

## TREB DATA LICENSE AGREEMENT ("Agreement")

Parties: Toronto Real Estate Board ("TREB"), 1400 Don Mills Road, Toronto, Ontario, M3B 3N1 and you, the data licensee ("Licensee").

### 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 Broker 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 registered as a broker under the *Real Estate and Business Brokers Act, 2002* (Ontario) and 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.

"**Brokerage**" means a sole proprietor, partnership or corporation registered under the *Real Estate and Business Brokers Act, 2002* (Ontario) as a brokerage and which is a Member.

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

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

"**Franchised Broker**" means a Broker 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 Section 2.

"**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, 2002* (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 salesperson, broker or Broker of Record.

"**Salesperson**" means an individual registered as a salesperson under the *Real Estate and Business Brokers Act, 2002* (Ontario) and 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.

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 *Personal Information Protection and Electronic Documents Act* (Canada) and any successor legislation and any legislation of similar effect in the Province of Ontario as applicable 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 non-infringement, 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 amount and in the manner set out in Schedule “A” (“**License Fees**”). All License Fees paid hereunder are non-refundable.

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. Unless otherwise notified by TREB, Licensee (or its Third Party) will retrieve and update the Data by the means specified by TREB on a daily basis but no more frequently than once every 24 hours.

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 Licensee's Broker of Record rescinds authorization;

(C) immediately, if Licensee ceases to be employed, appointed or authorized to trade in real estate by its Brokerage or if Licensee changes Brokerages (in which case, in order to obtain a new license, Licensee must enter into a new Data License Agreement with TREB with the authorization of its new Broker of Record); or

(D) upon 10 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 10 day period. Notwithstanding the foregoing, if within 48 hours of the giving of notice of breach by TREB, Licensee does not notify TREB in writing of actions being taken to cure the breach, this Agreement shall immediately terminate at the end of such 48 hour 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 this Agreement, the license granted herein shall immediately terminate and 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 Licensee's membership, Office, Brokerage, Third Party 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.

l. The parties acknowledge and agree that the Licensee's Broker of Record may at any time change the access level of a Data transfer under this Agreement.

**Required Signatures**

**Licensee Signature:**

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**Licensee Name Printed:**

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**Licensee's TREB Membership Number:**

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**Office Name:**

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**Office Address:**

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**Broker of Record Signature:**

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**Broker of Record Name Printed:**

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**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**

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**To be completed by TREB:**

**Toronto Real Estate Board:**

Per:

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

Title:

**Date:**

\_\_\_\_\_

**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 \$\_\_\_\_\_, plus taxes.
2. For the calendar year commencing on the 1<sup>st</sup> day of January 20\_\_ and ending on December 31, 20\_\_, the sum of \$\_\_\_\_\_, 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 (12 percent per year) calculated from the due date thereof.

Note: where no License Fees are stated above, License Fees are \$0 until TREB provides notice of any change in accordance with the provisions of this Agreement.

**THIRD PARTY DATA TRANSFER ADDENDUM**

This is an addendum (“Addendum”) to a License Agreement between Toronto Real Estate Board (“TREB”) and the Licensee identified below 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\_\_\_\_ (the “License Agreement”) and the capitalized terms herein are the same as those used in the License Agreement.

The Licensee hereby authorizes and directs TREB to allow the “Third Party” specified in this Addendum to retrieve Data from TREB. 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 Protection 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 the Third Party to cease its use of such Data immediately and the 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 the 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 the Third Party.

The Licensee shall, and shall cause the Third Party to, honour any “perm\_adv” (permission to advertise) and “disp\_addr” (display address) fields in the Data. Without limiting the foregoing, if the “perm\_adv” field for any listing in the Data is set to N, such listing may only be displayed on the listing agent’s website and not on any other website and if the “disp\_addr” field is set to N, then the property or street address may not be displayed on the Internet.

The Licensee represents, warrants and covenants to TREB that in providing to TREB any electronic address of the Third Party (including any Third Party contact), the Licensee has obtained any necessary consent in compliance with applicable law in order for TREB to send electronic messages to such electronic address in connection with this Addendum and the License Agreement, and the Licensee will notify TREB immediately if such consent is withdrawn. Each of the Licensee and the Third Party agrees and consents to receive electronic notices and communications from TREB regarding this Addendum and License Agreement to their electronic addresses specified herein or otherwise provided by them to TREB.

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 the Third Party.

DATED as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
**Printed Name of Licensee**

\_\_\_\_\_  
**Name of Brokerage**

\_\_\_\_\_  
**Signature of Licensee**

\_\_\_\_\_  
**Broker of Record Signature**

\_\_\_\_\_  
**Licensee’s E-mail Address**

\_\_\_\_\_  
**Broker of Record Name (Please print)  
(I have authority to bind the Brokerage.)**

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.

REALTYNINJA SERVICES LTD.

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**Printed Name of Third Party**

CASIMIR LOEBER

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**Contact**

casimir@realtyninja.com

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**Contact e-mail Address**

1.888.767.7421

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**Contact Phone Number**

www.realtyninja.com

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**Internet address for delivery of Data**



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**Authorized Signature (Third Party)**

**Name:**

**Title:**

**(I have the authority to bind the Third Party)**

170 - 422 Richards St.

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**Address**

Vancouver

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**City/Town**

British Columbia

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**State/Province**

V6B 2Z4

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**Zip/Postal Code**