



Serving Orange, Rockland, Sullivan & Ulster Counties
Visit us online at www.ghvmls.com

- ◆ 9 COATES DR., GOSHEN, N.Y. 10924 PH 845-294-7905 FAX 294-3414
- ◆ Branch office: 2 Medical Park Dr, Suite 17A, W Nyack, NY 10994 PH 845-358-7080

Application for Participation – Broker/Owner

Please Check One: Mr. Mrs. Ms. Please Check One: Preferred Mailing Address: Home Office

Name of Participant: _____
(Applicant) (Please Print your name as it appears on your license)

Real Estate License #: _____ Exp. Date: ____/____/____
Applicant MUST Hold Valid NYS Broker or NYS Appraiser License – Copy of License MUST be Submitted with Application

Personal Mailing Address: _____

City: _____ State: _____ Zip: _____ - _____

Published Contact Phone#: _____ Fax#: _____
(NOT your office phone – viewable by GHVMLS subscribers and on websites displaying your listings)

E-Mail Address*: _____@_____

*Correspondences to our members are sent via e-mail. It is important that you provide us with a current and accurate business e-mail address.

Personal Web Page: _____

Board in Which REALTOR Membership Is Held: HGAR Other (Enter name below)

Other Board: _____

NRDS# : _____ Office NRDS#: _____

If "Other" Selected, A REALTOR Membership Letter in Good Standing from your Primary board is required, including your NRDS#

Office/Firm Name: _____

Office Address: _____

City: _____ State: _____ Zip: _____ - _____

Phone#: _____ Ext #: _____ Fax#: _____

Required GHVMLS Orientation - Date: _____ Membership Effective Date: _____

An MLS Orientation **MUST** be completed within 30 days of receiving access.
Please call for available dates **BEFORE** submitting application.

MLXchange access codes will be issued via email once your application has been processed (minimum of 72hrs).
These codes are for your use ONLY. Providing your access codes to ANYONE is a violation of GHVMLS policy.
Policy violations will result in a minimum \$500 fine and/or termination of services.

I agree to abide by the Bylaws and Procedural Manual of the Greater Hudson Valley MLS.

Applicant Signature: _____ Date: _____

Applications **MUST** include: Copy of NY Real Estate license,
Proof of Realtor Membership and signed Participant Copyright Agreement

Incomplete applications cannot be processed.





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July 2011- June 2012 Subscriber Fees

Join Month	Fees for Members of HGAR		Subscriber Fee	Office Assessment**
	Subscriber Fee	Office Assessment**		
JULY	\$280.00	\$200.00	\$300.00	\$200.00
AUGUST	\$257.00	\$183.00	\$275.00	\$183.00
SEPTEMBER	\$234.00	\$167.00	\$250.00	\$167.00
OCTOBER	\$210.00	\$150.00	\$225.00	\$150.00
NOVEMBER	\$187.00	\$133.00	\$200.00	\$133.00
DECEMBER	\$163.00	\$117.00	\$175.00	\$117.00
JANUARY	\$140.00	\$100.00	\$150.00	\$100.00
FEBRUARY	\$117.00	\$83.00	\$125.00	\$83.00
MARCH	\$93.00	\$67.00	\$100.00	\$67.00
APRIL	\$70.00	\$50.00	\$75.00	\$50.00
MAY	\$47.00	\$34.00	\$50.00	\$34.00
JUNE	\$23.00	\$17.00	\$25.00	\$17.00

*Hudson Gateway Association of REALTORS®

** Office Assessment is paid annually by the principal broker of the firm.

Important Participant Information Including Excerpts from the GHVMLS Rules & Regulations

Section 1.3 – GENERAL REMARKS MLS policy limits information deemed to be “self promotional” to the MEMBERS ONLY REMARKS section of a listing. GHVMLS retains the right to remove copy or images which, in its sole discretion, it deems to be self promotional.

Section 6 – A Participant is responsible for a subscriber fee for **each and every** licensee, affiliated with their office, who uses GHVMLS Services. Use of service by a non subscriber may result in suspension of service to the Participant.

Section 6.1 d – There shall be no reimbursements or partial payment of fees/charges for persons leaving the MLS.

Section 6.2 – FINES The following fine schedule is strictly enforced.

- | | | | |
|-------------------------------------------------------|----------|----------------------------------------------------------|----------|
| (a) Failure to input a listing - 24 - Hrs | \$500.00 | (e) Failure to report Title Transferred - 24 - Hrs | \$500.00 |
| (b) Late reporting of a price change - 24 - Hrs | \$500.00 | (f) Failure to report Sale Fallen Through - 24 - Hrs ... | \$500.00 |
| (c) Property withdrawn from market - 24 - Hrs | \$500.00 | (g) Failure to submit photo - 72 - Hrs | \$25.00 |
| (d) Failure to report signed contracts - 5 Days | \$500.00 | (h) Self –promotion other than in “member remarks” .. | \$500.00 |

Recurrence of a violation within a six month period shall result in a fine equal to twice the original amount.

Four or more occurrences of a violation within a six month period shall result in suspension of services.

LISTINGS - All exclusive listings taken in the GHVMLS service area are required to be submitted to the Service.

FEES - Listing.....\$9.00 “Comp Only” Listings.....\$9.00
 Extensions (Maximum 30 days after expiration date)..\$9.00

BILLING - GHVMLS bills offices monthly for all listing activities. Payment is due on receipt (Cash or check only)
 There is a \$25.00 late fee for invoices which remain outstanding at next billing date.

Office Assessment: \$ _____ . _____

MLS Subscriber Fee: \$ _____ . _____

Total Payable GHVMLS: \$ _____ . _____

(Payment amount MUST be entered in order to process)

Check #: _____ Cash AmX MC Visa

Card #: _____ Exp. Date: ____/____/____
MM YY

Applicant Name _____ Contact # _____
Please Print

Card Holder Name _____
Please Print

Card Holder Billing Address _____

City _____ State _____ Zip _____

Card holder Signature: _____

Date: _____

Member # _____
 For Office Use Only MLS participant App .doc 1/12

GHVMLS Fees are based on a fiscal year of July 1 through June 30 and are prorated monthly.





GHVMLS Billing Structure Commencing July 1st, 2012

The Board of Directors of the Greater Hudson Valley Multiple Listing Service has voted to significantly modify the billing structure of GHVMLS, commencing July 1st, 2012. The most significant modifications to the structure are as follows:

- * There will no longer be an annual \$280 per agent fee
- * There will no longer be an annual \$200 per firm fee
- * There will be a reduction in listing fees from \$9 per listing to \$5 per listing
- * There will no longer be a \$9 fee for listing extensions
- * There will be a \$175 monthly per office fee (applies per office not per firm)

There were several key rationales for modifying the billing structure, however, the underlying rationale is that the official Participants of the MLS are the broker-owners not individual sales agents. You may recall that for many years GHVMLS only billed the broker owners. For the past several years the number of agents participating in the MLS has been declining steadily impacting revenue, while the number of participating offices has historically been more consistent. The change in the billing structure in no way precludes a broker owner from passing MLS fees on to affiliated sale agents as a matter of office policy.

These modifications to the billing structure were not taken lightly. A Work Group consisting of representatives from a cross section of small, medium, and large firms was convened to review the current billing structure. The Work Group reached a consensus on the recommendations that appear above, which were then presented to the Board of Directors. The Directors discussed the recommendations in great detail, including the financial impact the modifications would have on firms of all sizes. Ultimately the Directors voted unanimously to approve the recommendations.

Contractual obligations prevent us from immediately shifting to a unified data platform however, we do anticipate launching a vibrant data sharing product that will allow users of both MLXchange/Fusion and Rapattoni to view listings from each system. This product, called "data co-op," will allow users to access almost 23,000 active listings, and will hopefully be up and running in approximately 2 months. This data sharing program will also include a mandatory offer of cooperation and compensation.

We know that our members have been confronted with considerable challenges over the last several years. The leadership of GHVMLS firmly believes that the changes that are occurring at the MLS level will ultimately lead to a stronger service with access to greater amounts of data and more robust functionality. Please know that we will work with you, to the best of our ability, to make the transition as smooth as possible.

Sincerely,
Russ Woolley, President
GHVMLS

Ann R. Garti, CEO
GHVMLS



GHVMLS offers its subscribers the Supra/GE electronic Key and Lockbox system. The Supra KEY allows you to remove keys from a Keybox to show a GHVMLS listed property as well as keep track of the Keyboxes it has opened during the day. Choose to lease a Display Key (Dkey) or use your compatible PDA/Smartphone (eKey) with added software to access the Keyboxes. The Keys synchronize with a host computer to report showing activity and renew key usage for valid GHVMLS subscribers. Subscribers can view Lockbox access times and listing agents and managers can view box activity within in the GHVMLS MLXchange system. Conveniences, daily showing/access reports and security, are all components of this system.

DisplayKEY



Key Fees	
One Time Set Up Fee for eKey	\$50.00
One Time Set Up Fee for Display Key	\$60.00
eKey (PDA or Smartphone Required)	
Standard	\$13.03/month
Professional	\$22.72/month
Billed monthly to credit card. Requires compatible device	
----- Or -----	
Display Key (Dkey)	
Annual Lease Fee*	\$162.48
Optional Loss/Theft Insurance	\$25.00
Payment by Credit Card or Check	
*Annual Fee prorated monthly based on fiscal year beginning March 14 th . \$13.54/month	



* Keys are issued by appointment only.

- Goshen OCAR/GHVMLS office appointments Tuesdays & Thursdays. Call : 845-294-7905
 - West Nyack branch office appointments Mondays & Thursdays. Call : 845-358-7080
- *Subscribers must have approved applications prior to key appointment.

eKEY Basic or eKEY Professional? You may add either level of service to any device on the compatible list unless otherwise designated. Not sure which level of service is right for you? Below are great timesaving eKey advantages.

Basic - What you'll be able to do with this level of service

- Open iBoxes
- Read iBoxes at listings; view showing agent name and phone
- Customize iBox access hours as you take the listing
- Add business card, flyer, showing notes to iBox
- Track iBox inventory and view settings on your device
- Send showing feedback to listing agents when you update your key
- View showing activity details on KIMweb

Professional - What you'll be able to do with this level of service

- Retrieve specific MLS info wherever you are
- MLS info and agent roster refreshed daily on your key device
- View HotSheets
- Search MLS five ways (Most used is Address Search)
- Free Mapopolis maps linked to listings
- Create and save buyer profiles and mini-CMA searches on device
- View showing details and feedback on your device

For additional information on compatible eKey PDA or Smart phones, see this web site page;
http://www.gesecurity.com/GEsecurity/Real%20Estate/current_devices.pdf

GHVMLS STORE ITEMS



Dkey” Case \$ 4.95+tax

Don't Lug It, Just Clip It! - Black leather with heavy-duty elastic sides for that perfect fit for you key and business cards. An extra heavy duty, spring loaded all metal clip for a secure feeling.



iBox(keybox) \$102.00 + tax

The Electronic keybox stores the keys to GHVMLS listing. Each time a Dkey or eKEY accesses a Keybox, information is stored in the Keybox as well as the key. Reports showing which GHVMLS subscriber accessed the box along with the date and time are available to the listing agent and office via the MLXchange system or Supra web site.



Greater Hudson Valley Multiple Listing Service, Inc. Participation Agreement

This Participant License and Access Agreement (“Agreement”) is made as of the Effective Date below between Greater Hudson Valley Multiple Listing Service, Inc. (“GHVMLS”) and the undersigned participant (“Participant”), who, intending to be legally bound, hereby agree as follows.

1. Definitions and usage.

(a) Definitions.

“**GHVMLS Affiliates**” means GHVMLS and its officers, directors, employees, agents, representatives, licensors and shareholders.

“**GHVMLS Database**” means all data available to Participant on the GHVMLS System, including the Participant Contribution and all other text, binary, and photographic image data, in any form now known or hereafter discovered.

“**GHVMLS Policies**” means GHVMLS’s bylaws, rules and regulations, and policies and procedures adopted by GHVMLS’s board of directors or authorized delegates, as GHVMLS amends them from time to time.

“**GHVMLS Service**” means the services GHVMLS provides to Participant under this Agreement and similar services GHVMLS provides to third parties under similar agreements, including any access or license to the GHVMLS Software, the GHVMLS Database, and the GHVMLS System.

“**GHVMLS Software**” means GHVMLS’s proprietary web browser interface(s) to the GHVMLS System.

“**GHVMLS System**” means the aggregate of all hardware and telecommunications systems that GHVMLS maintains, or that GHVMLS contractors maintain on its behalf, in order to make access to the GHVMLS Database available to Participant.

“**Participant Contribution**” means all data that the Subscribers submit, contribute, or input in the GHVMLS System, including text, binary, and photographic image data, in any form now known or hereafter discovered.

“**Saved Information**” means information that Subscribers store in the GHVMLS System for their own later use that is not intended by them to be available to GHVMLS’s other customers, including client prospect and contact information.

“**Subscribers**” means Participant’s employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

(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. GHVMLS’s obligations.

Subject to the terms and conditions of this Agreement and the GHVMLS Policies, GHVMLS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the GHVMLS service by virtue of this Agreement

or another license agreement; and Participant shall have all rights and obligations of a participant in GHVMLS as set forth in the GHVMLS Policies. The user ID and password will provide Participant access to all data and functions in the GHVMLS Service to which Participant is entitled under the GHVMLS Policies. GHVMLS makes no warranties, however, that the GHVMLS Service will be available at all times.

3. Participant acknowledgments.

(a) **Modifications to service.** GHVMLS may, but is not required to, modify the GHVMLS Service, including removing information and making additional information available, and adding and removing system functions. Certain products and services made available in conjunction with the GHVMLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

(b) **Editorial control.** GHVMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the GHVMLS Database or the Participant Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, GHVMLS may take any steps necessary in its judgment, including deleting the Participant Contribution or portions thereof, to avoid or remedy any violation of law, breach of the GHVMLS Policies or infringement of intellectual property right.

(c) **Conditions of service.** Participant must at all times during the term of this Agreement satisfy the prerequisites for participation in the GHVMLS Service. The prerequisites are set out in the GHVMLS Policies; at present, they include a requirement that Participant either (i) hold a real estate broker’s license, be actively engaged in real estate brokerage, and be capable of offering and receiving offers of compensation from other brokerage firms; or (ii) be licensed or certified by an appropriate regulatory agency to engage in the appraisal of real property. Participant must maintain active membership in a REALTOR® association at all times during the term of this Agreement. Subscribers may enter and retrieve active listing information on the GHVMLS Service only if Participant is capable of offering compensation to and accepting compensation from other principal brokers.

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

(e) **Disclosure to third parties.** GHVMLS reserves the right to distribute to third parties certain information about Participant, including Participant’s name and business address, phone number and email address. GHVMLS reserves the right to distribute to third parties aggregated information about GHVMLS customers’ use of the GHVMLS Service, but not about Participant’s use specifically.

(f) **Disclosure to government.** Participant acknowledges that GHVMLS may provide government agencies access to the GHVMLS Service at any time in GHVMLS’s sole discretion.

(g) **Priority of agreements.** Participant must enter into this Agreement before any Subscriber may obtain access to the GHVMLS Service. Subscriptions of other Subscribers are dependent on this Agreement; any termination or suspension of this Agreement will result in termination or suspension of dependent Subscriber agreements.

(h) **If Participant is an appraiser or appraisal firm,** Participant acknowledges that certain information in the GHVMLS Database, including information about listings currently for sale, may be withheld from Participant pursuant to the GHVMLS Policies.

(i) **IDX data access subject to separate agreement.** Participant acknowledges that access to GHVMLS's IDX database and data feeds can occur only subject to a separate written agreement between GHVMLS and Participant.

4. Participant's obligations.

(a) **Use limited.** Participant shall use the GHVMLS Service solely for the purpose of selling, listing, leasing, and appraising real estate. Except as expressly provided in this Agreement and the GHVMLS Policies, Participant shall not copy, create derivative works of, distribute, perform, or display the GHVMLS Service or any part of it.

(b) **Confidentiality.** Participant shall maintain the confidentiality of its user ID and password; Participant shall not provide its ID and password to any other Subscriber or to any third party. Participant shall ensure that the Subscribers maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscribers obtains access to the GHVMLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the GHVMLS Database, and the GHVMLS System, Participant shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the GHVMLS Policies. Participant may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, Participant first gives reasonable notice to GHVMLS to permit GHVMLS to seek a protective order.

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

(d) **Participant Contribution.** When making a Participant Contribution to the GHVMLS Service, Participant warrants that the information submitted complies with the GHVMLS Policies in all respects, including with regard to (i) required data fields; (ii) format of submission; (iii) permitted and required listing types; and (iv) procedures for submission. Participant warrants that the Participant Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation or proceeding pending or threatened with respect to the Participant Contribution.

(e) **Subscriber agreements.** Participant shall ensure that each real estate and appraisal licensee affiliated with Participant, and each non-licensee affiliated with Participant who will have access to the GHVMLS System or GHVMLS Database, enters into a license and access agreement with GHVMLS. Participant is liable for all fees due under each license and access agreement.

(f) **Subscriber supervision.** Participant shall ensure that all Subscribers comply at all times with the GHVMLS Policies and with applicable laws. Participant is liable for any Subscriber's breach of any agreement between the Subscriber and GHVMLS

relating to the GHVMLS Service or violation of any of the GHVMLS Policies as if Participant himself had committed it.

(g) **List of Subscribers.** Participant shall ensure GHVMLS has a current list of all of Subscribers; Participant shall inform GHVMLS in writing of any change in the Subscribers within 24 hours of the change.

(h) **Accurate information.** Participant warrants that the Subscribers have used and will use reasonable care to ascertain the accuracy of the Participant Contribution and its compliance with all laws. Participant shall ensure that any changes to the Participant Contribution are made on the GHVMLS System within 24 hours or within such other time as GHVMLS shall provide in the GHVMLS Policies. Pursuant to the GHVMLS Policies, Participant shall provide to GHVMLS all documentation GHVMLS requests of Participant to ascertain Participant's compliance with this Agreement.

5. Intellectual property.

Election regarding copyrights in Participant Contributions. Participant must elect from the following options. If no election is indicated, or if both options are checked, then Participant is not allowed to participate in GHVMLS.

OPTION I

(a) **Assignment from Participant.** Participant hereby assigns to GHVMLS all right, title and interest, including all rights under U.S. and international copyright law, in the Participant Contribution; Participant warrants that it has the authority to make this assignment. Participant acknowledges that once it has made the election agreeing to this section, all copyrights in all portions of the Participant Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in GHVMLS.

(b) **GHVMLS Obligations.** GHVMLS hereby grants to Participant a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution and those portions of the GHVMLS Database relating to Participant's listings. GHVMLS shall secure the rights of Participant hereunder by obtaining assignments and licenses from Subscribers and others as necessary. GHVMLS shall make quarterly registrations of the copyrights in the GHVMLS Database, including the Participant Contribution; GHVMLS shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Participant's permission.

OPTION II

(a) **License from Participant.** Participant hereby grants to GHVMLS a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution. Participant warrants that it has the authority to grant this license.

(b) **GHVMLS has no obligations to protect.** Participant acknowledges that: (i) GHVMLS makes no grant of license or assignment to Participant of any rights in the GHVMLS Database except as set forth in subsection (c); (ii) GHVMLS will make no effort to register the copyrights in the Participant Contribution, and

Participant will be responsible for all costs and efforts associated with registration; (iii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; (iv) **GHVMLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Participant's permission;** (v) GHVMLS will make no effort to secure for Participant the right to use copyright works created by Subscribers or third parties.

(c) **Other licenses.** GHVMLS hereby grants Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the GHVMLS Software and the GHVMLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the GHVMLS Policies and only to deliver real estate brokerage or appraisal services to Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the GHVMLS Policies are prohibited. Title to the Licensed Materials remains at all times in GHVMLS and shall not pass to Participant.

(d) **Further Participant warranty.** Participant warrants that (i) the Participant Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (ii) Participant has the written consent of any party necessary to provide the Participant Contribution to GHVMLS.

(e) **Limitations on use by GHVMLS.** GHVMLS agrees during the term of this Agreement not to license or distribute the Participant Contribution to any third party that is not a real estate brokerage or appraisal subscriber to the GHVMLS Service if Participant has indicated in writing its desire to withhold the Participant Contribution from such third party.

6. Fees and payment terms.

(a) **Applicable fees.** Participant shall pay the fees set forth in GHVMLS's official Schedule of Fees which GHVMLS may amend at any time subject to the terms of Section 6(e).

(b) **Payment terms.** Participant shall pay the fees according to the terms set out in the GHVMLS Policies.

(c) **No refunds.** GHVMLS need not refund or pro-rate fees in the event of termination or suspension of this Agreement unless the GHVMLS Policies provide otherwise. Initiation fees, if any, are not refundable.

(d) **Taxes.** All fees for the GHVMLS 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, Participant shall pay all such taxes and levies other than any tax or levy on the net income of GHVMLS.

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

(f) **Fines.** GHVMLS may collect fines from Participant for violation of the MLS Policies by Participant and Subscribers. Payment terms for fines are set out in the GHVMLS Policies. GHVMLS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

7. Term and termination.

(a) **Term.** This Agreement shall commence upon the Effective Date set forth below and shall continue thereafter on a month-to-month basis until terminated.

(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. Any such 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 GHVMLS Policies.** Subsection (b) notwithstanding, GHVMLS may terminate this Agreement if Participant fails to comply with the GHVMLS Policies; if Participant violates or is alleged to have violated the GHVMLS Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or appeal rights of Participant have expired as provided in the GHVMLS Policies. If in GHVMLS's judgment, however, a violation or alleged violation of the GHVMLS Policies is resulting in a continuing harm to GHVMLS or its other customers, GHVMLS may suspend Participant's access to the GHVMLS Database during the pendency of any hearing or appeal.

(d) **Termination for failure to pay.** In the event Participant fails to pay any fees required under this Agreement, GHVMLS may terminate service without being subject to arbitration, and GHVMLS may bring any claims for fees to small claims court. In its sole discretion, GHVMLS may suspend its performance under this Agreement rather than terminating it, in the event that Participant fails to pay fees required under this Agreement.

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

(f) **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (i) GHVMLS shall deactivate Participant's user ID and password, and Participant shall have no further access to the GHVMLS Service; (ii) Participant shall purge all copies of the GHVMLS Software and the GHVMLS Database (except the Participant Contribution) from Participant's personal computers; and (iii) all licenses granted hereunder, except the license to the Participant Contribution in Section 5(b), if any, shall immediately terminate.

(g) **Affect on Subscribers.** Upon termination of this Agreement the license and access agreements of all other Subscribers shall also immediately terminate.

8. Disclaimer, limitation of liability, and indemnification.

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

Service may contain hyperlinks to web sites operated by parties other than GHVMLS; GHVMLS does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

(b) **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE GHVMLS AFFILIATES SHALL BE LIABLE TO PARTICIPANT OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE GHVMLS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE GHVMLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE GHVMLS 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 GHVMLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

(c) **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL THE LIABILITY OF THE GHVMLS AFFILIATES ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY PARTICIPANT HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM. Because some jurisdictions do not allow for the exclusion or limitation of consequential or incidental damages under certain circumstances, this limitation may not apply to Participant.

(d) **Indemnification.** Participant shall defend, indemnify and hold the GHVMLS 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 GHVMLS Affiliates arising from any acts of Subscribers, including (i) putting inaccurate information into the GHVMLS Service; (ii) making unauthorized use of Subscriber's password; (iii) making unauthorized use of the GHVMLS Database; (iv) infringing any proprietary or contract right of any third party; (v) breaching any warranty under this Agreement; and (vi) violating this or any other Agreement or any law.

(e) **Acknowledgment.** Participant acknowledges that GHVMLS 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.

9. Disputes and remedies.

(a) **Injunctive relief.** Participant acknowledges and agrees that the GHVMLS Software and GHVMLS Database are confidential and proprietary products of GHVMLS and that in the event there is an unauthorized disclosure of them by Participant, no remedy at law will be adequate. Participant therefore agrees that in the event of such unauthorized disclosure of GHVMLS Software or GHVMLS Database, GHVMLS may obtain injunctive relief or other equitable remedies against Participant in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

(b) **Dispute resolution.** In the event GHVMLS claims that Participant has violated the GHVMLS Policies, GHVMLS may, at its option, resolve such a claim according to the disciplinary

procedures set out in the GHVMLS Policies, provided MLS does not also base a claim that Participant has breached this Agreement on the same facts. Except as provided in this paragraph and in Section 7(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 where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Orange County, New York, except that it may be held by telephone where the Arbitration Rules expressly so permit. Participant agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Orange County, New York.

(c) **Liquidated damages.** Participant acknowledges that damages suffered by GHVMLS from access to the GHVMLS Service by an unauthorized third party as a result of disclosure of Participant's password or an unauthorized disclosure by Participant of the GHVMLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to GHVMLS to enter into this Agreement with Participant, Participant agrees that (i) in the event that any disclosure of Participant's password results in access to the GHVMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Participant shall be liable to GHVMLS for liquidated damages in the amount of \$5,000 (or the amount established in the GHVMLS Policies, whichever is greater) and termination of this Agreement; and (ii) in the event that Participant makes unauthorized disclosure of any portion of the GHVMLS Database to any third party, Participant shall be liable for liquidated damages in the amount of \$5,000 (or the amount established in the GHVMLS Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

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

10. Miscellaneous.

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

(b) **Interpretation and amendment.** Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). GHVMLS may amend this agreement by providing 30 days' advance notice of the amendment to Participant. If Participant or any Subscriber continues to use the GHVMLS Service or GHVMLS Database after the expiration of the 30-day notice period, Participant will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

(c) **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Participant. Any purported assignment in contravention of this section is null and void. Participation in GHVMLS is granted to the individual/Realtor® principal of Participant's firm and is not subject to assignment upon change of ownership of Participant's firm.

(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. The foregoing notwithstanding, if any provision of Section 8 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Participant's access to the GHVMLS Service shall immediately terminate.

(e) **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contacts made and performed in New York, without regard to its conflicts of law and choice of law provisions.

(f) **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (i) U.S. Mail, postage paid and return receipt requested; (ii) express mailing service with confirmation of receipt; (iii) facsimile transmission, provided sender obtains confirmation of transmission; or (iv) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

Having read this Agreement, the parties express their will to be bound by its terms by setting their signatures below.

Greater Hudson Valley Multiple Listing Service, Inc.

Participant – Broker/Appraiser

Signature

Signature of principal

Print name

Print name of principal

Effective Date

Participant firm name

I am participating in GHVMLS as a:

REAL ESTATE BROKER

REAL ESTATE APPRAISER

Please Check the box for Option I or Option II on Page 2 before returning agreement to GHVMLS.

Greater Hudson Valley Multiple Listing Service

Copyright Project

Frequently asked questions:

- 1) Why do I need to copyright my listing content? What are the current concerns and advantages?

Copyright law protects the authors of creative works from others (called “copyright infringers” or just “infringers”) who would use those works without the authors’ permission. Prompt registration of copyright with the United States Copyright Office is required in order to get attorney fees and a special kind of damages against infringers. Registration is also a prerequisite to suing an infringer. Under GHVMLS’s copyright project, GHVMLS can register all the works in the MLS database for a few hundred dollars a year, and GHVMLS can take steps to sue anyone who infringes the copyrights in the MLS data. For brokers and agents to do this individually would cost a great deal more, and it would entail efforts that many brokers and agents may not want to exert.

To achieve these objectives, GHVMLS must obtain ownership of the copyrights in the materials it will register and enforce. GHVMLS has thus created an optional program where listing brokers get to decide whether to have GHVMLS register and enforce their copyrights. If they do, they permit GHVMLS to acquire the copyrights in data content relating to their listings. In return, GHVMLS promises in its agreement with the listing brokers to (1) obtain copyrights from the brokers’ agents; (2) register the copyrights; (3) take reasonable actions to prevent and pursue infringement; (4) grant back to the listing broker unfettered rights to use data relating to the broker’s own listings; and (5) refrain from distributing the broker’s listing data (except for core MLS purposes) unless MLS has the broker’s consent.

Brokers who prefer not to take part can opt out. They can negotiate with their own agents regarding copyright ownership; they will be responsible for their own copyright registrations and for preventing third parties from making unauthorized use of the brokers’ listing data. From these brokers and the agents in their offices, GHVMLS obtains only a license to use the copyright-protected content for core MLS purposes.

GHVMLS’s attorneys have advised GHVMLS, and the GHVMLS board of directors has determined, that this approach is the most cost-effective way to prevent misuse of data relating to brokers’ listings.

- 2) Who currently retains ownership of listing copyrights?

In the absence of written agreements to the contrary, the owner of the copyright in a photo or in original text is the author – the human being who created it, in most cases, the agent or assistant who wrote the text or snapped the photo. If an employee (not an independent contractor) creates a work within the scope of her employment, then the employer is the author. (This is not as common in the real estate industry as other industries.)

If someone owns a copyright and allows someone else to use it, the owner is said to be “licensing” the copyright. Just because an agent submits the photo to her broker does not mean she transfers ownership to her broker. Just because a photographer takes a photo for an agent and permits the agent to put it on MLS does not mean that the photographer has given up his copyrights. Instead, they are licensing their rights to be used for particular purposes.

- 3) Which portion of the listing is copyright-protected?

Copyright protects anything that is the result of a creative process, including original text (like remarks) and perhaps even the listing price; photographs, whether taken with digital or traditional equipment; virtual tours (though the creators of tours often retain their copyrights); and any other creative text and graphic materials. Facts cannot be copyright-protected; the facts that the home on 123 Elm Street is for sale and that it has three bedrooms and encompasses approximately 2,100 square feet are not subject to copyright protection. (Copyright also does not relate to product or service names; designations of the origins of products and services, including product names and logos, are the subject of trademark law, something completely different.)

- 4) Would granting copyrights to MLS work against my fiduciary responsibility to my seller/client?

GHVMLS cannot give you legal advice about your fiduciary duties. GHVMLS’s attorneys believe, however, that copyright protects agents themselves and their customers from the predations of those who take listing data without permission. Sometimes, agent and seller interests may be at odds. For example, imagine an agent takes a set of particularly fine

photos of her listing in June, but the house does not sell before the listing expires; imagine that the seller lists with another broker in November, but wants the 'summer' pictures from the first agent on MLS. Under copyright law, the first agent must consent before the second broker or seller can use her photos. If the seller claimed the first agent had an agency/fiduciary duty to allow the seller to reuse the pictures, GHVMLS would direct the first agent to her own attorney for counsel.

5) Would copyrighting restrict activity in the market and violate Federal anti-trust laws?

Generally, copyrights do not pose antitrust problems. In fact, a copyright is a sort of state-sponsored monopoly; an exception to the antitrust laws' view that monopolies are generally bad. Copyrights can be misused so as to bring about an antitrust violation, but such misuses are unlikely in the MLS/brokerage context.

6) How can this benefit my business?

It prevents other folks taking your work and profiting from it without your permission.

7) What would the cost be to me?

The cost is included in your MLS fees. **GHVMLS does not anticipate the need to increase dues in order to pay for its copyright project.**

8) Do NAR and NYSAR have a position on copyrighting? Do we need their approval for any new documents we are utilizing?

NAR has encouraged the registration of copyrights in MLS databases. Under NAR policy, GHVMLS cannot require brokers to transfer any intellectual property rights to MLS. Consequently, GHVMLS's copyright project is optional for brokers. NAR reviews mandatory documents of MLSs affiliated with it; the proposed agreements are very similar to ones that NAR has previously approved. NYSAR does not maintain MLS policies that are binding on GHVMLS.

9) Can GHVMLS release/sell our data without permission from the Participants?

No. The proposed agreement between GHVMLS and the Participants ensures that Participants can opt out of any 'non-core' use of the MLS data that GHVMLS considers. Non-core uses include any distribution to non-Participants (like consumers or other businesses).

10) As a Broker, will I retain my right to give third party entities the right to use my listing data? Will there be any restrictions?

The proposed agreements ensure that the listing broker has an unrestricted right to use content relating to her own listings, including licensing them for use by third parties (and even including the right to allow the third parties to license to other third parties). MLS commits in the proposed agreements to support the brokers' unfettered use of their own listing content.

11) Will there need to be a separate agreement between broker and agent? Can the broker incorporate the language into their Independent Contractor Agreement or will it need to be a separate document?

The proposed documents ensure that brokers participating in GHVMLS's copyright program obtain all the rights they will need from their agents without the need for separate agreements relating to copyright between brokers and agents. Nevertheless, the brokers can choose to address copyrights in their independent contractor agreements, and GHVMLS has prepared language brokers can consider incorporating into independent contractor agreements.

Brokers not participating in GHVMLS's copyright program may wish to obtain copyright assignments from their agents, but that would be subject to negotiation between brokers and agents.

12) What if the broker opts to copyright their listing data and one of their agents does not want to agree to copyright?

GHVMLS takes care of this issue with regard to brokers who participate in GHVMLS's copyright project. It obtains assignments from the agents and grants the appropriate rights to the broker. If the broker does not participate in GHVMLS's copyright project, the broker will have to negotiate copyright matters with each of its agents.

13) How will this impact an individual agent? Will they lose all rights to their photos and text?

If a broker takes part in GHVMLS's copyright project, GHVMLS takes copyright ownership in the listing content each of the broker's agents submits to the service. The listing broker, though not the owner of the copyrights, has a license from GHVMLS to use that content any way the listing broker wishes. Individual agents can negotiate in their independent contractor agreements with brokers the right to continue using listing content they supply under particular circumstances. As for brokers that do not participate in GHVMLS's copyright project, their agents continue to hold copyrights in works they create unless their independent contractor agreements with their brokers provide otherwise.

- 14) If an agent moves their license to another real estate company will they have the ability to take their data, assuming that the previous broker has given them permission?

The agent can use data from her listings at her previous company in any way her previous broker permits. Without the previous broker's permission, the agent would not be able to use data from her listings at the previous company. If she re-listed one of the same properties, she would have to take new pictures and write new remarks text.

- 15) How is the copyright initiative handled if an agent contracts with a professional photographer who already copyrights their photos?

Unless the agent has a written agreement with the photographer that transfers the copyrights from the photographer, the photographer continues to own the copyrights. The agent has only a license to use it for the purposes the photographer permits. The GHVMLS copyright project does not change these circumstances because the agent cannot transfer to GHVMLS a copyright that the agent does not own.

- 16) What if the seller does not agree to the copyright terms?

Sellers generally do not contribute copyright-protected material for inclusion in MLS. To the extent that the seller has taken a picture or drafted remarks for MLS, the seller would be treated like the photographer in the previous question. GHVMLS does not require brokers or sellers to enter listing agreements or other agreements where the seller must transfer ownership of copyrights to the listing broker or to GHVMLS. If a broker wishes to obtain copyrights from the seller, the broker should negotiate those terms with the seller. *GHVMLS does require* that the listing broker (and the seller and any photographers from whom the listing broker obtains copyright-protected work) have the rights necessary to provide the materials to MLS. Thus, if MLS were sued because a broker submitted someone's copyright-protected work without permission, the proposed agreements would require the infringing broker to pay MLS's defense costs.

- 17) When it comes to disclosing the copyright guidelines for the seller, can the listing agent utilize the current Exclusive Right to Sell and Exclusive Agency contracts? If a listing agent does not utilize the current ER and EA forms can they introduce a separate disclosure form to the seller?

The current forms meet MLS's requirements.

- 18) What if I have any additional questions?

GHVMLS is holding two sessions for Participant Questions on Wednesday July 16th. Please see the enclosed Reservation Form for details.