



Knoxville Area Association of Realtors® 2021 Principal Broker Application

This packet contains the application forms for a REALTOR® membership with the Knoxville Association of Realtors®. The enclosed materials review the services, benefits, and responsibilities of your association membership.

To join KAAR, please complete the application form. Once the form has been completed, you may e-mail your application to Membership Director Teresa Tillery, teresa@kaarmls.com. You can also mail it to 609 Weisgarber Rd, Knoxville, TN 37919.

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

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

Once the Ethics and MLS exams are completed and passed, you will receive an email with your MLS access and eKey issuance. If all three components are not completed within 30 days, MLS and key access will be terminated.

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

*denotes required form

Page 2 – Membership Application*

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If you have any questions regarding this membership packet or the process of joining, contact our Membership Department at (865) 584-8647 ext. 1. Once you have completed the REALTOR® application, please submit the application and appropriate fees to the Knoxville Area Association of Realtors by e-mail (teresa@kaarmls.com), or mail to 609 Weisgarber Rd, Knoxville, TN 37919.

Exact name as shown on license _____ Ms. Mrs. Mr.

Preferred name _____ Real Estate or Appraiser License Number _____

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 #: _____
If you are a principle broker, please provide your firm license # and firm fax #.

Firm Fax #: _____

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 belong 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 KAAR for pricing.)

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

Would you be interested in joining the KAAR Young Professionals Network (YPN)? Yes No

Principal Broker's Signature Date

ASSOCIATION USE ONLY

Application Fee: _____

MLS Participate Fees: _____

KAAR: _____

TAR: _____

NAR: _____

EC: _____

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General Terms & Conditions of Membership

Bylaws, policies and rules:

I agree to abide by the bylaws, policies and rules of the Knoxville Area Association of REALTORS®, the bylaws, policies and rules of the Tennessee 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 offers or accepts cooperation and compensation 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 and /or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. “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 time-limited 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 make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. 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 make or accept offers of cooperation and compensation. An MLS may evaluate whether a participant or potential participant actively endeavors during the operation of its real estate business to offer or accept cooperation and compensation 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.

Signature of Applicant

Date of Signature

General Terms & Conditions of Membership

Initial below

I UNDERSTAND AND AGREE TO THE FOLLOWING

_____ I agree that I will complete mandatory New Member Orientation within 30 days from the date my KAAR application was processed.

_____ I agree that if I fail to complete the mandatory Orientation, I will have my REALTOR® membership suspended until I have completed the new member orientation.

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

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

_____ I agree to accept responsibility for any action I take under my password.

_____ I agree to issue the appropriate sign-off command when leaving a computer terminal unattended thus preventing unauthorized use of my password.

office 865 584 8647 *website* kaarmls.com
address 609 Weisgarber Rd, Knoxville, TN 37919

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2021 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 \$300 for primary members with MLS Access, Application fee is \$150 for primary members WITHOUT MLS access, and Application fee is \$150 for reciprocal members**

*****Double MLS column if you have both Residential & Commercial MLS**

2021 New Member	TOTAL	Local	State	National	Application Fee**	MLS***
Jan.	\$953.00	\$180.00	\$120.00	\$185.00	\$300.00	\$168.00
Feb.	\$888.75	\$165.00	\$111.25	\$172.50	\$300.00	\$140.00
March	\$824.50	\$150.00	\$102.50	\$160.00	\$300.00	\$112.00
April	\$760.25	\$135.00	\$93.75	\$147.50	\$300.00	\$84.00
May	\$696.00	\$120.00	\$85.00	\$135.50	\$300.00	\$56.00
June	\$967.75	\$105.00	\$76.25	\$122.50	\$300.00	\$364.00
July	\$903.50	\$90.00	\$67.50	\$110.00	\$300.00	\$336.00
Aug.	\$839.25	\$75.00	\$58.75	\$97.50	\$300.00	\$308.00
Sept.	\$775.00	\$60.00	\$50.00	\$85.00	\$300.00	\$280.00
Oct.	\$710.75	\$45.00	\$41.25	\$72.50	\$300.00	\$252.00
Nov.	\$646.50	\$30.00	\$32.50	\$60.00	\$300.00	\$224.00
Dec.	\$1,067.25	\$195.00	\$143.75	\$232.75	\$300.00	\$196.00

The initial cost to join KAAR is prorated based on the month of the join date. After you have established your KAAR 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 \$485, due every December 31. Annual MLS fees are \$336, due every June 30.

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: _____

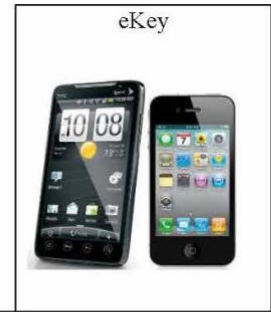
Signature: _____ Date: _____

Amount: _____

Supra Keys & Lockboxes

Before a Member Can Obtain a Supra Key, He/She Must Complete the Following Steps:

- **COMPLETE THE NEW MEMBER ETHICS AND MLS EXAM**
- Possess an active real estate license
- Have residential MLS access
- Be acquainted with MLS Rules regarding the common key lockbox service
- Complete a Master Key Custody Agreement
- Obtain a key within 30 days of completing orientation *or* sign a key waiver



Activation Fee	\$50
Annual cost	\$16.20/month

Please note that we cannot accept cash payments for Supra payments, but we can accept cash for the ActiveKey deposit.

Supra Lockboxes

If you bought lockboxes from another agent that were originally purchased from KAAR and you wish to transfer them into your name, you and the seller of the boxes must sign a Lockbox Transfer Form. KAAR will not program boxes obtained from any other sources.

The cost for new Supra Lockboxes is \$115 per box, which includes a lifetime warranty for KAAR members.

If you have a lockbox that has “died” on a house or has a battery life of five percent or less, you may bring it into the KAAR office for a replacement. If a lockbox has died on a house, you may use any means necessary to remove it, including cutting the shackle with bolt cutters. KAAR does not mind if you have to bring us the lockbox in pieces. As long as the lockbox number on the side of the device is legible, KAAR is happy to exchange it for you.

PLEASE NOTE: Because KAAR has no means of opening a box to retrieve key(s), it is strongly recommended that you have a spare key(s) of the listing on hand, as KAAR must return all faulty lockboxes to Supra.

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MASTERKEY CUSTODY AGREEMENT

IT IS HEREBY AGREED by and between KNOXVILLE AREA ASSOCIATION OF REALTORS" MULTIPLE LISTING SERVICE, hereinafter referred to as the "Multiple; and _____ hereinafter referred to as the "Holder."

- 2. KEY RECEIPT. The Holder hereby acknowledges receipt of master key Serial No. _____(hereinafter referred to as the "key") from the Multiple.
- 3. 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.
- 4. 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.
- 5. 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 \$500.00 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.
- 6. 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 the Knoxville Area Association of Realtors and their publication in the Multiple's bulletin.
- 7. LOCK BOX RULES. Holder agrees to adhere to all the Multiple Lockbox Rules as set forth in the MLS Rules and Regulations.
- 8. 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

Knoxville Area Association of REALTORS¹¹

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Please complete this form if you wish install the Supra eKEY app.

Supra Credit Card Authorization

If you wish to obtain your eKEY (key on your phone), please fill out the information below and return it with your application and Master Key Custody Agreement.

Name: _____ License # _____

Preferred 4-digit pin number _____

There will be a \$50 + tax Activation fee at the time your eKEY request is processed.

Credit Card #

Expiration Date

***If you would like to use another credit card to pay the monthly fee of \$16.20 please put that card here:**

Credit Card #

Expiration Date

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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 KAAR 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 KAAR 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

KAAR 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 KAAR 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 KAAR 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

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The Participant hereby acknowledges the Waiver Applicant(s) below have been informed of the KAAR waiver requirements and that any change to their waiver eligibility as defined herein must be communicated immediately to the Participant. Waiver Applicant(s) further acknowledges that non-compliance with the terms of the Application Form and its notification provisions will result in the Participant incurring Subscriber Fees and a non-compliance fee of \$200.00. Participant certifies that the following real estate and appraiser licensees meet **ALL** the requirements for receiving an MLS Subscription Fee waiver as described herein:

(This form must be filled out fully by the Participant/Principal Broker and signed by the Participant. You may make additional copies of this page if necessary)

WAIVER OF INDIVIDUALS AFFILIATED WITH MLS PARTICIPANT		
Applicant Name	Real Estate License #	Subscribing MLS

Signature of MLS Participant / Designated Broker Date

Printed Name of MLS Participant / Designated Broker Print Company Name/ MLS Office ID Code

MLS Participation Agreement

Name: _____

Office Address: _____

Primary Board/Association: _____

I agree as a condition of participation in the MLS to abide by all relevant Bylaws, Rules and other obligations of participation including payment of fees. I confirm that I currently, and will on a continual and ongoing basis in the operation of my real estate business activities, actively endeavor to list real property of the type filed with the MLS and/or accept offers of cooperation and compensation made by other Participants through the MLS. I agree that I must continue to engage in such activities during my participation in the MLS. I further agree to be bound by the Code of Ethics on the same terms and conditions as board/association members including the obligation to submit to ethics hearings and the duty to arbitrate contractual disputes with other REALTORS® in accordance with the established procedures of the board/association. I understand that a violation of the Code of Ethics may result in termination of my MLS privileges and that I may be assessed an administrative processing fee which may be in addition to any discipline, including fines, that may be imposed.

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 offers or accepts cooperation and compensation 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 and /or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "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 time-limited 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 make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. 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 make or accept offers of cooperation and compensation. An MLS may evaluate whether a participant or potential participant actively endeavors during the operation of its real estate business to offer or accept cooperation and compensation 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.

Signature: _____ Date: _____

Dear KAAR MLS Participant,

As you know, the listing broker owns the listing agreement. Prior to submitting a listing to the MLS, the listing broker should own, or have the authority to cause all listing content (e.g., photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property) to be published in the MLS compilation of listing information.

MLS Participants cannot be required to transfer any rights (including intellectual property rights) in their listings or listing content to MLS to obtain or maintain participatory rights, except that MLSs may require participants to consent to storage, reproduction, compiling, and distribution of listings and listing information to the extent necessary to fulfill the defined purposes of MLS. MLSs may also require participants to warrant that they have the rights in submitted information necessary to grant these rights to MLS.

The Digital Millennium Copyright Act (DMCA) is a federal copyright law that enhances the penalties for copyright infringement occurring on the Internet. The law provides exemptions or “safe harbors” from copyright infringement liability for online service providers (OSP) that satisfy certain criteria. Courts construe the definition of “online service provider” broadly, which would likely include MLSs as well as participants and subscribers.

One safe harbor limits the liability of an OSP that hosts a system, network or website on which Internet users may post user-generated content. If an OSP complies with the provisions of this DMCA safe harbor, it cannot be liable for copyright infringement if a user posts infringing material on its website. This protects an OSP from incurring significant sums in copyright infringement damages, as statutory damages are as high as \$150,000 per work. For this reason, it is highly recommended that MLSs, participants and subscribers comply with the DMCA safe harbor provisions discussed herein.

Kaar is now implementing agreements whereby the MLS acquires ownership of photos and text to protect you from copyright infringers who would use your works without your permission. NAR has been vigilant in defending MLSs from these copyright infringers. However, in order for NAR to defend KAAR and your works, you must sign the Knoxville Area Association of Realtors, Inc Participant Agreement.

You have two Options to choose from:

1. Assignment from Participant - KAAR shall make quarterly registrations of the KAAR's copyrights in the KAAR Database; KAAR shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Firm Participant's permission.

2. License from Participant - KAAR has no obligations to protect. *KAAR will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm Participant's permission.*

I have included Frequently Asked Questions to help you decide which option you want to choose for your firm.

Participants Frequently Asked Questions

1) Why do I need to copyright my listing content? What are the current concerns and advantages?

Copyright law protects the authors of creative works from others (called “copyright infringers” or just “infringers”) who would use those works without the authors’ permission. Prompt registration of copyright with the United States Copyright Office is required in order to get attorney fees and a special kind of damages against infringers. Registration is also a prerequisite to suing an infringer. Under KAAR’s copyright project, KAAR can register all the works in the MLS database for a few hundred dollars a year, and KAAR can take steps to sue anyone who infringes the copyrights in the MLS data. For brokers and agents to do this individually would cost a great deal more, and it would entail efforts that many brokers and agents may not want to exert.

To achieve these objectives, KAAR must obtain ownership of the copyrights in the materials it will register and enforce. KAAR has thus created an optional program where listing brokers get to decide whether to have KAAR register and enforce their copyrights. If they do, they permit KAAR to acquire the copyrights in data content relating to their listings. In return, KAAR promises in its agreement with the listing brokers to (1) obtain copyrights from the brokers’ agents; (2) register the copyrights; (3) take reasonable actions to prevent and pursue infringement; (4) grant back to the listing broker rights to use data relating to the broker’s own listings; and (5) refrain from distributing the broker’s listing data (except for core MLS purposes) unless MLS has the broker’s consent.

Brokers who prefer not to take part can opt out. They can negotiate with their own agents regarding copyright ownership; they will be responsible for their own copyright registrations and for preventing third parties from making unauthorized use of the brokers’ listing data. From these brokers and the agents in their offices, KAAR obtains only a license to use the copyright-protected content for core MLS purposes.

2) Who currently retains ownership of listing copyrights?

In the absence of written agreements to the contrary, the owner of the copyright in a photo or in original text is the author – the human being who created it, in most cases, the agent or assistant who wrote the text or snapped the photo. If an employee (not an independent contractor) creates a work within the scope of her employment, then the employer is the author. (This is not as common in the real estate industry as other industries, because most real estate agents and many assistants, etc., are independent contractors.)

If someone owns a copyright and allows someone else to use it, the owner is said to be “licensing” the copyright. Just because an agent submits the photo to her broker does not mean she transfers ownership to her broker. Just because a photographer takes a photo for an agent and permits the agent to put it on MLS does not mean that the photographer has given up his or her copyrights. Instead, they are licensing their rights to be used for particular purposes.

3) Which portion of the listing is copyright-protected?

Copyright protects anything that is the result of a creative process, including original text (like remarks) and perhaps even the listing price; photographs, whether taken with digital or traditional equipment; virtual tours (though the creators of tours often retain their copyrights); and any other creative text and graphic materials. Facts cannot be copyright-protected; the facts that the home on 123 Elm Street is for sale and that it has three bedrooms and encompasses approximately 2,100 square feet are not subject to copyright protection. (Copyright also does not relate to product or service names; designations of the origins of products and services, including product names and logos, are the subject of trademark law, something completely different.)

4) Would granting copyrights to MLS work against my fiduciary responsibility to my seller/client?

KAAR cannot give you legal advice about your fiduciary duties. KAAR’s attorneys believe, however, that copyright protects agents themselves and their customers from the predations of those who take listing data without permission. Sometimes, agent and seller interests may be at odds. For example, imagine an agent takes a set of particularly fine photos of her listing in June, but the house does not sell before the listing expires; imagine that the seller lists with another broker in November, but wants the ‘summer’ pictures from the first agent on MLS. Under copyright law, the first agent must consent before the second broker or seller can use her photos. If the seller claimed the first agent had an agency/fiduciary duty to allow the seller to reuse the pictures, KAAR would direct the first agent to her own attorney for counsel.

5) Would copyrighting restrict activity in the market and violate Federal anti-trust laws?

Generally, copyrights do not pose antitrust problems. In fact, a copyright is a sort of state-sponsored monopoly; an exception to the antitrust laws' view that monopolies are generally bad. Copyrights can be misused so as to bring about an antitrust violation, but such misuses are unlikely in the MLS/brokerage context.

6) How can this benefit my business?

It prevents other folks taking your work and profiting from it without your permission.

7) What would the cost be to me?

The cost is included in your MLS fees. KAAR does not anticipate the need to increase dues in order to pay for its copyright project.

8) Do NAR and Tennessee State Association of REALTORS® (TAR) have a position on copyrighting? Do we need their approval for any new documents we are utilizing?

NAR has encouraged the registration of copyrights in MLS databases. Under NAR policy, KAAR cannot require brokers to transfer any intellectual property rights to MLS. Consequently, KAAR's copyright project is optional for brokers. NAR reviews mandatory documents of MLSs affiliated with it; the proposed agreements are very similar to ones that NAR has previously approved. TAR does not maintain MLS policies that are binding on KAAR.

9) Can KAAR release/sell our data without permission from the Participants?

No. The proposed agreement between KAAR and the Participants ensures that Participants can opt out of any 'non-core' use of the MLS data that KAAR considers. Non-core uses include any distribution to non-Participants (like consumers or other businesses).

10) As a Broker, will I retain my right to give third-party entities the right to use my listing data? Will there be any restrictions?

The proposed agreements ensure that the listing broker has an unrestricted right to use content relating to her own listings, including licensing them for use by third parties (and even including the right to allow the third parties to license to other third parties). MLS commits in the proposed agreements to support the brokers' use of their own listing content.

11) Will there need to be a separate agreement between broker and agent? Can the broker incorporate the language into their Independent Contractor Agreement or will it need to be a separate document?

The proposed documents ensure that brokers participating in KAAR's copyright program obtain all the rights they will need from their agents without the need for separate agreements relating to copyright between brokers and agents. Nevertheless, the brokers can choose to address copyrights in their independent contractor agreements.

Brokers not participating in KAAR's copyright program may wish to obtain copyright assignments from their agents, but that would be subject to negotiation between brokers and agents.

12) What if the broker opts to copyright their listing data and one of their agents does not want to agree to copyright?

KAAR takes care of this issue with regard to brokers who participate in KAAR's copyright project. It obtains assignments from the agents and grants the appropriate rights to the broker. If the broker does not participate in KAAR's copyright project, the broker will have to negotiate copyright matters with each of its agents.

13) How will this impact an individual agent? Will they lose all rights to their photos and text?

If a broker takes part in KAAR's copyright project, KAAR takes copyright ownership in the listing content each of the broker's agents submits to the service. The listing broker, though not the owner of the copyrights, has a license from KAAR to use that content any way the listing broker wishes. Individual agents can negotiate in their independent contractor agreements with brokers the right to continue using listing content they supply under particular circumstances. As for brokers that do not participate in KAAR's copyright project, their agents continue to hold copyrights in works they create unless their independent contractor agreements with their brokers provide otherwise.

14) If an agent moves their license to another real estate company will they have the ability to take their data, assuming that the previous broker has given them permission?

The agent can use data from her listings at her previous company in any way her previous broker permits. Without the previous broker's permission, the agent would not be able to use data from her listings at the previous company. If she re-listed one of the same properties, she would have to take new pictures and write new remarks text.

15) How is the copyright initiative handled if an agent contracts with a professional photographer who already copyrights their photos?

Unless the agent has a written agreement with the photographer that transfers the copyrights from the photographer, the photographer continues to own the copyrights. The agent has only a license to use it for the purposes the photographer permits. The KAAR copyright project does not change these circumstances because the agent cannot transfer to KAAR a copyright that the agent does not own.

16) What if the seller does not agree to the copyright terms?

Sellers generally do not contribute copyright-protected material for inclusion in MLS. To the extent that the seller has taken a picture or drafted remarks for MLS, the seller would be treated like the photographer in the previous question. KAAR does not require brokers or sellers to enter listing agreements or other agreements where the seller must transfer ownership of copyrights to the listing broker or to KAAR. If a broker wishes to obtain copyrights from the seller, the broker should negotiate those terms with the seller. *KAAR does require* that the listing broker (and the seller and any photographers from whom the listing broker obtains copyright-protected work) have the rights necessary to provide the materials to MLS. Thus, if MLS were sued because a broker submitted someone's copyright-protected work without permission, the proposed agreements would require the infringing broker to pay MLS's defense costs.

Please continue to scroll down to electronically sign the Participants Copyright Agreement

Knoxville Area Association of REALTORS®, Inc.

Participant Agreement

This AGREEMENT is made and entered into by Knoxville Area Association of REALTORS®, Inc. ("KAAR"), 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.

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

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

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

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

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

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

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

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

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

Saved Information: Information that Subscribers store in the KAAR 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: KAAR's document that establishes the fees for KAAR 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 are amended. Without limiting the generality of the foregoing, "law" expressly includes all state and federal fair housing statutes and regulations.

KAAR'S OBLIGATIONS.

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

FIRM PARTICIPANT ACKNOWLEDGMENTS.

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

5. Editorial control. KAAR is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the KAAR 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, KAAR 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 KAAR 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 KAAR Service. The prerequisites are set out in the KAAR 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, 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. Individual Participants must maintain active membership in a REALTOR® association at all times during the term of this Agreement. Subscribers may enter and retrieve active listing information on the KAAR Service only if Firm Participant offers compensation to or accepts compensation from other principal brokers.

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

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

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

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

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

FIRM PARTICIPANT'S OBLIGATIONS.

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

14. Confidentiality. Firm Participant shall maintain the confidentiality of its user ID and password. KAAR 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 KAAR Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the KAAR Database, and the KAAR 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 KAAR 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 KAAR to permit KAAR 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 KAAR Software, necessary for Participant's use of the KAAR Service.

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

19. List of Subscribers. Firm Participant shall ensure KAAR has a current list of all of Subscribers; Firm Participant shall inform KAAR 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 KAAR System within such time as KAAR shall provide in the KAAR Policies. Pursuant to the KAAR Policies, Firm Participant shall provide to KAAR all documentation KAAR 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 KAAR 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 KAAR.

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

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

22. Other licenses. KAAR hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the KAAR Software and the KAAR

Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the KAAR 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 KAAR Policies are prohibited. Title to the Licensed Materials remains at all times in KAAR 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 KAAR; and (c) the provision of selection, coordination, and arrangement to the KAAR 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 KAAR.** KAAR 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 KAAR Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after KAAR 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 KAAR that includes an offer of interbroker compensation are subscribers to the KAAR Service.

FEES AND PAYMENT TERMS.

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

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

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

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

30. **Fines.** KAAR may collect fines from Firm Participant and from Individual Participants for violation of the KAAR Policies by Firm Participant, Individual Participant and Subscribers. Payment terms for fines are set out in the KAAR Policies. KAAR 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 KAAR Policies.** Paragraph 32 KAAR Participant Agreement

notwithstanding, KAAR may terminate this Agreement if Firm Participant fails to comply with the KAAR Policies; if Firm Participant violates or is alleged to have violated the KAAR 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 KAAR Policies. If in KAAR's judgment, however, a violation or alleged violation of the KAAR Policies is resulting in a continuing harm to KAAR or Other Participants or Subscribers, KAAR may suspend Firm Participant's access to the KAAR 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, KAAR may terminate service without being subject to arbitration. In its sole discretion, KAAR 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) KAAR 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 KAAR Service; (b) Firm Participant shall purge all copies of the KAAR Software and the KAAR 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 KAAR notice to Subscriber, KAAR may in its sole discretion suspend Subscriber access to KAAR System or terminate Subscriber license and access agreements. If KAAR does not exercise its right to suspend Subscriber access to the KAAR 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.** KAAR PROVIDES THE KAAR SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE KAAR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE KAAR SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE KAAR AFFILIATES DO NOT WARRANT THAT THE KAAR SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE KAAR AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE KAAR SERVICE. THE KAAR AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE KAAR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE KAAR SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The KAAR Service may contain hyperlinks to web sites operated by parties other than KAAR; KAAR 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 KAAR 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 KAAR SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE KAAR SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE

KAAR 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 KAAR SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

40. MAXIMUM AGGREGATE LIABILITY. IN NO EVENT SHALL KAAR BE LIABLE TO FIRM PARTICIPANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT HAS PAID KAAR, 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 KAAR 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 KAAR Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the KAAR Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the KAAR 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 KAAR 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 KAAR Software and KAAR Database are confidential and proprietary products of KAAR 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 KAAR Software or KAAR Database, KAAR 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 KAAR claims that Firm Participant 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, 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 KAAR from access to the KAAR 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 KAAR Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to KAAR 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 KAAR Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Firm Participant shall be liable to KAAR for liquidated damages in the amount of \$5,000 (or the amount established in the KAAR 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 KAAR 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 KAAR 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 KAAR 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). KAAR 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 KAAR Service or KAAR 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 KAAR 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 conflicts 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.

Knoxville Area Association of REALTORS®, Inc.

Firm Participant

Signature

Signature of Participant

Print name

Firm name

Firm MLS ID#

Effective Date

Date _____