



## Carolina Multiple Listing Services, Inc.

CHARLOTTE REGIONAL REALTOR® ASSOCIATION

### Online Consultant/AVP Agreement for IDX/VOW Services

This Consultant/AVP Agreement for IDX/VOW Services (the “Agreement”) is made and entered into by Carolina Multiple Listing Services, Inc. (“**CMLS**”), with offices at 1201 Greenwood Cliff, Suite 200, Charlotte, NC 28204 and the IDX technology provider or Affiliated VOW Partner (as that term is defined in the Policies) that has electronically executed this Agreement (“**Consultant**”).

#### **BACKGROUND**

- A. Consultant wishes to provide some or all of the following types of services:  
IDX; VOW; Internal (CMLS firm acting as own vendor)
- B. Consultant wishes to provide some or all of such services to each of the following types of customers:  
Non-Principal Brokers (including agents); Participants (offices and brokerage firms)
- C. Consultant’s electronic execution of this Agreement permits CMLS Participants (and Non-Principal Brokers, if any) to designate Consultant to receive Licensed Data from CMLS in order to perform services on behalf of CMLS Participants (and Non-Principal Brokers, where applicable), subject to this Agreement and the Policies.

#### **DEFINITIONS**

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

**Confidential Information:** “Confidential Information” means the Licensed Data and all information or material proprietary to a party or designated “confidential” by the party and not generally known to the public that the other parties may obtain knowledge of, or access to, as a direct or indirect result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, electronic, audio, written or other form): (a) all Licensed Data, except to the extent to which this Agreement and the Policies permit its disclosure; (b) intellectual property addresses, access codes and passwords; (c) any information that CMLS obtains from any third party that CMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by CMLS; (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims or evidence presented by any party in any arbitration under this Agreement. Confidential Information does not include

information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; is independently developed by the receiving party; is received from a third party that has obtained and disclosed it without breaching any confidentiality agreement; or is already possessed by the receiving party at the time of its disclosure.

**Data Interface:** The transport protocols and data storage formats provided by CMLS for use by Participants and Consultant; CMLS may modify the Data Interface in their sole discretion at any time.

**Licensed Data:** Includes the IDX Database as defined in the CMLS Rules and Regulations for IDX sites; “MLS Listing Information” as defined in the CMLS Rules and Regulations for VOWs; or both, as applicable, based upon Consultant’s selections.

**Non-Principal Broker:** Any real estate broker licensed in North Carolina or South Carolina who is not a Participant (as such term is defined in the Policies) but who is subject to a Participant’s supervision under applicable laws.

**Non-Principal Broker Party:** Any Non-Principal Broker affiliated with a Participant to which Consultant provides services subject to this Agreement, provided that the Participant consents to the provision of services and agrees to supervise Consultant’s provision of services to any such Non-Principal Broker Party.

**Participant:** This term has the meaning given to it in the Policies. For purposes of this Agreement, “Participant” does not apply to participants of MLSs other than CMLS.

**Policies:** CMLS’ Rules and Regulations, bylaws and all operating policies promulgated by IDX, as amended from time to time.

**Virtual Office Website or VOW:** This term has the meaning given to it in the Policies.

## **CMLS’ OBLIGATIONS**

2. CMLS grants to Consultant, a non-exclusive, world-wide license to make copies of, display, perform and make derivative works of the Licensed Data, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement and the Policies; any other use of the Licensed Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license and not a sale, assignment or exclusive license. CMLS retains all rights not expressly granted herein.

3. The scope of this license is restricted solely to the purpose of delivering to Participants (and to Non-Principal Brokers with written Participant permission), Web site services consistent with the IDX and VOW provisions of the Policies.

4. CMLS agrees to provide to Consultant, during the term of this Agreement: (a) access to the Licensed Data via the Data Interface under the same terms and conditions as CMLS offers to Participants and to other companies providing similar services to Participants; (b) seven days’ advance notice of changes to the

Data Interface; and (c) seven days' advance notice of changes to the Policies. CMLS is not required to provide technical support for the Data Interface or the Licensed Data. The Data Interface, together with access to the Licensed Data, may, from time-to-time, be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface or otherwise. Any interruption or unavailability of access to the Data Interface or Licensed Data shall not constitute a default under this Agreement.

## **CONSULTANT'S OBLIGATIONS**

5. Consultant shall immediately cease and cure any breach of this Agreement or violation of the Policies within its control, whether committed by a Participant, a Non-Principal Broker Party or Consultant, upon notice from CMLS.

6. Consultant acknowledges that (as among the parties to this Agreement) CMLS possesses all right, title and interest in all copyrights in the Licensed Data. Consultant shall not challenge or take any action inconsistent with CMLS' ownership of or rights in the Licensed Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. Consultant shall not make the Licensed Data or the Confidential Information available to any third party, except on behalf of Participants and Non-Principal Brokers and in a manner consistent with the Policies, this Agreement, and the provisions of the licenses from CMLS to the Participants and Non-Principal Brokers; nor shall it make any other use of the Licensed Data, whether commercial or personal. **In the event that Consultant provides services to Participants (or to Non-Principal Brokers affiliated with Participants), Consultant must be selected as a provider of such services by the applicable Participants and their affiliated Non-Principal Brokers (if applicable) on this Web site or as otherwise instructed by CMLS. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant and in the case of Non-Principal Brokers, that each Non-Principal Broker to which Consultant provides services remains affiliated with an eligible Participant. If Consultant fails to comply with the provisions of this paragraph, CMLS may terminate all of Consultant's access(es) to the Licensed Data under this Agreement and all similar agreements.** Consultant shall all employ reasonable measures to ensure that the Licensed Data is not gathered from Consultant's systems by automated means (such as "scraping" and other means of pirating). The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

8. Consultant is surety for the obligations to pay fees under the Policies of Participants and all Non-Principal Brokers to which Consultant provides services. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

## **AUDITS OF COMPLIANCE**

9. CMLS may, or at its option may engage, an independent third party to, review, inspect and test the books, records, equipment and facilities of Consultant to the extent reasonably necessary to ascertain Consultant's

compliance with this Agreement (“Audit”). CMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Consultant’s websites and systems to ensure that Licensed Data is displayed in accordance with the Policies; using all features available to end-users of Consultant’s systems that employ the Licensed Data; and posing as consumers to register and test services Consultant makes available on behalf of Participants and Non-Principal Brokers to consumers using the Licensed Data. CMLS shall pay the costs CMLS incurs and the out-of-pocket costs Consultant incurs as part of any Audit; provided, however, Consultant shall be liable for all costs of any Audit that discloses that Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

### **CONFIDENTIAL INFORMATION**

10. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information but, in no event, less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order provided, however, that such party makes commercially reasonable efforts to notify the others, in writing, in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

### **TERM AND TERMINATION**

11. The term of this Agreement begins on the date that CMLS electronically executes it. This Agreement shall terminate upon the occurrence of any of the following events: (a) 30 days after either party’s notice to the other 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; (d) as otherwise provided in this Agreement.

12. In the event Consultant breaches this Agreement and entitles CMLS to terminate under Paragraph 11 above, CMLS may, in its sole discretion, suspend its performance instead of terminating this Agreement. CMLS may make this election by notice to Consultant within three days after the initiation of the suspension. Consultant’s obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, Consultant shall make no further use of the Licensed Data or any derivative works thereof until and unless Consultant’s rights under this Agreement are restored.

## GENERAL PROVISIONS

13. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of North Carolina, without regard to its conflicts and choice of law provisions.

14. **Survival of Obligations.** The “Definitions,” “Confidential Information” and “General Provisions” of this Agreement shall survive its termination or expiration in perpetuity.

15. **CMLS’ Remedies.** (a) Injunctive relief: Because of the unique nature of the Licensed Data and Confidential Information, Consultant acknowledges and agrees that CMLS would suffer irreparable harm in the event that Consultant breaches or threatens to breach its obligations under this Agreement and that monetary damages would be inadequate to compensate CMLS for a breach. CMLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Consultant, without showing or proving any actual damages sustained by CMLS and without posting any bond. (b) Liquidated damages: Consultant acknowledge that damages suffered by CMLS from access to the Licensed Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the Licensed Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to CMLS to enter into this Agreement, Consultant agrees that, in the event Consultant or its employees, agents or contractors, disclose any password to access the Licensed Data or disclose the Licensed Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Consultant shall be liable to CMLS for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement.

16. **Limitation of Liability/Exclusion of Warranties. IN NO EVENT SHALL CMLS BE LIABLE TO CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (EVEN IF CMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL CMLS BE LIABLE TO CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE FEES CONSULTANT HAS PAID CMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES. CONSULTANT ACKNOWLEDGES THAT CMLS PROVIDES THE LICENSED 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. CMLS SHALL NOT BE LIABLE TO CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE LICENSED DATA, ANY FAILURE TO UPDATE THE LICENSED DATA PROMPTLY OR THE LICENSED DATA’S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. CMLS MAKES NO WARRANTY, INCLUDING THOSE REGARDING TITLE, AVAILABILITY OR NON-INFRINGEMENT, REGARDING TRADEMARKS LICENSED UNDER THIS AGREEMENT, IF ANY.**

**17. Dispute Resolution; Venue; Jurisdiction; Attorney's fees.** In the event CMLS claims that Consultant, or a Participant or a Non-Principal Broker Party to which Consultant provides services has violated this Agreement or the Policies, CMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the Policies. Except as set forth in the preceding sentence, the parties irrevocably agree, consent and submit themselves to personal jurisdiction in the courts of the State of North Carolina located in Charlotte, North Carolina or the federal court of the United States located in Charlotte, North Carolina, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action from the non-prevailing party.

**18. Indemnification.** Subject to Paragraph 16 above, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies and all of their respective employees, directors, agents and authorized successors and assigns (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. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

**19. Notice.** 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 herein or such other address of which any party may advise the others in writing during the term of this Agreement and shall be effective upon the earlier of the date of receipt or three days after mailing or other transmission.

**20. 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.

**21. No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of the other party to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void and shall immediately cause this Agreement to terminate.

**22. Entire Agreement.** Subject to the 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.

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

**24. Severability.** Each provision of this Agreement is severable from the whole and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

## Information and Signature Page

The Consultant(s) and CMLS shall sign this Agreement. Signing this Agreement indicates that you have read and understand the terms of this Agreement and the Policies and agree to abide by them.

This Agreement is for the following service (check one):		
<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm's Internal Use
The CMLS RETS server makes use of IP address restrictions. Each Consultant's RETS User ID and RETS Password will only work from up to two IP address. Please provide at least one, and not more than two, IP addresses from which your client will be accessing CMLS RETS server.		
Primary IP Address _____	Secondary IP Address _____	

CONSULTANT:	
Consultant/Company Name _____	
Name of owner or officer: _____ <small>Print Name</small>	
Signature of owner or officer: _____	Effective Date _____
Phone _____	Fax _____
E-mail _____ <small>(You must supply an e-mail address here. This address will be CMLS' principal means of communication with you for notices under this agreement.)</small>	
Mailing Address _____	City, State, Zip _____

CONSULTANT CONTACT FOR NOTICES AND OPERATIONS MATTERS:	
Name _____ <small>Print Name</small>	
Phone _____	Fax _____
E-mail _____ <small>(You must supply an e-mail address here. This address will be CMLS' principal means of communication with you for notices under this agreement.)</small>	
Mailing Address _____	City, State, Zip _____

CONSULTANT CONTACT FOR TECHNICAL MATTERS:	
Name _____ <small>Print Name</small>	
Phone _____	Fax _____
E-mail _____ <small>(You must supply an e-mail address here. This address will be CMLS' principal means of communication with you for notices under this agreement.)</small>	
Mailing Address _____	City, State, Zip _____

CONSULTANT CONTACT FOR BILLING MATTERS:	
Name _____ <small>Print Name</small>	
Phone _____	Fax _____
E-mail _____ <small>(You must supply an e-mail address here. This address will be CMLS' principal means of communication with you for notices under this agreement.)</small>	
Mailing Address _____	City, State, Zip _____

CMLS:	
Entered into on behalf of CMLS by _____ <small>Print Name</small>	
Signature _____	Effective Date _____
Mailing Address _____ 1201 Greenwood Cliff, Suite 200	City, State, Zip _____ Charlotte, NC 28204
CONTACT FOR NOTICES AND OPERATIONS MATTERS:	
Name _____ Gary Frank	E-mail _____ gary.frank@carolinahome.com
Phone _____ 704-940-3139	Fax _____ 704-940-3120
CONTACT FOR TECHNICAL MATTERS:	
Name _____ Steve Byrd	E-mail _____ steve.byrd@carolinahome.com
Phone _____ 704-940-3141	Fax _____ 704-940-3120

This box is for CMLS' use only. CMLS will fill out the information below after signing this Agreement. CMLS will then return a copy of this Agreement to Consultant. The contents of this box are Confidential Information under this Agreement.	
RETS Server _____	
RETS User ID _____	RETS Password _____