

## **CONTRACT:**

### **Agreement to access the Internet Data Exchange data feed**

**Note: By completing this form you are creating a legally binding contract between you and the CMLS.** Simultaneously or prior to submitting this form/contract, you must become an Internet Data Exchange Subscriber (IDX). See the CMLS' *Internet Data Exchange: Broker Informational Packet* for further details. **This form/contract must be filled out completely and signed by an owner of your firm.** Once you have filled it out and signed it, fax or mail it to the CMLS at Suite 23, 101 Merritt 7 Corp. Park, Norwalk, CT 06851-6216, Fax: (203) 840-6678. The 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 Consolidated Multiple Listing Service, Inc. (CMLS), 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**

2. The firm wishes to obtain, and the CMLS wishes to provide, data for firm's web site, including the listing data of other real estate brokerages participating in the 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.

**Internet Data Exchange Database or IDX Data:** The current aggregate compilation of all active exclusive 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 CMLS owns the IDX Data.

**Internet Data Exchange Subscriber or IDX:** 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.

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

**Subscriber:** The owner/broker or appraiser (Participant) of a firm holding membership in the Consolidated Multiple Listing Service, Inc.

**Subscriber Data:** Data relating to real estate for sale, previously sold or listed for sale, including the IDX Data, and data relating to CMLS Members and Subscribers, entered into the Compass System. The CMLS owns the Subscriber Data.

### **CMLS' OBLIGATIONS**

4. During the term of this Agreement, the CMLS grants to IDXSS 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.
  - c. Use the "IDX Detail Logo" and the "IDX Thumbnail Logo".
5. During the term of this Agreement, the CMLS agrees to provide to Firm and its Consultants:
  - a. Access to the IDX Data via the Internet using File Transfer Protocol ("**FTP**"), under the same terms and conditions 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 OBLIGATIONS**

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

### **CONSULTANT'S OBLIGATIONS**

12. If the CMLS notifies the Firm of a breach of the Rules or this Agreement and the Firm does not immediately cure such breach, the CMLS may contact Consultant to cure any

such breach that is within Consultant's control. Consultant agrees to cooperate with the CMLS and act immediately upon notification by the CMLS of an uncured breach by Firm.

13. Each Consultant acknowledges the CMLS' ownership of the copyrights in the Subscriber Data, the IDX Data, the "IDX Detail Logo" and the "IDX Thumbnail Logo".
14. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
15. Each Consultant shall notify the 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 CMLS or designated "confidential" by the CMLS 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 CMLS obtains from any third party that the CMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by the 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 CMLS, to the extent of such consent;
  - d. Becomes known to the Receiving Party from a source other than the 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 CMLS; or
  - e. Is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to the 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 CMLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by the 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 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 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 CMLS. If the 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 CMLS' prior written consent. In the event the 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 CMLS, the Receiving Party will return to the CMLS all Confidential Information and all other materials provided by the 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 CMLS, an officer of the Receiving Party will certify in writing that all materials have been returned to the 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 CMLS Information and Signature Page" below. The 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 CMLS' notice to Firm that this Agreement is terminated.
  - b. Firm's notice to the CMLS that it no longer intends to display IDX Data on its web site.
  - c. Termination of Firm's CMLS membership privileges.

## GENERAL PROVISIONS

25. **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.
26. **The CMLS’ Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Firm and Consultants acknowledge that the 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 CMLS for a breach. The 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 or Consultants or any one of them, without showing or proving any actual damages sustained by the CMLS.
27. **Attorney’s fees.** If the 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 CMLS’ reasonable attorney’s fees and costs for such legal action.
28. **Limitation of Liability.** The CMLS’ 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 CMLS, if any, under this Agreement. Firm’s and Consultants’ only other remedy shall be termination of this Agreement. The CMLS shall not be liable for any incidental or consequential damages under any circumstances, even if the CMLS has been advised of the possibility of such damages. The 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 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 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 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.

[The remainder of this page is left blank intentionally.]

## CMLS Information and Signature

Entered into on behalf of CMLS by:

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Signature

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Print Name

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Effective Date

The CMLS will fill out the information required below after signing this Agreement. The CMLS will then return a copy of this Agreement to Firm and Consultants. The contents of this box are Confidential Information under this Agreement.

FTP URL: \_\_\_\_\_

FTP User ID: \_\_\_\_\_

FTP Password: \_\_\_\_\_

# Consultants Identified: \_\_\_\_\_

Consultant(s) Name(s): \_\_\_\_\_

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Listing Office ID: \_\_\_\_\_

Listing Office Name: \_\_\_\_\_

Broker or Contact Person: \_\_\_\_\_

## Firm Information and Signature

Firm Name: \_\_\_\_\_ Firm MLS OFFICE ID: \_\_\_\_\_

Designated Broker Name: \_\_\_\_\_ Broker MLS AGENT ID: \_\_\_\_\_

E-mail address: \_\_\_\_\_

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

Firm Street Address: \_\_\_\_\_

Firm City, ST, ZIP: \_\_\_\_\_

Firm Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

All web addresses (URLs) on which the IDX will be publicly accessible

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Entered into on behalf of Firm by:

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Signature

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Print Name

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Title

Date

## Consultant Information and Signature

**NOTE TO FIRM: Reproduce this page for each individual/company to whom you intend to provide access to the IDX Data under this Agreement.**

Consultant (company or individual) Name: \_\_\_\_\_

E-mail address: \_\_\_\_\_

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

Consultant Street Address: \_\_\_\_\_

Consultant City, ST, ZIP: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**\*\*PLEASE PROVIDE THE IP ADDRESS OF THE SERVER ON WHICH ALL CMLS IDX DATA WILL BE STORED:** \_\_\_\_\_

Entered into on behalf of Consultant by

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name

\_\_\_\_\_

Title

Date

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