



BILLING POLICY

Last revised 12-1-2015

INTRODUCTION

HGMLS bills Participants for monthly MLS services at the beginning of each month. The monthly invoice will also include any listing fees and any additional service charges that were generated from the previous month's activity. Most charges are automatically generated by our computer system. Nevertheless, errors sometimes occur. There is a procedure, stated below, when a Participant believes there are incorrect listing fees or service charges appearing on the invoice.

For inquiries about your account, please contact Jennifer Gonzalez (ext. **3016**) at the White Plains offices.

1. HGMLS EMAILS STATEMENTS ON OR ABOUT THE FIRST BUSINESS DAY OF EACH MONTH. The statement reflects the current months MLS fee, and any listing fees or service charges you incurred during the **preceding** month.

2. PAYMENT IS DUE UPON RECEIPT OF THE STATEMENT AND IN NO CASE LATER THAN THE LAST BUSINESS DAY OF THE MONTH IN WHICH THE STATEMENT WAS ISSUED.

For example, a statement issued July 1st will be payable no later than July 31st.

3. IF PAYMENT IS NOT RECEIVED BY THE LAST BUSINESS DAY OF THE MONTH, HGMLS STARTS A PROCESS THAT RESULTS IN SUSPENSION OF SERVICE BY THE TENTH CALENDAR DAY OF THE FOLLOWING MONTH. THERE WILL BE A \$50.00 FEE ADDED TO THE MINIMUM BALANCE DUE FOR REACTIVATION OF SERVICES.

Suspension means that all service including on-line access, listing entry, etc. - everything - is stopped until payment is received. **Although service is stopped, the Participant will continue to incur the monthly participation fees.** Suspension ends when all outstanding charges are paid. HGMLS issues prior notice of pending suspension with the subsequent statement. In the example cited above, a failure to pay the July 1st invoice by August 10th would result in suspension of MLS services.



4. TERMINATION OF PARTICIPATION OCCURS AUTOMATICALLY IF AN ACCOUNT REMAINS UNPAID BY THE LAST BUSINESS DAY OF THE SECOND MONTH AFTER ISSUANCE OF THE STATEMENT. In the example cited above, if no payment is received, termination of participation would occur on August 30th. Termination means complete denial of all services, deletion of Participant's access code and removal of Participant's listings from the database. The Participant is solely responsible for notifying his/her clients of the listings' deletions and his/her non-participation in the MLS.

5. REINSTATEMENT AFTER TERMINATION OF SERVICES REQUIRES PAYMENT IN FULL OF ALL ACCOUNTS INCLUDING SECURITY DEPOSIT OF \$335, PLUS A \$200 REINSTATEMENT FEE, PLUS 1st MONTH PARTICIPATION FEE. In addition, the participant is responsible for re-entering his listings and will incur the listing entry fees.

6. CONTINUED DELINQUENCY AFTER TERMINATION RESULTS IN:

a] Referral of the account to a collection agency, and
b] referral of the delinquency to all Association of REALTORS® in which the former participant may hold membership, for appropriate action by those Associations. The former Participant will be required to pay for the collection agency fees in addition to the charges stated in paragraph 5 above, if reinstatement is desired.

7. IF PARTICIPANT EXHIBITS A PATTERN OF SUSPENSION OR TERMINATION, OR HAS CAUSED HGMLS TO PURSUE COLLECTIONS, HGMLS RESERVES THE RIGHT TO REQUIRE PAYMENT BY CASH OR CERTIFIED CHECK FOR UP TO TWELVE MONTHS.

8. PARTICIPANTS MAY WITHHOLD PAYMENT ON DISPUTED AMOUNTS CONCERNING LISTING FEES AND SERVICE CHARGES ONLY, NOT MONTHLY PARTICIPATION FEES.

The nature and amount of the disputed items must be reported **in writing** before payment is due, and this will prevent suspension or termination of services. However, the charges that are **not** in dispute must be paid on schedule and are subject to these policies. Please fill out a Member Billing Query Form online for any disputed charges and staff will render their decision. If staff does not resolve the issue to your satisfaction, you may take the dispute to the Rules Committee as described in the Rules and Regulations.

9. PAYMENTS CAN BE MADE BY CHECK OR CREDIT CARD.

Checks should be made payable to HGMLS, and sent to the White Plains office as not to delay processing. We accept Visa, Mastercard, American Express and Discover credit cards. Participants can make credit card payments online at www.HGAR.com. The responsible member will log in using their Association member number and password, click on Member Services from the top menu bar, and then proceed to **Pay Your HGMLS Bill**. If you cannot locate your Association membership number – please email us at: Support@HGAR.com and we will email you your username and password.



HGMLS Participant Package (Brokers/Owners)

This is to acknowledge that:

Name of Principal Broker: _____

Office Street Address: _____

City, State, Zip Code: _____

Business Tel #: _____ Ext: _____

Business Fax : _____

Home Street Address: _____

City, State, Zip Code: _____

Contact Tel #: _____

Email Address: _____

Business Web Address: _____

Type of real estate business applicant engages in:

Real Estate Brokerage [] Appraisal [] Other [] if other please specify: _____

I hereby subscribe to the Service and enclose the following initiation fee:

START-UP FEE: \$500
SECURITY DEPOSIT: \$335.00
1st MONTH'S PARTICIPATION FEE: \$165

I and my firm agree to abide by and be subject to the Rules and Regulations (as may be amended from time to time) of the Hudson Gateway Multiple Listing Service, Inc.

HGMLS bills monthly for services; the bills show detail of all the charges. Bills must be paid within 30 days of invoice date or the Participant is subject to suspension from HGMLS. After 60 days delinquency, HGMLS services are terminated. When a Participant resigns from HGMLS or is terminated from membership due to non-payment of charges, the Participant's listings are removed from the database and the Participant has a legal obligation to inform his clients of this circumstance.

Firm Name: _____

Signature of Participant: _____

Date: _____

Office #: _____
Member #: _____
For Office Use Only

Hudson Gateway Association of REALTORS® Hudson Gateway Multiple Listing Service, Inc.	One Maple Avenue White Plains, NY 10605 914.681.0833 Telephone	9 Coates Drive, Suite 1 Goshen, NY 10924 845.294.7905 Telephone	2 Medical Park Drive, Suite 17A West Nyack, NY 10994 845.735.0075 Telephone
HGAR.com	914.681.6044 Fax		



HGMLS Participation Payment & Start-Up

Firm Name: _____

Start-up Date*: _____

*Note: **Start up is as of the 1st business day of a month.**
We do not pro-rate fees for partial months.

I herewith submit payment of start-up fee in the amount of **\$500.**

Security Deposit of **\$335** and the first month's Participation fee of **\$165**
for a total of **\$1,000.**

___ Check Enclosed CK# _____

___ Charge to my VISA, MasterCard, Discover or American Express:

Card #: _____ Exp: ___/___

Signature of Cardholder: _____

Print Name: _____

FAX TO: 914-681-6044 or 845-294-3414
OR EMAIL Membership@HGAR.com

Office #: _____
Member #: _____
For Office Use Only

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To All Applicants of HGMLS, INC.

Using the form below, please report the name of the person in your firm who will be the official "Participant" in the Service.

The Participant must be a principal, partner, or other real estate licensee having an ownership interest in the real estate firm. The Participant is the person who files information with the HGMLS, receives information from HGMLS, and is responsible for the firm's transactions with HGMLS and for the acts of his or her associates as they may pertain to HGMLS business.

The designation of "Participant" affects voting rights, the operations and mailings of HGMLS and access to the database subsequent to any merger or dissolution or other change affecting the ownership of the firm. Therefore, please complete this form fully and accurately. Thank you.

Our Designated Participant is: _____

Name and Address of Firm: _____

Telephone Number of Firm: _____

Name of Respondent: _____

Signature of Participant/Respondent: _____

In addition to your designation of Participant, please report the names of ALL New York State real estate licensees who are affiliated with the Participant or who are otherwise operating at or through the Participant's office address as registered with HGMLS. HGMLS requires a list of ALL LICENSEES, regardless of whether they are active or inactive, REALTORS® or non REALTORS®, for reasons of security, assignment of access to the database, and registration for dispute resolution procedures, among other purposes. Failure of a Participant to report ALL LICENSEES may result in suspension or termination of services.

Name of Licensee (please print). Use reverse side or attach additional sheets as necessary.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Board in Which REALTOR Membership is Held:

HGAR

Other: _____

If other: Include a letter of good standing from your Primary Board of REALTORS

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HGAR.com	914.681.6044 Fax		



HGMLS Orientation

In accordance with Section 12:0 of the Rules & Regulations of the Hudson Gateway Multiple Listing Service: Any applicant for HGMLS Participation and any licensee affiliated with an HGMLS Participant who desires access to HGMLS-generated information shall complete if offered by HGMLS, an orientation program within thirty (30) days after access has been provided, which program shall consist of no more than eight (8) classroom hours devoted to the HGMLS Rules and Regulations and the operation of HGMLS.

Rules & Regs 9:30am-11:30am

Matrix 1: Intro to Matrix 12:30pm-3:45pm

Please check the Orientation you wish to attend from the available dates below:

- Date: **Tuesday, July 5, 2016**
Time: **9:30am to 3:45pm**
Location: **Orange** - 9 Coates Drive, Suite 1, Goshen, NY 10924
- Date: **Tuesday, July 12, 2016**
Time: **9:30am to 3:45pm**
Location: **Westchester** - One Maple Avenue, White Plains, NY 10605
- Date: **Friday, August 5, 2016**
Time: **9:30am – 3:45pm**
Location: **Rockland** - 2 Medical Park Drive, Suite 17A, West Nyack, NY 10994
- Date: **Thursday, August 11, 2016**
Time: **9:30am to 3:45pm**
Location: **Westchester** - One Maple Avenue, White Plains, NY 10605
- Date: **Thursday, September 1, 2016**
Time: **9:30am to 3:45pm**
Location: **Orange** - 9 Coates Drive, Suite 1, Goshen, NY 10924
- Date: **Tuesday, September 13, 2016**
Time: **9:30am to 3:45pm**
Location: **Westchester** - One Maple Avenue, White Plains, NY 10605
- Date: **Tuesday, October 4, 2016**
Time: **9:30am – 3:45pm**
Location: **Rockland** - 2 Medical Park Drive, Suite 17A, West Nyack, NY 10994
- Date: **Wednesday, October 12, 2016**
Time: **9:30am to 3:45pm**
Location: **Westchester** - One Maple Avenue, White Plains, NY 10605
- Date: **Tuesday, November 1, 2016**
Time: **9:30am to 3:45pm**
Location: **Orange** - 9 Coates Drive, Suite 1, Goshen, NY 10924
- Date: **Wednesday, November 9, 2016**
Time: **9:30am to 3:45pm**
Location: **Westchester** - One Maple Avenue, White Plains, NY 10605
- Date: **Thursday, December 1, 2016**
Time: **9:30am – 3:45pm**
Location: **Rockland** - 2 Medical Park Drive, Suite 17A, West Nyack, NY 10994
- Date: **Tuesday, December 13, 2016**
Time: **9:30am to 3:45pm**
Location: **Westchester** - One Maple Avenue, White Plains, NY 10605

I will attend the above MLS orientation

Name: _____
PLEASE PRINT

Signature: _____ Date: ____ / ____ / ____

FAX TO: 914-681-6044 or 845-294-3414
OR EMAIL Membership@HGAR.com

Member # _____ For Office Use Only

Hudson Gateway Association of REALTORS®
Hudson Gateway Multiple Listing Service, Inc.
HGAR.com

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West Nyack, NY 10994
845.735.0075 Telephone



2016 Fees and Charges

Start-up Fee, non-refundable	\$500.00	
Advance Security Deposit, to be applied to Participant's account upon separation from HGMLS or upon 16th month of participation, whichever is sooner	\$335.00	
Monthly Participation Fee, per office site	\$140.00 monthly	
Public Records Access Fee	\$25.00 monthly	
Listing Input		
Listing entered by Participant	\$4.00 per listing	
Status and Property Record changes		
Changes made by Participant	No charge	
Changes made by HGMLS staff*	\$10.00 per change	
*Except changes that are restricted to staff-only		
Photographs		
Failure to upload photo within 3 days of a listing entry	\$25.00	
Photo still not uploaded after 7 days of a listing entry	\$50.00	
Additional fee assessed if no photo has been uploaded or supplied by 30 days after the initial 30-day period		\$100.00 per infraction
Additional fee assessed for each and every 30-day period thereafter that a photo is not uploaded or supplied to HGMLS		\$100.00 for each 30-day period day period
Agent User Fee (per Agent)	\$95.00 per year	
<i>For non-Hudson Gateway Participants only. Participants whose affiliated Agents hold REALTOR® membership in Associations other than the Hudson Gateway Association of REALTORS® are assessed an annual charge of \$95.00 per agent who has a user ID and password to Matrix.</i>		
Affiliate Membership – Sold Only	\$900.00 per year	
Assessor Membership – (For Assessor's only) Sold Only	\$600.00 per year	

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2015 HGMLS FEES & CHARGES continued...

Service Charges, Fines:

Reactivation of Suspended Account*	\$50.00 per instance
Reactivation of Terminated Account*	\$200.00 per instance
<i>*All past due balances must be paid in full plus \$165.00 subscription fee.</i>	
Late (24+ hours) entering of listing to HGMLS	\$50.00 per instance
Late (24+ hours) reporting of any status changes	\$50.00 per instance
No Listing Agreement Uploaded within 24 hours	\$15.00 per instance
No Listing Agreement Uploaded within 7 days	\$50.00 per instance
No Listing Agreement Uploaded within 30 days	\$100.00 per instance
Failure to enter SOLD Status within 24 hours	\$50.00 per instance
Failure photo within three days of Listing Load (see "Photographs" on prev. page)	\$25.00 per instance
Failure photo within seven days of Listing Load (see "Photographs" on prev. page)	\$50.00 per instance
If no photo has been uploaded or supplied by 30 days after the initial 7-day period	\$100.00 per instance
Each and every 30-day period thereafter that a photograph is not uploaded or supplied to HGMLS 30-day period	\$100.00 for each
Failure to produce an executed status change upon request by HGMLS	\$500.00 per instance
Other Rules infractions	See Rules & Regs

Supra Lockbox & Key information:

eKey – must have Compatible Smart phone (Key year July – June, prorated quarterly).....	\$150.00
Xpress Key – annual lease, (Key year July – June, prorated quarterly).....	\$250.00 each
Xpress Key Insurance, (Valid for one lost key, July – June)	\$30.00 annually
Supra Lockbox Purchase.....	\$99.00 each + tax

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Hudson Gateway Multiple Listing Service, Inc.

HGMLS Participant Agreement

This AGREEMENT is made and entered into by Hudson Gateway Multiple Listing Service, Inc. ("HGMLS"), with offices at 60 South Broadway, White Plains, NY 10601; and _____ ("Participant"), with offices at _____.

DEFINITIONS AND USAGE.

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

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

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

HGMLS Policies: HGMLS's bylaws, rules and regulations, and policies and procedures adopted by HGMLS's board of directors or authorized delegates, as HGMLS amends them from time to time.

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

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

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

Other Participants and Subscribers: All Participants and Subscribers of HGMLS not party to this Agreement.

Participant Contribution: All data that the Subscribers submit, contribute, or input in the HGMLS System, including text, binary, and photographic image data, in any form now known or hereafter discovered.

Saved Information: Information that Subscribers store in the HGMLS System for their own later use that is not intended by them to be available to HGMLS's other participants and subscribers, including client prospect and contact information.

Subscribers: 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.

HGMLS'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the HGMLS Policies, HGMLS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the

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

PARTICIPANT ACKNOWLEDGMENTS.

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

5. **Editorial control.** HGMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the HGMLS 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, HGMLS 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 HGMLS Policies or infringement of intellectual property right.

6. **Conditions of service.** Participant must at all times during the term of this Agreement satisfy the prerequisites for participation in the HGMLS Service. The prerequisites are set out in the HGMLS Policies; at present, they include a requirement that Participant either (a) hold a real estate broker's license, be actively engaged in real estate brokerage, and offer and receive offers of compensation from other brokerage firms; or (b) 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 or otherwise fulfill the requirements as prescribed in the HGMLS Policies. Subscribers may enter and retrieve active listing information on the HGMLS Service only if Participant offers compensation to and accepts compensation from other principal brokers.

7. **Saved Information.** Saved Information may not always be available to Participant and may become available to unauthorized persons. HGMLS is not liable for unauthorized access to or loss of Saved Information.

8. **Disclosure to third parties.** HGMLS reserves the right to distribute to third parties certain information about Participant, including Participant's name and business address, phone number and email address. HGMLS reserves the right to distribute to third parties aggregated information about HGMLS participants' and subscribers' use of the HGMLS Service, but not about Participant's use specifically.

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

10. **Priority of agreements.** Participant must enter into this Agreement before any other Subscriber may obtain access to the HGMLS Service. Subscriptions of other Subscribers are dependent on this Agreement; any termination or suspension of this Agreement will result in termination or suspension of dependent Subscriber agreements.

11. **If Participant is an appraiser or appraisal firm,** Participant acknowledges that certain information in the HGMLS Database, including information about listings currently for sale, may be withheld from Participant pursuant to the HGMLS Policies.

12. **IDX and VOW data access subject to separate agreement.** Participant acknowledges that access to HGMLS's IDX or VOW database

and data feeds can occur only subject to a separate written agreement between HGMLS and Participant.

PARTICIPANT'S OBLIGATIONS.

13. **Use limited.** Participant shall use the HGMLS Service solely for the purpose of selling, listing, leasing, and appraising real estate. Except as expressly provided in this Agreement and the HGMLS Policies, Participant shall not copy, create derivative works of, distribute, perform, or display the HGMLS Service or any part of it.

14. **Confidentiality.** Participant shall maintain the confidentiality of its user ID and password; Participant shall not provide its ID and password to any other Subscriber or to any third party. Participant shall ensure that the Subscribers maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscribers obtains access to the HGMLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the HGMLS Database, and the HGMLS System, Participant shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the HGMLS Policies. Participant may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, Participant first gives reasonable notice to HGMLS to permit HGMLS to seek a protective order.

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

16. **Participant Contribution.** When making a Participant Contribution to the HGMLS Service, Participant warrants that the information submitted complies with the HGMLS 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. 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.** Participant shall ensure that each real estate and appraisal licensee affiliated with Participant, and each non-licensee affiliated with Participant who will have access to the HGMLS System or HGMLS Database, enters into a Subscriber Agreement with HGMLS. Participant is liable for all fees due under each Subscriber Agreement.

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

19. **List of Subscribers.** Participant shall ensure HGMLS has a current list of all of Subscribers; Participant shall inform HGMLS in writing of any change in the Subscribers within 24 hours of the change.

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

INTELLECTUAL PROPERTY.

21. **Election regarding copyrights in Participant Contributions.** Participant must elect from the following options. If no election is indicated, or if both options are checked, then Participant is not allowed to participate in HGMLS.

OPTION I

(a) **Assignment from Participant.** Participant hereby assigns to HGMLS 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 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 HGMLS.

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

OPTION II

(a) **License from Participant.** Participant hereby grants to HGMLS 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.

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

22. **Other licenses.** HGMLS hereby grants Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the HGMLS Software and the HGMLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the HGMLS Policies and only to deliver real estate brokerage or appraisal services to Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the HGMLS

Policies are prohibited. Title to the Licensed Materials remains at all times in HGMLS and shall not pass to Participant.

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

24. **Limitations on use by HGMLS.** HGMLS 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 HGMLS Service if Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after HGMLS has provided notice of its intention to provide the Participant Contribution to the third party.

FEES AND PAYMENT TERMS.

25. **Applicable fees.** Participant shall pay the fees set forth in HGMLS's official Schedule of Fees which HGMLS may amend at any time subject to the terms of Section 6(e).

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

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

28. **Taxes.** All fees for the HGMLS 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 HGMLS.

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

30. **Fines.** HGMLS may collect fines from Participant for violation of the MLS Policies by Participant and Subscribers. Payment terms for fines are set out in the HGMLS Policies. HGMLS 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 thereof if the breach or nonperformance has not then been remedied.

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

34. **Termination for failure to pay.** In the event Participant fails to pay any fees required under this Agreement, HGMLS may terminate service without being subject to arbitration, and HGMLS may bring any claims for fees to small claims court. In its sole discretion, HGMLS may suspend its performance under this Agreement rather than terminating it, in the event that Participant fails to pay fees required under this Agreement.

35. **Termination without breach.** Either party may terminate this Agreement with or without cause, upon thirty days' written notice to the other.

36. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) HGMLS shall deactivate Participant's user ID and password, and Participant shall have no further access to the HGMLS Service; (b) Participant shall purge all copies of the HGMLS Software and the HGMLS Database (except the Participant Contribution) from Participant's personal computers; and (c) all licenses granted hereunder, except the license to the Participant Contribution in Paragraph 21(b), if any, shall immediately terminate.

37. **Affect on Subscribers.** Upon termination of this Agreement the license and access agreements of all other Subscribers shall also immediately terminate.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

38. **DISCLAIMER OF WARRANTIES.** HGMLS PROVIDES THE HGMLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE HGMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE HGMLS SERVICE ARE AT THE SOLE RISK OF PARTICIPANT. THE HGMLS AFFILIATES DO NOT WARRANT THAT THE HGMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE HGMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE HGMLS SERVICE. THE HGMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE HGMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE HGMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The HGMLS Service may contain hyperlinks to web sites operated by parties other than HGMLS; HGMLS does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

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

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

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

42. **Acknowledgment.** Participant acknowledges that HGMLS 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.

DISPUTES AND REMEDIES.

43. **Injunctive relief.** Participant acknowledges and agrees that the HGMLS Software and HGMLS Database are confidential and proprietary products of HGMLS 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 HGMLS Software or HGMLS Database, HGMLS 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 HGMLS claims that Participant has violated the HGMLS Policies, HGMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the HGMLS Policies, provided MLS does not also base a claim that Participant has breached this Agreement on the same facts. 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 Westchester County, New York.

45. **Liquidated damages.** Participant acknowledges that damages suffered by HGMLS from access to the HGMLS Service by an unauthorized third party as a result of disclosure of Participant's password or an unauthorized disclosure by Participant of the HGMLS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to HGMLS to enter into this Agreement with Participant, Participant agrees that (a) in the event that any disclosure of Participant's password results in access to the HGMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Participant shall be liable to HGMLS for liquidated damages in the amount of \$15,000 (or the amount established in the HGMLS Policies, whichever is greater) and termination of this Agreement; and (b) in the event that Participant makes unauthorized disclosure of any portion of the HGMLS Database to any third party, Participant shall be liable for liquidated damages in the amount of \$15,000 (or the amount established in the HGMLS Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

46. **Legal fees.** In the event of legal action or arbitration between HGMLS and Participant, or HGMLS 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 HGMLS is the prevailing party in an action against a Subscriber, 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 HGMLS and Participant, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party.

48. **Interpretation and amendment.** Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). HGMLS may amend this agreement by providing 30 days' advance notice of the amendment to Participant. If Participant or any Subscriber continues to use the HGMLS Service or HGMLS Database after the expiration of the 30-day notice period, 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.

49. **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 HGMLS 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.

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. 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 and Participant's access to the HGMLS Service shall immediately terminate.

51. **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contacts made and performed in New York, 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 (iv) 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.

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

Hudson Gateway Multiple Listing Service, Inc.

Participant

Signature

Signature of principal

Print name

Print name of principal

Effective Date

Participant firm name

I am participating in HGMLS as a:

REAL ESTATE BROKER

REAL ESTATE APPRAISER