

**THE TERMS AND CONDITIONS CONTAINED HEREIN WILL BE LEGALLY BINDING ON VENDOR UPON EXECUTION OF THE CONTENT LICENSE AGREEMENT AND ARE HEREBY INCORPORATED INTO THE CONTENT LICENSE AGREEMENT. ALL REFERENCES TO THE CONTENT LICENSE AGREEMENT OR AGREEMENT SHALL REFER TO THE CONTENT LICENSE AGREEMENT AND THE TERMS AND CONDITIONS CONTAINED HEREIN (COLLECTIVELY, THE “AGREEMENT”). VENDOR SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE EXECUTING THE AGREEMENT.**

- 1. DEFINITIONS.** The following capitalized terms shall have the meanings set forth below.
  - 1.1. “RECOLORADO” means Metrolist, Inc. d/b/a RECOLORADO, a Colorado corporation having a principal place of business at 6455 S. Yosemite St., Suite 500, Greenwood Village, CO 80111.
  - 1.2. “VENDOR” means the party entering into the Content License Agreement with RECOLORADO, as defined in the Content License Agreement.
  - 1.3. “EFFECTIVE DATE” means the date that the last signing party executes the Content License Agreement.
  - 1.4. “IDX Content” means a subset of the MLS Content consisting of data fields allowed for public display on Vendor Customer websites.
  - 1.5. “Login” means, collectively, the unique account name and/or number, login and passwords whereby VENDOR is authorized to access and use the MLS Content.
  - 1.6. “RECOLORADO Licensee” means a real estate broker or other vendor who is licensed by RECOLORADO to access, receive, view, and otherwise use MLS Content under terms of an agreement between such broker or vendor and RECOLORADO.
  - 1.7. “MLS Content” means those portions and categories of data and information specifically identified in Section 1 of the Agreement, that are licensed to VENDOR under the Agreement.
  - 1.8. “VENDOR Customers” means the people and businesses to which VENDOR provides, sells, or licenses VENDOR Services.
  - 1.9. “VENDOR Services” means the services, information, and/or products that incorporate, are based on or are developed by use of the MLS Content, and which VENDOR is authorized to provide to VENDOR Customers under the terms of the Agreement. In no event may VENDOR Services include, in whole or in part, MLS services or other services that are competitive with RECOLORADO’s core MLS function, as determined in RECOLORADO’s sole discretion.
  
- 2. GRANT OF LICENSE.** Subject to VENDOR’s compliance with the Agreement, RECOLORADO hereby grants to VENDOR a limited, non-exclusive, non-transferable, revocable license to access and use the MLS Content solely as expressly authorized in this Section.
  - 2.1. RECOLORADO will make the MLS Content available to VENDOR. All costs and expenses associated with VENDOR’s access to and receipt of the MLS Content,

including network, telecommunications, hardware, software, and maintenance costs, shall be borne by VENDOR.

- 2.2. All of VENDOR's access to and use of the MLS Content shall be through VENDOR's own Login. Only VENDOR's direct employees may use VENDOR's Login to access the MLS Content. VENDOR shall not allow any other party to access and use the MLS Content. VENDOR shall actively monitor all activities conducted under its Login, and shall promptly enforce compliance with the Agreement. VENDOR shall remain at all times primarily and directly responsible and liable to RECOLORADO for all activities conducted by any party, whether or not associated with VENDOR, through VENDOR's Login.
- 2.3. VENDOR shall not access or use the MLS Content through the account or logins of, or license granted to, any other RECOLORADO Licensee unless expressly so authorized under the terms of a separate agreement between VENDOR, RECOLORADO, and such RECOLORADO Licensee.
- 2.4. VENDOR's access to and use of the MLS Content shall at all times fully comply with the Agreement, all laws, regulations, and legal obligations of VENDOR governing such access and use.
- 2.5. VENDOR shall pay RECOLORADO the fees applicable to the service and access levels selected by VENDOR, as set forth in the Vendor Fee Schedule attached hereto as Exhibit B and made a part hereof. RECOLORADO may at any time update and modify the Vendor Fee Schedule by a minimum thirty (30) day prior written notice to VENDOR.
- 2.6. VENDOR shall publish the Login ID assigned by RECOLORADO to VENDOR on all pages where MLS Content is publicly displayed.

On each page where listing information is displayed, the following microdata must be present:

```
<div itemscope itemtype=https://schema.org/Product>  
  <meta itemprop="provider" content="<LOGINID>" />  
  <meta itemprop="owns" content="RECOLORADO" />  
</div>
```

....where <LOGINID> is your username. It is acceptable to merge the productID, provider, and owns attributes within an existing itemscope where applicable.

- 2.7. Vendors will display the following copyright notice on all electronic displays of the MLS Database, or any portions thereof. “© 2019 [or current year]® – All Rights Reserved
- 2.8. VENDOR acknowledges and agrees that VENDOR will place RECOLORADO provided tracking code in the Product for the purpose of providing RECOLORADO with a mechanism to compile statistics about Internet activity related to the Product and how the MLS Content is viewed and visited within the Product. VENDOR acknowledges and agrees that RECOLORADO may utilize a third party of RECOLORADO's choice to manage the tracking code and website statistics analysis.
- 2.9. VENDOR shall not use any personally identifying information or other contact information of RECOLORADO Licensees that are part of MLS Content for any reason other than as is necessary to provide Vendor Services and support Vendor Customers. VENDOR shall in no event itself or through a representative contact or solicit RECOLORADO Licensees who are not already Vendor Customers. For clarity, the foregoing shall not restrict Licensee’s right to use information relating to RECOLORADO Licensees that is obtained from a source other than the MLS Content.

### **3. PAYMENT.**

- 3.1. INITIAL AND ONGOING CHARGES. On the Effective Date, VENDOR shall pay RECOLORADO the Account Establishment Fee in the amount set forth in the Vendor Fee Schedule. All other fees and charges payable by VENDOR on an ongoing basis hereunder are identified and set forth in the Vendor Fee Schedule. All amounts payable by VENDOR hereunder, including all fees, costs and charges itemized in the Vendor Fee Schedule and identified anywhere in the Agreement, including any late fees and all applicable taxes, are hereinafter collectively referred to as “Charges”. No portion of Charges, once incurred, may be reversed, refunded, or credited to another party’s account.

- 3.2. **VENDOR FEE SCHEDULE.** Exhibit B contains RECOLORADO's Vendor Fee Schedule in effect on the Effective Date. RECOLORADO may modify, supplement and update the Vendor Fee Schedule at any time by a thirty (30) day prior written notice to VENDOR which may be given in any manner, including by email or facsimile.
- 3.3. **INVOICES AND PAYMENTS.** Unless otherwise provided in the Agreement, VENDOR will be billed on a monthly basis for all Charges incurred under VENDOR's Login. VENDOR is responsible for safekeeping the confidentiality of its Login. VENDOR shall pay all invoices in full upon receipt. Any amount not paid within thirty (30) days of its due date shall incur a service charge in the amount of a minimum or one and one half percent (1.5%) per month or the highest rate allowed by law if lower, on the overdue amount until paid in full. Failure to timely pay invoices in full shall also constitute a material breach of the Agreement and shall entitle RECOLORADO to immediate remedies, including, without limitation, the suspension of service to VENDOR and VENDOR Customers and/or termination of the Agreement.
- 3.4. **REINSTATEMENT FEE.** If the Agreement or any portion of products, services, or licenses provided by RECOLORADO to VENDOR hereunder is terminated or suspended at any time due to VENDOR's noncompliance with the Agreement or its election to terminate or suspend its receipt of such services, RECOLORADO may, in addition to all other requirements identified in the Agreement, require VENDOR to pay a reinstatement fee before it may apply for any reinstatement or resumption. If the Agreement is terminated altogether for any reason and RECOLORADO determines that VENDOR subsequently may be eligible to re-subscribe to the services offered by RECOLORADO under the Agreement, VENDOR will be charged the Account Establishment Fee as a condition to re-subscribing.
- 3.5. **COLLECTION COSTS.** In addition to all other amounts payable by VENDOR to RECOLORADO under the Agreement, VENDOR shall pay all costs, expenses, fees, and damages incurred by RECOLORADO as a result of commencing any legal or other action to collect amounts remaining unpaid hereunder, including, without limitation, court and collectors' costs and fees and reasonable attorneys' fees.

- 4. ADDITIONAL RESTRICTIONS AND LIMITATIONS.** VENDOR's access to and use of the MLS Content is subject to the following additional restrictions and limitations. Any breach or threatened breach of any provision in this Section 4 shall be grounds for termination of the Agreement and VENDOR's license to the MLS Content, and furthermore grounds for termination of any other agreements entered into by and between RECOLORADO and VENDOR.
- 4.1. Section 1 of the Agreement hereto sets forth the manner and purpose of VENDOR's access to and use of the MLS Content. VENDOR's use of the MLS Content solely for the purpose(s) stated in Section 1 of the Agreement is required as a condition to gaining access to the MLS Content. Whether VENDOR's access and license to data from RECOLORADO will be authorized shall in all events be at RECOLORADO's sole discretion.
  - 4.2. VENDOR shall not use the MLS Content for any purpose other than to provide VENDOR Services to VENDOR Customers as expressly stated in Section 1 of the Agreement. No uses that are not expressly identified in Section 1 of the Agreement will be implied to be included within the scope of authorized purposes and uses of the MLS Content.
  - 4.3. VENDOR Customers shall at all times be end user consumers (general public) and customers (brokers) of VENDOR Services. VENDOR Customers may not be resellers or distributors of VENDOR Services in whole or in part, or business partners or business contractors of VENDOR.
  - 4.4. VENDOR shall not allow any party other than its employees to access or use the MLS Content. VENDOR is expressly prohibited from allowing its vendors, contractors, suppliers, the VENDOR Customers or other third parties to access the MLS Content on VENDOR's behalf, or to use VENDOR's Login. VENDOR shall promptly notify RECOLORADO if it becomes aware that the security or confidentiality of its Login has become jeopardized.
  - 4.5. VENDOR shall not in any manner alter or obscure any portion of the MLS Content, or in any manner interfere with RECOLORADO's or any RECOLORADO Licensee's access to and use of the MLS Content.
  - 4.6. VENDOR shall not exceed the scope of license expressly granted hereunder, or attempt to circumvent the security or access restrictions that protect the MLS Content.

- 4.7. The grant of license to VENDOR hereunder may not be assigned, sublicensed, or in any manner transferred or shared with any other party, in whole or in part, except to the extent necessary to allow VENDOR to provide VENDOR Services to VENDOR Customers. Any purported or attempted assignment, sublicense, transfer, or sharing of rights in or access to any portion of the MLS Content is strictly prohibited, and shall be void.
- 4.8. VENDOR shall implement the following security measures for all hardware, including but not limited to, computing and communications equipment, and for all software, including but not limited to, operating systems, middleware, web services, database programs, applications and any other software products or tools used to host or transmit MLS content:
- 4.8.1. Physical security and software-based security schemes that limit access to hardware and software to authorized personnel only.
  - 4.8.2. Securely configured firewall (e.g. bastion firewall that includes stateful packet inspection).
  - 4.8.3. Anti-virus software with current virus definitions and a minimum update schedule of no longer than seven (7) days (one (1) day recommended).
  - 4.8.4. Software patching schedule that ensures critical security patches are installed within 14 days of the patch becoming available (seven (7) days recommended).
  - 4.8.5. Schemes to prevent data mining and other inappropriate access and use.
  - 4.8.6. Maintain an audit trail of user activity within the application. Archives of this audit trail must be kept for a minimum of 180 days (365 days recommended).
- 4.9. VENDOR warrants that it is in full compliance with all security measures prior to accessing the MLS Content.
- 4.9.1. RECOLORADO reserves the right by a minimum 48-hour advance written notice to audit VENDOR's security measures to confirm adequacy and compliance with the Agreement. VENDOR agrees to cooperate and allow RECOLORADO or its designee access to perform such audit.
  - 4.9.2. If RECOLORADO has a reasonable belief that a breach has occurred in the security of the MLS Content, VENDOR shall, upon request, provide RECOLORADO a copy of the record of the name, e-mail address,

username, current password, and audit trail of any user identified by RECOLORADO suspected of involvement in the security breach. VENDOR shall cooperate with any RECOLORADO investigation of security breach or improper use.

4.9.3. RECOLORADO reserves the right to require VENDOR to implement additional security measures from time to time. Failure to implement all security measures required by RECOLORADO shall be deemed a material breach.

4.9.4. VENDOR shall allow RECOLORADO access to VENDOR's computers, telecommunications, software, and other equipment and technology or resources as may be necessary for the purpose of monitoring and ensuring compliance with RECOLORADO required security measures, as well as the proper and lawful use of the MLS Content by VENDOR.

4.10. VENDOR shall promptly destroy, delete, expunge, and cease displaying any portion of the MLS Content upon receiving instructions to do so from RECOLORADO or from the original source of the information.

4.11. All rights not expressly granted to VENDOR in the Agreement are reserved by RECOLORADO.

**5. STANDARD OF SERVICE.** RECOLORADO has established standards and a reputation for delivering high quality, prompt, efficient, and courteous services. VENDOR shall at all times meet or exceed RECOLORADO's standards by delivering prompt, courteous, and efficient services to potential and existing VENDOR Customers, shall at all times exhibit the highest standards of honesty, integrity, and fair dealing, including compliance with all applicable laws, ordinances, and regulations, and shall do nothing that would tend to discredit, dishonor, reflect adversely upon, or in any manner injure the reputation of RECOLORADO, its products, services, and goodwill associated therewith. VENDOR shall at all times during the Agreement act in good faith and in the best interests of RECOLORADO, and shall only enhance the goodwill and reputation of RECOLORADO.

**6. OWNERSHIP AND CONFIDENTIALITY.** VENDOR understands and acknowledges that all knowledge and information regarding the MLS Content, the technical information related to its storage, access and use, the VENDOR Login, and any other information provided to VENDOR in connection with the Agreement is the confidential and proprietary information and trade secret of RECOLORADO. Furthermore, VENDOR understands and acknowledges that the MLS Content is a valuable database and compilation that is a protected copyright asset of RECOLORADO. Accordingly, VENDOR's shall at all times safeguard the confidentiality of all such information, shall comply with

the Agreement and all requirements under copyright laws and treaties, and shall not take any action in derogation of RECOLORADO's proprietary rights. VENDOR shall not challenge, interfere with, deny, or violate RECOLORADO's copyrights or other proprietary rights in the MLS Content. VENDOR agrees to retain any trade secrets, codes, and technical information obtained from RECOLORADO or otherwise under the Agreement in confidence, and shall not disclose such information to any third party. The obligations under this Section shall survive the termination of the Agreement.

## **7. TERM AND TERMINATION.**

7.1. The Agreement shall become effective on the Effective Date, and shall remain in full force and effect for one (1) year ("Initial Term"). Thereafter the Agreement shall automatically renew for successive thirty (30) day terms. The Agreement may be terminated as follows:

7.1.1. Either party may elect not to renew or to terminate the Agreement without cause by a (30) days written notice to the other prior to expiration of the Initial Term, or prior to any month-to-month renewal of the Agreement after the Initial Term. Nothing herein shall obligate RECOLORADO to renew the Agreement, or to reinstate the Agreement or any other agreement with VENDOR after termination or suspension of the Agreement.

7.1.2. RECOLORADO may without prior notice to VENDOR suspend VENDOR's access to the MLS Content if in RECOLORADO's reasonable judgment doing so would protect the security and integrity of the MLS Content and related services and access to the MLS Content, or would prevent VENDOR's breach of the Agreement.

7.1.3. RECOLORADO may terminate the Agreement at any time by written notice to VENDOR in the event of a breach or threatened breach of the Agreement.

7.1.4. Termination of the Agreement for VENDOR's breach shall also be grounds for termination by RECOLORADO of any other agreement between RECOLORADO and VENDOR and other parties.

7.1.5. In the event of a breach or threatened breach of the Agreement, RECOLORADO may charge Vendor the liquidated damages listed below, or RECOLORADO's actual damages, if greater, based on the nature, severity, and the occurrence of the breach or threatened breach:



<u>Type of Breach</u>	<u>1st Occurrence</u>	<u>2nd Occurrence</u>
Abusive use of Login and/or MLS Content	\$5,000 and/or termination	\$10,000 and/or termination
Account Sharing	\$10,000 and/or termination	\$15,000 and/or termination
Failure to protect against data mining and other security breaches	\$10,000 and/or termination	\$15,000 and/or termination
Unauthorized Distribution or Disclosure of MLS Content	\$25,000 and/or termination	\$50,000 and/or termination

VENDOR understands and acknowledges that breach of provisions related to protection of RECOLORADO’s intellectual property and other proprietary rights may be difficult to ascertain and quantify, and that the liquidated damages above are designed to quantify the damages that RECOLORADO will suffer as a result of VENDOR’s breach of threatened breach and are fair.

- 7.2. Upon termination of the Agreement for any reason, VENDOR shall immediately destroy, delete and discontinue use of all MLS Content and discontinue use of the MLS Content in all VENDOR Services. RECOLORADO may conduct an audit to ensure that MLS Content has been destroyed.
- 7.3. In no event shall VENDOR be entitled to any refunds, credits, or setoffs under the Agreement. VENDOR’s sole remedy for any cause of action related to the Agreement or the MLS Content or any enforcement hereunder shall be to terminate the Agreement under this Section.
- 7.4. RECOLORADO’s exercise of a right to suspend or terminate the Agreement and to impose and recover liquidated damages under this Section shall not be an election of remedies, and RECOLORADO shall remain entitled to any and all other rights to equitable and legal remedies and damages, including without limitation, those set forth in this Section. All of RECOLORADO’s rights and remedies hereunder are cumulative.

**8. RECOLORADO'S DISCLAIMERS.**

- 8.1. RECOLORADO shall not be responsible or liable for any damages resulting from VENDOR's use of, or inability to use, the MLS Content, or from any party's reliance on VENDOR Services obtained from VENDOR.
- 8.2. RECOLORADO reserves the right to monitor, review, and edit the MLS Content, and shall have the right to audit and inspect VENDOR's activities under the Agreement. Nevertheless, RECOLORADO shall not have an obligation to do so, and shall not be responsible for any failure to so monitor or audit VENDOR's or any other party's actions with respect to the MLS Content.
- 8.3. **RECOLORADO MAKES NO EXPRESSED OR IMPLIED WARRANTIES HEREUNDER INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. RECOLORADO'S MLS CONTENT AND TECHNOLOGY FOR MAKING SAME AVAILABLE TO VENDOR HEREUNDER ARE MADE AVAILABLE ON AN "AS IS", "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. USE OF THE MLS CONTENT AND RELATED TECHNOLOGY IS AT THE SOLE RISK OF VENDOR. RECOLORADO, ITS LICENSORS, AND THIRD-PARTY SUPPLIERS DO NOT WARRANT THAT THE CONTENT OR RELATED TECHNOLOGY WILL BE AVAILABLE AT ALL TIMES, WILL BE UNINTERRUPTED, COMPLETE, ACCURATE, CURRENT, RELIABLE OR ERROR-FREE.**
- 8.4. **RECOLORADO, its licensors, and third-party suppliers do not warrant or guarantee that the MLS Content complies with all Fair Housing laws and regulations. RECOLORADO shall not be responsible for monitoring or reviewing the MLS Content for compliance with Fair Housing or any other laws and regulations.**

**9. ENFORCEMENT AND REMEDIES.**

- 9.1. VENDOR shall defend, indemnify and hold RECOLORADO and its affiliates and licensors harmless from and against any liabilities, losses, costs, expenses, and damages, including attorneys' fees and defense costs, in any way incurred by RECOLORADO as a result of VENDOR's actions or omissions under the Agreement, under its agreement with VENDOR Customers, or as a result of matters for which RECOLORADO is designated as not having any responsibility or liability hereunder.
- 9.2. The parties shall arbitrate any and all disputes arising out of the Agreement or out of the use of the MLS Content. Such arbitration shall occur in Arapahoe County, Colorado, and shall be conducted by the Judicial Arbitrator Group, Inc. in accordance

with the rules of the American Arbitration Association in effect at the time the dispute arose. The arbitration award shall be final and binding.

- 9.3. Notwithstanding the obligation to arbitrate, RECOLORADO shall be entitled to obtain injunctive relief in court against VENDOR to compel compliance or prevent breach of provisions related to protection of RECOLORADO's proprietary rights or the scope of license granted hereunder.
- 9.4. In addition to all other rights and remedies available in law or equity, the prevailing party in any action or proceeding brought to interpret or enforce the Agreement shall be entitled to recover from the other party its attorneys' fees and costs incurred in connection therewith.
- 10. FORCE MAJEURE.** Neither party shall be responsible for any failure or delay in performance under the Agreement, except for the obligation to make payment, if such failure or delay results from circumstances in any way beyond its control including, but not limited to, government regulations, fire, natural disaster, communication line failure, power failure, or act of God. VENDOR shall be deemed to be in control of the actions of its Associates.
- 11. NO ASSIGNMENTS.** VENDOR may not assign the Agreement or any right arising hereunder, in whole or in part. Subject to the foregoing, the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, and assigns.
- 12. NOTICES.** All notices or other documents under the Agreement shall be in writing addressed to the parties at their addresses and email addresses identified in the Agreement. Notice given by email shall be deemed to be given in writing.
- 13. AMENDMENT.** Except for those provisions which may be amended or updated by the sole discretion of RECOLORADO, the Agreement may be altered, amended, terminated, or modified only by a written agreement executed by all of the parties to the Agreement.
- 14. COMPLETE AGREEMENT.** The Agreement constitutes the final, complete, and exclusive understanding between the parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous agreements, understandings, inducements, and conditions, expressed or implied, oral or written.
- 15. NON-WAIVER.** No delay or failure by either party to exercise any right under the Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided in the Agreement.

16. **SEVERABILITY.** The terms of the Agreement are independent of and severable from each other, and neither the Agreement nor any provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any other of the provisions may be invalid or unenforceable, in whole or in part, for any reason. Paragraph and section headings are for convenience only.
17. **GOVERNING LAW.** The Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of Colorado.
18. **INDEPENDENT CONTRACTORS.** Nothing in the Agreement shall be considered to constitute or create a partnership, association, or joint venture between RECOLORADO and VENDOR.
19. **COUNTERPARTS.** The parties, by the signatures of their respective authorized individuals, warrant that they have authority to enter into the Agreement. The signatures of the parties, which may be executed in counterparts, each of which shall be deemed an original, evidence consent to the Agreement and all counterparts and originals shall constitute one Agreement. Facsimile and electronic signatures shall be valid and effective as originals.

REFERENCE