



Martin County REALTORS® of the Treasure Coast, Inc.

Participant Data Access Agreement

This AGREEMENT is made and entered into by Martin County REALTORS® of the Treasure Coast, Inc. ("MCRTC"), with offices at 3204-A SE Federal Highway, Stuart, FL 34997; the real estate brokerage firm identified as "Firm" on the signature page below ("Firm"); and the individual or business association identified as "Consultant" on the signature page below, if any ("Consultant"). This Agreement describes certain rights and obligations of "Real Estate Associate Party," which refers collectively to the Real Estate Associates affiliated with Firm to whom Firm has permitted Consultant to provide services under this Agreement.

DEFINITIONS

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.

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 MCRTC Data, except to the extent to which this Agreement and the MCRTC Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that MCRTC obtains from any third party that MCRTC treats as proprietary or designates as Confidential Information, whether or not owned or developed by MCRTC; (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.

Data Interface: The transport protocols and data storage formats provided by MCRTC for use by Firm, Real Estate Associate Party, and Consultant; MCRTC may modify the Data Interface in its sole discretion.

Firm Internal Use: Any use of those portions of the MCRTC Data relating to Firm's own listings; and any use of those portions of the MCRTC Data relating to listings of Participants other than Firm that exposes MCRTC Data only to Firm-Related Persons and to Real Estate Associates affiliated with Firm, subject to the MCRTC Policies.

Firm-Related Persons: Consultant, if any, and employees of Firm who are not Real Estate Associates or broker/managers.

IDX: Use and display of portions of the MCRTC Data under the Internet Data Exchange provisions of the MCRTC Policies.

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

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

MCRTC Policies: MCRTC's Bylaws and Rules and Regulations, as amended from time to time, and any operating policies promulgated by MCRTC.

Real Estate Associate: Any person holding a real estate license in Florida who is not a Participant but who is subject to a Participant's supervision under the laws of Florida.

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".).

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

MCRTC'S OBLIGATIONS

2. MCRTC grants to Firm and Real Estate Associate Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the MCRTC Data, 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; any other use of the MCRTC 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. MCRTC retains all rights not expressly granted herein.

3. MCRTC agrees to provide to Firm, Real Estate Associate Party, and Consultant, during the term of this Agreement, (a) access to the MCRTC Data via the Data Interface under the same terms and conditions MCRTC offers to other MCRTC Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the MCRTC Policies. MCRTC does not undertake to provide technical support for the Data Interface or the MCRTC Data. The Data Interface, together with access to the MCRTC 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 MCRTC Data shall not constitute a default by MCRTC under this Agreement.

FIRM'S OBLIGATIONS

4. Firm and Real Estate Associate Party shall comply with the MCRTC Policies at all times. In the event of any perceived conflict between the MCRTC Policies and this Agreement, the MCRTC Policies shall govern.

5. Firm and Real Estate Associate Party shall use the MCRTC Data obtained under this Agreement for Firm Internal Use, IDX, and VOW use only. Any other use is strictly prohibited. Firm and Real Estate Associate Party shall not make the MCRTC Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Real Estate Associate Party may display the MCRTC Data on web sites only to the extent permitted by the MCRTC Policies and then only on a site or sites resident at the second-level and third-level domain(s) 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 Real Estate Associate Party acknowledge that ownership and use rights relating to copyrights in the MCRTC Data are defined in the MCRTC Policies or in the terms of the participant and subscriber agreements between MCRTC Firm and Real Estate Associate Party, or both. Firm and Real Estate Associate Party shall not challenge or take any action inconsistent with MCRTC's ownership of or rights in the MCRTC Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If MCRTC notifies Firm or Real Estate Associate Party of a breach of the MCRTC Policies or this Agreement and Firm or Real Estate Associate Party does not immediately cure the breach, Firm and Real Estate Associate Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with MCRTC under Paragraph 10.

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

9. Firm is responsible for the performance of Real Estate Associate's obligations under this Agreement as if Real Estate Associate had signed this agreement and Firm had agreed to be surety for Real Estate Associate's obligations hereunder. Firm is surety for Consultant's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

CONSULTANT'S OBLIGATIONS

10. Consultant shall immediately correct any breach of this Agreement or violation of the MCRTC Policies within its control, whether committed by Firm, Real Estate Associate Party, or Consultant, upon notice from MCRTC.

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

12. Consultant shall not make the MCRTC Data or the Confidential Information available to any third party, except on behalf of Firm and Real Estate Associate Party and in a manner consistent with Firm's and Real Estate Associate Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the MCRTC Data, whether commercial or personal. In the event that Consultant provides services to Participants other than Firm, Consultant must enter separate contracts with MCRTC. 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 Real Estate Associates, that each Real Estate Associate Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in MCRTC terminating all of Consultant's access to the MCRTC 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.

13. Consultant is surety for Firm'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 MCRTC 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

14. MCRTC may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Real Estate Associate Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Real Estate Associate Party's, and Consultant's

compliance with this Agreement ("Audit"). MCRTC may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Real Estate Associate Party's, and Consultant's web sites and systems to ensure that MCRTC Data is displayed in accordance with the MCRTC Policies; using all features available to end-users of Firm's, Real Estate Associate Party's, and Consultant's systems that employ the MCRTC Data; and posing as consumers to register and test services Firm, Real Estate Associate Party, and Consultant make available to consumers using the MCRTC Data. MCRTC shall pay the costs it incurs, and the out-of-pocket costs Firm, Real Estate Associate Party, and Consultant incur, as part of any Audit; provided, however, Firm shall be liable for all costs of any Audit that discloses that Firm, Real Estate Associate 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

15. 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

16. The term of this Agreement begins on the date that MCRTC signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in MCRTC; (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 Real Estate Associate Party, immediately upon any event that results in the Real Estate Associate Party no longer being affiliated with Firm; (g) as provided in Paragraphs 26 and 29.

17. In the event Firm's privileges as a Participant (or Real Estate Associate Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and MCRTC subsequently reinstates those privileges, this Agreement shall automatically be reinstated if MCRTC resumes its obligations under Paragraphs 2 and 3. In the event Firm, Real Estate Associate Party, or Consultant breaches this Agreement and entitles MCRTC to terminate under Paragraph 16, MCRTC may in its sole discretion suspend its performance instead of terminating this Agreement. MCRTC may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Real Estate Associate Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, Firm, Real Estate Associate Party, and Consultant shall make no further use of the MCRTC 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 Real Estate Associate Party's rights under this Agreement are restored.

GENERAL PROVISIONS

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



19. **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.

20. **MCRTC's Remedies.** (a) Injunctive relief: Because of the unique nature of the MCRTC Data and Confidential Information, Firm, Real Estate Associate Party, and Consultant acknowledge and agree that MCRTC 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 MCRTC for a breach. MCRTC is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Real Estate Associate Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by MCRTC, and without posting any bond. (b) Liquidated damages: Firm, Real Estate Associate Party, and Consultant acknowledge that damages suffered by MCRTC from access to the MCRTC Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the MCRTC Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to MCRTC to enter into this Agreement, Firm, Real Estate Associate Party, and Consultant agree that in the event Firm, Real Estate Associate Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the MCRTC Data or disclose the MCRTC Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Real Estate Associate Party, and Consultant shall be liable to MCRTC for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Real Estate Associate Party, and Consultant under this paragraph is joint and several.

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

22. **Dispute resolution; Attorney's fees.** In the event MCRTC claims that Firm, Real Estate Associate Party, or Consultant has violated the MCRTC Policies, MCRTC may, at its option, resolve such a claim according to the disciplinary procedures set out in the MCRTC Policies, provided MCRTC does not also base a claim that Firm, Real Estate Associate Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, may 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 determination whether a matter will be submitted to arbitration under the previous sentence shall be at MCRTC's sole discretion. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Florida located in Martin County or the federal court of the United States situated nearest to Martin County, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to MCRTC's disciplinary procedures or to arbitration. 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.

23. **Indemnification.** Subject to Paragraph 21, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. 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 the 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 counsel at the Indemnifying Party's expense.

24. **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 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.

25. **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.

26. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

27. **Entire Agreement.** Subject to MCRTC 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.

28. **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 MCRTC or have any authority to make any agreements or representations on the behalf of MCRTC. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

29. **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.



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Under this Agreement, **FIRM AND REAL ESTATE ASSOCIATE PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Real Estate Associate Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with MCRTC and each such consultant. Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Real Estate Associates affiliated with Firm except the Real Estate Associate Party. Consultant must enter into a new version of this Agreement with MCRTC and each additional Participant.

If Firm or Real Estate Associate Party will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box.

This Agreement is for the following (check all that apply): **IDX Data** **VOW Data** **Firm Internal Use Data**

<p>FIRM</p> <p>_____</p> <p>Firm name</p> <p>_____</p> <p>Signature of owner or officer (MLS Participant)</p> <p>_____</p> <p>Name of owner or officer</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>Second or Third Level Domain:</p> <p>_____ <input type="checkbox"/> IDX <input type="checkbox"/> VOW</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>	<p>CONSULTANT</p> <p>Constellation Web Solutions</p> <p>_____</p> <p>Consultant name</p> <p><i>Dan Dlh</i></p> <p>Signature of owner or officer</p> <p>_____</p> <p>Dan Dlh</p> <p>Name of owner or officer</p> <p>Contact for notices and operations matters</p> <p>Name: <u>Dan Dlh</u></p> <p>Phone: <u>425-636-6910</u></p> <p>Email: <u>brokersolutions@constellationws.com</u></p> <p>Mailing: <u>6737 W. Washington Street, Suite 2120</u></p> <p><u>Milwaukee, WI 53214</u></p>
<p>MCRTC: Martin County REALTORS® of the Treasure Coast, Inc.</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name</p> <p>Date: _____</p> <p>(effective date of this Agreement)</p> <p>Contact for notices and operations matters</p> <p>Name: Marisa Moleiro</p> <p>Phone: (772) 283-1748</p> <p>Email: marisa@martincountyrealtors.org</p>	<p>Instructions:</p> <p>The MLS Participant (Qualifying Broker) must make all RETS requests. If requesting on behalf of an agent, the broker can authorize the agent as the "Contact for notices and operations matters" and therefore should fill in the agent's information in those fields. Agent's website needs to be filled in the "Second or Third Level Domain" field; and if there are multiple sites which will be displaying the data, they also need to be indicated on the attached additional page.</p> <p>There is a setup fee for each new RETS feed needed. Contact MCRTC for further information.</p>



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Exhibit A – Additional Requirements

1. **Additional Domains.** In addition to the Second and Third Level Domains specified on the signature page Firm, Real Estate Associate Party, and Consultant may display MCRTC Data subject to the terms of this Agreement at the following Second and Third Level Domains (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