

METROLIST SERVICES, INC.

ACCESS AGREEMENT FOR TEMPLATE SERVICE

This Access Agreement ("Agreement") is entered into at Sacramento, California effective _____, (the "Effective Date") by and between METROLIST SERVICES, INC., a California corporation, 1164 W. National Drive, Suite 60, Sacramento, CA, 95834 ("MetroList"), and _____, a Participant or Subscriber ("Subscriber") in MetroList's multiple listing service ("MLS") with reference to the following facts.

RECITALS

A. MetroList owns and operates an MLS using computer systems and software from several different companies, which provides confidential copyrighted proprietary information to MetroList's MLS Participants, Subscribers and other authorized persons (the "System").

B. The System includes an SQL server that contains the non-confidential listing information and photographs for Class 1: Residential/Common Interest (RES) properties that are active listings (the "Compilation"). The Compilation may be accessed with templates developed using a software program commonly known as Cold Fusion ("Template Service").

C. Subscriber has established an Internet website which relates to Subscriber's business as a licensed real estate broker or salesperson;

D. Subscriber desires to enter into an agreement with MetroList for the purpose of using the Template Service for the purpose of reproducing non-confidential listing information and photographs from the Compilation at Subscriber's website in compliance with the MLS Rules.

E. MetroList hereby consents to Subscriber accessing the Template Service for the intended purpose on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth herein, the parties agree as follows:

AGREEMENT

1. **MetroList Copyright.** Subscriber acknowledges that the System and all data and other information ("Information") contained in the System constitute the exclusive, proprietary, copyrighted property of MetroList. Subscriber shall at all times during the term of this Agreement be a Subscriber to the MetroList MLS in good standing and agrees that under no circumstance shall Subscriber create any derivative work from the Information contained in the System.

2. **Access to Template Service.** MetroList hereby grants Subscriber permission to access the Template Service for the purpose of obtaining the Compilation for reproduction at Subscriber's website. Such access to and reproduction of the Compilation shall at all times be subject to this Agreement and MetroList's MLS Rules as well as such other rules, regulations or procedures as MetroList may adopt from time to time; and under no circumstance shall Subscriber be permitted to act as an agent who procures Information contained in the System and arranges for its transmission or delivery to, or use by, any third party.

3. **Term of Agreement.** The term of this Agreement shall be for one (1) year commencing on the Effective Date, provided that the term shall automatically renew for additional one (1) year terms unless either party gives written notice to the other party of its intent to not renew the Agreement at least sixty (60) days prior to the expiration date of the then-current term. Provided further, however, MetroList may immediately terminate this Agreement upon written notice to Subscriber should Subscriber in MetroList's sole opinion be in breach of any provision of this Agreement. Upon any such termination, Subscriber shall not be entitled to the refund of any amounts paid to MetroList prior to the effective date of the termination. Upon termination of this Agreement, Subscriber shall immediately return to MetroList or destroy all Information obtained from the Template Service and certify to MetroList in writing within five (5) business days of the termination date that it has done so. Provided, however, that Information reproduced by Subscriber in accordance with this Agreement and pursuant to the MLS Rules at Subscriber's website shall not be subject to return or destruction under this provision so long as such reproduction complies with the MLS Rules. Notice of termination as well as other notices required or allowed to be given hereunder, shall be in writing, mailed, faxed or personally delivered, addressed: If to MetroList, Attention President, 4640 Northgate Blvd., #100, Sacramento, CA, 95834; If to Subscriber, at Subscriber's business address as shown in MetroList's records.

4. **Payment.** In consideration for the rights granted to Subscriber hereunder, during the first twelve (12) months of this Agreement, Subscriber agrees to pay MetroList a one-time setup fee of Fifty Dollars (\$50.00) payable upon execution of this Agreement by Subscriber and a monthly fee of Five Dollars (\$5.00) commencing on the Effective Date. Any Monthly Fee or portion thereof for use of the Template Service previously paid shall be non-refundable to Subscriber. MetroList shall invoice Subscriber for the monthly payments as part of Subscriber's quarterly billing for MLS Services. MetroList reserves the right to adjust such fees on an annual basis as of the renewal date, provided that not less than ninety (90) days written notice of such adjustment shall be given to Subscriber prior to the renewal date.

5. **No Warranties.** THE INFORMATION CONTAINED IN THE SYSTEM IS OBTAINED FROM INFORMATION INPUT INTO METROLIST'S MLS BY ITS PARTICIPANTS AND SUBSCRIBERS. METROLIST MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE INFORMATION CONTAINED IN THE SYSTEM, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR AS TO THE TIMELINESS, ACCURACY AND COMPLETENESS OF THE INFORMATION CONTAINED IN THE SYSTEM.

6. **Limitation of Liability.** METROLIST IS NOT LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS INFORMATION, LOST PROFITS, OR OTHER PECUNIARY LOSS), ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE INFORMATION OR THE SYSTEM. IN NO EVENT SHALL METROLIST'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT EXCEED THE MONTHLY FEES ACTUALLY PAID BY SUBSCRIBER TO METROLIST UNDER THIS AGREEMENT FOR THE MONTH IN WHICH THE CAUSE OF ACTION AROSE.

7. **Default by Subscriber.** Each of the following shall constitute a default by Subscriber under this Agreement:
- a. Failure by Subscriber to observe or perform any of its material obligations under this Agreement or any other agreements between the parties, including but not limited to a failure to pay MetroList any fees owing under this Agreement when due;
 - b. If Subscriber becomes insolvent, or admits in writing its inability to pay its debts as they become due; calls a meeting of creditors for the composition of debts; or makes an assignment for the benefit of creditors;
 - c. If a case or proceeding with respect to Subscriber is commenced under any applicable bankruptcy, insolvency, reorganization, receivership, or readjustment of debt law or other similar law, unless such case or proceeding is dismissed within sixty (60) days after it was commenced; or
 - d. If an order for the appointment of a receiver, liquidator, sequestrator, trustee, custodian, or other officer having similar powers over Subscriber or a substantial part of Subscriber's property is entered; an interim receiver, trustee, or other custodian of Subscriber or of a substantial part of Subscriber's property is appointed; or a warrant of attachment, execution, or similar process against any substantial part of Subscriber's property is issued.

8. **Indemnity by Subscriber.** Subscriber hereby agrees to indemnify, defend and hold harmless MetroList and its respective officers, directors, shareholders, members, employees, agents, and representatives from and against any and all claims, demands, losses, liabilities, judgments, damages, costs, and expenses of every kind and nature whatsoever, including but not limited to reasonable attorneys' fees, arising out of or relating to Subscriber's access and/or use of the Template Service as described hereinabove. The terms of this paragraph shall survive the termination of this Agreement.

9. **Miscellaneous.**

9.1 **Assignment.** Neither this Agreement, nor any of the rights or benefits hereof, shall be assigned, sublicensed, sold, or otherwise transferred, by Subscriber without the prior written consent of MetroList, which consent may be given or withheld in MetroList's sole and complete discretion. MetroList may transfer or assign its rights under this Agreement at any time without the prior consent of Subscriber.

9.2 **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Venue of any action brought to enforce, interpret, or for the breach of this Agreement shall be in the Superior Court for the County of Sacramento, State of California.

9.3 **Integrated Agreement: Modifications.** This Agreement supersedes all prior oral or written agreements between the parties in any manner relating to the subject matter hereof, contains all the agreements of the parties concerning such subject matter and shall not be amended or modified except by a written instrument executed by both parties.

9.4 **Attorneys' Fees.** In any action arising out of this Agreement or the relationship of the parties reflected in this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs incurred, which shall include any such fees and costs incurred in connection with a bankruptcy proceeding, at trial, and on any appeal.

IN WITNESS HEREOF, the parties have executed this Agreement as of the effective date set forth above.

METROLIST SERVICES, INC.
A California corporation

By _____
Authorized Representative

Subscriber _____
Print Name

Subscriber _____
Signature

Broker _____
Print Name

Broker _____
Signature