

Brokerage Services Agreement

Realtracs LLC

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Phone (615) 385-0777

This Brokerage Services Agreement (the “**Agreement**”) is made and entered into as of the date of agreement (the “**Effective Date**”) by Realtracs LLC (together with its successors and/or assigns, “**Realtracs**”) and the principal broker or other individual that is authorized to sign on behalf of their affiliated brokerage firm (“**Brokerage**”). By executing this Agreement, Realtracs and Brokerage agree as follows:

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

Brokerage Compilation Contribution or “BCC”: All selection, coordination, and arrangement by Realtracs and Users of the 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. BCC does not include the listing price, original text or photographs.

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

Realtracs Database: All data available to Brokerage on the Realtracs System, including the Brokerage 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, online terms of use (currently available at www.realtracs.com/info/info-terms-of-use-policy), 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 Brokerage 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 software and mobile application(s) in the Realtracs System.

Realtracs System: The aggregate of all software, 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 Brokerage.

Realtracs Participants: All brokerage firms and their respective employees, contractors, salespeople, Users, and assistants (whether licensed or unlicensed) that have entered into brokerage services agreements with Realtracs other than this Agreement, and that have been granted access to or use of the Realtracs Service.

Users: Brokerage’s employees, brokers, affiliate brokers, appraisers, appraiser trainees, contractors, 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 Brokerage, 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 Users are entitled under the Realtracs Policies. Realtracs makes no warranties, however, that the Realtracs Service will be available at all times.

3. **Brokerage’s obligations.**

(a) **Compliance with rules:** Brokerage 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. Brokerage is solely liable for any User’s breach of any agreement between the User and Realtracs relating to the Realtracs Service or violation of any Realtracs Policies as if Brokerage had committed the breach. Brokerage acknowledges that Realtracs may suspend Brokerage’s and User’s access to the Realtracs Service in the event of Brokerage’s and/or User’s breach of the Realtracs Policies.

(b) **Fees:** Brokerage 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 Brokerage with written notice at least 30 days in advance of the effective date of any amendment to the fees schedule. Brokerage is liable for all fees due under this Agreement and each User’s agreement with Realtracs. Brokerage acknowledges that fees for offices, licensees and unlicensed assistants are non-refundable and non-transferrable.

(c) Brokerage Contribution: Brokerage hereby represents and warrants that the Brokerage Contribution complies in all respects with this Agreement and the Realtracs Policies and covenants that the Brokerage Contribution shall at all times comply with this Agreement and the Realtracs Policies.

4. Copyrights in Brokerage Contributions.

(a) Ownership; License from Brokerage: Brokerage is and shall remain the sole owner of the Brokerage Contribution, including all intellectual property rights therein. Nothing in this Agreement shall be construed as an assignment or transfer of ownership of the Brokerage Contribution to Realtracs. Brokerage hereby grants to Realtracs a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to use and exercise all intellectual property rights in and to the Brokerage Contribution, including any underlying copyrights, database rights, and other proprietary rights therein, and to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Brokerage Contribution, and to enforce such intellectual property rights against third parties, including the right to bring suit or other legal action. Without limiting the foregoing, Realtracs may sublicense the Brokerage Contribution to third parties on behalf of and/or for the economic benefit or operational efficiency of Brokerage and Realtracs Participants for purposes including, but not limited to: (i) creating derivative products or services that utilize the Brokerage Contribution, (ii) facilitating consumer referrals and interactions by connecting consumers with real estate agent leads, mortgage loan services, and other similar services and products; (iii) enabling brokerage firms to access and retrieve listing data and other content; (iv) displaying listings on websites and mobile applications; (v) generating revenue from advertising; and (vi) any other purposes that benefit Brokerage and Realtracs Participants as determined by Realtracs. Brokerage warrants that it has the authority to grant this license.

(b) Realtracs has no obligations to protect: Brokerage acknowledges that: (i) Realtracs makes no grant of license or assignment to Brokerage of any rights in the Realtracs Database except as set forth in Section 5; (ii) Realtracs will make no effort to register the copyrights in the Brokerage Contribution, and Brokerage 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 Brokerage Contribution without Brokerage's permission; (v) Realtracs will make no effort to secure for Brokerage the right to use copyright works created by Users or third parties.

5. Other intellectual property provisions. Pursuant to the Realtracs Policies, the BCC shall be a work made for hire by Brokerage and Users for the benefit of Realtracs, each of which shall be deemed the BCC's author, as applicable, for purposes of copyright law. If for any reason the BCC cannot be provided as a work made for hire, Brokerage shall immediately upon such determination, and hereby does, assign to Realtracs all right, title and interest in such BCC, including, without any limitation, any copyrights therein under United States and international copyright law. Realtracs hereby grants Brokerage 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 Brokerage 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 Brokerage'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 Brokerage.

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 BROKERAGE. 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 BROKERAGE, THEIR AFFILIATED FIRM, 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 BROKERAGE OR THEIR AFFILIATED FIRM FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES BROKERAGE 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. Brokerage and their affiliated brokerage firm shall defend, indemnify and hold Realtracs and Realtracs Participants 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 Realtracs Participants arising from any acts of Brokerage, any Brokerage'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. Brokerage 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. Brokerage further represents that they are authorized to bind their affiliated brokerage firm to the terms of this Agreement and that they are in fact so binding their affiliated brokerage firm to the terms of this Agreement related to use of the Realtracs Service, limitation of liability, dispute resolution, audits of compliance, and indemnification, to the fullest extent permitted by law.

11. Miscellaneous.

(a) Term; Termination; Suspension: This Agreement commences upon the Effective Date 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 Brokerage if Brokerage fails to comply with Realtracs Policies (subject to any hearing or appeal rights of Brokerage as described in the Realtracs Policies); or (iv) immediately upon Realtracs' written notice to Brokerage upon termination of Brokerage'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 Brokerage Contribution in Section 4(a). In the event Brokerage breaches this Agreement and entitles Realtracs to terminate under this Section 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 Brokerage within 3 days after the initiation of the suspension. Brokerage's obligations hereunder continue during any period of suspension.

(b) Electronic signatures and interpretation: Brokerage 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 Brokerage and Brokerage'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 Brokerage. Except as provided in this Section, 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 Brokerage, whether by merger, acquisition or otherwise. Any purported assignment or delegation in contravention of this Section 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 will 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 Brokerage'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 arising under this Agreement may be litigated exclusively in confidential, single party (not class-based) arbitration under the American Arbitration Association (AAA) rules for expedited commercial dispute resolution, before a single arbitrator sitting in Davidson County, Tennessee, who is exclusively authorized to grant any relief related to this Agreement and to determine the arbitrability of any dispute. 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 3 days after transmission, whichever is earlier.

(g) Survival. The representations and warranties in this Agreement, the license to the Brokerage Contribution in Section 4(a), and the provisions of Sections 7, 8, 9 and 11(e) remain in full force and effect notwithstanding the termination of this Agreement.

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Having read this Agreement and typing AGREE, Brokerage agrees to be bound by its terms.