

Firm/Agent Information and Signature

(filled out by designated broker or agent)

It is understood by signing this page that the **firm** identified understands the guidelines for IDX which were set by the Greater El Paso Association of REALTORS®, MLS Inc. and agrees to comply with policies and procedures included. All information is for IDX only and confidential by Copyright. *(See Internet Data Exchange Handbook)*

Firm/Agent Name: _____

Firm/Agent MLS ID: _____

Designated Broker Name: _____

Broker MLS ID: _____

Firm/Agent's Website: _____

(Website that will use IDX)

E-Mail
address: _____

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

Firm
Street Address: _____

Firm
City, ST, ZIP: _____

Firm/Agent
Phone: _____ Fax: _____

Entered into on behalf of Firm by:

Signature of Designated Broker

Print Name

Title, Agency

Consultant Information and Signature

(filled out by web consultant)

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

It is understood by signing this page that the **consultant** identified understands the guidelines for IDX which were set by the Greater El Paso Association of REALTORS®, MLS Inc. and agrees to comply with policies and procedures included. All information is for IDX only and confidential by Copyright. *(See Internet Data Exchange Handbook)*

Consultant
(company or individual) Name: _____

Consultant Web: _____ http://www._____

E-mail
address: _____

(You **must** supply an e-mail address here. This address will be GEPAR MLS's principle means of communicating with you for notices under this Agreement.)

Consultant
Street Address: _____

Consultant
City, ST, ZIP: _____

Phone: _____ Fax: _____

Entered into on behalf of Consultant by:

Signature of Designated Broker

Print Name

Title, Agency

NOTE TO CONSULTANT: Be sure to enter into this Access to Internet Data Exchange data feed contract with GEPAR MLS 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.

CONTRACT: Access to Internet Data Exchange data feed

Note: This form is a legally binding contract between you and GEPAR MLS.

Simultaneously or prior to submitting this form/contract, you must become an Internet Data Exchange Subscriber (IDX). See GEPAR IDX Booklet for further Details. **Each page of the contract needs to be initialed in the margins and this form must be filled out completely and signed by an owner of your firm. There are no exceptions.** Once you have filled it out and signed it, fax or mail it to GEPAR MLS at 6400 Gateway East, El Paso, Texas 79905, FAX: 915-779-0584. GEPAR MLS 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 Greater El Paso Association of REALTORS® Multiple Listing Service, Inc. (**GEPAR MLS**), 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.

_____ Broker Initials

RECITALS

2. Firm wishes to obtain, and GEPAR MLS wishes to provide, data for Firm’s web site, including the listing data of other real estate brokerages participating in GEPAR MLS. 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.

Affiliated Association: Any association or board of REALTORS® that purchases Multiple Listing Services from GEPAR MLS for resale to its members.

Internet Data Exchange Database or IDX Data: The current aggregate compilation of all active exclusive right to sell 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. GEPAR MLS 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 GEPAR MLS, as amended from time to time, and any operating policies and Rules and Regulations relating to the IDX Data and IDXSSs promulgated by GEPAR MLS.

Subscriber: Any real estate broker, appraiser, or other real estate related business professional that purchases Multiple Listing Services from an Affiliated Association or from GEPAR MLS directly.

Subscriber Data: Data relating to real estate for sale, previously sold or listed for sale, including the IDX Database, and data relating to Subscribers and Affiliated Associations, entered into the MLS system by Subscribers, the Affiliated Associations, and GEPAR MLS. GEPAR MLS owns the Subscriber Data.

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GEPAR MLS'S OBLIGATIONS

4. During the term of this Agreement, GEPAR MLS grants to Firm 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.
5. During the term of this Agreement, GEPAR MLS 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 GEPAR 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.

FIRM'S OBLIGATIONS

6. Firm shall comply with the Rules at all times.
7. Firm acknowledges GEPAR MLS's ownership of the copyrights in the Subscriber Data and the IDX Data.
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. In order for a third party to qualify as a Consultant hereunder, said third party must be a web consultant who consults with a member Firm regarding the development, design and/or maintenance of the Firm's web site.

10. If GEPAR MLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that GEPAR MLS may seek cure from the Consultants, or any one of them.
11. Firm shall notify GEPAR MLS within five (5) business days of any change to the information relating to Firm on the Firm Information and Signature page below.

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CONSULTANT'S OBLIGATIONS

12. If GEPAR MLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, GEPAR MLS may contact Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with GEPAR MLS and act immediately to cure upon notification by GEPAR MLS of an uncured breach by Firm.
13. Each Consultant acknowledges GEPAR MLS's ownership of the copyrights in the Subscriber Data and the IDX Data.
14. Each Consultant shall comply with the requirements relating to Confidential Information set forth below. Each Consultant represents and agrees that Consultant shall utilize the Subscriber Data, IDX Data, and Confidential Information solely, and only to the extent necessary, for the purposes of development, design, and/or maintenance of the web site of the member Firm for which Consultant acts as a web consultant, and for no other purpose.
15. Each Consultant shall notify GEPAR MLS within (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 GEPAR MLS or designated "confidential" by GEPAR MLS 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 GEPAR MLS obtains from any third party that GEPAR MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by GEPAR MLS.

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 with the prior written consent of GEPAR MLS, to the extent of such consent.

c. is used or disclosed by the Receiving Party with the prior written consent of GEPAR MLS, to the extent of such consent;

d. becomes known to the Receiving Party from a source other than GEPAR MLS without breach of this Agreement by the Receiving Party and provided that such source is not bound by a confidential agreement with GEPAR MLS; or

e. Is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to GEPAR MLS prompt notice of any such order or compulsion.

18. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with GEPAR MLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by GEPAR MLS.

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 Rules 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 GEPAR MLS 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 GEPAR MLS. If GEPAR MLS 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. **Restriction on Use - Location restriction.** The Receiving Party will not remove the Confidential Information from its principle place of business without GEPAR MLS's

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prior written consent. In the event GEPAR MLS 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 GEPAR MLS, the Receiving Party will return to GEPAR MLS all Confidential Information and all other materials provided by GEPAR MLS 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 GEPAR MLS, an officer of the Receiving Party will certify in writing that all materials have been returned to GEPAR MLS and all magnetic or computer data have been destroyed.

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TERM AND TERMINATION

24. The term of this Agreement begins on the “Effective Date” set forth on the “GEPAR MLS Information and Signature Page” below. GEPAR 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. GEPAR MLS’s notice to Firm that this Agreement is terminated.
 - b. Firm’s notice to GEPAR MLS that it no longer intends to display IDX Data on its web site.
 - c. Termination of Firm’s privileges as a Subscriber either by GEPAR MLS or the Affiliated Association from which Firm purchases Multiple Listing Services.

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. **GEPAR MLS’s Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Firm and Consultants acknowledge that GEPAR MLS 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 GEPAR MLS for a breach. GEPAR MLS 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 GEPAR MLS.
27. **Attorney’s fees.** If GEPAR MLS 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 GEPAR MLS’s reasonable attorney’s fees and costs for such legal action.
28. **Limitation of Liability.** GEPAR MLS’s 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 GEPAR MLS, if any, under this Agreement. Firm’s and Consultants’ only other remedy shall be termination of this Agreement. GEPAR MLS shall not be liable for any incidental or consequential

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damages under any circumstances, even if GEPAR MLS has been advised of the possibility of such damages. GEPAR MLS 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 GEPAR MLS.
32. **Entire Agreement.** This Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supercedes all prior representations and understandings whether oral or written. The previous sentence notwithstanding, the Rules as now constituted or as amended in the future 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 Texas.

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

Greater El Paso Association of Realtors
6400 Gateway Blvd East
El Paso, Tx 79905 Phone: 915-779-3521

3rd Party Access Billing Agreement

I, _____, in my capacity as, _____
of _____ (Company Name), agree to the terms
set by Greater El Paso Association of Realtors to receive an MLS Data feed.

I also agree that an initial charge of \$150.00 will be billed to my credit card. Thereafter, a charge of
\$120.00 will be billed to my credit card on a yearly basis. All 3rd Party billing is done by credit card, and
all billing receipts will be emailed.

☎ I would like my billing receipts emailed to: _____

☎ Card Holder Name: _____

☎ Card Type: _____

☎ Billing Address for Credit Card:

☎ Contact Phone #: _____

I must notify GEPAR **immediately** in order for my billing to be adjusted.

Client Signature

Date

|||
Credit Card Number

____/____
Expiration Date

GEPAR Representative

Date