![Carolina Multiple Listing Services, Inc. — Charlotte Regional Realtor® Association](logo)

Online Participant/Subscriber Agreement for
CDS/VOW Services

This Online Participant/Subscriber Agreement for CDS/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; the real estate brokerage firm participating in CMLS as identified on the signature page of this Agreement and electronically executing this Agreement ("**Firm**"); and the non-principal brokers, if any, affiliated with a brokerage firm participating in CMLS as identified on the signature page of this Agreement and electronically executing this Agreement ("**Non-Principal Broker Party**").

BACKGROUND

A. Firm intends to build for itself or for certain providers of technology and marketing services to build on its behalf (and on behalf of any Non-Principal Broker Party) applications or Web sites for Firm's internal uses, CDS and/or VOW purposes.

B. Firm's and any Non-Principal Broker Party's electronic execution of this Agreement, permits Firm or its designated Consultants to receive Licensed Data from Data Providers in order to perform services on behalf of Firm (and its Non-Principal Brokers, where applicable), subject to this Agreement and the Policies of CMLS.

C. The Firm shall be fully and completely responsible for ensuring compliance with this Agreement by any and all of the Firm's Non-Principal Brokers, employees, independent contractors and any and all other third parties in any manner associated with Firm. All parties hereto acknowledge their understanding that non-compliance by any of such parties with the terms of this Agreement shall constitute a breach of this Agreement by Firm.

DEFINITIONS

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

Carolina Data Share or CDS: The Carolina Data Share program described in the Policies. Carolina Data Share provides the capability for CMLS Participants to have IDX (as such term is defined in the Policies) sites including the data of multiple listing services other than CMLS.

CDS MLS: A multiple listing service (an "MLS") other than CMLS that participates in Carolina Data Share.

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, direct or indirect, as a 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 or the Policies permit its disclosure; (b) intellectual property addresses, access codes and passwords; (c) any information that Data Providers obtain from any third party that Data Providers treat as proprietary or designate as Confidential Information, whether or not owned or developed by Data Providers; (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.

Consultant: Each and every recipient that Firm designates to receive Licensed Data under this Agreement, except any Non-Principal Broker Party.

Data Interface: The transport protocols and data storage formats provided by Data Providers for use by Firm, any Non-Principal Broker Party and any Consultant. Data Providers may modify the Data Interface in their sole discretion at any time.

Data Providers: CMLS and the CDS MLSs, or any one of them where the context permits.

Firm Internal Use: Any use of those portions of the Licensed Data relating to Firm's own listings and any use of those portions of the Licensed Data relating to listings of Participants other than Firm that exposes Licensed Data only to Firm-Related Persons and to Non-Principal Brokers affiliated with Firm, subject to the Policies.

Firm-Related Persons: Consultant, if any, and employees, independent contractors or agents of Firm who are not Non-Principal Brokers or broker/managers.

Licensed Data: Includes the CDS Database as defined in the CMLS Rules and Regulations for CDS sites; "MLS Listing Information" as defined in the CMLS Rules and Regulations for VOWs; or both, as applicable, based upon Firm'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.

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. Where applied in this Agreement to Participants other than

NPCHLT1:287918.1-DOC-(RHH) 019802-00000

Firm, "Participant" also includes Non-Principal Brokers affiliated with those Participants for whom the Participants are responsible under applicable laws.

Policies: CMLS' Rules and Regulations, bylaws and all operating policies promulgated by CDS, 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 Firm and any Non-Principal Broker Party, 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. Data Providers retain all rights not expressly granted herein.

3. CMLS agrees to provide to Firm (and any Non-Principal Broker Party, where applicable) or Consultant on Firm's behalf, 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 other CMLS 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.

FIRM'S OBLIGATIONS

4. Firm and any Non-Principal Broker Party shall comply with the Policies at all times. In the event of any perceived conflict between the Policies and this Agreement, the Policies shall prevail and govern. Firm shall supervise all activities of any Non-Principal Broker Party and shall be fully responsible for all of a Non-Principal Broker Party's acts as if Firm had performed those acts itself.

5. Firm shall use the Licensed Data obtained under this Agreement for Firm Internal Use, CDS and VOW uses only. Any other use is strictly prohibited. Firm and any Non-Principal Broker Party shall not make the Licensed Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and any Non-Principal Broker Party may display the Licensed Data on a Web site available to the public only to the extent permitted by the Policies and then only on a site resident at the second-level and third-level domain(s) as indicated by Firm to CMLS. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. <u>Firm and any Non-Principal Broker Party acknowledge Data Providers' ownership of all copyrights and any other intellectual property rights in the Licensed Data, except that Firm may have rights to its own listings as provided in the Policies.</u> Firm and any Non-Principal Broker Party shall not challenge or take any action inconsistent with Data Providers' ownership of or rights in the Licensed Data. Firm and any Non-Principal Broker Party assume all responsibility for maintaining the integrity of the Licensed Data on Firm's and any Non-Principal Broker Party's systems and acknowledge that their use of the Licensed Data is subject to all limitations and disclaimers set forth in this Agreement. Firm and any Non-Principal Broker Party shall employ reasonable measures to ensure that the Licensed Data is not gathered from Firm's or a Non-Principal Broker Party'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.

7. If CMLS notifies Firm or any Non-Principal Broker Party of a breach of the Policies or this Agreement and Firm or such Non-Principal Broker Party does not immediately cure the breach, Firm and such Non-Principal Broker Party shall hold Consultant and CMLS harmless from any liability arising from Consultant's cooperation with CMLS under CMLS' agreements with Consultant.

8. Firm and any Non-Principal Broker Party shall pay the fees, if any, that CMLS customarily charges other CMLS Participants for data access. Firm and such Non-Principal Broker Party acknowledge receipt of CMLS' current schedule of such fees, if any. CMLS may, in its sole discretion, establish or modify its schedule of fees upon 30 days' written notice to Firm and any Non-Principal Broker Party. Firm and all Non-Principal Broker Parties shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Non-Principal Broker Party's and Consultant's obligations to CMLS under this Agreement and the agreements enabling the applications contemplated in this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

AUDITS OF COMPLIANCE

10. CMLS may, or at its option may engage, an independent third party to, review, inspect and test the books, records, equipment and facilities of Firm and any Non-Principal Broker Party and Consultant to the extent reasonably necessary to ascertain Firm's, any Non-Principal Broker Party's and Consultant's compliance with this and other agreements ("Audit"). CMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, any Non-Principal Broker Party's, and Consultant's Web sites and systems to ensure that Licensed Data is displayed in accordance with the Policies; using all features available to end-users of Firm's, Non-Principal Broker Party's and Consultant's systems that employ the Licensed Data; and posing as consumers to register and test services Firm, any Non-Principal Broker Party and Consultant make available to consumers using the Licensed Data. CMLS shall pay the costs it incurs, and the

NPCHLT1:287918.1-DOC-(RHH) 019802-00000

out-of-pocket costs Firm, any Non-Principal Broker Party and Consultant incur, as part of any Audit; provided, however, Firm shall be liable for all costs of any Audit that discloses that Firm, Non-Principal Broker Party, or 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

11. 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

12. The term of this Agreement begins on the date that CMLS electronically executes it, having previously verified Firm's and any Non-Principal Broker Party's eligibility hereunder signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in CMLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) 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; (e) with regard to any Non-Principal Broker Party, immediately upon any event that results in the Non-Principal Broker Party no longer being affiliated with Firm; (f) as otherwise provided in this Agreement.

13. In the event Firm's privileges as a Participant (or any Non-Principal Broker Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect and CMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if CMLS resumes its obligations under Paragraphs 2 and 3 above. In the event Firm or any Non-Principal Broker Party breaches this Agreement and entitles CMLS to terminate under Paragraph 12 above, CMLS may, in its sole discretion, suspend its performance instead of terminating this Agreement. CMLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's and any Non-Principal Broker Party's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, neither Firm nor abt Non-Principal Broker Party shall make any further use of the Licensed Data

NPCHLT1:287918.1-DOC-(RHH) 019802-00000

or any derivative works thereof (except the portions of the Licensed Data relating to Firm's own listings) until and unless Firm's or such Non-Principal Broker Party's rights under this Agreement are restored.

GENERAL PROVISIONS

14. **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.

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

16. **CMLS' Remedies**. (a) Injunctive relief: Because of the unique nature of the Licensed Data and Confidential Information, Firm and any Non-Principal Broker Party acknowledge and agree that, in the event that any of them breaches or threatens to breach its obligations under this Agreement, Data Providers would suffer irreparable harm and that monetary damages would be inadequate to compensate Data Providers 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 Firm or a Non-Principal Broker Party, or any one of them, without showing or proving any actual damages sustained by CMLS and without posting any bond. (b) Liquidated damages: Firm and all Non-Principal Broker Parties 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, Firm and all Non-Principal Broker Parties agree that, in the event Firm, any Non-Principal Broker Party or Firm-Related Persons 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, Firm shall be liable to CMLS for liquidated damages in the amount of $15,000 for each such disclosure and termination of this Agreement.

17. **Limitation of Liability/Exclusion of Warranties. IN NO EVENT SHALL DATA PROVIDERS BE LIABLE TO FIRM, NON-PRINCIPAL BROKER PARTY OR CONSULTANT, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (EVEN IF DATA PROVIDERS HAVE 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 FIRM, ANY NON-PRINCIPAL BROKER PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE FEES FIRM AND CONSULTANT HAVE PAID CMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES. FIRM AND ALL NON-PRINCIPAL BROKER PARTIES ACKNOWLEDGE THAT DATA PROVIDERS PROVIDE 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. DATA PROVIDERS SHALL NOT BE LIABLE TO FIRM, NON-PRINCIPAL BROKER PARTY OR 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.

18. **Dispute resolution; Venue; Jurisdiction; Attorney's fees**. In the event CMLS claims that Firm or a Non-Principal Broker Party 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.

19. **Indemnification.** Subject to Paragraph 17 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 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.

20. **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.

21. **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.

22. **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

NPCHLT1:287918.1-DOC-(RHH) 019802-00000

written consent of all other parties 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.

23. **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.

24. **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.

25. **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 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.

CAROLINA MULTIPLE LISTING SERVICES, INC.

Contact for Notices and Operations Matters

Name: Gary Frank

Phone: 704-940-3139

Email: gary.frank@carolinahome.com

Mailing: 1201 Greenwood Cliff, Suite 200, Charlotte, NC 28204

Contact for Technical Matters:

Name: Steve Byrd

Phone: 704-940-3141

Email: steve.byrd@carolinahome.com

Mailing: 1201 Greenwood Cliff, Suite 200, Charlotte, NC 28204

Information and Signature Page

The Firm, the Non-Principal Broker Party 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):
☐CDS   ☐VOW   ☐Firm's Internal Use

CONSULTANT:

Consultant/Company Name (if any)_____

FIRM:

Firm/Office Name_____ Firm/Office MLS ID#_____

Member Participant_____ Member Participant MLS ID#_____
Print Name

Signature_____

E-mail_____
(You must supply an e-mail address here. This address will be CMLS' principal means of communication with you for notices under this agreement.)

Web site_____

Firm/Office Address_____ City, State, Zip_____

Phone_____ Fax_____

NON-PRINCIPAL BROKER PARTY (IF ANY):

Agent Name_____ Agent MLSID#_____
Print Name

Signature_____

E-mail_____
(You must supply an e-mail address here. This address will be CMLS' principal means of communication with you for notices under this agreement.)

Web site_____

Phone_____ Fax_____

CMLS:

Entered into on behalf of CMLS by_____
Print Name

Signature_____ Effective Date_____

CONTACT FOR NOTICES AND OPERATIONS MATTERS:

Name___Gary Frank_____ E-mail___gary.frank@carolinahome.com

Phone___704-940-3139_____ Fax___704-940-3120

Mailing Address___1201 Greenwood Cliff, Suite 200_____ City, State, Zip___Charlotte, NC 28204

CONTACT FOR TECHNICAL MATTERS:

Name___Steve Byrd_____ E-mail___steve.byrd@carolinahome.com

Phone___704-940-3141_____ Fax___704-940-3120

Mailing Address___1201 Greenwood Cliff, Suite 200_____ City, State, Zip___Charlotte, NC 28204

NPCHLT1:287918.1-DOC-(RHH) 019802-00000