

# FIRST AMERICAN REAL ESTATE DISCLOSURES CORPORATION NATURAL HAZARD DISCLOSURE DIVISION

## TERMS OF SERVICE AGREEMENT

THIS TERMS OF SERVICE AGREEMENT ("TOS") IS A LEGALLY BINDING AGREEMENT BETWEEN FIRST AMERICAN REAL ESTATE DISCLOSURES CORPORATION, A CALIFORNIA CORPORATION, OPERATING THROUGH ITS NATURAL HAZARD DISCLOSURE ("JCP-LGS") DIVISION AND YOU ("LICENSEE") CONCERNING THE WEBSITE ("SITE") AND NATURAL HAZARD DISCLOSURE ("NHD") REPORTS. NHD REPORTS ARE AVAILABLE FOR LICENSE THROUGH THIS SITE'S ORDERING PLATFORM. PLEASE NOTE THAT NHD REPORTS ARE LICENSED, NOT SOLD, AND MAY BE USED ONLY IN ACCORDANCE WITH THE LICENSE GRANTED.

BEFORE YOU ORDER AN NHD REPORT, YOU MUST AGREE TO THESE TERMS AND CONDITIONS BY CLICKING ON THE "I ACCEPT" BUTTON BELOW. WHEN YOU CLICK "I ACCEPT," YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS FOR USE OF THE SITE. WHEN YOU ORDER AN NHD REPORT THROUGH THIS SITE'S PLATFORM. YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS IN THE NHD REPORTS. TO VIEW THE TERMS AND CONDITIONS OF THE NHD REPORTS, PRIOR TO PURCHASE, CLICK ON

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BY ACCESSING THE NHD REPORTS AND/OR SERVICES PROVIDED THROUGH THIS WEBSITE, YOU ARE AGREEING TO ALL THE TERMS AND CONDITIONS OF THIS TOS, AND THE TERMS AND CONDITIONS SET FORTH IN THE NHD REPORTS.

### 1. Definitions.

- a. **"JCP-LGS Content"** shall mean all editorial content, graphics, data and information contained in the NHD REPORTS and on the Site (collectively, the "JCP-LGS Content").
- b. **"NHD REPORTS"** shall mean the products and services available for license on this Site. The NHD REPORTS include, but are not limited to, the natural hazard disclosure reports that are available through disclosures.com, reodisclosure.com and fanhd.com.
- c. **"Site"** shall mean the www.fanhd.com website, the www.disclosures.com website, the www.reodisclosure.com website, and any other individual sites as may be added to, or available through, the Site, including, without limitation, the data and computer code contained on or transmitted from the Site, the NHD REPORTS, and the JCP-LGS Content. Any reference herein to the Site shall be to each individual item and also to the Site as a whole.

2. **Access.** Provided that You comply with all the terms and conditions of this TOS, JCP-LGS agrees to provide You with access to the Site which contains the NHD REPORTS. You agree that JCP-LGS controls the terms of all access to, and use of, the Site (including any

upgrades, modifications or updates thereto) and all products, services, and materials contained therein that are delivered by means of the Site, including the NHD REPORTS, and all third-party products and information and data that may be included therein. JCP-LGS reserves the right to revise or alter the Site, NHD REPORTS, and terms of this TOS at any time, in its sole discretion. In no event shall JCP-LGS or its data suppliers be liable for any damages resulting from Your inability or failure to access or interface with the Site.

3. **Term; Termination.** The term of this TOS will commence upon Your acceptance of the TOS terms (by clicking "I Accept") and continue in perpetuity, unless sooner terminated pursuant to the terms hereof or a governing Services Agreement (the "Term"). Notwithstanding the foregoing, upon written notice to You, JCP-LGS may immediately terminate this TOS, and terminate Your access to and use of the Site, and the NHD REPORTS, if:
  - a. JCP-LGS ceases to offer the Site, Software or NHD REPORTS or,
  - b. You fail to comply with any of the terms of this TOS.
  - c. JCP-LGS may also terminate this TOS, for any reason whatsoever, in its sole discretion, by giving You thirty (30) days advance notice.
4. **Grant of Licenses.** Subject to the terms and conditions of this TOS, and provided that Licensee has paid all applicable fees to JCP-LGS for the use of the NHD REPORTS and that You have not breached the provisions of this TOS or any other agreement between You and JCP-LGS, including a Services Agreement, JCP-LGS grants to You during the Term and within the United States a limited, revocable, non-exclusive, non-sublicensable and non-transferable license to use the Site, and NHD REPORTS, solely as set forth in this TOS. The license granted by JCP-LGS to You hereunder (the "License") is conditioned upon Your compliance with the terms and conditions of this TOS.
5. **Acceptable Use.** You acknowledge and agree that Your use and access of the Site, and the NHD REPORTS may be logged and monitored. You agree to use the Site, and the NHD REPORTS, in a manner consistent with any and all applicable laws, rules and regulations as well as the terms and conditions set forth in this TOS. You shall not disassemble, create models, analytics, or derivative works of, decompile, manipulate or reverse engineer the Site, or the NHD REPORTS, and You shall take all necessary steps to prevent any unauthorized use of the NHD REPORTS. You shall not use the Site, or the NHD REPORTS, in any way that infringes or misappropriates JCP-LGS's or any third-party owner's copyright, patent, trademark, trade secret or other intellectual property or proprietary rights or rights of publicity or privacy.

You shall only access the Site using an assigned password or other security mechanism to prevent unauthorized access. Sharing of user access is prohibited and any automation of accessing information is strictly prohibited unless expressly authorized in writing by JCP-LGS. It is Your sole responsibility to maintain the confidentiality of all assigned usernames and passwords, and You shall be responsible for all charges relating to the use of said usernames and passwords whether or not authorized by You. In no event shall You use the Site or the NHD REPORTS for illegal purposes or in any manner that is defamatory, libelous, unlawfully threatening or unlawfully harassing, or that otherwise violates any federal, state or local statute, law or regulation, for debt collection, skip tracing, or electronic telephone directory assistance.

You understand that the information, data, images, scores, and reports available under one or more of the NHD REPORTS have not been collected for credit purposes and are not intended to be indicative of any consumer's credit worthiness, credit standing, credit capacity, or other characteristics listed in Section 1681(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. You shall not use the NHD REPORTS

- a. as a factor in establishing an individual's eligibility for credit or insurance,
- b. in connection with underwriting individual insurance,
- c. in evaluating an individual for employment purposes,
- d. in connection with a determination of an individual's eligibility for a license or other benefit granted by a governmental authority,
- e. in any way that would cause the NHD REPORTS to constitute a "consumer report" under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or
- f. in any other manner that would cause such use of the NHD REPORTS to be construed as a consumer report by any pertinent governmental authority.

You acknowledge that certain products and services provided in connection with Your use of the Site, and the NHD REPORTS, may incorporate information, services, and/or products of third parties and the provision and use thereof shall be subject to terms and conditions provided by such third parties. You assume sole responsibility for all use of the information provided by a third-party data supplier, including the liability and responsibility for any and all claims, demands, losses, damages, liabilities, costs, charges and expenses, including reasonable attorneys' fees, arising out of Your use of the information and agree to indemnify JCP-LGS and its suppliers or licensors with respect thereto. You are not permitted to resell any information contained in the Site or the NHD REPORTS.

6. **Ownership.** You acknowledge and agree that, as between You and JCP-LGS, JCP-LGS retains all rights, title and interest in and to the Site, and the NHD REPORTS, including all copyrights, patents, trademarks, trade secrets and all other intellectual property rights in the same. No rights in or to the Site, or the NHD REPORTS, are granted to You except the limited license specifically granted in this TOS. You acknowledge that You shall not acquire any copyright ownership or other similar right, or any other ownership or intellectual property rights in or to the Site, the NHD REPORTS or other property owned by JCP-LGS as a result of this TOS.
7. **Confidentiality.** You acknowledge that the Site contains valuable commercial products, the development of which has involved the expenditure of substantial time and money. You will take appropriate measures and shall initiate strict security measures to prevent the accidental or otherwise unauthorized use or release of any and all proprietary and confidential information of JCP-LGS and any third parties associated with or provided through the Site.
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9. **Trademarks.** JCP-LGS and/or its parent company, subsidiaries or affiliates own several trademarks and service marks that are used in connection with, among other things, the Site, including, but not limited to, JCP-LGS, the Eagle logo ® ("JCP-LGS Marks"). Any use of the JCP-LGS Marks requires prior approval in writing by JCP-LGS which may be withheld in JCP-LGS's sole discretion. The "look and feel" of JCP-LGS's Site and the contents thereof, including, without limitation, the JCP-LGS Content and color combinations, buttons, layout, and other graphical elements are protected by applicable U.S. and international intellectual property laws, including, without limitation, trademark, copyright and trade dress laws. Nothing contained herein shall constitute a license (either express or implied) for You to use any of the JCP-LGS Marks or trade dress, including the elements that constitute the "look and feel" of the Site.
10. **Product and Service Claims.** You shall provide prompt notice to JCP-LGS, and a reasonable opportunity to cure, any known error, omission or mistake that may result in a claim on services provided pursuant to this TOS, prior to making a claim against the services. In addition, You shall use Your best efforts to mitigate Your losses resulting from services provided pursuant to this TOS. If You do not perform according to the requirements of this section, JCP-LGS will not be liable. You must also provide sufficient documentation, as deemed appropriate by JCP-LGS, to evidence Your out-of-pocket, actual monetary loss.
11. **Warranties, Disclaimers and Limitations.** TO THE EXTENT ALLOWED BY LAW, JCP-LGS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS OTHERWISE PROVIDED IN THE NHD REPORTS.

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12. **Pricing/Billing.** JCP-LGS reserves the right to change the NHD REPORTS pricing at any time without notice. Charges or fees for the NHD REPORTS will be accumulated under the Licensee account number and will be invoiced either through escrow or directly to Licensee, depending upon how Licensee sets up their account.
  - a. **Payment Processing.** In the event that credit card payments are processed by a third-party card processing company, such third-party card processing company will be contractually required by JCP-LGS to use commercially adequate security and confidentiality measures. That agreement requires the card processing company to use adequate security and confidentiality measures to protect Your payment information. All payment information that You provide through JCP-LGS's website will be transmitted directly to the card processing company over a secure connection. JCP-LGS will not record Your credit card number, expiration date, or CVV number. However, this information may be stored by the card processing company in the normal course of its business, or as required or authorized by law, statute, regulation, or Payment Card Industry standard.
13. **Your Content.** You hereby represent and warrant that any content that You upload to the Site or content that You use in connection with the NHD REPORTS shall not be used in any manner that is defamatory, libelous, unlawfully threatening or unlawfully harassing, and does not and shall not infringe upon or misappropriate any rights, including, without limitation, intellectual property rights, proprietary rights or confidentiality rights, or rights of publicity or privacy of any third parties or JCP-LGS, and that such content is free of worms, viruses, Trojan Horses and other disabling code. For the avoidance of doubt, "content" as used in this TOS in connection with the Licensee shall be construed broadly so as to include, but not be limited to, all materials, documents, data, information or other materials that You may upload to the Site or use in connection with the NHD REPORTS. You agree to indemnify, defend and hold JCP-LGS, its parents, subsidiaries, affiliates and their respective officers, directors, employees and agents, harmless from, and against, any and all claims, suits, damages, costs and expenses, including attorneys' fees, arising from Your breach of any provision of this TOS or Your use of the Site, or the NHD REPORTS, in a manner that is inconsistent with either this TOS, applicable law, the documentation or information accompanying or the documentation or information made available on the Site.
14. **Notices.** Any notice or other communication required or permitted under this TOS shall be sufficiently given if delivered in person or sent by one of the following methods:
  - a. Registered U.S. mail, return receipt requested (postage prepaid);
  - b. Certified U.S. mail, return receipt requested (postage prepaid); or
  - c. Commercially recognized overnight service with tracking capabilities.

Notices to JCP-LGS shall be sent to 4 First American Way, Santa Ana, California 92707, with a copy to JCP-LGS's counsel at the same address marked Attention: Legal Department.

Notices to You shall be sent to the address entered by You in the registration information. Notices or communications shall be deemed properly delivered as of the date personally delivered or sent by mail or overnight service.

15. **Conflicts.** If there is a conflict between the terms and conditions of this TOS and the terms and conditions of any NHD REPORT, the NHD REPORT controls.
16. **Links.** Where JCP-LGS provides hypertext links to other Internet websites on the Site, or in the NHD REPORTS, it does so for informational purposes only, and such links are not endorsements by JCP-LGS of any products or services on such sites. JCP-LGS shall not accept, and shall not incur, any liability for such products or services and makes no endorsement or approval of the same.
17. **Survival.** Upon the discontinuance of use of the Site by You, any and all liability limitations, confidentiality, warranty, indemnity, and claims provision(s), and any other provision that contemplates performance subsequent to the expiration or earlier termination of this TOS, shall survive the termination of the TOS. Upon termination of this TOS by either party, any amounts unpaid by You for outstanding NHD REPORTS shall be immediately due and payable.
18. **General.**
  - a. The interpretation and construction of this TOS, and all matters relating hereto, shall be governed by the laws of the State of California applicable to agreements executed and to be performed solely within such State. The parties hereby submit to the jurisdiction of, and waive any objection to, the venue of Orange County, California in any litigation arising out of this TOS, except as otherwise provided in the NHD REPORTS.
  - b. You may not assign this TOS or allow third parties, other than Your employees to use the Site without prior written consent of JCP-LGS.
  - c. JCP-LGS shall not be liable for any delay or failure in its performance of any of the acts required by this TOS when such delay or failure arises for reasons beyond JCP-LGS's reasonable control.
  - d. If a court of competent jurisdiction finds any provision of this TOS to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this TOS in all other respects shall remain valid and enforceable.