



Carolina Multiple Listing Services, Inc.

CHARLOTTE REGIONAL REALTOR® ASSOCIATION

PARTICIPANT LICENSE AGREEMENT
FOR
INTERNET DATA EXCHANGE
VIRTUAL OFFICE WEBSITE
LICENSEE INTERNAL USE

This License Agreement for Internet Data Exchange/Virtual Office Website/Licensee Internal Use (the "Agreement") is made and entered into by and among Carolina Multiple Listing Services, Inc., ("CarolinaMLS"), a wholly owned subsidiary of Charlotte Regional Realtor® Association, Inc. (the "Association"), with offices located at 1201 Greenwood Cliff, Suite 200 in Charlotte, North Carolina, the person or company whose name and contact information appears in the signature section of this Agreement designated "Licensee Information and Signature" ("Licensee") and any third party person or company employed by or acting as an independent contractor on behalf of Licensee whose name and contact information appears in the signature section of this Agreement designated "Consultant/Vendor Information and Signature" ("Consultant/Vendor"). CarolinaMLS, Licensee and Consultant/Vendor, if any, are each, individually, referred to herein as a "Party" and/or, collectively, as the "Parties."

This Agreement is made with reference to the following facts:

- A. CarolinaMLS operates a real estate multiple listing service (the "Multiple Listing Service" or "MLS") that collects information about real properties and then aggregates, compiles, displays, maintains, distributes and licenses a proprietary database of real estate listings and other information for the benefit of its Authorized Users.
- B. Licensee desires to access and use all or certain portions of the Content for the use(s) and purpose(s) described on Exhibit A attached hereto and expressly made a part hereof.
- C. Consultant/Vendor, if any, has been engaged by Licensee to assist Licensee in accomplishing Licensee's intended purpose(s) as described on Exhibit A.
- D. CarolinaMLS is willing to grant Licensee and Consultant/Vendor, if any, the right to access and use the Licensed Content for Licensee's intended use as

described on Exhibit A, subject to the terms and conditions of this Agreement including fees in Exhibit B.

Now, therefore, in consideration of the foregoing, the mutual covenants and promises contained herein and intending to be legally bound, the Parties do each hereby agree as follows

1. Definitions

- (a) "**Affiliated VOW Partner**" means an Affiliated VOW Partner (or "AVP") as described in the Governing Documents.
- (b) "**Agreement**" means this Agreement, including all exhibits attached hereto and any subsequent or additional amendments, exhibits or addenda to this Agreement that may be adopted by the Parties.
- (c) "**Authorized User**" means a CarolinaMLS Participant Licensee hereunder, or Subscriber, as described or defined in the Governing Documents, including appropriate and necessary employees or Consultant/Vendor authorized to use or have access to the Licensed Content in accordance with the terms of this Agreement and the Governing Documents.
- (d) "**Confidential Information**" means all confidential or proprietary information of CarolinaMLS including, without limitation, user names, IP addresses, access codes, source code, passwords, software, tools, designs, plans or any other information relating to any project, work in process, future development, marketing or business plan relating to CarolinaMLS' present or future products, sales, suppliers, customers, employees, members or business, which information is disclosed by or on behalf of CarolinaMLS to Licensee or Consultant/Vendor whether tangible or intangible and whether or not disclosed in oral, written, graphic, photographic or electronic form and whether marked "confidential" or not. All information received in the course of the Parties' relationship is considered Confidential Information, unless marked otherwise by CarolinaMLS. The Content, the Licensed Content and the Database Compilation are all deemed to be Confidential Information. The specific terms of this Agreement and of the Governing Documents shall also be deemed Confidential Information. The term "Confidential Information" does not include information that (i) is or becomes generally available to the public through no fault of either Party; (ii) can be demonstrated by credible evidence as having been rightfully known to the receiving Party prior to the time of its disclosure, or to have been independently developed by the receiving Party; (iii) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; or (iv) was required to be disclosed by operation of law or a court order.

- (e) **"Consultant/Vendor"** means the person or company (including appropriate and necessary employees, agents, etc., thereof) referred to in the first paragraph of this Agreement and identified on the Consultant/Vendor Information Signature Page hereof, who has been engaged by Licensee to access and/or whose product is intended to use the Licensed Content to assist Licensee in accomplishing Licensee's intended purpose as described in Exhibit A.
- (f) **"Consultant/Vendors' System"** means the Consultant/Vendors' own computers, networks or servers.
- (g) **"Content"** means, all information contained within the MLS including, but not limited to, the IDX Database, the Database Compilation, personally identifiable information of buyers and sellers and any other individuals or entities, pending sales, on-market listings, off-market listings, text, images, maps, audio, video, software and other informational content and data, Authorized User information and any and all compilations, collections or combinations of any of the foregoing.
- (h) **"Database Compilation"** means CarolinaMLS' collected and compiled Content, maintained in electronic form from which CarolinaMLS provides Licensed Content pursuant to this Agreement.
- (i) **"Data Interface"** means the transport protocols and data storage formats provided by CarolinaMLS for use by Licensee and/or Consultant/Vendor. If no such information has been provided by CarolinaMLS, then the Data Interface consists of those protocols and formats typically provided by CarolinaMLS for use by other licensees of Content, which protocols and formats CarolinaMLS may modify, in its sole discretion, at any time and without notice.
- (j) **"Display"** means the visual representation of Licensed Content by Licensee, whether in print, electronic or other form, which at all times is subject to rules set forth in applicable Governing Documents.
- (k) **"Effective Date"** means the date CarolinaMLS manually or electronically executes this Agreement and is the date upon which this Agreement shall commence.
- (l) **"Governing Documents"** means some, all or any of CarolinaMLS' Rules and Regulations (including all of CarolinaMLS' interpretations thereof), Bylaws and any and all other governing documents and/or operating policies of CarolinaMLS as may be amended by CarolinaMLS, at any time and without notice.
- (m) **"Internet Data Exchange" or "IDX"** means as defined in applicable Governing Documents.

- (n) **"IDX Database"** means the current aggregate compilation of all listings of IDX Participants as defined by CarolinaMLS in the Governing Documents.
- (o) **"Intellectual Property Rights"** means any and all rights existing, from time to time, under patent law, trademark law, service mark law, copyright law, trade secret law, unfair competition law, publicity rights law, privacy rights law and any and all other similar proprietary rights and any renewals and extensions thereof now or hereafter in force and effect in the United States and throughout the world.
- (p) **"Licensed Content"** means that subset of the Content licensed for Licensee's use(s) and purpose(s) under this Agreement as described in Exhibit A (and not prohibited by Section 3 below) and, further, including all software and interfaces provided by CarolinaMLS in connection with the periodic transmission of the Licensed Content to Licensee or Consultant/Vendor and also includes periodic updates and changes to the Licensed Content as existing from time to time.
- (q) **"Licensee"** means the person or company referred to in the first paragraph of this Agreement and identified on the Licensee Information Signature Page hereof. It is understood that Licensee is a Participant qualified and entitled to use the Licensed Content under the terms of the Governing Documents.
- (r) **"Participant Licensee Internal Use"** means any use of those portions of the Licensed Content relating to Participant Licensee's own listings and/or relating to listings of Participants other than Licensee that exposes Licensed Content only to Licensee or to Consultant/Vendor for internal statistical analysis and integration with in-house, back-office systems and otherwise as may be permitted by CarolinaMLS' Rules and Regulations.
- (s) **"Licensee's System"** means the Licensee's own computers, networks or servers.
- (t) **"Monitor"** means a method by which CarolinaMLS tracks the Seeded or Watermarked Licensed Content used by Licensee or Consultant/Vendor to ensure compliance with the letter and spirit of this Agreement.
- (u) **"Participant"** means a CarolinaMLS Participant as described in the Governing Documents.
- (v) **"Seed"** means a method by which CarolinaMLS may code the Licensed Content such that its access, use and integration can be Monitored.
- (w) **"Subscriber"** means a CarolinaMLS Subscriber as described in the Governing Documents.

- (x) "**Term**" means the period during which this Agreement is in full force and effect.
- (y) "**VOW**" or "**Virtual Office Website**" means the term created by NAR for the listing display program mandated as of February 2009, which program allows brokers to display MLS listings on their password-protected websites, and which is further described in applicable Governing Documents.
- (z) "**Watermark**" means an identification code embedded into digital data, digital signal or pattern carrying information about the copyright owner, the creator of a work, authorized consumers and other pertinent information that will assist CarolinaMLS in Monitoring use of the Licensed Content.

Capitalized terms used but not defined herein shall carry the meanings given to such terms in the Governing Documents.

2. Grant of License.

CarolinaMLS grants to Licensee a limited, revocable, non-exclusive, non-transferable world-wide license to make copies of, display, perform and make derivative works of the Licensed Content, during the Term of this Agreement, only to the extent expressly set forth on Exhibit A or as otherwise permitted by and subject at all times to the terms of this Agreement and the Governing Documents. Any other use of the Licensed Content is hereby prohibited. CarolinaMLS reserves all rights not expressly granted to Licensee herein. Nothing herein shall be construed as a grant of any other right or license to access or use the Licensed Content, without CarolinaMLS' prior specific written permission, which may be withheld in CarolinaMLS' sole discretion. CarolinaMLS does not grant any license hereunder to Consultant/Vendor. Consultant/Vendor's rights hereunder are granted through the Licensee's.

This Agreement provides no limit on the number of Authorized Users who may access the Licensed Content residing on Licensee's System. Licensee agrees, on behalf of all of its Authorized Users, that such Authorized Users shall not further convey or copy the Licensed Content and that such Authorized Users shall be bound by the Governing Documents, any applicable laws and by all of the other terms and conditions of this Agreement as a condition to access to the Licensed Content.

CarolinaMLS is not required to provide technical support for the Data Interface or the Licensed Content. CarolinaMLS agrees to exercise its best efforts to ensure the functionality of the Data Interface however, the Data Interface, together with access to the Licensed Content 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 Content shall not constitute a default under this Agreement.

3. Prohibited Uses

Except as may be permitted by CarolinaMLS' Rules and Regulations:

- (a) Neither Licensee nor Consultant/Vendor shall copy or reproduce the Licensed Content or any portion thereof, except as authorized by CarolinaMLS. Further, neither Licensee nor Consultant/Vendor shall sell, license, sublicense, assign, transfer, alter, modify, change or create any derivative works of the Licensed Content, in any manner (other than reformatting), without the written consent of CarolinaMLS.
- (b) Except as may be permitted under the Governing Documents and as contemplated by this Agreement, neither Licensee nor Consultant/Vendor shall distribute, publically display or convey the Licensed Content, or any portion thereof. Neither Licensee nor Consultant/Vendor shall permit any Authorized User to access or use the Licensed Content, or any portion thereof, other than in the ordinary course of Licensee's business and as permitted by this Agreement.
- (c) Neither Licensee nor Consultant/Vendor shall disclose or make available access to the Licensed Content, or any portion thereof, to any third party other than an Authorized User. Licensee, by the execution of this Agreement, does hereby acknowledge its understanding and agreement that Licensee shall be responsible for the acts of all Authorized Users employed by or acting as independent contractors of Licensee, including Consultant/Vendor. All acts of Authorized Users, Consultant/Vendor or any other third party shall be deemed to be the acts of Licensee for all purposes hereunder.
- (d) Except where performed in a manner which complies with this Agreement and in accordance with the Governing Documents neither Licensee nor Consultant/Vendor may create, host or support an Internet website available to the public that contains a database comprised in whole or in part of the Licensed Content.
- (e) In addition to those restrictions and prohibitions set forth above, any advertising, distribution or other use of individual listings contained in the Licensed Content shall be subject to the following further restrictions. Specifically, Licensee shall not itself do, nor permit Consultant/Vendor or any other party to do, any of the following:

- (i) Employ any framing or add any links or meta-tags that constitute an alteration of any listings in the Licensed Content that are presented or distributed via the Internet by Licensee in a manner not permitted by this Agreement or by the Governing Documents and in accordance with CarolinaMLS' Rules and Regulations.
- (ii) Violate any applicable disclosure guidelines as set forth by the North Carolina Real Estate Commission or the South Carolina Real Estate Commission, whichever may be applicable.
- (iii) Add any name, mark or other material that may cause consumers or others to believe that Licensee or any Authorized User is the listing agent or broker for a property when, in fact, such is not the case.
- (iv) Use or continue to use or distribute any data, listing or other material that it has reason to believe is outdated, no longer valid or inaccurate.
- (v) Modify any listing data except for Licensee's own listings.
- (vi) Use any of CarolinaMLS' membership data contained in the Licensed Content for any purpose inconsistent with the intent of this Agreement.

Notwithstanding the foregoing prohibitions, nothing in this Agreement shall prevent Licensee from advertising, promoting or distributing its own listings in any venue, even if such listings are part of the Licensed Content.

4. Obligations and Understandings of Licensee and Consultant/Vendor

Licensee and Consultant/Vendor shall comply with this Agreement at all times and shall take all steps necessary to insure that all persons working or acting under the control or direction of either of them shall also comply with this Agreement at all times. Neither Licensee nor Consultant/Vendor shall make the Licensed Content available to any third party, except in such manner as may be allowed hereunder and is not inconsistent with the Governing Documents. In the event of any conflict between the Governing Documents and this Agreement, CarolinaMLS shall determine which shall govern.

If Consultant/Vendor is an IDX technology provider or an Affiliated VOW Partner providing services to Licensee, Consultant/Vendor must be selected as a provider of such services by the applicable Licensee. Consultant/Vendor must ascertain, using the Data Interface on a daily basis, that each Licensee to which Consultant/Vendor provides services remains an eligible Licensee and, in the case of Subscriber affiliated with a Participant Licensee to whom

Consultant/Vendor provides services, that such Subscriber remain affiliated with an eligible Participant Licensee. If Consultant/Vendor fails to comply with the provisions of this paragraph, CarolinaMLS may terminate Consultant/Vendor's access to the Licensed Content. Licensee and Consultant/Vendor shall each employ reasonable measures to ensure that the Licensed Content is not gathered from their systems by automated means, such as scraping or other means of pirating.

Licensee and Consultant/Vendor shall not make the Content, the Licensed Content or any other Confidential Information available to any third party unless expressly authorized to do so by CarolinaMLS and such third party executes and becomes subject to this Agreement. Licensee may electronically display the Licensed Content available to the public only to the extent permitted by the Governing Documents and then only on the site or mobile application indicated by the Licensee to CarolinaMLS.

Licensee and Consultant/Vendor each acknowledge that CarolinaMLS possesses all ownership, right, title and interest in all copyrights and all other Intellectual Property Rights in the compilation and all of the Confidential Information, except that all Licensees have rights to their own listings. Neither Licensee nor Consultant/Vendor shall challenge nor take any action inconsistent with CarolinaMLS' ownership of or rights in any of the Confidential Information.

Neither Licensee nor Consultant/Vendor shall use or refer to CarolinaMLS or any trademark, service mark, logo or trade name belonging to CarolinaMLS, in any advertising or marketing materials or in any solicitation directed at CarolinaMLS' Participants or Subscribers, without CarolinaMLS' prior express written permission.

Licensee and Consultant/Vendor shall comply with all applicable privacy and information security laws including, but not limited to, security breach notification laws. In the event a security breach of Licensee's or Consultant/Vendor's System(s) containing the Licensed Content results in access or use by an unauthorized party, Licensee and Consultant/Vendor shall each notify CarolinaMLS by confirmed email or confirmed telephone within 24 hours of such discovery by Licensee or Consultant/Vendor. Licensee and Consultant/Vendor shall each take all steps, in accordance with commercially reasonable security practices, to protect the security and privacy of the Licensed Content from unauthorized access, use or disclosure.

Licensee assumes ultimate responsibility for maintaining the integrity of the Licensed Content licensed hereunder and acknowledges that its use of the Licensed Content is subject to all limitations set forth in this Agreement.

Licensee, upon notice by CarolinaMLS, shall immediately cease and cure any breach of this Agreement or violation of the Governing Documents, within its control, whether committed by Licensee or Consultant/Vendor or any party acting under Licensee's control or direction. Licensee shall hold CarolinaMLS harmless from any and all liability arising out of such breach.

Within three (3) days following the termination of this Agreement or receipt of notice of termination by CarolinaMLS, Licensee and Consultant/Vendor will return to CarolinaMLS all Confidential Information and all other materials provided to them by CarolinaMLS. Licensee and Consultant/Vendor will also erase, delete or destroy any stored Confidential Information, including system backups. Upon the request of CarolinaMLS, Licensee and Consultant/Vendor will certify in writing that all materials have been returned to CarolinaMLS and all copies of computer data have been destroyed.

5. Changes to CarolinaMLS' Server.

CarolinaMLS shall not be obligated to make any changes to its server, including any software running on its server, the configuration, applicable protocols, or any other aspect of its server for any reason, including changes which Licensee or Consultant/Vendor believes may be necessary to facilitate access to the Licensed Content. Notwithstanding the foregoing, CarolinaMLS may, at any time, modify or replace its server, in its sole discretion, and Licensee and Consultant/Vendor understand that a modification of CarolinaMLS' server may require changes to any applicable hardware, software or configurations to provide for access to the Licensed Content. CarolinaMLS makes no representations or warranties with respect to the response time for access to the Licensed Content. CarolinaMLS agrees to exercise its best efforts to ensure functionality and access to CarolinaMLS' server, however, Licensee and Consultant/Vendor each acknowledge that CarolinaMLS' server, together with access to the Licensed Content may, from time to time, be unavailable to Licensee and Consultant/Vendor, whether because of technical failures or interruptions, intentional downtime for service or changes to CarolinaMLS' server, or otherwise. Licensee and Consultant/Vendor agree that any modification of CarolinaMLS' server and any interruption or unavailability of access to CarolinaMLS' server or access to or use of the Licensed Content shall not constitute a default under this Agreement and that CarolinaMLS shall have no liability of any nature to Licensee or Consultant/Vendor for any such modifications, interruptions, unavailability or failure of access.

6. Fees

Licensee and/or Consultant/Vendor shall pay all fees applicable to either of them as set forth on the Fee Schedule attached hereto as Exhibit B. CarolinaMLS

may, in its sole discretion, establish or modify its schedule of fees upon 30 days' notice to the other Party or Parties.

Licensee shall be liable for all costs, including reasonable attorney fees associated with collecting amounts due under this Agreement.

7. Audits of Compliance.

CarolinaMLS may, or at its option may engage an independent third party to, audit, test, and inspect the books, records, equipment and facilities of Licensee and Consultant/Vendor, including Licensee's System, and to perform tests of Licensee's and/or Consultant/Vendor's controls, systems and procedures as often as deemed necessary by CarolinaMLS, including, without limitation, (a) external attempts to penetrate any firewalls established in connection with Licensee's System and protection of the Licensed Content, (b) viewing all displays of the Licensed Content on Licensee's System or printouts, as applicable, (c) using Licensee's System to initiate and execute searches, (d) using all other features and functions available on Licensee's System, and if any of the features or functions of Licensee's System are protected by a user authentication device, such as a password, or require registration or similar function, then using all of such features and functions. If any features or functions of Licensee's System require registration or other information, CarolinaMLS may input information which is not accurate in order to access the feature or function. Neither Licensee nor Consultant/Vendor shall attempt to block or otherwise interfere with CarolinaMLS' Monitoring or review of, attempts to penetrate, or access to, Licensee's System or other systems and controls. Each such audit shall be performed in accordance with audit standards and procedures established by CarolinaMLS, in its sole discretion, and shall be performed to Monitor and review (a) the adequacy of Licensee's and Consultant/Vendor's internal controls; (b) the adequacy of Licensee's and Consultant/Vendor's security system and procedures; (c) Licensee's and Consultant/Vendor's compliance with any term of this Agreement; and (d) Licensee's and Consultant/Vendor's compliance with applicable laws. The costs of such audits and tests shall be at CarolinaMLS' expense, except that if at any time an audit discloses that Licensee or Consultant/Vendor are not in full compliance and have otherwise not met the audit standards established by CarolinaMLS, Licensee and Consultant/Vendor shall pay all costs of the audit, including CarolinaMLS' internal costs, the independent auditor costs and other out-of-pocket expenses incurred by CarolinaMLS.

Licensee and Consultant/Vendor each expressly understand that the Licensed Content and the Content may be Seeded, Watermarked and Monitored by CarolinaMLS and CarolinaMLS reserves the right to suspend or immediately terminate this Agreement upon notice to Licensee pending investigation of any

evidence or allegation that either Licensee or Consultant/Vendor has breached this Agreement.

8. Duty of Care.

The Parties shall protect all 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 other Party or Parties, in writing, in advance of disclosure. Within ten (10) days after termination of this Agreement, the receiving Party shall return to the disclosing Party all Confidential Information in the possession of the disclosing Party. The receiving Party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. The receiving Party shall certify, in writing, that all materials have been returned or destroyed.

9. Term and Termination.

The Term of this Agreement begins on the date CarolinaMLS executes it (either manually or electronically) and shall remain in full force and effect until such time as it is terminated hereunder. This Agreement shall immediately terminate upon termination of Licensee's privileges as a Participant of CarolinaMLS. Licensee may terminate this Agreement at any time upon 24 hours advance written notification given to CarolinaMLS. CarolinaMLS may terminate this Agreement upon 24 hours advance written notice given to Licensee in the event Licensee (or Consultant/Vendor) shall breach any term or provision of this Agreement or the Governing Documents. CarolinaMLS may also terminate this Agreement at any time if in CarolinaMLS's sole judgment the Licensee has failed to use the Licensed Content within a reasonable period of time after having been granted access to the Licensed Content. Following termination hereof, this Agreement may be reinstated upon payment by Licensee to CarolinaMLS of any reinstatement fee that may be required to be paid to CarolinaMLS and upon satisfaction of such other conditions as may be determined in the sole and absolute discretion of CarolinaMLS. Notice to terminate by either party shall be effective 24 hours following the giving of actual written notification of termination by one Party to the other. Upon termination of this Agreement, the license granted herein shall similarly terminate. Licensee and Consultant/Vendor shall, within 10 days, return to CarolinaMLS all materials comprising the Licensed Content and shall further destroy or erase, in a manner that prevents unerasure, any non-transportable materials comprising the Licensed Content and shall provide evidence of such satisfactory to CarolinaMLS.

In the event Licensee (or Consultant/Vendor) breaches this Agreement and CarolinaMLS terminates the privileges of the Licensee hereunder, CarolinaMLS

may, in its sole discretion, suspend its performance instead of terminating this Agreement. CarolinaMLS may make this election by notice to Licensee within three days after the initiation of the suspension. Licensee's obligations under this Agreement continue during any period of suspension. In the event of any suspension and termination of this Agreement, Licensee shall make no further use of the Licensed Content or any derivative works thereof (except the portions of the Licensed Content relating to Licensee's own listings) until and unless Licensee's rights under this Agreement are restored by CarolinaMLS.

10. General Provisions

(a) **Governing Law.** This Agreement shall be governed by and interpreted according to the laws of the State of North Carolina.

(b) **Survival of Obligations.** The obligations of Licensee and Consultant/Vendor as described under Sections 3, 4, 8 and 10(f) under this Agreement shall survive the termination or expiration of this Agreement. Those Sections not specifically mentioned in this paragraph do not survive the termination or expiration of this Agreement.

(c) **CarolinaMLS Remedies.**

(i) **Injunctive Relief:** Due to the unique nature of the Licensed Content and Confidential Information, Licensee and Consultant/Vendor each acknowledge and agree that, in the event Licensee and/or Consultant/Vendor breaches or threatens any breach of this Agreement, CarolinaMLS would suffer irreparable harm and that monetary damages would be inadequate to compensate CarolinaMLS for a breach. CarolinaMLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Licensee and/or Consultant/Vendor without showing or proving any actual damages sustained by CarolinaMLS and without posting any bond; and/or

(ii) **Liquidated Damages:** Licensee and Consultant/Vendor each acknowledge that damages suffered by CarolinaMLS by virtue of access to the Licensed Content by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the Licensed Content to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to CarolinaMLS to enter into this Agreement, Licensee agrees that, in the event Licensee, Consultant/Vendor or any other person acting for on behalf of Licensee or Consultant/Vendor discloses any password and/or credentials to access the Licensed Content or discloses the Licensed Content itself to any third

party, regardless of whether such disclosure is intentional or negligent, Licensee shall be liable to CarolinaMLS for liquidated damages in an amount up to \$15,000.00 (at the discretion of CarolinaMLS) for each such disclosure as well as immediate termination of this Agreement.

(d) Disclaimer/Limitation of Liability/Exclusion of Warranties.

(i) CarolinaMLS does not guarantee or warrant the correctness, completeness, currentness, or accuracy of the Licensed Content. The Licensed Content is provided "AS IS", without any express or implied representations or warranty of any kind. CAROLINAMLS EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, AVAILABILITY AND NON-INFRINGEMENT .

(ii) Licensee and Consultant/Vendor agree that CarolinaMLS shall not be liable to Licensee, to Consultant/Vendor or any Authorized User or any of their clients for any consequential, punitive, exemplary, special, direct or indirect damages or loss of any type (including without limitation, lost data, lost business or profits, and lost opportunities), under any legal theory, arising from this Agreement, the content of the Licensed Content, or Licensee's use of, or inability to use the Licensed Content, or the actions or inactions of CarolinaMLS, including but not limited to acts or omissions in procuring, compiling, collecting, interpreting, reporting, communicating, or delivering the Licensed Content.

(iii) Licensee and Consultant/Vendor agree further that CarolinaMLS shall not be liable to Licensee, to Consultant/Vendor or any Authorized User, or any person or entity claiming through Licensee or any Authorized User, by reason of any claim, whether for negligence, breach of warranty, breach of contract, or any other legal theory, arising from CarolinaMLS' association with Licensee or Licensee's or any Authorized User's (or their clients) use of or inability to use the Licensed Content or any derivation or portion thereof.

(e) Dispute Resolution/Venue/Jurisdiction/Attorney's Fees. Any dispute arising hereunder shall be resolved by the CarolinaMLS Executive Committee or its designee(s) (or as otherwise may be required or permitted by the Governing Documents) and the resolution of such dispute shall be binding upon the Parties hereto.

(f) Indemnification.

Licensee and Consultant/Vendor hereby agrees to indemnify and hold CarolinaMLS and the Association and any and all subsidiary and affiliated companies and each of their respective employees, directors, officers, members, licensees, agents and each of their respective successors and assigns (the "Indemnified Parties") from and against any and all lawsuits, proceedings, losses, damages, costs, claims, demands, liabilities and actions, including the payment of all expenses and all attorney's fees and costs, arising out of or connected with any of the following claims, whether such claim is for a direct or indirect liability (each, a "Claim"):

- (i) Any Claim for infringement or misappropriation of any copyright, patent, trade secret or other intellectual or other property right of any kind or nature whatsoever, arising under or in connection with this Agreement based upon acts or omissions of Licensee and/or Consultant/Vendor including, without limitation, any Claim in connection with the use, display, sublicensing or distribution of the Licensed Content, the use of any technology or processes, including computer software programs, computer hardware or business methods in connection with the use, display or distribution of the Licensed Content; and
 - (ii) Any breach of any provision of this Agreement or of any representation or warranty made by Licensee or Consultant/Vendor under this Agreement. The Indemnified Parties shall each have the right to control its, his, her or their own defense and to engage legal counsel acceptable to such Indemnified Party or Indemnified Parties, in its, his, her, or their sole discretion. If any Claim is made or, in CarolinaMLS's reasonable opinion is likely to be made, CarolinaMLS may, upon ten (10) days written notice to Licensee, terminate this Agreement, but such termination shall not relieve Licensee of its indemnification obligations hereunder.
- (g) **Notice.** All notices to be given under this Agreement shall be mailed or electronically mailed, to the Parties at their respective addresses set forth on the signature pages hereof 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.
- (h) **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.
- (i) **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 or 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.

- (j) **Entire Agreement.** This Agreement, together with the Governing Documents as they may change from time to time, comprise the entire agreement and understanding between the Parties with respect to the subject matter hereof and this Agreement supersedes all prior agreements and representations of any type, express, written or implied. This Agreement may be modified only by a written instrument signed by an authorized representative of each Party, provided, however, that the Governing Documents may be revised at any time by CarolinaMLS.
- (k) **Relationship of the Parties.** Relative to each other, the Parties hereto are independent contractors. Neither the Licensee nor the Consultant/Vendor shall be deemed to be the agent, partner, joint venture partner, franchisee, employee, agent or representative of CarolinaMLS and neither shall have any authority to make any agreements or representations on behalf of CarolinaMLS. Each Party shall be solely responsible for payment of compensation, insurance, and taxes of its own employees.
- (l) **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.
- (m) **CarolinaMLS Copyright.** Unless otherwise required by the Governing Documents, all displays of Licensed Content shall include the following notation: " Proprietary Information© (current year) Carolina Multiple Listing Services, Inc. All Rights Reserved. Certain information contained herein is derived from information which is the licensed property of, and copyrighted by, Carolina Multiple Listing Services, Inc."

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT BY THEIR AUTHORIZED REPRESENTATIVE AS OF THE EFFECTIVE DATE.

CAROLINAMLS INFORMATION AND SIGNATURE

Entered into on behalf of CarolinaMLS by _____

Signature _____ Effective Date _____

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

FOR NOTICES AND OPERATIONS:
Stephanie Gresham
stephanie.gresham@carolinahome.com
Phone 704-940-3139

FOR TECHNICAL MATTERS:
Steve Byrd
steve.byrd@carolinahome.com
Phone 704-940-3141

PARTICIPANT LICENSEE INFORMATION AND SIGNATURE

Entered into on behalf of Participant Licensee by: _____
("Licensee")

Signature: _____ Participant MLS ID# _____ Date: _____

Firm/Office Name _____ Firm/Office MLS ID# _____

Firm/Office Address _____ City, State, Zip _____

E-mail _____ Phone _____
(This is the principal means of communication for notices under this agreement.)

CONSULTANT/VENDOR INFORMATION AND SIGNATURE (1)

Entered into on behalf of Consultant/Vendor by: _____
("Consultant/Vendor")

Signature: _____ Title: _____ Date: _____

E-mail _____ Phone _____
(This is the principal means of communication for notices under this agreement.)

CONSULTANT/VENDOR INFORMATION AND SIGNATURE (2) (IF ANY)

Entered into on behalf of Consultant/Vendor by: _____
("Consultant/Vendor")

Signature: _____ Title: _____ Date: _____

E-mail _____ Phone _____
(This is the principal means of communication for notices under this agreement.)

SUBSCRIBER INFORMATION AND SIGNATURE (IF ANY)

By signing below, I understand that I am bound by the terms of the Participant License Agreement and the Policies of the CarolinaMLS, both of which I have reviewed, as they relate to the IDX/VOW programs.

This Agreement is for the following service (check one): IDX VOW

Subscriber Name: _____ Agent MLS ID# _____
(Print Name)

Signature _____ Date _____

E-mail _____ Phone _____
(This is the principal means of communication for notices under this agreement.)

Website Address: _____

****CarolinaMLS requires this signature page and EXHIBIT A: Licensee's Purpose and Specific Use of Licensed Content in order to process the Agreement.****

EXHIBIT A

Licensee's Purpose and Specific Use of Licensed Contents

- Display MLS Content, under the Internet Data Exchange (IDX) program, on _____ website or mobile device.

- Display MLS Content, under the Virtual Office Website (VOW) program, on _____ website.

- Non-Public Access and/or display MLS content via _____
(name of product or service).

- Other _____

EXHIBIT B

Data Licensing Fee Schedule

Types of Fees:

- **Set-Up Fee.** Data Recipient shall pay a non-refundable set-up fee that is due upon execution of this Agreement.
- **License Fee.** Data Recipient shall pay non-refundable annual License Fees as set forth below beginning on the effective date of this Agreement. License fees will be billed to a credit card placed on file with CMLS. Returned or rejected credit card charges are subject to late fees and/or penalties as defined in CarolinaMLS policy.
- A fee applies to every data feed. Dependent on the situation, "Data Recipient" may mean Licensee, Subscriber or Consultant/Vendor. In many cases, this contract will be signed as an authorization for an existing vendor to provide services to a new subscriber or participant. If no additional feed is required, no additional fees will be assessed.

Fee Schedule:

These fees apply per data feed. For example, if a third party requires a separate data feed for each participant whose data is transmitted, these fees would apply per feed; if a participant requires two separate data feeds for two different internal functions, fees would apply to each such feed.

- Set-Up Fee - \$500
- License Fee - \$100 per month, billed quarterly
- Additional Tech Support - \$100 per hour

Additional tech support is defined as technical support exceeding three hours in any calendar quarter billed in increments of 30 minutes.