SMART MLS Subscription Application & Agreement

Application Type

☐ **New Subscriber Application** ☐ **Reactivation** ☐ **Member Transfer**

Please complete this section if this is a Member Transfer as well as 'Subscriber Details' and 'Office Details'

Member User ID:_____ Prior Office Code:_____

Subscriber Details

Name:_____

Email:_____

Cell:_____ Agent Web URL:_____

Primary REALTOR® Board:_____ NRDS#_____

State of Licensure:_____ License #_____

Office Details

Name of Firm: List n Show Office code: LNS01

Complete Office Address: 125 Route 66E Columbia, CT 06237

Office Phone: 860 617-2946 Office Fax: N/A

Access Type

☐ Agent ☐ Office Manager ☐ Appraisal Access

Supra eKey

Have you already obtained a Supra eKey from your local board or would you like one from SmartMLS?

☐ I have one from my board ☐ I'd like one from SmartMLS ☐ I do not need an eKey

I have read and understand all pages of the Subscriber Application and Agreement and agree to abide by its terms and conditions.

Signature of Subscriber:_____ Date:_____
(Agent)

Participants/Broker Name: Sheri Shvonski

Signature of Participant: Sheri Shvonski Date:_____
(Broker)

1. I certify that I am affiliated with the Participant listed above and that I am actively engaged in the real estate profession for compensation in one or more of the following activities: buying, selling, exchanging, renting or leasing, appraising for others for compensation, counseling or building, developing or subdividing.

2. I agree as a condition of participation in the MLS to abide by all relevant bylaws, rules and regulations and other obligations of participation, as amended from time to time, including payment of fees and fines. Under the current rules, the maximum fine that can be imposed is in the amount of $5,000. I understand that the Subscriber will be provided with notice of amendments to the Bylaws and Rules & Regulations as they are amended, and I agree that my continued use of MLS services after the Bylaws and Rules & Regulations are amended constitutes my agreement to be subject to the Bylaws or Rules & Regulations as amended.

3. Definitions.

Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 25 of this Agreement.

4. Grant of Subscriber Rights in Multiple Listing Service.

Subject to the terms and conditions of this Agreement and the Rules and Regulations, MLS agrees to make the MLS Database available for access by Subscriber, and Subscriber shall have all rights and obligations of a subscriber in MLS's multiple listing service as set forth under the Rules and Regulations. Access to the MLS Database shall be through a means determined by MLS.

5. License Grant.

MLS hereby grants to Subscriber a limited, non-exclusive, and personal license to use Listing Content only for purposes and as expressly allowed under Subscriber's certification or licensure, the Rules and Regulations, and any applicable License Agreement. Subscriber agrees to take all reasonable steps to protect the MLS Database and Listing Content from unauthorized access, copying, or use.

6. Intellectual Property Ownership.

Subscriber acknowledges and agrees that the MLS Database, and all copies, modifications, enhancements, and derivative works of the MLS Database, are the property of MLS, and all right, title, and interest in and to the MLS Database, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS. Subscriber hereby irrevocably assigns to MLS any and all rights which it may have or acquire in and to the MLS Database.

a. Subscriber acknowledges and agrees that the Listing Content, and all copies, modifications, enhancements, and derivative works of the Listing Content, are proprietary, confidential, original works of authorship of MLS, or have been assigned or licensed to MLS, and are protected under United States copyright, trademark, and trade secret laws of general applicability.

b. Subscriber acknowledges and agrees that all right, title, and interest in and to the Listing Content, together with all copies, modifications, enhancements, and derivative works, including all copyright and other intellectual property rights are and shall remain with MLS or its licensors. Subscriber hereby irrevocably assigns to MLS any and all rights not assigned to Broker which it may have or acquire in and to the Listing Content. Nothing in this Agreement or the Rules and Regulations shall be deemed to convey to Subscriber an interest in or to the MLS Database or Listing Content, but only a limited right of access and use, revocable in accordance with the terms of this Agreement.

c. Subscriber agrees not to challenge MLS's rights in and to the Listing Content or the MLS Database or to take any action inconsistent with the provisions of this Section 7 of this Agreement. Subscriber agrees to take all action and execute and deliver to MLS all documents requested by MLS in connection with the copyright application and registration of the Listing Content and the MLS Database.

d. Without limiting the generality of this Section 7.d, Subscriber acknowledges and agrees that MLS may license, or otherwise grant rights in or to the MLS Database or any or all of the Listings included in the MLS Database,

including any and all Listing Content, to any third party for any lawful purpose reasonably deemed appropriate by MLS, unless otherwise limited by a separate agreement between MLS and the applicable broker/brokerage firm or by the Rules and Regulations.

7. License to Broker's Listings.
Upon the receipt of a written request from Broker, in a form acceptable to MLS, and so long as Broker, Subscriber, and/or an applicable Vendor are not in default under this Agreement, the Rules and Regulations or any agreement with MLS, MLS will grant to Subscriber or the applicable Vendor a license to the Internet Listing Display Listings. The license will only be granted pursuant to a License Agreement. MLS has no obligation to grant a license to Subscriber or any Vendor which does not enter into a License Agreement. In addition to any applicable license fee payable by Subscriber and/or the Vendor, Subscriber shall pay to MLS all costs and expenses incurred by MLS in connection with any licenses and any services provided by MLS in connection with such licenses.

8. Fees.
In consideration for subscriber rights in MLS's multiple listing service and for the services provided and licenses granted under this Agreement, Subscriber agrees to pay to MLS the fees ("Fees") in the amount, and in accordance with the terms, established by MLS for subscribers to MLS's multiple listing service, which amount and terms may be changed by MLS at any time effective upon thirty (30) days prior written notice to Subscriber.

9. No Assignment by Subscriber.
Subscriber agrees that this Agreement is personal to Subscriber, and Subscriber may not assign or transfer this Agreement, including any license granted under this Agreement, or transfer any rights or delegate any duties under this Agreement, to any third party. Any attempt to assign, transfer, or delegate any of Subscriber's rights, duties, or obligations under this Agreement shall be void.

10. Interruptions in Service.
Subscriber acknowledges that access to the MLS Database may from time-to-time be unavailable to Subscriber, whether because of technical failures or interruptions, intentional downtime for service or changes to MLS's website, or otherwise. Subscriber agrees that any modification of MLS's website, and any interruption or unavailability of access to the MLS Database shall not constitute a default of any obligations of MLS under this Agreement, and MLS shall have no liability of any nature to Subscriber for any such modifications, interruptions, unavailability, or failure of access.

11. Copies and Derivative Works.
Except as otherwise expressly provided in this Agreement or the Rules and Regulations, Subscriber may not do any of the following, either directly or indirectly, including assist any other person to do, or otherwise contribute in any way to any of the following:

a. Make any copies of the MLS Database, or any portion of the MLS Database, including any specific Listing Content included in the MLS Database;

b. Create any derivative works, enhancements, or other modifications of the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database;

c. Download, distribute, export, or transmit the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database; or

d. Publicly display the MLS Database, or any portion of the MLS Database, including any Listing Content included in the MLS Database.

12. Representations and Warranties Regarding Listings.
Subscriber represents and warrants with respect to each Broker's Listing or change to a Broker's listing submitted by Subscriber to Broker, the following:

a. Subscriber and the respective Seller have assigned in writing all of Seller's and Subscriber's rights, title and interest, including all copyright rights and other intellectual property rights, in and to the Listing Content to Broker.

b. The Broker's Listing complies in all respects with the Rules and Regulations.

c. To the best of Subscriber's knowledge and after reasonable due diligence to verify the accuracy of all information in the Broker's Listing, all information included in the Broker's Listing is accurate and not misleading.

d. The Listing Content for each Broker's Listing is an original work of authorship of the Broker, or has been assigned to Broker pursuant to an enforceable assignment. Except for Broker, no other person or entity, including Sales Licensee or any Seller, has any rights of any nature in or to any of the Listing Content for any Broker's Listing.

e. There is no claim, litigation or proceeding pending or threatened with respect to the Listing Content for any Broker's listing.

13. Submission of Listings.

As a material condition to accessing the MLS Database, Subscriber agrees to submit to MLS on behalf of Broker, all Listings for properties listed for sale by Subscriber, in accordance with, and except as otherwise provided in, the Rules and Regulations. MLS may refuse to accept or include in, and may remove from, the MLS Database, any Listing, or any Listing Content, or may require Subscriber, on behalf of Broker, to direct MLS to modify any Listing Content, as provided under the Rules and Regulations or if MLS determines, in its sole discretion, that any such Listing Content may violate or infringe upon the rights of a third party. Notwithstanding the foregoing sentence, except as provided in the Rules and Regulations, Subscriber acknowledges that MLS has no obligation to remove or modify any Listing or Listing Content. MLS grants to Subscriber a limited, non-exclusive, personal license to input Listing Content in the MLS Database, and modify such Listing Content, only on behalf of Broker and strictly in accordance with the terms and conditions of this Agreement and the Rules and Regulations. Subscriber acknowledges and agrees that any Listing or Listing Content, or any prospective Listing or Listing Content, submitted to MLS may be accessible by other users of MLS's multiple listing service, and MLS shall have no liability to Subscriber for providing such other user's access to any Listing or Listing Content, or any prospective Listing or Listing Content.

14. Confidential Information.

Any information provided by MLS to any Subscriber, including without limitation, any password to the MLS Database, any printouts of the MLS Database as provided under this Agreement, and all Listing Content, including personal information of a Seller (collectively "Confidential Information") shall be maintained by Subscriber as confidential and available exclusively for use by the Subscriber as provided in this Agreement. Subscriber shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law. Subscriber shall not disclose any Confidential Information pursuant to a court order or as required by law until Subscriber has given MLS ten (10) days prior written notice and an opportunity to oppose such disclosure. Notwithstanding the foregoing, Subscriber may disclose Listing Content for individual Listings strictly in accordance with this Agreement and the Rules and Regulations.

15. Additional Representations and Warranties of Subscriber.

Subscriber represents and warrants the following to MLS: (a) Subscriber is a real estate Subscriber licensed and in good standing; (b) Broker has consented to Subscriber entering into this Agreement; (c) this Agreement, when executed by Subscriber, will be valid, binding and enforceable with respect to Subscriber in accordance with its terms; (d) the provisions of the services provided under this Agreement and the fulfillment of Subscriber's obligations as contemplated under this Agreement are proper and lawful; (e) Subscriber 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.

16. Compliance with Governing Rules and Agreements.

a. By entering into this Agreement, Subscriber represents and warrants to MLS that he or she has read and understands, and shall be bound by and at all times fully comply with and perform all of Subscriber's obligations under this Agreement and the Rule and Regulations, as may be amended from time to time by MLS. In addition to all other rights and remedies available to MLS under this Agreement and the Rules and Regulations, Subscriber acknowledges that MLS may levy fines against Subscriber for noncompliance with the Rules and Regulations as provided in the Rules and Regulations. A copy of the then-current version of the Rules and Regulations is available upon request.

b. To the extent there is any conflict between this Agreement, an applicable Participation Agreement, and the Rules and Regulations, the Rules and Regulations shall govern. As between this Agreement and any applicable Participation Agreement, this Agreement shall govern.

17. No Warranty.

THE SERVICES PROVIDED AND LICENSE GRANTED TO SUBSCRIBER UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY NATURE. MLS EXPRESSLY

DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, MLS DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY LISTING CONTENT, AND THEIR ACCURACY.

18. Limitation of Liability.

MLS'S ENTIRE AND CUMULATIVE LIABILITY TO SUBSCRIBER, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MLS DATABASE OR LISTING CONTENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY SUBSCRIBER TO MLS DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT SHALL MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19. Injunction.

MLS and Subscriber agree that a breach or violation of Sections 12, 15, and 21 f. of this Agreement will result in immediate and irreparable injury and harm to MLS. In such event, MLS shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to 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 MLS may have, including, without limitation, the right to seek monetary damages.

20. Term and Termination.

a. Either party may terminate this Agreement at any time for any reason upon thirty (30) days prior written notice to the other party.

b. MLS may terminate this Agreement upon the occurrence of any of the following events: (1) Participant requests in writing to MLS that this Agreement be terminated; (2) Subscriber fails to pay any Fees when due; (3) Subscriber discloses any Confidential Information, including, without limitation, any password of Subscriber, except as expressly provided in this Agreement; (4) Subscriber otherwise fails to comply in all respects with the Rules and Regulations, (5) Subscriber defaults under any material term or condition of any License Agreement; or (6) Subscriber defaults under any other material term or condition of this Agreement. Except as otherwise provided in this Agreement, termination pursuant to this Section 18.c of this Agreement shall be effective at any time after MLS has given ten (10) business days notice to Subscriber of any such event, and such event has not been cured within such ten (10) day period. Notwithstanding the foregoing sentence, if, in the reasonable discretion of MLS, the occurrence of any such event could result in irreparable harm to MLS, termination shall be effective immediately, without prior written notice to Subscriber, provided that notice shall be delivered to Subscriber within ten (10) business days following such termination.

c. This Agreement shall automatically terminate upon termination of the Participation Agreement; except that if Broker, and not Brokerage Firm, entered into the terminated Participation Agreement, this Agreement shall continue in effect provided that another Broker or his/her Brokerage Firm enters into a Participation Agreement within thirty (30) days after termination of the terminated Participation Agreement. If another Participation Agreement is not entered into within such thirty (30) day period, this Agreement shall automatically terminate upon expiration of such thirty (30) day period.

d. In addition to all other rights and remedies available to MLS under this Agreement, if Subscriber fails to pay any Fees when due, or otherwise defaults under this Agreement, MLS may, in its sole discretion, temporarily suspend the license granted to Subscriber to access the MLS Database until all outstanding Fees have been paid in full or the default has been cured.

e. Upon termination of this Agreement, Subscriber agrees to immediately destroy any printouts of the MLS Database or Listing Content, and any copies of the MLS Database and Listing Content in Subscriber's possession or under Subscriber's control. Upon termination of this Agreement, all licenses granted and all services provided to Subscriber

f. Under this Agreement shall terminate. No pre-paid Fees will be refunded to Subscriber for any termination of this Agreement.

21. Indemnification.
Subscriber agrees to indemnify and hold harmless MLS, and its officers, directors, employees, shareholders from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorney's fees and costs, arising out of or connected with any Listing Agreement, this Agreement, submission to MLS of any Listing or Listing Content and the inclusion of any Listing or Listing

Content by Subscriber in the MLS Database, including, without limitation, any claim that the access to, display of, and/or use of any Listing Content infringes on or constitutes a misappropriation of any patent, copyright, or trade secret, or any other intellectual property right of any person or entity anywhere in the world, including any claims by Sellers. MLS shall have the right to control its own defense and engage legal counsel acceptable to MLS.

22. Proprietary and Other Notices.
Subscriber agrees that it will not alter or remove any trademarks or copyright notices or other notices and disclaimers located or used on, or in connection with, the MLS Database or any printouts of the MLS Database allowed under this Agreement.

23. General.

a. Notices. All notices, demands, or consents required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, by a reputable overnight courier service, or by e-mail, if the sender receives and maintains a copy of a certified mail receipt and a copy is mailed within (1) business day after notice is delivered by e-mail, to the appropriate party at the following addresses:

If to Subscriber: At the office address or e-mail address of the Subscriber shown on page 1.

If to MLS:

Smart MLS, Inc.
55 Old Gate Lane Milford, CT 06460

The foregoing addresses may be changed from time-to-time by delivering notice of such change, referencing this Agreement, to the parties to this Agreement.

b. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the state of Connecticut. Subscriber acknowledges that by using the services provided under this Agreement, Subscriber has transacted business in the state of Connecticut. By transacting business in the state of Connecticut by agreement, Subscriber voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in the state of Connecticut, as to all matters relating to or arising from this Agreement.

c. Costs of Litigation. If any action is brought by either party to this Agreement against the other 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.

d. Severability. 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; except that if any provision of Sections 8, 15, or 16 of this Agreement, or any other limitation of liability or exclusion of warranty set forth in this Agreement, is determined to be invalid or unenforceable, then this Agreement shall immediately terminate without notice.

e. No Waiver. The waiver by either party of, or the failure of either party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement 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. The subsequent acceptance of any payment due under this Agreement by any party shall not be deemed to be a waiver of any preceding breach of the party making payment with respect to any term, covenant or condition contained in this Agreement.

f. Entire Agreement; Modifications Only in Writing. This Agreement, together with the Rules and Regulations and any applicable License Agreement, (i) constitutes the entire agreement between MLS and Subscriber concerning the MLS Database, Listing Content, and all other subject matter of this Agreement, (ii) supersedes any contemporaneous

or prior proposal, representation, agreement, or understanding between the parties, and (iii) may not be amended except in writing signed by MLS and Subscriber.

g. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of MLS and Subscriber and is not intended to benefit any third party, including any Seller or Subscriber. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement.

h. Survival. The provisions of Sections 7, 9, 10, 15, 18, 19, 20, 21, 22, and 24 of this Agreement shall survive the termination of this Agreement.

25. Definitions.

The following terms shall have the following meanings in this Agreement:

a. Broker means the principal real estate broker/broker in charge who has engaged Subscriber as an agent/Subscriber of broker, either as an employee or independent contractor.

b. Brokerage Firm means the real estate brokerage firm affiliated with broker.

c. Broker Listings means only the Listings of Broker.

d. Exempted Listing means a Listing which the respective Seller refuses to have disseminated by MLS pursuant to a written certification, or any other Listing which is not required to be published with MLS as provided under the Rules and Regulations.

e. Internet Listing Display Listings means all of the listings identified or defined as Internet Listing Display listings in the Rules and Regulations.

f. License Agreement means a license agreement entered into between MLS and Subscriber or MLS and a third party at the request of Subscriber.

g. Listing means a real estate listing of a participant in MLS's multiple listing service.

h. Listing Agreement means an enforceable, written, and fully executed agreement between Broker and a Seller whereby, among other things, Broker agrees to provide real estate sales services to Seller, and Seller agrees to pay compensation for services provided, all in accordance with applicable law.

i. Listing Content means all content, including without limitation, all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, and pricing information submitted by Broker to MLS with respect to all Broker's Listings except Exempted Listings.

j. MLS Database means the compilation of Listings, including information for sold properties, known as the MLS Database, as modified from time-to-time by MLS, and which, as of the date of this Agreement, is available to Subscribers on the MLS web site.

k. Participation Agreement means a participation agreement, in a form acceptable to MLS in its sole discretion, entered into between MLS and Broker or Brokerage Firm (the "Participant"), which grants participation rights in MLS's multiple listing service to Broker or Brokerage Firm.

l. Seller means the seller(s) or lesson(s) of a property which is the subject of a Listing at issue under this Agreement.

m. Vendor means any person or entity which has entered into a License Agreement for display of real estate listings for Subscriber.