

LICENSE AGREEMENT
(MLS data feed to Affiliated VOW Partner)

This License Agreement (the Agreement) is made and entered into by and between Southwest Multiple Listing Service, Inc., a New Mexico corporation (MLS), the real estate firm whose name and contact information appear on the Signature Page of this Agreement designated "Participant Information and Signature" (Participant), and the company or individual(s) whose name and contact information appear on the Signature Page of this Agreement designated "Affiliated VOW Partner Information and Signature" (AVP).

RECITALS

A. Participant wishes to obtain and MLS wishes to provide MLS Listing Information, as defined in Section 1 of this Agreement, for use on Participant's Virtual Office Website (Participant's VOW). Participant wishes to engage AVP to operate Participant's VOW on behalf of Participant and subject to Participant's supervision, accountability, and compliance with the MLS's Rules,' as defined in Section 1 of this Agreement.

B. AVP wishes to and has or will enter into an agreement with Participant to operate Participant's VOW, and seeks to obtain access to the MLS Listing Information for such purpose.

AGREEMENT

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

DEFINITIONS

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.
 - a. 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 MLS's VOW Policy and Rules. 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."
 - b. MLS Listing Information means active listing information and sold data provided by MLS Participants to the MLS and aggregated and distributed by the MLS to Participants, except for any listing for which the seller has withheld permission to have the listed property displayed on the Internet or information which pursuant to the Rules or applicable law is not to be displayed on a VOW.
 - c. 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 Vendor to access the MLS Listing Information.

- d. MLS 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.
- e. Participant means for purposes of this Agreement, the real estate firm or individual whose name and contact information appear on the Signature Page of this Agreement in the section designated "Participant Information and Signature." 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.
- f. Rules refers to the MLS 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 the MLS Listing Information.
- g. Virtual Office Website (VOW) refers to an MLS 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 a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the participant's oversight, supervision, and accountability and compliance with the Rules.
- h. VOW Policy refers to the policy governing use of MLS data in connection with internet brokered services as adopted by MLS, as amended from time to time.
- i. VOW Rules refers to that portion of the Rules applicable specifically to VOWs.

LICENSE

2. License Grant. Subject to the terms and conditions of this Agreement, MLS hereby grants to AVP a 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 Participant's VOW, provided, however, MLS reserves the right to change the content or configuration of the MLS Listing Information provided to AVP upon notice of such change.

3. Limitations on License. Except as expressly set forth in this Agreement 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, or (c) sell, grant access to, or sublicense the MLS Listing Information, or any portion of the MLS Listing Information, to any third party. AVP agrees to take all reasonable steps necessary to protect the MLS Listing Information from unauthorized access, distribution, copying or use.

4. License Fees and Payment; Expenses. In consideration for the License granted under this Agreement, AVP agrees to pay to MLS the license fees and other fees described on the attached Schedule A to this Agreement (the Fees). The Fees shall be payable as provided on Schedule A. Participant may pay the Fees on behalf of AVP, except that if Participant fails to pay any such amounts when due, AVP shall be liable to MLS for such amounts until paid. AVP agrees to pay all costs of collection of all unpaid amounts owing to MLS under this Agreement, including reasonable attorneys' fees and costs. AVP shall be responsible for its own expenses and costs under this Agreement, and MLS 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.

5. No Warranties. THE LICENSE GRANTED UNDER THIS AGREEMENT, INCLUDING ACCESS AND DISPLAY OF THE MLS LISTING INFORMATION, IS PROVIDED "AS IS," AND, EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 19 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. FURTHER, MLS DISCLAIMS ANY WARRANTY OR REPRESENTATION REGARDING THE ACCURACY OF THE MLS LISTING INFORMATION, AND MLS DISCLAIMS ANY OBLIGATION TO CONFIRM THE ACCURACY OF THE MLS LISTING INFORMATION.

COMPLIANCE

6. Rules. Participant and AVP hereby acknowledge that MLS has provided each with a copy of the MLS'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. MLS may modify the Rules at any time, in its sole discretion. 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.

7. Means of Accessing the MLS Listing Information. Access by 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 AVP, change the means and nature of accessing the MLS Listing Information.

8. Authorization to Access the MLS Listing Information. AVP hereby acknowledges and agrees that (i) AVP has no independent participation rights in the MLS by virtue of this license; (ii) AVP shall not use MLS Listing Information except in connection with operation of Participant's VOW pursuant to this Agreement; and (iii) access by AVP to MLS Listing Information is derivative of the rights of Participant.

9. MLS Access to the VOW. Participant shall at all times make Participant's VOW readily accessible to MLS and to all MLS Participants for purposes of verifying compliance with the Rules. Participant's VOW is accessible to MLS at the following URL (include any necessary third-level domain names): _____

10. Changes to the MLS Server. MLS shall not be obligated to make any changes to the MLS Server, including any software running on the MLS Server, the configuration, applicable protocols, or any other aspect of MLS 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 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 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

11. Ownership of Intellectual Property. AVP acknowledges and agrees 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. AVP further acknowledges and agrees 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 with MLS. This Agreement does not convey or grant to AVP an interest in or to the MLS Listing Information, but only a limited right to access and display the MLS Listing Information, revocable in accordance with the terms of this Agreement. AVP agrees that it will not challenge or take any action inconsistent with MLS's ownership of or rights to the MLS Listing Information as described herein.

12. Trademark License. MLS grants to AVP a limited, non-exclusive, revocable license to use MLS's logo(s) and any associated trademark(s) identified in Exhibit B for the sole purpose of identifying MLS as the source of the MLS Listing Information ("MLS Trademark"). AVP agrees that it 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 AVP. AVP agrees that it will not file any applications or assert any rights to the MLS Trademark in the United States, or any other country or territory. MLS may subsequently grant similar rights to AVP to use other trademarks of MLS, and AVP's use thereof shall be subject to the provision of this paragraph as if they had been included in Exhibit B.

13. Proprietary and Other Notices. AVP agrees 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 MLS Listing Information. AVP agrees 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

14. The term of this Agreement shall commence on the "Effective Date" set forth on the "MLS Information and Signature Page." MLS may, by delivery of written notice to Participant and AVP, in addition to all other rights and remedies available to MLS under this Agreement or at law or in equity, terminate this Agreement effective immediately upon the occurrence of any of the following events, and additionally, the events set forth in (e), (f) and (g) below shall be breaches of the terms of this Agreement:

- a. AVP giving MLS and Participant written notice of the termination;
- b. Participant giving notice to MLS that it no longer intends to display the MLS Listing Information on the VOW;
- c. AVP being no longer designated to provide VOW services to Participant;
- d. MLS becoming aware of Participant ceasing to remain a MLS Participant;
- 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 Rule, any applicable law, or any term of this Agreement;
- or
- g. Participant or AVP failing to make required payments to the MLS.

15. MLS acknowledges and agrees that it may not suspend or terminate AVP's access to MLS Listing Information except as set forth in this Agreement or for reasons that would allow MLS to suspend or terminate Participant's access to such data, and if required by the Rules, MLS will give 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.

16. No Fees, portion of the Fees, or other fees payable by AVP under this Agreement will be refunded to AVP upon termination of this Agreement for any reason.

WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY

17. Mutual Representations 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 the 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 MLS that the grant of the License to AVP and the fulfillment of AVP's obligations as contemplated under this Agreement are proper and lawful.

18. 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 (i) 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; (ii) any claim by a third party arising out of any action or inaction of Participant or AVP. MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.

19. Limitation of Liability. TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, MLS'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 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

20. 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 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 this shall in no way limit any other remedies which MLS may have including, without limitation, the right to seek monetary damages.

21. **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, reasonable attorneys' fees, costs, and expenses of litigation.

GENERAL PROVISIONS

22. **Governing Law; Submission to Jurisdiction.** This Agreement is governed by and enforced according to the laws of the State of New Mexico. Participant and AVP hereby submit and consent to, and waive any defense to the jurisdiction of courts located in this Bernalillo County, State of New Mexico, as to all matters relating to or arising from this Agreement.

23. **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.

24. **No Joint Venture.** Nothing in this Agreement shall be construed to create a partnership or joint venture between MLS and AVP or Participant.

25. **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.

26. **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.

27. **No Assignment.** Neither Participant nor AVP may assign or otherwise transfer any rights under this Agreement to any party.

28. **Survival.** The obligations of Participant and AVP set forth in Sections 5, 7, 10, 13, 14, 20, and 21 under this Agreement shall survive the termination of this Agreement.

29. **Execution and Amendment.** 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. This Agreement may not be amended except in writing signed by Participant, AVP, and MLS.

[The remainder of this page is left blank intentionally.]

SIGNATURE PAGE

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

Effective Date: _____

MLS Information and Signature

Signature

Signature

Name, Title

Name, Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

Email Address

Email Address

Phone Number

Phone Number

Facsimile 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

**Affiliated VOW Partner
Information and Signature**

Signature

Name, Title

Street Address

City, State, Zip Code

Email Address

Phone Number

Facsimile Number

Participant Information and Signature

Signature

Name, Title

Street Address

City, State, Zip Code

Email Address

Phone Number

Facsimile Number

SCHEDULE A

Fees and Payment Terms

Data Feed Annual Fee (Billed Annually)	\$100
Per Site Compliance and Administrative Annual Fee (Billed Annually)	\$ 50
Set Up Fee	\$ 25

SCHEDULE B

Trademarks Licensed to AVP

[Attach image of logo]

K:\dox\client\68942\111\W0947545.DOCX