

ACCESS AGREEMENT FOR BROKER RECIPROCITY DATA FEED

1. This **AGREEMENT** is made and entered into by and among Multiple Listing Service of Long Island, Inc. (“**MLS LI**”), and the real estate firm and the MLS LI participant whose name and contact information appear on the signature page of this Agreement designated “Firm Information and Signature” (here and after jointly and severally referred to as “the **Firm**”).

RECITALS

2. Firm wishes to obtain and MLS LI wishes to provide, data for Firm’s web site, including the listing data of other real estate brokerages participating in MLS LI. 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 exclusive listings and photographs of all Broker Reciprocity Subscribers except those listings where the property seller has opted out of Internet publication. The BR data is part of a copyrighted compilation of Real Estate data owned by MLS LI.

Broker Reciprocity Subscriber or BRS: A Subscriber who gives permission to other Subscribers to display its active exclusive MLS listings on their web sites or an exclusive buyer broker.

Exclusive Buyer Broker: Exclusive Buyer Broker is a participant in MLS LI who does not maintain active exclusive listings but who facilitates the sale of listed property as a broker representing only buyers.

Multiple Listing Service: All of the services which MLS LI currently provides to its participants and their employees and agents and all services which MLS LI provides in the future. Generally 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.

Rules: The Rules and Regulations of MLS LI, as amended from time to time, and any operating policies relating to the BR Data and BRS’s promulgated by MLS LI.

Subscriber: Any real estate broker who is qualified to be a participant in MLSLI in accordance in the rules of MLSLI and any Real Estate Agents licensed to such real estate broker, provided that each subscriber is in fact a participant in MLSLI or an agent licensed to such a participant.

Subscriber Data: Data relating to real estate or cooperative apartments for sale, previously sold or listed for sale, including the Broker Reciprocity Database, and data relating to Subscribers, entered into the Stratus System by Subscribers, and MLSLI. MLSLI possesses ownership rights in that portion of the subscriber data, other than Firm's private listings, which has been entered into the MLSLI Database pursuant to a Stratus sub-license agreement between the subscriber and MLSLI. MLSLI owns the Subscriber Data. MLSLI makes no claim of ownership to Firm's private listings, unless and until they are entered into the BR database as active MLS listings.

MLSLI's OBLIGATIONS

4. During the term of this term of this Agreement, MLSLI grants to Firm a limited, non-transferable license to:
 - A. display the BR Data on Firm's web site, and
 - B. allow BRS's to permit their Agents to frame the Firm's Broker Reciprocity Data on Agent web sites, and
 - C. make copies of the BR Data to the extent necessary to deliver the BR Data to consumers on Firm's web site.
 - D. Commingle, integrate and display Firm's private listings with the BR Data.
5. During the term of this Agreement, MLSLI agrees to provide to Firm and its Consultants:
 - A. access to the BR Data, which will be updated daily, via the Internet using FTP, under the same terms and conditions MLSLI offers to other Subscribers and their Consultants.
 - B. seven (7) days' advance notice of changes to the file and record formats of the BR Data; and
 - C. seven (7) days' advance notice of changes to the Rules.

FIRM'S OBLIGATIONS

6. Firm shall comply with this Agreement, the Rules and The Broker Reciprocity Policy manual at all times.
7. Firm acknowledges MLSLI's ownership of the copyrights of the Subscriber Data and the BR Data.
8. Firm shall comply with the requirements relating to Confidential Information set forth below.

9. As part of the aforesaid license, Firm shall be entitled to display certain trademarks and logos belonging to MLSLI on Firm's website. Said trademarks and logos include, but are not limited to, the following:



Firm hereby acknowledges that said logos and trademarks are the sole property of MLSLI and that Firm's right to display the same is subject to the terms of this Agreement. Nothing herein contained is intended to give Firm any ownership or other proprietary interest in said trademarks and logos.

10. The parties agree that any rights or benefits enuring to said trademarks, logos or copyrighted materials resulting from the use thereof by Firm shall enure to the exclusive benefit of MLSLI.

11. In the event that Firm desires to make the BR Data or the Confidential Information available to any third party, it shall first obtain the written consent of MLSLI except in those cases where disclosure of such confidential information and data to third parties may be provided in this agreement.

12. Firm agrees that MLSLI may cure any breach of the rules or this agreement through either Firm or its consultant. To the extent that any consent or waiver of rights is necessary for MLSLI to obtain a cure of said breach through Firm's consultant the same is hereby granted.

13. If any of the information set forth on the firm information and signature page changes Firm shall notify MLSLI within 5 business days of such change. Such notification shall be accomplished by the firm completing and noticing to MLSLI a new firm information and signature page containing the correct and accurate information.

CONFIDENTIAL INFORMATION

14. "**Confidential Information**" is information or material proprietary to MLSLI or designated "confidential" by MLSLI and not generally known to the public, that Firm or Consultants or any one of them (the "Receiving Party") may obtain knowledge of or access to as a result of performance of this Agreement. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether in oral, visual, audio, written or other form):

- A. all Subscriber Data, except the BR Data to the extent to which this Agreement and the Rules permit its disclosure;
- B. all documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;

- C. software, source code, object code, diagrams, flow charts;
- D. techniques, procedures;
- E. IP addresses, access codes and passwords; and
- F. Any information that MLSLI obtains from any third party that MLSLI treats as proprietary or designates as Confidential Information, whether or not owned or developed by MLSLI.

15. **Exceptions.** The Confidential Information does not include information that:

- A. is in the public domain at the time of disclosure;
- B. is known to the Receiving Party at the time of disclosure; provided that Receiving Party notices MLSLI of such fact within seven (7) days after receipt of the confidential information.
- C. is used or disclosed by the Receiving Party with the prior written consent of MLSLI, to the extent of such consent;
- D. becomes known to the Receiving Party from a source other than MLSLI without breach of this Agreement by the Receiving Party and provided that such source is not known by the Receiving Party to be bound by a confidentiality agreement with MLSLI provided that Receiving Party notices MLSLI of such fact within seven (7) days after receipt of the confidential information.; or
- E. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to MLSLI prompt notice of any such order.
- F. no notice need be given MLSLI by Receiving Party if the Confidential Information is contained in a listing entered into the BR Data by the Receiving Party.

16. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with MLSLI or with the third parties in whom title existed prior to this Agreement or prior to disclosure by MLSLI.

17. **Restrictions on Use - Scope of Use.** The Receiving Party will use or access the Confidential Information only as expressly permitted under this Agreement and the Rules and the Receiving Party will not use its access or the Confidential Information for any other purpose. The Receiving party will employ measures to protect the Confidential Information from disclosure at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care.

18. **Restrictions on Use - Unauthorized Uses.** The Receiving party will not make copies of the Confidential Information. The Receiving Party will not directly or indirectly disclose, display, provide, transfer or otherwise make available the Confidential Information to any person or entity, unless the Receiving Party has received prior written consent of MLSLI to do so. At no time and under no circumstances will the Receiving Party reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. The Receiving Party will not incorporate the Confidential Information into any other work or product.

19. **Restrictions on Use - Location restriction.** The Receiving Party may disclose the confidential

information to its own employees only in those cases where such employees need to have such information in order to perform their duties and only if such employees execute an agreement with respect to maintaining the confidentiality of such information that imposes at least as strict a confidentiality obligation upon such employee as that imposed by this agreement on the receiving party.

20. Restrictions on Use - Location restriction. The Receiving Party will not remove the Confidential Information from its principal place of business without MLSLI's prior written consent. In the event MLSLI grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.

21. Termination and Return of Materials. Within five (5) days of the end of the terms of this Agreement or receipt of notice of termination by MLSLI, the Receiving Party will return to MLSLI all Confidential Information and all other materials provided by MLSLI to the Receiving Party. The Receiving Party will also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of MLSLI, an officer of the Receiving Party will certify in writing that all materials have been returned to MLSLI and all magnetic or computer data have been destroyed.

MLSLI AND FIRM INTEGRATED DATA

22. In the event, Firm elects to mingle and integrate firms exclusive listing data, Broker reciprocity data the "New Product" formed by such integration shall be jointly owned by Firm and MLSLI. Said "New Product" may be displayed and distributed only in accordance with the terms of this agreement, the MLSLI Broker Reciprocity rules and MLSLI Broker Reciprocity policy manual. Neither party may distribute, lease, sell or otherwise provide said "New Product" except by the mutual written consent of both MLSLI and the Firm.

TERM AND TERMINATION

23. The term of this Agreement begins on the "Effective Date" set forth on the "MLSLI Information and Signature Page" below. This Agreement and the license issued hereunder shall terminate upon the occurrence of any of the following events:

- A. MLSLI's notice to Firm that this Agreement is terminated.
- B. Firm's notice to MLSLI that it no longer intends to display BR Data on its web site.
- C. Termination or suspension of Firm's privileges as a participant in MLSLI.
- D. A breach or violation of this Agreement.

In the event this agreement is terminated because of the occurrence C above, the agreement shall be

automatically reinstated should the Firm be reinstated as a Participant in good standing of MLSLI.

GENERAL PROVISIONS

24. **Survival of Obligations.** The obligations of Firm set forth in paragraphs 7, 9, 10, 11, 12, 17, 18, 20, 21, 22, 23, 24, 25 and 26 shall survive the termination or expiration of this Agreement.

25. **MLSLI'S Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Firm acknowledges that MLSLI would suffer irreparable harm in the event that any of them breaches their obligation under this Agreement, and that monetary damages would be inadequate to compensate MLSLI for a breach. MLSLI 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 without showing or proving any actual damages sustained by MLSLI. In addition to such injunctive relief, the parties agree that MLSLI shall be entitled to recover in any such action or proceeding liquidated damages as follows:

- A. If the breach consists of the firm's publishing, displaying, utilizing or using all or any part of the BR Data, other than data provided to MLSLI by Firm, after Firm's right to so use said BR Data has expired or has otherwise been terminated by MLSLI, then MLSLI shall be entitled to recover liquidated damages in the sum of \$5,000.00 per day for each and every day that all or any part of said BR Data, exclusive of Firm's data supply to MLSLI, was so published, displayed, utilized or used but in no event less than the sum of One Hundred Thousand (\$100,000) Dollars; or
- B. In the event of any other material breach of any of the paragraphs of this Agreement MLSLI shall be entitled to recover liquidated damages in the amount of no less than \$50,000.00.

26. **Attorney's fees.** If MLSLI 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 MLSLI's reasonable attorney's fees and costs for such legal action.

27. **Limitation of Liability.** MLSLI liability to Firm for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by Firm to MLSLI, if any, under this Agreement. Firm's only other remedy shall be termination of this Agreement. MLSLI shall not be liable for any incidental or consequential damages under any circumstances, even if MLSLI has been advised of the possibility of such damages. MLSLI shall have no liability for inaccuracies in the BR Data or the Subscriber Data or temporary or permanent failure to provide the Firm with BR Data.

28. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth below or such other address of which any party may advise the others in writing during the terms of this Agreement.

29. **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.

30. **No Assignment.** Firm may not assign or otherwise transfer any of their rights under this Agreement to any party without the prior written consent of MLSLI.

31. **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 in this Agreement by reference.

32. **Applicable Law.** This Agreement is governed by and enforced according to the laws of the State of New York.

FIRM INFORMATION AND SIGNATURE

Firm Name: _____

Participant Name: _____

E-Mail address: _____

(You **must** supply an e-mail address here. This address will be MLSLI's principal means of communicating with you for notices under this Agreement.)

Firm Street Address: _____

Firm City, ST, ZIP: _____

Firm Phone: _____ Fax: _____

URL in which Broker Reciprocity listings will be displayed _____

Participant Signature _____

Subscriber Name (if for an agent, rather than the office) _____

Subscriber Member# _____

(If for an agent, this contract must be accompanied by the "Broker Reciprocity Agent Authorization Form")

Name of Consultant, if any: _____

Consultant Street Address: _____

Consultant City, State and Zip: _____

Consultant Phone: _____ Fax: _____

Consultant Email: _____

The cost of this service is \$100 set-up fee plus \$29.95/month + applicable taxes. The set-up fee plus the first month fee must be included with this signed contract. You will then be billed monthly for the service.

Upon receipt of the signed contract and initial payment you will be contacted with instructions on receiving the data feed.

These fees are subject to change.