

## IDX VENDOR AGREEMENT

This IDX Vendor Agreement (the “**Agreement**”) is made by and between the Matagorda County Board of REALTORS®, Inc. (hereinafter referred to as “**Matagorda County BOR**”), and:

\_\_\_\_\_  
Broker Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip  
( )

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Firm Website

\_\_\_\_\_  
Fax

**hereinafter referred to as “Participant”**

\_\_\_\_\_  
Agent Name (if applicable)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip  
( )

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Agent’s Website

\_\_\_\_\_  
Fax

**hereinafter referred to as “Subscriber”**

\_\_\_\_\_  
IDX Vendor Company Name

\_\_\_\_\_  
Address  
( )

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Contact Email

**hereinafter referred to as “IDX Vendor”**

\_\_\_\_\_  
Contact Name

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Fax

\_\_\_\_\_  
Website

**Participant, IDX Vendor, and Subscriber, if applicable, are jointly referred to herein as “Licensees”.**

**1. License.** Subject to the provisions, terms and conditions set forth in this Agreement and in the Matagorda County BOR MLS Rules and Regulations (the “**Matagorda County BOR MLS Rules**”), Matagorda County BOR hereby grants to Licensees during the Term a non-exclusive, non-transferable revocable license to access the current aggregated compilation of Matagorda County BOR listing content available for Internet Listing Display which excludes those listings where the property seller has opted out of Internet publication by so indicating on the listing contract (the “**Matagorda County BOR MLS Content**”) for the SOLE purpose of integrating the Matagorda County BOR MLS Content into the website or mobile application as identified on the signature page hereof (the “**Member IDX Display**”). The Matagorda County BOR MLS Content shall include all active and pending listings available for internet display.

**2. Restrictions.** (a) The license granted in this Agreement is for use only in conjunction with Participant’s or Subscriber’s ordinary licensed real estate business activities and for no other purpose. IDX Vendor specifically understands and agrees it is not authorized to use the Matagorda County BOR MLS Content in any other product or service or display the Matagorda County BOR MLS Content on its own website(s) or the website of any third party. (b) IDX Vendor shall not disclose or provide the Matagorda County BOR MLS Content, or access thereto, to any affiliates, parent organization, subsidiaries, corporate partners, consultants, shareholders, agents, third parties or any persons within its organization not having a need to know for the purposes permitted in this Agreement. (c) Except as otherwise provided in this Agreement, Licensees shall not copy, modify, transfer, reproduce, sell, Matagorda County BOR MLS Content or participate in or allow such modification, transfer, reproduction, sale, publication or exploitation by any person except with the prior written consent of Matagorda County BOR. Licensees shall not remove any intellectual property notice or watermark from the Matagorda County BOR MLS Content.

**3. Term.** The Term of this Agreement shall be one (1) year commencing on the date the last party executes this Agreement (the "Effective Date") and shall automatically extend for additional one (1) year Terms unless any party shall notify the others of its intention to terminate this Agreement, in writing, sixty (60) days prior to the end of the initial Term or any extension thereof or unless otherwise terminated as provided in this Agreement.

**4. Fees.** Licensees shall pay license fees to Matagorda County BOR for access to the Matagorda County BOR MLS Content, the amount and terms of which shall be set forth in a written notice to Licensees at any point throughout the term of this Agreement. The license fees shall be due ninety (90) days after the date of written notice. In the event Licensees disagree with the payment terms set forth in the written notice, Participant, Subscriber and/or IDX Vendor may terminate this Agreement by providing written notice to Matagorda County BOR within the ninety (90) day period prior to the commencement of the license fees. Matagorda County BOR will accept payment of the license fees from Participant, Subscriber or IDX Vendor; however, Licensees will be jointly and severally liable if such license fees are not paid.

**5. Set-Up Costs.** Licensees shall provide their own hardware, software and bear their own programming, technology and methodology expenses, if any, relating to the integration of Matagorda County BOR MLS Content into Member IDX Display and shall provide for all telecommunication needs in order to facilitate the accessibility of the Matagorda County BOR MLS Content.

**6. Monthly Report.** IDX Vendor shall, on or before the last day of each month commencing on the last day of the month following the Effective Date, provide to Matagorda County BOR a report which shall set forth the number of Matagorda County BOR members for whom IDX Vendor has provided an IDX Display and each member's name and Member IDX Display URL or mobile application name. IDX Vendor agrees that it will at all times maintain accurate and complete books and records of all of IDX Vendor's Matagorda County BOR member clients and all payments due to Matagorda County BOR, if any.

**7. Member IDX Display.** Participant and Subscriber understand and agree this Agreement only licenses display of the Matagorda County BOR MLS Content on Member IDX Display URL or mobile application set forth on the signature page of this Agreement. Display of the Matagorda County BOR MLS Content on any other website or mobile application owned by Participant or Subscriber shall require the execution of a separate license agreement and payment of additional fees. Participant and Subscriber acknowledge that Member IDX Display URL and/or mobile application must be registered to Participant or Subscriber.

**8. Participant's Responsibility for Use.** If the license granted in this Agreement is for the display of the Matagorda County BOR MLS Content on the Member IDX Display of a Subscriber, Participant acknowledges and understands Participant is responsible for supervising Subscriber's use of the Matagorda County BOR MLS Content and shall be liable for Subscriber's failure to comply with this Agreement or the Matagorda County BOR MLS Rules.

**9. Copyright Notice.** IDX Vendor shall design Member IDX Display such that any report generated therefrom and any page displaying the Matagorda County BOR MLS Content shall also display the Matagorda County BOR logo, in the form and format provided by Matagorda County BOR, adjacent to the following copyright notice: **"© 2018 [or current year] Matagorda County Board of REALTORS®, Inc. All rights reserved."** IDX Vendor shall not use the Matagorda County BOR logo for any other purpose unless authorized in writing by Matagorda County BOR.

**10. Disclaimer.** IDX Vendor shall design Member IDX Display such that any report generated therefrom and any page displaying the Matagorda County BOR MLS Content shall also display the following disclaimer: **"Based on information from the Multiple Listing Service of the Matagorda County Board of REALTORS® for the period (date) through (date). All information provided is deemed reliable but is not guaranteed and should be independently verified. The Matagorda County Board of REALTORS® provides the MLS and all content therein "AS IS" and without any warranty, express or implied."**

**11. Access; Security of Access ID and Penalties for Disclosure.** Within five (5) business days of the Effective Date, Matagorda County BOR shall provide IDX Vendor access to the Matagorda County BOR MLS Content via RETS and secure password. IDX Vendor understands and agrees the IDX Vendor's access ID and password are owned by Matagorda County BOR. IDX Vendor shall treat the access ID or password as private, confidential and personal and shall safeguard and maintain its confidentiality. Licensees shall be jointly and severally liable for any consequences that may result from unauthorized disclosure of IDX Vendor's access ID or password, whether intentional, negligent or inadvertent, including but not limited to immediate termination of this Agreement and liability for damages.

**12. Membership Status; Information Changes.** Licensees acknowledge that if Participant or Subscriber, as applicable, is no longer a member of Matagorda County BOR or if its status with Matagorda County BOR is inactive, access to the

Matagorda County BOR MLS Content will be denied until Participant's and/or Subscriber's status is returned to active. IDX Vendor acknowledges and understands this Agreement shall be terminated immediately in the event IDX Vendor no longer provides services to Participant or Subscriber. IDX Vendor, Participant and Subscriber agree to notify Matagorda County BOR within ten (10) days of any change to its information set forth in this Agreement.

**13. Breach.** Within five (5) business days of becoming aware of any breach of this Agreement, Matagorda County BOR shall notify Licensees, specifying the nature of the breach. Licensees shall have ten (10) business days to mutually determine which of them is the cause of the breach and the party at cause shall cure said breach within the next ten (10) business days. If Licensees are unable to determine the party at cause, they shall be jointly and severally liable to cure the breach, within the ten (10) business day cure period. If not cured within such time, Matagorda County BOR may immediately terminate this agreement. In the event of termination, IDX Vendor shall disable the display of the Matagorda County BOR MLS Content on the Member IDX Display, shall delete all Matagorda County BOR MLS Content from its servers and files, in any form or format, and shall certify to Matagorda County BOR in writing within ten (10) days of the date of termination that it has complied with the terms of this section 13.

**14. Confidentiality & Suspension.** (a) IDX Vendor acknowledges that the Matagorda County BOR MLS Content is proprietary to Matagorda County BOR and its suppliers and has been developed as commercial trade secrets at the expenditure of Matagorda County BOR's time and money and is furnished to IDX Vendor in trust. IDX Vendor agrees it will hold the Matagorda County BOR MLS Content in the same manner as it deals with its own proprietary information and trade secrets. (b) IDX Vendor shall use industry standard technological safeguards to protect the Matagorda County BOR MLS Content from unauthorized disclosure, with particular respect to consumer information that is considered "sensitive", but in any event shall use no less than the same standard of care IDX Vendor uses to protect its own confidential or proprietary information. (c) IDX Vendor will issue appropriate instructions to its authorized users having access to the Matagorda County BOR MLS Content concerning the restrictions contained herein and shall monitor all use thereof. (d) Upon Participant's, Subscriber's, or IDX Vendor's violation of this paragraph and without cause stated, Matagorda County BOR may exclude Licensees from access to the Matagorda County BOR MLS Content and suspend or terminate this agreement upon notification by Matagorda County BOR.

**15. Ownership and Dissemination of the Matagorda County BOR MLS Content.** (a) Licensees acquire no proprietary rights in or to Matagorda County BOR MLS Content or in any data elements contained therein. Matagorda County BOR and its data suppliers shall remain the exclusive owners of all rights, title and interest in and to the Matagorda County BOR MLS Content licensed hereunder and all copyrights and renewals thereof, heretofore or hereafter secured therein. All publication, dissemination and other rights to the Matagorda County BOR MLS Content licensed hereunder are reserved for Matagorda County BOR in all languages, formats and media throughout the world for the sole and exclusive use or any other disposition by Matagorda County BOR or its assignees or grantees at any time and from time to time without obligation or liability to Licensees. (b) IDX Vendor shall remain the exclusive owner of all rights, title and interest in and to IDX Vendor's products and services provided under this Agreement.

**16. Limitation and Disclaimers.** MATAGORDA COUNTY BOR AND ITS DATA SUPPLIERS ARE NOT RESPONSIBLE FOR ERRORS OR OMISSIONS. ACCESS TO AND USE OF THE MATAGORDA COUNTY BOR MLS CONTENT IS PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. NEITHER MATAGORDA COUNTY BOR NOR ANY OF ITS SUPPLIERS MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS OF A PARTICULAR PURPOSE OR NONINFRINGEMENT, WITH RESPECT TO THE MATAGORDA COUNTY BOR MLS CONTENT. Matagorda County BOR disclaims any warranty that the Matagorda County BOR MLS Content is error-free or that access to the Matagorda County BOR MLS Content will be uninterrupted.

**17. Responsibility For Use; Limitation of Liability.** IDX Vendor assumes sole responsibility for all use of the Matagorda County BOR MLS Content in IDX Vendor's services provided to Participant and/or Subscriber, which use IDX Vendor acknowledges to be at its own risk. The data contained in the Matagorda County BOR MLS Content is sourced from public, publicly available or non-public sources. Neither Matagorda County BOR nor any Matagorda County BOR MLS Content supplier is responsible for errors or omissions. Matagorda County BOR's full liability hereunder for any and all claims of damages, for any cause whatsoever, and regardless of the form of the actions, whether in contract or tort, including negligence, shall be limited to the fee paid by Licensees for access to and use of the Matagorda County BOR MLS Content, during the period any events which are the basis for any such claim(s) occur. IN NO EVENT SHALL MATAGORDA COUNTY BOR BE LIABLE FOR ANY DAMAGES RESULTING FROM PARTICIPANT'S, SUBSCRIBER'S, OR IDX VENDOR'S INABILITY OR FAILURE TO PERFORM PROFESSIONAL WORK OR FOR ANY LOST PROFITS OR ANY OTHER CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES RELATING IN WHOLE OR PART TO LICENSEES' RIGHTS UNDER THIS AGREEMENT, EVEN IF Matagorda County BOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Matagorda County BOR's data suppliers are not responsible for any damages including, but not limited to, those incurred as a result of lost profits or revenue, loss of use of access to the Matagorda

County BOR MLS Content, loss of the Matagorda County BOR MLS Content, or the cost of recovering access to the Matagorda County BOR MLS Content, the cost of any substitute therefor, or claims by third parties, or for other similar costs. In no event shall any of the Matagorda County BOR MLS Content suppliers be liable for any damages resulting from IDX Vendor's inability or failure to access the Matagorda County BOR System or any use or availability of the Matagorda County BOR MLS Content.

**18. Injunctive Relief.** Licensees acknowledge that Matagorda County BOR may suffer great harm if Licensees misappropriate the Matagorda County BOR MLS Content or access to the Matagorda County BOR MLS Content. The parties agree Matagorda County BOR may seek injunctive or other equitable relief against the breach or threatened breach of this Agreement in addition to any other legal remedies which may be available, and Licensees waive any obligation of Matagorda County BOR to post a bond or other surety or security in the event Matagorda County BOR is successful in securing a preliminary injunction. Any injunctive relief awarded to Matagorda County BOR shall not limit Matagorda County BOR's ability to secure any other appropriate relief by reason of Licensees' breach of this Agreement.

**19. Jurisdiction.** In any dispute arising out of this Agreement, this Agreement shall be construed and governed in accordance with the laws of the State of Texas, without giving effect to conflicts of law provisions, and the parties hereby submit to the exclusive jurisdiction of and venue in any state or federal courts located within the State of Texas with respect to such dispute.

**20. Assignment.** This Agreement may not be assigned by Participant, Subscriber, or IDX Vendor without Matagorda County BOR's prior written consent.

**21. Force Majeure.** No party shall be responsible for reasonable delays or failures in performance resulting from acts beyond the control of such parties. Such acts shall include, but not be limited to, acts of God, strikes, lock-outs, riots, acts of war, epidemics, governmental regulation superimposed after the fact, fire, communication line failures, power failures, tornados, earthquakes or other disasters.

**22. Compliance.** Each party agrees that it will perform its obligations hereunder in accordance with all the applicable laws, rules and regulations now or hereafter in effect, including, but not limited to the Matagorda County BOR MLS Rules Applicable to Internet Data Exchange (IDX), a copy of which has been provided to IDX Vendor as of the Effective Date, and the Matagorda County BOR MLS Rules, all as may be amended from time to time.

**23. Severability.** If any term or provision of this Agreement shall be found to be illegal or unenforceable then, notwithstanding, this agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

**24. Amendments.** No amendment of this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of all parties.

**25. Independence.** Nothing contained in this Agreement, nor in the relationship created hereby, should be interpreted to evidence a joint venture, partnership, or principal/agent relationship as between the Parties.

**26. Non-Waiver.** Waiver by Matagorda County BOR of any breach of any provision of this Agreement by Licensees shall not operate or be construed as a waiver of any subsequent or other breach by Licensees.

**27. Authority.** Each party warrants it has full power and authority to enter into and perform this Agreement and the persons signing this Agreement on behalf of each has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

**28. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to this subject matter; all prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

**29. Notices.** Any notice required or permitted to be given hereunder shall be by "confirmed email" (effective only upon confirmation of receipt by the recipient) to the email address as set forth on the face of this Agreement or in writing sent by accountable means such as Federal Express or certified mail to Participant, Subscriber, and IDX Vendor at their respective address on the first page of this Agreement and to Matagorda County BOR at 1115 San Jacinto Blvd., Ste. 200, Austin, TX 78701.

**30. Privacy.** IDX Vendor agrees to comply with all applicable privacy, data security, best practices and all other laws, rules and regulations relevant to IDX Vendor's business model.

**31. Captions.** The captions in this Agreement are included for convenience of reference only and will not be construed to define or limit any of the provisions contained herein.

**32. Counterparts.** This Agreement may be executed in any number of counterparts by the parties in separate counterparts, each constituting an original, and all such counterparts constituting one and the same Agreement.

**Matagorda County BOR:** \_\_\_\_\_ **IDX VENDOR:** \_\_\_\_\_ **PARTICIPANT:** \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_ By: \_\_\_\_\_

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

Title: \_\_\_\_\_ Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

**SUBSCRIBER (if applicable):** \_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Member IDX Display URL or mobile application name: \_\_\_\_\_