

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made and entered into by and between Multiple Listing Service of Chattanooga, Inc., (MLS) and the Participant/Subscriber and Contractant (IDX Vendor) whose name and contact information appear on the Confidentiality Agreement of this agreement designated "Participant/Subscriber, and contact information appear on the signature pages of the Agreement designated "Contractant(s)", if any.

W I T N E S S E T H:

- A: Participant/Subscriber wishes to obtain, and MLS wishes to provide data for Participant/Subscriber web site, including the listing data of other real estate brokerages participating in MLS.
- B. WHEREAS, Participant/Subscriber has a limited license to use certain proprietary information and data owned and copyrighted solely by the MLS, which information and data includes, but is not limited to the MLS (all such proprietary and copyrighted information and data, including the MLS data, shall hereinafter be referred to as the "Data");
- C. WHEREAS, pursuant to the terms and conditions of Participant/Subscriber's license and contract with MLS with respect to the Data, a copy of which has been made available to the Contractants, the Participant/Subscriber desires to engage Contractants in a manner that will permit access to the Data; and
- D. WHEREAS, Contractants understands the proprietary nature of the Data and is willing, able and agreeable to keep the Data (including any and all parts and portions of it) confidential and secret and to not use the Data in any manner restricted or prohibited by the Participant/Subscriber or by the license and contract which the Participant/Subscriber has with MLS.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by each of the Parties, the Parties hereto agree as follows:

MLS OBLIGATIONS

During the period of this Agreement, MLS grants to Participant/Subscriber/Contractants a license to:

- A. display the IDX Data on Participant/Subscriber web site, and
- B. make copies of the IDX Data to the extent necessary to be retrieved from MLS RETS for IDX Data to be used on the Participant/Subscriber web site.

During the terms of this Agreement, MLS agrees to provide to Participant and its Contractants:

- A. access to the IDX Data via the Internet using a RETS feed, under the same terms and conditions MLS 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.

PARTICIPANT/SUBSCRIBER'S OBLIGATIONS

- A. Participant/Subscriber shall comply with the Rules at all times.
- B. Participant/Subscriber acknowledges MLS ownership of the copyrights in the Subscriber Data and the IDX Data.
- C. Participant/Subscriber shall comply with the requirements relating to Confidential Information set forth below.
- D. If MLS notifies Participant/Subscriber of a breach of the Rules of this Agreement and Participant/Subscriber does not immediately cure such breach, Participant/Subscriber agrees that MLS may seek cure from the Contractant.

CONTRACTANT'S OBLIGATIONS

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

CONFIDENTIAL INFORMATION

- A. "Confidential Information" shall mean any and all Data; including, but not limited to, confidential technical data, trade secret, know-how or other confidential information disclosed by any party hereunder or by MLS in writing, digitally, orally, or by drawing or any other form. Contractants expressly agrees and understands that MLS is a third-party beneficiary hereunder.
- B. Notwithstanding the foregoing, Confidential Information shall not include all Data and other information which: (i) is known to the Contractants at the time of disclosure or becomes known to the Contractants without breach of this Agreement; (ii) is or becomes publicly know through no wrongful act of the Contractants or any person or entity in any way related to or associated with the Contractants; (iii) is independently developed by the Contractants or any of its subsidiaries; (iv) is approved for release upon a prior written consent of both MLS and the Participant/Subscriber; (v) is disclosed pursuant to judicial order, requirement of a governmental agency or by operation of law.

C. The Contractants agrees that it will not disclose any Confidential Information to any third party and will not use Confidential Information for any purpose other than for the performance of the rights and obligations hereunder strictly for the Participant/Subscriber during the term of this engagement and at all times thereafter, without the prior written consent of both MLS and the Participant/Subscriber. The Contractants further agrees that the Confidential Information shall remain the sole property of MLS and that Contractants will take all reasonable precautions to prevent any unauthorized disclosure of any and all of the Confidential Information by Contractants and all others. No license shall be granted by MLS or by the Participant/Subscriber to the Contractants with respect to Confidential Information and Data disclosed to Contractants unless otherwise expressly provided in writing and signed by the duly authorized agent of MLS.

D. Upon the request of either the Participant/Subscriber or MLS, the Contractants will promptly return all Confidential Information and Data furnished to Contractants and all copies and other forms thereof.

E. The Parties agree that all publicity and public announcements concerning the formation and existence of this Agreement shall be jointly planned and coordinated by and among the Parties. Neither Party shall disclose any of the specific terms of this Agreement to any third party without the prior written consent of the other Party and MLS, which consent shall not be withheld unreasonably. Notwithstanding the foregoing, any Party may disclose information concerning this Agreement as required by the rules, orders, regulations, subpoenas or directives of a court, government or governmental agency, after giving prior notice to the other Party.

F. If Contractants breaches any of its obligations with respect to confidentiality and unauthorized use of Confidential Information or Data hereunder, then both the Participant/Subscriber and MLS (as a third-party beneficiary hereunder) shall be entitled to both equitable and legal relief to protect its or their interests therein; including but not limited to, injunctive relief, as well as money damages and all costs and fees associated therewith, notwithstanding anything to the contrary contained herein.

RELATIONSHIPS OF PARTIES

Nothing in the Agreement shall be deemed to constitute, create, give effect to or otherwise recognize a partnership, joint venture or formal business entity of any kind; and the rights and obligations of the Parties shall be limited to those expressly set forth herein.

JURISDICTION/DISPUTES

This Agreement shall be governed in accordance with the laws of the State of Tennessee. All disputes under this Agreement shall be resolved by litigation in the courts of Hamilton County, Tennessee, including the federal courts therein and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

AGREEMENT BINDING ON SUCCESSORS

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, personal representatives, successors and assigns.

ASSIGNABILITY

This Agreement and the rights and obligations hereunder are personal with respect to Contractants and may not be assigned by the Contractants by any act without the prior written consent of Participant/SUBSCRIBER and MLS. Participant/Subscriber shall, however, have the absolute, unfettered right to assign this Agreement to a successor in interest to Participant/Subscriber or to the purchaser of any of the assets of Participant/Subscriber.

WAIVER

No waiver by either Party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

SEVERABILITY

The term of this Agreement begins on the "Effective Date" set forth on the Signature Page below. MLS 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. MLS’s notice to Participant/Subscriber that this Agreement is terminated.
- B. Participant/Subscriber notice to MLS that it no longer intends to display IDX Data on its web site.
- C. Termination of Participant/Subscriber privileges as a Subscriber of MLS.

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her duly authorized hand and seal as of the date above written.

Effective Date: _____

CONSULTANT INFORMATION AND SIGNATURE

CONSULTANT: (IDX Company)

Signature: *Dan Dlh*

Consultant Name: Dan Dlh

Consultant Address: 6737 W. Washington Street, Suite 2120

City, State, Zip: Milwaukee, WI 53214

Title: Data & Compliance Manager

Email address: brokersolutions@constellationws.com

(You **must** supply an e-mail address. This address will be GCAR’s principal means of communicating with you for notices under this agreement.

NOTE TO CONSULTANT: Be sure to enter into this Access to IDX data feed contract with GCAR and every real estate broker to which you provide services. If you sign only one and that Firm's access to IDX Data is terminated, you will not be able to get the data for your other clients.

PARTICIPANT/SUBSCRIBER:

Participant (Company) Name: _____

Signature: _____

Name (Participant/Subscriber): _____

BROKER APPROVAL RELEASE FOR MLS DATA

Please sign below giving authorization for _____ to receive access to the MLS listings for their web site.

Broker Signature _____

Date Signed _____

