

Content Provider Agreement Explainer

What follows this page is CCIMLS's Content Provider Agreement. This "explainer" is not part of the agreement and is not legal advice; it is provided to help answer common questions and guide your review of the agreement.

- CCIMLS is participating in a subscription service with Larson Skinner PLLC to license model agreements. In this agreement, you'll see a version number and an indication whether the body of the agreement has been modified from the model version (which CCIMLS is free to do in its business discretion). If the body of the agreement is modified, you'll see the word "modified" after the version number; if it's not, you'll see "not modified" after the version number. (Note, CCIMLS may have custom signature blocks and contact information requests without indicating the agreement has been "modified.")
- This agreement contains the terms and conditions for participating in CCIMLS's program for content providers.
- Under the program, content providers grant CCIMLS a direct license to use their content in the MLS.
- In exchange, each participating content provider will be included in CCIMLS's directory of verified content providers and may receive access to the MLS system to upload content for brokers that provide their authorization.

Providers should seek legal advice if they have questions about this agreement.

CONTENT PROVIDER AGREEMENT

CPA version 22.01, not modified. © Larson Skinner PLLC 2023

This Content Provider Agreement (“**Agreement**”) is entered into by Cape Cod & Islands Multiple Listing Service, Inc. (“**CCIMLS**”), with offices at 22 Mid Tech Drive, West Yarmouth, MA 02673; and the individual or company identified as “**Provider**” on the signature page below (“**Provider**”).

1. BACKGROUND

- A.** CCIMLS provides multiple listing services and related services to real estate brokers and agents, appraisers, and real estate related business professionals.
- B.** Provider provides content-production and media-creation services to CCIMLS’s customers, for example, photography, videography, and virtual tours.
- C.** CCIMLS wishes to provide and Provider wishes to take advantage of the program under this Agreement that facilitates the inclusion of content generated by the Provider in CCIMLS’s services to their mutual customers.

2. DEFINITIONS

2.1 MLS Data: Data (including text, photographs, media, and all other data in formats now known or developed in the future) entered into CCIMLS’s databases by CCIMLS Participants and CCIMLS, or on their behalf, relating to (a) real estate for sale or previously sold or listed for sale or (b) identified or identifiable Participants or Subscribers.

2.2 MLS Policies: CCIMLS’s rules and regulations and any operating policies applicable to Participants and Subscribers and promulgated by CCIMLS.

2.3 MLS Services: Multiple listing and related services that CCIMLS provides to Participants and Subscribers. Without limiting the foregoing, MLS Services includes: inclusion of MLS Data in CCIMLS’s data compilation; facilitation of the promotion, marketing, and sale of real property listed by Participants and Subscribers; MLS Data aggregation and distribution (including data sharing with other MLS organizations); provision of MLS Data to support creation of estimates of value of a specific property (including appraisals); generation of analysis and trends of MLS Data; MLS Data uses that Participants and Subscribers authorize as provided in the MLS Policies; and operation, development, and other activities related to provision and maintenance of software and databases to facilitate the foregoing consistent with the MLS Policies.

2.4 MLS System: The software that CCIMLS maintains and uses to make access to MLS Services available to Participants and Subscribers.

2.5 Participant: A real estate brokerage or principal broker who purchases MLS Services from CCIMLS.

2.6 Provider Compilation Contribution or “PCC”: All selection, coordination, and arrangement by Provider of the Works or other listing information submitted, contributed, or input in the MLS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the MLS System. PCC does not include Works or other original text, photographs, or other media.

2.7 Service Agreement: The separate agreements, terms and conditions, or services contracts that Provider enters with Participants or Subscribers under which Provider provides the Works for Participants’ and Subscribers’ use.

2.8 Subscriber: Any non-principal broker or sales licensee affiliated with a Participant and permitted access to MLS Services.

2.9 Works: All photographs, images, video, data, graphics, visual records, virtual tours, floor plans, original text, and other media that Provider provides to CCIMLS, or its Participants and Subscribers, in any form now known or hereafter discovered. “Works” also includes all photographs, images, video, data, graphics, visual records, virtual tours, floor plans, original text, and other media created by Provider pursuant to an agreement between Provider and a Participant or Subscriber that were previously provided to CCIMLS or submitted to CCIMLS by a Participant or Subscriber prior to this Agreement. “Works” does not include the PCC.

2.10 Other terms. Other terms may be defined below upon their first use.

3. CCIMLS OBLIGATIONS

3.1 Program description. During the term of this Agreement, CCIMLS must perform the following services:

- (a) CCIMLS must list Provider in the CCIMLS content provider directory described in Exhibit A and designate Provider as an “Verified Media Provider.”
- (b) CCIMLS consents to Provider indicating on Provider’s website and marketing materials that Provider is a “Verified Media Provider” for CCIMLS and its Participants and Subscribers, provided that Provider must give notice to CCIMLS and provide copies of applicable marketing materials including this indication.
- (c) CCIMLS will offer Provider the additional services, if any, described in Exhibit A.

3.2 Relationship not Exclusive. CCIMLS may enter similar agreements with other entities providing services similar to those of Provider, and CCIMLS may also designate those entities as “Verified Media Providers” of CCIMLS.

3.3 Notice of Changes to MLS Policies. CCIMLS may modify at any time, in its sole discretion, the MLS Policies; provided CCIMLS must provide seven days’ advance notice of changes to the MLS Policies to the extent they are applicable or related to the activities of Provider and CCIMLS under this Agreement.

4. PROVIDER'S OBLIGATIONS AND ACKNOWLEDGEMENTS

4.1 Service Agreements. Provider consents that this Agreement shall take precedence over any Service Agreement if there is any inconsistency, conflict, or ambiguity between that Service Agreement and this Agreement regarding intellectual property or risk allocation (i.e., limitation of liability, warranties, indemnification) terms. Service Agreements may address fees and payment terms, delivery timelines, and other similar business terms between Provider and Participants and Subscribers.

4.2 Non-compliance with MLS Policies. Provider must immediately correct violation within its control of the MLS Policies with respect to the Works and upon notice from CCIMLS.

4.3 Editorial control. Provider acknowledges that CCIMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the Works or use of the Works in the MLS Services. Notwithstanding the foregoing, Provider consents that CCIMLS may take any steps necessary in its judgment, including deleting the Works or portions thereof, to avoid or remedy any violation of law, breach of MLS Policies, or infringement of any intellectual property right.

4.4 Modifications permitted. Provider consents that CCIMLS may alter or remove metadata and copyright management information contained in the Works and may place a "digital watermark" or trademark of CCIMLS on the Works.

4.5 Disclosure to third parties. Provider consents that CCIMLS may distribute to third parties Provider's name, company name, business address, phone number, and email address, identifying it as a "Verified Media Provider."

4.6 No royalties; credit. Provider acknowledges and understands that no royalty or other consideration will be due to Provider under this Agreement. Provider must separately negotiate any fees due to Provider under a Service Agreement. Provider acknowledges that CCIMLS is under no obligation to credit Provider for the Works.

4.7 No endorsement. Provider acknowledges this Agreement does not constitute an endorsement, recommendation, or guarantee by CCIMLS of Provider or its products or services.

4.8 Warranties. Provider warrants that (a) the Works do not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; (b) Provider has the written consent of any party necessary to provide the Works to CCIMLS and its Participants and Subscribers; (iii) the Works are not defamatory, offensive, or obscene; (iv) that there is no claim, litigation, or proceeding pending or threatened with respect to the Works; (v) each of the Works is compliant with the MLS Policies at the time the Work is made; (vi) Provider complies with all applicable laws, statutes, ordinances and regulations in performance of its obligations

under this Agreement; and (vii) Provider has the right and power to make each license and assignment of any right it has made under Section 5.

4.9 Program Fees. Provider must pay the fees, if any, set out in Exhibit A.

5. INTELLECTUAL PROPERTY

5.1 License. Provider hereby grants to CCIMLS a non-exclusive, perpetual, world-wide, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and sublicense (including sublicenses to Subscribers and sublicenses through multiple tiers) all Works for use in the MLS Services. Provider warrants that it has the authority to grant this license. Provider remains the owner of the copyright of the Works.

5.2 Provider acknowledgments. Provider acknowledges that: (i) CCIMLS will make no effort to register the copyrights in the Works, and Provider will be responsible for all costs and efforts associated with registration; (ii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; and (iii) CCIMLS is under no obligation to detect or hinder third parties using the Works without Provider's permission.

5.3 PCC assignment. Provider agrees to assign and hereby does assign to CCIMLS all right, title, and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law.

6. COPYRIGHT INFRINGEMENT PROCEDURE

6.1 Notice of Alleged Infringement. If Provider believes that any of its copyrights have been violated in the MLS Services or by Participants or Subscribers, including display on their respective websites, then upon discovery of the alleged infringement, Provider must provide written notice to CCIMLS that includes: (a) a description of the copyrighted work and where the material is located; (b) a statement under penalty of perjury that the information in the notice is accurate; (c) a statement under penalty of perjury that Provider is the owner of the copyright or authorized to act on the owner's behalf.

6.2 Additional Information. CCIMLS may request additional information before removing any infringing material.

6.3 Take-down. Upon validation of the information provided in a notice under Section 6.1, CCIMLS must use commercially reasonable efforts to remove or disable access to the infringing material; in such cases, CCIMLS will remove the infringing material from data feeds it provides to Participants, Subscribers, and third parties. Provider acknowledges that, though CCIMLS requires data-feed recipients to update their displays promptly, CCIMLS cannot directly control Participant, Subscriber, or third party displays that have previously received a data distribution from CCIMLS including the infringing material.

6.4 No Copyright Claims. Provided CCIMLS uses commercially reasonable efforts to remove or disable access to the infringing material, Provider waives any potential copyright infringement claims against CCIMLS arising from the material's use. Provider waives any potential copyright infringement claims against a Participant or Subscriber arising from the material's use, unless Provider has first exhausted the procedure provided in this Agreement, CCIMLS has removed the infringing material from any applicable data feed, and the Participant or Subscriber has failed to take down the allegedly infringing work for more than three days after its removal from the data feed.

7. LIMITATION OF LIABILITY/EXCLUSION OF WARRANTIES

IN NO EVENT WILL CCIMLS BE LIABLE TO PROVIDER FOR ANY COSTS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR STATUTORY DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF CCIMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDER'S SOLE REMEDIES AGAINST CCIMLS HEREUNDER ARE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF \$1,000. THIS PARAGRAPH SETS OUT PROVIDER'S EXCLUSIVE REMEDIES, AND UNDER NO CIRCUMSTANCES IS PROVIDER ENTITLED TO EQUITABLE REMEDIES. CCIMLS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE PREVIOUS SENTENCE, CCIMLS DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR USE.

8. INDEMNIFICATION

8.1 Indemnification required. Provider must indemnify and defend CCIMLS, its subsidiaries and affiliated companies, and all its respective employees, directors, agents, and authorized successors and assigns, and Participants and Subscribers (the "Indemnified Parties"), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party arising from the Works or Provider's breach of this Agreement.

8.2 Indemnification process. Provider must promptly notify Indemnified Parties in writing of any claim and give the Indemnified Parties the opportunity to defend or negotiate a settlement of any such claim at Provider's expense; and Provider must cooperate fully with Indemnified Parties, at Provider's expense, in defending or settling any such claim. The Indemnified Parties must promptly notify Provider of any claim and give the Provider the opportunity to defend or negotiate a settlement of any such claim at the Provider's expense; and cooperate fully with the Provider, at Provider's expense, in defending or settling any claim. The Indemnified Parties may engage their own local counsel at Provider's expense.

9. TERM AND TERMINATION

9.1 Term. The term of this Agreement begins on the date that CCIMLS signs it and continues until terminated.

9.2 Termination. This Agreement terminates upon the occurrence of any of the following events: (a) 30 days after any party's notice to the others of its intent to terminate; (b) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (c) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; and (d) as provided in Section 10.4 (regarding assignment).

9.3 Effect of termination. Upon termination of this Agreement, CCIMLS may remove Provider's name and contact information from the CCIMLS content provider directory and Provider may no longer identify itself as a "Verified Media Provider" of CCIMLS.

10. GENERAL PROVISIONS

10.1 Applicable law and venue. This Agreement is governed by and interpreted according to the laws of the Commonwealth of Massachusetts, without regard to its conflicts and choice of law provisions. Any proceeding arising under this Agreement, including motions for injunctive relief, arbitration, or litigation, shall take place in Barnstable County, Massachusetts.

10.2 Attorney's Fees. If CCIMLS prevails in an action or proceeding to enforce or interpret this Agreement or any provision of it, it is entitled to reasonable attorney's fees and costs for the legal action.

10.3 Notice. All notices given under this Agreement must be mailed or electronically mailed to the parties at their respective addresses provided in the signature block or another address of which any party may advise the others in writing during the term of this Agreement; and are effective the earlier of the date of receipt or three days after mailing or other transmission. Provider must notify CCIMLS within five business days of any change to the information relating to it in this Agreement, including change of its corporate name, assumed name, or address.

10.4 Assignment. Provider may not assign or otherwise transfer any of its rights or obligations under this Agreement to any other party. Any purported assignment or delegation by Provider in contravention of this section is null and void and immediately causes this Agreement to terminate.

10.5 Relationship of the Parties. The parties to this Agreement are independent contractors. No party may be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of the other party or have any authority to make any agreements or representations on the behalf of the other party. Each party is solely responsible for the payment of compensation, insurance, and taxes of its own employees.

10.6 Third-party Beneficiaries. Except as expressly provided in this section, this Agreement is solely between, and may be enforced only by, CCIMLS and Provider. This Agreement does not create or should not be construed to create any rights in any third party. Participants and Subscribers are third-party beneficiaries of Section 6.4, and the parties agree that Participants and Subscribers may enforce that provision.

10.7 Survival of Obligations. The following Sections will survive termination, expiration, or suspension of this Agreement in perpetuity: Section 2 Definitions, Section 4.4 Modifications permitted, Section 4.6 No royalties; credit, Section 4.7 No endorsement, Section 4.8 Warranties, Section 5 Intellectual Property, Section 6 Copyright Infringement Procedure, Section 7 Limitation Of Liability/Exclusion Of Warranties, Section 8 Indemnification, Section 9.3 Effect of termination, and Section 10 General Provisions.

10.8 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.

10.9 Severability. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions remain in full force and effect. If any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, this Agreement will be reformed so that the invalid or unenforceable provision is replaced, if possible, with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

10.10 Amendments. This Agreement may not be amended except by written instrument executed by both parties.

10.11 Entire Agreement. Subject to MLS Policies, this Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same. In the event of any dispute regarding the interpretation of the terms of this Agreement, it will not be construed for or against any party on the grounds that the Agreement was prepared by any one of the parties.

10.12 Execution. This Agreement may be executed in two or more counterparts, each of which constitutes an original Agreement, but all of which together constitute one and the same executed agreement. This Agreement may be electronically signed, and any electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

[end of agreement]

CONTENT PROVIDER AGREEMENT

Signature Page

PROVIDER	
Provider Name:	
Signature:	
Name/Title:	
Date:	

CCIMLS	
MLS Name:	Cape Cod & Islands Multiple Listing Service, Inc.
Signature:	
Name/Title:	
Effective Date of Agreement:	

Contact information

CCIMLS contacts	
For official contract notices:	(To send notices of breach, termination, etc.)
Name:	
Phone:	
Email:	
For all technical matters:	(To contact regarding data feed credentials and data access concerns.)
Name:	
Phone:	
Email:	

PROVIDER contacts	
For official contract notices:	(To send notices of amendments, breach, termination, etc.)
Name:	
Phone:	
Email:	
For all technical matters:	(To contact regarding data feed credentials, display issues, etc.)
Name:	
Phone:	
Email:	
Billing contact name/email:	

CONTENT PROVIDER AGREEMENT

Exhibit A – Other Services to Provider from CCIMLS; Fees from Provider

Content Provider Directory description

CCIMLS's Content Provider Directory is available at: <https://cciaor.com/cape-island-mls#data-service-resources>

Other services to Provider

CCIMLS will provide Provider with access to the MLS System (subject to completion of Exhibit B) for each Participant that completes the Participant Authorization Form.

Fees from Provider

CCIMLS assesses a one-time setup and processing fee of \$50 for new Content Providers only. The fee is due upon Effective Date and is non-refundable.

CONTENT PROVIDER AGREEMENT

Exhibit B – MLS System Access Terms

This Exhibit B governs Provider's use the MLS System under this Agreement as part of CCIMLS's program for content providers.

B.1. License. During the term of this Agreement, CCIMLS grants Provider a license to use the MLS System, subject to the MLS Policies and the terms of this Agreement for the sole purpose of submitting Works to CCIMLS on behalf of Participants and Subscribers that are Provider's clients. This license will terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license; CCIMLS retains all rights not expressly granted herein.

B.2. Credentials. CCIMLS will provide one unique user ID and password ("**Credentials**") to Provider for access to the MLS System. The Credentials will provide Provider access to functions in the MLS System as determined in CCIMLS's sole discretion.

B.3. Permitted Use. Provider is permitted to upload Works only on behalf of Participants and Subscribers that are Provider's clients. Provider warrants that Provider has each applicable Participant's permission to upload Works to that Participant's (and affiliated Subscriber's) listings. A completed Participant Authorization Form must be filed with CCIMLS for each Participant to which Provider wishes to upload Works to their listings.

B.4. Reporting. Provider must deliver to CCIMLS periodic reports, no less frequently than quarterly, of the Participants and Subscribers that are using Provider's services to upload Works in the MLS System. The parties will mutually agree on the timing and formatting of such report.

B.5. Prohibitions. Except as expressly provided in this Agreement, Provider shall not access, use, copy, create derivative works of, distribute, perform, or display the MLS System or any part of it, except the Works. Provider shall not remove or delete Works from the MLS System for any sold or other off-marketing property records or otherwise. Provider shall make no commercial use of the MLS System, except as expressly permitted in this Agreement.

B.6. Confidentiality. Provider shall maintain the confidentiality of its Credentials and the MLS System; Provider shall not provide its Credentials to any third party, including without limitation affiliates, franchisors, and subsidiaries. To maintain the confidentiality of its Credentials, the MLS System, and all components thereof, Provider will (a) take the greater of reasonable care or the care it takes to protect its own confidential information; (b) use industry best practices for firewalls and other network protocols to increase the security of its systems; (c) employ reasonable physical, technical, and administrative security measures to protect the MLS System; and (d)

prevent unauthorized third parties from accessing and using the MLS System. Provider acknowledges that the data and information contained in the MLS System is confidential and shall not disclose any such information to a third party, including without limitation affiliates, franchisors, and subsidiaries. CCIMLS may in its reasonable discretion conduct periodic compliance reviews of Provider's use of the MLS System under this Agreement; Provider will respond within 24 hours of any compliance inquiry by CCIMLS. Provider also agrees to follow any password policy set by CCIMLS. Provider must immediately notify CCIMLS of any security incident or breach related to its Credentials or the MLS System of which Provider is aware.

B.7. Injunctive relief. Because of the unique nature of the MLS System, Provider acknowledges and agrees that CCIMLS would suffer irreparable harm in the event that Provider breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate CCIMLS for a breach. CCIMLS is therefore entitled, in addition to all other forms of relief, to seek injunctive relief to restrain any threatened, continuing or further breach by Provider, without showing or proving any actual damages sustained by CCIMLS, and without posting any bond.

B.8. Liquidated damages. Provider acknowledges that damages suffered by CCIMLS from access to the MLS System by an unauthorized third party as a result of disclosure of Provider's password to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to CCIMLS to enter into this Agreement with Provider, Provider agrees that (a) in the event that any disclosure of Provider's password results in access to the MLS System by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Provider shall be liable to CCIMLS for liquidated damages in the amount of \$5,000, termination of this Agreement, and all other remedies available to CCIMLS under law; and (b) in the event that Provider makes unauthorized disclosure of any portion of the MLS data (including the data to any third party), Provider shall be liable for liquidated damages in the amount of \$5,000 for each real estate listing disclosed, termination of this Agreement, and all other remedies available to CCIMLS under law.

B.9. DISCLAIMERS. PROVIDER ACKNOWLEDGES THAT CCIMLS PROVIDES THE MLS SYSTEM, AND ALL COMPONENTS THEREOF, 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.

B.10. Events upon termination. Upon any termination or expiration of the Agreement, CCIMLS will deactivate Provider's Credentials and Provider's license to the MLS System will terminate. In the event that Provider has no active Participant clients (with signed Broker Authorization Forms), CCIMLS may terminate the Agreement according to its terms.

Provider certifies that it has read the terms of this Exhibit B and agrees to comply with them.

Provider Signature	Printed Name, Title, Company	Date
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