



# **RULES AND REGULATIONS**

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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.

## 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.

- A. “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.
- B. “Authorized Assistant” shall mean a person (a) who does not hold an active real estate license, (b) who is designated by a REALTOR® Participant in writing as authorized to access the MLS solely in order to provide services to the REALTOR® Participant, and (c) who has agreed in writing to maintain the confidentiality of the MLS.
- C. “Board” shall mean the Austin Board of REALTORS®.
- D. “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.
- E. “Designated Property Type” means, with respect to the MLS:
  - (a) 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). With respect to the Clear Cooperation Policy (Section 2.5 of these rules), only Residential properties are required for submission in compliance with the policy. The following special listing conditions are excluded from the Clear Cooperation Policy: auctions, foreclosures, and new construction;
  - (b) Commercial Sale;

- (c) 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);
- (d) Multi-Family – duplexes, tri-plexes and four-plexes; and
- (e) Farm/Ranch/Acreage;
- (f) Commercial Lease; and

with respect to the LMS:

- (a) Residential Lease.

- F. “Dual or Variable Rate Commission Arrangement” shall have the meaning given in Section 5.5.
- G. “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.
- H. “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.
- I. “Late/Reinstatement Fee” shall have the meaning given in Section 6.2.
- J. “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, and other details or information related to listed property.
- K. “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 Designated Property Types.
- L. “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 Designated 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.

- M. “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.
- N. “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.
- O. “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.
- P. “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®.
- Q. “Rules” means these Rules and Regulations of ACTRIS.
- R. “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®, and 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 or in agreement and compliance with these Rules and the Participant Agreement or Subscriber Agreement where the MLS or LMS may be accessed.

## **PART I AUSTIN/CENTRAL TEXAS REALTY INFORMATION SERVICE (ACTRIS)**

### **ARTICLE I**



## **MEMBERSHIP**

1.1. **Eligibility.** Only (i) 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 (ii) other persons identified as members of other REALTOR® Boards are eligible to use the MLS.

## **ARTICLE II** **LISTING PROCEDURES**

2.1. **Acceptable Property Types.** Subject to compliance with the other terms hereof, ACTRIS will accept property listings for properties that are of a Designated Property Type and that (i) are located within Central Texas or (ii) are located outside of Central Texas and that are submitted voluntarily by a Participant.

2.2. **Acceptable Listing Types.** Subject to compliance with the other terms hereof, ACTRIS will accept the following listing types:

- (a) **Exclusive Right to Sell.**
- (b) **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.
- (c) **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:

- (a) **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));
- (b) **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));

- (c) **Advise.** Advise the seller(s) as to the merits of offers to purchase; or
- (d) **Assist.** Assist the seller(s) in developing, communicating, or presenting counter-offers.

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 include the code “LR” (“Limited Representation”) in the Agent Remarks field. Use of that code serves only to distinguish such a listing from other listings with respect to which listing Participant or Subscriber will provide substantial services, 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 Designated Property Type listings for properties within Central Texas into the MLS within five (5) days (except weekends and postal holidays) 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 required property types 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. Jurisdiction. Only listings of Designated Property Types that are located within Central Texas are required to be entered. Listings of Designated Property Types that are located outside of Central Texas will be accepted if submitted voluntarily by a Participant.

2.7. Exempted Listings. If the seller refuses in writing to permit a listing within Central Texas to be filed with ACTRIS for dissemination through the MLS, the Participant may then take the listing without filing such listing with ACTRIS. Nevertheless, if requested by ACTRIS, the listing Participant shall promptly provide ACTRIS with a certification, in such form as is reasonably acceptable to ACTRIS, signed by the seller that he or she does not desire the listing to be filed with ACTRIS for dissemination through the MLS.

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. 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. 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. To the extent such information is provided, data fields not specified as being required 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.

- (a) **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.
- (b) **Internet Remarks - The Physical Property Description - Public** 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 Physical Property Description - Public 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 Physical Property Description - Public field.
- (c) **Agent 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.
- (d) A listed property may not be entered in more than one MLS area.
- (e) Non-ACTRIS member names shall not be included in the MLS.

2.12. 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, filing of 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.

2.13. Auto-population of Tax IDs. All properties listed for sale or for lease, which have a tax ID in the MLS, must be auto-populated at the time a listing is entered into the MLS.

2.14. 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 list date unless written documentation requesting a digital image not be submitted is signed by the seller and submitted to ACTRIS. Digital images submitted to MLS shall only contain photos pertinent to the listed property, floor plans of the listed property, and renderings of the listed property or plat maps. If the listed property has a dwelling, at least one image must be of the front

of the dwelling and images may not be removed. This does not apply to “To Be Built” or “Under Construction” dwellings. 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.

2.15. Non-Branded Virtual Tour Hyperlinks (URL). Virtual tours submitted to ACTRIS shall comply with the following guidelines:

- (a) The primary focus of the tour shall be of the subject property.
- (b) The tour must be hosted on an Internet accessible server from which a Participant can retrieve the tour by selecting that tour's hyperlink.
- (c) 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.
- (d) 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.

2.16. Non-Branded Community Hyperlinks (URL). URL's 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 homeowners 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.

2.17. 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.

2.18. 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” in the “Sales Restrictions” field. When an offer with respect to a potential short sale is accepted, the listing Participants shall mark the listing as (i) Active Contingent, (ii) P or (iii) PB, until such time as the bank has approved the offer.

2.19. 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 twenty-four (24) hours (except weekends and postal holidays) 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 3.1](#) hereof, the cooperating broker shall report accepted offers and prices to the listing broker within twenty-four (24) hours after occurrence and the listing broker shall report them to the MLS within twenty-four (24) hours after receiving notice from the cooperating broker.

2.20. Available for Showing. Active listings will be available for showing 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.

2.21. 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.

2.22. 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.

2.23. 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.

2.24. 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.

### ARTICLE III **SELLING PROCEDURES**

3.1. 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.

32. 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.

33. 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 presentations.

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.

34. 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.

35. 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.



3.6. 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.

3.7. For Sale Signs. Only the “FOR SALE” sign of the listing Participant may be placed on a property.

3.8. 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.

#### **ARTICLE IV LOCKBOXES**

4.1. 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.

4.2. MLS-Approved Lockboxes. All properties listed in the MLS must have an MLS-approved lock box 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 lock boxes leased or sold by an association or MLS; any lock box 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.

4.3. 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 designated security code field. In no event shall such codes be placed in the listing details or disclosed to third parties.

4.4. 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.

4.5. 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.

4.6. 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 (i) suspend the right of lockbox key holders to use lockbox keys following their arrest for any felony or misdemeanor and/ or (ii) 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 felony or misdemeanor if, in either case, the crime for which such individual is accused and/ or convicted, in the determination of the Board or ACTRIS, relates to the real estate business or puts clients, customers, or other real estate professionals at risk. Factors that can be considered in making such determinations include, but are not limited to: the nature and seriousness of the crime; the relationship of the crime to the purposes for limiting lockbox access; the extent to which access (or continued access) might afford opportunities to engage in similar criminal activity; the extent and nature of past criminal activity; time since criminal activity was engaged in; evidence of rehabilitation while incarcerated or following release; and evidence of present fitness.

## **ARTICLE V** **COMPENSATION**

5.1. Specify Offer of 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.

52. Form of Offer of 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.

53. Conditional Offer of 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.

54. 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.

55. 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 (i) 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 (ii) 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.

56. Adjusting 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.

57. Compliance with Offer of 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.

## ARTICLE VI **FEES AND CHARGES**

6.1. 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](http://abor.com).

6.2. 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 fifteenth (15th) day of the month preceding the MLS semi-annual period for which service is desired. ACTRIS shall send or 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 Late/Reinstatement Fee; 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 Late/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.

6.3. Lockbox and Related Fees. ACTRIS may establish 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.

6.4. MLS Passwords. Every Participant, Subscriber, Authorized Agent and Appraiser who has access to and use of the MLS shall be required to obtain a private MLS password issued by MLS. Each private 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 private MLS password, and such persons shall be required to keep the private MLS password confidential. The private MLS password shall only be used for purposes permitted by the Rules.

6.5. IDX and VOW. ACTRIS may from time to time establish service fees and charges for participation in IDX and VOW.

6.6. Failure to Pay Fees. Failure to pay any charge created under this Article VI, 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.

## ARTICLE VII

### **CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

7.1. 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.

7.2. 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 unauthorized attempt, successful or unsuccessful, to disclose, sell, assign, lease, commercially exploit, or otherwise provide Listing Content (all or part of the MLS) to third parties could result in loss of membership and a penalty of Five Thousand Dollars (\$5,000) for the Participant. 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 Article VIII, 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.

73. 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: The listing agreement should 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.

74. 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. 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.

75. 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.

7.6. 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.

7.7. 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®.

7.8. 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.

7.9. 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.

7.10. License and Warranty To ACTRIS. 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. 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 submission of 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.

7.11. 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.

7.12. License from ACTRIS. ACTRIS grants to Participants and Subscribers those rights set out in the Participant and Subscriber Agreements.

7.13. 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.

7.14. 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.

7.15. 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.

## ARTICLE VIII

### **IDX**

8.1. IDX Defined. IDX affords Participants the ability to authorize limited electronic display of their listings by other Participants via the following authorized mediums under the participant's control: websites, mobile apps, and audio devices. As used throughout these rules, "display" includes "delivery" of such listings.

8.2. Authorization. Participants' consent for display of their listings by other Participants pursuant to these Rules is presumed unless a Participant affirmatively notifies ACTRIS that the Participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of that Participant's listings, that Participant may not download, frame or display the aggregated MLS content of other Participants. Even where Participants have given blanket authority for other Participants to display their listings on IDX displays, such consent may be

withdrawn on a listing-by-listing basis, where the Seller has prohibited all Internet display. If seller instructs Participant to withdraw a listing from IDX, the listing will also be withdrawn from Internet display or other electronic forms of display or distribution.

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

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

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

8.6. Excluded Information. Listings of sellers who have directed their listing Participant to withhold their listing from display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) or other electronic forms of display or distribution shall not be accessible via IDX displays. Listing Participant will mark Internet (No) on property data form when filed with MLS for any listing to be excluded from Internet display per the request of seller. Property address of listings of sellers who have directed their listing Participant to withhold their listing from display on the Internet shall not be accessible via IDX displays. Listing Participant will mark Property Address Internet (No) on property data form when filed with MLS for any property address listing to be excluded from Internet display per the request of seller.

8.7. Selection of Listings Displayed; Download. Participants may select the listings they choose to display through IDX based only on objective criteria including, but not limited to, factors such as geography, or location (“uptown”, “downtown”, etc.), list price, type of property, (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right to sell, exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed through IDX must be independently made by each Participant. The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than five hundred (500) listings or fifty percent (50%) of the listings available for IDX display, whichever is fewer.

8.8. Refresh IDX. Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours. The date and time of the last content update shall be displayed.

8.9. Reservation of Rights. Except as provided in the IDX policy and these Rules, an IDX site or a Participant or user operating an IDX site on behalf of a Participant, or displaying IDX information as otherwise permitted may not distribute, provide, or make the MLS Database available to any person or entity.

8.10. Attribution. All listings displayed pursuant to IDX must:

- (a) Clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.
- (b) Show the MLS as the source of the information being displayed as “Based on information from the Austin Board of REALTORS® (alternatively, from ACTRIS) for the period (date) through (date). ®” and “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.”, and
- (c) Clearly identify the listing firm as “Property listed by [Listing Participant]” in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data\*. If hyperlinked, the hyperlink may only link to the listing firm’s website.
- (d) \* Display of minimal information (e.g., “thumbnails,” text messages, tweets, etc. of two hundred (200) characters or less) are exempt from MLS-required disclosures (e.g., listing firm, source of information, notice that information is deemed reliable but is not guaranteed accurate) but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosure must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the devices application.

For purposes of the IDX policy and these Rules, “Control” means the ability to add, delete, modify and update information required by the IDX policy and Rules.

8.11. Third Party Comments and AVMs. Any IDX display controlled by a Participant or Subscriber that

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

either or both of those features shall be disabled or discontinued for the seller’s listings at the request of the seller. The listing Participant or Subscriber shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by Participant. Except for the foregoing and subject to 8.13, a Participant’s IDX display may communicate the Participant’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its

customers that a particular feature has been disabled at the request of the seller.

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

8.13. Display. Display of expired, withdrawn, and sold listings is prohibited. Listings displayed or fields made available for search pursuant to IDX shall contain only those fields of content designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other Participants or Subscribers (e.g., off-market statuses, status dates, exclusive right to sell, exclusive agency, cooperative compensation offers, showing instructions, property security information, appointment number, agent remarks, expiration date, bonuses, variable dual rate, interest rate, tax exemptions, etc.) may not be displayed or made available for search on IDX displays. Participants shall not modify or manipulate information relating to other Participants' listings. This is not a limitation on site design but refers to changes to actual listing content. The Listing Content from the MLS Database may be augmented with additional content not otherwise prohibited from display so long as the source of the additional content is clearly identified. This requirement does not restrict the format of Listing Content display or display of fewer than all of the available listings or fewer authorized content fields.

8.14. Limitation. Non-principal brokers and sales licensees affiliated with IDX Participants may display information available through IDX on their own Web sites subject to their Participant's consent and control and the requirements of state law and/or regulation.

8.15. Disclaimer. Participants (and their affiliated licensees, if applicable) shall indicate on their Web sites that IDX information is provided exclusively for consumers' personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The Austin Board of REALTORS®, ACTRIS and their affiliates provide the MLS and all content therein "AS IS" and without any warranty, express or implied. The MLS may, at its discretion, require use of other disclaimers as necessary to protect Participants and/or the MLS from liability. Displays of minimal information (e.g., "thumbnails," text messages, tweets, etc. of two hundred (200) characters or less) are exempt from this requirement provided that a direct link to a detailed ("full view") display that includes all required disclosures is provided.

8.16. Security. Participants downloading the MLS Database (i.e., where the MLS Database resides on Participants' servers or website) of the MLS are required to

employ appropriate security protection such as firewalls on their websites and displays, provided that any security measures required may not be greater than those employed by the MLS. Participants utilizing a download (*i.e.*, where the MLS Database resides on Participants' servers or website) must maintain an audit trail of consumer activity on the their website and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers.

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

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

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

8.20. Off-Market Listings Prohibited. Display of expired, withdrawn, and sold listings is prohibited.

## ARTICLE IX **VIRTUAL OFFICE WEBSITES**

9.1. Virtual Office Website. A Virtual Office Website ("VOW") is a Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Database, subject to the Participant's oversight, supervision, and accountability. A Subscriber may, with his or her Participant's consent, operate a VOW. Any VOW of a Subscriber is subject to the Participant's oversight, supervision, and accountability.

9.2. Includes Subscribers. As used in this Article IX, the term "Participant" includes Subscribers — except when the term is used in the phrases "Participant's consent"

and “Participant’s oversight, supervision, and accountability.” References to “VOW” and “VOWs” include all VOWs, whether operated by a Participant, by a Subscriber, or by an Affiliated VOW Partner (“AVP”) on behalf of a Participant. “Affiliated VOW Partner” (“AVP”) refers to an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant’s supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Database except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to Listing Content is derivative of the rights of the Participant on whose behalf the AVP operates a VOW. As used in this Article IX, the term “Listing Content” refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

9.3. Rights Extend only to ACTRIS. The right of a Participant’s VOW to display Listing Content is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.

9.4. Other Features Permitted. Subject to the provisions of these Rules, a Participant’s VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, *e.g.* Internet Data Exchange (“IDX”).

9.5. No Other Permission Required. Except as otherwise provided in these Rules, a Participant need not obtain separate permission from other Participants whose listings will be displayed on the Participant’s VOW.

9.6. Broker-Consumer Relationship Required. Before permitting any consumer to search for or retrieve any Listing Content on his or her VOW, the Participant must take each of the following steps:

- (a) **Broker-Consumer Relationship.** The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter “Registrants”). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
- (b) **Obtain Contact Information.** The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in Section 9.8 below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.
- (c) **User Name and Password.** The Participant must require each

Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

9.7. VOW Passwords. The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password. If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of Listing Content or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.

9.8. Acceptance of Terms of Use Required. The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:

- (a) **Consumer-Broker Relationship**. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
- (b) **Personal Use**. That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;
- (c) **Bona Fide Interest in Purchase, Sale or Lease**. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
- (d) **No Copies**. That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;
- (e) **Ownership**. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyrights in, the MLS Database; and
- (f) **ACTRIS Access**. That the MLS, and other MLS Participants or their duly authorized representatives may access the VOW for the purposes of verifying compliance with Rules and monitoring display of Participants' listings by the VOW.

The Terms of Use Agreement may not impose a financial obligation on the Registrant or



create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

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

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

9.11. No Display of Excluded Listings. A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

9.12. Opt-Out Form. A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision and shall retain such form for at least one year from the date it is signed, or one year from the date the listing goes off the market, whichever is greater. In addition, the Listing Participant will mark Address Internet (No) on property data form.

### **Seller Opt-Out Form**

1. Please check either Option a or Option b

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

OR

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

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

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

9.13. Comments. A Participant's VOW may allow third-parties to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing. Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both such features as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 9.14, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

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

9.15. Updates. A Participant shall cause the Listing Content available on its VOW to be refreshed at least once every three (3) days.

9.16. Reservation of Rights. Except as provided in these rules, the National Association of REALTORS® VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the Listing Content to any person or entity.

9.17. Privacy Policy. A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used and/or disclosed to third parties. A failure to comply with such privacy policy may subject Participant to a fine and/or suspension of rights to maintain a VOW.

9.18. Exclusion of Listings. A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as

geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

9.19. Notify ACTRIS. A Participant who intends to operate a VOW to display Listing Content must notify ACTRIS of its intention to establish a VOW and must make the VOW readily accessible to ACTRIS and to all Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable Rules.

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

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

- (a) The seller's and occupant's name(s), phone number(s), or e-mail address(es);
- (b) Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property;

The restrictions established in this section apply to Participants' use of MLS listing information in providing brokerage service through all delivery mechanisms.

9.22. No Changes to Listing Content. A Participant shall not change any Listing Content that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment Listing Content with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of Listing Content on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields.

9.23. VOW Attribution. All listings displayed pursuant to VOW shall show the MLS as the source of the information being displayed as "Based on information from the Austin Board of REALTORS® (alternatively, from ACTRIS) for the period (date) through (date).®" and "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." A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability. A Participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data. A Participant shall cause any listing displayed on his or her VOW that is obtained from

other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

9.24. Limited Number of Listings. A Participant may allow a Registrant to view, retrieve, or download an unlimited number of currently active listings, however, Participant must limit the number of sold listings that a Registrant may view to not more than five hundred (500) or fifty (50%) of sold listings in response to any inquiry.

9.25. Registrants' Passwords. A Participant shall require that a Registrants' passwords be reconfirmed or changed every 90 days. Participants may, at their option, require Registrants to reconfirm or change passwords more frequently.

9.26. Deceptive Advertising. A Participant may display advertising and the identification of other entities ("co-branding") on any VOW the Participant operates or that is operated on his or her behalf. However, a Participant may not display on any such VOW deceptive or misleading advertising or co-branding.

9.27. License Agreement with ACTRIS Required. Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by ACTRIS.

## ARTICLE X **ENFORCEMENT OF RULES**

101. Right to Enforce. 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 may, through the administrative and hearing procedures established in this Article X, 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: letter of warning; letter of reprimand; attendance at MLS orientation or other appropriate courses or seminars which the Participant or Subscriber can reasonably attend taking into consideration cost, location, and duration; appropriate, reasonable fine not to exceed \$15,000; probation for a stated period of time not less than thirty (30) days nor more than one (1) year; suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year; termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years.

102. Written Complaints. The ACTRIS Board of Directors shall give consideration to all written complaints having to do with a violation of these Rules, acknowledged by a Participant or Participants and Subscriber. Participants may be held responsible for all actions of affiliated Subscribers.

103. Determination by ACTRIS Board of Directors. If the alleged offense is a violation of the Rules of ACTRIS and does not solely involve a charge of alleged unethical conduct or request for arbitration, it will be administratively considered and determined by the ACTRIS Board of Directors, and, if a violation is determined, the

ACTRIS Board of Directors may direct the imposition of sanction, provided the recipient of such sanction may initially appeal to the ACTRIS Board of Directors. Such appeal must be made in writing within thirty (30) days of notification of such sanction, and should contain any information pertinent to the matter for which sanction was imposed. Thereafter, the recipient of a sanction may request a hearing before the Professional Standards Committee of the Board in accordance with the bylaws and rules and regulations of the Board within twenty (20) days following receipt of the ACTRIS Board of Director's final decision. The sanction may consist of a fine being levied against the Participant of such an amount (not to exceed the maximum allowable fine) as may be determined by the ACTRIS Board of Directors. Participant and/or Subscriber agree that it may be difficult to quantify damages in connection with any breach by Participant and/or Subscriber of these Rules and that the aforementioned fine, as determined in the sole discretion of the Board of Advisors hereunder, as liquidated damages is a fair and reasonable calculation of such damages. Participant and/or Subscriber further agree that, because the damages may not fully compensate ACTRIS for its losses in connection with a breach of these Rules, ACTRIS may obtain injunctive relief to prevent the breach of any of these Rules without posting a bond.

104. Unethical Conduct. The ACTRIS Board of Directors shall refer all complaints of unethical conduct by a REALTOR® to the Board for appropriate action in accordance with the Bylaws of the Board and the Code of Ethics.

105. Complaints of Unauthorized Use of Listing Content.

- (a) 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 10.5 of the Rules.
- (b) Upon ACTRIS's receipt of a notice, ACTRIS will send the notice to the Participant who is accused of unauthorized use. Within ten (10) 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 ACTRIS Board of Directors or assigned staff, and a decision of whether it establishes authority to use the Listing Content will be made within thirty (30) days.
- (c) 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) 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.

- (d) If after ten (10) 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.

106. Participants Enforcing Rules. A Participants 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.

## ARTICLE XI

### **ACTRIS FINES, RESIDENTIAL BROKERAGE**

(a) Illustrative List. The following fines are illustrative and not exhaustive. The fines may be imposed and appealed pursuant to the procedures set forth in X. ACTRIS, in its sole discretion, may impose participation in a class in lieu of a fine.

(b) Unauthorized Use. ACTRIS, Participant and Subscriber agree that it may be difficult to quantify damages in connection with any breach by Participant and/or Subscriber of these Rules and that the following liquidated damages are a fair and reasonable calculation of the damages. Participant and/or Subscriber further agree that, because the damages may not fully compensate ACTRIS for its losses in connection with a breach of these Rules conditions, ACTRIS may obtain injunctive relief to prevent the breach of any of these Rules without posting a bond.

(c) MLS Access By A Non-Participant, Subscriber, Appraiser. Up to \$2,500. Unauthorized access to MLS or the MLS Database may result in a substantial fine up to the maximum allowable fine and other sanctions to the Participant. If Participant and/or Subscriber uses the MLS or the MLS Database, including, without limitation, providing access to the MLS or the MLS Database in any manner not expressly authorized under these Rules or any content license agreement entered into by and between ACTRIS and the applicable Participant and/or Subscriber, the Participant and/or Subscriber is subject to his or her access and/or rights to use the MLS Database or the MLS being terminated.

(d) Misuse of MLS Database or MLS tool. Further, if the Participant or Subscriber uses the MLS, the MLS Database, or any MLS tool, including without limitation, a Keypad, in any manner not expressly authorized under these Rules, the Participant Agreement, Subscriber Agreement, or any content license agreement entered into by and between ACTRIS and the applicable Participant and/or Subscriber, whether or not, expressly prohibited under these Rules or the Participant Agreement or Subscriber Agreement, is subject to a fine of up to the maximum allowable fine and other sanctions to the Participant. Additional actions could include the filing of a complaint with the Professional Standards Committee of the Board and initiating legal action, should the circumstances so indicate.

(e) Violation Of These rules or ACTRIS Participant Agreement or ACTRIS Subscriber Agreement. Specific violations include, but are not limited to:

- (a) **Unauthorized Use Of A Keypad.** 1st Offense \$250, 2nd Offense \$500. Keypads may not be shared by Participants and/or Subscribers or with non-Participants or non-Subscribers (spouses, assistants, customers, etc.)
  - (b) **Keeping Pin Code With Keypad.** 1st Offense \$250, 2nd Offense \$500.
  - (c) **Unauthorized Use Of MLS Tools.** 1st Offense \$250, 2nd Offense \$500. Sharing of MLS tools with non-MLS Participants or Subscribers is prohibited.
  - (d) **Licensed, Non-ACTRIS Member Name In MLS Listing.** 1st Offense \$250, 2nd Offense \$500. Entering a licensed, non- ACTRIS member name is prohibited.
  - (e) **Non Compliance Of IDX Or VOW Policy.** 1st Offense \$250, 2nd Offense \$500.
  - (f) **Non Compliance of Clear Cooperation Policy (Section 2.5).** All offenses, warning letter educating Participant and Subscriber on value of MLS cooperation.
- (f) Database Violations. Specific violations include, but are not limited to:
- (a) **Late Submission Of Listing.** \$100 per offense. Listing must be entered into the system within five (5) days (except weekends and postal holidays) of the instructions per the listing agreement.
  - (b) **Late Reporting Of “Pending” Status.** \$100 per offense. Participant or Subscriber must report status of “P,” “PB,” or “AC” within twenty-four (24) hours of change. A 24-hour warning period is issued before a fine is incurred.

**Late Reporting Of “Sold” Status.** \$100 per offense. Participant

or Subscriber must report a listing as sold within twenty-four (24) hours of the closing and/or funding on a listing. A 24-hour warning period is issued before a fine is incurred. Listing cannot be withdrawn if sold.

- (c) **Pending Over 4 Months.** \$100 per offense. If Participant or Subscriber is notified that a listing is “PO,” they must update the listing to reflect one of the following: appropriate sold date, return to active status or enter tentative close date. Participant or Subscriber will have seventy-two (72) hours after notification to correct the listing before a fine is incurred.
- (d) **Incorrect/Incomplete Information.** \$100 per offense. All listings must contain correct and complete information in all the fields. Listing Participant or Subscriber will have forty-eight (48) hours to correct the listing before a fine is incurred.
- (e) **Incorrect Sold Information.** \$100 per offense. All listings must contain correct and complete sold information, including the sold price and all other required fields. Listing Participant or Subscriber will have forty-eight (48) hours to correct the listing before a fine is incurred.
- (f) **Incorrect Parcel Identification (PID).** \$100 per offense. Only the correct PID, as identified in ACTRIS’ tax system, may be entered in the PID Field. If a PID is not assigned by the county or if the property is listed in another category, the address may be entered in the PID field. Listing must be corrected within 48 hours or incur a \$100 fine.
- (g) Immediate Fines. Specific violations include, but are not limited to:
  - (a) **Computer Class Violations.** \$25 per offense. If Participant or Subscriber scheduled him/herself for a class and fails to attend or cancel within twenty-four (24) hours prior to the class, Participant or Subscriber will be fined. If an Authorized Assistant fails to attend or cancel within twenty-four (24) hours, the Authorized Assistant will be fined. If Participant or Subscriber is a new member and misses the scheduled mandatory class, computer access will be stopped until agent reschedules.
  - (b) **Security Code In Listing.** \$100 per offense. For safety and liability issues, gate, combination and security codes are not to be included in any agent remarks or internet remarks. The Security Codes and Access Codes may only be uploaded as a separate attachment or entered in the designated Security Code field. The attachment must be labeled Security Code Attachment. This type of information is prohibited within the listing content, such as Agent Remarks, Internet Remarks, Directions, but not limited to these content fields.



- (c) **Incorrect Address.** \$100 per offense. Only the address may be entered in the Address Field: any other information, including, without limitation, Reduced, Back on Market, New Listing, is prohibited in the Address Field.
- (d) **Failure To Comply With Photo Policy.** \$100 per offense. At least one digital image of each property (all property types) listed in the MLS shall be loaded within seven (7) days of the list date unless written documentation requesting a digital image not be submitted is signed by the seller and submitted to ACTRIS. If the listed property has a dwelling, at least one image must be of the front of the dwelling. This does not apply to “To Be Built” or “Under Construction” dwellings. Digital images submitted to MLS shall only contain photos pertinent to the listed property, floor plans of the listed property, and renderings of the listed property or plat maps. 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).
- (e) **Directions.** \$100 per offense. Directions are a required field. All listings must contain directions. It is not appropriate to enter telephone numbers, e-mail addresses, or Web site addresses in this field as there are other specified fields in the listing format for this information.
- (f) **Double Listing.** \$100 per offense. A listing cannot be entered twice in the same category. Listings can be entered into two (2) different categories for a Five Dollar (\$5) charge.
- (g) **Improper Use Of Listing.** \$100 per offense. The intent and purpose of the MLS listing is to share information about the property and offer compensation to other members. It is a violation of this intent to use any field for anything but its intended purpose. This specifically includes, but is not limited to, promotion of an individual, a company, or a marketing plan.
- (h) **Unauthorized Listing Information For Internet Data Exchange Display.** \$100 per offense. Only a physical description of the property shall be entered in the Internet Remarks section. Any name, phone number, branded photos, any Web site or Web address, etc. is prohibited in the Internet Remarks section due to violation of IDX policies. Home builder name is permitted, as it describes the property. Photo descriptions are limited to descriptive narrative that describes the property. Virtual tours cannot display any name, phone number, agent branding or web addresses since this information is displayed on IDX displays.

- (i) **Improper Use Of Sold Data.** \$100 per offense. Any use of “sold” information other than to (a) support an estimate of value on a particular property for a particular client or (b) advertise Participant’s services.
- (j) **Failure To Report Sold Data.** \$500 per offense. Members cannot allow listings to expire, withdraw the listing, or report as another status (other than sold) if listing sells. If a listing is not reported as sold, member will incur an immediate fine of Five Hundred Dollars (\$500). Listing Agents obtain permission from seller to report sold data before entering listing into the MLS, eliminating “confidentiality” questions of disclosing sold price as a condition of purchase. If the correct sold information is not submitted to ACTRIS within twenty-four (24) hours of notification, an additional fine of Five Hundred Dollars (\$500) will be imposed up to a maximum amount allowable fine and other sanctions. If a Participant and/or Subscriber fails to report sold data, the Participant and/or Subscriber is subject to loss of his or her access and/or rights to use the MLS Database.
- (k) **Disparaging/Discriminatory Remarks In Listings.** \$100 per offense. Remarks made in a belittling manner, decry or reduce in rank or esteem. A twenty- four (24) -hour warning period is issued before a fine is incurred.
- (l) **Entering Incorrect Selling Agent.** \$100 per offense. The correct selling agent must be entered. If a non-member participates in the sale of the property, Participant or Subscriber must enter NON MBR.
- (m) **MLS-Approved Lockboxes.** \$100 per offense. Failure to have an MLS-Approved lockbox on property, as defined in Section 4.2.

(h) Warning Letters/Emails. Warning letters/emails are provided as notification of certain incorrect or incomplete entries in the MLS Database. If the entry is not corrected within forty-eight (48) hours of the notice, a fine of One Hundred Dollars (\$100) is imposed. Some examples are: School District, School Name, Zip Code, Owner Name (may be withheld only if a letter from the owner is on file or indicated in the ACTRIS Listing Agreement), City (if outside any city, use the mailing address city), omission of Subdivision or Survey Name from the “Legal” Field, comments that could be harmful to the interests of the seller, or abbreviation where truncation should be used.

(i) **Continuing Violation.** Failure to correct any violations under these rules will result in the imposition of additional fines each ten (10) days after the date the original fine was mailed. Where there is continuing and apparently willful violation relative to a property listing or the collective listings of a Participant, a fine of up to Five Thousand Dollars (\$5,000) may be imposed by the ACTRIS Board of Directors.

(j) **Continual Infringements.** Continual Infringement violations are defined by the three categories listed below:

(a) **Unauthorized Use.** Subscriber and affiliated Participant will be notified by email, U.S. Mail or appropriate method within ten (10) days.

1. First offense of an Unauthorized Use violation within a three (3) -year rolling period: \$250
2. Second offense of an Unauthorized Use violation within a three (3) -year rolling period: \$500.
3. Violators of a Third offense of an Unauthorized Use violation within a three (3) -year rolling period are subject to ACTRIS Directors' decision to impose fines up to the maximum allowable fine and other sanctions (including referral to ABOR Professional Standards Committee for possible Code of Ethics violations.)

(b) **Database Violations.** \$100.

1. Subscriber and affiliated Participant will be sent a warning email to correct listing within forty-eight (48) hours.
2. If listing is not corrected within forty-eight (48) hours a One Hundred Dollar (\$100) fine is assessed. Agent and Broker are notified by U.S. Mail or appropriate method within ten (10) days.
3. The fine is doubled every ten (10) days the correction is not made. (Example: \$100 fine doubles to \$200, \$200 doubles to \$400, up to allowable fine.)
4. Fourth Database Violation occurring within a rolling twelve (12) -month period is considered a Continual Infringement. Violators are subject to ACTRIS Directors' decision to impose fines up to the maximum allowable fine and other sanctions (including referral to ABOR Professional Standards Committee for possible Code of Ethics violations.)

(c) **Immediate Fines.**

1. A One Hundred Dollar (\$100) immediate fine is assessed, except failure to report sold data is subject to an immediate fine of \$500.
2. Subscriber and affiliated Participant will be notified via email, U.S. mail or appropriate method.
3. Photo policy violations receive an immediate fine and fine is doubled every ten (10) days. Member must enter a digital image of the listed property to stop the fine from doubling.
4. A Fourth violation of ANY rule in Article V within a twelve (12) -month rolling period is considered a Continual Infringement. Violators are subject to ACTRIS Directors' decision to impose fines up to the maximum allowable fine and other sanctions (including referral to ABoR Professional Standards Committee for possible Code of Ethics violations.)

## **ARTICLE XII** **GENERAL**

**Amendments.** Amendment to these Rules shall be by consideration and approval of a majority of the ACTRIS Board of Directors.

12.1. **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.

12.2. **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.

12.3. **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®.

## PART II - LEASING MANAGEMENT SERVICE (LMS)

### 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.

### **ARTICLE I** **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: (a) references to “sold data” shall be deemed references to “leased price”; (b) references to “FOR SALE” shall be references to “FOR LEASE”, (c) references to “SOLD” shall be references to “LEASED”, (d) references to the “Participation Fees” shall refer to the LMS Participation Fees; and (e) 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.