

Vendor License Agreement

(Vendor's Use of Licensed Listings via RETS/FTP)

This Vendor License Agreement (the "Agreement"), dated _____, 2011, is made and entered into by and among **NEW RIVER VALLEY ASSOCIATION OF REALTORS®**, INC. ("NRVAR"), and _____, a _____ ("Licensee").

RECITALS:

- A. Licensee owns and produces a certain software product entitled _____ (the "System").
- B. Real estate agents and brokers of NRVAR may purchase or otherwise be licensed to use the System through a separate third-party agreement with Licensee (the NRVAR agents and brokers are collectively the "Subscribers"). NRVAR is not a party to such third-party agreements.
- C. Licensee desires to acquire a license from NRVAR to use the Licensed Listings in conjunction with the System for the benefit of the Subscribers, and NRVAR is willing to provide such license, subject to the terms and conditions of this Agreement.

AGREEMENT

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, NRVAR and Licensee agree as follows:

- License Grant. The Recitals are incorporated herein as an integral part of this Agreement and not as mere recitals. Subject to payment of the Licensee Fee to NRVAR and other terms and conditions of this Agreement, NRVAR hereby grants to Licensee a license to accept and process the Licensed Listings for use in the System for the benefit of, and access only by, the Subscribers.
- Limitations on License. Except as expressly set forth in this Agreement, no rights are granted to Licensee to do any of the following, and Licensee shall not, and shall not cause or allow anyone else, to do any of the following: (a) use, display, access, distribute, transfer, alter, or modify the Licensed Listings, or otherwise create any derivative works of the Licensed Listings, (b) download, distribute, export, deliver, or transmit any of the Licensed Listings, including to any computer or other electronic device, except to the Subscriber's computer as permitted under this Agreement, or (c) sell, grant access to, or sublicense the Licensed Listings, or any portion of the Licensed Listings, to any third party. Licensee agrees to take all reasonable steps necessary to protect the Licensed Listings from unauthorized access, distribution, copying or use.
- License Fee and Payment; Expenses. In consideration for the License granted under this Agreement:

a. Licensee agrees to pay to NRVAR a setup fee and license fee in the amounts set forth on the attached Schedule A to this Agreement (collectively the “Licensee Fee”). Unless otherwise expressly provided under this Agreement, Licensee agrees to pay for any support or other services provided by NRVAR in connection with the Licensed Listings or this Agreement, at NRVAR’s then-current hourly rates. All amounts owing for such services shall be due as set forth in Schedule A.

b. Interest on all unpaid amounts owing to NRVAR under this Agreement shall accrue at the rate of twelve percent (12%) per annum until paid. Licensee agrees to pay all costs of collection of all unpaid amounts owing to NRVAR under this Agreement, including reasonable attorney’s fees and costs. Licensee shall be responsible for its own expenses and costs under this Agreement, and NRVAR shall have no obligation to reimburse Licensee for any expenses or costs incurred by Licensee in the exercise of its rights or the performance of its duties under this Agreement.

4. Means of Access to Licensed Listings. The parties acknowledge that the Licensed Listings are maintained in a database by NRVAR’s vendor. Access by Licensee to the Licensed Listings shall be exclusively through FTP download or another means determined by NRVAR or NRVAR’s vendor in their sole discretion. NRVAR may, in its sole discretion and upon ten (10) days prior written notice to Licensee, change the means and nature of accessing the Licensed Listings. NRVAR shall not be obligated to make any changes to its vendor’s server to accommodate Licensee. NRVAR makes no representations or warranties with respect to the response time for access to the Licensed Listings. Licensee acknowledges that NRVAR’s vendor’s server, together with access to the Licensed Listings may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or otherwise. Licensee agrees that any modification of NRVAR’s vendor’s server, and any interruption, unavailability of access or use of the Licensed Listings shall not constitute a default under this Agreement, and that NRVAR shall have no liability of any nature to Licensee for any such modifications, interruptions, unavailability, or failure of access.

5. Intellectual Property. Licensee acknowledges and agrees that the Licensed Listings are proprietary, original works of authorship of NRVAR, or licensed to NRVAR, protected under United States copyright, trademark, patent and trade secret laws of general applicability, and that all right, title, and interest in and to the Licensed Listings are and shall remain with NRVAR or its licensors. This Agreement does not convey or grant to Licensee an interest in or to the Licensed Listings, but only a limited right to access and use the Licensed Listings, revocable in accordance with the terms of this Agreement. Licensee agrees that it will not challenge or take any action inconsistent with NRVAR’s rights to the Licensed Listings.

6. No Warranties. THE LICENSE GRANTED UNDER THIS AGREEMENT, INCLUDING ACCESS TO AND DISPLAY OF THE LICENSED LISTINGS, IS “AS IS,” AND NRVAR DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Audit.

a. Commencing on the Effective Date of this Agreement and continuing each quarter thereafter (January 1, April 1, July 1 and October 1) during the term of this Agreement, Licensee shall provide to NRVAR, an accounting of all Subscribers utilizing Licensee's System for the previous quarter.

b. NRVAR may, or at its option may engage an independent third party to, audit and test Licensee's controls, systems and procedures regarding its System and use of the Licensed Listings. Each such audit or test shall be performed in accordance with audit standards and procedures established by NRVAR, in its sole discretion, and shall be performed to monitor and review (a) the adequacy of Licensee's security systems and procedures; and (b) Licensee's compliance with the terms of this Agreement. The costs of such audits and tests shall be at NRVAR's expense, except that if at any time an audit discloses that Licensee is not in full compliance, then Licensee shall pay all costs of the audit, including NRVAR's internal costs, the independent auditor costs, and other out-of-pocket expenses incurred by NRVAR.

8. Representations and Warranties of Licensee. Licensee represents and warrants the following to NRVAR:

a. This Agreement, when executed by Licensee, will be valid, binding and enforceable with respect to Licensee in accordance with its terms. The execution of this Agreement and/or the performance of Licensee's obligations under this Agreement will not constitute a default, or an event which with the passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which Licensee is bound.

b. During the term of this Agreement, each of the Subscribers will be (i) a real estate broker or agent licensed in accordance with the laws of the Commonwealth of Virginia, and (ii) a member in good standing with NRVAR.

9. Contract Administration; Technical Contact. Each party shall designate the name, address, telephone number, fax number, and e-mail address of a person who shall be the technical contact under this Agreement

10. Disclaimer. Licensee acknowledges and agrees that use of, access to, and the display of the Licensed Listings by Licensee do not constitute an endorsement, acceptance, or approval by NRVAR of any display of the Licensed Listings, or the means of displaying the Licensed Listings. NRVAR expressly disclaims any responsibility for the content of the Licensed Listings, including without limitation, intellectual property infringement, content, accuracy, defamation, and other unlawful content.

11. Operation in Accordance with Law. Licensee agrees at all times to operate the System and business operations in a professional manner and in accordance with all applicable federal, state, and local laws. Further, Licensee will not include in the content of the reports or other information provided to the Subscribers any material which is illegal, immoral, unethical, or offensive.

12. Confidential Information. Licensee agrees and acknowledges that in addition to any copyright and other proprietary rights, the Licensed Listings are confidential information of NRVAR. The Licensed Listings, any non-public information delivered by or under the direction of NRVAR or used in connection with access to the Licensed Listings, and the terms and conditions of this Agreement (collectively “Confidential Information”), shall be maintained by Licensee as confidential and available exclusively for use by Licensee as provided in this Agreement, and for no other purposes. Licensee shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law; provided, however, that Confidential Information shall not be disclosed pursuant to a court order or as required by law until NRVAR has been given ten (10) days prior written notice and an opportunity to oppose such disclosure.

13. Indemnification. Licensee hereby agrees to indemnify and hold harmless NRVAR, and its officers, directors, employees, licensees and affiliates, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorneys fees and costs, arising out of or connected with any material breach by Licensee of any of the terms and conditions of this Agreement and the use and display of the Licensed Listings. Licensee shall further indemnify NRVAR from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorney’s fees and costs, based on any breach of any representation or warranty set forth in Section 8 of this Agreement. NRVAR shall have the right to control its own defense and engage legal counsel acceptable to NRVAR.

14. Limitation of Liability. TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, NRVAR’ ENTIRE AND CUMULATIVE LIABILITY TO LICENSEE OR ANY THIRD PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE USE OR DISPLAY OF THE LICENSED LISTINGS, INCLUDING ANY TORT, SUCH AS NEGLIGENCE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE APPLICABLE LICENSE FEE PAID TO NRVAR UNDER THIS AGREEMENT DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. WITHOUT WAIVER OF THE LIMITATIONS SET FORTH IN THIS SECTION 14 OF THIS AGREEMENT, IN NO EVENT SHALL NRVAR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPNRVARY DAMAGES OR LOST PROFITS, EVEN IF NRVAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. Injunction. The parties agree that a breach or violation of this Agreement will result in immediate and irreparable injury and harm to NRVAR. In such event, NRVAR shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that, this shall in no way limit any other remedies which NRVAR may have, including, without limitation, the right to seek monetary damages.

16. License Suspension. NRVAR may, at its option and without prior notice to Licensee, immediately suspend the License, including access to or use of the Licensed Listings

for a period of up to thirty (30) days upon the occurrence of any default by Licensee, or the occurrence of any event which NRVAR believes may constitute a default, under this Agreement. Nothing under this Section 16 of this Agreement shall be construed as requiring NRVAR to suspend the License prior to exercising its right of termination under Section 17 of this Agreement.

17. Term and Termination.

a. The initial term of this Agreement shall commence on the Effective Date, and unless earlier terminated, continue until the first (1st) anniversary of the Effective Date, and shall automatically renew for additional one (1) year terms thereafter unless either party gives written notice to the other party of non-renewal at least thirty (30) days prior to the expiration of the then-current term. The term "Effective Date" as used herein shall mean the later date on which NRVAR or Licensee executes this Agreement below.

b. NRVAR may terminate this Agreement at any time after NRVAR has given ten (10) days notice to Licensee of any of the following defaults, and such defaults have not been cured within such ten (10) day period:

i. Failure to pay any amounts owing to NRVAR under this Agreement when due.

ii. Disclosing or using in any manner not expressly permitted under this Agreement any Licensed Listings or Confidential Information.

iii. The license is suspended pursuant to Section 16 of this Agreement, and Licensee fails to cure the reason for suspension within the thirty (30) day suspension period provided under Section 16 of this Agreement.

iv. Licensee otherwise defaults under any other term or condition of this Agreement.

c. Upon the termination of this Agreement, for any reason, the license granted under this Agreement shall terminate and Licensee shall within ten (10) business days of the date of termination: (a) permanently delete and remove all copies of the Licensed Listings from all computers and other storage devices on which they were loaded or copied, including the Licensee's server(s); (b) terminate the use of any Licensed Listings; and (c) deliver to NRVAR written certification acceptable to NRVAR of Licensee's compliance with the provisions of this Section 17.c. of this Agreement.

d. No Licensee Fees, or portion thereof, or other fees payable by Licensee under this Agreement will be refunded to Licensee upon termination of this Agreement for any reason, whether termination is by Licensee or NRVAR.

18. General.

a. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Licensee acknowledges that by entering into this Agreement, it has transacted business in the Commonwealth of Virginia. Licensee hereby voluntarily submits and consents to, and waives any defense to the jurisdiction of courts located in the Commonwealth of Virginia as to all matters relating to or arising from this Agreement.

b. Notices. All notices, demands, or consents required or permitted under this Agreement shall be either be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, or by a reputable overnight courier service, or delivered by email, to the appropriate party at the following addresses:

If to NRVAR:

New River Valley Association of Realtors, Inc.
125 Ponderosa Drive
Christiansburg, Virginia 24073
Attention: Stephanie White, CEO

If to Licensee:

The foregoing addresses may be changed from time-to-time by delivering notice of such change to the parties to this Agreement.

c. Costs of Litigation. If any action is brought by either party to this Agreement against the other party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney fees, costs, and expenses of litigation.

d. No Joint Venture. Nothing in this Agreement shall be construed to create a partnership or joint venture between or among NRVAR and Licensee.

e. Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement.

f. No Waiver. The waiver by any party of, or the failure of any party to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement. The subsequent acceptance of any payment due under this Agreement by any party shall not be deemed to be a waiver of any preceding breach of the party making payment with respect to any term, covenant or condition contained in this Agreement.

g. No Assignment. Licensee agrees that it will not assign or delegate, license, or otherwise transfer this Agreement, any licenses granted under this Agreement, or any of its rights or obligations under this Agreement.

h. Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of NRVAR and Licensee, and is not intended to benefit any third party, including any real estate agent, broker or brokerage firm. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement.

i. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement. This Agreement supersedes any contemporaneous or prior proposal, representation, agreement, or understanding between the parties. This Agreement may not be amended except in writing signed by the parties.

j. Survival. The provisions of Sections 2, 5, 6, 8, 10, 12, 13, 14, 15 and 18 shall survive the termination of this Agreement.

NEW RIVER VALLEY ASSOCIATION OF REALTORS,
INC.

By: _____
Stephanie White, CEO Date

LICENSEE:

[Print name of company]

By: _____
Date

Printed Name: _____

Title: _____

SCHEDULE A

License Fee

The initial license fee shall be \$500.00, plus any fees incurred by NRVAR or charged by its vendor to setup the download FTP/RETS feed, payable upon execution of this Agreement by Licensee. Thereafter, the annual license fee to maintain the feed shall be \$500.00 per year, payable on each anniversary date of the Effective Date during the term of this Agreement; provided however, that NRVAR retains the right to modify the amount of the license fee upon thirty (30) days written notice prior to anniversary date of the Effective Date. If the license fee is increased, the Licensee shall have the right to terminate this Agreement within ten (10) days notice of any fee increase.