



CONTRACT: Access to Broker Reciprocity data feed

Note: This form is a legally binding contract between you and Upstate Multiple Listing Service, Inc. (Upstate MLS).

Simultaneously or prior to submitting this form/contract, you must become a Broker Reciprocity Subscriber (BRS).

This form/contract must be completed in its entirety and signed by the designated broker of your firm. There are no exceptions. Once you have completed and signed this form, mail it to Upstate Multiple Listing Service, Inc., 600 McGee Road, Anderson, SC 29625.

AGREEMENT

1. This **AGREEMENT** is made and entered into by and among Upstate MLS and 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 Upstate MLS wishes to provide, data for Firm's web site, including the listing data of other real estate brokerages participating in 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 except those listings where the property seller has opted out of Internet publication by so indicating on the listing contract. Upstate MLS owns the BR Data.

Broker Reciprocity Subscriber or BRS: 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.

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, connection with the sale and appraisal of real property.

Rules: The Rules and Regulations of Upstate MLS, as amended from time to time, and any operating policies relating to the BR Data and BRSs promulgated by Upstate MLS.

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

UPSTATE MLS' OBLIGATIONS

4. During the term of this Agreement, Upstate MLS grants to Firm a license to:
 - a. Display the BR Data on Firm's web site, 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, Upstate MLS agrees to provide to Firm and its Consultants:
 - a. Access to the BR Data via the Internet using File Transfer Protocol ("FTP"), under the same terms and conditions Upstate MLS offers to other Subscribers;
 - b. Notice of changes to the file and record formats of the BR Data; and
 - c. Notice of changes to the Rules.

FIRM'S OBLIGATIONS

6. Firm shall comply with the Rules at all times.
7. Firm acknowledges Upstate MLS ownership of the copyrights in the Subscriber Data and the BR Data.
8. Firm shall comply with the requirements relating to Confidential Information set forth below.

9. In the event that Firm desires to make the BR Data or the Confidential Information available to any third party, Firm agrees to require such third party to execute this Agreement and become a Consultant.
10. If 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 Upstate MLS may seek cure from the Consultants, or any one of them and hereby authorizes such Consultants to act immediately to cure the breach without further action by Firm.
11. Firm shall notify Upstate MLS within five (5) business days of any change to the information relating to Firm on the Firm Information and Signature page below.

CONSULTANTS' OBLIGATIONS

(All Consultants must be a current member of a South Carolina Board/Association)

12. If Upstate MLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach [****SEE NOTE ABOVE CONCERNING CURE PERIODS**], Upstate MLS may contact Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with Upstate MLS and act immediately upon notification by Upstate MLS of an uncured breach by Firm.
13. Each Consultant acknowledges Upstate MLS ownership of the copyrights in the Subscriber Data and the BR Data.
14. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
15. Each consultant shall notify Upstate MLS within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page below.

CONFIDENTIAL INFORMATION

16. **"Confidential Information"** is information or material proprietary to Upstate MLS or designated "confidential" by Upstate MLS 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 access under 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 Upstate MLS obtains from any third party that Upstate MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by Upstate MLS.

17. **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;
- c. Is used or disclosed by the Receiving Party with the prior written consent of Upstate MLS, to the extent of such consent;
- d. Becomes known to the Receiving Party from a source other than Upstate MLS 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 Upstate MLS; or
- e. Is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to Upstate MLS prompt notice of any such order.

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

19. **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.

20. **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 Upstate MLS 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.

21. **Restrictions on Use – No Third Party Access.** Only the Receiving Party's own employees will access the Confidential Information. The Receiving Party will not provide access to the Confidential Information to third parties, including consultants or independent contractors, without prior written consent from Upstate MLS. If Upstate

MLS grants consent, the Receiving Party will execute an agreement with the third party that imposes at least as strict a confidentiality obligation on the third party as that imposed by this Agreement on the Receiving Party.

22. Restrictions on Use – Location Restriction. The Receiving Party will not remove the Confidential Information from its principal place of business without Upstate MLS' prior written consent. In the event Upstate MLS grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.

23. Termination and Return of Materials. Within five (5) days of the end of the term of this Agreement or receipt of notice of termination by Upstate MLS, the Receiving Party will return to MLS all Confidential Information and all other materials provided by Upstate MLS 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 Upstate MLS, an officer of the Receiving Party will certify in writing that all materials have been returned to Upstate MLS and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

24. The term of this Agreement begins on the "Effective Date" set forth on the "Upstate Multiple Listing Service, Inc. Firm Information and Signature" page to follow. Upstate MLS has the right at any time and in its sole discretion to terminate this Agreement. This Agreement shall terminate upon the occurrence of any of the following events:

- a. Upstate MLS' notice to Firm that this Agreement is terminated.
- b. Firm's notice to Upstate MLS that it no longer intends to display BR Data on its web site.
- c. Termination of Firm's privileges as a Subscriber by Upstate MLS to purchase Multiple Listing Services.

GENERAL PROVISIONS

25. Survival of Obligations. The obligations of Firm set forth under "Firm's Obligations" above and the obligations of Consultants under "Consultants' Obligations" above shall survive the termination or expiration of this Agreement.

26. Upstate MLS' Remedies. Because of the unique nature of the Subscriber Data and Confidential Information, Firm and Consultants acknowledge that 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 Upstate MLS for a breach. 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 Upstate MLS.

27. **Attorney's fees.** If 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 Upstate MLS' reasonable attorney's fees and costs for such legal action.
28. **Limitation of Liability.** Upstate MLS' liability to Firm and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by Firm and consultants to Upstate MLS, if any, under this Agreement. Firm's and Consultants' only other remedy shall be termination of this Agreement. Upstate MLS shall not be liable for any incidental or consequential damages under any circumstances, even if Upstate MLS has been advised of the possibility of such damages. Upstate MLS shall have no liability for inaccuracies in the BR Data or the Subscriber Data.
29. **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 term of this Agreement.
30. **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.
31. **No Assignment.** Neither Firm or Consultants, nor any of them, may assign or otherwise transfer any of their rights under this Agreement to any party without the prior written consent of Upstate MLS.
32. **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.
33. **Applicable law.** This Agreement is governed by and enforced according to the laws of the State of South Carolina.

Firm Information and Signature

Adding/Dropping Broker Reciprocity

This form permits you to opt in or out of the Broker Reciprocity program. If you opt in, you are considered a Broker Reciprocity Subscriber (BRS). This form must be filled out completely and signed by the Broker In Charge for your office. There are no exceptions. Once you have completed and signed this form, mail to: Upstate Multiple Listing Service, Inc. at 600 McGee Road, Anderson SC 29625.

Firm Name: _____

Designated Broker Name: _____

E-mail address: _____

(If you are becoming a BRS, you **must** supply an e-mail address here. This address will be the Upstate Multiple Listing Service of South Carolina, Inc.'s primary means of communicating with you about Broker Reciprocity developments.)

Firm Street Address: _____

Firm City, ST, Zip: _____

Firm Phone: _____ Fax: _____

Check one of these two boxes. By so doing, you are agreeing to the understandings indicated next to it.

My firm is a Broker Reciprocity Subscriber. I understand that I am hereby giving every other Broker Reciprocity Subscriber in the Upstate MLS permission to advertise my active MLS listings on its own web site, subject to the Rules and Regulations of the Upstate MLS. I authorize the Upstate MLS to distribute my active listing data to other Broker Reciprocity Subscribers pursuant to its Rules and Regulations and policies.

My firm Is Not a Broker Reciprocity Subscriber. I understand that this means that other Broker Reciprocity Subscribers will not be permitted to display my listings on their web sites. I further understand that my firm will receive no benefits under the Broker Reciprocity program of the Upstate MLS. My firm is not allowed to display the listings of other brokers unless I receive permission from them individually to do so. I also understand that it is my responsibility to ensure that my listings are designated with an "N" in the "Broker Reciprocity" field in the MLS.

I am the designated Broker for the MLS firm who appears above. I represent that I have authority to execute this form on behalf of my firm.

Date: _____ Signature: _____

Upstate Multiple Listing Service, Inc. Consultant Information and Signature

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

Consultant (company or individual) Name: _____

E-mail address: _____

(You *must* supply an e-mail address here. This address will be the 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 Upstate MLS. Entered into on behalf of Consultant by:

Signature

Print Name

Title

NOTE TO CONSULTANT: Be sure to enter into this Access to Broker Reciprocity data feed contract with the 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.



Upstate Multiple Listing Service of South Carolina, Inc.

FTP USER AGREEMENT

Entered into on behalf of the Upstate Multiple Listing Service of South Carolina, Inc. by:

Signature (President, CEO)

Print Name

Effective Date

The space below is for the Upstate Multiple Listing Service of South Carolina, Inc. use only. The Upstate Multiple Listing Service of South Carolina, Inc. will complete the below information after signing this Agreement. The Upstate Multiple Listing Service of South Carolina, Inc. will then return a copy of this Agreement to Firm and Consultants. The contents of this box are Confidential under this Agreement.

FTP URL: _____

FTP User ID: _____

FTP Password: _____

Consultant(s) Name(s): _____

Listing Office ID: _____

Listing Office Name: _____

Broker In Charge: _____

WEB POLICY

This Section directly relates to the display and or transmission of MLS data over the Internet or through Web Sites on the Internet.

In order to facilitate the display of MLS Data on the Internet, the Anderson Association of REALTORS®, Inc. and Upstate Multiple Listing Service of South Carolina, Inc. has adopted the following policies and guidelines:

(1) ALL members who wish to display MLS data on the Internet and wish to use an outside source, (i.e. someone other than the company/individual whose site and properties are to be displayed), must have the information fed to this third party source through the local Association or MLS. In all cases whether MLS fed or Company initiated the actual address of the property *shall not* be displayed.

NOTE: This is a description of the process for dissemination of this data. The Company/Agent who desires to have the information provided would create an agreement with the third party vendor, wherein the vendor agrees to use this information for display on the site(s) approved by the Company/Agent only. Further, that this information will not be provided to any other sources without the prior consent of the Company/Agent, the local Association or MLS and that such data will not be combined with data obtained by this third party source and/or from others within the real estate community for compilation in any format whatsoever. Further, the information displayed will not be modified and must be “refreshed” at least once every seven (7) days. Also, Participants must indicate on their websites that the information being provided is for consumers’ personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers who may be interested in purchasing. The Company/Agent must configure their websites to only allow the public to perform six (6) separate searches and retrieve or download up to 50 listings per search on their websites during any one session.

Once this agreement is signed, it is to be forwarded to the local Association or MLS with a request to assign this third party source an ID# and password to obtain the data agreed upon. (The Company/Agent will indicate whether they desire just the primary or all photos included) Within ten (10) working days, the MLS will create this password-protected access and inform both parties that the data is available for use.

(2) The following fields will be displayed along with the Listing Company, Listing Agent and associated contact information.

Residential: MLS#, Class, Type, Area, Asking Price, State, City, Bedrooms, Full Baths, Square Foot Range, Listing Agent, Listing Office, Subdivision, Style

Land: MLS#, Class, Type, Area Asking Price, City, State, Listing Agent, Listing Office, Subdivision

Commercial: MLS#, Class, Type, Area, Asking Price, State, City, Sale/Rent, Location, Square Feet, Listing Agent, Listing Office

Multi-Family: MLS#, Class, Type, Area, Asking Price, State, City, Sale/Rent, Number of Units, Listing Agent, Listing Office

NOTE: Since the listing information is copyrighted by and for the MLS and the listing company owns the listing, it is suggested that all Brokers-In-Charge provide permission to their agents to display the data. Further, it is suggested that the Broker-In-Charge and the Listing Agent review any sites displaying company listings for accuracy and appropriateness.