

Upstate Alliance of REALTORS® APPLICATION FOR REALTOR® MEMBERSHIP



APPLICATION FOR: ☐ **Primary REALTOR®** (You are **NOT** a member of another REALTOR® Board/Assn. You will pay your local, state and nat'l dues through UPSTAR).
☐ **Secondary REALTOR®** (You will only pay local dues to UPSTAR as a secondary member and continue to pay local, state and nat'l dues through your primary Board/Assn).

First Name (as shown on your RE. license)	Last Name (as shown on your RE license)	INDIANA Real Estate License #:	Date Issued mm/dd/yyyy
Common Name (for membership roster)		Date of Birth mm/dd/yyyy	Name of Your Real Estate Firm/Office
Home Address (primary physical residence – no P.O. box) Street _____ City, State ZIP _____ County in which your home is located: _____		Real Estate Firm/Office Address Street _____ City, State ZIP _____ County in which your office is located: _____	
Email Address*		Name of Managing Broker or Owner	
Cell Phone**		Firm/Office Phone	

*The **EMAIL** listed above will be used for member communication and associated with your listings if you are an MLS subscriber. **The **CELL PHONE** listed above will also be used for member communication (calls and texts). If you are applying for MLS access and would like to **associate a public contact phone with your listings**, which number would you like to use? ☐ **CELL PHONE** ☐ **OFFICE PHONE**

Send mail to (check one): <input type="checkbox"/> Home <input type="checkbox"/> Office Specify a "mailing address" below if it is different from your Home or Office Address. _____ _____	Do you need MLS Access? <input type="checkbox"/> Yes <input type="checkbox"/> No Before access to the Indiana Regional MLS is granted, your Broker must be a Participant in the MLS, you must complete the Lockbox Agreement, and you must agree to the terms in the online IRMLS subscriber agreement.
Do you NOW hold, or have you EVER held a real estate license in any other state? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what State? _____ Current Status _____	Are you NOW or were you EVER a member of another REALTOR® Board/Assn (including UPSTAR)? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide the information below: Board/Assn Name _____ NRDS# _____
Has your real estate license, in INDIANA or any OTHER state, ever been suspended or revoked? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide a full explanation (attach separate sheet)	If you are transferring from another REALTOR® Board/Assn, please attach a "Letter of Good Standing" from that Board/Assn to this form or email it directly to Membership@UpstarIndiana.com.
Do you hold an appraiser or auctioneer license? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please specify which license(s) you hold and the year they were issued _____	Has your membership in a Board/Assn ever been refused, suspended, or terminated? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide a full explanation (attach separate sheet)
Are you fluent in a foreign language? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which one(s): _____ Are you willing to provide translation services? <input type="checkbox"/> Yes <input type="checkbox"/> No	Have you ever been found in violation of the Code of Ethics within the last three years? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, through what REALTOR® Assn? _____
Are you a veteran or currently serving in the U.S. Armed Forces? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what military branch? _____	Do you have any pending ethics complaints, or unsatisfied discipline? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide a full explanation (attach separate sheet)

CONDITIONS, AGREEMENTS & SIGNATURE

I, _____ hereby apply for REALTOR® membership in the Upstate Alliance of REALTORS® (“the Association”).

Application Fees and Dues: I agree to pay the required fees and dues of the Upstate Alliance of REALTORS® (UPSTAR), Indiana Association of REALTORS® (IAR) and the National Association of REALTORS® (NAR). I understand that any fees paid in association with this application will be returned to me in the event I am not accepted to membership. **NOTE:** Dues payments to the Association are not tax deductible as charitable contributions. Portions of such payments may be deductible as ordinary and necessary business expenses.

Qualifications for Membership: I understand that membership brings certain privileges and obligations that require compliance, including the following:

- I understand that with this application I agree to attend New Member Orientation and complete such course within **ninety Days (90) of application**. Failure to meet this requirement may result in having my membership terminated.
- Membership in the Association necessarily means that I am also a member of the State Association and National Association of REALTORS®. I agree to abide by the existing Constitution, Bylaws, Code of Ethics, Arbitration rules and procedures and other governing documents (as amended from time to time) of the Upstate Alliance of REALTORS®, (UPSTAR), the Indiana Association of REALTORS® (IAR), and the National Association of REALTORS® (NAR).
- As a condition of membership, I agree to thoroughly familiarize myself with the Code of Ethics and Professional Standards Manual of the National Association of REALTORS®, including the duty to arbitrate contractual and specific non-contractual disputes in accordance with Article 17 of the Code of Ethics. Further, if required, I agree to satisfactorily complete the periodic Code of Ethics training and a reasonable and non-discriminatory written examination on such Code, Constitutions, Bylaws and Rules and Regulations.
- I acknowledge that as a member of the Association, I will be licensed to use the REALTOR® trademarks to indicate such membership, and I agree to abide by the rules governing use of those trademarks. I understand that REALTOR® is a federally registered trademark of the National Association and use of this designation is subject to rules promulgated by the National Association. Upon termination of my membership in the Association for any reason, my license to use the term REALTOR® is automatically revoked and I will immediately discontinue use of the term REALTOR® and all REALTOR® trademarks.
- Membership is final only upon approval by the Board of Directors and may be revoked should completion of any membership requirement, such as orientation, not be completed within the timeframe established in the Association's bylaws.
- I further agree to waive any and all claims or causes of action, legal or equitable, which I may have in the future against UPSTAR, IAR, NAR or any of their officers, directors, members, employees or agents, arising out of any fine, suspension, termination or membership or any other discipline or decision that may be imposed upon me for violating any of the duties assumed by me pursuant to the any of the terms herein above.
- I further agree to pay reasonable attorney fees, court costs and other expenses incurred by UPSTAR if it becomes necessary for UPSTAR to engage in litigation to collect monies owed by me to UPSTAR.
- I further agree to receive communication from UPSTAR via the specified address, telephone numbers, fax numbers, email address or other means of communication available. This consent applies to changes in contact information that may be provided by me to the Association(s) in the future. This consent recognizes that certain state and federal laws may place limits on communications that I am waiving to receive all communications as part of my membership.

NOTE: Applicant acknowledges that if accepted as a Member and he/she subsequently resigns or is expelled from membership in UPSTAR with an ethics complaint or arbitration request pending, the Board of Directors may condition renewal of membership upon applicant's verification that he/she will submit to the pending ethics or arbitration proceeding and will abide by the decision of the Hearing Panel; or if the applicant resigns or is expelled from membership without having complied with an award in arbitration, the Board of Directors may condition renewal of membership upon his/her payment of the award, plus any costs that have been established previously as due and payable in relation thereto, provided that the award and such costs have not, in the interim, been otherwise satisfied.

I hereby certify that the foregoing information furnished by me is true and correct, and I agree that the failure to provide complete and accurate information as requested, or any misstatement of fact, shall be grounds for revocation of my membership if granted.

Printed Name _____ Signature _____ Date _____

UPSTAR REALTOR® SOCIAL MEDIA POLICY

PURPOSE: Upstate Alliance of REALTORS® (“UPSTAR” or “the Association”) values social media. Its proper use creates awareness of our purpose and mission. It is also a great communication and marketing tool. As a REALTOR® member of UPSTAR, what you share on the Internet is (or may be interpreted to be) representative of the Association and, in any event, must be approached with caution. This agreement provides guidelines for Social Media Usage.

SCOPE: This social media policy applies to all REALTOR® members of the Upstate Alliance of REALTORS® (UPSTAR) as it pertains to real estate promotion and other work-related or personal use of social media that impacts UPSTAR rules—regardless of whether the technology used by the REALTOR® is a company or personal device.

GENERAL GUIDELINES FOR SOCIAL MEDIA USAGE BY A REALTOR®: In order to protect the Association from the posting of comments and information that may have a harmful effect on its reputation, staff and/or other members, the following policy has been developed. For the purpose of this policy, “engaging in social media” means posting or uploading content to any type of interactive electronic communication including but not limited to websites, blogs, social networks and discussion boards.

- Since the Internet is public space, you must refrain from engaging in social media that may disparage or harm the image or reputation of the Association, its employees or other members.
- You assume any and all risks associated with engaging in social media.
- Before engaging in social media, know the Association’s position on issues. Be sure it is clear that your opinion and views expressed are yours alone and that any statements, opinions and beliefs do not necessarily reflect the views of the Association.
- When engaging in social media, do not expect your comments to be private. Even comments posted in private groups can easily be shared publicly. Be vigilant to ensure that you do not disclose any information that is confidential or proprietary to the Association or to any third party that has disclosed information to us. This includes but is not limited to the use of Association trademarks, copyrighted material, board matters, personnel, staffing, and financial information.
- Use caution when posting photos of leadership, staff and other Affiliate and REALTOR® members from Association events that may portray them in a disparaging way.
- When it comes to political advocacy and candidate campaigns **in connection with UPSTAR**, remember the Association supports real property rights regardless of political affiliation. When using the Association name in connection with political issues and advocacy, please conduct yourself online accordingly.
- RPAC investments should not be solicited in any online public forum.

I have read, understand, support and, as a condition to holding REALTOR® membership with the Association, agree to fully abide by the above Social Media Policy. I understand that examples and best practices of social media usage may be found in the [Social Media Resource Guide](#). I will direct any inquiries or concerns, whether or not specifically addressed in the policy statement, to the Association Executive Officer. I understand that any violation of this policy could result in penalties impacting my MLS subscribership.

Printed Name _____ Date _____

Signature _____

Indiana Regional MLS LLC Participant Agreement

This **AGREEMENT** is made and entered into by Indiana Regional MLS LLC ("IRMLS"), with offices at 3660 Rome Drive, Lafayette IN 47905; and _____ ("Firm Participant"), with offices at _____. You, _____, Individual Participant, on behalf of yourself and Firm Participant, agree to the following terms and conditions.

DEFINITIONS AND USAGE.

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

Association: The REALTOR® association or multiple listing service organization through which Firm Participant and Subscribers receive the IRMLS Service.

Association Policies: The rules and regulations, and policies and procedures promulgated by Association, as Association amends them from time to time.

Individual Participants: The natural person, identified as "Individual Participant" in the signature block below, who is responsible for Firm Participant's conduct under IRMLS Policies with regard to each office of Firm Participant and who is a "participant" as that term is defined in the IRMLS Policies.

IRMLS Affiliates: IRMLS Affiliates means IRMLS and its officers, directors, employees, agents, representatives, licensors and shareholders.

IRMLS Database: All data available to Firm Participant on the IRMLS System, including the Participant Contribution and all other text, binary, and photographic image data, in any form now known or hereafter discovered.

IRMLS Policies: IRMLS's then current bylaws, rules and regulations, and policies and procedures promulgated by IRMLS, as IRMLS amends them from time to time.

IRMLS Service: The services IRMLS provides to Firm Participant under this Agreement and similar services IRMLS provides to third parties under similar agreements, including any access or license to the IRMLS Software, the IRMLS Database, and the IRMLS System.

IRMLS Software: IRMLS's proprietary web browser interface(s) to the IRMLS System.

IRMLS System: The aggregate of all hardware, software, and telecommunications systems that IRMLS maintains, or that IRMLS contractors maintain on its behalf, in order to make access to the IRMLS Database available to Firm Participant.

Other Participants and Subscribers: All participants, subscribers, and users of IRMLS Service not party to this Agreement.

Participant Compilation Contribution or "PCC." All selection, coordination, and arrangement by Subscribers of the listing information submitted, contributed, or input in the IRMLS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the IRMLS System. PCC does not include original text or photographs.

Participant Contribution: All data that the Subscribers submit, contribute, or input in the IRMLS System, including text, photographs, images, and other materials, in any form now known or hereafter discovered, except the PCC.

Saved Information: Information that Subscribers store in the IRMLS System for their own later use that is not intended by them to be available to Other Participants and Subscribers, including client prospect and contact information.

Subscribers: All persons defined as "Subscribers" in IRMLS Policies who are affiliated with Firm Participant, plus, solely for purposes of this IRMLS Participant Agreement

July 5, 2024

Agreement, Firm Participant's employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

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

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

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

(c) 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.

IRMLS'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the IRMLS Policies and/or Association Policies, Association shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the IRMLS service by virtue of this Agreement or another license agreement; and Individual Participants for which Firm Participant is responsible shall have all rights and obligations of a participant in IRMLS as set forth in the IRMLS Policies and/or Association Policies. IRMLS may require Individual Participant to change Individual Participant's password at any time. The user ID and password will provide Individual Participants access to all data and functions in the IRMLS Service to which Individual Participants are entitled under the IRMLS Policies and/or Association Policies. IRMLS makes no warranties, however, that the IRMLS Service will be available at all times. IRMLS may use a third party contractor, determined in IRMLS's sole discretion, to facilitate its responsibilities under this Agreement.

FIRM PARTICIPANT ACKNOWLEDGMENTS.

4. **Modifications to service.** IRMLS may, but is not required to, modify the IRMLS 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 IRMLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control.** IRMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the IRMLS 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, IRMLS 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 IRMLS Policies, Association Policies, or infringement of intellectual property rights. Additionally, IRMLS shall have the right to alter and/or remove metadata and copyright management information contained in the Participant Contribution.

6. **Conditions of service.** Firm Participant must at all times have an Individual Participant designated for each office. Firm Participant shall ensure that at all times Individual Participants for which Firm Participant is responsible under this Agreement satisfy the prerequisites for participation in the IRMLS Service. Subscribers must be affiliated with an Individual Participant at all times during the term of this Agreement. Firm Participant and Individual Participant will comply at all times with (a) IRMLS Policies, and (b) all applicable laws, statutes, ordinances, and regulations in performance of their respective obligations under this Agreement, including

the Fair Housing Act (42 U.S.C. §3601 et. seq.) and the Americans with Disabilities Act (42 U.S.C. §12101 et. seq.). Individual Participant and Firm Participant will ensure Subscribers' compliance with the foregoing.

7. Saved Information. Saved Information may not always be available to Firm Participant and may become available to unauthorized persons. IRMLS is not liable for unauthorized access to or loss of Saved Information. Firm Participant is responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

8. Disclosure to third parties. IRMLS reserves the right to distribute to third parties certain information about Firm Participant, including Firm Participant's and Individual Participants' names and business addresses, phone numbers and email addresses. IRMLS reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and Subscribers' use of the IRMLS Service, but not about Firm Participant's or Individual Participants' use specifically.

9. Disclosure to government. Firm Participant acknowledges that IRMLS may provide government agencies access to the IRMLS Service at any time in IRMLS's sole discretion.

10. Priority of agreements. Firm Participant must enter into this Agreement before any Subscriber may obtain access to the IRMLS Service.

11. If Firm Participant is an appraisal firm, Firm Participant acknowledges that certain information in the IRMLS Database, including information about listings currently for sale, may be withheld from Firm Participant and Individual Participants pursuant to the IRMLS Policies and/or Association Policies.

12. IDX and VOW data access subject to separate agreement; third-party TOU. Firm Participant acknowledges that access to IRMLS's IDX or VOW database and data feeds can occur only upon execution of a separate written agreement between IRMLS, Firm Participant and Subscriber, as applicable. Firm Participant acknowledges that access to third-party software offered via IRMLS Services may be subject to separate third-party terms of use ("Other TOUs"). For avoidance of doubt, Firm Participant shall be subject to the terms and conditions of this Agreement as well as any Other TOUs for those products and services to which they apply.

FIRM PARTICIPANT'S OBLIGATIONS.

13. Use limited; Compensation Disclaimer. Firm Participant shall use the IRMLS Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate, strictly as permitted by the IRMLS Policies and/or Association Policies. Except as expressly provided in this Agreement and the IRMLS Policies and/or Association Policies, Firm Participant shall not copy, create derivative works of, distribute, perform, or display the IRMLS Service or any part of it, except the Participant Contribution. Firm Participant acknowledges the following statements and may not communicate with any consumer in any manner that contradicts any of the following statements or brings them into doubt:

- (a) A broker's compensation and fees for services are not set by law and are fully negotiable.
- (b) A broker's compensation for services rendered to a seller or for services rendered to a buyer is solely a matter of negotiation between the broker and their client, and is not fixed, controlled, recommended, or maintained by any persons not a party to the brokerage service agreement.
- (c) The compensation paid by a listing broker to a cooperating broker in respect to any listing is established by the listing broker and/or seller, and is not fixed, controlled, recommended, or maintained by any persons other than the listing broker and/or seller.

14. Confidentiality. Firm Participant shall maintain the confidentiality of its user ID and password. IRMLS issues each Subscriber a separate ID and password. Firm Participant shall ensure that (a) its Subscribers maintain the confidentiality of their user IDs and passwords, (b) Subscribers do not share their user IDs or passwords, and (c) that no one but authorized Subscribers obtains access to the IRMLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the IRMLS Database, and the IRMLS System, Firm Participant shall take the greater of reasonable care or the care it takes to protect its own confidential information. Firm Participant and Individual Participant shall not make any user IDs, passwords, the IRMLS Database, or the IRMLS System available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement or the IRMLS Policies. Failure to comply with this provision will result in a significant fine, as set forth in the IRMLS Policies and/or Association Policies. Firm Participant may disclose confidential information under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, the disclosing Firm Participant first gives reasonable notice to IRMLS to permit IRMLS to seek a protective order.

15. Equipment. Firm Participant shall acquire and maintain all personal computers, modems, data connections, and computer software, other than the IRMLS Software, necessary for Participant's use of the IRMLS Service.

16. Participant Contribution. With regard to any Subscriber making a Participant Contribution to the IRMLS Service, Firm Participant warrants that the information submitted complies with all applicable laws, statutes, ordinances and regulations and the IRMLS Policies and/or Association Policies in all respects, including with regard to (a) required data fields; (b) format of submission; (c) permitted and required listing types; and (d) procedures for submission. Firm 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.

17. Subscriber agreements. Firm Participant shall ensure that each Subscriber who will have access to the IRMLS System or IRMLS Database, enters into a Subscriber agreement with IRMLS. Firm Participant is liable to IRMLS and/or Association for all fees due under each Subscriber agreement.

18. Subscriber supervision. Firm Participant shall ensure that all Subscribers comply at all times with the IRMLS Policies, Association Policies, and with applicable laws. Firm Participant is liable for any Subscriber's breach of any agreement between the Subscriber and IRMLS relating to the IRMLS Service or violation of any of the IRMLS Policies or Association Policies as if Firm Participant had committed it.

19. List of Subscribers. Firm Participant shall ensure IRMLS and Association has a current list of all of Subscribers; Firm Participant shall inform Association in writing of any change in the Subscribers within twenty-four hours of the change or the timeframe in the IRMLS MLS Policies, whichever is greater.

20. Accurate information. Firm 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. Firm Participant shall ensure that any changes to the Participant Contribution are made on the IRMLS System within such time as provided in the IRMLS Policies and/or Association Policies. Pursuant to the IRMLS Policies and/or Association Policies, Firm Participant shall provide to IRMLS or Association all documentation IRMLS or Association requests of Firm Participant to ascertain Firm Participant's compliance with this Agreement.

INTELLECTUAL PROPERTY.

21. Election regarding copyrights in Participant Contributions.

Firm Participant must elect from the following options. If no election is indicated, or if both options are checked, then Participant is deemed to have selected Option II.

☐ OPTION I

(a) **Assignment from Participant.** Firm Participant hereby unconditionally assigns to IRMLS all right, title and interest in the Participant Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; Firm Participant warrants that it has the authority to make this assignment. Firm 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 IRMLS.

(b) **IRMLS Obligations.** IRMLS hereby grants to Firm Participant a non-exclusive, perpetual, world-wide, 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 IRMLS Database relating to Firm Participant's listings. IRMLS shall use reasonable efforts to make quarterly registrations of the IRMLS's copyrights in the IRMLS Database; IRMLS shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Firm Participant's permission.

☐ OPTION II

(a) **License from Participant.** Firm Participant hereby grants to IRMLS 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. Firm Participant warrants that it has the authority to grant this license.

(b) **IRMLS has no obligations to protect.** Firm Participant acknowledges that: (i) IRMLS makes no grant of license or assignment to Firm Participant of any rights in the IRMLS Database except as set forth in paragraph 22; (ii) IRMLS will make no effort to register the copyrights in the Participant Contribution, and Firm 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) ***IRMLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm Participant's permission***; (v) IRMLS will make no effort to secure for Firm Participant the right to use copyright works created by Subscribers or third parties.

22. **Other provisions.** Pursuant to the IRMLS Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of IRMLS, which shall be deemed the PCC's author for purposes of copyright law. If for any reason the PCC cannot be provided as a work made for hire, you agree to assign and hereby do assign to IRMLS all right, title and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law. IRMLS hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the IRMLS Software

and the IRMLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the IRMLS Policies and only to deliver real estate brokerage or appraisal services to Firm Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the IRMLS Policies are prohibited. Title to the Licensed Materials remains at all times in IRMLS and shall not pass to Firm Participant.

23. **Further Participant warranty.** Firm Participant warrants that (a) the Participant Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) Firm Participant has the written consent of any party necessary to provide the Participant Contribution to IRMLS.

24. **Limitations on use by IRMLS.** IRMLS 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 IRMLS Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after IRMLS has provided notice of its intention to provide the Participant Contribution to the third party. If IRMLS enters a data sharing agreement with any other multiple listing service (as that term is defined in IRMLS Policies) IRMLS may license and distribute the Participant Contribution to the other multiple listing service in the data share and its users without obtaining any consent from Firm Participant.

FEES AND PAYMENT TERMS.

25. **Applicable fees.** No fees are due directly to IRMLS hereunder. Association is solely responsible for establishing the fees it charges for access to the IRMLS Service and for determining the means of collecting those fees. IRMLS does not control or fix the fees that brokers and salespersons pay to Association (or other REALTOR® associations) for access to IRMLS Service.

26. **Payment terms.** Firm Participant agrees to pay all applicable fees to Association when they come due according to Association's policies. Association may revise its schedule of fees at its sole discretion at any time, subject to its own policies. Association may suspend services to Firm Participant, Subscribers, and their employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers) for failure to pay according to Association's policies.

27. **No refunds.** Association or IRMLS need not refund or pro-rate fees in the event of termination or suspension of this Agreement unless the IRMLS Policies and/or Association Policies provide otherwise. Initiation fees, if any, are not refundable.

28. **Taxes.** All fees for the IRMLS 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, Association and Firm Participant shall pay all such taxes and levies other than any tax or levy on the net income of IRMLS.

29. **Fines.** IRMLS and/or Association may collect fines from Firm Participant and from Individual Participants for violation of the IRMLS Policies or Association Policies by Firm Participant, Individual Participant and Subscribers. Payment terms for fines are set out in the IRMLS Policies or Association Policies. IRMLS and/or Association may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION.

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

31. **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 to the breaching party and Association if the breach or nonperformance has not then been remedied.

32. **Termination for breach of policies.** Paragraph 31 notwithstanding, IRMLS may terminate this Agreement if Firm Participant fails to comply with the IRMLS Policies or Association Policies; if Firm Participant violates or is alleged to have violated the IRMLS Policies or Association Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or appeal rights of Firm Participant have expired as provided in the IRMLS Policies and/or Association Policies. If in IRMLS's judgment, however, a violation or alleged violation of the IRMLS Policies or Association Policies is resulting in a continuing harm to IRMLS or Other Participants or Subscribers, IRMLS may suspend Firm Participant's access to the IRMLS Database during the pendency of any hearing or appeal.

33. **Termination for failure to pay.** In the event Firm Participant fails to pay Association any fees required under this Agreement, IRMLS may terminate service without being subject to arbitration. In its sole discretion, IRMLS may suspend its performance under this Agreement rather than terminating it, in the event that Firm Participant fails to pay any fees required under this Agreement.

34. **Termination for convenience.** Either party may terminate this Agreement with or without cause, upon thirty days' written notice to the other party and Association.

35. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) IRMLS or Association shall deactivate Firm Participant's and Individual Participants' user ID and password, and Firm Participant and Individual Participants shall have no further access to the IRMLS Service; (b) Firm Participant shall purge all copies of the IRMLS Software and the IRMLS Database (except the Participant Contribution) from Firm Participant's personal computers, and shall cause Individual Participants and Subscribers to do the same; and (c) all licenses granted hereunder, except the license to the Participant Contribution in Paragraph 21 Option I(b) and Paragraph 21 Option II(a), if any, shall immediately terminate.

36. **Effect on Subscribers.** In the event of any termination of this Agreement, all Subscriber license and access agreements will automatically terminate; the intellectual property option selected by Firm Participant in this Agreement will survive termination. In the event of any suspension of this Agreement, upon IRMLS notice to Subscriber, IRMLS may in its sole discretion suspend Subscriber access to IRMLS System and Subscriber license and access agreements. If IRMLS does not exercise its right to suspend Subscriber access to the IRMLS System, the Subscriber license and access agreement shall continue in force with the intellectual property option selected by Firm Participant in this Agreement.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

37. **DISCLAIMER OF WARRANTIES.** IRMLS PROVIDES THE IRMLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE IRMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE IRMLS SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE IRMLS AFFILIATES DO NOT WARRANT THAT THE IRMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE IRMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE IRMLS SERVICE. THE IRMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT

TO THE IRMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE IRMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The IRMLS Service may contain third-party content, including hyperlinks to web sites operated by parties other than IRMLS; IRMLS does not control such third-party content, including web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the third-party content providers, including any web sites' operators.

38. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE IRMLS AFFILIATES SHALL BE LIABLE TO FIRM PARTICIPANT OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE IRMLS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE IRMLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE IRMLS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, DATA CONNECTION FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE IRMLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

39. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL IRMLS BE LIABLE TO FIRM PARTICIPANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT HAS PAID IRMLS AND/OR ASSOCIATION, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100.

40. **Indemnification.** Firm Participant shall defend, indemnify and hold the IRMLS Affiliates and Other Participants and Subscribers 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 IRMLS Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the IRMLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the IRMLS Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any term of this Agreement; and (f) violating this or any other Agreement or any law.

41. **Acknowledgment.** Firm Participant acknowledges that IRMLS and/or Association have set their 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.

DISPUTES AND REMEDIES.

42. **Injunctive relief.** Firm Participant acknowledges and agrees that the IRMLS Software and IRMLS Database are confidential and proprietary products of IRMLS and that in the event there is an unauthorized disclosure of them by Firm Participant, no remedy at law will be adequate. Firm Participant therefore agrees that in the event of such unauthorized disclosure of IRMLS Software or IRMLS Database, IRMLS 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.

43. **Dispute resolution.** In the event IRMLS claims that Firm Participant has violated the IRMLS Policies and/or Association Policies, IRMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the IRMLS Policies and/or Association Policies, provided IRMLS does not also base a claim that Firm Participant has breached this Agreement on the same facts. Except as provided in this

paragraph and in Paragraph 33, 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 Tippecanoe County, Indiana, except that it may be held by telephone where the Arbitration Rules expressly so permit. Firm 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 Tippecanoe County, Indiana.

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

45. Legal fees. In the event of legal action or arbitration between IRMLS and Firm Participant, or IRMLS 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 IRMLS is the prevailing party in an action against a Subscriber, Firm Participant shall be obligated to pay these costs on the Subscriber's behalf.

MISCELLANEOUS.

46. No third-party beneficiaries. This Agreement is entered into solely between, and may be enforced only by IRMLS and Firm 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. The foregoing notwithstanding, Association is a third-party beneficiary of this Agreement and the parties agree that Association may enforce those covenants herein of which Association is beneficiary.

47. Interpretation and amendment. Firm Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). IRMLS may amend this Agreement by providing thirty days' advance notice of the amendment to Firm Participant. If Firm Participant or any Subscriber continues to use the IRMLS Service or IRMLS Database after the expiration of the thirty-day notice period, Firm 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.

48. Assignment. Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Firm Participant. Any purported assignment in contravention of this section is null and void.

49. Integration and severability. This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. In the event of any dispute regarding the interpretation of the terms of this Agreement, it shall not be construed for or against any party on the grounds that the Agreement was prepared by any one of the parties. 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 Paragraphs 37 through 41 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm Participant's access to the IRMLS Service shall immediately terminate.

50. Governing law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana applicable to contracts made and performed in Indiana, without regard to its conflicts of law and choice of law provisions.

51. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation of receipt; (c) facsimile transmission, provided sender obtains confirmation of transmission; or (d) 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.

52. Authority to Bind. Individual Participant herein represents and warrants that they have all necessary power and authority to bind Firm Participant and to execute this Agreement on Firm Participant's behalf.

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

Indiana Regional MLS LLC

Firm Participant

Carrie Kendall, General Manager

Signature

Carrie Kendall, General Manager

Print name

Effective Date

Firm Participant name

Signature of Individual Participant

Print name of Individual Participant

Signature Date



UPSTAR/IRMLS Participant Agreement Subscriber Information

This form is to accompany the Indiana Regional MLS Participant Agreement in accordance with item #19 (List of Subscribers). Please include all subscriber 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 notifying UPSTAR in writing within 24 hours of any changes. Back-billing and possible fines are assessed for non-reported subscriber licensees. Please attached a separate sheet if you have more subscriber licensees than the space provided below.

#	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
1	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
2	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
3	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
4	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
5	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
6	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
7	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
8	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
9	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
10	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
11	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
12	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
13	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
14	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
15	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
16	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
17	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
18	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
19	Subscriber Name	Subscriber License Number	Cell Phone	Email Address
20	Subscriber Name	Subscriber License Number	Cell Phone	Email Address

LOCKBOX SYSTEM AUTHORIZED USER AGREEMENT

This **AGREEMENT** is made and entered into by Upstate Alliance of REALTORS® Multiple Listing Service, Inc. (“**MLS**”); the “**Participant**” identified on the last page below; and the “**Subscriber**” identified on the last page below.

1. **PURPOSES.** The parties have entered this Agreement because (a) MLS will provide access to its lockbox system; (b) if Subscriber agrees to the terms in this Agreement; and (c) if Participant makes certain commitments on Subscriber’s behalf.

DEFINITIONS AND USAGE

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

MLS Policies: MLS’s Rules and Regulations, including the lockbox system rules, as amended from time to time in MLS’s discretion, and any operating policies promulgated by MLS.

Confidential Information: 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, and personal identification numbers (PINs); (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 or evidence presented by any party under arbitration pursuant to paragraph 28. 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.

Subscriber: Party to this Agreement. In the event there is no separate subscriber party to this agreement, “Subscriber” refers to the Participant herein.

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

- Wherever the term “including” is used, it means “including, but not limited to.”
- The singular and plural numbers and masculine, feminine, and neutral genders of words are fully interchangeable.
- 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.

MLS’S OBLIGATIONS

4. **ACCESS TO SERVICE.** MLS shall provide Participant and Subscriber access to the lockbox service of MLS, subject to the MLS Policies.

5. **NOTICE OF SIGNIFICANT EVENTS.** MLS shall provide commercially reasonable notice to Participant and Subscriber of all significant events relating to the lock box system, including scheduled downtime and changes in the MLS Policies.

ACKNOWLEDGEMENTS / GENERAL PROVISIONS

6. **RECEIPT.** Participant and Subscriber acknowledge that Subscriber will receive a link once membership is complete.

7. **USE CONSISTENT WITH MLS POLICIES.** Access to and use of MLS’s lockbox system is at all times limited to the purposes and by the restrictions set out in the MLS Policies. Any other use or access is strictly prohibited and is a material breach of this Agreement.

8. **LOCKBOXES NOT A SECURITY SYSTEM.** Participant and Subscriber acknowledge that the Sentikey App, lockboxes, and other components of the lockbox system are not a security sys-

tem; they are a marketing convenience and control system. Participant and Subscriber hold MLS harmless against any claims that the lockbox system failed, for whatever reason, to prevent or grant admission to any property.

SUBSCRIBER / PARTICIPANT OBLIGATIONS TO MLS

9. **PERIODIC SERVICE FEES.** At the inception of this Agreement, no periodic service fees for the lockbox system are due from Participant or Subscriber. In the event the MLS establishes any periodic service fees, Participant and Subscriber agree to pay them when they come due and according to the payment terms MLS establishes.

10. **MLS POLICIES PREVAIL.** Participant and Subscriber 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.

11. **SUBMISSION TO DISCIPLINARY REVIEW.** Participant and Subscriber shall submit to a disciplinary tribunal of MLS in the event either is accused of a breach of the MLS Policies relating to the lockbox system. MLS shall conduct all such tribunals in accordance with its bylaws and rules. All such tribunals shall have at their disposal every sanction available to them under the MLS Policies, including forfeiture of Subscriber’s access to Sentrilock System. In cases of significant breaches of MLS Policies, a disciplinary tribunal may revoke all the Sentikey Access in Participant’s office, not just the one issued under this Agreement.

PARTICIPANT OBLIGATIONS TO MLS

12. **GUARANTY AND LIABILITY FOR SUBSCRIBER CONDUCT.** Participant is guarantor of Subscriber’s performance under this Agreement. Participant is jointly and severally liable to MLS for all damages and costs MLS sustains as a result of Subscriber’s use of the system, up to and including the last date Subscriber has access to the lockbox system issued under this agreement, even if Subscriber is no longer affiliated with Participant at the time of the wrongful conduct.

13. **PARTICIPANT WARRANTIES.** Participant warrants that (a) Participant is a license real estate broker and participant in MLS; and (b) Subscriber possesses a real estate license and is associated with Participant as a licensee actively seeking to sell real estate or Subscriber is a certified real estate appraiser affiliated with Participant.

14. **SUBSCRIBER TRANSFERS.** Participant shall notify MLS in writing within 24 hours after Subscriber’s transfer of license.

CONFIDENTIAL INFORMATION

15. 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.

TERM AND TERMINATION

16. 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 Participant’s privileges as an MLS participant or termination of Subscriber’s privileges as an MLS subscriber; (b) 30 days after any party’s notice to the others of its intent to terminate; (c) 10 days after any party’s notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon notice from an MLS disciplinary body to Participant or Subscriber that Participant or Subscriber has violated the MLS Policies with regard to the lockbox system. In the event Participant’s or Subscriber’s MLS privileges 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 4 through 6.

GENERAL PROVISIONS

17. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL MLS BE LIABLE TO PARTICIPANT OR SUBSCRIBER 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**

Lockbox System Authorized User Agreement (continued)

ING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL MLS BE LIABLE TO PARTICIPANT OR SUBSCRIBER FOR ANY AMOUNT IN EXCESS OF THE FEES PARTICIPANT AND SUBSCRIBER HAVE PAID MLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES. PARTICIPANT ACKNOWLEDGES THAT MLS PROVIDES THE LOCKBOX SYSTEM 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.

18. **APPLICABLE LAW.** This Agreement shall be governed by and interpreted according to the laws of the State of Indiana, without regard to its conflicts and choice of law provisions.

19. **MLS'S REMEDIES.** Because of the critical importance of security in the lockbox system, Participant and Subscriber 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 Participant or Subscriber, without showing or proving any actual damages sustained by MLS, and without posting any bond.

20. **ARBITRATION; ATTORNEY'S FEES.** 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 under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration shall be held in Fort Wayne, Indiana, or by telephone where the Arbitration Rules so permit. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Indiana located in the county of Allen or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to arbitration. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

21. **INDEMNIFICATION.** Subject to paragraph 25, 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. Participant and Subscriber shall further indemnify MLS against claims and damages arising from entry by any person into any premises by use of the lockbox system. 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.

22. **SURVIVAL OF OBLIGATIONS.** The obligations of Participant set forth in paragraph 19 shall survive the termination or expiration of this Agreement for five years. The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity.

23. **NOTICE.** All notices from Participant or Subscriber to MLS to be given under this Agreement shall be by personal service or U.S. mail, return receipt requested, and shall be effective the earlier of the date of receipt or three days after mailing. All notices from MLS to Participant and Subscriber shall be by personal service, U.S. mail, facsimile transmission, or electronic mail to the address(es) on for Participant and Subscriber on file with MLS, and shall be effective the earlier of the date of receipt or three days after mailing.

24. **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.

25. **NO ASSIGNMENT.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement 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.

26. **ENTIRE AGREEMENT.** 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.

27. **RELATIONSHIP OF THE PARTIES.** The relationship of MLS to the other parties hereunder is that of 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.

28. **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.

As Participant herein, I have authority to bind all existing and future REALTORS® affiliated with (my firm) to this User Agreement, and in the exercise of such authority, I do hereby bind all such REALTORS® to the terms and conditions of this User Agreement as evidenced by my signature below.

UPSTATE ALLIANCE OF REALTORS® MULTIPLE LISTING SERVICE, INC.

PARTICIPANT (Firm Owner/Managing Broker)

☒ UPSTAR MLS Representative Signature

☒ Participant Signature

Adam Smith, UPSTAR Executive Officer
Print name

Print name

March 25, 2024
Effective Date

Firm Name Date Signed

SUBSCRIBER (Agent)

☒ Subscriber Signature

Subscriber Name (Please Print)

Date Signed