



Participant Application (Part 1) – Applicant Information

Please fill out the application completely (lines 1-13) plus the areas noted in red type marked . (These require a response/signature.)

1. Applicant Name _____ Last Four Digits of Social Security _____
 2. Firm Name _____ Broker's License # _____
 3. Street Address _____ P.O. Box _____
 4. City _____ State _____ Zip Code _____
 5. Business Phone _____ Business Fax _____
 6. Home Address _____
 7. Home Phone _____ Home Fax _____
 8. Email Address _____ Website _____
 9. Type of Business: Sole Proprietorship Partnership Corporation Other
 10. This office is: The Main Office A Branch Office (registered with the IN Real Estate Commission)
 11. Applicant's Position in Firm _____
 12. Number of Sales Associates/Appraisers affiliated with your firm, other than yourself: _____ *
- *Attach a complete list of names, home contact information, last four digits of SSN's, and license numbers for all licensees (including licensed assistants) and appraisers (including trainees) directly or indirectly affiliated with your firm. It is the Participant's responsibility to keep this list up-to-date by immediately informing the UPSTAR MLS in writing of any changes. Back-billing and possible fines are assessed for non-reported licensees.*
13. If a member of another Board of REALTORS®, please identify: _____

By tendering this application along with the applicable fees, and executing the same, the undersigned applicant for participation certifies that he/she is currently a member in good standing of the Upstate Alliance of REALTORS® or another board of REALTORS®.**

The undersigned represents, and the Upstate Alliance of REALTORS Multiple Listing Service requires as a condition to participation, that he/she has fully examined and reviewed the Bylaws and the Rules and Regulations of the Upstate Alliance of REALTORS Multiple Listing Service, Inc. (available online at <http://www.upstarindiana.com/InsideFWAAR/BecomeaMember/mlsinformation.aspx> "How to Qualify as an MLS Participant" or by request); and that he/she intends and agrees to be bound by the terms and conditions set forth in those Bylaws and Rules and Regulations as they may be from time to time interpreted or amended. The undersigned is reminded that, as outlined in the UPSTAR MLS Rules and Regulations Section 14.1, his/her consent to participate in the UPSTAR MLS IDX program is presumed unless a separate written certification indicating the Participant's desire to opt out of IDX is filed with the UPSTAR MLS.

The undersigned further certifies that the information contained in this application is accurate and agrees to notify the UPSTAR MLS of any changes and to keep all such information current and correct. The undersigned agrees that the failure to provide complete and accurate information as requested, or any misstatement of fact, shall be grounds for revocation of Participation if granted.

The undersigned consents that the UPSTAR MLS may contact him/her at the specified address, telephone numbers, fax numbers, e-mail address or other means of communication available. This consent applies to changes in contact information that may be provided by him/her to the UPSTAR MLS in the future. This consent recognizes that certain state and federal laws may place limits on communications that the undersigned is waiving to receive all communications as part of his/her membership.

The undersigned agrees to hold harmless the Upstate Alliance of REALTORS Multiple Listing Service, Inc., as well as its directors, officers, and employees, from liability or claims thereof resulting in any way from the business activities of the said corporation.

Applicant's Signature _____ **Date** _____

***If REALTOR® membership is in an association/board other than Fort Wayne, a letter from that board certifying membership status must accompany this application.*

For MLS Office Use Only

Payment Method _____ Date Rec'd _____ Amount \$ _____

Assigned Broker Code _____ File _____ Date _____



Participant Application (Part 2) – Licensee Information

This form is to accompany the UPSTAR MLS Participant Application if the number entered in item #12 of the application is greater than zero. Participants please list all licensees (as defined in #12 on the previous page). If more than 12 licensees, please complete multiple pages.

1	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
2	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
3	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
4	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
5	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
6	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
7	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
8	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
9	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
10	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
11	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	
12	Name of Licensee		Home Address		Home Phone
	Last 4 Digits of SSN	License Number		Email Address	



Participant Application (Part 3) – Participant License and Access Agreement

This Participant License and Access Agreement (“Agreement”) is made as of the Effective Date below between Upstate Alliance of REALTORS Multiple Listing Service, Inc. (“UPSTAR MLS”) and the undersigned participant (“Participant”), who, intending to be legally bound, hereby

1. DEFINITIONS AND USAGE.

(a) DEFINITIONS.

“UPSTAR MLS Affiliates” means UPSTAR MLS and its officers, directors, employees, agents, representatives, licensors and shareholders.

“UPSTAR MLS Database” means all data available to Participant on the UPSTAR MLS System, including the Participant Contribution and all other text, binary, and photographic image data.

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

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

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

“UPSTAR MLS System” means the aggregate of all hardware and telecommunications systems that UPSTAR MLS maintains in order to make access to the UPSTAR MLS Database available to Participant.

“Participant Affiliates” means Participant and its employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

“MLS System Users” means Participant Affiliates who at any time have access to and use of the UPSTAR MLS Service.

“Participant Contribution” means all data that the Participant Affiliates submit, contribute, or input in the UPSTAR MLS System, including text, binary, and photographic image data.

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

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

- (i) Wherever the term “including” is used, it means “including, but not limited to.”
- (ii) The singular and plural numbers and masculine, feminine, and neuter genders of words are fully interchangeable.
- (iii) Wherever the term “law” is used, it means all statutes, regulations, and case law, both state and federal, as they are amended. Without limiting the generality of the foregoing, “law” expressly includes all state and federal fair housing statutes and regulations.

2. UPSTAR MLS’S OBLIGATIONS.

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

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

3. PARTICIPANT ACKNOWLEDGMENTS.

(a) **MODIFICATIONS TO SERVICE.** UPSTAR MLS may, but is not required to, modify the UPSTAR MLS Service, including removing information and making additional information available, and adding and removing system functions.

(b) **EDITORIAL CONTROL.** UPSTAR MLS is not required to, and does not, review, edit, or exercise editorial control over the UPSTAR MLS 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, UPSTAR MLS 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 UPSTAR MLS 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 UPSTAR MLS Service. The prerequisites are set out in the UPSTAR MLS 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. Participant’s continued compliance with all the terms of this Agreement is a condition of each and every performance of UPSTAR MLS hereunder.

(d) **SAVED INFORMATION.** Saved Information may not always be available to Participant and may become available to unauthorized persons. UPSTAR MLS is not liable for unauthorized access to or loss of Saved Information; Participant is responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

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

(f) **DISCLOSURE TO GOVERNMENT.** Participant acknowledges that UPSTAR MLS may provide government agencies access to the UPSTAR MLS Service at any time in UPSTAR MLS’s sole discretion.

(g) **COMMUNICATIONS FROM UPSTAR MLS.** Participant consents that UPSTAR MLS may contact him/her at the specified addresses, telephone numbers, fax numbers, email addresses, or other means of communication available. This consent applies to

Participant Application (Part 3) – Participant License and Access Agreement (continued)

changes in contact information that may be provided to UPSTAR MLS by Participant in the future. This consent recognizes that certain State and Federal laws may place limits on communications that Participant waives to receive all UPSTAR MLS communications as part of Participation in UPSTAR MLS.

(h) **PRIORITY OF AGREEMENTS.** Participant must enter into this Agreement before any other Participant Affiliate may obtain access to the UPSTAR MLS Service. Subscriptions of other Participant Affiliates are dependent on this Agreement; any termination or suspension of this Agreement will result in termination or suspension of dependent Participant Affiliate agreements. Participant Affiliates may enter and retrieve active listing information on the UPSTAR MLS Service only if Participant is capable of offering compensation to and accepting compensation from other principal brokers.

(i) **IF PARTICIPANT IS AN APPRAISER OR APPRAISAL FIRM,** Participant acknowledges that certain information in the UPSTAR MLS Database, including information about listings currently for sale, may be withheld from Participant pursuant to the UPSTAR MLS Policies.

4. PARTICIPANT’S OBLIGATIONS.

(a) **USE LIMITED.** Participant shall use the UPSTAR MLS Service solely for the purpose of selling, listing, leasing, and appraising real estate. Except as expressly provided in this Agreement and the UPSTAR MLS Policies, Participant shall not copy, create derivative works of, distribute, perform, or display the UPSTAR MLS 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 Participant Affiliate or to any third party. Participant shall ensure that the Participant Affiliates maintain the confidentiality of their user IDs and passwords and that no one but authorized Participant Affiliates obtains access to the UPSTAR MLS Service or any part of it. Failure to comply with this provision will result in a significant fine, as set forth in the UPSTAR MLS Policies.

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


(d) **PARTICIPANT CONTRIBUTION.** When making a Participant Contribution to the UPSTAR MLS Service, Participant warrants that the information submitted complies with the UPSTAR MLS Policies in all respects, including with regard to (i) required data fields; (ii) format of submission; and (iii) 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) **AFFILIATE AGREEMENTS.** Participant shall ensure that each Participant Affiliate enters into a license and access agreement with UPSTAR MLS before obtaining access the UPSTAR MLS System or UPSTAR MLS Database.

(f) **AFFILIATE SUPERVISION.** Participant shall ensure that all Participant Affiliates comply at all times with the UPSTAR MLS Polices and with applicable laws. Participant is liable for any Participant Affiliate’s breach of any agreement between the Participant Affiliate and UPSTAR MLS relating to the UPSTAR MLS Service or violation of any of the UPSTAR MLS Policies as if

Participant it/him/herself had committed it.

(g) **LIST OF AFFILIATES.** Participant shall provide to UPSTAR MLS a current list of all of Participant Affiliates; Participant shall inform UPSTAR MLS in writing of any change in the Participant Affiliates within 24 hours of the change.

(h) **ACCURATE INFORMATION.** Participant warrants that the Participant Affiliates have used 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 UPSTAR MLS System within 24 hours or within such other time as UPSTAR MLS shall provide in the UPSTAR MLS Polices. Pursuant to the UPSTAR MLS Policies, Participant shall provide to UPSTAR MLS all documentation FWAMLS 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 two options. Agreements with no election indicated will not be accepted.

OPTION I

OPTION I (check here for option 1)

(a) **ASSIGNMENT FROM PARTICIPANT.** Participant hereby assigns to UPSTAR MLS 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 further 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 UPSTAR MLS (including sellers, licensees/agents, and photographers). UPSTAR MLS 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 UPSTAR MLS Service if Participant has indicated in writing its desire to withhold the Participant Contribution from such third party. 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 UPSTAR MLS.

(b) **UPSTAR MLS OBLIGATIONS.** UPSTAR MLS 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 UPSTAR MLS Database relating to Participant’s listings. UPSTAR MLS shall secure the rights of Participant hereunder by obtaining assignments and licenses from Participant Affiliates and others as necessary. UPSTAR MLS shall make

Participant Application (Part 3) – Participant License and Access Agreement (continued)

OPTION II

quarterly registrations of the copyrights in the UPSTAR MLS Database, including the Participant Contribution; UPSTAR MLS shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Participant's permission.

OPTION II (check here for option 2)

(a) **LICENSE FROM PARTICIPANT.** Participant hereby grants to UPSTAR MLS 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. Participant further 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 UPSTAR MLS (including sellers, licensees/agents, and photographers). UPSTAR MLS 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 UPSTAR MLS Service if Participant has indicated in writing its desire to withhold the Participant Contribution from such third party

(b) **UPSTAR MLS HAS NO OBLIGATIONS TO PROTECT.** Participant acknowledges that (i) UPSTAR MLS makes no grant of license or assignment to Participant of any rights in the UPSTAR MLS Database except as set forth in subsection (c); (ii) UPSTAR MLS 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) ***UPSTAR MLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Participant's permission;*** (v) UPSTAR MLS will make no effort to secure for Participant the right to use copyright works created by Participant Affiliates or third parties.

(c) **OTHER LICENSES.** UPSTAR MLS hereby grants Participant a license to use the UPSTAR MLS Software and the UPSTAR MLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), subject to the following terms:

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

to the Licensed Materials terminate upon termination of this Agreement. (iii) **Restrictions.** All uses of the Licensed Materials not expressly authorized in this Agreement and the UPSTAR MLS Policies are prohibited, including (A) assigning, timesharing, selling, leasing, lending or renting the Licensed Materials or access to the UPSTAR MLS Database; (B) causing or permitting the reverse engineering, reformatting, recasting, disassembly or decompilation of the Licensed Materials; and (C) disclosing, demonstrating and displaying the Licensed Materials to anyone. (iv) **Title.** Title to the Licensed Materials remains at all times in UPSTAR MLS and shall not pass to Participant.

6. FEES AND PAYMENT TERMS.

(a) **APPLICABLE FEES.** Participant shall pay the fees set forth in UPSTAR MLS's official Schedule of Fees the current version of which is set forth in Exhibit A.

(b) **PAYMENT TERMS.** Fees are due and payable according to the terms of Exhibit A. UPSTAR MLS's board of directors may alter the payment terms in Exhibit A at any time upon notice to Participant.

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

(d) **TAXES.** All fees for the UPSTAR MLS 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 UPSTAR MLS.

(e) **FEE INCREASES.** UPSTAR MLS may amend the Schedule of Fees at any time at its sole discretion. UPSTAR MLS 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 UPSTAR MLS at any time before the effective date of the increase.

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 subject to the Participant's payment of fees and compliance with this Agreement.

(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 UPSTAR MLS POLICIES.** UPSTAR MLS may terminate this Agreement if Participant fails to comply with the UPSTAR MLS Policies; if Participant violates or is alleged to have violated the UPSTAR MLS 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 UPSTAR MLS Policies. The foregoing notwithstanding, if in UPSTAR MLS's judgment a violation or alleged violation of the UPSTAR MLS Policies is resulting in a continuing harm to UPSTAR MLS or its other customers, UPSTAR MLS may suspend Participant's access to the

Participant Application (Part 3) – Participant License and Access Agreement (continued)

UPSTAR MLS 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, UPSTAR MLS may terminate service, and UPSTAR MLS may bring any claims for fees to small claims court. In its sole discretion, UPSTAR MLS 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 without cause upon thirty days' written notice.

(f) **EVENTS UPON TERMINATION.** Promptly upon any termination or expiration of this Agreement, (i) UPSTAR MLS shall deactivate Participant's user ID and password, and Participant shall have no further access to the UPSTAR MLS Service; (ii) Participant shall purge all copies of the UPSTAR MLS Software and the UPSTAR MLS 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), shall immediately terminate.

(g) **Affect ON PARTICIPANT AFFILIATES.** Upon termination of this Agreement the license and access agreements of all other Participant Affiliates shall also immediately terminate.

8. DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

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

(b) **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE UPSTAR MLS 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 UPSTAR MLS SERVICE, INCLUDING RELIANCE BY ANY PARTICIPANT AFFILIATE ON ANY INFORMATION OBTAINED THROUGH USE OF THE UPSTAR MLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE UPSTAR MLS 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 UPSTAR MLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

(c) **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL THE LIABILITY OF THE UPSTAR MLS 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.

(d) **INDEMNIFICATION.** Participant shall defend, indemnify and hold the UPSTAR MLS 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 UPSTAR MLS Affiliates arising from any acts of Participant Affiliates, including (i) putting inaccurate information into the UPSTAR MLS Service; (ii) making unauthorized use of Participant Affiliate's password; (iii) making unauthorized use of the UPSTAR MLS 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 UPSTAR MLS 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 UPSTAR MLS Software and UPSTAR MLS Database are confidential and proprietary products of UPSTAR MLS 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 UPSTAR MLS Software or UPSTAR MLS Database, UPSTAR MLS 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 MLS claims that Participant 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 Participant has breached this Agreement on the same facts. Participant herewith agrees to submit any disputes or claims under this Agreement to the jurisdiction and venue of the state and federal courts sitting in Allen County, Indiana.

(c) **LIQUIDATED DAMAGES.** Participant acknowledges that damages suffered by UPSTAR MLS from access to the UPSTAR MLS Service by an unauthorized third party as a result of disclosure of Participant's password or an unauthorized disclosure by Participant of the UPSTAR MLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to UPSTAR MLS 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 UPSTAR MLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Participant shall be liable to UPSTAR MLS for liquidated damages in the amount of \$1,000 (or the amount established in the UPSTAR MLS Policies, whichever is greater) and termination of this Agreement; and (ii) in the event that Participant makes unauthorized disclosure of any portion of the UPSTAR MLS Database to any third party, Participant shall be liable for liquidated damages in the amount of \$1,000 (or the amount established in the UPSTAR MLS 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 UPSTAR MLS and Participant, or UPSTAR MLS and any Participant Affiliate, on account of or in respect to this



Participant Application (Part 3) – Participant License and Access Agreement (continued)

Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorney’s fees, costs and expenses incurred in such action or arbitration. If UPSTAR MLS is the prevailing party in an action against a Participant Affiliate, Participant shall be obligated to pay these costs on the Participant Affiliate’s behalf.

10. MISCELLANEOUS.

(a) **NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into solely between, and may be enforced only by, UPSTAR MLS 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.** This Agreement may not be amended except by written instrument executed by both parties. Should any purchase order, confirmation or acknowledgment of Participant contain additional or different terms, those terms shall be considered proposals by Participant which are hereby rejected. UPSTAR MLS may amend this Agreement by providing 30 days’ advance notice to Participant. If any Participant Affiliate continues to use the UPSTAR MLS Service after expiration of the 30-day notice period, Participant will have agreed to the amended terms.

(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 UPSTAR MLS 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 shall immediately terminate.

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

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



UPSTATE ALLIANCE OF REALTORS MULTIPLE LISTING SERVICE, INC.

UPSTAR MLS Representative Signature

Print name

Effective Date



PARTICIPANT

Signature

Print name

Firm Name

Participant Application (Part 4) – Exhibit A (*Schedule of Fees and Payment Terms*)

Current Schedule of Fees and Payment Terms

Excerpt from the UPSTAR MLS Rules and Regulations, Approved March 2007:

SECTION 6. SERVICE FEES AND CHARGES: The following service charges for operation of the MLS are in effect to defray the costs of the MLS and are subject to change from time to time in the manner prescribed:

- a) **INITIAL PARTICIPATION FEE:** An applicant for participation in the MLS shall pay an application fee of \$400 with such fee to accompany the application. **NOTE:** The Initial Participation Fee shall approximate the cost of bringing the MLS to the Participant.
- b) **RECURRING PARTICIPATION FEE*:** The annual participation fee (if any) shall be determined by the MLS Board of Directors. This fee is subject to change with at least sixty (60) days advance written notice to Participants. This participation fee (if any) is assessed to Participant for each real estate licensee, licensed certified or general appraiser or appraiser trainee, who is directly or indirectly affiliated with such Participant.
- c) Payment of such fees shall be made on or before the due date.
- d) An employee or independent contractor may be granted a leave of absence not to exceed 90 calendar days for medical reasons, military reasons, maternity reasons, death of a family member or illness in family, as approved by staff. The leave of absence shall be requested from the MLS in writing. During such leave of absence the required participation fee shall be waived.

**As of 2010, the "Recurring Participation Fee" is \$11 per week and is billed quarterly in the amount of \$143 per quarter.*

SECTION 7.1 COMPLIANCE WITH RULES: The following action may be taken for noncompliance with the rules:

- a) MLS service fees shall be billed to the Participant on a quarterly basis. Full payment must be received by the due date. A \$50 late fee per unpaid agent will be assessed the day after the due date of the MLS quarterly service fees. Failure to pay the amount due by the twentieth of the month following the due date will result in termination of MLS services for the entire firm. Full payment of all outstanding invoices and any reinstatement fees will be required prior to reinstatement of services. A reconnect fee of \$100 will be assessed to any Participant wishing to continue MLS Service. Reinstatement of service within 30 to 180 days of termination due to non-payment will require a \$200 reinstatement fee and payment of the service fees due for the remainder of the current quarter, prorated monthly. Reinstatement more than 180 days after the date of termination due to nonpayment will require a \$400 reinstatement fee and payment of the service fees due for the remainder of the current quarter, prorated monthly. No refunds will be made for service fees of Subscribers or Participants who resign from the MLS.