



Broker Download DATA ACCESS AGREEMENT

BROKER DOWNLOAD DATA ACCESS AGREEMENT

This **AGREEMENT** is made and entered into by and among the Smart MLS, Inc. (“**Smart 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, if any, whose names and contact information appear on the signature pages of this Agreement designated “Consultant Information and Signature” and who fall within the definition of “Consultant” set forth in Section 1. (collectively, “**Consultants**”).

RECITALS

Whereas, Firm wishes to obtain, and SMARTMLS wishes to provide, data for Firm’s website, or for other use including the listing data of other real estate brokerages.

Whereas, 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 Internet web-site design services and who will assist Firm in obtaining permitted data from Smart MLS.

Whereas, any and every Consultant wishes to provide such services in accordance with this Agreement.

Now therefore, for consideration receipt whereof is hereby acknowledged, the parties agree as follows:

1.0 DEFINITIONS

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

Multiple Listing Service Database or MLS Data: The current aggregate compilation of all active listings of real estate for sale, real estate previously sold or real estate previously listed of all MLS. The MLS Data is the Proprietary Property of Smart MLS.

Consultants: other companies or individuals who are not employees of Firm, who perform data downloading, manipulation, and formatting, as well as programming and Internet web-site design services, and who are retained by Firm to assist it in accessing and employing MLS Data as herein provided.

Multiple Listing Service: A means for collecting and disseminating information about real property that is or has been for sale, including a means for real estate brokers to make offers of cooperation and compensation to each other. Multiple Listing Services may also include, without limitation, the provision of data processing, technical support, consulting, and other information technology services to real estate brokers and appraisers in connection with the sale and appraisal of real property. Multiple Listing Service shall however include only such of these services as Smart MLS from time to time provides to Participants.

Rules: The rules and regulations of SMARTMLS, as amended, at the sole discretion of Smart MLS, from time to time with notice to Firm, and any operating policies which are promulgated and amended by Smart MLS at its sole discretion, from time to time with notice to Firm.

Participant: Any REALTOR® Principal who is an active member of the CT Association of REALTORS® or any other Association of REALTORS® without any further qualification except payment of required dues and fees and agreement to abide by the Bylaws and the Rules & Regulations of the Service.

Participant Data: Data relating to real estate for sale, previously sold or listed for sale, and data relating to Participants, entered into the Smart MLS System by Participants and Smart MLS. The compilation of the Participant Data is the Proprietary Property of Smart MLS.

Proprietary Property: As defined in Section 6.0.

2. Smart MLS' OBLIGATIONS

- 2.1 During the term of this Agreement, Smart MLS grants to Firm and its Consultants a limited, non-transferable and non-exclusive license to:
- (a) Access MLS Data as herein provided for use in accordance herewith;
 - (b) Make copies of the MLS data to the extent necessary to use the data for authorized purposes under the MLS Rules.
- 2.2 During the term of this Agreement, Smart MLS agrees to provide to Firm and its Consultants:
- (a) Access to the MLS Data under the same terms and conditions Smart MLS offers to other users.
 - (b) Minimum seven (7) days' advance notice of changes to the software file and record formats in which the substantive MLS Data is to be stored for access under this Agreement; and
 - (c) Minimum seven (7) days' advance notice of enforcement on changes to the Rules.

3.0 FIRM'S OBLIGATIONS

- 3.1 Firm shall comply with the Rules and this Agreement at all times and shall timely pay all fees established in accordance with the Rules.
- 3.2 Firm acknowledges and agrees that Smart MLS exclusively possesses as Smart MLS' Proprietary Property the compilation of the Participant Data and owns exclusively any and all copyrights and all other rights with respect thereto and that such Proprietary Property shall be governed by Section 6.0.
- 3.3 If Smart MLS notifies Firm of a breach by Firm of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that SMARTMLS may notify any or more of Firm's Consultant's of such breach and that such Consultant shall take immediate action at Firm's expense to cure such breach.
- 3.4 Firm shall provide Smart MLS with five (5) business days advance notice of any change to the information relating to Firm on the Firm Information and Signature page below.

4.0 CONSULTANT'S OBLIGATIONS

- 4.1 Each Consultant shall comply with the Rules and this Agreement at all times.
- 4.2 Each Consultant acknowledges and agrees that Smart MLS exclusively possesses, as Smart MLS' Proprietary Property, the compilation of Participant Data and owns exclusively any and all copyrights and all other rights with respect thereto and that such Proprietary Property shall be governed by Section 6.0.
- 4.3 If Smart MLS contacts any Consultant to cure any breach by Firm or such Consultant that is within such Consultant's control, such Consultant hereby agrees to act immediately and cure such breach.
- 4.4 Each Consultant shall provide Smart MLS with five (5) business days advance notice of any change to the information relating to it on the Consultant Information and Signature page below.

5.0 TERM AND TERMINATION

- 5.1 The term of this Agreement begins on the "Effective Date" set forth on the "Smart MLS Information and Signature Page" below. Smart MLS has the right at any time and in its sole discretion without advance notice of any kind to terminate this Agreement.
- 5.2 Firm may terminate this Agreement by notice to Smart MLS and each Consultant.
- 5.3 This Agreement shall automatically Terminate upon the termination of Firm's privileges as a Participant in Smart MLS.

6.0 PROPRIETARY PROPERTY

- 6.1 Smart MLS retains title to the compilation of Participant Data including without limitation all MLS Data, and further including, without limitation, all copies and audiovisual and computer graphic aspects thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto (the "Proprietary Property"). No Consultant shall by virtue of this Agreement or otherwise, acquire any proprietary rights whatsoever in the Proprietary Property, all of which shall be the sole and exclusive property of Smart MLS. Any right not expressly granted to Firm or a Consultant by this Agreement is hereby expressly reserved by Smart MLS and shall be deemed to be part of its Proprietary Property.
- 6.2 Firm and any and each Consultant agree that during the term hereof and at all times hereafter, and except as specifically permitted herein or in a separate writing signed by the Smart MLS, neither Firm nor any and each such Consultant shall commercialize, transfer, or disclose any portion of the Proprietary Property to any person or entity, except during the term of this Agreement to its own employees having a "need to know" (and who themselves are bound by similar nondisclosure restrictions, of which Smart MLS shall be deemed to be a third party beneficiary). Firm and any and each Consultant shall use the same degree of care in safeguarding the Proprietary Property as Firm and such Consultant uses in safeguarding its own confidential information and proprietary property. Firm shall use its reasonable best efforts to cooperate with and

assist Smart MLS in identifying and preventing any unauthorized use, copying or disclosure of the MLS Data or any portion thereof.

7.0 INDEMNIFICATION OF SMART MLS

7.1 Firm will, at its own expense, indemnify, promptly reimburse Smart MLS for the defense of, and hold Smart MLS and its affiliates, directors, officers, employees, agents and contractors, harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs and expenses (including attorneys' fees): (i) arising out of injury or death to persons, or damage to property, or any other claim, resulting from or pertaining to the access to and use of MLS Data and whether or not occasioned by the negligence or misconduct of Firm or any Consultant; or arising out of any breach by Firm or any Consultant of this Agreement.

8.0 LIMITED WARRANTY

8.1 Smart MLS warrants to Firm that it owns or otherwise has rights in the MLS Data and has the right to license the MLS Data as described in this Agreement.

8.2 SMART MLS MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE ABILITY TO ACCESS OR INTEGRATE BE DATA.

8.3 THE WARRANTY SET FORTH IN SECTION 8.1 IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY SMART MLS. SMART MLS MAKES NO WARRANTY TO ANY CONSULTANT. SMART MLS EXPRESSLY DISCLAIMS, AND FIRM HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OF THE MLS DATA, INFORMATIONAL CONTENT OF THE MLS DATA OR PARTICIPANT DATA, OR FITNESS OF THE DATA FOR FIRM'S PURPOSE OR SYSTEM INTEGRATION. THERE IS NO WARRANTY AGAINST INTERFERENCE WITH ENJOYMENT OF THE MLS DATA, OR AGAINST INFRINGEMENT OF PROPRIETARY RIGHTS OF ANOTHER. SMART MLS DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT ACCESS TO MLS DATA AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ACCESS PROBLEMS, IF ANY, WILL BE CORRECTED BY IT OR BE CORRECTABLE. FIRM SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE, EFFICIENCY AND SUITABILITY OF ANY CONSULTANT AND SMART MLS SHALL HAVE NO LIABILITY THEREFOR.

9.0 LIMITATION OF LIABILITY

9.1 IN NO EVENT SHALL SMART MLS BE LIABLE TO ANY CONSULTANT HEREUNDER FOR ANY REASON INCLUDING WITHOUT LIMITATION ANY INTERNAL OR NEGLIGENT ACT OF SMART MLS. IN NO EVENT SHALL SMART MLS BE LIABLE TO FIRM FOR ANY DAMAGES RESULTING FROM OR RELATED TO FIRM'S ATTEMPTS TO ACCESS BE DATA, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OF ANY SORT. SMART MLS SHALL HAVE NO LIABILITY, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE AGGREGATE LIABILITY OF SMART MLS FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM, SHALL BE LIMITED TO THE AMOUNT, IF ANY, PAID TO SMART MLS BY FIRM UNDER THIS AGREEMENT.

FIRM'S ONLY OTHER REMEDY SHALL BE TERMINATION OF THIS AGREEMENT. THE LIMITATIONS OF THIS SECTION APPLY TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

10. REMEDIES

10.1 Firm and any and each Consultant each acknowledge that violation by it of the provisions of Section 6.0 or the Rules would cause immediate irreparable harm to Smart MLS for which there would be no adequate remedy at law, including, without limitation, compensable monetary damages. In addition to any other relief, it is agreed that an immediate temporary and preliminary injunction, as well as a permanent injunction, shall be available, without necessity of a hearing or the posting of a bond, to prevent any actual or threatened violation of such provisions and that FIRM shall be liable for all attorney's fees and other costs incurred by Smart MLS in obtaining such injunctive relief.

11.0 MISCELLANEOUS

11.1 This Agreement and performance hereunder shall be governed by the laws of the State of Connecticut, without giving effect to the principles of conflict of laws of such state or international treaties. Smart MLS, Firm and any and each Consultant hereby agree on behalf of themselves and any person claiming by or through them that the sole and exclusive jurisdiction and venue for any litigation arising from or relating to this Agreement or the subject matter hereof shall be an appropriate federal or state court located in Connecticut.

11.2 This Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their permitted successors in interest and permitted assigns. Firm may not assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed null and void. Consultant may not assign without the prior written consent of Smart MLS and Firm, any of its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed null and void. Smart MLS may assign this Agreement.

11.3 All provisions of this Agreement relating to Proprietary Property shall survive the termination of this Agreement.

11.4 The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.

11.5 If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

11.6 The headings of the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

- 11.7 The parties agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third party beneficiaries as to this Agreement or any part or specific provision of this Agreement.
- 11.8 If Smart 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 Smart MLS reasonable attorney's fees and costs for such legal action.
- 11.9 All notices to be given under this Agreement shall be mailed by certified or first class U.S. Mail, or sent via facsimile transmission, or, sent via e-mail with a hard copy sent by first class U.S. Mail to the parties at their respective addresses set forth below or such other address of which any party may advise the others in writing during the term of this Agreement. Notices shall be effective only upon actual receipt. Notices to Smart MLS shall be sent to:

Smart MLS, Inc.
55 Old Gate Lane
Milford, CT 06460
Attn: Kathy Elson, CEO
Fax: 203-750-6001 Attn: Francisco Garcia, CIO
E-mail: RETS@SmartMLS.com

Notices to Firm or any and each Consultant shall be addressed per the information provided on the applicable signature page.

- 11.10 This Agreement and the Rules 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 Rules are expressly incorporated into this Agreement by reference.

Firm Information and Signature

Firm Name: _____

Firm MLS ID: _____

MLS Participant-Broker Name: _____

Broker MLS ID: _____

E-mail address:

(You **must** supply a valid e-mail address here. This address will be part of Smart MLS' principal means of communicating with you for notices under this Agreement.)

Firm Street Address:

Firm City, ST, ZIP:

Firm Phone: _____ Fax: _____

Entered into on behalf of Firm by the undersigned duly authorized agent.

Signature

Print Name

Title

Date

Consultant Information and Signature

NOTE TO FIRM: Reproduce this page for each individual/company to whom you intend to provide access to the MLS Data under this Agreement.

Consultant (company or individual) Name:

E-mail address:

(You **must** supply an e-mail address here.)

Consultant Street Address:

Consultant City, ST, ZIP:

Phone: _____ Fax: _____

Entered into on behalf of Consultant by the undersigned duly authorized agent

Signature

Print Name

Title

Date

NOTE TO CONSULTANT: You must complete a Data Access Agreement with Smart MLS for every real estate broker to which you provide services. If you sign only one and that Firm's access to the MLS Data is terminated, all your data feeds will be terminated with it.

The foregoing Consultant is submitted for approval by _____
(the "Firm") and upon acceptance will become a party to the Data Access Agreement between Smart MLS and the Firm originally executed by the Firm on _____.

(firm)

By _____
Authorized Agent

The foregoing Consultant is approved

Smart MLS, Inc.

By _____
Authorized Agent

SMART MLS Information and Signature

Smart MLS, Inc.

By _____

Signature

Title

Print Name

Effective Date

This section is for Smart MLS' use only. Smart MLS will fill out the information in it after signing this Agreement. Smart MLS will then return a copy of this Agreement to Firm and any and each Consultant. The contents of this section are Proprietary Property under this Agreement and included in the limited license granted by this Agreement.

FTP URL: _____

FTP User ID: _____

FTP Password: _____

Consultants Approved: _____

Consultant(s) Name(s): _____

Listing Office ID: _____

Listing Office Name: _____

Broker or Contact Person: _____