

Northwestern Wisconsin Multiple Listing Service, Inc Data Access and Use License

This Data Access and Use License (“Agreement”) is entered into and by the Northwestern Wisconsin Multiple Listing Service, Inc (“MLS”), the Broker (“Participant”) or Agent (“Licensee”), and the company or individual (“Consultant”) whose names and contact information appear on the Signature Page of this Agreement, collectively known as the “Parties”.

RECITALS

Participant wishes to 1) obtain MLS Content from the MLS for use as specified in Exhibit A and as provided for in MLS Rules and Regulations, and 2) engage Consultant to provide services on behalf of the Participant.

Licensee wishes to 1) obtain MLS Content from the MLS for *IDX purposes only* as specified in Exhibit A and as provided for in MLS Rules and Regulations, and 2) engage Consultant to provide *IDX purposes only* on behalf of the *Licensee*.

Consultant wishes to obtain access to MLS Content for the purposes set forth in this Agreement.

Participant or Licensee and Consultant agree to accountability and compliance with MLS Rules and Regulations, as may be amended or otherwise modified from time to time.

MLS agrees to provide Participant or Licensee with access to MLS Content subject to MLS Rules and Regulations and in a manner solely defined by the MLS.

DEFINITIONS

For purposes of this Agreement, these terms are defined as follows:

- **Back-Office** – internal software application for brokers (transaction, referral, listing and trust account management; commission plans, etc)
- **Consultant** – entity or person or vendor designated to operate a website or provide services on behalf of the Participant or Licensee, subject to the Participant’s supervision, accountability and compliance with the Rules
- **Licensee** – agent licensed with Participant with MLS access determined solely by said licensure; Licensees and their Consultant(s) may obtain a Data Access and Use License for *IDX application(s) only*
- **MLS Content** – listing data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants, pursuant to the Rules
- **MLS Server** – computer server(s), including hardware and software, maintained by the MLS which contains MLS Content and provide(s) the means for access to MLS Content
- **Participant** – any Realtor® who is a principal, partner, corporate officer or branch manager acting on behalf of the Principal who is a member of and/or participates in the MLS by agreeing to conform to the MLS rules, regulations and policies
- **Rules** – rules, policies and procedures established by the MLS, as may be amended or otherwise modified from time to time, including but not limited to those for the use of MLS Content and for the specific program(s) and uses(s) identified in Exhibit A
- **Website** – the Participant’s internet website through which consumers have the opportunity to view MLS Content as defined by MLS rules, regulations and policies

Therefore, in exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, MLS, Participant or Licensee and Consultant hereby agree as follows:

LICENSE

Subject to the terms and conditions of this Agreement, the MLS hereby grants a Data Access and Use License (“License”) to electronically receive from the MLS, MLS Content for use solely and exclusively in connection with the display of MLS Content as specified in Exhibit A.

MLS Content

Except as expressly set forth in this Agreement, Participant or Licensee and Consultant shall not, and shall not facilitate, cause, or allow anyone else to, do any of the following: a) use, display, access, distribute, transfer, alter, or modify, or otherwise create any derivative works of MLS Content; b) download, distribute, export, deliver, or transmit any MLS Content, including to any computer or other electronic device, except as permitted under this Agreement; or c) sell, grant access to, or sublicense MLS Content or any portion of MLS Content, to any third party. Participant or Licensee and Consultant agree to take all reasonable steps necessary to protect MLS Content from unauthorized access, distribution, copying or use.

Consultant agrees that MLS Content may not be reused in any manner for the purpose of providing services to any other Participant or Licensee not party to this Agreement.

Participant or Licensee and Consultant acknowledge and agree that MLS Content is proprietary; are original works of authorship of the MLS; consists of information for which the MLS has sufficient rights to grant this License; and is protected under United States copyright law. Consultant further acknowledges and agrees that all right, title, interest in and to, and any modifications, enhancements, or derivative works of MLS Content are and shall remain with the MLS. This Agreement does not convey or grant any interest in or to MLS Content, revocable in accordance with the terms of this Agreement. Consultant agrees that it will not challenge or take any action inconsistent with MLS's ownership of or rights to MLS Content as described herein.

Access to MLS Content shall be exclusively by the means, including the format and method of delivery, designated by the MLS. The MLS may, in its sole discretion and upon thirty (30) days prior written notice, change the means and nature of accessing MLS Content.

Consultant hereby acknowledges and agrees that a) Consultant has no independent participation rights in the MLS by virtue of this License; b) Consultant shall not use MLS Content except in connection with providing Participant or Licensee with the services defined in Exhibit A to this Agreement; and c) access to MLS Content is derivative of the rights of the Participant or Licensee.

Consultant agrees that it will include and not alter or remove any trademark, copyright, other notices, or any disclaimers located or used on or in connection with MLS Content that the source of MLS Content is MLS.

Fees/Expenses

In consideration for the License granted under this Agreement, the Participant or Licensee agrees to pay to the MLS license fees and other fees ("Fees") as described in Exhibit A of this Agreement. Initial Setup Fees must be submitted in full with this license application. Fees, except for Initial Setup Fee, are invoiced and payable upon receipt.

Participant or Licensee and Consultant shall be responsible for their own expenses and costs under this Agreement, and the MLS shall have no obligation to reimburse any expenses or costs incurred in the exercise of rights or the performance or other duties under this Agreement.

No Fees, portion of Fees, or other Fees payable by Participant or Licensee under this Agreement will be refunded to Participant or Licensee upon termination of this Agreement for any reason.

Rules

Participant or Licensee and Consultant confirm that they have received and understand the Rules and agree to be bound by them. The Rules may include terms and limitations in addition to those set forth in this Agreement. The MLS may modify the Rules at any time, at its sole discretion. Participant or Licensee and Consultant shall comply with such modification(s) not later than the specified effective date or ten (10) business days after receipt, whichever is later.

MLS Server

The 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. Participant or Licensee and Consultant acknowledge that the MLS Server, together with access to MLS Content, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the MLS Server, or otherwise. Participant or Licensee and Consultant agree that any modification of the MLS Server, any interruption or unavailability of access to the MLS Server, or access to or use of MLS Content shall not constitute a default under this Agreement. The MLS shall have no liability of any nature to Participant or Licensee and Consultant, and Participant or Licensee and Consultant waive all claims arising out of any such modifications, interruptions, unavailability, or failure or access.

The license granted under this Agreement, including access and display of MLS Content, is provided “As Is” and, except for the Warranties set forth in this Agreement, MLS disclaims any and all warranties, whether express or implied, including, without limitation, any implied warranties of merchantability and fitness for a particular purpose.

TERM OF LICENSE

The term of this Agreement shall commence on the Effective Date set forth on the Signature Page. The MLS may, by delivery of written notice to Participant or Licensee and Consultant, terminate this Agreement effective immediately upon the occurrence of any of the following events:

- a) Consultant gives Participant or Licensee notice of termination
- b) Participant gives notice to MLS that they no longer consent to display of MLS Content for IDX purposes on the Licensee’s website
- c) Consultant is no longer designated by Participant or Licensee to provide services
- d) Participant ceases to remain a Participant in the MLS
- e) Licensee is no longer licensed with Participant
- f) Consultant accesses or downloads data in a manner not authorized by MLS for Participant or Licensee or that hinders the ability of Participant or Licensee to access MLS Content
- g) Participant or Licensee, or Consultant violates the Rules
- h) Participant or Licensee fails to make required payments under this Agreement to the MLS
- i) Notice from Participant or Licensee of their election to terminate this Agreement
- j) Notice from MLS to Participant or Licensee of MLS’s election to terminate this Agreement

The MLS acknowledges and agrees that it may not suspend or terminate Consultant’s access to MLS Content for reasons other than those that would allow MLS to suspend or terminate Participant’s or Licensee’s access to data, or without giving the Consultant and Participant or Licensee prior notice of the process set forth in the applicable provisions of the Rules for suspension or termination or Participant’s or Licensee’s access.

GENERAL

This Agreement is governed by and enforced according to the laws of the State of Wisconsin. Participant or Licensee and Consultant hereby submit and consent to, and waive any defense to the jurisdiction of courts located in the State of Wisconsin, as to all matters relating to or arising from this Agreement.

All notices to be given under this Agreement shall be made in writing and delivered by U.S. Certified Mail, facsimile transmission, or email to the appropriate party at the address provided on the Signature Page of this Agreement. The foregoing addresses may be changed from time-to-time by delivering notice of such change to the Parties to this Agreement. Notice shall be effective upon receipt.

Nothing in this Agreement shall be construed to create a partnership or joint venture between the MLS and Participant or Licensee and/or Consultant.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement.

The waiver by any Party or, of the failure of any Party to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement.

Participant or Licensee and Consultant may not assign or otherwise transfer any rights under this Agreement to any party without the prior written consent of the MLS.

The Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument. Facsimile signatures are deemed to be equivalent to original signatures for the purposes of this Agreement. This Agreement may not be amended except in writing signed by Participant or Licensee, Consultant and MLS.

All Parties agree that a breach of this Agreement will result in immediate and irreparable injury and harm to the MLS. In such event, the MLS shall have the right to immediately terminate Consultant's and Participant's or Licensee's access to MLS Content and to obtain an injunction, specific performance, or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that this shall in no way limit any other remedies which the MLS may have including, without limitation, the right to seek monetary damages.

If any action is brought by any Party to the Agreement against another Party regarding the subject matter of this Agreement, the prevailing Party shall be entitled to recover, in addition to any other relief granted, reasonable attorney's fees, costs and expenses of litigation.

WARRANTIES

Each Party represents and warrants to the others as follows: a) this Agreement, when executed by such Party, will be valid, binding and enforceable with respect to such Party in accordance with its terms; b) the execution of this Agreement and/or the performance of such Party's obligations under this Agreement will not constitute a default, or an event which with the passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which such Party is bound; and c) Consultant is not and shall not be under any disability, restriction, or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement. Consultant further represents and warrants the MLS that the grant of the License to Consultant and the fulfillment of Consultant's obligations as contemplated under this Agreement are proper and lawful.

Participant or Licensee and Consultant jointly and severally indemnify and hold harmless the MLS, its officers, directors, employees, and licensees, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorneys' fees and costs, arising out of or connected with any breach by Participant or Licensee or Consultant of any of the terms and conditions of this Agreement, including any breach of representation or warranty set forth in this Agreement, and the use and display of MLS Content. The MLS shall have the right to control its own defense and engage legal counsel acceptable to the MLS.

To the fullest extent available under applicable law, the MLS's entire and cumulative liability to Participant, Licensee or Consultant, or any third party, for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement, shall not exceed an amount equal to the License Fee paid to the MLS under this Agreement during the one (1) year period immediately preceding the date on which the claim accrued, without waiver of the limitations set forth in this Agreement, in no event shall the MLS be liable to any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if the MLS has been advised of the possibility or such damages.

The terms of the License Agreement are in addition to all other MLS rules, regulations and policies of the NW WI MLS.

**EXHIBIT A
DATABASE APPLICATION OPTIONS**

1st Feed		2nd Feed-Same Type	
*Initial Setup	Ongoing Fee	Initial Setup	Ongoing Fee

Internet Data Exchange *IDX)

Internet Data Exchange is an MLS service where MLS brokers who participate in IDX grant reciprocal permission to advertise on IDX Participants' websites, those NW WI MLS listings they include in the IDX database. IDX is available only to those brokers and only for display on their company websites; and licensees, with broker approval, for display on licensees websites. IDX Participation is subject to IDX Rules as outlined in the NW WI MLS Rules and Regulations. Options are:

_____ NW WI MLS Data feed via FTP <i>Broker or licensee</i>	\$50	\$0	\$50	\$0
_____ NW WI MLS Data feed via RETS <i>Broker or licensee</i>	\$50	\$0	\$50	\$0
_____ NW WI MLS Framed IDX/ <i>Broker</i>	\$75	\$27.50 per MLS billing cycle	NA	NA
_____ NW WI MLS Framed IDX Map only	\$75	\$27.50 per MLS billing cycle	NA	NA
_____ NW WI MLS Framed IDX/ <i>Licensee</i>	\$75	\$75 per yr	NA	NA

IDX Website URL(s): _____

Virtual Office Website (VOW)

The MLS has available a data feed of the MLS via RETS for qualifying Virtual Office Websites (VOWs). A VOW is an online brokerage website that complies with detailed requirements of VOW policies as defined by the National Association of Realtors® and is outlined in the NW WI MLS Rules and Regulations. The data is only available via RETS.

_____ NW WI MLS VOW/RETS only	\$100	\$27.50 per MLS billing cycle	\$50	\$0
-------------------------------	-------	----------------------------------	------	-----

VOW Website URL(s): _____

Company Only Listing Feed Firm-Specific

NW WI MLS offers MLS companies a data feed of their own company listings in two formats: FTP and RETS

_____ NW WI MLS Firm-Specific via FTP	\$100	\$0	\$50	\$0
_____ NW WI MLS Firm-Specific via RETS	\$100	\$0	\$50	\$0

Company Broker Back-Office Firm-Specific

NW WI MLS offers MLS companies a replication of the MLS database for use ONLY with in-office applications. The MLS replicated database may not be distributed for any other use, and is subject to any and all MLS Rules & Regulations governing use of MLS data.

_____ NW WI MLS Database (back-office) via FTP	\$100	\$0	\$50	\$0
_____ NW WI MLS Database (back-office) via RETS	\$100	\$0	\$50	\$0

Data Use Explanation (use additional pages if necessary):

Please note: Each data service is distinguished not only by specific MLS data that is included, but by the purpose for which it may be used, as well as the license rights and MLS Rules that apply. Each option is treated separately and is specific in its rights and restrictions. Each option may only be used as stated and may not be repurposed or otherwise redistributed except as provided.

***INITIAL SETUP FEES payable WITH Application.
Fees, other than Initial Setup, are invoiced and payable upon receipt.**

SIGNATURE PAGE

The applicable Parties below hereby execute this Agreement by their authorized representatives as of the Effective Date:

Effective Date of Agreement: _____

Participant (Broker): Company Name: _____
Broker Name: _____
Broker Signature: _____
Company Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

Licensee (Agent): Licensee Name: _____
IDX Only Licensee Signature: _____
Company Name: _____
* Broker Name: _____
* Broker Signature: _____
Company Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

Back-Office Consultant /AVP:** Company Name: _____
Representative's Name: _____
Representative's Signature: _____
Company Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

Technical Contact: Tech Contact Name: _____
Tech Contact Email: _____

MLS: Company Name: Northwestern Wisconsin Multiple Listing Service
Company Address: 1903 Keith St, Suite 3
City/State/Zip: Eau Claire, WI 54701
Phone: 715-835-0923 OR 888-221-0112
Fax: 715-835-4621
Email: rhoda.s@ranww.org or staff@ranww.org
Representative's Name: _____
Representative's Signature: _____

*Broker Signature Required
**Affiliated VOW Partner