

RIVER COUNTIES MULTIPLE LISTING SERVICE

THIRD PARTY ACCESS, CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS THIRD PARTY ACCESS, CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT ("AGREEMENT") is entered on this _____ day of _____, 20____, by and between _____ participant/subscriber ("END USER"), and _____, a third party participant ("VENDOR") with reference to the following facts.

RECITALS:

1. RCMLS operates an online computerized real estate multiple listing service. RCMLS provides such multiple listing data and other information (hereinafter referred to as the "SERVICE" of the "SYSTEM") solely to its participants, subscribers, and other parties authorized by participant/subscriber ("END USER" or "END USERS") and only such END USERS are and shall be authorized to utilize the SERVICE.
2. RCMLS had a protectable interest in the operation of the SERVICE and all such data and information received by RCMLS and/or incorporated into the SERVICE.
3. VENDOR is a vendor of computer software product(s) and desires access to the SYSTEM for the sole purpose of creating computer software designed for the benefit of END USERS of the SERVICE. Such computer software created by VENDOR shall be limited to allowing END USERS exclusively, the ability to display MLS property via VENDOR product(s) on the Internet in accordance with RCMLS policy regarding Internet Data Exchange.
4. RCMLS is willing to grant VENDOR access to the SERVICE pursuant to the terms and subject to the conditions contained in this AGREEMENT.
5. The RCMLS SERVICE is operated in accordance with RCMLS Rules and Regulations, and in accordance with guidelines set forth by the National Association of REALTORS®, which may be amended from time to time.

IT IS AGREED:

1. Access to SYSTEM: RCMLS hereby permits VENDOR to access the SYSTEM to retrieve the Internet Data Exchange data feed from the SYSTEM for the exclusive purpose allowing END USERS, and only END USERS authorized in this agreement, to distribute RCMLS data from the SERVICE to their clients and customers through VENDOR's product(s).
 - a. Limitations on License: except as expressly set forth in this AGREEMENT, no rights are granted to VENDOR to do any of the following: (a) use, display, access, distribute, transfer, alter, or modify the listings or data compiled by the SERVICE, or otherwise create any derivative works of the listings or data compiled by the SERVICE, (b) download, distribute, export, deliver, or transmit any of the listings or data compiled by the SERVICE, including to any computer or other electronic device, except as permitted under this AGREEMENT, or (c) sell, grant access to, or sublicense the listings or data compiled by the SERVICE, to any third party. VENDOR agrees to take all reasonable steps necessary to protect the listings or data compiled by the SERVICE from unauthorized access, distribution, copying or use.

2. No Right to SERVICE Data: This AGREEMENT shall not be construed to grant VENDOR any ownership interest in the SERVICE or the data compiled by RCMLS and the SERVICE, and expressly prohibits VENDOR from remarketing, advertising and/or disseminating the data to any other person or entity, except as specifically authorized by this AGREEMENT.
3. Rules, Regulations and Guidelines: The RCMLS and VENDOR acknowledge that the SERVICE is operated in accordance with RCMLS Rules and Regulations, and in accordance with guidelines set forth by the National Association of REALTORS®, which may be amended from time to time. VENDOR hereby acknowledges and agrees the VENDOR has received, or has been given the opportunity to receive and review such rules, regulations and guidelines now in effect and as they may be amended from time to time. Further, VENDOR acknowledges and agrees that it has the obligation to discover, keep current and comply with all such rules, regulations and guidelines as they may be amended from time to time.
4. Duration: This AGREEMENT shall commence upon execution, as indicated by the date set forth above, and shall remain in full force and effect until December 31 of current year. Upon the expiration of such term this AGREEMENT shall terminate. VENDOR and RCMLS shall have the right to renew this AGREEMENT upon the mutual consent of the parties which shall be evidenced in writing.
5. Confidentiality and Nondisclosure: VENDOR hereby acknowledges that it may be exposed to confidential and proprietary information of RCMLS, including, but not limited to, the SERVICE or SYSTEM, or relating to RCMLS affairs, business information, or other information designated as confidential (“Confidential Information”). VENDOR agrees that it shall not disclose, nor permit any of its agents or employees to disclose, and Confidential Information or proprietary aspect of the SERVICE or product(s) prepared or created by VENDOR for END USERS to any unauthorized third party without first obtaining written consent of RCMLS.
 - a. Such Confidential Information may not be used by VENDOR in any manner except for the purposes of creating the software products contemplated by this AGREEMENT.
 - b. VENDOR agrees to protect the confidentiality of RCMLS’s Confidential Information in the same manner it protects the confidentiality of its own proprietary and confidential information of like kind. Access to the Confidential Information shall be restricted to VENDORS’s personnel engaged in creating the software products contemplated by this AGREEMENT. VENDOR agrees to inform such personnel of the confidential nature of the information, that such information is subject to this AGREEMENT, and shall require such personnel to abide by the terms of this AGREEMENT. VENDOR shall not otherwise, in any manner, copy, disclose, publish, release, reproduce, transmit, transfer or make available Confidential Information of RCMLS without RCMLS’s prior written consent.
 - c. All Confidential Information of RCMLS in the possession of VENDOR, in whatever form such Confidential Information is possessed by VENDOR including copies thereof, shall be returned to RCMLS upon the first to occur: (a) completion of the purpose referred to above, or (b) written request by RCMLS, or (c) termination of this AGREEMENT. VENDOR shall immediately notify RCMLS upon learning of any unauthorized use or disclosure of the Confidential Information of RCMLS.
 - d. Nothing in this AGREEMENT shall prohibit or limit either party’s use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) whereby such information was (i) previously known to it, (ii) independently developed by it, (iii) acquired by it

from a third party which was not, to the best of VENDOR's reasonable knowledge, under an obligation to RCMLS not to disclose such information, or (iv) which is or becomes publicly available through no breach by VENDOR of this AGREEMENT.

6. The parties also acknowledge that dissemination of RCMLS Confidential Information will cause irreparable harm to RCMLS, and agree that any breach of this AGREEMENT entitles the party not in breach to an injunction and may entitle such party to damages.
7. VENDOR Rights: VENDOR shall retain all rights, title and interest in the product(s) and their related documentation, including all functionality, copyright and patent rights as provided under state and federal law. Any modification or improvements made to the product(s) shall remain the property of the VENDOR.
8. RCMLS Rights: RCMLS shall retain its rights, title and interest in the SERVICE, any data or information compiled by RCMLS for the SERVICE, and any other software system which may be provided to or accessed by VENDOR hereunder, including all functionality, copyright and patent rights as provided under state and federal law. Any modifications or improvements made to the SERVICE or any other RCMLS software shall remain the property of RCMLS.
 - a. Intellectual Property: VENDOR acknowledges and agrees that the SERVICE and the multiple listing data are proprietary, original works of authorship of RCMLS, or licensed to RCMLS, protected under United States copyright, trademark, patent and trade secret laws of general applicability. VENDOR further acknowledges and agrees that all right, title, and interest in and to the SERVICE and multiple listing data, together with all modifications, enhancements, and derivative works of the SERVICE, including all copyright rights, are and shall remain with RCMLS. Notwithstanding the prohibition against modification of the SERVICE, in the event VENDOR makes any such modification, then any modifications to the SERVICE shall be the sole property of RCMLS. VENDOR hereby assigns to RCMLS any and all modifications to the SERVICE made by VENDOR, or anyone within the control of VENDOR. VENDOR agrees to execute all documents and take all action reasonably requested by RCMLS in connection with the assignment of rights to RCMLS. This AGREEMENT does not convey or grant to VENDOR an interest in or to the SERVICE or multiple listing data, but only a limited right to access and display the multiple listing data, revocable in accordance with the terms of this Agreement. In the event of any claim for infringement or misappropriation of the SERVICE or multiple listing data, all damages awarded and other awards and recoveries shall be the exclusive property of RCMLS, and all such amounts shall be paid to RCMLS. In the event, for any reason, VENDOR obtains possession or control of any such damages or awards, VENDOR agrees to hold all such funds as trustee in trust for the exclusive benefit of RCMLS. VENDOR agrees that it will not challenge or take any action inconsistent with RCMLS's rights to the SERVICE or multiple listing data.
9. VENDOR'S Obligations: As a material part of the consideration for this AGREEMENT, VENDOR and RCMLS hereby jointly and severally agree that VENDOR and RCMLS:
 - a. Will not knowingly permit any access to the SERVICE through the connection or otherwise by any person(s) or entity other than END USERS that have executed valid subscriber agreements with RCMLS;

- b. Will not make any use, alteration, adaption, addition, change or revision of the data in the SERVICE, other than to make it available to END USERS that have executed valid subscriber agreements with RCMLS;
- c. VENDOR will notify RCMLS within a reasonable time before making any change in the electronic connection between the SERVICE and VENDOR;
- d. VENDOR will design and maintain the connection in such a way that it does not impair or damage the performance of the SERVICE in any way;
- e. VENDOR will not enter into any license, sublicense, access, electronic connection or other agreement or arrangement, the effect of which would be to permit access to the SERVICE, or any portion thereof, to any party other than END USERS that have executed a valid subscriber agreement with RCMLS; and
- f. VENDOR will not subcontract, assign, delegate or otherwise transfer any right or obligation under this Agreement without first obtaining RCMLS's prior written consent; and
- g. VENDOR will establish and maintain firewalls, filters, and such additional and/or complementary security systems as may be reasonably necessary in order to provide reasonable assurances that the data is secure and the connection may not be used to access the SERVICE, except by END USERS that have executed a valid subscriber agreement with RCMLS.

10. Warranties:

- a. VENDOR hereby warrants that it is the sole owner of the software product(s) created by VENDOR in contemplation of this AGREEMENT, and that it shall not have any ownership interest in the SERVICE or the data compiled by RCMLS and the SERVICE. VENDOR agrees to defend, indemnify and hold RCMLS harmless against any action against RCMLS on account of violation of any patent, copyright or trade secret rights due to the use or licensing of product(s) or modifications to the product(s) as provided by the VENDOR. RCMLS shall have the right to participate, at its own expense, in the defense of any such action.
- b. RCMLS hereby warrants that it is the sole owner of the SERVICE and the connection to the SERVICE.

11. Disclaimer: Each party hereby disclaims any and all representations made by the other party and/or the other party's employees or representatives and further disclaims all implied warranties of merchantability and fitness for a particular purpose of the SERVICE and/or the product(s).

12. Payment: VENDOR shall pay to RCMLS, a one-time fee of \$100 and an annual fee of \$200 for access to the SYSTEM through FTP/RETS feeds; IDX smartframing annual fee of \$50.

13. Indemnification: VENDOR hereby agrees to indemnify and hold harmless RCMLS, and its officers, directors, employees and licensees from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorney fees and costs, arising out of or connected with any material breach by VENDOR of any of the terms and conditions of this Agreement, including any breach of any representation or warranty set forth in the this Agreement, and the use to display, and in the case of print media, distribution of the listing data. RCMLS shall have the right to control its own defense and engage legal counsel acceptable to RCMLS.

14. Termination: Either party may terminate this agreement for cause or otherwise upon written notice. The right to termination of this AGREEMENT shall be in addition to any other rights or remedies which either party may have at law or in equity.
15. Limitation of Liability: TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, RCMLS'S ENTIRE AND CUMULATIVE LIABILITY TO VENDOR, OR ANY THIRD PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE USE OR DISPLAY OF THE LISTING DATA, INCLUDING ANY TORT, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE VENDOR FEE PAID, IF ANY, TO RCMLS UNDER THIS AGREEMENT. IN NO EVENT SHALL RCMLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF RCMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
16. Attorney's Fees: If any party is required to initiate or defend litigation with respect to the terms of this Agreement, the prevailing party in any such litigation shall be entitled to reasonable attorney's fees and costs incurred in connection with such litigation, including any appeal.
17. Applicable Law: This AGREEMENT shall be construed, interpreted and applied, and the rights and obligations hereunder determined, in accordance with the laws of the State of Tennessee.
18. Merger: This AGREEMENT sets forth the full and complete understanding of the parties with respect to the subject matter of this Agreement, and, except with respect to the AGREEMENT between VENDOR and RCMLS, there is no other agreement, contract or understanding, whether written or oral, between or among any of the parties with respect to access to the SERVICE.
19. Severability: In the case that any one or more of the provisions contained in this AGREEMENT, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or unenforceability of the remaining provisions shall not in any way be affected or impaired thereby.
20. Time is of the Essence/No Waivers: Time and the prompt performance of each and every obligation of the parties hereto are agreed to be of the essence. Any departure from the conditions and terms of this AGREEMENT, or any delay in the enforcement of the same by either party, shall not operate to waive or be a waiver of the rights of either party to stand upon the strict letter or construction of this AGREEMENT or to require performance in accordance with the express terms set forth herein.
21. Authorization/Agency Representation: VENDOR represents and warrants that VENDOR's signatory hereto is duly authorized as the agent to represent VENDOR and to enter into this AGREEMENT, and that the VENDOR is bound by the terms and conditions of this AGREEMENT. The signatory hereby acknowledges that he has read and understands this AGREEMENT and has received a copy of it.

(The remainder of this **page** is left blank intentionally).

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized, representatives as of the Effective Date: _____

Domain name/url address(es) to be used: _____

MLS Information

Tara Hampton			Association Executive		
Contact Name & Title					
Signature					
2070 Candies Lane NW					
Street Address					
Cleveland		TN	37312		
City	State	Zip Code			
mlsservices@rivercounties.com					
Email Address					
423-476-5912		423-478-5964			
Phone Number		Fax Number			

Participant (Broker) Information

Contact Name & Title					
Signature					
Street Address					
City	State	Zip Code			
Email Address					
Phone Number		Fax Number			

[NOTE: If "Participant" is a non-principal broker or sales licensee, then the affiliated principal real estate broker or broker in charge must also sign this Agreement.]

Vendor

Contact Name & Title					
Signature					
Street Address					
City	State	Zip Code			
Email Address					
Phone Number		Fax Number			

Agent Information

Contact Name & Title					
Signature					
Street Address					
City	State	Zip Code			
Email Address					
Phone Number		Fax Number			