

**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:** \_\_\_\_\_