

Capital Area Technology & REALTOR[®] Services, Inc.

CATRS Participant Data Access Agreement

This AGREEMENT is made and entered into by Capital Area Technology & REALTOR[®] Services, Inc. ("CATRS"), with offices at 1029 Thomasville Rd, Tallahassee, FL 32303; 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 "Sales Associate Party," which refers collectively to the Sales 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.

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

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

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 CATRS Data, except to the extent to which this Agreement and the CATRS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that CATRS obtains from any third party that CATRS treats as proprietary or designates as Confidential Information, whether or not owned or developed by CATRS; (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 CATRS for use by Firm, Sales Associate Party, and Consultant; CATRS may modify the Data Interface in its sole discretion from time to time.

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

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

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

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

Sales 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 CATRS Data under the Virtual Office Website (VOW) provisions of the CATRS Policies.

CATRS'S OBLIGATIONS

2. CATRS grants to Firm and Sales Associate Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the CATRS 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 CATRS 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. CATRS retains all rights not expressly granted herein.

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

FIRM'S OBLIGATIONS

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

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

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

8. Firm shall pay the fees, if any, that CATRS customarily charges other CATRS Participants for data access. Firm acknowledges receipt of CATRS's current schedule of such fees, if any. CATRS 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 Sales Associate's obligations under this Agreement as if Sales Associate had signed this agreement and Firm had agreed to be surety for Sales 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 CATRS Policies within its control, whether committed by Firm, Sales Associate Party, or Consultant, upon notice from CATRS.

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

12. Consultant shall not make the CATRS Data or the Confidential Information available to any third party, except on behalf of Firm and Sales Associate Party and in a manner consistent with Firm's and Sales Associate Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the CATRS Data, whether commercial or personal. **In the event that Consultant provides services to Participants other than Firm, Consultant must enter separate contracts with CATRS. 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 Sales Associates, that each Sales Associate Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in CATRS terminating all of Consultant's access to the CATRS 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 CATRS 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. CATRS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and

facilities of Firm, Sales Associate Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Sales Associate Party's, and Consultant's compliance with this Agreement ("Audit"). CATRS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Sales Associate Party's, and Consultant's web sites and systems to ensure that CATRS Data is displayed in accordance with the CATRS Policies; using all features available to end-users of Firm's, Sales Associate Party's, and Consultant's systems that employ the CATRS Data; and posing as consumers to register and test services Firm, Sales Associate Party, and Consultant make available to consumers using the CATRS Data. CATRS shall pay the costs it incurs, and the out-of-pocket costs Firm, Sales 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, Sales 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 CATRS 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 CATRS; (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 Sales Associate Party, immediately upon any event that results in the Sales 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 Sales Associate Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and CATRS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if CATRS resumes its obligations under Paragraphs 2 and 3. In the event Firm, Sales Associate Party, or Consultant breaches this Agreement and entitles CATRS to terminate under Paragraph 16, CATRS may in its sole discretion suspend its performance instead of terminating this Agreement. CATRS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Sales 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, Sales Associate Party, and Consultant shall make no further use of the CATRS 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 Sales 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. **CATRS's Remedies.** (a) Injunctive relief: Because of the unique nature of the CATRS Data and Confidential Information, Firm, Sales Associate Party, and Consultant acknowledge and agree that CATRS 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 CATRS for a breach. CATRS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Sales Associate Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by CATRS, and without posting any bond. (b) Liquidated damages: Firm, Sales Associate Party, and Consultant acknowledge that damages suffered by CATRS from access to the CATRS Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the CATRS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to CATRS to enter into this Agreement, Firm, Sales Associate Party, and Consultant agree that in the event Firm, Sales Associate Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the CATRS Data or disclose the CATRS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Sales Associate Party, and Consultant shall be liable to CATRS for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Sales Associate Party, and Consultant under this paragraph is joint and several.

21. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL CATRS BE LIABLE TO FIRM, SALES ASSOCIATE PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF CATRS 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 CATRS BE LIABLE TO FIRM, SALES ASSOCIATE PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, SALES ASSOCIATE PARTY, AND CONSULTANT HAVE PAID CATRS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, SALES ASSOCIATE PARTY, AND CONSULTANT ACKNOWLEDGE THAT CATRS PROVIDES THE CATRS 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. CATRS SHALL NOT BE LIABLE TO FIRM, SALES ASSOCIATE PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE CATRS DATA, ANY FAILURE TO UPDATE THE CATRS DATA PROMPTLY, OR THE CATRS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. CATRS 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 CATRS claims that Firm, Sales Associate Party, or Consultant has violated the CATRS Policies, CATRS may, at its option, resolve such a claim according to the disciplinary procedures set out in the CATRS Policies, provided CATRS does not also base a claim that Firm, Sales Associate 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 Florida located in Leon 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 CATRS'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 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. 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.

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 CATRS 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 CATRS or have any authority to make any agreements or representations on the behalf of CATRS. 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.

Capital Area Technology & REALTOR® Services, Inc. CATRS Participant Data Access Agreement

Under this Agreement, **FIRM AND SALES ASSOCIATE PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Sales Associate Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with CATRS 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 Sales Associates affiliated with Firm except the Sales Associate Party. Consultant must enter into a new version of this Agreement with CATRS and each additional Participant.

Fees and Consideration

CATRS agrees to provide data URL and credentials for data access. If consultant(s) require additional technical support assistance from CATRS staff, consultant will incur a charge of \$125.00/hour with a 1 hour minimum. There will be an immediate termination of all data access for nonpayment of any applicable fees.

If Firm or Sales 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 uses (check all that apply): **IDX** **VOW** **Firm Internal Use.**

<p>CATRS: Capital Area Technology & REALTOR® Services, Inc.</p> <p>_____ Signature</p> <p>_____ Name</p> <p>Date: _____ (effective date of this Agreement)</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____</p>	<p>CONSULTANT</p> <p>_____ Constellation Web Solutions Consultant name</p> <p>_____ Signature of owner or officer</p> <p>_____ Trevor Peterson Name of owner or officer</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____ 6737 W Washington St Ste 2120 West Allis, WI 53214</p>
<div style="border: 1px solid red; padding: 2px; margin-bottom: 5px; color: red; font-weight: bold;">Broker signature required</div> <p>FIRM</p> <p>_____ Firm name</p> <p>_____ Signature of owner or officer</p> <p>_____ Name of owner or officer</p> <p>Contact for notices and operations matters</p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p> <p>_____ Second or Third Level Domain: <input type="checkbox"/> IDX <input type="checkbox"/> VOW</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>	

Capital Area Technology & REALTOR® Services, Inc. CATRS Participant Data Access Agreement

Exhibit A – Additional Requirements

1. **Additional Domains.** In addition to the Second and Third Level Domains specified on the signature page Firm, Sales Associate Party, and Consultant may display CATRS 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

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

_____	_____
Name	Signature
_____	_____
Name	Signature
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Name	Signature
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Name	Signature
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