

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.*

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; and (b) Firm Participant has the written consent of any party necessary to provide the Participant Contribution to KAAR.

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 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

Donna E. Roach, MLS Director
Signature

Signature of Participant

DONNA E. Roach
Print name

Firm name Firm MLS ID#

6-9-16
Effective Date

Date _____