

IDX

FRESNO ASSOCIATION OF REALTORS®

IDX / RETS Compliance

6720 N West Ave.

Fresno, CA 93711

(559) 490-6400 ~ rets@fresnorealtors.com

BROKER/AGENT INFORMATION PAGE – RETS IDX

IN WITNESS WHEREOF, the parties hereto have executed this Access Agreement as of

_____.

Entered into on behalf of Receiving Party:

Office Name: _____ Office MLS ID: _____

Broker's Name: _____ Broker MLS ID: _____

Contact E-Mail: _____

Signature: _____ Title: Broker Manager

If this application is for an agent's web site, the Designated Broker/Officer understands and accepts all liability if he/she chooses to allow licensees affiliated with his/her broker/corporate license to host or operate an IDX web site. Designated Broker will monitor said web sites to insure compliance with Fresno MLS Rules and Regulations, including IDX rules, all terms and conditions of the Access Agreement and all State Laws and Regulations regarding the advertising of Real Property.

Consultant Information

Consultant Name: _____

Consultant Contact: _____

Consultant Phone: _____

Consultant Email: _____

To be completed if "Receiving Party" is an Agent or MLS Subscriber:

Agent Name: _____ Agent MLS ID: _____

Agent E-Mail: _____

Signature: _____

URL (one only):

http:// _____

(A valid URL is required to process. This application will be disregarded if there is no URL provided.)

CONSULTANT ID:

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FRESNO ASSOCIATION OF REALTORS® DATA ACCESS AGREEMENT – RETS IDX

This Access Agreement is entered into as of the Effective Date set forth on the signature page of this Agreement by and between the Broker Participant of Fresno Association of REALTORS® Multiple Listing Service (“Broker”), or the Agent Subscriber of Fresno Association of REALTORS® Multiple Listing Service (“Agent”), or the Consultant (“Consultant”) who is assisting a Broker or an Agent with setting up and/or maintaining an internet web site that incorporates or otherwise displays IDX Data (Broker, Agent or Consultant shall hereinafter be referred to as the “Receiving Party”) specified on the signature page of this Access Agreement and Fresno Association of REALTORS®, a California corporation (“FAR”).

WHEREAS, FAR operates a multiple listing service (“MLS”) in connection with the sale of real estate in its jurisdiction in California; and WHEREAS, Broker or Agent wishes to obtain, and FAR wishes to provide, for Broker’s or Agent’s web site, certain IDX Data; and WHEREAS, the parties wish to set forth the terms on which Broker, Agent or Consultant may access the FAR RETS IDX Server containing listing data from FAR’s database and publish such data on the internet.

THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. As used herein, the following terms have the meanings set forth below:

“Agent” means the agent signing this Access Agreement that is also a Subscriber to FAR’s MLS as defined by the Fresno MLS Rules and Regulations.

“IDX Data” means, and is restricted to, a subset (selected by FAR) of the listing data in FAR’s database in which various Broker Participants have given FAR permission to disseminate to other participating Broker Participants for the purpose of Internet display on web sites of those Broker Participants who have agreed to participate in the IDX program.

“Broker” means the broker signing this Access Agreement that is also a Participant of FAR’s MLS as defined by the Fresno MLS Rules and Regulations.

“Claims” means any and all damages, losses, liabilities, costs and expenses, including reasonable attorneys’ fees, arising out of, in connection with or relating to, use and/or publication of the IDX Data, including, but not limited to, claims relating to infringement of proprietary rights of third parties.

“Consultant” means companies or individuals who are not employees of Broker or Agent that perform IDX Data downloading, manipulation, and formatting on behalf of one or more Brokers or Agents.

“Term” means a perpetual period commencing on the Effective Date unless this Access Agreement is terminated as provided in Paragraph 6.

“Effective Date” means the date on which both parties have executed this agreement.

“Rules” means Fresno Multiple Listing Service Rules and Regulations, revised as of May 2014 and further revised from time to time.

2. Non-Exclusive License. FAR hereby grants to Receiving Party a nonexclusive license to access and download and publish on the Internet, in whole or in part, the IDX Data during the Term. Receiving Party agrees that it shall obtain IDX Data only from FAR’S RETS IDX server unless specifically given written permission to obtain data from other FAR servers, programs or sources. Receiving Party hereby acknowledges and agrees that FAR is not supplying any software, programming assistance or tangible property of any kind in connection with such license and, if needed, Receiving Party must obtain such items at Receiving Party’s sole cost and expense. To the extent that the IDX Data

includes intellectual property owned by Broker or Agent, Broker or Agent grants to FAR a nonexclusive license to make such intellectual property available to Consultant pursuant to the terms and conditions of this Agreement.

3. Application Review. FAR will review this application and agreement, Receiving Party's website, other websites or IDX solutions created by Receiving Party, and may contact other Associations or MLS's regarding Receiving Party's website(s) or IDX services. FAR at its sole discretion may deny RETS server access to Receiving Party.

4. Fees. Receiving Party shall pay fees in accordance with the Schedule of IDX Fees published on FAR's web site found at www.fresnomls.com. FAR may make reasonable adjustments to the IDX Fees at any time by giving all Receiving Parties at least 30 days advance notice of any such adjustment.

5. Ownership. Nothing herein shall constitute a transfer of title to the IDX Data. Without limiting the generality of the foregoing, Receiving Party hereby acknowledges and agrees that it shall have no right to retain or use any IDX Data except as provided herein and in conjunction with the Rules. Receiving Party also acknowledges and agrees that FAR may enhance, augment, reformat, watermark or otherwise manipulate (collectively "Manipulations") the IDX Data. Receiving Party agrees to reproduce all such Manipulations each and every time Receiving Party makes the IDX Data available to the public.

6. Term. Each of the following shall constitute a "Termination Event" hereunder:

- (a) A material default in the performance of any of the covenants or conditions of this Access Agreement if the same shall not have been cured by the defaulting party within five (5) days after written notice from the non-defaulting party to the defaulting party setting forth with specificity the nature of such default; or
- (b) Broker's or Agent's MLS service becomes inactive for any reason; or
- (c) Broker or Agent terminates service with Consultant; or
- (d) Receiving Party fails to comply with the Rules; or
- (e) Receiving Party fails to respond within two business days to any inquiry from FAR directed to the contact information for Receiving Party then on file with FAR; or
- (f) Receiving Party fails to pay any fees associated with this agreement, including but not limited to access fees, or fees regarding violations of this agreement as defined in Section 7(e) below, within 30 days of the due date.
- (g) Upon thirty (30) days' prior written notice of one party to the other for any reason, with or without cause.

At any time following the occurrence of a Termination Event described above, the Access Agreement shall be deemed terminated immediately and automatically, without further notice or other action and FAR may immediately terminate Receiving Party's access to the Broker Data.

7. Warranties and Covenants. Receiving Party hereby warrants and covenants as follows:

- (a) Receiving Party shall comply, in all respects, and at no cost to FAR, with any and all conditions, requirements or restrictions established by FAR with respect to use or publication of the IDX Data.
- (b) Receiving Party shall provide to FAR a roster of members serviced under this agreement, no later than 5:00pm PST on the third business day of each month.

- (c) Receiving Party hereby acknowledges that it has downloaded a copy of the Fresno MLS Rules and Regulations (<http://fresnomls.com/wp/MLSRules.pdf>). Receiving Party shall comply, in all respects and at no cost to FAR, with the rules regarding the display of IDX Data.
- (d) Consultant shall not and Broker or Agent shall not allow any Consultant to download any IDX Data unless and until said Consultant receives written permission from FAR.
- (e) Receiving Party shall not use the IDX Data or any portion thereof, for any purpose other than the display of IDX Data on Broker's or Agent's website as specified in the Broker / Agent IDX/RETS Information form, including but not limited to the use IDX Data for the marketing of products, services or events.
- (f) RECEIVING PARTY ACKNOWLEDGES AND EXPRESSLY AGREES THAT FAR'S ACTUAL DAMAGES FROM IN THE EVENT OF A VIOLATION OF SECTION 7 WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO ASCERTAIN AND THAT THE APPROPRIATE AMOUNT OF DAMAGES IS \$1,000. NOTWITHSTANDING THE FOREGOING, FAR AND RECEIVING PARTY EXPRESSLY AGREE THAT THE DAMAGES TO BE PAID BY RECEIVING PARTY FOR A VIOLATION OF SECTIONS 7 SHALL BE AS FOLLOWS:

FIRST VIOLATION - \$500

SECOND VIOLATION - \$1,000

THE PARTIES FURTHER AGREE THAT A THIRD VIOLATION WITHIN FIVE YEARS OF THE SECOND VIOLATION SHALL BE A "TERMINATION EVENT" PURSUANT TO PARAGRAPH 6.

8. Assignment. Receiving Party may not assign this Access Agreement without the prior written consent of FAR, which may be withheld in its sole and absolute discretion.

9. Notice. All notices and other communications hereunder shall be in writing and shall be:

- (a) Personally delivered,
- (b) Transmitted by first class mail, postage prepaid,
- (c) Sent by Federal Express or similar expedited delivery service or
- (d) Transmitted by email

In each case, communications shall be addressed to the party to whom notice is being given at its address as set forth under its signature below, or at such other address as may hereafter be designated in writing by that party. All such notices or other communications shall be deemed to have been given on (i) the date received if delivered personally, (ii) three (3) business days after the date of posting if delivered by mail, (iii) the date of receipt, if delivered by Federal Express or similar expedited delivery service, or (iv) the date of transmission if delivered by email.

10. Confidentiality.

- (a) General Confidentiality. Unless Receiving Party proves conclusively to the contrary by a preponderance of the evidence that certain material is not encompassed by this Access Agreement, all material accessed by, or disclosed by FAR to, Receiving Party shall be presumed to be (i) confidential, (ii) trade secrets of FAR (iii) and proprietary information of FAR (collectively without distinction, "Proprietary Information"), and it will be so regarded by Receiving Party and Receiving Party's Consultant.

- (b) **Duty of Confidentiality.** Except as expressly allowed pursuant to this Access Agreement, Receiving Party agrees to maintain and preserve the confidentiality of the Proprietary Information and not to disclose such information to third parties without the prior written consent of FAR; provided, however, that Receiving Party shall have no such obligation with respect to use or disclosure to others not parties to this Access Agreement of such Proprietary Information as can be established to have been received by Receiving Party at any time from a source (other than FAR) lawfully having the right to disclose such information. Notwithstanding the above, nothing herein shall prevent Receiving Party from disclosing all or part of the Proprietary Information that it is legally compelled to disclose (by oral deposition, interrogatories, request for information or documents, subpoena civil investigative demand, or any other process), provided, however, that before any such disclosure, Receiving Party shall notify FAR in writing of any such order or request to disclose and cooperate with FAR (at FAR's cost) with respect to any procedure sought to be pursued by FAR in protecting against such disclosure.

11. **Indemnification.** Receiving Party hereby releases and discharges FAR from any and all Claims. Receiving Party agrees to indemnify and, at the request of FAR, defend FAR from and against all Claims, provided Receiving Party is notified promptly in writing of a Claim and has sole control over its defense or settlement, and FAR provides reasonable assistance (at Receiving Party's expense and reasonable request) in the defense of the same. Notwithstanding the foregoing, FAR shall have the right to approve any settlement of any Claim to the extent that such settlement imposes any restrictions, duties or obligation on FAR, such approval to not be unreasonably withheld or delayed.

12. **Survival.** Notwithstanding any other provision herein, the obligations of the parties, and each of them, contained in Paragraphs 5, 10 and 11 shall survive any termination of this Access Agreement.

13. **Miscellaneous.**

- (a) **Controlling Law.** This Licensing Agreement shall be governed by, and construed under, the laws of the State of California without regard to the principles of conflicts of law
- (b) **Binding upon Successors and Assigns.** Subject to Paragraph 6 of this Access Agreement, each and all of the covenants, terms, provisions and agreements contained in this Access Agreement shall be binding upon, and inure to the benefit of, the permitted successors, executors, heirs, representatives, administrators and assigns of the parties hereto.
- (c) **Severability.** If any provision of this Access Agreement, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Access Agreement and application of such provision to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto.
- (d) **Entire Agreement.** This Access Agreement and the documents referred to in this Access Agreement, along with their exhibits, constitute the entire understanding and agreement of the parties with respect to their subject matter and supersede all prior and contemporaneous agreements or understandings.
- (e) **Amendment and Changes.** No amendment, modification, supplement or other purported alteration of this Access Agreement shall be binding upon the parties unless it is in writing and signed on behalf of the parties by their own authorized representatives.
- (f) **Counterparts.** This Access Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument.
- (g) **No Waiver.** The failure of any party to enforce any of the provisions of this Access Agreement shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

- (h) **Attorneys' Fees.** In the event a lawsuit or other legal proceeding shall be commenced in respect of this Access Agreement, the prevailing party shall be entitled to be awarded, as an element of the costs of such lawsuit or proceeding and not as damages, reasonable attorneys' fees to be fixed by the court or arbitrator (including, without limitation, costs, expenses and fees).
- (i) **No Joint Venture.** Nothing contained in this Access Agreement shall be deemed or construed as creating a joint venture or partnership between the parties. Except as expressly set forth, no party by virtue of this Access Agreement is authorized as an agent, employee or legal representative of any other party, and the relationship of the parties is, and at all times will continue to be, that of independent contractors
- (j) **Further Assurances.** Each party agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements, and to give such further written assurances as may be reasonably requested by the other party, to better evidence and reflect the transactions described in and contemplated by this Access Agreement, and to carry into effect the intents and purposes of this Access Agreement.
- (k) **Syndication of Listings.** List Hub is the only syndicating partner for listings within the MLS. The Zillow Group and Homes.com has an opt-in syndication feature, available at the request of the broker.
- (l) **Statuses.** The following statuses are provided in the IDX feed:
- Active
 - Pending Accepting Back-Up
 - Pending
 - Sold starting from January 1, 2012
- (m) **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.

MLS Information and Signature	
	<i>Signature</i>
	<i>Name</i>
Dezmarie Tovar	
	<i>Title</i>
MLS Operations Supervisor	
	<i>Company</i>
Fresno Association of REALTORS®	
	<i>Effective Date</i>