

Secondary Participation Agreement

Realtracs, Inc.

301 Seven Springs Way, Suite 100, Brentwood, TN 37027
Phone (615) 385-0777

This Participation Agreement (the “**Agreement**”) is made and entered into by Realtracs, Inc. (together with its successors and/or assigns, “**Realtracs**”) and the principal broker or appraiser identified on the signature line below (“**Firm Participant**”). By executing this Agreement, Realtracs and Firm Participant agree as follows:

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

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

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

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

Realtracs Software: Realtracs’ proprietary web browser interface(s) to the Realtracs System.

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

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

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

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

Users: Firm Participant’s employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

2. **Realtracs’ obligations.** Subject to the terms and conditions of this Agreement and the Realtracs Policies, Realtracs shall provide to Firm Participant, and each of the Users that is authorized to obtain access to, the Realtracs Service, including access to all data and functions in the Realtracs Service to which participants are entitled under the Realtracs Policies. Realtracs makes no warranties, however, that the Realtracs Service will be available at all times.

3. **Firm Participant’s obligations.**

(a) **Compliance with rules:** Firm Participant agrees to comply at all times with the Realtracs Policies, which are incorporated by reference, and to ensure that all Users comply at all times with the Realtracs Policies. Firm Participant is solely liable for any User’s breach of any agreement between the User and Realtracs relating the Realtracs Service or violation of any Realtracs Policies as if Firm Participant had committed the breach. Firm Participant acknowledges that Realtracs may suspend Participant’s and User’s access to the Realtracs Service in the event of Participant’s and/or User’s breach of the Realtracs Policies.

(b) **Fees:** Firm Participant shall pay the fees set forth in Realtracs’ schedule of fees when due, which may be amended at any time by Realtracs in its sole discretion. Realtracs will provide Firm Participant with written notice at least 30 days in advance of the effective date of any amendment to the fees schedule. Firm Participant is liable for all fees due under this Agreement and each User’s agreement with Realtracs. Firm Participant acknowledges that fees for offices, licensees and unlicensed assistants are non-refundable and non-transferrable.

(c) **Participant Contribution:** Firm Participant hereby represents and warrants that the Participant Contribution complies in all respects with the Realtracs Policies and covenants that the Participant Contribution at all times complies with the Realtracs Policies.

4. Election regarding copyrights in Participant Contributions. Firm Participant must elect from the following options. If no election is indicated, or if both options are checked, then Firm Participant is deemed to have selected Option 2.

OPTION 1

(a) Assignment from Participant: Firm Participant hereby unconditionally assigns to Realtracs all right, title and interest in the Participant Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; Firm Participant warrants that it has the authority to make this assignment. Firm Participant acknowledges that once it has made the election agreeing to this section, all copyrights in all portions of the Participant Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in Realtracs.

(b) Realtracs Obligations: Realtracs hereby grants to Firm Participant a non-exclusive, perpetual, world-wide, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution and those portions of the Realtracs Database relating to Firm Participant's listings. Realtracs shall make quarterly registrations of the Realtracs' copyrights in the Realtracs Database; Realtracs shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Firm Participant's permission.

OPTION 2

(a) License from Participant: Firm Participant hereby grants to Realtracs a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution. Firm Participant warrants that it has the authority to grant this license.

(b) Realtracs has no obligations to protect: Firm Participant acknowledges that: (i) Realtracs makes no grant of license or assignment to Firm Participant of any rights in the Realtracs Database except as set forth in paragraph 5; (ii) Realtracs will make no effort to register the copyrights in the Participant Contribution, and Firm Participant will be responsible for all costs and efforts associated with registration; (iii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; (iv) **Realtracs will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm Participant's permission;** (v) Realtracs will make no effort to secure for Firm Participant the right to use copyright works created by Users or third parties.

5. Other intellectual property provisions. Pursuant to the Realtracs Policies, the PCC shall be a work made for hire by Participant and Users for the benefit of Realtracs, each of which shall be deemed the PCC's author, as applicable, for purposes of copyright law. If for any reason the PCC cannot be provided as a work made for hire, Firm Participant shall immediately upon such determination, and hereby does, assign to Realtracs all right, title and interest in such PCC, including, without any limitation, any copyrights therein under United States and international copyright law. Realtracs hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the Realtracs Software and the Realtracs Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the Realtracs Policies and only to deliver real estate brokerage or appraisal services to Firm Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the Realtracs Policies are prohibited. Title to the Licensed Materials remains at all times in Realtracs and shall not pass to Firm Participant.

6. DISCLAIMER OF WARRANTIES. REALTRACS PROVIDES THE REALTRACS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE REALTRACS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE REALTRACS SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. REALTRACS DOES NOT WARRANT THAT THE REALTRACS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND REALTRACS MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE REALTRACS SERVICE. REALTRACS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE REALTRACS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE REALTRACS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. LIMITATIONS AND EXCLUSIONS OF LIABILITY. REALTRACS IS NOT LIABLE TO FIRM PARTICIPANT, USERS OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE REALTRACS SERVICE, INCLUDING RELIANCE BY ANY USER ON ANY INFORMATION OBTAINED THROUGH USE OF THE REALTRACS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE REALTRACS 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 REALTRACS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

9. Indemnification. Firm Participant shall defend, indemnify and hold Realtracs 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 Realtracs, any of its affiliates, or Other Participants and Subscribers arising from any acts of Firm Participant, any Firm Participant's commonly owned or controlled firm, or Users, including but not limited to (a) putting inaccurate information into the Realtracs Service; (b) making unauthorized use of User's password; (c) making unauthorized use of the Realtracs Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any representation or warranty under this Agreement; (f) submitting or causing another to submit content to Realtracs Database without sufficient rights; and (g) violating this or any other Agreement or any law.

10. Acknowledgment. Firm Participant acknowledges that Realtracs 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.

11. Miscellaneous.

(a) Term; Termination; Suspension: This Agreement commences upon the Effective Date set forth below and continues until terminated as described herein. This Agreement may be terminated (i) by either party 30 days after any party's written notice to the other of its intent to terminate; (ii) by either party 3 days after any party's written notice to another that the other has materially breached this Agreement, provided the breach remains uncured; (iii) immediately upon Realtracs' written notice to Firm Participant if Firm Participant fails to comply with Realtracs Policies (subject to any hearing or appeal rights of Firm Participant as described in the Realtracs Policies); or (iv) immediately upon Realtracs' written notice to Firm Participant upon termination of Firm Participant's privileges as a participant in Realtracs. Upon termination of this Agreement, all licenses granted in this Agreement shall immediately terminate, except the license to the Participant Contribution in Section 4, Option 1(b) or Option 2(a), if any. In the event Firm Participant breaches this Agreement and entitles Realtracs to terminate under this Paragraph 11(a), Realtracs may in its sole discretion suspend its performance instead of terminating this Agreement. Realtracs may make this election by written notice to Participant within 3 days after the initiation of the suspension. Firm Participant's obligations hereunder continue during any period of suspension.

(b) Electronic signatures and interpretation: Firm Participant expressly consents to the execution of this Agreement and any amendments by electronic means (such as web site "click through" agreements). This agreement may be amended by Realtracs' providing 30 days' advance written notice of a proposed amendment to Firm Participant and Firm Participant's or any User's continued use of the Realtracs Service or Realtracs Database after the expiration of such 30-day notice period, such continued use will be deemed an acceptance to the terms of such amendment by Firm Participant. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties, including by electronic means.

(c) Assignment: Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Firm Participant, whether by merger, acquisition or otherwise. Any purported assignment in contravention of this paragraph is null and void.

(d) Integration and severability; conflict: This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid by a court of competent jurisdiction, the other provisions remain in full force and effect. The foregoing notwithstanding, if any provision of Sections 6 through 10 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm Participant's access to the Realtracs Service will immediately terminate. To the extent there is any conflict between this Agreement, and the Realtracs Policies, the Realtracs Policies govern.

(e) Governing law; venue: The laws of the State of Tennessee govern this Agreement and its interpretation, without regard to any conflict of laws principles. Any action to enforce or interpret this Agreement may be litigated exclusively in confidential arbitration under the American Arbitration Association (AAA) rules for expedited commercial dispute resolution, before a single arbitrator sitting in Davidson County, Tennessee. The prevailing party is entitled to recover its attorney fees and costs.

(f) Notice: Any notice required or permitted to be given under this Agreement must be in writing and delivered via (i) U.S. Mail, postage paid and return receipt requested; (ii) express mailing service with confirmation of receipt; or (iii) 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.

(g) Survival. The representations and warranties in this Agreement, the license to the Participant Contribution in Section 4, Option 1(b) or Option 2(a), if any, and the provisions of Sections 7, 8, 9 and 11(e) remain in full force and effect notwithstanding the termination of this Agreement.

Having read this Agreement, Firm Participant expresses her/his will to be bound by its terms by signing below.

Signature of Participant (Principal Broker or Appraiser)

Date

Company Name: _____

Office Address: _____

Office Phone # _____ **Office License #** _____
(if applicable under state licensure law)

Participant's Information

Name (printed): _____

License # _____ **State** _____

Primary MLS: _____

Email Address: _____

Mobile Phone # _____ **Preferred Phone #** _____

Roster *(all licensees affiliated with Participant requesting Realtracs access – add additional pages if needed)*

_____ Name	_____ License #	_____ State
_____ Personal Email Account	_____ Previous Company	
_____ Mobile Number		

_____ Name	_____ License #	_____ State
_____ Personal Email Account	_____ Previous Company	
_____ Mobile Number		

_____ Name	_____ License #	_____ State
_____ Personal Email Account	_____ Previous Company	
_____ Mobile Number		

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