

## **INTERNET DATA EXCHANGE (“IDX”) LICENSING AGREEMENT**

This Agreement, known as the Internet Data Exchange ("IDX") Licensing Agreement (the "Agreement") by and between West Penn Multi-List, Inc., a Pennsylvania corporation, having its principal place of business at 8980 Perry Highway, Pittsburgh, Pennsylvania 15237 ("WPML") and \_\_\_\_\_, a WPML Broker/Subscriber, having a principal place of business at \_\_\_\_\_ ("Broker/Subscriber").  
Effective date \_\_\_\_\_.

### BACKGROUND/RECITALS

(A) WPML and participating Broker/Subscriber to the IDX Program ("The Program") expressly agree to the following material conditions to participate in the IDX Program:

(i) IDX participating Broker/Subscriber shall be a Subscriber in good standing as defined by the WPML Rules and Regulations existing at the time; and

(ii) Each IDX participating Broker/Subscriber must currently be a party to a signed IDX Agreement to be eligible to participate; and

(iii) The WPML Board of Directors may establish and IDX participating Broker/Subscribers agree to abide by Rules and Regulations to participate in the program. These Rules and Regulations may be amended at the discretion of the WPML Board of Directors.

(B) Brokers/Subscribers participating in the IDX program wish to obtain and the WPML agrees to provide data to participant's website, including the listing data of other Brokers/Subscribers participating in the WPML IDX Program. The IDX Program has been developed to provide a process under which participating Brokers/Subscribers give permission to each other to display their listings on each other's websites.

(C) Individual listings and listing data are recognized as owned by the Listing Broker/Subscriber. WPML retains a copyright in the compilation of listing data.

(D) Participating Broker/Subscriber desires to obtain and WPML grants a non-exclusive license to use the IDX service mark ("the Mark"), copyrighted documentation, and know-how relating to the Program (the "Material") for Broker/Subscriber's participation in the IDX Program.

(E) Participating Broker/Subscriber may wish to engage individuals other than employees of the Broker/Subscriber ("Website Vendors") to perform data downloading, manipulation, formatting, and/or programming, and web design. However, if non-employee Website Vendors are retained, the authorized representative of the Website Vendor is required to execute this Agreement on behalf of the Website Vendor before the Agreement becomes binding.

## TERMS AND CONDITIONS

The above-referenced recitals are material provisions of this Agreement.

In consideration of the above recitals and the promises set forth in this Agreement, the parties agree as follows:

(1) **Grant of License.** WPML grants to Broker/Subscriber a non-exclusive, non-transferable, royalty-free license to use the Mark and Material to establish the Program for the Broker/Subscriber's participation in the IDX Program. Broker/Subscriber may not transfer, assign, or sublicense the license, without prior written consent of WPML. WPML may in the future establish fees for the license at the discretion of the WPML Board.

(2) **Quality Control.** Broker/Subscriber may only use the Program Mark while participating in the IDX Program. The Mark must be used in the form provided by WPML and only in connection with the Program and no other goods or services. Upon request by WPML, Broker/Subscriber will provide WPML with samples of materials using the Mark to verify proper use of the Mark. Broker/Subscriber will comply with all applicable laws and regulations when using the Mark.

(3) **Ownership.** WPML retains all ownership rights, including rights defined by trademark and copyright laws, in the Mark, Material, and the Program. Brokers/Subscriber and/or Listing Broker retains all ownership rights in their individual listings used in the program.

(4) **Infringement.** Broker/Subscriber will promptly notify WPML if Broker/Subscriber becomes aware of a third party infringing WPML's proprietary rights in the Mark, Material, and Program. WPML may, in its sole discretion, bring suit against any alleged infringer. Broker/Subscriber retains all rights to bring suit or join in any suit and recovery arising from the misuse of their listings.

(5) **Term and Termination.** The parties may terminate the license at any time by mutual written agreement. WPML may terminate the License in the event of a breach of this Agreement by Broker/Subscriber that is not corrected within 30 days of receiving written notice of the breach. Upon termination, Broker/Subscriber will immediately cease all use of the Mark and return to WPML all Material related to the Program.

(6) **Indemnity.** Broker/Subscriber and/or Website Vendor will indemnify and defend WPML against all losses, damages, and expenses, including attorneys' fees, incurred as a result of or related to Broker/Subscriber's and/or Website Vendor's use of the license.

(7) **Miscellaneous.**

(7.1) **Notice.** Any notice required or permitted to be given under this Agreement is sufficient if mailed by registered mail, postage prepaid, addressed to the party at the above addresses, or at such other address as may be furnished in writing to the notifying party.

(7.2) **Governing Law and Venue.** This Agreement is governed by and construed in all respects in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of law principles. The parties agree and submit to personal jurisdiction in Allegheny County, Pennsylvania, for purposes of any action or proceeding brought to enforce or construe the terms of this Agreement.

(7.3) **Headings.** The section headings in this Agreement are for convenient reference and are not a part of this Agreement.

(7.4) **Waiver.** No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing.

(7.5) **Amendments.** This Agreement can be modified or amended only by written agreement signed by the parties, including Website Vendor, if any.

(7.6) **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the Term, the provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision has never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

(7.7) **Counterparts.** This Agreement may be executed manually, electronically, or via fax and in one or more counterparts.

(7.8) **Construction.** If an ambiguity or question of intent arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Agreement.

(7.9) **Relationship of the Parties.** Broker/Subscriber and WPML are each independent organizations. Neither party nor their respective employees and representatives can or shall make any agreement, warranties, representations, promises, or covenants on behalf of or for the other party or any third party, unless approved in advance in writing by the other party. This Agreement shall not be construed as a partnership or franchise for any purpose or reason, whether implied, expressed or statutory, nor is this Agreement to be construed as creating an agency relationship.

(7.10) **Complete Agreement.** This Agreement contains the complete agreement between the parties concerning the subject matter and supersedes all prior understandings, letters of intent, proposals, or agreements, and all prior communications between the parties related to the IDX Agreement. No representation, warranty, promise, inducement, or statement of intention has been made by either party which is not embodied in this Agreement. However, WPML retains the right to implement, and Broker/Subscriber and Website Vendor agree to abide by rules to carry out, the IDX Program at the discretion of the WPML Board. Violations of these rules may be subject to fines/penalties at the discretion of the WPML Board.

(8) **Confidential Information.**

(8.1) **Definition.** "Confidential Information" is information or material proprietary to WPML or designated "confidential" by WPML and not generally known to the public that Broker/Subscriber and/or Website Vendor may obtain knowledge of or access to as a result of access under this Agreement.

Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether in oral, visual, audio, written, or other form):

- a. all WPML data;
- b. all documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models, information;

- c. software, source code, object code, diagrams, flow charts;
- d. techniques, procedures; and
- e. IP addresses, access codes, and passwords.

(8.2) **Exceptions.** The Confidential Information does not include information that:

- a. is in the public domain at the time of disclosure;
- b. is known to Broker/Subscriber at the time of disclosure;
- c. is used or disclosed by Broker/Subscriber with the prior written consent of WPML;
- d. becomes known to Broker/Subscriber from a source other than WPML without breach of this Agreement by Broker/Subscriber and provided that such source is not known by Broker/Subscriber to be bound by a confidentiality agreement with WPML; or
- e. is required to be disclosed by judicial order or other compulsion of law, provided that the Broker/Subscriber provides to WPML prompt notice of any such order.

(8.3) **Third-Party Information.** Confidential Information also includes any information that WPML obtains from any third party that WPML treats as proprietary or designates as Confidential Information, whether or not owned or developed by WPML.

(9) **Restrictions on Use.**

(9.1) **Scope of Use.** Broker/Subscriber and/or Website Vendor will use or access the Confidential Information only as required to perform the services, and Broker/Subscriber and/or Website Vendor will not use its access or the Confidential Information for any other purpose. Broker/Subscriber and/or Website Vendor will employ measures to protect the Confidential Information from disclosures at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care.

(9.2) **Unauthorized Uses.** Broker/Subscriber and/or Website Vendor will not make copies of the Confidential Information. Broker/Subscriber and/or Website Vendor will not directly or indirectly disclose, display, provide, transfer, or otherwise make available the Confidential Information to any person or entity, unless Broker/Subscriber and/or Website Vendor has received prior written consent from WPML to do so. At no time and under no circumstances will Broker/Subscriber and/or Website Vendor

reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. Broker/Subscriber and/or Website Vendor will not incorporate the Confidential Information into any other work or product.

(9.3) **No Third-Party Access.** Only Broker/Subscriber and/or Website Vendor's own employees will access the Confidential Information. Broker/Subscriber and/or Website Vendor will not provide access to the Confidential Information to third parties, including consultants or independent contractors, without prior written consent from WPML. If WPML grants consent, Broker/Subscriber and/or Website Vendor will execute an agreement with the third party that imposes at least as strict a confidentiality obligation on the third party as that imposed by this Agreement on the Broker/Subscriber and/or Website Vendor.

(9.4) **Location Restriction.** Broker/Subscriber and/or Website Vendor will not remove the Confidential Information from its principal place of business without WPML's prior written consent. In the event WPML grants consent, Broker/Subscriber and/or Website Vendor is not relieved of any of its obligations under this Agreement.

(10) **Termination and Return of Materials.** Within five (5) days of receipt of notice of termination by WPML, Broker/Subscriber and/or Website Vendor will return to WPML all Confidential Information and all other materials provided by WPML to the Broker/Subscriber and/or Website Vendor. Broker/Subscriber and/or Website Vendor will also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of WPML, an Officer of the Broker/Subscriber and/or Website Vendor will certify in writing that all materials have been returned to WPML and all magnetic or computer data have been destroyed.

(11) **Remedies.** Because of the unique nature of the Confidential Information, Broker/Subscriber and/or Website Vendor acknowledges that WPML would suffer irreparable harm in the event that Broker/Subscriber and/or Website Vendor breaches its obligation under this Agreement, and that monetary damages would be inadequate to compensate WPML for a breach. WPML is entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Broker/Subscriber and/or Website Vendor, without showing or proving any actual damages sustained by WPML.

(12) **URL (Web Address)**. Subscriber shall designate below the URL where the IDX data will be displayed and further designate for each such URL whether the URL (web address) is owned by the Subscribing Broker or an Agent. The URL information is to be updated by providing written notice to the WPML Office promptly upon any change in the web address.

The parties have executed this Agreement as of the date first written above.

**WEST PENN MULTI-LIST, INC.**

**BROKER/SUBSCRIBER**

By: \_\_\_\_\_  
Its Authorized Representative

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**WEBSITE VENDOR**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

**COMPANY NAME:** \_\_\_\_\_  
**(Please Print)**

**WEST PENN MULTI-LIST OFFICE I.D. #** \_\_\_\_\_

**URL for IDX Display:** \_\_\_\_\_ **Circle One: Agent/Broker**