

Outer Banks Association of REALTORS® Web API Agreement

This AGREEMENT is made and entered into by and between Outer Banks Association of REALTORS® (“OBAR”), with offices at 201 W. 8th Street, Nags Head, NC 27959; and _____ (“Licensee”), a _____ individual/partnership/corporation/limited liability company with offices at _____.

DEFINITIONS

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

Confidential Information: “Confidential Information” means information and material proprietary to the disclosing party, or designated “confidential” by the disclosing party, and not generally known to the public that the receiving party may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether in oral, visual, audio, written or other form): (a) all OBAR Data, except to the extent to which this Agreement permits its disclosure; (b) IP addresses, access codes and passwords; (c) any information the disclosing party obtains from any third party that the disclosing party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the disclosing party; and (d) any information designated as confidential or private from time to time by any applicable state, federal, local or other law, regulation or directive. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; is independently developed by the receiving party; is received from a third party who has lawfully obtained and disclosed it without breaching any confidentiality agreement; or is already known by the receiving party at the time of its disclosure.

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

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

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

Licensed Materials: The Licensed Data and Licensed Marks.

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

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

LICENSE

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

3. OBAR represents that OBAR has no actual knowledge that should reasonably cause OBAR to conclude that any particular component or component of the Licensed Materials, or that the compilation of the Licensed Materials, infringes the rights of any third party.

DATA ACCESS

4. During the term of this Agreement, OBAR shall provide to Licensee (a) access to the Licensed Data via the Data Interface; and (b) seven days’ advance notice of changes to the Data Interface. OBAR may use a third party contractor, determined in OBAR’s sole discretion, to facilitate the data access and any other responsibilities or rights of OBAR under this agreement.

LICENSEE’S ACKNOWLEDGEMENTS

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

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

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

LICENSEE’S OBLIGATIONS

8. Licensee shall display the OBAR copyright notice on each display screen, web page (whether Internet- or Intranet-based), and printout displaying any part of the Licensed Data. The OBAR copyright notice may take either of the following two forms: (a) “Copyright 20XX Outer Banks Association of REALTORS®” or (b) “© 20XX Outer Banks Association of REALTORS®”. Licensee shall replace “20XX” with the current year as of January 1 of each year.

9. Licensee shall employ reasonable measures to prevent “data piracy” and other unauthorized access and use of the Licensed Data, including preventing automated harvesting of Licensed Data (or portions of it) by third parties. Reasonable measures include industry-leading practices as generally used by companies of similar size and means to Licensee. From time to time, OBAR may, in its sole discretion, specify particular reasonable security measures Licensee must take. If a third party gains unauthorized access to Licensed Materials by scraping or other unauthorized data harvesting, Licensee agrees to take reasonable measures, including legal measures, to prevent the third party’s use of Licensed Materials.

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

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

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

13. Licensee warrants that any use of the OBAR Data by Licensee will not constitute infringement of the patent or other intellectual property rights of any third party.

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

AUDITS OF COMPLIANCE

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

CONFIDENTIAL INFORMATION

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

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

TERM AND TERMINATION

18. The term of this Agreement begins on the date that OBAR signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) 30 days after either party's notice to the other of its intent to terminate; (b) 10 days after either party's notice to the other that the other has breached this Agreement, provided the breach remains uncured; (c) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party

giving notice irreparable harm. In the event of any suspension or termination of this Agreement, Licensee shall make no further use of the Licensed Data or any derivative works based on it until and unless Licensee's rights under this Agreement are restored.

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

GENERAL PROVISIONS

20. **Applicable law.** The laws of the State of North Carolina shall govern this Agreement and its interpretation. Any action to enforce or interpret this Agreement shall have venue in Dare County, North Carolina, and the parties hereby submit to personal jurisdiction in that venue.

21. **Survival of Obligations.** Paragraphs 1, 10, 12, 13, 16, and 17, and Paragraphs 20 through 32, and all Exhibits to which they refer, shall survive termination or expiration of this Agreement.

22. **OBAR's Remedies.** (a) Injunctive relief. Because of the unique nature of the OBAR Data and Confidential Information, Licensee acknowledges that OBAR would suffer irreparable harm in the event that Licensee breaches its obligations under this Agreement, and that monetary damages would be inadequate to compensate OBAR for a breach. OBAR is therefore entitled, in addition to all other forms of relief, to seek injunctive relief as may be necessary to restrain any threatened, continuing, or further breach by Licensee without showing or proving any actual damages sustained by OBAR, and without posting any bond or other security. (b) Liquidated damages: Licensee acknowledges that damages suffered by OBAR from access to the Licensed Data or Confidential Information by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the Licensed Data or Confidential Information to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to OBAR to enter into this Agreement, Licensee agrees that in the event Licensee discloses any password to access the Licensed Data or Confidential Information or discloses the Licensed Data or the Confidential Information to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Licensee shall be liable to OBAR for liquidated damages in the amount of \$30,000 for each such disclosure and termination of this Agreement.

23. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL OBAR BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT, EVEN IF OBAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; LICENSEE'S SOLE REMEDIES AGAINST OBAR HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT AND DIRECT DAMAGES NOT IN EXCESS OF THE AMOUNTS LICENSEE HAS PAID TO OBAR HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR BREACH. OBAR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. THIS PARAGRAPH SETS OUT LICENSEE'S EXCLUSIVE REMEDIES, AND UNDER NO CIRCUMSTANCES SHALL LICENSEE BE ENTITLED TO EQUITABLE REMEDIES, EXCEPT IN THE EVENT OBAR BREACHES OR THREATENS TO BREACH PARAGRAPH 16. OBAR makes no warranty, including those of title, availability, or non-infringement, regarding marks licensed under this Agreement, if any.**

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

25. **Indemnification.** Subject to Paragraph 23, in the event any party breaches any provision of this Agreement, that party (the "Indemnifying Party") shall indemnify and defend the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the "Indemnified Parties"), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the Indemnifying Party's breach. Licensee shall indemnify and defend OBAR, customers of OBAR, and Subscribers, to whom Licensee provides a product or service using OBAR Data, against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from any third-party claim of intellectual property infringement, except for such claims that are based solely on the Licensed Data. The Indemnified Parties shall (a) promptly notify the Indemnifying Party in writing of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any such claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

26. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

27. **No Waiver.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.

28. **No Assignment.** No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement (each a "Transfer") to any other party without the prior written consent of the other

party. Any purported Transfer in contravention of this paragraph is null and void.

29. **Entire Agreement; Amendment.** This Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same subject matter. OBAR may amend this agreement by providing 30 days' advance notice of the amendment to Licensee; if Licensee continues to use the Data Interface or the OBAR Data after the expiration of the 30-day notice period, Licensee will be deemed to have agreed to the terms as amended.

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

31. **Severability.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event a court having jurisdiction over the parties holds any provision of this Agreement invalid or unenforceable, the parties shall negotiate in good faith to replace the invalid or unenforceable provision, if possible, with a valid provision that most closely approximates the intent and economic effect of the invalid provision. If any provision of the limitation of liability, exclusion of warranty, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate unless the parties agree to the contrary.

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

THE REMAINDER OF THIS PAGE (EXCEPT THE PAGE FOOTER) IS LEFT BLANK INTENTIONALLY.

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

OBAR Outer Banks Association of REALTORS®	LICENSEE
_____ Signature	_____ Licensee name
<u>Daniel M. Sutherland</u> _____ Name	_____ Signature of owner or officer
Date: _____ (effective date of this Agreement)	_____ Name of owner or officer
Contact for notices and operations matters	Contact for notices and operations matters
Name: <u>Daniel M. Sutherland</u> _____	Name: _____
Phone: <u>(252) 489-1487</u> _____	Phone: _____
Email: <u>daniels@outerbanksrealtors.com</u> _____	Email: _____
Mailing: <u>201 W. Eighth St, Nags Head, NC 27949</u> _____	Billing Email: _____
_____	Mailing: _____

Outer Banks Association of REALTORS® Third Party Data Access Agreement

Exhibit A: Definitions and Specification of Licensed Materials and Data Interface

Licensed Data

OBAR IDX / WebAPI Profile

Data Interface

OBAR will deliver the data in WebAPI format.

**Outer Banks Association of REALTORS®
Third Party Data Access Agreement**

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