

TREB DATA LICENSE AGREEMENT ("Agreement")

Parties: Toronto Real Estate Board ("**TREB**"), 1400 Don Mills Road, Toronto, Ontario, M3B 3N1 and the data licensee ("**Licensee**") described on the signing page of this Agreement.

BACKGROUND

TREB maintains a database of real properties. Brokerages and Brokers and/or others populate the database with information. Licensee wishes to obtain a license from TREB for the use and dissemination of certain of the information, pursuant to this Agreement.

GENERAL TERMS AND CONDITIONS

1. LICENSE GRANT AND RIGHT OF USE.

a. Definitions:

"**Broker of Record**" means an individual who is a Registrant in good standing and who is a Member in good standing and who is employed, appointed or duly authorized to trade in real estate by a Brokerage and who is designated as the Broker of Record for that Brokerage.

"**Broker**" means an individual who is a Registrant in good standing and who is a Member in good standing and who is employed, appointed or duly authorized to trade in real estate by a Brokerage.

"**Data**" means information provided to TREB and included in the Database.

"**Database**" means the database of information on real properties maintained by TREB.

"**Brokerage**" means a sole proprietor, partnership or corporation registered under the *Real Estate and Business Brokers Act* (Ontario) as a broker and which is a Member.

"**Franchised Brokers**" means Brokers of Record employed by a Brokerage which is party to a franchise agreement with Licensee, where such Brokerage is franchisee and Licensee is franchisor under such franchise agreement and where such agreement has not expired or has not otherwise been terminated

"**License Fees**" has the meaning set out in Schedule "A".

"**Member**" includes all types of Members of TREB as defined in TREB's By-laws and who TREB has authorized in writing to have access to the Database.

"**Office**" means a single branch location of a sole proprietor, partnership or corporation registered under the *Real Estate and Business Brokers Act* (Ontario) as a brokerage and which is a Member.

"**Registrant**" means a person admitted to, and continuing in, membership in the Real Estate Council of Ontario as a broker or Broker of Record.

b. Subject to Sections 1.c., d., e., f. and g., TREB grants to Licensee a non-exclusive and non-transferable license to obtain the Data from TREB and to use it solely for the purposes of assisting Licensee in carrying on its business of co-ordinating publicity and marketing operations for Broker of Record, Franchised Brokers and the Brokerages that employ them with respect to transactions involving real estate in Ontario.

c. Licensee shall, with regard to the Data, observe the requirements of the *Protection of Privacy and Electronic Documents Act* (Canada) and any successor legislation and any legislation of similar effect in the Province of Ontario as though that legislation were fully in force and shall indemnify TREB from all liability in connection with Licensee's failure to do so.

d. Subject to Section 1.c., Licensee shall, and shall cause its agents to, promptly (i.e. within 60 days) delete the Data from its records and files once it is no longer current and, in any event, when any property listing related to any such Data expires, or where any consent necessary for the collection, use and disclosure of any such Data is rescinded. Licensee shall, and shall cause its agents to, delete the related Data from its records and files as soon as possible where a consent expires or is terminated.

e. Licensee's rights in the Data will be limited to those expressly granted in this Agreement. TREB reserves all rights and licenses in and to the Data not expressly granted to Licensee under this Agreement. For certainty, Licensee shall not knowingly permit third parties to display the Data on the internet or to otherwise display or distribute the Data except with the written agreement of TREB in form and content acceptable to TREB.

f. TREB supplies Data to Licensee on an "as is" basis and makes no covenants, warranties or representations in connection with the Data or the delivery thereof. TREB disclaims all implied representations, conditions or warranties of noninfringement, alienability, merchantability or fitness for a particular purpose.

2. FEES

a. Licensee shall pay the License Fees (if any) to TREB as consideration for this license, in the manner set out in Schedule "A". All License Fees paid hereunder are nonrefundable.

b. All prices and fees are in Canadian dollars unless otherwise specified. Licensee will pay all taxes and duties assessed by any authority in connection with this Agreement and with Licensee's performance hereunder, if required by law. Licensee will promptly reimburse TREB for any and all taxes or duties that TREB may be required to pay in connection with this Agreement or its performance. This provision does not apply to taxes based on TREB's income, or any taxes for which Licensee is exempt, provided Licensee has furnished TREB with a valid tax exemption certificate.

3. DELIVERY OF DATA

a. TREB will provide the Licensee with access to the Data on, at least, a daily basis, by any manner as selected by TREB.

b. TREB shall not be required to deliver to Licensee any Data that does not meet the requirements or any Data where TREB is not satisfied, at its sole discretion, that such Data is in a satisfactory form and content.

c. Licensee agrees to provide TREB with all information and materials requested by TREB for use in replicating, diagnosing and correcting any Data delivery problem reported by Licensee. Licensee acknowledges that TREB's ability to provide the Data is dependent on (i) Licensee providing TREB with the information necessary to replicate Data problems; and (ii) Licensee configuring the correct telecommunications and operating environment, and maintaining same, as specified by TREB. TREB will not be responsible for errors that are not caused by TREB, and Licensee agrees to indemnify TREB for all losses experienced by TREB as a result of the Licensee's errors.

d. Delivery of the Data is subject to force majeure.

4. CONFIDENTIALITY AND IP OWNERSHIP

a. Any business, operational or technical information provided to Licensee by TREB hereunder that is marked or otherwise identified as confidential or proprietary, or that Licensee knows or reasonably should know is confidential or proprietary ("**Proprietary Information**") contains valuable and confidential information that is proprietary to TREB and that includes and constitutes trade secrets and unpublished copyright protected material of TREB.

Licensee agrees to maintain the confidentiality of TREB's Proprietary Information and to use it only in exploiting its rights and obligations under this Agreement. The Data and Proprietary Information are owned by TREB, and nothing in this Agreement shall be construed to convey any title or ownership rights to the Data or Proprietary Information to Licensee. Licensee shall make best efforts to prevent the theft of any Data or Proprietary Information and/or the disclosure, copying, reproduction or distribution of the Data or Proprietary Information unless such activity is specifically authorized by TREB in writing.

b. These confidentiality obligations shall not apply to any Proprietary Information that (i) is or becomes a part of the public domain through no act or omission by the Licensee, (ii) is independently developed by employees of the Licensee without use or reference to the Proprietary Information, (iii) is disclosed to the Licensee by a third party that, to the Licensee's knowledge, was not bound by a confidentiality obligation or other prohibitive contractual obligation to TREB, or (iv) is demanded by a lawful order from any court or any body empowered to issue such an order. Licensee agrees to notify TREB promptly of the receipt of any such order, and to provide TREB with a copy of such order.

5. TERM AND TERMINATION

a. This Agreement shall continue in force for the balance of the current calendar year. Thereafter this Agreement shall automatically renew for a further calendar year unless either party gives 60 days written notice of non-renewal to the other party.

b. This Agreement, any Assignment, and/or any license granted hereunder may be terminated in accordance with the following:

(i) TREB may terminate this Agreement and/or the license granted herein:

(A) immediately, if Licensee uses, transfers or discloses any of the Proprietary Information or Data in violation of this Agreement or if a third party uses, transfers or discloses any of the Data disclosed by TREB to Licensee without TREB's prior written agreement;

(B) immediately, if Licensee ceases to be a member of TREB or if Broker of Record rescinds authorization; or

(C) upon 30 calendar days written notice if Licensee has breached any other material provision of this Agreement, including failure to make payments when due, and such breach is not fully cured within such 30 day period.

(ii) Licensee may terminate this Agreement on 30 calendar days written notice if TREB has breached any material provision of this Agreement and such breach is not fully cured within such 30 day period.

c. Upon termination of the Agreement or the license granted herein, Licensee's right to use and/or possess the Data and Proprietary Information shall immediately cease. Licensee shall immediately stop using the Data and Proprietary Information and shall delete all copies thereof from all storage media used by Licensee. Licensee shall provide TREB with written certification signed by an officer of Licensee that all copies of the Data and Proprietary Information have been destroyed and that Licensee has retained no copies. Nothing in this provision prevents Licensee from utilizing its own data that is identical or similar to the Data.

d. Termination of this Agreement, any Assignment or any license granted hereunder shall not limit the remedies otherwise available to either party, including injunctive relief.

6. INDEMNITY

Licensee will defend or settle at its own expense any and all suits, actions or claims against TREB regarding (i) any part of the Data or (ii) the use of the Data by Licensee or any customer, or contact of Licensee in the manner contemplated by this Agreement. Licensee will pay all damages awarded in any such suit, action or claim and will indemnify and save harmless TREB from any other cost or liability reasonably incurred by it as a result of such suit, action or claim.

7. LIMITATIONS OF LIABILITY

a. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER TREB NOR ANY PERSON RELATED TO TREB SHALL BE LIABLE HEREUNDER FOR DAMAGES WHICH EXCEED, IN THE AGGREGATE, THE FEES PAID BY LICENSEE FOR THE SPECIFIC DATA THAT GAVE RISE TO SUCH DAMAGES.

b. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TREB BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO THOSE FOR BUSINESS INTERRUPTION OR LOSS OF PROFITS, EVEN IF TREB HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE.

c. NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR

PERSONAL INJURY CAUSED BY A PARTY'S NEGLIGENCE OR LIABILITY FOR FRAUD.

d. The provisions of this Agreement allocate the risks between Licensee and TREB. TREB's pricing reflects this allocation of risk and the limitations of liability specified herein.

8. MISCELLANEOUS

a. Licensee appoints each of its registered real estate agents as its agent to access the Data from the Database and acknowledges that TREB shall not be held accountable for releasing Data to any person purporting to be a registered real estate agent of the Licensee.

b. Licensee warrants all information contained on this form is correct and that any changes to their membership to Office, Brokerage or otherwise are the responsibility of the Licensee to report to TREB.

c. Licensee will not, without the approval in writing of TREB (which approval may be arbitrarily withheld) assign or transfer its interest in this Agreement or any license granted or created hereunder.

d. Licensee will not use the trade-marks or name of TREB, or use TREB or its directors or officers as references, without TREB's prior written permission.

e. During the currency of this Agreement and for 24 months after this Agreement terminates, Licensee will not directly or indirectly engage in, or have an interest in, or provide advice to or any guarantee for the indebtedness of, any business that provides electronic multiple listing services similar to that of TREB.

f. The parties are independent contractors and nothing in this Agreement shall be deemed to make either party an agent, employee, partner or joint venturer of the other party. Neither party shall have the authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.

g. All notices, requests, approvals, consents and other communications required or permitted under this Agreement will be in writing, including in the form of an electronic document.

h. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such deletion.

i. The obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation, or expiration of this Agreement.

j. TREB may stipulate new provisions for this Agreement during any renewal hereof after the first full calendar year. The Licensee is not bound to accept the renewal of this Agreement if it is not satisfied with TREB's proposed new

provisions, and in such case this Agreement shall terminate.

k. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada.

Required Signatures

LICENSEE:

TORONTO REAL ESTATE BOARD

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Member Name Printed: (if Member is licensee)

Broker of Record Signature:

Licensee's TREB Membership Number:

Broker of Record Name Printed:

Office Name:

Office Address:

Please check off one of the following:

- Release all of Brokerage's Listings Release all of Branch Office's Listings Release only Licensee's Listings

Licensee's Email Address:

SCHEDULE "A"

LICENSE FEES

TREB may change its License Fees no more often than annually, and no increase in License Fees shall exceed 10 percent per annum over the License Fees for the prior calendar year.

The License Fees payable by the Licensee are as follows:

1. For the period commencing on the ____ day of _____, 20__ and ending on December 31, 20__, the sum of \$0.00, plus taxes.
2. For the calendar year commencing on the 1st day of January 20__ and ending on December 31, 20__, the sum of \$0.00, plus taxes.

The first payment of License Fees is due on the ____ day of _____, 20__ for the part year referred to in paragraph numbered 1, above. The second payment of License Fees for the calendar year commencing January 1, 20__ is due on the ____ day of _____, 20__. Late payment of License Fees shall attract simple interest at the rate of 1_ percent per month (18 percent per year) calculated from the due date thereof.

THIRD PARTY DATA TRANSFER ADDENDUM

This is an addendum to a License Agreement between Toronto Real Estate Board (“TREB”) and the undersigned Licensee respecting responsibility for the handling of Data transfers to third parties, as requested by the Licensee. This addendum forms part of the License Agreement dated _____, 20____ and the capitalized terms herein are the same as those used in the License Agreement.

The Licensee hereby authorizes and directs TREB to deliver Data to the “Third Party” at the Internet address set out on page 2 of this Addendum. The Licensee represents, warrants and covenants that the Data will be received and used by the “Third Party” (i) as agent for the Licensee only for the purposes set out in the License Agreement, (ii) only by the Third Party on behalf of the Licensee and for no other purpose or person, and (iii) in full compliance with all applicable laws, statutes and regulations including the *Personal Information and Electronic Documents Act* (Canada). For certainty, should any person rescind a consent necessary for the collection, use and disclosure of any Data at any time, Licensee shall cause Third Party to cease its use of such Data immediately and Third Party agrees to do so. The Licensee covenants and agrees that as between it and TREB, it will be fully responsible for the actions and omissions of the Third Party. Should Third Party use the Data in any way that contravenes this Addendum, including without limitation in a manner not permitted by the License Agreement, TREB may cease delivery of the Data to such Third Party without prejudice to any other rights or remedies TREB may have against Licensee and/or Third Party.

The Licensee will indemnify TREB for all claims, suits, damages, costs and losses experienced by TREB as a result of TREB’s carrying out the direction contained in this Addendum. The Third Party hereby waives any claims, causes of action or rights it might have against TREB of any kind whatsoever regarding the Data and TREB’s provision of the Data or TREB’s ceasing to provide the Data at any time and from time to time to Third Party.

DATED as of the _____ day of _____, 20____.

Printed name of Licensee

Broker of Record Signature

Licensee’s e-mail Address

**Broker of Record Name Printed
(I have authority to bind the Licensee.)**

The undersigned Third Party acknowledges this Third Party Data Transfer Addendum and, for good and valuable consideration, the sufficiency of which is acknowledged, the undersigned Third Party accepts and agrees with the contents of this Addendum.

JumpTools Inc.

Printed Name of Third Party*

Authorized Signature (Third Party)

Name: Jon MacCall

Title: Director, Solution Development

(I have the authority to bind the Third Party)

Jon MacCall

Contact

171 East Liberty Street, Suite 250

Address

jmaccall@alaia.com

Contact e-mail Address

Toronto

City/Town

416-645-0525 x311

Contact Phone Number

Ontario

State/Province

Internet address for delivery of Data

M6K 3P6

Zip/Postal Code

* Put name of licensee if licensee is doing programming themselves only.

* Put LES if licensee is utilizing for internal LES office software (QOC).