



**EAST TENNESSEE  
REALTORS®**

## **East Tennessee REALTORS® Principal Broker Application**

To join East Tennessee REALTORS, please complete the application form. Once the form has been completed, you may e-mail your application to Membership Director Teresa Tillery, [teresa@etnrealtors.com](mailto:teresa@etnrealtors.com).

The Association's goal is to get you up and running as a Realtor member as efficiently and quickly as possible. New members are required to complete the following:

- Complete the National Association of Realtors (NAR) online ethics course for new member
- Complete and pass the online Multiple Listing Service exam
- Complete NAR's online New Member Orientation and online Fairhaven course

**Links for the Ethics, MLS and NAR New Member Orientation will be sent via email when application is made.**

**Once your orientation goals are completed and passed, you will receive an email with your MLS access and eKey if applicable.**

**NOTE:** Reciprocal members only need to complete the MLS exam to obtain MLS access.

# East Tennessee REALTORS® Principal Broker Application

If you have any questions regarding the membership application or the process of joining, contact our Membership Department at 865-584-8647, ext. 1. Once you have completed the REALTOR application, please submit it and appropriate fees to East Tennessee REALTORS by email to [teresa@etnrealtors.com](mailto:teresa@etnrealtors.com)

Name as shown on license: \_\_\_\_\_

Preferred name: \_\_\_\_\_ Real Estate or Appraiser License Number: \_\_\_\_\_

Must be on license

Type of Membership  Principal Broker  REALTOR® Appraiser  Reciprocal MLS

Primary Field of Business:  Residential  Commercial

Residence Address: \_\_\_\_\_  
(Street) (City, State and Zip)

Name of Firm: \_\_\_\_\_ Firm License # \_\_\_\_\_

Firm Address: \_\_\_\_\_  
(Street) (City) (State) (Zip)

Please check preferred #  Home: \_\_\_\_\_  Cell: \_\_\_\_\_  Office: \_\_\_\_\_

Email Address: \_\_\_\_\_ Web Address: \_\_\_\_\_

Date First Licensed in TN: \_\_\_\_\_ Date license was placed with current firm: \_\_\_\_\_

Please list all REALTOR® boards/associations you currently or have ever belonged to: \_\_\_\_\_

If you are now or have ever been a REALTOR®, indicate your NAR membership (NRDS) #: \_\_\_\_\_

Has any money been paid to another Association for the current year's dues?  Yes  No  
*(If yes, please call the association for pricing.)*

If you speak another language and consent to having your name on our bilingual agent roster, please list the languages you speak: \_\_\_\_\_

\_\_\_\_\_  
Principal Broker's Signature

\_\_\_\_\_  
Date

## ASSOCIATION USE ONLY

Application Fee: \_\_\_\_\_

MLS Participation Fee: \_\_\_\_\_

Association: \_\_\_\_\_

TAR: \_\_\_\_\_

NAR: \_\_\_\_\_

EC: \_\_\_\_\_

# East Tennessee REALTORS® Principal Broker Application

## General Terms & Conditions of Membership

**Bylaws, policies and rules:** I agree to abide by the bylaws, policies and rules of the East Tennessee REALTORS®, the bylaws, policies and rules of the Tennessee Association of REALTORS®, and the constitution, bylaws, policies and rules of the National Association of REALTORS®, all as may from time to time be amended.

**Use of the term REALTOR®:** I understand that the professional designation REALTOR® is a federally registered trademark of the National Association of REALTORS® (“NAR”) and use of this designation is subject to NAR rules and regulations. I agree that I cannot use this professional designation until this application is approved, all my membership requirements are completed, and I am notified of membership approval in one of the designations. I further agree that should I cease to be a REALTOR®, I will discontinue use of the term REALTOR® in all certificates, signs, seals or any other medium.

**MLS Participation:** Mere possession of a broker’s license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm cooperates means that the participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS, share information on listed property and make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of their client(s). “Actively” means on a continual and ongoing basis during the operation of the participant’s real estate business. The “actively” requirement is not intended to preclude MLS participation by a participant or potential participant that operates a real estate business on a part-time, seasonal, or similarly timelimited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a participant or potential participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the participant or potential participant as long as the level of service satisfies state law.

The key is that the participant or potential participant actively endeavors to cooperate with respect to properties of the type that are listed on the MLS in which participation is sought. Cooperation is the obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interest of their clients. This requirement does not permit an MLS to deny participation to a participant or potential participant that operates a “Virtual Office Website” (VOW) (including a VOW that the participant uses to refer customers to other participants) if the participant or potential participant actively endeavors to cooperate. An MLS may evaluate whether a participant or potential participant actively endeavors during the operation of its real estate business to cooperate only if the MLS has a reasonable basis to believe that the participant or potential participant is in fact not doing so. The membership requirement shall be applied in a nondiscriminatory manner to all participants and potential participants.

**Permission to communicate:** By signing this application, I expressly authorize the Boards/Associations I have applied to, including the local, or their subsidiaries or representatives, to fax, email, telephone, text or send by U.S. mail to me, at the fax numbers, email addresses, telephone numbers and postal addresses herein, material advertising the availability of or quality of any property, goods or services offered, endorsed or promoted by the Boards/Associations.

**I certify that I have read and agree to the terms and conditions of this application and that all information given in this application is true and correct.**

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Signature of Applicant

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Date of Signature

### I Understand and Agree to the Following

(initial) I agree that I will complete mandatory New Member Orientation within 30 days from the date my Association application was processed.

(initial) I acknowledge that all DUES and FEES are NON-REFUNDABLE. Suspension or termination of my membership does not entitle me to a refund.

(initial) I agree to keep my MLS password confidential. I will not post, share, disseminate or record the password in any way.

# East Tennessee REALTORS® Principal Broker Application

## Annual Dues

Payment of Application Fee and Annual dues is required when the application is submitted. The Total Column represents the amount due the time the application is turned in, and the columns to the right (local, state, national, application fee, & MLS) show the breakdown of the total cost.

Application Fee is \$400 for primary members with MLS Access, Application fee is \$200 for reciprocal (MLS only).

<b>New Member Orientation</b>	<b>TOTAL</b>	<b>Local</b>	<b>State</b>	<b>National</b>	<b>Application Fee</b>	<b>MLS</b>
Jan.	<b>\$1,069.00</b>	\$180.00	\$120.00	\$201.00	\$400.00	\$168.00
Feb.	<b>\$1,004.25</b>	\$165.00	\$111.25	\$188.00	\$400.00	\$140.00
March	<b>\$939.50</b>	\$150.00	\$102.50	\$175.00	\$400.00	\$112.00
April	<b>\$1,210.75</b>	\$135.00	\$93.75	\$162.00	\$400.00	\$420.00
May	<b>\$1,146.00</b>	\$120.00	\$85.00	\$149.00	\$400.00	\$392.00
June	<b>\$1,081.25</b>	\$105.00	\$76.25	\$136.00	\$400.00	\$364.00
July	<b>\$1,016.50</b>	\$90.00	\$67.50	\$123.00	\$400.00	\$336.00
Aug.	<b>\$951.75</b>	\$75.00	\$58.75	\$110.00	\$400.00	\$308.00
Sept.	<b>\$887.00</b>	\$60.00	\$50.00	\$97.00	\$400.00	\$280.00
Oct.	<b>\$1,323.25</b>	\$45.00	\$41.25	\$84.00	\$400.00	\$252.00
Nov.	<b>\$1,258.50</b>	\$30.00	\$32.50	\$71.00	\$400.00	\$224.00
Dec.	<b>\$1,193.75</b>	\$15.00	\$23.75	\$58.00	\$400.00	\$196.00

The initial cost to join East Tennessee REALTORS is prorated based on the month of the join date. After you have established your Association membership and paid the initial cost to join, agents will be billed for the reoccurring annual fees and dues. Invoices are issued approximately three months prior to the billing due date. Annual membership dues are \$501, due every December 31. Annual MLS fees are \$336, due every June 30.

Commercial MLS fees are \$456 per year, and due every June 30 (prorated at the time of joining).

**NOTE:** Annual dues & fees are subject to change

### Credit Card Authorization

Date: \_\_\_\_\_ Member Name: \_\_\_\_\_ License #: \_\_\_\_\_

Type of Card:  Visa       MasterCard       Discover       Amex

Credit Card #: \_\_\_\_\_ Exp. Date: \_\_\_\_\_ CVV: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# East Tennessee REALTORS® Principal Broker Application

## Master Key Custody Agreement

IT IS HEREBY AGREED by and between EAST TENNESSEE REALTORS® MULTIPLE LISTING SERVICE, hereinafter referred to as the "Multiple;" and \_\_\_\_\_ hereinafter referred to as the "Holder."

1. KEY RECEIPT. The Holder hereby acknowledges receipt of master key Serial No. \_\_\_\_\_ (hereinafter referred to as the "key") from the Multiple.
2. CHANGE OF LICENSE. The Holder agrees that in the event of release or transfer of his license or suspension or revocation of his license, Holder will immediately notify the Multiple. In the event of transfer of license to another member firm, Holder agrees to submit immediately to the Multiple an Addendum to this agreement signed by the releasing Principal Broker and the new Principal Broker.
3. NO LOAN OF KEY. The Holder agrees not to loan the key to any person whomsoever, for any period of time no matter how short. The foregoing includes loan to appraisers, mortgage and utility company employees, builders, other *brokers* and *salesmen*, purchasers, sellers, and anyone else.
4. FINE & DAMAGES. In the event of violation of any provision whatsoever of this Agreement, the Holder agrees to immediately pay to the Multiple a fine of up to \$15,000.00 as then provided in the Multiple's rules. In addition to said fine, it is understood and agreed that should said key get into unauthorized hands, the security of all of the Multiple's key boxes could be destroyed & be of no future value to the Multiple. Therefore, the Holder agrees that should the Multiple, in the sole discretion of its Board of Directors, determine that such is the case, the Holder will immediately reimburse the Multiple for the total cost of all expenses incurred in connection with replacement of all its key boxes & master keys. Further, in the event that it shall be necessary for the Multiple to commence any legal proceedings against the Holder or any other person to enforce this Agreement, Holder agrees to pay all cost incurred by the Multiple in connection therewith, together with a reasonable attorney's fee for the Multiple.
5. FUTURE CHANGES. The parties hereto agree that the Multiple may, from time to time as it sees fit, amend, modify, and add to the provisions of this Agreement; and the Holder agrees that all such amendments, modifications, and additions shall become a part of the Agreement in like manner as if they had originally appeared herein, upon their passage by the Board of Directors of East Tennessee Realtors and their publication in the Multiple's bulletin.
6. LOCK BOX RULES. Holder agrees to adhere to all the Multiple Lockbox Rules as set forth in the MLS Rules and Regulations.
7. I, the Designated REALTOR® or Broker of record for the above-mentioned Holder, do hereby co-sign and agree that if said Holders license is released from my firm, transferred to a non-member or placed in retirement, I will notify the Multiple. If Holders license is transferred to another member firm, I will immediately inform the Multiple by Addendum. I further understand that any violation of this agreement by the Holder constitutes me to the same fine and damages as stated above.

\_\_\_\_\_  
Principal Broker

\_\_\_\_\_  
Date

\_\_\_\_\_  
Key Holder

\_\_\_\_\_  
Multiple's Manager  
East Tennessee REALTORS

## East Tennessee REALTORS® Principal Broker Application

**WAIVER OF MLS SUBSCRIPTION FEES** As established in MLS Policy Statement 7.43, Waivers for MLS Fees, Dues, and Charges, the individual(s) named on this Form shall be exempt from payment of the MLS Subscription Fees, provided such Waiver Applicant(s) continuously satisfies the following requirements.

1. Waiver Applicant(s) already subscribes to a different MLS where their principal broker is an MLS Participant
2. Waiver Applicant(s) does not, and will not, use the East Tennessee REALTORS MLS services and content, including, but not limited to:
  - a. Accessing current listing data, comp and statistical information/reports, and MLS data feeds
  - b. Using East Tennessee REALTORS MLS products and services available only to authorized MLS Subscribers affiliated with the MLS Participant

### **CERTIFICATION BY WAIVER APPLICANT'S MLS PARTICIPANT / PRINCIPAL BROKER**

I certify that the Waiver Applicant(s) named herein is/are affiliated with me and meets the above requirements, and therefore is/are eligible for a waiver of MLS Subscription Fee(s).

I understand that I will need to supply an additional signed Application Form for any future Waiver Applicant(s).

Further, I agree to notify the MLS within 10 calendar days if any waiver recipient becomes ineligible for a waiver. Simultaneously with such notice to the MLS, I will either (i) sever the agent from this office, or (ii) inform the agent that he/she must subscribe to the MLS within 10 business days of the notification. Such affirmative notice, and the subsequent completion of (i) or (ii) above, shall not constitute a breach of this agreement and shall not incur the penalties described below.

Penalties: I understand that any violation of the conditions herein will result in automatic revocation of the waiver from the individual recipient. I agree to pay MLS Subscription Fees, retroactive to the beginning of the current billing period or the date Applicant became ineligible of this Application Form (whichever is less), plus a \$200 non-compliance fee for each waiver recipient that has his or her waiver revoked, within 10 calendar days after the waiver recipient becomes ineligible for this waiver. I acknowledge that non-payment of the amounts owed by the due date, as indicated on the associated MLS invoice, will result in the MLS access for myself and all subscribers associated under my participation being suspended until all fees have been paid.

### **ADDITIONAL LOCAL WAIVER REQUIREMENT**

East Tennessee REALTORS MLS has imposed these additional waiver requirements applied to all Waiver Applicants:

Waiver Applicant is NOT a listing agent or co-list agent for any active listing filed with the East Tennessee REALTORS MLS;

Waiver Applicant is NOT part of a designated real estate "Team" where one or more of the other Team members are subscribers to the East Tennessee REALTORS MLS.

MLS Participant / Principal Broker confirms they have informed the below named applicants of all Waiver requirements.

\_\_\_\_\_  
Signature of MLS Participant / Designated Broker

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of MLS Participant / Designated Broker

\_\_\_\_\_  
Print Company Name/ MLS Office ID Code



## East Tennessee REALTORS® Participant Agreement

### East Tennessee REALTORS® Participant Agreement

This AGREEMENT is made and entered into by East Tennessee REALTORS (ETNR), with offices at 609 Weisgarber Rd., Knoxville, Tennessee, 37919; and

\_\_\_\_\_ ("Firm Participant") with offices at \_\_\_\_\_.

### DEFINITIONS AND USAGE

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

**ETNR Affiliates:** ETNR Affiliates means the Association and its officers, directors, employees, agents, representatives, licensors and shareholders.

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

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

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

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

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

**Individual Participants:** With regard to each office of Firm Participant, the individual responsible for Firm Participant's conduct under ETNR Policies that is a "participant" as that term is defined in the ETNR Policies.

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

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

**Saved Information:** Information that Subscribers store in the ETNR 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:** ETNR's document that establishes the fees for ETNR Service.

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

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

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

(b) Wherever the term "law" is used, it means all statutes, regulations, and case law, both state and federal, as they area mended. Without limiting the generality of the foregoing, "law" expressly includes all state and federal fair housing statutes and regulations.

### ETNR'S OBLIGATIONS

3. Subject to the terms and conditions of this Agreement and the ETNR Policies, ETNR shall



provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the ETNR 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 ETNR as set forth in the ETNR Policies. The user ID and password will provide Individual Participants access to all data and functions in the ETNR Service to which Individual Participants are entitled under the ETNR Policies. ETNR makes no warranties, however, that the ETNR Service will be available at all times.

#### **FIRM PARTICIPANT ACKNOWLEDGMENTS**

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

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

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 ETNR Service. The prerequisites are set out in the ETNR Policies; at present, they include a requirement that Individual Participants either (a) hold a real

estate broker's license, be actively engaged in real estate brokerage; or (b) be licensed or certified by an appropriate regulatory agency to engage in the appraisal of real property.

Individual Participants must maintain active membership in a REALTOR® association at all times during the term of this Agreement.

7. Saved Information. Saved Information may not always be available to Firm Participant and may become available to unauthorized persons. ETNR 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. ETNR 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. ETNR reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and Subscribers' use of the ETNR Service, but not about Firm Participant's or Individual Participants' use specifically.

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

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

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

12. IDX and VOW data access subject to separate agreement. Firm Participant acknowledges that access to ETNR's IDX or VOW database and data feeds can occur only subject to a separate written agreement between ETNR, Firm Participant and Subscriber, as applicable.

#### **FIRM PARTICIPANT'S OBLIGATIONS**

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

14. Confidentiality. Firm Participant shall maintain the confidentiality of its user ID and password. ETNR issues each Subscriber a separate ID and password, and Participant must not facilitate sharing of passwords among Subscribers. Firm 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 ETNR Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the ETNR Database, and the ETNR System, Firm 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 ETNR Policies. Firm 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, the disclosing Firm Participant first gives reasonable notice to ETNR to permit ETNR to seek a protective order.

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

16. Participant Contribution. With regard to any Subscriber making a Participant Contribution to the ETNR Service, Firm Participant warrants that the information submitted complies with the ETNR 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 ETNR System or ETNR Database, enters into a Subscriber agreement with ETNR. 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 ETNR Policies and with applicable laws. Firm Participant is liable for any Subscriber's breach of any agreement between the Subscriber and ETNR relating to the ETNR Service or violation of any of the ETNR Policies as if Firm Participant had committed it.

19. List of Subscribers. Firm Participant shall ensure ETNR has a current list of all of Subscribers; Firm Participant shall inform ETNR in writing of any change in the Subscribers within 24 hours of the change. 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 ETNR System within such time as ETNR shall provide in the ETNR Policies. Pursuant to the ETNR Policies, Firm Participant shall provide to ETNR all documentation ETNR 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 2.

**OPTION I**

A. Assignment from Participant. Firm Participant hereby unconditionally assigns to ETNR 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 ETNR.

B. ETNR Obligations. ETNR hereby grants to Firm Participant a non-exclusive, perpetual, worldwide, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sub-licenses through multiple tiers) the Participant Contribution and those portions of the ETNR Database relating to Firm Participant's listings. ETNR shall make quarterly registrations of the ETNR's copyrights in the ETNR Database; ETNR 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 ETNR a non-exclusive, perpetual, worldwide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sub-licenses through multiple tiers) the Participant Contribution. Firm Participant warrants that it has the authority to grant this license.

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

22. Other licenses. ETNR hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the ETNR Software and the ETNR Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the ETNR 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 ETNR Policies are prohibited. Title to the Licensed Materials remains at all times in ETNR 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; (b) Firm Participant has the written consent of any party necessary to provide the Participant Contribution to ETNR; and (c) the provision of selection, coordination, and arrangement to the ETNR System is a work made for hire under the Copyright Act of 1976. Your agreement that selection, coordination, and arrangement is a work for hire does not change ownership of the original text (like public remarks), photographs, or videos that you create for your listings.

24. Limitations on use by ETNR. ETNR 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 ETNR Service if Firm Participant has indicated in writing its desire to

withhold the Participant Contribution from such third party after ETNR has provided notice of its intention to provide the Participant Contribution to the third party. For purposes of the previous sentence, brokers participating in any MLS in a data sharing relationship with ETNR are subscribers to the ETNR Service.

## **FEES AND PAYMENT TERMS**

25. Applicable fees. Firm Participant shall pay the fees set forth in ETNR's official Schedule of Fees, which ETNR 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 ETNR Policies.

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

28. Taxes. All fees for the ETNR 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 ETNR.

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

30. Fines. ETNR may collect fines from Firm Participant and from Individual Participants for violation of the ETNR Policies by Firm Participant, Individual Participant and Subscribers. Payment terms for fines are set out in the ETNR Policies. ETNR 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 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 ETNR Policies. Paragraph 32 notwithstanding, ETNR may terminate this Agreement if Firm Participant fails to comply with the ETNR Policies; if Firm Participant violates or is alleged to have violated the ETNR 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 ETNR Policies. If in ETNR's judgment, however, a violation or alleged violation of the ETNR Policies is resulting in a continuing harm to ETNR or Other Participants or Subscribers, ETNR may suspend Firm Participant's access to the ETNR 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, ETNR may terminate service without being subject to arbitration. In its sole discretion, ETNR 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 without breach. 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) ETNR 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 ETNR Service; (b) Firm Participant shall purge all copies of the ETNR Software and the ETNR Database (except the Participant Contribution) from Firm Participant's personal computers, and shall cause Individual Participants and Subscribers to do the same; and (c) all licenses granted hereunder, except the license to the Participant Contribution in Paragraph 21 Option I(b) and Paragraph 21 Option II(a), if any, shall immediately terminate.

37. Effect on Subscribers. In the event of any termination or suspension of this Agreement, upon ETNR notice to Subscriber, ETNR may in its sole discretion suspend Subscriber access to ETNR System or terminate Subscriber license and access agreements. If ETNR does not exercise its right to suspend Subscriber access to the ETNR System or terminate Subscriber license and access agreements, the Subscriber license and access agreement shall continue in force with the intellectual property option selected by Firm Participant in the terminated agreement.

#### DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION

38. DISCLAIMER OF WARRANTIES. ETNR PROVIDES THE ETNR SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE ETNR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ETNR SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE ETNR AFFILIATES DO NOT WARRANT THAT THE ETNR SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE ETNR AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE ETNR SERVICE. THE ETNR AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE ETNR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ETNR SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The ETNR Service may contain hyperlinks to web

sites operated by parties other than ETNR; ETNR 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 ETNR 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 ETNR SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE ETNR SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE ETNR 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 ETNR SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

40. MAXIMUM AGGREGATE LIABILITY. IN NO EVENT SHALL ETNR BE LIABLE TO FIRM PARTICIPANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT HAS PAID ETNR, 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 ETNR 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 ETNR Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the ETNR Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the ETNR 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. Firm Participant acknowledges that ETNR 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. Firm Participant acknowledges and agrees that the ETNR Software and ETNR Database are confidential and proprietary products of ETNR 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 ETNR Software or ETNR Database, ETNR 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 ETNR claims that Firm Participant has violated the ETNR Policies, ETNR may, at its option, resolve such a claim according to the disciplinary procedures set out in the ETNR 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 through the use of a single arbitrator located within one hundred (100) miles of Knoxville. The arbitrator will be mutually agreed upon by the parties within twenty-one (21) days of the receipt of a written demand for arbitration tendered by the requesting party to the other party hereto. The arbitration shall take place within sixty (60) days of the demand for arbitration. Unless all parties to the dispute agree otherwise, any arbitration

hearing or proceeding hereunder shall be held in Knox County, Tennessee, except that it may be held by telephone if both parties agree. 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 Knox County, Tennessee.

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

## **MISCELLANEOUS**

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

47. Interpretation and amendment. Firm Participant expressly consents to the execution of amendments by electronic means (such as

web site "click through" agreements). ETNR may amend this agreement by providing 30 days' advance notice of the amendment to Firm Participant. If Firm Participant or any Subscriber continues to use the ETNR Service or ETNR Database after the expiration of the 30-day notice period, Firm Participant will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

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

49. Integration and severability. This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. 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 ETNR Service shall immediately terminate.

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

51. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation of receipt; (c) facsimile transmission, provided sender obtains confirmation of transmission; or (d) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

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

Firm Participant

East Tennessee REALTORS<sup>®</sup>

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Signature of Participant

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Signature

---

Firm Name

Firm MLS ID Number

---

Print Name

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Today's Date

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Effective Date