

Tuolumne County Association of REALTORS[®], Inc. Vendor RETS Agreement

This **AGREEMENT** is made and entered into by Tuolumne County Association of REALTORS[®], Inc. ("TCAR"), 14195 Tuolumne Rd., Sonora, CA 95370 and _____ ("Vendor"), _____ (address).

DEFINITIONS

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

Confidential Information: "Confidential Information" means information or material proprietary to TCAR or designated "confidential" by TCAR 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 TCAR Data, except to the extent to which this Agreement and the TCAR Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that TCAR obtains from any third party that TCAR treats as proprietary or designates as Confidential Information, whether or not owned or developed by TCAR; and (d) any information designated as confidential or private from time to time by any applicable state, federal, local or other law, regulation or directive. 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.

Vendor Internal Use: Any use of TCAR Data that exposes the TCAR Data only to its employees and/or Vendor MLS RETS Customers in the ordinary course of the Vendor's normal business; this includes display on password-protected web sites, commonly referred to as "virtual office web sites" or "VOWS," to the extent that the TCAR Policies permit such display.

RETS: The Real Estate Transaction Standard for the electronic transmission of real estate information promulgated by the National Association of REALTORS[®].

RETS Server: Software compliant with RETS that responds to requests from other computers for data.

TCAR Data: Any and all data and other information which is transferred via the RETS download from the Multiple Listing Service ("MLS") system, including but not limited to the copyrighted compilations of property listings, data relating to real estate for sale, previously sold, or listed for sale, and data relating to Subscribers (including text, photographs, and all other data formats now known or hereafter invented) entered into TCAR's databases by Subscribers and/or TCAR, or on their behalf.

TCAR Policies: The Rules and Regulations of TCAR, as amended from time to time, and any operating policies relating to the MLS and/or the TCAR Data, whether promulgated by TCAR or others.

Vendor RETS Customers: Customers of Vendor who wish to have RETS access to TCAR Data. Vendor acknowledges that each of its RETS Customers must first complete a registration form provided by TCAR and must be current a Participant or Subscriber in the MLS.

TCAR'S OBLIGATIONS

2. TCAR hereby grants to Vendor a non-exclusive, non-transferable license to access and download from the MLS database, certain TCAR Data for the sole purpose of incorporating that TCAR Data

for the sole purpose of incorporating TCAR Data into the product Vendor provides to its Vendor RETS Customers for Internet Data Exchange ("IDX") and/or Virtual Office Website ("VOW") purposes, and for no other purposes or products (unless such purpose or product is approved in advance in writing by TCAR). Vendor acknowledges and agrees that TCAR is not directly supplying any software, programming assistance or tangible property of any kind in connection with such license and, if needed, Vendor must obtain such at Vendor's sole cost and expense.

3. All licensees hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. TCAR retains all rights not expressly granted herein.

VENDOR'S OBLIGATIONS

4. Vendor shall use the TCAR Data obtained under this Agreement for Vendor Internal Use and Other Permitted Uses only. Any other use is strictly prohibited. Vendor shall not make the TCAR Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement.

5. Vendor shall provide to TCAR, in writing, a list of its RETS Customers every quarter (January 1, April 1, July 1 and October 1) and, in addition, within seven (7) business days after written request therefor by TCAR.

6. Nothing herein contained shall constitute a transfer of title to the TCAR Data. Vendor acknowledges that TCAR possesses all right, title, and interest in the TCAR Data, including but not limited to any copyrights therein. Vendor shall display the TCAR copyright notice on each display screen, web page (whether Internet or Intranet based), and printout displaying TCAR Data. The TCAR copyright notice may take the following form: "Copyright 2011 Tuolumne County Association of REALTORS, Inc."

7. Vendor acknowledges that TCAR provides the TCAR Data on an as-is, as-available basis. TCAR shall not be liable to Vendor for inaccuracies in the TCAR Data or from any failure to update the data promptly, or for any lapses or failures in transmission of the data. Vendor shall provide its own hardware, software and other equipment, and shall bear its own programming, technology and methodology expenses, if any, together with all sales and distribution expenses relating to Vendor's business, and shall provide for all telecommunications needs in order to facilitate access to the TCAR Data.

8. Vendor shall comply with the TCAR Policies at all times. In the event of any perceived conflict between the TCAR Policies and this Agreement, the TCAR Policies shall prevail and govern.

9. Vendor shall pay the initial Set-Up Fee (currently \$100) for each Vendor RETS Profile. TCAR may in its sole discretion establish or modify its fees upon 30 days' written notice to Vendor.

CONFIDENTIAL INFORMATION

10. Vendor shall protect the Confidential Information with the same care Vendor takes to protect its own sensitive business information of like kind, but in no event less than reasonable care. Vendor may disclose Confidential Information if such disclosure is required by law, court order or regulation; provided, however, that Vendor must first make commercially reasonable efforts to notify TCAR in writing in advance of such disclosure.

11. Within five (5) days after the termination of this Agreement, Vendor shall return to TCAR all Confidential Information and materials provided by TCAR to it. Vendor shall also erase or destroy Confidential

Information stored on magnetic media or other computer storage, including system backups. Upon TCAR's request, an officer of Vendor shall certify in writing that all materials have been returned to TCAR or destroyed.

TERM AND TERMINATION

12. The term of this Agreement begins on the date that TCAR signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) 30 days after any party's notice to the others of its intent to terminate; (b) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured.

GENERAL PROVISIONS

13. **Applicable law.** This Agreement is entered into in Tuolumne County, California. It shall be governed by and interpreted according to the laws of the State of California. Any action to enforce or interpret this Agreement shall have venue only in Tuolumne County, California, and the parties hereby submit to personal jurisdiction in that venue.

14. **Survival of Obligations.** The obligations of Vendor set forth above shall survive the termination or expiration of this Agreement for three years. The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration.

15. **TCAR's Remedies.** Because of the unique nature of the TCAR Data and Confidential Information, Vendor acknowledges that TCAR would suffer irreparable harm if it breaches its obligations under this Agreement, and that monetary damages would be inadequate to compensate TCAR for a breach. TCAR is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Vendor, without showing or proving any actual damages sustained by TCAR, and without posting any bond.

16. **Limitation of liability/exclusion of warranties.** **IN NO EVENT SHALL TCAR BE LIABLE TO VENDOR OR ANY OTHER PERSON OR ENTITY UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF TCAR 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 TCAR BE LIABLE TO VENDOR OR ANY OTHER PERSON OR ENTITY UNDER THIS AGREEMENT FOR ANY AMOUNT IN EXCESS OF THE FEES VENDOR HAS PAID TCAR, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES. TCAR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.**

17. **Attorney's fees.** The prevailing party in any action, arbitration or other proceeding arising out of or related to this Agreement shall recover its reasonable attorneys' fees and costs from the other party.

18. **Indemnification.** Subject to paragraph 16, in the event any 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 Indemnifying Party's breach. The Indemnified Parties shall (a) promptly notify the Indemnifying Party in writing 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 such claim.

19. **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.

20. **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.

21. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void *ab initio*.

22. **Entire Agreement.** Subject to TCAR 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 subject matter.

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

24. **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.

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Signature Page

<p>TCAR Tuolumne County Association of REALTORS[®], Inc.</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name</p> <p>Date: _____ (effective date of this Agreement)</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p> <p>_____</p>	<p>VENDOR</p> <p>_____</p> <p>Vendor name</p> <p>_____</p> <p>Signature of owner or officer</p> <p>_____</p> <p>Name of owner or officer and title</p> <p>Date: _____</p> <p>Contact for notices and operations matters</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p>