

RULES & REGULATIONS

BIRMINGHAM AREA MULTIPLE LISTING SERVICE, INC.

January 2009

Section 1.0. **AUTHORITY:** The Birmingham Area Multiple Listing Service, Inc., (hereinafter referred to as "MLS") is a wholly owned subsidiary of the Birmingham Association of REALTORS® (hereinafter referred to as the Association). The MLS shall be subject to the MLS Bylaws and to these Rules and Regulations as same may be hereinafter amended.

Section 1.1. **PURPOSE:** A Multiple Listing Service is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law); by which cooperation among participants is enhanced; by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as a procuring cause of the sale (or lease).

LISTING PROCEDURES

Section 2.0. **LISTING PROCEDURES:** A Multiple Listing comes under the jurisdiction of the MLS upon signature(s) of the property owner(s) or their legally authorized representative(s), (hereinafter referred to as sellers), on the appropriate MLS "Seller Information Sheet". If the property is owned by more than one person, then all owners must sign the listing (husband, wife and/or others required to sign the deed). Participants and their agents may not sign listing agreements for owners. Listings of properties of the following classes taken by MLS Participants on an exclusive listing form, "Seller Information Sheet", and must be delivered to the MLS within four (4) days after all necessary signatures of seller(s) have been obtained. Note: the phrase "filed with the MLS" within these Rules and Regulations shall mean through the on-line system; however, the MLS has the right to request written confirmation as needed. On each listing, a Participant must identify in the "listing type" field of the Seller Information Form, whether the listing is an Exclusive Right to Sell, an Exclusive Agency or an Exclusive Right to Sell with Prospect Reservations.

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|------------------|----------------------|
| (a) Residential | (c) Lots and Acreage |
| (b) Multi-Family | (d) Commercial |

Note 1: The MLS shall not require a Participant to submit listings on a form other than the form the Participant individually chooses to utilize provided the listing is of a type accepted by the MLS, although a "Property Content Form" may be required as approved by the MLS. However, the MLS, through its legal counsel:

1. May reserve the right to refuse to accept a listing form which fails to adequately protect the interest of the public and the Participants.
2. Assure that no listing form filed with the MLS establishes, directly or indirectly, any contractual relationship between the MLS and the client (buyer or seller).

The MLS shall accept exclusive right to sell listing contracts, exclusive agency listing contracts and exclusive right to sell listing contracts with prospect reservations, and may accept other forms of agreement which make it possible for the listing broker to offer compensation to the other Participants of the MLS acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law.

The listing agreement must include the Seller's written authorization to submit the agreement to the MLS.

3. The different types of listing agreement include:

- | | | | |
|-----|--|-----|------|
| (a) | Exclusive Right to Sell | (d) | Open |
| (b) | Exclusive Agency | (e) | Net |
| (c) | Exclusive Right to Sell with Prospect Reservations | | |

The MLS may not accept net listings because they are deemed unethical and, in most states, illegal. Open listings are not accepted except where required by law because the inherent nature of an open listing is such as to usually not include the authority to cooperate and compensate and inherently provides a disincentive for cooperation.

The exclusive right to sell listing is the conventional form of listing submitted to the MLS in that the seller authorizes the listing broker to cooperate with and to compensate other brokers.

The exclusive agency listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on a blanket unilateral basis, but also reserves to the seller the general right to sell the property on an unlimited or restrictive basis. Exclusive agency listings and exclusive right to sell listings with named prospects exempted should be clearly distinguished by a simple designation such as a code or symbol from exclusive right to sell listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell listings with no named prospects exempted. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right to sell with prospect reservations.

Note 2: An MLS does not regulate the type of listings its members may take. This does not mean that an MLS must accept every type of listing. The MLS shall decline to accept open listings (except where acceptance is required by law) and net listings and it may limit its service to listings of certain kinds of property. But if it chooses to limit the kind of listings it will accept, it shall leave its members free to accept such listings to be handled outside the MLS.

Section 2.1. JURISDICTION: Only listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted to the Service. Listings of property located outside the MLS's jurisdiction will be accepted if submitted voluntarily by a Participant, but cannot be required by the MLS.

Section 2.2. LISTINGS SUBJECT TO RULES AND REGULATIONS OF THE SERVICE: Any listing taken on a contract to be filed with the MLS is subject to the Rules and Regulations of the Service upon signature of the seller(s).

Section 2.3. LISTING ENTRY TIME REQUIREMENTS: Participants must submit their listings to the MLS within 24 hours (excepting weekends and holidays). When a Participant feels there is a valid reason for filing a listing or change past the 24 hours (excepting weekends and holidays) deadline, or otherwise not complying with MLS rules, the Participant should attach a note of explanation to the listing or change.

Section 2.4. LISTING DETAILS: Any listing including any addendum and profile sheet, when filed with MLS by the Participant, shall be complete in every detail and contain the entire agreement between the parties. Directions field must contain directions that any reasonable, prudent person can use to locate the property. If the directions are to a model home or sales office, the Participant must specify this information in the directions field. "See agent" and "see map" shall not be entered in the directions field. The listing Participant/Subscriber may not enter any contact information such as names, phone numbers, email addresses, website addresses, service provider information, the words "fsbo" or "for sale by owner", or open house information in the public remarks field, directions field or any field released in consumer reports. The remarks field is intended for property information only and the directions field is intended for property directions only. Listings cannot include any links or HTML coding.

Section 2.5. AVAILABILITY OF LISTED PROPERTY: Only properties which are available to show and sell may be entered as an active listing in MLS. Listing brokers shall not misrepresent the availability of access to show or inspect listed property.

Section 2.6. LIMITED SERVICE LISTINGS: Listing agreements under which the listing broker will not provide one, or more, of the following services:

- a) arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s)
- b) accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s)
- c) advise the seller(s) as to the merits of offers to purchase
- d) assist the seller(s) in developing, communicating, or presenting counter-offers
- e) participate on the seller's(s') behalf in negotiations leading to the sale of listed property

will be identified with an appropriate code or symbol (e.g., LR or LS) in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property.

Section 2.7. **MLS ENTRY-ONLY LISTINGS:** Listing agreements under which the listing broker will not provide any of the following services:

- a) arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s)
- b) accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s)
- c) advise the seller(s) as to the merits of offers to purchase
- d) assist the seller(s) in developing, communicating, or presenting counter-offers
- e) participate on the seller's(s') behalf in negotiations leading to the sale of listed property

will be identified with an appropriate code or symbol (e.g., LR or LS) in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property.

Section 2.8. EXEMPTED LISTINGS: If the seller refuses to permit the listing to be disseminated by the Service, the Participant may then take the listing ("office exclusive") and such listing shall be filed with the Service but not disseminated to the Participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the Service.

NOTE: This section does not apply to listings of properties located outside the MLS's jurisdiction.

Section 2.9. **CHANGE OF STATUS OF LISTING:** Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller and shall be filed with MLS within twenty-four (24) hours (excepting weekends and holidays) after the authorized change is received by the listing broker.

Section 2.10. **WITHDRAWAL OF LISTING PRIOR TO EXPIRATION:** Listed property may be withdrawn before the expiration date of the listing agreement provided the Official Reporting Form is signed by the Seller(s) and filed by the Participant. The withdrawn status does not affect the contractual relationship between the seller(s) and the participant. A listing cannot be withdrawn, cancelled or reported as expired to avoid reporting price changes, sales price and/or closing information.

Sellers do not have the unilateral right to require an MLS to withdraw a listing without the listing broker's concurrence. However, when a seller(s) can provide written documentation that his/her exclusive relationship with the listing broker has been compromised, the MLS may withdraw the listing at the request of the seller; however, this does not affect the contractual relationship between the seller and the listing broker.

Section 2.11. **CONTINGENCIES APPLICABLE TO LISTINGS:** Any contingency or conditions of any term in a listing shall be specified and notice given to the participants in the agent notes section of MLS.

Section 2.12. **LISTING CONTRACT FORMS:** Listing Contracts which do not conform to the MLS Seller Information Sheet may be accepted with approval of MLS. (These contracts must be accompanied by a completed Seller Information Sheet.)

Section 2.13. NO CONTROL OF COMMISSION RATES OR FEES CHARGED BY PARTICIPANTS: The MLS shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, the Multiple Listing Service shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating Participants or between Participants and non-participants.

Section 2.14. EXPIRATION OF LISTINGS: All listings filed with the MLS will automatically convert to an expired status and be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date the MLS receives notice that the listing has been extended or renewed.

If notice of renewal or extension is received after the listing has been removed from the compilation of current listings, the extension or renewal will be published in the same manner as a new listing. Extensions and renewals of listings must be signed by the seller(s) and filed with the MLS.

Section 2.15. EXPIRATION DATE ON LISTINGS: Listings filed with the MLS shall bear a definite and final expiration date, as negotiated between the listing broker and the seller.

Section 2.16. LISTING MULTIPLE UNIT PROPERTIES: All properties which are to be (or may be) sold separately must be listed individually. When part of a listed property has been sold, proper notification should be given to the MLS.

Section 2.17. LISTING PRICE SPECIFIED: The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings.

Section 2.18. TRANSFER OF LISTINGS: Active listings will remain with the listing broker when an agent transfers to another office, and it will be the listing broker's decision to release these listings to transfer with the agent to the new company.

Section 2.19. LISTINGS OF SUSPENDED PARTICIPANTS: When a Participant of the MLS is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligation except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS by the suspended Participant shall, at the Participant's option, be retained in the MLS until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. Prior to any removal of a suspended Participant's listings from the MLS, the suspended Participant should be advised in writing of the intended removal so that the suspended Participant may advise his/her clients.

Section 2.20. LISTINGS OF EXPELLED PARTICIPANTS: When a Participant of the MLS is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS shall, at the Participant's option, be retained in the MLS until sold, withdrawn, or expired, and shall not be renewed or extended by MLS beyond the termination of the listing agreement in effect when the expulsion became effective. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised in writing of the intended removal so that the expelled Participant may advise his/her clients.

Section 2.21. LISTINGS OF RESIGNED PARTICIPANTS: When a Participant has resigned from the MLS (or where the Participant has been suspended or expelled from the MLS for failure to pay appropriate dues, fees, or charges), the MLS is not obligated to provide services, including continued inclusion of the former Participant's listings in the MLS compilation of current listing information. Prior to any removal of a former Participant's listings from the MLS, the Participant will be advised in writing of the intended removal so that the Participant may advise his/her clients.

Section 2.22. ONLY ONE FILING OF LISTING: No property may be listed in MLS by more than one participant, or in more than one class, at the same time.

Section 2.23. CLASS AND AREA: Each listing shall be placed in the proper class and the proper area.

Section 2.24. FALSE OR MISLEADING: Submission of false or misleading information to MLS shall be a violation of these rules and shall result in a fine as provided herein. Listing participants shall verify the accuracy of information of their listings.

SECTION 2.25. AUTOPOPULATION OF TAX IDS: All properties listed for sale, which have a tax id in the MLS system, must be autopopulated at the time a listing is entered into the MLS system.

SECTION 2.26. SUBMISSION OF DIGITAL IMAGES:

- (a) At least one digital image of each property listed in MLS shall be added to MLS within ten (10) days of list date unless written documentation requesting a photo not be submitted is signed by the seller and submitted to MLS.
- (b) Digital images submitted to MLS shall only contain photos pertinent to the listed property, floor plans of the listed property or renderings of the listed property. Digital images shall not contain contact information such as names, phone numbers, email addresses or website addresses, including use of embedded, overlaid, or digitally stamped information.
- (c) Digital images submitted to MLS are the property of the photographer.

Section 2.27. SUBMISSION OF VIRTUAL TOURS: Virtual tours submitted to MLS shall comply with the following guidelines:

- (a) The primary focus of the tour shall be of the subject property. Links to galleries or other websites that provide information on more than one listing are prohibited.
- (b) The tour must be housed on an Internet accessible server from which a MLS participant can retrieve the tour by selecting that tour's hyperlink.
- (c) By submitting the tour, participants are representing to MLS that the participant has permission to allow the display of the tour in MLS and that MLS in turn has permission to redistribute the tour hyperlink as a part of the MLS compilation.
- (d) Virtual tours submitted to MLS must comply with MLS Rule Section 16.2.

SECTION 2.28. SUBMISSION OF WEB HYPERLINKS AND DIGITAL DOCUMENTS: Web hyperlinks and digital documents submitted to MLS shall only contain information pertinent to the listed property.

(SEE SECTION 8 FOR PENALTIES & FINES FOR VIOLATIONS OF THIS SECTION)

SELLING PROCEDURES

Section 3.0. SHOWINGS AND NEGOTIATIONS: Appointments for showings and negotiations with the seller for the purchase of listed property filed with the MLS shall be conducted through the listing broker, except under the following circumstances:

- (a) The listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or
- (b) After reasonable effort, the cooperating broker cannot contact the listing broker or his/her representative. However, the listing broker, at his/her option, may preclude such direct negotiation by cooperating brokers.

Section 3.1. NOTIFICATION OF SHOWINGS: Participants and their agents who show any improved listed property filed with MLS will leave their business card in a conspicuous place, indicating the time and date of the showing on the card so that the owner of the property will be advised of the showing.

Section 3.2. PRESENTATION OF OFFERS: The listing broker must make immediate arrangements to present the offer as soon as possible. Offers and counter-offers must be delivered immediately to cooperating agents.

Section 3.3. SUBMISSION OF WRITTEN OFFERS AND COUNTER-OFFERS: The listing broker 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 listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer.

Participants representing buyers 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.

Section 3.4. RIGHT OF COOPERATING BROKER IN PRESENTATION OF OFFER: The cooperating broker (subagent, buyer agent or other agency or non-agency capacities defined by law) or his/her representative has the right to participate in the presentation to the seller of any offer he/she secures to purchase. The cooperating broker does not have the right to be present at any discussion or evaluation of that offer by the seller and the listing broker. However, if the seller gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

Section 3.5. RIGHT OF LISTING BROKER IN PRESENTATION OF COUNTER-OFFERS: The listing broker or his/her representative has the right to participate in the presentation of any counter-offer made by the seller. He/she does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser (except where 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.

Section 3.6. DISCLOSING THE EXISTENCE OF OFFERS: Listing brokers, in response to inquiries from buyers or cooperating brokers, shall, with the seller's approval, disclose the existence of offers on the property. Where disclosure is authorized, the listing broker shall also disclose whether offers were obtained by the listing agent, by another agent in the listing firm, or by a cooperating broker.

SECTION 3.7. REPORTING CONTRACTS TO MLS: All contracts shall be reported to MLS by the listing broker's office within 24 hours (excepting weekends and holidays). Contract status (i.e., contingency information) should be provided in the agent notes section. Transactions that have closed shall be reported to MLS within 24 hours (excepting weekends and holidays) of actual closing/funding and provide correct selling price, selling broker and agent codes, and other sold information required by MLS.

Section 3.8. REPORTING PENDING SALES TO SERVICE: Pending sales contracts where property can no longer be shown shall be reported to MLS within 24 hours (excepting weekends and holidays) by the listing broker's office.

Section 3.9. CONTRACTS FILED WITH BROKERS: Copies of contracts must be filed immediately with the selling and the listing broker's office(s) after execution by all parties.

Section 3.10. ADVERTISING OF LISTING FILED WITH MLS: A listing shall not be advertised by any Participant, other than the listing broker without the prior written consent of the listing broker.

Section 3.11. REPORTING CANCELLATION OF CONTRACTS/PENDING SALES: The listing broker's office shall report to MLS on the proper form 24 hours (excepting weekends and holidays) of the cancellation of any contract or pending sales contract previously reported. This listing shall be reactivated immediately by the listing broker's office.

Section 3.12. REPORTING SALES TO SERVICE: Status changes, including final closing of sales, shall be reported to MLS by the listing broker within 24 hours (excepting weekends and holidays) after they have occurred. If negotiations were carried on under Section 3(a) or (b) hereof, the cooperating broker shall report the status changes to the listing broker within 24 hours (excepting weekends and holidays) after occurrence and the listing broker shall report them to the MLS within 24 hours (excepting weekends and holidays) after receiving notice from the cooperating broker.

Note: The listing agreement of a property filed with the MLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listing with the MLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information including selling price to the MLS upon sale of the property. If deemed desirable by the MLS to publish sales information prior to final closing (settlement) of a sales transaction, the listing agreement should also include a provision expressly granting the listing broker the right to authorize dissemination of this information by the MLS to its participants.

Section 3.13. AVAILABILITY OF LISTED PROPERTY: Listing brokers shall not misrepresent the availability of access to show or inspect listed property.

(SEE SECTION 8 FOR PENALTIES AND FINES FOR VIOLATION OF THIS SECTION)

REFUSAL TO SELL

Section 4.0. REFUSAL TO SELL: If the seller of any listed property filed with MLS refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted immediately to the service and to all participants.

PROHIBITIONS

Section 5.0. INFORMATION FOR PARTICIPANTS ONLY: Any listing filed with MLS shall not be made available to any broker, firm or individual not a member of the MLS without the prior consent of the listing broker.

Section 5.1. "FOR SALE" SIGNS: Only the "for sale" sign of the listing broker may be placed on a property.

Section 5.2. "SOLD" SIGNS: Prior to closing, only the "sold" sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

Section 5.3. SOLICITATION OF LISTING FILED WITH SERVICE: Participants shall not solicit listings on properties filed with the MLS unless such solicitation is consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice, and its Case Interpretations.

Note: This section is to be construed in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This section is intended to encourage sellers to permit their properties to be filed with MLS by protecting them from being solicited, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration.

Without such protection, a seller could receive hundreds of calls, communications, and visits from brokers and salespersons who have been made aware through MLS filing of the date the listing will expire and desire to substitute themselves for the present broker.

This section is also intended to encourage brokers to participate in MLS by assuring them that other Participants will not attempt to persuade the seller to breach the listing agreement or to interfere with their attempts to market the property. Absent the protection afforded by this section, listing brokers would be most reluctant to generally disclose the identity of the seller or the availability of the property to other brokers.

This section does not preclude solicitation of listings under the circumstances otherwise recognized by the Standards of Practice related to Article 16 of the Code of Ethics.

Section 5.4. USE OF THE TERMS MLS AND MULTIPLE LISTING SERVICE: No MLS participant, subscriber, or licensee affiliated with any participant shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other way represent, suggest, or imply that the individual or firm is an MLS, or that they operate an MLS. Participants, subscribers and licensees affiliated with participants shall not represent, suggest, or imply that consumers or others have direct access to MLS databases, or that consumers or others are able to search MLS databases available only to participants and subscribers. This does not prohibit participants and subscribers from representing that any information they are authorized under MLS rules to provide to clients or customers is available on their websites or otherwise.

Section 5.5. SIGNING FOR THE SELLERS: Signing of the seller/sellers signature by an agent is specifically prohibited unless the agent has a specific written power of attorney from the seller/sellers.

DIVISIONS OF COMMISSIONS

Section 6.0. COOPERATIVE COMPENSATION SPECIFIED ON EACH LISTING: The listing broker shall specify, on each listing filed with the MLS, the compensation offered to other MLS Participants for their services in the sale of such listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale. The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.

In filing a property with the MLS, the Participant is making blanket unilateral offers of compensation to the other MLS Participants, and shall therefore specify on each listing filed with the MLS, the compensation being offered to the other MLS Participants. Specifying the compensation on each listing is necessary because the cooperating broker has the right to know what his/her compensation shall be prior to his/her endeavor to sell.*

* The compensation specified on listings filed with the MLS shall appear in one of two forms. The essential and appropriate requirement by the MLS is that the information to be published shall clearly inform the Participants as to the compensation they will receive in cooperative transactions, unless advised otherwise by the listing broker, in writing, in advance of his/her producing 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.
- b. By showing a definite dollar amount.

The listing broker retains the right to determine the amount of compensation offered to other participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law), which may be the same or different.

This shall not preclude the listing broker from offering any MLS Participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of his/her producing an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participants in the Service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

NOTE 1: The MLS shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a Participant. The MLS shall not disclose in any way the total commission negotiated between the seller and the listing broker.

NOTE 2: The listing broker may, from time to time, adjust the compensation offered to other MLS Participants for their services with respect to any listing by advance published notice to the Service so that all Participants will be advised.

NOTE 3: The MLS shall make no rule on the division of commissions between Participants and non-participants. This should remain solely the responsibility of the listing broker.

NOTE 4: Nothing in these MLS Rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction.

Section 6.0.1. SHORT SALE LISTINGS: 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.

Section 6.1. PARTICIPANT AS PRINCIPAL: If a Participant or any licensee (or licensed or certified appraiser) affiliated with a Participant has any ownership interest in property, the listing of which is to be disseminated through MLS, that person shall disclose that interest when the listing is filed with MLS and such information shall be disseminated to all MLS Participants.

Section 6.2. PARTICIPANT AS PURCHASER: If a Participant or any licensee (or licensed or certified appraiser) affiliated with a Participant wishes to acquire an interest in property listed with another Participant, such contemplated interest shall be disclosed, in writing, to the listing broker not later than the time an offer to purchase is submitted to the listing broker.

Section 6.3. DUAL OR VARIABLE RATE COMMISSION ARRANGEMENTS: The existence of a dual or variable rate commission arrangement (i.e., one in which the seller agrees to pay a specified commission if the property is sold by the listing broker without assistance and a different commission if the sale results through the efforts of a cooperating broker; or one in which the seller agrees to pay a specified commission if the property is sold by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale results through the efforts of a seller) shall be disclosed by the listing broker by a key, code, or symbol as required by the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction or, alternately in a sale that results through the efforts of the seller. If the cooperating broker is a buyer representative, the buyer representative must disclose such information to their client before the client makes an offer to purchase.

SERVICE FEES

Section 7.0. SERVICE FEES AND CHARGES: Fees for the operation of MLS are set by the Directors and are based on the number of licensees (including licensed or certified appraisers) affiliated with the Participant who have access to and who use the services provided by MLS.

- (a) The Participant is responsible for certifying the number of licensees (including licensed or certified appraisers) affiliated with Participant.
- (b) The Participant shall certify to MLS those licensees who are engaged in residential sales. Any licensee who solicits a listing, lists, advertises, shows, sells, or collects a commission on any residential property, shall be considered active in residential sales.
- (c) Licensees affiliated with the Participant other than those engaged in residential sales may participate in the MLS and the Participant must pay the appropriate fees.
- (d) The Participant will be assessed a penalty for each active residential salesperson who is not certified immediately upon becoming active. The penalty shall be two times the normal monthly MLS dues for the time the agent was active.
- (e) PUBLIC AND PRIVATE IDS: Every MLS participant and every real estate licensee and licensed or certified appraiser who is affiliated with such MLS participant and who has access to and use of the MLS through the MLS participant shall be required to obtain a public and private id issued by MLS. Private id's shall not be loaned, shared, disclosed, or allowed to come into the possession of any other person. The public and private id shall only be used for purposes permitted by the MLS rules and for no other purposes whatsoever. In the event that any disclosure of public and private id results in access to the MLS by an unauthorized third party, regardless if such disclosure is intentional, negligent, or inadvertent, the ID holder shall be liable to MLS, at MLS' option, for liquidated damages as follows: first offense \$500; second offense \$750; and third offense \$1,000; and expulsion from the MLS for the fourth offense. This provision shall also apply to any ID's provided for additional services and programs made available to MLS members, including but not limited to Anytime MLS, and iMapp.

- (f) The MLS Committee, with the approval of the Directorate, shall have the right to establish fees in each of the following cases:
 1. An initiation fee for new MLS Participants.
 2. A reinstatement fee for MLS Participants whose membership is reinstated within six months.
 3. A listing reinstatement fee for an MLS firm who withdraws a listing and then resubmits the same listing during the original listing period.
- (g) All MLS members are required to have an active email address recorded under their member account in the MLS system.

Section 7.1. Administrative Membership

- (a) Definitions: An “Administrative Member” is one of the following:
 - (1) A licensed Personal Assistant, who does not list or sell real estate, and who is employed by a REALTOR currently licensed with an MLS Participant in good standing with the MLS;
 - (2) An unlicensed Personal Assistant, employed by a REALTOR who is currently licensed with an MLS Participant in good standing with the MLS;
 - (3) An office administrator or secretary employed by an MLS Participant in good standing with the MLS.

“Access to the MLS on-line system” means the issuance of a User Name and Password to gain entry into the on-line system for the sole purpose of conducting real estate business directly related to the business of the MLS Participant or his or her licensed agents.

- (b) Access: Access to the MLS on-line system may be granted to an Administrative Member upon proper completion and submission to the MLS of an “Administrative Member” Application Form, signed and dated by the MLS Participant.

Access to the MLS on-line system is granted by the MLS on behalf of the MLS Participant, and can be terminated by either written instruction from the MLS Participant or the MLS if it becomes known the Administrative Member has violated the MLS Rules and Regulations or is no longer employed by the MLS Participant or employing REALTOR.

The MLS Participant shall notify the MLS as soon as practical but not to exceed four (4) days of the termination of an Administrative Member’s employment either with the brokerage or the employing REALTOR licensed with the MLS Participant. The MLS will terminate the Administrative Member’s access to the on-line system as soon as practical.

- (c) Fees: Administrative membership for an office administrator is granted by the MLS without cost or fee. Administrative membership for an agent’s assistant will be provided at a cost of \$10 per access per month. If, however, it becomes known that an Administrative Member who is licensed has placed a listing in the MLS in his/her name, the MLS reserves the right to terminate the Administrative Membership and begin billing the MLS Participant for the individual’s access according to the fee structure set forth in the Birmingham Area MLS Rules and Regulations, Section 7, Service Fees and Charges.
- (d) Liability: The MLS Participant who employs the Administrative Member, or holds the license of the REALTOR® who employs the Administrative Member, is solely responsible for the actions of the Administrative Member with respect to the MLS, and said MLS Participant agrees to hold the MLS and the Birmingham Association of REALTORS® harmless from any liability arising from such actions.

COMPLIANCE WITH RULES

Section 8.0. COMPLIANCE WITH RULES – AUTHORITY TO IMPOSE DISCIPLINE: By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- (a) letter of warning
- (b) letter of reprimand
- (c) 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
- (d) appropriate, reasonable fine not to exceed \$15,000
- (e) probation for a stated period of time not less than thirty (30) days nor more than one (1) year
- (f) termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years

Section 8.1. FAILURE TO PAY SUBSCRIBER FEES:

- (a) Payment of all quarterly service fees is due on the first day of each quarter.
- (b) If payment is not received within 45 days of the due date, MLS service will be cutoff, with a \$25 reinstatement fee, plus past due amounts, to restore service:
- (c) If payment is not received within 90 days from the due date, BAR/MLS membership will be terminated, and there will be BAR/MLS initiation fees, plus past due amounts, to rejoin.

Section 8.2. PENALTIES AND FINES: Fines may be imposed by the committee for the following violations. The policy, unless specified by a different amount listed below, will be to issue a warning for the first offense; a \$50 fine for the second offense; \$100 for the third, and \$250 for the fourth and any subsequent violation of a MLS rule:

- (a) Failure to file a listing or an exemption (Section 2.3) within 24 hours (excepting weekends and holidays) in accordance to the listing agreement.
- (b) Failure to report within 24 hours (excepting weekends and holidays) of the closing of a listing.
- (c) Failure to report to MLS within 24 hours (excepting weekends and holidays) any change in the status of a listing, including a terminated or pending sale listing.
- (d) Failure to enter into MLS complete information on the property (Section 2.4).
- (e) A \$150 penalty for withdrawing, canceling or reporting as expired a listing to avoid reporting sales price, price changes and/or closing information (Section 2.9).
- (f) Any Participant who causes more than one listing of the same interest in the same property to be entered into MLS as an active listing.
- (g) A \$100 penalty will be assessed for not autopopulating at the time of listing, all properties listed which have a tax id in the MLS system (Section 2.23).
- (h) Failure to provide within the first 10 days of the list date at least one digital image of each property listed; a \$100 penalty if no photo is provided within the next 10 days, and a \$250 penalty if no photo is provided in the next 10 day period (Section 2.24a).
- (i) A \$150 penalty for a violation of sections 2.24 and 2.25, regarding the content of images, links and virtual tours submitted to MLS.

- (j) For inclusion of any contact information in the Remarks or Directions sections of the listing (Section 2.4).
- (k) The MLS Committee shall have the authority to levy a fine for any violation of MLS rules not specifically referred to in this section.
- (l) A \$100 penalty will be assessed for a listing broker placing incorrect selling agent and broker information in the MLS system.
- (m) A \$100 penalty will be assessed for a listing that has a licensed agent who is not an active MLS member published in the listing.
- (n) A \$500 penalty will be imposed on any listing firm for placing an "unauthorized" listing in MLS. (The term "unauthorized listing" shall also include the unauthorized extension of listings.)

Section 8.3. APPLICABILITY OF RULES TO USERS AND/OR SUBSCRIBERS: Non-principal brokers, sales licensees, appraisers, and others authorized to have access to information published by the MLS are subject to these rules and regulations and may be disciplined for violations thereof provided that the user or subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the rules and regulations. Further, failure of any user or subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the Participant to the same or other discipline. This provision does not eliminate the Participant's ultimate responsibility and accountability for all users or subscribers affiliated with the Participant.

ENFORCEMENT OF RULES AND REGULATIONS

Section 9.0. CONSIDERATION OF ALLEGED VIOLATIONS: The committee shall give consideration to all complaints concerning a violation of the Rules and Regulations.

A rule violation may be submitted to MLS in one of the following ways:

- (a) In writing (fax, email or mail), with dated MLS translation attached, or generated by the MLS computer;
- (b) By phone (if MLS number is known), or
- (c) By the MLS department pursuant to its automated quality assurance computer process.

Section 9.1. VIOLATIONS OF RULES AND REGULATIONS: If the alleged offense is a violation of the Rules and Regulations of the MLS and does not involve a charge of alleged violation of one or more of the provisions of Section 19 of the Rules and Regulations or request for arbitration, it may be considered and determined by the MLS Committee, and if a violation is determined, the MLS Committee may direct the imposition of sanction, provided the recipient of such sanction may appeal it to the Professional Standards Committee of the Association for a hearing by the Professional Standards Committee in accordance with the Bylaws of the Association of REALTORS®. Alleged violations of Section 19 of the Rules and Regulations shall be referred to the Association's Grievance Committee for processing in accordance with the professional standards procedures of the Association.

Section 9.2. APPEAL OF PENALTIES AND FINES: Participants and Subscribers shall have twenty days to file written appeals of penalties and fines imposed by MLS. No appeals will be considered after the twenty-day period.

Section 9.3. COMPLAINTS OF UNETHICAL CONDUCT: Any complaints of unethical conduct shall be referred by the committee to the Association's Grievance Committee for appropriate action in accordance with the professional standards procedures established in the Association's Bylaws.

CONFIDENTIALITY OF MLS INFORMATION

Section 10.0. CONFIDENTIALITY OF MLS INFORMATION: Any publications or information provided by MLS or by the Association through the MLS to Participants shall be considered official publications and information of the Birmingham Area MLS, Inc. or the Association, as applicable. Such information shall be considered confidential and exclusively for the use of Participants and real estate licensees affiliated with such Participants

and those Participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such Participants.

Section 10.1. **MLS NOT RESPONSIBLE FOR ACCURACY OF INFORMATION:** The information published and disseminated by the MLS is communicated verbatim without change by the MLS, as filed with the MLS by the Participant. The MLS does not verify such information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold the MLS harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides.

CHANGES IN RULES AND REGULATIONS

Section 11.0. **RULE CHANGES:** Amendments to the Rules and Regulations of the MLS shall be by consideration and approval of the Board of Directors of the Corporation subject to the final approval of the Board of Directors of BAR, the shareholder. When approved by the Board of Directors of BAR, the amendments to the Rules and Regulations of the MLS shall be effective immediately or as stated in the amending resolution.

COMMISSION RATES

Section 12.0. **NO CONTROL OF COMMISSION RATES CHARGED BY PARTICIPANTS: THE COMMISSIONS PAYABLE FOR THE SALE, LEASE OR MANAGEMENT OF PROPERTY ARE NOT SET BY THE BIRMINGHAM ASSOCIATION OF REALTORS®, INC., BUT IN ALL CASES ARE NEGOTIABLE BETWEEN THE BROKER AND THE CLIENT.**

USE OF LOCK BOXES AND KEYS

Section 13.0. **OPTIONAL USE OF LOCKBOXES:** The MLS wishes to accommodate any MLS Participant who wishes to use lock boxes. The MLS presumes that each Participant is aware of the potential liability of using lock boxes on properties listed by them. The following guidelines must be adhered to by any Participant who wishes to use a lock box on any properties filed with MLS.

- (a) For the benefit of the Participant who wishes to use some type of lock box, MLS will provide a blank space on the MLS listing form for Participant to indicate information the Participant may wish to communicate regarding lock boxes.
- (b) Each Participant agrees to indemnify and hold MLS harmless from any liability arising from the use of lock boxes.

Section 13.1. **KEYS OR COMBINATIONS:** Keys may not be used by anyone other than the keyholder. Combinations may not under any circumstances be given to clients, customers or prospects.

MEETINGS

Section 14.0. **MLS COMMITTEE MEETINGS:** The MLS Committee shall meet for the transaction of its business at a time and place to be determined by the committee or at the call of the Chair.

Section 14.1. **PARTICIPANT MEETINGS:** The Directors or the committee may call meetings of the Participants in the MLS to be known as meetings of the MLS.

Section 14.2. **PRESIDING OFFICER:** The Chair shall preside at all meetings, or in his/her absence, a temporary Chair from the membership of the committee shall be named by the Chair, or upon failure to do so, by the committee.

OWNERSHIP OF MLS COMPILATIONS* AND COPYRIGHTS

Section 15.0. **AUTHORITY TO SUBMIT PROPERTY:** By the act of submission of any property listing content to the MLS, the Participant represents that the Participant has been authorized to grant and also thereby does grant authority for the MLS to include the property listing content in its copyrighted MLS compilation and also in any

statistical report on “Comparables”. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property.

Section 15.1. OWNERSHIP OF INFORMATION: All right, title, and interest in each copy of every Multiple Listing compilation created and copyrighted by the Birmingham Association of REALTORS®, Inc., and in the copyrights therein, shall at all times remain vested in the Birmingham Association of REALTORS®, Inc.

Section 15.2. RIGHT TO USE INFORMATION: The Association has agreed to lease, through MLS or directly at the Association’s discretion to each Participant a number of copies of each MLS Compilation sufficient to provide the Participant and each person affiliated as a licensee (including licensed or certified appraisers) with such Participant with one copy of such compilation. The Participant shall pay for such copy the rental fee set by the Association.**

Participants shall acquire by such lease only the right to use the MLS Compilations in accordance with these rules.

* The term MLS Compilation as used in Sections 15 and 16 herein, shall be construed to include any format in which property listing content is collected and disseminated to the Participants, including, but not limited to, bound book, loose-leaf binder, computer database, card file, or any other format whatever.

** This section should not be construed to require the Participant to lease a copy of the MLS Compilation for any licensee (OR LICENSED OR CERTIFIED APPRAISER) affiliated with the Participant who is engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties which are required to be filed with the MLS and who does not, at any time, have access to or use of the MLS information or MLS facility of the Association.

USE OF COPYRIGHTED MLS COMPILATIONS

Section 16.0. DISTRIBUTION: Participants shall at all times, maintain control over and responsibility for each copy of any leased MLS compilation leased to them by the MLS, and shall not distribute any such copies to persons other than subscribers who are affiliated with such Participants 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 the Association or MLS 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 the Association or MLS where access to such information is prohibited by law.

Section 16.1. DISPLAY: Participants, and those persons affiliated as licensees with such Participants, shall be permitted to display the MLS compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS compilation and to prospective sellers in conjunction with their ordinary business activities of attempting to list properties for sale.

SECTION 16.2. INTERNET DATA EXCHANGE (IDX): IDX affords MLS participants the option of authorizing display of their active listings on other participants’ Internet Web sites.

- (a) **AUTHORIZATION:** Participants’ consent for display of their active listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant’s listings, that participant may not download or frame the aggregated MLS content of other participants. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis as instructed by the seller.
- (b) **PARTICIPATION:** Participants must notify the MLS of their intention to establish an IDX site and must make their site directly accessible to the MLS for purposes of monitoring/ensuring compliance with applicable rules and policies.

- (c) Participants must protect IDX information from misappropriation by employing reasonable efforts to monitor and prevent “scraping” or other unauthorized accessing, reproduction, or use of the MLS database.
- (d) Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly-accessible Web sites or VOWs) shall not be accessible via IDX sites. Notwithstanding this prohibition, listing brokers may display on their IDX sites or their other Web site(s) the listing or property address of consenting sellers.
- (e) Participants may select listings they choose to display on their IDX sites 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 or exclusive agency), or the level of service being provided by the listing. Selection of listings displayed on any IDX site must be independently made by each Participant.
- (f) Participants must refresh all MLS downloads and refresh all MLS content at least once every seven (7) days.
- (g) Except as provided in these rules, an IDX site or a participant or user operating an IDX site may not distribute, provide, or make any portion of the MLS database available to any person or entity.
- (h) When displaying listing content, a participant’s or user’s IDX site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.
- (i) DISPLAY: Display of listing information pursuant to IDX is subject to the following rules:
 - (1) Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed on IDX sites.
 - (2) The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed on IDX sites.
 - (3) 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.) MLS content may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS content display or display of fewer than all of the available listings or fewer authorized data fields.
 - (4) All listings displayed pursuant to IDX shall identify the listing firm in a readily visible color and typeface not smaller than the median used in the display of listing content.
 - (5) 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.
 - (6) All listings displayed pursuant to IDX shall show the MLS as the source of the information.
 - (7) 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 content is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability.
 - (8) The data consumers can retrieve or download in response to an inquiry shall be limited to 100 listings per search.

- (9) The right to display other participants' listings pursuant to IDX shall be limited to a participant's office(s) holding participatory rights in this MLS.
 - (10) Listings obtained through IDX must be displayed separately from listings obtained from other sources, including information provided by other MLSs. 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.
 - (11) Display of expired, withdrawn, and pending listings is prohibited.
 - (12) Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and email address(es) is prohibited.
 - (13) Participants are required to employ appropriate security protection such as firewalls, provided that any security measures required may not be greater than those employed by the MLS.
 - (14) IDX operators must maintain an audit trail of consumer activity on the IDX site 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.
- (j) Service Fees and Charges: Service fees and charges for participation in IDX shall be as established annually by the Board of Directors.

Section 16.5. REPRODUCTION: Participants or their affiliated licensees shall not reproduce any MLS Compilation or any portion thereof except in the following limited circumstances:

- (a) Participants or their affiliated licensees may reproduce from the MLS Compilation, and distribute to prospective purchasers, a reasonable* number of single copies of property listing content contained in the MLS Compilation which relate to any properties in which the prospective purchasers are, or may, in the judgment of the Participants or their affiliated licensees, be interested.
- (b) Nothing contained herein shall be construed to preclude any Participant from utilizing, displaying, distributing, or reproducing property listing sheets or other compilations of listing content pertaining exclusively to properties currently listed for sale with the Participant.

Any MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support an estimate of value on a particular property for a particular client.

However, only such information that an association or association-owned MLS has deemed to be non-confidential and necessary to support the estimate of value may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations.

* It is intended that the Participant be permitted to provide prospective purchasers with listing content relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the Participant is seeking to promote interest. The term "reasonable", as used herein, should therefore be construed to permit only limited reproduction of property listing content intended to facilitate the prospective purchasers' decision-making process in the consideration of a purchase. Factors which shall be considered in deciding whether the reproductions made are consistent with this intent, and thus "reasonable" in number, shall include, but are not limited to, the total number of listings in the MLS Compilation, how closely the types of properties contained in such listing accord with the prospective purchaser's expressed desires and ability to purchase, whether the reproductions were made on a selective basis, and whether the type of properties contained in the property listing content is consistent with a normal itinerary of properties which would be shown to the prospective purchaser.

Section 16.6. DISCLOSURE TO PURCHASER: Participants who display the MLS compilation to prospective purchasers, or reproduce and distribute to prospective purchasers a copy of property listing content contained in the MLS compilation, shall also include the following disclaimer to the prospective purchasers, and retain evidence of such disclosure in the participant's file:

Information contained on the computer print-outs of the Birmingham Area Multiple Listing Service (MLS), is furnished by MLS participants for dissemination to other MLS participants, for their exclusive use, and should not be relied upon by buyers or any other person. There is no express or implied warranty by the Association or MLS as to the accuracy of such information, which should be independently verified by buyer or such other person. MLS does not verify the information and disclaims any responsibility for its accuracy.

USE OF MLS INFORMATION

Section 17.0. LIMITATIONS ON USE OF MLS INFORMATION: Information from MLS compilations of current listing information, from statistical reports, and from any sold or comparable report of the association or MLS may be used by MLS participants as the basis for aggregated demonstrations of market share or comparisons of firms in public mass-media advertising or in other public representations. This authority does not convey the right to include in any such advertising or representation information about specific properties which are listed with other participants, or which were sold by other participants (as either listing or cooperating broker).

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the Association or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice: "based on information provided by or through the Birmingham Area MLS, for the period (date) through (date).

Section 17.1. TAX DATA; NO WARRANTIES: The Association (or the MLS, with the approval of the Association) has entered into an agreement with an approved tax records vendor for the collection, from county records, of certain data regarding the sale and ownership of real property within the county (the "tax data"), which tax data the Association has authorized the MLS to disseminate to its Participants. Neither MLS nor the Association makes any warranties concerning the accuracy or completeness of the tax data. Neither MLS nor the Association shall have ANY liability or responsibility for damages to Participants or any third party based upon reliance on the tax data.

Section 17.2. OWNERSHIP OF LISTING CONTENT/PROHIBITIONS AGAINST RECOMMERCIALIZATION OF MLS INFORMATION: The Association (or MLS, upon prior approval by the Association) shall have the right to re-commercialize the tax data, by selling, licensing, renting, distributing or otherwise transferring rights in the tax data to any other party for any purpose whatsoever. Participants shall not have any right to re-commercialize as defined hereinabove. This provision shall not be construed to limit use of the tax data by Participants in the normal course of its real estate business, or to prohibit general references to the tax data in promotional materials.

Section 17.3. FINES FOR VIOLATIONS: The MLS Committee shall have the authority to levy fine(s) not to exceed \$500 for any single violation of MLS Rules and Regulations regarding the unauthorized release of copyrighted MLS compilations.

ARBITRATION OF DISPUTES

Section 18.0. ARBITRATION OF DISPUTES: By becoming and remaining a Participant, each Participant agrees to arbitrate disputes involving contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4 of the Code of Ethics with MLS Participants in different firms arising out of their relationships as MLS Participants, subject to the following qualifications:

- (a) If all disputants are members of the same Association of REALTORS®, or have their principal place of business within the same Association's territorial jurisdiction, they shall arbitrate pursuant to the procedures of that Association of REALTORS®.
- (b) If the disputants are members of different Associations of REALTORS®, or if their principal place of business is located within the territorial jurisdiction of different Association of REALTORS®, they remain obligated to arbitrate in accordance with the procedures of the Alabama Association of REALTORS®.

SECTION 18.1. INTERBOARD ARBITRATION PROCEDURES: In instances where the state association does not provide arbitration services, arbitration shall be conducted in accordance with any existing interboard agreement or, alternatively, in accordance with the Interboard Arbitration Procedures in the Code of Ethics and Arbitration Manual of the NATIONAL ASSOCIATION OF REALTORS®. Nothing herein shall preclude Participants from agreeing to arbitrate the dispute before a particular Association of REALTORS®.

STANDARDS OF CONDUCT FOR MLS PARTICIPANTS

Section 19.0. MLS Participants shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other MLS Participants have with clients.

Section 19.1. Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord.

Section 19.2. MLS Participants acting as subagents or as buyer/tenant representatives or brokers shall not attempt to extend a listing broker's offer of cooperation and /or compensation to other brokers without the consent of the listing broker.

Section 19.3. MLS Participants shall not solicit a listing currently listed exclusively with another broker. However, if the listing broker, when asked by the MLS Participant, refuses to disclose the expiration date and nature of such listing (i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client) the MLS Participant may contact the owner to secure such information and may discuss the terms upon which the MLS Participant might take a future listing, or alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.

Section 19.4. MLS Participants shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a MLS Participant, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the MLS Participant may contact the buyer/tenant to secure such information and may discuss the terms upon which the MLS Participant might enter into a future buyer/tenant agreement, or alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement.

Section 19.5. MLS Participants shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by the listing brokers.

Section 19.6. The fact that an agreement has been entered into with an MLS Participant shall not preclude or inhibit any other MLS Participant from entering into a similar agreement after the expiration of the prior agreement.

Section 19.7. The fact that a prospect has retained an MLS Participant as an exclusive representative or exclusive broker in one or more past transactions does not preclude other MLS Participants from seeking such prospect's future business.

Section 19.8. MLS Participants are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent.

Section 19.9. When MLS Participants are contacted by the client of another MLS Participant regarding the creation of an exclusive relationship to provide the same type of service, and MLS Participants have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement.

Section 19.10. In cooperative transactions, MLS Participants shall compensate cooperating MLS Participants (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other MLS Participants without the prior express knowledge and consent of the cooperating broker.

Section 19.11. MLS Participants are not precluded from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another MLS Participant. A general telephone canvass, general mailing, or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed “general” for purpose of this rule.

The following types of solicitations are prohibited:

Telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another MLS Participant; and mail or other forms of written solicitations of prospects whose properties are exclusively listed with another MLS Participant when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, for sale or for rent signs, or other sources of information intended to foster cooperation with MLS Participants.

Section 19.12. MLS Participants, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service.

Section 19.13. MLS Participants, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord’s representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord’s representative or broker not later than execution of a purchase agreement or lease.

Section 19.14. On unlisted property, MLS Participants acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement.

MLS Participants shall make any request for anticipated compensation from the seller/landlord at first contact.

Section 19.15. MLS Participants, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable, and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement.

Section 19.16. MLS Participants are not precluded from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers’ exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other MLS Participants to whom such offers to provide services may be made.

Section 19.17. MLS Participants, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker’s offer of compensation to subagents or buyer/tenant representatives or brokers, or make the submission of an executed offer to purchase/lease contingent on the listing broker’s agreement to modify the offer of compensation.

Section 19.18. All dealings concerning property exclusively listed or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client’s representative or broker, and not with the client, except with the consent of the client’s representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, MLS Participants shall ask prospects whether they are a party to any exclusive representation agreement. MLS Participants shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects’ exclusive representatives or at the direction of prospects.

Section 19.19. Participants, users, and subscribers, prior to or after terminating their relationship with their current firm, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude participants from establishing agreements with their associated licensees governing assignability of exclusive agreements.

Section 19.20. These Rules are not intended to prohibit ethical, albeit aggressive or innovative business practices, and do not prohibit disagreements with other MLS Participants involving commission, fees, compensation or other forms of payment or expenses.

Section 19.21. MLS Participants shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

Section 19.22. MLS participants' firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of licensees affiliated with a participant's firm shall disclose the firm's name and the licensee's state(s) of licensure in a reasonable and readily apparent manner.

Section 19.23. MLS participants shall present a true picture in their advertising and representations to the public, including the URLs and domain names they use, and participants may not:

- (a) engage in deceptive or unauthorized framing of real estate brokerage websites;
- (b) manipulate (e.g., presenting content developed by others) listing content in any way that produces a deceptive or misleading result, or
- (c) deceptively use metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic, or to otherwise mislead consumers.

ORIENTATION

Section 20.0. ORIENTATION: Any applicant for MLS Participation and any licensee affiliated with an MLS Participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS Rules and Regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within ninety (90) days after access has been provided.

VIRTUAL OFFICE WEBSITES (VOWs)

Policy governing use of MLS data in connection with Internet brokerage services offered by MLS Participants (“Virtual Office Websites”)

I. Definitions and Scope of Policy.

1. For purposes of this Policy, the term Virtual Office Website (“VOW”) refers to a Participant’s Internet website, or a feature of a Participant’s Internet 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 data, subject to the Participant’s oversight, supervision, and accountability.

a. A Participant may designate an Affiliated VOW Partner (“AVP”) to operate a VOW on behalf of the Participant, subject to the Participant’s supervision and accountability and the terms of this Policy.

b. A non-principal broker or sales licensee, affiliated with a Participant, may, with the Participant’s consent, operate a VOW or have a VOW operated on its behalf by an AVP. Such a VOW is subject to the Participant’s supervision and accountability and the terms of this Policy.

c. Each use of the term “Participant” in this Policy shall also include a Participant’s non-principal brokers and sales licensees (with the exception of references in this section to the “Participant’s consent” and the “Participant’s supervision and accountability,” and in section III.10.a, below, to the “Participant acknowledges”). Each reference to “VOW” or “VOWs” herein refers to all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an AVP.

2. The right to display listings in response to consumer searches is limited to display of MLS data supplied by the MLS(s) in which the Participant has participatory rights. This does not preclude a firm with offices participating in different MLSs from operating a master website with links to such offices’ VOWs.

3. Participants’ Internet websites, including those operated for Participants by AVPs, may also provide other features, information, or services in addition to VOWs (including the Internet Data Exchange (“IDX”) function).

4. The display of listing information on a VOW does not require separate permission from the Participant whose listings will be available on the VOW.

5. Except as permitted in Sections III and IV, MLSs may not adopt rules or regulations that conflict with this Policy or that otherwise restrict the operation of VOWs by Participants.

II. Policies Applicable to Participants’ VOWs.

1. A Participant may provide brokerage services via a VOW that include making MLS active listing data available, but only to consumers with whom the Participant has first established a lawful consumer-broker relationship, 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 agreement(s).

2. A Participant’s VOW must obtain the identity of each Registrant and obtain each Registrant’s agreement to Terms of Use of the VOW, as follows:

a. A Registrant must provide his or her name and a valid email address. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection c below). The Registrant may be permitted to access the VOW only after the Participant has verified that the email address provided is valid and that Registrant received the Terms of Use confirmation.

b. The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants on the VOW, before being permitted to search and retrieve information from the MLS database via the VOW. The user name and password may be established by

the Registrant or may be supplied by the Participant, at the option of the Participant. An email address may be associated with only one user name and password. The Registrant's password and access must expire on a date certain but may be renewed. The Participant must at all times maintain a record of the name and email address supplied by the Registrant, and the username and current password of each Registrant. Such records must be kept 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 the data or a violation of MLS rules related to use by one or more Registrants, the Participant shall, upon request, provide to the MLS a copy of the record of the name, email address, user name, current password, and audit trail, if required, of any Registrant identified by the MLS to be suspected of involvement in the violation.

c. The Registrant must be required affirmatively to express agreement to a "Terms of Use" provision that requires the Registrant to open and review an agreement that provides at least the following:

- i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
- ii. That all data obtained from the VOW is intended only for the Registrant's personal, non-commercial use;
- iii. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
- iv. That the Registrant will not copy, redistribute, or retransmit any of the data or information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property;
- v. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

After the Registrant has opened for viewing the Terms of Use agreement, a "mouse click" is sufficient to acknowledge agreement to those terms. 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.

The Terms of Use agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW.

d. An 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.

3. 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 properties 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.

4. A Participant's VOW must protect the MLS data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" or other unauthorized accessing, reproduction, or use of the MLS database.

5. A Participant's VOW must comply with the following additional requirements:

a. No VOW shall display listing or property address of any seller who have affirmatively directed its listing broker to withhold its listing or property address from display on the Internet. The listing broker or agent shall communicate to the MLS that a 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 listing or property address of a seller who has determined not to have the listing or address for its property displayed on the Internet.

b. A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that conforms to the form attached to this Policy as Appendix A. The Participant shall retain such forms for at least one year from the date they are signed.

c. With respect to any VOW that:

(i) 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

(ii) displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

the VOW shall disable or discontinue either or both of those features as to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Except for the foregoing and subject to subparagraph (d), a Participant's VOW may communicate the Participant's professional judgment concerning any listing. Nothing shall prevent a VOW from notifying its customers that a particular feature has been disabled "at the request of the seller."

d. A VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the VOW operator beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The VOW operator shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for that property explaining why the data or information is false. However, the VOW operator shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

e. Each VOW shall refresh MLS data available on the VOW not less frequently than every 3 days.

f. Except as provided elsewhere in this Policy or in MLS rules and regulations, no portion of the MLS database may be distributed, provided, or made accessible to any person or entity.

g. Every VOW must display a privacy Policy that informs Registrants of the ways in which information obtained from them will be used.

h. A 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, or whether the listing broker is a Realtor®.

6. A Participant who intends to operate a VOW must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with this Policy and any other applicable MLS rules or policies.

7. A Participant may operate more than one VOW itself or through an AVP. A Participant who operates a VOW itself shall not be precluded from also operating VOWs in conjunction with AVPs.

III. Policies Applicable to Multiple Listing Services.

1. A Multiple Listing Service shall permit MLS Participants to operate VOWs, or to have VOWs operated for them by AVPs, subject to the requirements of state law and this Policy.

2. An MLS shall, if requested by a Participant, provide basic "downloading" of all MLS non-confidential listing data, including without limitation address fields, listings types, photographs, and links to virtual tours. Confidential data includes only that which Participants are prohibited from providing to customers orally and by

all other delivery mechanisms. They include fields containing the information described in paragraph IV(1) of this Policy, provided that sold data (i.e., listing information relating to properties that have sold) shall be deemed confidential and withheld from a download only if the actual sales prices of completed transactions are not accessible from public records. For purposes of this Policy, "downloading" means electronic transmission of data from MLS servers to a Participant's or AVP's server on a persistent basis. An MLS may also offer a transient download. In such case, it shall also, if requested, provide a persistent download, provided that it may impose on users of such download the approximate additional costs incurred by it to do so.

3. This Policy does not require an MLS to establish publicly accessible sites displaying Participants' listings.

4. If an MLS provides a VOW-specific feed, that feed must include all of the non-confidential data included in the feed described in paragraph 2 above except for listings or property addresses of sellers who have elected not to have their listings or addresses displayed on the Internet.

5. An MLS may pass on to those Participants who will download listing information the reasonably estimated costs incurred by the MLS in adding or enhancing its "downloading" capacity to enable such Participants to operate VOWs.

6. An MLS may require that Participants (1) utilize appropriate security protection, such as firewalls, as long as such requirement does not impose security obligations greater than those employed concurrently by the MLS, and/or (2) maintain an audit trail of Registrants' activity on the VOW and make that information available to the MLS if the MLS has reason to believe that any VOW has caused or permitted a breach in the security of the data or a violation of applicable MLS rules.

7. An MLS may not prohibit or regulate display of advertising or the identification of entities on VOWs ("branding" or "co-branding"), except to prohibit deceptive or misleading advertising or co-branding. For purposes of this provision, co-branding will be presumed not to be deceptive or misleading if the Participant's logo and contact information (or that of at least one Participant, in the case of a VOW established and operated by or for more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

8. Except as provided in this Policy, an MLS may not prohibit Participants from enhancing their VOWs by providing information obtained from sources other than the MLS, additional technological services (such as mapping functionality), or information derived from non-confidential MLS data (such as an estimated monthly payment derived from the listed price), or regulate the use or display of such information or technological services on any VOW.

9. Except as provided in generally applicable rules or policies (such as the Realtor® Code of Ethics), an MLS may not restrict the format of data display on a VOW or regulate the appearance of VOWs.

10. Subject to the provisions below, an MLS shall make MLS listing data available to an AVP for the exclusive purpose of operating a VOW on behalf of a Participant. An MLS shall make MLS listing data available to an AVP under the same terms and conditions as those applicable to Participants. No AVP has independent participation rights in the MLS by virtue of its right to receive data on behalf of a Participant, or the right to use MLS data except in connection with operation of a VOW for a Participant. AVP access to MLS data is derivative of the rights of the Participant on whose behalf the AVP is downloading data.

a. A Participant, non-principal broker or sales licensee, or AVP may establish the AVP's right to receive and use MLS data by providing to the MLS a writing in which the Participant acknowledges its or its non-principal broker's or sales licensee's selection of the AVP to operate a VOW on its behalf.

b. An MLS may not charge an AVP, or a Participant on whose behalf an AVP operates a VOW, more than a Participant that chooses to operate a VOW itself (including any fees or costs associated with a license to receive MLS data, as described in (g), below), except to the extent that the MLS incurs greater costs in providing listing data to the AVP than the MLS incurs in providing listing data to a Participant.

c. An MLS may not place data security requirements or restrictions on use of MLS listing data by an AVP that are not also imposed on Participants.

d. An MLS must permit an AVP to download listing information in the same manner (e.g., via a RETS feed or via an FTP download), at the same times and with the same frequency that the MLS permits Participants to download listing information.

e. An MLS may not refuse to deal directly with an AVP in order to resolve technical problems with the data feed. However, the MLS may require that the Participant on whose behalf the AVP is operating the VOW participate in such communications if the MLS reasonably believes that the involvement of the Participant would be helpful in order to resolve the problem.

f. An MLS may not condition an AVP's access to a data feed on the financial terms on which the AVP provides the site for the Participant.

g. An MLS may require Participants and AVPs to execute license or similar agreements sufficient to ensure that Participants and AVPs understand and agree that data provided by the MLS may be used only to establish and operate a VOW on behalf of the Participant and not for any other purpose.

h. An MLS may not (i) prohibit an AVP from operating VOWs on behalf of more than one Participant, and several Participants may designate an AVP to operate a single VOW for them collectively, (ii) limit the number of entities that Participants may designate as AVPs for purposes of operating VOWs, or (iii) prohibit Participants from designating particular entities as AVPs except that, if an AVP's access has been suspended or terminated by an MLS, that MLS may prevent an entity from being designated an AVP by another Participant during the period of the AVP's suspension or termination.

i. Except as stated below, an MLS may not suspend or terminate an AVP's access to data (a) for reasons other than those that would allow an MLS to suspend or terminate a Participant's access to data, or (b) without giving the AVP and the associated Participant(s) prior notice and the process set forth in the applicable provisions of the MLS rules for suspension or termination of a Participant's access. Notwithstanding the foregoing, an MLS may immediately terminate an AVP's access to data (a) if the AVP is no longer designated to provide VOW services to any Participant, (b) if the Participant for whom the AVP operates a VOW ceases to maintain its status with the MLS, (c) if the AVP has downloaded data in a manner not authorized for Participants and that hinders the ability of Participants to download data, or (d) if the associated Participant or AVP has failed to make required payments to the MLS in accordance with the MLS's generally applicable payment policies and practices.

11. An MLS may not prohibit, restrict, or impede a Participant from referring Registrants to any person or from obtaining a fee for such referral.

IV. Requirements That MLSs May Impose on the Operation of VOWs and Participants.

1. An MLS may impose any, all, or none of the following requirements on VOWs but may impose them only to the extent that equivalent requirements are imposed on Participants' use of MLS listing data in providing brokerage services via all other delivery mechanisms:

a. A Participant's VOW may not make available for search by or display to Registrants the following data intended exclusively for other MLS Participants and their affiliated licensees:

i. Expired, withdrawn, or pending listings.

ii. Sold data unless the actual sales price of completed transactions is accessible from public records.

iii. The compensation offered to other MLS Participants.

iv. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.

v. The seller(s) and occupant(s) name(s), phone number(s) and email address(es), where available.

vi. Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.

b. The content of MLS data that is displayed on a VOW may not be changed from the content as it is provided in the MLS. MLS data may be augmented with additional data or information not otherwise prohibited from display as long as the source of such other data or information is clearly identified. This requirement does not restrict the format of MLS data display on VOWs or display of fewer than all of the listings or fewer authorized data fields.

c. There shall be a notice on all MLS data displayed indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may also include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

d. Any listing displayed on a VOW shall identify the name of the listing firm in a readily visible color, and reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

e. The number of current or, if permitted, sold listings that Registrants may view, retrieve, or download on or from a VOW in response to an inquiry may be limited to a reasonable number. Such number shall be determined by the MLS, but in no event may the limit be fewer than 100 listings or 5% of the listings in the MLS, whichever is less.

f. Any listing displayed on a VOW shall identify the name of the listing agent.

2. An MLS may also impose the following other requirements on the operation of VOWs: a. Participants displaying other brokers' listings obtained from other sources, e.g., other MLSs, non-participating brokers, etc. shall display the source from which each such listing was obtained. b. A maximum period, no shorter than 90 days and determined by the MLS, during which Registrants' passwords are valid, after which such passwords must be changed or reconfirmed.

3. An MLS may not prohibit Participants from downloading and displaying or framing listings obtained from other sources, e.g., other MLSs or from brokers not participating in that MLS, etc., but may require either that (i) such information be searched separately from listings obtained from other sources, including other MLSs, or (ii) if such other sources are searched in conjunction with searches of the listings available on the VOW, require that any display of listings from other sources identify such other source.

EFFECTIVE DATE: MLSs have until not later than [90 DAYS AFTER ENTRY OF THE FINAL JUDGMENT] to adopt rules implementing the foregoing policies and to comply with the provisions of section III above, and (2) Participants shall have until not later than 180 days following adoption and implementation of rules by an MLS in which they participate to cause their VOW to comply with such rules.

See Appendix A for Seller Opt-Out Form

Birmingham Area MLS rule requirements in connection with Internet brokerage services offered by MLS Participants (“Virtual Office Websites”)

Section 21.1 (a): A Virtual Office Website (“VOW”) is a Participant’s Internet website, or a feature of a Participant’s website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant’s oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant’s consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant’s oversight, supervision, and accountability.

Section 21.1 (b): As used in Section 21 of these Rules, the term “Participant” includes a Participant’s affiliated non-principal brokers and sales licensees – except when the term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability”. References to “VOW” and “VOWs” include all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner (“AVP”) on behalf of a Participant.

Section 21.1 (c): “Affiliated VOW Partner” (“AVP”) refers to an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant’s supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Listing Information except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS Listing Information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW.

Section 21.1 (d): As used in Section 21 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by by Participants to the MLS and aggregated and distributed by the MLS to Participants.

Section 21.2 (a): The right of a Participant’s VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.

Section 21.2 (b): Subject to the provisions of the VOW Policy and these Rules, a Participant’s VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange (“IDX”).

Section 21.2 (c): Except as otherwise provided in the VOW Policy or in these Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant’s VOW.

Section 21.3 (a): Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:

- (i) The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter “Registrants”). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
- (ii) The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.
- (iii) The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her

option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

Section 21.3 (b): The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

Section 21.3 (c): If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of MLS Listing Information or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.

Section 21.3 (d): The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:

- i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
- ii. That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;
- iii. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
- iv. That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;
- v. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

Section 21.3 (e): The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

Section 21.3 (f): The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

Section 21.4: A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

Section 21.5: A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

(NOTE: MLSs may adopt rules requiring Participants to employ specific security measures, provided that any security measure required does not impose obligations greater than those employed by the MLS.)

Section 21.6 (a): A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

Section 21.6 (b): A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision:

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

Section 21.6 (c): The Participant shall retain such forms for at least one year from the date they are signed, or one year from the date the listing goes off the market, whichever is greater.

Section 21.7(a): Subject to subsection (b), a Participant's VOW may allow third-parties (i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

Section 21.7 (b): Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 21.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

Section 21.8: A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

Section 21.9: A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

Section 21.10: Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

Section 21.11: A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

Section 21.12: A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

Section 21.13: A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

Section 21.14: 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.

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Appendix A Seller Opt-Out Form

1. [Initial one]

A. [_____] I have advised my broker or sales agent that I do not want my listed property to be displayed on the Internet;

--Or--

B. [_____] I have advised my broker or sales agent that I do want my listed property to be displayed on the Internet. I can choose to omit any of the following by indicating from being displayed with the listed property on the Internet with my initials:

[_____] I do not want the address of the listed property to be displayed on the Internet.

[_____] I do not want AVMs (automated valuation models) or automated estimates of the market value of the listing (or hyperlink to such estimate) to display in immediate conjunction with my listed property on the Internet.

[_____] I do not want to allow third-parties to write comments or reviews about the listing or display a hyperlink to such comments or reviews in immediate conjunction with my listed property 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 my listed property in response to their search.

Initials of seller