

Sussex County Association of REALTORS[®], Inc.

Subscriber Agreement

This agreement is a binding contract and includes terms limiting your legal rights and SCAOR's liability to you. Consult your attorney before signing if you do not understand any of the terms here.

This Subscriber Agreement ("Agreement") is made as of the Effective Date below between Sussex County Association of REALTORS[®], Inc. ("SCAOR") Multiple Listings Service ("MLS") and the undersigned subscriber ("**Subscriber**"), who, intending to be legally bound, hereby agree as follows.

1. Definitions and usage.

(a) Definitions.

"**MLS Affiliates**" means SCAOR and its officers, directors, employees, agents, representatives, licensors, and shareholders.

"**MLS Database**" means all data available to Subscriber on the MLS System, including the Subscriber Contribution and all other text, binary, and photographic image data, in any form now known or hereafter discovered.

"**MLS Policies**" means SCAOR's bylaws, rules and regulations, and policies and procedures adopted by SCAOR's board of directors or authorized delegates, as SCAOR amends them from time to time.

"**MLS Service**" means the services SCAOR provides to Subscriber under this Agreement and similar services SCAOR provides to third parties under similar agreements, including any access or license to the MLS Software, the MLS Database, and the MLS System.

"**MLS Software**" means SCAOR's proprietary web browser interface(s) to the MLS System.

"**MLS System**" means the aggregate of all hardware and telecommunications systems that SCAOR maintains in order to make access to the MLS Database available to Subscriber.

"**Participant**" means the principal broker or appraiser manager that supervises Subscriber's real estate activities and on whose behalf Subscriber conducts those real estate activities.

"**Saved Information**" means information that Subscriber stores in the MLS System for his/her own later use that is not intended by him/her to be available to SCAOR's other customers, including client prospect and contact information.

"**Subscriber Contribution**" means all data that the Subscriber submits, contributes, or inputs in the MLS System, including text, binary, and photographic image data, in any form now known or hereafter discovered.

(b) **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

- (i) Wherever the term “including” is used, it means “including, but not limited to.”
- (ii) The singular and plural numbers and masculine, feminine, and neuter genders of words are interchangeable.
- (iii) Wherever the term “law” is used, it means all statutes, regulations, and common law, both state and federal, as they are amended. Without limiting the generality of the foregoing, “law” expressly includes all state and federal fair housing statutes and regulations.

2. SCAOR’s obligations.

SCAOR shall provide one unique user ID and password to Subscriber. The user ID and password will provide Subscriber access to all data and functions in the MLS Service to which Subscriber is entitled under the MLS Policies. SCAOR makes no warranties, however, that the MLS Service will be available at all times.

3. Subscriber acknowledgments.

(a) **Modifications to service.** SCAOR may, but is not required to, modify the MLS Service, including removing information and making additional information available, and adding and removing system functions. Certain products and services made available in conjunction with the MLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

(b) **Editorial control.** SCAOR is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the MLS Database or the Subscriber Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, SCAOR may take any steps necessary in its judgment, including deleting the Subscriber Contribution or portions thereof, to avoid or remedy any violation of law, breach of the MLS Policies or infringement of intellectual property right.

(c) **Conditions of service.** Subscriber must be affiliated with Participant at all times during the term of this Agreement. Subscriber may enter and retrieve active listing information on the MLS Service only if Participant is capable of offering compensation to and accepting compensation from other principal brokers.

(d) **Saved Information.** Saved Information may not always be available to Subscriber and may become available to unauthorized persons. SCAOR is not liable for unauthorized access to or loss of Saved Information.

(e) **Disclosure to third parties.** SCAOR reserves the right to distribute to third parties certain information about Subscriber, including Subscriber’s name and business address, phone number and email address. SCAOR reserves the right to distribute to third parties aggregated information about SCAOR customers’ use of the MLS Service, but not about Subscriber’s use specifically.

(f) **Disclosure to government.** Subscriber acknowledges that SCAOR may provide government agencies access to the MLS Service at any time in SCAOR’s sole discretion.

(g) **Priority of agreements.** Subscriber's access to the MLS Service is subject at all times to the limitations set out in the MLS Policies and the Participant Agreement between SCAOR and Participant. In the event of an apparent conflict between those documents and this Agreement, Subscriber's obligations and rights shall be determined, in order of precedence, by the MLS Policies, the Participant Agreement between SCAOR and Participant, and by this Agreement.

(h) **IDX data access subject to separate agreement.** Subscriber acknowledges that access to SCAOR's IDX database and data feeds can occur only subject to a separate written agreement between SCAOR and Participant.

4. Subscriber's obligations.

(a) **Use limited.** Subscriber shall use the MLS Service solely for the purpose of selling, listing, leasing, and appraising real estate as provided in the MLS Policies. Except as expressly provided in this Agreement and the MLS Policies, Subscriber shall not copy, create derivative works of, distribute, perform, or display the MLS Service or any part of it.

(b) **Confidentiality.** Subscriber shall maintain the confidentiality of its user ID and password and the MLS Database; Subscriber shall not provide its ID and password to any third party. To maintain the confidentiality of all user IDs, passwords, the MLS Database, and the MLS System, Subscriber shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the MLS Policies. Subscriber may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, Subscriber first gives reasonable notice to SCAOR to permit SCAOR to seek a protective order.

(c) **Equipment.** Subscriber shall acquire and maintain all personal computers, modems, telecommunications connections, and computer software, other than the MLS Software, necessary for Subscriber's use of the MLS Service.

(d) **Subscriber Contribution.** When making a Subscriber Contribution to the MLS Service, Subscriber warrants that the information submitted complies with the MLS Policies in all respects, including with regard to (i) required data fields; (ii) format of submission; (iii) permitted and required listing types; and (iv) procedures for submission. Subscriber warrants that the Subscriber Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation, or proceeding pending or threatened with respect to the Subscriber Contribution.

5. Intellectual property.

(a) **Assignment from Subscriber.** Depending on the election Participant has made in Section 5 of the Participant Agreement between Participant and SCAOR, the following shall apply:

(i) If Participant has selected Option I, Subscriber hereby assigns to SCAOR all right, title and interest, including all rights under U.S. and international copyright law, in the Subscriber Contribution. To the extent that Subscriber has also purported to assign its interests in the Subscriber Contribution to Participant, the assignment in this paragraph is null and void.

(ii) If Participant has selected Option II, Subscriber hereby grants to SCAOR a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Subscriber Contribution and those portions of the MLS Database relating to Subscriber's listings.

(b) **Warranty.** Subscriber warrants that it has the authority to make the assignment in Section 5(a). Subscriber warrants that (i) the Subscriber Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (ii) Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to Participant or SCAOR.

(c) **License.** SCAOR hereby grants Subscriber a license to use the MLS Software and the MLS Database during the term of this Agreement, subject to the permission of Participant and according to the terms of the MLS Policies. All other uses are prohibited.

6. Fees and payment terms.

(a) **Periodic fees.** Participant is liable to SCAOR for fees related to Subscriber's access under this agreement. SCAOR may suspend Subscriber's access to the MLS service at any time if Subscriber or Participant fails to pay fees due to SCAOR according to its policies. SCAOR may revise its schedule of fees at its sole discretion at any time, subject to its own policies.

(b) **Fines.** SCAOR may collect fines from Subscriber and from Participant on Subscriber's behalf for violation of the MLS Policies. Payment terms for fines are set out in the MLS Policies. SCAOR may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

7. Term and termination.

(a) **Term.** This Agreement shall commence upon the Effective Date set forth below and shall continue thereafter on a month-to-month basis until terminated.

(b) **Termination for breach.** SCAOR may terminate this Agreement with notice if Subscriber fails to comply with the terms of this Agreement or of the MLS Policies.

(c) **Termination of Participant.** This Agreement shall terminate immediately and without notice if the Participant License and Access Agreement between SCAOR and Participant is terminated for any reason.

(d) **Termination for failure to pay.** In the event Participant fails to pay any fees required under this Agreement, SCAOR may terminate service without being subject to arbitration, and SCAOR may bring any claims for fees to small claims court. In its sole discretion, SCAOR may suspend its performance under this Agreement rather than terminating it, in the event that Participant fails to pay fees required under this Agreement.

(e) **Termination without fault.** Either party may terminate this Agreement upon 30 days' written notice to the other party. Subscriber may not terminate this Agreement so long as Subscriber remains affiliated with a broker/appraiser manager that is subject to a Participant Agreement with SCAOR.

(e) **Events upon termination.** Promptly upon any termination of this Agreement, (i) SCAOR shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the MLS Service; (ii) Subscriber shall purge all copies of the MLS Software and the MLS Database from Subscriber's personal computers; (iii) all licenses granted hereunder shall immediately terminate; and (iv) Subscriber will not be permitted to be affiliated with Participant or any other participant of SCAOR unless a new subscriber agreement between Subscriber and SCAOR is executed.

8. Disclaimer, limitation of liability, and indemnification.

(a) **DISCLAIMER OF WARRANTIES.** SCAOR PROVIDES THE MLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MLS SERVICE ARE AT THE SOLE RISK OF SUBSCRIBER. THE MLS AFFILIATES DO NOT WARRANT THAT THE MLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE MLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE MLS SERVICE. THE MLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE MLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The MLS Service may contain hyperlinks to web sites operated by parties other than SCAOR; SCAOR does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

(b) **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE MLS AFFILIATES SHALL BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE MLS SERVICE, INCLUDING RELIANCE BY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE MLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE MLS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE MLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

(c) **Maximum aggregate liability.** IN NO EVENT SHALL THE LIABILITY OF THE MLS AFFILIATES ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY SUBSCRIBER OR BY PARTICIPANT ON SUBSCRIBER'S BEHALF HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM. BECAUSE SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES UNDER CERTAIN CIRCUMSTANCES, THIS LIMITATION MAY NOT APPLY TO PARTICIPANT.

(d) **Indemnification.** Subscriber shall defend, indemnify and hold the MLS Affiliates harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the MLS Affiliates arising from any acts of Subscriber, including (i) putting inaccurate information into the MLS Service; (ii) making unauthorized use of Subscriber's password; (iii) making unauthorized use of the MLS Database; (iv) infringing any proprietary or contract right of any third party; (v) breaching any warranty under this Agreement; and (vi) violating this or any other Agreement or any law.

(e) **Acknowledgment.** Subscriber acknowledges that SCAOR has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

9. Disputes and remedies.

(a) **Injunctive relief.** Subscriber acknowledges and agrees that the MLS Software and MLS Database are confidential and proprietary products of SCAOR and that in the event there is an unauthorized disclosure of them by Subscriber, no remedy at law will be adequate. Subscriber therefore agrees that in the event of such unauthorized disclosure of MLS Software or MLS Database, SCAOR may obtain injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

(b) **Dispute resolution.** In the event SCAOR claims that Subscriber has violated the MLS Policies, SCAOR may, at its option, resolve such a claim according to the disciplinary procedures set out in the MLS Policies, provided SCAOR does not also base a claim that Subscriber has breached this Agreement on the same facts. Except as provided in this paragraph and in Section 7 (d), any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Sussex County, Delaware, except that it may be held by telephone where the Arbitration Rules expressly so permit. Subscriber agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Sussex County, Delaware.

(c) **Liquidated damages.** Subscriber acknowledges that damages suffered by SCAOR from access to the MLS Service by an unauthorized third party as a result of disclosure of Subscriber's password or an unauthorized disclosure by Subscriber of the MLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to SCAOR to enter into this Agreement with Subscriber, Subscriber agrees that (i) in the event that any disclosure of Subscriber's password results in access to the MLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Subscriber shall be liable to SCAOR for liquidated damages in the amount of \$5,000 (or the amount established in the MLS Policies, whichever is greater) and termination of this Agreement; and (ii) in the event that Subscriber makes unauthorized disclosure of any portion of the MLS Database to any third party, Subscriber shall be liable for liquidated damages

in the amount of \$5,000 (or the amount established in the MLS Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

(d) **Legal fees.** In the event of legal action or arbitration between SCAOR and Subscriber, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in such action or arbitration.

10. Miscellaneous.

(a) **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, SCAOR and Subscriber, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party.

(b) **Interpretation and amendment.** Subscriber expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). SCAOR may amend this agreement by providing 30 days' advance notice of the amendment to Subscriber. If Subscriber continues to use the MLS Service or MLS Database after the expiration of the 30-day notice period, Subscriber will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

(c) **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Subscriber. Any purported assignment or delegation in contravention of this section is null and void.

(d) **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. 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. The foregoing notwithstanding, if any provision of Section 8 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber's access to the MLS Service shall immediately terminate.

(e) **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contacts made and performed in Delaware, without regard to its conflicts of law and choice of law provisions.

(f) **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (i) U.S. Mail, postage paid and return receipt requested; (ii) express mailing service with confirmation of receipt; (iii) facsimile transmission, provided sender obtains confirmation of transmission; or (iv) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

Having read this Agreement, the parties express their will to be bound by its terms by setting their signatures below.

Signature

Signature of Subscriber

Print name

Print name of Subscriber

Effective Date

Subscriber Firm Name

Subscriber Business Address

I am subscribing to SCAOR as a:

<input type="checkbox"/>	REAL	ESTATE
	BROKER/SALESPERSON	
<input type="checkbox"/>	REAL ESTATE APPRAISER	
<input type="checkbox"/>	BROKER OR APPRAISER EMPLOYEE	
<input type="checkbox"/>	BROKER	OR APPRAISER
	CONTRACTOR	