

Greater Lakes Association of REALTORS[®], Inc.

Participant Data Access Agreement

This AGREEMENT is made and entered into by Greater Lakes Association of REALTORS[®], Inc. ("GLAR"), with offices at 15344 Pearl Drive, Baxter, MN 56425; _____ ("Firm"), with offices at _____; and _____ ("Consultant"), with offices at _____.

DEFINITIONS

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

BR: Use and display of portions of the GLAR Data under the Broker Reciprocity provisions of the GLAR Policies.

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 GLAR Data, except to the extent to which this Agreement and the GLAR Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that GLAR obtains from any third party that GLAR treats as proprietary or designates as Confidential Information, whether or not owned or developed by GLAR; (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 GLAR for use by Firm and Consultant; GLAR may modify the Data Interface in its sole discretion from time to time.

Firm Affiliates: Consultant, if any, and employees of Firm who are not real estate licensees or broker/managers.

Firm Internal Use: Any use of those portions of the GLAR Data relating to Firm's own listings.

GLAR Customer Affiliate: Any licensed real estate broker who is a Participant (as the term is defined in the GLAR Policies) together with salespersons and broker associates licensed to the Participant, for whom the Participant is responsible under the laws of the State of Minnesota.

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

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

Other Permitted Uses: Any use of the GLAR Data for the purposes set out in Exhibit A – Other Approved Uses, if any, in the ordinary course of the Firm's real estate brokerage business.

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 first "/" in the address. (So for example, in the URL Participant Data Access Agreement

"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 left, 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 left, if any, up to the third period from the left, if any, plus the Second Level Domain. (In the example, "JANESMITH.ABCREALTY.COM".).

GLAR'S OBLIGATIONS

2. GLAR grants to Firm a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the GLAR 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 GLAR 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. GLAR retains all rights not expressly granted herein.

3. GLAR agrees to provide to Firm and Consultant, during the term of this Agreement, (a) access to the GLAR Data via the Data Interface under the same terms and conditions GLAR offers to other GLAR Customer Affiliates; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the GLAR Policies. GLAR does not undertake to provide technical support for the Data Interface or the GLAR Data.

FIRM'S OBLIGATIONS

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

5. Firm shall use the GLAR Data obtained under this Agreement for Firm Internal Use, BR, and Other Permitted Uses only. Any other use is strictly prohibited. Firm shall not make the GLAR Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm may display the GLAR Data on a web site available to the public only to the extent permitted by the GLAR Policies and then only on a site resident at the second-level domain indicated on the signature page of this Agreement.

6. Firm acknowledges that GLAR possesses all right, title, and interest in all copyrights in the GLAR Data. The previous sentence notwithstanding, GLAR shall not use the portion of the GLAR Data relating to Firm's listings for any purpose other than the defined purposes of GLAR without Firm's permission.

7. If GLAR notifies Firm of a breach of the GLAR Policies or this Agreement and Firm does not immediately cure the breach, Firm shall hold Consultant harmless from any liability arising from Consultant's cooperation with GLAR under Paragraph 12.

8. Any display of the GLAR Data to persons other than GLAR Customer Affiliates shall be accompanied by the following notice: "Based on information from Greater Lakes Association of REALTORS[®], Inc., which neither guarantees nor is in any way responsible for its accuracy. All data is provided 'AS IS' and with all faults. Data maintained by Greater Lakes Association of REALTORS[®], Inc. may not reflect all real estate activity in the market."

9. Firm shall display the GLAR copyright notice on each display screen, web page (whether Internet or intranet), and printout displaying

GLAR Data. The GLAR copyright notice must take the following form: "Copyright 2008 Greater Lakes Association of REALTORS®, Inc."

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

11. Firm shall stand as surety for Consultant's performance under this Agreement.

CONSULTANT'S OBLIGATIONS

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

13. Consultant acknowledges that Firm and GLAR possess all right, title, and interest in all copyrights in the GLAR Data.

14. Consultant shall not make the GLAR Data or the Confidential Information available to any third party, except on behalf of Firm and in a manner consistent with Firm's obligations under Paragraphs 4 through 11 of this Agreement; nor shall it make any other use of the GLAR Data, whether commercial or personal.

15. Consultant shall notify GLAR 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

16. GLAR may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm and Consultant to the extent reasonably necessary to ascertain Firm's and Consultant's compliance with this Agreement ("Audit"). GLAR may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's and Consultant's web sites and systems to ensure that GLAR Data is displayed in accordance with the GLAR Policies; using all features available to end-users of Firm's and Consultant's systems that employ the GLAR Data; and posing as consumers to register and test services Firm and Consultant make available to consumers using the GLAR Data. GLAR shall pay the costs it incurs, and the out-of-pocket costs Firm and Consultant incur, as part of any Audit; provided, however, Firm shall be liable for all costs of any Audit that discloses that Firm or Consultant has breached this Agreement.

CONFIDENTIAL INFORMATION

17. 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.

18. 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

19. The term of this Agreement begins on the date that GLAR 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 GLAR; (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) as provided in Paragraph 32.

20. In the event Firm's privileges as a Participant are terminated while this Agreement is in effect and GLAR subsequently reinstates those privileges, this Agreement shall automatically be reinstated if GLAR resumes its obligations under Paragraphs 2 and 3. In the event Firm or Consultant breaches this Agreement and entitles GLAR to terminate under Paragraph 19, GLAR may in its sole discretion suspend its performance instead of terminating this Agreement. GLAR may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, neither Firm nor Consultant shall make any further use of the GLAR Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's rights under this Agreement are restored.

GENERAL PROVISIONS

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

22. **Survival of Obligations.** The obligations of Firm set forth under "Firm's Obligations" above and the obligations of Consultant under "Consultant's Obligations" above shall survive the termination or expiration of this Agreement for five years. The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity.

23. **GLAR's Remedies.** (a) Injunctive relief: Because of the unique nature of the GLAR Data and Confidential Information, Firm and Consultant acknowledge and agree that GLAR would suffer irreparable harm in the event that either of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate GLAR for a breach. GLAR is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm or Consultant or any one of them, without showing or proving any actual damages sustained by GLAR, and without posting any bond. (b) Liquidated damages: Firm and Consultant acknowledge that damages suffered by GLAR from access to the GLAR Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the GLAR Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to GLAR to enter into this Agreement, Firm and Consultant agree that (i) in the event Firm or Firm Affiliates disclose any password to access the GLAR Data or disclose the GLAR Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm shall be liable to GLAR for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement; and (ii) in the event Consultant or its employees, agents, or contractors, disclose any password to access the GLAR Data or disclose the GLAR Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Consultant shall be liable to GLAR for liquidated damages in the amount of \$30,000 for each such disclosure and termination of this Agreement.

24. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL GLAR BE LIABLE TO FIRM OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF GLAR 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 GLAR BE LIABLE TO FIRM OR CONSULTANT FOR ANY AMOUNT IN EXCESS**

OF THE GREATER OF (A) THE FEES FIRM AND CONSULTANT HAVE PAID GLAR, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM ACKNOWLEDGES THAT GLAR PROVIDES THE GLAR 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. GLAR SHALL NOT BE LIABLE TO FIRM FOR ANY CLAIM ARISING FROM INACCURACIES IN THE GLAR DATA, ANY FAILURE TO UPDATE THE GLAR DATA PROMPTLY, OR THE GLAR DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL.

25. **Arbitration; Attorney's fees.** In the event GLAR claims that Firm has violated the GLAR Policies, GLAR may, at its option, resolve such a claim according to the disciplinary procedures set out in the GLAR Policies, provided GLAR does not also base a claim that Firm has breached this Agreement on the same facts. Except as set forth in this paragraph, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, including any claim against Consultant shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Minnesota located in Crow Wing 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 arbitration. 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.

26. **Indemnification.** Subject to Paragraph 24, 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.

27. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth 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.

28. **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.

29. **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.

30. **Entire Agreement.** Subject to GLAR 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.

31. **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 GLAR or have any authority to make any agreements or representations on the behalf of GLAR. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

32. **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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<p style="text-align: center;">NOTE:</p> <p>Under this Agreement, FIRM IS PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE. If Firm chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with GLAR and each such consultant.</p> <p>Under this Agreement, CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM NAMED HERE. Consultant may not use data obtained under this Agreement to provide any services to other brokerage firms. Consultant must enter into a new version of this Agreement with GLAR and each such brokerage firm.</p> <p>If Firm will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box before returning this Agreement to GLAR.</p>	<p>FIRM</p> <p>_____</p> <p>Firm name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>_____</p> <p>Name of owner or officer</p> <p>Date: _____</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>2nd Level Domain: _____</p>
<p>GLAR</p> <p>Greater Lakes Association of REALTORS[®], Inc.</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name</p> <p>Date: _____</p> <p style="padding-left: 20px;">(effective date of this Agreement)</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p>	<p>CONSULTANT</p> <p>_____</p> <p>Consultant name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>_____</p> <p>Name of owner or officer</p> <p>Date: _____</p> <p>FTP or RETS: _____</p> <p>IDX, VOW or Both _____</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p>

VOW URL: _____

VOW Login for GLAR: _____

VOW Password for GLAR: _____

Date of site activation: _____

GLMLS needs notification when the site is available to the public.

IDX or VOW Active Data Confidential fields (not for display):

Compensation

Seller's phone number(s)

E-mail(s)

Address(s)

Agents Remarks

Showing instructions

Property security information

IDX or VOW Sold Data Allowable fields:

List Office name (required)

Primary photo

Street address

Municipality

State

Zip code

Status

Sale price

Sold date

MLS number

Property type

County

School district

Style

Year built

Total bed

Total baths

Garage stalls

Acres

Lot size

Parcel ID number

Latitude

Longitude

Greater Lakes Association of REALTORS[®], Inc. Participant Data Access Agreement

Fees:

Activation Fee for VOW Only: \$500

Activation Fee for IDX Only: \$250

Annual Fee due January 31 of each year: \$250

Reactivation Fee: \$250

Data feed will be terminated for the following reasons:

- a. Not filing the annual report
- b. Not filing paperwork for agent fee
- c. Doing a feed for inactive agents.
- d. Other reasons to be determined by the GLMLS Board of Directors

Payment by Check: _____

Payment by Credit Card: _____

Call Association for information