

# Southwest Multiple Listing Service, Inc. Participant Data Access Agreement

This AGREEMENT is made and entered into by Southwest Multiple Listing Service, Inc. ("SWMLS"), with offices at 1635 University Blvd NE, Albuquerque, New Mexico 87102; the real estate brokerage firm identified as "Firm" on the signature page below ("Firm"); the Salespersons affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the "Salesperson 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.

**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 SWMLS Data, except to the extent to which this Agreement and the SWMLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that SWMLS obtains from any third party that SWMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by SWMLS; (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims and evidence presented by any party in any arbitration under this Agreement. 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.

**Data Interface:** The transport protocols and data storage formats provided by SWMLS for use by Firm, Salesperson Party, and Consultant; SWMLS may modify the Data Interface in its sole discretion from time to time.

**Firm Internal Use:** Any use of those portions of the SWMLS Data relating to Firm's own listings; and any use of those portions of the SWMLS Data relating to listings of Participants other than Firm that exposes SWMLS Data only to Firm-Related Persons and to Salespersons affiliated with Firm, subject to the SWMLS Policies.

**Firm-Related Persons:** Consultant, if any, and employees of Firm who are not Salesperson Parties or broker/managers.

**Firm Valuation:** Use and display of portions of the SWMLS Data by Firm for Valuation purposes subject to the provisions of Exhibit B of this Agreement.

**IDX:** Use and display of portions of the SWMLS Data under the Internet Data Exchange provisions of the SWMLS Policies.

**Mobile Applications:** Any displays of IDX data authorized by SWMLS Policies and listed in Exhibit A that are not web sites. "Mobile Applications" does not include mass media display of SWMLS Data.

**Participant:** This term has the meaning given to it in the SWMLS Policies. For purposes of this Agreement, "Participant" does not apply to participants of MLSs other than SWMLS. Where applied in this Agreement to Participants other than Firm, "Participant" also includes Salespersons affiliated with those Participants for whom the Participants are responsible under the laws of the State of New Mexico

**Salesperson:** Any person holding a real estate license in New Mexico who is not a Participant but who is subject to a Participant's supervision under the laws of New Mexico.

**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".)

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

**SWMLS Policies:** SWMLS's Rules and Regulations, as amended from time to time, and any operating policies promulgated by SWMLS.

**Valuation:** An automated valuation model (AVM), broker price opinion (BPO), comparative (or comparable) market analysis (CMA) or similar product or service using SWMLS Data and possibly other data, provided it can fairly be characterized as a valuation of real property, and only to the extent permitted by the SWMLS Policies. An AVM need not include any human judgment or analysis.

**VOW:** Use and display of portions of the SWMLS Data under the Virtual Office Website (VOW) provisions of the SWMLS Policies.

## SWMLS'S OBLIGATIONS

2. SWMLS grants to Firm and Salesperson Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the SWMLS Data, and the right to sublicense the same to Consultant, 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 SWMLS 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. SWMLS retains all rights not expressly granted herein.

3. SWMLS agrees to provide to Firm, Salesperson Party, and Consultant, during the term of this Agreement, (a) access to the SWMLS Data via the Data Interface under the same terms and conditions SWMLS offers to other SWMLS Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the SWMLS Policies. SWMLS does not undertake to provide technical support for the Data Interface or the SWMLS Data. The Data Interface, together with access to the SWMLS 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 SWMLS Data shall not constitute a default by SWMLS under this Agreement.

## FIRM'S OBLIGATIONS

4. Firm and Salesperson Party shall comply with the SWMLS Policies at all times. In the event of any perceived conflict between the SWMLS Policies and this Agreement, the SWMLS Policies shall govern.

5. Firm and Salesperson Party shall use the SWMLS Data obtained under this Agreement for Firm Internal Use, Firm Valuation, IDX, and VOW

use only. Any other use is strictly prohibited. Firm and Salesperson Party shall not make the SWMLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Salesperson Party may display the SWMLS Data on web sites and Mobile Applications only to the extent permitted by the SWMLS Policies and then only on a site or sites resident at the Second Level and Third Level domain(s) and Mobile Applications 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.

6. Firm and Salesperson Party acknowledge that ownership and use rights relating to copyrights in the SWMLS Data are defined in the SWMLS Policies or in the terms of the participant and subscriber agreements between SWMLS Firm and Salesperson Party, or both. Firm and Salesperson Party shall not challenge or take any action inconsistent with SWMLS's ownership of or rights in the SWMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If SWMLS notifies Firm or Salesperson Party of a breach of the SWMLS Policies or this Agreement and Firm or Salesperson Party does not immediately cure the breach, Firm and Salesperson Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with SWMLS under Paragraph 10.

8. Firm and Salesperson Party shall pay the fees, if any, that SWMLS (or its shareholder associations/MLSSs) customarily charges other SWMLS Participants for data access. Firm and Salesperson Party acknowledge receipt of SWMLS's current schedule of such fees, if any. SWMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Salesperson Party. Firm and Salesperson Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Salesperson 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

10. Consultant shall immediately correct any breach of this Agreement or violation of the SWMLS Policies within its control, whether committed by Firm, Salesperson Party, or Consultant, upon notice from SWMLS.

11. Consultant acknowledges that (as among the parties to this Agreement) Firm and SWMLS possess all right, title, and interest in all copyrights in the SWMLS Data. Consultant shall not challenge or take any action inconsistent with SWMLS's and Firm's ownership of or rights in the SWMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

12. Consultant shall not make the SWMLS Data or the Confidential Information available to any third party, except on behalf of Firm and Salesperson Party and in a manner consistent with Firm's and Salesperson Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the SWMLS Data, whether commercial or personal. **In the event that Consultant provides services to Participants other than Firm, Consultant must enter separate contracts with SWMLS. 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 Salespersons, that each Salesperson Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in SWMLS terminating all of Consultant's access to the SWMLS 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.

13. Consultant warrants that any effort or use of the SWMLS 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.

14. Consultant shall pay the fees, if any, that SWMLS customarily charges other consultants for data access. Consultant acknowledges receipt of SWMLS's current schedule of such fees, if any. SWMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Consultant. Consultant shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

15. Consultant is surety for Firm's and Salesperson 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 SWMLS 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

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

17. 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

18. The term of this Agreement begins on the date that SWMLS 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 SWMLS; (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, VOW, or Valuation services to it; (f) with regard to any Salesperson Party, immediately upon any event that results in the Salesperson Party no longer being affiliated with Firm; (g) as provided in Paragraphs 28 and 31.

19. In the event Firm's privileges as a Participant (or Salesperson Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and SWMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if SWMLS resumes its obligations under Paragraphs 2 and 3. In the event Firm, Salesperson Party, or Consultant breaches this Agreement and entitles SWMLS to terminate under Paragraph 18, SWMLS may in its sole discretion suspend its performance instead of terminating this Agreement. SWMLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Salesperson 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, Salesperson Party, and Consultant shall make no further use of the SWMLS 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 Salesperson Party's rights under this Agreement are restored.

## GENERAL PROVISIONS

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

21. **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.

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

23. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL SWMLS BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF SWMLS 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 SWMLS BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, SALESPERSON PARTY, AND CONSULTANT HAVE PAID SWMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, SALESPERSON PARTY, AND CONSULTANT ACKNOWLEDGE THAT SWMLS PROVIDES THE SWMLS 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. SWMLS SHALL NOT BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE SWMLS DATA, ANY FAILURE TO UPDATE THE SWMLS DATA PROMPTLY, OR THE SWMLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. SWMLS makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.

24. **Dispute resolution; Attorney's fees.** In the event SWMLS claims that Firm, Salesperson Party, or Consultant has violated the SWMLS Policies, SWMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the SWMLS Policies, provided SWMLS does not also base a claim that Firm, Salesperson Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any controversy or claim to which Consultant is not a party arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of New Mexico located in Bernalillo County Metro Court 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 SWMLS's disciplinary procedures or to arbitration. 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.

25. **Indemnification.** Subject to Paragraph 23, 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 SWMLS, Firm, Salesperson Party, or customers of SWMLS, Firm, or Salesperson Party, to whom Consultant provides a product or service using SWMLS 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.

26. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed 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.

27. **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.

28. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

29. **Entire Agreement; Amendment.** Subject to SWMLS 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. SWMLS may amend this agreement by providing 30 days' advance notice of the amendment to all other parties; if any party continues to use the Data Interface or the SWMLS Data after the expiration of the 30-day notice period, that party will be deemed to have agreed to the terms as amended.

30. **Relationship of the Parties.** The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of SWMLS or have any authority to make any agreements or representations on the behalf of SWMLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

31. **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, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

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# Southwest Multiple Listing Service, Inc. Participant Data Access Agreement

Under this Agreement, **FIRM AND SALESPERSON PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Firm or Salesperson Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with SWMLS and each such consultant.

Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM AND SALESPERSON PARTY NAMED HERE.** Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with salespersons affiliated with Firm except the Salesperson Party. Consultant must enter into a new version of this Agreement with SWMLS and each additional Participant or amend this Agreement with SWMLS to add additional Salesperson Parties affiliated with Firm as Salesperson Party Parties.

If Firm or Salesperson 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 Salesperson Party, Firm should cross out the Salesperson Party signature box.

**This Agreement is for the following uses (check all that apply):**

**IDX**  **VOW**  **Firm Internal Use**  **Firm Valuation**

**If IDX, specify delivery method:**  **Smart Frame**  **RETS or API**

<p><b>SWMLS:</b> Southwest Multiple Listing Service, Inc.</p> <p>_____ Signature</p> <p>_____ Name</p> <p>Date: _____ (effective date of this Agreement)</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____ Phone: _____ Email: _____</p>	<p><b>CONSULTANT</b></p> <p>_____ Consultant name</p> <p>_____ Signature of owner or officer</p> <p>_____ Name of owner or officer</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p>
<p><b>FIRM</b></p> <p>_____ Firm name</p> <p>_____ Signature of owner or officer</p> <p>_____ Name of owner or officer</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p> <p>_____ Second or Third Level Domain or Mobile Application:</p> <p><input type="checkbox"/> <b>IDX</b> <input type="checkbox"/> <b>VOW</b> <input type="checkbox"/> <b>Firm Valuation</b> (If more than one will be used, specify each in Exhibit A.)</p>	<p><b>SALESPERSON PARTY</b></p> <p>(If there is more than one, have each named and sign on Exhibit A.)</p> <p>_____ Salesperson Party name</p> <p>_____ Signature of Salesperson Party</p> <p><b>Contact for notices and operations matters</b></p> <p>Name: _____ Phone: _____ Email: _____ Mailing: _____</p> <p>_____ Second or Third Level Domain or Mobile Application:</p> <p><input type="checkbox"/> <b>IDX</b> <input type="checkbox"/> <b>VOW</b> <input type="checkbox"/> <b>Firm Valuation</b> (If more than one will be used, specify each in Exhibit A.)</p>



# Southwest Multiple Listing Service, Inc. Participant Data Access Agreement

## Exhibit A – Additional Requirements

1. **Additional Domains and Mobile Applications.** In addition to the Second and Third Level Domains specified on the signature page Firm, Salesperson Party, and Consultant may display SWMLS Data subject to the terms of this Agreement at the following Second and Third Level Domains and Mobile Applications (attach additional pages if necessary):

_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW	<input type="checkbox"/> Firm Valuation

2. **Additional Salesperson Party Parties:** If there are two or more Salesperson Party Parties, each Salesperson Party after the first is identified by name here, and each must sign this Agreement. Each Salesperson Party listed here consents to SWMLS making communications and notices under this Agreement to Firm only. (Attached additional pages if necessary.)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

# Southwest Multiple Listing Service, Inc. Participant Data Access Agreement

## Exhibit B – Firm Valuation Data Use Requirements

This Exhibit governs any use of the SWMLS Data licensed under this Agreement for use in Firm Valuations.

B.1. Firm may provide Firm Valuation services to Registrants with whom Firm establishes a broker-customer or broker-client relationship, if such a relationship is required and defined by state law; including completion of all actions required by state law in connection with providing real estate brokerage services to Registrants. Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements necessary for performing Valuation services, and Consultant may facilitate such actions where permitted by state law. Where state law does not require the establishment of a broker-customer or broker-client relationship for providing Firm Valuation services, the transaction must still occur between the Firm and Registrant, but may be facilitated by Consultant.

B.2. Registrants may include financial institutions, mortgage lenders, mortgage bankers, mortgage brokers, mortgage loan servicers, title or mortgage insurers, insurers of payments owed to owners of mortgage backed securities, Government Sponsored Entities (GSEs), or such other businesses or institutions having an interest in automated reports on property valuation or market conditions.

B.3. Firm, or Consultant on behalf of Firm where permitted by state law, must obtain the name of and a valid e-mail address for each Registrant that is an individual and the name of and a valid email address for each authorized user if the Registrant is an entity. Each Registrant must agree to the terms of use described in Section B.4 of this Exhibit or substantially similar terms of use. Firm must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use. Firm may utilize Consultant's technology platform to facilitate and fulfill its obligations under Sections B.3, and B.4, and B.5.

B.4. Firm, or Consultant on behalf of Firm where permitted by state law, shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms-of-use agreement or other form of written contract that provides at least the following:

B.4.1: that Registrant acknowledges entering into a lawful consumer-broker relationship with Firm, if such a relationship is required by state law, or that Registrant acknowledges purchasing the Firm Valuation from Firm, if a consumer-broker relationship is not required by state law.

B.4.2: that all information obtained by Registrant from Firm Valuation is intended only for Registrant's business purposes related to (1) mortgage loan foreclosure or default risk assessment, or the review of the quality or accuracy of real estate appraisals or other valuations (2) use in evaluating or engaging in a potential financing or other transaction relating to the subject property, (3) distribution to an actual or potential borrower of funds the repayment of which is secured by a mortgage lien on the subject property, or to the borrower's financial or legal advisors, (4) the purchase or sale of mortgage servicing rights, (5) the purchase or sale of performing, re-performing or non-performing loans, or (6) the purchase, sale or rental of properties whether property is intended to be used as a residence or for investment and whether the purchaser or seller is an individual or institution.

B.4.3: except as provided in Section B.4.2, that Firm Valuations may not be used for any other purposes, including display on publically accessible websites, and that Registrant shall not resell Firm Valuation and will not copy, redistribute, or retransmit or otherwise use any of the SWMLS Data provided in Firm Valuation.

B.4.4: that Registrant acknowledges, as between the parties, SWMLS's ownership of and the validity of the SWMLS's copyright in the SWMLS Data.

B.5. The terms-of-use agreement described in Section B.4 shall also expressly authorize SWMLS and other Participants or their duly authorized representatives to access and review the form used by Firm for any Firm Valuation for the purposes of verifying compliance with SWMLS Policies and monitoring use of Participants' listings by the Firm Valuation. To the extent that Registrant breaches the terms-of-use agreement described in Section B.4, Firm and Consultant shall be liable to SWMLS as if Firm or Consultant had breached the terms-of-use agreement itself. The agreement may also include such other provisions as may be agreed to between Firm and Registrant.

B.6. Firm may utilize Consultant's technology platform and services to facilitate the fulfillment of Firm Valuations services to Registrants, subject to and as permitted by state law.

B.7. Firm's right to use SWMLS Data in any Firm Valuation is subject to the applicable office of Firm



being a Participant in SWMLS. In other words, an office of Firm that is not a Participant of SWMLS may not use SWMLS Data in any Valuation provided to any third party.

B.8. Firm must protect the SWMLS Data from misappropriation by employing reasonable efforts to monitor for and prevent scraping or other unauthorized accessing, reproduction, or use of the SWMLS Data and Valuations.

B.9. Firm must make a copy of any type of Firm Valuation sold by Firm available to SWMLS for purposes of verifying compliance with this Agreement and SWMLS Policies.

B.10. SWMLS shall exclude from the Data Interface all "User Confidential Data." "User Confidential Data" consists of those portions of SWMLS Data that Participants are prohibited from providing to customers orally and by all other delivery mechanisms. In the event that SWMLS includes User Confidential Data in the Data Interface, Firm and

Consultant shall ensure that it is not disclosed to Registrants or any other third party.

B.11. Firm shall maintain an audit trail of Firm's delivery to Registrant of all Firm Valuations and make that information available to SWMLS if SWMLS has reason to believe that any Registrant has caused or permitted a breach of the terms of use or comparable agreement.

B.12. Firm shall cause to be placed on any Firm Valuation or terms of use a notice indicating that the SWMLS Data displayed on the Firm Valuation is not guaranteed accurate by the SWMLS or other Participants.

B.13. In any display of SWMLS Data to any Registrant, Firm shall display the copyright notice of SWMLS or substantially similar. The copyright notice should take one of the following forms: "Copyright 20XX Southwest Multiple Listing Service, Inc." or "© 20XX Southwest Multiple Listing Service, Inc.". Firm shall replace "20XX" with the current year as of January 1 each year.