

## **CUSTOMER AGREEMENT OUTWEST MLS, LLC**

### RECITALS

1. OUTWEST MLS, LLC (OUTWEST MLS) is an internet application service provider, or IASP, integrating internet communications, network and data center management and the use of packaged application software and related implementation and providing a website and ongoing support.
2. OUTWEST MLS wishes to create a relationship with CUSTOMER for the purposes of providing IASP SERVICES (as hereafter defined.)

### AGREEMENT

In consideration of the foregoing and of the mutual covenants and agreements set forth below, the parties, intending to be legally bound, agree as follows:

3. **PURPOSE OF AGREEMENT** The parties wish to enter into a contractual arrangement for OUTWEST MLS to provide CUSTOMER with IASP SERVICES in the marketing and sale of real estate and for the cooperation with and sharing information between licensed real estate professionals and appraisers.

### 4. DEFINITIONS

- a. "AGREEMENT" means this Customer Agreement and any and all rate sheets and schedules made part of the website at the time of acceptance of this AGREEMENT and amendments to the AGREEMENT.
- b. "IASP SERVICES" refers to the provision of a website, OUTWEST MLS.com, and the collective bundling of any and all of OutWest MLS's consulting and implementation services, customization, and software applications and access to OUTWEST MLS's internet-based data center and network by licensed real estate professionals and appraisers. IASP SERVICES may include providing the ability for CUSTOMER to: (a) upload digital photos located on CUSTOMER's computer onto the website; (b) present real estate listings on the website; (c) search real estate listings on the World Wide Web; (d) post and manage real estate listings on the website anytime from CUSTOMER's web browser; (e) access real estate sales data and online reports; and (f) link to other websites.

### 5. COST OF IASP SERVICES

- a. CUSTOMER shall pay OUTWEST MLS a monthly fee by credit card as set forth in the schedule currently posted on the OUTWEST MLS website.

### 6. OUTWEST MLS's RESPONSIBILITIES

- a. OUTWEST MLS shall provide CUSTOMER with IASP SERVICES, which consist of web-based programs to enable CUSTOMER to cooperate and share information with other real estate professionals and appraisers, manage property listings, and market real estate to the public.
- b. OUTWEST MLS shall provide individual password protected accounts for CUSTOMER, which authorizes CUSTOMER to access and manipulate information relevant to CUSTOMER's accounts. Accounts may include one or more of the following:

i. Managing Broker Account: An account typically assigned to the managing broker overseeing an office. It provides the ability to post the managing broker's listings, edit the contact information for the office, add new associate brokers to the system and view other listings on the system.

ii. Associate Broker Account: An account typically assigned to the associate brokers/agents who are licensed real estate professionals in an office. Associate brokers can edit their personal contact information, post their own listings and view other listings on the system.

iii. Office Administrator Account: An account typically assigned to one or more unlicensed administrative staff persons supervised by the managing broker. An office administrator can manage information for the managing broker and the associate brokers in the office and can view other listings on the system.

c. OUTWEST MLS shall, maintain ongoing email and telephone support between 9:00 a.m. and 5:00 p.m. on Monday through Friday, normal holidays excepted.

d. OUTWEST MLS shall maintain and upgrade its software, as it deems appropriate.

## 7. CUSTOMER'S REPRESENTATIONS AND RESPONSIBILITIES

a. CUSTOMER represents that he or she has, and shall at all times maintain, a valid Colorado Real Estate license.

b. CUSTOMER shall post no information with respect to a listing unless CUSTOMER is the listing agent.

c. CUSTOMER shall provide his or her own hardware, including without limitation, computers, scanners, digital cameras and printers and internet access and software, including web browser, all with sufficient upgrades to access OUTWEST MLS's server. Access to OUTWEST MLS's server requires CUSTOMER to have Netscape 6.0 or higher or Internet Explorer 5.0 or higher. Internet Explorer 6.0 and higher are the preferred browsers.

d. CUSTOMER is responsible for obtaining and complying with license terms for all CUSTOMER provided software, which are sufficient to allow access to the IASP SERVICES provided by OUTWEST MLS.

e. CUSTOMER is solely responsible for providing and inserting content, including any subsequent changes or updates made or authorized by CUSTOMER.

f. CUSTOMER represents and warrants that content: (a) will not infringe or violate the rights of any third party including, but not limited to, intellectual property, privacy or publicity rights of others; (b) will not be abusive, profane or offensive to a reasonable person; (c) will not be hateful or threatening; (d) will not violate any applicable law or regulation; (e) will not violate any law, statute, ordinance or regulation; (f) will not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) will not contain any viruses, worms, Trojan horses or anything else that may damage or interfere with operation of the OUTWEST MLS system; (h) will not create any liability for OUTWEST MLS or cause it to lose the services of any of its ISPs or suppliers; and (i) will be accurate to the best of CUSTOMER's ability to make it so. Violations of the foregoing by CUSTOMER may result in early termination of IASP SERVICES for CUSTOMER by OUTWEST MLS, and

OUTWEST MLS may remove from the system anything posted by CUSTOMER, which it deems in its discretion to be in violation of this paragraph.

g. CUSTOMER shall:

- i. post all new listings;
- ii. post changes in material information with respect to all listings, including without limitation, listing price, exclusions, well data, inclusions or exclusions and property descriptions;
- iii. mark as sold any properties sold;
- iv. mark any listing taken off the market;
- v. mark any listing under contract or pending sale;
- vi. mark any cancellation of a pending sale; and
- vii. notify OUTWEST MLS if he or she is no longer licensed by the Colorado Real Estate Commission in which event CUSTOMER shall no longer have access to the system

within 48 hours of the time each such event occurs.

h. CUSTOMER shall not use the IASP SERVICES (a) for illegal purposes or (b) to interfere with or disrupt other network services or network equipment. Interference or disruptions include, but are not limited to, distribution of unsolicited advertising or chain letters, propagation of computer worms and viruses, and use of the network to make unauthorized entry to any other machine accessible via the network.

i. CUSTOMER shall protect his or her password protected accounts from use by any person other than CUSTOMER and CUSTOMER 's authorized staff.

## 8. TERM

The term of this AGREEMENT shall be one year from date of acceptance on the Member Re-commit and Member Agreement Acceptance page.

## 9. TERMINATION AND MODIFICATION OF AGREEMENT

a. This AGREEMENT may be terminated by either party for cause by giving 30 days written notice to the other party setting forth the reasons. OUTWEST MLS may terminate this AGREEMENT if CUSTOMER is no longer licensed as a Colorado Real Estate professional or for failure to comply with any terms of this AGREEMENT. In that event, OUTWEST MLS may remove any of CUSTOMER's listing or listing information from the system.

b. This AGREEMENT may be modified at any time by notifying CUSTOMER at CUSTOMER's email address that the AGREEMENT will be amended as set forth in the amendment posted on the website. Amendments shall be effective 30 days after they are posted on the site.

## 10. PROPRIETARY RIGHTS

a. Except for the limited licenses specifically granted by OUTWEST MLS to CUSTOMER in this AGREEMENT, OUTWEST MLS shall at all times retain full and exclusive right, title, and ownership interest in and to its IASP SERVICES, any software used by it in providing services to CUSTOMER, software licenses, network, all names, logos, trade names, trademarks, copyrights, service marks and all other intellectual property or trade secret rights related thereto. OUTWEST MLS retains the right to analyze data posted by CUSTOMER and to publish, without using

CUSTOMER's name, the results of any such analysis. OUTWEST MLS retains ownership of any analysis it may perform on the data posted by CUSTOMER.

#### 11. LIMITATION OF WARRANTY, LIABILITY AND INDEMNITY

a. OUTWEST MLS does not warrant any connection to, transmission over, nor results or use of, any network connection, service, equipment or facilities to be used, under this AGREEMENT. OUTWEST MLS further disclaims all warranties, whether express, implied or statutory, including, without limitation, any implied warranties of merchantability and fitness for a particular purpose and non-infringement of third party rights. Except as specifically provided herein, each party specifically disclaims any responsibility for any damages suffered by the other party or any third party, except for those caused by such party's gross negligence or willful misconduct.

b. In no event shall either party be liable for any indirect, incidental, special, punitive or other consequential damages whether or not foreseeable (including, without limitation, damages for the loss of data, goodwill or profits) arising out of or in relation to this AGREEMENT, even if advised beforehand of the possibility of such liability.

c. OUTWEST MLS shall not be liable for any damages CUSTOMER may suffer arising out of acts of God, use or inability to use OUTWEST MLS's Internet services or related products unless such damages are caused by an intentional or willful act of OUTWEST MLS. In no event shall OUTWEST MLS be liable for unauthorized access to CUSTOMER's transmission facilities or CUSTOMER's equipment or for unauthorized access to or alteration, theft or destruction of CUSTOMER's data files, programs, procedure or information through accident, fraudulent means or devices, or any other method. OUTWEST MLS shall not be liable for indirect, incidental, special or consequential damages for any lost property or of CUSTOMER's data.

d. CUSTOMER shall indemnify, defend and hold OUTWEST MLS harmless against any claims, damages, costs and attorneys fees incurred by OUTWEST MLS arising from claims in any way arising from or related to (a) the alleged infringement of patent, trademark, design, copyright or any other intellectual property rights in relation to CUSTOMER's use of the services; (b) CUSTOMER's use or inclusion of any information, photographs, art work or other content (including without limitation claims based on invasion of privacy, right of publicity, the Communications Decency Act of 1996, obscenity or pornography, or the violation of any laws, regulations or ordinances) or (c) CUSTOMER's breach of any of CUSTOMER's obligations under this Agreement.

e. OUTWEST MLS shall not be responsible for the accuracy of data it posts in connection with any template, which is a part of the IASP SERVICES.