

# **White Mountain Association of Realtors Participant Data Access Agreement**

This AGREEMENT is made and entered into by White Mountain Association of Realtors (“WMAR”), with offices at 3320 Kay Road, Lakeside, Arizona 85929; the real estate brokerage firm identified as “Firm” on the signature page below (“Firm”); the Agents affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the “Agent Party”); and the individual or business association identified as “Consultant” on the signature page below, if any (“Consultant”).

## **DEFINITIONS**

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.  
Agent: Any person holding a real estate license in Arizona who is not a Participant but who is subject to a Participant’s supervision under the laws of Arizona.
2. Confidential Information: “Confidential Information” means information or material proprietary to a party or designated “confidential” by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all WMAR Data, except to the extent to which this Agreement and the WMAR Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that WMAR obtains from any third party that WMAR treats as proprietary or designates as Confidential Information, whether or not owned or developed by WMAR; and (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.
3. Data Interface: The transport protocols and data storage formats provided by WMAR for use by Firm, Agent Party, and Consultant; WMAR may modify the Data Interface in its sole discretion from time to time.
4. Firm-Related Persons: Consultant, if any, and employees of Firm who are not Agents or broker/managers.
5. Firm Internal Use: Any use of those portions of the WMAR Data relating to Firm’s own listings; and any use of those portions of the WMAR Data relating to listings of Participants other than Firm that exposes WMAR Data only to Firm-Related Persons and to Agents affiliated with Firm, subject to the WMAR Policies.
6. IDX: Use and display of portions of the WMAR Data under the IDX provisions of the WMAR Policies.
7. Participant: This term has the meaning given to it in the WMAR Policies. For purposes of this Agreement, “Participant” does not apply to participants of MLSs other than WMAR. Where applied in this Agreement to Participants other than Firm, “Participant” also includes Agents affiliated with those Participants for whom the Participants are responsible under the laws of the State of Arizona.

8. **Second Level Domain:** “Second Level Domain” has the meaning given to it in this paragraph. “URL” means a web address, including the “http://” and any material appearing after a slash in the address. “Domain Name” means a URL, less the “http://” and any material appearing to the right of the next slash (‘/’) in the address. (So for example, in the URL “Http://janesmith.abcrealty.com/homepage.html”, the Domain Name is “JANESMITH.ABCREALTY.COM”). “Top Level Domain” means the portion of the Domain Name to the right of the right-most period. (In the example, “COM”). “Second Level Domain” means that portion of a domain name to the left of the right-most period, up to the second period from the right, if any, plus the Top Level Domain. (In the example, “ABCREALTY.COM”). “Third Level Domain” means that portion of a domain name to the left of the second period from the right, if any, up to the third period from the right, if any, plus the Second Level Domain. (In the example, “JANESMITH.ABCREALTY.COM”).
9. **WMAR Data:** Data relating to real estate for sale, previously sold, or listed for sale, and to WMAR Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into WMAR’s databases by WMAR Participants and WMAR, or on their behalf.

#### **WMAR POLICIES:**

1. WMAR’s Bylaws, Policy Statements, and Rules & Regulations of the Multiple Listing Service, as amended from time to time, and any operating policies promulgated by WMAR.
2. WMAR’S OBLIGATIONS, WMAR grants to Firm and Agent Party a non-exclusive, worldwide license to make copies of, display, perform, and make derivative works of the WMAR Data, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement; any other use of the WMAR Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. WMAR retains all rights not expressly granted herein.
3. WMAR agrees to provide to Firm, Agent Party, and Consultant, during the term of this Agreement, (a) access to the WMAR Data via the Data Interface under the same terms and conditions WMAR offers to other WMAR Participants; (b) seven days’ advance notice of changes to the Data Interface; and (c) seven days’ advance notice of changes to the WMAR Policies. WMAR does not undertake to provide technical support for the Data Interface or the WMAR Data. The Data Interface, together with access to the WMAR Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or WMAR Data shall not constitute a default by WMAR under this Agreement.

#### **FIRM’S OBLIGATIONS**

**Firm and Agent Party shall comply with the WMAR Policies at all times. In the event of any perceived conflict between the WMAR Policies and this Agreement, the WMAR Policies shall govern.**

1. Firm shall use the WMAR Data obtained under this Agreement for Firm Internal Use, IDX, and VOW use only. Any other use is strictly prohibited. Firm and Agent Party shall not make the WMAR Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Agent Party may display the WMAR Data on

web sites only to the extent permitted by the WMAR Policies and then only on a site or sites resident at the second-level and third-level domain(s) indicated on the signature page and in Exhibit A of this agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

2. Firm and Agent Party acknowledge that ownership and use rights relating to copyrights in the WMAR Data are defined in the WMAR Policies or in the terms of the participant and subscriber agreements between WMAR Firm and Agent Party, or both. Firm and Agent Party shall not challenge or take any action inconsistent with WMAR's ownership of or rights in the WMAR Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.
3. If WMAR notifies Firm or Agent Party of a breach of the WMAR Policies or this Agreement and Firm or Agent Party does not immediately cure the breach, Firm and Agent Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with WMAR under Paragraph 10.
4. Firm and Agent Party shall pay the fees, if any, that WMAR customarily charges other WMAR Participants for data access. Firm and Agent Party acknowledge receipt of WMAR's current schedule of such fees, if any. WMAR may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Agent Party. Firm and Agent Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this agreement.
5. Firm is surety for Agent Party's and Consultant's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

### **CONSULTANT'S OBLIGATIONS**

1. Consultant shall immediately correct any breach of this Agreement or violation of the WMAR Policies within its control, whether committed by Firm, Agent Party, or Consultant, upon notice from WMAR.
2. Consultant acknowledges that (as among the parties to this Agreement) Firm and WMAR Possess all right, title, and interest in all copyrights in the WMAR Data. Consultant shall not challenge or take any action inconsistent with WMAR's and Firm's ownership of or rights in the WMAR Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.
3. Consultant shall not make the WMAR Data or the Confidential Information available to any third party, except on behalf of Firm and Agent Party and in a manner consistent with Firm's and Agent Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the WMAR Data, whether commercial or personal. In the event that Consultant provides services to Participants other than Firm (or to Agents affiliated with Firm other than the Agent Party), Consultant must enter separate contracts with WMAR. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant; and in the case of Agents, that each Agent Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph will result in WMAR terminating all of Consultant's access to the WMAR Data under this Agreement and all similar agreements. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.
4. Consultant warrants that any effort or use of the WMAR Data will not constitute patent

infringement of any third party. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

5. Consultant is surety for Firm's and Agent Party's obligations to pay fees under Paragraph 8. The provisions of the preceding sentence shall survive the expiration or other termination of this Agreement in perpetuity. Consultant shall notify WMAR within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

## **AUDITS OF COMPLIANCE**

WMAR may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Agent Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Agent Party's, and Consultant's compliance with this Agreement ("Audit"). WMAR may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Agent Party's, and Consultant's web sites and systems to ensure that WMAR Data is displayed in accordance with the WMAR Policies; using all features available to end users of Firm's, Agent Party's, and Consultant's systems that employ the WMAR Data; and posing as consumers to register and test services Firm, Agent Party, and Consultant make available to consumers using the WMAR Data. WMAR shall pay the costs it incurs, and the out-of-pocket costs Firm, Agent Party, and Consultant incur, as part of any Audit; provided, however, Firm or Agent Party shall be liable for all costs of any Audit that discloses that Firm, Agent Party, or Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

## **CONFIDENTIAL INFORMATION**

**The parties shall protect the Confidential Information with the same degree of care they take to protect their 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 or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.**

## **TERM AND TERMINATION**

1. The term of this Agreement begins on the date that WMAR signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in WMAR; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide IDX or VOW services to it; (f) with regard to any Agent Party, immediately upon any event that results in the Agent Party no longer being affiliated with Firm; (g) as provided in Paragraphs 27 and 30.

2. In the event Firm's privileges as a Participant (or Agent Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and WMAR subsequently reinstates those privileges, this Agreement shall automatically be reinstated if WMAR resumes its obligations under Paragraphs 2 and 3. In the event Firm, Agent Party, or Consultant breaches this Agreement and entitles WMAR to terminate under Paragraph 17, WMAR may in its sole discretion suspend its performance instead of terminating this Agreement. WMAR may make this election by notice to the other parties within three days after the initiation of the suspension. Firms, Agent Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, Firm, Agent Party, and Consultant shall make no further use of the WMAR Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Agent Party's rights under this Agreement are restored.

## GENERAL PROVISIONS

**Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of Arizona, without regard to its conflicts and choice of law provisions.

**Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

**WMAR's Remedies.** (a) Injunctive relief: Because of the unique nature of the WMAR Data and Confidential Information, Firm, Agent Party, and Consultant acknowledge and agree that WMAR would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate WMAR for a breach. WMAR is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Agent Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by WMAR, and without posting any bond. (b) Liquidated damages: Firm, Agent Party, and Consultant acknowledge that damages suffered by WMAR from access to the WMAR Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the WMAR Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to WMAR to enter into this Agreement, Firm, Agent Party, and Consultant agree that in the event Firm, Agent Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the WMAR Data or disclose the WMAR Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Agent Party, and Consultant shall be liable to WMAR for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Agent Party, and Consultant under this paragraph is joint and several.

Limitation of liability/exclusion of warranties. IN NO EVENT SHALL WMAR BE LIABLE TO FIRM, AGENT PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF WMAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL WMAR BE LIABLE TO FIRM, AGENT PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, AGENT PARTY, AND CONSULTANT HAVE PAID WMAR, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, AGENT PARTY, AND CONSULTANT ACKNOWLEDGE THAT WMAR PROVIDES THE WMAR DATA 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. WMAR SHALL NOT BE LIABLE TO FIRM, AGENT PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN

THE WMAR DATA, ANY FAILURE TO UPDATE THE WMAR DATA PROMPTLY, OR THE WMAR DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL.

WMAR makes no warranty, including those regarding title, availability, or no infringement, regarding trademarks licensed under this Agreement, if any.

1 **Dispute resolution; Attorney's fees.** In the event WMAR claims that Firm, Agent Party, or Consultant has violated the WMAR Policies, WMAR may, at its option, resolve such a claim according to the disciplinary procedures set out in the WMAR Policies, provided WMAR does not also base a claim that Firm, Agent Party, or Consultant has breached this Agreement on the same facts. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Arizona located in Navajo County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not

subject to WMAR's disciplinary procedures. If WMAR 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. If WMAR does not prevail in an action or proceeding to enforce or interpret this Agreement or any provision hereof, each party shall pay its own attorney's fees.

2 **Indemnification.** Subject to Paragraph 22, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. Consultant indemnifies WMAR, Firm, Salesperson Party, or customers of WMAR, Firm, or Salesperson Party, to whom Consultant provides a product or service using WMAR Data, against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from any third party claim of patent infringement. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

WMAR PROVIDES THE WMAR DATA 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. WMAR SHALL NOT BE LIABLE TO FIRM, AGENT PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE WMAR DATA, ANY FAILURE TO UPDATE THE WMAR DATA PROMPTLY, OR THE WMAR DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL.

WMAR makes no warranty, including those regarding title, availability, or no infringement, regarding trademarks licensed under this Agreement, if any.

3 **Dispute resolution; Attorney's fees.** In the event WMAR claims that Firm, Agent Party, or Consultant has violated the WMAR Policies, WMAR may, at its option, resolve such a claim according to the disciplinary procedures set out in the WMAR Policies, provided WMAR does not also base a claim that Firm, Agent Party, or Consultant has breached this Agreement on the same facts. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Arizona located in Navajo County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to WMAR's disciplinary procedures. If WMAR 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. If WMAR does not prevail in an action or proceeding to enforce or interpret this Agreement or any provision hereof, each party shall pay its own attorney's fees.

4 **Indemnification.** Subject to Paragraph 22, in the event a party breaches any provision of this

Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. Consultant indemnifies WMAR, Firm, Salesperson Party, or customers of WMAR, Firm, or Salesperson Party, to whom Consultant provides a product or service using WMAR Data, against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from any third party claim of patent infringement. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

### **White Mountain Association of Realtors Participant Data Access Agreement**

Under this Agreement, **FIRM AND AGENT PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Agent Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with WMAR and each such consultant. Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM AND AGENT PARTY NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Agents affiliated with Firm except the Agent Party. Consultant must enter into a new version of this Agreement with WMAR and each additional Participant or amend this Agreement with WMAR to add additional Agents affiliated with Firm as Agent Parties.

If Firm or Agent Party will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box. If this Agreement is for services to Firm only, and there is no Agent Party, Firm should cross out the Agent Party signature box.

# WHITE MOUNTAIN ASSOCIATION OF REALTORS®

## IDX Subscription Selection Form for RETS and BBO Data Access Feeds

I, (Please Print) \_\_\_\_\_ agree to pay, per the current WMAR Rate & Fee Schedule\*, the yearly data access feed fee for:

Please check the IDX Subscription choice you wish to subscribe to.

### WMAR REALTOR® Members:

### **Rates\***

- |   |                       |
|---|-----------------------|
| <input type="checkbox"/> BBO WebAPI Data Feed | \$100.00 One Time Fee |
| <input type="checkbox"/> IDX WebAPI Data Feed | \$100.00 Annually     |
| <input type="checkbox"/> VOW WebAPI Data Feed | \$500.00 Annually     |

### NON-MEMBER MLS ONLY SUBSCRIBER

- |   |   |
|---|---|
| <input type="checkbox"/> BBO WebAPI Data Feed | \$500.00 One-Time Fee \$100.00 Annually |
| <input type="checkbox"/> IDX WebAPI Data Feed | \$150.00 Annually                       |
| <input type="checkbox"/> VOW WebAPI Data Feed | \$500.00 Annually                       |

### ***Cancellations and Changes:***

- All cancellations and changes must be submitted to the WMAR Office **in writing**.
- Any changes submitted must be received prior to the start of the next service period.
- BBO, IDX, and VOW subscriptions do not prorate.
- No refunds are given once the current service period has begun.

Member Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Consultant Firm: \_\_\_\_\_ Consultant Name: \_\_\_\_\_

Consultant Email: \_\_\_\_\_