

Global Multiple Listing Service, Inc. Participant Data Access Agreement

This **AGREEMENT** is made and entered into by Global Multiple Listing Service, Inc. ("**GMLS**"), with offices at 451 New Karner Road, Albany, NY 12205; the real estate brokerage firm identified as "Firm" on the signature page below ("**Firm**"); the Salespersons affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the "**Salesperson Party**"); and the individual or business association identified as "Consultant" on the signature page below, if any ("**Consultant**").

DEFINITIONS

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.

Confidential Information: "Confidential Information" means information or material proprietary to a party or designated "confidential" by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all GMLS Data, except to the extent to which this Agreement and the GMLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that GMLS obtains from any third party that GMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by GMLS; (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims and evidence presented by any party in any arbitration under this Agreement. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

Data Interface: The transport protocols and data storage formats provided by GMLS for use by Firm, Salesperson Party, and Consultant; GMLS may modify the Data Interface in its sole discretion from time to time.

Firm-Related Persons: Consultant, if any, and employees of Firm who are not Salespersons or broker/managers.

Firm Internal Use: Any use of those portions of the GMLS Data relating to Firm's own listings; and any use of those portions of the GMLS Data relating to listings of Participants other than Firm that exposes GMLS Data only to Firm-Related Persons and to Salespersons affiliated with Firm, subject to the GMLS Policies.

IDX: Use and display of portions of the GMLS Data under the Internet Data Exchange provisions of the GMLS Policies.

Participant: This term has the meaning given to it in the GMLS Policies. For purposes of this Agreement, "Participant" does not apply to participants of MLSs other than GMLS. Where applied in this Agreement to Participants other than Firm, "Participant" also includes Salespersons affiliated with those Participants for whom the Participants are responsible under the laws of the State of New York.

Salesperson: Any person holding a real estate license in New York who is not a Participant but who is subject to a Participant's supervision under the laws of New York.

Second Level Domain: "Second Level Domain" has the meaning given to it in this paragraph. "**URL**" means a web address, including the "http://" and any material appearing after a slash in the address. "**Domain Name**" means a URL, less the "http://" and any material appearing to the right of the next slash ("/") in the address. (So for example, in the URL "Http://janesmith.abcrealty.com/homepage.html", the Domain Name is "JANESMITH.ABCREALTY.COM".) "**Top Level Domain**" means the portion of the Domain Name to the right of the right-most period. (In the example,

"COM".) "**Second Level Domain**" means that portion of a domain name to the left of the right-most period, up to the second period from the right, if any, plus the Top Level Domain. (In the example, "ABCREALTY.COM".) "**Third Level Domain**" means that portion of a domain name to the left of the second period from the right, if any, up to the third period from the right, if any, plus the Second Level Domain. (In the example, "JANESMITH.ABCREALTY.COM".).

GMLS Data: Data relating to real estate for sale, previously sold, or listed for sale, and to GMLS Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into GMLS's databases by GMLS Participants and GMLS, or on their behalf.

GMLS Policies: GMLS's Rules and Regulations, as amended from time to time, and any operating policies promulgated by GMLS.

VOW: Use and display of portions of the GMLS Data under the Virtual Office Website (VOW) provisions of the GMLS Policies.

GMLS'S OBLIGATIONS

2. GMLS grants to Firm and Salesperson Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the GMLS Data, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement; any other use of the GMLS Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. GMLS retains all rights not expressly granted herein.

3. GMLS agrees to provide to Firm, Salesperson Party, and Consultant, during the term of this Agreement, (a) access to the GMLS Data via the Data Interface under the same terms and conditions GMLS offers to other GMLS Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the GMLS Policies. GMLS does not undertake to provide technical support for the Data Interface or the GMLS Data. The Data Interface, together with access to the GMLS Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or GMLS Data shall not constitute a default by GMLS under this Agreement.

FIRM'S OBLIGATIONS

4. Firm and Salesperson Party shall comply with the GMLS Policies at all times. In the event of any perceived conflict between the GMLS Policies and this Agreement, the GMLS Policies shall govern.

5. Firm shall use the GMLS Data obtained under this Agreement for Firm Internal Use, IDX, and VOW use only. Salesperson Party shall use the GMLS Data obtained under this Agreement for VOW use only. Any other use is strictly prohibited. Firm and Salesperson Party shall not make the GMLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Salesperson Party may display the GMLS Data on web sites only to the extent permitted by the GMLS Policies and then only on a site or sites resident at the second-level and third-level domain(s) indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Salesperson Party acknowledge that ownership and use rights relating to copyrights in the GMLS Data are defined in the GMLS Policies or in the terms of the participant and subscriber agreements between GMLS Firm and Salesperson Party, or both. Firm and Salesperson Party shall not challenge or take any action inconsistent with GMLS's ownership of

or rights in the GMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If GMLS notifies Firm or Salesperson Party of a breach of the GMLS Policies or this Agreement and Firm or Salesperson Party does not immediately cure the breach, Firm and Salesperson Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with GMLS under Paragraph 10.

8. Firm and Salesperson Party shall pay the fees, if any, that GMLS customarily charges other GMLS Participants for data access. Firm and Salesperson Party acknowledge receipt of GMLS's current schedule of such fees, if any. GMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Salesperson Party. Firm and Salesperson Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Salesperson Party's and Consultant's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

CONSULTANT'S OBLIGATIONS

10. Consultant shall immediately correct any breach of this Agreement or violation of the GMLS Policies within its control, whether committed by Firm, Salesperson Party, or Consultant, upon notice from GMLS.

11. Consultant acknowledges that (as among the parties to this Agreement) Firm and GMLS possess all right, title, and interest in all copyrights in the GMLS Data. Consultant shall not challenge or take any action inconsistent with GMLS's and Firm's ownership of or rights in the GMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

12. Consultant shall not make the GMLS Data or the Confidential Information available to any third party, except on behalf of, and at the direction of, the Firm and Salesperson Party and in a manner consistent with Firm's and Salesperson Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the GMLS Data, whether commercial or personal. **In the event that Consultant provides services to Participants other than Firm (or to Salespersons affiliated with Firm other than the Salesperson Party), Consultant must enter separate contracts with GMLS. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant; and in the case of Salespersons, that each Salesperson Party remains affiliated with Firm, and a member of the GMLS. Failure to comply with the provisions of this paragraph, will result in GMLS terminating all of Consultant's access to the GMLS Data under this Agreement and all similar agreements.** The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

13. Consultant is surety for Firm's and Salesperson Party's obligations to pay fees under Paragraph 8. The provisions of the preceding sentence shall survive the expiration or other termination of this Agreement in perpetuity. Consultant shall notify GMLS within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

AUDITS OF COMPLIANCE

14. GMLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Salesperson Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Salesperson Party's, and Consultant's compliance with this Agreement ("Audit"). GMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Salesperson Party's, and Consultant's web sites and systems to ensure that GMLS Data is displayed in accordance with the GMLS Policies; using all features available to end-users of Firm's, Salesperson Party's, and Consultant's systems that employ

the GMLS Data; and posing as consumers to register and test services Firm, Salesperson Party, and Consultant make available to consumers using the GMLS Data. GMLS shall pay the costs it incurs, and the out-of-pocket costs Firm, Salesperson Party, and Consultant incur, as part of any Audit; provided, however, Firm or Salesperson Party shall be liable for all costs of any Audit that discloses that Firm, Salesperson Party, or Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

15. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

16. The term of this Agreement begins on the date that GMLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in GMLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide IDX or VOW services to it; (f) with regard to any Salesperson Party, immediately upon any event that results in the Salesperson Party no longer being affiliated with Firm, or a member of the GMLS; (g) as provided in Paragraphs 26 and 29.

17. In the event Firm's privileges as a Participant (or Salesperson Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and GMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if GMLS resumes its obligations under Paragraphs 2 and 3. In the event Firm, Salesperson Party, or Consultant breaches this Agreement and entitles GMLS to terminate under Paragraph 16, GMLS may in its sole discretion suspend its performance instead of terminating this Agreement. GMLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Salesperson Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, Firm, Salesperson Party, and Consultant shall make no further use of the GMLS Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Salesperson Party's rights under this Agreement are restored.

GENERAL PROVISIONS

18. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of New York, without regard to its conflicts and choice of law provisions.

19. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

20. **GMLS's Remedies.** (a) Injunctive relief: Because of the unique nature of the GMLS Data and Confidential Information, Firm, Salesperson

Party, and Consultant acknowledge and agree that GMLS would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate GMLS for a breach. GMLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Salesperson Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by GMLS, and without posting any bond. (b) Liquidated damages: Firm, Salesperson Party, and Consultant acknowledge that damages suffered by GMLS from access to the GMLS Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the GMLS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to GMLS to enter into this Agreement, Firm, Salesperson Party, and Consultant agree that in the event Firm, Salesperson Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the GMLS Data or disclose the GMLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Salesperson Party, and Consultant shall be liable to GMLS for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Salesperson Party, and Consultant under this paragraph is joint and several.

21. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL GMLS BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF GMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL GMLS BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, SALESPERSON PARTY, AND CONSULTANT HAVE PAID GMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, SALESPERSON PARTY, AND CONSULTANT ACKNOWLEDGE THAT GMLS PROVIDES THE GMLS DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY. GMLS SHALL NOT BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE GMLS DATA, ANY FAILURE TO UPDATE THE GMLS DATA PROMPTLY, OR THE GMLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. GMLS makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.**

22. **Dispute resolution; Attorney's fees.** In the event GMLS claims that Firm, Salesperson Party, or Consultant has violated the GMLS Policies, GMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the GMLS Policies, provided GMLS does not also base a claim that Firm, Salesperson Party, or Consultant has breached this Agreement on the same facts. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of New York located in Richmond County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to GMLS's disciplinary procedures. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

23. **Indemnification.** Subject to Paragraph 21, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each

claim of any third party resulting from the breach. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

24. **Notice.** All notices to be given under this Agreement shall be mailed, or if sent via facsimile transmission, or electronically mailed (a hardcopy is to follow via regular mail) to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

25. **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.

26. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

27. **Entire Agreement.** Subject to GMLS Policies, 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, relating to the same.

28. **Relationship of the Parties.** The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of GMLS or have any authority to make any agreements or representations on the behalf of GMLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

29. **Severability.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

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Under this Agreement, **FIRM AND SALESPERSON PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Salesperson Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with GMLS and each such consultant. Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM AND SALESPERSON PARTY NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Salespersons affiliated with Firm except the Salesperson Party. Consultant must enter into a new version of this Agreement with GMLS and each additional Participant or amend this Agreement with GMLS to add additional Salespersons affiliated with Firm as Salesperson Parties.

If Firm or Salesperson Party will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box. If this Agreement is for services to Firm only, and there is no Salesperson Party, Firm should cross out the Salesperson Party signature box.

This Agreement is for the following uses (check all that apply): **IDX** **VOW** **Firm Internal Use.**

<p>GMLS: Global Multiple Listing Service, Inc.</p> <p>_____ Signature</p> <p><u>Scott Rummler, MLS Coordinator</u> Name</p> <p>Date: _____ (effective date of this Agreement)</p> <p>Contact for notices and operations matters</p> <p>Name: <u>Scott Rummler</u></p> <p>Phone: <u>518-464-8913</u></p> <p>Email: <u>srummler@globalmls.com</u></p>	<p>VENDOR</p> <p><u>Constellation Web Solutions</u> _____ Consultant name</p> <p><u>Dan Dlh</u> _____ Signature of owner or officer</p> <p><u>Dan Dlh</u> _____ Printed Name of owner or officer</p> <p>Contact for notices and operations matters</p> <p>Name: <u>Dan Dlh</u></p> <p>Phone: <u>425-636-6910</u> / Fax: <u>866-299-4385</u></p> <p>Email: <u>brokersolutions@constellationws.com</u></p> <p>Mailing: <u>6737 W. Washington Street, Suite 2120</u> <u>Milwaukee, WI 53214</u></p>
<p>PARTICIPANT/BROKER-OWNER</p> <p>_____ Firm name</p> <p>_____ Signature of owner or officer</p> <p>_____ Name of principal broker owner or officer</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____ / Fax: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>Website: <u>www.</u> Second or Third Level Domain: _____</p> <p>_____ <input type="checkbox"/> IDX <input type="checkbox"/> VOW</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>	<p>SUBSCRIBER (Sales Agent)</p> <p>(If there is more than one, have each named and sign on Exhibit A.)</p> <p>_____ Salesperson Party name</p> <p>_____ Signature of Salesperson Party</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____ <input type="checkbox"/> IDX</p> <p>(If more than one will be used, specify each in Exhibit A.)</p>

Global Multiple Listing Service, Inc. Participant Data Access Agreement

Exhibit A – Additional Requirements

1. **Additional Domains.** In addition to the Second and Third Level Domains specified on the signature page, Firm, Salesperson Party, and Consultant may display GMLS Data subject to the terms of this Agreement at the following Second and Third Level Domains (attach additional pages if necessary):

_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW

2. **Additional Salesperson Parties:** If there are two or more Salesperson Parties, each Salesperson Party after the first is identified by name here, and each must sign this Agreement. Each Salesperson Party listed here consents to GMLS making communications and notices under this Agreement to Firm only. (Attached additional pages if necessary.)

_____	_____
Name	Signature
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