

Coastal Carolinas Association of REALTORS®, Inc.

License Agreement

This **AGREEMENT** is made and entered into by and between (“**MLS**”) Coastal Carolinas Association of REALTORS®, Inc., with offices at 951 Shine Avenue, Myrtle Beach, SC 29577 and (“**Licensee**”) *

DEFINITIONS

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

Confidential Information: “Confidential Information” means information and material proprietary to the disclosing party, or designated “confidential” by the disclosing party, and not generally known to the public that the receiving party may obtain knowledge of or access to as a result of 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 MLS Data, except to the extent to which this Agreement permits its disclosure; (b) IP addresses, access codes and passwords; (c) any information the disclosing party obtains from any third party that the disclosing party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the disclosing party; and (d) any information designated as confidential or private from time to time by any applicable state, federal, local or other law, regulation or directive. 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 who has lawfully obtained and disclosed it without breaching any confidentiality agreement; or is already known by the receiving party at the time of its disclosure.

MLS Data: Data relating to real estate for sale, previously sold, or listed for sale and data relating to Subscribers (including text, photographs, and all other data formats now known or hereafter invented) entered into the MLS’s databases by Subscribers and MLS.

Data Interface: The transport protocols and data storage formats described in **Exhibit A, Page 4**, if any. If no such description appears in **Exhibit A, Page 4**, then the Data Interface consists of those protocols and formats typically provided by MLS for use by other licensees of the MLS Data, which MLS may modify in its sole discretion from time to time.

Licensed Data: That subset of the MLS Data Licensed for use under this Agreement, which is more fully described in **Exhibit A, Page 4**. If no such description appears in **Exhibit A, Page 4**, then the Licensed Data consists of those records and fields typically provided by MLS for use by other licensees of the MLS Data, which MLS may modify in its sole discretion from time to time.

Licensed Marks: Those trademarks, service marks, word marks, logos and distinctive marks of all other kinds, if any, set out in **Exhibit A, Page 4** as Licensed Marks. If no Licensed Marks appear in **Exhibit A, Page 4**, then there are no Licensed Marks.

Licensed Materials: The Licensed Data and Licensed Marks.

Subscriber: Any real estate broker, appraiser, or real-estate-related business professional that purchases multiple listing services from MLS.

LICENSE

2. MLS grants to Licensee the license to copy, distribute, and display the Licensed Materials, only to the extent necessary to achieve the purposes set out in **Exhibit B, Page 4**, only during the term of this Agreement, and only to the extent permitted by and subject at all times to the terms and restrictions of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. MLS retains all rights not expressly granted herein.

3. The License is strictly for the use and purposes set forth in **Exhibit B, Page 4**.

DATA ACCESS

4. During the term of this Agreement, MLS shall provide to Licensee (a) access to the Licensed Data via the Data Interface; and (b) seven days’ advance notice of changes to the Data Interface.

LICENSEE’S ACKNOWLEDGEMENTS

5. Licensee acknowledges that MLS provides the Licensed Data on an as-is, as-available basis. MLS shall not be liable to Licensee for any claim arising from inaccuracies in the Licensed Data or any failure, whether on the part of Licensee or of MLS, to update the data promptly.

6. Licensee is responsible for any liability or loss of goodwill associated with problems in data integrity, accuracy, or timeliness arising from Licensee's use of the Licensed Data.

7. The listings of some Subscribers may not be included in the Licensed Data if the listing Subscriber's permission is required under MLS's policies before its listings may be distributed to Licensee.

LICENSEE'S OBLIGATIONS

8. Licensee shall display the MLS copyright notice on each display screen, web page (whether Internet or Intranet based), and printout displaying any part of the Licensed Data. The MLS copyright notice may take either of the following two forms: (a) "Copyright 2011 Coastal Carolinas Association of REALTORS®, Inc." or (b) "© 2011 Coastal Carolinas Association of REALTORS®, Inc.". Licensee shall replace "2011" with the current year as of January 1 of each year.

9. Licensee shall employ reasonable measures to prevent "data piracy" and other unauthorized access and use of the Licensed Data; from time to time, MLS may, in its sole discretion, specify particular security measures Licensee must take.

10. Licensee shall not make the Licensed Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement.

11. Licensee shall pay the initial and periodic fees and provide the other consideration set forth in Exhibit D, Page 5, if any, according to the terms set forth therein. Licensee shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

12. Licensee acknowledges that, as among the parties to this Agreement, MLS is sole owner of and possesses all right, title, and interest in all copyrights in the Licensed Data.

13. Licensee shall conform to the supplemental use restrictions set forth in Exhibit C, Page 5, if any.

AUDITS OF COMPLIANCE

14. MLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Licensee to the extent reasonably necessary to ascertain Licensee's compliance with this Agreement (an "Audit"). MLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Licensee's web sites and systems to ensure that Licensed Data is displayed in accordance with the MLS Policies; using all features available to end-users of Licensee's systems that employ the Licensed Data; and posing as consumers to register and test services Licensee makes available to consumers using the Licensed Data. MLS shall pay the costs it incurs, and the out-of-pocket costs Licensee incurs, as part of any Audit; Licensee shall be liable, however, for all costs of any Audit that discloses that Licensee has breached this Agreement.

CONFIDENTIAL INFORMATION

15. Each party shall protect the Confidential Information with the same degree of care it takes to protect its own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if law, court order, or regulation requires such disclosure; provided, however, that party makes commercially reasonable efforts to notify the other party in writing in advance of such disclosure.

16. Within five days after the termination of this Agreement, each party shall return to the other party all Confidential Information and all other materials provided by the other party hereunder. Licensee shall also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of either party, an officer of the other party shall certify in writing that all materials have been returned and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

17. Licensee acknowledges and agrees that MLS may update the terms of this agreement at any time.

18. The term of this Agreement begins on the date that MLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) 30 days after either party's notice to the other of its intent to terminate; (c) 10 days after either party's notice to the other 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. In the event of any suspension or termination of this Agreement, Licensee shall make no further use of the Licensed Data or any derivative works based on it until and unless Licensee's rights under this Agreement are restored.

19. In the event Licensee breaches this Agreement and entitles MLS to terminate under Paragraph **18**, MLS may in its sole discretion suspend its performance instead of terminating this Agreement. MLS may make this election by notice to Licensee within three days after the initiation of the suspension. Licensee's obligations hereunder continue during any period of suspension.

GENERAL PROVISIONS

20. **Applicable law.** The laws of the State of South Carolina shall govern this Agreement and its interpretation. any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against either of the parties in the courts of the State of South Carolina, County of Horry, or, if it has or can acquire jurisdiction, in the United States District Court for the District of South Carolina, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on either party anywhere in the world.

21. **Survival of Obligations.** Paragraphs 1, 10, 12, 15, and 16, and Paragraphs 20 through 32, and all Exhibits to which they refer, shall survive termination or expiration of this Agreement.

22. **MLS's Remedies.** Because of the unique nature of the MLS Data and Confidential Information, Licensee acknowledges that MLS would suffer irreparable harm in the event that Licensee breaches its obligations under this Agreement, and that monetary damages would be inadequate to compensate MLS for a breach. MLS is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any threatened, continuing, or further breach by Licensee or Licensees or any one of them, without showing or proving any actual damages sustained by MLS, and without posting any bond or other security. Licensee acknowledges that damages suffered by MLS from access to the Licensed Data or Confidential Information by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the Licensed Data or Confidential Information to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to MLS to enter into this Agreement, Licensee agrees that in the event Licensee discloses any password to access the Licensed Data or Confidential Information or discloses the Licensed Data or the Confidential Information to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, will result in termination of this Agreement.

23. **Limitation of liability/exclusion of warranties.** **IN NO EVENT SHALL MLS BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; LICENSEE'S SOLE REMEDIES AGAINST MLS HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF THE AMOUNTS LICENSEE HAS PAID TO MLS HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM OR BREACH. MLS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. THIS PARAGRAPH SETS OUT LICENSEE'S EXCLUSIVE REMEDIES, AND UNDER NO CIRCUMSTANCES SHALL LICENSEE BE ENTITLED TO EQUITABLE REMEDIES, EXCEPT IN THE EVENT MLS BREACHES OR THREATENS TO BREACH PARAGRAPH 15. MLS makes no warranty, including those of title, availability, or non-infringement, regarding marks licensed under this Agreement, if any.**

24. **Attorney's fees.** If any party prevails in any action to enforce or interpret this Agreement or any provision hereof, it shall be entitled to its reasonable attorney's fees and costs for such legal action.

25. **Indemnification.** Subject to Paragraph 23, in the event any 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 Indemnifying Party's breach. The Indemnified Parties shall (a) promptly notify the Indemnifying Party in writing 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 such claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

26. **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 the earlier of the date of receipt or three days after mailing or other transmission.

27. **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.

28. **No Assignment.** No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement (each a "Transfer") to any other party without the prior written consent of the other party. Any purported Transfer in contravention of this paragraph is null and void.

29. **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, relating to the same subject matter.

30. **Relationship of the Parties.** The relationship of MLS to the Licensee is that of independent contractor. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of MLS or have any authority to make any agreements or representations on the behalf of MLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

31. **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 a court having jurisdiction over the parties holds any provision of this Agreement invalid or unenforceable, the parties shall negotiate in good faith to replace the invalid or unenforceable provision, if possible, with a valid provision that most closely approximates the intent and economic effect of the invalid provision. If any provision of the limitation of liability, exclusion of warranty, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate unless the parties agree to the contrary.

32. **Precedence.** In the event of any conflict between the terms of the main body of this Agreement and any Exhibit to this Agreement, the terms of the body of the Agreement shall prevail.

Exhibit A: Specification of Licensed Materials and Data Interface

Licensed Data

Standard **RETS** access to Active listing MLS content of the Coastal Carolinas Association of REALTORS®

Licensed Marks

Receiving Party acknowledges and agrees that CCAR will retain all right, title, and interest in and to its trademarks, service marks, and logos ("Marks") worldwide. Subject to the terms and conditions of this Agreement, CCAR hereby grants to Firm a nonexclusive, nontransferable, worldwide license to use the Marks in connection with the CCAR content during the term of this Agreement, provided that such use is in accordance with the then-current trademark guidelines of CCAR. CCAR may modify the Marks at any time upon written notice to the Real Estate Firm and the Website/Technical Consultant (if applicable). The Real Estate Firm and the Website/Technical Consultant will not form combination marks with the Marks or modify the Marks without written CCAR approval. The Real Estate Firm and the Website/Technical Consultant hereby assigns to CCAR all right, title and interest in the Marks, together with the goodwill attaching thereto, that may inure to it in connection with this Agreement or from its use of the Marks hereunder. The Receiving Party acknowledges and agrees that title to the Confidential Information remains at all times with CCAR including all copyright rights and other intellectual property or proprietary rights therein (collectively, the "Intellectual Property Rights").

Receiving Party agrees to display CCAR's copyright notice, disclosures and identifying logo (mark) on each page where CCAR content is displayed. Receiving Party further agrees to comply with additional requirements for notifications and logo use contained in the IDX Subscriber Rules.

Data Interface

Access to CCAR MLS will be provided via a **RETS** interface.

Exhibit B: Licensee's Purpose and Use of Licensed Materials

* shall have access to the Licensed Materials for use solely in connection with Subscribers' use of their software while the Standard Non-Participant License Agreement is in effect. Subscribers may routinely use the Software in conjunction with the Licensed Materials and various related details.

The Licensed Materials shall be used for the purposes of:

IDX compliant website development and hosting for a member of the CCAR MLS, using MLS content to populate the property search function of the site specifically for *

Use of this account to provide services to a company other than the one specified in this contract is prohibited

Exhibit C: Supplemental Restrictions on Licensee's Use of Licensed Materials

All parties granted access to the Coastal Carolinas Association of REALTORS® MLS content will receive a copy of the MLS Rules and Regulations / IDX Policy and VOW policy for compliance purposes.

Website/Technical Consultant is specifically authorized access to the MLS content as necessary to provide assistance to the following CCAR member office only: *

Use of Licensed Marks

Licensee must display the Licensed Marks set out in Exhibit A, Page 4, if any, in conjunction with the Licensed Data in any product or service Licensee delivers that incorporates the Licensed Data. Each such display shall conform to these requirements:

Licensee may use the Licensed Marks only during the term of this Agreement.

Licensee may use the Licensed Marks only on products and services incorporating the Licensed Data or a portion of it; on promotional materials directly related to such products; and not on any other material, including without limitation business cards, letterheads, office or yard signs, and other advertising.

If at any time this Agreement terminates or is suspended by MLS according to its terms, Licensee will immediately and thenceforth eliminate the Licensed Marks from, and refrain from using the Licensed Marks in, any print or electronic publication or material, including web sites and brochures.

It is vitally important to the preservation of the Licensed Marks that Subscribers and the public consistently recognize the Licensed Marks as identifiers of MLS as a source of Licensed Data. To assure that the Licensed Marks are not used inadvertently and improperly, Licensee may use the Licensed Marks only in a context in which they will be understood by the public to denote MLS as the source of the Licensed Data.

The Licensee must use the Licensed Marks in the exact style and form shown in Exhibit A, Page 4. Licensee shall not alter any of the Licensed Marks in any way during reproduction, except that Licensee may alter the size of a Licensed Mark, provided the aspect ratio remains the same and each element of the Licensed Mark remains legible.

Without limiting the generality of the previous paragraph, Licensee shall **never** make any of the following uses of the Licensed Marks:

- Redraw, round the corners, reshape, trace, tilt, intersect, photographically alter or otherwise distort the Licensed Marks.
- Use any of the Licensed Marks as part of a company or individual name.
- Superimpose any of the Licensed Marks over any graphic pattern or design.
- Combine any of the Licensed Marks with any other symbol or device.
- Outline or frame any of the Licensed Marks.

Licensee may not use any of the Marks or any portion of them as part of any domain name or web site name of Licensee. Licensee may not use any of the Mark as a hypertext link; as such a use can suggest an endorsement or recommendation of the linked site by MLS. The only exception is to establish a link to MLS's web site.

Exhibit D: Fees and Consideration

Fee as consideration for the license granted herein.

Account Type	One time setup fee	Quantity	Monthly Charge
RETS	\$	1	\$

A monthly billing schedule for * will be setup by the Coastal Carolinas Association of REALTORS®.

Licensee agrees to make payment in accordance with current Association policies on payment of financial obligations. Licensee acknowledges and agrees that CCAR may modify the monthly license fee.

In consideration of the mutual covenants set forth in this Agreement, the parties affirm and adopt this Agreement by setting their signatures below.

LICENSEE

Agent Signature: _____ **Date:** _____

Agent Name: _____

Broker Signature: _____ **Date:** _____

Broker Name: _____

Real Estate Office Name: _____

Company Mailing Address: _____

Accessing IP Address: _____

Name of Company Representative: _____

Email address of company representative: _____

Name and email address additional contacts (optional)

IDX Representative Signature: _____ **Date:** _____

IDX Representative Name: _____

IDX Service Provider Company Name: _____

Company Mailing Address: _____

Accessing IP Address: _____

Name of Company Representative: _____

Email address of company representative: _____

Name and email address additional contacts (optional)

MLS

MLS Signature: _____ **Date:** _____ (effective date of this Agreement)

Coastal Carolinas Association of REALTORS®, Inc.

MLS Representative Name: _____