

East Tennessee REALTORS®
Participant/Subscriber Data Access Agreement

This **AGREEMENT** is made and entered into by Knoxville Area Association of REALTORS®, Inc. ("**ETNR**"), with offices at 609 Weisgarber Road, Knoxville, TN 37919; the real estate brokerage firm identified as "**Firm**" on the signature page, Exhibit A ("**Firm**"); the Licensees affiliated with Firm that are identified on the signature page, Exhibit A, if any (collectively, the "**Licensee Party**"); and the individual or business association identified as "**Third Party Vendor**" on the signature page, Exhibit A, if any ("**Third Party Vendor**").

DEFINITIONS

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

Confidential Information: "Confidential Information" means information or material proprietary to a party or designated "confidential" by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all ETNR Data, except to the extent to which this Agreement and the ETNR Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that ETNR obtains from any third party that ETNR treats as proprietary or designates as Confidential Information, whether or not owned or developed by ETNR; and (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

Data Interface: The transport protocols and data storage formats provided by ETNR for use by Firm, Licensee Party, and Third Party Vendor; ETNR may modify the Data Interface in its sole discretion from time to time.

Firm Internal Use (Broker Back Office): Any use of those portions of the ETNR Data relating to Firm's own listings; and any use of those portions of the ETNR Data relating to listings of Participants other than Firm that exposes ETNR Data only to Firm-Related Persons and to Licensees affiliated with Firm, subject to the ETNR Policies.

Firm-Related Persons: Third Party Vendor, if any, and employees of Firm who are not Licensees or broker/managers.

IDX: Use and display of portions of the ETNR Data under the Internet Data Exchange provisions of the ETNR Policies.

ETNR Data: Data relating to real estate for sale, previously sold, or listed for sale, and to ETNR Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into ETNR's databases by ETNR Participants and ETNR, or on their behalf.

ETNR Policies: ETNR's Rules and Regulations, as amended from time to time, and any operating policies promulgated by ETNR.

Licensee: Any person holding a real estate license in Tennessee who is not a Participant but who is subject to a Participant's supervision under the laws of Tennessee.

Participant: This term has the meaning given to it in the ETNR Policies. For purposes of this Agreement, "Participant" does not apply to participants of MLSs other than ETNR. Where applied in this Agreement to Participants other than Firm, "Participant" also includes Licensees affiliated with those Participants for whom the Participants are responsible under the laws of the State of Tennessee.

Second Level Domain: "Second Level Domain" has the meaning given to it in this paragraph. "**URL**" means a web address, including the

"http://" and any material appearing after a slash in the address. "**Domain Name**" means a URL, less the "http://" and any material appearing to the right of the next slash ("/") in the address. (So for example, in the URL "Http://janesmith.abcrealty.com/homepage.html", the Domain Name is "JANESMITH.ABCREALTY.COM".) "**Top Level Domain**" means the portion of the Domain Name to the right of the right-most period. (In the example, "COM".) "**Second Level Domain**" means that portion of a domain name to the left of the right-most period, up to the second period from the right, if any, plus the Top Level Domain. (In the example, "ABCREALTY.COM".) "**Third Level Domain**" means that portion of a domain name to the left of the second period from the right, if any, up to the third period from the right, if any, plus the Second Level Domain. (In the example, "JANESMITH.ABCREALTY.COM".).

THIRD PARTY VENDOR: the individual or business association identified as "Third Party Vendor" on the signature page, Exhibit A

VOW: Use and display of portions of the ETNR Data under the Virtual Office Website (VOW) provisions of the ETNR Policies.

ETNR's OBLIGATIONS

2. ETNR grants to Firm and Licensee Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the ETNR Data, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement; any other use of the KAAR Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. ETNR retains all rights not expressly granted herein. This license does not permit Firm, Licensee Party, or Third Party Vendor to store, download, frame, or "scrape" any of the ETNR Data except as expressly provided in this Agreement.

3. ETNR agrees to provide to Firm, Licensee Party, and Third Party Vendor, during the term of this Agreement, (a) access to the ETNR Data via the Data Interface under the same terms and conditions ETNR offers to other ETNR Participants; ETNR does not undertake to provide technical support for the Data Interface or the ETNR Data. The Data Interface, together with access to the ETNR Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or ETNR Data shall not constitute a default by ETNR under this Agreement.

FIRM'S OBLIGATIONS

4. Firm and Licensee Party shall comply with the ETNR Policies at all times. In the event of any perceived conflict between the ETNR Policies and this Agreement, the ETNR Policies shall govern.

5. Firm shall use the ETNR Data obtained under this Agreement for Firm Internal Use (Broker Back Office), IDX, and VOW use only. Licensee Party shall use the ETNR Data obtained under this Agreement for IDX and VOW use only. Any other use is strictly prohibited. Firm and Licensee Party shall not make the ETNR Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Licensee Party may display the ETNR Data on web sites only to the extent permitted by the ETNR Policies and then only on a site or sites resident at the second-level and third-level domain(s) indicated on the signature page, Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Licensee Party acknowledge that ownership and use rights relating to copyrights in the ETNR Data are defined in the ETNR Policies or in the terms of the participant and subscriber agreements between ETNR Firm and Licensee Party, or both. Firm and Licensee Party shall not challenge or take any action inconsistent with ETNR's ownership of

or rights in the ETNR Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If ETNR notifies Firm or Licensee Party of a breach of the KAAR Policies or this Agreement and Firm or Licensee Party does not immediately cure the breach, Firm and Licensee Party shall hold Third Party Vendor harmless from any liability arising from Third Party Vendor's cooperation with ETNR under Paragraph 10.

8. Firm and Licensee Party shall pay the fees, if any, that ETNR customarily charges other ETNR Participants for data access. By signing this Agreement, Firm and Licensee acknowledge receipt of this responsibility. Firm and Licensee Party acknowledge receipt of ETNR's current schedule of such fees, if any. ETNR may in its sole discretion establish or modify its schedule of fees upon written notice to Firm and Licensee Party. Firm and Licensee Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Licensee Party's and Third Party Vendor's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

THIRD PARTY VENDOR'S OBLIGATIONS

10. Third Party Vendor shall immediately correct any breach of this Agreement or violation of the ETNR Policies within its control, whether committed by Firm, Licensee Party, or Third Party Vendor, upon notice from ETNR.

11. Third Party Vendor acknowledges that (as among the parties to this Agreement) Firm and ETNR possess all right, title, and interest in all copyrights in the ETNR Data. Third Party Vendor shall not challenge or take any action inconsistent with ETNR's and Firm's ownership of or rights in the ETNR Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

12. Third Party Vendor shall not make the KAAR Data or the Confidential Information available to any third party, except on behalf of Firm and Licensee Party and in a manner consistent with Firm's and Licensee Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the KAAR Data, whether commercial or personal. **In the event that Vendor provides services to Participants other than Firm (or to Licensees affiliated with Firm other than the Licensee Party) Vendor must enter separate Agreements with KAAR. Third Party Vendor must ascertain, using the Data Interface on a daily basis, that each Participant to which Vendor provides services remains an eligible Participant; and in the case of Licensees, that each Licensee Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph will result in KAAR terminating all of the Third Party Vendor's access to the KAAR Data under this Agreement and all similar Agreements. By signing this Agreement, THIRD PARTY VENDOR acknowledges that it shall be responsible to secure an executed version of this Agreement with KAAR, the Firm and Licensee and each additional Participant to add additional Licensees affiliated with Firm as Licensee Parties. The failure of the THIRD PARTY VENDOR to secure this new additional Agreement shall constitute a material breach of the terms hereof and entitle KAAR to immediately terminate access to the data feed.** The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

13. Third Party Vendor is surety for Firm's and Licensee Party's obligations to pay fees under Paragraph 8. The provisions of the preceding sentence shall survive the expiration or other termination of this Agreement in perpetuity. Third Party Vendor shall notify KAAR within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

AUDITS OF COMPLIANCE

14. KAAR may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Licensee Party's, and Third Party Vendor's web sites and systems to ensure that KAAR Data is displayed in accordance with the

KAAR Policies; using all features available to end-users of Firm's, Licensee Party's, and Third Party Vendor's systems that employ the KAAR Data; and posing as consumers to register and test services Firm, Licensee Party, and Third Party Vendor make available to consumers using the KAAR Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

15. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

16. The term of this Agreement begins on the date that KAAR signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in KAAR; (b) 5 days after any party's notice to the others of its intent to terminate, with or without cause; (c) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (d) immediately upon Firm's notice to a Third Party Vendor that Third Party Vendor is no longer designated to provide IDX or VOW services to it; (e) with regard to any Licensee Party, immediately upon any event that results in the Licensee Party no longer being affiliated with Firm; (f) as provided in Paragraphs 25 and 28.

17. In the event Firm's privileges as a Participant (or Licensee Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and KAAR subsequently reinstates those privileges, this Agreement shall automatically be reinstated if KAAR resumes its obligations under Paragraphs 2 and 3. In the event Firm, Licensee Party, or Third Party Vendor breaches this Agreement and entitles KAAR to terminate under Paragraph 16, KAAR may in its sole discretion suspend its performance instead of terminating this Agreement. KAAR may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Licensee Party's, and Third Party Vendor's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, Firm, Licensee Party, and Third Party Vendor shall make no further use of the KAAR Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Licensee Party's rights under this Agreement are restored.

GENERAL PROVISIONS

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

19. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

20. **ETNR's Remedies.** (a) Injunctive relief: Because of the unique nature of the KAAR Data and Confidential Information, Firm, Licensee Party, and Third Party Vendor acknowledge and agree that KAAR would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate KAAR for a breach. KAAR is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain

any threatened, continuing or further breach by Firm, Licensee Party, or Third Party Vendor, or any one of them, without showing or proving any actual damages sustained by KAAR, and without posting any bond. (b) Liquidated damages: Firm, Licensee Party, and Third Party Vendor acknowledge that damages suffered by KAAR from access to the KAAR Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the KAAR Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to KAAR to enter into this Agreement, Firm, Licensee Party, and Third Party Vendor agree that in the event Firm, Licensee Party, Firm-Related Persons, or Third Party Vendor, or its employees, agents, or contractors, disclose any password to access the KAAR Data or disclose the KAAR Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Licensee Party, and Third Party Vendor shall be liable to KAAR for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Licensee Party, and Third Party Vendor under this paragraph is joint and several.

21. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL KAAR BE LIABLE TO FIRM, LICENSEE PARTY, OR THIRD PARTY VENDOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF KAAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL KAAR BE LIABLE TO FIRM, LICENSEE PARTY, OR THIRD PARTY VENDOR FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, LICENSEE PARTY, AND THIRD PARTY VENDOR HAVE PAID KAAR, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, LICENSEE PARTY, AND THIRD PARTY VENDOR ACKNOWLEDGE THAT KAAR PROVIDES THE KAAR DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY. KAAR SHALL NOT BE LIABLE TO FIRM, LICENSEE PARTY, OR THIRD PARTY VENDOR FOR ANY CLAIM ARISING FROM INACCURACIES IN THE KAAR DATA, ANY FAILURE TO UPDATE THE KAAR DATA PROMPTLY, OR THE KAAR DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. KAAR makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.**

22. **Dispute resolution; Attorney's fees.** In the event KAAR claims that Firm, Licensee Party, or Third Party Vendor has violated the KAAR Policies, KAAR may, at its option, resolve such a claim according to the disciplinary procedures set out in the KAAR Policies. Except as set forth in

the preceding sentence, any controversy or claim shall have venue before the state or federal courts in Knox County Tennessee. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Tennessee located in Knox County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to ETNR disciplinary procedures. If KAAR prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

23. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

24. **No Waiver.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.

25. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

26. **Entire Agreement.** Subject to KAAR Policies, this Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same.

27. **Relationship of the Parties.** The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of KAAR or have any authority to make any agreements or representations on the behalf of KAAR. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

28. **Severability.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.