



## **Rules and Regulations**

Revised and Restated September 27, 2000

As Amended through August 3, 2016

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[NOTE: Capitalized terms which are used in these Rules and Regulations, but are not defined the first time they appear, are defined in Article XIII below.]

## **PREAMBLE**

The purpose of the Service is to provide a multiple listing service to its Participants and Subscribers in order to permit those Participants and Subscribers to serve their clients and customers in the sale, purchase and leasing or rental of real property. The Service acts as a neutral facility for the correlation and presentation of Listing data, information and Images Filed with it by Listing Brokers and for the dissemination of those Listing data, information and Images to its Participants and Subscribers. The integrity of the Service's database is essential to achieving its purpose. The Service, therefore, relies on the prompt and timely Filing of accurate and complete Listing data and information and accurate Images. These Rules and Regulations (together with policies of the Service and the terms of the Participant Agreement/Application to which each Participant is a party) govern the relationship between the Service and each of its Participants. They also govern the relationship between each Participant or Subscriber and each other Participant or Subscriber relating to the subject matter addressed by the Rules and Regulations.

## **ARTICLE I - LISTING PROCEDURES**

### **SECTION 1.0 LISTING PROCEDURES FOR DIFFERENT PROPERTY TYPES:**

(a) **MANDATORY TYPES OF PROPERTY.** Listings of real or personal property of the following types, taken by Participants on a Listing Agreement, must be Filed with the Service by the Deadline For Filing:

- (1) Single family homes for sale or exchange
- (2) Vacant lots and acreage for sale or exchange
- (3) Two-, three-, and four-family residential buildings for sale or exchange
- (4) Residential condominiums for sale or exchange

(b) **VOLUNTARY TYPES OF PROPERTY.** Listings of real or personal property of the following types, taken by Participants on a Listing Agreement, may be Filed with the Service after all necessary

signatures of the Seller have been obtained on the Listing Agreement:

- (1) Business opportunities for sale or exchange
- (2) Commercial income property for sale or exchange (including residential buildings of five or more units)
- (3) Industrial property for sale, lease, rental or exchange
- (4) Other real properties for lease or rent
- (5) Every property type that is to be an Auction Listing, even if the property type, if not an Auction Listing, would otherwise be a mandatory Listing under Section 1.0(a)

Note 1: The type of Listing Agreement shall be clearly distinguished on the Property Data Form with the following codes:

|         |   |
|---------|---|
| ERTS -  | Exclusive Right To Sell   |
| ERSP -  | Exclusive Right To Sell With Named Exclusion  |
| EXCL -  | Exclusive Agency  |
| ERSV -  | Exclusive Right To Sell With Variable Rate of Commission (sometimes known as Exclusive Right to Sell With Variable Rate Compensation)                           |
| ERSD -  | Exclusive Right to Sell With Dual Rate of Commission  |
| FERTS - | Facilitation/Exclusive Right to Sell  |
| FERSP - | Facilitation/Exclusive Right to Sell with Named Exclusion   |
| FEXCL - | Facilitation/Exclusive  |
| FERSV - | Facilitation/Exclusive Right to Sell with Variable Rate of Commission (sometimes known as Facilitation/Exclusive Right to Sell with Variable Rate Compensation) |
| FERSD - | Facilitation/Exclusive Right to Sell with Dual Rate of Commission   |

|        |  |
|--------|--|
| ERTSA  | Exclusive Right to Sell at Auction (sometimes known as Exclusive Right to Auction) |
| ERTR - | Exclusive Right to Rent  |

Note 2: A Listing Broker, by a key, code or symbol as specified by the Service, shall clearly designate on the Property Data Form if the Listing is an Entry-Only Listing. Use of the Entry-Only Listing designation serves only to distinguish the Listing from other Listings with respect to which the Listing Broker will provide services that are additional to those provided in an Entry-Only Listing, regardless of whether the Listing Agreement for that Listing is an Exclusive Agency, Exclusive Right to Sell, Facilitation/Exclusive, Facilitation/Exclusive Right to Sell or other type of exclusive Listing Agreement.

Note 3: For each Auction Listing, a Listing Broker shall designate on the Property Data Form (i) whether or not there is a minimum required bid price for the Auction, and, if there is, the amount of that minimum required bid price and (ii) whether or not the Seller retains a right of reserve in the Auction. A “right of reserve” shall mean the Seller’s reservation of a right to (A) establish a minimum price that the Seller is willing to accept for the sale of the Auction Listing (sometimes known as a “reserve price”), (B) disclose or not disclose an established reserve price, (C) accept or decline any and all bids for the Auction Listing and/or (D) withdraw the Auction Listing at any time before the Auctioneer’s announcement of the completion of the sale. Any stated minimum required bid price and any stated reserve price will be included in the Service Compilation.

Note 4: If a Seller (i) elects to offer an identified property for sale and for rental or lease at the same time, (ii) enters into a Listing Agreement with one Listing Broker to offer the property for sale and enters into a separate Listing Agreement with another Listing Broker to offer the property for rental or lease, and (iii) signs a Co-Exclusive Listing Form with both of those Listing Brokers and causes one of those Listing Brokers to File the Form with the Service, the property shall qualify to be listed in the System and in each Service Compilation as a Co-Exclusive Listing. A Co-Exclusive Listing is permitted under these Rules and Regulations only for the two Listing Brokers that are identified in and are signatories to the Co-Exclusive Listing Form Filed with the Service, as that Form may be amended from time to time.

Note 5: NOTWITHSTANDING ANYTHING OTHERWISE SET FORTH IN THESE RULES AND REGULATIONS, the terms and conditions set forth in Attachment E shall govern Listings in which (i) the Seller is a bank or other financial institution that has taken title to the Listed Property; (ii) the Listing Agreement between the Seller and the Listing Broker of the Listed Property may or may not have expired or been terminated; (iii) the Seller has engaged an auctioneer that is not a Participant or Subscriber to sell the Listed Property at auction; and (iv) the original Listing Broker has been required or requested by the Seller or the auctioneer to maintain the Listing in the System, whether or not the Listing Agreement between the Seller and the original Listing Broker has expired or been terminated.

(c) ACCEPTANCE OF LISTINGS. Except as specifically set forth in the next sentence of this Section 1.0(c), the Service will accept for Filing only those Listings that make it possible for the Listing Broker to offer cooperation, with accompanying compensation, to Cooperating Brokers, as and in the manner provided for in Article V below. Notwithstanding the foregoing, the Service will accept for Filing Listings of properties for lease or rent that make it possible for the Listing Broker to offer cooperation to Cooperating Brokers, even if those Listings do not offer accompanying compensation.

If the Service becomes aware of any proposed Listing or any existing Listing that, in the sole and exclusive determination of the Service, may not comply with all fair housing and other laws and regulations that may be applicable to the sale, lease or rental of the proposed or existing Listing, the Service may refuse to accept the proposed Listing for Filing and may remove the existing Listing from the Service Compilation. Any such determination and action by the Service shall be final, and neither the Service, nor any of its employees or agents, shall have an liability or responsibility of any kind, nor shall any Participant or Subscriber have or assert any claim against the Service, or against any of its employees or agents, arising out of (i) such determination or action by the Service, (ii) the Service’s failure for any reason to make any such determination or take any such action or (iii) the Service’s failure for any reason to become aware of a proposed or existing Listing’s possible non-compliance with any fair housing or other law or regulation.

(d) REPRESENTATIONS AND WARRANTIES. By Filing a Listing, a Listing Broker shall be deemed to have (i) represented and warranted that, as of the Filing date, (A) the Listing Broker holds a current, valid real estate broker's license issued by the appropriate state real estate licensing authority, agency or board, or its functional equivalent, in the state in which the Listed Property is located, (B) the Listing Broker and the Participant with which the Listing Broker is affiliated are in compliance with the terms and conditions of these Rules and Regulations, (C) to the knowledge of the Listing Broker, no other person has Filed, or has the right to File, a Listing with respect to the property identified in the Listing, except only in the case of a Co-Exclusive Listing of that property with respect to which a Co-Exclusive Listing Form has properly been Filed, and (D) in an Auction Listing, (I) each of the Listing Broker and any individual Subscriber affiliated with the Listing Broker who, as agent of the Listing Broker, will conduct the Auction of the Listed Property is, and at the time of the Auction will be, an Auctioneer, as that term is defined in Section 13.0 below, and (II) all licenses, permits and consents, if any, required for the conduct of the Auction have been obtained and will remain in full force and effect as required in order to complete the Auction; (ii) re-affirmed, as of the Filing date, the agreements, the representations and warranties and the completeness and accuracy of the information contained in the Participant Agreement/Application required to be submitted to the Service at the time Listing Broker first became a Participant in the Service; (iii) represented and warranted, in the case of a Co-Exclusive Listing, that the Seller and the other Listing Broker for the Listed Property have consented in writing to the current Filing; and (iv) represented and warranted that the Seller, if the Seller does not hold title to the Listed Property on the Filing date, has demonstrated to the Listing Broker that the Seller has received written authorization from the title holder of the Listed Property to File the Listed Property with the Service. For any Listing of the kind contemplated in the preceding clause (iv), in which the Seller does not hold title to the Listed Property on the of Filing date, the Listing Broker shall include in the Listing a disclosure that the Seller is not the title holder of the Listed Property and that the Listing is made subject to completion of the sale of the Listed Property to the Seller.

The Service shall be under no obligation to inquire into or to verify any of the representations and warranties made by a Listing Broker pursuant to this Section 1(d). Without limiting the foregoing, it is the

obligation of each Participant to assure that the Listing Broker holds a current, valid real estate broker's license issued by the appropriate state real estate licensing authority, agency or board, or its functional equivalent, in the state in which the Listed Property is located.

(e) LISTING REMARKS. In Filing a Listing, no listing or other broker or agent, nor any agency may be named or identified, nor may the web, e-mail or voicemail address, telephone number or other personal or other form of identification or means of contact of any listing or other broker, any agent or agency or any other individual or entity be included, in any section or field of any Property Data Form, except only in those fields headed "Listing Office", "Listing Agent", "Firm Remarks" and "Special Showing Instructions". In Filing a Listing, a Listing Broker may state the name of the builder of the Listed Property (but may not include any other information about or any means of contacting the builder) in the "Remarks" section (and in no other section or field) of the Property Data Form, but only if (i) the builder is not the Seller of the Listed Property, (ii) neither the Seller nor the Listing Broker has a financial interest in the builder, (iii) the builder has no financial interest in either the Seller or the Listing Broker, (iv) no individual or entity has a financial interest in both the Seller and the builder and (v) in the case of a Listed Property that is "to be built" or "under construction", the builder is not the general contractor or a subcontractor for the development or construction of the Listed Property. In Filing a Listing, no Participant or Subscriber may include in any section or field of a Property Data Form any language that has a purpose other than solely to seek to effect the sale, lease, rental or appraisal of the specific Listed Property or Properties to which the Listing relates. In Filing a Listing, no Seller may be named or identified, nor may any web, e-mail or voicemail address, telephone number or other personal or other form of identification or means of contact of a Seller be included, in any section or field of any Property Data Form, except only in those fields headed "Firm Remarks" and "Special Showing Instructions". For purposes of these Rules and Regulations, the term "any section or field" of a Property Data Form includes, in addition to any section or field of the Property Data Form itself, any virtual tours, Images and other types of data and/or information related to the Listed Property that are linked in any way to the Property Data Form.

(f) **FILING OF IMAGES.** Certain types of Listed Properties require the Filing of Images of the Listed Property. The Board of Directors of the Service from time to time may establish and amend a policy regarding the Filing of Images, which policy, among other things, may set forth different Filing requirements for different types of Listed Properties, may specify exceptions to the Filing requirements and may provide for sanctions for failure to comply with the terms and conditions of the policy. The Image Filing policy adopted by the Board of Directors, as it may be amended from time to time, shall be attached to these Rules and Regulations as Attachment D and shall be deemed to be a part hereof. An Image is acceptable for Filing with the Service only if the Image contains, displays and is limited to objective information about either the physical attributes of the property itself or about its location. No Image Filed with the Service for any type of Listed Property may contain or display, by any means, any data or information that (i) is prohibited from inclusion in a Listing or in a Property Data Form pursuant to Section 1.0(e) or (ii) otherwise promotes, is designed to promote, or has the effect of promoting, directly or indirectly, either (A) the Listing Broker, (B) any Subscriber affiliated with the Listing Broker, (C) any franchisor or other enterprise affiliated in any way with the Listing Broker, (D) any product, service or program, including without limitation any so-called “open house” or similar property showing, originated by and primarily for the benefit of the Listing Broker, any of its affiliated Subscribers or any franchisor or other enterprise affiliated in any way with the Listing Broker, or (E) the branding or any existing brand of any Listing Broker, Subscriber, franchisor or product, service or program contemplated in the preceding clauses (A) through (D).

**SECTION 1.1 LISTINGS SUBJECT TO RULES AND REGULATIONS OF THE SERVICE:** Any Listing Agreement to be Filed with the Service is subject to these Rules and Regulations as soon as that Listing Agreement has been signed by the Seller.

**SECTION 1.2 DETAIL ON LISTINGS FILED WITH THE SERVICE:** By Filing a Property Data Form with the Service, the Listing Broker represents and warrants (i) that, to the best of the Listing Broker’s knowledge, (A) the information and data in the Form are accurate and complete in every detail and (B) each image Filed with a Listing is an Image as defined in Section 13.0 below and (ii) that the Seller has entered into a Listing Agreement with

respect to the Listed Property with the Listing Broker and, to the knowledge of the Listing Broker, with no other broker, except only in the case of a Co-Exclusive Listing of that Listed Property with respect to which a Co-Exclusive Listing Form has properly been Filed. As set forth in Section 8.1 below, the Service shall have no liability or responsibility for, and no obligation to verify or otherwise inquire into the accuracy or completeness of, any Image Filed with a Listing or any of the information or data contained in any Property Data Form.

Note 1: This Section 1.2 provides that, by Filing a Property Data Form with the Service, a Listing Broker represents, among other things, that, to its knowledge, the Seller has entered into a Listing Agreement with no other broker, except only in the case of a Co-Exclusive Listing. Consistent with that representation, a broker may not (except only in the limited circumstances contemplated in clause (iii) and in clause (iv) of Section 1.0(d)) File a Listing with the Service for a Listed Property that is already the subject of a Listing Agreement with another broker. If, notwithstanding this prohibition, such a duplicate Filing is made, and if the Service becomes aware of the duplicate Filing, the Service may remove the duplicate Filing from the System and, if it does so, shall notify both the original Listing Broker and the broker that made the duplicate Filing of its action. Neither the Service, nor any of its agents or employees, shall have any liability or responsibility of any kind, nor shall any Participant or Subscriber have or assert any claim against the Service, or against any of its employees or agents, arising out of such action or out of the Service’s failure for any reason to become aware of a duplicate Filing. Any dispute between Participants or Subscribers that arises out a duplicate Filing shall be resolved pursuant to the provisions of Section 7.2 below.

Note 2: Consistent with the Preamble to these Rules and Regulations and Section 1.2 and 1.4 hereof, a Participant or Subscriber may not include in any Filing with the Service information or data that is known, or could reasonably be known, to be false, inaccurate, misleading or incomplete, and that has the intention or effect of either (i) impairing the quality or accuracy of any statistical report that contains “comparable” information, “sold” information and/or any other information that may be generated by or in a Service Compilation or (ii) circumventing quality or security routines in the System or any other Service Compilation.



**SECTION 1.3 EXEMPTED LISTINGS; DELAYED LISTINGS:**

(a) If a Seller refuses, on the Seller's initiative, to permit an identified property to be Listed in the System, and if the Seller executes a Non-MLS Listing Form with respect to that identified property, indicating in the Form a decision not to have the property Listed in the System, and if the Listing Broker delivers the Non-MLS Listing Form to the Service before the Deadline For Filing with respect to that property, the Participant with which the Listing Broker is affiliated may then take the identified property as an "office exclusive", and the property shall not be required to become a Listed Property or be included in any Service Compilation.

(b) If, in a Listing Agreement, the Seller and the Listing Broker agree to delay the Filing of the property with the Service to a fixed date in the future, or to a date in the future still to be determined, the Listing Broker shall File a Delayed Listing Form with respect to the property by the Deadline For Filing and shall indicate in the Form either the future date fixed for Filing or that that future date is still to be determined. During the period prior to Filing, the Participant with which the Listing Broker is affiliated may not take the identified property as an "office exclusive", and, upon its Listing, the property shall become a Listed Property and shall be included in all Service Compilations.

(c) Each of the Non-MLS Listing Form and the Delayed Listing Form shall be in a form acceptable to the Service. Each such Form must be signed by the Seller of the property identified in the Form and must meet the same Deadline For Filing imposed under these Rules and Regulations for the same type of Listed Property.

**SECTION 1.4 CHANGE OF LISTING:** Any change on a Listing must be Filed with the Service before the Deadline for Filing. Where such change consists of a modification of the text of the Listing Agreement, the duration of the Listing, the list price or other terms of sale, the Participant must obtain written authorization signed by the Seller prior to Filing the change with the Service. If requested by the Service, the Listing Broker shall provide the Service with a copy of the change authorization signed by the Seller.

**SECTION 1.5 CANCELLATION OF LISTING PRIOR TO EXPIRATION:** A Listing may be cancelled by the Listing Broker before the expiration date of the Listing Agreement related to the Listed Property if and when the cancellation of the Listing

Agreement has been authorized in a writing signed by the Seller. The cancellation shall be Filed with the Service by the Deadline for Filing.

A Seller may not require the Service to cancel a Listing without the Listing Broker's concurrence.

**SECTION 1.6 WITHDRAWAL OF LISTING PRIOR TO EXPIRATION:**

A Listing may be withdrawn from the Service by the Listing Broker before the expiration date of the Listing Agreement related to the Listed Property if and when the withdrawal has been authorized in a writing signed by the Seller. The withdrawal shall be Filed with the Service by the Deadline for Filing. Withdrawal of a Listing from the Service does not terminate the related Listing Agreement. A withdrawn Listing remains subject to the terms and conditions of the related Listing Agreement, and, as such, the Listing will expire at midnight on the expiration date set forth in that Listing Agreement.

A Seller may not require the Service to withdraw a Listing without the Listing Broker's concurrence.

**SECTION 1.7 CONTINGENCIES APPLICABLE TO LISTINGS:**

Any contingency or condition applicable to the sale, lease, rental, transfer or other conveyance of a Listing must be specified in the Property Data Form Filed with the Service.

**SECTION 1.8 LISTING PRICE SPECIFIED:**

Except in the case of an Auction Listing, the full gross listing price of a property must be stated in the Listing Filed with the Service. The gross listing price will be included in the Service Compilation.

**SECTION 1.9 LISTING PROPERTIES WITH MULTIPLE UNITS OR LOTS:**

(a) If a Listing Agreement includes multiple properties which may be sold, leased or rented separately, the Property Data Form Filed with the Service must provide separate data, information and Images for each such property. When each such property has been sold, leased or rented, the Listing Broker shall File a change of status form with the Service for that property.

(b) If a Listing Agreement for multiple properties includes properties on which there is to be new

construction, as a result of which full listing information is not available for each property, the Listing Broker must File Property Data Forms with the Service for at least a representative sampling of the properties that are then, or that will be, available for purchase. Provided that Property Data Forms for a representative sampling of properties have been filed, it is not necessary, at the time of that initial Filing, to File a separate Property Data Form for each property covered by the Listing Agreement. The Listing Broker, however, must File a separate Property Data Form for each such property as soon as basic data are available for the submission of a Property Data Form for that property.

**SECTION 1.10 NO CONTROL OF COMMISSION RATES OR FEES CHARGED BY PARTICIPANTS:**

The Service shall not fix, control, recommend, suggest or maintain commission rates or fees for services to be rendered by Participants or by any Listing Broker, Subscriber or other person affiliated with a Participant. Further, the Service shall not fix, control, recommend, suggest or maintain the division of commissions or fees between or among cooperating Participants (or any persons affiliated with them) or between or among Participants and non-Participants (or any persons affiliated with them).

**SECTION 1.11 EXPIRATION DATE ON LISTINGS:** Each Listing Filed with the Service shall bear a definite and final expiration date as negotiated and set forth in a written agreement between the Listing Broker and the Seller.

**SECTION 1.12 EXPIRATION, EXTENSION, RENEWAL AND REACTIVATION OF LISTINGS:** Any Listing Filed with the Service automatically expires as of midnight on the expiration date specified in the Listing Agreement, unless the expiration date under the Listing Agreement has been extended by the Listing Broker and the Seller, and, prior to that expiration date, the Listing Broker (i) Files with the Service a notice of the extension of the expiration date and (ii) obtains a written authorization of such extension signed by the Seller.

An expired Listing may be reactivated if, within ten (10) days after the original expiration date of the Listing, the Listing Broker (i) Files with the Service a notice of reactivation of the Listing and (ii) obtains a

written authorization extending the original expiration date signed by the Seller.

**SECTION 1.13 LISTINGS OF SUSPENDED PARTICIPANTS:**

If a Participant is suspended from the Service, the Service may cease to provide services, including the continued inclusion of the suspended Participant's Listings in any Service Compilation. Prior to any removal of a suspended Participant's Listings from the Service Compilation, the Service will advise the suspended Participant in writing of the intended removal.

**SECTION 1.14 LISTINGS OF RESIGNED PARTICIPANTS:**

If a Participant resigns from the Service, the Service may cease to provide services, including the continued inclusion of the resigned Participant's Listings in the Service Compilation. Prior to any removal of a resigned Participant's Listings from the Service Compilation, the Service will advise the resigned Participant in writing of the intended removal.

**SECTION 1.15 RIGHT OF SERVICE TO REQUIRE DATA AND CONTRACTS:**

In order to test the integrity of the Service Compilation, the Service from time to time may require Participants and/or Subscribers to provide written information and data concerning Listings with the Service and copies of Listing Agreements related thereto.

**SECTION 1.16 RETENTION OF LISTING DATA AND INFORMATION:**

All Listing data and information, and each Image, Filed with the Service from time to time with respect to a Listed Property shall be retained indefinitely in the System, even if the Listing is not "active", and shall be accessible to Participants and Subscribers. The Service shall have no liability or responsibility with respect to any data, information or Images retained in the System or with respect to the access to or use of any of such data, information or Images by any Participant or Subscriber, nor shall the Service have any responsibility to advise a Seller of that retention or right of access. Each Participant and each of its affiliated Subscribers agrees to indemnify the Service and to hold the Service harmless from and against any liability, damage, cost or expense arising from or out of (i) any retained data, information or Images Filed by or on behalf of that Participant and/or any of its affiliated Subscribers, (ii) the retention of such data, information and Images by the Service and (iii)

the access to or use of such data, information or Images by that Participant and/or any of its affiliated Subscribers.

## **ARTICLE II - SELLING PROCEDURES**

### **SECTION 2.0 SHOWINGS AND NEGOTIATIONS:**

Appointments for Showings of a Listed Property and negotiations with the Seller for the purchase of a Listed Property shall be conducted through the Listing Broker, except under the following circumstances:

(a) the Listing Broker gives the Cooperating Broker specific authority to show the Listed Property and/or to negotiate directly with the Seller, or

(b) notwithstanding reasonable and diligent efforts by the Cooperating Broker, the Cooperating Broker has been unable to contact the Listing Broker or an authorized representative of the Listing Broker.

A Listing Broker must make arrangements (including, where necessary, a procedure to be followed if a particular broker or salesperson is unavailable) to show a Listed Property to Cooperating Brokers and to present written offers to the Seller as soon as possible.

If a Seller desires to have an identified property Listed in the System, but desires to have Showings of the Listed Property deferred until a date following the Filing of the Listing, then, as a condition to such deferral, the Seller shall execute and deliver to the Listing Broker a Request for Deferral of Showing Form with respect to that identified property. The Listing Broker shall deliver the executed Request for Deferral of Showing Form to the Service before the Deadline for Filing with respect to the property to which the Form relates. The Property Data Form Filed by the Listing Broker for that property shall state, in its "Firm Remarks" field, (i) that there is to be a deferral of Showings for that property and (ii) the date to which Showings are deferred. That deferred Showing date may be no more than seven (7) calendar days after the Deadline for Filing with respect to the property to which the Property Data Form relates. Whether or not the Listing Broker makes timely delivery to the Service of an executed Request for Deferral of Showing Form, if such Form has been executed and delivered by the Seller, and if the listing Broker Files a Property Data Form with respect to the property whose Showing is to be

deferred, there shall be no Showings of that Listed Property by the Listing Broker or by any Cooperating Broker until the date certain set forth in the Seller's Request for Deferral of Showings Form.

The Request for Deferral of Showing Form shall be in a form acceptable to the Service and shall be executed by the Seller of the property identified in the Form.

### **SECTION 2.1 PRESENTATION OF OFFERS:**

A Listing Broker must either make arrangements to present all written offers to the Seller as soon as possible or give the Cooperating Broker a satisfactory reason for not doing so.

### **SECTION 2.2 SUBMISSION OF WRITTEN OFFERS:**

A Listing Broker shall submit or cause to be submitted to the Seller all written offers received by the Listing Broker or by any of its salespersons at any time before the closing for the purchase and sale of the Listed Property, unless excused or precluded from doing so by law or by government rule or regulation, or unless otherwise agreed in writing between the Seller and the Listing Broker. Unless a subsequent offer is contingent upon the termination or expiration of an existing contract for the purchase and sale of the Listed Property, the Listing Broker shall recommend to the Seller that the Seller obtain the advice of legal counsel prior to acceptance of the subsequent offer.

### **SECTION 2.3 RIGHT OF COOPERATING BROKER IN PRESENTATION OF OFFER:**

Except as otherwise set forth in the third sentence of this Section 2.3, a Cooperating Broker or his or her representative has the right to participate in the presentation to the Seller of any offer the Cooperating Broker secures to purchase or lease the Listed Property. 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. If the Seller gives written instructions to the Listing Broker that the Cooperating Broker not be present at the presentation of an offer which the Cooperating Broker secured, the Cooperating Broker has the right to a copy of the Seller's written instructions, but the Cooperating Broker shall have no right to be present at such presentation. Whether or not the Cooperating Broker has the right to be present at a presentation to the Seller of an offer to purchase, lease or rent, the Listing Broker alone, consistent with the provisions of Section 2.1 and

Section 2.2 above, shall have the right to control the establishment of appointments for presentation.

**SECTION 2.4 RIGHT OF LISTING BROKER IN PRESENTATION OF COUNTER-OFFERS:**

Except as otherwise set forth in the third sentence of this Section 2.4, a Listing Broker or his or her representative has the right to participate in the presentation of any counter-offer made by the Seller. The Listing Broker does not have the right to be present at any discussion or evaluation of a counter-offer by the prospective purchaser, lessee or tenant (except where the Cooperating Broker is a subagent of the Seller). If the prospective purchaser, lessee or tenant 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 written instructions of the prospective purchaser, lessee or tenant, but the Listing Broker shall have no right to be present at such presentation.

**SECTION 2.5 REPORTING SALES AND LEASES TO THE SERVICE:**

Sales, leases or rentals of a Listed Property must be Filed with the Service by the Deadline for Filing. For sales of a Listed Property, the sale price to be Filed with the Service shall be the sum of (a) the price that is required to be reported for purposes of calculating the then applicable real estate transfer tax on the sale of the Listed Property and (b) the then outstanding principal balance of any lien or encumbrance on the Listed Property that is not included in the price required to be reported for purposes of calculating the then applicable real estate transfer tax on that sale.

**SECTION 2.6 REPORTING LISTINGS**

**“UNDER AGREEMENT”:** (a) By the Deadline for Filing, the Listing Broker shall File notice with the Service of each Listing that is “Under Agreement”. Except as otherwise specifically provided in subsection (b) and subsection (c) of this Section 2.6, a Listing with respect to which the Seller and a prospective purchaser have executed and delivered a Bilateral Agreement shall be deemed to be “Under Agreement” and therefore off-market for all purposes.

(b) If (i) a Kick-Out Clause is the sole contingency in a Bilateral Agreement between the Seller and the prospective purchaser of a Listed Property and (ii) the Seller and the Listing Broker want the Listed Property to remain “Active” (“ACT”), the Listing Broker, by a key, code or symbol as specified by the

Service, shall clearly designate on the Property Data Form for the Listing that the Seller and the Listing Broker have signed an Active Status Request Form for the Listing. If the Listing Broker has made the foregoing designation on the Property Data Form, then, for so long as the Kick-Out Clause remains in full force and effect and is not exercised, the Listing shall be available for additional offers and shall be deemed to be, and shall be properly identified in the System as, “Active” (“ACT”). For so long as the Listing remains “Active” pursuant to an Active Status Request Form, the Listing Broker shall diligently and in good faith continue to show the Listing and seek additional offers for it. Notwithstanding that a Listing is otherwise eligible for “Active” (“ACT”) status pursuant to this Section 2.6(b), the Listing shall be deemed to be “Under Agreement” (“UAG”) and therefore “off market” if (A) the Listing Broker has failed for any reason to designate on the Property Data Form for the Listing that the Seller and the Listing Broker have signed an Active Status Request Form for the Listing or (B) the Kick-Out Clause in the Bilateral Agreement has been terminated by the Seller and the prospective purchaser or has otherwise ceased to be in full force and effect.

(c) If the Seller and the Listing Broker want a Listing that is “Under Agreement” (“UAG”) to remain “Active” and available for back up offers, the Listing Broker, by a key, code or symbol specified by the Service, shall clearly designate on the Property Data Form for the Listing that the Seller and the Listing Broker have signed a Contingent Status Request Form for the Listing. If the Listing Broker has made the foregoing designation on the Property Data Form, then, for so much of the Contingency Period (as defined below in this subsection (c)) during which any of the contingencies specified in the Contingent Status Request Form remains in full force and effect and has not been satisfied, the Listing shall be available for back up offers and shall be deemed to be, and shall be properly identified in the System as, “Contingent” (“CTG”). For so long as the Listing remains “Contingent” (“CTG”) pursuant to a Contingent Status Request Form, the Listing Broker shall diligently and in good faith continue to show the Listing and seek back up offers for it. Notwithstanding that a Listing is otherwise eligible for “Contingent” (“CTG”) status pursuant to this Section 2.6(c), the Listing shall be deemed to be “Under Agreement” (“UAG”) and therefore “off market” if (A) the Listing Broker has failed for any reason to designate on the Property Data Form for the Listing that the Seller and the Listing Broker have signed a Contingent Status Request Form for the Listing, (B) each contingency specified in that

Contingent Status Request Form has been terminated by the Seller and, if applicable, the prospective purchaser or has otherwise ceased to be in full force and effect, or (C) the Contingency Period for the Listing has expired for any reason. For purposes of this subsection (c), the term “Contingency Period” shall mean (i) the period from the Filing of the Listing through the close of business on the fourteenth (14<sup>th</sup>) day following the date on which the Listing is Filed; and (ii) any number of successive fourteen-day periods thereafter, provided that, before the end of the initial fourteen-day period or, as applicable, before the end of any then current successive fourteen-day period, the Listing Broker, or its designated manager acting in its name and on its behalf, by a key, code or symbol specified by the Service, shall clearly indicate that the Seller and the Listing Broker desire to extend the Contingency Period of a Listing with “Contingent” (“CTG”) status. If the Listing Broker has failed for any reason to indicate its desire and the desire of the Seller to extend the Contingency Period before the end of the then current fourteen-day period, the “Contingent” (“CTG”) status of the Listing will cease automatically at the end of that period and, without the necessity of any Filing by the Listing Broker and without the necessity of any notice or action of any kind by the Service, the Listing will appear in the System as “Under Agreement” (“UAG”).

**SECTION 2.7 REPORTING RESOLUTIONS OF CONTINGENCIES:** If and when a contingency currently on File with the Service has been fulfilled or ceases to exist for any reason, the Listing Broker shall File notice of that event with the Service by the Deadline for Filing.

**SECTION 2.8 ADVERTISING OF LISTINGS FILED WITH THE SERVICE:** A Listing may not be advertised by any Participant other than the Listing Broker, without the prior written consent of the Listing Broker. The Service, however, shall have the right to advertise and otherwise publicize a Listing, all Listing data and information and all Images through promotional advertising in any and all media, and each Participant in submitting a Listing for inclusion in the Service shall be deemed to have consented to such advertising and other publication by the Service. Notwithstanding the foregoing, a Listing Broker may restrict a Listing Filed by it from being advertised or otherwise publicized by the Service by submitting to the Service a written notice of restriction signed by both the Listing Broker and the Seller. Notwithstanding

anything otherwise contained in this Section 2.8, but subject to the provisions of Section 4.1, both the Listing Broker and the Cooperating Broker, after a Listing has been sold, leased or rented, may claim to have made or effected such sale, lease or rental.

**SECTION 2.9 REPORTING CANCELLATION OF “UNDER AGREEMENT” LISTINGS:** If a pending sale, lease or rental of a Listed Property has been cancelled for any reason (as a result of which it no longer qualifies for the status of “Under Agreement”), the Listing Broker shall File notice of such cancellation with the Service immediately upon its occurrence, but in no event later than the Deadline for Filing, and the Listing thereupon shall be reinstated in the Service Compilation, but only if the Listing Agreement has not yet expired.

**SECTION 2.10 CHANGE OF “SOLD” LISTINGS:** A Listing that is reported “sold” may not be modified or changed in any way by a Participant. Notwithstanding the foregoing, the Service may, but it need not, modify or change a “sold” Listing if the Service receives a written request for a modification or change from a Participant and if, in the sole and absolute discretion of the Service, the Service determines that the Participant which made the sale has demonstrated good cause for such modification or change. The determination of the Service shall be final, and neither the Participant nor any Subscriber or other person affiliated with the Participant shall have the right to assert any claim against the Service arising out of such determination.

**Note 1:** A Listing that is “sold” is considered an actual historical event. Therefore, changes or modifications made to a “sold” Listing must not compromise, in any way, the accuracy of information contained in any Service Compilation. The Service, however, shall always have the right to make changes to a “sold” Listing to correct an error that was made in reporting a sale, lease or rental.

**Note 2:** Participants from multi-branch Participant Firms do not have the right to change or transfer “sold” Listings from one branch Office to another.

## **ARTICLE III - [Reserved for Future Use]**

## ARTICLE IV - PROHIBITIONS

**SECTION 4.0 “FOR SALE” SIGNS:** Only the “For Sale” signs of the Listing Broker may be placed on a Listed Property.

**SECTION 4.1 “SOLD” SIGNS:** Prior to the closing of a sale of a Listed Property, only the “sold” sign of the Listing Broker may be placed on the Listed Property, except that, if authorized by the Listing Broker, the “sold” sign of a Cooperating Broker may be placed on the Listed Property as well.

**SECTION 4.2 SOLICITATION OF LISTING FILED WITH THE SERVICE:** A Participant shall not solicit a Listing that is subject to a Listing Agreement with another Participant.

## ARTICLE V - DIVISION OF COMMISSIONS

**SECTION 5.0 COOPERATIVE COMPENSATION SPECIFIED ON EACH LISTING:** Except only for Listings of properties offered for lease or rental, for which the Listing Broker (as provided in Section 1.0(c) above) is not obligated to offer compensation to other Participants for their services as Cooperating Brokers, a Listing Broker shall specify, on each Listing Filed with the Service, the compensation offered to other Participants for their services as Cooperating Brokers in the sale, lease or rental of the Listed Property. Such offers shall be unconditional, except that entitlement to compensation shall be conditioned on the Cooperating Broker’s performance as the procuring cause of the sale, lease or rental. A Listing Broker’s obligation to compensate any Cooperating Broker as the procuring cause of a sale, lease or rental may be excused only by agreement between the Listing Broker and the Cooperating Broker or by determination through arbitration or other legal process. Notwithstanding any agreement between the Listing Broker and the Seller of a Listed Property with respect to the compensation of a Cooperating Broker for the sale, lease or rental of the Listed Property, the ultimate responsibility and liability for compensating the Cooperating Broker shall remain with the Listing Broker. If a Listing Broker for a property offered for lease or rental elects to offer compensation to other Participants for their services as Cooperating

Brokers, that Listing Broker is subject to the same requirements regarding cooperative compensation hereunder as a Listing Broker for a property offered for sale.

**Note 1:** In Filing a Listing with the Service, a Participant is deemed to be making blanket unilateral offers of compensation to the other Participants in the Service. The Participant therefore shall specify on each Listing Filed with the Service the compensation being offered to the other Participants, as a Cooperating Broker has the right to know, prior to initiating any sales effort, what its compensation might be for that effort.

The Listing Broker has the right to determine the amount of compensation to be offered to a Cooperating Broker. The compensation offered by a Listing Broker to a subagent, to a buyer’s agent or to any other appropriately licensed facilitator in the process of selling a Listed Property, whether or not the facilitator is acting in an agency capacity, may, but need not be, the same.

Nothing in Section 1.0 of Article I above or in this Article V shall preclude a Listing Broker from offering a Participant compensation different from the compensation indicated on any Listing Filed with the Service, provided that (1) the Listing Broker informs the Participant in writing of such proposed change in compensation in advance of the Participant’s producing an offer to purchase or, in the case of an Auction Listing, in advance of the Participant’s registering a prospective bidder for participation in the Auction, and (2) the change in the listed compensation is not the result of any agreement or other cooperative activity between the Listing Broker and any one or more of the other Participants or Subscribers. Any superseding offer of compensation must be expressed in the same manner that the original offer of compensation was required to be expressed under this Note 1.

In addition to the foregoing, if a Seller requests that a Listing Broker not offer

compensation to and/or cooperation with a specific Participant in connection with the offering and sale of the Seller's property, the Listing Broker may accede to the Seller's request, but only if the Listing Broker, prior to Filing the Listing, transmits to such identified Participant a written notice of the Seller's request.

A Listing Broker need not disclose the amount of total negotiated commissions in its Listing Agreement, and the Service shall not publish the total negotiated commissions on a Listing that has been Filed with the Service by a Participant. The Service shall not disclose the total commissions negotiated between a Seller and a Listing Broker.

The total amount of any compensation offered to a Participant on a Listing Filed with the Service shall be shown in the Listing, in the appropriate compensation data field, either as (1) a percentage of the selling price of the Listed Property or (2) a definite dollar amount. If the total amount of compensation offered is shown as a percentage of the selling price of the Listed Property as permitted by clause (1) (rather than as a definite dollar amount as permitted by clause (2)), the Listing Broker shall elect to use as the "selling price" either (i) the full or gross selling price of the Listed Property or (ii) the Net Sales Price (as defined in Section 13.0). The Listing Broker's election shall be made and disclosed in the Property Data Form by a key, code or symbol specified for the purpose by the Service. The total amount of any compensation shown in the appropriate compensation data field shall set forth, without reference to any other data field, the total amount to which a Cooperating Broker shall be entitled for its performance as the procuring cause of the sale or lease of the Listed Property. Except only for the percentage calculation permitted by clause (1) in the first sentence of this paragraph, compensation shown in a Listing Filed with the Service shall be stated by the Listing Broker in such a way that it is not necessary for a Participant to make any mathematical calculation or employ any formula in order to determine the compensation offered.

Nothing set forth in this Section 5.0 or elsewhere in these Rules and Regulations shall prohibit a Listing Broker from offering Participants, for their services as Cooperating Brokers, something of value over and above the compensation required to be offered hereunder. Like the underlying offer of compensation required to be made pursuant to this Section 5.0, any such offer of additional compensation shall not require or be conditioned on Cooperating Broker's taking or completing, or its refraining from taking or completing, any specified actions, except only that entitlement to any additional compensation that is offered shall be conditioned on the Cooperating Broker's performance as the procuring cause of the sale, lease or rental of the Listed Property to which the underlying offer of compensation relates. If a Listing Broker elects to make an offer of additional compensation, an accurate description of the nature and terms of that offer shall be shown in the Listing in a data field other than the compensation data field."

**Note 2:** A Listing Broker, from time to time, may adjust (i) the compensation offered to all other Participants for their services as Cooperating Brokers with respect to any Listing and/or (ii) anything of value that may be offered to other Participants for such services in addition to the compensation. Any such adjustment shall be effected by Filing with the Service a notice of such adjusted compensation and/or other adjusted offering. The notice of adjustment shall be Filed with the Service in advance of the production of any offer to purchase the Listed Property so that all Participants can be advised of such adjustment or adjustments through the Service Compilation. The adjusted compensation and/or other adjusted offering shall be effective from and after the time at which the notice of adjustment is Filed with the Service.

**Note 3:** The Service takes no position on the division of commissions between a Participant and any individual or entity that is not a Participant. That division is the responsibility and concern solely of the Participant.

**SECTION 5.1 PARTICIPANT AS PRINCIPAL:**

If a Participant or any person (including licensed or certified appraisers or Auctioneers) affiliated with a Participant has any interest in a Listed Property, that Participant shall disclose the nature and extent of that interest when the Listing is Filed with the Service, and the Service shall include such information in the Service Compilation.

**SECTION 5.2 PARTICIPANT AS PURCHASER:**

If a Participant or any person (including licensed or certified appraisers or Auctioneers) affiliated with a Participant proposes to acquire an interest in a Listed Property which has been Filed with the Service by another Participant, such proposal shall be disclosed in writing to the Listing Broker by the Participant proposing to acquire the interest not later than the time an offer to purchase the Listed Property is submitted to the Listing Broker by a prospective purchaser.

**SECTION 5.3 DUAL OR VARIABLE RATE COMMISSION ARRANGEMENTS:**

A Listing Broker, by a key, code or symbol as required by the Service, shall disclose the existence of a dual or variable rate commission arrangement (that is, one in which the Seller/landlord agrees to pay a specified commission if the Listed Property is sold/leased/rented by the Listing Broker without assistance and a different commission if the sale/lease/rental results through the efforts of a Cooperating Broker; or one in which the Seller/landlord agrees to pay a specified commission if the Listed Property is sold/leased/rented by the Listing Broker either with or without the assistance of a Cooperating Broker and a different commission if the sale/lease/rental results through the efforts of the Seller/landlord). The Listing Broker, in response to inquiries from potential Cooperating Brokers, shall disclose the differential in commission that would result from either a cooperative transaction or, alternatively, a sale/lease/rental that results through the efforts of the Seller/landlord.

**ARTICLE VI - SERVICE FEES, CHARGES AND FINES****SECTION 6.0 SERVICE FEES, CHARGES AND FINES:**

The fees, charges and fines related to the operation of the Service are set forth in Attachment A to these Rules and Regulations. The Board of

Directors of the Service from time to time may establish new fees, charges and fines and may change the nature and amount of existing fees, charges and fines.

The Service may charge a participation fee. Except as hereafter specifically provided in this Section 6.0, the participation fee will be calculated on the basis of the number of licensed real estate brokers and salespersons and licensed or certified appraisers who (1) are employed by or affiliated as independent contractors with, or who are otherwise licensed with, each Participant and (2) have access to or use of the Service. Notwithstanding the foregoing, in the case of a Participant with no Office in the Service's Primary Coverage Area, the Service may charge that Participant a participation fee that will be calculated on the basis of only that number of the Participant's affiliated licensed real estate brokers and salespersons and licensed or certified appraisers who (A) meet the standards of clause (1) above, and (B) either (i) are licensed or certified in any one or more states included in whole or in part within the Primary Coverage Area or (ii) are not so licensed or certified but nonetheless agree to be included in the calculation of the Service's participation fee. No broker, salesperson or appraiser who is not included in the calculation of a Participant's participation fee, as provided in the preceding sentence, and with respect to whom such participation fee has not in fact been paid, may File a Listing with the Service, be a Cooperating Broker in respect of any Listing, have access to any Service Compilation or otherwise make use of any service or benefit of the Service made available to a Participant or Subscriber. If any such broker, salesperson or appraiser makes use, or attempts to make use, of any service or benefit of the Service, the Participant with which such broker, salesperson or appraiser is affiliated shall be subject to the sanctions specified in Attachment A hereto.

A Participant must notify the Service in writing of any roster change (that is, any change in the number of licensed or certified individuals affiliated with the Participant) immediately upon the occurrence of such change, but in any event not later than thirty (30) days after the date of the change.

The Service will bill participation fees and access fees quarterly in advance. The Service will bill all other fees, charges and unpaid fines monthly in arrears. Payment in full of all billed fees, charges and fined is due within thirty (30) days from the date



of the invoice. Thereafter, any unpaid balance will be subject to interest at the rate of one and one-half (1.5%) percent per month until paid. If payment in full of any fees, charges or fines is not made when due, services to the delinquent Participant and/or Subscriber and/or to the Office or Offices out of which the delinquent Participant and/or Subscriber works may be suspended.

Invoices for all fees, charges and fines will be sent to all Subscribers and to all Individual Participants. Although a Subscriber has the responsibility for payment of all applicable fees, charges and fines invoiced to the Subscriber, the Participant with which a Subscriber is affiliated has the ultimate liability and responsibility for timely payment of all fees, charges and fines of each of the Subscribers affiliated with it. Therefore, if payment is not made by or on behalf of any one or more Subscribers affiliated with a Participant when that payment is due, the Service may impose sanctions under these Rules and Regulations (including without limitation the suspension of all services) on the Participant, on all of the Subscribers affiliated with the Participant and/or on the Office out of which the delinquent Subscriber works.

In order to reactivate services following a suspension by the Service, a suspended Participant must pay, or cause to be paid, prior to reactivation, (1) all outstanding unpaid obligations to the Service and (2) a reinstatement fee. The amount of the reinstatement fee shall be as set forth from time to time in Attachment A hereto.

No application fee, listing fee, participation fee or other charges or fines required to be paid by a Participant or Subscriber shall be refunded or waived, except on approval of the Service, which approval the Service may grant or withhold in its absolute discretion.

## **ARTICLE VII - COMPLIANCE WITH RULES AND REGULATIONS**

**SECTION 7.0 APPLICABILITY OF RULES AND REGULATIONS TO PARTICIPANTS AND/OR SUBSCRIBERS:** Participants, Subscribers and others authorized to have access to the Service Compilation are subject to these Rules and Regulations and may be disciplined for violations thereof. Further, failure of any Subscriber or other user to abide by the Rules and Regulations or policies

of the Service, and/or any sanctions imposed for violations thereof, may subject the Participant with which the Subscriber or user is affiliated to the same or other discipline. A Participant has the ultimate responsibility and accountability for all Subscribers or other users affiliated with the Participant. By making payment of applicable service fees to the Service, Participants and their affiliated Subscribers reconfirm their agreement to comply with these Rules and Regulations and with the policies of the Service in effect from time to time.

**SECTION 7.1 VIOLATIONS OF RULES AND REGULATIONS:** The Chief Executive Officer of the Service (the "CEO"), or the designee of the CEO, shall give consideration to all written complaints received from Participants or Subscribers regarding violations of these Rules and Regulations.

Violations of these Rules and Regulations or of any policies of the Service may subject the violating Subscriber and/or the Participant with which the Subscriber is affiliated to sanctions either as specified in Section 6 above or in Attachment A hereto or as otherwise determined by the Service. Such sanctions may include, but shall not be limited to, fines and suspensions of service. If, as a result of a violation, a Participant and/or a Subscriber may be made subject to more than one sanction, the Service, in its discretion, may impose any one or more, or all or none, of such applicable sanctions. When the Service imposes a sanction, it will notify the violating Subscriber and will also notify the Participant with which the violating Subscriber is affiliated. Failure of the Service to deliver a notice shall not affect the validity or enforceability of the sanction.

A Participant, on the Participant's behalf, or on behalf of Subscribers who derive their right to use the Service through the Participant, shall have a right to appeal a sanction involving the suspension of service, except that there shall be no such right to appeal if the suspension has been imposed for the non-payment or the late payment of fees or charges imposed pursuant to Article VI of these Rules and Regulations. An appeal, if permitted hereunder, must be made in a writing delivered to the Service within twenty-one (21) days of the imposition of the sanction or sanctions being appealed. The appeal shall be referred by the Service, within fifteen (15) business days of its receipt, to the Board of Directors of the Service or to such committee or other designee of the Board of Directors as the CEO, the Board of

Directors or the Executive Committee of the Board of Directors from time to time may specify as a tribunal for the determination of appeals (each an "Appeals Tribunal"). An Appeals Tribunal shall consist of no fewer than three individuals selected by the Service. At the time an appeal is referred to an Appeals Tribunal, the Service shall give simultaneous written notice thereof to the appealing party, and the appeal shall be heard before the Appeals Tribunal within fifteen (15) business days of its referral. If an appeal is timely and properly Filed following the imposition of a suspension, the suspension itself shall be suspended from the time the appeal is Filed until the completion of the appeals process and the issuance of the decision by the Appeals Tribunal. The Appeals Tribunal shall operate under such procedures as it shall promulgate to both the appealing party and the Service, it being the intention of these Rules and Regulations that the appeals process be informal, and not subject to formal rules of evidence, but that the process on the whole be fair to each of the participating parties. Parties to an appeal process shall appear before an Appeals Tribunal without the participation of counsel. Decisions of an Appeals Tribunal shall be final and binding on the parties.

In addition to satisfying any other requirements imposed on a suspended Participant and/or Subscriber as a condition of reinstatement with the Service, a suspended Participant and/or Subscriber wishing to be reinstated with the Service must pay all outstanding fees, charges and fines, plus a reinstatement fee, prior to reinstatement. The amount of the reinstatement fee shall be as set forth from time to time in Attachment A hereto.

## **SECTION 7.2 DISPUTES BETWEEN PARTICIPANTS AND/OR SUBSCRIBERS:**

If a dispute arises between or among any two or more Participants, Subscribers to and/or users of the goods and services provided by the Service, and if that dispute arises out of the use of those goods or services, then, unless the dispute relates solely to a violation of these Rules and Regulations or of any policies of the Service which could subject the disputing parties to a sanction by the Service hereunder, the disputing parties agree that (a) they shall diligently and in good faith seek to resolve the dispute amicably, but (b) if they are unable to do so within thirty (30) days after the first notice of dispute is given by one disputant to the other disputing party or parties, then the dispute shall be submitted for resolution as provided in the next three sentences, such submission to be made promptly at the end of

such thirty-day period, but in no event later than the latest date by which the dispute may be properly submitted for resolution under the rules, regulations or other requirements of the tribunal or, if applicable, the court before which the dispute is to be heard as hereinafter provided. If each of the disputing parties is a "REALTOR®" (as defined from time to time by the National Association of REALTORS®), and if mandated by the rules, regulations or other requirements of the National Association of REALTORS®, or any affiliate thereof, to which the disputing parties are subject, the parties shall submit their dispute for resolution by binding arbitration to a tribunal that is maintained by any board or association of REALTORS® (a "REALTOR® Tribunal") and that has been chosen or otherwise determined in accordance with such rules, regulations or other requirements. If one or more of the disputing parties is a REALTOR® and one or more is not, the parties shall submit their dispute for resolution by binding arbitration either (i) to a REALTOR® Tribunal (which may include, without limitation, a REALTOR® Tribunal maintained by the Massachusetts Association of REALTORS®) (A) that is selected by the REALTOR® or REALTORS® that are party to the dispute and (B) that is willing to conduct the arbitration or (ii) if agreed to by all the disputing parties, to a tribunal of any kind acceptable to the disputing parties. If none of the disputing parties is a REALTOR®, the parties shall submit their dispute for resolution either (I) to a court with which one or more of the disputing parties has been the first to file a complaint relating to the dispute, provided that such court has jurisdiction over all of the disputing parties, or (II) if a complaint has not been filed with a court pursuant to clause (I), and if all the disputing parties agree, by binding arbitration to a tribunal of any kind acceptable to the disputing parties. The Service shall have no responsibility of any kind with respect to, nor shall the Service have, and none of the disputing parties shall assert or have the right to assert against the Service, any liability related to or arising out of the dispute or the mediation, arbitration or other resolution of the dispute. Notwithstanding the continuation of any such dispute, the parties to the dispute shall remain obligated to comply with these Rules and Regulations, with the policies of the Service and with all other conditions to their continued use of the goods and services provided by the Service. Throughout the continuation of any dispute, the parties to the dispute shall keep the Service informed in writing of the status of the dispute and of the terms and conditions of its settlement.

If the Service at any time receives notice that two or more Participants or Subscribers claim to have entered into (or to have the right to enter into) separate Listing Agreements with a Seller for the same property, the Service will so advise each of the named Participants or Subscribers, and the matter shall be treated as a dispute between such Participants and/or Subscribers to be resolved in the manner provided in the preceding paragraph of this Section 7.2. The Service shall have no liability or responsibility of any kind with respect to the dispute, as provided in the preceding paragraph of this Section 7.2. Notwithstanding the efforts of the parties to resolve the dispute, if the dispute has not been resolved within ten (10) days after the Service has advised the parties of the conflicting Listing Agreements, the Service, in its sole and absolute discretion, and in order to preserve the integrity of the data and information in the Service Compilation, may remove from the Service Compilation the Listings of the property which is in dispute. Simultaneously with such removal, the Service shall give notice of the removal to each of the disputing parties. The Service shall be under no obligation to reinstate the removed Listing to the Service Compilation unless and until each of the disputing parties has Filed a notice with the Service acknowledging that the dispute has been resolved and identifying the single Participant and/or Subscriber under whose name the property is to be entered into the Service Compilation as the Listing Broker.

## **ARTICLE VIII - CONFIDENTIALITY OF SERVICE INFORMATION**

**SECTION 8.0 CONFIDENTIALITY OF SERVICE INFORMATION:** Any and all data and information contained in any Service Compilation shall be the proprietary data and information of the Service. Such data and information are provided by the Service for the use of Participants and their affiliated Subscribers solely in their capacities as such, and Participants and their affiliated Subscribers may use such data and information solely in connection with those activities in which they are properly engaged (i) under a valid real estate broker's license or real estate appraiser's license or certification), in either case issued by one or more of the New England States, and (ii) in the case of an Auctioneer, under a valid Auctioneer's license, if required and issued by the relevant jurisdictional authority or authorities of or within one or more of the New England States. Use of the Service Compilation, including without limitation use of the

email and other functionalities of any electronic Service Compilation, is limited strictly to activities by and communications from, to or among Participants and/or Subscribers, in each case in their capacities as such, for the sole purpose of effecting or seeking to effect the sale, lease, rental or appraisal of specific Listed Properties. Without limiting the foregoing, no Participant or Subscriber shall use the email functionality of any electronic Service Compilation (including without limitation the Service Compilation commonly known as "Pinergy" or previously known as "H3MLS") except for the sole purpose of seeking to effect the sale, lease, rental or appraisal of the specific Listed Property or Properties to which its email communication relates. No communication using the email or any other functionality of any electronic Service Compilation shall contain language or any other means of conveying a message, in the communication text, in the signature block or elsewhere, that directly or indirectly, seeks to persuade the intended recipient of the communication, or any other person, to terminate, discontinue or otherwise leave an existing employment or agency relationship with a Participant. The Service Compilation shall be confidential and for the exclusive use of the Service in the dissemination of information to Participants and Subscribers and for such other uses as may be determined from time to time by the Service. No Participant or Subscriber shall cause or permit any data or information contained in any Service Compilation to be transmitted, retransmitted or otherwise provided or made available in any manner to any individual or entity, other than to an individual or entity who or which is a Participant or Subscriber and other than as provided in Article X of these Rules and Regulations.

**SECTION 8.1 SERVICE NOT RESPONSIBLE FOR ACCURACY OF INFORMATION; INDEMNITY:** The data and information contained in any Service Compilation are set forth verbatim therein, without change by the Service, as Filed with the Service by the Participants and/or their affiliated Subscribers. Any Images contained in any Service Compilation are likewise set forth therein, without change by the Service, as Filed with the Service by the Participants and/or their affiliated Subscribers. The Service does not, and has no obligation to, verify the completeness or accuracy of any data or information Filed with it, or the accuracy of or the rights to ownership or use of any Image Filed with it, and the Service disclaims any responsibility or liability for the accuracy or completeness of any of such data or information or the accuracy of or rights

to ownership or use of any such Image. Each Participant and/or its affiliated Subscribers, by using the services of the Service, acknowledges and agrees to the foregoing disclaimers and agrees to indemnify the Service and to hold the Service harmless from and against any liability, damage, cost and expense arising from any inaccuracy or inadequacy of any of the data, information or Images Filed by or on behalf of that Participant and/or its affiliated Subscribers or arising from or based on the use or publication of such data, information or Images by the Service.

**SECTION 8.2 ACCESS TO COMPARABLE AND STATISTICAL INFORMATION:** Upon written request, the Service, in its discretion, may grant Comparable Access (as defined in Section 13.0 below) to (i) any individual or entity that is actively engaged in real estate brokerage, management, mortgage financing, appraising, land development or building activities, whether or not that individual or entity Participates fully in the Service within the meaning of these Rules and Regulations and (ii) any real estate assessor for a city or town in The Commonwealth of Massachusetts, in the assessor's capacity as such. The Service may grant Comparable Access on such terms and conditions, including the payment of fees and charges, and with the imposition of such fines, as may be set forth from time to time in Attachment A of these Rules and Regulations. The terms and conditions on which the Service may grant Comparable Access need not be identical for all classes or groups eligible to request such grant. The data and information made available under this Section 8.2 are for the exclusive use of (A) the qualifying individuals or entities identified in clause (i) above and for the individuals affiliated with any such qualifying entity who are also actively engaged in one or more branches of the real estate business identified in clause (i) and (B) the qualifying real estate assessors identified in clause (ii) above, in their capacities as such, and none of such data or information may be transmitted, retransmitted or provided or made available in any manner to any other individual or entity.

## **ARTICLE IX - COPYRIGHTS; OWNERSHIP OF MLS PUBLICATIONS AND THE SERVICE COMPILATION**

**SECTION 9.0 GRANT OF AUTHORITY:** By Filing any property Listing data or information with the Service, or by Filing an Image with the Service, a Participant (a) grants to the Service the perpetual, non-exclusive licenses necessary for storage, reproduction, compiling and distribution of Listings and Listing data, information and Images to the extent necessary to fulfill the Service's purposes as a multiple listing service, and (b) represents and warrants that, without the necessity of any further consent or approval, the Participant (i) as a Listing Broker for a Listing, owns or has the authority to license all of the Listing data and information and all Images concerning that Listing to be published in the Service Compilation and any manifestation thereof, (ii) has the rights in and to the submitted or filed Listing data, information and Images necessary to grant to the Service the rights granted to the Service under this Section 9.0, and (iii) has been authorized to grant, and by making the Filing does grant, authority to the Service to include both the property Listing data and information and all such Images in the Service Compilation and any manifestation thereof and to otherwise use such data, information and Images for such other purposes as the Service from time to time shall determine. Copyright to the Service Compilation and any manifestation thereof (including without limitation any MLS Publication), irrespective of medium, form or format, shall be vested and remain in the Service.

**SECTION 9.1 COPYRIGHT:** All right, title and interest in and to each copy of every MLS Publication and any other manifestation of any Service Compilation, and in and to the copyrights therein, shall at all times be and remain vested in the Service.

**SECTION 9.2 USE OF MLS PUBLICATIONS:** Each Participant shall be entitled to have the use of a number of copies of each MLS Publication sufficient to provide the Participant and each Subscriber affiliated with it with one copy of such MLS Publication. Each Participant shall pay a user fee for each such copy in an amount determined from time to time by the Service.

In exchange for payment of the user fee, a Participant shall acquire only the right to use the MLS Publication in accordance with these Rules and Regulations and shall not acquire or have any ownership or other rights therein or thereto.

**SECTION 9.3 USE OF LOGOS AND OTHER MARKS:** The Marks are reserved by the Service exclusively for its own use to identify and promote the products and services of the Service. No Participant or Subscriber may display, publish or in any way use any of the Marks for the identification or promotion of any product or service of that Participant or Subscriber, of any other Participant or Subscriber or of any other individual or entity, other than the Service itself.

## **ARTICLE X - USE OF MLS PUBLICATIONS AND THE SERVICE COMPILATION**

**SECTION 10.0 DISTRIBUTION:** Each Participant and each Subscriber affiliated with it shall at all times be responsible for the proper use of each copy of any MLS Publication or other manifestation of the Service Compilation made available by the Service for the use of the Participant and the Subscribers affiliated with it. A Participant shall not cause or permit the distribution of any copies of an MLS Publication or any other manifestation of the Service Compilation to any individual or entity other than the Subscribers affiliated with the Participant and other than as specifically provided elsewhere in this Article X. Consistent with the provisions of the third and fourth sentences of Section 8.0 of these Rules and Regulations, use by a Participant or Subscriber of data, information or Images contained in any Service Compilation is strictly limited to those activities authorized under a Participant's or Subscriber's licensure or certification, and any other uses are prohibited. Nothing contained in this Section 10.0 or elsewhere in these Rules and Regulations is intended to convey, nor shall anything herein or therein be deemed to convey, to any individual or entity a right to Participation in the Service or any right of access to any data, information or Image contained in any Service Compilation where conveyance of such rights or access to such data, information or Image is prohibited or not permitted by applicable law.

**SECTION 10.1 DISPLAY:** A Participant and the Subscribers affiliated with it shall be permitted to display MLS Publications and other manifestations of the Service Compilation to a bona fide prospective purchaser, lessee or tenant of a Listed Property, but only in the ordinary course of the business of the Participant and its affiliated Subscribers in their efforts to locate ready, willing and able buyers, lessees or tenants for the Listed Property.

**SECTION 10.2 REPRODUCTION:** No Participant or Subscriber may reproduce, by any mechanical, electronic or other means, any MLS Publication or any other manifestation of the Service Compilation, or any portion thereof, except in the following limited circumstances:

A Participant or any of its affiliated Subscribers may reproduce from an MLS Publication or from any other manifestation of the Service Compilation, and may distribute by any means to a prospective purchaser, lessee or tenant, a reasonable\* number of single copies of property Listing data, information and Images, contained in the MLS Publication (or in such other manifestation of the Service Compilation) which relate to those Listed Properties in which the prospective purchaser, lessee or tenant has or may have, in the judgment of the Participant or any of its affiliated Subscribers, a bona fide interest.

Nothing contained in this Section 10.2 shall be construed to preclude a Participant from utilizing, displaying, distributing or reproducing property listing sheets or other compilations of data, information and Images pertaining exclusively to those Listed Properties as to which that Participant is the Listing Broker.

Any data, information or Image contained in the Service Compilation, whether in written or printed form, or whether provided electronically or in any other form or format, is for the exclusive use of the Participant and those Subscribers affiliated with the Participant who are authorized by the Service to have access to such data, information and Images. Such data, information and Images may not be transmitted, retransmitted or provided, in whole or in part, in any manner, to any individual or entity who or which is not a Participant, a Subscriber or a person otherwise specifically authorized to have access to the data, information or Images as and to the extent provided in this Article X.

None of the foregoing shall be construed to prevent any individual legitimately in possession of either “active” Listing information, “comparable” or “sold” information or statistical information from utilizing such information to support an estimate of value on a particular Listed property for a particular client. However, only such information as the Service shall have specifically deemed to be nonconfidential and necessary to support the estimate of value on that Listed property may be reproduced and attached to a report to the client as supporting documentation. Any other use of such information is unauthorized and prohibited.

\*For purposes of determining what is a “reasonable” number of single copies of property Listing data, information and Images that a Participant and its affiliated Subscribers may properly reproduce and distribute to prospective purchasers or lessees of a Listed Property, the following considerations shall apply. It is intended that the Participant be permitted to provide prospective purchasers or lessees with Listing data, information and Images relating to Listed Properties which, in the good faith reasonable judgment of the Participant or its affiliated Subscribers, the prospective purchaser or lessee has a bona fide interest in purchasing or leasing or in which the Participant in good faith is seeking to promote interest. The term “reasonable” should therefore be construed to permit only limited reproduction and distribution of property Listing data, information and Images intended to facilitate the bona fide prospective purchaser’s, lessee’s or tenant’s decision-making process in the consideration of a purchase or lease. Factors which shall be considered in deciding whether the reproductions and distributions made are consistent with this intent, and thus “reasonable” in number, shall include, but shall not be limited to, the total number of Listings in the Service Compilation, how closely the types of properties contained in such Listings accord with the prospective purchaser’s, lessee’s or tenant’s expressed desires and ability to purchase, lease or rent, whether the reproductions and distributions were made on a selective basis, and whether the types of properties contained in the property Listing data, information and Images provided are consistent with a normal selection of properties which would be shown to such a prospective purchaser, lessee or tenant.

#### **SECTION 10.3      DISPLAY OF MLS COMPILATIONS ON PARTICIPANT AND**

**SUBSCRIBER WEBSITES:** (a) Subject to its compliance with all of the limitations and conditions set forth in Subsection 10.3(b), Subsection 10.3(c) and Subsection 10.3(d) below, and subject further to its compliance with the requirements of applicable law, each Participant, and each Subscriber affiliated with a Participant, may display on its own website (whether such website constitutes a Public Access Website or a Virtual Private Network) the Listing data, information and Images from time to time included in the Service Compilation. Such Listing data, information and Images either may be downloaded to the permitted website or it may be framed on the permitted website from any website which the Service from time to time may maintain.

(b) Notwithstanding anything contained in Subsection 10.3(a) above, any Participant, by delivering a signed written notice to the Service, may prohibit the display, on the Public Access Websites of all other Participants and Subscribers, of “active” Listing data, information and Images for Listings for which the notifying Participant, or any of its affiliated Subscribers, is the Listing Broker. The notice of prohibition shall specify that it is either a blanket prohibition (in which case none of the “active” Listing data, information and Images of the Participant and/or of those of its affiliated Subscribers identified in the notice shall appear on the Public Access Websites of any of the other Participants or Subscribers) or a prohibition relating only to the “active” Listings specified in the notice (in which case only the data, information and Images relating to those specified “active” Listings shall not appear on the Public Access Websites of any of the other Participants or Subscribers). Unless and until a Participant delivers a notice of prohibition as described above in this Subsection 10.3(b), that Participant will be presumed to have consented to the display rights authorized pursuant to Subsection 10.3(a). As soon as practicable after receipt of a notice of prohibition from a Participant, the Service, by log-on message displayed on the System, shall (i) publish the contents of the notice and (ii) request that the prohibited Listing data, information and Images specified in the notice be removed from the Public Access Websites of the other Participants and their affiliated Subscribers. Notwithstanding its receipt of a notice of prohibition from a Participant, the Service shall have no liability to any Participant, or to any affiliated Subscriber of a Participant, arising out of or resulting from the continued display of prohibited Listing data, information or Images on the Public Access Website of another Participant or of any of its affiliated Subscribers. If a Participant has delivered a

blanket notice of prohibition as provided herein, then, unless and until the notice of prohibition has been withdrawn, that Participant, and those of its affiliated Subscribers identified in the notice of prohibition, may not display on its or their own Public Access Websites any of the “active” Listing data, information and Images of any of the other Participants or their affiliated Subscribers.

(c) Consistent with the provisions of Subsection 10.3(a) above, each Participant, and each Subscriber affiliated with a Participant, may display on its own Public Access Website “active” and “sold” Listing data, information and Images from time to time included in the Service Compilation, and that display is subject to the satisfaction of all of the following conditions:

(i) A Public Access Website display may include only those data fields (which, for purposes of this clause (i), shall include Images), which the Service from time to time determines to be acceptable, such acceptable data fields, as the same may be amended from time to time, to be attached to these Rules and Regulations as Attachment C.

(ii) Any Listing or Listing data, information or Images displayed on a Public Access Website must identify the correct name of both the firm and the individual agent which constitute the Listing Broker for that Listing.

(iii) A Public Access Website display may not modify in any way any of the Listing data, information or Images as they originally appeared in the Service Compilation.

(iv) Each screen on a Public Access Website which contains Listing data and information or any Image of a Listed Property, and any distribution of Listing data, information or Images derived from a Public Access Website, shall include, in a prominent location, the following, or a substantially similar, notice:

“The property listing data and information, or the Images, set forth herein were provided to MLS Property Information Network, Inc. from third party sources, including sellers, lessors, landlords and public records, and were compiled by MLS Property Information Network, Inc. The property listing data and information, and the Images, are for the personal, non-commercial use of consumers having a good faith interest in purchasing, leasing or renting listed properties of the type displayed to them and may not be used for any purpose other than to identify prospective properties which such consumers may have a

good faith interest in purchasing, leasing or renting. MLS Property Information Network, Inc. and its subscribers disclaim any and all representations and warranties as to the accuracy of the property listing data and information, or as to the accuracy of any of the Images, set forth herein.”

(v) All of the Listing data and information displayed on a Public Access Website must be updated at least once every three (3) days.

(vi) Listing data, information and Images Filed with the Service may be displayed only on the Public Access Websites of those Offices of a Participant (or their Subscribers, with their Participant’s permission) with which there are affiliated Subscribers.

(vii) The sole use of the Listing data, information and Images shall be to support the proper activities of the Participant or Subscriber, under its licensure, in seeking to effect the purchase, sale, leasing or rental of Listed Properties.

(viii) The Public Access Website shall display, in a prominent location (I) the name of the Participant Firm that maintains the Public Access Website, or, if the Public Access Website is maintained by a Subscriber, the name of the Participant Firm with which the Subscriber is affiliated, (II) the office address of the named Participant, (III) the telephone number of the Participant or the Subscriber that maintains the Public Access Website and (IV) a listing of the cities and towns that constitute the market area serviced by the Participant or Subscriber that maintains the Public Access Website.

(ix) A Participant or Subscriber may display on its Public Access Website Listing data, information and Images of an “active” Listed Property only if that Participant or Subscriber in good faith holds itself out to be, and in fact is, ready, willing and able to show the “active” Listed Property to which the Listing data, information and Images relate to prospective purchasers, lessees and tenants.

(x) The Public Access Website shall display, in a prominent location, the privacy policy of the Participant or Subscriber that maintains the Public Access Website, stating in that policy the use that the Participant or Subscriber may make of the information provided to it by visitors to the Public Access Website and whether, and to whom and under what conditions, the Participant or Subscriber may make that information available to third parties.”

(d) If, consistent with the provisions of Subsection 10.3(a) above, a Virtual Private Network

is used by a Participant and/or any of its affiliated Subscribers as a means or medium to display Listing data, information and/or Images to bona fide prospective purchasers, lessees or tenants of a Listed Property, that display is subject to satisfaction of all of the following conditions:

(i) The Participant or Subscriber may display Listing data, information and Images on its Virtual Private Network only for “active”, “under agreement” and “sold” Listed Properties and may display the data, information and Images only to a bona fide prospective purchaser, lessee or tenant of a Listed Property, in the ordinary course of the Participant’s or Subscriber’s business in their efforts to locate ready, willing and able buyers, lessees or tenants for the Listed Property.

(ii) The sole use of the Listing data, information and Images shall be to support the proper activities of the Participant or Subscriber, under its licensure, in seeking to effect the purchase, sale, leasing or rental of Listed Properties.

(iii) The Participant or Subscriber may display to a bona fide prospective purchaser, lessee or tenant, on its Virtual Private Network, Listing data, information and Images concerning only a reasonable number of Listed Properties (using the standards set forth in Section 10.2 for determining what is a “reasonable” number).

(iv) The Virtual Private Network shall display, in a prominent location (I) the name of the Participant Firm that maintains the Virtual Private Network, or, if the Virtual Private Network is maintained by a Subscriber, the name of the Participant Firm with which the Subscriber is affiliated, (II) the office address of the named Participant, (III) the telephone number of the Participant or the Subscriber that maintains the Virtual Private Network and (IV) a listing of the cities and towns that constitute the market area serviced by the Participant or Subscriber that maintains the Virtual Private Network.

(v) A Participant or Subscriber may display on its Virtual Private Network Listing data, information and Images for an “active” Listed Property only if that Participant or Subscriber in good faith holds itself out to be, and in fact is, ready, willing and able to show the Listed Property to which the Listing data, information and Images relate to prospective purchasers, lessees and tenants.

(vi) The Virtual Private Network shall display, in a prominent location, the privacy policy of the Participant or Subscriber that maintains the Virtual Private Network, stating in that policy the use that the

Participant or Subscriber may make of the information provided to it by visitors to the Virtual Private Network and whether, and to whom and under what conditions, the Participant or Subscriber may make that information available to third parties.

#### **SECTION 10.4 NO LIMITATION ON DELIVERY MEANS; LIMITATION ON USE:**

Nothing contained in this Article X is intended to define, limit or restrict the means or medium by which data, information and Images from any Service Compilation may be distributed, displayed, reproduced or used, provided only that such distribution, display, reproduction and use otherwise comply with the terms and conditions of these Rules and Regulations. Notwithstanding anything otherwise set forth in this Article X or in Article XI below, nothing contained in these Rules and Regulations is intended to grant, nor shall it be deemed to grant, to any Participant, Subscriber or other person any right to distribute, display or reproduce any Service Compilation in its entirety or in substantial part. All right, title and interest in and to any Service Compilation shall belong exclusively to the Service, as provided in Article IX above, and the rights specifically granted in these Rules and Regulations to distribute, display, reproduce and use the data, information and Images contained in any Service Compilation shall be construed strictly in accordance with their terms.

### **ARTICLE XI - USE OF DATA AND INFORMATION IN ADVERTISING**

#### **SECTION 11.0 USE OF DATA AND INFORMATION IN ADVERTISING:**

For purposes of public mass-media advertising or other public representations, the Service itself and any Participant may use data or information taken from the “statistical” report or from any “sold” or “comparable” report contained in any Service Compilation as the basis for aggregated demonstrations of market share or as comparisons with other firms. Subject only to the rights granted to Listing Brokers and Cooperating Brokers in the last sentence of Section 2.8, the foregoing authority does not convey the right to include in any such advertising or representation information about specific Listed Properties that were Filed by other Participants or Subscribers or that were sold by other Participants or Subscribers, in either case as either Listing Broker or Cooperating Broker.



Notwithstanding the foregoing, any advertising or other public representation permitted pursuant to the preceding sentence, irrespective of form, format or medium, shall be accurate and not misleading, shall clearly state the period of time covered by such advertising or other representation and shall include the following, or a substantially similar, notice:

“Based on information provided to and compiled by MLS Property Information Network, Inc. covering the period [Insert Initial Date] through [Insert Final Date].”

In addition, if the permitted advertising or other public representation contains a claim to market share based on any data or information contained in any Service Compilation, the advertising or other public representation (a) shall clearly identify the geographical area or statistical category to which the market share relates and (b) shall clearly state whether the market share is presented on a company-wide basis, on an office-to-office basis or on some other clearly articulated basis.

The Service shall have no liability or responsibility for the truth or accuracy of any data or information contained in any advertising or other public representation made or sponsored by a Participant and/or by any of its affiliated Subscribers, and each of such Participant and its affiliated Subscribers hereby agrees to indemnify the Service and to hold the Service harmless from and against any liability, damage, cost and expense arising from or out of any such advertising or other public representation.

## **ARTICLE XII - RULES AND REGULATIONS**

**SECTION 12.0 GENERAL:** These Rules and Regulation, as they may be amended from time to time, shall be binding upon each Participant, Subscriber and other user of any of the goods and services provided by the Service, and each such Participant, Subscriber and other user shall be deemed to have consented and agreed to be bound hereby by its use of such goods and/or services.

**SECTION 12.1 CHANGES IN RULES AND REGULATIONS:** The Service shall have the right

to amend these Rules and Regulations (including any Attachments hereto) from time to time. Amendments to these Rules and Regulations (and any Attachments hereto) may be made (a) by the Board of Directors of the Service or (b) except for amendments establishing or amending any dues, fees, fines or other charges imposed or proposed to be imposed under these Rules and Regulations, including without limitation amendments to Attachment A hereto, by the Executive Committee of the Board of Directors of the Service.

## **ARTICLE XIII - DEFINITIONS**

### **SECTION 13.0 DEFINITIONS:**

**Active Status Request Form** – Shall mean the form required to be signed by a Seller and the Listing Broker when the Seller requests that an identified Listing remain “Active” (“ACT”) and available for additional offers, notwithstanding that the Listing, absent the signing of the Active Status Request Form, would be a Listing that is “Under Agreement” and therefore deemed to be “off market”.

**Auction** – Shall mean the method of offer and sale of a Listed Property in a public forum by means of a process or procedure of open and competitive bidding that is included within the definition of an “auction” or a “public auction” by the statutes and/or regulations of the New England State, and/or by the relevant jurisdiction or jurisdictions within that State, in which the Listed Property is located.

**Auctioneer** – Shall mean both the Listing Broker for an Auction Listing and any individual Subscriber affiliated with that Listing Broker who, as agent of the Listing Broker, will direct, conduct or be responsible for the Auction of that Auction Listing. Each such Listing Broker and affiliated Subscriber (i) must also hold a current, valid real estate broker’s or agent’s license, as applicable, issued by the New England State in which the Auction Listing is located and (ii) if, but only if, required by the statutes, ordinances and/or regulations, or by the decisional law, of the New England State, and/or the relevant jurisdiction or jurisdictions within that State, in which the Auction Listing is located, must also hold a current, valid license or other appropriate certification as an auctioneer of real estate..

**Auction Listing** – Shall mean a Listing or Listed Property with respect to which the Listing Broker, pursuant to the Listing Agreement, will offer the Listed Property for sale in an Auction. For a property to be Listed as an Auction Listing, the property must be a non-distressed property – that is, the proposed sale of the property may not be a bankruptcy sale, a foreclosure sale or any other sale that is ordered or compelled either by a court or by any other third party that is not the title holder of the Listed Property.

**Bilateral Agreement** – Shall mean a purchase and sale agreement executed and delivered by the Seller and the prospective purchaser of a Listed Property or, if earlier, a written bilateral offer to purchase a Listed Property, or other equivalent bilateral agreement, executed and delivered by the Seller and a prospective purchaser.

**Co-Exclusive Listing** - Shall mean a Listing or Listed Property with respect to which one Listing Broker, pursuant to its Listing Agreement with the Seller, will offer the Listed Property for sale and another Listing Broker, pursuant to its Listing Agreement with the Seller, will simultaneously offer the same Listed Property for rental or lease. Before a property may be listed in the System or in any Service Compilation as a Co-Exclusive Listing, the Seller and both Listing Brokers must sign a Co-Exclusive Listing Form and the Co-Exclusive Listing Form must be Filed with the Service.

**Co-Exclusive Listing Form** - Shall mean the form required to be signed by a Seller and by each of the Seller's two Listing Brokers and Filed with the Service, when the Seller requests that an identified property be listed in the System and in each Service Compilation for sale by one Listing Broker and for rental or lease by the other Listing Broker.

**Comparable Access** - Shall mean the access to "comparable" information, "sold" information, and "statistical" reports (but not "active" listing data) that is in any Service Compilation and that the Service, upon request, may make available, in its discretion, to (i) any individual or entity that is actively engaged in real estate brokerage, management, mortgage financing, appraising, land development or building activities, whether or not that individual or entity is a Participant in the Service or is affiliated with a Participant in the Service, and (ii) any real estate assessor for a city or town in The Commonwealth of Massachusetts, in the assessor's capacity as such.

**Contingency Period** – Shall have the meaning given to it in subsection (c) of Section 2.6 of these Rules and Regulations.

**Contingent Status Request Form** – Shall mean the form required to be signed by a Seller and the Listing Broker when the Seller requests that an identified Listing have "Contingent" ("CTG") status and be available for back-up offers, notwithstanding that the Listing, absent the signing of the Contingent Status Request Form, would be a Listing that is "Under Agreement" ("UAG") and therefore be deemed to be "off market".

**Cooperating Broker** - Shall mean the licensed broker who or which is (i) a Participant and (ii) either a subagent of a Listing Broker, a buyer's agent or other appropriately licensed facilitator in the process of selling a Listed Property. Wherever the context so requires, reference in these Rules and Regulations to a Cooperating Broker shall include the Participant through which any individual Cooperating Broker is acting.

**Deadline For Filing** - Shall mean, with respect to a property, twenty-four (24) hours (excepting weekends, Service holidays and postal holidays) after the Listing Agreement or authorization for change with respect to the property (including, without limitation, price changes, changes in contingencies, pendings, cancellations, withdrawals, leases, rentals or any other change in the Listing, except only as provided in the next sentence) has been executed and delivered by all necessary signatories and has been received by the Listing Broker. Notwithstanding anything to the contrary set forth in the preceding sentence, (i) for a change to the status of "Under Agreement" ("UAG") (except for an automatic changes to that status under Section 2.6(c) above), the Deadline For Filing shall be twenty four (24) hours (excepting weekends, Service holidays and postal holidays) after the execution and delivery by all necessary signatories of a Bilateral Agreement (and the Seller has not been eligible to request, or, if eligible, has not requested, either that (A) the Listed Property remain "Active" and available for additional offers by the Listing Broker's Filing of a Property Data Form for the Listed Property clearly designating that the Seller and the Listing Broker have signed an Active Status Request Form or (B) the Listed Property have "Contingent" status and be available for back up offers by the Listing Broker's (I) Filing

of a Property Data Form for the Listed Property clearly designating that the Seller and the Listing Broker have signed a Contingent Status Request Form and (II) as applicable, having taken the action required by the Service to extend the then current Contingency Period prior to its expiration); and (ii) for a change to the status of “Sold”, the Deadline For Filing shall be twenty four (24) hours (excepting weekends, Service holidays and postal holidays) after the recording of the deed for the Listed Property at the appropriate Registry of Deeds. For purposes of these Rules and Regulations, “Service holidays” shall be those days, identified by the Service from time to time in the Service Compilation, that the Service observes as holidays and that are not postal holidays.

**Delayed Listing Form** - Shall mean the form required to be signed by a Seller and delivered to the Service by the Seller’s Listing Broker when the Seller requests that an identified property be listed in the Service, but only after the Deadline For Filing for that property and only on a fixed date specified in the Form or on a date still to be determined.

**Entry-Only Listing** – Shall mean a Listing or Listed Property with respect to which the Listing Broker, pursuant to the Listing Agreement, is not obligated to provide, and will not be providing, any service to the Seller other than the Filing of the Listing and the providing of Seller Contact information to Cooperating Brokers.

**Exclusive Agency** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a commission to the Listing Broker if the Listed Property is sold or is rented or leased through the efforts of any real estate broker. Under an Exclusive Agency Listing, if the Listed Property is sold or is rented or leased solely through the efforts of the Seller, the Seller is not obligated to pay a commission to the Listing Broker or any other broker.

**Exclusive Right To Rent** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a commission to the Listing Broker regardless of whether the Listed Property is rented or leased through the efforts of the Listing Broker, the Seller or anyone else.

**Exclusive Right To Sell** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a commission to the Listing Broker regardless of whether the Listed Property is sold through the efforts of the Listing Broker, the Seller or anyone else.

**Exclusive Right to Sell at Auction** – Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Property is offered for sale as an Auction Listing, the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a commission to the Listing Broker regardless of whether the Listed Property is sold through the efforts of the Listing Broker, the Seller or anyone else.

**Exclusive Right To Sell With Dual Rate Of Commission** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a specified commission if the Listed Property is sold by the Listing Broker without assistance and a different commission if the sale results through the efforts of a Cooperating Broker.

**Exclusive Right To Sell With Named Exclusion** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a commission to the Listing Broker regardless of whether the Listed Property is sold through the efforts of the Listing Broker, the Seller or anyone else, except that the Seller may name one or more individuals or entities as exemptions in the Listing Agreement and, if the Listed Property is sold to any exempted individual or entity, the Seller is not obligated to pay a commission to the Listing Broker (nor will the Service include the Listed Property as a “sold” in any manifestation of the Service Compilation).

**Exclusive Right to Sell With Variable Rate of Commission** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker becomes the sole agent of the Seller and the Seller agrees to pay a specified commission if the Listed 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 the Seller.

**Facilitation/Exclusive** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker does not represent either the Seller or the buyer or become the agent of either of them and the Seller agrees to pay a commission to the Listing Broker if the Listed Property is sold through the efforts of any real estate broker. Under a Facilitation/Exclusive Listing, if the Listed Property is sold solely through the efforts of the Seller, the Seller is not obligated to pay a commission to the Listing Broker or any other broker.

**Facilitation/Exclusive Right To Sell** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker does not represent either the Seller or the buyer or become the agent of either of them and the Seller agrees to pay a commission to the Listing Broker regardless of whether the Listed Property is sold through the efforts of the Listing Broker, the Seller or anyone else.

**Facilitation/Exclusive Right To Sell With Dual Rate Of Commission** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker does not represent either the Seller or the buyer or become the agent of either of them and the Seller agrees to pay a specified commission if the Listed Property is sold by the Listing Broker without assistance and a different commission if the sale results through the efforts of a Cooperating Broker.

**Facilitation/Exclusive Right To Sell With Named Exclusion** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker does not represent either the Seller or the buyer or become the agent of either of them and the Seller agrees to pay a commission to the Listing Broker regardless of whether the Listed Property is sold through the efforts of the Listing Broker, the Seller or anyone else, except that the Seller may name one or more individuals or entities as exemptions in the Listing Agreement and, if the Listed Property is sold to any exempted individual or entity, the Seller is not obligated to pay a commission to the Listing Broker (nor will the Service include the Listed Property as a "sold" in any manifestation of the Service Compilation).

**Facilitation/Exclusive Right to Sell With Variable Rate of Commission** - Shall mean, when applied to a Listing Agreement, a Listing Agreement under which the Listing Broker does not represent either the Seller or the buyer or become the agent of either of them and the Seller agrees to pay a specified commission if the Listed 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 the Seller.

**Filed (or variants on the term, as the context may require)** - Shall mean directly input into the System by a Participant or Subscriber by electronic or other means or actually received by the Service from a Participant or Subscriber in printed or written form at the principal place of business of the Service for inclusion in the Service Compilation. All original and executed documentation - including all Property Data Forms, Listing Agreements and status change forms of any kind - must be kept by the Listing Broker and shall not be Filed with the Service. As set forth in Section 1.15 above, a Participant or Subscriber must submit to the Service such written information and data concerning its Listings, and copies of Listing Agreements related thereto, as the Service may request from time to time. Failure to comply with any such request may subject the Participant and/or the Subscriber to a fine as indicated in Attachment A hereto.

**Images** - Any photograph, sketch or other image of or directly related to a Listed Property in any medium, but not including any virtual tour of a Listed Property.

**Kick-Out Clause** - Shall mean a contingency in a Bilateral Agreement between the Seller and the prospective purchaser of a Listed Property in which (i) the prospective purchaser is not required to purchase the Listed Property unless one or more events specified in the Bilateral Agreement have occurred (each, for purposes of this definition, a "Contingency") and none of those Contingencies is of the same type or kind as the contingencies identified by the Service in its then current Contingent Status Request Form; (ii) until each Contingency has been satisfied, the Seller is permitted to seek additional offers for the Listed Property from third parties; (iii) before accepting an offer from a third party, the Seller is required to notify the prospective purchaser of the offer; and (iv)

on receipt of notice of a third-party offer, the prospective purchaser either (A) may abandon each then remaining Contingency within the limited period of time during which abandonment is permitted under the Bilateral Agreement and proceed with the purchase of the Listed Property, in which case the Seller may not accept the additional third-party offer and must sell the Listed Property to the prospective purchaser, or, if the prospective purchaser does not timely abandon each then remaining Contingency as contemplated in clause (A), (B) will forfeit the right to purchase the Listed Property, in which case the Seller has no further obligation to sell the Listed Property to the prospective purchaser.

**Listing or Listed Property** - Shall mean a property as to which all necessary data, information and Images have been Filed with the Service.

**Listing Agreement** - Shall mean a signed written agreement between a Seller and a broker which constitutes either an Exclusive Agency, an Exclusive Right To Sell, an Exclusive Right to Sell at Auction, an Exclusive Right To Sell With Dual Rate of Commission, an Exclusive Right To Sell With Named Exclusion, an Exclusive Right To Sell With Variable Rate Of Commission, a Facilitation/Exclusive, a Facilitation/Exclusive Right To Sell Listing, a Facilitation/Exclusive Right To Sell With Dual Rate of Commission, a Facilitation/Exclusive Right To Sell With Named Exclusion, a Facilitation/Exclusive Right To Sell With Variable Rate Of Commission or an Exclusive Right to Rent. A Listing Agreement must include the Seller's written authorization to the Listing Broker to submit the Listing Agreement to the Service and to File the Listing at such time and upon satisfaction of such conditions as shall be specified therein.

**Listing Broker** - Shall mean the Individual Participant or Participant Firm who or which Files a Listing with the Service.

**Listing Status Codes** - Shall mean the shorthand codes used by the Service to indicate the status of a Listed Property. A table of Listing Status Codes currently used by the Service is attached to these Rules and Regulations as Attachment B hereto.

**Marks** - Shall mean any of the marks and logos owned by the Service that use, include or incorporate in any way any one or more of the terms "MLS PIN",

"H3MLS", "H3" or "Pinergy" or the block "MLS Property Information Network" mark, or any variant of the same, that appears on these Rules and Regulations, on the Service's letterhead or on the Service's website.

**MLS Publications** - Shall mean the copyrighted MLS books (Full, Supplement and Comparable) that the Service causes to be published and copyrighted in its name for the exclusive use of Participants and their affiliated Subscribers.

**Net Sales Price** - Shall mean the full or gross selling price of a Listed Property as shown on the Property Data Form for the Property, minus buyer upgrades (for a Listed Property that is new construction) or seller concessions (for a Listed Property that is not new construction). Unless otherwise required by state law or regulation, the term "seller concessions" shall mean, for purposes of this definition, any one or more of the following amounts: (i) points paid by Seller on behalf of the prospective purchaser; (ii) closing costs of the prospective purchaser that are paid by Seller; (iii) cash or cash allowances given by Seller to the prospective purchaser and not escrowed; and (iv) down payment assistance that is given or credited by Seller to the prospective purchaser.

**New England States** - Means the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

**Non-MLS Listing Form** - Shall mean the form required to be signed by a Seller and delivered to the Service by the Seller's Listing Broker when the Seller requests that an identified property not be Listed in the Service.

**Office** - Shall mean the distinct location from which a Participant or Subscriber conducts a real estate business that is licensed by the appropriate state real estate licensing authority, agency or board, or its functional equivalent, legally designated as such in one or more of the New England States.

**Participant** - Shall mean, as the context requires, (i) any individual or sole proprietorship and any partnership, corporation, limited liability company or other legal entity which Participates in the Service (sometimes referred to herein as a "Participant Firm") and/or (ii) the individual who is designated by a

Participant Firm to be the individual with the responsibility of the Participant under these Rules and Regulations (sometimes referred to herein as an “Individual Participant”). For purposes of qualifying for Participation in the Service, the proposed Participant Firm and the proposed Individual Participant shall be required to satisfy the applicable eligibility requirements stated in the definition of “Participation” below. Upon admission of a Participant Firm to Participation in the Service, an Individual Participant has and may exercise all of the rights, benefits and privileges of Participation in the Service in the name and on behalf of the Participant Firm with which the Individual Participant is affiliated. Any such Individual Participant shall be responsible for compliance with all of the liabilities and obligations to the Service by the Participant Firm with which the Individual Participant is affiliated, including compliance with these Rules and Regulations and with the policies of the Service by all of the Subscribers and other persons affiliated with the Participant Firm. Under no circumstances is any individual or entity entitled to be a Participant or to Participate in the Service unless (a) the individual or entity holds a current, valid real estate broker’s license issued by one or more of the New England States and has all necessary power and authority to offer and accept cooperation and compensation to and from other Participants, (b) the individual holds a current, valid license or certificate issued by an appropriate state regulatory agency or authority of any one or more of the New England States to engage in the appraisal of real property or (c) the entity (I) employs or otherwise engages the services of licensed or certified appraisers one or more of whom are Participants and (II) meets the applicable standards set forth in the definition of Participation in this Section 13.0.

**Participation** - Participation in the Service shall be available only to (i) an individual, sole proprietorship or legal entity of any kind licensed as a real estate broker by one or more of the New England States, (ii) an individual licensed or certified as a real estate appraiser by one or more of the New England States or (iii) a legal entity that employs or otherwise engages the services of licensed or certified appraisers one or more of whom are Participants. Participation in the Service shall be available only to an individual, sole proprietorship or legal entity identified in either of the foregoing clauses (i), (ii) or (iii) that, in either case, (a) under its own licensure or certification, or, in the case of an entity that employs or otherwise engages licensed or certified appraisers, under or by virtue of the licensure or certification of

the appraisers affiliated and acting as such in conjunction with the business of that entity, is engaged actively, or in good faith advertises or holds itself out to be engaged actively, in the real estate profession, either by buying, selling (which may include or consist exclusively of selling at Auction), exchanging, renting or leasing, appraising, building, developing or subdividing real estate, in each case for another person and for a fee, commission or other valuable consideration, or with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission or other valuable consideration, and (b) abides fully by these Rules and Regulations and the policies of the Service. In determining whether an individual, sole proprietorship or legal entity is eligible for Participation in the Service as a Participant Firm and whether an individual affiliated with a Participant Firm that is a legal entity is eligible for Participation in the Service as the Individual Participant of that Participant Firm, the Service shall apply (I) the standards set forth in clause (a) to the Participant Firm and, where the Participant Firm is a legal entity that employs or otherwise engages the services of licensed or certified appraisers one or more of whom are Participants, to both the Participant Firm and the Individual Participant and (II) the standards set forth in clause (b) to both the Participant Firm and the Individual Participant. Both the Participant Firm and the Individual Participant shall be required to satisfy all of the applicable eligibility requirements. “Participation” may be expressed in these Rules and Regulations in the verb form to “Participate”.

**Primary Coverage Area** – Shall mean The Commonwealth of Massachusetts and such other contiguous or non-contiguous geographical areas as the Board of Directors of the Service from time to time may specify and designate as included in the Service’s Primary Coverage Area.

**Property Data Form** - Shall mean the printed or electronic form used to record data or information which will be Filed with the Service, including any printed or electronic form used to indicate a change in status of a Listing.

**Public Access Website** – Shall mean a website established or maintained by a Participant or by any of its affiliated Subscribers access to which is not limited or restricted.

Note: While, in some contexts, the term “Public Access Website” may correspond functionally to the

term “Information Data Exchange” (sometimes referred to as “IDX”) promulgated by the National Association of Realtors®, the terms are not necessarily the same, and the Service is not bound by the use or interpretation of the National Association of Realtors® term.

**Request for Deferral of Showing Form** – Shall mean the form required to be signed by a Seller and delivered to the Service by the Seller’s Listing Broker when the Seller requests that Showings of an identified property be deferred to a date certain, specified in the Form, that is beyond the Filing of the Listing for that property.

**Seller** - Shall mean any one or more individuals and/or entities, as the case may be, who or which a Participant has determined to be the proper party or parties seeking to sell, lease or rent a property through that Participant.

**Service** - Shall mean MLS Property Information Network, Inc., a Massachusetts business corporation, or, as the context may require, the multiple listing service owned and operated by MLS Property Information Network, Inc.

**Service Compilation** - Shall mean any form, format or medium in which property listing data, information and Images and/or tax information are collected and/or disseminated to Participants from time to time by the Service, including, but not limited to, the System and any other computer database, any MLS Publication, any bound book, loose-leaf binder and card file, and any other form, format or medium whatsoever. The Service Compilation and the data and information contained therein are copyrighted in the name of the Service.

**Showing** – Shall mean any on-site access to or viewing of a Listed Property by (i) any customer or client of the Listing Broker or of any potential Cooperating Broker or (ii) any Participant or Subscriber seeking to acquire an interest in the Listed Property.

**Subscribers** - Shall mean those non-principal brokers, sales licensees and licensed or certified appraisers affiliated with a Participant who are authorized by the Service, following payment of any applicable participation, access and other fees and

charges, to use some or all of the goods and services provided by the Service and/or have access to some or all of the Service Compilation. Because a Subscriber’s rights under these Rules and Regulations are derived solely through the authority hereunder of the Participant with which the Subscriber is affiliated, the rights of a Subscriber to use goods and services provided by the Service and/or to have access to some or all of the Service Compilation shall be no broader, and, in the discretion of the Service, may be narrower, than the rights of the Participant with which the Subscriber is affiliated.

**System** - Shall mean the computerized database of property data, information and Images maintained by the Service.

**Virtual Private Network** – Shall mean a website or other means of electronic communication, established and/or maintained, directly or through a third party, by a Participant or by an affiliated Subscriber of a Participant, by means of which a Participant or Subscriber distributes, displays or makes available to one or more authorized persons (as hereinafter defined) data, information and/or Images contained in any Service Compilation. For purposes of this definition, the term “authorized person” shall mean (i) any individual or entity who or which has been determined in good faith by an Individual Participant or Subscriber to have a bona fide interest in purchasing, leasing or renting a Listed Property of the kind in which the individual or entity has expressed an interest to the Individual Participant or Subscriber; and (ii) any employee or agent of the Participant or Subscriber that has established or maintains a Virtual Private Network, provided that (A) the function of such employee or agent is solely to assist the Participant or Subscriber in the conduct of its business, (B) such employee or agent shall not have or assert any right to distribute, display, reproduce or use the data, information or any Image contained in any Service Compilation in its own name or on its own behalf and (C) such employee or agent complies with the limitations and restrictions set forth in Article X of these Rules and Regulations concerning the distribution, display, reproduction and use of the data, information and Images contained in any Service Compilation.

Note: While, in some contexts, the term “Virtual Private Network” may correspond functionally to the term “Virtual Office Website” (sometimes referred to as “VOW”) promulgated by the National Association of Realtors®, the terms are not necessarily the same,

and the Service is not bound by the use or interpretation of the National Association of Realtors® term.



**ATTACHMENT A**  
**Service Fees, Charges and Fines**

Fees, charges and fines are subject to change, in both amount and nature, by the Board of Directors. No application fee, listing fee, participation fee or other charges or fines required to be paid by a Participant or Subscriber shall be refunded or waived, except on approval of the Service, which approval the Service may grant or withhold in its absolute discretion.

**RECURRING SERVICE FEES FOR PARTICIPANTS AND SUBSCRIBERS**

The Board of Directors shall designate the amount of such fees from time to time.

**ALTERNATIVE LEVELS OF ACCESS**

The following levels of access are alternative forms of access to Service data, information and Images and are available to individuals or entities who or which are not Participants or Subscribers. Participants and Subscribers who or which pay the full Service fees as described above are not obligated to pay the fees described below for alternative levels of access.

**Comparable Access Fee**

The Board of Directors shall designate the amount of the Comparable Access Fee from time to time. Comparable Access is access to “comparable” information, “sold” information and statistical reports (but not “active” Listing data) that is in any Service Compilation and that the Service, upon request, may make available, in its discretion, to (i) any individual or entity that is actively engaged in real estate brokerage, management, mortgage financing, appraising, land development or building activities, whether or not that individual or entity is a Participant in the Service or affiliated with a Participant in the Service, and (ii) any real estate assessor for a city or town in The Commonwealth of Massachusetts, in the assessor’s capacity as such.

**OTHER FEES AND CHARGES**

**Reinstatement Fee for Suspended Service**

\$50 for the first suspension; \$100 for the second suspension; \$250 for the third suspension; \$500 for the fourth suspension; and \$1,000 for any subsequent suspension.

Fee for reinstatement of a Subscriber to an Office of a Participant within 45 days after the Service is notified that the Subscriber is not associated with that Office.

\$20, or such other amount as the Board of Directors shall designate from time to time.

Fee for reinstatement of a Participant within 45 days after the Participant voluntarily terminates its Participation in the Service.

\$20, or such other amount as the Board of Directors shall designate from time to time.

**Interest on Overdue Unpaid Balances**

1.5% per month.

## VIOLATIONS, FINES AND OTHER SANCTIONS

[The citation of one or more specific Sections of the Rules and Regulations in the description of a violation is for general guidance and does not necessarily limit the described violation to the cited Section.]

Filing of a Listing without a Listing Agreement signed by the Seller.

\$1,000 for the first violation; suspension for not less than ten (10) days for each violation thereafter.

Filing of a Listing or Filing of either a Non-MLS Listing Form or a Delayed Listing Form after the Deadline For Filing (as defined in Section 13.0).

\$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension of not less than ten (10) days for each violation thereafter.

Including in any Filing with the Service information or data that is known, or could reasonably be known, to be false, inaccurate, misleading or incomplete and that has the intention or effect of either (i) impairing the quality or accuracy of any statistical report that contains “comparable” information, “sold” information and/or any other information that may be generated by or in a Service Compilation or (ii) circumventing quality or security routines in the System or any other Service Compilation. (Section 1.2, Note 2).

\$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension of not less than ten (10) days for each violation thereafter.

Violation of the prohibitions in Section 1.0(e) against identifying or including forms of identification or contact in certain sections or fields of the Property Data Form.

\$100 for the first violation; \$250 for the second violation; \$500 for the third violation; and suspension of not less than ten (10) days for each violation thereafter.

Failure or refusal to designate an Entry-Only Listing when Filing a Listing (Note 2 to Section 1.0).

\$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension for not less than ten (10) days for each violation thereafter.

Non-Filing of a status change or Filing of a status change after the Deadline for Filing (as defined in Section 13.0).

\$100 for the first violation; \$250 for the second violation; \$500 for the third violation; and suspension of not less than ten (10) days for each violation thereafter.

Extension of a Listing without signed authorization by the Seller (Section 1.12).

\$1,000.

Non-Filing of a mandatory Listing or non-Filing of

\$1,000. If a Listing is Filed with the Service

either a Non-MLS Listing Form or a Delayed Listing Form (Section 1.0(a) and Section 1.3).

Failure or refusal, for more than 72 hours after delivery of a request from the Service, to provide requested documentation or requested data and information relating to a Listing and/or copies of the Listing Agreement related thereto (Section 1.15).

Allowing access to any Service Compilation by an individual or entity not authorized by the Service to have such access (Article X).

Non-Filing of an Image of a Listed Property or Filing of an Image after the Deadline For Filing of an Image for that type of Listed Property, all as specified in the Image Filing policy set forth in Attachment D to these Rules and Regulations.

Violation of any other provision of the Image Filing policy set forth in Attachment D to these Rules and Regulations.

Failure or refusal to disclose dual or variable rate of commission when Filing a Listing (Section 5.3).

If a Seller has executed a Request for Deferral of Showing Form for a property, failure or refusal to state in the "Firm Remarks" field of the Property Data Form for the Listed Property (i) the existence of the deferral and (ii) the date to which the Showings have been deferred.

Falsely representing on a Property Data Form or elsewhere in the System or in any Service Compilation

under the "SOLD" or "Under Agreement" status, it will be removed from the Service Compilation.

For the first violation, \$250 and removal of the Listing from the Service Compilation; for the second violation, \$500 and removal of the Listing from the Service Compilation; for the third violation, \$1,000 and removal of the Listing from the Service Compilation; for each violation thereafter, suspension for not less than ten (10) days and removal of the Listing from the Service Compilation.

\$50 and possible suspension of service for the first violation; \$100 and possible suspension of service for the second violation; \$250 and possible suspension of service for the third violation; \$500 and possible suspension of service for the fourth violation; and \$1,000 and possible suspension of service for the fifth and each subsequent violation.

\$25 for failure to File by the deadline for filing of the Image as set forth in Attachment D and \$25 for each additional five business day period until the Image is Filed.

As provided in the Image Filing policy set forth in Attachment D to these Rules and Regulations.

\$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension for not less than ten (10) days for each violation thereafter.

\$100 for the first violation; \$250 for the second violation; \$500 for the third violation; and suspension of not less than ten (10) days for each violation thereafter.

\$100 for the first violation; \$250 for the second violation; \$500 for the third violation;

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|---|--|
| either the signing of an Active Status Request Form or the duration of the “active” period specified in a Property Data Form.   | and suspension of not less than ten (10) days for each violation thereafter.   |
| Failure or refusal to correctly identify the type of Listing Agreement on the Property Data Form (Section 1.0, Note 1).   | \$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension of not less than ten (10) days for each violation thereafter.   |
| For those changes on a Listing that require the written authorization of the Seller prior to Filing the change with the Service, Filing of the change without the Seller’s prior signed written authorization (Section 1.4).  | \$1,000.   |
| Filing of a cancellation of a Listing without the prior signed written authorization of the Seller (Section 1.5).   | \$1,000.   |
| Filing of a withdrawal of a Listing without the prior signed written authorization of the Seller (Section 1.6).   | \$1,000.   |
| Filing of a Listing without a definite and final expiration date or with an expiration date that is not an expiration date that has been negotiated between the Seller and the Listing Broker (Section 1.11).   | \$1,000.   |
| Failure to timely deliver a Deferral of Showing Form (Section 2.0)  | \$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension for not less than ten (10) days for each violation thereafter.  |
| Showing of a Listed Property during the deferral period shown on the Deferral of Showing Form Filed for that Listed Property (Section 2.0).   | \$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension of not less than ten (10) days for each violation thereafter.   |
| Deferral of the Showing of a Listed Property for which a Deferral of Showing Form has not been executed and delivered by the Seller and timely Filed with the Service (Section 2.0).  | \$1,000.   |
| Failure or refusal of a Listing Broker to pay the compensation and/or anything else of value offered to a Cooperating Broker in a transaction in which the Cooperating Broker’s entitlement to the compensation and/or to the other value offered is undisputed or the dispute concerning the compensation and/or the other value offered has been finally resolved in accordance with the dispute resolution provisions of Section 7.2 (Section 5.0 and Section 7.2) | If compensation and/or any other value offered is not paid in full within five (5) days after warning by the Service, suspension until the compensation and/or the other value offered, as the case may be, is paid in full. The Service will not issue a warning unless and until it has received written evidence reasonably satisfactory to it that either the Cooperating Broker’s entitlement to the compensation and/or to the other value offered, as the case may be, is undisputed or the dispute concerning the compensation and/or the other value offered has been finally resolved in accordance with the dispute resolution provisions of Section 7.2. |

Failure or refusal of a Participant or Subscriber to submit to resolution of a dispute as provided in Section 7.2 or otherwise to comply with the dispute resolution provisions of Section 7.2 (Section 5.0 and Section 7.2).

If the dispute has not been resolved during the thirty-day period provided for in clause (a) of Section 7.2, suspension thereafter to begin when the Service has received convincing written evidence of the failure or refusal of the Participant or Subscriber to submit to resolution of the dispute or otherwise to comply with the dispute resolution provisions, in either case as set forth in Section 7.2. Any such suspension shall continue until the Service has received convincing written evidence that good faith compliance with the provisions of Section 7.2 has begun and is continuing.

Failure or refusal to show total compensation offered to a Cooperating Broker on a Listing in the manner or format required by Section 5.0 (Section 5.0).

\$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension of not less than ten (10) days for each violation thereafter. For each violation, beginning with the first, and in addition to the above sanctions, the violation will result in removal of the Listing from the Service Compilation.

Use by a Participant or Subscriber of any data or information contained in any Service Compilation in a manner inconsistent either with the Participant's or Subscriber's capacity as such or with the capacity in which the Participant or Subscriber Participates in the Service (Section 8.0).

\$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension of not less than ten (10) days for each violation thereafter.

Use by a Participant or Subscriber of the Service Compilation, or of its email or any other functionality, in a manner inconsistent either with the Participant's or Subscriber's capacity as such or with the capacity in which the Participant or Subscriber Participates in the Service (Section 8.0).

\$250 for the first violation; \$500 for the second violation; \$1,000 for the third violation; and suspension of not less than ten (10) days for each violation thereafter.

Improper use of the Service's Marks (Section 9.3).

A warning for the first violation; if the violation is not corrected by the end of the third calendar day after delivery of the warning, \$250; if the violation is not corrected by the end of the fifth calendar day after delivery of the warning, an additional \$500; if the violation is not corrected by the end of the seventh calendar day after delivery of the warning, an additional \$1,000 and suspension (including withdrawal of the data feed to the violator's website(s)) until the violation is corrected. For each subsequent violation, \$1,000 and suspension (including withdrawal of the data feed to the violator's website) until the violation is corrected. The existence or imposition of a sanction under these Rules and Regulations for improper use of the Service's

Failure to comply with any of the requirements of Section 10.3(b), Section 10.3(c) or Section 10.3(d).

Advertisement of another Listing Broker's Listing without that Listing Broker's prior written consent (Section 2.8).

Filing a Listing for which it is not possible for the Listing Broker to offer or provide cooperation, with accompanying compensation, to Cooperating Brokers (Section 1.0(c)).

Marks shall not in any way limit the Service's rights to protect its Marks or to seek other legal and/or equitable relief or redress at any time for any improper use of the Service's Marks.

A warning for the first violation; if the violation is not corrected by the end of the third calendar day after delivery of the warning, \$250; if the violation is not corrected by the end of the fifth calendar day after delivery of the notice, an additional \$500; if the violation is not corrected by the end of the seventh calendar day after delivery of the warning, an additional \$1,000 and suspension (including withdrawal of the data feed to the violator's website) until the violation is corrected. For each subsequent violation, \$1,000 and suspension (including withdrawal of the data feed to the violator's website) until the violation is corrected.

A warning for the first violation; if the violation is not corrected by the end of the second calendar day after delivery of the warning, \$250; if the violation is not corrected by the end of the fifth calendar day after delivery of the warning, an additional \$500; if the violation is not corrected by the end of the seventh calendar day after delivery of the warning, an additional \$1,000 and suspension (including withdrawal of the data feed to the violator's website(s)) until the violation is corrected or, if earlier, until the Service has received convincing written evidence that good faith efforts to correct the violation have begun and are continuing. For each subsequent violation, \$1,000 and suspension (including withdrawal of the data feed to the violator's website) until the violation is corrected or, if earlier, until the Service has received convincing written evidence that good faith efforts to correct the violation have begun and are continuing.

\$100 and removal of the Listing from the Service Compilation for the first violation; \$250 and removal of the Listing from the Service Compilation for the second violation; \$500 and removal of the Listing from the Service Compilation for the third violation; for each violation thereafter, suspension of not less than ten (10) days and removal of the Listing from the Service Compilation.

**ATTACHMENT B**  
**Listing Status Codes**

| <b><u>Status Code</u></b> | <b><u>Description</u></b> |
|---------------------------|---------------------------|
| ACT                       | Active                    |
| NEW                       | New                       |
| PCG                       | Price Change              |
| EXT                       | Extended                  |
| BOM                       | Back on Market            |
| UAG                       | Under Agreement           |
| CTG                       | Contingent                |
| RAC                       | Reactivated               |
| SLD                       | Sold                      |
| EXP                       | Expired                   |
| CAN                       | Cancelled                 |
| WDN                       | Withdrawn                 |
| RNT                       | Rented or Leased          |

**DEFINITIONS OF CERTAIN LISTING STATUS CODES:**

**Under Agreement (UAG)** – Except in the case of an Auction Listing, shall mean the status of a Listed Property when the Seller and the potential purchaser of the Listed Property have executed and delivered a Bilateral Agreement and the Listing Broker has not made a timely Filing of a Property Data Form for the Listed Property clearly designating that the Seller and the Listing Broker (i) have signed either (A) an Active Status Request Form in accordance with the provisions of Section 2.6(b) of these Rules and Regulations or (B) a Contingent Status Request Form in accordance with the provisions of Section 2.6(c) of these Rules and Regulations and (ii) in the case of a Filing of a Contingent Status Request Form, have taken the action required by the Service to extend the then current Contingency Period for the Listing prior to its expiration. In the case of an Auction Listing, “UAG” shall mean the status of a Listed Property when the Seller and the high bidder in the Auction have executed and delivered an agreement committing the Seller to sell and the high bidder to purchase the Listed Property. Each “UAG” Listing shall be considered to be “off-market”.

**Contingent (CTG)** - Shall mean the status of a Listed Property when the Seller and the potential purchaser of the Listed Property have executed and delivered a Bilateral Agreement containing one or more eligible contingencies (as defined below), and the Seller and the Listing Broker have (i) executed and delivered a Contingent Status Request Form in which, among other things, each eligible contingency is specified and (ii) as applicable, taken the action required by the Service to extend the then current Contingency Period for the Listing prior to its expiration. For purposes of this definition, an “eligible contingency” entitling the Seller of a Listed Property to request “CTG” status is a condition or contingency in the relevant Bilateral

Agreement that is of a type or kind identified by the Service from time to time in its then current Contingent Status Request Form or, for purposes of extending the then current Contingency Period, in such other medium or form as the Service from time to time may specify. Each Listing with “CTG” status shall remain on the market and be available for back-up offers.

**Cancelled (CAN)** - Shall mean the status of a Listed Property where the Listing Agreement has been terminated prior to its expiration date. The Filing of a notice with the Service, indicating that a Listing has been cancelled, functions only to indicate the status of the Listing with the Service. In the absence of a contrary agreement between the Seller and the broker for the cancelled Listing, the Filing of the notice with the Service, in and of itself, does not affect the legal rights or duties, if any, that may continue to exist between the Seller and that broker under the terminated Listing Agreement.

**Withdrawn (WDN)** - Shall mean the status of a Listed Property that is temporarily taken off the market. Each “WDN” Listing remains subject to the terms and conditions of its original Listing Agreement and, as such, expires at midnight on the expiration date of the Listing Agreement.



## ATTACHMENT C

### Acceptable Data Fields for Public Access Websites

#### Single Family Fields

Property Type  
Listing Number  
Address  
Area  
Town  
County  
Zip Code  
State  
Year Built  
Year Built Description  
Assessed Value  
Taxes  
Tax Year  
List Price  
Sale Price  
Sale Date  
Neighborhood/Subdivision  
Lender Owned  
Type of Single Family  
Style  
Construction  
Roof Material  
Exterior Color  
Exterior Features  
Interior Features  
Flooring  
Approximate Lot Size  
Approximate Acres  
Lot Description  
Approximate Gross Living Area  
Garage Capacity  
Garage Description  
Parking Capacity  
Parking Description  
Basement\_Yes/No  
Basement Features  
Total Number of Rooms  
Total Bedrooms  
Number of Full Baths  
Number of Half Baths  
Total Bathrooms  
Master Bath\_Yes/No  
All Room Levels, Sizes, and Descriptions  
Road Type  
# Heat Zones  
Heating

# Cooling Zones  
Cooling  
Electric  
Water Utilities  
Sewer Utilities  
Appliances  
Images and virtual tours  
Open House Date  
Open House Start Time  
Open House End Time  
Public Remarks

Multi-Family Fields

Property Type  
Listing Number  
Address  
Town  
Area  
County  
Zip Code  
State  
Year Built  
Assessed Value  
Taxes  
Tax Year  
List Price  
Sale Price  
Sale Date  
Lender Owned  
Type of Multi-Family  
Number of Units  
Number of Floors  
Total Number of Rooms  
Total Beds  
Total Full Baths  
Total Half Baths  
Basement Y/N  
Number of Garage Stalls  
Number of Parking Spaces  
Approximate Lot Size  
Approximate Acres  
Approximate Gross Living Area  
Images and virtual tours  
Open House Date  
Open House Start Time  
Open House End Time  
Public Remarks

Condo/Co-op Fields

Property Type  
Listing Number  
Address

Area  
Town  
County  
Zip Code  
State  
Assessed Value  
Taxes  
Tax Year  
List Price  
Sale Price  
Sale Date  
Lender Owned  
Association Fee  
Type of Condo/Co-op  
Style  
Flooring  
Construction  
Exterior Features  
Interior Features  
Number of Living Levels  
Unit Level  
Approximate Lot Size  
Approximate Acres  
Approximate Gross Living Area  
Basement\_Yes/No  
Total Number of Rooms  
Total Bedrooms  
Number of Full Baths  
Number of Half Baths  
Total Bathrooms  
Master Bath\_Yes/No  
All Room Levels, Sizes, and Descriptions  
# Heat Zones  
Heating  
# Cooling Zones  
Cooling  
Electric  
Water Utilities  
Sewer Utilities  
Appliances  
# Units In Complex  
Garage Capacity  
Garage Description  
Parking Capacity  
Parking Description  
Images and virtual tours  
Open House Date  
Open House Start Time  
Open House End Time  
Public Remarks

#### Land Fields

Property Type  
Listing Number  
Address  
Area  
Town  
County  
Zip Code  
State  
List Price  
Sale Price  
Sale Date  
Lender Owned  
Type of Land  
Road Type  
Land Description  
Zone Usage  
Approximate Lot Size  
Total Approximate Acres  
Images and virtual tours  
Open House Date  
Open House Start Time  
Open House End Time  
Public Remarks

#### Commercial/Industrial Fields

Property Type  
Listing Number  
Address  
Area  
Town  
County  
Zip Code  
State  
List Price  
Sale Price  
Sale Date  
Lender Owned  
Type of Commercial/Industrial  
Space Available  
Number of Stories  
Number of Residential Units  
Residential Square Feet  
Number of Office Units  
Office Square Feet  
Number of Retail Units  
Retail Square Feet  
Number of Warehouse Units  
Warehouse Square Feet  
Number of Manufacturing Units  
Manufacturing Square Feet

Total Units  
Total Square Feet  
Approximate Lot Size  
Estimated Acres  
Number of Parking Spaces  
Parking Description  
Images and virtual tours  
Open House Date  
Open House Start Time  
Open House End Time  
Public Remarks

#### Business Opportunity Fields

Property Type  
Listing Number  
Address  
Town  
Area  
County  
Zip Code  
State  
List Price  
Sale Price  
Sale Date  
Lender Owned  
Type of Business Opportunity  
Approximate Lot Size  
Building Square Feet  
Number of Parking Spaces  
Real Estate Included  
Images and virtual tours  
Open House Date  
Open House Start Time  
Open House End Time  
Public Remarks

#### Rental or Leasing Fields

Property Type  
Listing Number  
Address  
Area  
Town  
County  
Zip Code  
State  
Rent Price  
Rental Price  
Sale Date  
Lender Owned  
Type of Rental  
Total Number of Rooms

Total Bedrooms  
Number of Full Baths  
Number of Half Baths  
Total Bathrooms  
Master Bath\_Yes/No  
Parking Spaces  
Approximate Lot Size  
Approximate Gross Living Area  
Images and virtual tours  
Open House Date  
Open House Start Time  
Open House End Time  
Public Remarks

#### Mobile Home Fields


Property Type  
Listing Number  
Address  
Area  
Town  
County  
Zip Code  
State  
List Price  
Sale Price  
Sale Date  
Neighborhood/Subdivision  
Lender Owned  
Type of Mobile Home  
Style  
Exterior Color  
Exterior Features  
Interior Features  
Approximate Lot Size  
Approximate Acres  
Lot Description  
Approximate Gross Living Area  
Garage Capacity  
Garage Description  
Basement\_Yes/No  
Total Number of Rooms  
Total Bedrooms  
Number of Full Baths  
Number of Half Baths  
Total Bathrooms  
Master Bath\_Yes/No  
All Room Levels, Sizes, and Description  
Road Type  
# Heat Zones  
Heating  
# Cooling Zones  
Cooling

Electric  
Water Utilities  
Sewer Utilities  
Appliances  
Parking Capacity  
Parking Description  
Images and virtual tours  
Open House Date  
Open House Start Time  
Open House End Time  
Public Remarks

## **ATTACHMENT D**

### **Image Submission Policy**

This policy requires the Filing of photographs, sketches and other images (collectively, “Images”) for the following Listing types: “SF” (“Single Family”), “MF” (“Multi-Family”), “CC” (“Condominium/Cooperative”), “CI” (“Commercial/Industrial”), except only for those CI Listings for which the “Type of CI” has been indicated to be “Land”, “MH” (“Mobile Home”), and “RN” (“Residential Rental”).

Images must be Filed within five (5) days (excluding weekends, Service holidays and postal holidays) from the date the Listing was Filed with the Service for Listings of the following statuses: NEW, ACT, , CTG, ACT , EXT, RNT, WDN, RAC, PCG, UAG, SLD, BOM. The fine for not Filing an Image in this time frame is set forth in Attachment A to the Rules and Regulations of the Service.

If a Listing is a “To Be Built” or “Under Construction” property, the Listing Broker must specify on the listing under “YBD” (“Year Built Description”) either “(E) To Be Built”, or “(F) Under Construction”. Images of Listed Properties carrying these designations need not be Filed until the exterior of the structure is complete. If, however, an Image of a “To Be Built” or “Under Construction” Listing is Filed before the exterior of the structure is complete, that Image must be either an architectural drawing of the proposed structure in its completed form or an architectural drawing or photograph of another completed structure that is substantially similar to the proposed structure that is to be built. For purposes of the definition of “Images” in the Rules and Regulations, only the architectural drawings or photographs contemplated in the preceding sentence shall be deemed to be “directly related to” the Listed Property.

If a Seller does not want an Image of its Listed Property Filed with the Service, the Listing Broker must submit to the Service, before the Deadline For Filing the Image of the Listed Property, a writing, signed by the Seller, stating that the Seller does not want an Image included in the Listing for the Seller’s Listed Property and requesting that the Service waive its Image requirement. If the Seller’s letter is not timely Filed, and if an Image has not been Filed, the Service may impose a fine as specified in Attachment A to the Rules and Regulations.

The Service does not assume any responsibility for Images lost in the mail (including electronic mail) or lost in the process of uploading.

The staff of the Service from time to time may promulgate procedures for the implementation and enforcement of the foregoing Image submission policy.



**[NOTE: BECAUSE IT WAS NOT RENEWED OR EXTENDED BY THE SERVICE'S BOARD OF DIRECTORS, THE PROVISIONS OF THIS ATTACHMENT E EXPIRED, PURSUANT TO THE TERMS OF ITS PARAGRAPH 6, AT MIDNIGHT ON DECEMBER 31, 2014. FROM JANUARY 1, 2015 ONWARD, THIS ATTACHMENT E IS OF NO FURTHER FORCE AND EFFECT, EXCEPT AS SPECIFICALLY PROVIDED IN ITS PARAGRAPH 6.]**

## **ATTACHMENT E**

### **Non-Participant Auction Sales of Foreclosed Listed Properties**

1. Construction. The privileges granted to a Listing Broker under this Attachment E with respect to a Listed Property are to be narrowly and strictly construed. Those privileges are exceptional and are to be available only under the specific factual circumstances described in Paragraph 2 of this Attachment E and only if the Listing Broker has timely complied in full with the conditions set forth in Paragraph 3 of this Attachment E.
2. Factual Requirements. The factual circumstances under which a Listing Broker may exercise the privileges described in Paragraph 4 of this Attachment E with respect to a specific Listed Property are as follows:
  - (a) The Seller of the Listed Property is a bank or other financial institution that first had been a mortgagee of the Listed Property and, following default under the mortgage, now has taken title to the Listed Property.
  - (b) The Seller had entered into a Listing Agreement with respect to the Listed Property with the Listing Broker, and the Listing Broker had properly Filed the Listed Property with the Service pursuant to that Listing Agreement.
  - (c) The Listing Agreement between the Seller and the Listing Broker may either be in full force and effect or it may have expired or been properly terminated by the Seller.
  - (d) Without entering into a separate Listing Agreement with any other Listing Broker, the Seller has entered into a contractual arrangement with an individual auctioneer or auctioneer firm that is not a Participant, Subscriber or Auctioneer, as defined in these Rules and Regulations (the "Non-Participant Auctioneer"), and has authorized the Non-Participant Auctioneer to offer the Listed Property for sale at auction.
  - (e) The Seller or the Non-Participant Auctioneer has required or requested the original Listing Broker for the Listed Property, in writing, to maintain the Listed Property in the System, irrespective of whether the Listing Agreement between the Seller and the original Listing Broker is still in full force and effect.
3. Conditions Precedent. The conditions that must be satisfied by the Listing Broker before the Listing Broker may exercise any of the privileges set forth in Paragraph 4 of this Attachment E are as follows:
  - (a) As and to the extent required by the Service, the Listing Broker shall have delivered, or caused to be delivered, each of the following to the Service, in form and substance satisfactory to the Service:
    - (i) A copy of the Listing Agreement between the Seller and the Listing Broker with respect to the Listed Property;
    - (ii) A copy of Seller's engagement agreement with the Non-Participant Auctioneer or other evidence acceptable to the Service (the "Auctioneer Engagement Agreement") of (A) the Non-Participant Auctioneer's identity, address and other contact information and (B) the Non-Participant Auctioneer's appointment by the Seller to auction the Listed Property;

- (iii) If not included in the Auctioneer Engagement Agreement, a copy of the request or demand made by the Seller or the Non-Participant Auctioneer to the Listing Broker to maintain the Listed Property in the System;
  - (iv) If not included in the Auctioneer Engagement Agreement, a copy of any document or documents between or among the Seller, the Non-Participant Auctioneer and/or the Listing Broker describing the compensation to be offered and paid to a Cooperating Broker in connection with the proposed auction sale of the Listed Property, including without limitation a statement of the amount and nature of the compensation offered, any conditions on its payment, the identity and contact information of the person or persons obligated to pay the offered compensation and the time at which and the method by which the compensation will be paid; and
  - (v) A written certification to the Service, dated and signed by a duly elected executive officer or other duly authorized agent or representative of the Listing Broker, (A) confirming the existence of each of the factual circumstances set forth in clauses (a) through (e) of Paragraph 2 of this Attachment E, (B) stating the Listing Broker's desire to maintain the Listing in the System and (C) stating whether or not the original Listing Agreement between the Listing Broker and the Seller remains in full force and effect or has expired or been terminated.
- (b) By a key, code or symbol, as specified by the Service, the Listing Broker shall have updated the Listing to inform all Participants and Subscribers of the following:
- (i) The Seller's execution and delivery of an Auctioneer Engagement Agreement with the Non-Participant Auctioneer to sell the Listed Property at auction;
  - (ii) The Listing Broker's satisfaction in full of all of the conditions set forth in this Attachment E permitting the Listing Broker to maintain the Listing in the System, notwithstanding that the Listing Broker no longer has an exclusive Listing Agreement with the Seller;
  - (iii) The changes, if any, in the amount and nature of the compensation offered to Cooperating Brokers as a result of the execution and delivery of the Auctioneer Engagement Agreement, together with the identity and contact information of the individuals and/or entities that have undertaken the primary responsibility to pay the compensation; and
  - (iv) The Listing Broker's agreement and confirmation that (A) it continues to offer cooperation to all Cooperating Brokers as required under these Rules and Regulations and (B) notwithstanding any changes in compensation described pursuant to clause (iii) above, the Listing Broker continues to have the ultimate responsibility and liability for compensating the Cooperating Broker when the Listed Property is sold.

4. Limited Privileges. Provided that the Listing Broker has timely satisfied in full the requirements and conditions set forth in Paragraph 2 and Paragraph 3 of this Attachment E, the Listing Broker shall have the following limited privileges with respect to the Listed Property to be sold at auction by the Non-Participant Auctioneer:

- (a) The Listing Broker may continue to maintain and update the Listing in the System; and
- (b) The Listing Broker will not be deemed to be in violation of the provisions of these Rules and Regulations regarding the offer of compensation to other Participants that provide services as Cooperating Brokers.

The Listing Broker shall not include or seek to include in any claim to market share, nor shall the Service include in any statistical report that contains "comparable" information or "sold" information, any Listed Property

that is maintained in the System pursuant to the provisions of this Attachment E and is sold at auction by a Non-Participant Auctioneer.

5. Continuation of Listing Broker's Obligations and Liabilities. **Notwithstanding that a Listing Broker satisfies in full the requirements and conditions set forth in Paragraph 2 and Paragraph 3 of this Attachment E, entitling it to the limited privileges afforded with respect to a Listed Property under Paragraph 4 of this Attachment E, that Listing Broker shall continue, nonetheless, to be bound by and required to comply with all of the responsibilities and obligations, and be subject to all of the liabilities, imposed by these Rules and Regulations on the Listing Broker for that Listed Property**, including, without limitation, those with respect to "Selling Procedures" and the "Division of Commissions" set forth, respectively, in Article II and Article V of the Rules and Regulations, except only if and to the extent that those responsibilities, obligations and liabilities may be specifically modified by the provisions of this Attachment E.

6. Expiration. The provisions of this Attachment E shall expire and be of no further force and effect at midnight on December 31, 2014 or on such later date, if any (each, the "Expiration Date"), as may have been established before the then current Expiration Date by action of the Service's Board of Directors. Notwithstanding the occurrence of the Expiration Date, any Listing that, on or before the Expiration Date, had been properly Filed with the Service and maintained in the System in accordance with the provisions of this Attachment E shall continue to be treated as properly Filed with the Service after the Expiration Date, provided that the Listing and the Listing Broker continue to comply with all the requirements and conditions set forth in this Attachment E and with all of the other provisions of these Rules and Regulations.