

# CONTRACT: Access to Broker Reciprocity<sup>SM</sup> Data

**Note: This form is a legally binding contract between you and the Southeast Minnesota Association of REALTORS® Multiple Listing Service, Inc. (SEMAR MLS)**

**This form/contract must be filled out completely and signed by an owner or employee of your firm. There are no exceptions.** Once you have filled it out and signed it, mail it to the Southeast Minnesota Association of REALTORS® MLS, 3400 East River Road NE, Rochester MN 55906, or fax it to 1-877-240-0567. SEMAR MLS will sign the form/contract and return a copy to you. Once you are authorized, you may contact our MLS vendor, Technology Concepts at 1-507-281-0535 to arrange for data transfer.

## AGREEMENT

1. This **AGREEMENT** is made and entered into by and between SEMAR 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 SEMAR MLS wishes to provide, data for Firm’s web site, including the listing data of other real estate brokerages participating in SEMAR 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 exclusive right to sell 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. SEMAR 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 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 SEMAR MLS, as amended from time to time, and any operating policies relating to the BR Data and BRSs promulgated by SEMAR MLS.  
**Subscriber:** Any real estate broker, appraiser, or other real estate related business professional that purchases Multiple Listing Services from SEMAR 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 Ultrex System by Subscribers, and SEMAR MLS. SEMAR MLS owns the Subscriber Data.

## **SEMAR MLS's OBLIGATIONS**

4. During the term of this Agreement, SEMAR 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, SEMAR MLS agrees to provide to Firm and its Consultants:
  - a. access to the BR Data via the Internet using File Transfer Protocol ("**FTP**") or other methods, under the same terms and conditions SEMAR MLS offers to other Subscribers;
  - b. seven (7) days' advance notice of changes to the Rules.

## **FIRM'S OBLIGATIONS**

6. Firm shall comply with the Rules and Policies at all times.
7. Firm acknowledges SEMAR MLS'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. 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 SEMAR MLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, Firm agrees that SEMAR MLS may seek cure from the Consultants, or any one of them.
11. Firm shall notify SEMAR 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**

12. If SEMAR MLS notifies Firm of a breach of the Rules or this Agreement and Firm does not immediately cure such breach, SEMAR MLS may contact Consultant to cure any such breach that is within Consultant's control. Consultant agrees to cooperate with SEMAR MLS and act immediately upon notification by SEMAR MLS of an uncured breach by Firm.
13. Each Consultant acknowledges SEMAR MLS's ownership of the copyrights in the Subscriber Data and the BR Data. Required disclaimers, copyright notices and use restrictions as outlined in the Policies and/or Rules must be included on the website as prescribed.
14. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
15. Each Consultant shall notify SEMAR 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 SEMAR MLS or designated "confidential" by SEMAR 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, electronic 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 SEMAR MLS obtains from any third party that SEMAR MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by SEMAR 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 SEMAR MLS, to the extent of such consent;
- d. becomes known to the Receiving Party from a source other than SEMAR 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 SEMAR MLS; or
- e. is required to be disclosed by judicial order or other compulsion of law, provided that the Receiving Party provides to SEMAR MLS prompt notice of any such order.

18. **Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with SEMAR MLS or with the third parties in whom title existed prior to this Agreement or prior to disclosure by SEMAR 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 SEMAR 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 SEMAR MLS. If SEMAR 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 SEMAR MLS's prior written consent. In the event SEMAR 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 SEMAR MLS, the Receiving Party will return to SEMAR MLS all Confidential Information and all other materials provided by SEMAR 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 SEMAR MLS, an officer of the Receiving Party will certify in writing that all materials have been returned to SEMAR 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 “SEMAR MLS Information and Signature Page” below. SEMAR 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. SEMAR MLS’s notice to Firm that this Agreement is terminated.
- b. Firm’s notice to SEMAR MLS that it no longer intends to display BR Data on its web site.
- c. Termination of Firm’s privileges as a Subscriber by SEMAR 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. **SEMAR MLS Remedies.** Because of the unique nature of the Subscriber Data and Confidential Information, Firm and Consultants acknowledge that SEMAR 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 SEMAR MLS for a breach. SEMAR 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 SEMAR MLS.

27. **Attorney’s fees.** If SEMAR 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 SEMAR MLS’s reasonable attorney’s fees and costs for such legal action.

28. **Limitation of Liability.** SEMAR MLS’s 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 SEMAR MLS, if any, under this Agreement. Firm’s and Consultants’ only other remedy shall be termination of this Agreement. SEMAR MLS shall not be liable for any incidental or consequential damages under any circumstances, even if SEMAR MLS has been advised of the possibility of such damages. SEMAR 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 nor 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 SEMAR 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 Minnesota.

**BROKER: Retain this Agreement in your files. Send the following signature page to SEMAR.**

# CONTRACT: Access to Broker Reciprocity<sup>SM</sup> Data

## Firm Information and Signature

Firm Name: \_\_\_\_\_

Broker/Office Manager Name (Print): \_\_\_\_\_

Signature: \_\_\_\_\_

E-mail address: \_\_\_\_\_ Date \_\_\_\_\_

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

**This contract is for a BROKER or Company website** \_\_\_\_\_

**This contract is for an AGENT in my office**

**Agent Name:** \_\_\_\_\_

## Third Party Vendor Information

If you plan to give the MLS data to a third party, whether it is an in-house department of your firm, or a web designer from another firm, you must supply this contact information.

Consultant(s) Name(s): \_\_\_\_\_

\_\_\_\_\_

Company Name: \_\_\_\_\_

Address \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**WEB SITE ADDRESS where data will be displayed** \_\_\_\_\_

## SEMAR MLS Authorization

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Effective Date

**Sent to Technology Concepts by SEMAR – date** \_\_\_\_\_

**IDX/Broker Reciprocity  
Consultant Information and Subsequent Approval Requests**

**NOTE TO FIRM: Reproduce this page for each individual/office to whom you intend to provide access to the SEMAR MLS Broker Reciprocity Data under this Agreement after the initial approval.**

Consultant (company or individual) Name: \_\_\_\_\_

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

Consultant Street Address: \_\_\_\_\_

Consultant City, ST, ZIP: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**Office receiving IDX / Broker Reciprocity data** \_\_\_\_\_

**Broker / Agent Name** \_\_\_\_\_

**WEB SITE ADDRESS where data will be displayed** \_\_\_\_\_

Date \_\_\_\_\_

**NOTE TO CONSULTANT:** You must enter into this Access to Broker Reciprocity data contract with SEMAR MLS and **each** real estate broker or agent to whom you provide services.

**FAX to 1-877-240-0567**

or mail to SEMAR MLS, 3400 East River Road NE, Rochester MN 55906.

Date received by SEMAR MLS \_\_\_\_\_

Date sent to Technology Concepts \_\_\_\_\_