data Interface under the same terms and conditions GNIAR/MLS offers to other GNIAR/MLS Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the GNIAR/MLS Policies. GNIAR/MLS does not undertake to provide technical support for the Data Interface or the GNIAR/MLS Data.

FIRM'S OBLIGATIONS

4. Firm and Subscriber Party shall comply with the GNIAR/MLS Policies at all times. In the event of any perceived conflict between the GNIAR/MLS Policies and this Agreement, the GNIAR/MLS Policies shall prevail and govern.

5. Firm and Subscriber Party shall use the GNIAR/MLS Data obtained under this Agreement for Firm Internal Use, IDX, or VOW use. Any other use is strictly prohibited. Firm and Subscriber Party shall not make the GNIAR/MLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Subscriber Party may display the GNIAR/MLS Data on a web site available to the public only to the extent permitted by the GNIAR/MLS Policies and then only on a site or sites resident at the second-level and third-level domain(s) indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Subscriber Party acknowledge that ownership and use rights relating to copyrights in the GNIAR/MLS Data are defined in the GNIAR/MLS Policies or in the terms of the participant and subscriber agreements between GNIAR/MLS Firm and Subscriber Party, or both. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If GNIAR/MLS notifies Firm or Subscriber Party of a breach of the GNIAR/MLS Policies or this Agreement and Firm or Subscriber Party does not immediately cure the breach, Firm and Subscriber Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with GNIAR/MLS under Paragraph 10.

8. Firm shall pay the fees, if any, that GNIAR/MLS customarily charges other GNIAR/MLS Participants for data access. Firm acknowledges receipt of GNIAR/MLS's current schedule of such fees, if any. GNIAR/MLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm. Firm shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Subscriber Party's and Consultant's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

CONSULTANT'S OBLIGATIONS

10. Consultant shall immediately correct any breach of this Agreement or violation of the GNIAR/MLS Policies within its control, whether committed by Firm, Subscriber Party, or Consultant, upon notice from GNIAR/MLS.

11. Consultant acknowledges that (as among the parties to this Agreement) Firm and GNIAR/MLS possess all right, title, and interest in all copyrights in the GNIAR/MLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

12. Consultant shall not make the GNIAR/MLS Data or the Confidential Information available to any third party, except on behalf of Firm and Subscriber Party and in a manner consistent with Firm's and Subscriber Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the GNIAR/MLS Data, whether commercial or personal. In the event that Consultant provides services to Participants other than Firm (or to Subscribers affiliated with Firm other than the Subscriber Party), Consultant must enter separate contracts with GNIAR/MLS. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant; and in the case of Subscribers, that each Subscriber Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in GNIAR/MLS terminating all of Consultant's access(es) to the GNIAR/MLS Data under this Agreement and all similar agreements. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

13. Consultant shall notify GNIAR/MLS within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

AUDITS OF COMPLIANCE

14. GNIAR/MLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Subscriber Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Subscriber Party's, and Consultant's compliance with this Agreement ("Audit"). GNIAR/MLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Subscriber Party's, and Consultant's web sites and systems to ensure that GNIAR/MLS Data is displayed in accordance with the GNIAR/MLS Policies; using all features available to end-users of Firm's, Subscriber Party's, and Consultant's systems that employ the GNIAR/MLS Data; and posing as consumers to register and test services Firm, Subscriber Party, and Consultant make available to consumers using the GNIAR/MLS Data. GNIAR/MLS shall pay the costs it incurs, and the out-of-pocket costs Firm, Subscriber Party, and Consultant incur, as part of any Audit; provided, however, Firm shall be liable for all costs of any Audit that discloses that Firm, Subscriber Party, or Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

15. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

16. The term of this Agreement begins on the date that GNIAR/MLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in GNIAR/MLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide IDX or VOW services to it; (f) with regard to any Subscriber Party, immediately upon any event that results in the Subscriber Party no longer being affiliated with Firm; (g) as provided in Paragraphs 26 and 29.

17. In the event Firm's privileges as a Participant (or Subscriber Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect and GNIAR/MLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if GNIAR/MLS resumes its obligations under Paragraphs 2 and 3. In the event Firm, Subscriber Party, or Consultant breaches this Agreement and entitles GNIAR/MLS to terminate under Paragraph 16, GNIAR/MLS may in its sole discretion suspend its performance instead of terminating this Agreement. GNIAR/MLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Subscriber Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, neither Firm, Subscriber Party, nor Consultant shall make any further use of the GNIAR/MLS Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Subscriber Party's rights under this Agreement are restored.

GENERAL PROVISIONS

18. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of Indiana, without regard to its conflicts and choice of law provisions.

19. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

20. **GNIAR/MLS's Remedies.** (a) Injunctive relief: Because of the unique nature of the GNIAR/MLS Data and Confidential Information, Firm, Subscriber Party, and Consultant acknowledge and agree that GNIAR/MLS would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate GNIAR/MLS for a breach. GNIAR/MLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Subscriber Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by GNIAR/MLS, and without

posting any bond. (b) Liquidated damages: Firm, Subscriber Party, and Consultant acknowledge that damages suffered by GNIAR/MLS from access to the GNIAR/MLS Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the GNIAR/MLS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to GNIAR/MLS to enter into this Agreement, Firm, Subscriber Party, and Consultant agree that in the event Firm, Subscriber Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the GNIAR/MLS Data or disclose the GNIAR/MLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Subscriber Party, and Consultant shall be liable to GNIAR/MLS for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Subscriber Party, and Consultant under this paragraph is joint and several.

21. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL GNIAR/MLS BE LIABLE TO FIRM, SUBSCRIBER PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF GNIAR/MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL GNIAR/MLS BE LIABLE TO FIRM, SUBSCRIBER PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, SUBSCRIBER PARTY, AND CONSULTANT HAVE PAID GNIAR/MLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, SUBSCRIBER PARTY, AND CONSULTANT ACKNOWLEDGE THAT GNIAR/MLS PROVIDES THE GNIAR/MLS DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY. GNIAR/MLS SHALL NOT BE LIABLE TO FIRM, SUBSCRIBER PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE GNIAR/MLS DATA, ANY FAILURE TO UPDATE THE GNIAR/MLS DATA PROMPTLY, OR THE GNIAR/MLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. GNIAR/MLS makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.

22. **Dispute resolution; Attorney's fees.** In the event GNIAR/MLS claims that Firm, Subscriber Party, or Consultant has violated the GNIAR/MLS Policies, GNIAR/MLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the GNIAR/MLS Policies, provided GNIAR/MLS does not also base a claim that Firm, Subscriber Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any controversy or claim to which Consultant is not a party arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Indiana located in Lake County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to GNIAR/MLS's disciplinary procedures or to arbitration. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

23. **Indemnification.** Subject to Paragraph 21, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated

companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

24. **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 herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

25. **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.

26. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

27. **Entire Agreement.** Subject to GNIAR/MLS Policies, 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, relating to the same.

28. **Relationship of the Parties.** The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of GNIAR/MLS or have any authority to make any agreements or representations on the behalf of GNIAR/MLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

29. **Severability.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

Multiple Listing Service of the Greater Northwest Indiana Association of REALTORS®

Participant Data Access Agreement

Under this Agreement, **FIRM AND SUBSCRIBER PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Subscriber Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with GNIAR/MLS and each such consultant. Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM AND SUBSCRIBER PARTY NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Subscribers affiliated with Firm except the Subscriber Party. Consultant must enter into a new version of this Agreement with GNIAR/MLS and each additional Participant or amend this Agreement with GNIAR/MLS to add additional Subscribers affiliated with Firm as Subscriber Parties.

If Firm or Subscriber Party will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box before returning this Agreement to GNIAR/MLS. If this Agreement is for services to Firm only, and there is no Subscriber Party, Firm should cross out the Subscriber Party signature box before returning this Agreement to GNIAR/MLS.

<p style="text-align: center; border: 1px solid red; display: inline-block; padding: 2px;">Broker info and signature needed</p>	<p style="text-align: center; border: 1px solid red; display: inline-block; padding: 2px;">Agent info and signature needed</p>
<p>FIRM</p> <p>_____</p> <p>Firm name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>_____</p> <p>Name of owner or officer</p> <p>Date: _____</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____</p> <p>2nd Level Domain: _____</p> <p style="text-align: center; font-size: small;">If Applicable</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>	<p>SUBSCRIBER PARTY</p> <p>(If there is more than one, have each named and sign on Exhibit A.)</p> <p>_____</p> <p>Subscriber Party name</p> <p>_____</p> <p>Signature of Subscriber Party</p> <p>Date: _____</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____</p> <p>2nd or 3rd Level Domain: _____</p> <p style="text-align: center; font-size: small;">If Applicable</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>
<p>GNIAR/MLS</p> <p>Multiple Listing Service of the Greater Northwest Indiana Association of REALTORS®</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name</p> <p>Date: _____</p> <p>(effective date of this Agreement)</p> <p>Contact for notices and operations matters</p> <p>Name: <u>GNIAR/MLS Support</u></p> <p>Phone: <u>219-795-3600</u></p> <p>Email: <u>MLSsupport@gniar.com</u></p> <p>Mailing: <u>800 E 86th Ave, Merrillville, IN 46410</u></p>	<p>CONSULTANT</p> <p>Constellation Web Solutions</p> <p>_____</p> <p>Consultant name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>Dan Dlhy</p> <p>_____</p> <p>Name of owner or officer</p> <p>Date: _____</p> <p>Contact for notices and operations matters</p> <p>Name: <u>Dan Dlhy</u></p> <p>Phone: <u>425-636-6910</u></p> <p>Email: <u>brokersolutions@constellationws.com</u></p> <p>Mailing: <u>6737 W. Washington St. Ste 2120</u> <u>West Allis, WI 53214</u></p>

Multiple Listing Service of the Greater Northwest Indiana Association of REALTORS®
Participant Data Access Agreement
Exhibit B – Data Access Fee Schedule

GNIAR/MLS RETS Server

Development & Start-up Fee (Due at signing)	Monthly Fee (Billed Quarterly)
\$1,000.00 (Waived if Consultant has paid the \$1,000 one-time fee.)	\$50.00 *

* Monthly fee assessed per individual office and or affiliated offices.

The GNIAR/MLS RETS (Real Estate Transaction Standard) server is updated routinely to be in sync with the GNIAR/MLS database. Access is subject to review and approval by the GNIAR/MLS staff. Support provided by GNIAR/MLS staff to resolve issues not related to a RETS upgrade is billed at \$150.00/hr.