

Appendix C – Access to Internet Data Exchange Data Feed Contract

Note: This form is a legally binding contract between you and CMLS. Simultaneously or prior to submitting this form/contract, you must become an Internet Data Exchange Participant (IDX Participant). See CMLS' *Internet Data Exchange: Broker Informational Packet* for further details. **This form/contract must be filled out completely and signed by an owner or employee of your firm. There are no exceptions.** Once you have filled it out and signed it, fax or mail it to CMLS at 1201 Greenwood Cliff, Suite 200, Charlotte, NC 28204 Fax: (704) 940-3120. CMLS will sign the form/contract and return a copy to you with information on how to access the data feed.

AGREEMENT

1. This **AGREEMENT** is made and entered into by and among Carolina Multiple Listing Services, Inc. ("**CMLS**"), the real estate firm whose name and contact information appear on the signature page of this Agreement designated "Firm Information and Signature" (the "**Firm**"), and the companies/individuals whose names and contact information appear on the signature pages of this Agreement designated "Consultant Information and Signature" (collectively, "**the Consultants**"), if any.

RECITALS

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

DEFINITIONS

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

Internet Data Exchange Database or IDX data: The current aggregate compilation of all active listings of all Internet Data Exchange Participants except those listings where the IDX Participant/Participant Firm has opted out of Internet publication by so indicating on the MLS system. CMLS owns the IDX data.

Internet Data Exchange Participant or IDX Participant: A Member Participant who gives permission to other Member Participants to display its active listings on their Web sites in return for their permission to display their listings on its Web site.

In order to be an IDX Participant, the Participant Firm must:

- a. Have agents actively representing buyers or sellers in real estate transactions through exclusive right to sell or exclusive agency listing agreements, or through exclusive or non-exclusive buyer agency agreements or any other form of written buyer agency agreement.
- b. Comply with all applicable North Carolina and South Carolina laws, rules and regulations governing real estate. As prohibited by law, an IDX Participant should not advertise listings from another state where the IDX Participant is not licensed.

Note: There shall be only one IDX Participant per office. Companies with multiple offices must designate an IDX Participant for each office. The IDX participant (principal) may be the same broker or a different broker for each separate office location.

Multiple Listing Service: A means by which Participants make unilateral offers of compensation to other Participants [acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law]; by which real estate information is accumulated and disseminated to enable Participants to prepare appraisals and other valuations of real estate; by which Participants engaging in real estate appraisal contribute to common databases; and as a facility for the orderly correlation and dissemination of listing information about real property that is or has been for sale, among Participants so that they may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as a procuring cause of the sale (or lease). Multiple Listing Services may also include, without limitation, the provision of data processing, technical support, consulting, and other information technology services to real estate brokers and appraisers in connection with the sale and appraisal of real property.

Rules: The Rules and Regulations of CMLS, as amended from time to time, and any operating policies relating to the IDX data and IDX Participants promulgated by CMLS.

"CMLS Subscriber" (Subscriber) Subscribers or users of the MLS include non-principal brokers, sales associates, and licensed appraisers affiliated with Participants.

CMLS' OBLIGATIONS

4. During the term of this Agreement, CMLS grants to Firm a license to:
 - a. display the IDX data on Firm's Web site (or a Web site hosted or contract-hosted by the firm), and
 - b. make copies of the IDX data to the extent necessary to deliver the IDX data to consumers on Firm's Web site.
5. During the term of this Agreement, CMLS agrees to provide to Firm and its Consultants:
 - a. access to the IDX 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 IDX data; and
 - c. seven (7) days' advance notice of changes to the Rules.

FIRM'S OBLIGATIONS

6. Firm shall comply with the Rules at all times.
7. Firm acknowledges CMLS' ownership of the copyrights in the IDX data.
8. Firm shall comply with the requirements relating to Confidential Information set forth below.
9. In the event that Firm desires to make the IDX data or the Confidential Information available to any third party, Firm agrees to require such third party to execute this Agreement and become a Consultant subject to this contract and any Rules.
10. If CMLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that CMLS may seek cure from the Consultants, or any one of them.

11. Firm shall notify CMLS within five (5) business days of any change to the information relating to Firm on the Firm Information and Signature page below.

CONSULTANTS' OBLIGATIONS

12. If CMLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, CMLS may contact Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with CMLS and act immediately upon notification by CMLS of an uncured breach by Firm.
13. Each Consultant acknowledges CMLS' ownership of the copyrights in the IDX data.
14. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
15. Each Consultant shall notify CMLS within five (5) business days of any change to the information relating to it on the Consultant 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, that Firm or Consultants 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. IP 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 without breach of this Agreement by the Receiving Party and provided that such source is not known by the Receiving Party to be bound by a confidentiality agreement with CMLS; or
 - 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 rigorous as those it uses to protect its own trade secrets, 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 consultants 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 at least as strict a confidentiality obligation on the third party 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 of the end of the term 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 “CMLS 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 upon the occurrence of any of the following events:**
 - a. CMLS' notice to Firm that this Agreement is terminated.
 - b. Firm's notice to CMLS that it no longer intends to display IDX data on its Web site.
 - c. Termination of Firm's privileges as a Participant by CMLS.

GENERAL PROVISIONS

25. **Survival of Obligations.** The obligations of Firm set forth under “Firm's Obligations” above and the obligations of Consultants under “Consultants' Obligations” above shall survive the termination or expiration of this Agreement.

26. **CMLS' Remedies.** Because of the unique nature of the Confidential Information, Firm and Consultants 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 by Firm or Consultants or any one of them, 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' reasonable attorney's fees and costs for such legal action.
28. **Limitation of Liability.** CMLS' liability to Firm and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by Firm and Consultants to CMLS, if any, under this Agreement. Firm's and Consultants' only other remedy shall be termination of this Agreement. CMLS shall not be liable for any incidental or consequential damages under any circumstances, even if CMLS has been advised of the possibility of such damages. CMLS shall have no liability for inaccuracies in the IDX data.
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.** Neither Firm nor Consultants, nor any of them, may assign or otherwise transfer any of their 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.

[The remainder of this page is left blank intentionally.]

CMLS Information and Signature

Entered into on behalf of CMLS by

Signature

Print Name

Effective Date

This box is for CMLS' use only. CMLS will fill out the information in it after signing this Agreement. CMLS will then return a copy of this Agreement to Firm and Consultants. The contents of this box are Confidential Information under this Agreement.

FTP URL: _____

FTP User ID: _____

FTP Password: _____

Consultant Firm Name: _____

Consultant(s) Name(s): _____

Listing Office ID: _____

Listing Office Name: _____

Broker or Contact Person: _____

Firm Information and Signature

Firm Name: _____ Firm MLS ID: _____

Broker/Office Manager Name: _____ Broker MLS ID: _____

E-mail address: _____

(You **must** supply an e-mail address here. This address will be CMLS' principal means of communicating with you for notices under this Agreement.)

Web address: _____
(You **must** supply a Web address here.) **CMLS reserves the right to object to any company name or Web site name proposed by a current or potential Member Participant or Subscriber, which name in CMLS' sole discretion is confusingly similar to any name used in commerce by CMLS and that CMLS believes would leave the public confused. This includes use of the word Multiple Listing (s), MultiList or Listing(s), or the letters MLS or any combination thereof, anywhere in the name. This also includes use of the words Carolinahome(s) when used alone in the URL.**

Firm Street Address: _____

Firm City, ST, ZIP: _____

Firm Phone: _____ Fax: _____

Signing this contract indicates that you have read and understand the CMLS Internet Data Exchange Rules and Regulations and agree to abide by them.

Entered into on behalf of Firm by

Signature

Print Name

Title

NOTE: This is to advise CMLS that the above named Firm intends to send its data to the company named below and that said Firm agrees to ensure that said company abides by this contract.

Company name: _____

Point of contact: _____

Telephone number: _____

Email address: _____

Consultant Information and Signature

NOTE TO FIRM: Reproduce this page for each individual/company to whom you intend to provide access to the IDX data under this Agreement.

Consultant (company or individual) Name: _____

E-mail address: _____
(You **must** supply an e-mail address here. This address will be CMLS' principal means of communicating with you for notices under this Agreement.)

Consultant Street Address: _____

Consultant City, ST, ZIP: _____

Phone: _____ Fax: _____

Signing this contract indicates that you have read and understand the CMLS Internet Data Exchange Rules and Regulations and agree to abide by them.

Entered into on behalf of Consultant by

Signature

Print Name

Title

NOTE TO CONSULTANT: Be sure to enter into this Access to Internet Data Exchange data feed contract with CMLS and every real estate broker to which you provide services. If you sign only one and that Firm's access to the IDX data is terminated, you will not be able to get the data for your other clients.

NOTE: This is to advise CMLS that the above named Consultant intends to provide an IDX solution to the real estate firm named below.

Firm name: _____

Point of contact: _____

Telephone number: _____

Email address: _____