

Fresno Association of Realtors® Multiple Listing Service (FresnoMLS)

Data License Agreement

This **AGREEMENT** is made and entered into by Fresno Association of Realtors® Multiple Listing Service (“**FresnoMLS**”), with offices at 6720 N. West Ave, Fresno, CA 93711; and _____ (“**Firm**”), with offices at _____; and the Subscriber(s) and/ or Participant(s) named from time to time in Content Access Authorization attached hereto (FresnoMLS, Firm and Subscriber and/ or Participant each a “**Party**” and together, the “**Parties**”).

DEFINITIONS

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

FresnoMLS Content: Information relating to real estate for sale, previously sold, or listed for sale and data relating to Subscribers and Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into FresnoMLS’s databases by Subscribers, Participants and FresnoMLS, or on their behalf.

FresnoMLS Policies: The FresnoMLS Rules and Regulations and Terms available at <https://fresnorealtors.com/services/member-forms/> as may be amended from time to time, and any operating policies relating to the FresnoMLS Content promulgated by FresnoMLS.

Confidential Information: “Confidential Information” means all information disclosed in tangible or intangible form (whether orally, visually, or in audio, written or other form), (i) concerning the business or technology of FresnoMLS and/or its affiliates, including, without limitation (a) all FresnoMLS Content, except to the extent to which this Agreement and the FresnoMLS Policies permit its disclosure, (b) IP addresses, access codes and passwords, (c) any information that FresnoMLS obtains from a third party that FresnoMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by FresnoMLS, and (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; (ii) that is designated “confidential” by FresnoMLS; or (iii) that the Firm and/ or Subscriber and/ or Participant may obtain knowledge of, or access to, as a result of, or in connection with, this Agreement. Notwithstanding the forgoing, Confidential Information does not include information (w) that is or becomes publicly available other than by unauthorized disclosure by the receiving Party; (x) is lawfully and independently developed by the receiving Party; (y) is lawfully and independently received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or (z) is already possessed by the receiving Party prior to disclosure, as demonstrated by contemporaneously dated documentation.

Interface: The transport protocols and data storage formats provided by FresnoMLS for use by Firm, as FresnoMLS may change or modify them at any time, and from time to time.

Participant: “Participant” shall have the meaning ascribed to it under FresnoMLS Rules & Regulations.

Subscriber: “Subscriber” shall have the meaning ascribed to it under FresnoMLS Rules & Regulations

Syndication: To the extent such right is granted by a Participant hereunder, “Syndication” shall refer to Firm’s right to provide selected Licensed Content for publication on the Firm’s webpage or a specified third-party webpage.

Publisher: A website not owned or controlled by FresnoMLS Participant which publishes FresnoMLS Content as directed by a Participant. Under this agreement, all Publishers of FresnoMLS Content shall be subject to the FresnoMLS Rules & Regulations.

GRANT

2. Subject to Firm’s compliance with the terms of this Agreement and FresnoMLS Policies, FresnoMLS grants to Firm a non-exclusive, limited-term, revocable license (with no rights to sublicense other than such Syndication rights which may be granted by a Participant hereunder) to make copies of, display, perform, and, if not otherwise prohibited by the FresnoMLS Policies, make derivative works of the FresnoMLS Content specified herein and in certain attachments referencing this Agreement (each such attachment, a “**Content Access Authorization**” or “**CAA**”) that are signed or electronically approved by the Parties from time to time, a form of which is attached hereto as **Schedule B**, during the term of this Agreement. Each CAA shall include (i) the scope of FresnoMLS Content to be provided to Firm (the “**Licensed Content**”), (ii) the Subscriber(s) and/ or Participant(s) for whom the Firm shall provide services relating to such Licensed Content, (iii) the permitted URL(s) for display of Licensed Content, (iv) whether the Licensed Content will be Syndicated, and, if so, (v) to which websites it will be Syndicated subject to the Publisher Guidelines, and (vi) the signature of the authorizing Participant (such information, collectively, the “**Specifications**”; and any Work Product to be created by Firm and the services to be performed by Firm hereunder, together the “**Services**”). This paragraph 2 and the attached CAA set forth the entirety of Firm’s rights to use and distribute the Licensed Content. Without limiting the foregoing, Firm will not, directly or through others:
 - a. market, license, distribute, transfer or otherwise exploit the Licensed Content except as expressly authorized under this Agreement;
 - b. sell, lend, rent, give, assign, transfer or dispose of the Licensed Content except in accordance with this Agreement, or
 - c. remove, obscure, or alter any notice of copyright, trademark or proprietary right included with, appearing in or on, or required to appear in or on, the Licensed Content

Firm’s rights with respect to Licensed Content shall terminate upon the earlier of (y) termination of this Agreement or (z) termination of the CAA under which such Licensed Content is identified. FresnoMLS retains all rights not expressly granted herein.

FresnoMLS agrees to provide to Firm, during the term of this Agreement, (i) access to the Licensed Content via the Interface under the same terms and conditions FresnoMLS offers such Licensed Content to Subscribers, except as modified in this agreement or the CAA; (ii) 5 business days advance notice of changes to the Interface; and (iii) five business days advance notice of changes to the FresnoMLS Policies. FresnoMLS undertakes no obligation to provide technical support for the Interface or the Licensed Content.

FIRM’S OBLIGATIONS

3. Firm shall comply with the FresnoMLS Policies at all times. In the event of any perceived conflict between the FresnoMLS Policies and this Agreement or the Specifications, the FresnoMLS Policies shall prevail and govern. Any use of Licensed Content other than as set forth herein and in the Specifications is strictly prohibited. Firm shall not make any FresnoMLS Content or Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm may display the Licensed Content on a web site available to the public only to the extent

permitted by the FresnoMLS Policies and then only on a site resident at the second-level domain indicated on the CAAs to this Agreement.

4. Firm shall maintain and develop a plan to document adequate: (i) security controls with respect to Licensed Content, such as logical access controls including user sign-on identification and authentication, data access controls (e.g. password protection of applications, data files, databases, repositories and libraries where Licensed Content is stored and/ or displayed, as well as for such content or data Firm prepares on behalf of a Subscriber and/ or Participant); and (ii) record-keeping processes and policies for all security data events in accordance with legal and regulatory requirements applicable to Firm. If Firm discovers any unauthorized access to or use of Licensed Content or Confidential Information other than as permitted under this Agreement (an “**Incident**”), Firm shall promptly notify FresnoMLS and the applicable Subscriber(s) and/ or Participant(s) of such Incident. Firm shall perform a diligent investigation of all Incidents and shall provide FresnoMLS and the applicable Subscriber(s) and/ or Participant(s) with a detailed report of the investigation and its findings, at Firm’s expense. Firm further shall provide reasonable cooperation to FresnoMLS and the applicable Subscriber(s) and/ or Participant(s), in such Parties’ investigations of any Incident caused by a breach by Firm of its obligations under this Agreement. The Firm is responsible for all costs incurred from the Incident to FresnoMLS and the applicable Subscriber(s) and/ or Participant(s) to provide notices to third parties.
5. Firm acknowledges and agrees that FresnoMLS shall retain all of its patent, copyright, trade secret, trademark or other intellectual property or proprietary rights (collectively, “**Intellectual Property Rights**”) in any text, images or other components or content owned and transmitted to Firm under this Agreement and through the Interface.
6. Upon FresnoMLS or any applicable Subscriber(s) and/ or Participant(s)’ request with reasonable notice, Firm will permit technical, financial, and operational audits of Firm and its affiliates, related to the subject matter of this Agreement, by the internal and external auditors and personnel of FresnoMLS and any applicable Subscriber(s) and/ or Participant(s) and regulators (collectively, “**Auditors**”). Audits by internal auditors and personnel of any one Recipient will occur every month of firms Active membership with FresnoMLS. Audits shall be done during normal business hours. During each audit, Firm will grant the Auditors reasonable access to Firm’s Member Roster which will include all Active Fresno Participant and Subscriber’s name, Agent ID and website URL to which the firm is providing no later than the 5th day of each month. Firm will, in a timely manner, fully cooperate with the Auditors and provide the Auditors all assistance as they may reasonably request in connection with the audit. The Auditors will seek to avoid disrupting Firm’s operations during the audit.
7. In the event Firm seeks to have personnel other than employees of Firm perform work or provide Services, any and all such personnel shall be deemed subcontractors of Firm. Under no circumstance will Firm utilize, hire, consult, or subcontract to subcontractors in connection with the provision of such Services or creation of Work Product under this Agreement or any CAA without the prior written consent of FresnoMLS and the applicable Subscriber and/ or Participant(s) identified hereunder. Firm shall cause any of its subcontractors providing Services to agree in writing to, and comply with, the same terms as those herein. Subcontractors must also agree in writing not to use or share RETS or Web API credentials for any purpose other than performing services for Firm. Firm shall be responsible for any failure of any subcontractor to comply with the terms and conditions of this Agreement. Firm will remain solely responsible for all Services and will be liable for any subcontractor’s failure to perform or abide by the provisions of this Agreement.
8. If FresnoMLS notifies Firm of a breach of the FresnoMLS Policies or this Agreement and Firm

does not immediately cure the breach, Firm shall indemnify, defend and hold Subscriber and/ or Participant and FresnoMLS harmless from any costs and/ or liability arising therefrom.

9. Each reproduction or display of the Licensed Content, or any portion of it, including display on any web page, to persons other than Subscribers shall be accompanied by the following notice or one substantially similar and appropriate to the circumstances, clearly legible to viewers of the page: “Based on information from the Fresno Association of REALTORS® (alternatively, from the FresnoMLS) as of _____ (date the AOR/MLS data was obtained). All data, including all measurements and calculations of area, is obtained from various sources and has not been, and will not be, verified by broker or MLS. All information should be independently reviewed and verified for accuracy. Properties may or may not be listed by the office/agent presenting the information.”
10. Firm shall display, or cause to be displayed, the FresnoMLS copyright notice on each display screen, web page (whether Internet or intranet), and printout displaying Licensed Content. The FresnoMLS copyright notice must take the following form: “Copyright [date] Fresno Association of REALTORS®”
11. Firm shall pay to FresnoMLS the fees designated in Schedule A in addition to applicable taxes. FresnoMLS may, at any time, and from time to time, in its sole discretion, modify its schedule of fees upon 30 days’ written notice to Firm.
12. Syndication of Listings. List Hub is the only syndicating partner for listings within the MLS. The Homes.com has an opt-in syndication feature, available at the request of the broker.
13. Statuses. The following statuses are provided in the IDX feed:
 - a. Active
 - b. Pending Accepting Back-Up
 - c. Pending
 - d. Sold starting from January 1, 2012
14. Sold Information. For sold listings, only the information that is available through public tax records will be supplied. Listings are allowed one (1) primary photo. Any photos in excess of this one photo are not allowed and will be considered a violation of the MLS Rules and Regulations should they be displayed.

CONFIDENTIAL INFORMATION

15. Firm shall protect the Confidential Information with the same degree of care it takes to protect its own sensitive business information of like kind, but in no event less than reasonable care. A Party may disclose Confidential Information if such disclosure is required by law, court order or regulation; provided however, that such Party makes commercially reasonable efforts to notify FresnoMLS in writing in advance of such disclosure. Within five days after the termination of this Agreement or any CAA, the receiving Party shall return to FresnoMLS all applicable Confidential Information and materials provided, or made available, by FresnoMLS. The receiving Party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage, including system backups. Upon FresnoMLS’s request, an officer of the receiving Party shall certify in writing that all materials have been returned to FresnoMLS or destroyed.

TERM AND TERMINATION

16. The term of this Agreement begins on the date that FresnoMLS signs the Agreement. Similarly, the term of any CAA hereunder begins on the date that FresnoMLS accepts and signs such CAA. This Agreement, and all CAAs hereunder, shall terminate upon the occurrence of any of the following events: (i) immediately upon termination of Firm’s privileges as a Subscriber, if applicable; (ii) immediately upon termination of Subscriber and/ or Participant’s privileges as a Subscriber; (iii) 30

days after any Party's notice to the others of its intent to terminate this Agreement or any CAA(s) hereunder; or (iv) one day after any Party's notice of a breach of this Agreement, provided the breach remains uncured. In the event Firm or Subscriber and/ or Participant's privileges as a Subscriber are terminated while this Agreement is in effect and FresnoMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if FresnoMLS elects, in its sole discretion, to resume performance under paragraphs 2 and 3 hereof.

GENERAL PROVISIONS

17. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of California, without regard to its conflicts and choice of law provisions. The Parties agree that this contract is formed in and is performable in Fresno County, California, and any action to enforce or interpret this Agreement must be brought in a court of applicable jurisdiction in Fresno County, California. The parties hereby submit to personal jurisdiction in Fresno County, California.
18. **Survival of Obligations.** The obligations of Firm set forth herein shall survive the termination or expiration of this Agreement for five years. The "Confidential Information" and "General" provisions, as well as the meaning of all defined terms herein shall survive its termination or expiration in perpetuity.
19. **FresnoMLS's Remedies.** Because of the unique nature of FresnoMLS Content and Confidential Information, Firm acknowledges and agrees that FresnoMLS would suffer irreparable harm in the event of a breach or threatened by Firm of its obligations under this Agreement, and that monetary damages would be inadequate to compensate FresnoMLS. Accordingly, it is agreed that, in addition to any other remedy to which it may be entitled at law or in equity, FresnoMLS shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to prevent breaches or threatened breaches of this Agreement or any CAA and/or to compel specific performance of this Agreement, and that neither Firm nor its representatives will oppose the granting of such relief.
20. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE AFFILIATES BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. EXCEPT FOR CLAIMS FOR INDEMNITY PURSUANT TO PARAGRAPH 21, BELOW, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY AMOUNT IN EXCESS OF FIFTY THOUSAND DOLLARS (\$50,000). THE PARTIES ACKNOWLEDGE THAT FRESNOMLS PROVIDES ALL INFORMATION UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONFIDENTIAL INFORMATION, FRESNOMLS CONTENT AND ANY LICENSED CONTENT ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY. NEITHER FRESNOMLS NOR ANY OF ITS AFFILIATES SHALL BE LIABLE TO ANY PARTY HEREUNDER FOR ANY CLAIM ARISING FROM INACCURACIES IN THE LICENSED CONTENT, ANY FAILURE TO UPDATE THE LICENSED CONTENT PROMPTLY, OR THE LICENSED CONTENT'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL.
21. **Attorney's fees.** If any Party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.
22. **Indemnification.**

- a. Firm hereby agrees to indemnify FresnoMLS and the Fresno Association of REALTORS®, and their members, officers, directors, employees, and agents, from and against any and all third party claims, demands, and actions, and all liabilities and losses incurred in connection with such third party claims, demands and actions, including the payment of all reasonable attorney's fees and costs, arising out of or resulting from (i) any material breach by Firm of any of the terms of this Agreement, or (ii) any claim that the Firm's use of the FresnoMLS Content, whether allegedly or actually, infringes on the copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights of any third party, unless the source of such claim is the FresnoMLS Content itself. If Firm becomes aware of any such possible infringement, Firm shall immediately notify FresnoMLS in writing. FresnoMLS shall have the right, at its option, to control its own defense and engage counsel acceptable to FresnoMLS.
 - b. FresnoMLS hereby agrees to indemnify Firm, and its members, officers, directors, employees and agents, from and against any and all third party claims, demands, and actions, and all liabilities and losses incurred in connection with such third party claims, demands and actions, including the payment of all reasonable attorney's fees and costs, arising out of or resulting from
 - c. (i) any material breach by FresnoMLS of any of the terms of this Agreement, or (ii) any claim that the FresnoMLS Content, whether allegedly or actually, infringes on the copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights of any third party, except to the extent that the claim results from the unauthorized modification of the FresnoMLS Content by Firm. If FresnoMLS becomes aware of any such possible infringement, FresnoMLS shall immediately notify Firm in writing. Firm shall have the right, at its option, to control its own defense and engage counsel acceptable to Firm.
23. **Notice.** All notices to be given under this Agreement shall be mailed in a manner which allows for documentation of delivery by a third party commercial delivery service, and also contemporaneously e-mailed or sent via facsimile transmission to the Parties, at their respective addresses set forth herein or such other address of which any Party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.
24. **No Waiver.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the Party who is alleged to have waived its rights or to have agreed to a modification.
25. **No Assignment.** Firm may not assign or otherwise transfer any of its rights or obligations under this Agreement or any CAA to any other party without the prior written consent of FresnoMLS and any applicable Subscriber and/ or Participant. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.
26. **Entire Agreement.** Subject to FresnoMLS Policies, this Agreement contains the full and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same subject matter.
27. **Relationship of the Parties.** The relationship of FresnoMLS to the other Parties hereunder is that of independent contractors. No Party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of FresnoMLS or have any authority to make any agreements or representations on the behalf of FresnoMLS. Each Party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.
28. **Severability.** Each provision of this Agreement is severable from the whole, and if one provision is

declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the Parties, the invalid or unenforceable provision shall be replaced, to the extent possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date written below.

FIRM:_____

By:_____

Name:_____

Contact for notices and operations matters

Name:

Phone:

Email:

Mailing:

Fresno Association of Realtors® Multiple Listing Service

By:_____

Layne Sellers, MLS Operations Specialist/Webmaster

Date (Effective Date):_____

Contact for notices and operations matters

Name:

Email:

Mailing: 6720 N. West Ave, Fresno, CA 93711

Schedule A
Fresno Association of Realtors® Multiple Listing Service
Participant Content Access Agreement

RETS/Web API access fees are billed twice a year (Due May 1st and November 1st) in the amount of \$225.

The Table below shows the proration of fees for new RETS Consultants. All fees are prorated on the 25th of the month. x of 8.25%.

	Access Fee	Upcoming Billing	Setup Fee	Total
January	\$150.00		\$100.00	\$250.00
February	\$112.50		\$100.00	\$212.50
March	\$75.00		\$100.00	\$175.00
April	\$37.50	\$225.00	\$100.00	\$362.50
May	\$225.00		\$100.00	\$325.00
June	\$187.50		\$100.00	\$287.50
July	\$150.00		\$100.00	\$250.00
August	\$112.50		\$100.00	\$212.50
September	\$70.00		\$100.00	\$170.00
October	\$37.50	\$225.00	\$100.00	\$362.50
November	\$225.00		\$100.00	\$325.00
December	\$187.50		\$100.00	\$287.50

Example 1: A new RETS consultant submits an application for RETS access in August. The consultant would pay an access fee of \$112.50 (3 months of access) and a setup fee of \$100.00 for a total of \$212.50. In November the RETS Consultant would join the normal billing cycle and receive an invoice for \$225.00 plus the \$225.00 plus the \$100.00 Setup Fee for a total of \$325.00.

Example 2: A new RETS consultant submits an application for RETS access in April. The consultant would pay an access fee of \$37.50 for one month of access, plus \$225.00 for the next 6 months of access (7 months total) and a setup fee of \$100.00 for a total of \$362.50. In November the RETS Consultant would join the normal billing cycle and receive an invoice for \$325.00.

Schedule B
Content Access Authorization

1. Subscriber or Participant for whom Firm will provide Services:

Name:

MLS ID:

Brokerage Name:

MLS Office ID:

2. FresnoMLS Content to be provided to _____ (the “Firm”) is limited to:

IDX – On-Market Property	<input type="checkbox"/>
VOW – Virtual Office Website	<input type="checkbox"/>
Broker Back-Office	<input type="checkbox"/>
myDX – Broker Office Only	<input type="checkbox"/>

3. Will listing information be displayed on a Publisher’s website and/or a Subscriber/Participant Application?

Publisher Website	<input type="checkbox"/>
Subscriber/Participant Application	<input type="checkbox"/>

A “Publisher Website” is defined as “A website not owned or controlled by a FresnoMLS Participant which receives FresnoMLS Content directly from FresnoMLS and publishes FresnoMLS Content as directed by a Participant.”

If “Publisher Website” please complete the following:

Enter the URL(s) to be used for display of Licensed Content:

<p>SUBSCRIBER OR PARTICIPANT</p> <p>Subscriber or Participant name:</p> <p>_____</p> <p>Signature of owner or officer:</p> <p>_____</p> <p>Name of owner or officer:</p> <p>_____</p> <p>Date: _____</p> <p>Contact for notices and operations matters .</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p>	<p>[AUTHORIZING PARTICIPANT (IF DIFFERENT)]</p> <p>Participant name:</p> <p>_____</p> <p>Signature of owner or officer:</p> <p>_____</p> <p>Name of owner or officer:</p> <p>_____</p> <p>Date: _____</p> <p>Contact for notices and operations matters .</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p>
<p>FresnoMLS:</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name</p> <p>Date: _____</p>	<p>FIRM:</p> <p>Firm name:</p> <p>_____</p> <p>Signature of owner or officer:</p> <p>_____</p> <p>Name of owner or officer:</p> <p>_____</p> <p>Date: _____</p> <p>Contact for notices and operations matters .</p> <p>Name: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Mailing: _____</p>