

This Framing Agreement (“Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) by and between SAN DIEGO MLS, Inc., a California corporation (“SAN DIEGO MLS”) and \_\_\_\_\_, a \_\_\_\_\_ (“Framer”).

(Office Name)

(Sole proprietor or California Corporation)

Framer and SAN DIEGO MLS agree as follows:

1. **GRANT OF RIGHTS.**

- a. **Definitions.** For purposes of this Agreement, (1) “Public Web Site” means one or more web sites created and maintained by SAN DIEGO MLS generally listing certain aggregated MLS active listing information; (2) “Frame” or “Framing” means dividing one or more web pages of Framer’s web site into separate sections or “frames” and incorporating the Public Web Site into at least one of those frames. (3) “Framer” means a Broker Participant or R.E. Subscriber of the SAN DIEGO MLS MLS as defined by the SAN DIEGO MLS MLS Rules and Regulations.
- b. **License Grant.** SAN DIEGO MLS hereby grants to Framer a non-exclusive right to frame the Public Web Site. SAN DIEGO MLS may grant others rights similar or identical to the rights granted under this Agreement. The content and format of the Public Web Site shall be selected at the sole discretion of SAN DIEGO MLS. Framer shall not modify the form, content or any other aspect of the Public Web Site in any way. Framer shall not display only a part or portion of any one page of the Public Web Site but shall display one entire page at a time. Framer shall make sure that any notices or information contained in the San Diego MLS MLS Rules and Regulations pertaining to Internet Data Exchange (currently Section 12.16) which includes, but not limited to, identification of the listing firm are reproduced when Framer frames the Public Web Site. If Framer caches or otherwise stores the Public Web Site in Framer’s own server, Framer shall update and refresh the cached or stored Public Web Site with the latest version of the Public Web Site at least once per twenty-four hour period. The Public Web Site will be hosted on a server chosen at the sole discretion of SAN DIEGO MLS. Pursuant to this Agreement, SAN DIEGO MLS will provide framer with access to the Public Web Site. The particular manner in which SAN DIEGO MLS shall provide Framer with access to the Public Web Site shall be chosen at the sole discretion of SAN DIEGO MLS. From time to time, SAN DIEGO MLS may change the server that hosts the Public Web Site or the particular manner in which SAN DIEGO MLS provides Framer with access to the Public Web Site provided that SAN DIEGO MLS shall not change either an unreasonable number of times within a one year period without a reasonable business, technological, or other justification. Framer is responsible for providing its own web site and any and all means necessary to link Framer’s web site to the Public Web Site. Framer will take all reasonable and necessary steps to safeguard the particular access information that it uses to access the Public Web Site to make sure that no third party gains unauthorized access to the Public Web Site by use of access information derived from Framer.
- c. **Ownership and Validity of Rights.** Framer shall have no ownership interest or rights to the form, content, or any other aspect of the Public Web Site. Framer acknowledges and agrees that the form, content, and all other aspects of the Public Web Site, including all intellectual property rights pertaining thereto and all listings, records and information contained therein, are the property of SAN DIEGO MLS and are owned by, and proprietary to SAN DIEGO MLS. Framer acknowledges and agrees that valid and enforceable copyrights exist in the Public Web Site. Framer agrees that it will not challenge the existence or validity of any of those copyrights. Framer further agrees that it will not take any action

inconsistent with SAN DIEGO MLS's ownership of valid and enforceable copyrights in the Public Web Site.

- d. **Use of Public Web Site and Its Content.** Framer agrees not to use any listings, records, information, and data derived from the Public Web Site for any purpose inconsistent or prohibited by this Agreement or the MLS Rules and Regulations of SAN DIEGO MLS. Framer shall not copy, display, perform, distribute, use, digest, extract, compile, aggregate, modify, or disclose the listings, records, information, and data derived from the Public Web Site for any purpose other than those purposes expressly permitted by this Agreement. Framer agrees not to sell, rent, license, sublicense, distribute, transfer, or directly or indirectly, disclose or permit the sale, rental, licensing, sublicensing, distribution, transfer or disclosure of the listings, records, information, and data derived from the Public Web Site to any other party other than as expressly permitted by this Agreement.
- e. **Enforcement of Provisions.** SAN DIEGO MLS may enforce any of the provisions of this Section 1 by injunctive relief, and the parties acknowledge that monetary damages would be an inadequate remedy. The parties further acknowledge and agree that violation of the terms of this Agreement will result in great and irreparable harm to SAN DIEGO MLS as the ability to control the dissemination and use of the listings, records, information, and data governed by the terms of this Agreement is a critical part of SAN DIEGO MLS's business and those listings, records, information, and data are vital assets of SAN DIEGO MLS. SAN DIEGO MLS's right to injunctive relief shall not otherwise impair SAN DIEGO MLS's right to pursue any of its other rights or remedies as provided by law or equity.

## 2. **PAYMENT, TERM, AND TERMINATION.**

- a. **Initial Payment and Term.** In consideration for SAN DIEGO MLS's performance of its obligations under this Agreement, Framer shall pay to SAN DIEGO MLS a one-time setup fee of **\$50.00** (the "Setup Fee") and an annual fee of **\$120.00** (the "Access Fee") upon the signing of this Agreement. The annual Access Fee shall be pro-rated monthly based on a calendar year. Framer's payment of the Access Fee and Framer's performance of and compliance with all other obligations and provisions of this Agreement shall entitle Framer to exercise the rights and privileges granted by SAN DIEGO MLS to Framer under the terms of this Agreement until such rights and privileges are terminated pursuant to the provisions of this Agreement. SAN DIEGO MLS may increase the amount of the Access Fee on an annual basis by sending notice of the increased Access Fee to Framer at least fifteen days prior to the applicable anniversary date of this Agreement.
- b. **Renewal and Subsequent Payments.** This Agreement shall continue indefinitely pursuant to the following terms and conditions. If Framer offers and SAN DIEGO MLS accepts an additional Access Fee on or before any anniversary date of this Agreement, this Agreement shall be renewed for a period of one year from the date upon which this Agreement would have expired had Framer not paid the additional Access Fee, or until the rights and privileges granted under this Agreement are terminated pursuant to the provisions of this Agreement.
- c. **Termination.** Either party may terminate this Agreement with or without cause by sending notice of such termination to the other party. This Agreement shall terminate thirty days after the date of a notice stating that this Agreement is terminated

without cause. This Agreement shall terminate ten days after the date of a notice stating that this Agreement is terminated with cause (and setting forth the cause for termination in a manner reasonable under the circumstances), unless the party in default cures the default within such 10 day period. This Agreement shall terminate automatically with no notice

(i) upon a breach by Framer under any other agreement with SAN DIEGO MLS, or (ii) on the date Framer ceases to be a Participant in good standing in SAN DIEGO MLS's MLS, or (iii) if Framer ceases to participate in the SAN DIEGO MLS IDX program. Reasons for such automatic termination may include, without limitation, failure of a Participant to pay its MLS fees. Regardless of the manner in which this Agreement terminates, the provisions of Paragraphs 1.c., 1.d., and 1.e. of this Agreement shall survive the termination of this Agreement and shall continue forever. If SAN DIEGO MLS terminates this Agreement without cause, SAN DIEGO MLS shall refund a pro rata portion of the Access Fee based on the amount of time remaining until this Agreement would have expired absent the termination and absent any renewal. If this Agreement is terminated for any other reason and in any other manner, Framer shall forfeit the unused balance of its Access Fee.

### 3. **ADDITIONAL PROVISIONS.**

- a. **Indemnification.** Framer shall indemnify defend and hold harmless SAN DIEGO MLS, its officers, directors, agents, affiliates, subcontractors and employees from any and all claims, demands, liabilities, costs or expenses, including actual attorneys' fees resulting from any third party claim arising from Framer's web site or Framer's activities related thereto.
- b. **Force Majeure.** In the event either party is prevented from performing its obligations under this Agreement by circumstances beyond its control, except in the case of payment of monies due under this Agreement, including, without limitation, labor disputes, fires, explosions, floods, acts of God, war or other hostilities, civil commotion, breakdown of machinery, domestic or foreign governmental acts, orders or regulations and inability or difficulty in obtaining supplies, then the party so affected shall be excused from its performance under this Agreement so long as such condition exists.
- c. **Cooperation.** The parties will cooperate with each other and execute and record such documents as may reasonably be requested to effectuate the provisions of this Agreement and to protect SAN DIEGO MLS's intellectual property.
- d. **Limited Relationship.** This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each party will act as an independent entity and not as an agent of the other Party for any purpose, and neither will have the authority to bind the other.
- e. **Notice.** All notices permitted or required to be given to either party under this Agreement shall be in writing, delivered to the address as set forth below and be deemed to have been given: (i) in the case of hand delivery, at the time of said delivery; (ii) in the case of mailing, three (3) days after the same has been mailed by certified mail, return receipt requested, and deposited postage prepaid in the U.S. Mail; and (iii) in any other case, when actually received by the other party. Either party may change the address at which said notice is to be given by giving notice of such change to all other parties to this Agreement in the manner set forth in this Agreement.

If to SAN DIEGO MLS:     Attn: Jessica Killian, IDX Specialist  
SAN DIEGO MLS, INC.  
5414 Oberlin Dr., Suite 150  
San Diego, CA 92121

If to Framer: \_\_\_\_\_  
(Mailing Address) \_\_\_\_\_  
\_\_\_\_\_

- f.     **Complete Agreement.** This Agreement represents the complete Agreement between the parties with respect to the subject matter contained in this Agreement, and this Agreement replaces and supersedes all prior written and oral agreements or statements by and among the parties with respect to the subject matter contained in this Agreement.
- g.     **Amendments.** All amendments and modifications to this Agreement must be in writing and signed by the parties.
- h.     **Waiver.** No term, covenant, condition or warranty of this Agreement will be deemed to have been waived, nor shall there be any estoppel against the enforcement of any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel. The failure of either party to enforce any term, termination, condition or provision of this Agreement as soon as that term, termination, condition or provision becomes enforceable shall not prevent or estop such party from enforcing that term, termination, condition or provision at a later time.
- i.     **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Any such successors or assigns shall take the rights conferred under this Agreement subject to the obligations and duties imposed by this Agreement.
- j.     **Parties in Interest.** Except as expressly provided in this Agreement, nothing in this Agreement will confer any rights or remedies under or by reason of this Agreement on any person or entity other than the parties and their respective successors and assigns.
- k.     **Construction of Agreement.** In the event it is necessary to construe the terms and conditions of this Agreement, it will be done without giving any consideration or effect as to which party may have drafted this Agreement. The parties acknowledge that all the terms of this Agreement were negotiated at arms' length and that this Agreement and all documents executed in connection with this Agreement were prepared and executed without duress, undue influence or coercion upon any party.
- l.     **Pronouns; Statutory References.** All pronouns and all variations thereof will be deemed to refer to the masculine, feminine, or neuter, or singular or plural, as the context in which they are used may require.
- m.     **Headings.** All headings in this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

**Governing Law; Venue; Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California (without giving effect to principles of conflicts of laws). The venue for any legal proceedings arising from or connected with this Agreement shall be exclusively in San Diego County, California, and no party shall have the right to challenge venue based upon *forum non conveniens* or otherwise. For any claim at law or injunctive relief action sought and permitted pursuant to this Agreement, the parties expressly consent to the jurisdiction of the state and/or federal courts in and/or for San Diego County, California.

- o. **Attorneys' Fees.** In any legal proceeding, including arbitration, arising from, under or in connection with this Agreement, the prevailing party shall recover the actual attorneys' fees and costs incurred in preparation for and in connection with such legal proceedings, including at all levels of arbitration, trial and appeal.
- p. **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable, the remainder of this Agreement will not be affected thereby.

n.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

SAN DIEGO MLS, INC., a California corporation \_\_\_\_\_, a  
(Office Name) (sole proprietor or corporation)

By \_\_\_\_\_ By \_\_\_\_\_  
(San Diego MLS, Inc.) *Office Broker Participant Signature*

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Office ID #: \_\_\_\_\_

Office Name: \_\_\_\_\_

Phone: \_\_\_\_\_

You Web Site Address: http:// \_\_\_\_\_  
(Web site for the IDX link)

**Web Hosting/Consultant Company Information:**

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

## IDX Web Site Requirements

Agent Name: \_\_\_\_\_

Brokerage Name: \_\_\_\_\_

The following checklist outlines the compliance requirements set forth by **SAN DIEGO MLS** in order for your website to be approved for IDX Data Display. Use this checklist to review your web site. Noncompliance will prevent your site from being approved by **SAN DIEGO MLS** for the display of IDX data.

... **Brokerage Name Is Prominently Displayed On Web Site Homepage**

The name of your brokerage must be prominently displayed on the Home Page of your web site. If you have a team or division logo it must be clear which brokerage you are affiliated with. This can be done by making sure the brokerage logo is **larger** than your own and/or stating that your team is a part of said brokerage.

... **Brokerage Contact Information Is Displayed On Web Site Homepage**

The contact information of your Brokerage is prominently displayed on the Home Page of your site. This includes the phone number of your office, the physical address of your brokerage, the name of your brokerage and the logo of your brokerage.

... **Brokerage Logo Displayed On Website Homepage**

**SAN DIEGO MLS** requires that the Logo of your Brokerage be prominently displayed on the Home Page of your site. At this time there are no guideline as to size, however, it must be clearly identifiable and placed in a location where the consumer can easily view it.

... **Signed & Submitted Link Packet**

By now you should have also downloaded the link Packet that you are required to have signed and return to **SAN DIEGO MLS**. This agreement can be signed by the authorized Office Manager or Broker of Record which appears in San Diego MLS records.

Once completed packet has been submitted to San Diego MLS, allow approximately two weeks for the approval process.

... **The Name Of Agent Who Owns The Site Is Prominently Displayed On The Homepage**

The full name of the agent who owns or sponsors the website must be prominently displayed on the web sites home page. This means that you will not be able to create a stealth or masked site that does not seem to be affiliated with an agent.

... **The Agent Is An Active Member of SAN DIEGO MLS – No RECIPROCAL Agents**

In order to receive the IDX feed the agents listed on the web site must be current dues paying members of **SAN DIEGO MLS**. Agents who are part of the Reciprocal network cannot obtain the feed unless they become a full member of SAN DIEGO MLS. If you are not a full member, please go to <http://www.sdmls.com> to obtain information on becoming a member.

... **Do You Have A Roster On Your Site?**

If you have a roster on your site (showing agents on your team/in your office), you must make sure that any people listed on your site, who are not active members of SAN DIEGO MLS, are noted with their official job title (i.e. Office Assistant/Transaction Coordinator, etc.). This is to ensure that there is no confusion over whether they are a member of your brokerage as an active member of **SAN DIEGO MLS**.

... **Site Must Be Finished and Have A Location Where It Can Be Viewed (active URL)**

**Prior** to submitting your application for IDX access to **SAN DIEGO MLS**, the site must be completed and be viewable by **SAN DIEGO MLS** in order to verify compliance.

San Diego MLS, Inc.  
5414 Oberlin Dr., Suite 150  
San Diego, CA 92121  
Office: (858) 622-6200 <sup>TM</sup> Fax: (858) 622-6222  
[www.San Diego MLS.com](http://www.San Diego MLS.com)