

ST. AUGUSTINE & ST. JOHNS COUNTY MULTIPLE LISTING SERVICE, INC.
1789 LAKESIDE AVE, ST. AUGUSTINE FL 32084
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rets@stjohnsrealtors.org

2018 PRIMARY & SECONDARY MULTIPLE LISTING INFORMATION LICENSE AGREEMENT

This License Agreement (the “Agreement”) is made and entered into by and between the St. Augustine & St. Johns County Multiple Listing Service, Inc. (“MLS”) on the one hand, and the principal broker or sales licensee identified as the “Designated Realtor” on the signature page of this Agreement (“Designated Realtor”), the real estate agent or firm, if any, designated as the “Real Estate Agent” on the signature page of this Agreement (“Agent”), and the company or individual(s), if any, designated as “Affiliated IDX/VOW Partner” on the signature page of this Agreement (“AVP”), on the other hand.

RECITALS:

Participant, as identified below, wishes to obtain, and MLS wishes to provide, MLS Listing Information as defined in Section 1 of this Agreement for use on a single virtual office website (“VOW”) owned by either Designated Realtor or Agent. Participant may or may not engage a vendor, identified as “AVP” in this Agreement, for the purpose of operating Participant’s VOW on behalf of Participant and subject to Participant’s supervision, accountability, and compliance with MLS’s Rules, as defined in Section 1 of this Agreement. AVP now seeks to obtain access to the MLS Listing Information for this limited purpose. In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, MLS, Designated Realtor, Agent, if any, and AVP, if any, agree as follows.

DEFINITIONS:

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.
 - a. “Agent” shall have the meaning ascribed to it above.
 - b. “AVP” means the party identified as “AVP” above, and engaged by either Designated Realtor or Agent to operate Participant’s VOW according to the terms of this Agreement.
 - c. “Designated Realtor” shall have the meaning ascribed to it above.
 - d. “License” shall have the meaning ascribed to it in Section 2 below.
 - e. “MLS Listing Information” means active listing information provided by third parties to MLS and aggregated and distributed by MLS to one or more real estate brokers or agents, such as Participant, 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.
 - f. “MLS Server” means the computer server or servers, including both hardware and software, maintained by MLS which contains the MLS Listing Information and provides or provide the means for Participant or AVP to access the MLS Listing Information.
 - g. “MLS Trademarks” shall have the meaning ascribed to it in Section 12 below.
 - h. “Participant” means the Designated Realtor together with the Agent executing this Agreement, or only the Designated Realtor if there is no such Agent, and all of the respective officers, managers, directors, employees, agents, brokers, licensees, partners, and affiliates acting on behalf of Designated Realtor and Agent, if any, to participate in the multiple listing service provided by MLS under this Agreement.



- i. “Rules” refers to MLS’s rules, regulations and policies, 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 the MLS Listing Information.
- j. “VOW” means the single virtual office website provided by Participant, and owned by either Designated Realtor or Agent, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) in which the consumer has the opportunity to search MLS Listing Information, subject to the Participant’s oversight, supervision, and accountability.
- k. “VOW Domain Name” shall mean the domain name identified on the signature page of this Agreement, under which domain name Participant makes the VOW available on the Internet.

LICENSE:

2. LICENSE GRANT. Subject to the terms and conditions of this Agreement, MLS hereby grants to Designated Realtor, Agent (if any), and AVP (if any), a non-exclusive, terminable, limited license to receive from MLS an electronic data feed of the MLS Listing Information for use solely and exclusively in connection with the display of MLS Listing Information on the single VOW owned by Designated Realtor or Agent, and made available via the VOW Domain Name (“License”).

- 1. LIMITATIONS ON LICENSE. Except as expressly set forth in this Agreement Designate Realtor, Agent, and AVP shall not, and shall not facilitate, cause, or allow anyone else, to do any of the following: (a) use, display, access, distribute, transfer, alter, or modify the MLS Listing Information, or otherwise create any derivative works of the MLS Listing Information, (b) download, distribute, export, deliver, or transmit any of the MLS Listing Information, including to any computer or other electronic device, except Participant’s VOW as permitted under this Agreement, (c) make the VOW available through any domain name other than the VOW Domain Name; or (d) sell, resell, lease, sublicense, or otherwise disclose or grant access to, or sublicense the MLS Listing Information, or any portion of the MLS Listing Information, to any third party. Designated Realtor, Agent, and AVP agree to take all reasonable steps necessary to protect the MLS Listing Information from unauthorized access, distribution, copying or use. An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display. Listings obtained through IDX feeds from REALTOR® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

2. PAYMENT FOR GRANT OF LICENSE.

- a. In consideration for the License granted under this Agreement, Participant shall pay MLS the license fees and other fees described on the schedule attached to this Agreement as Exhibit A and incorporated herein by this reference (“Fees”). The Fees shall be payable as provided on Exhibit A. If Participant has an AVP, then AVP may pay the Fees on behalf of Participant, except that if AVP fails to pay any such amounts when due, Participant shall remain liable to MLS for such amounts until paid. Participant and AVP agree to pay all costs of collection of all unpaid amounts owing to MLS under this Agreement, including reasonable attorneys’ fees and costs. Participant and AVP shall be responsible for their own expenses and costs under this Agreement, and MLS shall have no obligation to reimburse either Participant or AVP for any expenses or costs incurred by Participant or AVP in the exercise of their respective rights or the performance of their respective duties under this Agreement.

b. The fee of \$60.00 annually (365 days) will be assessed per data feed to Participant. MLS will mail an invoice to Participant at least thirty (30) days prior to the end of the then-current Term of this Agreement. If MLS does not receive this payment from Participant on or before the renewal date, Participant shall pay a \$100.00 reinstatement fee to reinstate this Agreement.

3. NO WARRANTIES. THE LICENSE GRANTED UNDER THIS AGREEMENT AND THE MLS LISTING INFORMATION, INCLUDING, WITHOUT LIMITATION, ACCESS AND DISPLAY OF THE MLS LISTING INFORMATION AND ACCESSIBILITY AND OPERATION OF THE MLS SERVER, ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND, EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 17 OF THIS AGREEMENT, MLS DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MLS MAKES NO WARRANTY AS TO THE ADEQUACY OR CAPACITY OF ANY HARDWARE OR THIRD PARTY SOFTWARE TO ATTAIN SOME OR ALL OF THE PERFORMANCE OBJECTIVES OF DESIGNATED REALTOR, AGENT, OR AVP CONTEMPLATED BY THIS AGREEMENT.

COMPLIANCE:

4. RULES. Participant and AVP hereby acknowledge that MLS has provided each with a copy of the MLS's Rules and each agrees to be bound by and comply with the Rules. Participant and AVP further acknowledge and agree that:

- a. The Rules may include terms and limitations in addition to those set forth in this Agreement, and in the event of any inconsistency, the terms of the Rules will govern; and
- b. MLS may modify the Rules at any time, in its sole discretion, and MLS agrees to deliver to Participant and AVP any modification of the Rules, and Participant and AVP shall comply with such modification not later than five (5) business days after receipt.

5. MEANS OF ACCESSING THE MLS LISTING INFORMATION. Access by Participant or AVP to the MLS Listing Information shall be exclusively by the means, including the format and method of delivery, designated by MLS. MLS may, in its sole discretion and upon thirty (30) days prior written notice to Participant or AVP, change the means and nature of accessing the MLS Listing Information.

6. AUTHORIZATION TO ACCESS THE MLS LISTING INFORMATION. Participant and AVP hereby acknowledge and agree that:

- a. AVP has no independent participation rights in the MLS by virtue of the License or this Agreement;
- b. neither Participant nor AVP will use MLS Listing Information except in connection with operation of Participant's VOW pursuant to this Agreement; and
- c. Access by AVP to MLS Listing Information is solely derivative of the rights of Participant, and AVP shall make no use of the MLS Listing Information in violation of, or otherwise inconsistent with, this Agreement.

7. MLS ACCESS TO THE VOW. Participant shall at all times make Participant's VOW readily accessible via the VOW Domain Name to MLS and to all MLS participants for purposes of verifying compliance with the Rules.

8. CHANGES TO MLS'S SERVER. MLS shall not be obligated to make any changes to MLS's Server, including any software running on MLS's Server, the configuration, applicable protocols, or any other aspect of MLS's Server for any reason. Participant and AVP acknowledge that the MLS Server, together with access to the MLS Listing Information, may from time-to-time be unavailable to Participant or AVP, whether because of technical failures or interruptions, intentional downtime for service or changes to the MLS Server, or otherwise. Participant and AVP agree that any modification of the MLS Server, any interruption or unavailability of access to the MLS Server, or access to or

use of the MLS Listing Information shall not constitute a default by MLS under this Agreement. MLS 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 of access.

OWNERSHIP:

9. **OWNERSHIP OF INTELLECTUAL PROPERTY.** Designated Realtor, Agent, and AVP acknowledge and agree that the MLS Listing Information is proprietary, original works of authorship of MLS, may consist of information for which MLS has sufficient rights to grant this license, and is protected under United States copyright law. Participant and AVP further acknowledge and agree that all right, title, and interest in and to the MLS Listing Information and any modifications, enhancements, or derivative works of the MLS Listing Information, are and shall remain the sole and exclusive property of MLS. Other than the rights explicitly granted under the License, this Agreement does not convey or grant to Participant or AVP an interest in or to the MLS Listing Information, and MLS expressly reserves all rights in the MLS Information not expressly granted under the License or otherwise expressly granted under this Agreement. Participant and AVP agree that they will not challenge or take any action inconsistent with MLS's ownership of or rights in or to the MLS Listing Information as described herein.

10. **TRADEMARK LICENSE.** During the Term of this Agreement, MLS grants to Participant and AVP a limited, non-exclusive, revocable license to use MLS's trademark(s) identified in Exhibit B, attached hereto and incorporated herein by this reference, for the sole purpose of identifying MLS as the source of the MLS Listing Information ("MLS Trademarks"). MLS shall have the right to approve the Participant's VOW or any other materials exhibiting or otherwise using or displaying the MLS Trademarks (the "Materials"). Such approval may be given orally or implied based upon a review of Materials by MLS. Any Materials submitted to MLS for approval shall be deemed approved unless MLS notifies Participant or AVP to the contrary within ten (10) days after MLS's receipt of such Materials. Any subsequent depictions of the MLS Trademarks in revisions of Participant's VOW shall conform to the Materials approved or deemed approved by MLS. Licensor shall have the right to terminate the License and this Agreement upon Participant's or AVP's failure to have any Materials approved after having received written notice from Licensor of such failure and an opportunity to cure. Participant and AVP agree that they shall not use the MLS Trademark, or any marks that are confusingly similar, assert any right, license, or interest with respect to any trademarks of MLS, or represent or suggest any affiliation between MLS and Participant or AVP other than as licensees of the MLS Listing Information and MLS Trademarks. Participant and AVP agree that they will not file any applications or assert any rights to the MLS Trademarks in the United States, or any other country or territory. MLS may subsequently grant similar rights to Participant or AVP to use other trademarks of MLS, and Participant's and AVP's use such additional trademarks shall be subject to the provision of this paragraph as if they had been included in Exhibit B.

11. **PROPRIETARY AND OTHER NOTICES.** Participant and AVP agree that they will include and not alter or remove any trademark, copyright, other notices, or any disclaimers located or used on or in connection with the MLS Listing Information. Participant and AVP agree to provide notice to any person with access to the display of the MLS Listing Information that the source of the MLS Listing Information is MLS.

TERM AND TERMINATION

12. The term of this Agreement shall commence on the "Effective Date" set forth on the signature page below and shall continue for a period of one year (the "Term"). Before the expiration of the Term, Participant or AVP may renew the Term by paying to MLS the Fees for the subsequent one-year renewal term, which renewal term shall be included within the meaning of "Term" as used in this Agreement. MLS 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's or Participant's unauthorized accessing or downloading data in a manner that hinders the ability of other participants to download data;
- b. Participant or AVP violating a VOW Policy or VOW Rule;
- c. Participant or AVP failing to make required payments to MLS;

- d. Participant's or AVP's breach of any term or provision of this Agreement; or
- e. Any other action or inaction of Participant or AVP which is deemed by MLS, in its sole and absolute discretion, to be adverse to the best interests of the MLS going forward.

Additionally, Participant or AVP may, by delivery of written notice to MLS, terminate this Agreement effective immediately upon the occurrence of any of the following events:

- a. AVP's or Participant's termination of this Agreement for convenience;
- b. AVP being no longer designated to provide VOW services to Participant;
- c. Participant giving notice to MLS that Participant has removed the MLS Listing Information from its VOW and no longer intends to display the MLS Listing Information on its VOW; or
- d. Participant's termination of its participation in the MLS.

13. MLS shall have the absolute right and option to suspend or terminate the License herein granted without prior notice in the event that MLS, in its sole and absolute discretion, has reason to believe that either Participant or AVP is committing or has committed any of the acts of breach set forth in Section 14 above. In such event, and as soon as practicable, MLS shall give the breaching party written notice of such termination or suspension, and the breaching party shall thereafter have such right of hearing or appeal as may be established by MLS's Rules.

14. 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, cancellation, or expiration of this Agreement for any reason whatsoever.

WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY

15. **MUTUAL REPRESENTATIONS AND WARRANTIES.** Each party represents and warrants to the others as follows: (i) this Agreement, when executed by such party, will be valid, binding and enforceable with respect to such party in accordance with its terms; and (ii) 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 the passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which such party is bound. Participant and AVP further represent and warrant to MLS that: (x) they are not, and shall not be, under any disability, restriction, or prohibition related to the execution of this Agreement and the performance of their respective obligations under this Agreement; and (y) the grant of the License to Participant and AVP and the fulfillment of Participant's and AVP's respective obligations as contemplated under this Agreement are proper and lawful.

16. **INDEMNIFICATION.** Participant and AVP indemnify and hold harmless MLS, 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 this Agreement, and the use and display of the MLS Listing Information. In any such action, MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.

17. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, MLS'S ENTIRE AND CUMULATIVE LIABILITY TO PARTICIPANT AND AVP, OR ANY THIRD PARTY, FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF DATA, OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE USE OR DISPLAY OF THE MLS LISTING INFORMATION, INCLUDING ANY TORT, SUCH AS NEGLIGENCE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE FEE PAID TO MLS 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 MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL,

CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

REMEDIES:

18. MLS, Participant, and AVP agree that a breach of this Agreement will result in immediate and irreparable injury and harm to MLS. In such event, MLS shall have the right to immediately terminate Participant's and AVP's access to the MLS 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 MLS's procurement of this equitable relief shall in no way limit any other remedies to which MLS may be entitled, including, without limitation, the right to seek monetary damages.

19. COSTS OF LITIGATION. 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, its reasonable attorneys' fees, costs, and expenses of litigation.

GENERAL PROVISIONS:

20. GOVERNING LAW; SUBMISSION TO JURISDICTION. This Agreement is governed by and enforced according to the laws of the State of Florida. Participant and AVP hereby submit and consent to, and waive any defense to the jurisdiction of courts located in St. Johns County, State of Florida, as to all matters relating to or arising from this Agreement.

21. NOTICES. All notices to be given under this Agreement shall be made in writing and delivered by U.S. certified mail, facsimile transmission, or email 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 receipt.

22. NO JOINT VENTURE. Nothing in this Agreement shall be construed to create a partnership or joint venture between MLS and either Participant or AVP.

23. SEVERABILITY. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement.

24. NO WAIVER. The waiver by any party of or the failure of any 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.

25. 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 MLS. Any attempted assignment by Participant or AVP in violation of this Section shall be void and of no force or effect.

26. SURVIVAL. The obligations of Participant and AVP set forth in Sections 5, 7, 10, 11, 13, 14, 18, 19, 20, 21, 22, 24-28, and 30 under this Agreement shall survive the termination, cancellation, or expiration of this Agreement for any reason whatsoever.

27. 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.

28. ENTIRE AGREEMENT. This Agreement contains all of the prior and contemporaneous terms, conditions, and promises of the parties with respect to the subject matter hereto, and no modification or waiver of any provision of this Agreement shall be valid or binding unless in writing and signed by Participant, AVP, and MLS.

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

[SIGNATURES ON FOLLOWING PAGE]

[Note: If “Participant” is a non-principal broker or sales licensee, then the affiliated principal real estate broker or broker in charge, identified as “Designated Realtor,” must also sign this agreement.]

Effective Date: DATE SIGNED

IDX/VOW Domain (URL) Address: URL FOR YOUR CHIME WEBSITE

PARTICIPANT

Designated Realtor (BROKER):

Company Name: BROKERAGE NAME

Broker/Owner: BROKER'S NAME

Signature: BROKER'S SIGNATURE

Address: BROKERAGE ADDRESS

Phone: BROKER'S PHONE NUMBER Fax: _____

Agent:

Company Name: AGENT'S OFFICE NAME

Name/Title: POSITION

Signature: AGENT'S SIGNATURE

Address: AGENT'S ADDRESS

Phone: AGENT'S PHONE NUMBER Fax: _____

Affiliated IDX/VOW Vendor:

Company Name: Chime Technologies, Inc.

Name/Title: MLS Coordinator

Signature: 

Address: 2828 N Central Avenue, 7th Floor, Phoenix, AZ. 85004

Phone: 8559817557 Fax: _____

<p align="center">OFFICIAL USE ONLY</p> <p align="center">St. Augustine & St. Johns County Multiple Listing Service, Inc.</p> <p align="center">_____</p> <p align="center">Name</p> <p align="center">_____</p> <p align="center">Title</p> <p align="center">_____</p> <p align="center">Signature</p> <p align="center">_____</p> <p align="center">Date</p>
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