

INTERNET DATA EXCHANGE (IDX) LICENSING AGREEMENT

This Internet Data Exchange (“IDX”) Licensing Agreement (the “Agreement”) is entered into by and between Waco Association of REALTORS®, Inc. (“WAOR”), having its principal place of business at 2025 North 44th, Waco, Texas 76710 and _____, a WAOR Broker/Subscriber (“Broker/Subscriber”), having a principal place of business at _____.

BACKGROUND/RECITALS

- (A) WAOR and participating Broker/Subscribers to the IDX Program (“The Program”) expressly agree to following material conditions to participate in the IDX Program:
 - i. Broker/Subscriber represents that it is a Subscriber in good standing as defined by the WAOR Rules and Regulations and that it will remain in good standing as defined by the WAOR Rules and Regulations throughout the term of this Agreement as they exist at that time; and
 - ii. Broker/Subscriber represents that it is a party to a separate written agreement with IDX authorizing its use and access to The Program.
- (B) WAOR agrees to provide data listing data of other participants in the WAOR IDX Program to Broker/Subscriber’s website; provided, however, WAOR shall have no obligation to provide such data unless Broker/Subscriber fully complies with all requirements of the IDX Program.
- (C) Individual listings and listing data are recognized as owned by the Listing Broker/Subscriber. WAOR retains a copyright in the compilation of listing data.
- (D) Participating Brokers/Subscriber may wish to engage individuals other than employees of the Broker/Subscriber (“Website Vendors”) to perform data downloading, formatting and/or programming and web design. However, if non-employee Website Vendors are retained, the authorized representative of the Website Vendor is required to execute this Agreement on behalf of the Website Vendor before the Agreement becomes binding.

TERMS AND CONDITIONS

The above-referenced recitals are material provisions of this Agreement.

In consideration of the above recitals and the promises set forth in this Agreement, the parties agree as follows:

- (1) **Grant of License.** WAOR grants to Broker/Subscriber a non-exclusive, revocable, non-transferable, royalty-free license to use WAOR data reasonably necessary to establish the Program for the Broker/Subscriber’s participation in the IDX Program. Broker/Subscriber may not transfer, assign or sublicense this license. WAOR reserves the right to establish fees for the license at the sole discretion of the WAOR Board.
- (2) **Ownership.** WAOR retains all ownership rights, including rights defined by trademark and copyright laws, in any data provided to Broker/Subscriber under this Agreement, and to the Program. Brokers/Subscriber and/or Listing Broker shall retain all ownership rights in the individual listings of Broker/Subscriber and/or Listing Broker used in the program.

- (3) **Infringement.** Broker/Subscriber will promptly notify WAOR if Broker/Subscriber becomes aware of a third party infringing WAOR's proprietary rights in the data and the Program. WAOR may, in its sole discretion, bring suit against any alleged infringer. Broker/Subscriber retains all rights to bring suit or join in any suit and recover arising from the misuse of their listings.
- (4) **Terms and Termination.** WAOR may terminate this Agreement and any rights granted to Broker/Subscriber herein at any time in its sole discretion on written notice to Broker/Subscriber. Upon termination, Broker/Subscriber will immediately cease all use of the data and the Program.
- (5) **Indemnity.** Broker/Subscriber and Website Vendor, jointly and severally, agree to indemnify and defend WAOR against all losses, damages and expenses, including attorney's fees, incurred as a result of or related to Broker/Subscriber's and/or Website Vendor's use of the license granted herein and/or breach of this Agreement.
- (6) **Miscellaneous.**
- (6.1) **Notice.** Any notice required or permitted to be given under this Agreement is sufficient if mailed by registered mail, postage prepaid, addressed to the party at the above addresses, or at such other address as may be furnished in writing to the notifying party.
- (6.2) **Governing Law and Venue.** This Agreement is governed by and construed in all respects in accordance with the laws of the State of Texas without regard to conflict of law principles. The parties agree and submit to personal jurisdiction in McLennan County, Texas for purposes of any action or proceeding brought to enforce or construe the terms of this Agreement.
- (6.3) **Headings.** The section headings in this Agreement are for convenient reference and are not part of this agreement.
- (6.4) **Waiver.** No waiver of any breach of this provision of this Agreement will constitute a waiver of any prior, concurrent, or subsequent breach of the same of any other provisions hereof, and no waiver shall be effective unless made in writing.
- (6.5) **Amendments.** This Agreement can be modified or amended only by written agreement signed by the parties including Website Vendor, if any.
- (6.6) **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the Term, the provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid or enforceable provision has never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affect by the illegal, invalid or unenforceable provision or by its severance from this Agreement
- (6.7) **Counterparts.** This Agreement may be executed manually, electronically or via fax and in one or more counterparts.
- (6.8) **Construction.** If an ambiguity or question of intent arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue or authorship of any of the provisions of this Agreement.

- (6.9) **Relationship of the Parties.** Broker/Subscriber and WAOR are each independent organizations. Neither party nor its respective employees and representative can or shall make any agreement, warranties, representations, promises or covenants on behalf of or for the other party or any third party, unless approved in advanced in writing by the other party. This Agreement shall not be construed as a partnership or franchise for any purpose or reason, whether implied, expressed or statutory.
- (6.10) **Complete Agreement.** This Agreement contains the complete agreement between the parties concerning the subject matter and supersedes all prior understandings, letters of intent, proposals or agreements, and all prior communications between the parties' related to the IDX Agreement. No representation, warranty, promise, inducement or statement of intention has been made by either party which is not embodied in this Agreement. However, WAOR retains the right to implement and Broker/Subscriber and Website Vendor agree to abide by Rules and Regulations to carry out the IDX Program at the discretion of the WAOR Board. Violations of these Rules may be subject to fines/penalties at the discretion of the WAOR Board.
- (7) **Confidential Information.**
- (7.1) **Definition.** "Confidential Information" is information or material property to WAOR or designated "confidential" by WAOR and not generally known to the public, that Broker/Subscriber and/or Website Vendor may obtain knowledge of or access to as a result 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):
- All WAOR data;
 - All documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;
 - software, source code, object code, diagrams, flow charts;
 - techniques, procedures; and
 - IP addresses, access codes and passwords.
- (7.2) **Exceptions.** The Confidential Information does not include information that:
- is known to Broker/Subscriber at the time of disclosure;
 - is used or disclosed by Broker/Subscriber with the prior written consent of WAOR;
 - becomes known to Broker/Subscriber from a source other than WAOR without breach of this Agreement and provided that such source is not bound by a confidentiality agreement with WAOR; or
 - is required to be disclosed by judicial order or other compulsion of law, provided that the Broker/Subscriber provides to WAOR prompt notice of any such order.

- (7.3) **Third Party Information.** Confidential Information also includes any information that WAOR obtains from any third party that WAOR treats as proprietary or designates as Confidential Information, whether or not owned or developed by WAOR.
- (8) **Rules and Regulations.** WAOR may establish Rules and Regulations to participate in the Program. Broker/Subscriber agrees to abide by such Rules and Regulations. These Rules and Regulations may be amended at the discretion of WAOR.
- (9) **Restrictions on Use.**
- (9.1) **Scope of Use.** Broker/Subscriber and/or Website Vendor will use or access the Confidential Information only as necessary to perform the Services and Broker/Subscriber and/or Website Vendor will not use its access or the Confidential Information for any other purpose. Broker/Subscriber and/or Website Vendor will employ measures to protect the Confidential Information from disclosures at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care.
- (9.2) **Unauthorized Use.** Broker/Subscriber and/or Website Vendor will not make copies of the Confidential Information. Broker/Subscriber and/or Website Vendor will not directly or indirectly disclose, display, provide, transfer or otherwise make available the Confidential Information to any person or entity, unless Broker/Subscriber and/or Website Vendor has received prior written consent of WAOR to do so. At no time and under no circumstances will Broker/Subscriber and/or Website Vendor reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. Broker/Subscriber and/or Website Vendor will not incorporate the Confidential Information into any other work or product.
- (9.3) **No Third Party Access.** Only Broker/Subscriber and/or Website Vendor's own employees will access the Confidential Information. Broker/Subscriber and/or Website Vendor will not provide access to the Confidential Information to third parties, including consultants or independent contractors, without prior written consent from WAOR. If WAOR grants consent, Broker/Subscriber and/or Website Vendor 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 Broker/Subscriber and/or Website Vendor.
- (10) **Termination of the Program.** Within five (5) days of receipt of notice of termination by WAOR, Broker/Subscriber and/or Website Vendor will return to WAOR all Confidential Information and all materials provided by WAOR to the Broker/Subscriber and/or Website Vendor. Broker/Subscriber and/or Website Vendor will also erase, delete or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of WAOR, an Officer of the Broker/Subscriber and/or Website Vendor will certify in writing that all materials have been returned to WAOR and all magnetic or computer data have been destroyed.

- (11) **Remedies.** Because of the unique nature of the Confidential Information, Broker/Subscriber and/or Website Vendor acknowledges that WAOR would suffer irreparable harm in the event that Broker/Subscriber and/or Website Vendor breaches its obligation under this Agreement, and that monetary damages would be inadequate to compensate WAOR for a breach. WAOR is entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Broker/Subscriber and/or Website Vendor, without showing or proving any actual damages sustained by WAOR.

By signing this agreement, the MLS participant and vendor agree to abide by the WAOR MLS Rules & Regulations Section 18 Internet Data Exchange (IDX) as follows:

INTERNET DATA EXCHANGE (IDX)

SECTION 18 IDX affords MLS participants the ability to authorize limited electronic display of their listings by other participants. (Amended 5/12).

SECTION 18.1 Participants consent for display of their listings by other participants pursuant to these rules and regulations must be established in writing. If a participant withholds consent on a blanket basis to permit the display of that participant's listings, that participant may not download, frame or display the aggregated MLS data of other participants. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display. (Amended 5/12)

SECTION 18.2 Participation in IDX is available to all MLS participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other participants. (Amended 11/09)

18.2.1 Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring the compliance with applicable rules and policies.

18.2.2 MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines. (Amended 5/12)

18.2.3 Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing's property address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs.) (Amended 5/12)

18.2.4 Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown," etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each participant. (Amended 11/06)

18.2.5 Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours. (Amended 11/14)

18.2.6 Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide or make any portion of the MLS data base available to any person or entity. (Amended 5/12)

18.2.7 Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, "control" means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules. (Amended 5/12)

18.2.8 Any IDX display controlled by a participant or subscriber that

- a. allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- b. displays an automated estimate of the market value of the listings (or hyperlink to such estimate) in immediate conjunction with the listing,

either or both of those features shall be disabled or discontinued for the seller's listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants. Except for the foregoing and subject to

Section 18.2.9, a participant's IDX display may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller. (Adopted 5/12)

18.2.9 Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. (Amended 5/12)

18.2.10 An MLS participant (or where permitted locally, an MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display. (Adopted 11/14)

18.2.11 Participants are allowed three direct feeds from the MLS service. Two pulls shall be for Website Information and one for Contact Management information.

SECTION 18.3 Display of listing information pursuant to IDX is subject to the following rules:

18.3.1 Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed on IDX sites.

18.3.2 The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed on IDX sites.

18.3.3 Participants shall not modify or manipulate information relating to other participant's listings. (this is not a limitation on site design by refers to changes to actual listing data.) MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.

18.3.4 All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in readily visible color and typeface not smaller than the median used in the median used in the display of listing data.

18.3.5 All listings displayed pursuant to IDX shall identify the listing agent.

18.3.6 Non-principal brokers and sales licensees affiliated with IDX participant may display information available through IDX on their website subject to their participant's written consent and control and the requirements of state law/or regulation.

18.3.7 All listings displayed pursuant to IDX shall show the MLS as the source of the information.

18.3.8 Participants and their affiliated licensees shall indicate on their websites that IDX information is provided exclusively for consumer's personal, non-commercial use and that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing and that data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability.

18.3.9 The data consumers can retrieve or download in response to an inquiry shall be limited to one hundred listings per search.

18.3.10 Display of expired, withdrawn, pending and sold listings is prohibited. (Amended 11/09)

18.3.11 Display of sellers or occupant's names, phone numbers and email addresses is prohibited.

18.3.12 Participants are required to employ appropriate security protection such as firewalls, provided that any security measures required may not be greater than those employed by the MLS.

18.3.13 IDX operators must maintain an audit trail of consumer activity on the IDX site, and make that information available to the MLS, if the MLS believes that the IDX site has caused or permitted a breach in the security of the data or a violation of the MLS rules to use by consumers.

18.3.14 Advertising (including co-branding) on pages displaying IDX-provided listings is prohibited.

SECTION 18.4 Service fees and charges for participation in IDX shall be established annually by the Board of Directors.

The parties have executed this Agreement as of the date first written.

WEBSITE VENDOR

Constellation Web Solutions _____ (Company Name)

By: Dan Dlh _____ (Company Representative)

Its: Data & Compliance Manager _____ (Representative's Position in Company)

Phone #: 425-636-6910 _____

E-mail Address: brokersolutions@constellationws.com _____

Mailing Address: 6737 West Washington Street, Suite 2120
Milwaukee, WI 53214 _____

Purposes of access to licensed data: Display on an IDX Website

Company Representative Signature: *Dan Dlh* _____ Date: _____

BROKER/SUBSCRIBER

By Agent: _____

By Broker: _____

E-mail Address: _____

Website URL: _____

*Agent is required to send written notification to Waco Association of REALTORS®, Inc., if the URL changes for data display.

Agent Signature: _____ **Date:** _____

Broker Signature: _____ **Date:** _____

Both Agent and
Principal Broker's
signatures are required

WACO ASSOCIATION OF REALTORS®, INC.

By: _____ Effective Date: _____

(WAOR Representative)