



Dear REALTOR®:

Enclosed is a contract for IDX (Internet Data Display) of MLS listing information for your website.

READ the agreement. On the last page of the agreement (page 6), the broker of record needs to complete the left hand side and sign. If you are not the broker of record, you will need to complete the right hand side of the last page and sign.

**IDX RETs / WebAPI Vendor Account**

The Association charges an annual service fee of \$100 (RETS). In addition, you will pay a fee for setting up and maintaining your IDX, and that fee will vary according to the vendor. You will pay that fee directly to that vendor. Your account cannot be established with another vendor until you do the following:

1. Submit the signed final agreement page
2. Submit a completed form called: "Consultant Information and Signature" page.  
Your vendor must sign this form!
3. Submit a check payable to OBAR for \$100 (RETS accounts).

**MAIL FORMS AND CHECKS TO:**

Outer Banks Association of REALTORS®  
Attention: MLS Director  
201 West Eighth Street  
Nags Head, NC 27959

01/16/2024

## IDX AGREEMENT

1. This **AGREEMENT** is made and entered into by and among the Outer Banks Association of REALTORS<sup>®</sup>, Inc., as owner of a Multiple Listing Service (hereinafter the "**MLS**"), the Real Estate Firm and Real Estate Agent whose name(s) and contact information appear on the signature page of this Agreement and the companies/individuals whose names and contact information appear on the signature pages of this Agreement designated "Consultant Information and Signature" (jointly and severally "**the Consultants**"), if any.

## RECITALS

2. Firm/Agent wishes to obtain, and the MLS wishes to provide data for Firm's or Agent's web site, including the listing data of other real estate brokerages participating in the MLS. Firm/agent may wish to engage Consultants, i.e.' other companies or individuals who are not employees of Firm/agent, to perform data downloading, manipulation, formatting, or framing as well as programming and web design.
3. Agent cannot participate in Internet Data Exchange (IDX) without authorization from the Designated REALTOR<sup>®</sup>.

## DEFINITIONS

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

**Affiliated Association:** Any Association or Board of REALTORS<sup>®</sup> that purchases Multiple Listing Services from the MLS for resale to its members.

**Agent:** The real estate licensee who is affiliated with a firm that holds membership in the Outer Banks Association of REALTORS<sup>®</sup> Multiple Listing Service.

**Consultant:** Any party retained by the Outer Banks Association of REALTORS<sup>®</sup>, Inc. Multiple Listing Service, or by any of its member Firms or affiliated Agents for the purpose of facilitating the display of IDX Data on their web sites.

**Firm:** The real estate brokerage firm or appraisal company that holds membership in the Outer Banks Association of REALTORS<sup>®</sup>, Inc. Multiple Listing Service.

**Internet Data Exchange Database or IDX Data:** The current aggregate compilation of all active exclusive right to sell listings of all Internet Data Exchange Subscribers except those listings where the property seller has opted out of Internet publication by so indicating on the listing contract. The Outer Banks Association of REALTORS<sup>®</sup>, Inc. owns the IDX Data.

**Internet Data Exchange Subscriber or IDX Subscriber:** A Subscriber who gives permission to other Subscribers to display its active listings on their web sites in return for the other subscriber's permission to advertise their listings on its web site.

**Multiple Listing Service:** A means of collecting and disseminating information about real property that is or has been for sale, including a means for real estate brokers to make offers of cooperation and compensation to each other. 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 the MLS as amended from time to time, and any operating policies relating to the IDX Data and IDX Subscribers promulgated by the MLS.

**Subscriber:** Any real estate broker, appraiser, or other real estate related business professional that purchases Multiple Listing Services from the MLS.

**Subscriber Data:** Data relating to real estate for sale, previously sold or listed for sale, including the Internet Data Exchange Database, and data relating to Subscribers entered into the MLS System by Subscribers and the MLS. The Outer Banks Association of REALTORS®, Inc. owns the Subscriber Data.

### **MLS'S OBLIGATIONS**

5. During the term of this Agreement, the MLS grants to Firm/Agent a license to
  - a. display the IDX Data on Firm's/Agent's web site, and
  - b. make copies of the IDX Data to the extent necessary to deliver the IDX Data to consumers on Firm's/Agent's web site.
6. During the term of this Agreement, the MLS agrees to provide to Firm/Agent and their Consultants:
  - a. access to the IDX Data under the same terms and conditions the MLS 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/AGENT'S OBLIGATIONS**

7. Firm/Agent shall comply with the Rules at all times.
8. Firm/Agent acknowledges the Association's ownership of the copyrights in the Subscriber Data and the IDX Data.
9. Firm/Agent shall comply with the requirements relating to Confidential Information set forth below.

10. In the event that Firm/Agent desires to make the IDX Data or the Confidential Information available to any third party, Firm/Agent agrees to require such third party to execute this Agreement and shall be deemed to be a Consultant.
11. If the MLS notifies Firm/Agent of a breach of the Rules or this Agreement and Firm/Agent does not cure such breach within five (5) business days, Firm/Agent agrees that the MLS will, among other rights and remedies, levy a fine of \$50 for each day that the violation is not corrected. The MLS may also seek cure from the Consultants, or any one of them. Notice from MLS to Consultant will not stay any ongoing fines.
12. Firm/Agent shall notify the MLS within five (5) business days of any change to the information relating to Firm/Agent on the signature page below.

### **CONSULTANTS' OBLIGATIONS**

13. If the MLS notifies Firm/Agent of a breach of the Rules or this Agreement and Firm/Agent does not cure such breach within five (5) business days, the MLS may contact Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with the MLS and act immediately upon notification by the MLS of an uncured breach by Firm/Agent.
14. Each Consultant acknowledges the MLS's ownership of the copyrights in the Subscriber Data and the IDX Data.
15. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
16. Each Consultant shall notify the MLS within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page below.

### **CONFIDENTIAL INFORMATION**

17. **"Confidential Information"** is information or material proprietary to the MLS or designated "confidential" by the MLS and not generally known to the public, that Firm/agent 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, electronic or other form);
  - a. all Subscriber Data, except the IDX Data to the extent to which this Agreement and the Rules permit its disclosure;
  - b. all documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;
  - c. software, source code, object code, diagrams flow charts;
  - d. techniques, procedures;
  - e. internet Provider addresses, access codes and passwords; and

- f. any information that the MLS obtains from any third party that the MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by the MLS.
18. **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 the MLS, to the extent of such consent;
  - d. becomes known to the Receiving Party from a source other than the MLS 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 the MLS; or
  - e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to the MLS prompt notice of any such order.
19. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with the MLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by the MLS.
20. **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.
21. **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 the MLS 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.
22. **Restrictions on Use – No Third Party Access.** Only the Receiving Party's own employees will access the Confidential Information. The Receiving Party will not provide access to the Confidential Information to third parties, including consultants or independent contractors, without prior written consent from the MLS. If the MLS 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.
23. **Restrictions on Use – Location restriction.** The Receiving Party will not remove the Confidential Information from its principal place of business without the MLS's prior written consent. In the event the MLS grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.

24. **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 the MLS, the Receiving Party will return to the MLS all Confidential Information and all other materials provided by the MLS to the Receiving Party. The Receiving Party will also erase, delete, or destroy any Confidential Information stored on magnetic media on other computer storage, including system backups. Upon the request of the MLS, an officer of the Receiving Party will certify in writing that all materials have been returned to the MLS and all magnetic or computer data has been destroyed.

### **TERM AND TERMINATION**

25. The term of this Agreement begins on the "Effective Date" set forth on the "MLS Information and Signature Page" below. The MLS has the right to at any time and at its sole discretion to terminate this Agreement. This Agreement shall terminate upon the occurrence of any of the following events:
- a. The MLS's notice to Firm/Agent that this Agreement is terminated.
  - b. Firm's/Agent's notice to the MLS that it no longer intends to display IDX Data on its web site.
  - c. Termination of Firm's/Agent's privileges as a Subscriber by the MLS.

### **GENERAL PROVISIONS**

26. **Survival of Obligations.** The obligations of Firm/Agent set forth under "Firm's/Agent's Obligations" above and the obligations of Consultants under "Consultants' Obligations" above and under Confidential Information shall survive the termination or expiration of this Agreement.
27. **MLS's Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Firm/agent and Consultants acknowledge that the MLS 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 the MLS for a breach. The MLS 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/Agent or Consultants or any one of them, without showing or proving any actual damages sustained by the MLS.
28. **Attorney's fees.** If the MLS 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 the MLS's reasonable attorney's fees and costs for such legal action.
29. **Limitation of Liability.** The MLS's liability to Firm/Agent and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by Firm/Agent and Consultants to the MLS, if any, under this Agreement. Firm's/Agent's and Consultants' only other remedy shall be termination of this Agreement. The MLS shall not be liable for any incidental or consequential damages under any circumstances, even if the MLS has been advised of the possibility of such damages. The MLS shall have no liability for inaccuracies in the IDX Data or the Subscriber Data.

- 30 **Notice.** All notices to be given under this Agreement may 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.
- 31 **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.
- 32 **No Assignment.** Neither Firm/agent 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 the MLS.
- 33 **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.
- 34 **Applicable law.** This Agreement is governed by and to be enforced according to the laws of the State of North Carolina. Jurisdiction and venue are agreed to be in Dare County, North Carolina.

<b>Designated Realtor for Firm</b>	<b>REALTOR®/Agent Signature</b>
_____ Print Name	_____ Print Name
_____ Print Firm Name	_____ Print Firm Name
_____ Mailing Address	_____ Mailing Address
_____ City, State, Zip	_____ City, State, Zip
_____ E-mail	_____ Telephone
_____ Telephone	_____ e-mail
_____ Designated REALTOR® Signature	_____ Website (Required)
_____ Date	_____ Date
	_____ Agent Signature
	_____

Attachment 1

**NOTE TO FIRM/AGENT:**

Reproduce this page for each individual company for which you intend to provide access to the IDX Data under this Agreement.

## Consultant Information and Signature

RETS / WebAPI Account

**Consultant** (company or individual) Name: \_\_\_\_\_

**E-mail address:** \_\_\_\_\_

**(CONSULTANT *must* supply an e-mail address here.** This address will be the MLS's principal means of communicating with the consultant for notices under this Agreement.)

**Consultant Street Address:** \_\_\_\_\_

**Consultant City, ST, ZIP:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

REALTOR® NAME YOU ARE WORKING FOR: \_\_\_\_\_

**WEB SITE (URL) ADDRESS WHERE IDX WILL BE DISPLAYED (Required):**

\_\_\_\_\_

**Entered into on behalf of Consultant by:**

\_\_\_\_\_  
Signature of Consultant

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**NOTE TO CONSULTANT: Be sure to enter into this agreement with every Firm and/or agent for whom you provide services. If you sign only one form and that REALTORS® access to the IDX Data is terminated; you will not be able to get the data for your other clients.**