

**Austin Board of REALTORS® Website Terms of Use (“TOU”)**  
and  
**Austin/Central Texas Realty Information Service (“ACTRIS”)**  
**Participant and Subscriber Agreement (“Agreement”)**

Welcome to the Austin Board of REALTORS® (ABoR) Web Site. Part One set forth below applies to all users of the Web Site. Furthermore, if you are a Participant or Subscriber to Austin/Central Texas Realty Information Service (“ACTRIS”), Part Two shall be applicable to your use of ACTRIS’ service as described in detail below, and you should carefully review those terms. Where applicable, the use of “ABoR” herein includes “ACTRIS.”

**Part One - Website Terms of Use**

ABoR makes [www.abor.com](http://www.abor.com) and, for Participants and Subscribers of ACTRIS, [www.matrix.abor.com](http://www.matrix.abor.com), (cumulatively, Web Site) available subject to the following Terms of Use (“Terms”). ABoR may update and amend these Terms without prior notice. By entering and using the Web Site, you signify that you have read and agree to the Terms of Use posted at the time of your use of the Web Site. Unauthorized use of this Web site and technical issues may be reported to [technology@abor.com](mailto:technology@abor.com).

**1. Objectives**

This Web Site is intended to provide you with access to information about ABoR’s business, services, products and related links to meet your needs. These Terms are intended to protect all users of this Web Site. **DO NOT USE THIS WEB SITE IF YOU DO NOT AGREE WITH THESE TERMS.** ABoR reserves the right to modify or update these Terms or any features of this Web Site at any time. This Web Site includes links to other Web Sites that may or may not be affiliated with this Web Site or with ABoR. Your use of these linked Web Sites is not governed by these Terms, and ABoR disclaims all responsibility for your access to and use of such linked Web Sites.

**2. Privacy**

Log-in information and other information about you that you may submit or provide to ABoR through this Web Site is subject to ABoR’s Privacy Policy (<http://www.abor.com/privacy/>). For more information about ABoR’s use and protection of your information, please review ABoR’s Privacy Policy. Information and communications posted on this Web Site may be monitored by ABoR and may be produced in response to demands by governmental authorities and private litigants in accordance with applicable legal principles.

**3. Your Responsibilities**

You agree that you will not use this Web Site for any purpose that is unlawful, illegal or prohibited by these Terms, including, without limitation, the sending and posting of any

threatening, harassing, libelous, defamatory, obscene, inflammatory, sexually oriented or profane material, content or images, or other content that might be considered vulgar, violent or otherwise offensive. If you violate any of these Terms, your permission to use this Web Site immediately terminates without the necessity of any notice. ABoR retains the right to deny access to this Web Site to anyone for any reason, including for violation of these Terms.

You are responsible for the content and accuracy of the information that you submit to or through this Web Site and any information or data that is generated by this Web Site as a result of your use of or access to this Web Site. You agree that any information that you provide is accurate, current and complete. You agree that you are solely responsible for (and that ABoR has no responsibility to you or to any third party for) any information that you submit to or through this Web Site and any information or data that is generated by this Web Site that you create, transmit or display while using the Web Site, and for the consequences of your actions (including any loss or damage which ABoR may suffer) by doing so.

You shall keep user identification numbers, confirmation numbers and passwords in confidence, and you agree not to distribute or disclose the same to third parties. It is your responsibility to immediately alter your password upon your belief that the password may be subject to theft, unauthorized use or access, or a breach of confidentiality.

#### 4. Use of this Web Site

ABoR and ACTRIS control and operate this Web Site. All content on this Web Site, including, but not limited to, text, images, graphics, data and audio/video clips is the property of ABoR and ACTRIS and may be protected by copyrights, trademarks or other intellectual property rights. Unless other rights are expressly granted by ABoR, content on this Web Site is solely for your personal, non-commercial use, meaning that you may not use such content in any person's or firm's marketing or advertising materials without the permission of ABoR or without citing ABoR as the source, and that you will not post anyone's advertisements on this website. You agree to abide by all additional copyright notices or restrictions contained in or with any content. You are specifically prohibited from any use of this Web Site, and you agree not to use or permit others to use this Web Site, for any of the following:

- disclose or share user names and/or passwords to any unauthorized third parties for any unauthorized purpose;
- access or attempt to access ABoR's information technology systems, environments, data or accounts to which express authorization has not been granted, or log into an account that you are not authorized to access;
- attempt to modify or remove any of the software or HTML code comprising a part of this Web Site.

Messages should not be posted if they encourage or facilitate members to arrive at any agreement that either expressly or impliedly leads to price fixing, a boycott of another's business, or other conduct intended to illegally restrict free trade. Messages that encourage or facilitate an agreement about the following subjects are inappropriate: prices, discounts, or terms or conditions of sale; salaries; profits, profit margins, or cost data; market shares, sales territories, or markets; allocation of customers or territories; or selection, rejection, or termination of customers or suppliers.

## 5. Information Posted to this Web Site

ABoR has the right to monitor, use, display, distribute, reproduce, publish and modify any information you opt to post to publicly and privately accessible areas of the Web Site. If ABoR provides comment posts, message boards, discussion forums or blogs on this Web Site, you agree to use the forums only for personal purposes and that you will not post commercial advertisements in online communities, forums or article posts. You shall not, without ABoR's express approval in advance, distribute or publish via this website any material containing solicitation of funds, advertising or written solicitation for goods and services. This includes content the purpose of which could reasonably be construed to be recruiting agents, leasing office space or equipment, or seeking or offering employment. You agree not to post any abusive, defamatory, obscene or illegal content or any content the posting of which would violate copyright. ABoR reserves the right, without obligation, to edit, delete or move messages that it deems abusive, defamatory, obscene, infringing in violation of laws, in violation of these Terms or otherwise unacceptable to ABoR in its sole discretion. We reserve the right to deny access to this Web Site or any service provided via this Web Site to anyone who violates this visitor agreement or who, in our judgment, interferes with the ability of others to enjoy this Web Site or infringes the rights of others. We also reserve the right (but assume no obligation) to delete or move any postings that come to our attention that we consider unacceptable or inappropriate, whether for legal or other reasons.

**You agree to indemnify and hold ABoR, and its subsidiaries, affiliates, officers, directors, volunteers and employees harmless from any claim, demand or cause of action, for any manner of actual, threatened or claimed loss, damage, cost or expense, including but not limited to costs of court and attorneys' fees, made by any person, firm, entity or governmental agency or body, due to or arising from content you submit, post, transmit or make available through an online learning community or otherwise from your use of an ABoR online community or this website.**

To submit posts to comments, message boards, discussion forum or blogs on this Web Site, individuals are required to log in and must be members of the Austin Board of REALTORS® or ACTRIS Participants or Subscribers. Names of posters will be posted with submitted content.

## 6. Password and Security

You are responsible for maintaining the confidentiality of your Abor.com password and account information, and are fully responsible for all activities that occur under your password or account. You agree to a) immediately notify ABoR of any unauthorized use of your password or account or any other breach of security, and b) ensure that you exit from your account at the end of each user session.

## 7. Liability

**YOU EXPRESSLY UNDERSTAND AND AGREE THAT ABOR, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU FOR: (A) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER**

CAUSED AND UNDER ANY THEORY OF LIABILITY, IN ANY WAY RELATED TO YOUR USE OF THIS WEB SITE. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS; (B) ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU IN ANY WAY RELATED TO YOUR USE OF THIS WEBSITE OR SERVICES PROVIDED BY ABOR OR ACTRIS. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE WEB SITE IS AT YOUR SOLE RISK AND THAT THE WEB SITE IS PROVIDED “AS IS” AND “AS AVAILABLE.”

## **Part Two - Austin/Central Texas Realty Information Service (“ACTRIS”) Participant and Subscriber Agreement (hereinafter, “Agreement”)**

**If you are an ACTRIS Participant or Subscriber, this Part Two applies to you as indicated below (some provisions apply only to Participants, others only to Subscribers). This AGREEMENT is made and entered into by Austin/Central Texas Realty Information Service (“ACTRIS”), with offices at 4800 Spicewood Springs, Austin, TX 78759, and you (hereinafter, “You,” as further defined below). You may not use the ACTRIS Multiple Listing Service (“MLS”) or the MLS Compilation unless you read, understand and agree to the following terms and conditions. This agreement is a binding contract. Consult your attorney before signing if you do not understand any of these terms or conditions.**

### **DEFINITIONS AND USAGE**

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

**You:** The REALTOR® entering into this Agreement with ACTRIS as indicated by Your acceptance of these terms, below. You must be either a Participant or a Subscriber. If you are a Firm Participant, “You” and “Your” applies both to you and your Subscribers as defined below.

**Participant:** A “Participant” is a licensed real estate broker that offers or accepts cooperation and compensation to and from other Participants, or an Appraiser (a) who is a member of the National Association of REALTORS®, a member of the Austin Board of REALTORS® (“the Board”) or any other board of REALTORS® (b) who has applied for designated REALTOR® status and whose Applicant Agreement has been accepted by ACTRIS and (c) who has an office or is employed by or is a contractor to an office that is open to the public for the conduct of the real estate business.

**Firm Participant:** The Participant brokerage or appraisal company to which Individual Participants and Subscribers are affiliated.

**Individual Participant:** With regard to each office of a Firm Participant, the principal Participant broker or supervisory appraiser responsible for Firm Participant’s conduct under the ACTRIS Policies, or that supervises a Subscriber’s real estate activities, and on whose behalf Subscribers conduct those real estate activities.

**Subscriber:** A Subscriber is (a) a person who is licensed by the State of Texas to sell or lease real property and who is employed by or under contract with a Firm Participant; (b) an Individual Participant

with a valid license from the State of Texas to sell real estate that is on file with another Participant, or (c) an Appraiser who is working for another Appraiser that is a Participant or for an entity affiliated with another Appraiser that is a Participant. Subscriber must be a member of the National Association of REALTORS®, a member of the Board or any other board of REALTORS®, and employed by or a contractor to a Firm Participant.

**Other Participants and Subscribers:** All Participants and Subscribers of ACTRIS not party to this Agreement, including Firm Participants' employees, contractors, salespeople, and Authorized Assistants.

**Authorized Assistant:** An Authorized Assistant is a person (a) who does not hold an active real estate license, (b) who is designated by a REALTOR® Participant in writing as authorized to access the MLS solely in order to provide services to the REALTOR® Participant, and (c) who has agreed in writing to maintain the confidentiality of the MLS.

**Saved Information:** Information that You store in the ACTRIS System for Your own later use that is not intended by You to be available to ACTRIS's Other Participants and Subscribers, including client prospect and contact information.

**Schedule of Fees:** ACTRIS's document that establishes the fees for ACTRIS Service.

**ACTRIS Affiliates:** ACTRIS Affiliates means ACTRIS, the Austin Board of REALTORS® ("ABoR"), and their officers, directors, employees, agents, representatives, licensors, and members.

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

**ACTRIS Policies:** ACTRIS' bylaws, rules and regulations, and policies and procedures adopted by the Board of Directors of the Austin Board of REALTORS® or authorized delegates, as amended by them from time to time.

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

**ACTRIS Software:** ACTRIS's proprietary web browser interface(s) to the ACTRIS System.

**ACTRIS System:** The aggregate of all hardware, data connection systems and telecommunication systems that ACTRIS maintains, or that ACTRIS contractors maintain on its behalf, in order to make access to the ACTRIS Database available to You.

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

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

- (a) If you are a Subscriber, the provisions of the following agreement limited only to Firm Participants do not apply to you.
- (b) Wherever the term "including" is used, it means "including, but not limited to."
- (c) The singular and plural numbers and masculine, feminine, and neuter genders of words are interchangeable.
- (d) Wherever the term "law" is used, it means all statutes, regulations, and common law, both state and federal, as they are amended. Without limiting the generality of the foregoing, "law" expressly includes all state and federal fair housing statutes and regulations.

## ACTRIS'S OBLIGATIONS

3. Subject to the terms and conditions of this Agreement and the ACTRIS Policies, ACTRIS shall provide one unique user ID and password to You and (if applicable) to each Subscriber authorized to obtain access to the ACTRIS Service by virtue of this Agreement or another license agreement; and (if applicable) Individual Participants for which You are responsible shall have all rights and obligations of a Participant in ACTRIS as set forth in the ACTRIS Policies. ACTRIS may require you to change your password at any time. The user ID and password will provide You and (if applicable) Individual Participants access to all data and functions in the ACTRIS Service to which You or (if applicable) Individual Participants are entitled under the ACTRIS Policies. ACTRIS makes no warranties, however, that the ACTRIS Service will be available at all times.

## YOUR ACKNOWLEDGMENTS

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

5. **Editorial control.** ACTRIS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the ACTRIS Database or Your Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, ACTRIS may take any steps necessary in its judgment, including deleting Your Contribution or portions thereof, to avoid or remedy any violation of law, breach of the ACTRIS Policies or infringement of intellectual property rights.

6. **Conditions of service.** If You are a Firm Participant, you must at all times have an Individual Participant designated for each office, and You shall ensure that at all times Individual Participants for which you are responsible under this Agreement satisfy the prerequisites for participation in the ACTRIS Service. The prerequisites are set out in the ACTRIS Policies. Subscribers must be affiliated with a Participant at all times during the term of this Agreement, and may enter and retrieve active listing information on the ACTRIS Service only if Firm Participant offers compensation to or accepts compensation from other principal brokers.

7. **Saved Information.** Saved Information may not always be available to You and may become available to unauthorized persons. ACTRIS is not liable for unauthorized access to or loss of Saved Information. You are responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.

8. **Disclosure to third parties.** ACTRIS reserves the right to distribute to third parties certain information about You, including Your name and business address, phone number and email address. ACTRIS reserves the right to distribute to third parties aggregated information about Your and Other Participants' and Subscribers' use of the ACTRIS Service, but not about Your use specifically unless required by law.

9. **Non-MLS Uses.** You acknowledge that ACTRIS may also use or permit the use of Your Contribution for non-MLS purposes, including technology design and testing, and risk analysis. If you do not want Your Contribution used for any such purposes, you must notify ACTRIS in writing.

10. **Priority of agreements.** Your access to the ACTRIS Service is subject at all times to the limitations set out in the ACTRIS Policies and the provisions of this Agreement between ACTRIS and You or Your Firm Participant. In the event of an apparent conflict between those documents and this Agreement, Your obligations and rights shall be determined, in order of precedence, by the ACTRIS Policies, Your Firm Participant's most recent Participant and Subscriber Agreement with ACTRIS, and by your Agreement to these terms as indicated below.

11. **IDX and VOW data access subject to separate agreement.** You acknowledge that access to ACTRIS's IDX or VOW database and data feeds can occur only subject to a separate written agreement between ACTRIS and You, and if you are a Subscriber your Firm Participant, as applicable.

## **YOUR OBLIGATIONS**

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

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

14. **Equipment.** You shall acquire or provide and maintain all personal computers, modems, data connections, and computer software, other than the ACTRIS Software, necessary for Your use of the ACTRIS Service.

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

16. **Subscriber agreements.** If you are a Firm Participant, You shall ensure that each of Your Subscribers who will have access to the ACTRIS System or ACTRIS Database enters into this Agreement with ACTRIS. Firm Participants are liable for all fees due under each Subscriber Agreement.

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

18. **List of Subscribers.** Each Firm Participant shall ensure ACTRIS has a current list of all of of its Subscribers; each Firm Participant shall inform ACTRIS in writing of any change in its Subscribers within 24 hours of the change.

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

## **INTELLECTUAL PROPERTY - FIRM PARTICIPANTS**

(This Section applies only to Firm Participants)

**20. Assignment from Participant.** You hereby unconditionally assign to ACTRIS all right, title and interest in Your Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; You warrant that You have or will have the authority to make this assignment at the time Your Contribution is entered into the ACTRIS Database. You acknowledge that once You have made the election agreeing to this section, all copyrights in all portions of Your Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in ACTRIS.

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

**22. Optional License.** You, as Firm Participant, have the option to only license Your Contribution rather than make the assignment stated in Paragraph 20. If you desire to make such election, please contact ACTRIS staff to make arrangements to execute an alternative license agreement. If you make the election to license Your Contribution to ACTRIS rather than assign it to ACTRIS, ACTRIS shall have none of the obligations to protect Your Contribution as stated in Paragraph 21. Instead, ACTRIS will make a much more limited license grant to You than that provided in Paragraph 21, and will make no effort to register the copyrights in Your Contribution. Instead, You will be responsible for all costs and efforts associated with registration (timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act), ACTRIS will employ no efforts whatsoever to detect or hinder third parties using Your Contribution without Your permission, and ACTRIS will make no effort to secure for You the right to use copyrighted works created by Subscribers or third parties.

**23. Other licenses.** ACTRIS hereby grants You a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the ACTRIS Software and the ACTRIS Database (excluding Your Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the ACTRIS Policies and only to deliver real estate brokerage or appraisal services to Your bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the ACTRIS Policies are prohibited. Title to the Licensed Materials remains at all times in ACTRIS and shall not pass to You.

**24. Further Participant warranty.** You warrant that (a) Your Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) You have the written consent of any party necessary to provide Your Contribution to ACTRIS.

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



## **INTELLECTUAL PROPERTY – SUBSCRIBERS**

(This section applies only to Subscribers)

26. **Assignment from Subscriber.** You hereby unconditionally assign to ACTRIS all right, title and interest in Your Contribution including, without any limitation, any copyrights therein under U.S. and international copyright law. To the extent that You have also purported to assign your interests in Your Contribution to Your Firm Participant or Your Firm Participant has chosen the optional licensure identified in Paragraph 22, the assignment in this paragraph is null and void and, instead, You hereby grant to ACTRIS a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) Your Contribution.

27. **Warranty.** You warrant that You have the authority to make the assignment in Paragraph 26. You further warrant that (a) Your Contribution does not infringe on the copyright or other intellectual property rights of any third party; and (b) You have the written consent of any party necessary to provide Your Contribution to Your Firm Participant or ACTRIS.

28. **License.** ACTRIS hereby grants You a license to use the ACTRIS Software and the ACTRIS Database during the term of this Agreement, subject to the permission of Your Firm Participant and according to the terms of the ACTRIS Policies. All other uses are prohibited.

## **FEES AND PAYMENT TERMS**

29. **Applicable fees.** You shall pay the fees set forth in ACTRIS's published Schedule of Fees which ACTRIS may amend at any time subject to the terms of Paragraph 33.

30. **Payment terms.** You shall pay all fees and other amounts according to the terms set out in the ACTRIS Policies and Schedule of Fees.

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

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

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

34. **Fines.** ACTRIS may collect fines from You and (if applicable) from Your Firm Participant on Your behalf for violation of the ACTRIS Policies. Payment terms for fines are set out in the ACTRIS Policies. ACTRIS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

## **TERM AND TERMINATION**

35. **Term.** This Agreement shall commence upon the Effective Date set forth below and shall continue thereafter until terminated.

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

37. **Termination for breach of ACTRIS Policies.** Paragraph 35 notwithstanding, ACTRIS may terminate this Agreement if You fail to comply with the ACTRIS Policies; if You violate or are alleged to have violated the ACTRIS Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or Your appeal rights have expired as provided in the ACTRIS Policies. If in ACTRIS's judgment, however, a violation or alleged violation of the ACTRIS Policies is resulting in a continuing harm to ACTRIS or Other Participants or Subscribers, ACTRIS may suspend Your access to the ACTRIS Database during the pendency of any hearing or appeal.

38. **Termination for failure to pay.** In the event You fail to pay any fees required under this Agreement, ACTRIS may terminate service without being subject to arbitration. In its sole discretion, ACTRIS may suspend its performance under this Agreement rather than terminating it, in the event that You fail to pay any fees required under this Agreement.

39. **Termination without breach.** Either party may terminate this Agreement, with or without cause, upon ninety (90) days' written notice to the other party.

40. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) ACTRIS shall deactivate all applicable user IDs and passwords issued pursuant this Agreement, and You and any other users operating pursuant to this Agreement shall have no further access to the ACTRIS Service; (b) You shall purge all copies of the ACTRIS Software and the ACTRIS Database (except Your Contribution) from Your personal computers and other electronic device and internal or external (including cloud) storage, and You shall cause all Individual Participants and Subscribers operating hereunder to do the same; and (c) all licenses granted hereunder, except the license granted to ACTRIS to Your Contribution, shall immediately terminate.

41. **Effect on Subscribers.** In the event of any termination or suspension of this Agreement, upon ACTRIS notice to any Subscriber acting pursuant to this Agreement, ACTRIS may in its sole discretion suspend all Subscriber access to the ACTRIS System or terminate any applicable Subscriber license and access agreements. If ACTRIS does not exercise its right to suspend Subscriber access to the ACTRIS System or terminate Subscriber license and access agreements, applicable Subscriber license and access agreements shall continue in full force.

## **DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION**

42. **DISCLAIMER OF WARRANTIES.** ACTRIS PROVIDES THE ACTRIS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE ACTRIS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ACTRIS SERVICE ARE AT YOUR SOLE RISK. THE ACTRIS AFFILIATES DO NOT WARRANT THAT THE ACTRIS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE ACTRIS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE ACTRIS SERVICE. THE ACTRIS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE ACTRIS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE ACTRIS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The ACTRIS Service may contain hyperlinks to web sites operated by parties other than ACTRIS; ACTRIS does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

43. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE ACTRIS AFFILIATES SHALL BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE ACTRIS SERVICE, INCLUDING RELIANCE BY YOU ON ANY INFORMATION OBTAINED THROUGH USE OF THE ACTRIS SERVICE; MISTAKES,

OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN DATA CONNECTIONS TO THE ACTRIS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, DATA CONNECTION FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE ACTRIS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

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

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

46. **Acknowledgment.** You acknowledge that ACTRIS has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

## **DISPUTES AND REMEDIES**

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

48. **Dispute resolution.** In the event ACTRIS claims that You have violated the ACTRIS Policies, ACTRIS may, at its option, resolve such a claim according to the disciplinary procedures set out in the ACTRIS Policies, provided ACTRIS does not also base a claim that You have breached this Agreement on the same facts. Except as provided in this paragraph and in Paragraph 38, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by agreement of the parties or, lacking agreement, by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the “Arbitration Rules”). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Travis County, Texas, except that it may be held by telephone where the Arbitration Rules expressly so permit. You agree to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Travis County, Texas.

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

50. **Legal fees.** In the event of legal action or arbitration between ACTRIS and You, on account of or in respect to this Agreement, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or arbitration.

## MISCELLANEOUS

51. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, ACTRIS and You, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association (other than ABoR), or other third party.

52. **Interpretation and amendment.** You expressly consent to the execution of amendments by electronic means (such as web site "click through" agreements). ACTRIS may amend this agreement at any time. If You continue to use the ACTRIS Service or ACTRIS Database after the amendment, You will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

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

54. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. The foregoing notwithstanding, if any provision of Paragraph 42 through 46 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Your access to the ACTRIS Service shall immediately terminate.

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

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

By clicking below to indicate Your agreement, and by accessing, browsing or using abor.com or any other web site pursuant to which ACTRIS' multiple listing service may be accessed ("Site"), You acknowledge, represent and warrant that (i) You have read, understood, and agreed to be bound by these

terms and conditions; (ii) Your use of this Site is subject to all applicable laws; (iii) You are a Participant, Subscriber, or Authorized Assistant authorized to use the ACTRIS MLS; and (iv) to the extent there is another agreement between You and ACTRIS, this is a supplemental agreement and should be construed so as not to conflict with the terms of other agreements between You and ACTRIS. These terms and conditions are in addition to, and not in place of, the ACTRIS Rules and Regulations and the terms and conditions of use of Corelogic's applications. If You do not agree to these terms and conditions, you are not authorized to access the Site or the ACTRIS MLS. Your use of this Site, and your agreement below, will be deemed your acceptance and understanding of this Agreement. ACTRIS reserves the right to modify the information contained on the Site or these terms and conditions at any time.

[AGREEMENT WILL BE INDICATED ELECTRONICALLY THROUGH MMSI]

Having read Parts One and Part Two (if applicable to You), You expressly agree to be bound by the Terms and (if applicable) the Agreement by clicking ACCEPT where indicated.