



15344 Pearl Drive, Baxter, MN 56425 Telephone 218-828-4567 Fax 218-829-8178 Office@GreaterLakesRealtors.com

MULTIPLE LISTING SERVICE AGREEMENT

Effective Date: _____

This Multiple Listing Service Agreement ("Agreement") is made and effective as of the Effective Date set forth above between Greater Lakes Multiple Listing Service, Inc., Minnesota Corporation ("GLMLS"), and the brokerage firm identified on the last page of this agreement ("Member Firm"). In consideration of the mutual covenants contained in, and intending to be legally bound by, this Agreement the parties agree as follows.

1. Definitions and usage.

(a) Definitions.

"GLMLS Affiliates" means GLMLS and its officers, directors, employees, agents, representatives, licensors and shareholders, including Greater Lakes Association of REALTORS, Inc.

"GLMLS Database" means all data available to Member Firm on the GLMLS System, including the Member Firm Contribution and all other text, binary, and photographic image data and the compilation thereof.

"GLMLS Policies" means GLMLS's bylaws, standard operating procedures, and rules and regulations, and any other governing document duly adopted by GLMLS or the Greater Lakes Association of REALTORS, Inc., as GLMLS amends them from time to time; a copy of which Member Firm hereby acknowledges having received.

"GLMLS Service" means the services GLMLS provides to Member Firm under this Agreement and similar services GLMLS provides to third parties under similar agreements, including any access or license to the GLMLS Software, the GLMLS Database, and the GLMLS System.

"GLMLS Software" means GLMLS's proprietary web browser interface to the GLMLS System.

"GLMLS System" means the aggregate of all hardware and telecommunications systems that GLMLS maintains in order to make access to the GLMLS Database available to Member Firm.

"Member Firm Affiliates" means Member Firm and its employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

"Member Firm Contribution" means all data that the Member Firm Affiliates submit, contribute, or input in the GLMLS System, including text, binary, and photographic image data.

"Saved Information" means information that Member Firm Affiliates store in the GLMLS System for their own later use that is not intended by them to be available to GLMLS's other customers, including client prospect and contact information.

(b) **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

(i) Wherever the term "including" is used, it means "including, but not limited to."

(ii) The singular and plural numbers and masculine, feminine, and neuter genders of words are fully interchangeable.

(iii) Wherever the term "law" is used, it means all statutes, regulations, and case law, both state and federal, as they are amended. Without limiting the generality of the foregoing, "law" expressly includes all state and federal fair housing statutes and regulations.

2. Association membership and Code of Ethics.

Member Firm's rights under this Agreement are subject at all times to Member Firm's continuing membership in the Greater Lakes Association of REALTORS, Inc., and adherence to the Code of Ethics of the National Association of REALTORS ("**Code of Ethics**").

3. GLMLS's obligations.

(a) **ID and password.** GLMLS shall provide one unique user ID and password to each of the Member Firm Affiliates that is authorized to obtain access to the GLMLS Service by virtue of this Agreement and other license and access agreements. The user ID and password will provide Member Firm access to all data and functions in the GLMLS Service to which Member Firm is entitled under the GLMLS Policies. GLMLS makes no warranties, however, that the GLMLS Service will be available at all times.

(b) **Protect Saved Information.** GLMLS shall make commercially reasonable efforts to make Saved Information available only to Member Firm Affiliates.

4. Member Firm acknowledgments.

(a) **Modifications to service.** GLMLS may, but is not required to, modify the GLMLS Service, including removing information and making additional information available, and adding and removing system functions.

(b) **Editorial control.** GLMLS is not required to, and does not, review, edit, or exercise editorial control over the GLMLS Database or the Member Firm Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, GLMLS may take any steps necessary in its judgment, including deleting the Member Firm Contribution or portions of it, to avoid or remedy any violation of law or infringement of intellectual property right.

(c) **Conditions of service.** Member Firm's continued compliance with all the terms of this Agreement is a condition to each and every performance of GLMLS hereunder.

(d) **Saved Information.** Saved Information may not always be available to Member Firm and may become available to unauthorized persons. GLMLS is not liable for unauthorized access to or loss of Saved Information; Member Firm is

responsible for retention of information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

(e) **Disclosure to third parties.** GLMLS reserves the right to distribute to third parties certain non-confidential information about Member Firm, including Member Firm's name, telephone number and electronic and mailing addresses. GLMLS reserves the right to distribute to third parties aggregated information about GLMLS customers' use of the GLMLS Service, but not about Member Firm's use specifically.

(f) **Disclosure to government.** Member Firm acknowledges that GLMLS may provide government agencies access to the GLMLS Service at any time in GLMLS's sole discretion.

(g) **Member Firm access before Member Firm Affiliates.** Member Firm must enter into this Agreement before any other Member Firm Affiliate may obtain access to the GLMLS Service. Subscriptions of other Member Firm Affiliates are dependent on this Agreement; any termination or suspension of this Agreement will result in termination or suspension of dependent Member Firm Affiliate agreements.

(h) **Data display.** The GLMLS Policies limit the extent to which Member Firm may disclose the GLMLS Database or portions thereof to anyone who is not a customer of GLMLS. Violation of this policy will subject Member Firm to immediate termination of this Agreement.

5. Member Firm's obligations.

(a) **Use limited.** Member Firm shall use the GLMLS Service solely for the purpose of selling, listing, and leasing real estate. Except as expressly provided in this Agreement, Member Firm shall not copy, create derivative works of, distribute, or display the GLMLS Service, the GLMLS Database, or any part of them.

(b) **Confidentiality.** Member Firm shall maintain the confidentiality of its user ID and password. Member Firm shall ensure that Member Firm Affiliates maintain the confidentiality of their user IDs and passwords and that no one but authorized Member Firm Affiliates obtains access to the GLMLS Service or any part of it. Failure to comply with this provision may result in a significant fine, as set forth in the GLMLS Policies.

(c) **Equipment.** Member Firm shall acquire and maintain all computers, modems, telecommunications connections, and computer software, other than the GLMLS Software, necessary for Member Firm's use of the GLMLS Service.

(d) **Member Firm representations.** Member Firm shall not make any representations or warranties to any third party regarding the GLMLS Service or any part of it; Member Firm may, however, republish verbatim any description of the GLMLS Service that GLMLS publishes. Without limiting the generality of the foregoing, Member Firm agrees not to employ any business name or Internet domain including the phrase "MLS" or "multiple listing service" as these phrases cause confusion as to the roles of GLMLS and Member Firm.

(e) **Disclosures to third parties.** Member Firm shall not knowingly publish or disclose any information about GLMLS or the GLMLS Service to any competitor or potential competitor of GLMLS.

(f) **Member Firm Contribution.** When making a Member Firm Contribution to the GLMLS Service, Member Firm shall ensure that the information submitted complies with the GLMLS

Policies with regard to required data fields; format of submission; and procedures for submission.

(g) **Member Firm Affiliate agreements.** Member Firm acknowledges that each Member Firm Affiliate other than Member Firm shall enter into a separate license and access agreement with GLMLS before obtaining access to the GLMLS System or GLMLS Database; and GLMLS may amend such license and access agreements in accordance with the GLMLS Policies.

(h) **Member Firm Affiliate supervision.** Member Firm shall ensure that all Member Firm Affiliates comply at all times with the GLMLS Polices, the Code of Ethics, and applicable laws. Member Firm is liable for any Member Firm Affiliate's breach of any agreement between Member Firm Affiliate and GLMLS relating to the GLMLS Service and any violation of the GLMLS Policies as if Member Firm itself had committed it.

(i) **List of Member Firm Affiliates.** Member Firm shall provide to GLMLS a current list of all of Member Firm Affiliates; Member Firm shall inform GLMLS in writing of any change in the Member Firm Affiliates within 24 hours of the change.

(j) **Accurate information.** Member Firm shall use reasonable care to ensure the accuracy of the Member Firm Contribution and its compliance with all laws. Member Firm shall ensure that any changes to the Member Firm Contribution are made on the GLMLS System within 24 hours or within such other time as GLMLS shall provide in the GLMLS Polices.

6. Intellectual property.

(a) **Work for hire; assignment from Member Firm.** The Member Firm Contribution to the GLMLS Database, which is a collective work, shall be deemed a work made for hire and GLMLS its author for copyright purposes. To the extent any portion of the Member Firm is not or cannot be deemed a work made for hire, Member Firm hereby assigns to GLMLS all right, title, and interest in any copyrights of Member Firm in the Member Firm Contribution; Member Firm warrants that it has the authority to make this assignment. Member Firm further warrants that the Member Firm Contribution does not infringe on the copyright or other intellectual property rights of any third party; and Member Firm has the written consent of any party necessary to provide the Member Firm Contribution to GLMLS. GLMLS agrees during the term of this Agreement not to license, sublicense, or assign GLMLS's copyright interest in the Member Firm Contribution, or distribute the Member Firm Contribution, to any third party that is not a real estate brokerage or appraisal subscriber to the GLMLS Service, unless Member Firm has granted permission for such a license, sublicense, assignment, or distribution.

(b) **License to Member Firm Contribution.** GLMLS hereby grants Member Firm a perpetual, royalty-free, worldwide, non-exclusive, license to reproduce, distribute, display, and make derivative works of the Member Firm Contribution, including the right to sublicense these rights to others through multiple tiers; provided, however, that this license is suspended if Member Firm is delinquent in payment of any fees or charges due GLMLS.

(c) **Other licenses.** GLMLS hereby grants Member Firm a license to use the GLMLS Software and the GLMLS Database

(excluding the Member Firm Contribution) (collectively, the "Licensed Materials"), subject to the following terms:

(i) **Scope.** License to the Licensed Materials is personal, non-exclusive, non-transferable, and royalty-free. Member Firm may use the Licensed Materials only to the extent expressly permitted by this Agreement and the GLMLS Policies and only to deliver real estate brokerage or appraisal services to Member Firm's bona fide customers.

(ii) **Duration.** The licenses to the Licensed Materials terminate upon termination of this Agreement.

(iii) **Restrictions:** All uses of the Licensed Materials not expressly authorized in this Agreement and the GLMLS Policies are prohibited, including (A) assigning, timesharing, selling, leasing, lending or renting the Licensed Materials or access to the GLMLS Database; (B) causing or permitting the reverse engineering, reformatting, recasting, disassembly or decompilation of the Licensed Materials; and (C) disclosing, demonstrating and displaying the Licensed Materials to anyone.

(iv) **Title.** Title to the Licensed Materials remains at all times in GLMLS and its licensors and shall not pass to Member Firm.

7. Fees and payment terms.

(a) **Applicable fees.** Member Firm shall pay the fees set forth in GLMLS's schedule of fees.

(b) **Payment terms.** Fees are due and payable on the first day 20th day of each payment period for that period's services. If Member Firm has not paid in full by the first day of the payment period, GLMLS may suspend or terminate this Agreement without further notice to Member Firm.

(c) **No refunds.** GLMLS need not refund or pro-rate fees in the event of termination or suspension of this Agreement.

(d) **Taxes.** All fees for the GLMLS Service are exclusive of federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and, accordingly, Member Firm shall pay all such taxes and levies other than any tax or levy on the net income of GLMLS.

(e) **Fee increases.** GLMLS may amend its schedule of fees at any time at its sole discretion. GLMLS shall provide written notice to Member Firm at least thirty days in advance of the effective date of any fee increase. If Member Firm objects to the increase, Member Firm may terminate this Agreement by written notice to GLMLS at any time before the effective date of the increase.

(f) **Liability for Member Firm Affiliate fees.** Member Firm is liable to GLMLS for periodic fees for each and every Member Firm Affiliate according to the schedule of fees.

8. Term and termination.

(a) **Term.** This Agreement shall continue on a month-to-month basis subject to the Member Firm's payment of fees and compliance with this Agreement and the GLMLS Policies.

(b) **Termination for breach.** Either party may terminate this Agreement in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement. The termination shall become effective upon the expiration of three days after written notice thereof if the breach or nonperformance has not then been remedied.

(c) **Termination for breach of GLMLS Policies.** GLMLS may terminate this Agreement without notice if Member Firm fails to comply with the GLMLS Policies.

(d) **Termination without breach.** Either party may terminate this Agreement in its sole discretion, with or without cause, upon thirty days' written notice to the other.

(e) **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (i) GLMLS shall deactivate Member Firm's user ID and password, and Member Firm shall have no further access to the GLMLS Service; (ii) Member Firm shall purge all copies of the GLMLS Software and the GLMLS Database (except the Member Firm Contribution) from Member Firm's personal computers; and (iii) all licenses granted hereunder, except the license set forth in Section 6(b), shall immediately terminate.

(f) **Termination of Member Firm Affiliates.** Upon termination of this Agreement, the license and access agreements of all other Member Firm Affiliates shall also immediately terminate.

9. Disputes and remedies.

(a) **Injunctive relief.** Member Firm acknowledges and agrees that the GLMLS Software and GLMLS Database are confidential and proprietary products of GLMLS and that in the event there is an unauthorized disclosure of them by Member Firm, no remedy at law will be adequate. Member Firm therefore agrees in the event of such unauthorized disclosure of GLMLS Software or GLMLS Database, GLMLS may obtain injunctive relief or other equitable remedies against Member Firm in addition to all available remedies at law.

(b) **Dispute resolution.** Except as provided in Section 8(d), any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures, the Optional Procedures for Large Complex Commercial Disputes, and the Optional Rules for Emergency Measures of Protection, where applicable (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Unless all parties to the dispute agree otherwise, any arbitration, hearing, or proceeding hereunder shall be held in Crow Wing County, Minnesota, except that it may be held by telephone where the Arbitration Rules expressly permit. Neither party shall disclose the existence or substance of any dispute between them subject to arbitration to any third party. Member Firm agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the courts of the State of Minnesota sitting in Crow Wing County.

(c) **Liquidated damages.** Member Firm acknowledges that damages suffered by GLMLS from access to the GLMLS Service by an unauthorized third party as a result of disclosure of Member Firm's password or an unauthorized disclosure by

Member Firm of the GLMLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to GLMLS to enter into this Agreement with Member Firm, Member Firm agrees in the event any disclosure of Member Firm's password results in access to the GLMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Member Firm shall be liable to GLMLS for liquidated damages in the amount of the greater of \$5,000 or the amount established in the GLMLS Policies and termination of this Agreement; and in the event Member Firm makes unauthorized disclosure of any portion of the GLMLS Database to any third party, Member Firm shall be liable for liquidated damages in the amount of the greater of \$1,000 or the amount established in the GLMLS Policies for each real estate listing disclosed and termination of this Agreement.

(d) **Legal fees.** In the event of legal action or arbitration between GLMLS and Member Firm, or GLMLS and any Member Firm Affiliate, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorney's fees, costs and expenses. If GLMLS is the prevailing party in an action against a Member Firm Affiliate, Member Firm shall be obligated to pay these costs on the Member Firm Affiliate's behalf.

10. Disclaimer, limitation of liability, and indemnification.

(a) **DISCLAIMER OF WARRANTIES.** GLMLS PROVIDES THE GLMLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE GLMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE GLMLS SERVICE ARE AT THE SOLE RISK OF MEMBER FIRM. THE GLMLS AFFILIATES DO NOT WARRANT THAT THE GLMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE GLMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE GLMLS SERVICE. THE GLMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE GLMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE GLMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(b) **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE GLMLS AFFILIATES SHALL BE LIABLE TO MEMBER FIRM OR ANYONE ELSE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE GLMLS SERVICE, INCLUDING RELIANCE BY ANY MEMBER FIRM AFFILIATE ON ANY INFORMATION OBTAINED THROUGH USE OF THE GLMLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE GLMLS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART

BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE GLMLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

(c) **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL THE LIABILITY OF THE GLMLS AFFILIATES ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY MEMBER FIRM HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

(d) **Indemnification.** Member Firm shall defend, indemnify and hold the GLMLS Affiliates harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the GLMLS Affiliates arising from any acts of Member Firm Affiliates, including (i) putting inaccurate information into the GLMLS Service; (ii) making unauthorized use of Member Firm Affiliate's password; (iii) making unauthorized use of the GLMLS Database; (iv) infringing any proprietary or contract right of any third party; and (v) violating any agreement or law.

(e) **Acknowledgment.** Member Firm acknowledges that GLMLS has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

11. Miscellaneous.

(a) **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, GLMLS and Member Firm, and this Agreement shall not create or be construed to create any rights in any other Member Firm Affiliate, home owner, home seller, home purchaser, board or association, or other third party.

(b) **Interpretation and amendment.** This Agreement may not be amended except by written instrument executed by both parties. Should any purchase order, confirmation or acknowledgment of Member Firm contain additional or different terms, those terms shall be considered proposals by Member Firm which are hereby rejected.

(c) **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Member Firm. Any purported assignment or delegation in contravention of this section is null and void *ab initio*.

(d) **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. 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.

(e) **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota applicable to contacts made and performed in Minnesota, notwithstanding its choice of law provisions.

The parties witness their covenants in this Agreement by setting their signatures below.

Signature of Member Firm officer

Signature of GLMLS officer or agent

Print name

Print name

Member Firm name

Address

Telephone

Fax