



RETS DATA ACCESS AGREEMENT

Smart MLS, Inc
860 North Main Street Ext.
Wallingford, CT 06492
203-750-6000
SmartMLS.com

RETS DATA ACCESS AGREEMENT

This **AGREEMENT** is made and entered into by and among the Smart MLS, Inc (“**Smart MLS**”), the real estate firm whose name and contact information appear on the signature page of this Agreement designated “Firm Information and Signature” (the “**Firm**”), and the companies/individuals, if any, whose names and contact information appear on the signature pages of this Agreement designated “Consultant Information and Signature” and who fall within the definition of “Consultant” set forth in Section 1. (collectively, “**Consultants**”).

RECITALS

Whereas, Firm wishes to obtain, and SMART MLS wishes to provide, data for Firm’s website, or for other use including the listing data of other real estate brokerages.

Whereas, Firm may wish to engage Consultants, i.e., other companies or individuals who are not employees of Firm, to perform data downloading, manipulation, and formatting, as well as programming and Internet web-site design services and who will assist Firm in obtaining permitted data from SMART MLS.

Whereas, any and every Consultant wishes to provide such services in accordance with this Agreement.

Now therefore, for consideration receipt whereof is hereby acknowledged, the parties agree as follows:

1.0 DEFINITIONS

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

Consultants: Other companies or individuals who are not employees of Firm, who perform data downloading, manipulation, and formatting, as well as programming and Internet web-site design services, and who are retained by Firm to assist it in accessing and employing RETS Data as herein provided.

Multiple Listing Service or MLS: A means for collecting and disseminating information about real property that is or has been for sale, including a means for real estate brokers to make offers of cooperation and compensation to each other. Multiple Listing Services may also include, without limitation, the provision of data processing, technical support, consulting, and other information technology services to real estate brokers and appraisers in connection with the sale and appraisal of real property. Multiple Listing Service shall however include only such of these services as SMART MLS from time to time provides to Participants.

RETS Data: The real-time, live access database containing detailed data concerning MLS active listings of real estate for sale, real estate previously sold or real estate previously listed. RETS Data is the Proprietary Property of Smart MLS.

Rules: The rules and regulations of Smart MLS, revised January 5, 2007, as may be amended from time to time, at the sole discretion of Smart MLS, with notice to Firm, and any operating policies which are promulgated and amended from time to time, at the sole discretion of Smart MLS, with notice to Firm.

Participant: Participation in the SMART MLS is available to any REALTOR® principal who is an active member of the Connecticut Association of REALTORS® or any other Association of REALTORS® without further qualification except payment of required dues and fees and agreement to abide by the association's by-laws and the Smart MLS Rules. However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service "Membership" or "Participation" unless they hold a current, valid real estate broker's license and are capable of accepting and offering compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property.

Participant Data: Data relating to real estate for sale, previously sold or listed for sale, and data relating to Participants, entered into the Smart MLS System by Participants and/or Smart MLS. The compilation of the Participant Data is the Proprietary Property of SMART MLS.

Proprietary Property: As defined in Section 6.0.

2.0 Smart MLS' OBLIGATIONS

2.1 During the term of this Agreement, Smart MLS grants to Firm and its Consultants a limited, non-transferable and non-exclusive license to:

(a) Access RETS Data as herein provided for use in accordance herewith;

(b) Make copies of the RETS Data to the extent necessary to use the data for authorized purposes under the MLS Rules.

2.2 During the term of this Agreement, Smart MLS agrees to provide to Firm and its Consultants:

(a) Access to the RETS Data under the same terms and conditions Smart MLS offers to other users.

(b) Minimum seven (7) days' advance notice of changes to the software file and record formats in which the substantive RETS Data is to be stored for access under this Agreement; and

(c) Minimum seven (7) days' advance notice of changes to the Rules.

3.0 FIRM'S OBLIGATIONS

3.1 Firm shall comply with the Rules and this Agreement at all times and shall timely pay all fees established in accordance with the Rules.

3.2 Firm acknowledges and agrees that Smart MLS exclusively possesses as Smart MLS' Proprietary Property the compilation of the Participant Data and owns exclusively any and all copyrights and all other rights with respect thereto and that such Proprietary Property shall be governed by Section 6.0.

3.3 If Smart MLS notifies Firm of a breach by Firm of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that Smart MLS may notify any or more of Firm's Consultant's of such breach and that such Consultant shall take immediate action at Firm's expense to cure such breach. Firm acknowledges that, in the event Firm and/or Firm's Consultant fail to cure such breach within 48 hours of being

notified of the breach, Smart MLS may immediately terminate access to the RETS Data, without further notice to Firm. This provision shall not limit or otherwise restrict Smart MLS' ability to terminate access to the RETS Data as provided elsewhere in this Agreement.

- 3.4 Firm shall provide Smart MLS with five (5) business days advance notice of any change to the information relating to Firm on the Firm Information and Signature page below.
- 3.5 Firm shall take reasonable steps to ensure that the provisions of this Agreement and the Rules are not violated by any person under its control or in its service.
- 3.6 Firm shall not provide access to and/or share the RETS Data and/or the Proprietary Property with any person who or entity which is not a Participant or Consultant, including without limitation Firm's parent, subsidiary and/or affiliated entities.
- 3.7 Firm shall take reasonable steps to ensure that it has technical capability to carry out its activities without jeopardizing the RETS Data, the server on which the RETS Data is stored, the operating system or other data or systems of Smart MLS. Firm further warrants that it will not retrieve or download data with a frequency, or at a rate, that will cause damage to Smart MLS' databases, operating system or other systems.
- 3.8 Firm's use of the RETS Data shall conform to the advertising specifications as provided in the Rules.

4.0 CONSULTANT'S OBLIGATIONS

- 4.1 Each Consultant shall comply with the Rules and this Agreement at all times.
- 4.2 Each Consultant acknowledges and agrees that Smart MLS exclusively possesses, as Smart MLS' Proprietary Property, the compilation of Participant Data and owns exclusively any and all copyrights and all other rights with respect thereto and that such Proprietary Property shall be governed by Section 6.0.
- 4.3 If Smart MLS contacts any Consultant to cure any breach by Firm or such Consultant that is within such Consultant's control, such Consultant hereby agrees to act immediately and cure such breach. Consultant acknowledges that, in the event Firm and/or Firm's Consultant fail to cure such breach within 48 hours of being notified of the breach, Smart MLS may immediately terminate access to the RETS Data, without further notice to Firm's Consultant. This provision shall not limit or otherwise restrict Smart MLS' ability to terminate access to the RETS Data as provided elsewhere in this Agreement.
- 4.4 Each Consultant shall provide Smart MLS with five (5) business days advance notice of any change to the information relating to it on the Consultant Information and Signature page below.
- 4.5 Consultant shall take reasonable steps to ensure that the provisions of this Agreement and the Rules are not violated by any person under its control or in its service.
- 4.6 Consultant shall not provide access to and/or share the RETS Data and/or the Proprietary Property with any person who or entity which is not a Participant or

Consultant, including without limitation Consultant's parent, subsidiary and/or affiliated entities.

4.7 Consultant shall take reasonable steps to ensure that it has technical capability to carry out its activities without jeopardizing the RETS Data, the server on which the RETS Data is stored, the operating system or other data or systems of Smart MLS. Consultant further warrants that it will not retrieve or download data with a frequency, or at a rate, that will cause disruption to Smart MLS' databases, operating system or other systems. Data requests deemed excessive in the sole discretion of Smart MLS may be limited in volume or frequency, may result in fines for data overage fees, and may be terminated.

4.8 Consultant's use of the RETS Data shall conform to the advertising specifications as provided in the Rules.

5.0 TERM, TERMINATION AND SURVIVAL

5.1 The term of this Agreement begins on the "Effective Date" set forth on the "SMART MLS Information and Signature Page" below. Smart MLS has the right at any time and in its sole discretion without advance notice of any kind to terminate this Agreement and/or terminate Firms' and/or Consultant's access to the RETS Data.

5.2 Firm may terminate this Agreement by notice to Smart MLS and each Consultant.

5.3 This Agreement shall automatically terminate upon the termination of Firm's privileges as a Participant in SMART MLS.

5.4 Within five (5) business days after termination of this Agreement, the receiving party shall return to Smart MLS all Proprietary Property, Smart MLS confidential information and any other materials provided by Smart MLS to the receiving party. The receiving party shall also erase, delete, shred or destroy any Proprietary Property or Smart MLS confidential information which is has stored on magnetic media or other computer storage systems, including onsite and/or offsite backup systems. Upon Smart MLS' request, a duly authorized representative of the receiving party shall certify to Smart MLS, in writing, that all Proprietary Property, Smart MLS confidential information and any other materials provided by Smart MLS to the receiving party have either been returned to Smart MLS and/or erased, deleted, shredded or destroyed.

5.5 All provisions of this Agreement relating to Proprietary Property shall survive the termination of this Agreement.

6.0 PROPRIETARY PROPERTY

6.1 Smart MLS retains title to the compilation of Participant Data including without limitation all RETS Data, and further including, without limitation, all copies and audiovisual and computer graphic aspects thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto (the "Proprietary Property"). No Consultant shall by virtue of this Agreement or otherwise, acquire any proprietary rights whatsoever in the Proprietary Property, all of which shall be the sole and exclusive property of Smart MLS. Any right not expressly granted to Firm or a Consultant by this Agreement is hereby expressly reserved by Smart MLS and shall be deemed to be part of its Proprietary Property.

- 6.2 Firm and any and each Consultant agree that during the term hereof and at all times hereafter, and except as specifically permitted herein or in a separate writing signed by the Smart MLS, neither Firm nor any and each such Consultant shall directly or indirectly commercialize, transfer, publish, disseminate or otherwise disclose any portion of the Proprietary Property to any person or entity, except during the term of this Agreement to its own employees having a “need to know” (and who themselves are bound by similar nondisclosure restrictions, of which Smart MLS shall be deemed to be a third party beneficiary). Notwithstanding the above, portions of the Smart MLS Proprietary Property may be published by a Participant within a virtual office website, but only as may be expressly authorized under the Rules and Regulations agreed to by Participant in the Smart MLS Participant Agreement. Firm and any and each Consultant shall use its best efforts in safeguarding the Proprietary Property from access by unauthorized individuals and entities and to ensure that its employees comply with the terms of this section. Firm shall use its reasonable best efforts to cooperate with and assist Smart MLS in identifying, preventing and terminating any unauthorized use, copying or disclosure of the Proprietary Property, the RETS Data or any portion thereof.
- 6.3 Firm and any and each Consultant agree that during the term hereof and at all times hereafter, and except as specifically permitted herein or in a separate writing signed by the Smart MLS, neither Firm nor any and each such Consultant shall make copies of any portion of the Proprietary Property or the RETS Data.

7.0 INDEMNIFICATION OF SMART MLS

- 7.1 Firm will, at its own expense, indemnify, promptly reimburse Smart MLS for the defense of, and hold Smart MLS and its affiliates, directors, officers, employees, agents and contractors harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs and expenses (including attorneys' fees): (i) arising out of injury or death to persons, or damage to property, or any other claim, resulting from or pertaining to the access to and use of RETS Data and whether or not occasioned by the negligence or misconduct of Firm or any Consultant; or (ii) arising out of any breach by Firm or any Consultant of this Agreement.

8.0 LIMITED WARRANTY

- 8.1 Smart MLS warrants to Firm that it owns or otherwise has rights in the RETS Data and has the right to license the RETS Data as described in this Agreement.
- 8.2 SMART MLS MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE ABILITY TO ACCESS OR INTEGRATE RETS DATA. FURTHER, SMART MLS MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE ACCURACY OF RETS DATA.
- 8.3 THE WARRANTY SET FORTH IN SECTION 8.1 IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY SMART MLS. SMART MLS MAKES NO WARRANTY TO ANY CONSULTANT. SMART MLS EXPRESSLY DISCLAIMS, AND FIRM HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OF THE RETS DATA, INFORMATIONAL CONTENT OF THE RETS DATA OR PARTICIPANT DATA, OR FITNESS OF THE RETS DATA FOR FIRM'S PURPOSE OR SYSTEM INTEGRATION. THERE IS NO WARRANTY AGAINST INTERFERENCE WITH ENJOYMENT OF THE RETS DATA, OR AGAINST

INFRINGEMENT OF PROPRIETARY RIGHTS OF ANOTHER. SMART MLS DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT ACCESS TO RETS DATA AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ACCESS PROBLEMS, IF ANY, WILL BE CORRECTED BY IT OR BE CORRECTABLE. FIRM SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE, EFFICIENCY AND SUITABILITY OF ANY CONSULTANT AND SMART MLS SHALL HAVE NO LIABILITY THEREFOR.

9.0 LIMITATION OF LIABILITY

9.1 IN NO EVENT SHALL SMART MLS BE LIABLE TO ANY CONSULTANT HEREUNDER FOR ANY REASON INCLUDING WITHOUT LIMITATION ANY INTERNAL OR NEGLIGENT ACT OF SMART MLS. IN NO EVENT SHALL SMART MLS BE LIABLE TO FIRM FOR ANY DAMAGES RESULTING FROM OR RELATED TO FIRM'S ATTEMPTS TO ACCESS RETS DATA, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OF ANY SORT. SMART MLS SHALL HAVE NO LIABILITY, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE AGGREGATE LIABILITY OF SMART MLS FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM, SHALL BE LIMITED TO THE AMOUNT, IF ANY, PAID TO SMART MLS BY FIRM UNDER THIS AGREEMENT DURING THE PRECEDING 12-MONTH PERIOD. FIRM'S ONLY OTHER REMEDY SHALL BE TERMINATION OF THIS AGREEMENT. THE LIMITATIONS OF THIS SECTION APPLY TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND ALL OTHER TORTS.

10.0 REMEDIES

10.1 Firm and any and each Consultant each acknowledge that violation by it of the provisions of Section 6.0 or the Rules would cause immediate irreparable harm to Smart MLS for which there would be no adequate remedy at law, including, without limitation, compensable monetary damages. In addition to any other relief, it is agreed that an immediate temporary and preliminary injunction, as well as a permanent injunction, shall be available, without necessity of a hearing or the posting of a bond, to prevent any actual or threatened violation of such provisions and that FIRM shall be liable for all attorney's fees and other costs incurred by Smart MLS in obtaining such injunctive relief.

11.0 MISCELLANEOUS

11.1 This Agreement and performance hereunder shall be governed by the laws of the State of Connecticut, without giving effect to the principles of conflict of laws of such state or international treaties. Smart MLS, Firm and any and each Consultant hereby agree on behalf of themselves and any person claiming by or through them that the sole and exclusive jurisdiction and venue for any litigation arising from or relating to this Agreement or the subject matter hereof shall be an appropriate federal or state court located in Connecticut.

11.2 This Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their permitted successors in interest and permitted assigns. Firm may not, without Smart MLS' prior written consent, assign it's rights, duties or obligations

under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed null and void. Consultant may not assign without the prior written consent of Smart MLS and Firm, any of its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed null and void. Smart MLS may, in its sole discretion, assign this Agreement.

- 11.3 The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.
- 11.4 If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.
- 11.5 The headings of the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.
- 11.6 The parties agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third party beneficiaries as to this Agreement or any part or specific provision of this Agreement.
- 11.7 If Smart MLS prevails in any action to enforce or interpret this Agreement or any provision hereof, the party against whom enforcement or interpretation was sought will pay Smart MLS' reasonable attorney's fees and costs for such legal action.
- 11.8 All notices to be given under this Agreement shall be: (i) mailed by certified or first class U.S. Mail; (ii) sent via facsimile transmission; (iii) delivered by courier or overnight courier service; or (iv) sent via e-mail with a hard copy sent by first class U.S. Mail, to the parties at their respective addresses set forth below or such other address of which any party may advise the others in writing during the term of this Agreement. Notices shall be deemed received upon the earlier of: (a) two (2) business days after mailing; or (b) actual receipt of the notice by the recipient whether by mail, facsimile transmission, courier, overnight courier or e-mail.

Notices to Smart MLS shall be sent to:

Smart MLS, Inc.
860 North Main Street Ext.
Wallingford, CT 06492
Attn: Kathy Elson, CEO
Fax: 203-697-1064 Attn: Francisco Garcia, CIO
E-mail: Francisco@SmartMLS.com

Notices to Firm or to any and each Consultant shall be addressed per the information provided on the applicable signature page.

- 11.9 This Agreement and the Rules contain the full and complete understanding of the parties regarding the subject matter of this Agreement and supersede all prior representations and understandings whether oral or written. The Rules are expressly incorporated into this Agreement by reference.
- 11.10 Notwithstanding any rule of law or custom to the contrary, the parties agree that any rule of construction that any ambiguities be construed against the drafting party will not apply to this Agreement, the Rules or to any other agreement or document collateral to or otherwise relating to this Agreement and/or the Rules.
- 11.11 Each party hereto acknowledges that it is an independent contractor in the performance of this Agreement. Nothing contained herein shall be deemed to create the relationship of partners, joint venturers, or of principal and agent between the parties hereto. Each party covenants that it shall not hold itself out to any third party as having the authority to act on behalf of, to bind or to serve as the agent of any party to this Agreement. Firm and Consultant will not, without Smart MLS' prior written approval, undertake commitments or incur liability on behalf of Smart MLS for any services or expenditures and Smart MLS will not be liable for any such commitments or liabilities incurred without such written approval.
- 11.12. **WAIVERS OF RIGHT TO JURY TRIAL & FILING COUNTERCLAIMS. Each Party Hereby Knowingly, Voluntarily And Intentionally Waives Any Right To A Trial By Jury In Any Litigation, Action Or Proceeding Based On, Arising Out Of, Under Or In Connection With This Agreement, The Rules Or Any Course Of Conduct, Statements Or Actions Of Any Party With Respect Hereto. Each Party Further Waives All Rights To Interpose Any Counterclaim(s) And/Or Cross-Claim(s) In Any Action Seeking To Enforce Obligations Under And/Or For Damages Relating To This Agreement And/Or The Rules And/Or Any Breach(es) Thereof.**

Signatures are set forth on the pages which follow.

Firm Information and Signature

Firm Name: _____

Firm MLS ID: _____

MLS Participant-Broker Name: _____

Broker MLS ID: _____

E-mail address: _____

(You **must** supply an e-mail address here. This address will be part of SMART MLS's principal means of communicating with you for notices under this Agreement.)

Agent Name: _____

Agent MLS ID: _____

E-mail address: _____

(You **must** supply an e-mail address here. This address will be part of SMART MLS's principal means of communicating with you for notices under this Agreement.)

Website URL(s) on which IDX will be displayed: _____

By signing this page, Firm agrees to be bound by all the terms and obligations set forth in the foregoing SMART MLS RETS Data Access Agreement.

Entered into on behalf of Firm by the undersigned duly authorized broker or agent.

Broker Signature

Agent Signature

Broker Print Name

Agent Print Name

Title

Title

Date

Date

Consultant Information and Signature

NOTE TO FIRM: Reproduce this page for each individual/company to whom you intend to provide access to the RETS Data under this Agreement.

Consultant (company or individual) Name: Chime Technologies, Inc.

E-mail address: mls_support@chimeinc.com
(You **must** supply an e-mail address here.)

Consultant Street Address: 420 E South Temple, Suite 270.

Consultant City, State, Zip Code: Salt Lake City, UT 84111

Phone: (801.) 917-5860

Fax: ()

By signing this page, Consultant agrees to be bound by all the terms and obligations set forth in the SMART MLS RETS Data Access Agreement executed between Smart MLS and

(Firm Name): Chime Technologies, Inc.

Entered into on behalf of Consultant by the undersigned duly authorized agent


Signature

Myla Landayan
Print Name

Chime MLS Coordinator
Title

Date

NOTE TO CONSULTANT: Be sure to enter into this RETS Data Access Agreement with Smart MLS for every real estate broker to which you provide services. If you sign only one and that Firm's access to the RETS Data is terminated, you will not be able to get the data for your other clients.

The foregoing Consultant is submitted for approval by _____
(the "Firm") and upon acceptance will become a party to the RETS Data Access Agreement between Smart MLS and the Firm originally executed by the Firm on _____.

(Firm)

By _____
Broker or Authorized Agent

The foregoing Consultant is approved

Smart MLS, Inc.

By _____
Authorized Agent

SMART MLS Information and Signature

Smart MLS, Inc.

By _____
Signature Title

Print Name

Effective Date

This section is for Smart MLS' use only. Smart MLS will fill out the information in it after signing this Agreement. Smart MLS will then return a copy of this Agreement to Firm and any and each Consultant. The contents of this section are Proprietary Property under this Agreement and included in the limited license granted by this Agreement.

RETS URL: _____

RETS User ID: _____

RETS Password: _____

Consultants Approved: _____

Consultant(s) Name(s): _____

Listing Office ID: _____

Listing Office Name: _____

Broker or Contact Person: _____