

Marc Scolari Photography | Terms of Services

Please read these Terms of Service ("Terms") before using the MarcScolari.com (the "Agency"), its website & portal and/or requesting any of the services offered therein (collectively the "Services").

By using the Services and placing any orders on this website, it indicates to Agency that you have read these Terms in its entirety and any policies and guidelines of the Agency incorporated herein. If you do not accept these Terms or such policies, you may not use the Services or this website.

All references to the Client within this document shall include Client's parent companies, affiliates, subsidiaries and their clients (sometimes also known as landlords, homeowners, sellers and/or tenants).

You are purchasing Services which will always remain the property of the Agency, as described further into detail within these Terms (Section 2). Furthermore, Client is responsible for relaying all of this information, including these Terms of Service, to their clients (homeowners, landlords & tenants), as well as obtaining all necessary approvals from their clients to photograph their location (Section 11).

Unless otherwise agreed to in writing with each Client and its parent companies, these Terms of Service apply at all times.

1. General - These Terms apply to any digital assets or digital images created or taken by the Agency and delivered to the Client for properties being marketed for sale or lease ("Property") by Client. This Agreement governs the relationship between the parties and in no event shall any e-mail communication or other exchange, amend or otherwise modify the terms of this Agreement unless agreed to in writing and signed by both parties.

2. Rights - All SERVICES and rights relating to them, including copyright and ownership rights in the media remain the sole and exclusive property of the Agency. This license provides the Client with the limited right to publicly display and distribute the SERVICES for promotional or advertising purposes directly related to the sale of the Property. This includes any Local Multiple Listing Services; social media websites; personal and/or brokerage websites; any other websites not listed herein as allowed by their own governing laws. SERVICES used for any other purpose, not directly related to the sale of the Property must be with the express permission of the Agency and may be subject to additional fees, unless otherwise agreed to in writing. This includes the use of the generic photos that have been taken by the Agency and is offered to all Clients as part of a the package they purchase. These photographs are located under Community, Towns, Villages and Cities part of the Client Portal.

3. SERVICES - Services may be uploaded to any MLS listing service or other sites as described above during the pendency of this Agreement by client. However, regardless of any terms and conditions of the MLS, at no time does this Agreement provide Client with the right to transfer copyright, or any other exclusive rights as provided by the Copyright Act 17 U.S.C § 106. Digital Photographs contain copyright management information (CMI) by the Agency in the form of either (a) a copyright notice © AND/OR (b) other copyright and ownership information embedded in the metadata or elsewhere, unless otherwise agreed to by the Parties. Removing and/or altering such information is prohibited and constitutes violation of the Digital Millennium Copyright Act (DMCA). Client will be responsible to the Agency for any penalties and awards available under the statute.

Client IS NOT to reuse photos for the marketing of other property listings (such as Clubhouses, Pools, Common Areas, Gatehouses, etc) as well as photographs of Community, Towns, Villages and Cities unless Agency is hired to photograph that specific additional specific property. The Client is free to hire the services of another Agency for similar services at any time. This exclusive relationship does not apply to Agency, its employees and/or contractors which shall be entitled to offer and provide their SERVICES to other clients, brokerages, companies and so forth. Furthermore, unless otherwise specifically provided elsewhere in this document or other signed agreement between the parties, any grant of rights is limited to the termination of Client's representation of the Property. Additional use of images beyond this period requires the Agency's permission. Rights are assigned to the Client immediately upon delivery of the SERVICES for each specific property only. These rights end at the same time that its listing agreement expires and is not renewed or is sold and has passed onto a new owner.

Client may request, to use our SERVICES for the purpose of marketing their listing services. This must be requested in writing. The Agency also may use any SERVICES it has completed for Clients for its own marketing purposes including photography and floor plan drafting. If a specific SERVICE is chosen by Agency to be used for our own marketing, all Client's information along with property address, client and brokerage information will be kept confidential.

4. Relationship of the Parties - The parties agree that the Agency is an independent contractor, and that neither the Agency, nor any Agency's employees and/or contracted personnel are, or shall be deemed to be, employees of Client. No agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. Agency and the SERVICES or any other deliverables prepared by the Agency shall not be deemed a work for hire as defined under Copyright Law. All rights granted to Client are contractual in nature and are expressly defined by this Agreement.

5. Creation - The manner and method of creating any Services is solely at the discretion of the Agency and the Client has no right to control Agency's manner and method of performance under this Agreement. Agency will use their best efforts to (a) ensure that the Services conform to Client's specifications; and (b) submit Services to Client within a reasonable amount of time. A property shoot will vary in time dependent on the total square footage of the property.

6. Delivery - The Agency will submit digital delivery of Services in the format of zip files by means of a portal account (otherwise known as "MyTristate Portal", hosted and backed up on a third party website. Two versions of all photos are provided; one higher resolution which is normally used for printed marketing materials and most websites as well as a lower resolution version which typically conforms with Multiple Listing Service requirements for smaller files. There might be a rare instance where Server issues are experienced including downtime or server unavailability of the Portal. Although these are rare, they do happen from time to time. The Agency will not be held liable or responsible by Client for such downtimes/issues, as this is a service provided by third party hosting service and not the Agency.

7. Fees - All fees and expenses payable under this Agreement are required at time of delivery, unless otherwise agreed to by Agency. These are payable irrespective of whether Client makes actual use of the Services or the property listing is dropped due to no fault of the Agency. A late fee of Ten (10) percent (%) of the invoice total will be applied after the DUE DATE of the invoice has passed, if payment is not received. If after Forty Five (45) days, any payment is still unpaid, all rights will be revoked at Agency's discretion and an electronic notice will be sent to client regarding of such. In the event

that rights are revoked, access to online portal where photos are stored will be suspended. If a cease & desist letter is issued, it is Client's full responsibility for removing all Services from any/all syndicated websites, including local MLS. Any Collections and Legal fees sustained by the Agency in an attempt to collect unpaid fees for Service will be the sole responsibility of the Client and will apply after this period of Forty Five (45) days.

8. Cancellations - Cancellations or re-scheduling of an appointment require a Twenty Four (24) hours notice, otherwise a Cancellation/Rescheduling fee of Fifty Dollars (\$50.00) will apply.

9. Media Outlets & Public Relations Firms (PR) - Agency services (or Client's listings) may attract the attention from Media Outlets and PR Firms. The Agency welcomes the opportunity to share the Services with third party contributors. However, it is essential that all communication regarding Services and the relationship created by this Agreement, be consistent, accurate and comply with applicable law.

Should Client be contacted by such parties, regarding any services provided under this Agreement, Client agrees to (a) notify the Agency in writing, as soon as possible but not exceed Twenty Four (24) hours from original contact. This will be made possible by electronic mail to Marcello.Scolari@icloud.com ; (b) to assure that Due Credit for Services, as allowed by law is provided to Agency; and (c) to ensure that Agency's name, contact information, website and any additional pertinent information is included, unless otherwise agreed to in writing. For Copyright information, see Section 2 aforementioned within these Terms.

Without written authorization, Agency's Services are completely forbidden from being used in Articles, Interviews, or any other type of publication, written or spoken, by any third party companies, including articles created by the parties (Client) accepting these Terms.

Should the Agency be contacted in the same manner, the same terms will apply if and only the contacting company requests information about the Client or the Client's client. Absolutely no information will be released by Agency without Client's written authorization. As all finalized Services are the property of the Agency, they may be provided by Agency for articles without any further notification to Client as long as all personal information (ie property name, property address, company or brokerage information, etc) is removed from the finalized shared Services.

10. Non-Exclusivity - The scope of this Agreement is limited to Services advertised on this website. This Agreement creates an non-exclusive relationship between the parties on a per job basis. This Agreement shall not interfere with any other current services that other third party providers (such as other vendors, photographers and/or floor plan drafting agencies) offer to the Client. At any time, Client is free to hire the services of any company it deems necessary. 10. Indemnification Client will indemnify and defend Agency against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of the creation or any use of the Services or materials furnished by Client. It is the Client's responsibility to obtain the necessary property release from any respective party and to ensure they are in full effect and in force. This includes the authorization of Homeowners and/or Tenants (the Client's client) to have their property photographed.

Furthermore, Agency's employees and contractors will not be held liable by accidental damage to any belongings of Client's or Client's client while at their location to perform under these Terms. As aforementioned, Client will hold all responsibility to any claims against Agency,

11. Severability - If one or more of the provisions contained in the Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. Such provisions shall be revised only to the extent necessary to make them enforceable.

12. Waiver - No action of either party, other than express written waiver, may be construed to waive any provision of this Agreement and a single or partial exercise by either party of any such rights or remedies will not preclude further exercise of other rights or remedy.

13. General Law/Arbitration - This Agreement sets forth the entire understanding and agreement of the parties, and supersedes any and all prior agreements between the parties. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of New York. Any claim or litigation arising out of this Agreement or its performance may be maintained only in courts physically located within the State of New York, and the parties hereby consent to the personal jurisdiction of such courts. In the event of any litigation arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its attorneys' fees incurred in the litigation. If parties are unable to resolve the dispute by negotiation, either party may start mediation and/or binding arbitration in a forum mutually agreed to by the parties.

14. Matterport Services & Interactive 3-Dimensional Virtual Tours (the "Scans") - The Agency advertises Matterport Interactive 3-Dimensional Virtual Tours (hereinafter referred to as "the Scans"). These services are normally offered under its sister company REtours3D, LLC who performs the Scans. The Agency makes no guarantees to Scan services and will not be held responsible for any of its contractors while providing the Scan services. This addendum extends to "SECTION 11. INDEMNIFICATION" to include the services of Scans detailed herein. Furthermore, Client understands and agrees that they are also bound to the REtours3D, LLC Terms of Services which explains licensing, hosting and ALL OTHER TERMS which are clearly listed on the REtours3D LLC website at www.retours3d.com

All information distributed by Agency to Clients, including pricing and/or discounts, are to be kept confidential at all times. These Terms of Service are proprietary and may not be reproduced without proper authorization. The Agency and its management team may make changes to these terms at its own discretion at any time without any notification.

***** WE STRONGLY SUGGEST YOU REVIEW THIS DOCUMENT AT EACH ORDERING & FROM TIME TO TIME *****