



Access to Virtual Office Web Site Data Feed Contract

Note: This is a legally binding contract between the companies/individuals whose names and contact information appear on the signature page of this Agreement **and Carolina Multiple Listing Services, Inc. ("CMLS")**. **This Agreement must be filled out completely and signed by an owner or authorized employee of the Member Participant's firm. There are no exceptions.** Once the Agreement is completed, sign it and fax or mail it to CMLS at 1201 Greenwood Cliff, Suite 200, Charlotte, NC 28204; Fax: 704-940-3120. CMLS will sign this Agreement and return a copy to each party to this Agreement with information on how to access the Virtual Office Web Site Database, as defined in Section 3 below.

AGREEMENT

1. This **AGREEMENT** is made and entered into by and among **CMLS**, the real estate firm whose name and contact information appear on the signature page of this Agreement designated "Firm" or "VOW Participant" (the "**Firm**"), and the companies/individuals whose names and contact information appear on the signature page of this Agreement designated "Affiliated VOW Partner" (collectively, "**the AVP**"), and/or the Virtual Office Web site user(s) (collectively, "VOW User"), if any. Upon execution of this Agreement, all parties hereto acknowledge that the Firm and the VOW Participant shall be fully and completely responsible for insuring compliance with this Agreement by any and all of the Firm's VOW Users, employees, salespersons, Subscribers, 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.

RECITALS

2. Firm wishes to obtain, and CMLS wishes to provide, data for Firm's and/or VOW User's Web site(s), including the listing data of other real estate brokerages participating in CMLS. Firm and/or VOW User may wish to engage other companies or individuals who are not employees of Firm ("AVPs"), to perform data downloading, manipulation and formatting, as well as programming and Web design.

DEFINITIONS

3. The following capitalized terms used but not defined in this Agreement are defined as set forth in the Rules or *CMLS' Bylaws*: **VOW Participant, Multiple Listing Service, Subscribers.**

Note: There shall be only one VOW Participant per office. Firms with multiple offices must designate an VOW Participant for each office. The VOW Participant may be the same broker or a different broker for each separate office location. As noted above, the Firm is responsible for compliance with this Agreement by all persons associated with the Firm and by all VOW Users.

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

Virtual Office Web Site Database, VOW Data or “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. VOW Data does not include 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. CMLS owns the VOW Data.

Virtual Office Web Site User or VOW User: A non-principal broker or sales licensee affiliated with an VOW Participant. A VOW User may, with the permission of his VOW Participant and CMLS, use the VOW Data to populate his or her own Web site(s).

Rules: The *CMLS Rules and Regulations*, as amended from time to time, including the any operating policies relating to the VOW Data and VOW Participants promulgated by CMLS.

CMLS’ OBLIGATIONS

4. During the term of this Agreement, CMLS grants to Firm, VOW Participant and VOW User, a limited, non-exclusive and terminable license to:
 - a. display the VOW Data on the Web site(s) of such party (or parties) **(or a Web site hosted or contract-hosted by the Firm)**, and
 - b. make copies of the VOW Data to the extent necessary to deliver the VOW Data to consumers on the Web site(s) of such party or parties.
5. During the term of this Agreement, CMLS agrees to provide to Firm, VOW Participant, VOW User and AVPs:
 - a. access to the VOW Data via the Internet using File Transfer Protocol (“**FTP**”), under the same terms and conditions CMLS offers to other Subscribers.
 - b. seven (7) days’ advance notice of changes to the file and record formats of the VOW Data; and
 - c. seven (7) days’ advance notice of changes to the Rules.

FIRM’S, VOW PARTICIPANT’S AND VOW USER’S OBLIGATIONS

6. Firm, VOW Participant and VOW User shall comply with the Rules at all times.
7. Firm, VOW Participant and VOW User acknowledge CMLS’ ownership of all copyrights and any other intellectual property rights in the VOW Data.
8. Firm, VOW Participant and VOW User shall comply with the requirements relating to Confidential Information set forth below.
9. In the event that Firm and/or VOW User desire to make the VOW Data or the Confidential Information available to any third party (other than its buyer/seller customers), Firm, VOW Participant and VOW User agree to require such third party or parties to execute this Agreement and become an AVP subject to this Agreement and the Rules.
10. If CMLS notifies a party to this Agreement of a breach of the Rules or this Agreement and such party does not immediately cure such breach, all parties hereto agree that CMLS may seek cure from all or any of such parties.
11. Firm, VOW Participant and VOW User shall notify CMLS within five (5) business days of any change to the information relating to any of them set forth on the Information and Signature Page below.

AVPS' OBLIGATIONS

12. If CMLS notifies a party hereto of a breach of the Rules or this Agreement and such party does not immediately cure such breach, CMLS may contact any AVP to cure any such breach that is within AVP's control. AVP agrees to cooperate with CMLS and act immediately upon notification by CMLS of an uncured breach.
13. Each AVP acknowledges CMLS' ownership of all copyrights and other intellectual property rights in the VOW Data.
14. Each AVP shall comply with the requirements relating to Confidential Information set forth below.
15. Each AVP shall notify CMLS within five (5) business days of any change to the information relating to it on the Information and Signature Page below.

CONFIDENTIAL INFORMATION

16. **"Confidential Information"** is information or material proprietary to CMLS or designated "confidential" by CMLS and not generally known to the public, which any other party hereto or any one of them (the "Receiving Party"), may obtain knowledge of or access to as a result of access under 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):
 - a. all documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;
 - b. software, source code, object code, diagrams, flow charts;
 - c. techniques, procedures;
 - d. intellectual property addresses, access codes and passwords; and
 - e. 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.
17. **Exceptions.** The Confidential Information does not include information that:
 - a. is in the public domain at the time of disclosure;
 - b. is known to the Receiving Party at the time of disclosure;
 - c. is used or disclosed by the Receiving Party with the prior written consent of CMLS, to the extent of such consent;
 - d. becomes known to the Receiving Party from a source other than CMLS;
 - e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to CMLS prompt notice of any such order.
18. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with CMLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by CMLS.

19. **Restrictions on Use – Scope of Use.** The Receiving Party will use or access the Confidential Information only as expressly permitted under this Agreement and the Rules, and the Receiving Party will not use its access or the Confidential Information for any other purpose. The Receiving Party will employ measures to protect the Confidential Information from disclosure at least as rigorously as those it uses to protect its own confidential information or other property, but in no event less than reasonable care.
20. **Restrictions on Use – Unauthorized Uses.** The Receiving Party will not make copies of the Confidential Information. The Receiving Party will not directly or indirectly disclose, display, provide, transfer or otherwise make available the Confidential Information to any person or entity, unless the Receiving Party has received prior written consent of CMLS to do so. At no time and under no circumstances will the Receiving Party reverse engineer, decompile or disassemble any software constituting part of the Confidential Information. The Receiving Party will not incorporate the Confidential Information into any other work or product.
21. **Restrictions on Use – No Third-Party Access.** The Receiving Party will not provide access to the Confidential Information to third parties, including but not limited to AVPs or independent contractors, without prior written consent from CMLS. If CMLS grants consent, the Receiving Party will execute an agreement with the third party that imposes a confidentiality obligation on the third party that is at least as strict as that imposed by this Agreement on the Receiving Party.
22. **Restrictions on Use – Location Restriction.** The Receiving Party will not remove the Confidential Information from its principal place of business without CMLS' prior written consent. In the event CMLS grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.
23. **Termination and Return of Materials.** Within five (5) days following termination of this Agreement or receipt of notice of termination by CMLS, the Receiving Party will return to CMLS all Confidential Information and all other materials provided by CMLS to the Receiving Party. The Receiving Party will also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of CMLS, an officer of the Receiving Party will certify in writing that all materials have been returned to CMLS and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

24. **The term of this Agreement begins on the "Effective Date" set forth on the Information and Signature Page below. CMLS has the right at any time and in its sole discretion to terminate this Agreement. This Agreement shall terminate immediately upon the occurrence of any of the following events:**
- a. CMLS' notice to any party or all parties hereto that this Agreement is terminated.
 - b. Notice by Firm, VOW Participant or VOW User to CMLS that it or they no longer intend to display VOW Data on its or their Web site(s).
 - c. Termination of Firm's or VOW Participant's privileges as a Participant of CMLS.
 - d. Termination of VOW User's association with VOW Participant.
 - e. Termination of VOW Participant's association with the Firm.
 - f. In the event a party breaches this Agreement, thus entitling CMLS to terminate this Agreement, 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. The obligations of the parties hereunder continue during any period of suspension.

GENERAL PROVISIONS

25. **Survival of Obligations.** The obligations of Firm, VOW Participant, VOW User and AVPs set forth herein shall survive the termination or expiration of this Agreement.
26. **CMLS' Remedies.** Because of the unique nature of the Confidential Information, all other parties hereto each acknowledge that CMLS would suffer irreparable harm in the event that any of them breaches its obligation 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 as may be necessary to restrain any continuing or further breach of this agreement by any party hereto without showing or proving any actual damages sustained by CMLS.
27. **Attorney's Fees.** If CMLS prevails in any action to enforce or interpret this Agreement or any provision hereof, the party against whom enforcement or interpretation was sought will pay CMLS' attorney's fees and costs for such legal action.
28. **Limitation of Liability/Exclusion of Warranties.** In no event shall CMLS be liable to any other party hereto 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. All parties acknowledge that CMLS provides the 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. CMLS shall not be liable to any other party hereto for any claim arising from inaccuracies in the VOW Data, any failure to update the VOW Data promptly, or the VOW 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.
29. **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 below or such other address of which any party may advise the others in writing during the term of this Agreement.
30. **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.
31. **No Assignment.** No party hereto may assign or otherwise transfer any of its rights under this Agreement to any party without the prior written consent of CMLS.
32. **Entire Agreement.** 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. The previous sentence notwithstanding, the Rules are expressly incorporated into this Agreement by reference.
33. **Applicable Law.** This Agreement is governed by and enforced according to the laws of the State of North Carolina.
34. **Transition Period.** Upon termination of this Agreement for any reason or termination of the Transition Period (as defined below), whichever is later, the license(s) granted under this Agreement shall terminate and the Firm, VOW Participant and VOW User, as applicable, shall, within ten (10) business days (i) permanently delete and remove all copies of the VOW Data and related software from all computers and other storage devices on which it is loaded or copied, and (ii) terminate the use and display of the VOW Data; and (iii) deliver to CMLS written certification acceptable to CMLS of

such party's compliance with the provisions of this Section 34. For a period of thirty (30) days following any termination of this Agreement (the "Transition Period"), except termination for an event of default by a party hereto, all parties agree to reasonably cooperate with one another for the purpose of transitioning display of the VOW Data by another third-party AVP pursuant to a separate Data Feed Contract between CMLS and such other AVP, and CMLS agrees to continue to allow the Firm, VOW Participant or VOW User, as applicable, to access and display the VOW Data during the Transition Period, subject to the terms and conditions of this Agreement. During the Transition Period, all terms of this Agreement shall continue in effect.

35. **Listings from Other States.** As prohibited by law, no party hereto may advertise listings from another state where such party is not licensed.

Information and Signature Page

The Firm, the VOW Participant, the VOW User, AVP(s) and CMLS shall sign this Agreement. Signing this Agreement indicates that you have read and understand the terms of this Agreement and the Rules and agree to abide by them.

FIRM/VOW PARTICIPANT	
Firm/Office Name_____	Firm/Office MLS ID#_____
Member Participant_____	Member Participant MLS ID#_____
<small>Print Name</small>	
Signature_____	
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>	
Web site_____	
Firm/Office Address_____	City, State, Zip_____
Phone_____	Fax_____

AFFILIATED VOW PARTNER	
AVP (company or individual) Name_____	
Point of Contact:_____	Title_____
<small>Print Name</small>	
Signature_____	
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>	
Address_____	
City, State, Zip_____	
Phone_____	Fax_____

VOW USER: The VOW User must be completed for every Subscriber Web site that displays VOW data, except for Subscriber Web sites that "frame" the brokerage's Web site or for Subscriber Web sites that are sub-domains of the brokerage's Web site.	
Agent Name_____	Agent MLSID#_____
<small>Print Name</small>	
Signature_____	
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>	
Web site_____	
Phone_____	Fax_____

CMLS	
Entered into on behalf of CMLS by_____	
<small>Print Name</small>	
Signature_____	Effective Date_____
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>	
Phone_____	Fax_____

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 all parties hereto. The contents of this box are Confidential Information under this Agreement.	
FTP URL_____	
FTP User ID_____	
FTP Password_____	