Lehigh Valley Association of REALTORS®, Inc.
Participant Data Access Agreement

This **AGREEMENT** is made and entered into by Lehigh Valley Association of REALTORS®, Inc. ("**MLS**"), a Pennsylvania corporation with offices at 10 South Commerce Way, Bethlehem, PA 18017; the real estate brokerage firm identified as "Firm" on the signature page below ("**Firm**"); the Salespersons affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the "**Salesperson Party**"); and the individual or business association identified as "Consultant" on the signature page below, if any ("**Consultant**").

DEFINITIONS

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

Confidential Information: "Confidential Information" means information or material proprietary to a party or designated "confidential" by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all MLS Data, except to the extent to which this Agreement and the MLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that MLS obtains from any third party that MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by MLS; (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 MLS for use by Firm, Salesperson Party, and Consultant as set out in Exhibit B; MLS may modify the Data Interface in its sole discretion from time to time.

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

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

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

Mobile Applications: Any displays of IDX data authorized by MLS Policies and listed in Exhibit A that are not web sites.

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

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

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

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

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

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

MLS'S OBLIGATIONS

2. MLS grants to Firm and Salesperson Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the MLS 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 MLS Data is hereby prohibited. All licensees hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. MLS retains all rights not expressly granted herein.

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

FIRM'S OBLIGATIONS

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

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

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

6. Firm and Salesperson Party acknowledge that ownership and use rights relating to copyrights in the MLS Data are defined in the MLS Policies or in the terms of the participant and subscriber agreements between MLS, Firm and Salesperson Party, or both. Firm and Salesperson Party shall not challenge or take any action inconsistent with MLS's ownership of or rights in the MLS Data.The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

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

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

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

CONSULTANT'S OBLIGATIONS

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

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

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

13. Consultant warrants that any effort or use of the MLS Data will not constitute patent infringement of any third party. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

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

15. Consultant is surety for Firm's and Salesperson Party's obligations to pay fees under Paragraph 8. The provisions of the preceding sentence shall survive the expiration or other termination of this Agreement in perpetuity. Consultant shall notify MLS 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. MLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Salesperson Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Salesperson Party's, and Consultant's compliance with this Agreement ("Audit"). MLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Salesperson Party's, and Consultant's web sites, Mobile Applications, and systems to ensure that MLS Data is displayed in accordance with the MLS Policies; using all features available to end-users of Firm's, Salesperson Party's, and Consultant's systems that employ the MLS Data; and posing as consumers to register and test services Firm, Salesperson Party, and Consultant make available to consumers using the MLS Data. MLS shall pay the costs it incurs, and the out-of-pocket costs Firm, Salesperson Party, and Consultant incur, as part of any Audit; provided, however, Firm or Salesperson Party shall be liable for all costs of any Audit that discloses that Firm, Salesperson Party, or Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

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. 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

18. The term of this Agreement begins on the date that MLS 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 MLS; (b) 5 days after any party's notice to the others of its intent to terminate; (c) 2 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide IDX or VOW services to it; (f) with regard to any Salesperson Party, immediately upon any event that results in the Salesperson Party no longer being affiliated with Firm; (g) as provided in Paragraphs 28 and 31.

19. In the event Firm's privileges as a Participant (or Salesperson Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect and MLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if MLS resumes its obligations under Paragraphs 2 and 3. In the event Firm, Salesperson

Party, or Consultant breaches this Agreement and entitles MLS to terminate under Paragraph 18, MLS may in its sole discretion suspend its performance instead of terminating this Agreement. MLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Salesperson Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, neither Firm, Salesperson Party, nor Consultant shall make any further use of the MLS Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Salesperson Party's rights under this Agreement are restored.

GENERAL PROVISIONS

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

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

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

23. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL MLS BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF MLS 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 MLS BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF $500. FIRM, SALESPERSON PARTY, AND CONSULTANT ACKNOWLEDGE THAT MLS PROVIDES THE MLS 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. MLS SHALL NOT BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE MLS DATA, ANY FAILURE TO UPDATE THE MLS DATA PROMPTLY, OR THE MLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. MLS makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.**

24. **Dispute resolution; Attorney's fees**. In the event MLS claims that Firm, Salesperson Party, or Consultant has violated the MLS Policies, MLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the MLS Policies, provided MLS does not also base a claim that Firm, Salesperson Party, or Consultant has breached this Agreement on the same facts. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Pennsylvania located in the county of Northampton or Lehigh 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 MLS's disciplinary procedures or to arbitration. If MLS 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.

25. **Indemnification.** Subject to Paragraph 23, 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.

26. **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.

27. **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.

28. **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.

29. **Entire Agreement; Amendment**. Subject to MLS 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. MLS may amend this agreement by providing 30 days' advance notice of the amendment to all other parties; if any party continues to use the Data Interface or the MLS Data after the expiration of the 30-day notice period, that party will be deemed to have agreed to the terms as amended.

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

31. **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.

Lehigh Valley Association of REALTORS®, Inc.
MLS OFFICE USE ONLY

MLS will fill out this section after signing this Agreement and will then return a copy of the Agreement to Firm and Consultant along with this page. The contents of this page are Confidential Information under the Agreement.

LVAR RETS Server User Agent Header	_____
LVAR RETS Server User ID	_____
LVAR RETS Server Password	_____
Consultant Name	_____
MLS Office ID	_____
Office Name	_____
Broker or Office Contact Person	_____
Salesperson or Office Contact Person	

Lehigh Valley Association of REALTORS®, Inc.
Participant Data Access Agreement Signature Page

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

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

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

MLS: Lehigh Valley Association of Realtors®, Inc.

_____
Signature

Ryan T. Conrad _____
Name

Date: _____

(effective date of this Agreement)

Contact for notices and operations matters

Name: Michael S. Naratil, e-PRO _____
Phone: 484-821-0505 _____
Email: michael@lvar.org _____

CONSULTANT

Proagentwebsites.com
Consultant name

_____
Signature of owner or officer

Douglas Greene
Name of owner or officer

Contact for notices and operations matters

Name: Douglas Greene
Phone: 801-913-5869
Email: dg@proagentwebsites.com
Mailing: 12581 Deer Mt. Blvd.
Kamas, UT 84036

FIRM

_____
Firm name

_____
Signature of Broker\Responsible Member

_____
Name of Broker\Responsible Member

Contact for notices and operations matters

Name: _____
Phone: _____
Email: _____
Mailing: _____

_____
Second or Third Level Domain or Mobile Application:

_____
☒ IDX ☐ IDX Plus ☐ VOW
(If more than one will be used, specify each in Exhibit A.)

SALESPERSON PARTY

(If there is more than one, have each named and sign on Exhibit A.)

_____
Salesperson Party name

_____
Signature of Salesperson Party

Contact for notices and operations matters

Name: _____
Phone: _____
Email: _____
Mailing: _____

_____
Second or Third Level Domain or Mobile Application:

_____
☐ IDX ☐ IDX Plus ☐ VOW
(If more than one will be used, specify each in Exhibit A.)

Lehigh Valley Association of REALTORS®, Inc.
Participant Data Access Agreement

Exhibit A – Additional Requirements

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

_____ ☐ IDX ☐ IDX Plus ☐ VOW

_____ ☐ IDX ☐ IDX Plus ☐ VOW

_____ ☐ IDX ☐ IDX Plus ☐ VOW

_____ ☐ IDX ☐ IDX Plus ☐ VOW

_____ ☐ IDX ☐ IDX Plus ☐ VOW

_____ ☐ IDX ☐ IDX Plus ☐ VOW

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

_____

Name Signature

_____

Name Signature

_____

Name Signature

_____

Name Signature

_____

Name Signature

_____

Name Signature

_____

Name Signature

Lehigh Valley Association of REALTORS®, Inc.
Participant Data Access Agreement

Exhibit B – Data Interface

MLS provides access to the MLS Data via a RETS server. RETS is an open standard for accessing and exchanging real estate transaction information.

MLS will provide technical details of the Data Interface, IDs, passwords, and server addresses, and other necessary information, upon execution of this Agreement. MLS may require periodic password changes.