

# IDX and VOW Implementation Guide

(Version 4.1 – May 2009)

## ***Purpose of this Guide***

This IDX and VOW Implementation Guide is designed to provide display, disclaimer and disclosure information to brokers, technical advisors and contractors of brokers participating in RealTracs Solutions, so they may incorporate the IDX listings into those brokers' web sites or create VOWs for authorized brokers.

For the best results RealTracs Solutions recommends brokers, technical advisors and contractors review this entire Guide for further details, particularly regarding rules and regulations and disclosures that should appear on your web site.

## ***Internet Data Exchange Program (IDX)***

The Internet Data Exchange Program (IDX) is a cooperative initiative whereby brokers give permission to display their listings on each other's web sites. Brokers who participate can display all of each other's active listings.

If a broker chooses not to participate, no other broker will be permitted to display that broker's listings *nor* can that broker display other broker's listings. However, even if you don't have your own web site, by participating in IDX you can include your listings in other participants' web sites.

While the Internet Data Exchange Program provides permission for the use of listing information by other brokers in web sites, it also creates guidelines that protect the listing broker and the consumer. Those guidelines are defined in the MLS Rules and Regulations.

**BROKERS DO NOT NEED TO TAKE ANY ACTION TO PARTICIPATE IN THE INTERNET DATA EXCHANGE PROGRAM.** All brokers are automatically signed up for IDX. If, however, a broker decides not to participate, it can be cancelled through the Internet Advertising Permissions page in RealTracs, or by mailing or faxing a signed request to the RealTracs office.

## ***Virtual Office Website (VOW)***

A Virtual Office Website (VOW) is a web site through which a broker offers brokerage services to clients and customers, such as displaying recent sales or creating CMAs. The guidelines for using MLS data within a VOW can be found in the MLS Rules and Regulations.

Because a VOW is simply an extension of a brokerage's services or an alternative method to deliver real estate services to customers and clients, VOW operators are required to establish a broker-consumer relationship with the consumer before granting access to website services. All disclosures and agreements required when a broker works with a consumer face-to-face are also required when operating a VOW. A registration process is necessary, including acceptance of a "Terms of Use," before granting access to the VOW, and each registrant must use a login and password to enter the VOW site.

Brokers do not opt in or out of another broker's VOW, since MLS Participation provides that all MLS information may be used to serve *bona fide* customers and clients. Active and off-market listings are available for use in a VOW.

## ***IDX vs. VOW***

In the simplest terms, IDX provides active listings to search and display (advertise) on brokers' websites without a registration process, and VOWs provide brokerage services to *bona fide* customers and clients. A site may actually display both IDX listings, with no registration, and VOW services, if a consumer wants more information about properties or wants brokerage services delivered via the Internet and agrees to enter a broker-consumer relationship with the broker.

## ***IDX and VOW Rules***

Following are the sections of the MTRMLS, Inc. Rules and Regulations that govern the use of MLS Content under the IDX Program and on VOWs. *MTRMLS, Inc. does business as RealTracs Solutions.* Please note that MLS Participants are bound by all the MTRMLS, Inc. Rules and Regulations, and these are provided, as excerpts, for the benefit of developers of IDX and/or VOW sites.

### **Section XIII: Internet Data Exchange Program**

The Internet Data Exchange Program (IDX) is a means by which each MTRMLS, Inc. Participant grants and receives blanket permission to display other Participants' active Listing Content on its web site according to the rules listed below.

If an individual Participant opts not to grant such permission, that Participant's listings will not be included in the available IDX Listing Content nor will that Participant be allowed to display IDX Listing Content on his or her web site.

A Participant may republish all or a portion of the IDX Listing Content on the Internet in accordance with the following provisions and in keeping with any policies that MTRMLS, Inc. may adopt from time to time. Participants may select the listings they choose to display on their IDX sites based only on objective criteria.

Unless expressly contravened by the provisions of this section, all other rules and regulations remain in full force and effect. The following apply only to those MLS Participants who are participating in the IDX program.

**13.1** An Internet republication of another Participant's listing shall not contain more (but may contain less) Listing Content than is contained in the Buyer Full Report listing printout in RealTracs.

**13.2** In order to participate in the IDX, a Participant must be actively engaged in providing real estate brokerage services to buyers or sellers in real estate transactions.

**13.3** Participants must notify MTRMLS, Inc of their intention to establish an IDX site and must make their site directly accessible to MTRMLS, Inc. for purposes of monitoring/ensuring compliance with these IDX Rules and Regulations.

**13.4** The Participant must update the IDX Listing Content on its Internet web site at least every 48 hours.

**13.5** The Participant may not modify or manipulate the IDX Listing Content relating to another Participant's listing. (This is not a limitation on the design of the site.)

**13.6** The MTRMLS-approved logo and an explanation that those properties marked with the logo are provided courtesy of the RealTracs Internet Data Exchange Program must appear on the first page where any Listing Content is displayed.

**13.7** "Thumbnail" refers to a summary of a listing containing no more than five selection criteria describing the property (e.g. address, bedrooms, baths, square footage and list price). Any search result identifying another Participant's listing in a "thumbnail" format

(a) shall bear the MTRMLS-approved logo or the MTRMLS-approved thumbnail logo immediately adjacent to the Listing Content to identify the listing as such;

- (b) shall display “Information Is Believed To Be Accurate But Not Guaranteed.”; and
- (c) may not include any contact information or branding of the Participant whose web site it is, or any of its agents, within the borders of the “thumbnail” Listings Content unless similar treatment is given to the other Participants and agents whose listings may appear on the page.

**13.8** Any web page displaying the details of another Participant’s individual listing, regardless of the number of data fields in the detail,

- (a) shall display the Participant’s company name in the same type face, color and median size as the other listing data on the page;
- (b) shall display the MTRMLS-approved logo;
- (c) shall display “Information Is Believed To Be Accurate But Not Guaranteed.”;
- (d) shall display “Copyright [insert year] MTRMLS, Inc.”; and
- (e) may not include any contact information or branding of the Participant whose web site it is, or any of its agents, within the “body” of the Listing Content (defined as the rectangular area whose borders are delimited by the utmost extent in each direction of the Listing Content).

**13.9** Any Internet web site used for publication of the IDX Listing Content or any portion thereof must be controlled by the Participant and advertised as that Participant’s or Participant’s company Internet web site. When displaying IDX Listing Content, a Participant’s or User’s IDX web site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.

**13.10** Participants and/or their web site designers must protect IDX information from misappropriation by employing reasonable efforts to monitor and prevent "scraping" or other unauthorized accessing, reproduction or use of the IDX Listing Content.

**13.11** Participants or Users operating IDX sites and their web site designers shall not use, provide to any third party or store any Listing Content (or facilitate the use or storage of any Listing Content by any entity or individual) for any purpose other than to display them on their web site.

**13.12** Listing or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet shall not be included in IDX Listing Content. Notwithstanding this prohibition, Participants in the IDX program may display the listing or property address of consenting sellers.

**13.13** No portion of the IDX Listing Content may be co-mingled with any non-MLS listings on the Participant’s web site.

**13.14** Third party web site developers/designers to whom IDX Listing Content will be supplied must have a signed agreement with the Participant acknowledging that they abide by the Rules and Regulations of MTRMLS, Inc. as they apply to the Internet Data Exchange Program.

**13.15** Participants must make changes necessary to cure a violation of these IDX Rules and Regulations within five business days, or their access to the IDX Listing Content shall be terminated. If a Participant is unable or unwilling to make the necessary changes and continues to use other Participants’ Listing Content, Section 12.4 above shall automatically apply to the Participant.

## **Section XIV: Virtual Office Websites**

### **14.1**

- (a) A Virtual Office Website ("VOW") is a Participant's Internet website, or a feature of a Participant's 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. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant's oversight, supervision, and accountability.

- (b) As used in Section 14 of these Rules, the term "Participant" includes a Participant's affiliated non-principal brokers and sales licensees - except when the term is used in the phrases "Participant's consent" and "Participant's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner ("AVP") on behalf of a Participant.
- (c) "Affiliated VOW Partner" ("AVP") refers to 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 VOW Policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Listing Information except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS Listing Information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW.
- (d) As used in Section 14 of these Rules, the term "MLS Listing Information" refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

## **14.2**

- (a) The right of a Participant's VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.
- (b) Subject to the provisions of the VOW Policy and these Rules, a Participant's VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange ("IDX").
- (c) Except as otherwise provided in the VOW Policy or in these Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant's VOW.

## **14.3**

- (a) Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:
  - i) The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
  - ii) The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.
  - iii) The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.
- (b) The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user

name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

- (c) If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of MLS Listing Information or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.
- (d) The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:
  - i) That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
  - ii) That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;
  - iii) That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
  - iv) That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;
  - v) That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.
- (e) The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.
- (f) The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

**14.4** A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

**14.5** A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

#### **14.6**

- (a) A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

- (b) A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision:

### **Seller Opt-Out Form**

1. Please check either Option a or Option b

- a.  I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.

OR

- b.  I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.

2. I understand and acknowledge that, if I have selected option a, consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.

\_\_\_\_\_  
initials of seller

- (c) The Participant shall retain such forms for at least one year from the date they are signed, or one year from the date the listing goes off the market, whichever is greater.

#### **14.7**

(a) Subject to subsection (b), a Participant's VOW may allow third-parties (i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

(b) Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 14.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**14.8** A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

**14.9** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**14.10** Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

**14.11** A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

**14.12** A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

**14.13** A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

**14.14** A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the Participant.

**14.15** A Participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields.

**14.16** A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

**14.17** A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than 250 current listings and not more than 250 sold listings in response to any inquiry.

**14.18** A Participant shall require that Registrants' passwords be reconfirmed or changed every 180 days.

**14.19** A Participant shall cause any listing displayed on his or her VOW that is obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

**14.20** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

### ***Access to IDX Data and VOW Data***

Any participant in the IDX Program or a Participant's VOW may display all or any portion of the IDX Data and/or VOW Data on its own web site, provided it:

1. Signs the required agreement with RealTracs Solutions (Appendix C); and
2. Abides by the MTRMLS, Inc. Rules and Regulations relating to the Internet Data Exchange Program and Virtual Office Websites.

Before brokers, technical advisors and contractors will be permitted to have access to the IDX Data and/or VOW Data, or any test sample of it, a contract must be signed with RealTracs Solutions--See the CONTRACT in Appendix C of this Guide for details. Technical advisors and contractors must sign such a contract for each broker for whom services are provided. (If not, the web site designer may lose access to the IDX Data and/or VOW Data if one of the brokers leaves RealTracs Solutions or ceases to participate in the Internet Data Exchange Program.)

## **APPENDIX A: IDX DISPLAY CHECKLIST**

The following checklist provides a quick reference of required items. It is a simplified checklist. Brokers, technical advisors and contractors should review this entire Guide for further details, particularly regarding rules and regulations and disclosures that should appear on your web site. To the extent that the MTRMLS, Inc. Rules and Regulations differ from those in this checklist, the MTRMLS, Inc. Rules and Regulations govern.

- MLS Participant (principal broker) has signed the agreement. **(Rule 13.14)**
- Authorized person(s) with the web development company (or companies) has signed the agreement. **(Rule 13.14)**
- Brokerage firm is actively engaged in listing and selling real estate. **(Rule 1.2)**
- IDX Data is only being used for search and display of listings on a web site. **(Rule 13.11)**
- Site clearly displays brokerage firm name listed above. **(Rule 13.9)**
- Site displays the explanation of data source. **(Rule 13.6)**
- Site displays the IDX logo on competitors' listings. **(Rules 13.7 and 13.8)**
- Listing thumbnail and detail displays contain "Information is believed to be accurate but not guaranteed." **(Rules 13.7 and 13.8)**
- Listing detail display contains "Copyright [yyyy] RealTracs Solutions." **(Rule 13.8)**
- Listing detail display contains the firm name of the listing office. **(Rule 13.8)**
- IDX Data is updated at least every 48 hours. **(Rule 13.4)**
- IDX Data is not co-mingled with "For Sale By Owner" listings. **(Rule 13.13)**

## **APPENDIX B: VOW CHECKLIST**

The following checklist provides a quick reference of items required when implementing a VOW. It is a simplified checklist. Brokers, technical advisors and contractors should review this entire Guide for further details, particularly regarding rules and regulations and disclosures that should appear on your web site. To the extent that the MTRMLS, Inc. Rules and Regulations differ from those in this checklist, the MTRMLS, Inc. Rules and Regulations govern.

- MLS Participant (principal broker) has signed the agreement. **(Rule 14.20)**
- Authorized person(s) with the web development company (or companies) has signed the agreement. **(Rule 14.20)**
- Brokerage firm is actively engaged in listing and selling real estate. **(Rule 1.2)**
- A lawful broker-consumer relationship is established on the site before granting access to VOW Data, including affirmative confirmation of to the “Terms of Use.” **(Rule 14.3)**
- Site displays the Participant’s privacy policy informing Registrants of all of the ways in which information that they provide may be used. **(Rule 14.11)**
- A registration process for VOW users (Registrants) requires their name and valid email addresses. **(Rule 14.3)**
- Registrants are issued unique logins and passwords to the VOW. **(Rule 14.3)**
- Registrants’ logins and passwords expire at least every 180 days. **(Rules 14.3 and 14.18)**
- Registrants’ information is retained for at least 180 days past expiration of the login. **(Rule 14.3)**
- Site provides a mechanism for Registrants to contact the Participant operating the VOW in order to obtain additional information about properties. **(Rule 14.4)**
- Site provides a mechanism for other Participants to contact the Participant operating the VOW in order to comment on incorrect information displayed by sources other than MLS. **(Rule 14.8)**
- VOW Data is updated at least every 72 hours. **(Rule 14.9)**
- Displays of VOW Data contain “Information is believed to be accurate but not guaranteed.” **(Rule 14.16)**
- Other information displayed and associated with the VOW Data identify the source of the information. **(Rule 14.15)**
- There is a 250 search limit for listings displayed to a Registrant. **(Rule 14.17)**

## APPENDIX C

### IDX/VOW DATA ACCESS AGREEMENT

THIS IDX/VOW DATA ACCESS AGREEMENT (this "Agreement") is made and entered into by and between MTRMLS, Inc. d/b/a RealTracs Solutions ("RealTracs Solutions") and the company or individual whose name and contact information appear on the signature page of this Agreement under "Web Developer" (the "Developer").

#### RECITALS

WHEREAS, Developer wishes to obtain data for the creation of web site(s) on behalf of Participants and Affiliated Licensees (as defined below) that include the listing data of real estate brokerages participating in RealTracs Solutions; and

WHEREAS, RealTracs Solutions wishes to provide such data to Developer, subject to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties do hereby agree as follows:

#### AGREEMENT

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

**A.** "Affiliated Licensee" means any person holding a real estate license who is not a Participant but who is subject to a Participant's supervision under the laws of the state in which the Participant is licensed.

**B.** "IDX" means RealTracs Solutions' Internet Data Exchange Program as defined in the Rules.

**C.** "IDX Data" means the IDX Listing Content, as defined in the Rules, available for use on the Site(s).

**D.** "MLS Data" means data relating to real estate for sale, previously sold or listed for sale, including the IDX Data and/or VOW Data and data relating to Participants and MLS Users, real estate offices, data structures and any other information developed or compiled by RealTracs Solutions.

**E.** "MLS User" means any real estate broker, appraiser, or other real estate related business professional affiliated with a Participant who purchases Multiple Listing Services from RealTracs Solutions.

**F.** "Multiple Listing Service" is 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 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.

**G.** "Participant" means the REALTOR® principal of any firm, partnership, corporation, or the branch office manager designated by said firm, partnership, or corporation who is an active participant in RealTracs Solutions as defined by the RealTracs Solutions Bylaws and Rules.

**H.** "Rules" means the Rules and Regulations of RealTracs Solutions, as amended from time to time, and any operating policies promulgated by RealTracs Solutions.

**I.** “Site(s)” means the website(s) owned or controlled by the Participant(s) and/or Affiliated Licensee(s) listed on the signature page of this Agreement.

**J.** “VOW” means a Virtual Office Website as defined in the Rules.

**K.** “VOW Data” means the MLS Listing Information, as defined in the Rules, available for use on the Site(s).

**2. Grant of License.** During the term of this Agreement and subject to the Rules, RealTracs Solutions grants to Developer a revocable, non-exclusive license to (a) display the IDX Data and/or VOW Data on the Site(s), and (b) make copies of the IDX Data and/or VOW Data to the extent necessary to deliver the IDX Data and/or VOW Data to consumers on the Site(s). RealTracs Solutions also grants to Developer a revocable, non-exclusive license to display the IDX logo on the Site(s), subject to the terms and conditions listed on Attachment A.

**3. Ownership.** Subject only to the limited license granted to Developer under this Agreement, RealTracs Solutions retains sole and exclusive ownership of, and all intellectual property rights in and to, the MLS Data, IDX Data, VOW Data, and all trade secrets, *sui generis* database rights, and proprietary rights therein. Developer agrees that it shall not challenge or otherwise contest RealTracs Solutions’ ownership or intellectual property rights in and to the MLS Data, IDX Data or VOW Data or make any claim that the MLS Data, IDX Data or VOW Data is not capable of intellectual property protection. All rights not expressly granted herein are reserved by RealTracs Solutions.

**4. RealTracs Solutions’ Obligations.** During the term of this Agreement, RealTracs Solutions agrees to provide the following to Firm and Developer: (a) access to the IDX Data via the Internet using File Transfer Protocol (FTP) and a Real Estate Transaction Standard (RETS) server; (b) access to the VOW Data via the Internet using a RETS server; (c) up-to-date supporting documentation on the data structures, definitions and code translations for the FTP access; and (d) seven (7) days’ advance notice of changes to the Rules. RealTracs Solutions does not provide technical support for IDX Data and VOW Data integration with a Site. Firm and Developer acknowledge and agree that RealTracs Solutions may from time to time modify the data structure, field definitions, field content, network configuration, RETS Server and/or RETS metadata structure in order to improve service. Firm and Developer further acknowledge and agree that if such modifications occur, RealTracs Solutions shall not be obligated to make adjustments for Firm and/or Developer to continue to use the IDX Data and/or VOW Data, as applicable, and Firm shall be responsible for all related costs. Firm and Developer agree that in no event will RealTracs Solutions be liable for any loss or damage that Firm and/or Developer may suffer or incur as a result of such modifications.

**5. Developer’s Obligations.** During the term of this Agreement, Developer shall: (a) comply with the Rules at all times; and (b) notify RealTracs Solutions in writing within five (5) business days of any change to Developer’s information on the signature page. Developer also agrees that it will use its best efforts to use well-formed RETS queries and minimize its RETS server impact. If, in the judgment of RealTracs Solutions, Developer’s queries are causing unreasonable loads on the RETS servers, Developer agrees to make modifications to its queries or pay for the increased server capacity needed to support its existing queries.

**6. Fees and Payments.** The monthly license fee for the use by Developer of the IDX Data and/or VOW Data, as applicable, will be an amount as specified in the Rules or as set forth on Attachment B hereto (the “Monthly Fee”). RealTracs Solutions shall invoice Developer monthly for the Monthly Fee, which shall be due and payable within thirty (30) days from the date of invoice. RealTracs Solutions reserves the right to increase the Monthly Fee at any time upon thirty (30) days prior written notice to Developer. All other costs and expenses associated with

the acquisition and use of IDX Data and/or VOW Data by Developer, plus any ongoing maintenance or marketing, shall be borne by Developer.

## **7. Confidential Information.**

**A. Definition.** “Confidential Information” is information or material proprietary to RealTracs Solutions or designated “confidential” by RealTracs Solutions and not generally known to the public that Developer 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 and other information of a similar nature (whether in oral, visual, audio, written or other form): (i) all MLS Data, except the IDX Data and/or VOW Data to the extent to which this Agreement and the Rules permit its disclosure; (ii) software, source code, and object code; (iii) IP addresses, access codes and passwords; and (iv) any information that RealTracs Solutions obtains from any third party that RealTracs Solutions treats as proprietary or designates as Confidential Information, whether or not owned or developed by RealTracs Solutions.

**B. Exceptions.** “Confidential Information” does not include information that: (i) is in the public domain at the time of disclosure; (ii) can be shown by written documentation to have been known to Developer at the time of disclosure by RealTracs Solutions; (iii) becomes known to Developer from a source other than RealTracs Solutions without breach of this Agreement by Developer and provided that such source is not known by Developer to be bound by a confidentiality agreement with RealTracs Solutions; or (iv) is required to be disclosed by judicial order or other compulsion of law, provided that Developer provides to RealTracs Solutions prompt written notice of any such order.

**C. Restrictions on Use.** Developer shall use the Confidential Information only as expressly permitted under this Agreement and not for any other purpose. Developer will employ measures to protect the Confidential Information from disclosure at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care. Developer will not make copies of the Confidential Information except as expressly permitted under this Agreement. Only Developer’s own employees may access the Confidential Information. Developer will not directly or indirectly disclose, display, provide, transfer or otherwise make available the Confidential Information to any third parties, including consultants or independent contractors, without prior written consent from RealTracs Solutions. If RealTracs Solutions grants consent, Developer will execute an agreement with such third party that imposes at least as strict a confidentiality obligation on the third party as that imposed by this Agreement on Developer. At no time and under no circumstances will Developer reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. Developer will not remove the Confidential Information from its principal place of business without RealTracs Solutions’ prior written consent.

**D. Return of Materials.** Within thirty (30) days after termination of this Agreement by either party, Developer will return to RealTracs Solutions all Confidential Information and copies thereof and all other materials provided by RealTracs Solutions to Developer. Developer will also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of RealTracs Solutions, an officer of Developer will certify in writing that all materials have been returned to RealTracs Solutions and all magnetic or computer data have been destroyed.

**8. Term and Termination.** The term of this Agreement shall begin on the Effective Date set forth on the signature page and continue until terminated by a party as set forth herein. This Agreement shall terminate upon (a) written notice by RealTracs Solutions to Developer, or (b) written notice by Developer to RealTracs Solutions that Developer is no longer providing

services to the Participant(s) and/or Affiliated Licensee(s) listed on the signature page. The licenses granted to Developer in Section 2 hereof with respect to an individual Site shall terminate upon (x) written notice to RealTracs Solutions by Developer, the Participant or Affiliated Licensee that such Participant and/or Affiliated Licensee no longer intends to display IDX Data and/or VOW Data on the Site, or (y) termination of the Site's Participant's or Affiliated Licensee's privileges as a Participant or Affiliated Licensee by RealTracs Solutions

**9. Warranties.** Developer represents and warrants that: (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder, and upon execution and delivery hereof, this Agreement shall constitute the valid and binding obligation of Developer enforceable in accordance with its terms; (b) Developer's execution and performance of this Agreement will not violate any law or agreement with a third party; (c) nothing in this Agreement shall be interpreted to bind Affiliated Licensees to any fees or other obligations to Developer; and (d) any and all agreements between Developer and Participants and/or Affiliated Licensees shall not obligate RealTracs Solutions to any performance or obligation outside those set forth in this Agreement.

**10. Indemnification.** Subject to Section 11, in the event a party breaches any provision of this Agreement, that party (the "Indemnifying Party") shall indemnify the other party, its subsidiaries and affiliated companies, and their respective employees, directors, agents, and authorized successors and assigns (collectively, 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.

**11. Disclaimer; Limitation of Liability.** DEVELOPER ACKNOWLEDGES AND AGREES THAT REALTRACS SOLUTIONS PROVIDES THE MLS DATA, IDX DATA AND VOW 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. DEVELOPER ACKNOWLEDGES AND AGREES THAT INDEPENDENT AGENTS AND BROKERS WHO USE THE SERVICES OF REALTRACS SOLUTIONS CREATE, ENTER, AND MODIFY THE INFORMATION CONTAINED IN THE MLS DATA, IDX DATA AND VOW DATA. REALTRACS SOLUTIONS SHALL NOT BE LIABLE TO DEVELOPER OR ANY THIRD PARTY FOR ANY CLAIM ARISING FROM INACCURACIES IN THE MLS DATA, IDX DATA AND/OR VOW DATA, ANY FAILURE TO UPDATE THE MLS DATA, IDX DATA AND/OR VOW DATA PROMPTLY, OR THE MLS DATA, IDX DATA AND/OR VOW DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. IN NO EVENT SHALL REALTRACS SOLUTIONS BE LIABLE TO DEVELOPER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXPECTATION, EXEMPLARY, OR PUNITIVE DAMAGES, OR LOST PROFITS ARISING FROM THIS AGREEMENT, EVEN IF REALTRACS SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL REALTRACS SOLUTIONS' LIABILITY TO DEVELOPER OR ANY THIRD PARTY HEREUNDER EXCEED THE GREATER OF (A) THE FEES DEVELOPER HAS PAID REALTRACS SOLUTIONS IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR (B) ONE HUNDRED DOLLARS (\$100.00).

**12. Remedies.** Because of the unique nature of the MLS Data and Confidential Information, Developer acknowledges that RealTracs Solutions would suffer irreparable harm in the event Developer breaches its obligations under this Agreement, and that monetary damages would be inadequate to compensate RealTracs Solutions for a breach. RealTracs Solutions is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Developer, without showing or proving any actual damages sustained by RealTracs Solutions.

**13. Compliance Audit.** RealTracs Solutions may review, inspect, and test the books, records, equipment, and facilities of Developer to the extent reasonably necessary to ascertain Developer's compliance with this Agreement. RealTracs Solutions may conduct an audit upon any notice reasonable under the circumstances. RealTracs Solutions shall pay the costs it incurs and the out-of-pocket costs Developer incurs as part of any audit; provided, however, Developer shall be liable for all costs of any audit that discloses that Developer has breached this Agreement. The provisions of this Section 13 shall survive the termination of this Agreement for one (1) year.

**14. Attorneys' Fees.** If RealTracs Solutions prevails in any action to enforce or interpret this Agreement or any provision hereof, Developer will pay RealTracs Solutions' reasonable attorneys' fees and costs for such legal action.

**15. Notices.** 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 on the signature page or such other address of which a party may advise the other in writing during the term of this Agreement.

**16. 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.

**17. No Assignment.** Developer may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of RealTracs Solutions.

**18. Governing Law and Venue.** This Agreement shall be governed by and enforced according to the laws of the State of Tennessee (excluding its choice of law rules). Each party agrees to the exclusive jurisdiction of the state and federal courts sitting in Nashville, Tennessee for the resolution of any disputes arising from or related to this Agreement.

**19. Survival.** The following sections shall survive the termination of this Agreement: Sections 3 (Ownership), 7 (Confidential Information), 11 (Disclaimer; Limitation of Liability), 12 (Remedies), 14 (Attorneys' Fees), 18 (Governing Law and Venue), this Section 19, and Section 20 (Conflicts).

**20. Conflicts.** In the event of any conflicts between the Rules and this Agreement, the Rules shall govern.

**21. Entire Agreement.** This Agreement, together with Attachments A and B and the Rules, all of which are incorporated herein by this reference, contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations, understandings and agreements between the parties, whether oral or written.

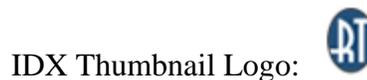
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## ATTACHMENT A

### Use of IDX Logo

The RealTracs Solutions IDX logo (the “Mark”) is a service mark owned by RealTracs Solutions. RealTracs Solutions has the sole right to authorize use of the Mark in connection with real estate brokerage and advertising services. Developer’s license to use the Mark is subject to compliance with the following terms and conditions:

1. The Mark shall be used solely by Developer in connection with the Site(s) and only so long as the Participant(s) and/or Affiliated Licensee(s) listed on the signature page are Participants or Affiliated Licensees who are in good standing under the Rules as published and amended from time to time by RealTracs Solutions.
2. The Mark shall be used only in the exact form authorized by RealTracs Solutions, without any alteration, addition, deletion or other modification in design or color. RealTracs Solutions will provide digital art for reproduction of the Mark in black and white.
3. RealTracs Solutions is the owner of the Mark and retains all ownership rights and interests in the Mark.
4. Developer shall indemnify, defend and hold RealTracs Solutions harmless from and against any loss, liability, damage, cost or expense (including, without limitation, attorneys’ fees) arising out of or relating to any claims or suits which may be brought or made against RealTracs Solutions by reason of Developer’s use of the Mark.
5. Upon termination of the Agreement, or as otherwise set forth in Section 8 of the Agreement, Developer’s license to use the Mark shall terminate, and Developer must immediately discontinue all use of the Mark. RealTracs Solutions reserves the right to inform its members and the public that Developer is no longer entitled to use the Mark. Developer shall not thereafter adopt or use any name, mark, logo or other designation that is a colorable imitation or is likely to be confused with the Mark.
6. In the event of any violation of this Attachment A, RealTracs Solutions shall, in addition to all other legal and equitable rights and remedies, have the right to an injunction (without the necessity of posting a bond or other security) against Developer.



## **ATTACHMENT B**

### **Fee Schedule**

#### **Monthly Fee for IDX and/or VOW Data Access Account .... \$50.00 per Month**

NOTE: This is a single fee per Developer's data access account and is not based on the number of Sites designed by the Developer, even if the Developer's customers are Participants or Affiliated Licensees from different real estate companies.

## IDX/VOW Data Access Agreement Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date set forth below.

### MTRMLS, Inc. d/b/a RealTracs Solutions

By: \_\_\_\_\_  
Stuart D. White Effective Date

### Web Developer

Web Developer Company: \_\_\_\_\_

Contact Name: \_\_\_\_\_

E-mail address: \_\_\_\_\_

(You must supply an e-mail address here. This address will be RealTracs Solutions' principal means of communicating with you for notices under this Agreement.)

Mailing Address: \_\_\_\_\_

City, ST, ZIP: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Billing Attention: \_\_\_\_\_ OR  Same as Above

Billing Address: \_\_\_\_\_

Billing City, ST, Zip: \_\_\_\_\_

By: \_\_\_\_\_  
Web Developer's Signature Date

\_\_\_\_\_ Title  
Print Name

IDX Data for Site  VOW Data for Site

**NOTES TO WEB DEVELOPER: 1) After this form is completed and returned to RealTracs Solutions, you will be sent login credentials for the FTP and RETS accesses. 2) Login credentials must be provided to RealTracs staff for all Sites utilizing VOW Data.**

### Participant and/or Affiliated Licensee and their corresponding Site(s):

Real Estate Firm Name: \_\_\_\_\_

Office Code (aka Broker Code): \_\_\_\_\_

User or Broker (requesting IDX): \_\_\_\_\_

Website Address(es) (URLs): \_\_\_\_\_

For additional sites and customers, attach the  
Additional IDX and VOW Customers and Sites form.

IDX/VOW Data Access Agreement  
**Additional IDX and VOW Customers and Sites**

**Participant and/or Affiliated Licensee and their corresponding Site(s):**

Real Estate Firm Name: \_\_\_\_\_  
Office Code (aka Broker Code): \_\_\_\_\_  
User or Broker (requesting IDX): \_\_\_\_\_  
Website Address(es) (URLs): \_\_\_\_\_

**Participant and/or Affiliated Licensee and their corresponding Site(s):**

Real Estate Firm Name: \_\_\_\_\_  
Office Code (aka Broker Code): \_\_\_\_\_  
User or Broker (requesting IDX): \_\_\_\_\_  
Website Address(es) (URLs): \_\_\_\_\_

**Participant and/or Affiliated Licensee and their corresponding Site(s):**

Real Estate Firm Name: \_\_\_\_\_  
Office Code (aka Broker Code): \_\_\_\_\_  
User or Broker (requesting IDX): \_\_\_\_\_  
Website Address(es) (URLs): \_\_\_\_\_

**Participant and/or Affiliated Licensee and their corresponding Site(s):**

Real Estate Firm Name: \_\_\_\_\_  
Office Code (aka Broker Code): \_\_\_\_\_  
User or Broker (requesting IDX): \_\_\_\_\_  
Website Address(es) (URLs): \_\_\_\_\_

**Participant and/or Affiliated Licensee and their corresponding Site(s):**

Real Estate Firm Name: \_\_\_\_\_  
Office Code (aka Broker Code): \_\_\_\_\_  
User or Broker (requesting IDX): \_\_\_\_\_  
Website Address(es) (URLs): \_\_\_\_\_

**Web Developer**

Web Developer Company: \_\_\_\_\_  
Web Developer Login: \_\_\_\_\_

By: \_\_\_\_\_  
Web Developer's Signature Date

\_\_\_\_\_  
Print Name Title