

Memphis Area Association of REALTORS®

Participant Data Access Agreement

This **AGREEMENT** is made and entered into by Memphis Area Association of REALTORS® (“**MAAR**”), with offices at 6393 Poplar Ave, Memphis, TN 38119; the real estate brokerage firm identified as “**Firm**” on the signature page below (“**Firm**”); the Salespersons affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the “**Salesperson Party**”); and the individual or business association identified as “**Consultant**” on the signature page below, if any (“**Consultant**”).

DEFINITIONS

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

Audio Device: Any audio delivery of IDX data authorized by MAAR Policies and listed in Exhibit A that are not web sites or Mobile Applications. “Audio Device” does not include mass media delivery of MAAR Data.

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

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

Firm BBO Use: Firm’s use and display of portions of MAAR Data under the “broker back office” provisions of MAAR Policies that (a) exposes MAAR Data and derivatives of it only to Firm, Firm-Related Persons, and Firm’s bona fide clients as established under state law; or (b) exposes MAAR Data and derivatives of it in marketplace statistical analyses and reports to the extent permitted by MAAR Policies. “Derivatives” of MAAR Data include any subset of data or aggregation of values derived from the MAAR Data. The MAAR Policies determine whether Firm BBO Use includes and permits Firm and Salesperson advertising or making representations about specific properties that are listed with other participants or that were sold by other participants.

Firm-Related Persons: Consultant, if any, and employees of Firm who are not Salespersons or broker/managers.

Firm Valuation: Use and display of portions of the MAAR Data by Firm for Valuation purposes subject to the provisions of Exhibit B of this Agreement.

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

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

MAAR Policies: The then-current MAAR’s Rules and Regulations and any operating policies promulgated by MAAR, as amended from time to time in MAAR’s sole discretion.

Mobile Applications: Any displays of IDX data authorized by MAAR Policies and listed in Exhibit A that are not web sites. “Mobile Applications” does not include mass media display of MAAR Data.

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

Participant Data Use: Any use of those portions of the MAAR Data relating to Firm’s own listings.

Permitted Use: One or more of the following permitted data uses: Firm BBO Use, Firm Valuation, IDX, Participant Data Use, or VOW as specified on the signature page and in Exhibit A.

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

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

Valuation: An automated valuation model (AVM), broker price opinion (BPO), comparative (or comparable) market analysis (CMA) or similar product or service using MAAR Data and possibly other data, provided it can fairly be characterized as a valuation of real property, and only to the extent permitted by the MAAR Policies. An AVM need not include any human judgment or analysis.

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

MAAR’S OBLIGATIONS

2. MAAR grants to Firm and Salesperson Party a terminable, non-transferable, non-exclusive, revocable, world-wide license to make copies of, display, perform, and make derivative works of the MAAR Data for the Permitted Use, and the right to sublicense the same to Consultant, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement and the MAAR Policies; any other use of the MAAR Data is hereby prohibited. Firm and Salesperson Party may sublicense its rights to Consultant, but not the right to sublicense, only so Consultant may provide services on behalf of Firm or Salesperson Party to exercise the Permitted Uses only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement and the MAAR Policies; any other use of the MAAR Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license,

and not a sale, assignment, or exclusive license. MAAR retains all rights not expressly granted herein.

3. MAAR agrees to provide to Firm, Salesperson Party, and Consultant, during the term of this Agreement, (a) access to the MAAR Data via the Data Interface under the same terms and conditions MAAR offers to other MAAR Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the MAAR Policies to the extent they are applicable or related to the Permitted Use. MAAR does not undertake to provide technical support for the Data Interface or the MAAR Data. The Data Interface, together with access to the MAAR Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or MAAR Data shall not constitute a default by MAAR under this Agreement. MAAR may use a third party contractor, determined in MAAR's sole discretion, to facilitate the data access and any other responsibilities or rights of MAAR under this Agreement.

FIRM'S OBLIGATIONS

4. Firm and Salesperson Party shall comply with the MAAR Policies at all times. In the event of any perceived conflict between the MAAR Policies and this Agreement, the MAAR Policies shall govern. Additionally, Firm and Salesperson Party shall comply with all applicable laws, statutes, ordinances and regulations in performance of their respective obligations under this Agreement.

5. Firm and Salesperson Party shall use the MAAR Data obtained under this Agreement for the Permitted Use only. Any other use is strictly prohibited. Firm and Salesperson Party shall not make the MAAR Data or the Confidential Information available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement. Firm and Salesperson Party may display or deliver the MAAR Data on web sites, Mobile Applications, and Audio Devices only to the extent permitted by the MAAR Policies and then only on a site or sites resident at the Second Level and Third Level Domain(s), Mobile Applications, and Audio Devices expressly indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Salesperson Party acknowledge that ownership and use rights relating to copyrights in the MAAR Data are defined in the MAAR Policies or in the terms of the participant and subscriber agreements between MAAR Firm and Salesperson Party, or both. Firm and Salesperson Party shall not challenge or take any action inconsistent with MAAR's ownership of or rights in the MAAR Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

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

8. Firm and Salesperson Party shall pay the fees, if any, that MAAR (or its shareholder associations/MLSSs) customarily charges other MAAR Participants for data access. Firm and Salesperson Party acknowledge receipt of MAAR's current schedule of such fees, if any. MAAR may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Salesperson Party. Firm and Salesperson Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

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

CONSULTANT'S OBLIGATIONS

10. Consultant shall immediately correct any breach of this Agreement or violation of the MAAR Policies within its control, whether

committed by Firm, Salesperson Party, or Consultant, upon notice from MAAR.

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

12. Consultant shall not make the MAAR Data or the Confidential Information available to any third party, including without limitation affiliates, franchisors, and subsidiaries, except on behalf of Firm and Salesperson Party and in a manner consistent with Firm's and Salesperson Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the MAAR Data, whether commercial or personal. **In the event that Consultant provides services to Participants other than Firm (or to Salespersons affiliated with Firm other than the Salesperson Party), Consultant must enter separate contracts with MAAR. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant; and in the case of Salespersons, that each Salesperson Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in MAAR terminating all of Consultant's access to the MAAR Data under this Agreement and all similar agreements.** The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

13. Consultant warrants that any effort or use of the MAAR Data will not constitute patent infringement or other intellectual property rights of any third party. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity. Additionally, Consultant shall comply with all applicable laws, statutes, ordinances and regulations in performance of its respective obligations under this Agreement.

14. Consultant represents that it currently, and through the term of this Agreement, shall use industry best practices for firewalls and other network protocols to increase the security of its systems and shall employ reasonable physical, technical, and administrative security measures to protect the Confidential Information and prevent unauthorized third-parties from accessing and using the Confidential Information. Consultant will comply fully with all applicable laws, and regulations relating to personally identifiable information ("PII") and data privacy with regards to the Confidential Information. Consultant agrees that it will monitor and test its security protocols from time to time and adjust the same as necessary. In the event a security breach of Consultant's systems or use of the Confidential Information by unauthorized third parties, Consultant shall immediately notify MAAR of such breach by confirmed email or confirmed telephone call. In the event of such security breach, Consultant will (i) cooperate with MAAR at Consultant's expense to prevent or stop such a security breach; (ii) comply with all applicable laws and take appropriate steps to remedy such a security breach; (iii) indemnify, hold harmless and defend MAAR against any and all loss, damage, claims, liabilities, or expenses, including reasonable attorneys' fees, arising out of or relating to a third party claim or suit from breach by Consultant of its obligations described in this paragraph.

15. Consultant shall pay the fees, if any, that MAAR customarily charges other consultants for data access. Consultant acknowledges receipt of MAAR's current schedule of such fees, if any. MAAR may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Consultant. Consultant shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

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

AUDITS OF COMPLIANCE

17. MAAR may in its reasonable discretion conduct periodic compliance reviews of Firm's, Salesperson Party's, and Consultant's use of the MAAR Data under this Agreement. Firm, Salesperson Party, and Consultant will respond within 72 hours of any compliance inquiry by MAAR. MAAR may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Salesperson Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Salesperson Party's, and Consultant's compliance with this Agreement ("Audit"). MAAR may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Salesperson Party's, and Consultant's web sites, Mobile Applications, Audio Devices, and systems to ensure that MAAR Data is displayed in accordance with the MAAR Policies; using all features available to end-users of Firm's, Salesperson Party's, and Consultant's systems that employ the MAAR Data; and posing as consumers to register and test services Firm, Salesperson Party, and Consultant make available to consumers using the MAAR Data. MAAR shall pay the costs it incurs, and the out-of-pocket costs Firm, Salesperson Party, and Consultant incur, as part of any Audit; provided, however, Firm or Salesperson Party shall be liable for all costs of any Audit that discloses that Firm, Salesperson Party, or Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

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

TERM AND TERMINATION

19. The term of this Agreement begins on the date that MAAR signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in MAAR; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide services for the Permitted Use to it; (f) with regard to any Salesperson Party, immediately upon any event that results in the Salesperson Party no longer being affiliated with Firm; (g) as provided in Paragraphs 29 and 32.

20. In the event Firm's privileges as a Participant (or Salesperson Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and MAAR subsequently reinstates those privileges, this Agreement shall automatically be reinstated if MAAR resumes its obligations under Paragraphs 2 and 3. In the event Firm, Salesperson Party, or Consultant breaches this Agreement and entitles MAAR to terminate under Paragraph 19, MAAR may in its sole discretion suspend its performance instead of terminating this Agreement. MAAR may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Salesperson Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any

termination of this Agreement, Firm, Salesperson Party, and Consultant shall delete the MAAR Data and any derivative works based on it (except the portions of it relating to Firm's own listings). In the event of any suspension of this Agreement, Firm, Salesperson Party, and Consultant shall make no further use of the MAAR Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Salesperson Party's rights under this Agreement are restored.

GENERAL PROVISIONS

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

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

23. **MAAR's Remedies.** (a) Injunctive relief: Because of the unique nature of the MAAR Data and Confidential Information, Firm, Salesperson Party, and Consultant acknowledge and agree that MAAR would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate MAAR for a breach. MAAR is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Salesperson Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by MAAR, and without posting any bond. (b) Liquidated damages: Firm, Salesperson Party, and Consultant acknowledge that damages suffered by MAAR from access to the MAAR Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the MAAR Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to MAAR to enter into this Agreement, Firm, Salesperson Party, and Consultant agree that in the event Firm, Salesperson Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the MAAR Data or disclose the MAAR Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Salesperson Party, and Consultant shall be liable to MAAR for liquidated damages in the amount of \$5,000 for each such disclosure and termination of this Agreement. Liability of Firm, Salesperson Party, and Consultant under this paragraph is joint and several.

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

25. **Dispute resolution; Attorney's fees.** In the event MAAR claims that Firm, Salesperson Party, or Consultant 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 MAAR does not also base a claim that Firm, Salesperson Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any controversy or claim to which Consultant is not a party arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Tennessee located in Shelby County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to MAAR's disciplinary procedures or to arbitration. Non-binding mediation in good faith is a condition precedent to asserting any claim, whether in arbitration or the courts, under this Agreement, except that this condition shall not prevent MAAR from exercising any of its rights under Section 23. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

26. **Indemnification.** Subject to Paragraph 24, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. Consultant indemnifies MAAR, Firm, Salesperson Party, or customers of MAAR, Firm, or Salesperson Party, to whom Consultant provides a product or service using MAAR Data, against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from any third party claim of patent infringement. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

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

and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

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

29. **Assignment.** Firm, Salesperson Party, and Consultant may not assign or otherwise transfer any of its respective rights or obligations under this Agreement to any other party. Any purported assignment or delegation by Firm, Salesperson Party, or Consultant in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

30. **Entire Agreement; Amendment.** Subject to MAAR Policies, this Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same. 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. MAAR may amend this agreement by providing 30 days' advance notice of the amendment to all other parties; if any party continues to use the Data Interface or the MAAR Data after the expiration of the 30-day notice period, that party will be deemed to have agreed to the terms as amended.

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

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

(The remainder of this page intentionally left blank.)

Memphis Area Association of REALTORS® Participant Data Access Agreement (Signature Page)

Under this Agreement, **FIRM AND SALESPERSON PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Salesperson Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with MAAR and each such consultant.

Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM AND SALESPERSON PARTY NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Salespersons affiliated with Firm except the Salesperson Party. Consultant must enter into a new version of this Agreement with MAAR and each additional Participant or amend this Agreement with MAAR to add additional Salespersons affiliated with Firm as Salesperson Parties.

If Firm or Salesperson Party will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box. If this Agreement is for services to Firm only, and there is no Salesperson Party, Firm should cross out the Salesperson Party signature box.

This Agreement is for the following Permitted Use(s) (check all that apply):

☐ Firm BBO Use ☐ Firm Valuation ☐ IDX ☐ Participant Data Use ☐ VOW

FIRM	
Firm name:	
MLS Office ID:	
Signature of owner or officer:	
Name of owner or officer:	
Date:	
Contact for notices and operations matters:	
Name:	
Phone:	
Email:	
Mailing Address:	
Second or Third Level Domain, Mobile Application, or Audio Devices:	<i>Check one:</i> <input type="checkbox"/> IDX <input type="checkbox"/> VOW <input type="checkbox"/> Firm Valuation <hr/> (If more than one will be used, specify each in Exhibit A.)

Memphis Area Association of REALTORS®

Participant Data Access Agreement (Signature Page)

SALESPERSON PARTY	
<i>(If there is more than one, have each named and sign on Exhibit A.)</i>	
Name:	
MLS User ID:	
Signature:	
Date:	
Contact for notices and operations matters:	
Name:	
Phone:	
Email:	
Mailing Address:	
Second or Third Level Domain, Mobile Application, or Audio Devices:	Check one: <input type="checkbox"/> IDX <input type="checkbox"/> VOW <input type="checkbox"/> Firm Valuation _____ (If more than one will be used, specify each in Exhibit A.)
CONSULTANT	
Consultant name:	
Signature of owner or officer:	
Name of owner or officer:	
Date:	
Contact for notices and operations matters:	
Name:	
Phone:	
Email:	
Mailing Address:	

Memphis Area Association of REALTORS®
Participant Data Access Agreement (Signature Page)

MAAR: Memphis Area Association of REALTORS®	
Signature:	
Name:	
Date (effective date of this Agreement):	
Contact for notices and operations matters:	
Name:	
Phone:	
Email:	

Memphis Area Association of REALTORS®

Participant Data Access Agreement

Exhibit A – Additional Requirements

1. Additional Domains, Mobile Applications, and Audio Devices. In addition to the Second and Third Level Domains specified on the signature page Firm, Salesperson Party, and Consultant may display MAAR Data subject to the terms of this Agreement at the following Second and Third Level Domains, Mobile Applications, and Audio Devices (attach additional pages if necessary):

_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation

2. Additional Salesperson Parties: If there are two or more Salesperson Parties, each Salesperson Party after the first is identified by name here, and each must sign this Agreement. Each Salesperson Party listed here consents to MAAR making communications and notices under this Agreement to Firm only. (Attached additional pages if necessary.)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

Memphis Area Association of REALTORS®

Participant Data Access Agreement

Exhibit B – Firm Valuation Data Use Requirements

This Exhibit governs any use of the MAAR Data licensed under this Agreement for use in Firm Valuations.

B.1. Firm may provide Firm Valuation services to Registrants with whom Firm establishes a broker-customer or broker-client relationship, if such a relationship is required and defined by state law; including completion of all actions required by state law in connection with providing real estate brokerage services to Registrants. Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements necessary for performing Valuation services, and Consultant may facilitate such actions where permitted by state law. Where state law does not require the establishment of a broker-customer or broker-client relationship for providing Firm Valuation services, the transaction must still occur between the Firm and Registrant, but may be facilitated by Consultant.

B.2. Registrants may include financial institutions, mortgage lenders, mortgage bankers, mortgage brokers, mortgage loan servicers, title or mortgage insurers, insurers of payments owed to owners of mortgage backed securities, Government Sponsored Entities (GSEs), or such other businesses or institutions having an interest in automated reports on property valuation or market conditions.

B.3. Firm, or Consultant on behalf of Firm where permitted by state law, must obtain the name of and a valid e-mail address for each Registrant that is an individual and the name of and a valid email address for each authorized user if the Registrant is an entity. Each Registrant must agree to the terms of use described in Section B.4 of this Exhibit or substantially similar terms of use. Firm must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use. Firm may utilize Consultant's technology platform to facilitate and fulfill its obligations under Sections B.3, and B.4, and B.5.

B.4. Firm, or Consultant on behalf of Firm where permitted by state law, shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms-of-use agreement or other form of written contract that provides at least the following:

B.4.1: that Registrant acknowledges entering into a lawful consumer-broker relationship with Firm, if such a relationship is required by state law, or that Registrant acknowledges purchasing the Firm Valuation from Firm, if a consumer-broker relationship is not required by state law.

B.4.2: that all information obtained by Registrant from Firm Valuation is intended only for Registrant's business purposes related to (1) mortgage loan foreclosure or default risk assessment, or the review of the quality or accuracy of real estate appraisals or other valuations (2) use in evaluating or engaging in a potential financing or other transaction relating to the subject property, (3) distribution to an actual or potential borrower of funds the repayment of which is secured by a mortgage lien on the subject property, or to the borrower's financial or legal advisors, (4) the purchase or sale of mortgage servicing rights, (5) the purchase or sale of performing, re-performing or non-performing loans, or (6) the purchase, sale or rental of properties whether property is intended to be used as a residence or for investment and whether the purchaser or seller is an individual or institution.

B.4.3: except as provided in Section B.4.2, that Firm Valuations may not be used for any other purposes, including display on publicly accessible websites, and that Registrant shall not resell Firm Valuation and will not copy, redistribute, or retransmit or otherwise use any of the MAAR Data provided in Firm Valuation.

B.4.4: that Registrant acknowledges, as between the parties, MAAR's ownership of and the validity of the MAAR's copyright in the MAAR Data.

B.5. The terms-of-use agreement described in Section B.4 shall also expressly authorize MAAR and other Participants or their duly authorized representatives to access and review the form used by Firm for any Firm Valuation for the purposes of verifying compliance with MAAR Policies and monitoring use of Participants' listings by the Firm Valuation. To the extent that Registrant breaches the terms-of-use agreement described in Section B.4, Firm and Consultant shall be liable to MAAR as if Firm or Consultant had breached the terms-of-use agreement itself. The agreement may also include such other provisions as may be agreed to between Firm and Registrant.

B.6. Firm may utilize Consultant's technology platform and services to facilitate the fulfillment of Firm Valuations services to Registrants, subject to and as permitted by state law.

B.7. Firm's right to use MAAR Data in any Firm Valuation is subject to the applicable office of Firm being a Participant in MAAR. In other words, an office of Firm that is not a Participant of MAAR may not use

MAAR Data in any Valuation provided to any third party.

B.8. Firm must protect the MAAR Data from misappropriation by employing reasonable efforts to monitor for and prevent scraping or other unauthorized accessing, reproduction, or use of the MAAR Data and Valuations.

B.9. Firm must make a copy of any type of Firm Valuation sold by Firm available to MAAR for purposes of verifying compliance with this Agreement and MAAR Policies.

B.10. MAAR shall exclude from the Data Interface all "User Confidential Data." "User Confidential Data" consists of those portions of MAAR Data that Participants are prohibited from providing to customers orally and by all other delivery mechanisms. In the event that MAAR includes User Confidential Data in the Data Interface, Firm and Consultant shall ensure that it is not disclosed to Registrants or any other third party.

B.11. Firm shall maintain an audit trail of Firm's delivery to Registrant of all Firm Valuations and make that information available to MAAR if MAAR has reason to believe that any Registrant has caused or permitted a breach of the terms of use or comparable agreement.

B.12. Firm shall cause to be placed on any Firm Valuation or terms of use a notice indicating that the MAAR Data displayed on the Firm Valuation is not guaranteed accurate by the MAAR or other Participants.

B.13. In any display of MAAR Data to any Registrant, Firm shall display the copyright notice of MAAR or substantially similar. The copyright notice should take one of the following forms: "Copyright 20XX Memphis Area Association of REALTORS®" or "© 20XX Memphis Area Association of REALTORS®". Firm shall replace "20XX" with the current year as of January 1 each year.