

# MARIS

## Participant Agreement

Please check the appropriate category

\_\_\_\_\_ REALTOR® Participant/Principal/Corporate Officer \_\_\_\_\_ State Certified Appraiser

Election regarding copyrights in Participant Contributions (see page 6) \_\_\_\_\_ Option I \_\_\_\_\_ Option II

Brokerage/Office Name: \_\_\_\_\_

Brokerage License Number: \_\_\_\_\_ NRDS: \_\_\_\_\_

Complete Office Address: \_\_\_\_\_

Office Phone Number: \_\_\_\_\_ Office Fax Number: \_\_\_\_\_

Office E-mail Address: \_\_\_\_\_

Participant Name: \_\_\_\_\_

Participants Primary Number: \_\_\_\_\_

Participants Email Address: \_\_\_\_\_

Participants License Number: \_\_\_\_\_ NRDS: \_\_\_\_\_

**MARIS will send your new login credentials to the participants email address listed above.**

**MLS New Brokerage Fee** – All new brokerages are charged a \$250 application fee.

**MLS Quarterly Fees** - MLS quarterly fees are \$120 per active participant. The amount due depends on the quarterly fee join date (see grid below).

Pro-Rated Quarterly Fee Join Date 1 <sup>st</sup> -15 <sup>th</sup>	Pro-Rated Quarterly Fee Join Date 16 <sup>th</sup> -31 <sup>st</sup>	Quarterly Fee Amount
Q1 Jan \$120  Feb \$80  March \$40	Q1 Jan \$80  Feb \$40  March \$120	Q1 Subscriber Fee: (If applicable)
Q2 April \$120  May \$80  June \$40	Q2 April \$80  May \$40  June \$120	Q2 Subscriber Fee: (If applicable)
Q3 July \$120  August \$80  Sep \$40	Q3 July \$80  August \$40  Sep \$120	Q3 Subscriber Fee: (If applicable)
Q4 Oct \$120  Nov \$80  Dec \$40	Q4 Oct \$80  Nov \$40  Dec \$120	Q4 Subscriber Fee: (If applicable)
<b>New Brokerage Fee \$250.00</b>		<b>New Brokerage Fee: \$250.00</b>
<b><i>Payments must be made within 2 business days of activation.</i></b> <i>Please see attached for online payment instructions.</i>		<b>Total Amount Due:</b>

By signing below, you acknowledge that you have read this Agreement and agree to its terms and conditions.

\_\_\_\_\_  
Firm Participant Signature

\_\_\_\_\_  
Date

# MARIS

## Participant Agreement

This **AGREEMENT** is made and entered into by Mid-America Regional Information Systems, Inc. ("**MARIS**"), with offices at 1716 Hidden Creek Ct., Suite 150, St. Louis, MO 63131; and **Firm Participant** listed above, 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.

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

### **MARIS Policies.**

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

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

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

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

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

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

**Other Participants and Subscribers:** All participants, subscribers, and users of MARIS 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 MARIS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the MARIS System. PCC does not include original text or photographs.

**Participant Contribution:** All data that the Subscribers submit, contribute, or input in the MARIS 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 MARIS 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.

**Schedule of Fees:** MARIS's document that establishes the fees for MARIS Service.

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

# MARIS

## Participant Agreement

(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.

### **MARIS’S OBLIGATIONS.**

3. Subject to the terms and conditions of this Agreement and the MARIS Policies, MARIS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the MARIS 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 MARIS as set forth in the MARIS Policies. MARIS may require Individual Participant to change Individual Participant’s password at any time. The user ID and password will provide Individual Participants with access to all data and functions in the MARIS Service to which Individual Participants are entitled under the MARIS Policies. MARIS makes no warranties, however, that the MARIS Service will be available at all times. MARIS may use a third-party contractor, determined in MARIS’s sole discretion, to facilitate its responsibilities under this Agreement.

### **FIRM PARTICIPANT ACKNOWLEDGMENTS.**

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

5. **Editorial control.** MARIS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the MARIS 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, MARIS 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 MARIS Policies or infringement of intellectual property rights. Additionally, MARIS 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 MARIS 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) the MARIS 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. MARIS 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.** MARIS 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. MARIS reserves the right to distribute to third parties aggregated information about Firm Participant’s,

# MARIS

## Participant Agreement

Individual Participants, and Other Participants' and Subscribers' use of the MARIS Service, but not about Firm Participant's or Individual Participants' use specifically.

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

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

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

12. **IDX and VOW data access subject to separate agreement; third-party TOU.** Firm Participant acknowledges that access to MARIS's IDX or VOW database and data feeds can occur only upon execution of a separate written agreement between MARIS, Firm Participant and Subscriber, as applicable. Firm Participant acknowledges that access to third-party software offered via MARIS 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 MARIS Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate, strictly as permitted by the MARIS Policies. Except as expressly provided in this Agreement and the MARIS Policies, Firm Participant shall not copy, create derivative works of, distribute, perform, or display the MARIS 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. MARIS 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 MARIS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the MARIS Database, and the MARIS 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 MARIS Database, or the MARIS System available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement or the MARIS Policies. Failure to comply with this provision will result in a significant fine, as set forth in the MARIS 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 MARIS to permit MARIS to seek a protective order.

# MARIS

## Participant Agreement

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

16. **Participant Contribution.** With regard to any Subscriber making a Participant Contribution to the MARIS Service, Firm Participant warrants that the information submitted complies with all applicable laws, statutes, ordinances and regulations and the MARIS 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 MARIS System or MARIS Database, enters into a Subscriber agreement with MARIS. Firm Participant is liable for all fees due under each Subscriber agreement.

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

19. **List of Subscribers.** Firm Participant shall ensure MARIS has a current list of all of Subscribers; Firm Participant shall inform MARIS in writing of any change in the Subscribers within twenty-four hours of the change or the timeframe in the MARIS 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 MARIS System within such time as provided in the MARIS Policies. Pursuant to the MARIS Policies, Firm Participant shall provide to MARIS all documentation MARIS 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.

# MARIS

## Participant Agreement

### **OPTION I**

(a) **Assignment from Participant.** Firm Participant hereby unconditionally assigns to MARIS 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 MARIS.

(b) **MARIS Obligations.** MARIS 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 MARIS Database relating to Firm Participant's listings. MARIS shall use reasonable efforts to make quarterly registrations of the MARIS's copyrights in the MARIS Database; MARIS 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 MARIS 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) **MARIS has no obligations to protect.** Firm Participant acknowledges that: (i) MARIS makes no grant of license or assignment to Firm Participant of any rights in the MARIS Database except as set forth in paragraph 22; (ii) MARIS 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) **MARIS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm Participant's permission;** (v) MARIS 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 MARIS Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of MARIS, 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 MARIS all right, title and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law. MARIS hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty free license during the term of this Agreement to use the MARIS Software and the MARIS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the MARIS 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 MARIS Policies are prohibited. Title to the Licensed Materials remains at all times in MARIS 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 MARIS.

24. **Limitations on use by MARIS.** MARIS 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 MARIS Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after MARIS has provided notice of its intention to provide the Participant Contribution to the third party. If MARIS enters a data sharing agreement with any other multiple listing service (as that term is defined in MARIS Policies) MARIS 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.

# MARIS

## Participant Agreement

### FEES AND PAYMENT TERMS.

25. **Applicable fees.** Firm Participant shall pay the fees set forth in MARIS's official Schedule of Fees, which MARIS may amend at any time subject to the terms of Paragraph 29.

26. **Payment terms.** Firm Participant shall pay the fees according to the terms set out in the MARIS Policies.

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

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

29. **Fee increases.** MARIS may amend the Schedule of Fees at any time at its sole discretion. MARIS 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 MARIS at any time before the effective date of the increase.

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

### TERM AND TERMINATION.

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

32. **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 if the breach or nonperformance has not then been remedied.

33. **Termination for breach of MARIS Policies.** Paragraph 32 notwithstanding, MARIS may terminate this Agreement if Firm Participant fails to comply with the MARIS Policies; if Firm Participant violates or is alleged to have violated the MARIS 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 MARIS Policies. If in MARIS's judgment, however, a violation or alleged violation of the MARIS Policies is resulting in a continuing harm to MARIS or Other Participants or Subscribers, MARIS may suspend Firm Participant's access to the MARIS Database during the pendency of any hearing or appeal.

34. **Termination for failure to pay.** In the event Firm Participant fails to pay any fees required under this Agreement, MARIS may terminate service without being subject to arbitration. In its sole discretion, MARIS 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. 35. **Termination for convenience.** Either party may terminate this Agreement with or without cause, upon thirty days' written notice to the other party.

36. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) MARIS 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 MARIS Service; (b) Firm Participant shall purge all copies of the MARIS Software and the MARIS 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

# MARIS

## Participant Agreement

license to the Participant Contribution in Paragraph 21 Option I (b) and Paragraph 21 Option II(a), if any, shall immediately terminate.

**37. 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 MARIS notice to Subscriber, MARIS may in its sole discretion suspend Subscriber access to MARIS System and Subscriber license and access agreements. If MARIS does not exercise its right to suspend Subscriber access to the MARIS 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.**

**38. DISCLAIMER OF WARRANTIES.** MARIS PROVIDES THE MARIS SERVICE AND ALL COMPONENTS OF IT ON AN “AS IS,” “AS AVAILABLE” BASIS. USE OF THE MARIS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MARIS SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE MARIS AFFILIATES DO NOT WARRANT THAT THE MARIS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE MARIS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE MARIS SERVICE. THE MARIS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE MARIS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MARIS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The MARIS Service may contain third-party content, including hyperlinks to web sites operated by parties other than MARIS; MARIS 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 web sites’ operators.

**39. LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE MARIS 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 MARIS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE MARIS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE MARIS 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 MARIS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

**41. Indemnification.** Firm Participant shall defend, indemnify and hold the MARIS 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 MARIS Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the MARIS Service; (b) making unauthorized use of Subscriber’s password; (c) making unauthorized use of the MARIS 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.

**42. Acknowledgment.** Firm Participant acknowledges that MARIS 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.

# MARIS

## Participant Agreement

### DISPUTES AND REMEDIES.

43. **Injunctive relief.** Firm Participant acknowledges and agrees that the MARIS Software and MARIS Database are confidential and proprietary products of MARIS 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 MARIS Software or MARIS Database, MARIS 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.

44. **Dispute resolution.** In the event MARIS claims that Firm Participant has violated the MARIS Policies, MARIS may, at its option, resolve such a claim according to the disciplinary procedures set out in the MARIS Policies, provided MLS 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 34, 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 St. Louis County, Missouri, except that it may be held by telephone or other electronic means 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 St. Louis County, Missouri.

45. **Liquidated damages.** Firm Participant acknowledges that damages suffered by MARIS from access to the MARIS 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 MARIS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to MARIS 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 MARIS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Firm Participant shall be liable to MARIS for liquidated damages in the amount of \$5,000 (or the amount established in the MARIS Policies, whichever is greater) in addition to termination of this Agreement; and (b) in the event that Firm Participant makes unauthorized disclosure of any portion of the MARIS 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 MARIS Policies, whichever is greater) for each real estate listing disclosed in addition to termination of this Agreement.

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

### MISCELLANEOUS.

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

48. **Interpretation and amendment.** Firm Participant expressly consents to the execution of amendments by electronic means (such as web site “click through” agreements). MARIS 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 MARIS Service or MARIS 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.

# MARIS

## Participant Agreement

49. **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.

50. **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 38 through 42 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm Participant's access to the MARIS Service shall immediately terminate.

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

52. **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.

53. **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.

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