# Willamette Valley Multiple Listing Service
# WVMLS Participant Data Access Agreement

This **AGREEMENT** is made and entered into by Willamette Valley Multiple Listing Service ("**WVMLS**"), with offices at 3421 25th St. SE, Salem, OR 97302-1122; _____ ("**Firm**"), with offices at _____; and

_Constellation Web Solutions_____ ("**Consultant**"), with offices at _6737 West Washington Street, Suite 2120, Milwaukee, WI 53214_

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

**Firm Affiliates:** The employees of Firm, broker/managers and licensed real estate agents affiliated with Firm who are Subscribers of WVMLS, and Consultant, if any.

**Firm Internal Use:** Any use of those portions of the WVMLS Data relating to Firm's own listings and any use of WVMLS Data that exposes the WVMLS Data only to Firm Affiliates and to the Firm's clients in the ordinary course of the Firm's real estate brokerage business.

**Other Permitted Uses:** Any use of the WVMLS Data for the purposes set out in Exhibit A – Other Approved Uses, if any, in the ordinary course of the Firm's real estate brokerage business.

**WVMLS Customer Affiliate:** Any licensed real estate broker who is a Participant (as the term is defined in the WVMLS Policies) together with salespersons and broker associates licensed to the Participant, for whom the Participant is responsible under the laws of the State of Oregon.

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

**WVMLS IDX:** Use and display of portions of the WVMLS Data under the Willamette Valley Internet Data Exchange Program provisions of the WVMLS Policies.

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

## WVMLS'S OBLIGATIONS

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

3.  WVMLS agrees to provide to Firm and Consultant, during the term of this Agreement, (a) access to the WVMLS Data via the Data Interface under the same terms and conditions WVMLS offers to other WVMLS Customer Affiliates; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the WVMLS Policies. WVMLS does not undertake to provide technical support for the Data Interface or the WVMLS Data.

## FIRM'S OBLIGATIONS

4.  Firm shall comply with the WVMLS Policies at all times. In the event of any perceived conflict between the WVMLS Policies and this Agreement, the WVMLS Policies shall prevail and govern.

5.  Firm shall use the WVMLS Data obtained under this Agreement for Firm Internal Use, WVMLS IDX, and Other Permitted Uses only. Any other use is strictly prohibited. Firm shall not make the WVMLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm may display the WVMLS Data on a web site available to the public only to the extent permitted by the WVMLS Policies and then only on a site resident at the second-level domain indicated on the signature page of this Agreement.

6.  Firm acknowledges that WVMLS possesses all right, title, and interest in all copyrights in the WVMLS Data. The previous sentence notwithstanding, WVMLS shall not use the portion of the WVMLS Data relating to Firm's listings for any purpose other than the defined purposes of WVMLS without Firm's permission.

7.  If WVMLS notifies Firm of a breach of the WVMLS Policies or this Agreement and Firm does not immediately cure the breach, Firm shall hold Consultant harmless from any liability arising from Consultant's cooperation with WVMLS under Paragraph 12.

8.  Any display of the WVMLS Data to persons other than WVMLS Customer Affiliates shall be accompanied by the following notice: "Based on information from Willamette Valley Multiple Listing Service, which neither guarantees nor is in any way responsible for its accuracy. All data is provided 'AS IS' and with all faults. Data maintained by Willamette Valley Multiple Listing Service may not reflect all real estate activity in the market."

9. Firm shall display the WVMLS copyright notice on each display screen, web page (whether Internet or intranet), and printout displaying WVMLS Data. The WVMLS copyright notice must take the following form: "Copyright #### Willamette Valley Multiple Listing Service" where #### shall be the current year.

10. Firm shall pay the fees, if any, that WVMLS customarily charges other WVMLS Customer Affiliates for data access. Firm acknowledges receipt of WVMLS's current schedule of such fees, if any. WVMLS 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.

11. Firm shall stand as surety for Consultant's performance under this Agreement.

## CONSULTANT'S OBLIGATIONS

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

13. Consultant acknowledges that Firm and WVMLS possess all right, title, and interest in all copyrights in the WVMLS Data.

14. Consultant shall not make the WVMLS Data or the Confidential Information available to any third party, except on behalf of Firm and in a manner consistent with Firm's obligations under Paragraphs 4 through 11 of this Agreement; nor shall it make any other use of the WVMLS Data, whether commercial or personal.

15. Consultant shall notify WVMLS 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

16. WVMLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm and Consultant to the extent reasonably necessary to ascertain Firm's and Consultant's compliance with this Agreement ("Audit"). WVMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's and Consultant's web sites and systems to ensure that WVMLS Data is displayed in accordance with the WVMLS Policies; using all features available to end-users of Firm's and Consultant's systems that employ the WVMLS Data; and posing as consumers to register and test services Firm and Consultant make available to consumers using the WVMLS Data. WVMLS shall pay the costs it incurs, and the out-of-pocket costs Firm and Consultant incur, as part of any Audit; provided, however, Firm shall be liable for all costs of any Audit that discloses that Firm or Consultant has breached this Agreement.

## CONFIDENTIAL INFORMATION

17. 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.

18. 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

19. The term of this Agreement begins on the date that WVMLS 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 WVMLS; (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) as provided in Paragraph 32.

20. In the event Firm's privileges as a Participant are terminated while this Agreement is in effect and WVMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if WVMLS resumes its obligations under Paragraphs 2 and 3. In the event Firm or Consultant breaches this Agreement and entitles WVMLS to terminate under Paragraph 19, WVMLS may in its sole discretion suspend its performance instead of terminating this Agreement. WVMLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, neither Firm nor Consultant shall make any further use of the WVMLS Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's rights under this Agreement are restored.

## GENERAL PROVISIONS

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

22. **Survival of Obligations**. The obligations of Firm set forth under "Firm's Obligations" above and the obligations of Consultant under "Consultant's Obligations" above shall survive the termination or expiration of this Agreement for five years. The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity.

23. **WVMLS's Remedies**. (a) Injunctive relief: Because of the unique nature of the WVMLS Data and Confidential Information, Firm and Consultant acknowledge and agree that WVMLS would suffer irreparable harm in the event that either of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate WVMLS for a breach. WVMLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm or Consultant or any one of them, without showing or proving any actual damages sustained by WVMLS, and without posting any bond. (b) Liquidated damages: Firm and Consultant acknowledge that damages suffered by WVMLS from access to the WVMLS Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the WVMLS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to WVMLS to enter into this Agreement, Firm and Consultant agree that (i) in the event Firm or Firm Affiliates disclose any password to access the WVMLS Data or disclose the WVMLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm shall be liable to WVMLS for liquidated damages in the amount

of $15,000 for each such disclosure and termination of this Agreement; and (ii) in the event Consultant or its employees, agents, or contractors, disclose any password to access the WVMLS Data or disclose the WVMLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Consultant shall be liable to WVMLS for liquidated damages in the amount of $30,000 for each such disclosure and termination of this Agreement.

24. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL WVMLS BE LIABLE TO FIRM OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF WVMLS 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 WVMLS BE LIABLE TO FIRM OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM AND CONSULTANT HAVE PAID WVMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) $100. FIRM ACKNOWLEDGES THAT WVMLS PROVIDES THE WVMLS 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. WVMLS SHALL NOT BE LIABLE TO FIRM FOR ANY CLAIM ARISING FROM INACCURACIES IN THE WVMLS DATA, ANY FAILURE TO UPDATE THE WVMLS DATA PROMPTLY, OR THE WVMLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL.

25. **Arbitration; Attorney's fees.** In the event WVMLS claims that Firm has violated the WVMLS Policies, WVMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the WVMLS Policies, provided WVMLS does not also base a claim that Firm has breached this Agreement on the same facts. Except as set forth in this paragraph, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, including any claim against Consultant shall be settled by arbitration conducted by and in accordance with the effective arbitration rules of the Arbitration Service of Portland, Inc., and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The party not prevailing in arbitration shall pay each prevailing party's reasonable attorney's fees, which shall be fixed by the arbitrators in their award and by the court or courts in which any exceptions to the award, including any appeal thereof, are tried, heard or decided. In the event a dispute arises as to the applicability of the arbitration requirement, the arbitrator(s) assigned to the dispute shall have the sole authority to determine arbitrability. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Oregon and Marion County Circuit Court or the Federal District Court of Oregon, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject 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.

26. **Indemnification.** Subject to Paragraph 24, 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.

27. **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.

28. **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.
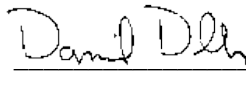
29. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

30. **Entire Agreement.** Subject to WVMLS 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.

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

32. **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.

# Willamette Valley Multiple Listing Service
## WVMLS Participant Data Access Agreement

**NOTE:**

Under this Agreement, **FIRM IS PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE**. If Firm chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with WVMLS 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 other brokerage firms. Consultant must enter into a new version of this Agreement with WVMLS and each such brokerage firm.

If Firm will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box before returning this Agreement to WVMLS.

**FIRM**

_____
Firm name

_____
Name of WVMLS Designated Member (print)

_____
Signature of WVMLS Designated Member

_____
Name of WVMLS Participant Broker (if different)

_____
Signature of WVMLS Participant Broker (if different)

## 2ND LEVEL DOMAIN

_____
2nd Level Domain

(Website address/URL where listings will be displayed)

Date: _____

**Contact for notices and operations matters**

Name: _____

Phone: _____

Email: _____

Mailing: _____

**WVMLS**

Willamette Valley Multiple Listing Service

_____
Signature

_____
Name

Date: _____
(effective date of this Agreement)

**Contact for notices and operations matters**

Name: John Cogdill

Phone: 503-399-8657

Email: idx@wvmls.com

Mailing: 3421 25th St SE, Salem, OR  97302

**CONSULTANT (Vendor)**

Constellation Web Solutions
_____
Consultant name

_Dan Dlhy_
_____
Signature of owner or officer

Dan Dlhy
_____
Name of owner or officer

Date: _____

**Contact for notices and operations matters**

Name: Dan Dlhy

Phone: 425-636-6910

Email: brokersolutions@constellationws.com

Mailing: 6737 West Washington Street, Suite 2120, Milwaukee, WI 53214

**Rule 7  Internet Data Exchange**  Internet Data Exchange or IDX is a means by which a Member gives other Members the right to display his listings on their web sites in return for their permission to display their listings on his web site, subject to these Rules.

a)  <u>Definitions.</u> The following terms have the meanings given them here.

     i.   "IDX Member" means a Member who has not opted out of IDX; Members are presumed to be IDX Members unless they inform WVMLS to the contrary.

     ii.  "IDX Data" means all active and contingent listings of IDX Members, except those listings where the seller has prohibited display on the Internet.

     iii. "IDX Site" means a web site of an IDX Member displaying the IDX Data or any portion of it.

     iv. "IDX License Agreement" means the agreement adopted by WVMLS for licensing data to IDX Members for IDX use.

b)  <u>IDX Member Control and Branding</u>. An IDX Member must own and control any IDX Site; branding on the site must make clear to any consumer visiting it that the site belongs to the IDX Member.

c)  <u>Data feeds.</u> WVMLS shall provide an IDX Member a data feed including the IDX Data upon the IDX Member's request, subject to these Rules and WVMLS's standard fees (as adopted by the Board of Directors). The feed may take any form directed by the Board of Directors (including FTP or RETS). Each IDX Member is permitted a single data feed or login. WVMLS will update the IDX Data a minimum of once per week. More frequent updates may be available by means designated by the Board of Directors.

d)  <u>No Other Use.</u> No IDX Member may make any use of the IDX Data except the operation of an IDX Site as provided for in these Rules. Except as expressly provided in these rules, an IDX Member may not disclose the IDX Data or any part of it to any party.

e)  <u>No Modification of Other Member's Listing.</u> No IDX Member may modify any listing of another Member when displaying it on an IDX Site.

f)  <u>Minimum Updates.</u> An IDX Member must update IDX Data on the Member's IDX Site at least every 48 hours.

g)  <u>Listing Broker Identified.</u> A search result on an IDX Site producing a display of another Participant Members Broker's listing shall bear the listing company's name immediately adjacent to the property information in a 10 point font size (minimum) with a font color Black. This information must appear without the need for the site visitor to have to scroll to view it.

h)  <u>Disclaimer</u>. Any search results including any portion of the IDX Data must include a disclaimer of accuracy in the data. The Board of Directors may adopt the specific form the disclaimer must take.

i)  <u>Correcting problems.</u> The IDX Site operator must make changes within ten (10) days of notice from WVMLS to correct or cure any violation of WVMLS Rules and Regulations or any breach of the WVMLS Participant Data Access Agreement.

j)  <u>Avoiding scraping</u>. The IDX Site operator shall take reasonable efforts to avoid scraping of the IDX Data and framing of the IDX Data by any unauthorized web site.

# Willamette Valley Multiple Listing Service
# WVMLS Participant Data Access Agreement

Exhibit A – Other Permitted Uses

1. None.

**Willamette Valley Multiple Listing Service**
**WVMLS Participant Data Access Agreement**

## FEE SCHEDULE

| | |
|---|---|
| Setup Fee | $100 |
| Quarterly Fee | $90 |

Fees are per-profile. Payment is required in advance and automatic credit card billing strongly encouraged.

Payments are due the first day of each quarter for the following 3-month period