



# RULES AND REGULATIONS

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**INTRODUCTION..... 5**

**DEFINITIONS ..... 5**

**PURPOSE..... 8**

**PART I: SALE OR VALUATION OF REAL PROPERTY ..... 9**

**SECTION 1: ELIGIBILITY AND FEES..... 9**

    1.1. ELIGIBILITY .....9

    1.2. START-UP FEE.....9

    1.3. PARTICIPATION FEE.....9

    1.4. LOCKBOX AND RELATED FEES.....9

    1.5. MLS PASSWORDS.....9

    1.6. DATA FEED FEES.....10

    1.7. FAILURE TO PAY FEES .....10

**SECTION 2: LISTING PROCEDURES ..... 10**

    2.1. REQUIRED AND ACCEPTED PROPERTY TYPES.....10

    2.2. ACCEPTED LISTING TYPES .....10

    2.3. LIMITED REPRESENTATION.....10

    2.4. TIMING OF SUBMISSION.....11

    2.5. CLEAR COOPERATION .....11

    2.6. SERVICE AREA .....11

    2.7. EXEMPT LISTINGS.....11

    2.8. FORM OF SUBMISSION .....12

    2.9. RIGHT TO REJECT LISTING.....12

    2.10. LISTING IN MULTIPLE SECTIONS OF THE MLS.....12

    2.11. LISTING DETAIL; ACCURACY OF LISTING DATA.....12

    2.12. PROPERTY ADDRESSES.....12

    2.13. SELLER’S NAME AND CONTACT INFORMATION .....13

    2.14. POPULATION OF TAX IDS.....13

    2.15. DIGITAL IMAGES .....13

    2.16. NON-BRANDED VIRTUAL TOUR HYPERLINKS (URL).....13

    2.17. NON-BRANDED COMMUNITY HYPERLINKS (URL).....14

    2.18. SUBMISSION OF OPEN HOUSES.....14

    2.19. SHORT SALES.....14

    2.20. SUBMISSION OF CHANGES IN LISTINGS.....14

    2.21. AVAILABLE FOR SHOWING .....14

    2.22. WITHDRAWAL OF LISTINGS .....15

    2.23. LISTING MULTIPLE UNIT PROPERTIES.....15

    2.24. COMMISSIONS .....15

    2.25. LISTINGS OF SUSPENDED, EXPELLED AND RESIGNED PARTICIPANTS .....15

    2.26. FAIR HOUSING .....16

**SECTION 3: KEYS AND LOCKBOXES..... 16**

    3.1. PREFERRED LOCKBOXES .....16

    3.2. MLS-APPROVED LOCKBOXES .....16

    3.3. DISCLOSURE OF COMBINATIONS .....16

    3.4. NON-DUPLICATIVE KEYS .....16

3.5.	SOURCE OF KEYS.....	17
3.6.	RIGHT TO A KEY.....	17
<b>SECTION 4: SELLING PROCEEDURES.....</b>		<b>17</b>
4.1.	NEGOTIATIONS .....	17
4.2.	PRESENTATION OF THE OFFER .....	18
4.3.	RIGHT TO BE PRESENT AT PRESENTATION OF OFFER .....	18
4.4.	RIGHT TO BE PRESENT AT PRESENTATION OF COUNTER-OFFER .....	18
4.5.	DISCLOSURE BY PARTICIPANT OR SUBSCRIBER OF INTEREST .....	18
4.6.	DISCLOSING THE EXISTENCE OF OFFERS.....	19
4.7.	FOR SALE SIGNS .....	19
4.8.	SOLD SIGNS.....	19
4.9.	SERVICES ADVERTISED AS “FREE” .....	19
<b>SECTION 5: COOPERATIVE COMPENSATION .....</b>		<b>19</b>
5.1.	SPECIFY OFFER OF COOPERATIVE COMPENSATION.....	19
5.2.	FORM OF OFFER OF COOPERATIVE COMPENSATION .....	19
5.3.	CONDITIONAL OFFER OF COOPERATIVE COMPENSATION.....	20
5.4.	OTHER COMPENSATION .....	20
5.5.	DUAL OR VARIABLE RATE COMMISSION ARRANGEMENT .....	20
5.6.	ADJUSTING COOPERATIVE COMPENSATION.....	20
5.7.	COMPLIANCE WITH OFFER OF COOPERATIVE COMPENSATION.....	20
5.8.	DISPLAY OF LISTING BROKER’S OFFER OF COMPENSATION .....	20
5.9.	NON-FILTERING OF LISTINGS.....	20
<b>SECTION 6: COMPLIANCE WITH RULES .....</b>		<b>21</b>
6.1.	COMPLIANCE WITH RULES – AUTHORITY TO IMPOSE DISCIPLINE.....	21
6.2.	CONSIDERATION OF ALLEGED VIOLATIONS AND WRITTEN COMPLAINTS.....	21
6.3.	COMPLAINTS OF UNETHICAL CONDUCT .....	22
6.4.	PARTICIPANT’S COMPLAINT OF UNAUTHORIZED USE OF LISTING CONTENT.....	22
6.5.	PARTICIPANT’S REMEDIES .....	22
<b>SECTION 7: ADMINISTRATIVE PROCEDURE FOR DISCIPLINE .....</b>		<b>22</b>
7.1.	ADMINISTRATIVE PROCESSING .....	23
7.2.	REQUEST FOR HEARING.....	23
7.3.	MANDATORY HEARING.....	23
7.4.	HEARING PROCEDURES .....	23
7.5.	APPEAL TO ACTRIS BOARD OF DIRECTORS.....	23
7.6.	MLS COMPLIANCE COMMITTEE .....	23
<b>SECTION 8: CONFIDENTIALITY OF MLS INFORMATION AND INTELLECTUAL PROPERTY.....</b>		<b>24</b>
8.1.	DISCLOSURE OF LISTINGS ONLY TO PARTICIPANTS AND SUBSCRIBERS.....	24
8.2.	LIMITED PERMITTED USE OF LISTING CONTENT .....	24
8.3.	PERMITTED USE OF SOLD DATA .....	24
8.4.	PERMITTED DISCLOSURE .....	24
8.5.	OBLIGATION TO CONTROL.....	25
8.6.	PROHIBITION ON COMMERCIALIZATION .....	26
8.7.	NO SOLICITING LISTINGS INCLUDED IN MLS .....	26
8.8.	LIMITED PERMITTED USE FOR APPRAISERS .....	26
8.9.	ACCESS BY AUTHORIZED ASSISTANTS .....	26

8.10.	LICENSE AND WARRANTY TO ACTRIS .....	26
8.11.	OWNERSHIP OF MLS DATABASE.....	27
8.12.	LICENSE FROM ACTRIS.....	27
8.13.	DISCLAIMER AND INDEMNITY .....	27
8.14.	PARTICIPANT’S OWN COMPILATIONS .....	27
8.15.	BROKERAGE BACK OFFICE FEED .....	27
8.16.	DMCA NOTE .....	27
<b>SECTION 9: GENERAL .....</b>		<b>28</b>
9.1.	CHANGES IN RULES AND REGULATIONS.....	28
9.2.	SEVERABILITY .....	28
9.3.	NO THIRD-PARTY BENEFICIARY .....	28
9.4.	ARBITRATION .....	29
<b>SECTION 10: ORIENTATION.....</b>		<b>29</b>
10.1.	ORIENTATION.....	29
<b>APPENDIX A: MLS GRID IDX RULES.....</b>		<b>29</b>
1.	IDX ADMINISTERED BY MLS GRID .....	29
2.	IDX POLICIES.....	29
<b>APPENDIX B: MLS GRID VOW RULES .....</b>		<b>29</b>
1.	VOW ADMINISTERED BY MLS GRID .....	29
2.	VOW POLICIES.....	30
<b>APPENDIX C: COMPLIANCE PROCEDURES.....</b>		<b>30</b>
1.	ACTRIS COMPLIANCE PROCESS AND PROCEDURES.....	30
<b>ACTRIS - LEASING MANAGEMENT SERVICE (LMS) .....</b>		<b>31</b>
<b>INTRODUCTION.....</b>		<b>31</b>
<b>SECTION 1: APPLICABILITY OF MLS RULES AND REGULATIONS .....</b>		<b>31</b>

## RULES AND REGULATIONS OF ACTRIS MLS

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### INTRODUCTION

The Austin/Central Texas Realty Information Service (ACTRIS), hereinafter referred to as “ACTRIS” shall provide the following forms of service: A brokerage multiple listing service (MLS); and, a residential leasing multiple listing service, leasing management service (LMS) to support leasing/management activities; all operating under the name of ACTRIS.

The rules and regulations applicable to each of the above-mentioned services shall appear as separate parts of this document. The parts shall be entitled ACTRIS and Leasing Management Service. These rules and regulations are incorporated in the Applicant Agreement and form a binding legal agreement between ACTRIS and Participant or ACTRIS and Subscriber, as applicable.

These Rules and Regulations are policies adopted by the ACTRIS MLS Board of Directors to govern the operation of the MLS, and its Participants and Subscribers. ACTRIS MLS designed these rules to facilitate the provision of multiple listing services to Participants and Subscribers while avoiding arbitrary restrictions on business practices.

Subject to these Rules and Regulations, Participants receive participatory rights to the Service.

### DEFINITIONS

Capitalized terms not defined herein shall have the meaning required by law in the context in which the term is used, or if no specific meaning is required by law, the meaning given in the Application Agreement, or if not provided therein, the meaning given in the published guidelines of the National Association of REALTORS®, and if not provided therein, the meaning as used in the real estate sales industry.

**“Appraiser”** shall mean an appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board; including an Authorized Assistant who is a Provisional Licensed Real Estate Appraiser or an Approved Appraiser Trainee (each, as defined by the Texas Appraiser Licensing and Certification Board) or tax agents that provide property valuations and that has an office (or is employed by or is a contractor to an office) that is open to public for the conduct of the appraisal business.

**“Authorized Assistant”** shall mean a person (a) who does not hold an active real estate license,  
1. 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  
2. who has agreed in writing to maintain the confidentiality of the MLS.

**“Board”** shall mean the Austin Board of REALTORS®.

**“Central Texas”** shall mean Bastrop, Bell, Blanco, Burnet, Caldwell, Comal, Fayette, Gillespie,

Gonzales, Guadalupe, Hays, Lampasas, Lee, Llano, Milam, San Saba, Travis and Williamson counties in the State of Texas.

**“Dual or Variable Rate Commission Arrangement”** shall have the meaning given in Section 5.5.

**“Exclusive Agency Listing”** shall mean a contractual agreement under which the listing Participant acts as the agent or as the legally recognized non-agency representative of the seller(s), and the seller(s) agrees to pay a commission to the listing Participant if the property is sold through the efforts of any Participant. If the property is sold solely through the efforts of the seller(s), the seller(s) is not obligated to pay a commission to the listing Participant.

**“Exclusive Right to Sell”** shall mean a contractual agreement under which the listing Participant acts as the agent or as the legally recognized non-agency representative of the seller(s), and the seller(s) agrees to pay a commission to the listing Participant, regardless of whether the property is sold through the efforts of the listing Participant, the seller(s) or anyone else; and a contractual agreement under which the listing Participant acts as the agent or as the legally recognized non-agency representative of the seller(s), and the seller(s) agrees to pay a commission to the listing Participant regardless of whether the property is sold through the efforts of the listing Participant, the seller(s), or anyone else, except that the seller(s) may name one or more individuals or entities as exemptions in the listing agreement and if the property is sold to any exempted individual or entity, the seller(s) is not obligated to pay a commission to the listing Participant.

**“Late/Reinstatement Fee”** shall have the meaning given in Section 1.3.

**“Listing Content”** shall mean details or information related to listed property, including, but not be limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, PDF documents, text files, artist renderings, and other details or information related to listed property.

**“LMS Database”** means the proprietary compilation of content and Listing Content regarding listings for the lease of real estate that is developed, compiled and organized by ACTRIS. The LMS Database may include Listing Content relating to Required and Other Property Types.

**“MLS Database”** means the proprietary compilation of content and Listing Content regarding listings for the sale of real estate that is developed, compiled and organized by ACTRIS. The MLS Database may include Listing Content relating to the Required and Other Property Types. The term “MLS Database” as used in the foregoing sentence shall be construed to include the full MLS Database and any part thereof, in any format in which Listing Content is collected, retrieved, displayed, and/or disseminated, including, but not limited to, bound books, loose leaf binder, computer database or compilation, card file, any computer readable medium, any printed format, or any format whatever to the greatest extent permitted by law.

**“Net Listing”** means a listing agreement based on the net price the seller will receive if the property is sold. Under a net listing a broker can offer the property for sale at the highest price obtainable to increase the commission. This type of listing is illegal in many states.

**“Open Listing”** means a listing agreement under which a Participant’s commission is contingent on the Participant producing a ready, willing and able buyer before the property is sold by the seller or another broker.

**“Other Property Types”** means, with respect to the MLS:

- Commercial Sale;
- Residential Lots – vacant sites without an existing dwelling (ACTRIS may, in its sole discretion, make exceptions for certain sites, including sites for which there is an existing demolition permit);
- Residential Income (Multi-Family) – duplexes, tri-plexes and four-plexes; and
- Commercial Lease;
- and with respect to the LMS: Residential Lease.

**“Participant”** means a licensed real estate broker that offers or accepts cooperation and compensation to and from other Participants or Appraiser: (a) who is a member of the a member of the National Association of REALTORS®, a member of 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.

**“REALTOR®”** means a Subscriber or a Participant who is a REALTOR® member of the Board or any other board affiliated with the National Association of REALTORS®.

**“Required Property Type”** means with respect to the MLS:

- Residential – single-family homes, condominiums, town homes, and manufactured homes that include the sale of land (new construction or “to-be-built” listings must be labeled as such, include a building permit or the selected building plan on the property and include an established selling price before it may be listed as Residential);
- Farm/Ranch – residential structures (e.g., single-family residential, manufactured home, mobile home, modular, townhouse) must be labeled as such, if there is not residential structure then the ranch subtype may be used.

**“Rules”** means these Rules and Regulations of ACTRIS.

**“Subscriber”** means (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 Participant; (b) a 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®, employed by or a contractor to an office that is open to the public for the conduct of the real estate business.

## **PURPOSE**

The MLS is intended solely for use by Participants, Subscribers and Appraisers in connection with the sale, lease and valuation of real property. Rules governing the use of the MLS in connection with the sale or valuation of real property are outlined in Part 1 hereof, and the rules governing the use of the LMS in connection with the lease of real property are outlined in Part 2 hereof. Use of the MLS or LMS is conditioned on agreement and compliance with these Rules and the Participant Agreement or Subscriber Agreement where the MLS or LMS may be accessed.



## PART I: SALE OR VALUATION OF REAL PROPERTY

### **SECTION 1: ELIGIBILITY AND FEES**

**1.1 ELIGIBILITY.** Only 1) Participants, Subscribers, Appraisers and Authorized Assistants who are engaged actively in the real estate profession, including buying, selling, exchanging, renting or leasing, managing, appraising for others for compensation, counseling, building, developing or subdividing real estate, and 2) other persons identified as members of other REALTOR® Boards are eligible to use the MLS.

**1.2 START-UP FEE.** A one-time Participant and Subscriber “start-up” fee shall be an amount established by the ACTRIS Board of Directors and shall be payable prior to the provision of any services by ACTRIS. Such fee and fee amount will be related to a “Participant” without regard for the number of offices or Subscribers. Fee information is available through Board staff or ABoR.com.

**1.3 PARTICIPATION FEE.** ACTRIS Board of Directors shall set the semi-annual Participation Fee of each Participant and Subscriber. Participant and Subscriber shall pay such fees on or before the final day of the month preceding the MLS semi-annual period for which service is desired. ACTRIS shall email billing statements to currently active Participants and Subscribers; however, failure to receive such notice does not relieve the Participant or Subscriber from timely payment if service for the succeeding semi-annual period is desired. Payments received after the due date must be accompanied by a Reinstatement Fee per service; otherwise, such payments will not be accepted, and service will be terminated at the end of the current semi-annual period and not reinstated until both the Reinstatement Fee and semi-annual Participation Fees are received. Each Appraiser employed or engaged by, or associated with, or using the offices of a Participant or a Participant’s associated firm must be identified as a Participant or a Subscriber.

*However, MLSs must provide Participants the option of a no-cost waiver of MLS fees, dues, and charges for any licensee or licensed or certified appraiser who can demonstrate subscription to a different MLS where the principal broker participates. MLSs may, at their discretion, require waiver recipients and their Participants to sign a certification for nonuse of its MLS services by their licensees, which can include penalties and termination of the waiver if violated. Waived licensees are not entitled to any MLS services.*

**1.4 LOCKBOX AND RELATED FEES.** ACTRIS Board of Directors shall establish the charges/fees (such as MLS fees, issuing fees, lockbox system fees, fines, and reinstatement fees, etc.) from time to time for use of lockboxes and keys.

**1.5 MLS PASSWORDS.** Every Participant, Subscriber, Authorized Agent and Appraiser who has access to and use of the MLS shall be required to obtain an individual MLS password issued by MLS. Each individual MLS password shall not be loaned, shared, disclosed, or allowed to come into the possession of any other person, except that the Participant, manager and/or administrator in that person’s real estate company

may have access to such MLS password, and such persons shall be required to keep their MLS password private and confidential. The MLS password shall only be used for purposes permitted by the Rules.

**1.6 DATA FEED FEES.** ACTRIS Board of Directors shall establish the service fees and charges for access to data feeds available via ACTRIS, including but not limited to IDX and VOW feeds.

**1.7 FAILURE TO PAY FEES.** Failure to pay any charge created under this Section I or other fees or fines established under these Rules, by the applicable due date, and provided that at least ten (10) days' notice has been given, shall result in the suspension of services until such charges have been paid in full.

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## **SECTION 2: LISTING PROCEDURES**

**2.1 REQUIRED AND ACCEPTED PROPERTY TYPES.** Subject to compliance with the other terms hereof, for properties that are (i) of the Required Property Type and that are located within Central Texas must be submitted to ACTRIS; (ii) of an Other Property Types may be submitted voluntarily by a Participant, but are not required by ACTRIS; (iii) of the Required Property Type and are located outside of Central Texas may be submitted voluntarily by a Participant, but are not required by ACTRIS.

**2.2 ACCEPTED LISTING TYPES.** Subject to compliance with the other terms hereof, ACTRIS will accept the following listing types:

1. **Exclusive Right to Sell.**
2. **Exclusive Right to Sell with Prospect Reservations.** (Named prospects exempted.) Property data forms submitted on properties listed under Exclusive Right to Sell with prospect reservations must so indicate in order that such information can be provided to other Participants and Subscribers of ACTRIS.
3. **Exclusive Agency.** Property data forms submitted on properties listed under Exclusive Agency must so indicate in order that such information can be provided to other Participants and Subscribers of ACTRIS.

ACTRIS does not regulate the type of listings Participants or Subscribers may take, but ACTRIS is not required to accept every type of listing. ACTRIS shall decline to accept open listings and net listings and it may limit its service to listings of certain kinds of property. But if ACTRIS chooses to limit the kind of listings it will accept, it shall leave its Participants or Subscribers free to accept such listings to be handled outside the MLS.

**2.3 LIMITED REPRESENTATION.** For purposes of this rule, the term "substantial services" includes, but is not limited to, the following services:

1. **Arrange Appointments.** Arrange appointments for cooperating Participants to show listed property to potential purchasers (*i.e.*, gives cooperating Participants or Subscribers authority to make such appointments directly with the seller(s));
2. **Accept and Present Offers.** Accept and present to the seller(s) offers to purchase procured by

cooperating Participants (*i.e.*, gives cooperating Participants or Subscribers authority to present offers to purchase directly to the seller(s));

3. **Advise.** Advise the seller(s) as to the merits of offers to purchase; or
4. **Assist.** Assist the seller(s) in developing, communicating, or presenting counteroffers; or
5. **Negotiate.** Participate on the seller's(s') behalf in negotiations leading to the sale of the listed property.

Any listing with respect to which the listing Participant or Subscriber is not obligated to provide, and will not be providing, one or more "substantial services," as defined herein, must select "Limited Service" from the Listing Service field on listing input, and provide additional details in the Private Remarks field. Use of that selection serves only to distinguish such a listing from other listings, so the potential cooperating brokers will be aware of the extent of the substantial services provided by the listing Participant or Subscriber, regardless of whether the listing is an Exclusive Agency or Exclusive Right to Sell listing.

Nothing in this rule shall be considered approval or authorization for any Participant or Subscriber to violate any provision of the Real Estate License Act ("RELA"). Specifically in this context, RELA permits delivery of an offer directly to a represented buyer or seller only with consent of the represented party's broker, and only if a copy of the offer is sent to the represented party's broker. Furthermore, a Participant or Subscriber may not engage, directly or indirectly, in negotiations with a represented party. "Represented party" as used herein means an owner or buyer who is party to an outstanding written exclusive agency agreement with another broker in connection with the transaction.

**2.4 TIMING OF SUBMISSION.** Participants and Subscribers must enter all required listings for properties within Central Texas into the MLS within five (5) business days after all necessary signatures have been obtained.

**2.5 CLEAR COOPERATION.** Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.

Note: Exclusive listing information for the Residential and Farm/Ranch property types (excluding the following special listing conditions: auctions, foreclosures, and new construction) must be filed and distributed to other MLS Participants for cooperation under the Clear Cooperation Policy. This applies to listings filed under Section 2 and listings exempt from distribution under Section 2.7, and any other situation where the listing broker is publicly marketing an exclusive listing that is required to be filed with the service and is not currently available to other MLS Participants.

**2.6 SERVICE AREA.** The service area of ACTRIS for required listings is Central Texas; ACTRIS accepts listings located outside the service area which are listed subject to a Participant's real estate license.

**2.7 EXEMPT LISTINGS.** If the seller refuses to permit a listing, that is of a Required Property Type and located within Central Texas, to be filed with ACTRIS for dissemination through the MLS, then the Participant may then take the listing (office exclusive), and such listing will not be disseminated to Participants. The listing contract must be accompanied by a certification signed by the seller that he or she does not desire the listing to be filed with ACTRIS for dissemination through the MLS. The certification can be made using ACTRIS' *Seller's Authorization to Exclude Listing from MLS* form, or a substantially similar form that includes (i) the seller's

acknowledgement of consequences of excluding their listing from dissemination via ACTRIS and release of claims against ACTRIS from the same, (ii) the seller's signature, and (iii) the listing broker's (or authorized office manager's) signature. Upon request from ACTRIS, Participant must promptly submit the certification to ACTRIS, within two (2) business days of the request. Failure to comply with ACTRIS's request for the certification is a violation of these Rules and will be processed in accordance with Appendix C – Compliance Procedures.

Note: MLS Participants must distribute exempt listings within (1) one business day once the listing is publicly marketed. See Section 2.5, Clear Cooperation.

**2.8 FORM OF SUBMISSION.** Participants may submit listing agreements on any form that the Participant individually chooses to utilize that is mutually acceptable to the Participant and Seller, provided the listing is of a type accepted by ACTRIS, although a property data form may be required as approved by ACTRIS. Participants do not need to file the listing agreement, unless these rules state otherwise or as requested by ACTRIS. Only one Participant shall be responsible for any given listing. Where cooperative agreements are entered into between Participants, only the Participant having the right to offer compensation shall submit the listing. When a seller authorizes filing of a listing with ACTRIS, it accepts that such listing is subject to the Rules of ACTRIS.

**2.9 RIGHT TO REJECT LISTING.** ACTRIS through its legal counsel may refuse to accept a listing form which: (a) fails to adequately protect the interests of the public and the Participants, (b) establishes, directly or indirectly, any contractual relationship between ACTRIS and the client; and/or (c) fails to comply with these Rules. The listing agreement of a property filed with ACTRIS must expressly grant the listing Participant authority to advertise; file the listing with ACTRIS; provide timely notice of status changes of the listing to the MLS; provide sales information including selling price to ACTRIS upon sale of the property; designate the full gross listing price, and bear a definite and final termination time and date as negotiated between the listing Participant or Subscriber and the seller(s).

**2.10 LISTING IN MULTIPLE SECTIONS OF THE MLS.** If a property is suitable for listing in more than one section of the MLS Database, such as a single-family residence zoned for commercial use, such listing may be entered in more than one section of the MLS Database, provided that, ACTRIS may require payment of a service charge for the second listing. Second listings of this nature are not permitted for properties having only one clear usage category. Designate properties to be built as improved properties only if a plan has been selected, selling price established, and the database entry labeled as "to be built."

**2.11 LISTING DETAIL; ACCURACY OF LISTING DATA.** Any listing including any addendum and profile sheet, when filed with ACTRIS, must contain correct and complete information for all required fields, including seller's name (except as provided below), including such information described below. Participants and subscribers are required to submit accurate listing data and required to correct any known errors. To the extent that information pertaining to optional data fields (i.e., those not specified as being required) is provided, such information shall also be complete and accurate. Listings found to have incomplete required items or incomplete, incorrect or misleading information will be subject to a fine. The full gross listing price stated in the listing contract will be included in the information published in the MLS Database, unless the property is subject to auction.

1. **Directions** - The Directions field must contain driving directions that any reasonable, prudent person can use to locate the listed property. The Directions field is intended for property directions only.
2. **Public Remarks - The Physical Property Description** - Public Remarks field is intended to describe the physical attributes of the listed property only. Remarks related to the transaction such as available financing, cash back at closing, bonuses, upgrade incentives and the like shall not be

entered in the Public Remarks field. Moreover, confidential information such as showing instructions or security codes and contact information such as names, phone numbers, email addresses, web site addresses, service provider information, the words FSBO or For Sale by Owner shall not be entered in the Public Remarks field.

3. **Private Remarks - Private** - The Agent Remarks - Private field shall only be displayed to other MLS Subscribers and shall not be displayed to customers, clients, or consumers. It shall be used to convey additional information related to the listed property or information related to the transaction of the listed property such as available financing, cash back at closing, bonuses, upgrade incentives, upgrade allowances, repair allowances, builder options, etc. Comments related to variable commission offers based on conditions other than the cooperating agent's performance as the procuring cause of the sale or condition of sale shall not be entered. Comments related to brokerage business models or advertisements intended to recruit agents shall not be entered.
4. **Duplicate MLS Areas**- A listed property may not be entered in more than one MLS area.
5. **Non-ACTRIS Member Inclusion**- non-ACTRIS member names shall not be included in the MLS.

**2.12 PROPERTY ADDRESSES.** At the time of filing a listing, Participants and Subscribers must include a property address available to other Participants and Subscribers, and if an address doesn't exist, a parcel identification number can be used. Where an address or parcel identification number are unavailable, the information filed with the MLS must include a legal description of the property sufficient to describe its location.

**2.13 SELLER'S NAME AND CONTACT INFORMATION.** In the event that seller does not wish his or her name and/or contact information to be disseminated along with the property listing information, the listing agreement should be accompanied by certification signed by the seller requesting such information be withheld from dissemination. The seller's name will then be listed as "Withheld." This documentation must be submitted to ACTRIS promptly upon request.

**2.14 POPULATION OF TAX IDS.** All properties listed for sale or for lease, which have a tax ID in the MLS, must be populated or auto-populated at the time a listing is entered into the MLS. If filled from existing listing or blank listing, tax record information must match information tied to tax ID (Parcel ID).

**2.15 DIGITAL IMAGES.** The listing Participant or Subscriber shall load at least one digital image of each property (all property types) listed in the MLS within seven (7) days of the System list date. Digital images submitted to MLS shall only contain photos pertinent to the listed property and must show an accurate representation of the property in its current state, and may include floor plans of the listed property, and renderings of the listed property, plat maps, or aerial view. If the listed property has a dwelling, at least one image must be of the front of the dwelling and images, once submitted may not be removed. This does not apply to "To Be Built" or "Under Construction" dwellings, where the renderings may be replaced with an actual image of the property. Images with virtual staging (i.e., use of software to add furnishings) must include a non-virtually staged image of the same view. Digital images should not contain contact information such as names, phone numbers, email addresses or web site addresses, including use of embedded, overlaid, or digitally stamped information, except for the listing Participant's yard sign (provided that such yard sign may only be incidental to and a small portion of the digital image). Images previously submitted by a Participant may not be used by other Participants on subsequent listings without written permission. ACTRIS reserves the right to reject or remove any digital image submitted that includes any embedded, overlaid, or digitally stamped text, personal advertising or promotion, as well as people or persons.

**2.16 NON-BRANDED VIRTUAL TOUR HYPERLINKS (URL).** Virtual tours submitted to ACTRIS shall comply with

the following guidelines:

1. The primary focus of the tour shall be of the subject property.
2. The tour must be hosted on an Internet accessible server from which a Participant can retrieve the tour by selecting that tour's hyperlink.
3. The tour or any accompanied audio descriptions shall not include any contact information such as names, phone numbers, email addresses, web site addresses, agent photographs, logos or promotion for a closing service provider or any other peripheral service, with the exception of the listing firm's name.
4. By submitting the tour, Participants are representing to ACTRIS that the Participant has permission to allow the display of the tour in MLS and that ACTRIS in turn has permission to redistribute the tour hyperlink as a part of the MLS Database.

**2.17 NON-BRANDED COMMUNITY HYPERLINKS (URL).** URLs submitted to ACTRIS and designated as a Community hyperlink shall only link to web pages that are pertinent to the listed property. Participants may also provide hyperlinks to websites owned and operated by the homeowner's association (HOA) applicable to such listed property. The URL submitted shall not include any contact information such as names, phone numbers, email addresses, web site addresses, agent photographs, logos, or promotion for the listing Participant.

**2.18 SUBMISSION OF OPEN HOUSES.** Open houses submitted to ACTRIS must designate a specific date and time the property will be available for viewing and must allow Participants and Subscribers to preview the inside of the property and allow public access. Properties that do not allow access to the inside of the property shall not be submitted to ACTRIS as an open house. Open houses shall not include in the comments section any remarks related to the transaction such as available financing, cash back at closing, bonuses, upgrade incentives, upgrade allowances, repair and decorating allowances, contact information such as names, phone numbers, email addresses, web site addresses, or promotion for a closing service provider or any other peripheral service.

**2.19 SHORT SALES.** Participants must disclose potential short sales when reasonably known to the listing Participants. When disclosed, Participants may, at their discretion, advise other Participants whether and how any reduction in the gross commission established in the listing agreement, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating Participants. Such disclosure should be made in the MLS by selecting "Short Sale" under the Special Listing Conditions field. When an offer with respect to a potential short sale is accepted, the listing Participants shall mark the listing as (i) Active Under Contract [AU] or (ii) Pending [P], until such time as the bank has approved the offer.

**2.20 SUBMISSION OF CHANGES IN LISTINGS.** Participants shall submit to ACTRIS or enter into the MLS any change in listed price or other change in the original listing agreement within one (1) business day after the authorized change is received by the listing Participant or Subscriber. Each change in price must be authorized in writing by the seller and specify the date of the change and the new list price. Other applicable changes may include, without limitation, any change in status such as final closing of sales, that a contingency on file with ACTRIS has been fulfilled, renewed or cancelled, or that any pending sale has been cancelled. By way of example, when a listing is "under contract" and the contract fails, the listing should be restored to Active (A) status if the listing under which the property was entered has not expired. Similarly, if the listing under which the property was entered into the MLS has expired at the time the contract fails, the status may be changed to Active (A) status; in that circumstance, the listing will automatically expire at midnight on the day of the status change. If negotiations were carried on under Section 4.1 hereof, the cooperating broker shall report accepted offers and prices to the listing broker within one (1) business day after occurrence and the listing broker shall

report them to the MLS within one (1) business day after receiving notice from the cooperating broker.

**2.21 AVAILABLE FOR SHOWING.** Active listings must be available for showing within four (4) business days once entered into the MLS. Participants and Subscribers can enter approved showing instructions into the MLS. If, after reasonable effort, the cooperating Participant or Subscriber cannot contact the listing agent, the cooperating Participant or Subscriber should contact the listing broker. If, after twenty-four (24) hours, the listing Participant or Subscriber and the listing agent cannot be contacted, the cooperating Participant or Subscriber may contact ACTRIS. The contacted ACTRIS official will either arrange the showing or authorize the cooperating Participant or Subscriber to contact the seller(s) directly. Certain exceptions may exist, such as, for example, if the listing Participant or Subscriber had previously precluded such direct contact by the cooperating Participant or Subscriber by direct notice or e-mail.

**2.22 WITHDRAWAL OF LISTINGS.** Listings may be withdrawn from the MLS by the Participant before the expiration date of the listing agreement. A copy of the agreement between the seller and the listing Participant or Subscriber which authorizes the withdrawal shall be submitted to ACTRIS promptly upon request. Sellers do not have the unilateral right to require MLS to withdraw a listing without the listing Participant or Subscriber's concurrence. However, when a seller(s) can document that his or her exclusive relationship with the listing Participant or Subscriber has been terminated, ACTRIS may remove the listing at the request of the seller. Listings may not be withdrawn for purposes such as the avoidance of reporting sales price or other closing information. All sales prices must be reported to the multiple listing service.

If not earlier withdrawn, any listing in Active (A) status will automatically expire on the date specified in the listing agreement, as indicated in the system. Extensions of listings are acceptable if filed on a change report form. If permitted to expire, a new listing agreement must be secured for the listing to be filed with the MLS. Such listing will then be published as a new listing. Participants may not allow listings to expire in order to avoid reporting sales price or other closing information. All sales prices must be reported to the multiple listing service.

**2.23 LISTING MULTIPLE UNIT PROPERTIES.** All properties which are to be sold or which may be sold separately must be indicated individually in the listing and on the property data form. Participant shall notify ACTRIS when any part of a listed property has been sold.

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

**2.25 LISTINGS OF SUSPENDED, EXPELLED AND RESIGNED PARTICIPANTS.** When a Participant is suspended or has been expelled from ACTRIS for failing to abide by a membership duty (*i.e.*, violation of the Code of Ethics, Board Bylaws, ACTRIS Bylaws, ACTRIS Rules, ACTRIS Participant Agreement, ACTRIS Subscriber Agreement, or other membership obligation except failure to pay appropriate dues, fees, or charges), ACTRIS shall, at Participant's option, include any listings then currently filed with the MLS in the MLS until such listing is sold, withdrawn or expired. Such listings shall not be renewed or extended by ACTRIS beyond the termination date of the listing agreement in effect when suspension or expulsion became effective. When a Participant has been suspended or expelled from the Board or ACTRIS (or both) for failing to pay appropriate dues, fees or charges, ACTRIS is not obligated to provide services, including continued inclusion of that Participant's and its associated Subscriber's listings in the MLS Database of current listing information. Prior to any removal of a suspended or expelled Participant's and its associated Subscriber's listings from the MLS, the suspended Participant should be advised in writing (including email) of the intended removal so that the Participant may reasonably advise his or her clients. When a Participant resigns from the MLS, the MLS is not obligated to provide services, including

continued inclusion of the resigned Participant's and its associated Subscriber's listings in the MLS compilation of current listing information. Prior to any removal of a resigned Participant's listings from the MLS, ACTRIS should notify the resigned Participant in writing (including email) of the intended removal so that the resigned Participant may reasonably advise his clients. Any Authorized Assistants shall be suspended, terminated or expelled upon any suspension, resignation or expulsion of the designated Participant. This Section 2.24 applies to Subscribers with respect to ACTRIS Bylaws, ACTRIS Rules and ACTRIS Subscriber Agreement.

**2.26 FAIR HOUSING.** ACTRIS is committed to compliance with federal, state, and local fair housing laws and opposes discrimination in housing based on race, color, religion, sex, handicap, familial status sexual orientation, gender identity, and national origin. From time to time, ACTRIS may modify or request that a Participant or Subscriber modify their Listing Content that may violate any fair housing law or Article 10 of the NAR Code of Ethics. Participants and Subscribers may report of potential violations of fair housing laws to [support@abor.com](mailto:support@abor.com).

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### **SECTION 3: KEYS AND LOCKBOXES**

**3.1 PREFERRED LOCKBOXES.** The lockboxes approved by ACTRIS shall be the preferred lockboxes for use on the MLS listed properties. Participants and Subscribers may use other lockboxes on their listed properties if they desire.

**3.2 MLS-APPROVED LOCKBOXES.** All properties listed in the MLS must have an MLS-approved lockbox if any device giving access to real estate professionals and/or service providers is authorized by the seller and occupant and is placed on the property. "MLS-approved" devices are not limited to lockboxes leased or sold by an association or MLS; any lockbox or access device that provides cooperating Participants and Subscribers with reasonable, timely access to listed property will satisfy this requirement. For purposes of this rule, a lockbox provides "reasonable, timely access to listed property" if (1) it allows all Participants and Subscribers timely access to the listed property by reliance solely on data submitted to and residing on the MLS or showing service company; (2) complete, accurate instructions are provided for accessing the listed property in the designated security code field; or (3) it ensures that the lockbox or device will provide reasonable access to listed property with any information, code or key needed to access the contents of the lockbox or device to be made available or access to the property otherwise scheduled within four [4] hours of initial contact in the event the lockbox or device requires the participating member to obtain additional information to enable access (for example, "call agent for code") with said 4 hour response obligation in effect every day from 8am to 6pm. The MLS reserves the right to require that the device be submitted in advance for approval. The MLS also may revoke the approval and/or subject the Participant to discipline if the device is used in a manner that fails to continue to satisfy this requirement. Failure to provide reasonable and timely access as required by this section will subject the listing agent to discipline and potential fines. More than one lockbox or access device may be used on a property as long as one of them is MLS-approved where the listing is submitted.

**3.3 DISCLOSURE OF COMBINATIONS.** Gate codes, combination codes, access codes and security codes may be added as a separate attachment to a listing and/or in the Access Code or Showing Instructions field. In no event shall such codes be placed in the listing details, Public Remarks, or disclosed to third parties.



**3.4 NON-DUPLICATIVE KEYS.** Any key, programmer, or other device (hereinafter referred to as “key”) by which a lockbox can be opened shall be nonduplicative. By “nonduplicative” it is not meant that the key is

necessarily covered by a current patent, but that it cannot be readily copied in the manner that other types of keys are ordinarily capable of being copied.

**3.5 SOURCE OF KEYS.** Keys must be obtained from the original manufacturer, from a recognized vendor of lockbox systems, or from any other legitimate source. Prior to utilizing previously used keys, lids, or boxes, information shall be obtained from the original manufacturer to determine whether the key's pattern, code, or configuration is already in use by other boards, multiple listing services, or other users in the vicinity. Surrounding boards and multiple listing services shall also be contacted to determine whether the key's pattern, code, or configuration is currently in use.

**3.6 RIGHT TO A KEY.** Each Participant or Subscriber who is a member of ACTRIS (active status) is eligible to hold a key subject to their execution of a lease agreement with ACTRIS. ACTRIS may, at its discretion, lease keys to affiliate members of NAR-approved boards of REALTORS® who are actively engaged in a recognized field of real estate practice or in related fields. ACTRIS may 1) suspend the right of lockbox key holders to use lockbox keys following their arrest for any felony or misdemeanor and/ or 2) refuse to sell or lease lockbox keys, terminate existing key lease agreements, and/ or refuse to activate or reactivate any key held by an individual convicted of a crime within the past seven (7) years under the following circumstances: a) ACTRIS Board of Directors determine that the conviction(s) relates to the real estate business or puts clients, customers, or other real estate professionals, or property at risk, for example through dishonest, deceptive, or violent acts; and b) ACTRIS Board of Directors gives the individual an opportunity to provide and the ACTRIS Board of Directors must consider mitigating factors related to the individual's criminal history, including, but not limited to, factors such as: the individual's age at the time of the conviction(s); the nature and seriousness of the crime; the extent and nature of past criminal activity; time elapsed since criminal activity was engaged in; rehabilitative efforts undertaken by applicant/user since the conviction; facts and circumstances surrounding the convictions(s); and evidence of current fitness to practice real estate. The ACTRIS Board of Directors should be sure to evaluate individuals uniformly, and avoid making exceptions for one individual while denying an exception to another individual with a similar criminal history. The ACTRIS Board of Directors may suspend the right of lockbox keyholders to use lockbox keys following their arrest and prior to a final determination on any such charge if, in the determination of the ACTRIS Board of Directors, the charge relates to a crime that relates to the real estate business or puts clients, customers, other real estate professionals, or property at risk.

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## **SECTION 4: SELLING PROCEDURES**

**4.1 NEGOTIATIONS.** Negotiations with the seller(s) for the purchase of listed property filed with the MLS shall be conducted through the listing Participant or Subscriber. An offer may be delivered directly to a seller only if: (a) the listing Participant or Subscriber gives the cooperating Participant or Subscriber specific authority to deliver the offer directly, (b) a copy of the offer is sent to the listing Participant, and (c) the cooperating Participant or Subscriber delivering the offer does not otherwise negotiate or attempt to negotiate directly with the seller(s) of the listed property.

**4.2 PRESENTATION OF THE OFFER.** The listing Participant must present the offer as soon as possible, or give the cooperating Participant a satisfactory reason for not doing so. The listing Participant or Subscriber shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing Participant. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing Participant shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer. Participants representing buyers shall submit to the buyer all offers and counter-offers until acceptance, and shall recommend that buyers obtain legal advice where there is a question about whether a pre-existing contract has been terminated.

**4.3 RIGHT TO BE PRESENT AT PRESENTATION OF OFFER.** The cooperating Participant (including Subscriber) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing Participant. However, if the seller or lessor gives written instructions to the listing Participant that the cooperating Participant not be present when an offer the cooperating Participant secured is presented, the cooperating Participant has the right to a copy of the seller's written instructions. None of the foregoing diminishes the listing Participant's right to control the establishment of appointments for such presentation.

Where the cooperating Participant is not present during the presentation of the offer, the cooperating Participant can request in writing, and the listing Participant must provide, written affirmation stating that the offer has been submitted to the seller, or written notification that the seller has waived the obligation to have the offer presented.

**4.4 RIGHT TO BE PRESENT AT PRESENTATION OF COUNTER-OFFER.** The listing Participant (including Subscriber) or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except when the cooperating broker is a subagent). However, if the purchaser gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser's written instructions.

**4.5 DISCLOSURE BY PARTICIPANT OR SUBSCRIBER OF INTEREST.** If a Participant or a Subscriber affiliated with the Participant has any ownership interest in a property, the listing of which is to be disseminated through the MLS, that person shall disclose that interest when the listing is filed with the MLS and such information shall be disseminated to all MLS Participants. If a Participant or Subscriber affiliated with the Participant wishes to acquire an interest in property listed with another Participant, such contemplated interest shall be disclosed, in writing, to the listing Participant or Subscriber no later than the time an offer to purchase is submitted to the listing Participant or Subscriber.

**4.6 DISCLOSING THE EXISTENCE OF OFFERS.** Disclosure of the existence of offers of a specified property is covered under Standard of Practice 1-15 of the Code of Ethics and Standards of Practice of the National Association of REALTORS®, as may be amended from time to time.

**4.7 FOR SALE SIGNS.** Only the “FOR SALE” sign of the listing Participant may be placed on a property.

**4.8 SOLD SIGNS.** Prior to closing, unless the listing Participant authorizes the cooperating Participant (selling Participant) to post such a sign, only the “SOLD” sign of the listing Participant may be placed on a property.

**4.9 SERVICES ADVERTISED AS “FREE”.** MLS Participants and Subscribers must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the Participant or Subscriber will receive no financial compensation from any source for those services.

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## **SECTION 5: COOPERATIVE COMPENSATION**

**5.1 SPECIFY OFFER OF COOPERATIVE COMPENSATION.** The listing Participant or Subscriber shall specify, on each listing filed with the MLS, the compensation offered to other Participants for their services in the sale of such listing. Such offers of compensation are unconditional except that entitlement to compensation is determined by the cooperating Participant’s performance as the procuring cause of sale. The listing Participant’s obligation to compensate any cooperating Participant as the procuring cause of sale may be excused if it is determined through arbitration that, through no fault of the listing Participant and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing Participant to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through the 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 Participant to collect some or all of the commission established in the listing agreement; at what point in the transaction the listing Participant knew (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly the listing Participant communicated to cooperating Participants that the commission established in the listing agreement might not be paid. In filing a property with the MLS, the Participant is making blanket unilateral offers of compensation to the other Participants, and shall therefore specify on each listing filed with the MLS the compensation being offered to the other Participants. Specifying the compensation on each listing is necessary, because the cooperating Participant has the right to know what his or her compensation shall be prior to his or her endeavor to sell.

**5.2 FORM OF OFFER OF COOPERATIVE COMPENSATION.** The compensation specified on listings filed with the MLS shall appear in one of two forms. The essential and appropriate requirement by ACTRIS is that the published information shall clearly inform the Participants as to the compensation they will receive in cooperative transactions, unless advised otherwise by the listing Participant or Subscriber, in writing, in advance of submitting an offer to purchase. The compensation specified on listings published by the MLS

shall be shown in one of the following forms: (a) by showing a percentage of the gross selling price, or (b) by showing a definite dollar amount. The listing Participant retains the right to determine the amount of compensation offered to other Participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law) which may be the same or different.

**5.3 CONDITIONAL OFFER OF COOPERATIVE COMPENSATION.** Listing Participant or Subscriber may communicate to potential cooperating Participants or Subscribers that gross commissions established in listing contracts are subject to court approval or current lien holders; and that compensation payable to cooperating Participant or Subscriber may be reduced if the gross commission established in the listing contract is reduced by a court or by current lien holders. In such instances, the fact that the gross commission is subject to court or current lien holders' approval, and either the potential reduction in compensation payable to cooperating Participant or the method by which the potential reduction in compensation will be calculated, must be clearly communicated to potential cooperating Participant prior to the time they submit an offer that ultimately results in a successful transaction.

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

**5.5 DUAL OR VARIABLE RATE COMMISSION ARRANGEMENT.** The existence of a dual or variable rate commission arrangement shall be disclosed by the listing Participant or Subscriber by a key, code, or symbol as required by ACTRIS. The listing Participant or Subscriber shall, in response to inquiries from potential cooperating Participant or Subscriber, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale that results through the efforts of the seller. Some examples of variable rate commission arrangements include 1) where the seller agrees to pay a specified commission if the property is sold by the listing Participant or Subscriber without assistance and a different commission if the sale results through the efforts of a cooperating Participant or Subscriber; or 2) where the seller agrees to pay a specified commission if the property is sold by the listing Participant or Subscriber either with or without the assistance of a cooperating Participant or Subscriber and a different commission if the sale results through the efforts of a seller).

If the cooperating Participant or Subscriber is a buyer representative, the buyer representative must disclose such information to his or her client before the client makes an offer to purchase.

**5.6 ADJUSTING COOPERATIVE COMPENSATION.** The listing Participant or Subscriber may, from time to time, adjust the compensation offered to other Participants for their services with respect to any listing by advance published notice in the MLS so that all Participants will be advised. A listing Participant and a cooperating Participant may, as a matter of mutual agreement, modify the cooperative compensation to be paid in the event of a successful transaction.

**5.7 COMPLIANCE WITH OFFER OF COOPERATIVE COMPENSATION.** In cooperative transactions, Participants will receive the compensation specified on the property data form or entered into the MLS Database and published by ACTRIS unless advised differently by the listing Participant in advance of submitting an offer to purchase and in writing. ACTRIS cannot specify the method of delivery or the level of postal service to be used. The Participant must make that determination.

**5.8 DISPLAY OF LISTING BROKER'S OFFER OF COOPERATIVE COMPENSATION.** Participants and subscribers who share the listing broker's offer of compensation for an active listing must display the following disclaimer or something similar.

*The listing broker's offer of compensation is made only to participants of the MLS where the listing is filed.*

**5.9 NON-FILTERING OF LISTINGS.** Participants and subscribers must not filter out or restrict MLS listings that are searchable by and displayed to consumers based on the level of compensation offered to the cooperating broker or the name of a brokerage or agent.

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## **SECTION 6: COMPLIANCE WITH RULES**

**6.1 COMPLIANCE WITH RULES – AUTHORITY TO IMPOSE DISCIPLINE:** By becoming and remaining a Participant or Subscriber, each Participant and Subscriber agrees to be subject to these Rules and the ACTRIS Participant Agreement or ACTRIS Subscriber Agreement. ACTRIS interprets these Rules in accordance with the National Association of REALTORS® Handbook on Multiple Listing Policy and the Code of Ethics. ACTRIS may, through the administrative and hearing procedures established in this Section 6, impose discipline for violations of the Rules and the ACTRIS Participant Agreement or ACTRIS Subscriber Agreement. Discipline that may be imposed may only consist of one or more of the following:

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

**Note 1:** A participant (or user/subscriber, where appropriate) can be placed on probation. Probation is not a form of discipline. When a participant (or user/subscriber, where appropriate) is placed on probation the discipline is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the MLS rules during the probationary period may, at the

discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the individual's record will reflect the fulfillment. The fact that one or more forms of discipline are held in abeyance during the probationary period does not bar imposition or other forms of discipline which will not be held in abeyance.

**Note 2:** MLS participants and subscribers can receive no more than three (3) administrative sanctions in a calendar year before they are required to attend a hearing for their actions and potential violations of MLS rules, except that the MLS may allow more administrative sanctions for violations of listing information provided by participants and subscribers before requiring a hearing. The MLS must send a copy of all administrative sanctions against a subscriber to the subscriber's participant and the participant is required to attend the hearing of a subscriber who has received more than three (3) administrative sanctions within a calendar year.

**6.2 CONSIDERATION OF ALLEGED VIOLATIONS AND WRITTEN COMPLAINTS:** ACTRIS considers all complaints alleging a violation of the Rules and Regulations by Participants and Subscribers, including but not limited to

written complaints, complaints initiated by MLS staff or staff of Realtor® Associations, complaints initiated by Participants and Subscriber, or potential violations identified via tools used by MLS (e.g., compliance software). ACTRIS reserves the right to request complaints be submitted in writing. The complainant may send via mail or email complaints to ACTRIS. Participants may be held responsible for all actions of affiliated Subscribers. When requested by a complainant, the ACTRIS will process a complaint without revealing the complainant's identity. If a complaint is subsequently forwarded to a hearing, and the original complainant does not consent to participating in the process, the ACTRIS will appoint a representative to serve as the complainant.

**6.3 COMPLAINTS OF UNETHICAL CONDUCT.** ACTRIS shall refer all complaints of unethical conduct by a REALTOR® to the Texas REALTORS® Professional Standards Committee for appropriate action in accordance with the professional standards procedures and the Code of Ethics.

**6.4 PARTICIPANT'S COMPLAINT OF UNAUTHORIZED USE OF LISTING CONTENT.**

1. Any Participant who believes another Participant has engaged in the unauthorized use or display of Listing Content shall send notice of such alleged unauthorized use to ACTRIS. Such notice shall be in writing, specifically identify the allegedly unauthorized use and Listing Content, and be delivered to ACTRIS not more than sixty (60) days after the alleged misuse is first identified. No Participant may pursue action over the alleged unauthorized use and display of Listing Content in a court of law without first completing the notice and response procedures outlined in this Section 6.4 of the Rules.
2. Upon ACTRIS's receipt of a notice, ACTRIS will send the notice to the Participant who is accused of unauthorized use. Within ten (10) business days from receipt, the Participant must either: 1) remove the allegedly unauthorized content, or 2) provide proof to ACTRIS that the use is authorized. Any proof submitted will be considered by the MLS Compliance Committee or assigned staff, and a decision of whether it establishes authority to use the Listing Content will be made within thirty (30) days.
3. If ACTRIS determines that the use of the Listing Content was unauthorized, ACTRIS may issue a sanction pursuant to these Rules, including a request to remove the Listing Content, stop its use, or both, within ten (10) business days after transmittal of the decision. If the unauthorized use stems from a violation of these Rules, that too will be considered at the time of establishing an appropriate sanction.
4. If after ten (10) business days following transmittal of ACTRIS's determination the alleged violation remains uncured (i.e., the content is not removed or the rules violation remains uncured), then the complaining party may seek action through a court of law.

**6.5 PARTICIPANT'S REMEDIES.** A Participant may not take legal action against another Participant for alleged violation of these Rules unless the complaining Participant has first exhausted the remedies provided in these Rules.

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**SECTION 7: ADMINISTRATIVE PROCEDURE FOR DISCIPLINE**



**7.1 ADMINISTRATIVE PROCESSING.** 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, ACTRIS will administratively consider it and make a determination, and if a violation is determined, ACTRIS will categorize the violation and impose an administrative sanction in accordance with Appendix C – Compliance Procedures. An administrative sanction includes a warning, monetary penalty, mandatory workshop, or suspension. A copy of all administrative sanctions against a Subscriber will be sent to the Subscriber’s Participant.

**7.2 REQUEST FOR HEARING.** A Participant or Subscriber may contest the assessment of their violation and imposition of the corresponding administrative sanction by requesting a hearing before the MLS Compliance Committee. Requests are made by filing the ACTRIS Compliance Hearing Request form. The request for hearing must include a detailed explanation of why the Participant or Subscriber feels that the violation is erroneous, copies of any relevant documents, and be sent to the ACTRIS Compliance Administrator no later than five (5) days after the violation notification. The assessed administrative sanction will be suspended during the hearing process

**7.3 MANDATORY HEARING.** Repeated offenses or for failure to comply with any administrative sanction will result in the Participant or Subscriber to appear at a mandatory hearing before the MLS Compliance Committee as described in Appendix C – Compliance Procedures. The MLS Compliance Committee will consider the pattern of violations and may direct the imposition of sanctions in accordance with Appendix C – Compliance Procedures.

**7.4 HEARING PROCEDURES.** ACTRIS schedules and conducts all hearings via its MLS Compliance Committee and in accordance with the ACTRIS Hearing Procedures. The Subscriber’s Participant or Licensed Supervisor must be present at any hearing where the Subscriber will be required appear. The MLS Compliance Committee is not bound by the rules of evidence applicable in courts of law, but shall endeavor to afford the Participant or Subscriber the opportunity to be heard. The MLS Compliance Committee will make a determination of the violation and may issue administrative sanction consistent with these Rules.

**7.5 APPEAL TO ACTRIS BOARD OF DIRECTORS.** A Participant or Subscriber may appeal any determination of the MLS Compliance Committee to the ACTRIS Board of Directors. All appeals must be filed in writing by filling out the ACTRIS Appeal Request form and must be made within ten (10) days of the determination of date of the Compliance Hearing. The request for appeal must include a detailed explanation on why the Participant or Subscriber disagrees with the MLS Compliance Committee’s determination. ACTRIS will forward the material from the Compliance Hearing to the Board. The associated compliance mechanism will be suspended during the appeal process. The ACTRIS Board of Directors will consider the matter and make a final determination; Participant/Subscriber may only attend the Board meeting at the request of the ACTRIS Board of Directors. Upon a decision being rendered by the ACRTIS Board of Directors any penalty or compliance mechanism upheld must be completed within the allowed time frame and an additional administrative fee may be applied.

**7.6 MLS COMPLIANCE COMMITTEE.** The ACTRIS Board of Directors will appoint an MLS Compliance Committee to hear or review all written complaints not prescribed by ACTRIS’s Appendix C – Compliance Procedures, any dispute of prescribed penalties, and mandatory hearings for Participants and their licensees having to do with an infraction of MLS Rules and Regulations.

## **SECTION 8: CONFIDENTIALITY OF MLS INFORMATION AND INTELLECTUAL PROPERTY**

**8.1 DISCLOSURE OF LISTINGS ONLY TO PARTICIPANTS AND SUBSCRIBERS.** Except solely as provided otherwise herein, Participants and Subscribers shall not make any listing filed with the MLS available to anyone other than Participants, Subscribers, or Appraisers without the prior consent of the listing Participant. Any information provided by ACTRIS to the Participants shall be considered official information of ACTRIS. Such information shall be considered confidential and exclusively for the use of Participants, Subscribers, and Appraisers for the purposes for which the MLS exists. ACTRIS may provide listing information, including sold data, to third-party entities for academic research, statistical analysis, or for providing services to Participants and Subscribers as consistent with MLS purposes.

**8.2 LIMITED PERMITTED USE OF LISTING CONTENT.** Except solely as specified in a separate written agreement between ACTRIS and Participant or ACTRIS and Subscriber, Listing Content shall not be utilized by Participants or Subscribers for any purpose (a) other than as provided for in these Rules and (b) other than as authorized under a Participant's, Subscriber's or Appraiser's, as applicable, licensure(s) or certification. All other uses are prohibited. Participants and Subscribers agree that they will not, in any form, disclose, sell, assign, lease, commercially exploit, or otherwise provide to third parties or cause to be disclosed, sold, assigned, leased, commercially exploited, directly or indirectly, the Listing Content or any compilation. Any Participant or Subscriber shall promptly notify ACTRIS if he or she believes that any use by a Participant or Subscriber is inconsistent with the foregoing. In addition, without limiting the generality of the foregoing, other than as expressly provided pursuant to Appendix A and B, a listing shall not be advertised by any Participant or Subscriber, other than the listing Participant or Subscriber, without the prior written consent of the listing Participant or Subscriber. If such consent is obtained, advertising of individual property listing information by a Participant who did not participate in the transaction, as either the listing Participant or cooperating Participant, must include the name of the listing firm. Participants and Subscribers may not copy Listing Content submitted by another broker or agent without the written permission of the owner of the Listing Content.

**8.3 PERMITTED USE OF SOLD DATA.** A Participant or Subscriber may utilize current listing information, "sold" information, "comparables," or statistical information to support an estimate of value on a particular property for a particular client. However, with respect to "sold" information, only such information that ACTRIS has deemed to be nonconfidential and necessary to support the estimate of value may be reproduced and attached to the report as supporting documentation. In addition, the listing or selling Participant of a property may use the "sold" information for that property in advertising Participant's services. Any other use of "sold" information, including, without limitation, importation of such information into a separate database or compilation, is unauthorized and prohibited by these Rules. Moreover, Participants and Subscribers are advised that Texas is considered a non-disclosure state (*i.e.*, there are no state laws requiring the disclosure of "sold" information), and as such, buyers and sellers in Texas may have an expectation of confidentiality of such information. Note: For all listings submitted to ACTRIS, the listing agreement must include a provision expressly granting the listing Participant authority to advertise and to provide sales information, including selling price, to ACTRIS upon sale of the property.

**8.4 PERMITTED DISCLOSURE.** Participant or Subscriber may, in the ordinary course of such Participant or Subscriber's business, provide prospective purchasers or sellers with individual property records (or portions of individual property records) relating to properties which the prospective purchaser or seller has a bona fide interest in purchasing or selling, or in which the Participant or Subscriber is seeking to promote interest, consistent with these Rules and Regulations. Accordingly, Participants and Subscribers may display and/or reproduce from the MLS Database, and distribute to prospective purchasers or

prospective sellers, a reasonable number of individual property records (or portions of individual property records) contained in the MLS Database which relate to any properties in which prospective purchasers or sellers are or may, in the judgment of the Participant or their affiliated licensees, be interested. The term “reasonable,” as used herein, shall be construed to permit only limited reproduction of individual property records (or portions 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 Database, how closely the types of properties contained in such listings conform 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 Listing Content are consistent with a normal itinerary of properties which would be shown to the prospective purchaser.

In addition, notwithstanding the foregoing a Participant or Subscriber may make statistical information derived from the contents of the MLS Database available to clients and prospective clients in connection with the marketing of the Participant’s brokerage services. 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:

“Based on information from the Austin Board of REALTORS® (alternatively, from ACTRIS) for the period (date) through (date). All information provided is deemed reliable but is not guaranteed and should be independently verified. The Austin Board of REALTORS®, ACTRIS and their affiliates provide the MLS and all content therein “AS IS” and without any warranty, express or implied.”

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 a particular property 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. ACTRIS will either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. ACTRIS may require execution of a third-party license agreement, where deemed appropriate by ACTRIS. ACTRIS may require Participants who will use such data feeds to pay the reasonably estimated costs incurred by ACTRIS 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.

**8.5 OBLIGATION TO CONTROL.** Participants shall, at all times, maintain control over and responsibility for each copy of any MLS content leased to them by the association of REALTORS®, and shall not distribute any such copies to persons other than Subscribers who are affiliated with such Participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other Subscribers as authorized pursuant to the governing documents of the MLS. Use of information developed by or published by ACTRIS is strictly limited to the activities authorized under a Participant’s licensure(s) or certification, and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed or published by ACTRIS where access to such information is prohibited by law. ACTRIS Participants are prohibited from sharing, providing or delivering the MLS Database (or access thereto) to, or facilitating access to the MLS Database, to any third party, except in cases where a

REALTOR® Participant and each Subscriber, employee, and contractor who will have access to the MLS Database has entered into a license with ACTRIS to permit such activities (or as expressly provided herein). The REALTOR® Participant and the third party shall both sign the agreement and provide an executed original of that agreement to ACTRIS before ACTRIS issues authorization privileges to the third party.

**8.6 PROHIBITION ON COMMERCIALIZATION.** No part of the MLS may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, used as part of or in connection with a mailing list, or otherwise utilized, in any form or manner or by any means, except for the Participant's individual, personal, and confidential reference without the express written permission of the ACTRIS, except as provided in these Rules. No person, whether or not they be a Participant, Subscriber, or Appraiser, shall be entitled to recommercialize, or to impose any charge upon or receive anything of value for the utilization, transmission, retransmission, or repackaging in any format, of any information obtained directly or indirectly from the MLS. 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 an estimate of value on a particular property for a particular client.

**8.7 NO SOLICITING LISTINGS INCLUDED IN MLS.** Solicitation of listings included in the MLS is covered by Article 16 of the Code of Ethics and Standards of Practice of the National Association of REALTORS®.

**8.8 LIMITED PERMITTED USE FOR APPRAISERS.** Notwithstanding anything herein to the contrary, a Participant or a Subscriber that is an Appraiser and that accesses the MLS in his or her role as an Appraiser may only access the MLS for purposes of appraising real property in accordance with the rules and regulations promulgated by the Texas Appraiser Licensing and Certification Board and the ACTRIS Participant and ACTRIS Subscriber Agreement.

**8.9 ACCESS BY AUTHORIZED ASSISTANTS.** REALTOR® Participants may designate one (1) or more Authorized Assistant(s). After acceptance of such Authorized Assistants by ACTRIS, the Authorized Assistant(s) may access the MLS solely in connection with the provision of Services to the REALTOR® Participant in a manner in which the REALTOR® Participant would be permitted to access and use the MLS. The authorizing-REALTOR® Participant shall be responsible for all acts or omissions of the Authorized Assistant(s) as if such acts or omissions were done by the REALTOR® Participant. ACTRIS reserves the right to impose a fee on the access provided to Authorized Assistants.

**8.10 LICENSE AND WARRANTY TO ACTRIS.** ACTRIS MLS requires the listing broker to obtain the necessary rights to use and reproduce the Listing Content from the copyright holder for use by the MLS and all other authorized entities anywhere the Listing Content is intended to appear. As between a Participant and that Participant's Subscribers and Authorized Assistants on the one hand and ACTRIS and ABOR on the other hand, the Participant Agreement between the Participant and ACTRIS governs the allocation of intellectual property rights in Listing Content relating to that Participant's listings, and the rights Participant grants here are cumulative with those it grants in the Participant Agreement. At a minimum, a Participant and its affiliated Subscribers and Authorized Assistants grant to ACTRIS (and, subject to terms of separate agreements with ACTRIS, its service providers and licensees) an irrevocable, worldwide, paid-up, royalty-free, right and license to include the Listing Content in the MLS Database and any statistical report or comparables, to use, copy and create derivative works of it, and to authorize its use, copying and creation of derivative works for any purpose consistent with the facilitation of the sale,

lease and valuation of real property. The license includes the right for ACTRIS to remove or modify copyright management information and to affix a visible ACTRIS watermark to all photos submitted to ACTRIS. ACTRIS may make other uses of Listing Content provided to ACTRIS as ACTRIS shall determine; provided that with respect to such other uses, the listing Participant has not opted-out of such other use after notice of the same. Subject to the terms of the ACTRIS Participant and Subscriber Agreements, by the act of submitting any Listing Content to ACTRIS or into the MLS Database, each Participant and Subscriber represents and warrants that he or she owns all right, title and interest in the Listing Content, or has obtained necessary consents to comply with these Rules and the Participant and Subscriber Agreements from any third party to any materials included in such Listing Content, including the right to make the assignments or grant the licenses in these Rules and in the Participant and Subscriber Agreements. Each Participant who submits Listing Content to ACTRIS or the MLS Database agrees to defend and hold ACTRIS and every other Participant harmless from and against any liability or claim arising from any inaccuracy of the submitted listing content or any inadequacy of ownership, license, or title to the submitted Listing Content, or any legal proceeding relating to the reproduction of the Listing Content by ACTRIS MLS or other authorized entities.

**8.11 OWNERSHIP OF MLS DATABASE.** ACTRIS owns all right, title, and interest in the compilation of the MLS Database, including all copyrights and other intellectual property rights in it. In virtue of the Participant and Subscriber Agreements, ACTRIS may have other exclusive and nonexclusive rights, and these Rules do not limit the rights licensed or assigned to ACTRIS in the Participant and Subscriber Agreements.

**8.12 LICENSE FROM ACTRIS.** ACTRIS grants to Participants and Subscribers those rights set out in the Participant and Subscriber Agreements.

**8.13 DISCLAIMER AND INDEMNITY.** ACTRIS does not verify the information provided in the MLS and disclaims any responsibility for its accuracy and availability. The MLS is made available AS IS and WHEN AVAILABLE. Each Participant and Subscriber agrees to defend and hold ACTRIS harmless from and against any liability arising from any inaccuracy or inadequacy of the information such Participant or Subscriber provides and or any claim based on such Participant or Subscriber's use of the MLS. Each Participant should verify the accuracy of its information as disseminated through the MLS to all other Participants and immediately notify ACTRIS of any corrections.

**8.14 PARTICIPANT'S OWN COMPILATIONS.** Nothing contained herein shall be construed to preclude any Participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of content pertaining exclusively to properties currently listed for sale with the Participant.

**8.15 BROKERAGE BACK OFFICE FEED.** Participants are entitled to use the BBO Data for BBO Use subject to the provisions of this policy:

1. "BBO Data" means all real property listing and roster information in the MLS database, including all listings of all participants, but excludes (i) MLS only fields (those fields only visible to MLS staff and the listing participant), and (ii) fields and content to which MLS does not have a sufficient license for BBO use.
2. "BBO Use" means use of BBO Data by participant and subscribers affiliated with the participant for the following purposes: (1) Brokerage management systems that only expose BBO Data to participant and subscribers affiliated with participant; (2) Customer relationship management (CRM) and transaction management tools that only expose the

BBO Data to participant, subscribers affiliated with participant, and their bona fide clients as established under state law; (3) Agent and brokerage productivity and ranking tools and reports that only exposes BBO Data to participant and subscribers affiliated with participant; (4) Marketplace statistical analysis and reports in conformance with Section 8.4.

3. BBO Use may only be made by participant and subscriber affiliated with participant, except that at the request of a participant, MLS must provide BBO Data to that participant's designee. The designee may use the BBO Data only to facilitate the BBO Use on behalf of that participant and its affiliated subscribers.
4. There is no option for participants to opt-out their listings from the BBO Use.

**8.16 DMCA 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.

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## **SECTION 9: GENERAL**

**9.1 CHANGES IN RULES AND REGULATIONS.** Changes in Rules and Regulations of the MLS shall be by consideration and approval of a majority of the ACTRIS Board of Directors.

**9.2 SEVERABILITY.** In the event that any provision of these Rules conflicts with applicable law or is held invalid or unenforceable by a court with jurisdiction over the parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of ACTRIS in accordance with applicable law. The remaining provisions of these Rules and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable to the full extent permitted by applicable law.

**9.3 NO THIRD-PARTY BENEFICIARY.** These rules confer no rights on anyone who is not a current Participant, Subscriber, Appraiser or Authorized Assistant to obtain access to, download, copy, reproduce, manipulate, store in any information retrieval system, repackage, transmit, retransmit, or display, any MLS information, and all such activities are hereby prohibited.

**9.4 ARBITRATION.** Issues and obligations relating to arbitration of disputes are covered under Article 17 of the Code of Ethics and Standards of Practice of the National Association of REALTORS®.

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## **SECTION 10: ORIENTATION**

**10.1 ORIENTATION:** Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with an MLS Participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight classroom hours devoted to the “ACTRIS MLS Rules and Regulations” and computer training related to MLS information entry and retrieval and the operation of the MLS.

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

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## **APPENDIX A: MLS GRID IDX RULES**

- 1. IDX ADMINISTERED BY MLS GRID.** ACTRIS retains the professional services of MLS Technology Platform, LLC dba MLS Grid (“MLS Grid”) to administer and manage the ACTRIS IDX program, which affords Participants the ability to authorize limited electronic display of their listings by other Participants on authorized mediums under the participant’s control.
  - 2. IDX POLICIES.** MLS Grid will adopt, implement, and maintain rules, policies, and procedures as necessary for the operation of the ACTRIS IDX program and that are consistent with the policies of the National Association of REALTORS® MLS policies. MLS Grid will enforce these rules, policies, and procedures on behalf of ACTRIS, and Participant agrees to comply with be subject to MLS Grid’s authority as delegated by ACTRIS. MLS Grid’s current IDX documentation is located at: <https://www.mlsgrid.com/resources>.
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## **APPENDIX B: MLS GRID VOW RULES**

- 1. VOW ADMINISTERED BY MLS GRID.** ACTRIS retains the professional services of MLS Technology Platform, LLC dba MLS Grid (“MLS Grid”) to administer and manage the ACTRIS Virtual Office Website or “VOW” program, which 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 Database, subject to the Participant’s oversight, supervision, and accountability.



- 2. VOW Policies.** MLS Grid will adopt, implement, and maintain rules, policies, and procedures as necessary for the operation of the ACTRIS VOW program and that are consistent with the policies of the National Association of REALTORS® MLS policies. MLS Grid will enforce these rules, policies, and procedures on behalf of ACTRIS, and Participant agrees to comply with be subject to MLS Grid’s authority as delegated by ACTRIS. MLS Grid’s current VOW documentation is located at: <https://www.mlsgrid.com/resources>.
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## **APPENDIX C: COMPLIANCE PROCEDURES**

- 1. ACTRIS COMPLIANCE PROCESS AND PROCEDURES.** ACTRIS's compliance process and procedures can be found at: <https://www.abor.com/document/appendix-c>

## ACTRIS: LEASING MANAGEMENT SERVICES (LMS)

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### **INTRODUCTION**

The purpose of the Leasing Management Service, hereinafter referred to as the “LMS,” is to provide a means by which a Participant may make offers of compensation to other Participants (acting as subagents, Lessee agents or in other agency and nonagency capacities authorized by law) in respect to properties exclusively listed by them and is a facility for the orderly correlation and dissemination of listing information among the Participants. Entitlement to compensation is determined by the cooperating Participant or Subscriber’s performance as procuring cause of a lease.

### **SECTION 1: APPLICABILITY OF MLS RULES AND REGULATIONS**

The Rules governing use of the LMS (Part II) are the same as the Rules governing the MLS (PART I) and are herein incorporated, except as follows: 1) references to “sold data” shall be deemed references to “leased price”; 2) references to “FOR SALE” shall be references to “FOR LEASE”, 3) references to “SOLD” shall be references to “LEASED”, 4) references to the “Participation Fees” shall refer to the LMS Participation Fees; and 5) references to “MLS Database” are to the “LMS Database.” Further, the definition of “Exclusive Agency Listing”, “Exclusive Right to Sell” and “Open Listing” shall, with respect to the LMS, refer to the lease of real property rather than the sale of real property. Participants and Subscribers to the MLS, but not the LMS, shall not be permitted to use the LMS. In addition, as necessary to effectuate the purpose of these Rules, any other provision of Part I shall, when incorporated in this Part II, be construed to cover the lease of real property rather than the sale of real property.