



**CAPE COD & ISLANDS**  
**MULTIPLE LISTING SERVICE, INC.**

**RULES**  
**&**  
**REGULATIONS**

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## Contents

Article I	Listing Procedures .....	5
Section 1.1	Listing Procedures .....	5
Section 1.2	Types of Properties .....	6
Section 1.3	Listing Subject to Rules and Regulations of the MLS .....	7
Section 1.4	Detail on Listings Filed with the MLS .....	7
Section 1.5	Limited Service Listings.....	7
Section 1.6	MLS Entry-Only Listings .....	7
Section 1.7	Exempt Listings .....	8
Section 1.8	Change of Status of Listing .....	8
Section 1.9	Withdrawal of Listing Prior to Expiration.....	8
Section 1.10	Contingencies Applicable to Listings.....	8
Section 1.11	Listing Price Specified.....	8
Section 1.12	Listing Multiple Unit Properties.....	8
Section 1.13	No Control of Commission Rates or Fees Charged by Participants.....	9
Section 1.14	Expiration of Listings .....	9
Section 1.15	Termination Date on Listings .....	9
Section 1.16	Service Area and Mandatory-Listing Areas .....	9
Section 1.17	Listings of SUSPENDED Participants .....	9
Section 1.18	Listings of EXPELLED Participants.....	10
Section 1.19	Listings of Resigned Participants .....	10
Article II	Selling Procedures .....	10
Section 2.1	Showings and Negotiations .....	10
Section 2.2	Presentation of Offers .....	11
Section 2.3	Submission of Written Offers and Counter-Offer.....	11
Section 2.4	Right of Cooperating Broker in Presentation of Offer .....	11
Section 2.5	Reporting Sales to the Service.....	11
Section 2.6	Reporting Resolutions of Contingencies .....	12
Section 2.7	Advertisings of Listings Filed With the Service .....	12
Section 2.8	Reporting Cancellation of Pending Sale.....	12
Section 2.9	Availability of Listed Property .....	12
Article III	Refusal to Sell.....	12
Section 3.1	Refusal to Sell.....	12
Article IV	Prohibitions.....	13

Section 4.1	Information for Participants Only.....	13
Section 4.2	For Sale Signs.....	13
Section 4.3	Sold Signs and use of term “Sold” .....	13
Section 4.4	Solicitation of Listing Filed with the Service.....	13
Section 4.5	Use of the Terms MLS and Multiple Listing Service .....	13
Section 4.6	Misuse of Public Remarks and Media.....	14
Section 4.7	False or Misleading Advertising and Representations; True Picture Standard of Conduct	14
Article V	Division of Commissions.....	14
Section 5.1	Compensation Specified on Each Listing.....	14
Section 5.2	Disclosing Potential Short Sales.....	16
Section 5.3	Participant as Principal .....	17
Section 5.4	Participant as Purchaser.....	17
Section 5.5	Dual or Variable Rate Commission Arrangements .....	17
Article VI	Service Charges .....	17
Section 6.1	Initial participation Fee.....	18
Section 6.2	Recurring Charges .....	18
Section 6.3	Responsibility for Fees .....	18
Section 6.4	Clerical Users .....	18
Section 6.5	Notification of Licensees.....	18
Section 6.6	Subscriber Fee Waivers.....	18
Section 6.6.1	Conditions for Waiver.....	19
Section 6.6.2	Process for Obtaining and Maintaining Waiver.....	19
Section 6.6.4	Consequences of Repeated Violations.....	20
Article VII	Compliance with Rules .....	21
Section 7.1	Compliance with Rules.....	21
Section 7.2	Applicability of Rules to Users and/or Subscribers.....	22
Article VIII	Meetings .....	22
Article IX	Enforcement of Rules or Disputes .....	22
Section 9.1	Consideration of Alleged Violations .....	22
Section 9.2	Violations of Rules and Regulations .....	22
Section 9.3	Sanctions.....	22
Section 9.4	Citations.....	22
Article X	Confidentiality of MLS Information.....	23
Section 10.1	MLS Not Responsible for Accuracy of Information.....	23

Section 10.2	Participant and Subscriber Duties of Confidentiality .....	23
Article XI	Ownership of MLS Compilation and Copyright .....	23
Section 11.1	Right and Title .....	24
Section 11.2	Display .....	25
Article XII	Use of Copyrighted MLS Compilation .....	25
Section 12.1	Distribution .....	25
Section 12.2	Display .....	25
Section 12.3	Reproduction .....	25
Article XIII	Use of MLS Information .....	26
Section 13.1	Limitations on Use of MLS Information .....	26
Article XIV	Changes in Rules and Regulations .....	27
Article XV	Orientation .....	27
Article XVI	Internet Data Exchange (IDX) .....	27
Section 16.1	IDX Defined .....	27
Section 16.2	Authorization .....	27
Section 16.3	Participation .....	27
Section 16.4	Display .....	29
Section 16.5	Service Fees and Charges .....	31
Article XVII	Virtual Office Websites (VOWs) .....	31
Section 17.1	VOW Defined .....	31
Section 17.2	.....	32
Section 17.3	.....	32
Section 17.4	.....	33
Section 17.5	.....	33
Section 17.6	.....	34
Section 17.7	.....	34
Section 17.8	.....	35
Section 17.9	.....	35
Section 17.10	.....	35
Section 17.11	.....	35
Section 17.12	.....	35
Section 17.13	.....	35
Section 17.14	.....	35
Section 17.15	.....	35

Section 17.16.....	36
Section 17.17.....	36
Section 17.18.....	36
Section 17.19.....	36
Section 17.20.....	36
Section 17.21.....	36
Section 17.22.....	36

## Article I Listing Procedures

### Section 1.1 Listing Procedures

The service area of the Cape Cod & Islands Multiple Listing Service, Inc. is the state of Massachusetts. The mandatory-listing area of the Cape Cod & Islands Multiple Listing Service, Inc. is the counties of Barnstable, Dukes, and Nantucket, and the town of Wareham in the state of Massachusetts. Listings of real or personal property of the following types, which are listed subject to a real estate broker's license, and are located within the mandatory-listing area of the Cape Cod & Islands Multiple Listing Service, Inc. and are taken by Participants (DRs) on an **exclusive right to sell, exclusive agency, or limited exclusive agency** listing shall be delivered to the Multiple Listing Service (MLS) office within forty-eight (48) hours after all necessary signatures of Seller(s) have been obtained.

- (a) single family homes for sale or exchange
- (b) vacant lots and acreage for sale or exchange
- (c) two-family, three-family, and four-family residential buildings for sale or exchange

Note 1: The Multiple Listing Service (MLS) shall not require a Participant (DR) to submit listings on a form other than the form the Participant (DR) individually chooses to utilize provided the listing is of a type accepted by the Multiple Listing Service (MLS), although a *Property Data Form* may be required as approved by the Multiple Listing Service (MLS). However, the Multiple Listing Service (MLS), through its legal counsel:

- (a) May reserve the right to refuse to accept a listing form which fails to adequately protect the interests of the public and the Participant (DR).
- (b) Assure that no listing form filed with the Multiple Listing Service (MLS) establishes, directly or indirectly, any contractual relationship between the Multiple Listing Service (MLS) and the client (buyer or seller).

The Multiple Listing Service (MLS) shall accept **exclusive right to sell** listing contracts and **exclusive agency** listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer cooperation and compensation to the other Participants (DRs) of the Multiple Listing Service (MLS) acting as subagents, buyer agents, or both.

The listing agreement must include the seller's written authorization to submit the agreement to the Multiple Listing Service (MLS). The different types of listing agreements include:

- (a) exclusive right to sell;
- (b) exclusive agency;
- (c) open;
- (d) net.

The Multiple Listing Service (MLS) may not accept **net listings** because they are deemed unethical and, in most states, illegal. **Open listings** are not accepted except where required by law because the inherent nature of an open listing is such as to usually not include the authority to cooperate and compensate other brokers and inherently provides a disincentive for cooperation.

The **exclusive right to sell** listing is the conventional form of listing submitted to the Multiple Listing Service (MLS) in that the seller authorizes the listing broker to cooperate with and to compensate other brokers.

The **exclusive agency** listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves to the seller the general right to sell the property on an unlimited or restrictive basis. **Exclusive agency** listings and **exclusive right to sell** listings with named prospects exempted should be clearly distinguished by a simple designation such as a symbol from **exclusive right to sell** listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by **exclusive right to sell** listings with no named prospects exempted. Care should be exercised to ensure that different symbols are used to denote **exclusive agency** and **exclusive right to sell** listings with prospect reservations.

Note 2: A Multiple Listing Service (MLS) does not regulate the type of listings its members may take. This does not mean that a Multiple Listing Service (MLS) must accept every type of listing. The Multiple Listing Service (MLS) shall decline to accept **open listings** (except where acceptance is required by law) and **net listings**, and it may limit its service to listings of certain kinds of property. But, if it chooses to limit the kind of listings it will accept, it shall leave its members free to accept such listings to be handled outside the Multiple Listing Service (MLS).

Note 3: A Multiple Listing Service (MLS) may, as a matter of local option, accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings.

## Section 1.2 Types of Properties

Following are some of the types of properties that may be published through the service, including types described in the preceding paragraph that are required to be filed with the service and other types that may be filed with the service at the Participant's option provided, however, that any listing submitted is entered into within the scope of the Participant's licensure as a real estate broker:

- Residential
- Motel-hotel

- Residential income
- Subdivided vacant lot
- Land and ranch
- Business opportunity
- Mobile homes
- Mobile home parks
- Commercial income
- Industrial

### Section 1.3 Listing Subject to Rules and Regulations of the MLS

Any listing taken on a contract to be filed with the Multiple Listing Service (MLS) is subject to the rules and regulations of the Multiple Listing Service (MLS) upon signature of the seller(s).

### Section 1.4 Detail on Listings Filed with the MLS

A listing agreement or property data form, when filed with the MLS by the listing broker, shall be complete in every detail which is ascertainable as specified on the property data form.

### Section 1.5 Limited Service Listings

Listing agreements under which the listing broker will not provide one, or more, of the following services:

- a. Arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s)
- b. Accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s)
- c. Advise the seller as to the merits of offers to purchase
- d. Assist the seller in developing, communicating, or presenting counter-offers
- e. Participate on the seller's(s') behalf in negotiations leading to the sale of the listed property

Will be identified with an appropriate code or symbol (e.g., LR or LS) in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller, and any potential for cooperating brokers being asked to provide some or all of these services to listing broker's clients, prior to initiating efforts to show or sell the property.

### Section 1.6 MLS Entry-Only Listings

Listing agreements under which the listing broker will not provide any of the following services:

- a. Arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller
- b. Accept and present to the seller offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller
- c. Advise the seller as to the merits of offers to purchase
- d. Assist the seller in developing, communicating, or presenting counter-offers
- e. Participate on the seller's(s') behalf in negotiations leading to the sale of the listed property

Will be identified with an appropriate code or symbol (e.g., EO) in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller, and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property.

#### Section 1.7 Exempt Listings

If the seller refuses to permit the listing to be disseminated by the service, the Participant may then take the listing (office exclusive) and such listing shall be filed with the service but not disseminated to the Participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the service.

#### Section 1.8 Change of Status of Listing

Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller and shall be filed with the service within twenty-four (24) hours (excepting weekends, holidays, and postal holidays) after the authorized change is received by the listing broker.

#### Section 1.9 Withdrawal of Listing Prior to Expiration

Listings of property may be withdrawn from the MLS by the listing broker before the expiration date of the listing agreement, provided notice is filed with the service, including a copy of the agreement between the seller and the listing broker which authorizes the withdrawal.

Sellers do not have the unilateral right to require an MLS to withdraw a listing without the listing broker's concurrence. However, when a seller can document that his exclusive relationship with the listing broker has been terminated, the MLS may remove the listing at the request of the seller.

#### Section 1.10 Contingencies Applicable to Listings

Any contingency or conditions of any term in a listing shall be specified and noticed to the Participants.

#### Section 1.11 Listing Price Specified

The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings, unless the property is subject to auction.

#### Section 1.12 Listing Multiple Unit Properties

All properties which are to be sold or which may be sold separately must be indicated individually in the listing and on the property data form. When part of a listed property has been sold, proper notification should be given to the multiple listing service.



### Section 1.13 No Control of Commission Rates or Fees Charged by Participants

The MLS shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, the MLS shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating Participants or between Participants and non-Participants.

### Section 1.14 Expiration of Listings

Listings filed with the MLS will automatically be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date the MLS receives notice that the listing has been extended or renewed. Extensions and renewals of listings must be signed by the seller and filed with the service.

If notice of renewal or extension is received after the listing has been removed from the compilation of current listings, the extension or renewal will be published in the same manner as a new listing except:

- a. If notice of renewal or extension is received prior to cancellation from the MLS or after cancellation of the listing but on such form that allows for extension of the listing after the expiration date, then such listing shall remain active in the MLS provided:
  - i. If notice of renewal or extension is dated after expiration date of the original listing agreement or previous valid extension and is not on a form expressly affirming the continuation of the listing from original expiration date to the date of the extension, or
  - ii. If any extension is received by the MLS more than 30 days after the expiration date of the listing, then a new listing must be secured for the listing to be filed with the MLS and shall be published as a new listing

### Section 1.15 Termination Date on Listings

Listings filed with the service shall bear a definite and final termination date, as negotiated between the listing broker and the seller.

### Section 1.16 Service Area and Mandatory-Listing Areas

Only listings of the designated types of property located within the mandatory-listing area of the MLS are required to be submitted to the service. However, in the event that the listing of a Participant has as its listing agent or salesperson a licensee who is subject to a fee waiver under Section 6.6, then that listing shall be ineligible for submission to the service. Listings of property located outside the mandatory-listing area but within the service area will be accepted if submitted voluntarily by a Participant. Listings of property located outside the MLS's service area will be accepted if submitted voluntarily by a Participant, but cannot be required by the service.

### Section 1.17 Listings of SUSPENDED Participants

When a Participant of the service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association bylaws, MLS bylaws, MLS

Rules and Regulations, or other membership obligation except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the suspended Participant shall, at the Participant's option, be retained in the service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the Association (except where MLS participation without Association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, an association MLS is not obligated to provide MLS services, including continued inclusion of the suspended Participant's listings in the MLS compilation of current listing information. Prior to any removal of a suspended Participant's listings from the MLS, the suspended Participant should be advised, in writing, of the intended removal so that the suspended Participant may advise his clients.

#### Section 1.18 Listings of EXPELLED Participants

When a Participant of the service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association bylaws, MLS bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the expelled Participant shall, at the Participant's option, be retained in the service until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the Association (except where MLS participation without Association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, an Association MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings in the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised, in writing, of the intended removal so that the expelled Participant may advise his clients.

#### Section 1.19 Listings of Resigned Participants

When a Participant resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned Participant's listings in the MLS compilation of current listing information. Prior to any removal of a resigned Participant's listings from the MLS, the resigned Participant should be advised, in writing, of the intended removal so that the resigned Participant may advise his clients.

## Article II Selling Procedures

### Section 2.1 Showings and Negotiations

Appointments for showings and negotiations with the seller for the purchase of listed property filed with the MLS shall be conducted through the listing broker, except under the following circumstances:

- a. The listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or
- b. After reasonable effort, the cooperating broker cannot contact the listing broker or his representative; however, the listing broker, at his option, may preclude such direct negotiations by cooperating brokers.

## Section 2.2 Presentation of Offers

The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so.

## Section 2.3 Submission of Written Offers and Counter-Offers

The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer.

Participants representing buyers or tenants shall submit to the buyer or tenant all offers and counter-offers until acceptance, and shall recommend that buyers and tenants obtain legal advice where there is a question about whether a pre-existing contract has been terminated.

## Section 2.4 Right of Cooperating Broker in Presentation of Offer

The cooperating broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's or lessor's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

## Section 2.5 Reporting Sales to the Service

Status changes, including final closings of sales and sales prices, shall be reported to the MLS by the listing broker within seventy-two (72) hours after they have occurred. If negotiations were carried on under Section 2 a. or b. hereof, the cooperating broker shall report accepted offers and prices to the listing broker within seventy-two (72) hours after occurrence and the listing broker shall report them to the MLS within seventy-two (72) hours after receiving notice from the cooperating broker.

Note 1: The listing agreement of a property filed with the MLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listing with the MLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information including selling price to the MLS upon sale of the property. If deemed desirable by the MLS to publish sales information prior to final closing (settlement) of a sales transaction, the listing agreement should also include a provision expressly granting the listing broker the right to authorize dissemination of this information by the MLS to its Participants.

Note 2: In disclosure states, if the sale price of a listed property is recorded, the reporting of the sale price may be required by the MLS.

In states where the actual sale prices of completed transactions are not accessible, failure to report sale prices can result in disciplinary action only if the MLS:

1. Categorizes sale price information as confidential and
2. Limits use of sale price information to Participants and Subscribers in providing real estate services, including appraisals and other valuations, to customers and clients; and to governmental bodies and third-party entities only as provided below.

The MLS may provide sale price information to governmental bodies only to be used for statistical purposes (including use of aggregated data for purposes of valuing property) and to confirm the accuracy of information submitted by property owners or their representatives in connection with property valuation challenges; and to third-party entities only to be used for academic research, statistical analysis, or for providing services to Participants and Subscribers. In any instance where a governmental body or third-party entity makes sale price information provided by the MLS available other than as provided for in this provision, a listing Participant may request the sale price information for a specific property be withheld from dissemination for these purposes with written authorization from the seller, and withholding of sale price information from those entities shall not be construed as a violation of the requirement to report sale prices.

Note 3: As established in the Virtual Office Website (“VOW”) policy, sale prices can only be categorized as confidential in states where the actual sale prices of completed transactions are not accessible from public records.

#### Section 2.6 Reporting Resolutions of Contingencies

The listing broker shall report to the MLS within twenty-four (24) hours that a contingency on file with the MLS has been fulfilled or renewed, or the agreement cancelled.

#### Section 2.7 Advertisings of Listings Filed With the Service

A listing shall not be advertised by any Participant other than the listing broker without the prior consent of the listing broker.

#### Section 2.8 Reporting Cancellation of Pending Sale

The listing broker shall report immediately to the MLS the cancellation of any pending sale, and the listing shall be reinstated immediately.

#### Section 2.9 Availability of Listed Property

Listing brokers shall not misrepresent the availability of access to show or inspect listed property.

### Article III Refusal to Sell

#### Section 3.1 Refusal to Sell

If the seller of any listed property filed with the MLS refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted immediately to the service and to all Participants.

## Article IV Prohibitions

### Section 4.1 Information for Participants Only

Any listing filed with the service shall not be made available to any broker or firm not a member of the MLS without the prior consent of the listing broker. A Participant with licensees who are subject to a fee waiver under Section 6.6 may not make available to those licensees listings of other brokers in the MLS. The preceding sentence does not prohibit a licensee from accessing listing records from another MLS or from any other source lawfully available to the licensee.

### Section 4.2 For Sale Signs

Only the for sale sign of the listing broker may be placed on a property.

### Section 4.3 Sold Signs and use of term "Sold"

Prior to closing, only the sold sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign. Only Participants or Subscribers who participated in the transaction as the Listing Broker or Cooperating Broker (Selling Broker) may claim to have "sold" the property.

### Section 4.4 Solicitation of Listing Filed with the Service

Participants shall not solicit a listing on property filed with the service unless such solicitation is consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice, and its Case Interpretations. The prohibition in the previous sentence applies to licensees affiliated with a Participant who are subject to a fee waiver under Section 6.6.

Note: This section is to be construed in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This section is intended to encourage sellers to permit their properties to be filed with the service by protecting them from being solicited, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration.

Without such protection, a seller could receive hundreds of calls, communications and visits from brokers and salespersons who have been made aware through MLS filing of the date the listing will expire and desire to substitute themselves for the present broker.

This section is also intended to encourage brokers to participate in the service by assuring them that other Participants will not attempt to persuade the seller to breach the listing agreement or to interfere with their attempts to market the property. Absent the protection afforded by this section, listing brokers would be most reluctant to generally disclose the identity of the seller or the availability of the property to other brokers.

This section does not preclude solicitation of listings under the circumstances otherwise recognized by the Standards of Practice related to Article 16 of the Code of Ethics.

### Section 4.5 Use of the Terms MLS and Multiple Listing Service

No MLS Participant, Subscriber, or licensee affiliated with any Participant shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other

way represent, suggest, or imply that the individual or firm is an MLS, or that they operate an MLS. Participants, Subscribers and licensees affiliated with Participants shall not represent, suggest, or imply that consumers or others have direct access to MLS databases, or that consumers or others are able to search MLS databases available only to Participants and Subscribers. This does not prohibit Participants and Subscribers from representing that any information they are authorized under MLS rules to provide to clients or customers is available on their websites or otherwise. The provisions of this section apply to licensees affiliated with a Participant who are subject to a fee waiver under Section 6.6.

#### Section 4.6 Misuse of Public Remarks and Media

Information in the public remarks shall only relate to the marketing, description and condition of the property. No contact information is permitted, including names, phone or fax numbers, email addresses or website addresses (including branded virtual tours). No showing instructions are permitted or the occupancy of the property. No information directed toward real estate agents or Brokers, including compensation or bonuses offered may be shown in public remarks. Participants and Subscribers may not use any remarks or other media fields to convey any information that does not directly relate to the marketing of the listing.

#### Section 4.7 False or Misleading Advertising and Representations; True Picture Standard of Conduct

Participants and Subscribers may not engage in false or misleading advertising, including, but not limited to, advertisements or representations regarding the Participant's or Subscriber's relationship to the MLS, about the MLS itself, or about any property listed with the MLS. MLS Participants and Subscribers shall present a true picture in their advertising and representations to the public, including the URLs and domain names they use, and Participants and Subscribers may not:

- i. Engage in deceptive or unauthorized framing of real estate brokerage websites;
- ii. Manipulate listing content in any way that produces a deceptive or misleading result; or
- iii. Deceptively use metatags, keywords or other devices/methods to direct, drive or divert Internet traffic, or to otherwise mislead consumers.

## Article V Division of Commissions

#### Section 5.1 Compensation Specified on Each Listing

The listing broker shall specify, on each listing filed with the multiple listing service, the compensation offered to other multiple listing service Participants for their services in the sale of such listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease) or as otherwise provided for in this rule. The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the

commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.

In filing a property with the multiple listing service of an association of Realtors®, the Participant of the service is making blanket unilateral offers of compensation to the other MLS Participants, and shall therefore specify on each listing filed with the service, the compensation being offered to the other MLS Participants. Specifying the compensation on each listing is necessary, because the cooperating broker has the right to know what his compensation shall be prior to his endeavor to sell.<sup>1</sup>

The listing broker retains the right to determine the amount of compensation offered to other Participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law) which may be the same or different.

This shall not preclude the listing broker from offering any MLS Participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of submitting an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participants in the service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

**Note 1:** The multiple listing service shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his listing contract, and the association multiple listing service shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a Participant. The association multiple listing service shall not disclose in any way the total commission negotiated between the seller and the listing broker.

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<sup>1</sup> \*The compensation specified on listings filed with the multiple listing service shall appear in one of two forms. The essential and appropriate requirement by an association multiple listing service is that the information to be published shall clearly inform the Participants as to the compensation they will receive in cooperative transactions, unless advised otherwise by the listing broker, in writing, in advance of submitting an offer other party in a non-agency capacity, Realtors® remain obligated to treat all parties honestly.

1. by showing a percentage of the gross selling price
2. by showing a definite dollar amount

**Note:** MLSs may also, as a matter of local discretion, allow Participants to offer cooperative compensation as a percentage of the net sales price, with the net sales price defined as the gross sales price minus buyer upgrades (new construction) and seller concessions (as defined by the MLS unless otherwise defined by state law or regulation). *(Adopted 5/08)*

While MLSs are not required to authorize Participants to offer cooperative compensation based on net sale prices, those that do permit such offers must define 'seller concessions' for purposes other than new construction, unless that term is defined by applicable state law or regulation. The following definition of 'seller concessions' is suggested but not required for adoption:

Points paid by seller on behalf of buyer, seller-paid buyer closing costs, cash or cash allowances not escrowed, down payment assistance, additions or alterations not considered deferred maintenance, and personal property not usual and customary to such transactions conveyed from seller to buyer having an agreed upon monetary value.

**Note 2:** The listing broker may, from time to time, adjust the compensation offered to other multiple listing service Participants for their services with respect to any listing by advance published notice to the service so that all Participants will be advised.

**Note 3:** The multiple listing service shall make no rule on the division of commissions between Participants and non-Participants. This should remain solely the responsibility of the listing broker.

**Note 4:** Multiple listing services, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval, and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they submit an offer that ultimately results in a successful transaction.

**Note 5:** Nothing in these MLS rules precludes a listing Participant and a cooperating Participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction.

**Note 6:** Multiple listing services must give Participants the ability to disclose to other Participants any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple listing services may, as a matter of local discretion, require Participants to disclose potential short sales when Participants know a transaction is a potential short sale. In any instance where a Participant discloses a potential short sale, they may, as a matter of local discretion, also be permitted to communicate to other Participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating Participants. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential "remarks" available only to Participants and Subscribers.

## Section 5.2      Disclosing Potential Short Sales

Participants must disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) when reasonably known to the listing Participants.

When disclosed, Participants may, at their discretion, advise other Participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating Participants.

Where Participants communicate to other Participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving



the sale will be apportioned between the listing and cooperating Participants, listing Participants shall disclose to cooperating Participants in writing the total reduction in the gross commission and the amount by which the compensation payable to the cooperating broker will be reduced within twenty-four (24) hours of receipt of notification from the lender.

### Section 5.3 Participant as Principal

If a Participant or any licensee (or certified appraiser) affiliated with a Participant has any ownership interest in a property, the listing of which is to be disseminated through the multiple listing service, the Participant shall disclose that interest when the listing is filed with the multiple listing service and such information shall be disseminated to all multiple listing service Participants.

### Section 5.4 Participant as Purchaser

If a Participant or any licensee (including licensed and certified appraisers) affiliated with a Participant wishes to acquire an interest in property listed with another Participant, such contemplated interest shall be disclosed, in writing, to the listing broker not later than the time an offer to purchase is submitted to the listing broker.

### Section 5.5 Dual or Variable Rate Commission Arrangements

The existence of a dual or variable rate commission arrangement (i.e., one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker without assistance and a different commission if the sale/lease results through the efforts of a cooperating broker; or one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale/lease results through the efforts of a seller/landlord) shall be disclosed by the listing broker by a key, code, or symbol as required by the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

### Section 5.6 No Compensation for Fee-Waived Selling Salesperson

The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) shall be excused if it is determined through arbitration that the selling salesperson affiliated with the cooperating broker was subject to a fee waiver under Section 6.6 at any time between the offer to purchase and the closing of the sale.

## Article VI Service Charges

The following service charges for operation of the Multiple Listing Service are in effect to defray the costs of the service and are subject to change from time to time by the Board of Directors. The Board of Directors shall establish a schedule of MLS fees applicable to the MLS, which may include the following service fees and charges:

### Section 6.1 Initial participation Fee

An applicant for participation in the service shall pay an application fee which shall accompany each application submitted in full. Additional branch offices do not incur a separate fee but must be registered with the Multiple Listing Service office.

### Section 6.2 Recurring Charges

The Participant (DR) will be assessed a yearly fee for each salesperson and licensed or certified appraiser in the office, whether licensed as a broker, sales licensee, or licensed or certified appraiser who is employed by or affiliated as an independent contractor with such Participant, except that this fee shall be waived for licensees subject to a fee waiver under Section 6.6. Payment of such fees shall be made on or before the first day of each quarter. Fees shall be prorated on a monthly basis. Administrative (whether licensed or unlicensed) and clerical staff, personal assistants, and/or individuals seeking licensure or certification as real estate appraisers are eligible for MLS access for a reduced fee.

### Section 6.3 Responsibility for Fees

In the event the MLS allows for direct billing or payment by a Subscriber for fees under these rules, such fees shall be the exclusive obligation of that Subscriber regardless of whether such Subscriber becomes affiliated with a different Participant. If the MLS does not allow for direct billing or payment by a Subscriber for MLS fees, such fees shall be the responsibility of the Participant with whom the Subscriber was affiliated with at the time the MLS fees were incurred. This section does not preclude in any way the ability of Participants to pursue reimbursement of MLS fees from current or past Subscribers or to establish agreements with Subscribers regarding payment or reimbursement of MLS fees.

### Section 6.4 Clerical Users

Individuals (whether licensed or unlicensed) under the direct supervision of an MLS Participant or Subscriber that perform only administrative and clerical tasks that do not require a real estate license or an Appraiser's license. Each Participant and Subscriber shall provide the MLS with a list of all clerical users employed by or affiliated as independent contractors with the Participant or Subscriber and shall immediately notify the MLS of any changes, additions or deletions from the list.

### Section 6.5 Notification of Licensees

Each Participant shall provide the MLS with a list of real estate licensees or licensed Appraisers employed by or affiliated as independent contractors with such Participant or with such Participant's firm and shall immediately notify the MLS of any changes, additions, or deletions from the list. This list shall include any licensees under any Broker associate affiliated with the Participant.

### Section 6.6 Subscriber Fee Waivers

MLS provides participants the option of a no-cost waiver of MLS fees, dues, and charges for any licensee or licensed or certified appraiser in a participating office who can demonstrate (i) subscription to a different MLS where the principal broker for the office also participates or

(ii) that they work exclusively with rentals. MLS requires participants to sign a certification for nonuse of MLS services, which includes penalties and termination of the waiver if violated.

Normally, under Section 6.2, any per-subscriber fee is calculated based on each salesperson and licensed or certified appraiser affiliated with a participating office. The effect of fee waiver is that the number of subscribers in a participating office for purposes of any recurring per-subscriber fees paid by a participant under Section 6.2 shall be reduced by the number of licensees and certified appraisers who are subject to waiver under this Section 6.6.

For purposes of this Section 6.6 and all rule provisions referring to it, “licensee” refers to non-principal brokers and salespersons and licensed and certified appraisers. Section 6.6.1 sets out the conditions for fee waiver, Section 6.6.2 the process for obtaining and maintaining waivers, Section 6.6.3 circumstances under which waiver is revoked and consequences of revocation, and Section 6.6.4 the consequences of repeated violations of these policies.

#### Section 6.6.1 Conditions for Waiver

Fee waivers are available for licensees in offices participating in MLS, provided the participant and any fee-waived licensee(s) meet all the following requirements:

- a. Any fee-waived licensee must be a subscriber in another multiple listing service or must exclusively work with rentals
- b. During any period for which a licensee’s fees are waived, the licensee shall refrain from using any of the services of this MLS included but not limited to:
  1. Using this MLS’s systems, databases, etc. This does not include accessing listing information of the licensee’s own broker or of other brokers through the participant’s IDX site or elsewhere. It does include accessing such information on the participant’s VOW (which is for consumers’ personal use).
  2. Being a listing agent on an active or pending property listing in this MLS.
  3. Use of any data feed from this MLS (except one that includes listings only of the licensee’s broker).
  4. Using this MLS’s data on an IDX or VOW website identified as the fee-waived subscriber’s site or page.
  5. Using MLS’s data in an automated valuation product or tool in any product or service identified as coming from the fee-waived subscriber.
  6. Attending an MLS Tour, training, or utilizing any other product, service or benefit of the Multiple Listing Service.

#### Section 6.6.2 Process for Obtaining and Maintaining Waiver

The participant must at all times provide to MLS up-to-date information on all licensees, whether they are subscribers or fee-waived licensees, in each participating office.

Participant shall notify the MLS within five (5) business days of any change in status for subscribers and any change in qualifications of fee-waiver licensees.

In order to obtain a waiver for any licensee in the participant's office, the participant must certify the MLS's form for listing fee-waived licensees. In order to maintain a waiver for any licensee, the participant and licensee must continue to satisfy the requirements of Section 6.6.1 and must recertify of the matters addressed in this Section with the frequency set by this MLS.

#### Section 6.6.3 Revocation of Waiver

The fee waiver for a licensee may be revoked under various circumstances, and the consequences of the revocation vary depending on its circumstances, as provided in this section.

- a. The participant or fee-waived licensee may revoke the waiver at any time upon notice to this MLS. In that case, the fee-waived licensee immediately becomes a subscriber and any fees due to MLS under its normal fee schedule for the current period for the subscriber (including pro-rata fees for any partial service period and any application fees if none have previously been paid for the subscriber) shall immediately become due and payable.
- b. If this MLS determines that the fee-waived licensee has used any of the services of this MLS listed in Section 6.6.1(b) during a fee-waiver period, including if a fee-waived licensee appears as a listing agent on an active or pending listing in this MLS, then MLS may terminate the fee waiver upon notice to the participant and subscriber. In this case, the consequences of subsection (a) apply, and in addition to them, MLS may assess participant a fine (as outlined in the MLS Citation Policy); non-payment of the fine will result in a suspension of MLS access for participant and all subscribers associated with participant. Six months after termination of a waiver, the participant and subscriber can re-certify the subscriber to be a fee-waived licensee.

#### Section 6.6.4 Consequences of Repeated Violations

A pattern of repeated violations of Section 6.6.1(b) exists when a participant allows any combination of three or more violations of Section 6.6.1(b), whether the participant is aware of the violations and whether committed by one fee-waived licensee or more; or when a subscriber commits three or more violations of Section 6.6.1(b). In the event that a participant or subscriber exhibits a pattern of repeated violations of Section 6.6.1(b), MLS may suspend all fee waivers for the participant or subscriber (or both) for a period of up to three years. If, after such a period of suspension, a participant or subscriber again exhibits a pattern of repeated violations, MLS may permanently terminate fee waivers for the participant or subscriber (or both). In the event a participant or subscriber subject to suspension or termination of waivers moves to a new office as a participant, that office shall be ineligible for waivers during the pendency of its participant's suspension or termination. In the event a participant or subscriber subject to suspension or termination of waivers moves to a new office as a non-principal licensee, that non-principal licensee shall be ineligible for waivers during the pendency of his or her suspension or termination.

## Article VII Compliance with Rules

By becoming and remaining a Participant or Subscriber in this MLS, each Participant and Subscriber agrees to be subject to the Rules and Regulations and any other MLS governance provision. Each Participant is subject to these Rules and Regulations with regard to licensees affiliated with the Participant who are subject to fee waiver under Section 6.6. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the Rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- a. Letter of warning
- b. Letter of reprimand
- c. Attendance at MLS orientation or other appropriate courses or seminars which the Participant or Subscriber can reasonably attend taking into consideration cost, location and duration
- d. Appropriate, reasonable fine not to exceed \$15,000
- e. Suspension of MLS rights, privileges and services for not less than thirty (30) days nor more than one (1) year
- f. Termination of MLS rights, privileges and services with no right to reapply for a specified period not to exceed three (3) years.

Note: A Participant (or user/Subscriber, where appropriate) can be placed on probation. Probation is not a form of discipline. When a Participant (or user/Subscriber, where appropriate) is placed on probation the discipline is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the MLS rules during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the individual's record will reflect the fulfillment. The fact that one or more forms of discipline are held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance.

### Section 7.1 Compliance with Rules

The following action may be taken for noncompliance with the rules:

- a. for failure to pay any service charge or fee within one (1) month of the date due, and provided that at least ten (10) days' notice has been given, the service shall be suspended until service charges or fees are paid in full
- b. for failure to comply with any other rule, the provisions of Sections 9 and 9.1 shall apply

Note: Generally, warning, censure, and the imposition of a moderate fine are sufficient to constitute a deterrent to violation of the rules and regulations of the multiple listing service. Suspension or termination is an extreme sanction to be used in cases of extreme or repeated violation of the rules and regulations of the service. If the MLS desires to establish a series of moderate fines, they should be clearly specified in the rules and regulations.

## Section 7.2 Applicability of Rules to Users and/or Subscribers

Non-principal brokers, sales licensees, appraisers, and others authorized to have access to information published by the MLS are subject to these rules and regulations and may be disciplined for violations thereof provided that the user or Subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the rules and regulations. Further, failure of any user or Subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the Participant to the same or other discipline. The Participant is subject to these Rules and Regulations with regard to licensees affiliated with the Participant who are subject to fee waiver under Section 6.6. This provision does not eliminate the Participant's ultimate responsibility and accountability for all users or Subscribers affiliated with the Participant.

## Article VIII Meetings

The meetings of the Participants in the service or the Board of Directors of the MLS for the transaction of business of the service shall be held in accordance with the provisions of Article 7, bylaws of the service.

## Article IX Enforcement of Rules or Disputes

### Section 9.1 Consideration of Alleged Violations

The Board of Directors shall give consideration to all written complaints having to do with violations of the Rules and Regulations.

### Section 9.2 Violations of Rules and Regulations

After a hearing by a hearing panel as provided in the Code of Ethics and Arbitration manual, the MLS Board of Directors may take disciplinary action and impose sanctions against any Participant and Subscriber:

- a. For violation of any MLS rule.
- b. For any violation of subsection (a) by any person, including but not limited to, an Administrative User or a salesperson, who is not a Participant or Subscriber but is employed by or affiliated with such Participant or Subscriber and was providing real estate related services within the scope of the Participant's or Subscriber's license. Lack of knowledge by the Participant or Subscriber of such salesperson's conduct shall only go to mitigation of discipline imposed.

### Section 9.3 Sanctions

Sanctions or disciplinary action for violation of an MLS Rule may consist of one or more of those specified in the Code of Ethics and Arbitration Manual.

### Section 9.4 Citations

The MLS may implement a schedule of fines (as outlined in the MLS Citation Policy) for certain MLS Rules violations and direct staff to issue citations for the specified MLS rules violations and implement a procedure whereby the Participant and Subscriber receiving the citation may either pay the amount specified on the citation or request a full hearing in accordance with the procedures set forth in the Code of Ethics and Arbitration Manual.

## Article X Confidentiality of MLS Information

Any information provided by the multiple listing service to the Participants shall be considered official information of the service. Such information shall be considered confidential and exclusively for the use of Participants and real estate licensees affiliated with such Participants entitled to access and those Participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such Participants entitled to access.

### Section 10.1 MLS Not Responsible for Accuracy of Information

The information published and disseminated by the service is communicated verbatim, without change by the service, as filed with the service by the Participant. The service does not verify such information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold the service harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides.

### Section 10.2 Participant and Subscriber Duties of Confidentiality

Any information provided by the MLS to the Participants and Subscribers shall be considered and treated as confidential by Participants and Subscribers and shall be for the exclusive use of the Participants and Subscribers for purposes described in these Rules and Regulations. Participants and Subscribers shall at all times maintain control over and responsibility for each copy of any MLS compilation leased to them by the MLS and shall not distribute any such copies to persons other than Participants and Subscribers. Participants and Subscribers are responsible for the security of their usernames and shall not give or allow use of or make available their usernames to any person. Participants and Subscribers may reproduce or display the information as provided in these rules.

#### Section 10.2.1 Clerical Users

Clerical Users may have access to MLS information solely under the direction and supervision of the Participant or Subscriber. Clerical Users are expressly prohibited from displaying or distributing MLS information to anyone other than the Participant or Subscriber under whom they are registered. Access by Clerical Users to the database is solely for clerical and administrative functions for the Participant or Subscriber under whom the Clerical User is registered.

## Article XI Ownership of MLS Compilation\* and Copyright

By the act of submitting any property listing content to the MLS the Participant represents that he has been authorized to grant and also thereby does grant authority for the MLS to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparables. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property.

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\* The term MLS compilation, as used in Sections 11 and 12 herein, shall be construed to include any format in which property listing data is collected and disseminated to the Participants, including but not limited to bound book, loose-leaf binder, computer database, card file, or any other format whatsoever

Note: The Digital Millennium Copyright Act (DMCA) is a federal copyright law that enhances the penalties for copyright infringement occurring on the Internet. The law provides exemptions or “safe harbors” from copyright infringement liability for online service providers (OSP) that satisfy certain criteria. Courts construe the definition of “online service provider” broadly, which would likely include MLSs as well as participants and subscribers hosting an IDX display.

One safe harbor limits the liability of an OSP that hosts a system, network or website on which Internet users may post user-generated content. If an OSP complies with the provisions of this DMCA safe harbor, it cannot be liable for copyright infringement if a user posts infringing material on its website. This protects an OSP from incurring significant sums in copyright infringement damages, as statutory damages are as high as \$150,000 per work. For this reason, it is highly recommended that MLSs, participants and subscribers comply with the DMCA safe harbor provisions discussed herein.

To qualify for this safe harbor, the OSP must:

- (1) Designate on its website and register with the Copyright Office an agent to receive takedown requests. The agent could be the MLS, participant, subscriber, or other individual or entity.
- (2) Develop and post a DMCA-compliant website policy that addresses repeat offenders.
- (3) Comply with the DMCA takedown procedure. If a copyright owner submits a takedown notice to the OSP, which alleges infringement of its copyright at a certain location, then the OSP must promptly remove allegedly infringing material. The alleged infringer may submit a counter-notice that the OSP must share with the copyright owner. If the copyright owner fails to initiate a copyright lawsuit within ten (10) days, then the OSP may restore the removed material.
- (4) Have no actual knowledge of any complained-of infringing activity.
- (5) Not be aware of facts or circumstances from which complained-of infringing activity is apparent.
- (6) Not receive a financial benefit attributable to complained-of infringing activity when the OSP is capable of controlling such activity.

Full compliance with these DMCA safe harbor criteria will mitigate an OSP’s copyright infringement liability. For more information see 17 U.S.C. §512.

### Section 11.1 Right and Title

All right, title, and interest in each copy of every multiple listing compilation created and copyrighted by the Cape Cod & Islands Association Multiple Listing Service, Inc. and in the copyrights therein, shall at all times remain vested in the Cape Cod & Islands Multiple Listing Service, Inc.



## Section 11.2 Display

Each Participant shall be entitled to lease from the Cape Cod & Islands Multiple Listing Service, Inc. a number of copies of each MLS compilation sufficient to provide the Participant and each person affiliated as a licensee (including licensed or certified appraisers, but not including any licensee subject to fee waiver under Section 6.6) with such Participant with one copy of such compilation. The Participant shall pay for each such copy the rental fee set by the MLS.

Participants shall acquire by such lease only the right to use the MLS compilation in accordance with these rules.

## Article XII Use of Copyrighted MLS Compilation

### Section 12.1 Distribution

Participants shall, at all times, maintain control over and responsibility for each copy of any MLS compilation leased to them by the MLS, and shall not distribute any such copies to persons other than Subscribers who are affiliated with such Participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other Subscribers as authorized pursuant to the governing documents of the MLS. Use of information developed by or published by an association multiple listing service is strictly limited to the activities authorized under a Participant's licensure(s) or certification, and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed or published by an association multiple listing service where access to such information is prohibited by law.

### Section 12.2 Display

Participants and those persons affiliated as licensees with such Participants shall be permitted to display the MLS compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers for the properties described in said MLS compilation. "Persons affiliated as licensees" in the previous sentence does not include licensees subject to fee waiver under Section 6.6.

### Section 12.3 Reproduction

Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable\* number of single copies of property listing data

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\* It is intended that the Participant be permitted to provide prospective purchasers with listing data relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the Participant is seeking to promote interest. The term reasonable, as used herein, should therefore be construed to permit only limited reproduction of property listing data intended to facilitate the prospective purchaser's decision-making process in the consideration of a purchase. Factors which shall be considered in deciding whether the reproductions made are consistent with this intent and thus reasonable in number, shall include, but are not limited to, the total number of listings in the MLS compilation, how closely the types of properties contained in such listings accord with the prospective purchaser's expressed desires and ability to purchase, whether the reproductions were made on

contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the Participants or their affiliated licensees, be interested. "Persons affiliated as licensees" in the previous sentence does not include licensees subject to fee waiver under Section 6.6.

Nothing contained herein shall be construed to preclude any Participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the Participant.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the Participant and those licensees affiliated with the Participant who are authorized to have access to such information. (The previous sentence does not apply to licensees subject to fee waiver under Section 6.6.) Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support valuations on particular properties for clients and customers. Any MLS content in data feeds available to Participants for real estate brokerage purposes must also be available to Participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require Participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations.

## Article XIII Use of MLS Information

### Section 13.1 Limitations on Use of MLS Information

Information from MLS compilations of current listing information, from statistical reports, and from any sold or comparable report of the association or MLS may be used by MLS Participants as the basis for aggregated demonstrations of market share or comparisons of firms in public mass-media advertising or in other public representations. This authority does not convey the right to include in any such advertising or representation information about specific properties which are listed with other Participants, or which were sold by other Participants (as either listing or cooperating broker).

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the association or its MLS must clearly

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a selective basis, and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties which would be shown to the prospective purchaser.

demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

Based on information from the Cape Cod and Islands Multiple Listing Service, Inc. for the period (date) through (date).

## Article XIV Changes in Rules and Regulations

Amendments to the Rules and Regulations of the Service shall be by consideration and approval of the Board of Directors of the Multiple Listing Service, subject to final approval by the Board of Directors of the Cape Cod & Islands Association of REALTORS®.

## Article XV Orientation

Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with an MLS Participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS Rules and Regulations and computer training related to MLS information entry and retrieval and the operation of the MLS prior to receiving . The previous sentence applies to licensees subject to fee waiver under Section 6.6 only if their waiver status is revoked.

Participants and Subscribers may be required, at the discretion of the MLS, to complete additional training of not more than four (4) classroom hours in any twelve (12) month period when deemed necessary by the MLS to familiarize Participants and Subscribers with system changes or enhancements and/or changes to MLS rules or policies. Participants and Subscribers must be given the opportunity to complete any mandated orientation and additional training remotely.

## Article XVI Internet Data Exchange (IDX)

### Section 16.1 IDX Defined

IDX affords MLS Participants the ability to authorize limited electronic display of their listings by other Participants.

### Section 16.2 Authorization

Participants' consent for display of their listings by other Participants pursuant to these rules and regulations is presumed unless a Participant affirmatively notifies the MLS that the Participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of that Participant's listings, that Participant may not download, frame or display the aggregated MLS data of other Participants. Even where Participants have given blanket authority for other Participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display.

### Section 16.3 Participation

Participation in IDX is available to all MLS Participants engaged in real estate brokerage who consent to display of their listings by other Participants.

Section 16.3.1

Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies.

Section 16.3.2

MLS Participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require Participants to prevent indexing of IDX listings by recognized search engines.

Section 16.3.3

Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing's property address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs).

Section 16.3.4

Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location ("uptown," "downtown," etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell, or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each Participant.

Section 16.3.5

Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours.

Section 16.3.6

Except as provided in the IDX policy and these rules, an IDX site or a Participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity.

Section 16.3.7

Any IDX display controlled by a Participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, "control" means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules.

Section 16.3.8

Any IDX display controlled by a Participant or Subscriber that:

- a. Allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

either or both of those features shall be disabled or discontinued for the seller's listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by Participants. Except for the foregoing and subject to Section 15.3.9, a Participant's IDX display may communicate the Participant's professional judgment concerning any listing.

Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller.

#### Section 16.3.9

Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the Participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, Participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

#### Section 16.3.10

Participants and Subscribers may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participants or Subscribers hold participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display.

### Section 16.4 Display

Display of listing information pursuant to IDX is subject to the following rules:

#### Section 16.4.1

Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS Participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed.

#### Section 16.4.2

The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed.

#### Section 16.4.3

Participants shall not modify or manipulate information relating to other Participants' listings. MLS Participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.

#### Section 16.4.4

All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data. Displays of minimal information (e.g., “thumbnails”, text messages, “tweets”, etc. of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

#### Section 16.4.5

All listings displayed pursuant to IDX shall identify the listing agent.

#### Section 16.4.6

Non-principal brokers and sales licensees affiliated with IDX Participants may display information available through IDX on their own Web sites subject to their Participant's consent and control and the requirements of state law and/or regulation. The previous sentence does not apply to licensees subject to fee waiver under Section 6.6.

#### Section 16.4.7

All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g., "thumbnails", text messages, "tweets", etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

#### Section 16.4.8

Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers' personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect Participants and/or the MLS from liability. Displays of minimal information (e.g., "thumbnails", text messages, "tweets", etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

#### Section 16.4.10

The right to display other Participants' listings pursuant to IDX shall be limited to a Participant's office(s) holding participatory rights and licensees holding subscribers' rights in this MLS.

#### Section 16.4.11

Listings obtained through IDX feeds from REALTOR® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g., "thumbnails", text messages, "tweets", etc., of two hundred [200] characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

Note: An MLS Participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS Participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, "co-mingling" means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that Participants may display listings from each IDX feed on a single webpage or display.

#### Section 16.4.12

Display of expired and withdrawn listings is prohibited.

#### Section 16.4.13

Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and email address(es) is prohibited.

#### Section 16.4.14

Participants are required to employ appropriate security protection such as firewalls on their websites and displays, provided that any security measures required may not be greater than those employed by the MLS.

#### Section 16.4.15

Participants must maintain an audit trail of consumer activity on their website and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers.

#### Section 16.4.16

Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the Participant's logo and contact information is larger than that of any third party.

### Section 16.5 Service Fees and Charges

Service fees and charges for participation in IDX shall be as established annually by the Board of Directors.

## Article XVII Virtual Office Websites (VOWs)

### Section 17.1 VOW Defined

- a. A "Virtual Office Website" (VOW) is a Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS listing information, subject to the Participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant, except one subject to a fee waiver under Section 6.6, may, with his or her Participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant's oversight, supervision, and accountability.
- b. As used in Section 17 of these rules, the term "Participant" includes a Participant's affiliated non-principal brokers and sales licensees other than those subject to a fee waiver under Section 6.6—except when the term is used in the phrases "Participant's consent" and "Participant's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all Virtual Office Websites, whether operated by a Participant, by a non-principal broker or sales licensee, or by an "Affiliated VOW Partner" (AVP) on behalf of a Participant.
- c. "Affiliated VOW Partner" (AVP) refers to an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant's supervision, accountability, and compliance with the VOW policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS listing information, except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS listing information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW.

- d. As used in Section 19 of these rules, the term “MLS listing information” refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

#### Section 17.2

- a. The right of a Participant’s VOW to display MLS listing information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.
- b. Subject to the provisions of the VOW policy and these rules, a Participant’s VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g., “Internet Data Exchange” (IDX).
- c. Except as otherwise provided in the VOW policy or in these rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant’s VOW.

#### Section 17.3

- a. Before permitting any consumer to search for or retrieve any MLS listing information on his or her VOW, the Participant must take each of the following steps.
  - i. The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter, “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.
  - ii. The Participant must obtain the name of and a valid e-mail address for each Registrant. The Participant must send an e-mail to the address provided by the Registrant confirming that the Registrant has agreed to the terms of use (described in Subsection d., below). The Participant must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use.
  - iii. The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any e-mail address is associated with only one user name and password.
- b. The Participant must assure that each Registrant’s password expires on a date certain, but may provide for renewal of the password. The Participant must at all times maintain a record of the name, e-mail address, user name, and current password of each Registrant. The Participant must keep such records for not less than one hundred eighty (180) days after the expiration of the validity of the Registrant’s password.
- c. If the MLS has reason to believe that a Participant’s VOW has caused or permitted a breach in the security of MLS listing information or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, e-mail address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of



activity by any such Registrant.

- d. The Participant shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms of use provision that provides at least the following:
  - i. that the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant
  - ii. that all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use
  - iii. that the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW
  - iv. that the Registrant will not copy, redistribute, or retransmit any of the information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property
  - v. that the Registrant acknowledges the MLS' ownership of and the validity of the MLS' copyright in the MLS database
- e. The terms of use agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the terms of use, must be prominently labeled as such, and may not be accepted solely by mouse click.
- f. The terms of use agreement shall also expressly authorize the MLS and other MLS Participants or their duly authorized representatives to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

#### Section 17.4

A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions or get more information about any property displayed on the VOW. The Participant or a non-principal broker or sales licensee licensed with the Participant must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

#### Section 17.5

A Participant's VOW must employ reasonable efforts to monitor for and prevent misappropriation, scraping, and other unauthorized uses of MLS listing information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

**Note:** MLSs may adopt rules requiring Participants to employ specific security measures, provided that any security measure required does not impose obligations greater than those employed by the MLS.

## Section 17.6

- a. A Participant's VOW shall not display the listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as e-mail, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.
- b. A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision.

### ***Seller Opt-out Form***

#### *1. Check one.*

*a. \_\_\_\_\_ I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.*

*b. \_\_\_\_\_ I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.*

*2. I understand and acknowledge that if I have selected Option a., consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their searches.*

\_\_\_\_\_  
*Initials of Seller*

- c. The Participant shall retain such forms for at least one (1) year from the date they are signed or one (1) year from the date the listing goes off the market, whichever is greater.

## Section 17.7

- a. Subject to Subsection b., below, a Participant's VOW may allow third-parties:
  - i. to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
  - ii. to display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing.
- b. Notwithstanding the foregoing, at the request of a seller, the Participant shall disable or discontinue either or both of those features described in Subsection a. as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 19.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled at the request of the seller.

### Section 17.8

A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within forty-eight (48) hours following receipt of a communication from the listing broker explaining why the data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

### Section 17.9

A Participant shall cause the MLS listing information available on its VOW to be refreshed at least once every three (3) days.

### Section 17.10

Except as provided in these rules, in the NATIONAL ASSOCIATION OF REALTORS®, VOW policy, or in any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS listing information to any person or entity.

### Section 17.11

A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

### Section 17.12

A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

### Section 17.13

A Participant who intends to operate a VOW to display MLS listing information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these rules, the VOW policy, and any other applicable MLS rules or policies.

### Section 17.14

A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the Participant.

### Section 17.15

A Participant's VOW may not make available for search by or display to Registrants any of the following information:

- a. expired and withdrawn listings
- b. the compensation offered to other MLS Participants
- c. the type of listing agreement, i.e., exclusive right-to-sell or exclusive agency
- d. the seller's and occupant's name(s), phone number(s), or e-mail address(es)
- e. instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property

#### Section 17.16

A Participant shall not change the content of any MLS listing information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS listing information with additional information not otherwise prohibited by these rules or by other applicable MLS rules or policies, as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS listing information on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields.

#### Section 17.17

A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS listing information displayed on the VOW is deemed reliable, but is not guaranteed accurate by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

#### Section 17.18

A Participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

#### Section 17.19

A Participant may display advertising and the identification of other entities ("co-branding") on any VOW the Participant operates or that is operated on his or her behalf. However, a Participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this section, co-branding will be presumed not to be deceptive or misleading if the Participant's logo and contact information (or that of at least one Participant, in the case of a VOW established and operated on behalf of more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

#### Section 17.20

A Participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

#### Section 17.21

Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

#### Section 17.22

Where a seller affirmatively directs his or her listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within forty-eight (48) hours.