

Critical Components of a Contract Licensing Agreement with Portals

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Overview

The purpose of this document is to provide a checklist of critical components for MLSs and brokerage firms to consider when entering into agreements with consumer facing Portals. For purposes of this document the brokerage firms and MLSs are referred to as “Providers” and the Portals are referred to as the “Portals”. While COVE participants and CMLS leadership have provided input, there is no representation that all are in agreement with everything on the checklist.

Portal Agreements

Each Portal may not agree with or be willing to incorporate all of the items on this checklist. What they will incorporate may depend on their business models and philosophies. More importantly, each MLS and brokerage firm should know what they are agreeing to, and this checklist can aid in making a conscious and thoughtful decision about each of the contract terms. Some of the checklist items may not be important to a firm or MLS, while others may be critical.

Core Assumptions

There are core assumptions contained in this document. Any agreement that MLSs or brokerage firms sign should consider incorporating these core assumptions.

Brokerage Firms

1. The brokerage firm owns the listing.
2. The brokerage firm must have the right to determine and change where, when, how, and if listings are displayed. The brokerage must have the ability to modify this themselves conveniently at any time.
3. The brokerage firm has the right to restrict display and usage of the brokerage firm’s listings.

MLSs

1. The MLS retains the copyright to the MLS compilation as a whole.
2. The MLS may facilitate distribution to consumer facing Portals if a broker contracts directly with the portal or elects to opt out of MLS distribution.
3. MLSs should not enter into any agreements with Portals that make commitments for a firm’s listings without the firm’s approval.

Brokerage Firms and MLSs

1. Brokerage ownership and IP rights do not transfer to the Portals.
2. The brokerage firm and the MLS have the right to enter into direct agreements with Portals.
3. The brokerage firm and/or the MLS reserve the right to negotiate different terms with different Portals.
4. No Portal may dictate how Providers elect to provide data access or distribution.
5. Providers may provide access directly or through a third party utilizing the technology of Provider’s choice.¹

Contractual Requirements

There are basic contractual requirements that every Provider should consider when licensing data. Providers should consult with their own legal counsel regarding the attached checklist.

¹Some Providers prefer to have one entity distribute their listings to make management and tracking listings easier. Some contract with a third party or build the tools to do it themselves. No Portal should be able to dictate listing distribution; potentially making data distribution more complicated, difficult and expensive.

Checklist of Critical Components for MLSs and Brokerage Firms to Consider in Contracts with Consumer Facing Portals.

Critical Components Yes No

<p>Data Ownership</p> <ol style="list-style-type: none"> 1. Provider retains all intellectual property and ownership rights. 2. No ownership rights accrue to the Portal in or from the information licensed. 3. Brokerage firms have the right to opt-out of providing a listing or all listings at any time when they are the listing broker. 		
<p>Data Access</p> <ol style="list-style-type: none"> 1. Provider determines method of data access (RETS Feed, RETS Access, API, third party or other). 2. Provider determines method of access or distribution even if Provider contracts directly with the Portal. 3. Provider reserves the right to determine how frequently data is updated and what data is provided for each Portal. 4. Provider has the right to change the technology for access with reasonable notice and without entering into a new agreement. 		
<p>Data Protection</p> <ol style="list-style-type: none"> 1. Portal will take commercially reasonable efforts to secure and prevent unauthorized access to Provider’s information and will pursue third parties that scrape or use the information without authorization. 2. Provider reserves the right and the Portals agree to provide access and cooperation to conduct compliance audits. 3. Portal to maintain DMCA safe harbor status and register with the Copyright office. 		
<p>Warranties, Representations and Indemnification</p> <ol style="list-style-type: none"> 1. Providers do not warrant that the information is accurate. 2. Providers do not warrant or guarantee that they have ownership rights in all data provided or provide any indemnification to the Portal regarding ownership of the data. 3. Portal will provide Indemnification in the event of any claims that the Portal or its use of Provider’s data within the Portal infringes any IP rights of any third party. 4. Portal will comply with applicable laws and will not display information in a manner that makes the Provider non-compliant with laws. 		
<p>Data Usage</p> <ol style="list-style-type: none"> 1. Listing data, current and historical price histories, listing photos and member information may only be used for consumer display and may not be used when it goes off market unless express written permission is provided. 2. No derivative works may be created without express written approval. 3. Listing data, current and historical price histories, listing photos and member information may not be redistributed or re-syndicated to any other Portal or company, even if the company is owned or operated by the Portal unless the company has written permission. 4. Data may not be used for IDX or VOWs unless Provider grants permission. 5. Provider determines if information provided may be used for analytics. 6. Provider data may not be used for marketing purposes except as expressly agreed to by the firm or MLS. Roster data may not be used for marketing purposes of any kind and shall not be distributed or shared for any purpose. 		

<p>7. Photos and content shall not be modified.</p>		
<p>Data Requirements</p> <ol style="list-style-type: none"> 1. Providers determine which fields will be provided 2. Providers determine which statuses will be provided, including any off market statuses. 3. Providers determine which photographs, virtual tours or other information will be provided. 4. Portals will not receive any data on properties where the broker has either not opted in or has opted out. 5. Providers have the right to modify which data is being provided at any time during the contract with reasonable notice. 		
<p>Data Display</p> <ol style="list-style-type: none"> 1. Portals must display the fields designated by the Provider as required fields. 2. Portals must display the data in priority order based on who provided the data with brokerage firms having precedence followed by the MLS. This cannot be overwritten by listings from another source. 3. Portals will remove duplicate listings and will not accept listings from any third party if receiving listings from the brokerage firms or MLSs. 4. Portals will display data, including listing status, accurately so that if listings are removed because they are no longer on the market, they will not find an outdated source that lists the property as active. 5. If FSBOs are displayed on the site (those not listed by a real estate broker or provided by a broker or MLS), then they will appear at the bottom of the search results or in search results where the consumer is only requesting FSBOs. FSBOs will not be commingled with listed properties provided by the brokerage firm or the MLS. 6. If a broker or MLS reports a listing is off the market, the Portal will promptly remove it. 7. Portals must cease to use or display and must destroy off market listing data and all associated price, photos and member information as determined by the Provider. 8. Portal must update data daily or more frequently as determined by Provider. 9. Portals will present “unbiased” search results based on the consumer request. 10. Portals must clearly note the Provider on all data. 11. Listings must display as required by the Provider including requests that the listing displays without AVMs or public comments when indicated. 12. Portal may not provide consumers any interface, URL, or marketing language that purports to allow them to “search the MLS” or “search all homes for sale” or make any similar assertion about the completeness of the listing data. 		
<p>Leads and Links and Metrics</p> <ol style="list-style-type: none"> 1. Portals must provide a link to the Provider’s designated website such as the listing firm’s website and/or the MLS public facing web site if provided by the MLS or the brokerage firm and to the detail listing page on the firm’s web site if requested. 2. Links to firm site must be formatted so that SEO is preserved for the firm. 3. Portals must make the listing firm or listing agent’s branding more prominent than any other agent’s branding so that it is clear to a consumer that they are the listing agent/broker. 4. The listing agent email must be included even if the agent has not completed a profile on the site if so requested by the Provider. If the agent profile is provided with the listing, then this must auto populate to complete the profile if so requested by the Provider. 5. Portals must route any leads to the email address designated by the listing broker. 6. Portal must provide metrics, in the format required by the Providers, for all listings including but not limited to search impressions, property views, all mobile metrics, and lead data for all 		

Critical Components

Yes No

listings either directly to Provider or to Provider’s technology partner. Mobile metrics must be provided separately. 7. If a Portal does not publish a listing from Provider, Portal must promptly notify Provider why the listing is not being published.		
General Contract Provisions 1. Portal may not change contractual requirements without agreement from Provider. 2. Portal will follow all state laws regarding display of listing content. 3. No contract assignment without consent of Provider. 4. No referral fees. 5. Portal will provide a direct contact (name, phone number, email) that Provider can contact to discuss Issues or errors in the display of data. Portal will guarantee a 24 hour response for any question from Provider. 6. Consider including a provision for attorney’s fees. 7. Portals must cease use of and destroy all information provided by Provider at the end of the contract term. 8. Confidentiality terms in favor of Provider. 9. Portal must display a Terms of Use provision for consumers that acknowledges Provider’s data is only for personal non-commercial use and Provider retains ownership of content.		
Non-Compete 1. Portal must agree they will not compete with the brokerage firms or MLSs by either becoming a licensed brokerage firm or by providing offers of cooperation and compensation. 2. Portal may not use the data in a manner that is similar to a Multiple Listing Service business. 3. Non-compete must prevail during the agreement and for a certain number of years after the agreement.		