

2725 ROCKY MOUNTAIN AVE
SUITE 450
LOVELAND, CO 80538
www.IRES-net.com
www.ColoProperty.com



MAIN 970-593-9002
TOLL FREE 800-596-4901
FAX 970-593-0900

INFORMATION AND REAL ESTATE SERVICES, LLC

DATABASE ACCESS LICENSE AGREEMENT

This License Agreement made and entered into this _____ day of _____, 20____ by and between:

Information and Real Estate Services, LLC a/k/a IRES, whose address is
2725 Rocky Mountain Ave., Suite 450, Loveland, CO 80538 (“IRES” or the “Licensor”)

and

Company Name: _____ (the “Licensee”)

Company Address: _____
(city) (zip)

Billing Address: _____
(city) (zip)

Company Representative: (Name) _____
(Title) _____

Phone: _____ **Fax:** _____

Email: _____ **Company URL:** _____

Company Representative Requesting Access: (Name) _____
(If different from above) (Title) _____

Phone: _____ **Fax:** _____

Email: _____ **Company URL:** _____

Payment Method: Check # _____ MasterCard Visa

Amount enclosed or authorized to charge to credit card: \$ _____

Credit Card No. _____ **Exp. Date** _____

Name on Card _____ **Zip Code** _____

I hereby authorize IRES to charge the above amount to the identified Credit Card

Signature

Date

WHEREAS, Licensor owns proprietary and other rights to a collective database of real estate information (the “Database”) and is willing to grant a license to Licensee for such portions of the Database as Licensor deems appropriate; and

Check Only One:

____ **Type I Licensee (e.g. Office/Company listings; I2I/IDX or Custom Download)**

WHEREAS, Licensee has provided IRES permission from specific IRES broker[s] identified in Addendum A*, which may be updated from time to time upon the approval of the Licensor (the “Broker[s]”), for the Licensor to grant the Licensee a license to use the real estate listings of the Broker[s] (the “Licensed Records”) for the purpose of marketing and presenting the listings through (a) a web site it will maintain on behalf of the Broker[s] known as http://_____

and/or (b) through other media known as _____ (the “Licensed Purpose”);

Or

_____ **Type II Licensee (e.g. Third party software interface such as Top Producer)**

WHEREAS, Licensee desires to create a temporary interface between its application and the Database for the purpose of _____ (the Licensed Purpose) in order to access certain records necessary to accomplish the Licensed Purpose (the Licensed Records);

Or

_____ **Type III Licensee (e.g. Back Office User)**

WHEREAS, Licensee has provided IRES permission from specific IRES broker[s] identified in Addendum A*, which may be updated from time to time upon the approval of the Licensor (the “Broker[s]”), for the Licensor to grant the Licensee a license to use the augmented real estate listings of the Broker[s] (the “Licensed Records”) for the Broker[s]’ internal use, accessible only by IRES subscribers under the Broker[s]’ control to create reports, office systems and the like, but not for reproduction in any manner (the “Licensed Purpose”).

NOW, THEREFORE, the parties hereto agree as follows:

1. **GRANT OF LICENSE.** Subject to compliance with all terms of this agreement, the Licensor grants to Licensee for the License Term: **Type I Licensee:** A limited, non-exclusive license to access, reproduce, republish, and modify the presentation of the Licensed Records, each as necessary to accomplish the Licensed Purpose only. The Licensee is further limited in its exercise to only the above uses to the extent they are for business and commercial purposes and those that are in the best interests of the Licensor in facilitating the Licensed Purpose. **Type II Licensee:** A limited, non-exclusive license to create an interface between Licensee’s application and the Database only as necessary to access the Licensed Records in order to accomplish the Licensed Purpose. **Type III Licensee:** A limited, non-exclusive license to access and modify the presentation of the Licensed Records, each as necessary to accomplish the Licensed Purpose only. The Type III Licensee is strictly prohibited from reproducing or displaying the Licensed Records in any manner. The above rights are the only rights granted. Among other things, neither access to nor use of information other than the Licensed Records for the Licensed Purpose is authorized.

2. **TERM AND TERMINATION.** Subject to the termination rights set forth in this paragraph and in Addendum B* , and so long as all obligations of the Licensor are precisely complied with, this license is granted for a term of one calendar year beginning on the date of execution of this agreement (the “License Term”). Further, the Licensee understands that the Licensor reserves the right to unilaterally terminate the license grant upon ten days notice if the Licensor either receives a request from one of Broker[s] or if the Licensor deems continued license is not in its best interests. Licensee may terminate the agreement at any time after thirty days notice to Licensor and the Broker[s]. Any renewal of the license rights granted after the License Term for a Type II Licensee shall be only upon mutual agreement of the parties executed in writing. The license term for a Type I and Type III Licensee will automatically renew for successive one-year terms, subject to the termination rights set forth above and contingent upon the Licensee’s compliance with its obligations under this agreement as may be updated in writing from time to by Licensor. In the event of any termination of this license, the Licensee shall pay all fees due the Licensor through the date of termination and further agrees to cease any continued access, use, re-publication, or presentation of any previously Licensed Record and any portion thereof and agrees to take steps to immediately remove any such previously

Licensed Record from any medium in which it is stored or displayed, including but not limited to Licensee's internal computer records, the Broker[s]' back office system and Licensee's Web Site.

3. **ACKNOWLEDGMENT OF RIGHTS.** The Licensee acknowledges that only applications approved by Licensor can be used for fetching, viewing or otherwise using the Database. The Licensee further acknowledges that this license grant is necessary to efficiently accomplish the Licensed Purpose and that the Database as well as each individual record on the Database and all intellectual property rights, including copyright, trade name, trademark, and trade secret, and all title and interest in and to the Database are owned by the Licensor, and are proprietary and shall be considered confidential. Further, the Licensee agrees to not take any action that might limit, diminish, or impair any claimed proprietary right of the Licensor or of the Broker[s] in the Database, in any listing data, or in any Licensed Record. The Licensee agrees that it will not use or continue to present any information contained in any Licensed Record (regardless how obtained) after any termination of this license agreement. All terms related to the acknowledgement of the proprietary rights involved and agreements to not take any action that is might limit, diminish, or impair any claimed proprietary right of the Licensor or of the Broker[s] shall continue after any termination of this agreement. Licensee's breach of the terms of this agreement may result in Licensee's liability for copyright infringement as well as subjecting Licensee to all other remedies available to Licensor under applicable law.

4. **LICENSEE EFFORTS.** The Licensee agrees to comply with the terms of the IRES Rules and Regulations and further agrees to use its best efforts to accomplish the Licensed Purpose. In addition, the Licensee agrees to take any further actions reasonably requested by the Licensor to aid in the assertion or protection of the Database or any Licensed Record, including but not limited to posting proprietary rights notices on each record, displaying initial license information to users or the like. In presenting any Licensed Record on the Licensee's Web Site or in any other manner, the Licensee agrees to use its best efforts to (1) keep the Licensed Records current, including but not limited to immediately informing the Licensor of and correcting any known inaccuracy, and regularly accessing the Licensor's Database to incorporate any changes the Licensor may post and (2) prevent consumer confusion between the Database and Licensee's presentation of the Licensed Records. Licensee shall work with the Licensor to keep Addendum A* updated. Further Type I and Type III Licensees shall comply with the obligations and be subject to the sanctions of the I2I/IDX rules related to Internet display of listings from Section 18 of the IRES Rules and Regulations, on the same terms as an IRES or MLS Participant. Since Type III Licensees will not be involved in Internet display of listings, compliance with these rules serves to limit the listings which a Type III Licensee may access. Such rules are summarized in Addendum B* and are posted on the IRES web site at www.IRES-net.com. Upon the request of Licensor, Licensee shall provide free of charge to Licensor an account password to allow Licensor to monitor the data display and general compliance with the Agreement. Licensee agrees not to re-license or re-distribute the Licensed Records, in whole or in part, to any third party, or provide any form of access thereto except as necessary to accomplish the Licensed Purpose. Only the Company Representatives listed on page 1 of this agreement are authorized to access the Licensed Records. Licensee must notify Licensor before making any change to the identity of the Company Representatives. Licensee shall also immediately notify Licensor of any change in status of a Company Representative, such as a change in employment or contact information. Licensee is responsible for immediately terminating the access rights of a Company Representative who leaves the employment of Licensee and for promptly reporting the same to Licensor. Licensee shall at all times maintain control over and responsibility for access to the Database and Licensed Records and shall take all reasonable precautions to hold such information confidential and to prevent access to or use thereof by unauthorized users in any manner unless expressly given permission to do so in writing signed by the Licensor. Licensor shall have the right, at its own expense, to inspect during normal business hours and without disruption to Licensee's normal business practice, the actions the Licensee takes to comply with this section. All Type II Licensees shall provide to Licensor an updated list each month of the names and addresses of Licensee's customers/purchasers within the IRES services area.

5. **PAYMENT.** In consideration of this license granted to the Licensee for the Licensed Records for the Licensed Purpose, the Licensee agrees to pay to Licensor an initiation fee upon execution of this agreement in the amount of \$225.00 and throughout the entire License Term, a monthly fee in an amount as set by the Licensor from time to time. Initially such monthly fee shall be \$45.00 for the 1st URL where IDX listings will be displayed, plus \$20.00 for each additional URL registered with IRES by submitting the Broker Authorization Form. Such amounts shall be paid without demand, in advance not later than the fifth day of the month in which the rights will be exercised. The first monthly fee shall be paid upon execution of this agreement. In the event the Licensor raises its monthly fee, the Licensor agrees that it will give the Licensee no less than thirty days notice of such increase, during which time the Licensee shall have the right to accept such increase or terminate the continued grant of this license. The Licensee understands and agrees that in the event it should fail to make any payment or otherwise comply with any term of this agreement, the license grants of this agreement shall automatically terminate.

6. **DISCLAIMER.** Since the Licensor and the Broker[s] each assemble the data from various sources, each must limit the degree to which they warrant the accuracy of the data and the results that may be obtained by using the data. Neither the Licensor, nor the Broker[s], nor any individual providing any data warrants that the data will be free from all errors or inaccuracies. Furthermore, it is understood even when the Licensor or the Broker[s] are informed that inaccuracies or mistakes are present, it is possible that neither may immediately make the appropriate corrections. The Licensor suggests and the Licensee accepts the obligation to verify all information to the extent necessary. Further, in the event any inaccuracy or mistake causes damage, and in the event a liability for the damage is determined to exist, it is agreed that the maximum total liability of the Licensor, the Broker[s], and any individual of the Broker[s] involved in providing data to the Licensee shall be limited to a maximum of one hundred dollars each. THE DATA LICENSED IS PROVIDED "AS IS" WITH ALL FAULTS AND IN NO CASE SHALL THE LICENSOR, THE BROKER[S], OR ANY INDIVIDUAL OF THE BROKER[S] INVOLVED IN PROVIDING DATA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR OTHER SIMILAR DAMAGES ARISING FROM BREACH OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL THEORY. ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED IN DURATION TO TEN (10) DAYS FROM THE DATE OF ORIGINAL ACCESS OF THE DATA. The warranty set forth above is in lieu of all other express or implied warranties, whether oral or written. The Licensee shall be fully responsible for its use and presentation of the Licensed Records and agrees to hold harmless and indemnify both the Licensor and the Broker[s] from and against any and all claims, causes of action and costs (including attorney's fees) in the event any claim is made involving the Licensee's use or presentation thereof or any other actions involving the Licensee or this license agreement.

7. **LAW / ARBITRATION.** This License agreement shall be construed and enforced in accordance with the laws and jurisdiction of the State of Colorado. Other than injunctive relief by the Licensor which it may, but need not, choose to pursue in a court, the parties agree to submit any dispute arising hereunder or in any way arising from their relationship or any use of Licensor's rights to confidential, binding arbitration in Larimer County, Colorado, to the extent permissible under law by a single arbitrator pursuant to the rules of the Commercial Arbitration Rules (CAR's) of the American Arbitration Association (AAA) and with all applicable laws or rules modified to the extent permissible for considerations of fairness and expediency and so as: a) to provide for the minimal amount of discovery and other pre-hearing procedures consistent with a fair resolution of the dispute, and b) to endeavor for the dispute to be resolved within 180 days of the arbitrator's appointment unless the arbitrator determines that justice requires otherwise, and c) to avoid involvement or fees by the American Arbitration Association or other such oversight organization. Each party agrees that the prevailing party may be awarded its share of the arbitrator's fees and costs and its attorney's fees and costs in addition to any appropriate award. In the event any claim or controversy arises which is not subject to binding arbitration under this section, the parties agree to submit to exclusive

jurisdiction and venue for the resolution of such dispute in the District Court of Larimer County, Colorado, or to the extent necessary in federal court in the District of Colorado.

8. **MISCELLANEOUS.** This license agreement sets forth the entire understanding and agreement between the parties and no written or oral representations of any kind whatsoever by the Licensor, the Licensee, or the Broker[s] shall in any way modify or expand the terms of the agreement. In the event any provision of this agreement is found to be unenforceable, void, or invalid, such provision shall be modified to the extent necessary to make it enforceable, and as so modified, this agreement shall remain in full force and effect. Failure to exercise any rights contained in this agreement shall not be construed as a waiver of such rights. This agreement is assignable by the Licensor only. Licensee acknowledges that its business operation is completely independent of the Licensor. The Licensee agrees that it shall at no time hold itself or any of its employees out as agents or representatives of either the Licensor or the Broker[s]. No partnership, joint venture, or other such relationship shall be deemed to exist by virtue of the rights granted herein.

9. **THIRD PARTY PROVIDER PASSWORD HANDLING POLICY.** Licensee acknowledges that protecting the confidentiality of customer data and the integrity of Licensor's services is a top priority for Licensor. Further Licensee understands that logins and passwords help secure the confidentiality of Licensor's Customer data. Licensor's policy requires that passwords only be known by the Customer and only be exchanged between the Customer and the IRES system. Third party access to Customer Passwords is contrary to IRES' policy. In the event that such access is necessary, Third Party Providers handling customer login information must strictly adhere to the following standards for handling login and password data storage, transmission and interactions with IRES applications.

- Third Party Providers must not deal directly with IRES Customers regarding issues concerning IRES passwords or login access. All requests of this nature must be made with Licensor.
- Customer information including logins and passwords must be kept confidential.
- Licensee must use a single mechanism to collect IRES login information and that mechanism must be made available for Licensor to review and approve upon request. The Third Party Provider is not authorized to collect IRES login information by any other means than this single mechanism.
- Customer Passwords must always be stored in a cryptographically secure manner
- Customer Passwords must be transmitted in a cryptographically secure manner
- Customer Passwords must only be used to log into the IRES systems and may not be transmitted to other systems or used for any other purpose.
- Any unauthorized disclosure of IRES Customer data or Customer Passwords must be reported within 24 hours to Licensor.

Definitions

Customer – For the purpose of this document a Customer is any person or entity that has access to IRESis.com.

Customer Password – Any password that the end user has created, in contrast to a system assigned password.

Cryptographically secure manner - Cryptography based on industry-tested and accepted algorithms, along with strong key lengths and proper key-management practices. Cryptography is a method to protect data and includes both encryption (which is reversible) and hashing (which is not reversible, or “one way”). SHA-1 is an example of an industry-tested and accepted hashing algorithm. Examples of industry-tested and accepted standards and algorithms for encryption include AES (128 bits and higher), TDES (minimum double-length keys), RSA (1024 bits and higher), ECC (160 bits and higher), and ElGamal (1024 bits and higher). See NIST Special Publication 800-57 (<http://csrc.nist.gov/publications/>) for more information.

Enforcement

Any Third Party Provider found to have violated this policy may be subject to termination of this Agreement as well as any right to access the Database and to access data feeds. By signing this Agreement Licensee agree to uphold this policy and understands that failure to do so may result in termination of these access rights.

Executed as of the day and year first above written.

Licensee:

Licensor:

Name

Name

Title

Title

* Addendum A: Broker Authorization for Third Party Access to Office/Company Listing Data or I2I/IDX Data or Back Office Listing Data from IRES.

** Addendum B: Summary of I2I/IDX Rules and Regulations

Addendum B to Database Access License Agreement: Summary of IRES I2I/IDX Rules and Regulations

Below is a summary of I2I/IDX rules related to the Internet display of listings from Section 18 of the IRES Rules and Regulations. A complete copy of IRES Rules and Regulations is posted on our company web site at www.IRES-net.com.

Note: I2I/IDX sites will be monitored for compliance.

Internet Data Exchange (IDX) or I2I:

I2I Defined: I2I affords IRES Participants the option of authorizing display of their active listings on other Participants' Internet web sites.

Participation in I2I is available to all MLS Participants engaged in real estate brokerage who consent to display of their listings by other Participants. This requirement can be met by maintaining an office or Internet presence from which Participants are available to represent real estate sellers or buyers (or both). Non-principal brokers affiliated with I2I Participants may display information on their own web sites provided written authorization from the Participant (employing broker) has been provided to IRES.

Display: Display of listing information pursuant to I2I is subject to the following rules:

- Listings shall contain only those fields designated and provided by IRES. Display of all other fields is

prohibited.

- Listing information shall be not modified or manipulated. This is not a limitation on site design but refers to changes to actual listing data.
- Participants may determine which listings or types of listings will display on their web sites. Examples include property type, (e.g. Farm and Ranch) price, or location.
- All listings displayed are required to identify the listing firm.
- Optional: All listings displayed may identify the listing agent.
- Listings displayed shall be limited to properties listed on an exclusive right to sell basis.
- All listings displayed pursuant to I2I shall show IRES as the source of the information as follows: "Information source: Information and Real Estate Services, LLC. Provided for limited non-commercial use only under IRES Rules. © Copyright IRES."
- All listing data must be refreshed at least once every 3 days. Failure to comply shall result in immediate suspension from the data download function.
- "Terms of Use" shall be prominently displayed, indicating that listing information is provided exclusively 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 data consumers can retrieve or download in response to an inquiry shall be limited to a maximum of 400 listings per search.

No portion of the listing database shall be used or provided to any third party for any purpose.

Service Fees and Fines: Service fees for participation and fines for failure to comply with these Rules shall be established from time to time by IRES Managers.

Sanctions for Rules Violations and Data Misappropriation:

Internal Remedies for MLS Rules Violations:

- (a) a fine of up to \$5000
- (b) suspension of data download privileges
- (c) termination of data download privileges

Judicial Remedies for Data Misappropriation and Copyright Infringement:

- (a) injunctive relief
- (b) 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
- (c) actual damages and lost profits
- (d) attorney's fees and costs, at the discretion of the court
- (e) potential criminal penalties

(Rev.06/09)