



AGREEMENT: Access to Broker Reciprocity data feed

Note: This form is a legally binding agreement (the "Agreement") between or among the Firm (as defined below), the Consultant(s), if any, (as defined below) and Western Upstate Multiple Listing Service of South Carolina, Inc. (Western Upstate MLS).

Simultaneously or prior to submitting this Agreement, the Firm must become a Broker Reciprocity Subscriber (BRS).

This Agreement must be completed in its entirety and signed by the designated broker of the Firm and by any Consultants assisting your firm. There are no exceptions. Once this Agreement has been completed and signed by the designated broker of the Firm and any Consultant, mail or deliver it to Western Upstate Multiple Listing Service of South Carolina, Inc., 600 McGee Road, Anderson, SC 29625. The Effective Date of the Agreement will be the date that it is signed and dated by an authorized representative of the Western Upstate MLS.

AGREEMENT

1. This **AGREEMENT** is made and entered into by and among Western Upstate MLS, the real estate firm whose name and contact information appear on the signature page of this Agreement designated "Firm Information and Signature" (the "**Firm**"), and the companies/individuals whose names and contact information appear on the signature pages of this Agreement designated "Consultant Information and Signature" (collectively, the "**Consultants**"), if any.

RECITALS

2. Firm wishes to obtain, and Western Upstate MLS wishes to provide, data for the Firm's web site, including the listing data of other real estate brokerages participating in Western Upstate MLS. Firm may wish to engage Consultants, i.e., other companies or individuals who are not employees of Firm, to perform data downloading, manipulation, and formatting, as well as programming and web design.

DEFINITIONS

3. 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, including Copyrighted Data and Works, except those listings where the property seller has opted out of

Internet publication by so indicating on the listing contract. Western Upstate MLS owns the BR Data.

Broker Reciprocity Subscriber or BRS: A Firm which is 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.

MLS Server: The computer server or servers, including both hardware and software, maintained by the Western Upstate MLS which contains the BR Data and provides or provide the means for the Firm and Consultant(s) to access the BR Data.

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 procession, technical support, consulting, in connection with the sale and appraisal of real property.

Rules: The Rules and Regulations of Western Upstate MLS, as amended from time to time, and any operating policies relating to the BR Data and BRSS promulgated by Western Upstate MLS. The Rules are, at all times, an integral part of the terms of this Agreement. The Rules may include terms and limitations in addition to those set forth in this Agreement. In the event of any inconsistency, the terms of the Rules will govern. The Western Upstate MLS may modify the Rules at any time at its sole discretion.

Subscriber: Any real estate broker, appraiser, or other real estate related business professional that purchases Multiple Listing Services from Western Upstate MLS 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 Multiple Listing Service web system by a Subscriber. Western Upstate MLS owns the Subscriber Data.

WESTERN UPSTATE MLS' OBLIGATIONS

4. During the term of this Agreement, Western Upstate MLS grants to Firm a license to:
 - a. Display the BR Data on Firm's web site, subject to the use by the Firm being in compliance at all times with this Agreement and the Rules, as determined in the sole discretion of the MLS. With respect to each property listing, only the portion of BR Data indicated by the MLS as being for publication may be displayed and/or transmitted by the Firm; and
 - b. Make copies of the BR Data to the extent necessary to deliver the BR Data to consumers on Firm's web site.

5. During the term of this Agreement, Western Upstate MLS agrees to provide to Firm and its Consultants:
 - a. Access to the BR Data via the Internet using such information transfer system as may be utilized by the Western Upstate MLS from time to time, under the same terms and conditions which Western Upstate MLS offers the BR Data to other Broker Reciprocity Subscribers;
 - b. Access to the BR Data shall be exclusively by the means, including the format and method of delivery, designated by the Western Upstate MLS, which may in its sole discretion and upon reasonable prior notice, change the means and nature of access to the BR Data;
 - c. With respect to each listed property, or with respect to all listed properties, an indication of the portions of the BR Data that may be displayed and/or transmitted, and any limitations on the manner in which such BR Data may be displayed, transmitted and/or any other requirement related thereto, with the understanding that such provisions may be governed globally by the Rules.
 - d. Notice of changes to the file and record formats of the BR Data; and
 - e. Notice of changes to the Rules.
6. The Western Upstate MLS shall not be obligated to make any changes to the MLS Server, including any software running on the MLS Server, the configuration, applicable protocols, or any other aspect of the MLS Server for any reason. The Firm and each Consultant acknowledges that the MLS Server, together with access to the BR Data, may from time to time be unavailable to the Firm and Consultant, whether because of technical failures or interruptions, intentional downtime for service or changes to the MLS Server or otherwise. The Firm and each Consultant agrees that any modification of the MLS Server, any interruption or unavailability of access to the MLS Server, or access to or use of the BR Data shall not constitute a default under this Agreement. Western Upstate MLS shall have no liability of any nature to the Firm or any Consultant for, and the Firm and each Consultant waives all claims rising out of, any such modifications, interruptions, unavailability, or failure of access.
7. THE LICENSE GRANTED UNDER THIS AGREEMENT, INCLUDING ACCESS AND DISPLAY OF THE BR DATA, IS PROVIDED "AS IS", AND WESTERN UPSTATE MLS DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

FIRM'S AND CONSULTANT'S OBLIGATIONS

8. Firm and the Consultant shall comply with the Rules at all times. The Firm and the Consultant acknowledge that each has received a copy of the Rules in the form as adopted by the Western Upstate MLS as of the Effective Date and agree that each shall not use the BR Data in any manner except as in compliance with the requirements of the Rules, the intent being that the Firm and the Consultant shall be fully bound by the

Rules. Without limiting the Rules in any way, this Agreement specifically requires (i) that all use of any BR Data provided to the Firm or the Consultant by the Western Upstate MLS pursuant to this Agreement or obtained in any other manner shall identify the listing firm and listing agent for each listed property, with all listing firms and agents being shown and identified in the same manner and (ii) the BR Data shall be refreshed at least every three (3) days for use by the Firm's web site.

9. Firm and the Consultant each acknowledge that ownership of the Subscriber Data and the BR Data, including but not limited to all Copyrighted Data and Works, is and shall remain at all times with the Western Upstate MLS or with the third parties, such as photographers who may retain ownership.
10. Firm and the Consultant each shall comply with the requirements set forth below relating to Copyrighted Data and Works.
11. The Firm and the Consultant(s), each on its own behalf and on behalf of its employees, agents, contractors and any other information technology consultants which the Firm or Consultant(s) may use, agrees to not directly or indirectly disclose, display, provide, publish, sell, copy, reproduce, transfer, grant access to or sublicense the BR Data or any portion thereof, or otherwise make available to any third party or use the BR Data for any purpose other than that expressly intended by this Agreement in any manner or which is not in full compliance with the terms of this Agreement and with the Rules. In the event that Firm or Consultant desires to make the BR Data available to any third party, Firm and Consultant each agree to require such third party to execute this Agreement and become a Consultant.
12. If Western Upstate MLS notifies Firm of a breach of the Rules or this Agreement and Firm does not cure such breach within 14 days, Firm agrees that Western Upstate MLS may seek cure for such breach from the Consultants, or any one of them, and hereby authorizes such Consultants to act immediately to cure the breach that is within Consultant's control without further action by Firm. Consultant agrees to cooperate with Western Upstate MLS and act immediately upon notification by Western Upstate MLS of an uncured breach by Firm.
13. Firm and the Consultant each shall notify Western Upstate MLS within five (5) business days of any change to the information on the signature page below relating to the Firm or a Consultant.

COPYRIGHTED DATA AND CONFIDENTIAL INFORMATION

14. "**Copyrighted Data and Works**" is and includes all copyrightable works, including, but not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, any details related to listed property and all other works fixed in any tangible medium of expression and created by or for a Subscriber and/or the Western Upstate MLS. Copyrighted Data and Works include, but are not limited to, the following types of information, data, and other information of a similar nature (whether in oral, visual, audio, written or other form):

- (i) Subscriber Data and BR Data;
- (ii) Documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;
- (iii) Software, source code, object code, diagrams, flow charts;
- (iv) Techniques, procedures;
- (v) IP addresses, access codes and passwords; and
- (vi) Any information that the Western Upstate MLS creates and is protectable by copyright.

15. Firm and Consultant(s) each acknowledges and agrees that the BR Data consists of proprietary, original works of authorship of the Western Upstate MLS, may consist of information for which the Western Upstate MLS has sufficient rights to grant this license, and is protected under United States copyright law. Title to Copyrighted Data and Works remains at all times with the Western Upstate MLS or with the third parties, such as photographers who may retain ownership. Title to any Copyrighted Data and Works created by the Firm or a Consultant or their employees or agents as a result of obtaining or utilizing any Copyrighted Data and Works of the Western Upstate MLS or a Subscriber shall be held in the name of the Western Upstate MLS. To the extent necessary, any such Copyrighted Data and Works shall be deemed a work made for hire under the United States copyright laws as a work specially ordered or commissioned for use as supplementary work and the Western Upstate MLS shall own all title and rights therein. Firm and Consultant each agrees that it will not challenge or take any action inconsistent with the Western Upstate MLS's ownership of or rights to the BR Data as described herein.

16. **Restrictions on Use – Scope of Use.** The Firm and any Consultant will use or access the BR Data only as expressly permitted under this Agreement, the Rules, and as indicated by the Western Upstate MLS as to the portions of the BR Data that may be displayed or published. The Firm and any Consultant will not use its access to the BR Data for any other purpose. The Firm and any Consultant will employ measures to protect the BR Data at least as rigorously as it protects its own copyrighted material, but in no event with the exercise of less than reasonable care.

17. **Restrictions on Use – Unauthorized Uses.** The Firm and any Consultant will not use, publish, display or transmit, and will not make copies of the BR Data except as necessary to effect the purposes of this Agreement and the Rules. At no time and under no circumstances will the Firm or any Consultant reverse engineer, decompile, or disassemble any software constituting part of the BR Data. The Firm and any Consultant will not incorporate the BR Data into any other work or product other than expressly provided in this Agreement or in the Rules.

TERM AND TERMINATION

18. Western Upstate MLS shall have the right at any time and in its sole discretion, with or without cause, to terminate this Agreement. The Firm has the right at any time and in its sole discretion, with or without cause, to terminate this Agreement and in such case this Agreement with the Consultant shall also terminate. The Consultant has the right at any

time and in its sole discretion, with or without cause, to terminate this Agreement as to the Consultant, but such termination by the Consultant shall not terminate this Agreement as to the Firm. Any termination of Firm's privileges as a Subscriber by Western Upstate MLS to purchase Multiple Listing Services shall automatically also be a termination of this Agreement. As provided below, the respective Firm's and Consultant's Obligations shall survive any termination of this Agreement.

GENERAL PROVISIONS

19. **Survival of Obligations.** The obligations of Firm and the Consultant, including but not limited to those set forth under "Firm's and Consultant's Obligations" above shall survive the termination or expiration of this Agreement.
20. **Western Upstate MLS' Remedies.** Because of the unique nature of the BR Data, including but not limited to the Copyrighted Data and Confidential Information, Firm and Consultants acknowledge that Western Upstate MLS would suffer irreparable harm in the event that any of them breaches its obligation under this Agreement, and that monetary damages would be inadequate to compensate Western Upstate MLS for a breach. Western Upstate MLS is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Firm or Consultants or any one of them, without showing or proving any actual damages sustained by Western Upstate MLS.
21. **Attorney's fees.** If Western Upstate MLS prevails in any action to enforce or interpret this Agreement or any provision hereof, the party against whom enforcement or interpretation was sought will pay Western Upstate MLS' reasonable attorney's fees and costs for such legal action.
22. **Limitation of Liability.** Western Upstate MLS' liability to Firm and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the amount equal to what was paid by the Consultant in this Agreement. Firm's and any Consultant's only other remedy shall be termination of this Agreement. Western Upstate MLS shall not be liable for any incidental, consequential or punitive damages under any circumstances, even if Western Upstate MLS has been advised of the possibility of such damages. Western Upstate MLS shall have no liability for inaccuracies in the BR Data or the Subscriber Data.
23. **Notice.** All notices to be given under this Agreement shall be sent by certified mail, prepaid with return receipt requested, or by a nationally recognized overnight delivery service such as Federal Express to the parties at their respective addresses set forth below or such other address of which any party may advise the other in writing during the term of this Agreement.
24. **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.
25. **No Assignment.** Neither the Firm nor any Consultant may assign or otherwise transfer any of its rights under this Agreement to any party without the prior written consent of

Western Upstate MLS, which consent may be withheld in the sole discretion of the Western Upstate MLS .

26. **Entire Agreement.** This Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings whether oral or written. The previous sentence notwithstanding, the Rules are expressly incorporated into this Agreement by reference.

27. **Applicable law.** This Agreement is governed by and enforced according to the laws of the State of South Carolina.

28. **Legally Binding.** This Agreement shall be binding upon and shall inure to the benefit of the respective parties, their successors and assigns (subject to the above stated assignment prohibition).

-SIGNATURE PAGES FOLLOW-

Western Upstate Multiple Listing Service, Inc. Consultant Information and Signature

Consultant (company or individual) Name: _____

E-mail address: _____

(You *must* supply an e-mail address here. This address will be the Western Upstate Multiple Listing Service of South Carolina, Inc.'s principal means of communicating with you for notices under this Agreement.)

Consultant Street Address: _____

Consultant City, ST, ZIP: _____

Phone: _____ Fax: _____

By signing below, I am agreeing to all terms of this agreement and the Rules and Regulations of the Western Upstate MLS. Entered into on behalf of Consultant by:

Signature

Print Name

Title

Agent Name

Web Address

NOTE TO CONSULTANT: Be sure to enter into this Access to Broker Reciprocity data feed agreement with the Western Upstate Multiple Listing Service of South Carolina, Inc. and every real estate broker to which you provide services. If you sign only one and that Firm's access to the Broker Reciprocity Data is terminated, you will not be able to get the data for your other clients.

BROKER-IN-CHARGE ACKNOWLEDGEMENT:

By signing below I acknowledge and approve that the above noted Consultant will be providing the IDX data feed to one or more agents of this company as noted below:

Broker-in-Charge (*Print*)

Signature

Company

Date

AGENT ACKNOWLEDGEMENT:

By signing below I acknowledge that the above noted Consultant will be providing the IDX data feed to my Website as noted below:

Agent (Print)

Signature

Web Address

Date

APPROVED:

Western Upstate Multiple Listing Service of South Carolina, Inc.

**600 McGee Road
Anderson, SC 29625**

Date

*(This as part of The Western Upstate Multiple Listing Service, Inc. Rules and Regulations
Dated June 2014 in its entirety Section 16 pages 16-19)*

SECTION 16
INTERNET DATA EXCHANGE (IDX)

IDX affords MLS Participants the ability to authorize limited electronic display of their listings by other participants. (Amended 5/12)

Section 16.1 – Authorization: Participants’ consent for display of their listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant’s listings, that participant may not download, or frame or display the aggregated MLS data of other participants. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis by where the seller has prohibited all Internet display. (Amended 5/12)

Section 16.2 – Participation: Participation in IDX is available to all MLS participants who are REALTORS® and who consent to display of their listings by other participants.

Section 16.2.1 – Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies. (Amended 5/12)

Section 16.2.2 –MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines. (Amended 5/12)

Section 16.2.3 Listings, including property addresses, can be included in IDX displays except where a sellers has directed their listing broker to withhold their listing or the listing’s property address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs). (Amended 5/12)

Section 16.2.4 – Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location (“uptown,” “downtown,” etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each participant. (Amended 11/06)

Section 16.2.5 – Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every three (3) days. (Amended 5/12)

Section 16.2.6 – Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide or make any portion of the MLS database available to any person or entity. (Amended 5/12)

Section 16.2.7 – Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, “control” means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules. (Amended 5/12)

Section 16.2.8 - Any IDX display controlled by a participant or subscriber that:

- a. allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

either or both of those features shall be disabled or discontinued for the seller’s listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants. Except for the foregoing and subject to Section 18.2.9, a participant’s IDX display may communicate the participant’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller. (Amended 5/12)

Section 16.2.9 - Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment. (Amended 5/12)

Section 16.2.10 - Display of IDX Information by Real Estate Franchise Organizations

Deleted November, 2011.

Section 16.3 – Display: Display of listing information pursuant to IDX is subject to the following rules:

Section 16.3.1 – Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative

compensation offers, showing instructions, property security information, etc.) may not be displayed.

Section 16.3.2 – Participants shall not modify or manipulate information relating to other participants’ listings. (This is not a limitation on site design but refers to changes to actual listing data.) MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.

Section 16.3.3 – All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 5/12)

Section 16.3.4 – All listings displayed pursuant to IDX shall identify the listing agent.

Section 16.3.5 – Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own websites subject to their participant’s consent and control and the requirements of state law and/or regulation.

Section 16.3.6 – All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 5/12)

Section 16.3.7 – Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers’ personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 5/12)

Section 16.3.8 – Participants shall display at the start of any IDX property search the following disclaimer:

“This information is deemed reliable, but not guaranteed. Neither, the Western Upstate Association of REALTORS[®], Inc. or Western Upstate Multiple Listing Service of South Carolina, Inc., nor the listing broker, nor their agents or subagents are responsible for the accuracy of the information. The buyer is responsible for verifying all information. This information is provided by the Western Upstate Association of REALTORS[®], Inc. and Western Upstate Multiple Listing

Service of South Carolina, Inc. for use by its members and is not intended for the use for any other purpose.”

Section 16.3.9 – Participants shall display on each page of displayed search results, the following disclaimer:

“The data relating to real estate for sale on this Web site comes in part from the Broker Reciprocity Program of the Western Upstate Association of REALTORS[®], Inc. and the Western Upstate Multiple Listing Service, Inc.”

Section 16.3.10 – The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than one hundred (100) listings or five percent (5%) of the listings available for IDX display, whichever is fewer. (Amended 11/09)

Section 16.3.11 – The right to display other Participants’ listings pursuant to IDX shall be limited to a Participant’s office(s) holding participatory rights in this MLS.

Section 16.3.12 – Listings obtained through IDX must be displayed separately from listings obtained from other sources, including information provided by other MLS’. Listings obtained from other sources (e.g., from other MLS’, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 5/12)

Section 16.4 – Service Fees and Charges: Service fees and charges for participation in IDX shall be as established annually by the Board of Directors. (*Adopted 11/01, Amended 5/05*)

Section 16.5 – Monitoring of Data: It is recommended that the Participating Broker-in-Charge and listing agent review any sites displaying company listings for accuracy and appropriateness.