

**POCONO MOUNTAINS ASSOCIATION OF REALTORS®**  
**RECIPROCAL LISTING APPLICATION**

Limited Entry of 4 (Four) Listings Per Calendar Year at \$50.00 per listing entry.

MLS Access for listing insertions for REALTOR® members in Good Standing with their Association, but that are not members of PMAR.

I hereby submit the following information for your consideration:

Name as Shown on License \_\_\_\_\_  
Home Mailing Address \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Applicant Email Address \_\_\_\_\_  
Cell Phone Number: (\_\_\_\_\_) \_\_\_\_\_ Cell Phone Provider: \_\_\_\_\_  
NRDS Number: \_\_\_\_\_ PA License Number: \_\_\_\_\_  
Participant (Broker's) Name: \_\_\_\_\_  
Participant's Email Address: \_\_\_\_\_  
Participant's NRDS Number: \_\_\_\_\_ Participant's PA License Number: \_\_\_\_\_  
Office Name \_\_\_\_\_  
Office Address \_\_\_\_\_  
Office Phone: \_\_\_\_\_ ext. \_\_\_\_\_ Office Fax: \_\_\_\_\_  
Participant (Broker's) Office License Number: \_\_\_\_\_  
Office Email Address: \_\_\_\_\_

**Please indicate the Association you hold Primary membership with:** \_\_\_\_\_  
**\*PMAR Staff will verify that you are a member in good standing with your Primary Association.**

I understand that providing above my mailing address(es), email address(es), and telephone number(s), I consent to receive communications sent from the POCONO MOUNTAINS ASSOCIATION OF REALTORS®, PENNSYLVANIA ASSOCIATION OF REALTORS®, and the NATIONAL ASSOCIATION OF REALTORS® via U.S. mail, email, telephone, text or facsimile at those number(s)/location(s). **Initial:** \_\_\_\_\_

I agree as a condition of participation in the PMAR MLS to abide by all the relevant PMAR Bylaws, MLS Rules and Regulations, and other obligations of participation including payment of fees. I further agree to be bound by the Code of Ethics on the same terms and conditions as PMAR Association members, as established in the Code of Ethics and Arbitration Manual, including the obligation to submit to ethics hearings and the duty to arbitrate contractual disputes with other REALTORS® in accordance with the established procedures of the Association. I am in receipt of the PMAR Bylaws and MLS Rules and Regulations, and I understand that a violation of the PMAR Bylaws, Rules and Regulations, or the Code of Ethics may result in the termination of my MLS access/entry privileges, and that I may be assessed an administrative processing fee not to exceed \$500.00 (Five Hundred) dollars, which may be in addition to any disciplinary action including any fines, fees, or cost that may be imposed by PMAR. **Initial:** \_\_\_\_\_

**PMAR MLS User Information**

**The MLS Coordinator will contact you to provide your user access information.**

**The Pocono FlexMLS address is [poc.flexmls.com](http://poc.flexmls.com)**

**PLEASE NOTE: ACTIVATION OF MLS SERVICES CAN TAKE UP TO 72 HOURS OF RECEIPT BY THE MLS COORDINATOR.**

**WE REQUIRE A COPY OF YOUR PA REAL ESTATE LICENSE AND DRIVERS LICENSE TO BE SUBMITTED WITH THIS APPLICATION.**

\_\_\_\_\_  
SIGNATURE OF APPLICANT (SUBSCRIBER)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF BROKER (PARTICIPANT)

\_\_\_\_\_  
DATE

Please make checks payable to PMAR in the amount of \$50 (Fifty) dollars per listing. There is a \$40.00 (Forty) dollar returned check processing fee for all returned checks.

**(PMAR Administrative Use Only)**

**Member Name: First** \_\_\_\_\_ **Middle** \_\_\_\_\_ **Last** \_\_\_\_\_

**Office Code:** \_\_\_\_\_ **Office NRDS #:** \_\_\_\_\_

**RE License #:** \_\_\_\_\_ **Member NRDS#** \_\_\_\_\_

**Good Standing verified with Primary Association:** \_\_\_\_\_

**Payment Processed:**  
(if paid via credit card, please include last 4 digits of the card)

**Listing 1 :** \_\_\_\_\_ **Listing 2:** \_\_\_\_\_ **Listing 3:** \_\_\_\_\_ **Listing 4:** \_\_\_\_\_

**Entered in Quickbooks:**

**Listing 1 :** \_\_\_\_\_ **Listing 2:** \_\_\_\_\_ **Listing 3:** \_\_\_\_\_ **Listing 4:** \_\_\_\_\_

**MLS Coordinator Use:**

**Listing 1 :** \_\_\_\_\_ **Listing 2:** \_\_\_\_\_ **Listing 3:** \_\_\_\_\_ **Listing 4:** \_\_\_\_\_

**MLS USER ID**

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**MLS Coordinator Use:**

Subscriber contacted: \_\_\_\_\_

\_\_\_\_\_

# Pocono Mountains Association of REALTORS®

## Participant Agreement

This AGREEMENT is made and entered into by Pocono Mountains Association of REALTORS® (“PMAR”), with offices at 2214 West Main Street, Stroudsburg, PA 18360; and \_\_\_\_\_ (“Firm Participant”), with offices at \_\_\_\_\_.

### DEFINITIONS AND USAGE.

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below.

**Individual Participants:** With regard to each office of Firm Participant, the individual responsible for Firm Participant’s conduct under PMAR Policies that is a “participant” as that term is defined in the PMAR Policies.

**Other Participants and Subscribers:** All Participants and Subscribers of PMAR not party to this Agreement.

**Participant Compilation Contribution or “PCC.”** All selection, coordination, and arrangement by Subscribers of the of listing information submitted, contributed, or input in the PMAR System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the PMAR System. PCC does not include original text or photographs.

**Participant Contribution:** All data that the Subscribers submit, contribute, or input in the PMAR System, including text, photographs, images, and other materials, in any form now known or hereafter discovered, except the PCC.

**PMAR Affiliates:** PMAR Affiliates means PMAR and its officers, directors, employees, agents, representatives, licensors and shareholders.

**PMAR Database:** All data available to Firm Participant on the PMAR System, including the Participant Contribution and all other text, binary, and photographic image data, in any form now known or hereafter discovered.

**PMAR Policies:** PMAR’s then current bylaws, rules and regulations, and policies and procedures adopted by PMAR’s board of directors or authorized delegates, as PMAR amends them from time to time.

**PMAR Service:** The services PMAR provides to Firm Participant under this Agreement and similar services PMAR provides to third parties under similar agreements, including any access or license to the PMAR Software, the PMAR Database, and the PMAR System.

**PMAR Software:** PMAR’s proprietary web browser interface(s) to the PMAR System.

**PMAR System:** The aggregate of all hardware and telecommunications systems that PMAR maintains, or that PMAR contractors maintain on its behalf, in order to make access to the PMAR Database available to Firm Participant.

**Saved Information:** Information that Subscribers store in the PMAR System for their own later use that is not intended by them to be available to Other Participants and Subscribers, including client prospect and contact information.

**Schedule of Fees:** PMAR’s document that establishes the fees for PMAR Service.

**Subscribers:** Firm Participant’s employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

2. **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

(a) Wherever the term “including” is used, it means “including, but not limited to.”

(b) The singular and plural numbers and masculine, feminine, and neuter genders of words are fully interchangeable.

(c) Wherever the term “law” is used, it means all statutes, regulations, and case law, both state and federal, as they are amended. Without limiting the generality of the foregoing, “law” expressly includes all state and federal fair housing statutes and regulations.

### PMAR’S OBLIGATIONS.

3. Subject to the terms and conditions of this Agreement and the PMAR Policies, PMAR shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the PMAR service by virtue of this Agreement or another license agreement; and Individual Participants for which Firm Participant is responsible shall have all rights and obligations of a participant in PMAR as set forth in the PMAR Policies. The user ID and password will provide Individual Participants access to all data and functions in the PMAR Service to which Individual Participants are entitled under the PMAR Policies. PMAR makes no warranties, however, that the PMAR Service will be available at all times.

### FIRM PARTICIPANT ACKNOWLEDGMENTS.

4. **Modifications to service.** PMAR may, but is not required to, modify the PMAR Service, including removing information and making additional information available, and adding and removing system functions. Certain products and services made available in conjunction with the PMAR Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control.** PMAR is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the PMAR Database or the Participant Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, PMAR may take any steps necessary in its judgment, including deleting the Participant Contribution or portions thereof, to avoid or remedy any violation of law, breach of the PMAR Policies or infringement of intellectual property right. Additionally, PMAR shall have the right to alter and/or remove metadata and copyright management information contained in the Participant Contribution.

6. **Conditions of service.** Firm Participant must at all times have an Individual Participant designated for each office. Firm Participant shall ensure that at all times Individual Participants for which Firm Participant is responsible under this Agreement satisfy the prerequisites for participation in the PMAR Service. The prerequisites are set out in the PMAR Policies; at present, they include a requirement that Individual Participants either (a) hold a real estate broker’s license, be actively engaged in real estate brokerage, and offer and receive offers of compensation from other brokerage firms; or (b) be licensed or certified by an appropriate regulatory agency to engage in the appraisal of real property. Individual Participants must maintain active membership in a REALTOR® association at all times during the term of this Agreement. Subscribers may enter and retrieve active listing information on the PMAR Service only if Firm Participant offers compensation to or accepts compensation from other principal brokers.

7. **Saved Information.** Saved Information may not always be available to Firm Participant and may become available to unauthorized persons. PMAR is not liable for unauthorized access to or loss of Saved Information. Firm Participant is responsible for retention of any

information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

8. **Disclosure to third parties.** PMAR reserves the right to distribute to third parties certain information about Firm Participant, including Firm Participant's and Individual Participants' names and business addresses, phone numbers and email addresses. PMAR reserves the right to distribute to third parties aggregated information about Firm Participant's, Individual Participants, and Other Participants' and Subscribers' use of the PMAR Service, but not about Firm Participant's or Individual Participants' use specifically.

9. **Disclosure to government.** Firm Participant acknowledges that PMAR may provide government agencies access to the PMAR Service at any time in PMAR's sole discretion.

10. **Priority of agreements.** Firm Participant must enter into this Agreement before any Subscriber may obtain access to the PMAR Service.

11. **If Firm Participant is an appraisal firm,** Firm Participant acknowledges that certain information in the PMAR Database, including information about listings currently for sale, may be withheld from Firm Participant and Individual Participants pursuant to the PMAR Policies.

12. **IDX and VOW data access subject to separate agreement.** Firm Participant acknowledges that access to PMAR's IDX or VOW database and data feeds can occur only subject to a separate written agreement between PMAR, Firm Participant and Subscriber, as applicable.

## FIRM PARTICIPANT'S OBLIGATIONS.

13. **Use limited.** Firm Participant shall use the PMAR Service solely for the purpose of selling, listing, leasing, valuing, and appraising real estate, strictly as permitted by the PMAR Policies. Except as expressly provided in this Agreement and the PMAR Policies, Firm Participant shall not copy, create derivative works of, distribute, perform, or display the PMAR Service or any part of it, except the Participant Contribution.

14. **Confidentiality.** Firm Participant shall maintain the confidentiality of its user ID and password. PMAR issues each Subscriber a separate ID and password, and Participant must not facilitate sharing of passwords among Subscribers. Firm Participant shall ensure that the Subscribers maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscribers obtains access to the PMAR Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the PMAR Database, and the PMAR System, Firm Participant shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the PMAR Policies. Firm Participant may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, the disclosing Firm Participant first gives reasonable notice to PMAR to permit PMAR to seek a protective order.

15. **Equipment.** Firm Participant shall acquire and maintain all personal computers, modems, data connections, and computer software, other than the PMAR Software, necessary for Participant's use of the PMAR Service.

16. **Participant Contribution.** With regard to any Subscriber making a Participant Contribution to the PMAR Service, Firm Participant warrants that the information submitted complies with the PMAR Policies in all respects, including with regard to (a) required data fields; (b) format of submission; (c) permitted and required listing types; and (d) procedures for submission. Firm Participant warrants that the Participant Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation or proceeding pending or threatened with respect to the Participant Contribution.

17. **Subscriber agreements.** Firm Participant shall ensure that each Subscriber who will have access to the PMAR System or PMAR Database, enters into a Subscriber agreement with PMAR. Firm Participant is liable for all fees due under each Subscriber agreement.

18. **Subscriber supervision.** Firm Participant shall ensure that all Subscribers comply at all times with the PMAR Policies and with applicable laws. Firm Participant is liable for any Subscriber's breach of any agreement between the Subscriber and PMAR relating to the PMAR Service or violation of any of the PMAR Policies as if Firm Participant had committed it.

19. **List of Subscribers.** Firm Participant shall ensure PMAR has a current list of all of Subscribers; Firm Participant shall inform PMAR in writing of any change in the Subscribers within 24 hours of the change.

20. **Accurate information.** Firm Participant warrants that the Subscribers have used and will use reasonable care to ascertain the accuracy of the Participant Contribution and its compliance with all laws. Firm Participant shall ensure that any changes to the Participant Contribution are made on the PMAR System within such time as PMAR shall provide in the PMAR Policies. Pursuant to the PMAR Policies, Firm Participant shall provide to PMAR all documentation PMAR requests of Firm Participant to ascertain Firm Participant's compliance with this Agreement.

## INTELLECTUAL PROPERTY.

21. **Election regarding copyrights in Participant Contributions.** Firm Participant must elect from the following options. If no election is indicated, or if both options are checked, then Participant is deemed to have selected Option 2.

### OPTION I

(a) **Assignment from Participant.** Firm Participant hereby unconditionally assigns to PMAR all right, title and interest in the Participant Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; Firm Participant warrants that it has the authority to make this assignment. Firm Participant acknowledges that once it has made the election agreeing to this section, all copyrights in all portions of the Participant Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in PMAR.

(b) **PMAR Obligations.** PMAR hereby grants to Firm Participant a non-exclusive, perpetual, world-wide, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution and those portions of the PMAR Database relating to Firm Participant's listings. PMAR shall make quarterly registrations of the PMAR's copyrights in the PMAR Database; PMAR shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Firm Participant's permission.

### OPTION II

(a) **License from Participant.** Firm Participant hereby grants to PMAR a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution. Firm Participant warrants that it has the authority to grant this license.

(b) **PMAR has no obligations to protect.** Firm Participant acknowledges that: (i) PMAR makes no grant of license or assignment to Firm Participant of any rights in the PMAR Database except as set forth in paragraph 22; (ii) PMAR will

make no effort to register the copyrights in the Participant Contribution, and Firm Participant will be responsible for all costs and efforts associated with registration; (iii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; (iv) **PMAR will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Firm Participant's permission**; (v) PMAR will make no effort to secure for Firm Participant the right to use copyright works created by Subscribers or third parties.

22. **Other provisions.** Pursuant to the PMAR Policies, the PCC shall be a work made for hire by Participant and Subscribers for the benefit of PMAR, which shall be deemed the PCC's author for purposes of copyright law. PMAR hereby grants Firm Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the PMAR Software and the PMAR Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the PMAR Policies and only to deliver real estate brokerage or appraisal services to Firm Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the PMAR Policies are prohibited. Title to the Licensed Materials remains at all times in PMAR and shall not pass to Firm Participant.

23. **Further Participant warranty.** Firm Participant warrants that (a) the Participant Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) Firm Participant has the written consent of any party necessary to provide the Participant Contribution to PMAR.

24. **Limitations on use by PMAR.** PMAR agrees during the term of this Agreement not to license or distribute the Participant Contribution to any third party that is not a real estate brokerage or appraisal subscriber to the PMAR Service if Firm Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after PMAR has provided notice of its intention to provide the Participant Contribution to the third party. For purposes of the previous sentence, brokers participating in any MLS in a data sharing relationship with PMAR that includes an offer of interbroker compensation are subscribers to the PMAR Service.

## FEES AND PAYMENT TERMS.

25. **Applicable fees.** Firm Participant shall pay the fees set forth in PMAR's official Schedule of Fees, which PMAR may amend at any time subject to the terms of Paragraph 29.

26. **Payment terms.** Firm Participant shall pay the fees according to the terms set out in the PMAR Policies.

27. **No refunds.** PMAR need not refund or pro-rate fees in the event of termination or suspension of this Agreement unless the PMAR Policies provide otherwise. Initiation fees, if any, are not refundable.

28. **Taxes.** All fees for the PMAR Service are exclusive of federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and, accordingly, Firm Participant shall pay all such taxes and levies other than any tax or levy on the net income of PMAR.

29. **Fee increases.** PMAR may amend the Schedule of Fees at any time at its sole discretion. PMAR shall provide written notice to Participant at least thirty days in advance of the effective date of any fee increase. If Participant objects to the increase, Participant may terminate this Agreement by written notice to PMAR at any time before the effective date of the increase.

30. **Fines.** PMAR may collect fines from Firm Participant and from Individual Participants for violation of the PMAR Policies by Firm

Participant, Individual Participant and Subscribers. Payment terms for fines are set out in the PMAR Policies. PMAR may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

## TERM AND TERMINATION.

31. **Term.** This Agreement shall commence upon the Effective Date set forth below and shall continue thereafter on a month-to-month basis until terminated.

32. **Termination for breach.** Either party may terminate this Agreement in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement. Any such termination shall become effective upon the expiration of three days after written notice to the breaching party if the breach or nonperformance has not then been remedied.

33. **Termination for breach of PMAR Policies.** Paragraph 32 notwithstanding, PMAR may terminate this Agreement if Firm Participant fails to comply with the PMAR Policies; if Firm Participant violates or is alleged to have violated the PMAR Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or appeal rights of Firm Participant have expired as provided in the PMAR Policies. If in PMAR's judgment, however, a violation or alleged violation of the PMAR Policies is resulting in a continuing harm to PMAR or Other Participants or Subscribers, PMAR may suspend Firm Participant's access to the PMAR Database during the pendency of any hearing or appeal.

34. **Termination for failure to pay.** In the event Firm Participant fails to pay any fees required under this Agreement, PMAR may terminate service without being subject to arbitration. In its sole discretion, PMAR may suspend its performance under this Agreement rather than terminating it, in the event that Firm Participant fails to pay any fees required under this Agreement.

35. **Termination for convenience.** Either party may terminate this Agreement with or without cause, upon thirty days' written notice to the other party.

36. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) PMAR shall deactivate Firm Participant's and Individual Participants' user ID and password, and Firm Participant and Individual Participants shall have no further access to the PMAR Service; (b) Firm Participant shall purge all copies of the PMAR Software and the PMAR Database (except the Participant Contribution) from Firm Participant's personal computers, and shall cause Individual Participants and Subscribers to do the same; and (c) all licenses granted hereunder, except the license to the Participant Contribution in Paragraph 21 Option I(b) and Paragraph 21 Option II(a), if any, shall immediately terminate.

37. **Effect on Subscribers.** In the event of any termination or suspension of this Agreement, upon PMAR notice to Subscriber, PMAR may in its sole discretion suspend Subscriber access to PMAR System or terminate Subscriber license and access agreements. If PMAR does not exercise its right to suspend Subscriber access to the PMAR System or terminate Subscriber license and access agreements, the Subscriber license and access agreement shall continue in force with the intellectual property option selected by Firm Participant in the terminated agreement.

## DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

38. **DISCLAIMER OF WARRANTIES.** PMAR PROVIDES THE PMAR SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE PMAR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE PMAR SERVICE ARE AT THE SOLE RISK OF FIRM PARTICIPANT. THE PMAR AFFILIATES DO NOT WARRANT THAT THE PMAR SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE PMAR AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS,

CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE PMAR SERVICE. THE PMAR AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE PMAR SERVICE AND THE INFORMATION AVAILABLE THROUGH THE PMAR SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The PMAR Service may contain hyperlinks to web sites operated by parties other than PMAR; PMAR does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

39. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE PMAR AFFILIATES SHALL BE LIABLE TO FIRM PARTICIPANT OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE PMAR SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE PMAR SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE PMAR SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, DATA CONNECTION FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE PMAR SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

40. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL PMAR BE LIABLE TO FIRM PARTICIPANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT HAS PAID PMAR, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100.

41. **Indemnification.** Firm Participant shall defend, indemnify and hold the PMAR Affiliates and Other Participants and Subscribers harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the PMAR Affiliates or Other Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the PMAR Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the PMAR Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any warranty under this Agreement; and (f) violating this or any other Agreement or any law.

42. **Acknowledgment.** Firm Participant acknowledges that PMAR has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

## **DISPUTES AND REMEDIES.**

43. **Injunctive relief.** Firm Participant acknowledges and agrees that the PMAR Software and PMAR Database are confidential and proprietary products of PMAR and that in the event there is an unauthorized disclosure of them by Firm Participant, no remedy at law will be adequate. Firm Participant therefore agrees that in the event of such unauthorized disclosure of PMAR Software or PMAR Database, PMAR may obtain injunctive relief or other equitable remedies against Participant in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

44. **Dispute resolution.** In the event PMAR claims that Firm Participant has violated the PMAR Policies, PMAR may, at its option, resolve such a claim according to the disciplinary procedures set out in the PMAR Policies, provided MLS does not also base a claim that Firm Participant has breached this Agreement on the same facts. Except as provided in this paragraph and in Paragraph 34, any controversy or claim

arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Monroe County, Pennsylvania, except that it may be held by telephone where the Arbitration Rules expressly so permit. Firm Participant agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Monroe County, Pennsylvania.

45. **Liquidated damages.** Firm Participant acknowledges that damages suffered by PMAR from access to the PMAR Service by an unauthorized third party as a result of disclosure of Firm Participant's password or an unauthorized disclosure by Firm Participant of the PMAR Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to PMAR to enter into this Agreement with Firm Participant, Firm Participant agrees that (a) in the event that any disclosure of Firm Participant's or Individual Participants' password results in access to the PMAR Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Firm Participant shall be liable to PMAR for liquidated damages in the amount of \$5,000 (or the amount established in the PMAR Policies, whichever is greater) and termination of this Agreement; and (b) in the event that Firm Participant makes unauthorized disclosure of any portion of the PMAR Database to any third party, Firm Participant shall be liable for liquidated damages in the amount of \$5,000 (or the amount established in the PMAR Policies, whichever is greater) for each real estate listing disclosed and termination of this Agreement.

46. **Legal fees.** In the event of legal action or arbitration between PMAR and Firm Participant, or PMAR and any Subscriber, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or arbitration. If PMAR is the prevailing party in an action against a Subscriber, Firm Participant shall be obligated to pay these costs on the Subscriber's behalf.

## **MISCELLANEOUS.**

47. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by PMAR and Firm Participant, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party.

48. **Interpretation and amendment.** Firm Participant expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). PMAR may amend this agreement by providing 30 days' advance notice of the amendment to Firm Participant. If Firm Participant or any Subscriber continues to use the PMAR Service or PMAR Database after the expiration of the 30-day notice period, Firm Participant will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

49. **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Firm Participant. Any purported assignment in contravention of this section is null and void.

50. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. 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. The

foregoing notwithstanding, if any provision of Paragraphs 38 through 42 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Firm Participant's access to the PMAR Service shall immediately terminate.

51. **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Pennsylvania applicable to contracts made and performed in Pennsylvania, without regard to its conflicts of law and choice of law provisions.

52. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation of receipt; (c) facsimile transmission, provided sender obtains confirmation of transmission; or (d) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

Having read this Agreement, the parties express their will to be bound by its terms by setting their signatures below.

**Pocono Mountains Association of REALTORS®**

**Firm Participant**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Firm Participant name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature of principal

\_\_\_\_\_  
Effective Date

\_\_\_\_\_  
Print name of principal

**POCONO MOUNTAINS ASSOCIATION OF REALTORS®**

2214 West Main Street, Stroudsburg, PA 18360  
Phone: 570-424-8846      Front Desk Fax: 570-424-9167

**CREDIT CARD AUTHORIZATION FORM**

**VISA AND MASTERCARD, American Express, Discover**

I hereby authorize the Pocono Mountains Association of REALTORS® to charge my credit card account.  
Please describe each payment you are making, i.e.: Board dues, MLS fees, etc.  
This form must be emailed or faxed to the Association Office for processing.

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_                      Office: \_\_\_\_\_

Name on card: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Phone Number: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_      **(This must be included to process)**

Card # 

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Signature: \_\_\_\_\_                      Expiration Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Type of Card : \_\_\_\_\_ (AE, Visa, Discover...) Security Code: \_\_\_\_\_

QTY	ITEM	AMOUNT	TOTAL
	<b>Sub Total:</b>		
	<b>TOTAL:</b>		

**For Association Use Only:**

Date Processed: \_\_\_\_/\_\_\_\_/\_\_\_\_                      Date Entered into QB: \_\_\_\_/\_\_\_\_/\_\_\_\_

Authorization #: \_\_\_\_\_