

Telluride Association of REALTORS, Multiple Listing Service®
Broker Back Office Data Agreement

THIS BROKER BACK OFFICE DATA AGREEMENT (“Agreement”) is made and entered into by and between TELLURIDE MULTIPLE LISTING SERVICE, INC. (“Telluride MLS”), a Colorado corporation, _____ a licensed real estate broker or brokerage firm and a Participant or Subscriber in the Telluride MLS (“Participant”), and _____ (“Vendor”). (Participant and Vendor are sometimes collectively referred to herein as “Licensee”).

RECITALS

- A. Telluride MLS maintains a data collection and dissemination system regarding property listing information, referred to as a Multiple Listing Service (the “MLS”);
- B. The Participant is participating in the MLS pursuant to the Rules, as defined in Section 1.1(j) of this Agreement;
- C. Participant wishes to obtain, and Telluride MLS wishes to provide, MLS Listing Information (as such term is defined below in Section 1.1(f)), in the form of BBO Data via the BBO Feed (as such terms are defined below in Sections 1.1(b)-(c)), for use in accordance with this Agreement for a BBO Use (as such term is defined below in Section 1.1(d));
- D. Participant has engaged or will engage Vendor to use the BBO Data for an approved BBO Use pursuant to the terms and conditions of this Agreement; and
- E. Subject to the Participant’s and Vendor’s compliance with the provisions of this Agreement, Telluride MLS desires to provide the BBO Data to Participant and Vendor pursuant to the terms of this Agreement.

NOW THEREFORE, in exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Telluride MLS, Participant, and Vendor agree as follows.

ARTICLE I
DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

- a. “Telluride MLS Server” means the computer server or servers, including both hardware and software, maintained by Telluride MLS which contains the MLS Listing Information and provides the means for participants to access the MLS Listing Information.
- b. “BBO Data” means all real property listing and roster information, including all fields, photos, media, and information, in the Telluride MLS Listing Information, including all listings of all Participants, but excludes: (i) MLS only fields (those fields only visible to MLS staff and the listing participant), and (ii) fields and content to which MLS does not have a sufficient license for use in the BBO Feed (as such term is defined below in Section 1.1(c)).
- c. “BBO Feed” means the one data source that will be delivered to the Participant and Vendor that contains the BBO Data.

d. “BBO Use” means use of BBO Data by Participant and Subscribers (as defined in the Rules) affiliated with the Participant for the following purposes:

- Brokerage management systems, such as accounting and other substantially similar uses, that only expose BBO Data to Participant and Vendor.
- Broker-client relationship transaction management tools, including customer relationship management and transaction management platforms that only expose the BBO Data to Participant, Vendor, and Participant’s bona fide clients as established under applicable state law for Colorado.
- Individual agent and brokerage productivity and ranking tools and reports that only expose BBO Data to Participant and Vendor.
- General marketplace reports and other similar statistical analyses and reports in conformance with NAR MLS Policy Statement 7.80, which allows for certain public distribution.

e. “Confidential Information” means information or material proprietary to a party or designated “confidential” by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written, digital or other form): (a) all MLS Listing Information, except to the extent to which this Agreement and the Rules permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that Telluride MLS obtains from any third party that Telluride MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by Telluride MLS; (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims or evidence presented by any party in any arbitration under this Agreement. Confidential Information does not include information that is or becomes publicly available by means other than unauthorized disclosure by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

f. “MLS Listing Information” means listing information provided by Participants to the Telluride MLS and aggregated and distributed by the Telluride MLS to Participants, except for any listing for which the seller has withheld permission to have the listed property displayed on the Internet. “MLS Listing Information” shall include information relating to properties that have sold only in those jurisdictions in which the actual sales prices of completed transactions are accessible from public records.

g. “Participant” means any REALTOR® who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal who participates in the Telluride MLS by agreeing to conform to the Rules. For purposes of this Agreement, the Participant is the real estate firm or individual Subscriber identified in the preamble to this Agreement and whose name and contact information appears on the signature page of this Agreement designated “Participant Information and Signature”.

h. “Vendor Software Application” means the online computer software application(s) known as: _____ which provides Participants with functions for Back Office Operations.

i. “Back Office Operations” means the internal, non-public, real estate brokerage business

operations of a Participant.

j. “Rules” refers to the Telluride MLS rules and regulations and all attachments and exhibits thereto, as amended from time to time; any applicable access standards and technology standards; and any operating policies (including but not limited to the Internet Data Exchange Policy) relating to the MLS Listing Information.

k. “Vendor” means an entity or person designated by a Participant to have access to the BBO Data for purposes of a BBO Use, on behalf of the Participant, subject to the Participant’s supervision, accountability, and compliance with this Agreement as well as Telluride MLS’s Rules (as such term is defined above in Section 1.1(j)).

ARTICLE II LICENSE

2.1. License Grant. Subject to the terms and conditions of this Agreement, Telluride MLS hereby grants to Licensee a limited, revocable, non-transferrable, non-exclusive license to receive from Telluride MLS an electronic data feed of all MLS Listing Information contained in the BBO Data and delivered via the BBO Feed for use solely and exclusively in connection with an authorized BBO Use (the “License”). Licensee acknowledges and agrees that pursuant to this Agreement and NAR MLS Policy Statement 8.7, except to the extent expressly set forth in this Agreement, this License does not give third-parties access to Telluride MLS Listing Information data and does not give Licensee permission to provide unfettered use of MLS Listing Information or BBO Data to third- parties.

2.2. Limitations on License. Except as expressly set forth in this Agreement, Licensee shall not, and shall not facilitate, cause, or allow anyone else, to do any of the following: (a) create any derivative works of the MLS Listing Information included in the BBO Data, or any other underlying proprietary information or intellectual property rights associated therewith; (b) use, display, download, distribute, export, deliver, transmit, or provide access to the MLS Listing Information included in the BBO Data or any portion thereof except for a BBO Use as permitted under this Agreement; (c) provide access to the MLS Listing Information included in the BBO Data to any third party that is not in accordance with a BBO Use as defined in this Agreement, including, but not limited to mortgage lenders and mortgage servicers and other settlement service providers; (d) sell, license, sublicense, lease, or rent the MLS Listing Information, any portion thereof, or any derivative works of the MLS Listing Information to any third party, including, but not limited to, mortgage lenders and mortgage servicers or any other settlement service providers; or (e) use the MLS Listing Information or any portion thereof for any commercial purpose other than in connection with a BBO Use. This Agreement does not disrupt other established NAR MLS policies, such as Policy Statement 7.43, which includes that “MLSs may, at their discretion, require that broker Participants sign a certification for nonuse of its MLS services by their licensees, which can include penalties and termination of the waiver if violated.” Licensee agrees to take all reasonable steps necessary to protect the MLS Listing Information from unauthorized access, distribution, copying or use. Licensee acknowledges and agrees that any violation of the provisions of Section 2.1 or this Section 2.2 shall constitute a material breach of this Agreement and result in the immediate termination of the License and this Agreement and Licensee shall be liable to Telluride MLS for damages sustained by Telluride MLS as a result of any such breach.

2.2.1. In addition to the other limitations in this Agreement including in Section 2.2 above, Licensee agrees that they shall not, directly or indirectly, re-syndicate, redistribute, or sub-license any BBO Data, Confidential Information, or MLS Listing Information without written consent of the Telluride MLS Board of Directors. Licensee shall not re-syndicate, redistribute, or sub-license BBO Data, Confidential Information, or MLS Listing Information in any form or format for display on other websites, applications, media, or other sources for any purpose

except as provided for in this Agreement, without the express written consent of Telluride MLS. Telluride MLS will need to expressly opt-in or provide prior written approval in accordance with this Agreement for any additional uses, applications, or opportunities with respect to such information that may arise after entering this Agreement and that are not specifically provided for in this Agreement and its Schedules.

2.2.2. In the event that Vendor provides real estate related services to any other parties besides the undersigned Participant, Vendor must enter into separate contracts with Telluride MLS as a Vendor for each separate participant. Each time before accessing the BBO Feed or any information contained therein, the Vendor must ascertain, using the then current Telluride MLS data interface, that each participant to which the Vendor provides services remains an eligible participant in the Telluride MLS. Failure to comply with the provisions of this paragraph will result in Telluride MLS terminating all of Vendor's access to the Telluride MLS Data under this Agreement and all similar agreements. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

2.3. License Fees and Payment; Expenses. In consideration for the License granted under this Agreement, Participant agrees to pay to Telluride MLS the license fee and other fees described on the attached Schedule A, which is attached to this Agreement and incorporated herein by reference (collectively referred to herein as the "Fees"). The Fees shall be payable as provided on Schedule A. Participant agrees to pay all costs of collection of all unpaid amounts owing to Telluride MLS under this Agreement, including reasonable attorneys' fees and costs. The Fees may be increased or decreased in the sole and absolute discretion of Telluride MLS. In the event Telluride MLS elects to increase or decrease any of the Fees, Telluride MLS shall provide Participant five (5) days prior written notice of any such change in the Fees, and Participant shall have the right to terminate this Agreement if Participant does not agree to such change in Fees.

ARTICLE III COMPLIANCE AND ELIGIBILITY

3.1 Rules. Licensee hereby acknowledges that Telluride MLS has provided each with a copy of the Rules, and that Licensee agree to be bound by and comply with the Rules, including any exhibits, attachments and amendments thereto. Licensee acknowledges and agrees that: i) the Rules may include terms and limitations in addition to those set forth in this Agreement and that in the event of any inconsistency, the terms of the Rules will govern; and ii) Telluride MLS may modify the Rules at any time, in its sole discretion. Licensee agrees and acknowledges that delivery of instructions for accessing electronic copies of the Rules and/or modifications to the Rules shall be sufficient to satisfy the requirements under this Section 3.1. Without limiting the generality of the foregoing covenant whereby Licensee agrees to comply with the Rules, Licensee specifically acknowledges and agrees that eligibility for participation in this Agreement, and the License contemplated by this Agreement, is conditional on Participant qualifying as a participant as such term is defined in the Rules.

3.2 Means of Accessing the MLS Listing Information. Access by Licensee to the MLS Listing Information shall be exclusively by the means, including the format and method of delivery, designated by Telluride MLS. Telluride MLS may, in its sole discretion and upon ten (10) days prior written notice to Licensee, change the means and nature of accessing the MLS Listing Information.

3.3 Authorization to Access the MLS Listing Information. Vendor hereby acknowledges and agrees that: (i) Vendor has no independent participation rights in Telluride MLS by virtue of the License granted hereunder; (ii) shall not use MLS Listing Information except in connection with a BBO Use pursuant to this Agreement; and (iii) access by Vendor to MLS Listing Information is derivative of the rights of

Participant.

3.4 Changes to Telluride MLS Server. Telluride MLS shall not be obligated to make any changes to the Telluride MLS Server, including any software running on Telluride MLS Server, the configuration, applicable protocols, or any other aspect of Telluride MLS Server for any reason. Licensee acknowledges that the Telluride MLS Server, together with access to the MLS Listing Information, may from time-to-time be unavailable to Licensee, whether because of technical failures or interruptions, intentional downtime for service or changes to the Telluride MLS Server, or otherwise. Licensee agrees that any modification of the Telluride MLS Server, any interruption or unavailability of access to the Telluride MLS Server, or access to or use of the MLS Listing Information shall not constitute a default under this Agreement. Telluride MLS shall have no liability of any nature to Licensee for, and Licensee waives all claims arising out of, any such modifications, interruptions, unavailability, or failure of access.

3.5 Vendor Information. Vendor agrees to provide Telluride MLS, or its agent, with any information or access requested in order to verify compliance with this Agreement, including security requirements described in Schedule B (the “Security Protocols”) which is attached to this Agreement and incorporated herein by reference, and access standards described in Section 3.10 of this Agreement within two (2) business days following a written request from Telluride MLS.

3.6 Initial Security Audit. Within one hundred eighty (180) business days after the Effective Date, Telluride MLS may, or at its option may engage an independent third party to, audit, test, and inspect the books, records, equipment, and facilities of Participant’s use of the BBO Data for any BBO Use, including Licensee’s controls, systems and procedures, related to Participant’s BBO Use(s) (the “Initial Security Audit”). If requested by Telluride MLS pursuant to an audit, Licensee shall supply credentials to all systems that use Telluride MLS BBO Data or MLS Listing Information. Licensee shall not attempt to block or otherwise interfere with Telluride MLS’s or Telluride MLS’s agent’s monitoring or review of, attempts to penetrate, or gain access to, any server or Licensee’s other systems and controls. The Initial Security Audit shall be performed in accordance with audit standards and procedures established by Telluride MLS, in its sole discretion, and shall be performed to monitor and review: (a) the adequacy of Licensee’s internal controls; (b) the adequacy of Licensee’s security system and procedures; (c) Licensee’s compliance with the Security Protocols and access standards as detailed in Section 3.8 of this Agreement; (d) Licensee’s compliance with applicable laws and regulations as well as the Rules; and (e) Licensee’s compliance with any other terms of this Agreement. The costs of the Initial Security Audit shall be paid by Participant to Telluride MLS as part of the Fees owed to Telluride MLS according to the schedule and terms provided on Schedule A.

3.7 Audit. Telluride MLS may, or at its option may engage an independent third party to, audit, test, and inspect the books, records, equipment, and facilities of Licensee’s controls, systems and procedures, related to Participant’s access to the BBO Data for a BBO Use, as often as deemed reasonably necessary by Telluride MLS, in its sole discretion. If any features or functions of a BBO Use require registration or other information, Telluride MLS may input information which is not accurate in order to access the feature or function. Licensee shall supply credentials to all systems that use Telluride MLS BBO Data or MLS Listing Information and Licensee shall not attempt to block or otherwise interfere with Telluride MLS’s monitoring or review of, attempts to penetrate, or gain access to, any server or Licensee’s other systems and controls. Each such audit shall be performed in accordance with audit standards and procedures established by Telluride MLS, in its sole discretion, and shall be performed to monitor and review: (a) the adequacy of Licensee’s internal controls; (b) the adequacy of Licensee’s security system and procedures; (c) Licensee’s compliance with the Security Protocols and access standards as detailed in Section 3.8 of this Agreement; (d) Licensee’s compliance with applicable laws and regulations as well as the Rules; and (e) Licensee’s compliance with any other terms of this Agreement. The costs of such audits and tests shall be at Telluride MLS’s expense, except for the Initial Security Audit described in Section 3.6 of this

Agreement. Notwithstanding the foregoing, if at any time an audit discloses that Licensee is not in full compliance and has otherwise not met the audit standards established by Telluride MLS in its sole discretion, Participant shall pay all costs of the audit, including Telluride MLS's internal costs, the independent auditor costs, and other out-of-pocket expenses incurred by Telluride MLS. Any amount owed by Participant to Telluride MLS as a result of Licensee's failure to maintain full compliance with the audit standards adopted by Telluride MLS shall be due and payable to Telluride MLS by Participant immediately upon delivery of written notice by Telluride MLS to Participant of Licensee's non-compliance.

3.8 Access Standards. Licensee shall adhere to the access standards set forth in this Agreement. In this Agreement, "Web Services" means the process of Licensee making an electronic request of data from the BBO Feed, delivery of the electronic request through the BBO Feed as authenticated and verified according to the Security Protocols and Licensee returning to the user through the BBO Feed with limitations and restrictions imposed under the access standards in this Section and the Security Protocols, in the Rules, and as otherwise provided by Telluride MLS. Access to the MLS Listing Information shall be exclusively through Web Services. Licensee agrees that all data requests from the BBO Feed will be made by individual human users accessing the BBO Data through the BBO Feed, and no automated processes shall be used to generate data requests from the BBO Feed. Alternatively, requests may be made by non-human users and automated processes used to generate data requests from the BBO Feed if Telluride MLS expressly approves a request in writing. Licensee agrees and acknowledges that the License is for the access, use and display, as applicable, only of the MLS Listing Information, and accordingly, Licensee agrees that it shall not allow any third party to store the MLS Listing Information, or any portion of the MLS Listing Information, on any network, in any database, on any network of servers, or in any other location or repository; except, that Licensee may store the multiple listing service number associated with each listing in the MLS Listing Information on its respective server(s).

3.9 System Optimization. Licensee represents, warrants, and agrees that Licensee will use its best efforts to optimize any technological application utilized by Licensee to minimize the system resource requirements on Telluride MLS's system infrastructure. In the event Telluride MLS determines in its subjective discretion that any technological application being utilized by Licensee is impacting Telluride MLS's system infrastructure and/or impacting services to other participants, subscribers or vendors of Telluride MLS, Telluride MLS shall provide notification of such inefficiency to Licensee via email correspondence at the email address specified on the signature page attached hereto. Upon receipt of such notification, Licensee shall have three (3) business days to implement a corrective action plan approved by Telluride MLS to remedy any such inefficiency. In the event the corrective action plan is not approved by Telluride MLS and/or implemented by Licensee, Telluride MLS may immediately terminate this Agreement.

3.10 Data Protection. Licensee acknowledges and agrees that Licensee is responsible for restricting access to the BBO Feed, as well as all BBO Data, Confidential Information, and MLS Listing Information, such that only the Licensee identified in this Agreement will have access to the foregoing. Licensee shall use all commercially reasonable efforts and adhere to industry best practices in order to prevent any unauthorized access to or use of any of the BBO Data, Confidential Information, and/or MLS Listing Information; without limiting the generality of the foregoing, Participant shall comply with the Security Protocols. Telluride MLS reserves the right to amend or update the Security Protocols from time to time, or to otherwise impose reasonable security policies and procedures that Licensee must adhere to. Participant is liable for and will indemnify Telluride MLS pursuant to Section 6.3 below, in the event of any unauthorized access to or unauthorized use of any BBO Data, Confidential Information, and/or MLS Listing Information.

3.11 Web Traffic Data. Licensee will send or make available, in a form reasonably acceptable to Telluride MLS, web traffic statistics related to all of Licensee's use pursuant to this Agreement, including but not limited to listing pages viewed, to Telluride MLS at no charge.

3.12 Maintain Status under DMCA. Licensee will maintain itself and its properties as Digital Millennium Copyright Act (DMCA) safe harbors and will register its own DMCA Agent.

ARTICLE IV OWNERSHIP

4.1 Ownership of Intellectual Property. Licensee acknowledges and agrees that the MLS Listing Information is proprietary, original works of authorship of Telluride MLS, may consist of information for which Telluride MLS has sufficient rights to grant this license, and is protected under United States copyright law. Licensee further acknowledges and agrees that all right, title, and interest in and to the MLS Listing Information and any modifications, enhancements, or derivative works of the MLS Listing Information, are and shall remain the exclusive property of Telluride MLS. This Agreement does not convey or grant to Licensee an interest in or to the MLS Listing Information, but only a limited right to access and display the MLS Listing Information, revocable in accordance with the terms of this Agreement. Licensee agrees that it will not challenge or take any action inconsistent with Telluride MLS's ownership of or rights to the MLS Listing Information.

4.2 Trademark License. To the extent necessary for any BBO Use, Telluride MLS grants to Licensee a limited, non-exclusive, revocable license to use Telluride MLS's trademark(s) (each a "Telluride MLS Trademark"), for the sole purpose of identifying Telluride MLS as the source of the MLS Listing Information. Licensee agrees that they shall not use the Telluride MLS Trademark, or any marks that are confusingly similar, assert any right, license, or interest with respect to any trademarks of Telluride MLS, or represent or suggest any affiliation between Telluride MLS and Licensee. Licensee agrees that it will not file any applications or assert any rights to the Telluride MLS Trademark in the United States, or any other country or territory.

4.3 Proprietary and Other Notices. Licensee agrees that it will include and not alter or remove any trademark, copyright, other notices, or any disclaimers located or used on or in connection with the MLS Listing Information. Licensee agrees to provide notice to any person with access to the display of the MLS Listing Information that the source of the MLS Listing Information is Telluride MLS and identify the listing office.

ARTICLE V TERM AND TERMINATION

5.1 Term. The term of the Agreement shall commence on the "Effective Date," and will continue in effect through December 31 of the year of the Effective Date (the "Term"). Thereafter, the Term shall automatically renew for successive one-year periods beginning on January 1 of each year until either party notifies the other in writing at least ten (10) days prior to expiration of the then-current term of its intent not to renew.

5.2 Termination. In addition to the termination provisions set forth in the Rules and any other termination provisions set forth in the Agreement, the following termination provisions also apply:

5.2.1. By Telluride MLS. Telluride MLS may terminate this Agreement without penalty under any of the following circumstances: (i) immediately if Telluride MLS, for any reason, permanently ceases operations; (ii) immediately if Telluride MLS, for any reason, permanently ceases to provide

the MLS Listing Information; (iii) with or without cause upon ten (10) days prior written notice to Licensee; or (iv) immediately if either Vendor or Participant breaches this Agreement or any other agreement with Telluride MLS governing the terms, rights and obligations regarding the use of the MLS, including without limitation, the Rules.

5.2.2. By Participant. Participant may terminate this Agreement without penalty under any of the following circumstances: (i) within the first thirty (30) days after the Effective Date upon at least twenty-four (24) hours prior written notice to Telluride MLS and immediate payment of all amounts due and owing; (ii) on any anniversary date of this Agreement upon at least thirty (30) days prior written notice to Telluride MLS and immediate payment of all amounts due and owing; or (iii) within the first sixty (60) days after Telluride MLS gives notice of an increase in charges with at least twenty-four (24) hours prior written notice to Telluride MLS and the immediate payment of all amounts due and owing to date; (iv) upon the breach by Telluride MLS of this Agreement or any other agreement between Telluride MLS and Participant governing the terms, rights and obligations regarding the use of the MLS, including without limitation the Rules. Notwithstanding the foregoing, Telluride MLS shall have the right to cure any breach cited by Participant as its reason for terminating this Agreement. Telluride MLS' right to cure shall extend for fourteen (14) days from receipt of notice from Participant. Upon Telluride MLS curing its breach and providing written notice of the cure to Participant, Participant's termination shall be automatically rescinded, and this Agreement shall remain in effect.

5.3 Rights and Duties Upon Termination. Upon the termination of this Agreement for any reason, Licensee agrees to take whatever actions necessary to comply with the provisions of the Rules relating to such termination. In addition, the parties hereby agree to abide by the surviving terms of this Agreement.

5.4 No Refund. No Fees, portion of the Fees, or other amounts payable by Participant under this Agreement will be refunded to Participant upon termination of this Agreement for any reason.

ARTICLE VI WARRANTIES, INDEMNIFICATION AND LIMINATION OF LIABILITY

6.1 No Warranties. TELLURIDE MLS MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE LICENSE GRANTED UNDER THIS AGREEMENT, THE MLS OR ANY PRODUCT OR ITEM DEVELOPED BASED ON THE MLS. TELLURIDE MLS DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TELLURIDE MLS MAKES NO WARRANTY OR GUARANTEE: (I) THAT USE OF THE MLS OR PRODUCTS OR SERVICES ASSOCIATED OR IN CONNECTION WITH THE MLS WILL BE ERROR FREE; (II) REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE MLS; OR (III) REGARDING THE COMPLETENESS, ACCURACY, RELIABILITY OR QUALITY OF ANY INFORMATION, CONTENT, DATA, SERVICE OR ADVICE PROVIDED WITH, ON OR CREATED THROUGH THE MLS. FURTHER, TELLURIDE MLS MAKES NO WARRANTY OF ANY KIND THAT ANY ITEM, PRODUCT OR SERVICE DEVELOPED BASED ON THE MLS, OR ANY PORTION OF IT, WILL NOT INFRINGE ANY COPYRIGHT, PATENT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY PERSON OR ENTITY IN ANY COUNTRY.

6.2 Representations and Warranties. Each party represents and warrants to the others as follows: (a) this Agreement, when executed by such party, will be valid, binding and enforceable with respect to such party in accordance with its terms; (b) the execution of this Agreement and/or the performance of such

party'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 such party is bound. In addition to the foregoing, Licensee represents and warrants to Telluride MLS that: (i) it is not and shall not be under any disability, restriction, or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement; (ii) that the grant of the license to Licensee and the fulfillment of Licensee's obligations as contemplated under this Agreement are proper and lawful; and (iii) that it is actively engaged in providing real estate brokerage services to consumers in the service area of Telluride MLS.

6.3 Indemnification. Licensee will indemnify and hold harmless Telluride MLS, its officers, directors, employees, and licensees, 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: (i) the acts or omissions of Licensee; (ii) the Licensee's execution of this Agreement; (iii) the use or display of the MLS Listing Information or any parts or files of the MLS Listing Information by the Licensee or any employee, agent or affiliate of Licensee; (iv) the Participant's participation in or access to the MLS; (v) Licensee's access to the MLS Listing Information; or (vi) the Licensee's breach of this Agreement.

6.4 Payment of Fees. Participant agrees to pay all costs of collection of all unpaid amounts owing to Telluride MLS under this Agreement, including reasonable attorneys' fees and costs.

6.5 Participant As Surety. Participant shall stand as a surety for Vendor's performance under this Agreement.

6.6 Limitation of Liability. TO THE FULLEST EXTENT AVAILABLE UNDER APPLICABLE LAW, TELLURIDE MLS'S 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 MLS LISTING INFORMATION, INCLUDING ANY TORT, SUCH AS NEGLIGENCE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE FEE PAID TO TELLURIDE MLS 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 AGREEMENT, IN NO EVENT SHALL TELLURIDE MLS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF TELLURIDE MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ARTICLE VII CONFIDENTIAL INFORMATION

7.1 Confidentiality. Licensee acknowledges and agrees that the MLS Listing Information constitutes confidential, proprietary information and a trade secret belonging solely to Telluride MLS. Licensee shall hold confidential and shall not, directly or indirectly, disclose, publish or use for the benefit of any third party or itself, except in carrying out this Agreement, as permitted by the Rules, or as required by law or legal process, any part of the Confidential Information or MLS Listing Information without first having obtained Telluride MLS's prior written consent to such disclosure or use even if such confidential information was acquired prior to the date of this Agreement. The obligations of confidentiality under this Agreement shall survive the termination of this Agreement. **Licensee certifies that the MLS Listing Information that the Telluride MLS provides to Licensee will reside in a secure location while in Licensee's custody and that Licensee will make its best efforts to ensure that it is not disclosed to unauthorized third parties.**

7.2 Disclosure. In the event of disclosure of the MLS Listing Information to any third party in violation of this Agreement or the Rules, the disclosing party agrees to immediately notify and advise Telluride MLS in writing of the details of such disclosure. Further, the disclosing party agrees that any such disclosure or other breach of the terms of this Agreement shall cause and continue to cause irreparable harm to Telluride MLS, and Telluride MLS shall be entitled to equitable relief, in addition to all other remedies at law, including, without limitation, specific performance, temporary restraining order, and preliminary and permanent injunction to restrain any further disclosure of the MLS Listing Information or other breaches of this Agreement. Licensee hereby waives any requirement for posting a bond or other undertaking in connection with any equitable remedy.

7.3 Return of Confidential Information. Within five (5) days after termination of this Agreement, the Licensee shall return to Telluride MLS all Confidential Information, including all access codes used to access MLS Listing Information. Licensee shall also erase or destroy any Confidential Information stored on magnetic media or other computer storage. An officer of the Licensee party shall certify in writing that all materials containing Confidential Information have been returned or destroyed. Notwithstanding the foregoing, Participant may retain any Confidential Information that Participant is legally entitled to retain pursuant to a separate agreement with the Telluride MLS.

ARTICLE VIII GENERAL PROVISIONS

8.1 Governing Law: Submission to Jurisdiction. This Agreement is governed by and enforced according to the laws of the State of Colorado. Licensee hereby submits, consents to, and waives any defense to the jurisdiction of courts located in San Miguel County, Colorado as to all matters relating to or arising from this Agreement.

8.2 Notices. All notices to be given under this Agreement shall be made in writing and delivered by U.S. certified mail, facsimile transmission, or email to the appropriate party at the address provided on the signature page of this Agreement. The foregoing addresses may be changed from time-to-time by delivering notice of such change to the parties to this Agreement. Notice shall be effective upon receipt.

8.3 No Joint Venture. Nothing in this Agreement shall be construed to create a partnership or joint venture between Telluride MLS and Licensee. No party shall be deemed to be the agent, partner, joint venturer, franchisor, franchisee, independent contractor or employee of Telluride MLS.

8.4 Attorneys' Fees. If any action is brought by any party to this Agreement against another party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees, costs, and expenses of litigation.

8.5 Injunctive Relief. Telluride MLS and Licensee agree that a breach of this Agreement by Licensee will result in immediate and irreparable injury and harm to Telluride MLS. In such event, Telluride MLS shall have the right to immediately terminate Licensee's access to the MLS Listing Information and to obtain 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 Telluride MLS may have including, without limitation, the right to seek monetary damages.

8.6 Entire Agreement. This Agreement contains the entire agreement between the parties hereto and may be enforced at law or in equity to the extent necessary.

8.7 Acknowledgment. The parties agree that in entering into this Agreement, they are relying upon their own judgment, belief and knowledge as to all phases of their claims and further acknowledge that no

promise, inducement or agreement, or any representations and warranties not expressed herein, have been made to procure their agreement hereto. The parties further acknowledge that this Agreement is contractual and not merely a recital, and that they have read, understand and fully agree to the terms of this Agreement.

8.8 Further Assurances. The parties hereto agree that they and each of them will take whatever action or actions as are deemed by counsel to Telluride MLS to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Agreement, and to that end, the parties agree that they will execute, acknowledge, seal, and deliver any further instruments or documents which may be necessary to give force and effect to this Agreement or any of the provisions hereof, or to carry out the intent of this Agreement.

8.9 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.

8.10 No Waiver. The waiver by either party of, or the failure of either 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.

8.11 No Assignment. Neither Participant nor Vendor may assign or otherwise transfer any rights under this Agreement to any party without the prior written consent of Telluride MLS and such consent may be granted or withheld by Telluride MLS for any reason or no reason. Telluride MLS is freely able to assign its rights and obligations under this Agreement to its successors-in-interest, affiliates, related companies and other assigns, and this Agreement shall inure to the benefit, and be the obligation, of such assignee.

8.12 Gender and Headings. Throughout this Agreement, where such meanings would be appropriate, the masculine gender shall be deemed to include the feminine and the neuter and vice versa, and the singular shall be deemed to include the plural, and vice versa. The headings herein are inserted only as a matter of convenience and reference, and in no way define or describe the scope of the Agreement, or the intent of any provisions hereof.

8.13 Survival. The obligations of Licensee under this Agreement shall survive the termination of this Agreement or expiration of this Agreement for a period of three (3) years, except where a longer survival period is expressly provided elsewhere in this Agreement.

8.14 Execution and Amendment. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument. Facsimile signatures are deemed to be equivalent to original signatures for the purposes of this Agreement. Subject to Telluride MLS' rights under Section 2.3, this Agreement may not be amended except in writing signed by Participant, Vendor, and Telluride MLS.

8.15 Authority. The representatives of each party to this Agreement hereby warrant and represent they are duly authorized to enter into this Agreement and that each party hereto shall be fully bound by the terms herein.

8.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument, notwithstanding the fact that all parties are not signatory to the same original or counterpart.

8.17 No Restrictions. Nothing in this Agreement shall prohibit Telluride MLS from engaging in a

similar or competing business or agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized representatives as of the Effective Date.

Telluride MLS Information and Signature

Signature

Name, Title

Street Address

City, State, Zip Code

Email Address

Phone Number

Facsimile Number

Participant Information and Signature

Signature

Name, Title

Street Address

City, State, Zip Code

Email Address

Phone Number

Facsimile Number

Name of Office (if applicable)

VENDOR Information and Signature

Signature

Name, Title

Street Address

City, State, Zip Code

Email Address

Phone Number

Facsimile Number

SCHEDULE A

Fees and Payment Terms

Setup or other one-time charges:

- \$1,000 – Setup fee payable to Telluride MLS
- \$2,500 – Telluride MLS or independent third-party fee for Initial Security Audit payable to Telluride MLS*
- \$250 per hour – Telluride MLS or independent third-party fee for any additional retesting needed after the Initial Security Audit payable to Telluride MLS*

*As provided in Section 3.6 of the Agreement, the Participant shall pay to Telluride MLS: (i) the costs and fees for the third-party Initial Security Audit; and (ii) any additional fees accrued by Telluride MLS or the independent third party for retesting related to the Initial Security Audit which such fees are billed at \$250.00 per hour. All fees related to the Initial Security Audit and any additional retesting pursuant to Section 3.6 of the Agreement are subject to change.

Periodic Fees or Charges:

- \$250 – Annual fee payable to Telluride MLS
- \$56 – Monthly fee payable to Telluride MLS per URL serviced
- \$250 per hour – 3rd party fee for any additional audits payable to Telluride MLS *

*As provided in Section 3.7 of the Agreement, the Participant shall pay to Telluride MLS any additional fees accrued by Telluride MLS or an independent third-party for audits, testing or inspection which such fees are billed at \$250.00 per hour. All fees related to audits pursuant to Section 3.7 of the Agreement are subject to change.

Billing Information for Participant Office (BBO)

Contact/Office Name:

Contact Email:

Telephone Number:

Billing email:

Signature of Telluride MLS Participant (Office)/authorized Office representative:

We will send you a link for online payment when this Agreement has been completed and returned for processing.

- **This page must be completed prior to processing of the Agreement.**
- **All Offices will be billed for each URL serviced monthly by email statement.**
- **Vendors must provide TAR with list of the Salesperson Party's name and each website address RETS URL is used.**
- **Vendors may not redirect any website not included in this agreement.**
- **RETS URL will be suspended immediately for violation of any part of this agreement.**

SCHEDULE B

Security Protocols

1. Data Location and Storage

- a. Data must be downloaded to servers located in North America, and such companies must be headquartered in North America, where legal responsibilities can be practically enforced.
- b. If Licensee is only authorized to receive active listings, then the active listings should not be retained for more than three (3) days after a status change. If Licensee's data access authorization is revoked, all data stored by the Licensee must be destroyed within two (2) weeks. Off-market listings may only be retained five (5) years from the date of the last listing status change. A Firm is not bound by these obligations regarding its own listings.
- c. If data is copied to other locations, such as tapes or disk for backup, they must be stored in encrypted form and physical access controlled via key lock or stronger means.
- d. Telluride MLS data must not be copied to and stored on laptops, PDAs, portable hard drives, tablets, or portable RAM memory drives that are not located in a secure location.

2. Data Transmission

- a. Telluride MLS may require authentication and data transmission to use SSL or other encryption mechanism.
- b. Telluride MLS requires Third Parties providing products and services to active Telluride MLS subscribers to authenticate user requests against a Telluride MLS authentication database, to ensure users are of good standing prior to allowing access to the application and Telluride MLS data.

3. Anti-Scraping

Anti-scraping is required for the data usage; the following practices must be implemented:

- a. A robots.txt file is implemented, and robots identified as undesirable by Telluride MLS must be denied access using this file by the Licensee.
- b. User inputs – including URL and form parameters - must not be easy to manipulate, such that Telluride MLS information is easily spidered and scraped.
- c. Sensitive information, such as email addresses, is obscured using JavaScript or hidden behind forms (and not present in 'hidden' form fields).
- d. There are limits on the number of pages that can be requested in a given time period.
- e. Key listing information, such as price and listing address, is rendered as a graphic with no 'ALT' tag or using Flash or Java or other technology such that the content is un-scrapeable.

4. Secure Coding Practices

The following are additional secure coding practices that must be implemented as applicable:

- a. User inputs and other parameters (URL, Form) must ALL be validated at both Interface and Business tiers for data type, allowed character set, numeric range, enumerated legal values. Special characters, such as those used for cross site scripting attack (XSS) and SQL injection must be stripped or otherwise rendered harmless.
- b. All reasonable steps must be taken to prevent browser caching of Sensitive Information.
- c. Repeated failed logins must be logged and generate alerts.
- d. Passwords and other Confidential Information must be stored in encrypted format, and the encryption key strongly protected.
- e. Logins and other parts of user sessions where Confidential Information is transmitted must utilize strong SSL encryption.
- f. If located in different data centers, back-end connections between the web application and database must be strongly encrypted.
- g. Sensitive Information or information that could be manipulated and result in information discovery must never be unencrypted in a cookie, form field or URL parameter.
- h. Every application component must thoroughly be wrapped in error-trapping code so that Confidential Information is never displayed to the end-user.
- i. Passwords should be changed and updated every 90 days to enforce security.

Additional reasonable judgment must be used in developing secure web applications and securing servers – best practices must be utilized.

Telluride MLS must be immediately notified if there is any information security breach such that Telluride MLS data is accessed for a purpose not described in this Agreement.

Telluride MLS may implement additional security enhancements that must be implemented by the Licensee (at the Licensee's expense) and will provide notification to Third Parties that will include deadlines for compliance.