

# TERMS AND CONDITIONS OF USE

(October 2007)

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## **I. ACTRIS may modify these T&Cs.**

ACTRIS reserves the right to modify the information contained on the Site or the T&Cs at any time without notice or to terminate Your right to access the Site. By accessing the Site after any changes to the T&Cs have been posted thereon, You will be deemed to have consented to all such changes.

## **II. Who may access the MLS?**

You may only access the MLS if You are a Participant or Subscriber in good standing with ACTRIS or an Authorized Assistant designated by a Participant and registered with ACTRIS. Access is only provided to those Participants, Subscribers or Authorized Assistants who work

for a real estate office open to the public or to those Participants who are appraisers certified or licensed by the Texas Appraiser Licensing and Certification Board. **If You do not work for a real estate office open to the public or are not a licensed appraiser, You may not access the MLS without express written permission from ACTRIS.**

## **III. What can I do with access to the MLS?**

### **A. Sale, Lease or Appraisal.**

Subject to Your compliance with these T&Cs, the ACTRIS Rules and Regulations and applicable law, ACTRIS shall grant You a limited, non-exclusive, personal, revocable license solely to use the MLS Compilation in connection with **Your sale, lease, valuation or appraisal of real property**, subject to all of the limitations and restrictions set forth herein. You shall at all times maintain control over and responsibility for each copy of any MLS Compilation You may make.

### **B. Reasonable Copies to Prospective Purchasers.**

**You may provide prospective purchasers with individual property records (or portion of individual property records) relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the Participant is seeking to promote interest. You may provide prospective sellers with individual property records (or portion of individual property records) relating to properties which are relevant to the valuation of real property that a seller has a bona fide interest in selling.** The term "reasonable," as used herein, should therefore be construed to permit only limited reproduction of individual property records (or portion of individual property records) 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 types of properties contained in the property listing data is consistent with a normal itinerary of properties which would be shown to the prospective purchaser. Except as provided in III hereof or in the Rules and Regulations, nothing contained herein shall be construed to preclude You from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with You. Note: references in these terms and conditions to (a) "purchase" or "purchasers" shall be deemed to be references to "lease" or "leases," (b) references to "sellers" shall be deemed references to "lessors," and (c) references to the "MLS" shall be deemed references to the "LMS" with respect to Participants or Subscribers to the Leasing Management Service.

#### C. Framing the Site.

You (provided that You are a Participant) may display on Your publicly accessible Internet Web sites aggregated MLS active listing information. Such display can be made framing such information on a Web site provided by ABoR or ACTRIS for such purpose (Smart Framing Solution and/or IDX Web site). Display of information fields intended for cooperating brokers rather than consumers is prohibited. Any listing displayed must identify the listing firm. Information displayed shall not be modified. Any display of other Participants' listings must indicate the source of the information being displayed and Participants must refresh all downloads and

refresh all data at least once every seven (7) days. You must indicate on Your Web sites that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing. The amount of data/number of listings that consumers may retrieve or download in response to an inquiry shall be reasonable. ACTRIS may limit the right to display other Participants' listings to a Participant's office(s) holding participatory rights in the same MLS.

#### IV. **Access to Third Parties & Other Prohibited Acts**

Except as otherwise expressly provided herein, **You may not, in whole or in part, reproduce, copy, disseminate, sublicense, transfer, assign, enter into a computer database, use as part of or in connection with a mailing list, or otherwise utilize in any form or manner or by any means, except for Your individual, personal and confidential, reference the MLS.** You are prohibited from posting or transmitting to the Site any incomplete and/or incorrect data or any unlawful, libelous, defamatory, discriminatory, obscene, scandalous, inflammatory or profane material. You may not disclose and shall use reasonable commercial efforts to protect the confidentiality of restricted fields, names and addresses included in the MLS. Participant and Subscriber agree to use best effort to protect the confidentiality of their passwords and to prevent unauthorized access to the MLS, the MLS Compilation or any MLS tool.

#### V. **Attribution.**

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

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the period (date) through (date). Neither the Board nor ACTRIS guarantees or is in any way responsible for its accuracy. All data is provided "AS IS" and with all faults. Data maintained by the Board or ACTRIS may not reflect all real estate activity in the market."

#### **VI. Passwords.**

**You are responsible for remembering Your password and for protecting the confidentiality of Your password. You may not disclose Your password to anyone other than ACTRIS. You are responsible for all acts or omissions made while using your password.** ACTRIS retains the right to require the updating of passwords.

#### **VII. ACTRIS owns the MLS Compilation.**

By the act of submission of any property listing data to ACTRIS or into the MLS Compilation, You represent and warrant that You own all right, title and interest in the such property listing data, have obtained necessary consents to comply with these T&Cs, if any, from any third party to any materials, and to grant, and thereby do grant, ACTRIS (and its service providers and licensees) an irrevocable, worldwide, paid-up, royalty-free, right and license to include such property listing data in the MLS Compilation, any statistical report or comparables, and to use it and authorize its use for any purpose consistent with the facilitation of the sale, lease and valuation of real property or such other use; provided that with respect to such other use, You have not opted-out of such other use after notice of the same. Such right shall include, without limitation, any photos. All rights, title, and interest in the MLS Compilation, including all intellectual property rights, shall at all times be owned and remain vested with ACTRIS. The term "MLS Compilation" as used in the foregoing sentence shall be construed to include the full MLS Compilation and any part thereof, in any format in which property listing data is collected, retrieved, displayed and/or disseminated, including, but not limited to, bound books, loose leaf binder, computer database, card file, any computer readable medium, any printed format or any format whatever to the greatest extent permitted by law.

#### **VIII. Warranty Disclaimer.**

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#### **IX. Indemnification.**

YOU AGREE TO INDEMNIFY AND TO HOLD ACTRIS, INCLUDING ITS EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS, HARMLESS FROM AND AGAINST ANY CLAIM, DEMAND OR LIABILITY (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING FROM YOUR ACTS OR OMISSIONS, INCLUDING YOUR USE OF AND OR RELIANCE ON THE MLS AND ANY DATA AVAILABLE IN THE MLS, INCLUDING ANY INACCURACY OR INADEQUACY OF THE INFORMATION AND ANY NEGLIGENCE OF ACTRIS OR ITS INFORMATION SUPPLIERS, AND ANY ACTS OR OMISSIONS MADE BY A THIRD PARTY USING YOUR PASSWORD.

**X. Advertisements, Sponsorship and Links.**

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**XI. Penalty.**

ACTRIS and ABoR reserve the right to suspend or terminate Your access to the MLS and/or impose a fine of up to the maximum allowable amount for Your failure to comply with these T&Cs or the Rules and Regulations.

**XII. Choice of Law.**

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