

IDX CONTRACT
Access to Internet Data Exchange Data Feed

Note: This form is a legally binding contract between you and the Pinehurst-Southern Pines Area MLS, Inc. Simultaneously or prior to submitting this form/contract, you must become a Internet Data Exchange Subscriber (IDX Subscriber). See the MLS's *Internet Data Exchange: Broker Informational Packet* for further details. **This form/contract must be filled out completely and signed by the Participant of your firm. There are no exceptions.** Once you have filled it out and signed it, fax, mailed, emailed or hand delivered it to the Pinehurst-Southern Pines Area MLS at 550 S. Ashe Street, Southern Pines, NC 28387, FAX: 910-692-1609. The MLS will process the application and return a copy to the Consultant/Vendor with information on how to access the data feed.

AGREEMENT

This **AGREEMENT** is made and entered into by and among the Pinehurst-Southern Pines Area MLS, Inc. ("**MLS**"), 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 names and contact information appear on the signature pages of this Agreement designated "Consultant Information and Signature" (collectively, "**the Consultants**"), if any.

RECITALS

Firm wishes to obtain, and the MLS wishes to provide data for Firms web site, including the listing data of other real estate brokerages participating in the MLS. 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

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 Subscribers except those listings where the property seller has opted out of Internet publication by so indicating on the listing contract. The Pinehurst-Southern Pines Area MLS, Inc. owns the IDX Data.

Internet Data Exchange Subscriber or IDX Subscriber: 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.

In order to be an IDX Subscriber the MLS Participant must:

A. Have agents actively representing buyers or sellers in real estate transactions through exclusive right to sell or exclusive agency listing agreements, or through

exclusive or non-exclusive buyer agency agreements or any other form of written buyer agency agreements.

B. Comply with all applicable North Carolina laws, rules and regulations governing real estate.

Note: There shall be only one IDX Subscriber per office. Companies with multiple offices must designate an IDX Subscriber for each office. The IDX Subscriber may be the same broker or a different broker for each separate office location.

Multiple Listing Service: A means to 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 MLS as amended from time to time, and any operating policies relating to the IDX Data and IDX Subscribers promulgated by the MLS.

Subscriber: Any real estate broker, appraiser, or other real estate related business professional that purchases Multiple Listing Services from the MLS.

Subscriber Data: Data relating to real estate for sale, previously sold or listed for sale, including the Internet Data Exchange Database, and data relating to Subscribers entered into the MLS System by Subscribers and the MLS. The Pinehurst-Southern Pines Area Association of REALTORS® owns the Subscriber Data.

MLS'S OBLIGATIONS

1. During the term of this Agreement, the MLS grants to Firm a 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 Firm's web site.
2. During the term of this Agreement, the MLS agrees to provide to Firm and its Consultants:
 - a. access to the IDX Data under the same terms and conditions the Association offers to other Subscribers;
 - b. seven (7) days advance notice of changes to the file and record formats of the IDX Data; and
 - c. seven (7) days advance notice of changes to the Rules.

FIRM'S OBLIGATIONS

1. Firm shall comply with the Rules at all times
2. Firm acknowledges the Association's ownership of the copyrights in the Subscriber Data and the IDX Data
3. Firm shall comply with the requirements relating to Confidential Information set forth below.
4. 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.
5. If the MLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that the MLS may seek cure from the Consultants, or any one of them,
6. Firm shall notify the MLS within five (5) business days of any change to the information relating to Firm on the Firm Information and Signature page below.

CONSULTANTS' OBLIGATIONS

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

CONFIDENTIAL INFORMATION

1. **"Confidential Information"** is information or material proprietary to the MLS or designated "confidential" by the MLS 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 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 MLS obtains from any third party that the MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by the MLS.
2. **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 MLS, to the extent of such consent
 - d. becomes known to the Receiving Party from a source other than the MLS 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 MLS; or
 - e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to the MLS prompt notice of any such order.
3. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with the MLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by the MLS
4. **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.
5. **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 MLS 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.
6. **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 MLS. If the MLS 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.
7. **Restrictions on Use Location restriction.** The Receiving Party will not remove the Confidential Information from its principal place of business without the MLS's prior

written consent. In the event the MLS grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.

8. 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 MLS, the Receiving Party will return to the MLS all Confidential Information and all other materials provided by the MLS to the Receiving Party. The Receiving Party will also erase, delete, or destroy any Confidential Information stored on magnetic media on other computer storage, including system backups. Upon the request of the MLS, an officer of the Receiving Party will certify in writing that all materials have been returned to the MLS and all magnetic or computer data has been destroyed.

TERM AND TERMINATION

The term of this Agreement begins on the "Effective Date" set forth on the "PSPAAR MLS Information and Signature Page" below. The MLS has the right to 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. The MLS's notice to Firm that this Agreement is terminated.

- b. Firm's notice to the MLS that it no longer intends to display IDX Data on its web site.

- c. Termination of Firm's privileges as a Participant by the MLS.

GENERAL PROVISIONS

1. 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.

2. MLS's Remedies. Because of the unique nature of the Subscriber Data and Confidential Information, Firm and Consultants acknowledge that the MLS 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 MLS for a breach. The MLS 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 the MLS.

3. Attorney's fees. If the MLS 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 MLS's reasonable attorney's fees and costs for such legal action.

4. Limitation of Liability. The MLS'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 to the MLS, if any, under this Agreement. Firm's and Consultants' only other remedy shall be termination of this Agreement. The MLS shall not be liable for any incidental or consequential damages under any circumstances, even if the MLS has been advised of the possibility of such damages. The MLS shall have no liability for inaccuracies in the IDX Data or the Subscriber Data.

5. **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.
6. **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
7. **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 the MLS.
8. **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.
9. **Applicable law.** This Agreement is governed by and enforced according to the laws of the State of North Carolina.

Principle broker's
information and
signature required

PARTICIPANT FIRM INFORMATION AND SIGNATURE

Firm Name: _____

Participant's Name: _____

E-Mail Address: _____

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

Web Address: _____

(You **must** supply a web address here). **The MLS reserves the right to object to any company name or Web site name proposed by a current or potential Member Participant or Subscriber, which name in the MLS's sole discretion is confusingly similar to any name used in commerce by the Association or the MLS and that the MLS believes would leave the public confused.**

Firm's First Feed? Yes or No _____ Firm's First RETS Feed? Yes or No _____

Firm Address: _____

Firm Phone: _____ Firm Fax: _____

Signing this contract indicates that you have read and understand the Internet Data Exchange Rules and Regulations and agree to abide by them.

Entered into on behalf of the Firm by

Participant's Signature _____

Print Name _____

Date _____

I intend to utilize

- Smart Framing
 RETS Download

To provide listing data to my web site

Note: This is to advise the PSPAMLS that the above named Firm intends to send its data to the company named below (if utilizing the ftp file download) or to have the company named below host the website (if using the smart framing option) and that said Firm agrees to ensure that said company abides by this contract:

Company Name: Constellation Web Solutions

Contact Name: Dan Dhly

Telephone Number: 425-636-6910

E-Mail Address: brokersolutions@constellationws.com

AGENT INFORMATION AND SIGNATURE
(To Be Used for Agent Sites)

Firm Name: _____

MLS Participant's Name: _____

Agent Requesting IDX Feed: _____

E-Mail Address of Agent Requesting Site: _____
(You **must** supply an e-mail address here. This address will be the MLS's principal means of communicating with you for notices under this Agreement.)

Agent's Web Address: _____
(You **must** supply a web address here). **The MLS reserves the right to object to any company name or Web site name proposed by a current or potential Member Participant or Subscriber, which name in the MLS's sole discretion is confusingly similar to any name used in commerce by the Association or the MLS and that the MLS believes would leave the public confused.**

Firm Web Site/Feed the Agent Will Be Framing:

Firm Address: _____

Firm City, ST, Zip: _____

Firm Phone: _____ Firm Fax: _____

Signing this contract indicates that you have read and understand the Internet Data Exchange Rules and Regulations and agree to abide by them.

Both principle broker and agent signature's required

Entered into on behalf of the Firm by

MLS Participant's Signature

Agent's Signature

Print Name

Print Name

Date

Date

Note: This is to advise the PSPAAR MLS that the above named Agent intends to frame their MLS Participant's web site in order to display IDX data. The company named below will host the agent website and said Firm agrees to ensure that said company abides by this contract:

Company Name: Constellation Web Solutions

Contact Name: Dan Dhly

Telephone Number: 425-636-6910

E-Mail Address: brokersolutions@constellationws.com

Consultant/Vendor Information and Signature

NOTE TO FIRM: Reproduce this page for each individual company for 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 the MLS's principal means of communicating with you for notices under this Agreement.)

Consultant Street Address: **6737 W. Washington St., Suite 2120**

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

Phone: **425-636-6910** FAX: **414-918-9216**

Providing Services for _____
Name of Real Estate Firm for Which You are Providing Service

Your Client's Web Address _____

Signing this contract indicates that you have read and understand the PSPAAR Internet Data Exchange Rules and Regulations and agree to abide by them.

Entered into on behalf of Consultant by



Signature

Daniel Dlh

Print Name

Data & Compliance Manager

Title

Date

NOTE TO CONSULTANT: Be sure to enter into this Access to Internet Data Exchange Data Feed Contract with the MLS and every Designated REALTOR® for whom you provide services. If you sign only one and that REALTOR®'S access to the IDX Data is terminated, you will not be able to get the data for your other clients.