



MLS ONLY APPLICATION FORM

Name: _____

Firm Name: _____

Firm Address: _____

Firm Phone #: _____

Home Address: _____

Home Phone #: _____

Real Estate License #: _____ State: _____

E-mail Address: _____

Are you a member of a Board or Association of REALTORS®? Yes _____ No _____

If yes submit the following information:

1. Name of member Board/Association: _____

2. Membership classification: _____ Designated REALTOR® _____ REALTOR®
_____ REALTOR - Associate®

3. A letter from your Board or Association verifying your membership classification.

Signature of Applicant: _____ Date: _____

Signature of MLS Participant (Broker): _____

Complete the following for Computer Access:

Password: _____

Your personal password must consist of 8 characters. Do not include spaces or punctuation characters.

If you have any questions, please contact MAAR at 901.685.2100.

Please send completed forms to MAAR, 6393 Poplar Avenue, Memphis, TN 38119 or fax to Member Services at 901.761.4003 or e-mail to membership-mls@maar.org.



MLS ORIENTATION

Welcome to the Paragon Multiple Listing Service.

MLS Membership Requirements:

1. Submit the following documents

- ☐ Completed Application signed by both the Designated REALTOR® and applicant
- ☐ Copy of Broker, Affiliate Broker's or Appraiser's License

2. Pay the following fees

- ☐ MLS Orientation Fee (non-refundable)
- ☐ MLS Usage Fee
- ☐ SentiCard (Optional)*

3. Attend MLS Orientation

New applicants must attend the MLS Orientation given by the Memphis Area Association of REALTORS® within 60 days of submitting their application. Failure to complete the course within the 60-day time period will result in suspension of MLS privileges until Orientation is attended.

Application Deadlines

**12pm, Friday
prior to MLS Orientation.**

To reserve a place in Orientation, applications and payment for all dues and fees must be received by 12pm, Friday prior to Orientation.

MLS Orientation

TIME: **MLS Orientation: 9:00 a.m. – 12:00 p.m.**

PLACE: **Memphis Area Association of REALTORS® Education Center
6393 Poplar, Memphis, TN**

NOTE (1): *MLS services, including SentiLock™ Access activation, will be provided to MLS subscribers for up to 60 days prior to attending MLS Orientation and Paragon Training, provided application, copy of license and all fees are submitted. SentiLock™ Access will be issued only after Access training quiz is completed and returned to MAAR.*

NOTE (2): *If you are the Principal Broker complete the Participant Agreement; If you are an Affiliate-Broker or Broker, please complete the Subscriber Agreement.*

FOR ADDITIONAL INFORMATION CALL MAAR AT 901-685-2100

MLS New Member Worksheet

Submit this worksheet with your payment and application:

Name _____ Email Address _____

Firm Name _____

Office Address _____

Real Estate License Number _____

Date License Issued or Received _____

I. Payment (To determine amount for Line 2, see Fees Schedule)

MLS is mandatory for licensees of MLS firms.

- | | |
|------------------------------------------------------------------|-----------|
| 1. MLS Firm Initiation Fee (For Designated REALTORS® only) | \$ 200.00 |
| 2. MLS Orientation Fee | \$ 150.00 |
| 3. Transfer Fee | \$ _____ |
| 4. Reinstatement fee | \$ _____ |
| 5. MLS Usage Fee..... | \$ _____ |
| 6. SentiLock Access Fee (Optional) | \$ _____ |
| 7. Total (Add lines 1 through 6 and enter total here) | \$ _____ |

MLS Orientation fee \$150

Method of Payment:

Check _____ Check Number _____

(Make check payable to MAAR or Memphis Area Association of Realtors®)

Credit Card _____ Credit Card Number _____ Exp. Date: _____

Cash _____ American Express, Discover, MasterCard or VISA

II. CHECK DATE YOU WILL ATTEND MLS ORIENTATION:

_____ Wed., January 15	
_____ Wed., February 5	_____ Wed., August 13
_____ Wed., March 19	_____ Wed., September 10
_____ Wed., April 9	_____ Wed., October 8
_____ Wed., May 7	_____ Wed., November 5
_____ Wed., June 11	_____ Wed., December 17

III. PASSWORD: Please provide a password. The password is used to access the MLS system and your member records. Your personal password must consist of **8-12** characters. **1 upper case alpha, 1 lower case alpha and 1 number. Cannot include spaces or your name.**

YOUR PERSONAL PASSWORD: _____

Send application to memberservices@maar.org or fax to 901761-4003

MLS Usage Fees

Line 5: MLS Usage Fee: Mandatory for licensees of MLS firms. The fee is a semi-annual fee. The fee is prorated for new subscribers according to the month your sponsoring broker received your license. The fee is \$360 semi-annually for all counties. Enter the pro-rated amount for the county and the current month below on Line 5.

	All Counties			All Counties
Jan.- Feb.	\$112.00		July-Aug.	\$130.00
Feb.-Aug.	\$446.00		Aug.-Feb.	\$455.00
Mar.-Aug.	\$390.00		Sept.-Feb.	\$390.00
Apr.-Aug.	\$325.00		Oct.-Feb.	\$325.00
May-Aug.	\$260.00		Nov.-Feb.	\$260.00
June-Aug.	\$195.00		Dec.-Feb.	\$195.00

Line 6: SentriLock Access (Optional): The price of a SentriLock Access is \$25.00. Access will not be given until your license becomes active, a REALTOR™ Lockbox Agreement has been processed and you have completed the Access training quiz.

Memphis Area Association of REALTORS®
Participant Agreement

This **AGREEMENT** is made and entered into by Memphis Area Association of REALTORS® ("**MAAR**"), with offices at 6393 Poplar Avenue, Memphis, TN 38119; and _____ ("**Firm**"), 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, the individual responsible for Firm's conduct under MAAR Policies that is a "participant" as that term is defined in the MAAR Policies.

MAAR Associates: MAAR Associates means MAAR and its officers, directors, employees, agents, representatives, licensors and shareholders.

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

MAAR Policies: MAAR's then current bylaws, rules and regulations, and policies and procedures promulgated by MAAR, as MAAR amends them from time to time.

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

MAAR Software: MAAR's proprietary software interface(s) to the MAAR System.

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

Other Participants and Subscribers: All participants and subscribers of MAAR not party to this Agreement, including Firms' employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

Participant Compilation Contribution or "PCC." All selection, coordination, and arrangement by Subscribers of the listing information submitted, contributed, or input in the MAAR System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the MAAR System. PCC does not include original text or photographs.

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

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

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

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

- (a) Wherever the term "including" is used, it means, "including, but not limited to."
- (b) The singular and plural numbers and masculine, feminine, and neuter genders of words are fully interchangeable.
- (c) Wherever the term "law" is used, it means all statutes, regulations, and case law, both state and federal, as they are

amended. Without limiting the generality of the foregoing, "law" expressly includes all state and federal fair housing statutes and regulations.

MAAR'S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the MAAR Policies, MAAR shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the MAAR service by virtue of this Agreement or another license agreement; and Individual Participants for which Firm is responsible shall have all rights and obligations of a participant in MAAR as set forth in the MAAR Policies. The user ID and password will provide Individual Participants access to all data and functions in the MAAR Service to which Individual Participants are entitled under the MAAR Policies. MAAR makes no warranties, however, that the MAAR Service will be available at all times. MAAR may use a third party contractor, determined in MAAR's sole discretion, to facilitate its responsibilities under this Agreement.

FIRM'S ACKNOWLEDGMENTS.

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

5. **Editorial control.** MAAR is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the MAAR 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, MAAR 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 MAAR Policies or infringement of intellectual property right. Additionally, MAAR shall have the right to alter and/or remove metadata and copyright management information contained in the Participant Contribution.

6. **Conditions of service.** Firm must at all times have an Individual Participant designated for each office. Firm shall ensure that at all times Individual Participants for which Firm is responsible under this Agreement satisfy the prerequisites for participation in the MAAR Service. The prerequisites are set out in the MAAR 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 in MAAR's multiple listing service in accordance with MAAR Policies and NAR policy; 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 MAAR Service only if Firm offers compensation to or accepts compensation from other principal brokers in MAAR's multiple listing service in accordance with MAAR Policies and NAR policy. Firm Participant and Individual Participant will comply with the MAAR Policies at all times. Additionally, Firm Participant and Individual Participant will comply with all applicable laws, statutes, ordinances and regulations in performance of their respective obligations under this Agreement, including the Fair Housing Act (42 U.S.C. §3601 et. seq.) and the Americans with Disabilities Act (42 U.S.C. §12101 et. seq.).

7. **Saved Information.** MAAR will use commercially reasonable efforts to store Saved Information. However, Firm acknowledges that Saved Information may not always be available to Firm and despite MAAR's security protocols may become available to unauthorized persons. MAAR is not liable for unauthorized access to or loss of Saved Information. Firm 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.** MAAR reserves the right to distribute to third parties certain information about Firm, including Firm's

and Individual Participants' names and business addresses, phone numbers and email addresses for any MAAR business purposes. MAAR reserves the right to distribute to third parties aggregated information about Firm's, Individual Participants, and Other Participants' and Subscribers' use of the MAAR Service, but not about Firm's or Individual Participants' use specifically.

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

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

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

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

FIRM'S OBLIGATIONS.

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

14. Confidentiality. Firm shall maintain the confidentiality of its user ID and password and Firm shall ensure that each Subscriber maintains the confidentiality of their user IDs and passwords. MAAR issues each Subscriber a separate ID and password, and Participant must not facilitate sharing of passwords among Subscribers. Firm shall ensure that no one but authorized Subscribers obtains access to the MAAR Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the MAAR Database, and the MAAR System, Firm shall take the greater of reasonable care or the care it takes to protect its own confidential information. Firm and Individual Participant shall not make any user IDs, passwords, the MAAR Database, or the MAAR System available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement or the MAAR Policies. Failure to comply with this provision will result in a significant fine, as set forth in the MAAR Policies. Firm 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 first gives reasonable notice to MAAR to permit MAAR to seek a protective order.

15. Equipment. Firm shall acquire and maintain all personal computers, modems, data connections, and computer software, other than the MAAR Software, necessary for Firm's use of the MAAR Service. MAAR does not provide support for personal computers, modems, data connections, and computer software, or other hardware or software, other than the MAAR System.

16. Participant Contribution. With regard to any Subscriber making a Participant Contribution to the MAAR Service, Firm warrants that the information submitted complies with all applicable laws, statutes, ordinances and regulations and the MAAR 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 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 shall ensure that each Subscriber who will have access to the MAAR System or MAAR Database enters into a Subscriber agreement with MAAR. Firm is liable for all fees due under each Subscriber agreement.

18. Subscriber supervision. Firm shall ensure that all Subscribers comply at all times with the MAAR Policies and with applicable laws. Firm is liable for any Subscriber's breach of any agreement between the

Subscriber and MAAR relating to the MAAR Service or violation of any of the MAAR Policies as if Firm had committed it.

19. List of Subscribers. Firm shall ensure MAAR has a current list of all of Subscribers; Firm shall inform MAAR in writing of any change in the Subscribers in accordance with the MAAR Policies.

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

INTELLECTUAL PROPERTY.

21. Election regarding copyrights in Participant Contributions. Firm 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 II.

☐ OPTION I

(a) **Assignment from Participant.** Firm hereby unconditionally assigns to MAAR all right, title and interest in the Participant Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; Firm warrants that it has the authority to make this assignment. Firm 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 MAAR.

(b) **MAAR Obligations.** MAAR hereby grants to Firm 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 MAAR Database relating to Firm's listings. MAAR shall use reasonable efforts to make quarterly registrations of the MAAR's copyrights in the MAAR Database; MAAR shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Firm's permission.

☐ OPTION II

(a) **License from Participant.** Firm hereby grants to MAAR 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 warrants that it has the authority to grant this license.

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

22. Other provisions. Pursuant to the MAAR Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of MAAR, which shall be deemed the PCC's author for purposes of copyright law. If for any reason the PCC cannot be provided as a work made for hire, you agree to assign and hereby do assign to MAAR all right, title and interest in the PCC, including, without any limitation, any copyrights therein under United States and international copyright law. MAAR hereby grants Firm Participant a personal, non-exclusive, non-

transferable, and royalty-free license during the term of this Agreement to use the MAAR Software and the MAAR Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the MAAR Policies and only to deliver real estate brokerage or appraisal services to Firm's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the MAAR Policies are prohibited. Title to the Licensed Materials remains at all times in MAAR and shall not pass to Firm.

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

24. Limitations on use by MAAR. During the term of this Agreement, MAAR shall use the Participant Contribution as permitted under the MAAR Policies and NAR policy, and for other such purposes and uses with the consent of Firm. In accordance with MAAR Policies and NAR policy, MAAR agrees to provide Firm notice of its intention to provide the Participant Contribution to a third party, who is not a real estate brokerage or appraisal subscriber to the MAAR Service, if such notice is required under the MAAR Policies or NAR policy, and agrees not to license or distribute the Participant Contribution if Firm has indicated in writing its desire to withhold the Participant Contribution from such third party. For purposes of the previous sentence, brokers participating in any MLS in a data sharing relationship with MAAR that includes an offer of interbroker compensation are subscribers to the MAAR Service.

FEES AND PAYMENT TERMS.

25. Applicable fees. Firm shall pay the fees set forth in MAAR's official Schedule of Fees, which MAAR may amend at any time subject to the terms of Paragraph 29.

26. Payment terms. Firm shall pay the fees according to the terms set out in the MAAR Policies.

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

28. Taxes. All fees for the MAAR 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 shall pay all such taxes and levies other than any tax or levy on the net income of MAAR.

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

30. Fines. MAAR may collect fines from Firm and from Individual Participants and Subscribers for violation of the MAAR Policies by Firm, Individual Participant and Subscribers. Payment terms for fines are set out in the MAAR Policies. MAAR may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION.

31. Term. This Agreement shall commence upon the Effective Date set forth below and shall continue thereafter on a month-to-month basis until terminated.

32. Termination for breach. Either party may terminate this Agreement in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement. Any such termination shall become effective upon the expiration of three days after written notice to the breaching party if the breach or nonperformance has not then been remedied.

33. Termination for breach of MAAR Policies. Paragraph 32 notwithstanding, MAAR may terminate this Agreement if Firm fails to comply with the MAAR Policies; if Firm violates or is alleged to have violated the MAAR Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or appeal

rights of Firm have expired as provided in the MAAR Policies. If in MAAR's judgment, however, a violation or alleged violation of the MAAR Policies is resulting in a continuing harm to MAAR or Other Participants or Subscribers, MAAR may suspend Firm's access to the MAAR Database during the pendency of any hearing or appeal.

34. Termination for failure to pay. In the event Firm fails to pay any fees required under this Agreement, MAAR may terminate service without being subject to arbitration. In its sole discretion, MAAR may suspend its performance under this Agreement rather than terminating it, in the event that Firm fails to pay any fees required under this Agreement.

35. Termination for convenience. 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) MAAR shall deactivate Firm's and Individual Participants' user IDs and passwords, and Firm and Individual Participants shall have no further access to the MAAR Service; (b) Firm shall purge all copies of the MAAR Software and the MAAR Database (except the Participant Contribution) from Firm'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 MAAR notice to Subscriber, MAAR may in its sole discretion suspend Subscriber access to MAAR System or terminate Subscriber license and access agreements. If MAAR does not exercise its right to suspend Subscriber access to the MAAR 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 in the terminated agreement.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

38. DISCLAIMER OF WARRANTIES. MAAR PROVIDES THE MAAR SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE MAAR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MAAR SERVICE ARE AT THE SOLE RISK OF FIRM. THE MAAR ASSOCIATES DO NOT WARRANT THAT THE MAAR SERVICE WILL BE UNINTERRUPTED OR ERRORFREE, AND THE MAAR ASSOCIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE MAAR SERVICE. THE MAAR ASSOCIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE MAAR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MAAR SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The MAAR Service may contain hyperlinks to web sites operated by parties other than MAAR; MAAR 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 MAAR ASSOCIATES SHALL BE LIABLE TO FIRM OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE MAAR SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE MAAR SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE MAAR 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 MAAR SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

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

42. **Acknowledgment.** Firm acknowledges that MAAR 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 acknowledges and agrees that the MAAR Software and MAAR Database are confidential and proprietary products of MAAR and that in the event there is an unauthorized disclosure of them by Firm, no remedy at law will be adequate. Firm therefore agrees that in the event of such unauthorized disclosure of MAAR Software or MAAR Database, MAAR 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 MAAR claims that Firm has violated the MAAR Policies, MAAR may, at its option, resolve such a claim according to the disciplinary procedures set out in the MAAR Policies, provided MLS does not also base a claim that Firm 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 administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Shelby County, Tennessee, except that it may be held by telephone where the Arbitration Rules expressly so permit. Firm 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 Shelby County, Tennessee.

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

event that Firm makes unauthorized disclosure of any portion of the MAAR Database to any third party, Firm shall be liable for liquidated damages in the amount of \$15,000 (or the amount established in the MAAR Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

46. **Legal fees.** In the event of legal action or arbitration between MAAR and Firm, or MAAR and any Subscriber, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or arbitration. If MAAR is the prevailing party in an action against a Subscriber, Firm shall be obligated to pay these costs on the Subscriber's behalf.

MISCELLANEOUS.

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

48. **Interpretation and amendment.** Firm expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). MAAR may amend this agreement by providing 30 days' advance notice of the amendment to Firm. If Firm or any Subscriber continues to use the MAAR Service or MAAR Database after the expiration of the 30-day notice period, Firm will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

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

50. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. In the event of any dispute regarding the interpretation of the terms of this Agreement, it shall not be construed for or against any party on the grounds that the Agreement was prepared by any one of the parties. 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 court of competent jurisdiction declares any provision of Paragraphs 38 through 42 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm's access to the MAAR Service shall immediately terminate.

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

52. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation of receipt; (c) facsimile transmission, provided sender obtains confirmation of transmission; or (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.

Memphis Area Association of REALTORS®

Firm

Signature

Firm name

Print name

Signature of principal

Effective Date

Print name of principal



6393 Poplar Avenue . Memphis, Tennessee 38119 · 901.685.2100 · fax 901.761.4003 · www.maar.org

**MULTIPLE LISTING SERVICE
REALTOR™ LOCKBOX SYSTEM AGREEMENT**

THIS REALTOR™ LOCKBOX SYSTEM AGREEMENT ("THIS AGREEMENT") IS HEREBY ENTERED INTO

ON THIS _____ DAY OF _____, 20____, BY AND BETWEEN MEMPHIS AREA ASSOCIATION OF REALTORS®, INC. ("MAAR"), WHICH OPERATES A MULTIPLE LISTING SERVICE ("MLS"), AND _____ ("HOLDER"), WHO IS A

REAL ESTATE LICENSEE ASSOCIATED WITH _____ Name of Licensee ("PARTICIPANT"), WHO IS

A PARTICIPANT IN THE MLS AND THE PRINCIPAL BROKER OF _____ Name of Principal Broker THE PRINCIPAL OFFICE

WHICH IS LOCATED AT _____ Company Name

Street Address City State Zip

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **LOCKBOX:** MAAR has sold to Holder, or to Participant for Holder's use, one or more REALTOR™ Lockboxes ("Lockbox"), as reflected on a separate ledger maintained by MAAR, for use in connection with the REALTOR™ Lockbox System ("System") that has been sold and licensed by SentiLock, LLC ("SentiLock") to MAAR.
2. **SMART CARD READER AND SOFTWARE:** MAAR has also sold to Holder, or to Participant for Holder's use, one or more Smart Card Readers, which are SentiLock-supplied devices that may be attached to an Internet-connected personal computer (meeting certain minimum standards established by SentiLock) to allow renewal and maintenance of SentiCards™. MAAR is making available to Holder and/or Participant certain SentiLock-supplied software ("SentiLock Software") to be used with Smart Card Readers, subject to a SentiLock license agreement to be executed by the owner of the personal computer on which SentiLock Software is installed.
3. **RECEIPT OF SentiCard™ AND PIN:** By separate agreement Participant has granted permission to MAAR to sell to Holder a SentiLock electronic smart card ("SentiCard™") permitting entry into the System. MAAR hereby acknowledges receipt of the sum of \$_____ from Holder for the purchase of SentiCard™ Number _____. Holder hereby acknowledges receipt of the SentiCard™ and his/her personal identification number ("PIN") from MAAR.
4. **LICENSE TO USE:** Holder is hereby granted a revocable license to use the SentiCard™ in connection with his/her normal and customary activities while acting as a real estate agent or non-principal broker, all upon the terms and conditions set forth herein. Holder shall be permitted to use the other components of the System upon the terms and conditions set forth herein. Upon termination or revocation of Holder's right to use the System or any component thereof, and upon request of the MLS, Holder shall immediately return to the MLS all Lockboxes, SentiCards™, Smart Card Readers, and any other SentiLock-supplied devices, and shall cease using any SentiLock-supplied software.
5. **PURPOSE:** Holder shall use the SentiCard™ only for the purposes of gaining authorized entry into real property on which a Lockbox has been installed pursuant to an agreement with the owner(s) of such real property. Holder shall use the other components of the System only as necessary for proper use of the SentiCard™ and/or Lockbox.
6. **OTHER EQUIPMENT AND SOFTWARE:** Holder and/or Participant are responsible for providing the necessary Internet connection, computer hardware, and non-SentiLock-supplied software for communication with the System. These elements are not provided by MAAR or SentiLock. In order to be sufficient and compatible with the System, these elements must meet SentiLock's specifications, a copy of which is available from MAAR and/or SentiLock.
7. **REVOCATION OF LICENSE AND PERMISSION:** Holder's license and permission to use the System shall be revoked forthwith upon the occurrence of any one or more of the following events:
 - a) Suspension or termination of either Participant or Holder from the MLS.
 - b) Termination of Holder's association with Participant for any reason. (When Holder again becomes affiliated with an eligible MLS participant, license may be reinstated upon such other participant's assuming responsibility for Holder's SentiCard™ and Holder's use of other components of the System.)
 - c) Failure of Participant or Holder to comply with any of the terms and conditions set forth herein, including but not limited to the provisions for maintenance and security in Paragraph 9 below, or any provision of the MLS Rules and Regulations.
 - d) Failure of Participant or Holder to comply with: (i) SentiLock's operating and maintenance procedures as established from time to time and published on SentiLock's website; or (ii) any license agreement that SentiLock may require Participant or Holder to execute.
 - e) Expiration or termination of the Master Agreement between MAAR and SentiLock, LLC, as described in Paragraph 21 below.
 - f) Termination of Participant's Guaranty Agreement for REALTOR® Lockbox System (the "Guaranty") or receipt of notice by MAAR from Participant, pursuant to Guaranty, to exclude Holder from access to the System.

One of the effects of revocation of Holder's license and permission to use the System will be the MLS's deactivation of Holder's SentiCard™.

8. **CURRENT UPDATE CODE:** Holder acknowledges that each SentiCard™ has an update code and that this code expires periodically as determined by the MLS. Holder cannot use the SentiCard™ unless he/she updates the SentiCard™ during each designated period by using a Smart Card Reader or following other procedures required by SentiLock and the MLS. Holder will not be permitted to update his/her SentiCard™ if Holder's SentiCard™ license is revoked pursuant to paragraph 7 above.
9. **MAINTENANCE AND SECURITY OF SYSTEM:** Holder acknowledges that it is necessary to maintain security of the System to prevent its use by unauthorized persons. Consequently, Holder agrees:
- (a) To keep the SentiCard™ in Holder's possession or in a safe place at all times.
 - (b) Not to allow his/her PIN to be attached to the SentiCard™.
 - (c) Not to disclose his/her PIN to any third party.
 - (d) Not to loan the SentiCard™ or permit the SentiCard™ to be used by any other person, for any purpose whatsoever.
 - (e) Not to duplicate, tamper with, or modify the SentiCard™, the Smart Card Reader, the Lockbox, or any other component of the System or allow any other person to do so.
 - (f) Not to assign, transfer, or pledge any component of the System or any rights thereto.
 - (g) To follow all additional security procedures as specified by the MLS and/or SentiLock from time to time.
 - (h) To comply with any license agreement for SentiLock Software and SentiLock's operating and maintenance procedures as established from time to time and published on SentiLock's website, and any license agreement for SentiLock Software.
10. **LOST OR STOLEN SENTRICARD™:** In the event a SentiCard™ or other System component is lost, stolen, or otherwise unaccounted for, Holder shall notify the MLS immediately by telephone and promptly thereafter execute and deliver to MAAR an affidavit as to all the facts surrounding the loss, theft, or inability to account therefor.
11. **AUDIT/INSPECTION:** Holder shall submit the SentiCard™ for inspection at the MLS office after receipt of notice to do so by the MLS. The SentiCard™ shall be deemed unaccounted for if Holder does not demonstrate that the SentiCard™ is within his/her physical control during the time period specified by the MLS.
12. **FAILURE TO COMPLY:** Any failure to comply with any of the terms of this Agreement, the MLS Rules and Regulations, or any license for SentiLock Software shall constitute an event of default hereunder and may result in immediate termination of Holder's right to use the System.
13. **VIOLATION:** If Holder violates this Agreement, the MLS Rules and Regulations, or any license for SentiLock Software, Holder and/or Participant: (a) shall be subject to loss of access to the System, fines and/or other sanctions as determined by the MLS Rules and Regulations then in effect; (b) may be required to return all components of the System assigned to or within the possession, custody or control of Holder; and (c) may be liable for damages.
14. **INDEMNIFICATION:** Holder covenants and agrees to indemnify and hold MAAR, the MLS, and their respective officers, directors, employees, and representatives harmless from any and all losses, expenses, liabilities, obligation, claims, or demands, including attorneys' fees and expenses, in connection with Lockboxes, SentiCards™, Smart Card Readers, and other System components used by or assigned to Holder, including but not limited to or Holder's use of the Lockbox or the SentiCard™, use of the SentiCard™ by any other person, loss of the Lockbox or the SentiCard™, or any breach of this Agreement, the MLS Rules and Regulations, or any license for SentiLock Software by Holder.
15. **REIMBURSEMENT:** In the event MAAR or the MLS commences legal proceedings against Holder to enforce or interpret any of the provisions of this Agreement, Participant and Holder shall be jointly and severally liable for all reasonable attorney's fees and expenses incurred by MAAR or the MLS.
16. **PARTICIPANTS AND HOLDER'S RESPONSIBILITIES:** Holder hereby warrants and covenants that now and for so long as Holder shall be assigned a SentiCard™ or otherwise have access to the System: (a) Participant shall be both a principal broker and an authorized participant in the MLS; (b) Holder shall be in fact associated with Participant in an active effort to sell real estate through a business office under the control and supervision of Participant; (c) Participant and Holder shall maintain current Tennessee real estate licenses; and (d) Participant and Holder shall promptly notify the MLS should any of the statements in this numbered paragraph no longer be true. Holder agrees to: (a) attend an instructional meeting on the operation and use of the System as required by the MLS; and (b) comply with MLS Rules and Regulations for use of the System, including obtaining a confirmed appointment from each listing office or listing agent before entering the property through the use of the Lockbox unless "Open Lockbox" is denoted in the MLS listing.
17. **ACTION TO ENFORCE:** Any action for the enforcement of this Agreement may be taken or brought in the name of MAAR or the MLS.
18. **WARRANTY:** Participant's and Holder's sole and exclusive warranty with respect to the Lockbox, the SentiCard™, the Smart Card Reader, SentiLock Software, and any other component of the System shall be only that warranty which MAAR obtains from SentiLock and is permitted to pass through to Participant and Holder. **SUCH WARRANTY SHALL BE EXCLUSIVE AND IN LIEU OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER WARRANTY WHETHER EXPRESSED OR IMPLIED.** MAAR and the MLS do **NOT** represent or warrant that the System may not be compromised or circumvented or that the Lockbox, the SentiCard™, or other System components will prevent any loss by burglary or other criminal action. Holder agrees that neither MAAR nor the MLS has made any representations or warranties, express or implied, regarding such compromise or circumvention. It is expressly understood and agreed that the System is not designed or marketed as a security system. The System will be unavailable at certain times due to maintenance and may be unavailable at other times due to Internet or telecommunication service outages or malfunctions or other reasons. Neither Holder nor Participant nor any other person shall have any claim against MAAR as a result of any failure or malfunction of the System.
19. **AUTHORIZATION:** Prior to installing or using the Lockbox on any property, Participant or Holder shall secure written authorization from the owner(s) of such property. Extreme care shall be taken to ensure that all doors to the property and the Lockbox are locked. Participant and Holder shall include in the listing agreement, or some other agreement signed by the owner(s) of such property prior to installation or use of the System, a provision whereby the owner(s) acknowledge(s) the risk of using the System and release(s) MAAR, the MLS, and their officers, directors, employees, representatives, and independent contractors from any and all liability in connection with the System.
20. **PARTICIPANT AS HOLDER:** If this Agreement is being used in connection with issuance of a SentiCard™ and/or other System components to Participant and no name is filled in on the blank line above for "Holder," Participant shall be deemed to be "Holder" and shall have all the obligations assigned herein to "Holder."
21. **AGREEMENT BETWEEN MAAR AND SENTRILOCK:** Holder's and Participant's rights under this Agreement and Holder's and Participant's rights to use the System are dependent upon MAAR's rights under that certain SentiLock System Agreement dated November 7, 2004 by and between SentiLock and MAAR (the "Master Agreement"). Holder's and Participant's rights to use the System or any component thereof are subject to termination upon expiration or termination of Master Agreement.
22. **COMPLETE AGREEMENT:** This Agreement is the complete and exclusive statement of the agreement between the parties and may be amended only by a written instrument executed by both parties hereto. However, Participant has entered into the Guaranty, pursuant to which Participant has guaranteed the obligations of Holder hereunder, as well as the obligations of other real estate licensees with whom Participant is associated.
23. **MISCELLANEOUS:** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, such holding shall not affect the validity, legality, or enforceability of the remaining provisions. The MLS Rules and Regulations, as referred to herein, shall include any and all amendments thereto which may be adopted from time to time. The captions used in this Agreement are for convenience of reference only and shall not affect the meaning of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement at Memphis, Tennessee, on the date first above written.

MAAR:

HOLDER:

MEMPHIS AREA ASSOCIATION OF REALTORS®, INC.

By: _____

Holder's Signature

Date: _____

Print Holder's Name

Holder's Address

Memphis Area Association of REALTORS®

Subscriber Agreement

This agreement is a binding contract and includes terms limiting your legal rights and MAAR's liability to you. Consult your attorney before signing if you do not understand any of the terms here.

This "Agreement" is made between Memphis Area Association of REALTORS® with offices at 6393 Poplar Avenue, Memphis, TN 38119 ("MAAR") and you ("You" or "Subscriber"). By clicking "I Agree," You agree to the following terms:

DEFINITIONS AND USAGE

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

Firm: The brokerage or appraisal company to which Individual Participants are affiliated and has executed a Participant Agreement with MAAR.

Individual Participant: With regard to each office of Firm, the principal broker or appraiser manager that supervises Subscriber's real estate activities and on whose behalf Subscriber conducts those real estate activities.

MAAR Associates: MAAR Associates means MAAR and its officers, directors, employees, agents, representatives, licensors, and shareholders.

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

MAAR Policies: MAAR's then-current bylaws, rules and regulations, and policies and procedures promulgated by MAAR, as MAAR amends them from time to time.

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

MAAR Software: MAAR's proprietary software interface(s) to the MAAR System.

MAAR System: The aggregate of all hardware, software and data connection systems that MAAR maintains, or that MAAR contractors maintain on its behalf, in order to make access to the MAAR Database available to Subscriber.

Other Participants and Subscribers: All participants and subscribers of MAAR not party to this Agreement, including Firms' employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

Saved Information: Information that Subscriber stores in the MAAR System for his own later use that is not intended by him/her to be available to MAAR's Other Participants and Subscribers, including client prospect and contact information.

Schedule of Fees: MAAR's document that establishes the fees for MAAR Service.

Subscriber Compilation Contribution or "SCC." All selection, coordination, and arrangement by Subscriber of listing information submitted, contributed, or input in the MAAR System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the MAAR System. SCC does not include original text or photographs.

Subscriber Contribution: All data that the Subscriber submits, contributes, or inputs in the MAAR System, including text, photographs, images, and other materials, in any form now known or hereafter discovered, except the SCC.

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

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

(b) The singular and plural numbers and masculine, feminine, and neuter genders of words are interchangeable.

(c) Wherever the term "law" is used, it means all statutes, regulations, and common 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.

MAAR'S OBLIGATIONS

3. MAAR shall provide one unique user ID and password to Subscriber. The user ID and password will provide Subscriber access to all data and functions in the MAAR Service to which Subscriber is entitled under the MAAR Policies. MAAR makes no warranties, however, that the MAAR Service will be available at all times. MAAR may use a third party contractor, determined in MAAR's sole discretion, to facilitate its responsibilities under this Agreement.

SUBSCRIBER ACKNOWLEDGMENTS

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

5. Editorial control. MAAR is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the MAAR Database or the Subscriber Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, MAAR may take any steps necessary in its judgment, including deleting the Subscriber Contribution or portions thereof, to avoid or remedy any violation of law, breach of the MAAR Policies or infringement of intellectual property right. Additionally, MAAR shall have the right to alter and/or remove metadata and copyright management information contained in the Subscriber Contribution.

6. Conditions of service. Subscriber must be affiliated with Individual Participant and Firm at all times during the term of this Agreement. Subscriber may enter and retrieve active listing information on the MAAR Service only if Firm offers compensation to and accepts compensation from other principal brokers in accordance with MAAR Policies and NAR policy. Subscriber will comply with the MAAR Policies at all times. Additionally, Subscriber will comply with all applicable laws, statutes, ordinances and regulations in performance of their obligations under this Agreement, including the Fair Housing Act (42 U.S.C. §3601 et. seq.) and the Americans with Disabilities Act (42 U.S.C. §12101 et. seq.).

7. **Saved Information.** MAAR will use commercially reasonable efforts to store Saved Information. However, Subscriber acknowledges that Saved Information may not always be available to Subscriber and despite MAAR's security protocols may become available to unauthorized persons. MAAR is not liable for unauthorized access to or loss of Saved Information. Subscriber 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.** MAAR reserves the right to distribute to third parties certain information about Subscriber, including Subscriber's name and business address, phone number and email address for MAAR's business purposes. MAAR reserves the right to distribute to third parties aggregated information about Subscriber's, Firm's and Other Participants' and Subscribers' use of the MAAR Service, but not about Firm's or Subscriber's use specifically.

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

10. **Priority of agreements.** Subscriber's access to the MAAR Service is subject at all times to the limitations set out in the MAAR Policies and the Participant Agreement between MAAR and Firm. In the event of an apparent conflict between those documents and this Agreement, Subscriber's obligations and rights shall be determined, in order of precedence, by the MAAR Policies, the Firm Agreement between MAAR and Firm, and by this Agreement.

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

SUBSCRIBER'S OBLIGATIONS

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

13. **Confidentiality.** Subscriber shall maintain the confidentiality of its user ID and password and the MAAR Database; Subscriber shall not provide its ID and password to any third party. To maintain the confidentiality of all user IDs, passwords, the MAAR Database, and the MAAR System, Subscriber shall take the greater of reasonable care or the care it takes to protect its own confidential information. Subscriber shall not make any user IDs, passwords, the MAAR Database, or the MAAR System available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement or the MAAR Policies. Failure to comply with this provision will result in a significant fine, as set forth in the MAAR Policies. Subscriber 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, Subscriber first gives reasonable notice to MAAR to permit MAAR to seek a protective order.

14. **Equipment.** Subscriber shall acquire and maintain all personal computers, modems, data connections, and computer software, other than the MAAR Software, necessary for Subscriber's use of the MAAR Service. MAAR does not provide support for personal computers, modems, data connections, and computer software, or other hardware or software, other than the MAAR System.

15. **Subscriber Contribution.** When making a Subscriber Contribution to the MAAR Service, Subscriber warrants that the information submitted complies with all applicable laws, statutes, ordinances and regulations and the MAAR 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. Subscriber warrants that the Subscriber 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 Subscriber Contribution.

INTELLECTUAL PROPERTY

16. **Subscriber assignment or license.** Depending on the election Firm has made in Section 21 of the Participant Agreement between Firm and MAAR, the following shall apply:

(a) If Firm has selected Option I, Subscriber hereby unconditionally assigns to MAAR all right, title and interest in the Subscriber Contribution, including, without any limitation, any copyrights therein under U.S. and international copyright law. To the extent that Subscriber has also purported to assign its interests in the Subscriber Contribution to Firm, the assignment in this paragraph is null and void. To the extent that Subscriber does not possess the rights to permit the foregoing assignment, Subscriber hereby grants to MAAR 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 Subscriber Contribution.

(b) If Firm has selected Option II, Subscriber hereby grants to MAAR 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 Subscriber Contribution and those portions of the MAAR Database relating to Subscriber's listings.

17. **Warranty.** Subscriber warrants that it has the authority to make the assignment in Paragraph 16. Subscriber warrants that (a) the Subscriber Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to Firm or MAAR.

18. **Other terms.** Pursuant to the MAAR Policies, the SCC shall be a work made for hire by Subscriber for the benefit of MAAR, which shall be deemed the SCC's author for purposes of copyright law. If for any reason the SCC cannot be provided as a work made for hire, you agree to assign and hereby do assign to MAAR all right, title and interest in the SCC, including, without any limitation, any copyrights therein under United States and international copyright law. MAAR hereby grants Subscriber a license to use the MAAR Software and the MAAR Database during the term of this Agreement, subject to the permission of Firm and according to the terms of the MAAR Policies. All other uses are prohibited.

FEES AND PAYMENT TERMS

19. **Applicable fees.** Subscriber shall pay the fees set forth in MAAR's official Schedule of Fees, which MAAR may amend at any time subject to the terms of Paragraph 23.

20. **Payment terms.** Subscriber shall pay the fees according to the terms set out in the MAAR Policies.

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

22. **Taxes.** All fees for the MAAR 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, Subscriber shall pay all such taxes and levies other than any tax or levy on the net income of MAAR.

23. **Fee increases.** MAAR may amend the Schedule of Fees at any time at its sole discretion. MAAR shall provide written notice to Subscriber at least thirty days in advance of the effective date of any fee increase. If Subscriber objects to the increase, Subscriber may terminate this Agreement by written notice to MAAR at any time before the effective date of the increase.

24. **Fines.** MAAR may collect fines from Subscriber and from Firm or Individual Participant on Subscriber's behalf for violation of the MAAR Policies. Payment terms for fines are set out in the MAAR Policies. MAAR may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION

25. **Term.** This Agreement shall commence upon the date that you click "I Accept" and shall continue thereafter on a month-to-month basis until terminated.

26. **Termination for breach.** MAAR may terminate this Agreement with notice if Subscriber fails to comply with the terms of this Agreement or of the MAAR Policies.

27. **Termination of Participant.** In the event of any termination or suspension of Participant Agreement, upon MAAR notice to Subscriber, MAAR may in its sole discretion suspend Subscriber access to MAAR System or terminate Subscriber license and access agreements, including this Agreement. If MAAR does not exercise its right to suspend Subscriber access to the MAAR System or terminate this Agreement, this Agreement shall continue in full force, and the subparagraph of Section 16 of this Agreement in effect at the time of the termination or suspension of the Participant Agreement shall be binding on the parties to this Agreement for its duration.

28. **Termination for failure to pay.** In the event Subscriber fails to pay any fees required under this Agreement, MAAR may terminate service without being subject to arbitration. In its sole discretion, MAAR may suspend its performance under this Agreement rather than terminating it, in the event that Subscriber fails to pay any fees required under this Agreement.

29. **Termination for convenience.** Either party may terminate this Agreement upon 30 days' written notice to the other party. Subscriber may not terminate this Agreement so long as Subscriber remains affiliated with Individual Participant for which Firm is responsible subject to a Participant Agreement with MAAR, except as otherwise permitted under MAAR Policies.

30. **Events upon termination.** Promptly upon any termination of this Agreement, (a) MAAR shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the MAAR Service; (b) Subscriber shall purge all copies of the MAAR Software and the MAAR Database from Subscriber's personal computers; (c) all licenses granted hereunder shall immediately terminate, except the license to the Subscriber Contribution in Paragraph 16(b) and (d) Subscriber will not be permitted to be affiliated with Firm or any other participant of MAAR unless a new subscriber agreement between Subscriber and MAAR is executed.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION

31. **DISCLAIMER OF WARRANTIES.** MAAR PROVIDES THE MAAR SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE MAAR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MAAR SERVICE ARE AT THE SOLE RISK OF SUBSCRIBER. THE MAAR ASSOCIATES DO NOT WARRANT THAT THE MAAR SERVICE WILL BE UNINTERRUPTED OR ERRORFREE, AND THE MAAR ASSOCIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE MAAR SERVICE. THE MAAR ASSOCIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE MAAR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE MAAR SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The MAAR Service may contain hyperlinks to web sites operated by parties other than MAAR; MAAR 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.

32. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE MAAR ASSOCIATES SHALL BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE MAAR SERVICE, INCLUDING RELIANCE BY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE MAAR SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE MAAR 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 MAAR SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

34. **Indemnification.** Subscriber shall defend, indemnify and hold the MAAR Associates 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 MAAR Associates or Other Participants and Subscribers arising from any acts of Subscriber, including (a) putting inaccurate information into the MAAR Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the MAAR 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.

35. **Acknowledgment.** Subscriber acknowledges that MAAR 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

36. **Injunctive relief.** Subscriber acknowledges and agrees that the MAAR Software and MAAR Database are confidential and proprietary products of MAAR and that in the event there is an unauthorized disclosure of them by Subscriber, no remedy at law will be adequate. Subscriber therefore agrees that in the event of such unauthorized disclosure of MAAR Software or MAAR Database, MAAR may obtain injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

37. **Dispute resolution.** In the event MAAR claims that Subscriber has violated the MAAR Policies, MAAR may, at its option, resolve such a claim according to the disciplinary procedures set out in the MAAR Policies, provided MLS does not also base a claim that Subscriber has breached this Agreement on the same facts. Except as provided in this paragraph and in Paragraph 28, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Shelby County, Tennessee, except that it may be held by telephone where the Arbitration Rules expressly so permit. Subscriber 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 Shelby County, Tennessee.

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

39. **Legal fees.** In the event of legal action or arbitration between MAAR and Subscriber, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or arbitration.

MISCELLANEOUS

40. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, MAAR and Subscriber, 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.

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

42. **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Subscriber. Any purported assignment or delegation in contravention of this section is null and void.

43. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. In the event of any dispute regarding the interpretation of the terms of this Agreement, it shall not be construed for or against any party on the grounds that the Agreement was prepared by any one of the parties. 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 court of competent jurisdiction declares any provision of Paragraph 31 through 35 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber's access to the MAAR Service shall immediately terminate.

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

45. **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.

Memphis Area Association of REALTORS®

Firm

Signature

Firm name

Print name

Effective Date

Effective Date

Print name of principal

