



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 FWAMLS 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 Fort Wayne Area Association of REALTORS® or another board of REALTORS®.**

The undersigned represents, and the Fort Wayne Area 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 Fort Wayne Area Multiple Listing Service, Inc. (available online at <http://www.fwaar.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 FWAMLS Rules and Regulations Section 14.1, his/her consent to participate in the FWAMLS IDX program is presumed unless a separate written certification indicating the Participant's desire to opt out of IDX is filed with the FWAMLS.

The undersigned further certifies that the information contained in this application is accurate and agrees to notify the FWAMLS 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 FWAMLS 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 FWAMLS 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 Fort Wayne Area 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 FWMLS 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 Fort Wayne Area Multiple Listing Service, Inc. (“FWAMLS”) and the undersigned participant (“Participant”), who, intending to be legally bound, hereby agree as follows.

1. DEFINITIONS AND USAGE.

(a) DEFINITIONS.

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

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

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

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

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

“FWAMLS System” means the aggregate of all hardware and telecommunications systems that FWAMLS maintains in order to make access to the FWAMLS 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 FWAMLS Service.

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

“Saved Information” means information that Participant Affiliates store in the FWAMLS System for their own later use that is not intended by them to be available to FWAMLS’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. FWAMLS’S OBLIGATIONS.

Subject to the terms and conditions of this Agreement and the FWAMLS Policies, FWAMLS shall provide one unique user ID and password to each of the Participant Affiliates that is authorized to obtain access to the FWAMLS service by virtue of this Agreement or another license and access agreement; and Participant shall have all rights and obligations of a participant in FWAMLS as set forth in the FWAMLS Policies. The user ID and password will provide Participant access to all data and functions

in the FWAMLS Service to which Participant is entitled under the FWAMLS Policies. FWAMLS makes no warranties, however, that the FWAMLS Service will be available at all times.

3. PARTICIPANT ACKNOWLEDGMENTS.

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

(b) EDITORIAL CONTROL. FWAMLS is not required to, and does not, review, edit, or exercise editorial control over the FWAMLS 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, FWAMLS 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 FWAMLS 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 FWAMLS Service. The prerequisites are set out in the FWAMLS 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 FWAMLS hereunder.

(d) SAVED INFORMATION. Saved Information may not always be available to Participant and may become available to unauthorized persons. FWAMLS 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. FWAMLS reserves the right to distribute to third parties certain information about Participant, including Participant’s name and business address, phone number and email address. FWAMLS reserves the right to distribute to third parties aggregated information about FWAMLS customers’ use of the FWAMLS Service, but not about Participant’s use specifically.

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

(g) COMMUNICATIONS FROM FWAMLS. Participant consents that FWAMLS may contact him/her at the specified addresses, telephone numbers, fax numbers, email addresses, or other means of communication available. This consent applies to changes in contact information that may be provided to FWAMLS 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 FWAMLS communications as part of Participation in FWAMLS.

(h) PRIORITY OF AGREEMENTS. Participant must enter into this

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

Agreement before any other Participant Affiliate may obtain access to the FWAMLS 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 FWAMLS 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 FWAMLS Database, including information about listings currently for sale, may be withheld from Participant pursuant to the FWAMLS Policies.

4. PARTICIPANT'S OBLIGATIONS.

(a) **USE LIMITED.** Participant shall use the FWAMLS Service solely for the purpose of selling, listing, leasing, and appraising real estate. Except as expressly provided in this Agreement and the FWAMLS Policies, Participant shall not copy, create derivative works of, distribute, perform, or display the FWAMLS 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 FWAMLS Service or any part of it. Failure to comply with this provision will result in a significant fine, as set forth in the FWAMLS Policies.

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

(d) **PARTICIPANT CONTRIBUTION.** When making a Participant Contribution to the FWAMLS Service, Participant warrants that the information submitted complies with the FWAMLS 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 FWAMLS before obtaining access the FWAMLS System or FWAMLS Database.

(f) **AFFILIATE SUPERVISION.** Participant shall ensure that all Participant Affiliates comply at all times with the FWAMLS Policies and with applicable laws. Participant is liable for any Participant Affiliate's breach of any agreement between the Participant Affiliate and FWAMLS relating to the FWAMLS Service or violation of any of the FWAMLS Policies as if Participant it/ him/herself had committed it.


(g) **LIST OF AFFILIATES.** Participant shall provide to FWAMLS a current list of all of Participant Affiliates; Participant shall inform FWAMLS 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 FWAMLS System within 24 hours or within such other time as FWAMLS shall provide in the FWAMLS Policies. Pursuant to the FWAMLS Policies, Participant shall provide to FWAMLS 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 FWAMLS 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 FWAMLS (including sellers, licensees/agents, and photographers). FWAMLS 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 FWAMLS 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 FWAMLS.

(b) **FWAMLS OBLIGATIONS.** FWAMLS 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 FWAMLS Database relating to Participant's listings. FWAMLS shall secure the rights of Participant hereunder by obtaining assignments and licenses from Participant Affiliates and others as necessary. FWAMLS shall make quarterly registrations of the copyrights in the FWAMLS Database, including the Participant Contribution; FWAMLS shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Participant's permission.

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

OPTION II

OPTION II *(check here for option 2)*

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

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

(c) **OTHER LICENSES.** FWAMLS hereby grants Participant a license to use the FWAMLS Software and the FWAMLS 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 FWAMLS 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 FWAMLS Policies are prohibited, including (A) assigning, timesharing,

selling, leasing, lending or renting the Licensed Materials or access to the FWAMLS 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 FWAMLS and shall not pass to Participant.

6. FEES AND PAYMENT TERMS.

(a) **APPLICABLE FEES.** Participant shall pay the fees set forth in FWAMLS'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. FWAMLS's board of directors may alter the payment terms in Exhibit A at any time upon notice to Participant.

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

(d) **TAXES.** All fees for the FWAMLS 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 FWAMLS.

(e) **FEE INCREASES.** FWAMLS may amend the Schedule of Fees at any time at its sole discretion. FWAMLS 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 FWAMLS 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 FWAMLS POLICIES.** FWAMLS may terminate this Agreement if Participant fails to comply with the FWAMLS Policies; if Participant violates or is alleged to have violated the FWAMLS 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 FWAMLS Policies. The foregoing notwithstanding, if in FWAMLS's judgment a violation or alleged violation of the FWAMLS Policies is resulting in a continuing harm to FWAMLS or its other customers, FWAMLS may suspend Participant's access to the FWAMLS 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, FWAMLS may terminate service, and FWAMLS may bring any

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

claims for fees to small claims court. In its sole discretion, FWAMLS 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) FWAMLS shall deactivate Participant's user ID and password, and Participant shall have no further access to the FWAMLS Service; (ii) Participant shall purge all copies of the FWAMLS Software and the FWAMLS 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.** FWAMLS PROVIDES THE FWAMLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE FWAMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE FWAMLS SERVICE ARE AT THE SOLE RISK OF PARTICIPANT. THE FWAMLS AFFILIATES DO NOT WARRANT THAT THE FWAMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE FWAMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE FWAMLS SERVICE. THE FWAMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE FWAMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE FWAMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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

(c) **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL THE LIABILITY OF THE FWAMLS 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 FWAMLS 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 FWAMLS Affiliates arising from any acts of Participant Affiliates, including

(i) putting inaccurate information into the FWAMLS Service; (ii) making unauthorized use of Participant Affiliate's password; (iii) making unauthorized use of the FWAMLS 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 FWAMLS 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 FWAMLS Software and FWAMLS Database are confidential and proprietary products of FWAMLS 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 FWAMLS Software or FWAMLS Database, FWAMLS 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 FWAMLS from access to the FWAMLS Service by an unauthorized third party as a result of disclosure of Participant's password or an unauthorized disclosure by Participant of the FWAMLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to FWAMLS 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 FWAMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Participant shall be liable to FWAMLS for liquidated damages in the amount of \$1,000 (or the amount established in the FWAMLS Policies, whichever is greater) and termination of this Agreement; and (ii) in the event that Participant makes unauthorized disclosure of any portion of the FWAMLS Database to any third party, Participant shall be liable for liquidated damages in the amount of \$1,000 (or the amount established in the FWAMLS 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 FWAMLS and Participant, or FWAMLS and any Participant Affiliate, on account of or in respect to this 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 FWAMLS 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, FWAMLS and



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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. FWAMLS may amend this Agreement by providing 30 days' advance notice to Participant. If any Participant Affiliate continues to use the FWAMLS 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 FWAMLS 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.

FORT WAYNE AREA MULTIPLE LISTING SERVICE, INC.

PARTICIPANT

FWAMLS Representative Signature

Print name

Effective Date

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 FWAMLS 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 2007, 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.

Lockbox System Authorized User Agreement



This AGREEMENT is made and entered into by Fort Wayne Area 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.

Smart Card: A pocket-sized card with embedded integrated circuits designed to authenticate and control access to lockboxes.

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.

- 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.

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.

6. **PROVISION OF REPLACEMENT SMART CARDS.** MLS shall issue a replacement Smart Card to Subscriber provided Subscriber has (a) complied with this Agreement and the MLS Policies with respect to lockboxes; and (b) paid the fee or deposit established by MLS to replace a Smart Card that is lost, stolen, or damaged.

ACKNOWLEDGEMENTS / GENERAL PROVISIONS

7. **RECEIPT.** Participant and Subscriber acknowledge that Subscriber has received a SentiLock Smart Card from MLS.

8. **TITLE TO SMART CARD.** Participant and Subscriber acknowledge that the Smart Card is the sole property of SentiLock and Subscriber shall return it as required by SentiLock or MLS.

9. **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.

10. **PERIODIC UPDATES REQUIRED.** Participant and Subscriber acknowledge that the Smart Card has an update code interval, determined in MLS's sole discretion. At the expiration of each update code interval, Subscriber's Smart Card must receive a new update code, or it will fail to function. Subscriber may obtain update codes from the MLS by placing the Smart Card in a properly configured card reader or by other authorized methods.

11. **EXCHANGE OF SMART CARDS.** MLS may, at its discretion, require Subscriber to return Subscriber's Smart Card and to use a new Smart Card, compatible with the lockbox system, provided by MLS.

12. **LOCKBOXES NOT A SECURITY SYSTEM.** Participant and Subscriber acknowledge that the Smart Card, lockboxes, and other components of the lockbox system are not a security system; 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

13. **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.

14. **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.

15. **RETURN OF SMART CARD.** Participant and Subscriber shall return the Smart Card to MLS within 48 hours after receipt of a request to do so by MLS.

16. **SECURITY MEASURES.** Participant and Subscriber acknowledge the importance of maintaining security of Smart Cards. Consequently, Subscriber shall:

- a. Keep the Smart Card in Subscriber's possession and in a safe place at all times;



Lockbox System Authorized User Agreement *(continued)*

- b. Not allow Subscriber's personal identification number (PIN) to be attached to the Smart Card nor disclosed to anybody;
- c. Not lend the Smart Card to any person for any purpose whatsoever nor permit any other person to use the Smart Card for any purpose;
- d. Not duplicate or attempt to duplicate the Smart Card nor allow anyone else to do so.
- e. Not assign, transfer or pledge Subscriber's rights in the Smart Card.
- f. Notify MLS within three days of the loss or theft of the Smart Card.
- g. Follow any additional security measures set out in the MLS Policies.

17. **PROCEDURE FOR LOST, STOLEN AND DAMAGED CARDS.** In the event Subscriber loses the Smart Card or it is stolen, Participant and Subscriber shall sign and deliver to MLS a statement of the circumstances surrounding the loss or theft. In the event that Subscriber's Smart Card is damaged, Subscriber shall immediately return it to MLS.

18. **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 Smart Card and withdrawal of Participant's and Subscriber's rights to possess a Smart Card. In cases of significant breaches of MLS Policies, a disciplinary tribunal may revoke all the Smart Cards in Participant's office, not just the one issued under this Agreement.

PARTICIPANT OBLIGATIONS TO MLS

19. **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 Smart Card, up to and including the last date Subscriber has access to the lockbox system by virtue of the Smart Card issued under this agreement, even if Subscriber is no longer affiliated with Participant at the time of the wrongful conduct.

20. **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.

21. **SUBSCRIBER TRANSFERS.** Participant shall notify MLS in writing within 24 hours after Subscriber's transfer of license. If the Subscriber has transferred to a firm which is not participating in the FWAMLS, or if the Subscriber's license is inactivated or sent back to the State, Participant agrees to make its best efforts to obtain the transferred Subscriber's Smart Card. Participant acknowledges that it shall be liable for periodic lockbox service fees, if any, for the disassociated Subscriber until the next billing cycle after the card is returned. If Participant cannot obtain return of the Smart Card, it shall supply MLS with copies of written correspondence attempting to obtain the card's return.

CONFIDENTIAL INFORMATION

22. 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.

23. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the disclosing party's request, an officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

24. 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

25. **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 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.

26. **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.

27. **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



Lockbox System Authorized User Agreement (continued)

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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

The parties, intending to be bound by this Agreement, witness its provisions by signing below.

FORT WAYNE AREA MULTIPLE LISTING SERVICE, INC.

FWAMLS Representative Signature

Print name

Effective Date

PARTICIPANT

Signature

Print name

Firm Name

SUBSCRIBER

Subscriber Name (Please Print)

Signature of Subscriber