

**BIG BEAR ASSOCIATION OF REALTORS®, INC.  
MULTIPLE LISTING SERVICE**

**RETS ACCESS AND RECIPROCAL BROKER DATA  
DELIVERY AGREEMENT**

This RETS Access And Reciprocal Broker Data Delivery Agreement (“Agreement”), is by and between **BIG BEAR ASSOCIATION OF REALTORS, INC.** and **BIG BEAR ASSOCIATION OF REALTORS MULTIPLE LISTING SERVICE** (collectively “BBAOR”), and \_\_\_\_\_, a Broker Participant of BBAOR (“BROKER”), replaces all prior written and oral agreements between the parties, and is effective as of \_\_\_\_\_, (“Effective Date”).

**RECITALS**

- A. BBAOR operates a multiple listing service (“MLS”) in connection with the sale of real property throughout California through a proprietary real property listing information database.
- B. In compliance with a National Association of REALTORS® mandate and the California Association of REALTORS® guidelines, BBAOR has developed an Internet Data Exchange Program (“IDX”) that provides for delivery of certain multiple listing service data to qualified BBAOR Member participants.
- C. BROKER wishes to obtain, and BBAOR wishes to provide for use on BROKER’s website, certain listing data of other real estate brokerages participating in the BBAOR IDX Program (“Reciprocal Broker Data”).
- D. BROKER may engage consultants, including other companies or individuals who are not employees of BROKER (“Consultant”), to perform data downloading, manipulation of data, formatting, programming, and web design to support BROKER’s participation in the IDX Program, if said Consultant executes and acknowledges its obligation to be bound by this Agreement.
- E. BBAOR and BROKER wish to set forth the terms on which BROKER may access the BBAOR RETS server containing listing data from BBAOR’s proprietary database and publish such data on BROKER’s website on the Internet.

**AGREEMENT**

In consideration of the mutual promises and covenants in this Agreement, and other good and valuable consideration the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** In addition to the terms defined in the above Recitals, which Recitals are incorporated herein, the following terms have the meaning set forth below:

1.1 **“Broker Participant”** means a participant member in good standing of BBAOR or its MLS.

1.2 **“Reciprocal Broker Data”** means, and is restricted to, a **subset** of the listing data in BBAOR’s database (selected at the sole discretion of BBAOR), which is comprised of listing data from various Broker Participants that have given BBAOR permission to disseminate such listing data information to other participating Broker Participants for the purpose of Internet display on participating Broker Participant’s websites who have also agreed to participate in the BBAOR IDX Program.

1.3 **“Claims”** means any and all damages, losses, liabilities, cost and expenses, including reasonable attorney’s fees, arising out of, in connection with, or relating to, use and/or publication of the Reciprocal Broker Data, including, but not limited to, claims relating to infringement of proprietary rights of third parties.

1.4 **“Term”** means a perpetual period commencing on the Effective Date and ending when this Agreement is terminated as provided in Paragraph 4 of this Agreement.

1.5 **“RETS” or “Real Estate Transaction Standard”** means a specification for a standard communication method between computer systems exchanging real estate information. It defines a standard interface for use by applications such as agent desktop software, IDX systems, data aggregation systems, and other systems that store, display or use real estate listing, sales and other data.

1.6 **“RETS Service”** means the file transfer protocol supported by the BBAOR computer system that allows BROKER or Consultant to transfer and download files containing unformatted Reciprocal Broker Data to a computer system by use of RETS.

1.7 **“MLS Rules”** means BBAOR’s Multiple Listing Service Rules and Regulations, as revised from time to time, including, but not limited to, any reference to BBAOR’ IDX policy adopted by BBAOR.

## 2. **Grant of License.**

2.1 **Non-Exclusive License.** BBAOR hereby grants to BROKER, subject to BROKER’s performance of its obligations under this Agreement and compliance with the MLS Rules and Regulations, a non-exclusive license solely to access and download from BBAOR’ RETS website, and publish on the Internet, in whole or in part, the Reciprocal Broker Data during the Term.

2.2 **Responsibility for Other Property or Costs.** BROKER hereby acknowledges and agrees that BBAOR is not supplying any software, programming assistance, or tangible property of any kind in connection with such license and, if needed, BROKER must obtain such items, materials, or services at BROKER’s sole cost and expense.

**2.3 Ownership.** BROKER hereby acknowledges and agrees that BBAOR owns all rights and title to the Reciprocal Broker Data, nothing in this Agreement constitutes a transfer of title to the Reciprocal Broker Data to BROKER, and that BROKER has no right to retain or use any Reciprocal Broker Data except as provided in this Agreement and in conjunction with the MLS Rules. Notwithstanding the other terms of this paragraph, BBAOR and BROKER acknowledge and agree that BROKER owns all data initially supplied by BROKER to BBAOR for aggregation in BBAOR' listing database.

**3. License Fees.** BROKER will pay License Fees as follows:

**3.1 Initial Contract Year.** On execution of this Agreement, BROKER will pay to BBAOR a license fee an amount equal to the number of months from the Effective Date through the first June 30<sup>th</sup> after the Effective Date, multiplied by Six Dollars and Twenty-five Cents (\$6.25), with the month of the Effective Date counting as one month regardless of the day of the month.

**3.2 Subsequent Years.** Commencing on the first July 1<sup>st</sup> after the Effective Date ("Contract Year"), and on each July 1<sup>st</sup> thereafter during the term of this Agreement, BROKER will pay an annual license fee of Seventy-Five Dollars (\$75.00). If this Agreement is terminated other than at the end of a Contract Year, BROKER is not entitled to any rebate or refund of the license fee.

**4. Termination.** This Agreement will be deemed terminated immediately and automatically, without further notice on occurrence of any of the following events, subject to the provisions of Paragraph 11 of this Agreement:

**4.1** A material default in the performance of any of the covenants or conditions of this Agreement that is not cured by the defaulting party within ten (10) days of written notice from the non-defaulting party to the defaulting party setting forth, with specificity, the nature of such default; or

**4.2** BROKER elects to "OPT OUT" of the IDX Program by so notifying BBAOR and the Broker Participant's local Association, in writing; or

**4.3** BROKER's multiple listing service privileges are revoked by BBAOR for any reason; or

**4.4** BROKER fails to comply with the MLS Rules; or

**4.5** BROKER fails to timely pay any license fee within three (3) business days after written notice; or

**4.6** Upon thirty (30) days prior written notice of one party to the other for any reason, with or without cause.

**5. Warranties and Covenants.** BROKER hereby warrants and covenants as follows:

**5.1** BROKER will comply, in all respects, and at no cost to BBAOR, with any and all conditions, requirements, or restrictions established by BBAOR with respect to use or publication of the Reciprocal Broker Data.

**5.2** BROKER hereby acknowledges receipt of the MLS Rules. BROKER and BROKER's agents, including but not limited to BROKER's Consultant, will comply, in all respects, and at no cost to BBAOR, with the MLS Rules, including, but not limited to, rules or regulations concerning the display of active listing data on the Internet.

**5.3** BROKER will obtain Consultant's signature on this Agreement and provide BBAOR with the original executed Agreement containing Consultant's signature and current contact information. BROKER will not allow any Consultant to download, manipulate, or formulate any Reciprocal Broker Data unless and until BROKER delivers to BBAOR a fully signed copy of this Agreement executed by such Consultant. BROKER will not allow any Consultant to utilize the Reciprocal Broker Data in any manner inconsistent with this Agreement, including, but not limited to, transmittal of any BBAOR data to any third party.

**5.4** BROKER will not knowingly permit any access to the Reciprocal Broker Data, through BROKER's log-in identification and password or otherwise, by any persons other than BROKER and BROKER's agents.

**5.5** BROKER will not enter into any license, sublicense, access, electronic connection, or another agreement or arrangement, the effect of which would be to permit access to the Reciprocal Broker Data or any portion thereof, to any party other than BROKER and BROKER's customers or clients in conformance with the terms of this Agreement.

**5.6** BROKER will establish and maintain fire walls, filters, and such additional and/or complimentary security systems in place as may be reasonably necessary in order to provide reasonable assurances that the Reciprocal Broker Data is secure and the connection between BROKER and BBAOR may not be used to access the Reciprocal Broker Data except by BROKER and BROKER's agents.

**6.** **Assignment.** BROKER may not assign this Agreement without the prior written consent of BBAOR, which may be withheld in BBAOR's sole and absolute discretion.

**7.** **Notice.** All notices and other communications under this Agreement must be in writing addressed to the party to whom notice is being given at its address as set forth under its signature below, or at such other address as may hereafter be designated in writing by that party to the other party in accordance with the notice provisions of this paragraph, and may be (a) personally delivered, (b) transmitted by first class mail, postage prepaid, (c) sent by Federal Express or similar expedited delivery service, or (d) transmitted by facsimile, email, or other electronic delivery. All such notices or other communication will be deemed to have been given in accordance with the foregoing delivery alternatives as follows: (i) the date received if delivered personally, (ii) three (3) business days after the date of postmark if delivered by mail, (iii) the date of receipt, if delivered by Federal Express or similar expedited delivery service or (iv) the date of transmission if delivered by facsimile.

**8.** **Confidentiality.**

**8.1** **General Confidentiality.** BROKER acknowledges and agrees that all material accessed by or disclosed by BBAOR to BROKER pursuant to this Agreement will be presumed to be confidential information, trade secrets, and proprietary information of BBAOR (collectively the

“Proprietary Information”) and will be so regarded by BROKER and BROKER’s agents, including Consultants.

**8.2 Duty of Confidentiality.** BROKER agrees on behalf of BROKER and BROKER’s agents that any and all information identified as Proprietary Information or which, under all of the circumstances, ought reasonably be treated as Proprietary Information (including the terms of this Agreement and the relationship between the parties), will not be disclosed to any third person, without the express written consent of BBAOR, for a period of one (1) year following termination of this Agreement. These confidentiality obligations will not apply to any information which is or subsequently becomes available to the general public other than through a breach by the receiving party, is already known to the receiving party before disclosure by the disclosing party, is developed through the independent efforts of the receiving party, or the receiving party rightfully receives from a third party without restriction as to confidentiality or use.

**9. Release and Indemnification.** BROKER hereby releases and discharges BBAOR from any and all claims or causes of action, including any and all costs, expenses, and attorney’s fees with respect to the Reciprocal Broker Data delivered to BROKER pursuant to this Agreement. BROKER agrees to indemnify and defend BBAOR from and against all claims or causes of action, including any and all costs, expenses, and attorney’s fees with respect to the data initially supplied by BROKER to BBAOR for inclusion in the BBAOR listing database.

**10. Disclaimer.** BROKER acknowledges that the Reciprocal Broker Data is being delivered to BROKER by BBAOR on an “AS IS” basis, without any warranty of any kind, either express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. BBAOR’s liability, if any, will be limited to the price paid by BROKER for delivery of the Reciprocal Broker Data by BBAOR, and in no event will BBAOR be liable to BROKER, or to any other person, for any damages, including incidental or consequential damages, arising out of the use of the Reciprocal Broker Data provided by BBAOR to BROKER under this Agreement.

**11. Survival.** Notwithstanding any other provision herein, the obligations of the parties, and each of them, contained in Paragraphs 5, 8, 9, and 10, will survive any termination of this Agreement.

**12. Controlling Law.** This Agreement will be governed by and construed under the laws of the State of California without regard to the principles of conflicts of law.

**13. Successors and Assigns.** Subject to Paragraph 6 of this Agreement, each and all of the covenants, terms, provisions, and agreements contained in this Agreement will be binding upon and inure to the benefit of the permitted successors, representatives, and assigns.

**14. Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances will not be affected thereby, but rather will be enforced to the greatest extent permitted by law.

15. **Integration.** This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or understandings, whether written or oral.
16. **Modification.** No amendment, modification, or other purported alteration of this Agreement will be binding upon the parties unless it is in writing and signed by the party to be charged.
17. **Waiver.** The failure of any party to enforce any of the provisions of this Agreement will not be construed to be a waiver of the right of such party thereafter to enforce such provisions.
18. **Relationship of the Parties.** Nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between the parties. No party by virtue of this Agreement is authorized as an agent, employee, or legal representative of any other party.
19. **Attorney's Fees.** In the event a lawsuit or other action is instituted to enforce the terms of this Agreement, the prevailing party will be entitled to be awarded reasonable attorney's fees and costs, to be fixed by the Court or other tribunal, in addition to all other sums provided by law.
20. **Execution, Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which when taken together will constitute one and the same instrument. A signature on a copy of this Agreement received by either party by facsimile is binding upon the other party as an original. The parties will treat a photocopy of such facsimile as a duplicate original. If this Agreement is executed in counterparts, no signatory hereto will be bound until all parties hereto have duly executed or caused to be duly executed a counterpart of this Agreement.
21. **Amendment.** Any alterations, changes, or amendments to this Agreement must be made in writing executed on behalf of each party to this Agreement.
22. **BROKER and Consultant Acknowledgements.** By their signatures below, Consultant and BROKER acknowledge that they have read this Agreement in its entirety and agree to abide by the provisions in this Agreement for Consultant's and BROKER's use of Reciprocal Broker Data under the BBAOR IDX Program. BROKER and Consultant acknowledge and understand that any violation or breach of the terms and conditions of this Agreement by BROKER or Consultant may result in termination of this Agreement as provided in Paragraph 4 above.

**SIGNATURES ON NEXT PAGE**

The parties have executed this Agreement on the dates below indicated to be effective on the Effective Date in the introductory paragraph above.

**“BROKER”**

\_\_\_\_\_  
*Company name printed*

Dated: \_\_\_\_\_ By \_\_\_\_\_  
*Signature of Designated Broker*

Name Printed: \_\_\_\_\_

Email Address \_\_\_\_\_ Phone Number \_\_\_\_\_

Web site Address: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

**CONSULTANT [IF ANY], MUST SIGN BELOW:**

I have read and understand and agree to abide by this MULTIPLE LISTING SERVICE FTP ACCESS AND RECIPROCAL BROKER DATA DELIVERY AGREEMENT.

**“CONSULTANT”**

\_\_\_\_\_  
*Company name printed*

Dated: \_\_\_\_\_ By \_\_\_\_\_  
*Signature of Authorized Representative*

Name Printed: \_\_\_\_\_

Email Address \_\_\_\_\_ Phone Number \_\_\_\_\_

Web site Address: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

**Acknowledgement and Approval section below to be completed only by BBAOR**

**“BBAOR”**

**BIG BEAR ASSOCIATION OF REALTORS® and BIG BEAR ASSOCIATION OF REALTORS® MULTIPLE LISTING SERVICE**

Dated: \_\_\_\_\_ By \_\_\_\_\_  
*Signature of Executive Director*

Name Printed: \_\_\_\_\_

Email Address \_\_\_\_\_ Phone Number \_\_\_\_\_

**RETS Agent MLS ID Assigned:** \_\_\_\_\_

**AMENDMENT TO**  
**BIG BEAR ASSOCIATION OF REALTORS®, INC.**  
**MULTIPLE LISTING SERVICE**

**RETS ACCESS AND RECIPROCAL BROKER DATA**  
**DELIVERY AGREEMENT**

The RETS Access And Reciprocal Broker Data Delivery Agreement ("Agreement"), by and between BIG BEAR ASSOCIATION OF REALTORS, INC. and BIG BEAR ASSOCIATION OF REALTORS MULTIPLE LISTING SERVICE (collectively "BBAOR"), and \_\_\_\_\_, a Broker Participant of BBAOR ("BROKER"), and BROKER's vendor ("Consultant") is hereby amended, effective as of \_\_\_\_\_, ("Effective Date"), as follows:

The following Section 23 is added to the Agreement:

**23. Consultant Acknowledgments and Agreements.** In addition to other obligations of Consultant under this Agreement, by signing below Consultant hereby acknowledges and agrees to comply with the following requirements, to be provided at the time of submission of this agreement.

23.1 Consultant will deliver to BBAOR a complete written list of URLs on which Consultant will display BBAOR's Reciprocal Broker Data.

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23.2 Consultant will deliver to BBAOR a complete written list of all subsidiaries to whom Consultant intends to provide BBAOR's Reciprocal Broker Data.

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23.3 Consultant will deliver to BBAOR a complete written list of all syndication agreements pursuant to which Consultant intends to provide BBAOR's Reciprocal Broker Data.

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23.4 Consultant will deliver to BBAOR a complete written list of all BBAOR MLS members who are clients of Consultant or receive services from Consultant or the subsidiaries or pursuant to the syndication agreements identified under sections 23.2 and 23.3 above.

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Except as expressly set forth in this Amendment, the Agreement remains in full force and effect.

The parties have executed this Amendment on the dates below indicated to be effective on the Effective Date in the introductory paragraph above.

**“BROKER”**

\_\_\_\_\_  
*Company name printed*

Dated: \_\_\_\_\_

By

\_\_\_\_\_  
*Signature of Designated Broker*

Name Printed: \_\_\_\_\_

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Web site Address: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

**CONSULTANT [IF ANY], MUST SIGN BELOW:**

I have read and understand and agree to abide by this MULTIPLE LISTING SERVICE FTP ACCESS AND RECIPROCAL BROKER DATA DELIVERY AGREEMENT.

**“CONSULTANT”**

\_\_\_\_\_  
*Company name printed*

Dated: \_\_\_\_\_

By

\_\_\_\_\_  
*Signature of Authorized Representative*

Name Printed: \_\_\_\_\_

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Web site Address: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

**“BBAOR”**

**BIG BEAR ASSOCIATION OF REALTORS® and BIG BEAR ASSOCIATION OF REALTORS® MULTIPLE LISTING SERVICE**

Dated: \_\_\_\_\_

By

\_\_\_\_\_  
*Signature of Executive Director*

Name Printed: \_\_\_\_\_

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Web site Address: \_\_\_\_\_

**DATA ACCESS  
AGREEMENT**

This Data Access Agreement (“Agreement”) is entered into between **BIG BEAR ASSOCIATION OF REALTORS®** (“Multiple Listing Organization”) and \_\_\_\_\_ (“Technology Provider”), a(n) [\_\_\_\_\_], and is effective as of the date of the last signature below (“Effective Date”). Multiple Listing Organization and Technology Provider are collectively referred to herein as the “Parties” and individually as “Party.”

**BACKGROUND**

- A. Multiple Listing Organization is a trade association membership organization that compiles and owns data regarding certain active and historical real estate listings and associated photographs, images and information (“Content”), and provides access to the Content to its member participants and subscribers through its Multiple Listing Service (“MLS”). All references to the MLS in this agreement refer to Multiple Listing Organization’s MLS.
- B. Technology Provider desires access to the Content to include it in its products and services and market those products and services to: (1) MLS member participants and subscribers; and/or (2) the MLS, for Authorized Purposes, as defined below.
- C. Multiple Listing Organization is willing to grant to Technology Provider a nonexclusive, limited, nontransferable, revocable license (“License”) to access specified portion(s) of the Content (“Listing Data”), as specified in **Exhibit A**, for Authorized Purposes and Authorized Display.

The Parties hereby agree as follows:

**1. DEFINITIONS**

1.1 “Authorized Purpose” shall mean the purpose(s) for which Technology Provider is authorized to use Content as defined and restricted, pursuant to Section 3.4.

1.2 “Authorized Broker” shall mean a Participant, as defined by this Agreement, who is identified in any Broker Authorization Form between said Participant and Multiple Listing Organization. There may be more than one Authorized Broker.

1.3 “Broker Authorization Form” shall mean the separate form by which Multiple Listing Organization authorizes Technology Provider to provide the Product to a specified Authorized

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Multiple Listing Organization’s Initials

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Technology Provider’s initials

Broker. For the avoidance of doubt, (i) a Broker Authorization Form may be entered into on and/or after the Effective Date of this Agreement, and (ii) there may be multiple Broker Authorization Forms throughout the course of this Agreement.

1.4 “Listing Data” means the multiple listing data specified in Exhibit A.

1.5 “Participant” shall mean a participant of Multiple Listing Organization, as defined in the Policies.

1.6 “Policies” shall mean the restrictions specified in this Agreement, the MLS Policies and Procedures Manual of the Multiple Listing Organization, and any operating policies of Multiple Listing Organization, as may be amended from time to time.

1.7 “Product” shall mean Technology Provider’s product or service identified in **Exhibit A**.

## **2. OWNERSHIP**

Technology Provider acknowledges that the Listing Data is proprietary to Multiple Listing Organization and is protected by law, including trade secret and copyright laws. All right, title and interest in and to the Listing Data and all versions, copies, modifications, and derivatives of it, are and will remain the sole and exclusive property of Multiple Listing Organization. Technology Provider has only the limited rights expressly granted in this Agreement. All rights not expressly granted herein are reserved by Multiple Listing Organization. Technology Provider shall not challenge or take any action inconsistent with Multiple Listing Organization’s ownership of, or rights in, the Listing Data.

## **3. LICENSE AND PERMITTED USE**

3.1 License Grant. Subject to and in accordance with, the terms and conditions of this Agreement, Multiple Listing Organization grants to Technology Provider a nonexclusive, limited, nontransferable, revocable, license to use the Listing Data. There are no implied licenses under this Agreement. All rights not expressly granted herein are reserved to Multiple Listing Organization.

3.2 Compliance with Policies. Technology Provider shall comply with the Policies at all times. In the event of any perceived conflict between the Policies and this Agreement, the Policies shall govern.

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Multiple Listing Organization’s Initials

\_\_\_\_\_  
Technology Provider’s initials

3.3 Permitted Use. Technology Provider is authorized to use the Listing Data in connection with the Product. Technology Provider may provide the Product to one of the approved selections below (select one):

- a.  Only Authorized Broker(s)
- b.  All Participants

3.4 Restrictions.

- a. Technology Provider will not under any circumstances use, copy, duplicate or otherwise reproduce the Listing Data in any manner other than for the purposes expressly authorized in this Agreement. Technology Provider will not modify, alter, lease, loan, sell or re-commercialize the Listing Data or any portion thereof, or create derivative works from it, or make Listing Data available to any third party except in strict compliance with the terms of this Agreement.
- b. Technology Provider will not use for solicitation the name, mailing address, telephone number, or other contact information of any party named or identified as a client or customer of a Participant or any other party that is designated within the Content as requesting protection from solicitation.
- c. Technology Provider will abide by all prevailing federal, state, and local laws and regulations, including those governing fair information practices and consumers' rights to privacy.
- d. Technology Provider will limit access to the Listing Data to those individuals who have a "need to know" in connection with Technology Provider's business and will obligate those individuals to acknowledge the ownership, copyright, confidentiality and other restrictions defined in the provisions of this Agreement, and to adhere to fair information practices.
- e. Technology Provider will not permit any parent, subsidiary, affiliated entity, or other third party to access or use the Listing Data or any portion of it without the express written consent of Multiple Listing Organization.
- f. Technology Provider will not process or permit the Listing Data, or any portion of it, to be processed or aggregated with data from any other source without written permission of the MLS.

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Multiple Listing Organization's Initials

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Technology Provider's initials

- g. Technology Provider will not use the Listing Data to create, enhance or structure any database in any form for resale or distribution unless specifically authorized by Multiple Listing Organization or this Agreement.
- h. Technology Provider will not use any of the Listing Data for advertising or similar purposes without the specific, prior written consent of Multiple Listing Organization or pursuant to this Agreement. Technology Provider will not advertise, or state, or imply a joint venture with the Multiple Listing Organization, or the endorsement of the Multiple Listing Organization of Technology Provider's business, without the express written consent of the Multiple Listing Organization.
- i. Technology Provider will not receive any form of compensation for access to the Listing Data based solely on the value of the Listing Data or access to it.
- j. Technology Provider will not use the data for any purpose that:
  - i. Infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy;
  - ii. Violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing unfair competition, anti-discrimination and false advertising); or
  - iii. Is defamatory, trade libelous, unlawfully threatening or unlawfully harassing.
- k. Technology Provider will comply with the published guidelines of the National Association of REALTORS® ("NAR") for the use and dissemination of multiple listing service data, including the Content, as may be amended and published by NAR from time to time.
- l. Technology Provider will reproduce in full and will not remove, alter or obscure any portion of any proprietary notices in the Content or other materials provided by Multiple Listing Organization under this Agreement.
- m. The software provided by Technology Provider to the Multiple Listing Organization Participant will include a secure firewall with ample security to protect the Listing Data being provided by Multiple Listing Organization.
- n. The license agreement between the Technology Provider and the Multiple Listing Organization Participant will be consistent with, support and reinforce the Multiple Listing Organization governance rules in the use and treatment of the Listing Data accessed through Technology Provider.

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Multiple Listing Organization's Initials

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Technology Provider's initials

#### 4. LISTING DATA AND FEES

- 4.1 Listing Data. Multiple Listing Organization shall provide the data feed of Listing Data identified and in the manner set forth in **Exhibit A**. If Technology Provider is permitted to provide the Product only to Authorized Broker(s) (upon selection of Section 3.3(a)), then the data feed of Listing Data shall not commence until the first Authorized Broker completes the application and approval process..
- 4.2 Fees. Technology Provider shall pay the fees set forth in **Exhibit A** to Multiple Listing Organization via e-commerce or credit card. The “One-Time Set-Up Fee,” if applicable, shall be payable upon the Effective Date and shall be non-refundable. Additional fee(s) may be determined by the Multiple Listing Organization as necessary after the commencement of the first Authorized Broker’s (upon selection of Section 3.3(a)) completion of the application and approval process, or after the Effective Date (upon selection of Section 3.3(b)). Fees, to the extent applicable (other than a One-Time Set-Up Fee), shall be prorated for any partial months the Listing Data is used by Technology Provider.
- 4.3 Fee Increases. Multiple Listing Organization reserves the right to increase fees at any time during the term of this Agreement upon at least thirty (30) days’ notice (“Fee Increase Notice”) to Technology Provider. The effective date of the fee increase shall be the first day of the following month, and shall be specified in the Fee Increase Notice. If Technology Provider is unwilling to agree to the fee increase, then Technology Provider shall have the right to terminate this Agreement in accordance with Section 5.3.

#### 5. TERM AND TERMINATION

- 5.1 Term. The term of this Agreement shall commence on the first day of the month following the Effective Date (“Term Date”) and shall continue for twelve (12) months. However, if the Effective Date falls on the first day of the month, then the term of this Agreement shall commence on the Effective Date and shall continue for 12 months from the Effective Date. The term shall auto-renew for successive 12-month periods unless and until terminated in accordance with this Section 5.2 and Section 5.3 of this Agreement.
- 5.2 Notice of Non-Renewal. Either party may terminate this Agreement by giving the other party at least thirty (30) days’ written notice of non-renewal prior to the expiration of the then-current term. If such notice is timely given, the Agreement will terminate at the expiration of the then-current term.

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Multiple Listing Organization’s Initials

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Technology Provider’s initials

5.3 Termination for Fee Increase. Pursuant to Section 4.3, if Technology Provider is not willing to agree to an increase in fees, then Technology Provider may provide a written notice of termination (“Notice of Termination”) to Multiple Listing Organization on or before the end of the fee increase notice period, as provided in the Fee Increase Notice. If Technology Provider provides such notice, then this Agreement shall terminate on the day prior to the effective date of the fee increase.

5.4 Termination for Breach; Suspension. If either Party materially fails to perform or comply with any provision of this Agreement, the non-breaching party shall provide the breaching party a ten (10) days’ written notice of such breach. The breaching party shall be provided opportunity to cure the breach within fifteen (15) days following such notice. If the breach is not cured within that fifteen (15) day period, the non-breaching party shall be entitled to terminate this Agreement. Notwithstanding the foregoing, Multiple Listing Organization may immediately suspend Technology Provider’s license to use the Listing Data if Technology Provider is found in breach of this Agreement until such time as the breach is cured.

5.5 Effects of Termination. Upon expiration or termination of this Agreement, all license rights granted by Multiple Listing Organization to Technology Provider pursuant to the Agreement shall terminate.

## **6. REMEDIES**

6.1 Injunctive Relief. Any violation, infringement, or misappropriation of the licenses granted hereunder of Multiple Listing Organization's intellectual property rights shall be deemed a material breach of the Agreement. Due to the unique nature of the Listing Data, Technology Provider acknowledges and agrees that Multiple Listing Organization would suffer irreparable harm in the event that Technology Provider breaches or threatens to breach its obligations under this Agreement. Technology Provider further agrees that monetary damages would be inadequate to compensate Multiple Listing Organization for a breach. Multiple Listing Organization shall be entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Technology Provider of Multiple Listing Organization’s intellectual property and Listing Data.

6.2 Direct Damages. Technology Provider acknowledges that damages suffered by Multiple Listing Organization from unauthorized third party access to the Listing Data as a result of disclosure of any passwords or any other means of unauthorized disclosure would be speculative and difficult to quantify. Accordingly, Technology Provider agrees that in the event Technology Provider or its employees, agents, or contractors, disclose a method of access to the Listing Data

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Technology Provider’s initials

or disclose the Listing Data to any unauthorized third party, Technology Provider shall be liable to Multiple Listing Organization for direct damages which shall be capped at the greater of A) TWELVE THOUSAND US DOLLARS (\$12,000.00) or B) The amount Technology Provider has paid to Multiple Listing Organization in the twelve (12) months immediately preceding the event giving rise to a claim for breach.

## **7. AUDITS**

Multiple Listing Organization may, at its option and upon reasonable notice to Technology Provider of no less than ten (10) days, engage an independent third party to review, inspect, and test the books, records, equipment, and facilities of Technology Provider to the extent reasonably necessary to ascertain Technology Provider's compliance with this Agreement.

## **8. WARRANTY DISCLAIMER**

THE LISTING DATA IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, ACCURACY, COMPLETENESS, AVAILABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE (EVEN IF THAT PURPOSE IS KNOWN TO MULTIPLE LISTING ORGANIZATION), OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. TECHNOLOGY PROVIDER ACKNOWLEDGES THAT MULTIPLE LISTING ORGANIZATION DOES NOT INVESTIGATE OR CONFIRM ANY OF THE CONTENT OR LISTING DATA AND DOES NOT ENDORSE IT FOR ANY PURPOSE. TECHNOLOGY PROVIDER REPRESENTS AND WARRANTS THAT (I) IT HAS READ AND AGREES TO THESE TERMS AND CONDITIONS; (II) THAT IT IS AUTHORIZED TO ENTER INTO THIS AGREEMENT; AND (III) ENTERING INTO THIS AGREEMENT WILL NOT VIOLATE ANY OTHER AGREEMENT TO WHICH IT IS A PARTY.

## **9. LIMITATION OF LIABILITY**

MULTIPLE LISTING ORGANIZATION'S TOTAL LIABILITY UNDER THIS AGREEMENT IS LIMITED TO DIRECT MONEY DAMAGES NOT EXCEEDING THE AMOUNT PAID BY TECHNOLOGY PROVIDER TO MULTIPLE LISTING ORGANIZATION UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH CLAIM. THIS LIMIT IS CUMULATIVE AND ALL PAYMENTS UNDER THIS AGREEMENT ARE AGGREGATED TO CALCULATE SATISFACTION OF THE LIABILITY LIMIT. THE EXISTENCE OF MULTIPLE CLAIMS DOES NOT ENLARGE THE LIMIT. TO THE

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FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MULTIPLE LISTING ORGANIZATION, ITS MEMBER PARTICIPANTS AND SUBSCRIBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, AND REPRESENTATIVES BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, LOST PROFITS, LOST REVENUE, LOST SAVINGS, AND/OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF MULTIPLE LISTING ORGANIZATION IS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

## 10. INDEMNIFICATION

In the event a Party breaches any provision of this Agreement, that party (the “Indemnifying Party”) shall indemnify the other party and its respective employees, directors, officers, agents, representatives, and authorized successors and assigns (the “Indemnified Parties”) against any and all losses, damages, and costs (including reasonable attorneys’ fees) arising from each claim arising out of this Agreement and related in any way to Technology Provider’s use of the Content and Listing Data. The Indemnified Parties shall promptly notify the Indemnifying Party of any claim, and cooperate fully with the Indemnifying Party in defending or settling any claim. Notwithstanding any terms to the contrary in this Agreement, the failure to give notice to the Indemnifying Party within a reasonable time of the commencement of any claim under this Section will relieve the Indemnifying Party of any liability to the Indemnified Party under this Section, only to the extent that such failure materially prejudices the Indemnifying Party’s ability to defend such claim.

## 11. GENERAL PROVISIONS

11.1 Relationship of the Parties. The Parties acknowledge that this is a business relationship based on the express provisions of this Agreement. The Parties are independent of each other, and no partnership, joint venture, agency, fiduciary or employment relationship is intended or created by this Agreement.

11.2 Notices. Any notice or other communication required or permitted under this Agreement will be sufficiently given if delivered personally or sent by registered or certified United States mail, postage prepaid and return receipt requested, or by Federal Express or other reputable overnight delivery service, to the address of the Party set forth below. Notice given by personal service is considered delivered upon receipt. Notice given by U.S. Mail is considered delivered forty-eight (48) hours after deposit. Notice given by reputable overnight delivery service is considered delivered twenty-four (24) hours after timely deposit. A Party may

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Technology Provider’s initials

designate from time to time a different or additional address for noticing purposes under this provision by giving the other Party ten (10) days' written notice of that address.

**If to Technology Provider:**

Name/Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**With a Copy to:**

Name/Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**If to Multiple Listing Organization:**

Name/Title: ATTN: Executive Vice President  
Address: Big Bear Association of REALTORS®  
PO Box 1563  
40861 Stone Road  
Big Bear, CA 92315  
Phone: (909) 866-5891  
Email: bigbearaor@gmail.com

**With a Copy to:**

Name/Title: ATTN: John V. Giardinelli  
Address: The Giardinelli Law Group, APC  
31594 Railroad Canyon Road  
Canyon Lake, CA 92587  
Phone: (951) 244-1856  
Email: tglg@glawgroupapc.com

11.3 Assignment. Technology Provider shall not assign or transfer this Agreement or any rights or obligations under this Agreement without Multiple Listing Organization's prior written consent, which shall not be unreasonably withheld. A change in control of Technology Provider constitutes an assignment under this Agreement. Any unauthorized assignment or transfer of this Agreement, or any rights or obligations thereunder, shall be void and shall constitute grounds for immediate termination of this Agreement by Multiple Listing Organization. This Agreement shall be binding on respective permitted successors and permitted assigns for the benefit of the Parties.

11.4 Severability. If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, that provision is deemed omitted to the extent it is invalid or unenforceable, and the remaining provisions of this Agreement will not be affected in any way.

11.5 Waiver. A waiver by Multiple Listing Organization of any breach of this Agreement by Technology Provider does not constitute a waiver of any preceding or succeeding breach of

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the same or any other provisions of this Agreement. A waiver by Multiple Listing Provider is effective only if expressly set forth in a writing signed by Multiple Listing Provider.

11.6 Force Majeure. Neither Party shall be liable for any failure or delay in its performance due to circumstances beyond its reasonable control including, but not limited to: acts of terrorism, war (declared or not declared), hostilities, sabotage, insurrection, riot, act of civil disobedience, act of any government, nuclear event, act of God (such as, but not limited to, fire, explosion, flood, storm, earthquake, volcanic eruption, drought), labor disputes, failure or delay of shippers, or unavailability of components or equipment. Party shall notify the other party as soon as practicable and use commercially reasonable efforts to resume performance.

11.7 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws principles. Each Party acknowledges and agrees that any dispute or claim hereunder will be limited to the exclusive jurisdiction and venue of the state or federal courts located in San Bernardino County, California.

11.8 Dispute Resolution. If a dispute arises from or relates to this Agreement or the breach of this Agreement, and if the Parties to the dispute cannot resolve such dispute through direct discussions, the Parties agree to first endeavor to settle the dispute in an amicable manner through mediation with a qualified experienced neutral mediator agreed on by the parties. Any mediation will be conducted in San Bernardino County, California, and may be conducted by teleconference or video conference if a party requests.

11.9 Attorneys' Fees. In any dispute regarding the subject matter of or construction of this Agreement (including an arbitration), the substantially prevailing party is entitled to recover its reasonable attorneys' and experts' fees, expenses and court and arbitration costs incurred in resolving or settling the dispute, in addition to any and all other damages or relief which a court or arbitrator may deem proper. In any mediation regarding this Agreement, the parties will equally share the expenses of the mediator or mediation service.

11.10 No Third Party Beneficiaries. This Agreement is for the benefit of the entities executing such document and is not intended to confer any rights or benefits on any third party, including any employee or client of either entity executing such document, and that there are no third party beneficiaries as to this Agreement or any part or specific provision of this Agreement.

11.11 Survival. It is acknowledged and agreed that those rights and obligations which by their nature are intended to survive the expiration or termination of this Agreement will survive, including, without limitation, the rights and obligations set forth in Sections: 2 (Ownership);

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6 (Remedies); 7 (Audits); 8 (Warranty Disclaimer); 9 (Limitation of Liability); 10 (Indemnification); and 11 (General Provisions).

11.12 Entire Agreement. This Agreement constitutes the entire agreement between Multiple Listing Organization and Technology Provider and supersedes any and all prior written agreements, oral discussions, or understanding between them regarding the subject matter of this Agreement.

11.13 Amendment. This Agreement may be amended or modified only by a writing signed by both Parties.

\_\_\_\_\_  
("Technology Provider")

**BIG BEAR ASSOCIATION OF REALTORS®**  
("Multiple Listing Organization")

By: \_\_\_\_\_

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Multiple Listing Organization's Initials

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Technology Provider's initials

**EXHIBIT A**

**I. LISTING DATA; FEES**

Data Feed	RETS
Data Delivery	RETS
One-Time Setup Fee	NONE AT THIS TIME
Recurring Data Feed Fee	NONE AT THIS TIME
Recurring Billing Frequency	N/A
Recurring Per Broker Fee	N/A
Recurring Agent Fee	N/A

**II. PRODUCT**

Product Name	
Product Description	
Product URL	
Product Type	
Website URL	

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