

LICENSE AGREEMENT

(IMLS data feed to VOW Participant with AVP)

This Tri-Party License Agreement (the Agreement) is made and entered into by and between _____ (“Participant”), _____ (“AVP”) and Intermountain Multiple Listing Service, Inc. (“IMLS”), an Idaho corporation.

RECITALS

Participant wishes to obtain and IMLS wishes to provide IMLS Listing Information, as defined in Section 1 of this Agreement, for use on Participant’s Virtual Office Website.

Participant wishes to operate a Virtual Office Website (“VOW”) by engaging a third party Associated VOW Partner (“AVP”) to operate Participant’s VOW on behalf of Participant and subject to Participant’s supervision, accountability, and compliance with the IMLS’s Rules, as defined in Section 1 of this Agreement.

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, IMLS, AVP and Participant agree as follows:

DEFINITIONS

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

a. Virtual Office Website (“VOW”) refers to an IMLS Participant’s Internet website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established at a broker-customer relationship as defined under Idaho law and where the customer has the opportunity to search IMLS Listing Information, subject to the Participant’s oversight, supervision, and accountability.

b. Participant means any REALTOR® who is a principal, partner, corporate officer or branch office manager acting on behalf of a principal who participates in the Multiple Listing Service by agreeing to conform to the rules and regulations thereof. For purposes of this Agreement, a “Participant” may also be a non-principal broker or sales licensee affiliated with a principal who operates a VOW with the principal’s consent. For purposes of this Agreement, the Participant is the individual whose name and contact information appear in the Signature Page of this Agreement in the section designated “Participant Information and Signature.”

c. MLS Server means the computer server or servers, including both hardware and software, maintained by IMLS which contains the IMLS Listing Information and provides or provide the means for Vendor to access the MLS Listing Information.

d. IMLS Listing Information means active listing information provided by Participants to the IMLS and aggregated and distributed by the IMLS to Participants , except for any listing for which the seller has withheld permission to have the listed property displayed on the Internet. “MLS Listing Information” shall include information relating to properties that have sold only in those jurisdictions in which the actual sales prices of completed transactions are accessible from public records.

e. Rules refers to the IMLS rules and regulations, as amended from time to time; the VOW Policy; the VOW Rules; any applicable access standards and technology standards; and any operating policies relating to IMLS Listing Information.

f. Affiliated VOW Partner (AVP) means 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 IMLS’s rules and regulations. For purposes of this Agreement, the AVP is the company or individual(s) whose name and contact information appear on the Signature Page of this Agreement in the section designated “Affiliated VOW Partner Information and Signature.”

LICENSE

2. License to IMLS Listing Information. Subject to the terms and conditions of this Agreement, IMLS hereby grants to Participant and its AVP a nonexclusive and nontransferable License to receive from the IMLS an electronic data feed of the IMLS Listing Information for use on Participant’s VOW.
3. Ownership: Neither this Agreement nor the license rights granted to Participant and its AVP under this Agreement shall in any way affect IMLS’s exclusive ownership of the IMLS Listing Information and all other intellectual property owned by IMLS. Participant and AVP further acknowledge that the electronic data feed of the IMLS Listing Information and all copies of the IMLS Listing Information in any form are the sole property of the IMLS.
4. Trademark License. IMLS grants to Participant and AVP a limited, non-exclusive, revocable license to use IMLS’s trademark(s) identified in Exhibit B for the sole purpose of identifying IMLS as the source of the IMLS Listing Information (“IMLS Trademark”). Participant and AVP agree that it shall not use or permit third parties to use the IMLS Trademark, or any marks that are confusingly similar, assert any right, license, or interest with respect to any trademarks of IMLS, or represent or suggest any affiliation between IMLS and

Participant or IMLS and AVP. Participant and AVP agree that it will not file any applications or assert any rights to the IMLS Trademark in the United States, or any other country or territory.

5. Limitations on License to IMLS Listing Information. Except as expressly set forth in this Agreement, Participant and AVP shall not facilitate, cause, or allow anyone else, to do any of the following: (a) use, display, access, distribute, transfer, alter, or modify the IMLS Listing Information, or otherwise create any derivative works of the IMLS Listing Information, (b) download, distribute, export, deliver, or transmit any of the IMLS Listing Information to another computer or other electronic device, except Participant's VOW or its AVP as permitted under this Agreement, or (c) sell, grant access to, any third party. Participant agrees to take all reasonable steps necessary to protect the IMLS Listing Information from unauthorized access, distribution, copying or use.
6. Display of Trademark. Participant and AVP agree that it will include and not alter or remove any trademark, copyright, other notices, or any disclaimers located or used on or in connection with the IMLS Listing Information. Participant and AVP shall provide notice to any person with access to the display of the IMLS Listing Information that the source of the Listing Information is from IMLS.
7. Assistance in Infringement Proceedings. Participant and AVP agree to notify IMLS of any unauthorized use of the IMLS Listing Information by others promptly as it comes to Participant's attention. In the event that a third party infringes upon the copyrightable works contained in the IMLS Listing Information, Participant and AVP will immediately notify IMLS and will undertake all reasonable steps or procedures necessary to assist IMLS in protecting and enforcing IMLS's rights. The provisions of this section shall survive the termination of this Agreement.
8. License fees and Payment; Participation as Guarantor of Payment by AVP; Expenses. In consideration for the License granted under this Agreement, Participant agrees to pay to IMLS the license fee and other fees described on the attached Schedule A to this Agreement (the Fees). The Fees shall be payable as provided on Schedule A. If Participant's AVP fails to make any payment when due, Participant agrees to pay and shall be held liable for any such amounts. Participant agrees to pay all costs of collection of all unpaid amounts owing to IMLS under this Agreement, including reasonable attorneys' fees and costs. AVP shall be responsible for its own expenses and costs under this Agreement, and IMLS shall have no obligation to reimburse AVP for any expenses or costs incurred by AVP in the exercise of AVP's rights or the performance of AVP's duties under this Agreement.
9. No Warranties. IMLS MAKES NO REPRESENTATIONS CONCERNING THE ACCURACY OF ANY INFORMATION CONTAINED

IN THE IMLS LISTING SYSTEM AND DISCLAIMS ANY WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IMLS ASSUMES NO RESPONSIBILITY FOR LOSS OR DAMAGES, WHETHER DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL WHICH MIGHT ARISE OUT OF PARTICIPANT'S OR AVP'S USE OF THE IMLS LISTING INFORMATION, WHICH SHALL BE ENTIRELY AT PARTICIPANT'S AND AVP'S RISK AND PERIL.

COMPLIANCE

10. Rules. Participant and AVP hereby acknowledge that IMLS has provided it with a copy of the IMLS's Rules and agree to be bound by and comply with the Rules.
 - a. The Rules may include terms and limitations in addition to those set forth in this Agreement. In the event of any inconsistency, the terms of the Rules will govern.
 - b. IMLS may modify the Rules at any time, in its sole discretion. IMLS agrees to deliver to Participant and AVP any modification of the Rules, and Participant and AVP shall comply with such modification no later than five (5) business days after receipt.
11. Means of Accessing the IMLS Listing Information. Access by Participant or its AVP to the IMLS Listing Information shall be exclusively by the means, including the format and method of delivery, designated by IMLS. IMLS may, in its sole discretion and upon thirty (30) days prior written notice to Participant, change the means and nature of accessing the IMLS Listing Information.
12. Authorization to Access the IMLS Listing Information. Participant and AVP hereby acknowledge and agree that (i) AVP has no independent participation rights in the IMLS by virtue of this license; (ii) AVP shall not use IMLS Listing Information except in connection with operation of Participant's VOW pursuant to this Agreement; and (iii) access by AVP to IMLS Listing Information is derivative of the rights of Participant.
13. IMLS Access to the VOW. Participant shall at all times make Participant's VOW readily accessible to IMLS and to all IMLS Participants for purposes of verifying compliance with the Rules. Participant's VOW is accessible to IMLS at the following URL (include any necessary third-level domain names):_____.
14. Changes to IMLS's Server. IMLS shall not be obligated to make any changes to IMLS's Server, including any software running on IMLS's Server, the configuration, applicable protocols, or any other aspect of IMLS's server for any reason. Participant and AVP acknowledge that the IMLS Server, together with access to the IMLS Listing Information, may from time-to-time be unavailable to AVP, whether because of technical failures or interruptions, intentional downtime

for service or changes to the IMLS Server, or otherwise. Participant and AVP agree that any modification of the IMLS Server, any interruptions or unavailability of access to the IMLS Server, or access to or use of the IMLS Listing Information shall not constitute a default under this Agreement. IMLS shall have no liability of any nature to Participant or AVP for, and Participant and AVP waive all claims arising out of, any such modifications, interruptions, unavailability, or failure to access.

TERM AND TERMINATION

15. The term of this Agreement shall commence on the “Effective Date” set forth on the IMLS Information and Signature Page.” IMLS may, by delivery of written notice to Participant and AVP, terminate this Agreement effective immediately upon the occurrence of any of the following events:
 - a. AVP giving IMLS and Participant written notice of the termination.
 - b. Participant giving notice to IMLS that it no longer intends to display the IMLS Listing Information on the VOW;
 - c. AVP being no longer designated to provide VOW services to Participant;
 - d. Participant ceasing to remain a participant in the IMLS;
 - e. AVP accessing or downloading data in a manner not authorized for Participants that hinders the ability of Participants to download data;
 - f. Participant or AVP violating a VOW Policy or Rule; or
 - g. Participant or AVP failing to make required payments to the IMLS.
16. IMLS acknowledges and agrees that it may not suspend or terminate AVP’s access to data for reasons other than those that would allow IMLS to suspend or terminate Participant’s access to data, or without giving the AVP and Participant prior notice of the process set forth in the applicable provisions of the Rules for suspension or termination of Participant’s access.
17. No Fees, portion of the Fees, or other fees payable by Participant or AVP under this Agreement will be refunded to Participant or AVP upon termination of this Agreement for any reason.

WARRANTIES, INDEMNIFICATIONS AND LIMITATION OF LIABILITY

18. Mutual Representation and Warranties. Each party represents and warrants to the others as follows: (a) this Agreement, when executed by such party, will be valid, binding and enforceable with respect to such party in accordance with its terms; (b) the execution of this Agreement and /or the performance of such party’s obligations under this Agreement will not constitute a default, or an event which with passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which such party is bound; and (c) AVP is not and shall not be under any disability, restriction, or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement. AVP further represents and warrants to IMLS that the grant of the License to

AVP and the fulfillment of AVP's obligations as contemplated under this Agreement are proper and lawful.

19. Indemnification. Participant and AVP shall indemnify and hold harmless IMLS, its officers, directors, employees, and licensees, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorneys' fees and costs arising out of or connected with any breach by Participant or AVP of any of the terms and conditions of this Agreement, including any breach of representation or warranty set forth in the Agreement, and the use and display of the IMLS Listing Information. IMLS shall have the right to control its own defense and engage legal counsel acceptable to IMLS.
20. Limitation of Liability. TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, IMLS'S ENTIRE AND CUMULATIVE LIABILITY TO PARTICIPANT OR AVP, OR ANY THIRD PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE USE OR DISPLAY OF THE IMLS LISTING INFORMATION, INCLUDING ANY TORT, SUCH AS NEGLIGENCE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE FEE PAID TO IMLS UNDER THIS AGREEMENT DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. WITHOUT WAIVER OF THE LIMITATIONS SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL IMLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF IMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

REMEDIES

21. IMLS, Participant, and AVP agree that a breach of this Agreement will result in immediate and irreparable injury and harm to IMLS. In such event, IMLS shall have the right to immediately terminate Participant's and AVP's access to the IMLS Information and to obtain an injunction, specific performance, or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that this shall in no way limit any other remedies which IMLS may have including, without limitation, the right to seek monetary damages.
22. Attorneys Fees. If any action is brought by any party to this Agreement against another party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees, costs, and expenses of litigation.

GENERAL PROVISIONS

23. Governing Law. This Agreement shall be construed, interpreted, and applied in accordance with Idaho law, without regard to conflicts of law principles.
24. Venue. If disputes arise regarding this agreement, all claims shall be filed in Ada County, Idaho. Additionally, any use of alternative dispute resolution between the parties shall also take place in Ada County, Idaho.
25. Notices. All notices to be given under this Agreement shall be made in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile, (c) sent by e-mail, or (d) when received by the addressee if sent by a nationally recognized overnight delivery service (receipt requested), to the appropriate party at the address provided on the Signature Page of this Agreement. The foregoing addresses may be changed from time-to-time by delivering notice of such change to the parties to this Agreement. Notice shall be effective upon request.
26. No Joint Venture. Nothing in this Agreement shall be construed to create a partnership or joint venture between IMLS and Participant or Participant's AVP.
27. Severability. If any one or more provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
28. Headings: The headings in this Agreement are inserted for convenience only and shall not be considered in interpreting the provisions hereof.
29. No Waiver. The waiver by either party of, or the failure of either party to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same or any other term, covenant or condition contained in this Agreement.
30. No Assignment. Neither Participant nor AVP may assign or otherwise transfer any rights under this Agreement to any party without the prior written consent of IMLS.
31. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument. Facsimile signatures are deemed to be equivalent to original signatures for the purposes of this Agreement.
32. Amendment. This Agreement may be amended or terminated (other than by expiration or breach of contract) only by a written instrument executed by the parties.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized representatives as of the Effective Date.

Effective Date: _____

IMLS Information and Signature

Signature

Name, Title

Street Address

City, State, Zip Code

Email Address

Phone Number

Facsimile Number

**Affiliated VOW Partner
Information and Signature**

Signature

Name, Title

Street Address

City, State, Zip Code

Phone Number

Facsimile Number

Participant Information and Signature

Signature

Name, Title

Street Address

City, State, Zip Code

Email Address

Phone Number

Facsimile Number

[NOTE: If "Participant" is a non-principal broker or sales licensee, then the affiliated principal real estate broker or broker in charge must also sign this Agreement.]

Participant Information and Signature

Signature

Name, Title

Street Address

City, State, Zip Code

Phone Number

Facsimile Number

SCHEDULE A

Fees and Payment Terms

New vendor setup fee: \$100.00

Quarterly fee to be paid by the end of the first month of each quarter: \$150.00

SCHEDULE B

Trademarks Licensed to Participant & AVP

