



## **Agent Data Access Agreement**

**Cooperative Arkansas REALTORS® Multiple Listing Services, Inc.**

201 Natural Resources Drive Little Rock, AR 72205

Phone: (501) 224-3339

E-mail [support@carmls.com](mailto:support@carmls.com)



## ACCESS TO MLS DATA INFORMATION AGREEMENT

**Note: This is a legally binding contract between you, your Firm, Consultant, and the Cooperative Arkansas REALTORS® MLS, Inc.** Simultaneously or prior to submitting this Agreement, your Firm must be an MLS Data Exchange Member Participant (MLSDXMP). **This Agreement must be filled out completely and signed by you, your Firm, and your Consultant. There are no exceptions.** Once you have filled it out and signed it, Email to: Support@carmls.com, or Mail it to Cooperative Arkansas REALTOR® MLS, Inc., 201 Natural Resources Drive, Little Rock, AR 72205. CARMLS will then send information regarding data release approval.

### AGREEMENT

This AGREEMENT is made and entered into by Cooperative Arkansas REALTORS® Multiple Listing Services, Inc. ("CARMLS"), with offices at 201 Natural Resources Drive, Little Rock, AR 72205; the real estate brokerage firm identified as "**Firm**" on the signature page below ("*Firm*"); the Agent affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the "**Agent Party**"); and the **CARMLS approved** individual or business association identified as "**Consultant**" on the signature page below, if any ("*Consultant*").

### RECITALS

Agent wishes to obtain, and CARMLS wishes to provide, data for Agent/Firm's web site or other approved IDX application (collectively, "**IDX Display**"), including the listing data of other real estate brokerages participating in CARMLS. Agent may wish to engage Consultants, i.e., other companies or individuals to perform data downloading, manipulation, and formatting, as well as programming, web design, and mobile app and to further provide an Agent branded and controlled IDX Display for the Agent.

### DEFINITIONS

1.0 For purposes of this Agreement, the following terms shall have the meanings set forth below:

**Agent:** A person with a state license to appraise or represent a buyer or a seller in a real estate transaction that is licensed to a Member Participant who subscribes to the CARMLS.

**Audio Device:** Any audio delivery of IDX data authorized by CARMLS Policies and listed in Exhibit A that are not web sites or Mobile Applications. "Audio Device" does not include mass media delivery of CARMLS Data.

**CARMLS Data:** Data relating to real estate for sale, previously sold, or listed for sale, and to CARMLS Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into CARMLS's databases by CARMLS Participants and CARMLS, or on their behalf.

**CARMLS Policies:** The Rules and Regulations of CARMLS MLS, as amended from time to time, and any operating policies relating to the IDX Data and IDXMPs promulgated by CARMLS.

**Confidential Information:** "Confidential Information" means information or material proprietary to a party or designated "confidential" by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all CARMLS Data, except to the extent to which this Agreement and the CARMLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that CARMLS obtains from any third party that CARMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by CARMLS; (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims and evidence presented by any party in any arbitration under this Agreement. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

**Consultants:** Other companies or individuals who are not employees of the Member Participant who perform **CARMLS approved** data downloading, manipulation, and formatting, as well as programming and web design, for the Member Participant.

**Data Interface:** The transport protocols and data storage formats provided by CARMLS for use by Firm, Agent, and Consultant; CARMLS may modify the Data Interface in its sole discretion from time to time. **Firm Internal Use:** Any use of those portions of the CARMLS Data relating to listings of Firm and Participants other than Firm that exposes CARMLS Data only to Firm-Related Persons and to Agents affiliated with Firm, subject to the CARMLS Policies. **Firm-Related Persons:** Consultant, if any, and employees of Firm who are not Agents or broker/managers.

**IDX:** Use and display of portions of the CARMLS Data under the IDX provisions of the CARMLS Policies.

**Internet Data Exchange Database or IDX Data:** The current aggregate compilation of all active listings. This may also include **"UNDER CONTRACT"** data which shall include list price, pending date and all photographs for the listing, **HOWEVER YOU MUST DISPLAY AT LEAST ONE PHOTO FOR THE LISTING WHICH MUST BE THE PRIMARY PHOTO.** Compilations of such data, photographs, materials, and information of all Internet Data Exchange Member Participants except those listings where the property seller has opted out of Internet publication by so indicating on listing contract.

**MLS Data Exchange Member Participant (MLSDXMP):** A Member Participant who gives permission to other Member Participants and Agents to display its active listings. This may also include **"UNDER CONTRACT"** data which shall include list price, pending date and all photographs for the listing, **HOWEVER YOU MUST DISPLAY AT LEAST ONE PHOTO FOR THE LISTING WHICH MUST BE THE PRIMARY PHOTO.** Compilations of such data, photographs, materials, and information on their web sites in return for their permission to advertise their listings on its web site and those of its agents.

**Member Participant (Participant):** Any real estate broker or appraiser that purchases Multiple Listing Services.

**Multiple Listing Service (MLS):** 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.

**Mobile Applications:** Any displays of IDX data authorized by CARMLS Policies and listed in Exhibit A that are not web sites. "Mobile Applications" use is not permitted for Third Party mass media display of CARMLS Data.

**Participant:** This term has the meaning given to it in the CARMLS Policies. For purposes of this Agreement, "Participant" does not apply to participants of MLSs other than CARMLS. Where applied in this Agreement to Participants other than Firm, "Participant" also includes Agents affiliated with those Participants for whom the Participants are responsible under the laws of the State of Arkansas.

**Participant Data Use:** Any use of those portions of the CARMLS Data relating to Firm's own listings.

**Permitted Use:** One or more of the following permitted data uses: Firm Internal Use, IDX, Participant Data Use or VOW as specified on the signature page and in Exhibit A.

**Second Level Domain:** "Second Level Domain" has the meaning given to it in this paragraph. "URL" means a web address, including the "http://" and any material appearing after a slash in the address. "Domain Name" means a URL, less the "http://" and any material appearing to the right of the next slash ( '/') in the address. (So for example, in the URL "Http://janesmith.abcrealty.com/homepage.html", the Domain Name is "JANESMITH.ABCREALTY.COM".) "Top Level Domain" means the portion of the Domain Name to the right of the right-most period. (In the example, "COM".) "Second Level Domain" means that portion of a domain name to the left of the right-most period, up to the second period from the right, if any, plus the Top Level Domain. (In the example, "ABCREALTY.COM".) "Third Level Domain" means that portion of a domain name to the left of the second period from the right, if any, up to the third period from the right, if any, plus the Second Level Domain. (In the example, "JANESMITH.ABCREALTY.COM".).

**Third Party(s):** includes without limitation affiliates, franchisors, and subsidiaries.

**VOW:** Use and display of portions of the CARMLS Data under the Virtual Office Website (VOW) provisions of the CARMLS Policies.

## **CARMLS'S OBLIGATIONS**

2. CARMLS grants to Firm and Agent Party a terminable, non-transferable, non-exclusive, revocable, world-wide license to make copies of, display, perform, and make derivative works of the CARMLS Data for the Permitted Use, and the right to sublicense the same to Consultant, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement and the CARMLS Policies; any other use of the CARMLS Data is hereby prohibited. Firm and Agent Party may sublicense its rights to Consultant, but not the right to sublicense, only so Consultant may provide services on behalf of Firm or Agent Party to exercise the Permitted Uses only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement and the CARMLS Policies; any other use of the CARMLS Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. CARMLS retains all rights not expressly granted herein.

3. CARMLS agrees to provide to Firm, Agent Party, and Consultant, during the term of this Agreement, (a) access to the CARMLS MLS Database and IDX Data via the Data Interface under the same terms and conditions CARMLS offers to other CARMLS

Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the CARMLS Policies to the extent they are applicable or related to the Permitted Use. CARMLS does not undertake to provide technical support for the Data Interface or the CARMLS Data. The Data Interface, together with access to the CARMLS Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or CARMLS Data shall not constitute a default by CARMLS under this Agreement. CARMLS may use a third party contractor, determined in CARMLS's sole discretion, to facilitate the data access and any other responsibilities or rights of CARMLS under this Agreement.

### **FIRM'S OBLIGATIONS**

4. Firm and Agent Party shall comply with the CARMLS Policies at all times. In the event of any perceived conflict between the CARMLS Policies and this Agreement, the CARMLS Policies shall govern. Additionally, Firm and Agent Party shall comply with all applicable laws, statutes, ordinances, and regulations in performance of their respective obligations under this Agreement.

5. Firm and Agent Party shall use the CARMLS Data obtained under this Agreement for the Permitted Use only. Any other use is strictly prohibited. Firm and Agent Party shall not make the CARMLS MLS Database and IDX Data or the Confidential Information available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement. Firm and Agent Party may display or deliver the CARMLS Data on web sites, Mobile Applications, and Audio Devices only to the extent permitted by the CARMLS Policies and then only on a site or sites resident at the Second Level and Third Level Domain(s), Mobile Applications, and Audio Devices expressly indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Agent Party acknowledge that ownership and use rights relating to copyrights in the CARMLS Data are defined in the CARMLS Policies or in the terms of the participant and subscriber agreements between CARMLS Firm and Agent Party, or both. Firm and Agent Party shall not challenge or take any action inconsistent with CARMLS's ownership of or rights in the CARMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If CARMLS notifies Firm or Agent Party of a breach of the CARMLS Policies or this Agreement and Firm or Agent Party does not immediately cure the breach, Firm and Agent Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with CARMLS under Paragraph 11.

8. Firm and Agent Party shall pay the fees, if any, that CARMLS (or its shareholder associations/MLSs) customarily charges other CARMLS Participants for data access. Firm and Agent Party acknowledge receipt of CARMLS's current schedule of such fees, if any. CARMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Agent Party. Firm and Agent Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Agent Party's and Consultant's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

10. The Firm, Agent Party shall notify CARMLS within five (5) business days of any change to the information relating to the Agent and Firm on the Firm/Agent Party Information and Signature page is required.

### **CONSULTANT'S OBLIGATIONS**

11. Consultant shall immediately correct any breach of this Agreement or violation of the CARMLS Policies within its control, whether committed by Firm, Agent Party, or Consultant, upon notice from CARMLS.

12. Consultant shall notify CARMLS within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page.

13. Agent control of access, display and specific office branding are required if a consultant wishes to offer IDX display sites or other applications to an Agent, Member Participate and their Brokerage.

14. Each Consultant shall validate each and every Agent on a weekly basis to confirm their active status. Consultants shall only provide IDX Display to Agents, Member Participants and their Brokerage who are currently active with CARMLS.

15. Each Consultant shall provide CARMLS with an updated CARMLS Brokerage and Agent list immediately upon request by CARMLS. The list must identify every IDX Display for each Brokerage and/or Agent, including multiple URLs pointing to the same destination.

16. Consultant acknowledges that (as among the parties to this Agreement) Firm and CARMLS possess all right, title, and interest in all copyrights in the CARMLS IDX Data and MLS Database. Consultant shall not challenge or take any action inconsistent with CARMLS's and Firm's ownership of or rights in the CARMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

17. Consultant shall not make the CARMLS IDX Data, MLS Database, or the Confidential Information available to any third party, including without limitation affiliates, franchisors, and subsidiaries, except on behalf of Firm and Agent Party and in a

manner consistent with Firm's and Agent Party's obligations under Paragraphs 4 through 10 of this Agreement; nor shall it make any other use of the CARMLS Data, whether commercial or personal. In the event that Consultant provides services to Participants other than Firm (or to Agents affiliated with Firm other than the Agent Party), Consultant must enter separate contracts with CARMLS. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant; and in the case of Agents, that each Agent Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in CARMLS terminating all of Consultant's access to the CARMLS Data under this Agreement and all similar agreements. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

18. Consultant warrants that any effort or use of the CARMLS MLS Database and IDX Data will not constitute copyright infringement or other intellectual property rights of any third party. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity. Additionally, Consultant shall comply with all applicable laws, statutes, ordinances, and regulations in performance of its respective obligations under this Agreement.

19. Consultant represents that it currently, and through the term of this Agreement, shall use industry best practices for firewalls and other network protocols to increase the security of its systems and shall employ reasonable physical, technical, and administrative security measures to protect the Confidential Information and prevent unauthorized third parties from accessing and using the Confidential Information. Consultant will comply fully with all applicable laws, and regulations relating to personally identifiable information ("PII") and data privacy with regards to the Confidential Information. Consultant agrees that it will monitor and test its security protocols from time to time and adjust the same as necessary. In the event a security breach of Consultant's systems or use of the Confidential Information by unauthorized third parties, Consultant shall immediately notify CARMLS of such breach by confirmed email or confirmed telephone call. In the event of such security breach, Consultant will (i) cooperate with CARMLS at Consultant's expense to prevent or stop such a security breach; (ii) comply with all applicable laws and take appropriate steps to remedy such a security breach; (iii) indemnify, hold harmless and defend CARMLS against any and all loss, damage, claims, liabilities, or expenses, including reasonable attorneys' fees, arising out of or relating to a third party claim or suit from breach by Consultant of its obligations described in this paragraph.

20. Consultant shall pay the fees, if any, that CARMLS customarily charges other consultants for data access. Consultant acknowledges receipt of CARMLS's current schedule of such fees, if any. CARMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Consultant. Consultant shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

21. Consultant is surety for Firm's and Agent Party's obligations to pay fees under Paragraph 8. The provisions of the preceding sentence shall survive the expiration or other termination of this Agreement in perpetuity. Consultant shall notify CARMLS within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

#### **AUDITS OF COMPLIANCE**

22. CARMLS may in its reasonable discretion conduct periodic compliance reviews of Firm's, Agent Party's, and Consultant's use of the CARMLS Data under this Agreement. Firm, Agent Party, and Consultant will respond within 72 hours of any compliance inquiry by CARMLS. CARMLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Agent Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Agent Party's, and Consultant's compliance with this Agreement ("Audit"). CARMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Agent Party's, and Consultant's web sites, Mobile Applications, Audio Devices, and systems to ensure that CARMLS Data is displayed in accordance with the CARMLS Policies; using all features available to end-users of Firm's, Agent Party's, and Consultant's systems that employ the CARMLS Data; and posing as consumers to register and test services Firm, Agent Party, and Consultant make available to consumers using the CARMLS Data. CARMLS shall pay the costs it incurs, and the out-of-pocket costs Firm, Agent Party, and Consultant incur, as part of any Audit; provided, however, Firm or Agent Party shall be liable for all costs of any Audit that discloses that Firm, Agent Party, or Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year

#### **CONFIDENTIAL INFORMATION**

23. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

#### **TERM AND TERMINATION**

24. The term of this Agreement begins on the date that CARMLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Agent Party, Firm's privileges as a Participant in CARMLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's

notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide IDX or VOW services to it; (f) with regard to any Agent Party, immediately upon any event that results in the Agent Party no longer being affiliated with Firm; (g) as provided in Paragraphs 33 and 36.

24. In the event Firm's privileges as a Participant (or Agent Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and CARMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if CARMLS resumes its obligations under Paragraphs 2 and 3. In the event Firm, Agent Party, or Consultant breaches this Agreement and entitles CARMLS to terminate under Paragraph 24, CARMLS may in its sole discretion suspend its performance instead of terminating this Agreement. CARMLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firms, Agent Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any termination of this Agreement, Firm, Agent Party, and Consultant shall delete the CARMLS Data and any derivative works based on it (except the portions of it relating to Firm's own listings). In the event of any suspension of this Agreement, Firm, Agent Party, and Consultant shall make no further use of the CARMLS Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Agent Party's rights under this Agreement are restored.

## GENERAL PROVISIONS

25. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of Arkansas, without regard to its conflicts and choice of law provisions.

26. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

27. **CARMLS's Remedies.** (a) Injunctive relief: Because of the unique nature of the CARMLS Data and Confidential Information, Firm, Agent Party, and Consultant acknowledge and agree that CARMLS would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate CARMLS for a breach. CARMLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing, or further breach by Firm, Agent Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by CARMLS, and without posting any bond.

(b) Liquidated damages: Firm, Agent Party, and Consultant acknowledge that damages suffered by CARMLS from access to the CARMLS Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the CARMLS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to CARMLS to enter into this Agreement, Firm, Agent Party, and Consultant agree that in the event Firm, Agent Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the CARMLS Data or disclose the CARMLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Agent Party, and Consultant shall be liable to CARMLS for liquidated damages in the amount of \$5,000 for each such disclosure and termination of this Agreement. Liability of Firm, Agent Party, and Consultant under this paragraph is joint and several.

28. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL CARMLS BE LIABLE TO FIRM, AGENT PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF CARMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL CARMLS BE LIABLE TO FIRM, AGENT PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, AGENT PARTY, AND CONSULTANT HAVE PAID CARMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, AGENT PARTY, AND CONSULTANT ACKNOWLEDGE THAT CARMLS PROVIDES THE CARMLS DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NONINFRINGEMENT, AND ACCURACY. CARMLS SHALL NOT BE LIABLE TO FIRM, AGENT PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE CARMLS DATA, ANY FAILURE TO UPDATE THE CARMLS DATA PROMPTLY, OR THE CARMLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. CARMLS makes no warranty, including those regarding title, availability, or noninfringement, regarding trademarks licensed under this Agreement, if any.**

29. **Dispute resolution; Attorney's fees.** In the event CARMLS claims that Firm, Agent Party, or Consultant has violated the CARMLS Policies, CARMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the CARMLS Policies, provided CARMLS does not also base a claim that Firm, Agent Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any controversy or claim to which Consultant is not a party arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Arkansas located in Pulaski County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to CARMLS's disciplinary procedures or to arbitration. Non-binding mediation in good faith is a condition precedent to asserting any claim, whether in arbitration or the courts, under this Agreement, except that this condition shall not prevent CARMLS from exercising any of its rights under Section 23. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

**30. Indemnification.** Subject to Paragraph 28, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. Consultant indemnifies CARMLS, Firm, Agent Party, or customers of CARMLS, Firm, or Agent Party, to whom Consultant provides a product or service using CARMLS Data, against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from any third-party claim of patent infringement. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

**31. Notice.** All notices to be given under this Agreement shall be mailed, sent via electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

**32. 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.

**33. Assignment.** Firm, Agent Party, and Consultant may not assign or otherwise transfer any of its respective rights or obligations under this Agreement to any other party. Any purported assignment or delegation by Firm, Agent Party, or Consultant in contravention of this paragraph is null and void and shall immediately cause this Agreement to terminate.

**34. Entire Agreement; Amendment.** Subject to CARMLS Policies, 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, relating to the same. In the event of any dispute regarding the interpretation of the terms of this Agreement, it shall not be construed for or against any party on the grounds that the Agreement was prepared by any one of the parties. CARMLS may amend this agreement by providing 30 days' advance notice of the amendment to all other parties; if any party continues to use the Data Interface or the CARMLS Data after the expiration of the 30-day notice period, that party will be deemed to have agreed to the terms as amended.

**35. Relationship of the Parties.** The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of CARMLS or have any authority to make any agreements or representations on the behalf of CARMLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

**36. Severability.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

**37. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

(The remainder of this page intentionally left blank.)



Under this Agreement, **FIRM AND AGENT PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Agent Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with CARMLS and each such consultant.

Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM AND AGENT PARTY NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Agents affiliated with Firm except the Agent Party. Consultant must enter into a new version of this Agreement with CARMLS and each additional Participant or amend this Agreement with CARMLS to add additional Agents affiliated with Firm as Agent Parties.

If Firm or Agent Party will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box. If this Agreement is for services to Firm only, and there is no Agent Party, Firm should cross out the Agent Party signature box.

**This Agreement is for the following Permitted Use(s) (check all that apply):**

☐ **IDX** ☐ **VOW** ☐ **Firm Internal Use** ☐ **Participant Data Use**


☐ **RETS** ☐ **RESO API**

### **CONSULTANT (Vendor)**

Consultant Name: Constellation Web Solutions

Vendor Product(s): \_\_\_\_\_

Name of owner or officer: Dan Dlh

Signature of owner or officer: 

### **FIRM (Brokerage)**

Firm Name: \_\_\_\_\_

Broker Name: \_\_\_\_\_

Broker Signature: \_\_\_\_\_

### **AGENT PARTY (Requesting Agent)**

Agent name: \_\_\_\_\_

Signature Agent: \_\_\_\_\_

**Anticipated URL (if applicable):**

\_\_\_\_\_

**Date of form completion:** \_\_\_\_\_





**1. Additional Domains, Mobile Applications, and Audio Devices.** In addition to the Second and Third Level Domains specified on the signature page Firm, Agent Party, and Consultant may display CARMLS Data subject to the terms of this Agreement at the following Second and Third Level Domains, Mobile Applications, and Audio Devices (attach additional pages if necessary):

_____	<input type="checkbox"/> IDX <input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX <input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX <input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX <input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX <input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX <input type="checkbox"/> VOW

**2. Additional Agent Parties:** If there are two or more Agent Parties, each Agent Party after the first is identified by name here, and each must sign this Agreement. Each Agent Party listed here consents to CARMLS making communications and notices under this Agreement to Firm only. (Attached additional pages if necessary.)

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Name	Signature
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## CARMLS Data Display Policies

### Internet Data Exchange:

**Section 16 Internet Data Exchange (IDX)** – Internet Data Exchange (IDX) affords MLS participants the ability to authorize limited electronic display of their listings by other participants.

**Section 16.1 Authorization** – 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

**Section 16.2 Participation** – 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.

**Section 16.2.1** – Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies.

**Section 16.2.2** – 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.

**Section 16.2.3** – 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).

**Section 16.2.4** – 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.

**Section 16.2.5** – Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours.

**Section 16.2.6** – 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 database available to any person or entity.

**Section 16.2.7** – 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.

**Section 16.2.8** – 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 listing (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 16.2.9, 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.

**Section 16.2.9** – 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.

**Section 16.2.10** - 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, “comingling” 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.

**Section 16.2.11** - Participants shall not modify or manipulate information relating to other participants listings. MLS participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized fields.

**Section 16.3 Display** - Display of listing information pursuant to IDX is subject to the following rules:

**Section 16.3.1** 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.

**Section 16.3.1.1** - The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed.

**Section 16.3.2** - Deleted May 2015

**Section 16.3.3** - All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc. of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 16.3.4** - All listings displayed pursuant to IDX shall identify the listing agent.

**Section 16.3.5** - Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own websites subject to their participant’s consent and control and the requirements of state law and/or regulation.

**Section 16.3.6** - Deleted November 2006

**Section 16.3.7** - All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 16.3.8** - Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers’ personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the 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. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 16.3.9** - The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than one hundred (100) listings or five percent (5%) of the listings available for IDX display, whichever is fewer.

**Section 16.3.10** - The right to display other participants’ listings pursuant to IDX shall be limited to a participant’s office(s) holding participatory rights in this MLS.

**Section 16.3.11** - Listings obtained through IDX feeds from Realtor® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Note:** 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.

**Section 16.3.12** - Display of expired, withdrawn, and sold listings\* is prohibited. \*Note: If “sold” information is publicly accessible, display of “sold” listings may not be prohibited.

**Section 16.3.13** - Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and e-mail address(es) is prohibited.

**Section 16.3.14** - Participants are required to employ appropriate security protection such as firewalls on their websites and displays, provided that any security measures required may not be greater than those employed by the MLS.

**Section 16.3.15** - Participants must maintain an audit trail of consumer activity on their website and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers.

**Section 16.3.16** - Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information is larger than that of any third party. Section 16.4 Service Fees and Charges Service fees and charges for participation in IDX shall be as established annually by the Board of Directors.

**Section 16.4** - Service fees and charges for consultant participation in CARMLS IDX shall be as established annually by the Board of Directors.

## Virtual Office Websites

**Section 17 VOW (Virtual Office Website) Rules for MLSS** - On May 27, 2008, NAR and the U.S. Department of Justice reached a favorable settlement, concluding a two-year DOJ investigation (followed by two and a half years of litigation) regarding NAR's multiple listing policy as it pertained to the display of listings from the MLS on brokers' virtual office Web sites, or VOWs. The following sections (labeled 19.1 through 19.14 in the NAR Rules & Regulations) are required for adoption by all MLSS. They have been relabeled here as sections 17.1 through 17.14.

**Section 17.1 (a):** A Virtual Office Website ("VOW") is a Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant's oversight, supervision, and accountability. **(b)** As used in Section 19 of these Rules, the term "Participant" includes a Participant's affiliated non-principal brokers and sales licensees - except when the term is used in the phrases "Participant's consent" and "Participant's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner ("AVP") on behalf of a Participant. **(c)** "Affiliated VOW Partner" ("AVP") refers to an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant's supervision, accountability, and compliance with the VOW Policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Listing Information except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS Listing Information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW. **(d)** As used in Section 19 of these Rules, the term "MLS Listing Information" refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

**Section 17.2 (a):** The right of a Participant's VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSS may operate a master website with links to the VOWs of the other offices. **(b)** Subject to the provisions of the VOW Policy and these Rules, a Participant's VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g., Internet Data Exchange ("IDX"). **(c)** Except as otherwise provided in the VOW Policy or in these Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant's VOW.

**Section 17.3 (a):** Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:

- (i)** The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
- (ii)** The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.
- (iii)** The Participant must require each Registrant to have a username and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the username and password or may allow the Registrant to establish its username and password. The Participant must also assure that any email address is associated with only one username and password.

(b) The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, username, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

(c) If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of MLS Listing Information or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, email address, username, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.

(d) The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:

- (i) That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
- (ii) That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;
- (iii) That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
- (iv) That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;
- (v) That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

(e) The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

(f) The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

**Section 17.4:** A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

**Section 17.5:** A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

**(NOTE:** MLSs may adopt rules requiring Participants to employ specific security measures, provided that any security measure required does not impose obligations greater than those employed by the MLS.)

**Section 17.6 (a):** A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

- (b) A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision: