



## Rules and Regulations

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## **Smart MLS, Inc.**

# **Rules and Regulations**

## **Article 1 - Name, Authority and Purpose**

### **Section 1.1 Name.**

The name of this organization is the **Smart MLS, Inc.** (hereinafter “Service” or “the Service”).

### **Section 1.2 Authority.**

The Articles of Incorporation establishing the **Smart MLS, Inc.** and its Bylaws provide the authority to issue these Rules and Regulations and amend them from time to time.

### **Section 1.3 Definitions.**

Capitalized terms which are not defined the first time they appear are defined in Article 17.

### **Section 1.4 – Purpose of the Service**

The Service shall be a means by which authorized Participants make blanket unilateral offers of compensation to other Participants acting as buyer agents (or in other agency or non-agency capacities to whom such offers are permitted by law); by which cooperation among Participants is enhanced; by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of Listing information among the Participants so that the Participants may better serve their clients and the public. Entitlement to compensation is determined by the Cooperating Broker’s performance as a procuring cause of the sale (or lease).

As determined by the Board of Directors, the Corporation shall seek to model its governing documents, rules, regulations, and policies, practices, and procedures to the Constitution, Bylaws, Rules, Regulations, and Policies of the NATIONAL ASSOCIATION OF REALTORS®.

## **Article 2 - Participation**

### **Section 2.1 – Participation**

For purposes of these Rules & Regulations, the following definitions shall be used:

**1a. "Participants"** - Participation in the Service is available to any REALTOR® principal who is an active member of the Connecticut Association of REALTORS® or any other Association of REALTORS® without further qualification except payment of required dues and fees and agreement to abide by these By-laws and these Rules and Regulations of the Service. However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service "Membership" or "Participation" unless they hold a current, valid real estate broker's license and offer or accept compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property.

Use of information developed by or published by the 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 by or published by the Service where access to such information is prohibited by law. A REALTOR® principal of any firm, partnership, or corporation, or the branch office manager who serves as designated broker or licensed or certified appraiser and who is designated by said firm, partnership, or corporation shall be termed the "Participant" in the Service and shall have all rights, benefits, and privileges of the Service, and shall accept all obligations to the Service for the Participant's firm, partnership, or corporation, and for compliance with the bylaws and rules and regulations of the Service by all persons affiliated with Participant who utilize the Service.

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm offers or accepts cooperation and compensation means that the participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and ongoing basis during the operation of the participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a participant or potential participant that operates a real estate business on a part-time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a participant or potential participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the participant or potential participant as long as the level of service satisfies state law.)

The key is that the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a participant or potential participant that operates a "Virtual Office Website" (VOW) (including a VOW that the participant uses to refer customers to other participants) if the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a participant or potential participant actively endeavors during the operation of its real estate business to offer or accept cooperation and compensation only if the MLS has a reasonable basis to believe that the participant or potential

participant is in fact not doing so. The membership requirement shall be applied in a nondiscriminatory manner to all participants and potential participants.

**1c. "Subscribers"** - Subscribers include non-principal brokers, sales associates, licensed and certified appraisers affiliated with a Participant or Secondary Participant. Non-principal brokers, sales associates, licensed and certified appraisers affiliated with a Secondary Participant shall be known as a "Secondary Subscriber". A Subscriber's right to utilize information is limited to those activities authorized to the Participant's office with which said Subscriber is affiliated. Said information shall not be used or made available to any non-MLS individuals or firms, nor be used by the Subscriber for any real estate activity outside of the Participant's office. These are deemed to be unauthorized uses.

**1d. "Unlicensed Staff"** – Unlicensed staff include affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers who are under the direct supervision of a Participant or the Participant's licensed designee. An Unlicensed Staff's right to utilize information is limited to those activities authorized to the Participant's office with which said Unlicensed Staff is affiliated. Said information shall not be used or made available to any non-MLS individuals or firms, nor be used by the Unlicensed Staff for any real estate activity outside of the Participant's office. These are deemed to be unauthorized uses. All unlicensed staff must have an individual login ID and password.

**1e. "Users"** - Users of the Service include the Sponsoring Member, employees of the Participant who are not licensed as a real estate broker, salesperson, or appraiser but have access to the data. All Users must have an individual login ID and password. (e.g. a secretary, office manager, and unlicensed personal assistant).

## **Article 3 - Fees, Charges and Fines**

### **Section 3.1 Fees.**

The following fees and service charges for the operation of the Service are in effect and are subject to change from time to time in the manner prescribed in the Bylaws of the Service.

- (a) Each Participant shall pay a one-time application fee upon joining the Service.
- (b) A Subscriber fee shall be charged to each Participant and Subscriber in such amount and frequency as may from time to time be determined by the Board of Directors. Subscriber fees shall be billed in advance. Participants shall be responsible for paying subscription fees in an amount equal to the current subscription fee as defined in Attachment A times the number licensees affiliated with the Participant's firm who have access to and use of the service, 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. Secondary Participants shall be responsible for paying subscription fees in an amount equal to the current subscription fee as defined in Attachment A times the number of licensees affiliated with the Secondary Participant's firm who may choose to subscribe to Full or Limited access to the

service, whether licensed as a broker, sales licensee, or licensed or certified appraiser who is employed by or affiliated as an independent contractor with such Secondary Participant.

- (c) A fee for data entry of Listings by the Service staff in such amount as may from time to time be determined by the Board of Directors.
- (d) Electronic lockbox and key fees (Article 16)

A current schedule of fees, charges and fines is provided in Attachment A.

### **Section 3.2 Failure to Pay.**

- (a) Failure of a Participant to pay required Fees within thirty (30) days of the invoice date shall result in all services to the Participant and its Subscribers being suspended until the fees are paid in full.
- (b) Failure of a Subscriber to pay Subscriber Fees within thirty (30) days of the invoice date shall result in suspension of all services to the applicable Subscriber until the fees are paid in full. Any such unpaid Subscriber fee shall automatically become a responsibility of the Subscriber's Participant. If said fees remain unpaid for an additional thirty (30) day period, the services to said Participant and its Subscribers shall be suspended. The Service shall give at least ten (10) days' notice prior to suspending a Firm's service. Late payment of Subscriber Fees may result in a late fee. Reinstatement after suspension of either a Participant or Subscriber shall require payment of a Reinstatement Fee.

### **Section 3.3 Reinstatement Fee.**

The Service shall impose a Reinstatement Fee in the amount provided for in Attachment A as a condition of any Participant's or Subscriber's resumption of services after such Participant or Subscriber has canceled (or been suspended or terminated for nonpayment). No such Reinstatement Fee shall be charged to a Subscriber:

- (a) who cancels access to the MLS System Services and (i) resumes such services through a different Participant within (30) days of such cancellation or (ii) resumes such services after a period of at least twenty-four (24) months, or;

### **Section 3.4 No Refunds.**

There shall be no proration or refund of fees for Participants or Subscribers in connection with suspension or termination of service.

### **Section 3.5 Subscriber Transfers.**

Any Subscriber transferring his or her license from one Participant to another shall notify the Service Center promptly, and shall submit a Transfer Agreement executed by Subscriber and the Participant to whose Firm and office the Subscriber is transferring. As soon as is practicable after receipt of such Subscriber Agreement, the Service shall provide the Subscriber with access to the service.

### **Section 3.6 Allowing Another Person to Use a System ID is Disallowed.**

Only the Subscriber specifically assigned a System ID (private login) is authorized to access the System using that ID. Unless specifically authorized in writing by the Service, allowing any

other person to use an ID to access the System, including, without limitation, the Subscriber's Participant, other Participants and Subscribers, other agents, clients or customers are expressly prohibited. The penalty for the first violation of this policy shall be a fine as provided for in Attachment A. The penalty for additional violations of this policy shall be both a fine as provided for in Attachment A and a thirty (30) day suspension of privileges. Misuse of a System ID or use of a System ID without authorization may also subject the Subscriber to criminal prosecution.

## **Article 4 - Listing Procedures**

### **Section 4.1 Listing Procedures for Different Property Types.**

#### **Section 4.1.1 Mandatory Property Listings.**

Listings of the following types of property located within the Service's Service Area as defined in its Certificate of Incorporation taken by Participants on an Exclusive Right to Sell/Rent or Exclusive Agency to Sell/Rent Listing contract shall, in accordance with these Rules and Regulations, be input into the Service System within forty-eight (48) hours after all necessary signatures of Seller(s) and Participant, or his/her authorized agent, have been obtained. With the exception of properties where there is no address assigned by the town or properties not yet built, Mandatory Property Listings must include a valid address:

- (a) Single family homes, condominiums, townhouses, co-ops, mobile homes for sale, lease or exchange
- (b) Vacant lots and acreage for sale lease or exchange
- (c) Two-, three-, and four-family residential buildings for sale, lease or exchange
- (d) Residential rental properties
- (e) All listings of Secondary Participants and Subscribers for which they are identified as the listing agent and where the listings fall under the Mandatory Property Listings requirements identified above.

#### **Section 4.1.2 Voluntary Property Listings.**

Listings of real or personal property of the following types, taken by Participants on a Listing Agreement, may be Filed with the Service after all necessary signatures of the Seller have been obtained on the Listing Agreement. With the exception of vacant lots, acreage, and/or properties not yet built, where there is no address assigned by the town, Voluntary Property Listings must include a valid address:

- (a) Business opportunities for sale or exchange
- (b) Commercial income property for sale or exchange (including residential buildings of five or more units)
- (c) Industrial property for sale, lease or exchange
- (d) Only Listings of the designated types of property located within the state of Connecticut set forth in Section 4.1 above are required to be submitted to the service. Listings of property located outside the state of Connecticut if the Participant holds a valid real estate license in the state the property is located in or non-mandatory

property listings will be accepted if submitted voluntarily by a Participant but, cannot be required by the Service.

### **Section 4.1.3 Limited Service Compilation Listings.**

Listing agreements under which the Listing Broker will not provide one, or more, of the following services are “Limited Service Compilation Listings”:

- (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(s) as to the merits of offers to purchase;
- (d) assist the Seller(s) in developing, communicating, or presenting counter-offers; or
- (e) participate on the Seller(s) behalf in negotiations leading to the sale of the listed property Limited Service Compilation Listings will be identified with an appropriate code or symbol in Service Compilations so potential Cooperating Brokers will be aware of the extent of the services the Listing Broker will provide to the Seller(s), 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. Limited Service Compilation Listings shall also contain Seller contact information and showing instructions.

### **Section 4.1.4 Entry-only Listings.**

Listing agreements under which the Listing Broker will not provide any of the following services are “Entry-only Listings”:

- (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(s) as to the merits of offers to purchase;
- (d) assist the Seller(s) in developing, communicating, or presenting counter-offers; or
- (e) participate on the Seller(s) behalf in negotiations leading to the sale of the listed property Entry-only Listings will be identified with an appropriate code or symbol in Service Compilations so potential Cooperating Brokers will be aware of the extent of the services the Listing Broker will provide to the Seller(s), 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. Entry-only Listings shall also contain Seller contact information and showing instructions in the “Secure Showing Instructions” field.



### **Section 4.1.5 Acceptance of Listings.**

Except as specifically set forth in the last sentence of this Section 4.1.5, the Service will accept for Filing only those Listings that make it possible for the Listing Broker to offer cooperation, with accompanying compensation, to Cooperating Brokers, as and in the manner provided for in Article 7 below. The Service may refuse to accept for Filing any proposed Listing which, in the sole and exclusive determination of the Service, may not comply with all fair housing and other laws and regulations that may be applicable to the sale of the proposed Listed Property. Any such determination by the Service shall be final, and neither any Participant nor any Subscriber shall have or assert any claim against the Service, or any of its employees or agents, arising out of such determination.

### **Section 4.1.6 Representations and Warranties.**

By Filing a Listing, a Listing Broker shall be deemed to have:

- (a) represented and warranted that, as of the Filing date,
  1. the Listing Broker holds a current, valid real estate broker's license issued by the appropriate state real estate licensing authority, agency or board, or its functional equivalent, in the state in which the Listed Property is located,
  2. the Listing Broker and the Participant with which the Listing Broker is affiliated are in compliance with the terms and conditions of these Rules and Regulations and;
  3. to the knowledge of the Listing Broker, no other person has Filed, or has the right to File, a Listing with respect to the property identified in the Listing;
- (b) re-affirmed, as of the Filing date, the agreements, the representations and warranties and the completeness and accuracy of the information contained in the Participant Agreement/Application required to be submitted to the Service at the time the Listing Broker first became a Participant in the Service; and
- (c) represented and warranted that the Seller, if the Seller does not hold title to the Listed Property on the Filing date, has demonstrated to the Listing Broker that the Seller has received written authorization from the title holder of the Listed Property to File the Listed Property with the Service. For any Listing of the kind contemplated in the preceding clause in which the Seller does not hold title to the Listed Property on the Filing date, the Listing Broker shall include in the Listing a disclosure that the Seller is not the title holder of the Listed Property and that the Listing is made subject to completion of the sale of the Listed Property to the Seller.

The Service shall be under no obligation to inquire into or to verify any of the representations and warranties made by a Listing Broker pursuant to this Section 4.1.6. Without limiting the foregoing, it is the obligation of each Participant to assure that the Listing Broker holds a current, valid real estate broker's license issued by the appropriate state real estate licensing authority, agency or board, or its functional equivalent, in the state in which the Listed Property is located.

### **Section 4.1.7 Listing Remarks, Sensitive and Regulated Data.**

In Filing a Listing, no broker, agent or agency may be named or identified, nor may any web (URL), e-mail or voicemail address, telephone number or other personal or other form of identification or means of contact be included, in any section or field of any Property Data Form,

except only in those fields headed “Listing Office”, “Listing Agent”, “Agent Remarks” and “Special Showing Instructions”. In Filing a Listing, no Seller may be named or identified, nor may any web(URL), e-mail or voicemail address, telephone number or other personal or other form of identification or means of contact of a Seller be included, in any section or field of any Property Data Form. For purposes of these Rules and Regulations, the term “any section or field” of a Property Data Form includes, in addition to any section or field of the Property Data Form itself, any virtual tours, photographs and other types of data and/or information related to the Listed Property that are linked in any way to the Property Data Form.

Sensitive information such as, but not limited to, lockbox combinations and home security system access codes shall not be included in the Service Compilation or published in MLS Publications or any report from the System. Further, no information shall be entered into the Service Compilation which would violate any municipal, state or federal order, ruling or statute. No data is allowed in any field except that for which the field is designed. The Service retains the right to correct any violation of this regulation.

#### **Section 4.1.8 Filing of Photographs.**

Certain types of Listed Properties require the Filing of photographs of the Listed Property. The Board of Directors of the Service from time to time may establish and amend a policy regarding the Filing of Photographs, which policy, among other things, may set forth different Filing requirements for different types of Listed Properties, may specify exceptions to the Filing requirements and may provide for sanctions for failure to comply with the terms and conditions of the policy. The photograph Filing policy adopted by the Board of Directors, as it may be amended from time to time, shall be attached to these Rules and Regulations as Attachment C and shall be deemed to be a part hereof.

Subscribers are required to submit photos except in the event the seller directs, in writing, that photos or other graphic representations of their listed property not appear in the MLS compilation.

Participants and Subscribers warrant to the MLS that they are either the author or have rights to the photographs they submit to the Service. Photographs may not be borrowed or reproduced without the explicit knowledge and consent, provided in writing, of the owner or copyright holder of the original work.

#### **Section 4.2 Listings Subject to Rules and Regulations of the Service.**

Any Listing Agreement to be Filed with the Service is subject to these Rules and Regulations as soon as that Listing Agreement has been signed by the Seller. Only Listings of the types of property designated Mandatory (see Section 4.1.1) and located within the Service Area of the Service are required to be submitted to the Service. Listings of property located outside the Service’s Service Area will be accepted if submitted voluntarily by a Participant who meets the licensing requirements of the State in which such property is located.

### **Section 4.2.1 Deletion of Listing Data and Information.**

Listing data and information for an entire listing may not be removed from the system unless the listing was entered in error. Only MLS staff may remove listings from the system.

### **Section 4.3 Detail on Listings Filed with the Service.**

By Filing a Property Data Form with the Service, the Listing Broker represents and warrants:

- (i) that, to the best of the Listing Broker's knowledge, the information and data in the Form are accurate and complete in every detail and;
- (ii) that the Seller has entered into a Listing Agreement with respect to the Listed Property with the Listing Broker and, to the knowledge of the Listing Broker, with no other broker. As set forth in Section 9.2 below, the Service shall have no liability or responsibility for, and no obligation to verify or otherwise inquire into the accuracy or completeness of, any of the information or data contained in any Property Data Form.

**Note 1:** This Section 4.3 provides that, by Filing a Property Data Form with the Service, a Listing Broker represents, among other things that, to its knowledge, the Seller has entered into a Listing Agreement with no other broker. Consistent with that representation, a broker may not (except only in the limited circumstances contemplated in clause (c) of Section 4.1.6) File a Listing with the Service for a Listed Property that is already the subject of a Listing Agreement with another broker. If, notwithstanding this prohibition, such a duplicate Filing is made, and if the Service becomes aware of the duplicate Filing, the Service may remove the duplicate Filing from the System and, if it does so, shall notify both the original Listing Broker and the broker that made the duplicate Filing of its action. Neither the Service, nor any of its agents or employees, shall have any liability or responsibility of any kind, nor shall any Participant or Subscriber have or assert any claim against the Service, or against any of its employees or agents, arising out of such action or out of the Service's failure for any reason to become aware of a duplicate Filing. Any dispute between Participants or Subscribers that arises out a duplicate Filing shall be resolved pursuant to the provisions of Section 8.3 below.

### **Section 4.4 Exempted Listings.**

If a Seller refuses, on the Seller's initiative, to permit an identified property to be Listed in the Service, and if the Seller executes a Non-MLS Listing Form with respect to that identified property, and if the Listing Broker delivers the Non-MLS Listing Form to the Service before the Deadline for Filing with respect to that property, the Participant with which the Listing Broker is affiliated may then take the identified property as an "office exclusive", and the property shall not be required to become a Listed Property or be included in any Service Compilation. The Non-MLS Listing Form or other written confirmation must be signed by the Seller of the identified property and must meet the same Deadline For Filing imposed under these Rules and Regulations for the same type of Listed Property. If, in a Listing Agreement, the Seller and the Listing Broker agree to defer the Filing of the property with the Service to a fixed date in the future, or to a date in the future still to be determined, the Listing Broker shall File a Non-MLS Listing Form with respect to the property by the Deadline For Filing.

#### **Section 4.5 Change of Listing.**

Any change to the Listing agreed to in the Listing Agreement requires the authorization in writing of the Seller and the Participant prior to Filing the change with the Service. If requested by the Service, the Listing Broker shall provide the Service with a copy of the change authorization signed by the Seller within twenty-four (24) hours.

#### **Section 4.6 Cancellation of Listing Prior to Expiration.**

A Listing may be cancelled by the Listing Broker before the expiration date of the Listing Agreement related to the Listed Property if and when the cancellation of the Listing Agreement has been authorized in writing by the Seller. The cancellation shall be Filed with the Service by the Deadline for Filing. A Seller may not require the Service to cancel a Listing without the Listing Broker's concurrence.

#### **Section 4.7 Withdrawal of Listing Prior to Expiration.**

A Listing may be withdrawn from the Service by the Listing Broker before the expiration date of the Listing Agreement related to the Listed Property if and when the withdrawal has been authorized in writing by the Seller. The withdrawal shall be Filed with the Service by the Deadline for Filing. Withdrawal of a Listing from the Service does not terminate the related Listing Agreement. A withdrawn Listing remains subject to the terms and conditions of the related Listing Agreement, and, as such, the Listing will expire at midnight on the expiration date set forth in that Listing Agreement. A Seller may not require the Service to withdraw a Listing without the Listing Broker's concurrence.

#### **Section 4.8 Contingencies Applicable To Listings.**

Any contingency or condition applicable to a Listing must be specified in the Property Data Form Filed with the Service.

#### **Section 4.9 Listing Price Specified.**

The full gross Listing price of a property must be stated in the Listing Filed with the Service. The gross Listing price will be included in the Service Compilation.

#### **Section 4.10 Listing Properties with Multiple Units or Lots.**

(a) If a Listing Agreement includes multiple properties which may be sold or leased separately, the Property Data Form Filed with the Service must provide separate data and information for each such property. When each such property has been sold or leased, the Listing Broker shall File a change of status form with the Service for that property by deadline for filing.

(b) If a Listing Agreement for multiple properties includes properties on which there is to be new construction, as a result of which full Listing information is not available for each property, the Listing Broker must File Property Data Forms with the Service for at least a representative sampling of the properties that are then, or that will be, available for purchase. Provided that Property Data Forms for a representative sampling of properties have been Filed, it is not necessary, at the time of that initial Filing, to File a separate Property Data Form for each property covered by the Listing Agreement. The Listing Broker, however, must File a separate Property Data Form for each such property as soon as basic data are available for the submission of a Property Data Form for that property.

#### **Section 4.11 Listing Properties in Multiple Towns.**

No property shall be listed in more than one town, unless:

- i) it is physically located in more than one town, or;
- ii) the street on which the property is located can only be entered from an adjoining town.

If a property meets one or both of the above criteria, the Listing Broker may elect to place the property Listing in each appropriate town provided:

- A. the Listing broker must immediately notify the Service, in writing, of the fact that the property has been listed in more than one town. (Printed copies of the Listing as it appears in each town must be included with the notification.)
- B. The first line in the “Remarks” section of the adjoining town Listing must clearly indicate the town(s) in which the property is physically located and the municipal school system(s) serving the property.
- C. The Listing Broker must notify the Service, in writing, as soon as the property is sold; the Listing expires or is cancelled. Upon such notification, or if a property that fails to meet the criteria listed above is listed in an adjoining town, the Service shall remove the adjoining town Listing. Any broker placing a Listing in violation of this section shall be fined in accordance with these Rules and Regulations.

#### **Section 4.12 Listing Properties in More Than One Category.**

A Listing may be added to the Service Compilation in more than one (1) property category only if each and every entry cross references the MLS Number(s) of the other entry or entries via the Remarks field. The sale of a property which is in more than one category will only be reported in one category and additional entries will be withdrawn from the Service.

#### **Section 4.13 Non-MLS Closed Transaction.**

The Participant shall have the option to enter into the MLS a Non-MLS Closed transaction. A transaction where the property was not listed in the MLS, but where the sale was assisted by the Participant would qualify for entry. Any such Non-MLS Closed Transaction must be accompanied by Non-MLS Closed Transaction Form(s) and at least one exterior photo.

#### **Section 4.14 No Control of Commission Rates or Fees Charged by Participants.**

The Service shall not fix, control, recommend, suggest or maintain commission rates or fees for services to be rendered by Participants or by any Listing Broker, Subscriber or other person affiliated with a Participant. Further, the Service shall not fix, control, recommend, suggest or maintain the division of commissions or fees between or among cooperating Participants (or any persons affiliated with them) or between or among Participants and non-Participants (or any persons affiliated with them).

#### **Section 4.15 Expiration Date on Listings.**

Each Listing Filed with the Service shall bear a definite and final termination date as negotiated between the Listing Broker and the Seller.

#### **Section 4.16 Expiration, Extension, Renewal and Reactivation of Listings.**

Any Listing Filed with the Service automatically expires as of midnight on the expiration date specified in the Listing Agreement, unless the expiration date under the Listing Agreement has been extended by the Listing Broker and the Seller, and, prior to that expiration date, the Listing Broker:

- (i) obtains written authorization of such extension signed by the Seller and
  - (ii) Files with the Service a notice of the extension of the expiration date.
- An expired Listing may be reactivated if, within three (3) days after the original expiration date of the Listing, the Listing Broker:

- (i) Files with the Service a notice of reactivation of the Listing and
- (ii) obtains written authorization extending the original expiration date signed by the Seller.

#### **Section 4.17 Listings of Suspended Participants.**

When a participant of the service is suspended from the MLS to maintain REALTOR® membership or for violation of the 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 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. 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 4.18 Listings of Expelled Participants.**

When a Participant of the Service is expelled from the Service for failing to maintain REALTOR® membership or for violation of the Bylaws of the Service, these Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all Listings currently Filed with the Service shall, at the expelled Participant's option, be retained in the Service until sold, withdrawn, or expired, and shall not be renewed or extended by the Service beyond the termination date of the Listing Agreement in effect when the expulsion became effective. If a Participant has been expelled from a Board/Association of REALTORS® or the Service, or both, for failure to pay appropriate dues, fees, or charges, the Service is not obligated to provide any services, including continued inclusion of the expelled Participant's Listings in the Service Compilation of current Listing information. Prior to any removal of an expelled Participant's Listings from the Service, the expelled Participant should be advised, in writing, of the intended removal so that the expelled Participant may advise his clients.

#### **Section 4.19 Listings of Resigned Participants.**

If a Participant resigns from the Service, the Service may cease to provide services, including the continued inclusion of the resigned Participant's Listings in the Service Compilation. Prior to any removal of a resigned Participant's Listings from the Service Compilation, the Service will advise the resigned Participant in writing of the intended removal.

#### **Section 4.20 Right of Service to Require Data and Contracts.**

In order to test the integrity of the Service Compilation, the Service from time to time may require Participants and/or Subscribers to provide written information and data concerning Listings with the Service and copies of Listing Agreements related thereto. Requested documentation shall be provided within twenty-four (24) hours of request by Service.

#### **Section 4.21 Retention of Listing Data and Information.**

All Listing data and information Filed with the Service shall be retained in the System and shall be accessible to Participants and Subscribers.

#### **Section 4.22 Data Errors.**

After written notice from the Listing Broker of any errors or omissions in data loaded by the Service, the Service's sole responsibility shall be to correct any such errors or omissions in the System. A Participant shall correct all errors or omissions in data loaded by the Participant or his/her Subscribers. The Service will not be responsible for errors or omissions with respect to Listing information, regardless of whether the Listing Broker, his/her agent or representative, or the Service loaded the data.

#### **Section 4.23 Penalty for Entering an Incomplete or Inaccurate Listing.**

In the event a Listing input into the System:

- (a) Contains substantially inaccurate data or,
- (b) Contains incomplete or inaccurate data in any "Mandatory" field or,
- (c) Does not have a photo, as required in Section 4.1.8 of these Rules and Regulations, the following shall occur:
  - (1) The Service shall notify both the responsible Subscriber (listing agent) and Listing Broker of the suspected violation(s).
  - (2) The Listing Broker shall be given three (3) calendar days, from the date of notification, to resolve suspected deficiencies and notify the Service of such resolution.
  - (3) If the Service is not notified of the resolution of a suspected deficiency within three calendar days, the Subscriber shall be fined an amount as provided for in Attachment A for each Listing in violation.
  - (4) Regardless of changes in the Listing's status, these fines shall be reassessed each month, for each Listing, until the Listing data and/or photo is brought into compliance with these Rules and Regulations and the Service has been so notified.
  - (5) Imposed fines shall be due and payable upon receipt. Failure to pay imposed fines when due shall be handled in accordance with Section 3.2 of these Rules and Regulations.
  - (6) On the ninety-first (91<sup>st</sup>) day, after the date of initial invoice, if the Listing data and/or photo have not been brought into compliance, the responsible Subscriber's (listing agent's) System access privileges shall be suspended until the Listing data and/or photo has been brought into compliance. The fine assessed to the Listing Agent shall become the Participant's responsibility and shall be continued to be assessed monthly during any such suspension period.

#### **Section 4.24 Availability of Listed Property:**

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

### **Article 5 - Selling Procedures**

#### **Section 5.1 Showings and Negotiations.**

Appointments for showings of a Listed Property and negotiations with the Seller for the purchase of a Listed Property shall be conducted through the Listing Broker, except under the following circumstances:

- (a) the Listing Broker gives the Cooperating Broker specific authority to show the Listed Property and/or to negotiate directly with the Seller, 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.

A Listing Broker must make arrangements (including, where necessary, a procedure to be followed if a particular broker or salesperson is unavailable) to show a Listed Property to Cooperating Brokers and to present written offers to the Seller as soon as possible.

#### **Section 5.2 Presentation of Offers**

The Listing Broker must present all offers to the seller and make arrangements to present the offer as soon as possible.

#### **Section 5.3 Submission of Written Offers and Counter-Offer:**

The Listing Broker shall submit to the Seller all written offers until closing unless precluded by law, government rule, or regulation. 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 5.4 Right of Cooperating Broker in Presentation of Offer.**

Except as otherwise set forth in the third sentence of this Section 5.4, a Cooperating Broker or his or her representative has the right to participate in the presentation to the Seller of any offer the Cooperating Broker secures to purchase or lease the Listed Property. The Cooperating Broker does not have the right to be present at any discussion or evaluation of that offer by the Seller and the Listing Broker. If the Seller gives written instructions to the Listing Broker that the Cooperating Broker not be present at the presentation of an offer which the Cooperating Broker



secured, the Cooperating Broker has the right to a copy of the Seller's written instructions, but the Cooperating Broker shall have no right to be present at such presentation. Whether or not the Cooperating Broker has the right to be present at a presentation to the Seller of an offer to purchase or lease, the Listing Broker alone, consistent with the provisions of Section 5.2 above, shall have the right to control the establishment of appointments for presentation.

### **Section 5.5 Right of Listing Broker in Presentation of Counter-Offers.**

Excepting as otherwise set forth in the third sentence of this Section 5.5, a Listing Broker or his or her representative has the right to participate in the presentation of any counter-offer made by the Seller. The Listing Broker does not have the right to be present at any discussion or evaluation of a counteroffer by the prospective purchaser or lessee (except where the Cooperating Broker is a subagent of the Seller). If the prospective purchaser or lessee gives written instructions to the Cooperating Broker that the Listing Broker not be present when a counteroffer is presented, the Listing Broker has the right to a copy of the written instructions of the prospective purchaser or lessee, but the Listing Broker shall have no right to be present at such presentation.

### **Section 5.6 Reporting Sales and Leases to the Service.**

Status changes, including final closing of sales, shall be reported to the multiple listing service by the listing broker within 48 hours after they have occurred. If negotiations were carried on under Section 5.5 hereof, the cooperating broker shall report accepted offers to the listing broker within 24 hours and the listing broker shall report them to the MLS within 48 hours after receiving notice from the cooperating broker.

**NOTE: 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 property information to members of the Service and the public. 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.**

### **Section 5.7 Reporting Listings "Under Deposit".**

By the Deadline for Filing, the Listing Broker shall file notice with the Service of each Listing that is "On Deposit". A Listing that is "On Deposit" is deemed to be "off-market".

### **Section 5.8 Reporting Resolutions of Contingencies.**

If and when a contingency currently on File with the Service has been fulfilled or ceases to exist for any reason, the Listing Broker shall File notice of that event with the Service by the Deadline for Filing.

## **Section 5.9 Advertising of Listings Filed with the Service.**

Subject to the provisions of Article 12 of these Rules & Regulations a Listing may not be advertised by any Participant other than the Listing Broker, without the prior written consent of the Listing Broker. Notwithstanding the foregoing, a Listing Broker may restrict a Listing Filed by it from being advertised or otherwise publicized by the Service by submitting to the Service a written notice of restriction signed by both the Listing Broker and the Seller. Notwithstanding anything otherwise contained in this Section 5.9, but subject to the provisions of Section 6.3, both the Listing Broker and the Cooperating Broker, after a Listing has been sold or leased, may claim to have made or affected such sale or lease.

### **Section 5.9.1 Advertising of Listings Filed with the Service.**

A Listing may not be advertised by any Participant other than the Listing Broker, without the prior written consent of the Listing Broker. Notwithstanding the foregoing, a Listing Broker may restrict a Listing Filed by it from being advertised or otherwise publicized by the Service by submitting to the Service a written notice of restriction signed by both the Listing Broker and the Seller. Notwithstanding anything otherwise contained in this Section 5.9, but subject to the provisions of Section 6.3, both the Listing Broker and the Cooperating Broker, after a Listing has been sold or leased, may claim to have made or affected such sale or lease.

### **Section 5.9.2 Coming Soon Listings.**

Prior to being entered into the System or advertised, all Coming Soon Listings must have a valid, fully executed:

1. Exclusive Right to Sell listing agreement, or
2. Exclusive Agency to Sell, or
3. Exclusive Right to Lease, or
4. Exclusive Agency to Lease

Coming Soon listings must include a disclaimer that the listing is not available for showings and must include at least one exterior photo of the listing. Coming Soon listings must have a valid, fully executed Coming Soon Listing Addendum which shall be uploaded to the MLS system at the time of entry as a confidential document; and

Coming Soon Listings must include an offer of cooperation and compensation; and

Coming Soon Listings must include an Active Date; and

Coming Soon listings shall automatically convert to active status seven (7) days after entry, or when the Active date is equal to Today's date.

Coming Soon listings may be extended a single time by an additional seven (7) days a with a valid, fully executed Coming Soon Listing Extension which shall be uploaded to the MLS system as a confidential document.

Listing brokers/agents may terminate a Coming Soon Listing with owner's consent prior to the Active Date.

Coming Soon Listings will be included in listing history in the MLS record of the listing. ADOM will calculate from the date the listing becomes Active.

Coming Soon Listings will be available for auto-searches and will display on the Hotsheet.

Violations of the no showing rule within the Coming Soon Listing period will result in a fine of up to \$5,000, per occurrence.

### **Section 5.9.3 Syndication of Coming Soon Listings.**

There shall be no syndication permitted of Coming Soon Listings. Coming Soon listings may be included in IDX and VOW data feeds and may not be re-syndicated.

Coming Soon Listings shall be available for promotion on social media.

### **Section 5.10 Reporting Cancellation of “On Deposit” Listings.**

If a pending sale or lease of a Listed Property has been cancelled for any reason (as a result of which it no longer qualifies

### **Section 5.11 Reporting Refusal to Sell.**

If the Seller(s) of any Listed Property refuses to accept a written offer satisfying the terms and conditions stated in the Listing, such fact shall be communicated immediately to the Service and to all Participants.

### **Section 5.12 Change of “Sold” Listings.**

A Listing that is reported “sold” may not be modified or changed in any way by a Participant. Notwithstanding the foregoing, the Service may, but it need not, modify or change a “sold” Listing if the Service receives a written request for a modification or change from a Participant and if, in the sole and absolute discretion of the Service, the Service determines that the Participant which made the sale has demonstrated good cause for such modification or change. The determination of the Service shall be final, and neither the Participant nor any Subscriber or other person affiliated with the Participant shall have the right to assert any claim against the Service arising out of such determination.

**Note 1:** A Listing that is “sold” is considered an actual historical event. Therefore, changes or modifications made to a “sold” Listing must not compromise, in any way, the accuracy of information contained in any Service Compilation. The Service, however, shall always have the right to make changes to a “sold” Listing to correct an error that was made in reporting a sale or lease.

**Note 2:** Participants from multi-branch Participant Firms do not have the right to change or transfer “sold” Listings from one branch Office to another.

### **Section 5.13 Disclosing the Existence of Offers**

Listing brokers, in response to inquiries from buyers or Cooperating Brokers, shall, with the Seller’s approval, disclose the existence of offers on the property. Where disclosure is

authorized, the Listing Broker shall also disclose, if asked, whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a Cooperating Broker.

#### **Section 5.14 Requirement to Report Accepted Offers**

The Listing Broker/Agent must report to the Service all listings on which a buyer and seller have arrived at a meeting of the minds which has been documented by a binder, offer to purchase, sales agreement, contract of sale, or any document signed by both buyer and seller. Any such listing shall be reported as appropriate as either “Continue to Show”, “Deposit”, or identify the listing as “Active” and Hubbard “Yes”. Within two business days after all necessary signatures of buyer and seller or his/her/their authorized agent have been obtained.

## **Article 6 - Prohibitions**

### **Section 6.1 Information for Participants Only:**

Any Listing Filed with the Service shall not be made available to any broker or Firm not a Participant of the Service without the prior written consent of the Listing Broker.

### **Section 6.2 “For Sale” Signs.**

Only the “For Sale” signs of the Listing Broker may be placed on a Listed Property.

### **Section 6.3 “Sold” Signs.**

Prior to the closing of a sale of a Listed Property, only the “sold” sign of the Listing Broker may be placed on the Listed Property, except that, if authorized by the Listing Broker, the “sold” sign of a Cooperating Broker may also be placed on the Listed Property.

### **Section 6.4 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.

**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

## **Article 7 - Division of Commissions**

### **Section 7.1 Compensation Specified on Each Listing**

The Listing Broker shall specify, on each Listing Filed with the Service, the compensation offered to other 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 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.\* Compensation shall be expressed as either a flat dollar amount or as a percentage of the gross purchase price unless otherwise agreed by written consent of all Participants to the transaction.

\*The compensation specified on Listings Filed with the Service shall appear in one of two forms. The essential and appropriate requirement of the 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 his submitting an offer to purchase. The compensation specified on Listings published by the MLS shall be shown in one of the following forms:

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

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 his 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 Service shall not have a rule requiring the Listing Broker to disclose the amount of total negotiated commission in his listing contract, and the Service shall not publish the total negotiated commission on a Listing which has been submitted to the MLS by a Participant. The Service shall not disclose in any way the total commission negotiated between the Seller and the Listing Broker.

**Note 2:** The Listing Broker may, from time to time, adjust the compensation offered to other Service Participants for their services with respect to any Listing by advance published notice to the service so that all Participants will be advised. Changes to the compensation must be made prior to submission of an offer to purchase/lease, unless agreed to in writing by the buyer's/lessor's agent.

**Note 3:** The 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.

### **Section 7.1.0 Disclosure of Potential Short Sale.**

Participants may, but are not required to, disclose potential short sales to other participants and subscribers. 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.

### **Section 7.2 Participant as Principal.**

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

### **Section 7.3 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 7.4 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 in the “Confidential Agent Only Remarks” section of the listing. 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.

## **Article 8 - Compliance With and Enforcement of Rules and Regulations**

### **Section 8.1 Applicability of Rules and Regulations to Participants and/or Subscribers.**

Participants, Subscribers and others authorized to have access to the Service Compilation are subject to these Rules and Regulations and may be disciplined for violations thereof. Further, failure of any Participant, Subscriber or other user to abide by the Rules and Regulations or policies of the Service, and/or any sanctions imposed for violations thereof, may subject the Participant with which the Subscriber or user is affiliated to the same or other discipline. A Participant has the ultimate responsibility and accountability for all Subscribers or other users affiliated with the Participant. By making payment of applicable service fees to the Service, Participants and their affiliated Subscribers reconfirm their agreement to comply with these Rules and Regulations and with the policies of the Service in effect from time to time.

### **Section 8.2 Consideration of Violations of Rules and Regulations.**

The Board of Directors shall appoint a committee of no more than three (3) Directors to give consideration to all written complaints having to do with violations of the Rules and Regulations. If the alleged offense is a violation of the Rules and Regulations of the Service and does not involve a charge of alleged unethical conduct or request for arbitration, it may be determined by the committee whether a violation has occurred and the appropriate sanction.

A Participant, on the Participant's behalf, or on behalf of Subscribers who derive their right to use the Service through the Participant, shall have a right to appeal a sanction. An appeal must be submitted in writing and filed with the Service within seven (7) days of the sanction being imposed. Appeals may be heard by the Board of Directors (less those Directors from the committee that recommended sanction) or an appointed committee. The decision by the Board of Directors on an appeal request is final.

Violations of these Rules and Regulations or of any policies of the Service may subject the violating Subscriber and/or the Participant with which the Subscriber is affiliated to sanctions either as specified in Article 3 above or in Attachment A hereto or as otherwise determined by the Service. Such sanctions may include, but shall not be limited to, fines and suspensions of service. If, as a result of a violation, a Participant and/or a Subscriber may be made subject to more than one sanction, the Service, in its discretion, may impose any one or more, or all or none, of such applicable sanctions. When the Service imposes a sanction, it will notify the violating Subscriber and will also notify the Participant with which the violating Subscriber is affiliated. Failure of the Service to deliver a notice shall not affect the validity or enforceability of the sanction.

In addition to satisfying any other requirements imposed on a suspended Participant and/or Subscriber as a condition of reinstatement with the Service, a suspended Participant and/or Subscriber wishing to be reinstated with the Service must pay all outstanding fees, charges and fines, plus a reinstatement fee, prior to reinstatement. The amount of the reinstatement fee shall be as set forth in Section 3.3 as amended from time to time in Attachment A hereto.

### **Section 8.3 Complaints of Unethical Conduct:**

Alleged violations involving unethical conduct shall be referred to the professional standards committee of the association of REALTORS® having jurisdiction over the alleged violation for processing in accordance with the professional standards procedures of the association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the board of directors of the association of REALTORS® having jurisdiction over the matter.

### **Section 8.4 Harassment:**

Any Participant or Subscriber may be reprimanded, placed on probation, suspended from MLS Service or have MLS Service permanently removed for harassment of an MLS employee or Officer or Director after an investigation in accordance with the established procedures of the MLS. As used in this section, harassment means any verbal or physical conduct including threatening or obscene language, unwelcome sexual advances, stalking, actions including strikes, shoves, kicks, or other similar physical contacts, or threats to do the same, or any other conduct with the purpose or effect of unreasonably interfering with an individual's work performance by creating a hostile, intimidating or offensive work environment. The decision of the appropriate disciplinary action to be taken shall be made by the investigatory team comprised of the Officers of the Service and one member of the Board of Directors selected by the highest-ranking officer not named in the complaint, upon consultation with legal counsel for the MLS. Disciplinary action may include any sanction authorized in the MLSs Rules & Regulations. If the complaint involves the President, Vice President, Treasurer, or Secretary they may not participate in the



proceedings and shall be replaced by another member of the Board of Directors selected by the highest-ranking officer not named in the complaint.

## **Article 9 - Confidentiality of Service Information**

### **Section 9.1 Confidentiality of Service Information.**

Any and all data and information contained in any Service Compilation shall be the proprietary data and information of the Service. Such data and information are provided by the Service for the use of Participants and their affiliated Subscribers solely in their capacities as such, and Participants and their affiliated Subscribers may use such data and information solely in connection with those activities in which they are properly engaged under a valid real estate broker's license or real estate appraiser's license or certification, in either case issued by the state of Connecticut. Use of the Service Compilation, including without limitation use of the email, export functionality and other functionalities of any electronic Service Compilation, is limited strictly to activities by and communications from, to or among Participants and/or Subscribers, in each case in their capacities as such, for the sole purpose of effecting or seeking to affect the sale, lease or appraisal of specific properties. Without limiting the foregoing, no Participant or Subscriber shall use the email or export functionality of any electronic Service Compilation except for the sole purpose of seeking to affect the sale, lease or appraisal of the specific property or properties to which its email communication relates. The Service Compilation shall be confidential and for the exclusive use of the Service in the dissemination of information to Participants and Subscribers and for such other uses as may be determined from time to time by the Service. No Participant or Subscriber shall cause or permit any data or information contained in any Service Compilation to be transmitted, retransmitted or otherwise provided or made available in any manner to any individual or entity, other than to an individual or entity who or which is a Participant or Subscriber and other than as provided in Article 11 of these Rules and Regulations.

### **Section 9.2 Service Not Responsible for Accuracy of Information; Indemnity.**

The data and information contained in any Service Compilation are set forth verbatim therein, without change by the Service, as Filed with the Service by the Participants and/or their affiliated Subscribers. The Service does not, and has no obligation to, verify the completeness or accuracy of any data or information Filed with it, and the Service disclaims any responsibility or liability for the accuracy or completeness of any of such data or information. Each Participant and/or its affiliated Subscribers, by using the services of the Service, acknowledges and agrees to the foregoing disclaimers and agrees to indemnify the Service and to hold the Service harmless from and against any liability, damage, cost and expense arising from any inaccuracy or inadequacy of any of the data and information Filed by or on behalf of that Participant and/or its affiliated Subscribers or arising from or based on the use or publication of such data or information by the Service.

### **Section 9.3 Access to Comparable and Statistical Information.**

Upon written request, the Service, in its discretion, may grant Comparable Access (as defined in Section 17.1 below) to (i) real estate professionals who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development or building activities, but who do not Participate fully in the Service within the meaning of these Rules and Regulations and (ii) real estate assessors for cities and towns in the State of Connecticut, in their capacities as such. The Service may grant Comparable Access on such terms and conditions, including the payment of fees and charges, and with the imposition of such fines, as may be set forth from time to time in Attachment A of these Rules and Regulations. The terms and conditions on which the Service may grant

Comparable Access need not be identical for all classes or groups eligible to request such grant. The data and information made available under this Section 9.3 are for the exclusive use of (a) the qualifying real estate professionals identified in clause (i) above and for the individuals affiliated with such professionals who are also actively engaged in one or more branches of the real estate business identified in clause (i) and (b) qualifying real estate assessors for cities and towns in the State of Connecticut, in their capacities as such, and none of such data or information may be transmitted, retransmitted or provided or made available in any manner to any other individual or entity.

## **Article 10 - Ownership of the Service Compilation and Copyrights**

### **Section 10.1 Grant of Authority.**

By Filing any property Listing content or information with the Service, a Participant represents and warrants that the Participant, without the necessity of any further consent or approval, has been authorized to grant, and thereby does grant, authority to the Service to include the property Listing content and information in the Service Compilation Copyright to the Service Compilation and any manifestation thereof (including without limitation any MLS Publication), irrespective of medium, form or format, shall be vested and remain in the Service.

*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.*

*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 10.2 Copyright.**

All right, title and interest in and to each copy of every MLS Publication and any other manifestation of any Service Compilation, and in and to the copyrights therein, shall at all times be and remain vested in the Service.

## **Section 10.3 Use of MLS Data.**

Each Participant shall be entitled to have the use of MLS compilation data. If required by the Service, each Participant shall pay a fee for the Service to provide access to MLS compilation which may be set from time to time by the Service.

In exchange for payment of the fee, a Participant shall acquire only the right to use the MLS Publication in accordance with these Rules and Regulations and shall not acquire or have any ownership or other rights therein or thereto.

## **Section 10.4 Use of Logos and Other Marks.**

The Marks are reserved by the Service exclusively for its own use to identify and promote the products and services of the Service. No Participant or Subscriber may display, publish or in any way use any of the Marks for the identification or promotion of any product or service of that Participant or Subscriber, of any other Participant or Subscriber or of any other individual or entity, other than the Service itself.

## **Article 11 - Use of Copyrighted MLS Publications and the Service Compilation**

### **Section 11.1 Distribution.**

Each Participant and each Subscriber affiliated with it shall at all times be responsible for the proper use of each MLS data or other manifestation of the Service Compilation made available by the Service for the use of the Participant and the Subscribers affiliated with it. A Participant shall not cause or permit the distribution of MLS Compilation, as a whole or in part, or any other manifestation of the MLS Compilation to any individual or entity other than the Subscribers affiliated with the Participant and other than as specifically provided elsewhere in this Article 11. Consistent with the provisions of the third and fourth sentences of Section 9.1 of these Rules and Regulations, use by a Participant or Subscriber of data or information contained in any Service Compilation is strictly limited to those activities authorized under a Participant's or Subscriber's licensure or certification, and any other uses are prohibited. Nothing contained in this Section 12.1 or elsewhere in these Rules and Regulations is intended to convey, nor shall anything herein or therein be deemed to convey, to any individual or entity a right to Participation in the Service or any right of access to any data or information contained in any MLS Compilation where conveyance of such rights or access to such data or information is prohibited or not permitted by applicable law.

### **Section 11.2 Display.**

A Participant and the Subscribers affiliated with it shall be permitted to display non-confidential fields within the MLS Compilation data and other manifestations of the MLS Compilation to a bona fide prospective purchaser or lessee of a Listed Property, but only in the ordinary course of the business of the Participant and its affiliated Subscribers in their efforts to locate ready, willing and able buyers or lessees for the Listed Property.

### **Section 11.3 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 contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the Participant or their affiliated licensees, be interested.

\*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 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.

Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has

expressed interest, or in which the Participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.

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. 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 12 - Internet Data Exchange (IDX)**

### **Section 12 IDX Defined**

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

### **Section 12.1 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 12.2 Participation**

Participation in IDX is available to all MLS participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other participants.

### **Section 12.2.1 Notification to MLS**

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 12.2.10 No Modification of Other Participants' Listings**

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 fields.

### **Section 12.2.2 Scraping**

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 12.2.3 Right of Seller to Withhold Address From Display**

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

### **Section 12.2.4 Right of Participant to Display**

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, list price, type of property, 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 12.2.5 Refresh Data**

In accordance with Connecticut Real Estate Commission rules and regulations, Participants and Subscribers must refresh all MLS data at least once every 12 hours.

### **Section 12.2.6 No Distribution**

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 12.2.7 Clear Identification of Firm**

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 12.2.8**

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 12.2.9, 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 12.2.9**

Participants shall maintain a means (e.g., email 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 12.3 Display**

Participants, and those persons affiliated as licensees with such Participants, shall be permitted to display the MLS Compilation to prospective purchasers or lessees only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers or lessees for the properties described in said MLS Compilation and to prospective sellers or lessors in conjunction with their ordinary business activities of attempting to list properties for sale or lease.

Any display of listing information, including pending information and sold information, whether by the listing firm or by other Participants or their affiliated licensees, must include the name of the listing firm except where the information is used to prepare appraisals and other valuations of real property. In any display of listing information, other Participants and their affiliated

licensees may not alter the online display or any informational part of the listing without the written permission of the listing firm. The following fields of information are considered confidential and shall not be displayed to a buyer, whether client or customer: showing instructions, buyer/broker commission fields, listing agent name and ID, contact phone numbers (office phone, other phone, fax phone), listing type.

### **Section 12.3.1 Display Fields Designated by MLS**

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.

Current list date, prior list date, and expiration dates are non-confidential fields, but are not authorized to be displayed in advertisements, including IDX display, of other Participant's listings.

Price change information such as most recent increase or decrease in the price of current listings are non-confidential fields, but are not authorized to be displayed in advertisements, including IDX display, of other Participant's listings.

#### **Section 12.3.1.1 Co-Mingling of Data**

An MLS Participant (or where permitted by the MLS, 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 12.3.1.2**

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 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 12.3.1.3 Display of “Sold” and Off Market Data**

The MLS if requested by a participant, should promptly provide basic downloading of all active listings, sold\* listing data starting from January 1, 2012, non-confidential pending sale listing data, and other listings authorized under applicable MLS rules. MLSs may not exclude any listings from the information which can be downloaded or displayed under IDX except those listings for which a seller has affirmatively directed that their listing or their property address not appear on the Internet or other electronic forms of display or distribution.

### **Section 12.3.1.4 Non-Display of Listing Agreement Type**

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

### **Section 12.3.2 Listing Firm Displayed**

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 12.3.3 Participant Consent**

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.

### **Section 12.3.4 Identify Listing Agent**

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

### **Section 12.3.5 Participant’s Consent Required**

*Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own websites subject to their participant’s consent and control and the requirements of state law and/or regulation.*

### **Section 12.3.6 MLS As Source**

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” of two hundred [200] characters or less, automated audio responses via Siri, Alexa, etc.) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

### **Section 12.3.7 Non-Commercial Use**

Participants (and their affiliated licensees, if applicable) shall indicate on their Web sites 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 12.3.9 Reasonable Number of Listings**

The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance, shall be limited to fewer than one hundred (100) listings or five percent (5%) of the listings available for IDX display, whichever is fewer.

### **Section 12.3.9 Right to Display**

The right to display other participants’ listings pursuant to IDX shall be limited to a participant’s office(s) holding participatory rights in this MLS.

### **Section 12.3.10 Expired, Withdrawn, Pending**

Display of expired, withdrawn, and pending listings is prohibited.

### **Section 12.3.11 Seller’s Name, Phone, Email**

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

### **Section 12.3.12 Security**

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

### **Section 12.3.13 Audit Trail**

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 12.3.14 Deceptive Advertising**

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 12.4 Service Fees and Charges**

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

## **Section 12.5 (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 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 12 of these Rules, the term "Participant" includes a Participant's affiliated non-principal brokers and sales licensees – 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 VOWs, 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 12 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 12.51:**

(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 12.52:**

(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 email address for, each Registrant. The Participant must send an email 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 email 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 email 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, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 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, email 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:
- 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's ownership of, and the validity of the MLS's 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 12.6:** 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 12.7:** Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use 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.

**Section 12.8: Seller Opt-Out:**

(a) A Participant's VOW shall not display 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 email, 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:

(c) The Participant shall retain such forms for at least seven years from the termination date of the listing.

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**Seller Opt-Out Form**

1. Please check either Option a or Option b

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

OR

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 search.

\_\_\_\_\_  
Initials of seller

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**Section 12.9:**

(a) Subject to subsection (b), 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) 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 12.10, 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 12.10:** 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 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 12.11:** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every 12 hours.

**Section 12.12:** Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or 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 12.13:** 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 12.14:** 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 12.15:** 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 12.16:** 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 12.18:** 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 12.19:** A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability and shall include such disclaimers as the MLS directs to protect the MLS from liability.

**Section 12.20:** 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 12.21:** A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than 2000 current listings and not more than 2000 sold listings in response to any inquiry.

**Section 12.22:** A Participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

**Section 12.23:** 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 12.24:** A Participant shall cause any listing displayed on his or her VOW that is 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 12.26:** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

**Section 12.27:** Where a seller affirmatively directs their 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 at the request of the MLS.  
(11.03.08)

## **Article 13 - Use of Data and Information in Advertising**

### **Section 13.1 Use Of Data And Information In Advertising.**

Use of information from the MLS compilation of current listing information, from the Service's Statistical Report, or from any "sold" or "comparable" report of the Service for public mass-media advertising by an MLS Participant or in other public representations may not be prohibited.

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

"Based on information provided to and compiled by the **Smart MLS, Inc.** covering the period [Insert Initial Date] through [Insert Final Date]."



The Service shall have no liability or responsibility for the truth or accuracy of any data or information contained in any advertising or other public representation made or sponsored by a Participant and/or by any of its affiliated Subscribers, and each of such Participant and its affiliated Subscribers hereby agrees to indemnify the Service and to hold the Service harmless from and against any liability, damage, cost and expense arising from or out of any such advertising or other public representation.

### **Section 13.2 Internet Display of Sold Data.**

REALTOR® Participants with ownership and direct control of their website may display electronically MLS Sold Data information utilizing the following described applications:

- (a) An application which provides active listing data, sales data, including property address, sale date, and price. This application may be utilized by REALTOR® Participants or their Subscribers by framing such information on Homesnap.com

## **Article 14 - Limitation on Use of Service Compilation**

### **Section 14.1 Limitation on Use.**

Notwithstanding anything otherwise set forth in this Article 14 or in Article 13 above, nothing contained in these Rules and Regulations is intended to grant, nor shall it be deemed to grant, to any Participant, Subscriber or other person any right to distribute, display or reproduce any Service Compilation in its entirety or in substantial part. All right, title and interest in and to any Service Compilation shall belong exclusively to the Service, as provided in Article 11 above, and the rights specifically granted in these Rules and Regulations to distribute, display, reproduce and use the data and information contained in any Service Compilation shall be construed strictly in accordance with their terms.

## **Article 15 - Rules and Regulations**

### **Section 15.1 General.**

These Rules and Regulation, as they may be amended from time to time, shall be binding upon each Participant, Subscriber and other user of any of the goods and services provided by the Service, and each such Participant, Subscriber and other user shall be deemed to have consented and agreed to be bound hereby by its use of such goods and/or services.

### **Section 15.2 Changes In Rules and Regulations.**

The Service shall have the right to amend these Rules and Regulations (including any Attachments hereto) from time to time. Amendments to these Rules and Regulations (and any Attachments hereto) may be made only by the Board of Directors of the Service.

## **Article16 - Smart MLS Lockbox Service.**

**Section 16.1 MLS Lock Box System** - The SERVICE shall provide an optional electronic Lockbox system to Participant and their affiliated Subscribers and Users for the purpose of providing access to Listed Properties on the SERVICE and by extension through an “Electronic Lockbox Keycard Reciprocity Agreement,” those Electronic Lock boxes placed on properties listed by members of the Greater Hartford Association of REALTORS®; the Mid-State Association of REALTORS®; the New Haven/Middlesex Association of REALTORS®; and the Greater Waterbury Association of REALTORS® for legitimate real estate business, subject to the execution of either a Display Key or eKey Sub-License Agreement and the payment of the Lockbox Service Fee. These Agreements shall provide that:

- (1) Display Keys or eKEYs may not under any circumstances be used by anyone other than the key holder;
- (2) Electronic Lockboxes may only be placed on properties that are listed by a Subscriber to both the MLS System and the SERVICE Electronic Lockbox program;
- (3) Electronic Lockboxes shall not be placed on any property that is not Filed in the MLS System. The Lockbox system shall be provided by a recognized Lockbox Vendor.

**Section 16.2 Lock Box System Fees and Charges:** - The Lockbox fees and system charges shall be changed from time to time by the Board of Directors.

**Section 16.3 Only the Display Key or eKEY’s Owner is Authorized to Use It** - Only the Subscriber specifically authorized in their Display Key or eKEY Sublicense Agreement may utilize their Display Key or eKEY. Sharing or loaning the Display Key or eKEY to anyone including, without limitation, the Subscriber’s Participant, other Subscribers, home inspectors, appraiser or the home owner is expressly prohibited. Any violations of Section 16.3 are subject to the automatic imposition of a “Fourth Tier” fine as set forth in Section 5 of Schedule C. After the first violation, if a Participant, Subscriber or User again violates this Section, the Service shall impose a thirty (30) day suspension of all Lockbox services and privileges.

**Section 16.4 Storing the PIN with an eKEY or eKEY is Prohibited** - Each Display Key or eKEY will not function unless a unique PIN code has been entered via its keypad. This feature is critical in restricting unauthorized individual’s ability to open Electronic Lockboxes. Therefore, PIN codes are never to be attached to or stored with Display Key or eKey in anyway. Any violation of Section 16.4 is subject to the automatic imposition of a “Fourth Tier” fine as set forth in Section 5 of Schedule C. After the first violation, if a Participant, Subscriber or User again violates this Section, the Service shall impose a thirty (30) day suspension of all Lockbox services and privileges.

**Section 16.5 Requirement to Immediately Report a Lost or Stolen Display Key or eKey.** - When a Subscriber becomes aware that their Display Key or eKey has been lost, stolen

or is otherwise unaccounted for, the Subscriber must immediately notify the SERVICE and the SERVICE shall immediately deactivate the Display Key or eKEY.

## **Section 16.6 SERVICE May Suspend or Terminate Lockbox Services.**

The SERVICE may:

- (a) Deny, suspend or terminate all Lockbox Services; and/or
- (b) Refuse to sell Display Keys, eKeys or Lockboxes to any individual
  1. Convicted of a felony or misdemeanor if, in the sole determination of the SERVICE, the conviction relates to the conduct of real estate brokerage business or if clients, customers, or other real estate professionals would be placed at risk by allowing the convicted individual access to Lockbox Services. The SERVICE may suspend the right of a Lockbox key holder to use a Display Key or eKey following his/her arrest for any felony or misdemeanor, and pending judicial resolution of such charge, if the crime that the keyholder is accused of, in the sole determination of the SERVICE, relates to the conduct of real estate brokerage business or if clients, customers, or other real estate professionals would be placed at risk by allowing the accused individual continued access to Lockbox services.

## **Article 17 – Definitions**

### **Section 17.1 Definitions.**

**Code of Ethics** – The standards of professional and ethical conduct as prescribed in the Code of Ethics of the National Association of REALTORS®.

**Comparable Access** - Shall mean the access to “comparable” information, “sold” information, and “statistical” reports (but not “active” listing data) that is in any Service Compilation and that the Service, upon request, may make available, in its discretion, to (i) real estate professionals who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development or building activities, but who are not either Participants in the Service or affiliated with a Participant in the Service, and (ii) real estate assessors for cities and towns in Connecticut, in their capacities as such.

**Cooperating Broker** - Shall mean the licensed broker who or which is either a subagent of a Listing Broker, a buyer’s agent or other appropriately licensed facilitator in the process of selling a Listed Property. Wherever the context so requires, reference in these Rules and Regulations to a Cooperating Broker shall include the Participant through which any individual Cooperating Broker is acting.

**Deadline for Filing** - Shall mean, with respect to a property, forty-eight (48) hours after the Start Date of a Listing Agreement or authorization for change with respect to the property (including,

without limitation, price changes, changes in contingencies, pendings, cancellations, withdrawals, solds, leases or any other change in the Listing) has been executed and delivered by all necessary signatories and has been received by the Listing Broker.

**Entry-Only Listing** – Shall mean a Listing or Listed Property with respect to which the Listing Broker, pursuant to the Listing Agreement, is not obligated to provide, and will not be providing, any service to the Seller other than the Filing of the Listing.

**Exclusive Agency** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a commission to the Listing Broker if the Listed Property is sold through the efforts of any real estate broker. Under an Exclusive Agency Listing, if the Listed Property is sold solely through the efforts of the Seller, the Seller is not obligated to pay a commission to the Listing Broker or any other broker.

**Exclusive Right to Sell** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a commission to the Listing Broker regardless of whether the Listed Property is sold through the efforts of the Listing Broker, the Seller or anyone else.

**Exclusive Right to Sell with Dual Rate of Commission** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a specified commission if the Listed Property is sold by the Listing Broker without assistance and a different commission if the sale results through the efforts of a Cooperating Broker.

**Exclusive Right To Sell with Reserved Prospect** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a commission to the Listing Broker regardless of whether the Listed Property is sold through the efforts of the Listing Broker, the Seller or anyone else, except that the Seller may name one or more individuals or entities as exemptions in the Listing Agreement and, if the Listed Property is sold to any exempted individual or entity, the Seller is not obligated to pay a commission to the Listing Broker (nor will the Service include the Listed Property as a “sold” in any manifestation of the Service Compilation).

**Exclusive Right to Sell with Variable Rate of Commission** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a specified commission if the Listed Property is sold by the Listing Broker either with or without the assistance of a Cooperating Broker and a different commission if the sale results through the efforts of the Seller.

**Filed (or variants on the term, as the context may require)** - Shall mean directly input into the System by a Participant or Subscriber by electronic or other means or actually received by the Service from a Participant or Subscriber in printed or written form at the principal place of business of the Service for inclusion in the Service Compilation. All original and executed documentation - including all Property Data Forms, Listing Agreements and status change forms

of any kind - must be kept by the Listing Broker and shall not be Filed with the Service. As set forth in Section 4.19 above, a Participant or Subscriber must submit to the Service such written information and data concerning its Listings, and copies of Listing Agreements related thereto, as the Service may request from time to time. Failure to comply with any such request may subject the Participant and/or the Subscriber to a fine as indicated in Attachment A hereto.

**Firm** - a partnership, corporation, limited liability company, other legal entity or sole proprietorship that owns or operates an office or offices engaging in the real estate business and organized under the same management. A "Firm" does not include independently owned franchisees of a franchisor even if the franchisor owns or operates an office or offices engaging in the real estate business under the same or a similar name. (Also, see “**Office**”)

**Hubbard** – a contingency clause indicating that the current property purchase is contingent upon the sale of an existing property.

**Limited Access** – Shall mean the ability of Secondary Subscribers to enter listings into the Service, but not access the full Service for search or other capabilities.

**Listing or Listed Property** - Shall mean a property as to which all necessary data and information have been Filed with the Service.

**Listing Agreement** - Shall mean a signed written agreement between a Seller and a broker which constitutes either an Exclusive Agency Listing, an Exclusive Right To Sell Listing, an Exclusive Right To Sell With Dual Rate of Commission, an Exclusive Right To Sell With Reserved Prospect or an Exclusive Right To Sell With Variable Rate Of Commission. A Listing Agreement must include the Seller’s written authorization to the

Listing Broker to submit the Listing Agreement to the Service and to File the Listing at such time and upon satisfaction of such conditions as shall be specified therein.

**Listing Broker** - Shall mean the Individual Participant or Participant Firm who or which Files a Listing with the Service.

**Listing Status Codes** - Shall mean the shorthand codes used by the Service to indicate the status of a Listed Property. A table of Listing Status Codes currently used by the Service is attached to these Rules and Regulations as Attachment B hereto.

**Marks** – Shall mean any of the marks and logos owned by the Service that use, include or incorporate in anyway the term “**Smart MLS**” or the blocks “**Smart MLS, Inc.**” or “**SmartMLS**” or any variant of the same, that appears on these Rules and Regulations, on the Service’s letterhead or on the Service’s website.

**MLS Publications** - Shall mean the copyrighted Compact Discs (CDs) or MLS books (Full, Supplement and Comparable) that the Service causes to be published and copyrighted in its name for the exclusive use of Participants and their affiliated Subscribers.

**Non-MLS Listing Form** - Shall mean the form required to be signed by a Seller and delivered to the Service by the Seller's Listing Broker when the Seller requests that an identified property not be Listed in the Service.

**Office** - Shall mean the distinct location or Virtual Office web site from which a Participant or Subscriber conducts a real estate business that is licensed by the appropriate state real estate licensing authority, agency or board, or its functional equivalent, legally designated as such in Connecticut or another state.

**Participant** – See Article 2, Section 2.1. 1a)

**Participant Agreement/Application** – See Attachment E.

**Participation** - Participation in the Service shall be available only to (a) a real estate broker licensed as such by the state of Connecticut or (b) a real estate appraiser licensed or certified as such by the state of Connecticut that, in either case, (i) under such licensure or certification, is engaged actively, or in good faith advertises or holds itself out to be engaged actively, in the real estate profession, either by buying, selling, exchanging, renting or leasing, appraising, building, developing or subdividing real estate, and (ii) abides fully by these Rules and Regulations and the policies of the Service. In determining whether an entity or an individual affiliated with that entity is eligible for Participation in the Service as a Participant Firm and as the Individual Participant of that Participant Firm, the Service shall apply the standards set forth in clause (i) and in clause (ii) to both the entity and the individual, and both the entity and the individual shall be required to satisfy all of such eligibility requirements. "Participation" may be expressed in these Rules and Regulations in the verb form to "Participate".

**Primary Coverage Area** – Shall mean the State of Connecticut and such other contiguous or non-contiguous geographical areas as the Board of Directors of the Service from time to time may specify and designate as included in the Service's Primary Coverage Area.

**Property Data Form** - Shall mean the printed or electronic form used to record data or information which will be Filed with the Service, including any printed or electronic form used to indicate a change in status of a Listing.

**REALTOR®** - An individual who is a member of the National Association of REALTORS® in good standing.

**Request for Deferral of Showing Form** – Shall mean the form required to be signed by a Seller and delivered to the Service by the Seller's Listing Broker when the Seller requests that showings of an identified property be deferred to a date certain, specified in the Form that is beyond the Filing of the Listing for that property.

**Seller** - Shall mean any one or more individuals and/or entities, as the case may be, who or which a Participant has determined to be the proper party or parties seeking to sell or lease a property through that Participant.

**Service** - Shall mean the **Smart MLS, Inc.**, a Connecticut Nonstock corporation, or, as the context may require, the multiple listing service owned and operated by the **Smart MLS, Inc.**

**Service Compilation** - Shall mean any form, format or medium in which property listing data and information and/or tax information are collected and/or disseminated to Participants from time to time by the Service, including, but not limited to, the System and any other computer database, any MLS Publication, any bound book, loose-leaf binder and card file, and any other form, format or medium whatsoever. The Service Compilation and the data and information contained therein are copyrighted in the name of the Service.

**Service Center** - A Connecticut Board/Association of REALTORS® which has entered into an agreement with the **Smart MLS, Inc.** to provide certain services to Participants and Subscribers on behalf of the Service.

**Start Date of a Listing Agreement** – The date on which a Listing Agreement to Sell, Lease or Exchange a property goes into effect.

**Subscribers** – See Article 2, Section 2.2. 1 b)

**System** - Shall mean the computerized database of property data and information maintained by the Service. Often referred to as “MLS System”.

## **Attachment A - Service Fees, Charges and Fines**

Fees, charges and fines are subject to change, in both amount and nature, by the Board of Directors. No application fee, participation fee or other charges or fines required to be paid by a Participant or Subscriber shall be refunded or waived, except on approval of the Service, which approval the Service may grant or withhold in its absolute discretion.

### **Fees and Charges**

**Initial Participation Fee** – Each Participant and Secondary Participant will pay a fee of \$200.00 to become a member of the Smart MLS  
**Reinstatement Fee** – Suspended Participant will pay a fee of \$250.00 to reinstate participation after paying any other fees or fines assessed per Section 8-2.

**Subscriber Fee** – Each Participant and Subscriber to the service will be assessed a monthly access fee of \$26.00, billed bi-annually in advance.

**Secondary Subscriber**– Each Secondary Subscriber will be assessed a monthly access fee of \$26.00, billed bi-annually in advance.

**Late Fee** – Suspended Subscribers **and suspended Secondary Subscribers** will pay a fee of \$25.00 to reinstate subscription after paying any other fees or fines assessed per Section 8-2.

### **Fines**

***Penalties for Inaccurate or Incomplete Data:*** These Rules and Regulations are set up to give the buying and selling public the best possible service and to facilitate cooperation between Participants. The listing office will be notified in writing or by electronic means if there is a violation of the Rules and Regulations. The Participant shall be assessed a fine for each violation below. The following progressive fine schedule has been established by the Board of Directors and applies to all violations except for Items A-H Below.

1<sup>st</sup> time offense within one year: \$50.00

2<sup>nd</sup> time offense within one year: \$100.00

3<sup>rd</sup> time offense within one year: \$250.00

4<sup>th</sup> time offense within one year: \$500.00

5<sup>th</sup> time offense within one year Subject to a hearing to determine the conditions and amount of the fine.

The progressive fine schedule is per agent per offense and any rule violation below is considered to count as an offense. Fines will be billed to the Participant. A one-year term is defined as the Smart MLS fiscal year which is January 1-December 31.

One courtesy notification will be issued to the Participant per agent per year for violations of sections A through H and a grace period will be allowed for correction. After one warning notification, the progressive fine schedule above shall be automatically applied to subsequent violations of any lettered subsections below within that year. No courtesy warning letters are issued for the subsections not listed above and the progressive fine schedule is applied beginning with the first offense.



Database Accuracy and Integrity. The following are those critical elements of listing information for which fines will be assessed as outlined above for inaccurate, incomplete or missing data.

Participants whose agents violate Subsections A through H will receive one courtesy notice letter for the first violation by an agent of any of these subsections A-H within one year. A second violation by that same agent of either the same or any other Subsections A-H will result in the application of the progressive fine formula above.

**(A) Tax Id:** For failure to correct tax identification number after being notified in writing.

**(B) Remarks:** For failure to correct information entered in the Remarks data field after being notified in writing. The data fields of the remarks shall not include any agent, broker, company, URL information or affiliated businesses; however, this information may be entered in the Agent Remarks field.

**(C) Virtual Tours/Photo Sections:** Company or agent logos, agent photos, commissions, bonuses and any contact information are not allowed in the virtual tour or photo sections. Only photographs, site plot, property sketch, property line art or survey of the property can be entered in the virtual tour and all photo fields.

Unbranded virtual tours are permitted to be attached to listings. Virtual tours may not display agent/company name, logo or any other branding in the video or on the page surrounding the video.

YouTube hosting of virtual tours is permitted ONLY with an accompanying URL addition of **\_popup** to the link prohibiting advertisements from surrounding the video.

Correct example: [http://www.youtube.com/watch\\_popup?v=h65td3r3UDfQ](http://www.youtube.com/watch_popup?v=h65td3r3UDfQ)

Virtual tours not meeting the above restrictions will be automatically removed, with notice sent to the listing agent. Repeat violations will result in fines according to the schedule outlined above.

**(D) Map:** For failure to correct the subject's location on the MLS map, or to add it if missing, after a courtesy notification in writing.

**(E) Photos Required:** For failure to supply at least one front exterior photo, with the exception of vacant land, 48 hours from the Start Date of the Listing Agreement.

**(F) Prohibitions:** For failure to abide by the prohibitions in Article 6

**(G) Access Codes:** For the publication in any field of combination lockbox codes, electronic lock box codes, security gate codes or security system alarm codes or any other codes for equipment or systems designed to ensure the security of the property.

**(H) Accurate/complete Listing data:** For failure to enter accurate and complete listing data in required fields. No data is allowed in any field except that for which the field is designed.

The following are considered to more seriously affect the overall accuracy of the database and will incur immediate, automatic application of the progressive fine schedule with no courtesy notification or grace period for correction:

**(I) Status Changes:** For failing to report a status change within forty-eight hours after all necessary signatures have been obtained. Should a Participant discover that they have not reported a change in status prior to a fine being issued; they may correct the error and must immediately contact the MLS department with the information by email, phone or fax to avoid a fine. Amount determined by the Progressive fine schedule.

**(J) Late Listing:** For failing to File a mandatory Listing with Smart MLS within forty-eight hours after all necessary signatures have been obtained. Amount determined by the Progressive fine schedule.

**(K) Failure to respond:** For failing to respond to written notice of inaccurate information on a Listing within three (3) working days or to provide copies of documents within twenty-four hours (excepting weekends and holidays) when requested by the MLS. Amount determined by the Progressive fine schedule.

**(L) Type of Listing/Special Listing Type:** For failing to disclose a Limited Service, MLS Only or Exclusive Agency Listing, or a Variable Rate or Dual Rate commission arrangement (see Article 4, Section 21). Amount determined by the Progressive fine schedule.

Violations of Subsections M-Q are considered to have the most serious effect on overall database accuracy and are automatic in the amounts indicated, with no courtesy notification or grace period for correction:

**(M) Incorrect/Incomplete:** For providing incorrect or incomplete information or for failing to correct the information after a fine has been paid. The Participant will be assessed an additional fine of \$500.00 for each occurrence.

**(N) Failure to obtain Seller's signature:** For failing to obtain the Seller's signature on a change in status, price change, extension, or change in terms, the Participant will be assessed a fine of \$500.00 for each occurrence. In lieu of having the owner's signature, acceptable documentation would also include a faxed authorization or an email authorization with an electronic signature from the owner.

**(O) Required Signatures:** For failure to have all required signatures at the time the property was entered in MLS, the Participant shall be assessed a fine up to \$5,000.00

**(P) Unauthorized Access:** A fine of up to \$5,000 as determined by the Board of Directors for each occurrence will be assessed to any Participant/User that allows access to Smart MLS to an unauthorized person. (i.e., sharing system logon ID and Password)

**(Q) Providing MLS Data to unauthorized persons:** A fine of up to \$5,000 as determined by the Board of Directors for each occurrence will be assessed to any Participant/User that provides MLS data to an unauthorized person.

The purpose of the Multiple Listing Service is to provide the most accurate, comprehensive, and timely information possible to subscribers to the Service. The Service utilizes technology solutions to help identify errors in the data and will make every effort to assist Subscribers in both identifying and correcting data errors in their listings. While the Service prefers an educational approach to correcting data errors, the fine schedule above exists to prevent abuse and/or neglect of the Service data policies.

## Attachment B - Listing Status Codes

### Status Description

Active  
Cancelled  
Closed  
Coming Soon  
Deposit  
Expired  
Show  
Temp off Market  
Withdrawn

### Definitions Of Listing Status Codes.

**Active** - An active listing is one that is on the market and available for showings.

**Cancelled**- The status of a Listed Property where the Listing Agreement has been terminated prior to its expiration date.

**Closed** - Transaction has completed. Seller no longer holds title to the property.

**Deposit** - The status of a Listed Property when the Seller and the potential buyer of the Listed Property either (i) have executed and delivered a purchase and sale agreement or, if earlier, (ii) have executed and delivered a written bilateral offer to purchase, and, in either case, the Seller has not requested that the Listed Property remain marketed for back-up offers. Each “DEPOS” Listing shall be considered to be “off market”. DEPOS listings do not expire.

**Expired** - Listing is off the market following the expiration date of the listing agreement.

**Show** - Means that either (i) have executed and delivered a purchase and sale agreement or, if earlier, (ii) have executed and delivered a written bilateral offer to purchase, and, in either case, contingencies remain and the Seller requests that the Listed Property remain on market for back-up offers. SHOW listings do expire upon their expiration date.

**Temp Off Market** - Temporarily unavailable to be shown but expected to be active in the near future. Temp Off Market listings do expire upon their listing expiration date.

**Withdrawn**- Shall mean the status of a Listed Property that is temporarily taken off the market. (WITH) Listing remains subject to the terms and conditions of its original Listing Agreement and, as such, expires at midnight on the expiration date of the Listing Agreement.

## **Attachment C - Photograph Submission Policy**

Each Listing submitted for publication in the Service must include a photo unless it is one of the following Property Types; (a) Land, (b) Business For Sale, or (c) either “Proposed New Construction” or “Under Construction”.

**Note:** Photos of properties listed as “Proposed New Construction” or “Under Construction” are required to have photos once construction has been completed.

Photos must be input into the system or received at the Service within forty-eight (48) hours of the Start Date the Listing Agreement. There are three ways to meet this Requirement (1) The Listing Broker may enter a digital photo directly from their computer to the System; (2) A digital photo file(s) in “.jpg” file format may be emailed as an attachment(s) to a Service Center; or (3) Photos may be hand delivered or mailed directly to a Service Center.

Sellers of properties listed in the MLS have the ability to direct, in writing, that photographs or other graphic representations of the property be withheld from the MLS compilation. Copies of the written request by the seller must be made available to the MLS immediately upon request.

## **Attachment D - Application for Participant Membership**

<http://smartmls.com/wp-content/uploads/2017/07/Participation-Application-and-Agreement-v1.0.pdf>

### **Smart MLS, Inc. Locations**

#### **Wallingford**

860 North Main Street Ext.  
Wallingford, CT 06492  
203-750-6000

#### **Norwalk**

101 Merritt 7 Corporate Park, Suite 23  
Norwalk, CT 06851-6216  
203-750-6000

## **SCHEDULE A**

### **Affiliates**

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(Signature of Participant)

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(Date)

# Attachment E

<http://smartmls.com/wp-content/uploads/2017/07/Participation-Application-and-Agreement-v1.0.pdf>