

The Coastal Carolinas Association of REALTORS®
2005 MULTIPLE LISTING Rules and Regulations
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COASTAL CAROLINAS ASSOCIATION OF REALTORS, INC.
MULTIPLE LISTING MLS RULES AND REGULATIONS

LISTING PROCEDURES

SECTION 1.1 LISTING PROCEDURES: Listing of real or personal property of the following types which are listed subject to a real estate broker's license, and are located within the territorial jurisdiction of the Multiple Listing MLS (MLS), and are taken by Participants on (*Indicate form(s) of listing accepted by the MLS – See Notes 1 & 2*) shall be entered into MLS system with three (3) business days after all necessary signatures of seller(s) have been obtained:

- (a) Single family home for sale or exchange.
- (b) Single family condominium or townhouse for sale or exchange.
- (c) Vacant lots and acreage for sale or exchange.
- (d) Two-family, three-family, and four family residential buildings for sale or exchange.

NOTE 1: The Multiple Listing MLS shall not require a Participant to submit listings on a form other than the form the Participant individually chooses to utilize provided the listing is of a type accepted by the MLS, although a "Property Data Form" may be required as approved by the Multiple Listing MLS. However, the Multiple Listing MLS, through its legal counsel:

1. May reserve the right to refuse to accept a listing form that fails to adequately protect the interest of the public and the Participants.
2. Assure that no listing form filed with the Multiple Listing MLS establishes, directly or indirectly, any contractual relationship between the Multiple Listing MLS and the client (buyer or seller).

The Multiple Listing MLS shall accept exclusive right to sell listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer cooperation and compensation to the other Participants of the Multiple Listing MLS acting as subagents, buyer agents, or both.

The listing agreement must include the seller's authorization to submit the agreement to the Multiple Listing MLS.

3. The different types of listing agreement(s) include:
 - (a) Exclusive Right to Sell
 - (b) Exclusive Agency
 - (c) Open
 - (d) Net

The MLS may not accept net listings because (1) they are deemed unethical and, in most states, illegal. Open listings are not accepted except where they are required by law because the inherent nature of an open listing is such as to usually not include the authority to cooperate and compensate other brokers and inherently provides a disincentive for cooperation.

The exclusive right to sell listing is the conventional form of listing submitted to the Multiple Listing MLS in that the seller authorizes the listing broker to cooperate with and to compensate other brokers.

The exclusive agency listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves to the seller the general right to sell the property on an unlimited or restricted basis. Exclusive agency listings and exclusive right to sell listings with named prospects exempted should be clearly distinguished by a simple designation such as a code or symbol for exclusive right to sell listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell listings with no named prospects exempted. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right to sell listings with prospect reservations.

Note 2: A Multiple Listing MLS does not regulate the type of listings its Members may take. This does not mean that a Multiple Listing MLS must accept every type of listing. The Multiple Listing MLS shall decline to accept open listings (except where acceptance is required by law) and net listings and it may limit its MLS to listings of certain kinds of property. But, if it chooses to limit the kind of listings it will accept, it shall leave its Members free to accept such listings to be handled outside the Multiple Listing MLS.

Note 3: A Multiple Listing MLS may, as matter of local option, accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings.

TYPES OF PROPERTIES: The following are some of the types of properties that may be published through the MLS, including types described in the preceding paragraph that are required to be filed with the MLS and other types that may be filed with the MLS at the Participant's option provided, however, that any listing submitted is entered into within the scope of the Participant's licensure as a real estate broker:

1. Residential
2. Condominium and Townhouses
3. Subdivided Vacant Lot
4. Land and Ranch
5. Business Opportunity
6. Motel-Hotel
7. Mobile Homes
8. Mobile Home Parks
9. Commercial Income
10. Industrial

SECTION 1.2 LISTINGS SUBJECT TO RULES AND REGULATIONS OF MLS: Any listing taken on a contract to be filed with the Multiple Listing MLS is subject to the Rules and Regulations of the MLS upon signature of the seller(s).

SECTION 1.3 DETAIL ON LISTINGS FILED WITH THE MLS: A Listing Agreement or Property Data Form, when filed with the Multiple Listing MLS by the listing broker, shall be completed in every detail which is ascertainable as specified on the Property Data Form. Listings must be filed with the MLS within 72 hours (excluding Holidays and weekends).

A primary photo must accompany a listing when entered into the MLS on all classes with the exception of the Land property class. A primary photo must be the front view of the property and

cannot include any for sale signs, agent or office logos, or any other form of contact information. Failure to comply with the above statements will result in an automatic \$50.00 fine and possible deletion of the listing.

SECTION 1.4 EXEMPTED LISTINGS: If the seller refuses to permit the listing to be disseminated by the MLS, the REALTOR may then take the listing (“office exclusive”) and such listing agreement with exemption shall be filed with the MLS but not disseminated by the Participants. Filing of the listing must be accompanied by certification signed by the seller that he/she does not desire the listing to be disseminated by the MLS. However, all listings regardless of exemption must be entered in the MLS within 72 hours of the closing.

SECTION 1.5 CHANGE OF STATUS OF LISTING: Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller and shall be filed with the MLS within seventy-two (72) hours (except weekends, holidays, and Federal holidays) after the authorized change is received by the listing broker.

SECTION 1.6 WITHDRAWAL OF LISTING PRIOR TO EXPIRATION: Listing of property may be withdrawn from the MLS by the listing broker before the expiration date of the listing agreement provided notice is filed with the listing office. Once mutual agreement is reached between the seller and the listing broker, listing should be withdrawn immediately.

Sellers do not have the unilateral right to require an MLS to withdraw a listing without the listing broker's concurrence. However, when a seller(s) can document that his exclusive relationship with the listing broker has been terminated, the MLS may remove the listing at the request of the seller.

SECTION 1.7 CONTINGENCIES APPLICABLE TO LISTINGS: Any contingency or conditions of any term in a listing shall be made known to the Participants.

SECTION 1.8 LISTING PRICE SPECIFIED: The full gross listing price should be stated in the contract.

SECTION 1.9 LISTING MULTIPLE UNIT PROPERTIES: All properties which are to be sold or which may be sold separately must be indicated individually in the MLS and on the Property Data Form. When part of a listed property has been sold, proper notification should be given to the MLS within seventy-two (72) hours (except weekends, holidays, and Federal holidays).

SECTION 1.10 NO CONTROL OF COMMISSION RATES OR FEES CHARGED BY PARTICIPANTS: The Multiple Listing MLS shall not fix, control, recommend, suggest, or maintain commission rates or fees for MLSs to be rendered by Participants. Further, the Multiple Listing MLS shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating Participants or between Participants and Non-Participants.

SECTION 1.11 EXPIRATION OF LISTINGS: Listings entered in the MLS will automatically expire on the expiration date. Extensions and renewals of listings must be signed by the seller(s) and filed with the listing office.

SECTION 1.12 TERMINATION DATE ON LISTINGS: Listings filed with the MLS shall bear a definite and final termination date as negotiated between the listing broker and the seller.

SECTION 1.13 JURISDICTION: Only listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted to the MLS. Listings of property located outside the MLS's jurisdiction will be accepted if submitted voluntarily by a Participant, but cannot be required by the MLS.

SECTION 1.14 LISTINGS OF SUSPENDED PARTICIPANTS: When a Participant of the MLS is suspended from the MLS for failing to abide by a membership duty (i.e. violation of the Code of Ethics, Association Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligation except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the suspended Participant shall, at the MLS's option, be retained in the MLS until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the Association (except where MLS participation without Association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, an Association's MLS is not obligated to provide MLS services, including continued inclusion of the suspended Participant's listings in the MLS compilation of current listing information. Prior to any removal of a suspended Participant's listings from the MLS, the suspended Participant should be advised in writing of the intended removal so that the suspended Participant may advise his/her clients.

SECTION 1.15 LISTINGS OF EXPELLED PARTICIPANTS: When a Participant of the MLS is expelled from the MLS for failing to abide by a membership duty (i.e. violation of the Code of Ethics, Association's Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges) all listings currently filed with the MLS shall, at the MLS's option, be retained in the MLS until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the Association (except where MLS participation without the Association's membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees or charges, an Association's MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings from the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised in writing of the intended removal so that the expelled Participant may advise his/her clients.

SECTION 1.16 LISTINGS OF RESIGNED PARTICIPANTS: When a Participant resigns from the MLS; the MLS is not obligated to provide service, including continued inclusion of the resigned Participant's listings in the MLS compilation of current listing information. Prior to any removal of a resigned Participant's listings from the MLS, the resigned Participant should be advised in writing of the intended removal so that the resigned Participant may advise his/her clients.

SECTION 1.17 NEW HOME COMMUNITY PHOTO AND LISTING RULES AND REGULATIONS: At the time of contract for the type of home to be built on a specific lot, that listing must be entered into the MLS system with a status of Pending. An UNDER CONSTRUCTION logo must be used as a primary photo until a certificate of occupancy is issued. At that time, the logo must be replaced with a photo of the actual home. Any changes to the original contract must be entered at the time of closing. Any additions and/or upgrades that cannot be defined elsewhere in the listing must be entered into the Remarks section.

II. SELLING PROCEDURES

SECTION 2.1 SHOWINGS AND NEGOTIATIONS: Appointments for showings and negotiations with the seller for the purchase of listed property filed with the MLS shall be conducted through the listing broker except under the following circumstances:

- (a) The listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or
- (b) After reasonable effort, the cooperating broker cannot contact the listing broker or his representative. However, the listing broker, at his option, may preclude such direct negotiations by cooperating brokers.

SECTION 2.2 PRESENTATION OF OFFERS: The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so.

SECTION 2.3 SUBMISSION OF WRITTEN OFFERS: The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer.

SECTION 2.4 RIGHT OF COOPERATING BROKER IN PRESENTATION OF OFFER: The cooperating broker (subagent or buyer agent) or his representative shall have the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

SECTION 2.5 RIGHT OF LISTING BROKER IN PRESENTATION OF COUNTER-OFFER: The listing broker or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except where the cooperating broker is a subagent). However, if the purchaser or lessee gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser's or lessee's written instructions.

SECTION 2.6 REPORTING SALES TO THE MLS: Sales shall be reported within seventy-two (72) hours in the MLS by the listing broker unless the negotiations are carried on under Section 2 (a) or (b) hereof in which case the cooperating broker shall report, sending a copy to the listing broker within seventy-two (72) hours after acceptance (except weekends, holidays, and Federal holidays).

NOTE: The listing agreement of a property filed with the MLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listing with the MLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information

including selling price to the MLS upon sale of the property. If deemed desirable by the MLS to publish sales information prior to final closing (settlement) of sales transaction, the listing agreement should also include a provision expressly granting the listing broker the right to authorize dissemination of this information by the MLS to its Participants.

SECTION 2.7 REPORTING RESOLUTIONS OF CONTINGENCIES: The listing broker shall report to the MLS within seventy-two (72) hours that a contingency on file with the MLS has been fulfilled or renewed, or the agreement cancelled.

SECTION 2.8 ADVERTISING OF LISTING FILED WITH THE MLS: A listing shall not be advertised by any Participant, other than the listing broker, without the prior consent of the listing broker.

SECTION 2.9 REPORTING CANCELLATION OF PENDING SALE: The listing broker shall report within seventy-two (72) hours to the MLS the cancellation of any pending sale and the listing shall be reinstated immediately (except weekends, holidays, and Federal holidays).

III. REFUSAL TO SELL

SECTION 3.1 REFUSAL TO SELL: If the seller of any property listed in the MLS refuses to accept a written offer satisfying the terms and conditions stated in the listing, such change shall be made within seventy-two (72) hours in the MLS and transmitted to all Participants (except weekends, holidays, and Federal holidays).

IV. PROHIBITIONS

SECTION 4.1 MISUSE OF REMARKS SECTION: Participants may not use the “Public Remarks” section in a listing submitted to the MLS for contact information, website information, financial information or any language that may be considered private or harmful.

SECTION 4.2 INFORMATION FOR PARTICIPANTS ONLY: Any listing filed with the MLS shall not be made available to any non-participant without prior consent of the listing broker.

SECTION 4.3 “FOR SALE” SIGNS: Only the “For Sale” sign of the listing broker may be placed on a property.

SECTION 4.4 “SOLD” SIGNS: Prior to closing, only the “Sold” sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

SECTION 4.5 SOLICITATION OF LISTING FILED WITH THE MLS: Participants shall not solicit a listing on property filed with the MLS unless such solicitation is consistent with Article 16 of the REALTORS Code of Ethics, its Standards of Practice and its Case Interpretations.

NOTE: This section is to be construed in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This Section is intended to encourage sellers to permit their properties to be filed with the MLS by protecting them from being solicited, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration.

Without such protection, a seller could receive hundreds of calls, communications, and visits from brokers and salespersons that have been made aware through MLS filing of the date the listing will expire and desire to substitute themselves for the present broker.

The section is also intended to encourage brokers to participate in the MLS by assuring them that other Participants will not attempt to persuade the seller to breach the listing agreement or to interfere with their attempts to market the property. Absent the protection afforded by this Section, listing brokers would be most reluctant to generally disclose the identity of the seller or the availability of the property to other brokers.

This Section does not preclude solicitation of listings under the circumstances otherwise recognized by the Standards of Practice related to Article 16 of the Code of Ethics.

V. DIVISION OF COMMISSIONS

SECTION 5.1 COOPERATIVE COMPENSATION SPECIFIED ON EACH LISTING: The listing broker shall specify, on each listing filed with the MLS, the compensation offered to other MLS Participants for their services in the sale of such listing.

Such offers are unconditional* except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease) or as otherwise provided for in this rule. The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.

NOTE 1: In filing a property with the MLS of the Association of REALTORS, the Participant of the MLS is making a blanket unilateral offer of cooperation to the other MLS Participants, and shall therefore specify on each listing filed with the MLS, the compensation being offered to the other MLS Participants. Specifying the compensation on each listing is necessary, because the cooperating broker has the right to know what his compensation shall be prior to his endeavor to sell. *

The listing broker retains the right to determine the amount of compensation offered to subagents and to buyer agents, which may be the same or different.

This shall not preclude the listing broker offering any MLS Participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of his producing an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participants in the MLS. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

*While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional (except where MLS rules create specific exceptions as specified elsewhere in this policy statement), a listing broker's obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.

The Association MLS shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his listing contract, and the Association's MLS shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a Participant. The Association's MLS shall not disclose in any way the total commission negotiated between the seller and the listing broker.

The compensation specified on listings filed with the MLS shall appear in one of two forms. The essential and appropriate requirement by the Association's Multiple Listing MLS is that the information to be published shall clearly inform the Participants as to the compensation they will receive in cooperative transactions unless advised otherwise by the listing broker in writing in advance. The compensation specified on listings published by the MLS shall be shown in one of the following forms:

1. By showing a percentage of the gross selling price.
2. By showing a definite dollar amount.

Multiple Listing Services shall not publish listings that do not include an offer of compensation expressed as a percentage of the gross selling price or as a definite dollar amount, nor shall they include general invitations by listing brokers to other Participants to discuss terms and conditions of possible cooperative relationships.

NOTE 2. Multiple Listing Services, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval or to lender approval; and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court or by a lender. In such instances, the fact that the gross commission is subject to court or to lender approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they produce an offer that ultimately results in a successful transaction.

NOTE 3. The listing broker may, from time to time, adjust the compensation offered to other MLS Participants for their services with respect to any listing by advance published notice to the MLS so that all Participants will be advised.

NOTE 4. The MLS shall make no rule on the division of commissions between Participants and Non-Participants. This should remain solely the responsibility of the listing broker.

SECTION 5.2 PARTICIPANT AS PRINCIPAL: If a Participant or any licensee affiliated with a Participant has any interest in property, the listing of which is to be disseminated through the MLS, that a person shall disclose that interest when the listing is filed with the MLS and such information shall be disseminated to all MLS Participants.

SECTION 5.3 PARTICIPANT AS PURCHASER: If a Participant or any licensee (including licensed and certified appraisers) affiliated with a Participant wishes to acquire an interest in property listed with another Participant, such contemplated interest shall be disclosed in writing to the listing broker no later than the time an offer to purchase is submitted to the listing broker.

SECTION 5.3 DUAL OR VARIABLE RATE COMMISSION ARRANGEMENTS: The existence of a dual or variable rate commission arrangement (i.e. one in which the seller agrees to pay a specified commission if the property is sold by the listing broker without assistance and a different commission if the sale results through the efforts of a cooperating broker, or one in which the seller agrees to pay a specified commission if the property is sold by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale results through the efforts of the seller) shall be disclosed by the listing broker by a key, code or symbol as required by the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction, or alternatively in a sale that results through the efforts of the seller. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

VI. MLS CHARGES AND FINES

SECTION 6.1 MLS FEES AND CHARGES: The following MLS charges for operation of the MLS are in effect to defray the costs of the MLS and are subject to change from time to time in the manner prescribed:

- (a) **INITIAL PARTICIPATION FEE:** An applicant for participation in the MLS shall pay an application fee of \$500 with such fee to accompany the application and is a non-refundable fee.
- (b) **RECURRING PARTICIPATION FEE:** The monthly participation fee of each Participant shall be an amount recommended by the MLS Committee and approved by the Officers and Directors. This amount will be times each salesperson and licensed or certified appraiser who has access to and use of the MLSs, whether licensed as broker, sales licensee or licensed or certified appraiser, who is employed by or affiliated as an independent contractor with such Participant. Payment of such fees shall be made on or before the first day of the month. Users will be billed \$10 for each listing that the Association Office enters into the MLS.
- (c) **FINES:** A fine will be assessed to those Participants who do not submit listings, sales, pending or changes, or corrections to the MLS in accordance with the Rules and Regulations of the MLS as follows:
First Notice: A fifty dollar (\$50.00) automatic fine per listing.
Second Notice: An additional fifty dollars (\$50.00) will be assessed against those participants who have not made corrections to their listing(s) within the allotted time.

Third and Final Notice: If listing(s) has not been corrected in the allotted time per the second notice, MLS service may be suspended for the entire office until the correction(s) are made per the discretion of the MLS Chair. (For specific violations and fines, see the MLS Violations and Fines.)

The penalty for unauthorized access to the MLS by non-MLS members or members exempted by waiver for the purpose of listing, selling, and otherwise using the MLS system shall be fined five hundred (\$500) dollars for each offense. Enrollment in the system and monthly charges will automatically begin effective with the date of the first infraction.

- (d) **LOCK BOX FEE:** The fee for each lock box shall be at cost plus 10%, which shall accompany the request.
- (e) **LOCK BOX KEY FEE:** An initial deposit of \$100 for the display key plus a non refundable \$50 activation fee. Deposits for replacement keys reported stolen shall be the current cost of a new key accompanied by a cop The MLS must be notified immediately of all lost keys. If, at the time of inventory, a key is unaccounted for, or if a key holder refuses or is unable to demonstrate that the key is within their physical control, then the key will be considered unaccounted for and any funds on deposit will be forfeited to the Association.
- (f) **MISUSE OF LOCK BOX FEE:** Use of the lock box key must comply with the showing instructions as specified in the MLS listing. Any violation may result in the loss of lock box key privileges as well as a fine to be determined by the MLS Chair.

VII. COMPLIANCE WITH RULES

SECTION 7.1 COMPLIANCE WITH RULES: The following action may be taken for non-compliance with the rules:

- (a) For failure to pay any MLS charge, fee, or fine within ninety (90) days of the date due, and provided that at least ten (10) days notice has been given, the MLS shall be suspended until charges, fees, or fines are paid in full. Upon the first occurrence, any MLS Participant who's MLS has been suspended must pay a \$100 re-instatement fee plus any charges, fees, dues or fines that are past due. Upon the second occurrence, the re-instatement fee will be \$200.00. Further action will be taken in accord with Article X, Section 5 of the Bylaws of the Association.
- (b) For failure to comply with any other rule, the provisions of Sections 9 and 9.1 shall apply.

SECTION 7.2 APPLICABILITY OF RULES TO USERS AND/OR SUBSCRIBERS: Non-principal brokers, sales licensees, appraisers, and others authorized to have access to information published by the MLS are subject to these Rules and Regulations and may be disciplined for violations thereof provided that the user or subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the Rules and Regulations. Further, failure of any user or subscriber to abide by the Rules and/or any sanction imposed for violations thereof can subject the Participant to the same or other discipline. This provision does not eliminate the Participant's ultimate responsibility and accountability for all users or subscribers affiliated with the Participant.

VIII MEETINGS

SECTION 8.1 MEETINGS OF MLS COMMITTEE: The MLS Committee shall meet for the transaction of its business at a time and place to be determined by the committee or the call of the Chair.

SECTION 8.2 MEETINGS OF MLS PARTICIPANTS: The Committee may call meetings of the Participants in the MLS to be known as meetings of the MLS.

SECTION 8.3 CONDUCT OF THE MEETINGS: The Chair shall preside at all meetings or, in their absence; a temporary Chairman from the membership of the Committee shall be named by the Chair or, upon his/her failure to do so, by the Committee.

IX. ENFORCEMENT OF RULES OR DISPUTES

SECTION 9.1 CONSIDERATION OF ALLEGED VIOLATIONS: The Committee shall give consideration to all written complaints from Participants having to do with violations of the Rules and Regulations.

SECTION 9.2 VIOLATIONS OF RULES AND REGULATIONS: If the alleged offense is a violation of the MLS bylaws or Rules and Regulations of the MLS and such charge does not include alleged violations of the Code of Ethics or the Standards of Conduct for MLS Participants, or request for arbitration, it may be administratively considered and determined by the MLS Committee or MLS Board of Directors. If a violation is determined, the Committee or the MLS Board of Directors may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the Professional Standards Committee of the Association in accordance with the Bylaws and Rules and Regulations of the Association of REALTORS within twenty (20) days following receipt of the Committee's decision. If the Multiple Listing Committee has a procedure established to conduct hearings, the decision of the Multiple Listing Committee tribunal may be appealed to the Board of Directors within twenty (20) days of the tribunal's decision being rendered. If a separately incorporated MLS has an established procedure for the conduct of hearings, the decisions of the hearing tribunal shall be appealable to the Board of Directors of the MLS. Alleged violations of the Code of Ethics or the Standards of Conduct for MLS Participants shall be referred to the Board's Grievance Committee for processing in accordance with the professional standards procedures of the Board. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the Board of Directors of the Board of REALTORS.

SECTION 9.3 COMPLAINTS OF UNETHICAL CONDUCT: All other complaints of unethical conduct shall be referred by the Committee to the Executive Vice President of the Association of REALTORS for appropriate action in accordance with the Professional Standards procedures established in the Association's Bylaws.

X. CONFIDENTIALITY OF MLS INFORMATION

SECTION 10.1 CONFIDENTIALITY OF MLS INFORMATION: Any information provided by the MLS to the Participants shall be considered official information of the MLS. Such information shall be considered confidential and exclusively for the use of Participants and real estate licensees affiliated with such Participants and those Participants who are licensed or certified by an appropriate state or regulatory agency to engage in property management or the appraisal of real property and licensed or certified appraisers affiliated with such Participants.

SECTION 10.2 MLS NOT RESPONSIBLE FOR ACCURACY OF INFORMATION: The information published and disseminated by the MLS is communicated verbatim, without change by the MLS, as filed with the MLS by the Participant. The MLS does not verify such information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold the MLS harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides.

SECTION 10.3 ACCESS TO COMPARABLE AND STATISTICAL INFORMATION: Association Members who are actively engaged in real estate brokerage, management, appraising, land development, or building, but who do not participate in the MLS, are nonetheless entitled to receive, by purchase or lease, all information other than current listing information that is generated wholly or in part by the MLS including “comparable” information, “sold” information, and statistical reports. This information is provided for the exclusive use of Association Members and individuals affiliated with Association Members who are also engaged in the real estate business and may not be transmitted, retransmitted or provided in any manner to any unauthorized individual, office or firm except as otherwise provided in these Rules and Regulations.

XI. OWNERSHIP OF MLS COMPILATIONS AND COPYRIGHTS

SECTION 11.1: By the act of submission of any property listing data to the Association MLS, the Participant represents that he/she has been authorized to grant and also thereby does grant authority for the Association to include the property listing data in its copyrighted MLS compilation and also in any statistical report on “Comparable”.

SECTION 11.2: All right, title, and interest in each copy of every Multiple Listing Compilation created and copyrighted by the Coastal Carolinas Association of REALTORS and in the copyrights therein, shall at all times remain vested in the Coastal Carolinas Association of REALTORS, Inc.

SECTION 11.3: Each Participant shall be entitled to lease from the Coastal Carolinas Association of REALTORS a number of copies of each MLS Compilation* sufficient to provide the Participant and each person affiliated as a licensee (including licensed or certified appraisers) with such Participant with one copy of such Compilation. The Participant shall pay, for each such copy, the rental fee set by the Association. Participants shall acquire by such lease only the right to use the MLS Compilations in accordance with these rules.**

NOTE: *The term MLS Compilation, as used in Sections 11 and 12 herein, shall be construed to include any format in which property listing data is collected and disseminated to the Participants, including, but not limited to, bound book, loose-leaf binder, computer data base, card file, or any other format whatever.

NOTE: **This section should not be construed to require the Participant to lease a copy of the MLS Compilation for any licensee affiliated with the Participant who is engaged exclusively in a specialty of the real estate business other than listing and selling real property, and who does not, at any time, have access to nor use of the MLS information or MLS facility of the Association.

XII. USE OF COPYRIGHTED MLS COMPILATIONS

SECTION 12.1 DISTRIBUTION: Participants shall, at all times, maintain control over and responsibility for each copy of any MLS Compilation leased to them by the Association of REALTORS, and shall not distribute any such copies to persons other than persons who are affiliated with such Participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by an Association MLS is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey "Participation", or "Membership" or any right of access to information developed by or published by an Association MLS where access to such information is prohibited by law.

SECTION 12.2 DISPLAY: Participants, and those persons affiliated as licensees with such Participants, shall be permitted to display the MLS Compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS Compilation.

SECTION 12.3 REPRODUCTION: Participants or their affiliated licensees shall not reproduce any MLS Compilation or any portion thereof except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS Compilation, and distribute to prospective purchasers, a reasonable* number of single copies of property listing data contained in the MLS Compilation which relates to any properties in which the prospective purchasers are or may, in the judgement of the Participant or their affiliated licensees, be interested.

Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has expressed interest, or in which the Participant or their affiliated licensees, be interested.

Nothing contained herein shall be construed to preclude any Participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations or data pertaining exclusively to property currently listed for sale with the Participant.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the Participant and those licensees affiliated with the Participant who are authorized to have access to such information. Such information may not be transmitted, re-transmitted, or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, "sold" information, "comparables", or statistical information from utilizing such information to support an estimate of value on a particular property for a particular client. However, only such information that an Association-owned MLS has deemed to be non-confidential and necessary to support the estimate of value may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these Rules and Regulations.

*It is intended that the Participant be permitted to provide prospective purchasers with listing data relating to properties which the prospective purchaser has a bona fide interest in

purchasing or in which the Participant is seeking to promote interest. The term “reasonable”, as used herein, should therefore be construed to permit only limited reproduction of property listing data intended to facilitate the prospective purchaser’s decision-making process in the consideration of a purchase. Factors which shall be considered in deciding whether the reproductions made are consistent with this intent, and thus “reasonable” in number, shall include, but are not limited to: the total number of listings in the MLS Compilation, how closely the types of properties contained in such listings accord with the prospective purchaser’s expressed desires and ability to purchase, whether the reproductions were made on a selective basis, and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties which should be shown to the prospective purchaser.

XIII. USE OF MLS INFORMATION

SECTION 13.1 LIMITATIONS ON USE OF MLS INFORMATION: Use of information from the MLS compilation of current listing information, from the Board’s “Statistical Report”, or from any “sold” or “comparable” report of the Board or MLS for public mass-media advertising by an MLS Participant or in any other public representations may not be prohibited.

However, any print or non print forms of advertising or other forms of public representations based in whole or in part on information supplied by the Board or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following Notice:

“Based on information from the Board/Association of REALTORS (alternatively, from the ____ MLS) for the period (date) through (date).”

NOTE: “This representation is based in whole or in part on data supplied by the Coastal Carolinas Association of REALTORS or its MLS. Neither the Association nor its MLS guarantees or is in any way responsible for its accuracy. Data maintained by the Association or its MLS may not reflect all real estate activity in the market.”

XIV. CHANGES IN RULES AND REGULATIONS

SECTION 14.1 CHANGES IN RULES AND REGULATIONS: Amendments to the Rules and Regulations of the MLS shall be by a majority vote of the Members of the MLS Committee, subject to the approval of the Board of Directors of the Association of REALTORS.

XV. ORIENTATION

SECTION 15. ORIENTATION: Any applicant for MLS Participation and any licensee affiliated with a MLS Participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS Rules and Regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided.

XVI. LOCK BOX SECURITY REQUIREMENTS

SECTION 16.1 LOCK BOX SECURITY REQUIREMENTS: Any lock box system shall be designated as either an activity of an Association of REALTORS or an Association-owned and operated MLS.

Every REALTOR member and/or every MLS Participant and every non-principal broker, sales licensee and licensed or certified appraisers, and affiliate members that include only Pest Control and Home Inspectors shall be eligible to hold a key subject to their execution of a lease agreement with the Association and MLS.

Lease agreements shall spell out the responsibilities of the parties and shall incorporate by reference any applicable rules or regulations or other governing provisions of the Association or MLS that relate to the operation of the lock box system. The lease agreement shall also provide that keys may not be used under any circumstances by anyone other than the key holder.

Boards and Multiple Listing Services may refuse to sell or lease lock box keys, may terminate existing key lease agreements, and may refuse to activate or reactivate any key held by an individual convicted of a felony or misdemeanor if the crime, in the determination of the Board or MLS, relates to the real estate business or puts clients, customers or other real estate professionals at risk.

Boards or Multiple Listing Services may suspend the right of lock box key holders to use lock box keys following their arrest and prior to their conviction for any felony or misdemeanor which, in the determination of the Board or MLS, relates to the real estate business or which puts clients, customers or other real estate professionals at risk.

Factors that can be considered in making such determinations include, but are not limited to:

- a) the nature and seriousness of the crime
- b) the relationship of the crime to the purposes for limiting lock box access
- c) the extent to which access (or continued access) might afford opportunities to engage in similar criminal activity
- d) the extent and nature of past criminal activity
- e) time since criminal activity was engaged in
- f) evidence of rehabilitation while incarcerated or following release and
- g) evidence of present fitness

No one shall be required to lease a key from the Association except on a voluntary basis. Keys may be leased to affiliate members actively engaged in a recognized field of real estate practice or in related fields. In such instances the lease agreement shall be signed by the key holder. Current records shall be maintained as to all keys issued and in inventory. There shall be an audit, at least annually, of all keys, whether issued or in inventory. This requirement may be satisfied by a physical inventory or, alternatively, by receipt of a statement signed by the key holder and the designated REALTOR, broker of record. This audit requirement does not apply to electronic lock box programmers or keypads that are sold or leased provided such devices may be deactivated within thirty (30) days.

Lock boxes may not be placed on a property without authority from the seller. This authority may be established in the listing contract or in a separate document created specifically for the purpose.

XVII. WEB POLICY

SECTION 17.1 WEB POLICY: This Web Policy Section has been added to identify pre-existing sections that directly apply to the handling of MLS Compilations and Copyrights on Web sites and to put forth specific new policies directly related to the display of this Data.

The Following sections of the MLS Rules and Regulations directly relate to the display and or transmission of MLS data over the Internet or through Web Sites on the Internet.

SECTION 2.7: ADVERTISING OF LISTINGS FILED WITH THE MLS
SECTION 4: INFORMATION FOR PARTICIPANTS ONLY
SECTION 10: CONFIDENTIALITY OF MLS INFORMATION
SECTION 11: OWNERSHIP OF MLS COMPILATIONS
SECTION 11.1: ALL RIGHT, TITLE AND INTEREST IN EACH COPY
*NOTE * OF SECTION 11*
SECTION 12: DISTRIBUTION
SECTION 12.1: DISPLAY
SECTION 12.2: REPRODUCTION
SECTION 17: WEB POLICY
SECTION 18: IDX DEFINED
SECTION 18.1: IDX AUTHORIZATION
SECTION 18.2: IDX PARTICIPATION
SECTION 18.3: IDX DISPLAY
SECTION 18.4: IDX MLS FEES & CHARGES
SECTION 19: VOW DEFINED
SECTION 19.1 VOW AUTHORIZATION
SECTION 19.2 VOW PARTICIPATION & COMPLIANCE

(See specifically the paragraph beginning "Any MLS Information" and include the following)

In order to facilitate the display of MLS Data on the Internet, the local Association or Multiple Listing MLS has adopted the following policies and guidelines:

1) ALL members who wish to display MLS data on the Internet and wish to use an outside source, (i.e. someone other than the company/individual whose site and properties are to be displayed), must have the information fed to this third party source through the local Association or MLS.

NOTE: This is a description of the process for dissemination of this data. The Company/Agent who desires to have the information provided will acquire an agreement form from the MLS. The MLS has created separate and specific forms for the transmission of data to be used for IDX purposes and a VOW site. These agreements set forth the complete policy that must be adhered to between the Company/Agent, the Vendor and the MLS. VERBAL AGREEMENTS AND CHANGES FROM THE STATED IDX AND VOW POLICY WILL NOT BE RECOGNIZED. The information transmitted will not be provided to any other sources without the prior consent of the Company/Agent, the local Association or MLS and that such data will not be combined with data obtained by this third party source and/or from others within the real estate community for compilation in any format whatsoever. The information displayed will not be modified from that which is transmitted. The DATA MUST be 'refreshed' at least once every seven (7) days. Participants must indicate on their websites that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing.

The Company/Agent must configure their websites to only allow the public to search and retrieve up to 100 listings per search.

Once this agreement is signed by all parties involved, it is to be forwarded to the local Association and/or MLS with a request to assign this third party source an ID# and password to obtain the upon agreed data. (The Company/Agent will indicate whether they desire just the primary or all photos to be included with the data). Within ten (10) working days, the MLS will create this password-protected access and inform both parties that the data is available for use.

Section 18 Internet Data Exchange (IDX)

Section 18.1 **Definitions**

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

Broker Reciprocity Database or BR Data: The current aggregate compilation of all active listings of all Broker Reciprocity Subscribers except those listings where the property seller has opted out of Internet publication by so indicating on the listing contract. The BR Data is owned by CCAR.

Broker Reciprocity Subscriber or BRS: A Subscriber who gives permission to other Subscribers to display its active listings on their web sites in return for their permission to advertise their listings on its web site.

Multiple Listing Service: A means for 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 CCAR, as amended from time to time, and any operating policies relating to the BR Data and BRSs promulgated by CCAR.

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

Subscriber Data: Data relating to real estate for sale, previously sold or listed for sale, including the Broker Reciprocity Database, and data relating to Subscribers, entered into the current system by Subscribers and CCAR. Subscriber Data is owned by CCAR.

Section 18.2 **CCAR's Covenants and Obligations**

18.2.1 **License.** During the term of this Agreement, CCAR grants to Firm a non-exclusive, non-transferable license to:

- a. display the BR Data on Firm's web site, and

b. make copies of the BR Data to the extent necessary to deliver the BR Data to consumers on Firm's web site.

18.2.2 **Data.** During the term of this Agreement, CCAR agrees to provide to Firm and its Consultants:

a. the BR Data via the Internet using File Transfer Protocol ("FTP"), under the same terms and conditions CCAR offers to other Subscribers;

b. seven (7) days' advance notice of changes to the file and record formats of the BR Data;
and

c. seven (7) days' advance notice of changes to the Rules.

Section 18.3 **Firm's Covenants and Obligations**

18.3.1 **Subscriber Status.** Simultaneously or prior to submitting this agreement, Firm agrees to become a Broker Reciprocity Subscriber (BRS) in accordance with the procedures set forth in the CCAR's Broker Reciprocity: Broker Informational Packet.

18.3.2 **Rules.** Firm agrees to comply with the CCAR Rules and the Broker Reciprocity rules at all times.

18.3.3 **Ownership of Data.** Firm acknowledges CCAR's ownership of the copyrights in the Subscriber Data and the BR Data and agrees not to challenge such ownership.

18.3.4 **Confidential Information.** Firm agrees to comply with the requirements relating to Confidential Information set forth below. In the event that Firm desires to make the BR Data or the Confidential Information available to a third party for the sole purpose of performing data downloading, manipulation or formatting, programming or web design, Firm agrees to require such third party to execute this Agreement and become a Consultant.

18.3.5 **Modifications to Content.** Firm agrees not to modify content except as approved in writing in advance by CCAR.

18.3.6 **Breach.** If CCAR notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that CCAR may pursue any and all legal remedies against the Consultants or any one of them.

18.3.7 **Company Information.** Firm agrees to notify CCAR within five (5) business days of any change to the information relating to Firm on the Firm Information and Signature page below.

Section 18.4 **Consultants' Obligations**

18.4.1 **Breach.** If CCAR contacts Consultant to cure a breach by Firm that is within Consultant's control, Consultant agrees to cooperate with CCAR and act immediately upon notification by CCAR to cure the breach.

18.4.2 **Ownership of Data.** Consultant acknowledges CCAR's ownership of the copyrights in the Subscriber Data and the BR Data and agrees not to challenge such ownership.

18.4.3 **Confidential Information.** Consultant agrees to comply with the requirements relating to Confidential Information set forth below.

18.4.4 **Modifications to Content.** Consultant shall not modify content except as approved in writing by CCAR.

18.4.5 **Company Information.** Each Consultant shall notify CCAR within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page below.

Section 18.5 **Compensation**

18.5.1 **Set-up Fee.** Firm agrees to pay CCAR a one-time set-up fee \$Fifty dollars (\$50) upon execution of this Agreement.

18.5.2 **Annual License Fee.** Firm agrees to pay CCAR One Hundred Eighty dollars (\$180) per year as consideration for the license granted herein. The annual license fee will be billed to the Firm's BRS association account. Firm agrees to make payment in accordance with current Association policies on payment of financial obligations. If this Agreement is renewed beyond the initial term, as set forth below, Firm acknowledges and agrees that CCAR may modify the annual license fee.

Section 18.6 **Confidential Information**

18.6.1 **Definition.** "Confidential Information" is information or material proprietary to CCAR or designated "confidential" by CCAR 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 in any form:

- a. all Subscriber Data, except the BR 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; techniques, procedures; IP addresses, access codes and passwords; and
- d. any information that CCAR obtains from any third party that CCAR treats as proprietary or designates as Confidential Information, whether or not owned or developed by CCAR.

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 CCAR to the extent of such consent;
- d. becomes known to the Receiving Party from a source other than CCAR 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 CCAR; and
- e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to CCAR prompt notice of any such order.

18.6.2 **Ownership/Title.** 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 Firm and Consultant (if applicable). Firm/Consultant will not form combination marks with the Marks or modify the Marks without written CCAR approval. Firm/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”).

18.6.3 **Notices.** 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 BRS Rules.

18.6.4 **Restrictions on Use – Scope of Use.** The Receiving Party agrees that it will use or access the Confidential Information only as expressly permitted under this Agreement and the Rules, and the Receiving Party agrees that it will not use its access or the Confidential Information for any other purpose. The Receiving Party agrees that it 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.

18.6.5 **Restrictions on Use – Unauthorized Uses.** The Receiving Party agrees that it will not make copies of the Confidential Information. The Receiving Party further agrees that it will not directly or indirectly disclose, display, frame, provide, transfer, co-brand, link or otherwise make available the Confidential Information to any person or entity, unless the Receiving Party has received prior written consent of CCAR to do so. Receiving Party agrees that at no time and under no circumstances will it reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. The Receiving Party agrees that it will not incorporate the Confidential Information into any other work or product unless approved in writing by CCAR.

18.6.6. **Restrictions on Use – No Third Party Access.** The Receiving Party agrees that only its own employees will access the Confidential Information. The Receiving Party agrees not to provide access to the Confidential Information to third parties, including consultants or independent contractors, without prior written consent from CCAR. If CCAR grants consent, the Receiving Party agrees to execute an agreement with the third party that imposes the confidentiality obligations contained in this Agreement on the third party.

18.6.7 **Restrictions on Use – Location restriction.** The Receiving Party agrees that it will not remove the Confidential Information from its principal place of business without CCAR's prior written consent. In the event CCAR grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.

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

18.6.9 **CCAR's Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Firm and Consultants acknowledge and agree that CCAR 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 CCAR for a breach. CCAR 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 CCAR.

Section 18.7 **Term and Termination**

18.7.1 **Generally.** The term of this Agreement begins on the Effective Date and shall continue in full force and effect unless terminated in accordance with this Agreement. Firm acknowledges and agrees that CCAR may review and increase the monthly license fee on an annual basis.

18.7.2 **Termination by CCAR.** Firm agrees that CCAR may terminate this Agreement at any time in its sole and absolute discretion.

18.7.3 **Events of Termination by CCAR.** The parties agree that this Agreement shall terminate upon the occurrence of any of the following events:

- a. CCAR provides notice of termination to Firm;
- b. Firm provides thirty (30) days advance written notice of termination to CCAR;
- c. Upon suspension or termination of Firm's membership and/or privileges as a Subscriber by The Coastal Carolinas Association of REALTORS® for any reason, including but not limited to non-payment of financial obligations (termination shall be immediate and without prior notification)

Section 18.8 **Warranties and Liability**

18.8.1 **CCAR Warranties**. CCAR warrants that: (i) it has sufficient right and authority to enter into this Agreement and to grant to Firm the rights granted under this Agreement; and (ii) to the best of CCAR's knowledge, the CCAR Content, as delivered to Firm/Consultant by CCAR, will not infringe the U.S. Intellectual Property Rights of any other party.

18.8.2 **Firm Warranties**. Firm warrants that: (i) it has sufficient right and authority to enter into this Agreement and to carry out its obligations hereunder; (ii) to the best of Firm's knowledge, the Firm web site(s) (exclusive of the CCAR Content) will not infringe the U.S. Intellectual Property Rights of any other party; and (iii) the Firm web site(s) and Firm/Consultant's operation thereof will comply with all applicable laws, rules and regulations.

18.8.3 **Warranty Disclaimers**. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE BR DATA CONTENT AND THE LICENSEE SITES, AS APPLICABLE, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, FIRM EXPRESSLY ACKNOWLEDGES AND AGREES THAT CCAR MAKES NO WARRANTY REGARDING THE ACCURACY, TIMELINESS OR COMPLETENESS OF THE CCAR CONTENT.

18.8.4 **Limitation of Liability**. CCAR's 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 CCAR, if any, under this Agreement. Firm's and Consultants' only other remedy shall be termination of this Agreement. CCAR shall not be liable for any incidental or consequential damages under any circumstances, even if CCAR has been advised of the possibility of such damages. CCAR shall have no liability for inaccuracies in the BR Data or the Subscriber Data.

Section 18.9 **Indemnification**

Each party (an "Indemnifying Party") will defend, indemnify and hold harmless the other party (the "Indemnified Party") against any damages, costs, and expenses, including reasonable attorneys' fees, awarded against or paid in settlement by the Indemnified Party resulting from any third party claim arising from this Agreement; provided that (i) the Indemnified Party gives the Indemnifying Party prompt written notice of any such claim; (ii) the Indemnified Party reasonably cooperates with the Indemnifying Party, at the Indemnifying Party's expense, in the defense and settlement of any such claim; and (iii) the Indemnifying Party has sole and exclusive control over the defense and settlement of any such claim.

Section 18.9.1 **General Provisions**

18.9.1.1 **Section VI**. The parties agree that section VI shall survive termination of this Agreement.

18.9.1.2 **Further Assurances.** Each party agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

18.9.1.3 **Excuse of Non-Performance.** CCAR shall not be liable to Firm nor Firm liable to CCAR for failure to perform its obligations if and to the extent that such failure results from causes beyond reasonable control which interrupt operations. These events, all of which causes hereinafter are called "force majeure," include, but are not limited to, strikes, lockouts, riots, fires, floods or other weather conditions, natural disasters, acts of God, acts of public enemy, or compliance with any regulations, orders or requirements of any duly authorized governmental body or agency. If either party is unable to perform as a result of force majeure, it shall promptly notify the other in writing of the beginning and estimated ending of each such period.

18.9.1.4 **Relationship of the Parties.** CCAR and Firm are separate and independent entities. The relationship between CCAR and Firm is purely contractual. CCAR shall not be deemed to be the partner, agent or representative of Firm, or vice versa. Nothing in this Agreement shall be construed so as to create a partnership, joint venture, or agency. Neither party to this Agreement shall be liable for the debts or obligations of the other except as otherwise set forth in this Agreement. Except as expressly provided in this Agreement, Firm shall not have the power to hire or fire CCAR's employees, nor may Firm control or have access to CCAR's funds or expenditures of those funds, or any other way exercise control over CCAR's business.

18.9.1.5 **Attorney's Fees.** If any party to this Agreement shall bring any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party all costs plus a reasonable sum for attorneys' fees incurred in bringing such suit and/or enforcing a judgment granted thereon, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

18.9.1.6 **Waiver.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by either party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

18.9.1.7 **Assignment.** Neither party shall voluntarily subcontract or assign any of their respective rights, duties or obligations hereunder without first obtaining the other party's written consent; provided, however, such consent shall not be unreasonably withheld.

18.9.1.8 **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), provided that a copy is mailed by certified mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each

case to the appropriate addresses and facsimile numbers set forth on the signature page (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties).

18.9.1.9 **Amendments and Modifications.** This Agreement may not be amended or modified orally, but only by an agreement in writing signed by the parties hereto.

18.9.11 **Governing Law.** This Agreement will be governed by the laws of the State of South Carolina without regard to conflicts of laws principles excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this agreement to the substantive law of another jurisdiction.

18.9.1.11 **Arbitration.** Any and all disputes, controversies or claims arising under or in connection with this Agreement, including without limitation, fraud in the inducement of this Agreement, or the general validity or enforceability of this Agreement, shall be governed by the laws of the State of South Carolina, without giving effect to its conflict of laws provisions and shall be submitted to binding arbitration before one arbitrator of and in accordance with the Commercial Arbitration Rules of the American Arbitration Association and conducted in a private manner in Horry County, South Carolina. All expenses of any arbitration shall be borne equally by the parties. All fees, including legal fees shall be borne by the party who incurred said fees. The award of the arbitrator shall be final and enforceable in the courts of South Carolina. All costs of enforcement are to be borne by the losing party. In reaching his or her decision, the arbitrator shall have no authority to change or modify any provision of this Agreement. Each party shall have the right to discovery in accordance with the South Carolina Rules of Civil Procedure so long as all discovery is conducted under a confidentiality order issued by the arbitrator prohibiting the use of any information disclosed or delivered in the discovery process except for use within the Arbitration. Upon conclusion of the arbitration, all documents or tangible items disclosed must be returned to the party who produced the items.

18.9.1.12 **Jurisdiction.** Notwithstanding the arbitration clause above, 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.

18.9.1.13 **Section Headings, Construction.** The headings of sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement unless otherwise specified. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

18.9.1.14 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

18.9.1.15 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

18.9.1.16 **Binding Effect.** Each covenant and condition of this Agreement shall be binding on and inure solely to the benefit of the parties hereto and their respective successors, assigns, heirs, and legal representatives, including any entity with which the Company may merge or consolidate or to which all or substantially all of its assets may be transferred.

18.9.1.17 **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the parties hereto with respect to the subject matter hereof.

Section 19.VIRTUAL OFFICE WEBSITES (VOW)

19.1 **Legal Implications.** The Coastal Carolinas Association of REALTORS will not adopt any VOW policy until all pending investigations by the Department of Justice into the current NAR VOW policy are complete. Once NAR adopts any and all changes agreed to by the Department of Justice and NAR; CCAR will then adopt that policy.

19.2 **CCAR Authority.** CCAR reserves the right to cut off any data feed for the purpose of VOW if CCAR feels that the data is being misused in any way. This authority is reflected in section 9.2 and may only be used once proper due process hearing has taken place.

Appendix A Sanctions Available for MLS Rules Violations and Data Misappropriation

Internal Remedies for MLS Rules Violations

1. A fine of up to \$5,000.
2. Suspension of MLS privileges.
3. Termination of MLS privileges.
4. Specific violations and fines on separate white paper summary.

Judicial Remedies for Data Misappropriation and Copyright Infringement

1. Injunctive relief.
2. Statutory damages, which may range from \$750 to \$30,000, in the discretion of the court, or up to \$150,000 if the infringement is willful.
3. Actual damages and lost profits.
4. Attorneys fees and costs, at the discretion of the court.
5. Potential criminal penalties.

MULTIPLE LISTING POLICY OF THE NATIONAL ASSOCIATION OF REALTORS

The purpose of the MLS is the orderly correlation and dissemination of listing information to its members so those REALTORS may better serve the buying and selling public.

A MLS shall not enact or enforce any rule which restricts, limits, or interferes with the actions of its Members in their relations with each other or in their REALTOR/client relationship or in the conduct of their business including, but not limited to, the following*:

1. MLS shall not: Fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Members (Interpretation No. 14).
2. MLS shall not: Fix, control, recommend, suggest, or maintain any percentage division of commission or fees between cooperating Members and non-members.
3. MLS shall not: Require financial support of the MLS operations by any formula based on commission or sales price.
4. MLS shall not: Require or use any form that establishes or implies the existence of any contractual relationship between the MLS and the client (buyer or seller).
5. MLS shall not: Make any rule relating to the posting or use of signs (Interpretation No. 26).
6. MLS shall not: Make any rule prohibiting or discouraging cooperating with non-members.
7. MLS shall not: Limit or interfere with the terms of the relationship between a Member and his salesmen (Interpretation No. 15 & 26).
8. MLS shall not: Prohibit or discourage any Members from political participation or activity (Interpretation No. 15).
9. MLS shall not: Make any rules granting blanket consent to a selling Member to negotiate directly with the seller (owner) (Interpretation No. 10).
10. MLS shall not: Make any rules regulating the advertising or promotion of any listing (Interpretation No. 15 & 26).
11. MLS shall not: Prohibit or discourage a Member from accepting a listing from a seller (owner) preferring to give "office exclusive".
12. MLS shall not: Adopt any rules denying a listing Member from controlling the posting of "sold" signs.
13. MLS shall not: Reject any exclusive listing submitted by a Member on the basis of the quality or price of the listing.
14. MLS shall not: Adopt rules authorizing the modification or change of any listing without the express written permission of the listing Member.

*Relates to Official Interpretation No. 6