

**PARTICIPANT**  
**MLS CONTENT ACCESS AND LICENSE AGREEMENT**

This MLS Content Access and License Agreement (“Agreement”) is entered into on \_\_\_\_\_, 20\_\_\_, (“Effective Date”) by and between:

Monmouth Ocean Regional Multiple Listing Service, Inc. (“MORMLS”), a New Jersey corporation and wholly owned subsidiary of the Monmouth Ocean Regional REALTORS®, Inc. (“MORR”), a New Jersey corporation with a place of business at One Hovchild Plaza, 4000 Route 66, Tinton Falls, New Jersey 07753; and

\_\_\_\_\_, a \_\_\_\_\_, with a place of business at \_\_\_\_\_ (“Participant”/BROKERAGE); and

\_\_\_\_\_, a \_\_\_\_\_, with a place of business at \_\_\_\_\_ (“Agent”); and

Constellation Web Solutions \_\_\_\_\_, a Delaware Corporation \_\_\_\_\_, with a place of business at 6737 W. Washington Street, Suite 2120, Milwaukee, WI 53214 (“Service Provider”/VENDOR).

**WHEREAS**, MORMLS owns, operates and/or maintains multiple listing service databases and data feeds (collectively, the “MLS Databases”) that provide real estate listing data, photographs and related information owned and copyrighted by MORR (collectively the “MLS Content”) that can be displayed or accessed across the Internet and via various platforms and technologies by MORMLS Participants, Agents and Service Providers;

**WHEREAS**, Participant and/or Agent desires to display, access and/or use MLS Content for the single purpose herein defined and has contracted with Service Provider to permit limited access to the MLS Content through the Participant’s and/or Agent’s data feed; and

**WHEREAS**, subject at all times to the terms and conditions of this Agreement, MORMLS is willing to allow Participant and/or Agent and the Service Provider to access and use the MLS Databases and the MLS Content for such limited purpose.

**NOW, THEREFORE**, in consideration of the covenants and premises set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties, intending to be legally bound, hereby agree as follows:

1. **Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms shall be defined as follows:

(a) “Access” means the non-exclusive non-transferable access rights to the MLS Databases and the MLS Content granted to Participant and/or Agent and the Service Provider pursuant to this Agreement.

(b) “License” means the license rights more particularly set forth in Section 4 of this Agreement.

(c) “Participant” means the sole proprietor, partner, corporate officer, or other licensed broker who acts on behalf of a Firm's principals and meets all other qualifications for REALTOR® Membership established in Article XVII, Section 3, of the Bylaws of MORR.

(d) “Agent” means an MORMLS Member, other than a Broker or Affiliate, who is a salesperson or other associate affiliated with a Participant and holds a valid New Jersey Real Estate License other than a broker’s license.

(e) “MORMLS Rules and Regulations” means, collectively, the MORMLS policies, bylaws and rules and regulations, including any changes, amendments and additions as may be made from time to time and without advanced notice.

(f) “Service Provider” means the individual or entity specified on the first page of this Agreement and the “Request for MLS Content” attached to and made a part of this Agreement. Such request shall include the purpose of the request and how the MLS Databases and MLS Content shall be used by the Service Provider and Participant and/or Agent and shall be signed by both the Service Provider and the Participant or the Participant’s Authorized Representative.

(g) “Authorized Representative” means an MORMLS Participant or a Broker Manager in the Participant’s firm authorized by the Participant to Access MLS Content and enter into this license agreement on behalf of Participant’s firm.

(h) “IDX” means Internet Data Exchange, a means for Participant or Agent to display on Participant’s or Agent’s Internet Website the MLS Content in accordance with the MORMLS Rules and Regulations, including any changes, amendments and additions as may be made from time to time and without advanced notice.

2. **Agreement Term.** Unless terminated as provided for herein, this Agreement shall have an initial term of one (1) year commencing on the Effective Date, and, thereafter, this Agreement shall renew automatically for additional one (1) year periods, unless a party provides the other parties with written notice that it does not wish to renew the Agreement, such notice to be provided no less than thirty (30) days prior to the expiration of the then current term. The initial term and each renewal term are collectively referred to herein as the “Term.”

3. **Ownership.** The MLS Databases and the MLS Content, together with all intellectual property rights therein, are and shall remain the exclusive property of MORR and MORMLS or its licensors, as applicable. Other than the limited license rights described herein, neither Participant nor Agent nor Service Provider has any rights, title or interests in or to the MLS Databases or the MLS Content.

4. **License.** Subject at all times to the terms and conditions of this Agreement, and the MORMLS Rules and Regulations, Participant and/or Agent and Service Provider are hereby granted for the Term of this Agreement a non-exclusive and non-transferable limited license to Access MLS Databases and the MLS Content solely for the purpose described in Section 31 of this Agreement and for

no other purpose whatsoever. If MLS Content is used for IDX purposes, any Internet Website used for publication of the MLS Content or any portion thereof must be controlled by a Participant or Agent and advertised as Participant's or Agent's Internet Website. The Access granted hereby to Participant and Service Provider shall be limited to the data transfer process provided by MORMLS. Unless otherwise agreed to in advance by MORMLS in writing, Participant and/or Agent shall not market or permit Access to Participant's or Agent's IDX data feed to any person or entity that is not authorized to receive or view such under the MORMLS Rules and Regulations or under applicable laws governing the providing of real estate services.

5. **Unauthorized Use.** Neither Participant nor Agent nor Service Provider shall knowingly allow any third party to Access, display or use in any way the MLS Databases or the MLS Content in a manner that exceeds, is contrary to, or in violation of the specific Access and License rights granted herein. Neither Participant nor Agent nor Service Provider shall transmit or permit Access, display or use in any way the MLS Databases or the MLS Content other than for the single purpose as described in Section 31 of this Agreement.

6. **Fees.** As consideration for the License granted by this Agreement, Participant and/or Third party vendor shall pay MORMLS the following fees (collectively the "Fees"):

One-time Set Up Fee \$ \_\_\_\_\_

Annual Maintenance and Monitoring Fee \$ \_\_\_\_\_

7. **Late Payments and Taxes.** MORMLS may charge interest on any overdue amounts at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less, commencing with the date such amounts were due. Participant and/or Agent shall be responsible for all sales taxes and other taxes, levies and assessments related to or arising from Participant's and/or Agent's Access to and use of the MLS Databases and the MLS Content, except for taxes based on the net income of MORMLS. Participant and/or Agent shall promptly pay such taxes, levies or assessments or, if MORMLS has paid any such amounts, reimburse MORMLS for all such taxes, levies or assessments.

The Fees may be increased from time to time, but no more frequently than once in any calendar year. MORMLS shall provide advance written notice or e-mail at least thirty (30) days prior to the effective date of any such increase.

8. **Security Measures.** Both Participant and/or Agent and the Service Provider shall utilize appropriate security protection, including adequate firewalls, and other reasonable and customary efforts to secure, protect and prevent the MLS Databases and the MLS Content from unauthorized Access and use by third parties. In particular, but without limiting the foregoing, Participant and/or Agent shall change all such Access and/or security codes or passcodes in the event an employee or agent of Participant is terminated or resigns. In the event the Service Provider is terminated or resigns, the Participant and/or Agent shall immediately notify MORMLS and MORMLS shall terminate the Service Provider's Access and/or security codes or passcodes. Participant shall cooperate with MORMLS, as requested by MORMLS, in order to assist MORMLS with monitoring Access to and use of the MLS Databases and the MLS Content in the event MORMLS reasonably suspects or otherwise has reason to believe that a Participant's and/or Agent's Website has caused or permitted a breach in the security of the

MLS Databases or MLS Content or is being operated or maintained in a violation of this Agreement or MORMLS Rules and Regulations, as may be changed, amended or modified from time to time.

MORMLS shall issue to Participant's and/or Agent's Service Provider the security codes and/or passcode to be used by Service Provider to Access the MLS Databases and the MLS Content. The Access granted hereby to Service Provider is limited to the data transfer process provided by MORMLS and solely for the purpose described in Section 31 of this Agreement and for no other purpose whatsoever. MORMLS shall have the right, but not the obligation, to monitor the Service Provider's use of the MLS Databases and the MLS Content and in the event MORMLS determines, in its sole discretion, that the MLS Databases or the MLS Content is being misused or threaten to be misused by the Service Provider, MORMLS may terminate the Service Provider's Access rights, without prior notice.

9. **Non-Disclosure and Confidentiality.** Each party hereunder may disclose to the other certain Confidential Information of such party or of such party's associated companies, suppliers, or principals. The Term "Confidential Information" means the MLS Databases and the MLS Content, as well as any other information or data that is of value to its owner, that is clearly designated (in writing) as being confidential and is otherwise treated by its owner as confidential

10. **Termination of License.** In the event Participant and/or Agent fails to pay any Fees when due, or MORMLS, in its sole discretion, determines that a party to this Agreement has failed to comply with any term or condition of this Agreement or the MORMLS Rules and Regulations, MORMLS shall provide the offending party with written notice of such non-payment or non-compliance, and the party shall have five (5) business days from the date of receipt of the notice, to modify, correct and/or remedy such non-payment or non-compliance. Should a party fail to pay such amounts due or remedy, to MORMLS' satisfaction, such non-compliance within the five (5) day period, MORMLS shall have the right to terminate the party's License, and Access, immediately and without further notice.

In the event MORMLS determines, in its sole discretion, that a party to this Agreement has failed to comply with any terms or conditions of this Agreement or the MORMLS Rules and Regulations and that such non-compliance may materially or adversely affect the integrity of the MLS Databases and/or the MLS Content, MORMLS shall have the right to terminate the party's License, and Access, immediately and without prior notice to the party.

11. **Return of Confidential Information.** Upon the expiration or termination of this Agreement, as provided for herein, each party shall promptly return all Confidential Information of the other party's then in its possession, and the parties shall immediately return or destroy (as directed by MORMLS) any and all copies of the MLS Database and the MLS Content, as well as all Access codes and/or passcodes used to Access the MLS Database and the MLS Content. Participant and/or Agent shall certify in writing to MORMLS that all such copies have been returned and/or destroyed, as applicable, within ten (10) days of MORMLS' request.

12. **Responsibilities of Participant.** Participant acknowledges and agrees that Participant is solely responsible for: (a) the development, manufacture, marketing, security and support of Participant's Website that utilizes the MLS Databases or the MLS Content; (b) the use and/or integration of the MLS Content into and/or with the Participant's Website, a third party's Website or a Service Provider's Website, system or software; (c) the actions of the Service Provider in the creation or modification of the

Participant's Website or in the Participant's use of a Service Provider's Website, system or software; and (d) the prompt and complete cooperation with MORMLS as described herein.

13. **Responsibilities of Agent.** Agent acknowledges and agrees that Agent is solely responsible for: (a) the development, manufacture, marketing, security and support of Agent's Website that utilizes the MLS Databases or the MLS Content; (b) the use and/or integration of the MLS Content into and/or with the Agent's Website, a third party's Website or a Service Provider's Website, system or software; (c) the actions of the Service Provider in the creation or modification of the Agent's Website or in the Agent's use of a Service Provider's Website, system or software; and (d) the prompt and complete cooperation with MORMLS as described herein.

14. **Responsibilities of Service Provider.** Service Provider hereby agrees that: (i) it is bound by the terms, conditions and obligations contained in this Agreement, in addition to the MORMLS Rules and Regulations; (ii) it will immediately notify MORMLS in the event it discovers that Participant and/or Agent has violated any terms, conditions or provision of this Agreement (including, without limitation, the MORMLS Rules and Regulations); and (iii) it will cooperate with MORMLS, as directed by MORMLS, in enforcing MORMLS' rights against Participant and/or Agent pursuant to this Agreement.

15. **Participant Warranties and Representations.** Participant represents and warrants that: (a) Participant has the power and authority to enter into this Agreement; and (b) the Participant's Website that utilizes the MLS Databases or the MLS Content does not and will not infringe any trade name, trademark, trade secret, patent, or copyright or other intellectual property or other rights of any third party. Participant agrees to defend, indemnify and hold MORMLS (and/or its parent, subsidiaries, affiliates, agents, owners, employees and directors) harmless from any and all claims or suits against MORMLS (and/or its parent, subsidiaries, affiliates, agents, owners, employees and directors) arising out of or related to Participant's Website, the use of Participant's Website, and/or any breach or alleged breach of any of the foregoing representations or warranties.

16. **Agent Warranties and Representations.** Agent represents and warrants that: (a) Agent has the power and authority to enter into this Agreement; and (b) the Agent's Website that utilizes the MLS Databases or the MLS Content does not and will not infringe any trade name, trademark, trade secret, patent, or copyright or other intellectual property or other rights of any third party. Agent agrees to defend, indemnify and hold MORMLS (and/or its parent, subsidiaries, affiliates, agents, owners, employees and directors) harmless from any and all claims or suits against MORMLS (and/or its parent, subsidiaries, affiliates, agents, owners, employees and directors) arising out of or related to Agent's Website, the use of Agent's Website, and/or any breach or alleged breach of any of the foregoing representations or warranties.

17. **Service Provider Warranties and Representations.** Service Provider represents and warrants that: (a) Service Provider has the power and authority to enter into this Agreement; and (b) the Service Provider's system, software, Website, processes or techniques that utilize the MLS Databases or the MLS Content do not and will not infringe any trade name, trademark, trade secret, patent, or copyright or other intellectual property or other rights of any third party. Service Provider agrees to defend, indemnify and hold MORMLS (and/or its parent, subsidiaries, affiliates, agents, owners, employees and directors) harmless from any and all claims or suits against MORMLS (and/or its parent, subsidiaries, affiliates, agents, owners, employees and directors) arising out of or related to the use of Service

Provider's system, software, Website, processes or techniques, and/or any breach or alleged breach of any of the foregoing representations or warranties.

18. **Warranties of MORR and MORMLS.** MORR and MORMLS hereby warrant and represent that they have full power and authority to enter into and consummate the transactions contemplated in this Agreement and to grant the License and Access rights set forth herein.

19. **Disclaimer of Warranties.** EXCEPT AS EXPLICITLY PROVIDED HEREIN, MORR AND MORMLS EXPRESSLY AND SPECIFICALLY DISCLAIM AND REJECT ANY AND ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING THE ACCURACY, RELIABILITY, COMPLETENESS AND/OR TIMELINESS OF THE MLS DATABASES OR THE MLS CONTENT, OR ANY WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, MORMLS CANNOT AND DOES NOT WARRANT THAT THE MLS DATABASES OR THE MLS CONTENT WILL BE AVAILABLE AT ALL TIMES OR ON A CONSISTENT BASIS.

20. **Limitation of Liability.** IN NO EVENT WILL MORMLS OR MORR BE LIABLE TO A PARTY TO THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST DATA OR LOST PROFITS) ARISING OUT OF A PARTY'S ACCESS TO OR USE OF THE MLS DATABASES OR THE MLS CONTENT, EVEN IF MORMLS AND/OR MORR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MORMLS'S LIABILITY TO A PARTY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION WILL BE STRICTLY LIMITED TO THE FEES THAT HAVE ACTUALLY BEEN PAID BY THE PARTY TO MORMLS DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT CAUSED SUCH DAMAGE.

21. **Entire Agreement.** This Agreement expresses the complete and final understanding with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous written and oral agreements and communications relating hereto.

22. **Assignment.** No party to this Agreement may assign, transfer or pledge this Agreement, or any interest, license or rights herein, in any manner, without the prior written consent of MORMLS. This Agreement shall be binding upon, and inure to the benefit of, the parties' successors and permitted assigns.

23. **Independent Contractor.** The parties to this Agreement are independent contractors and this Agreement shall not be construed to create any employment, partnership, joint venture, or agency relationship between the parties or authorize any party to bind or commit another.

24. **Non-Waiver.** Any failure by a party to detect, protest, or remedy any breach of this Agreement shall not constitute a waiver or impairment of any such term or condition, or the right of such party at any time to avail itself of any remedies it may have for any breach or breaches of such term or condition.

25. **Severability.** If any provision hereof is declared illegal, invalid or unenforceable by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect. Furthermore, in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement another provision or term as similar to the illegal, invalid or unenforceable provision as may be possible and that is legal, valid and enforceable.

26. **Force Majeure.** The parties to this Agreement shall not be in default by reason of any failure in performance of this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such party, including but not limited to, acts of God, U.S. or foreign governmental acts (in either a sovereign or contractual capacity) labor strikes, fire, flood, epidemic, acts of war, terrorist acts and/or freight embargoes.

27. **Notice.** All communications between the parties which are required or permitted to be in writing shall be (i) by hand delivery, with receipt obtained, or (ii) by prepaid, first class U.S. postal service mail, certified return receipt requested, or (iii) by e-mail or facsimile with confirmation of delivery, and sent to the attention of the parties executing this Agreement at the addresses specified in the first page of this Agreement. By written notice pursuant to this Section, a party may designate a different recipient or address for purposes hereof. Notice shall be deemed received when actually received or five (5) business days after such notice is mailed in accordance with this Section, whichever occurs first.

28. **Duty to Advise if Change in Information.** The parties agree to advise MORR of any change in the information provided in this Agreement including, but not limited to, names, addresses, and contact information. The failure to timely advise MORR of such changes may result in the termination of this License.

29. **Governing Law, Venue and Waiver of Jury Trial.** The interpretation of and performance under this Agreement will be construed in accordance with the laws of the State of New Jersey and the exclusive jurisdiction and venue for all disputes related hereto shall be in the appropriate state or federal court in Monmouth County, New Jersey. In any such action, suit, or proceeding, such court shall have personal jurisdiction over all the parties hereto, and service of process upon them under any applicable statutes, laws and rules shall be deemed valid and good. **Each party to this Agreement waives any right to a trial by jury in any action or proceeding to enforce or defend any rights under or relating to this Agreement, or any amendment, instrument, document or agreement delivered or which may in the future be delivered in connection with this Agreement or arising from any course of conduct, course of dealing, statements (whether verbal or written), actions of any of the parties to this Agreement or any other relationship existing in connection with this Agreement, and agrees that any such action or proceeding shall be tried before a court and not before a jury.**

30. **Attorneys' Fees.** In an action brought to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover from the nonprevailing party or parties all costs and expenses including reasonable attorneys' fees, incurred by the prevailing party in enforcing the Agreement.

31. **Permitted Uses.** The license granted under this Agreement for Access to the MLS Databases and the MLS Content is for one (1) and only one (1) permitted use as checked off below, and for no other purpose whatsoever.

**Check one and only one:**

- Participant Website URL: \_\_\_\_\_
- Agent Website URL: \_\_\_\_\_
- Franchisor Website URL: \_\_\_\_\_
- 3<sup>rd</sup> Party System or Software Name: \_\_\_\_\_
- Participant – for internal brokerage firm use

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“MORMLS”  
Monmouth Ocean Regional Multiple Listing Service,  
Inc.

By: \_\_\_\_\_  
Bryan Hutchinson

“MORR”  
Monmouth Ocean Regional REALTORS®, Inc.

“Participant” (BROKER/MANAGER)  
By: \_\_\_\_\_  
Print

\_\_\_\_\_  
Sign

“Agent”  
By: \_\_\_\_\_  
Print

\_\_\_\_\_  
Sign

“Service Provider”  
By: Dan Dlhy  
Print

\_\_\_\_\_  
Sign 