

**WESTERN UPSTATE MULTIPLE LISTING  
SERVICE**

**OF**

**SOUTH CAROLINA, INC.**

**RULES AND REGULATIONS**

**Revised: August 2019**

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**WESTERN UPSTATE MULTIPLE LISTING SERVICE OF SOUTH CAROLINA, INC.  
RULES AND REGULATIONS**

*Rev. 7/2019*

The Western Upstate Multiple Listing Service of South Carolina, Inc. (hereinafter sometimes referred to as the “Multiple Listing Service” or “MLS”) is a means by which authorized participants make blanket unilateral offers of cooperation and compensation to the other participants (acting as transaction brokers, or buyers agents) by which cooperation among participants is enhanced; by which information is accumulated and disseminated to enable authorized participants to prepare appraisals, analyses and other valuations of real property for bona fide clients and customers; by which participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker’s performance as a procuring cause of the sale (or lease). Procuring cause is defined as the action that started a series of events that, without interruption, would have led to the consummation of the sale. The term “Association” as used herein shall mean and refer to Western Upstate Association of REALTORS<sup>®</sup>, Inc.

**SECTION 1**  
**LISTING PROCEDURES**

**Section 1 – Listing Procedures:** Listings of real property of the following types, which are listed subject to the real estate broker’s license and are located within the territorial service area of the Western Upstate Multiple Listing Service, Inc. and are taken by the participants on an Exclusive Right-to-Sell Listing Agreement, Exclusive Agency Agreement, or Transaction Brokerage Listing Agreement basis, shall be delivered to and input into the MLS database within 48 hours after all necessary signatures of seller(s) have been obtained:

- (a) Single-family homes for sale or exchange
- (b) Vacant lots and acreage for sale or exchange
- (c) Two-family, three-family and four-family residential buildings for sale or exchange

The MLS shall not require a participant to submit listings on a form other than the form the participant individually chooses to utilize provided the listing is of a type accepted by the service, although a property data form may be required as approved by the MLS. However, the MLS, through its legal counsel:

- may reserve the right to refuse to accept a listing form which fails to adequately protect the interests of the public and the participants
- assure that no listing form filed with the MLS establishes, directly or indirectly, any contractual relationship between the MLS and the client (buyer or seller)

The MLS shall accept exclusive right-to-sell listing contracts, exclusive agency listings contracts, transaction brokerage listing agreements and may accept other forms of agreement which make it possible for the listing broker to offer compensation to the other participants of the MLS acting as buyer agents or transaction brokers, or both.

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

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

The exclusive agency listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves to the seller the general right to sell the property on an unlimited or restrictive basis.

Exclusive agency listings, exclusive right-to-sell listings, or transaction brokerage listing agreements with named prospects exempted should be clearly distinguished in agent remarks, since they can present risks of procuring cause controversies and administrative problems not posed by exclusive right-to-sell listings or transaction brokerage listings with no named prospects exempted.

The MLS does not regulate the type of listings its participants may take. This does not mean that the MLS must accept every type of listing. The MLS does not accept open listings or net listings, and it may limit its service to listings of certain kinds of property. The MLS does not accept the listing of a property in which the seller only has an equitable interest. Participants, however, are free to accept other types of listings to be handled outside the MLS.

The MLS will accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they will be included in a separate section of the MLS compilation of current listings.

**Section 1.1 Types of Properties:** Following are some of the types of properties that may be published through the MLS, including types described in the preceding paragraph that are required to be filed with the MLS and other types that may be filed with the MLS at the participant's option provided, however, that any listing submitted is entered into within the scope of the participant's licensure as a real estate broker:

Residential	Motel-Hotel	Residential Income	Mobile Homes
Subdivided Vacant Lot	Mobile Home Parks	Land and Ranch	Commercial Income
Business Opportunity	Industrial	Rentals	

**Section 1.1.1 - Listings Subject to Rules and Regulations of the Multiple Listing Service:** Any listing taken on a contract to be filed with the MLS is subject to the Rules and Regulations of the Service upon signature of the seller(s). All new listings must be input in the MLS system within 48 hours of the Seller's signature with the only exception being holidays and weekends.

**Section 1.2 - Detail on Listings Filed with the Service:** A listing agreement or property data form, when filed with the MLS by the listing broker, shall be complete in every detail which is ascertainable as specified on the property data form. All “required” fields are indicated on Input/Maintenance and must be completed correctly on all listings. Should any listing not have this information completed correctly, the listing agent will be notified and will have 24 hours after notification to correct the problem or the listing is subject to being removed from MLS.

**Section 1.2.1 – Limited Service Listings:** Listing agreements under which the listing broker will not provide one, or more, of the following services:

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

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

**Section 1.3 - Exempted Listings:** If the seller refuses to permit the listing to be disseminated by the Service, the participant may then take the listing as an (“office exclusive”) and not enter it into the MLS.

**Section 1.4 - Change of Status of Listing:** Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller. Under-Contract status must be put in the computer within 24 hours of the signed contract, with the only exception being holidays and weekends.

**Section 1.5 - Withdrawal of Listing Prior to Expiration:** Listings of property may be withdrawn from the MLS by the listing broker before the expiration date of the applicable agreement, provided notice is filed with the MLS, including a copy of the agreement between the seller and the listing broker which authorizes the withdrawal.

Sellers do not have the unilateral right to require a MLS to withdraw a listing without the listing broker’s concurrence. However, when a seller(s) can document that his or her exclusive relationship with the listing broker has been terminated, the MLS may remove the listing at the request of the seller.

**Section 1.5.1 – Change of Status to “To” – Hold Do Not Show:** Listings of property may be changed to “Hold Do Not Show” status in the multiple listing service by the listing broker. No Signs, including “Coming Soon” may be placed or left on a property in Hold Do Not Show status.

**Section 1.6 - Contingencies Applicable to Listings:** Any contingency or conditions of any term in a listing shall be specified and notice given to the participants.

**Section 1.6.1 – Off Market/Coming Soon Listings:** Only properties that are available to be shown will be accepted for inclusion in the MLS. For properties that are classified as “off market” and unavailable for showing, the rule requiring listings to be entered into the MLS within forty-eight (48) hours of obtaining a listing, can be waived if within the 48-hour period, the listing agent sends notification to the MLS together with a copy of the listing agreement showing the seller’s desire to keep the property off market until a date certain and an acknowledgement by the seller and the listing agent confirming that the listing agent properly disclosed the advantages and disadvantages of this strategy and that the seller understands and agrees that the property is not to be shown by anyone and not inserted into the MLS or syndicated during the “off market” period.

**Section 1.7 - Listing Price Specified:** The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings, unless the property is subject to auction.

**Section 1.8 - Listing Multiple Unit Properties:** All properties which are to be sold or which may be sold separately must be indicated individually in the listing and on the property data form. When part of a listed property has been sold, proper notification should be given to the MLS.

**Section 1.9 - No Control of Commission Rates or fees Charged by participants:** The MLS shall not fix control, recommend, suggest or maintain commission rates or fees for services to be rendered by participants. Further, the MLS shall not fix, control, recommend, suggest or maintain the division of commissions or fees between cooperating participants or between participants and non-participants.

**Section 1.10 – Expiration of Listings:** Listings filed with the MLS will automatically be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date the MLS received notice that the listing has been extended or renewed.

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

**Section 1.11 - Termination Date on Listings:** Listings filed with the MLS shall bear a definite and final termination date as negotiated between the listing broker and seller.

**Section 1.12 –Service Area:** Only listings of the designated types of property located within the service area of the Western Upstate MLS, Inc. are required to be submitted to the MLS. Listings of property located outside the MLS’s service area will be accepted if submitted voluntarily by a participant but cannot be required by the MLS.

**Section 1.13 - Listings of Suspended participants:** When a participant of the MLS is suspended from the MLS for failing to abide by a membership duty (i.e. violation of the Code of Ethics, Association Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership

obligation except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS by the suspended participant shall, at the participant's option, be retained in the MLS until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a participant has been suspended from the Association (Define) or MLS (or both) for failure to pay appropriate dues, fees or charges, the Association or MLS is not obligated to provide services, including continued inclusion of the expelled participant's listings in the MLS compilation of current listing information. Prior to any removal of any suspended participant's listings from the MLS, the suspended participant should be advised, in writing, of the intended removal so that the suspended participant may advise his or her clients.

**Section 1.14 – Listings of Expelled Participants:** When a participant is expelled from the MLS for failing to abide by a membership duty (i.e. violation of the Code of Ethics, Board Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees or charges), all listings currently filed with the MLS shall, at the expelled participant's option, be retained in the MLS until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a participant has been expelled from the Association or MLS (or both) for failure to pay appropriate dues, fees or charges, the MLS is not obligated to provide services, including continued inclusion of the expelled participant's listings in the MLS compilation of current listing information. Prior to any removal of expelled participant's listing from the MLS, the expelled participant will be advised, in writing, of the intended removal so that the expelled participant may advise his or her clients.

**Section 1.15 - Listings of Resigned Participants:** When a participant resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned participant's listing in the MLS compilation of current listing information. Prior to any removal of a resigned participant's listings from the MLS, the resigned participant will be advised, in writing, of the intended removal so that the resigned participant may advise his or her clients.

**Section 1.16 - Remarks:** The "remarks" section of the input page is to allow listing agents to provide additional information regarding the listed property to consumers and cooperating agents. Information including, but not limited to the name, phone number, and email address of the listing company, the listing agent, or the property owner is not allowed in the public remarks section. Also disallowed is any statement such as "call listing agent for more information" or similar instruction.

**Section 1.17 - Photographs:** participants are required to insert photographs of listed property directly into the MLS database for viewing by consumers and cooperating agents. When doing so, however, participants should be careful that no information identifying the listing agent or agency, including agency signs, are included in these photographs. One photograph of the property must be entered within 72 hours of entry into the MLS to avoid fines.

**Section 1.18 – Duplication of Listings:** Listings are only allowed to be entered once in the MLS with two exceptions: (1) if the listing could be considered more than one property class (i.e., residential, land, multi-family, or commercial) or (2) if there is a significant amount of property

being sold. In either case, one listing with the entire property can be entered along with a second listing for one portion of the property and a third listing for the remaining property.

**Section 1.19 – Directions:** Agent and office information may not be entered into the directions section of the MLS. If references are made to following office signs in the directions section of the MLS, the notation should read “follow signs” instead of “follow XYZ REALTY signs.”

**Section 1.20 – Proposed Closing Date:** If the proposed closing date of a property passes without closing, the listing agent must amend the proposed closing date within 48 hours to the new negotiated closing date.

## **SECTION 2** **SELLING PROCEDURES**

**Section 2 - Showings and Negotiations:** Appointments for showings and negotiations with the seller for the purchase of listed property filed with the MLS shall be conducted through the listing broker, except under the following circumstances:

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

Business cards of the showing agent are not to be left at a property being shown to a customer/client unless specifically requested to do so by the listing broker or the seller.

**Section 2.1 – Presentation of Offers:** The listing broker must present all offers in a timely manner or give the cooperating broker a satisfactory reason for not doing so.

**Section 2.2 – Submission of Written Offers and Counteroffers:** The listing broker shall submit to the seller all written offers and counteroffers until closing. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer.

Participants representing buyers or tenants shall submit to the buyer or tenant all offers and counter-offers until acceptance and shall recommend that buyers and tenants obtain legal advice where there is a question about whether a pre-existing contract has been terminated.

**Section 2.3 – Right of Cooperating Broker in Presentation of Offer:** The cooperating broker (buyer agent, or transaction broker) or his or her representative has the right to participate in the offer presentation to the seller or lessor of any offer he or she secures to purchase or lease. He or she does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller’s written



instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

**Section 2.4 – Right of Listing Broker in Presentation of Counteroffer:** The listing broker or his or her representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He or she does not have the right to be present at any discussion or evaluation of a counteroffer by the purchaser or lessee. However, if the purchaser or lessee gives written instructions to the cooperating broker that the listing broker not be present when a counteroffer is presented, the listing broker has the right to a copy of the purchaser's or lessee's written instructions.

**Section 2.5 – Reporting Sales to the Service:** Status changes, including final closing of sales and sales prices, shall be reported within forty-eight (48) hours after they have occurred.

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

If the sale price of a listed property is recorded, the reporting of the sale price may be required by the MLS.

The MLS may provide sale price information to governmental bodies only to be used for statistical purposes (including use of aggregated data for purposes of valuing property) and to confirm the accuracy of information submitted by property owners or their representatives in connection with property valuation challenges; and to third-party entities only to be used for academic research, statistical analysis, or for providing services to participants and subscribers. In any instance where a governmental body or third-party entity makes sale price information provided by the MLS available other than as provided for in this provision, a listing participant may request the sale price information for a specific property be withheld from dissemination for these purposes with written authorization from the seller, and withholding of sale price information from those entities shall not be construed as a violation of the requirement to report sale prices.

**Section 2.6 – Reporting Resolutions of Contingencies:** The listing broker shall report to the MLS within twenty-four (24) hours that a contingency on file with MLS has been fulfilled or renewed, or the agreement canceled.

**Section 2.7 – Advertising of Listing Filed With the Service:** A listing shall not be advertised by any participant other than the listing broker without the prior consent of the listing broker and the property owner.

**Section 2.8 – Reporting Cancellation of Pending Sale:** The listing broker shall report immediately to the MLS the cancellation of any pending sale, and the listing shall be reinstated promptly.

**Section 2.9 - Disclosing the Existence of Offers:** Listing brokers, in response to inquiries from buyers or cooperating brokers, shall, with the seller’s approval, disclose the existence of offers on the property. Where disclosure is authorized, the listing broker shall also disclose, if asked, whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a cooperating broker.

**Section 2.10 – Availability of listed Property:** Listing brokers shall not misrepresent the availability of access to show or inspect listed property. All Listings must be available for showings upon MLS input. If a Seller requests additional time to prepare the property for showings the listing agent may only enter the listing in the MLS in strict accordance with Section 1.5.1 or Section 1.6.1. No signs, including “Coming Soon”, may be placed or left on a property in hold do not show or off market status. At no time may the property be shown by any agent, including the listing agent during the hold do not show or off-market period.

**SECTION 3**  
**REFUSAL TO SELL**

**Section 3 – Refusal to Sell:** If the seller of any listed property filed with the MLS refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted by the listing broker immediately to the MLS and to all participants.

**SECTION 4**  
**PROHIBITIONS**

**Section 4 - Information for Participants Only:** Any listing filed with the MLS shall not be made available to any broker or firm not a member of the MLS without the prior consent of the listing broker.

**Section 4.1 - “For Sale” Signs:** Only the “For Sale” sign of the listing broker may be placed on a property.

**Section 4.2 - “Sold Signs”:** Prior to closing, only the “Sold” sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

**Section 4.3 - Solicitation of Listing Filed With the Service:** Participants shall not solicit a listing on property filed with the Service unless such solicitation is consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice and its Case Interpretations.

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

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

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

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

**Section 4.4 – Use of the Terms Multiple Listing Service and MLS:** No Participant, subscriber, or licensee affiliated with any participant shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other way represent, suggest, or imply that the individual or firm is a Multiple Listing Service, or that they operate a Multiple Listing Service. Participants, subscribers and licensees affiliated with participants shall not represent, suggest, or imply that consumers or others have direct access to Multiple Listing Service databases, or that consumers or others are able to search Multiple Listing Service databases available only to participants and subscribers. This does not prohibit participants and subscribers from representing that any information they are authorized under these rules to provide to clients or customers is available on their websites or otherwise.

**Section 4.5 – MLS None Branding Rules:** No participant branding or company branding of any type (including home warranty companies, inspection companies, etc.) shall be placed within the Public Remarks section of the MLS. Details pertaining to company names, real estate service providers, email addresses, websites, phone numbers, etc. shall be placed in the Member Remarks or Syndicated Remarks section only.

## **SECTION 5** **DIVISION OF COMMISSIONS**

**Section 5 - Compensation Specified on Each Listing:** The listing broker shall specify, on each listing filed with the MLS, the compensation offered to other MLS participants for their services in the sale of such listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease) or as otherwise provided for in this rule. The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through the MLS would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing

broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.

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

The compensation specified on listings filed with the MLS shall appear in one of two forms. The essential and appropriate information to be published shall clearly inform the participants as to the compensation they will receive in cooperative transactions, unless advised otherwise by the listing broker, in writing, in advance of submitting an offer to purchase. The compensation specified on listings on the MLS shall be shown in one of the following forms:

1. by showing a percentage of the gross selling price
2. by showing a definite dollar amount.

The listing broker retains the right to determine the amount of compensation offered to other participants (acting as transaction brokers, or buyer agents) which may be the same or different.

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

**Note 1:** The association MLS shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his listing contract, and the association MLS shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a participant. The association MLS shall not disclose in any way the total commission negotiated between the seller and the listing broker.

**Note 2:** The listing broker may, from time to time, adjust the compensation offered to other MLS participants for their services with respect to any listing by advance published notice to the service prior to the presentation of the participant's offer so that all participants will be advised.

**Note 3:** The MLS shall make no rule on the division of commissions between participants and nonparticipants. This should remain solely the responsibility of the listing broker.

**Note 4:** MLSs, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval, and that compensation payable to cooperating brokers

may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they submit an offer that ultimately results in a successful transaction.

**Note 5:** Nothing in these MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction .

**Note 6:** MLSs must give participants the ability to disclose to other participants any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale, and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. MLSs may, as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they may, as a matter of local discretion, also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential “remarks” available only to participants and subscribers.

**Section 5.0.1 – Disclosing Potential Short Sales:** Participants must disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) when reasonably known to the listing participants. When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants.

**Section 5.1 – Participant as Principal:** If a participant or any licensee (or licensed or certified appraiser) affiliated with a participant has any ownership interest in a property, the listing of which is to be disseminated through the MLS, that person shall disclose that interest when the listing is filed with the MLS, and such information shall be disseminated to all MLS participants.

**Section 5.2 – Participant as Purchaser:** If a participant or any licensee (including licensed and certified appraisers) affiliated with a participant wishes to acquire an interest in property listed with another participant, such contemplated interest shall be disclosed, in writing, to the listing broker not later than the time an offer to purchase is submitted to the listing broker.

**Section 5.3 – Dual or Variable-Rate Commission Arrangements:** The existence of a dual or variable-rate commission arrangement (i.e., one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker without assistance and a different commission if the sale/lease results through the efforts of a cooperating broker; or one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by

the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale/lease results through the efforts of a seller/landlord) shall be disclosed by the listing broker by a key, code or symbol as required by the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to his or her client before the client makes an offer to purchase or lease.

**Section 5.4 – Responsibility for Payment of Fee:** When a cooperative fee is offered through the MLS, the listing broker is required to pay the cooperative fee to the transaction broker or buyer’s agent (as listing agent designates in the MLS), even when the cooperating agent is referred directly to the owner of the property for showing and negotiations.

**Section 5.6 – Bonuses and Incentives:** All terms and conditions of bonuses or incentives offered to other MLS participants to show, refer, or close a property, whether cash or non-cash, shall be disclosed in clear and understandable language so that the participant interested in benefiting or receiving the bonus or incentive will have a clear, thorough, advance understanding of all of the terms and conditions of the offer prior to acceptance. Information regarding bonuses or incentives should be placed in the private agent remarks section. The listing broker is responsible for and is required to pay any bonus or incentive offered through the MLS.

## **SECTION 6** **SERVICE CHARGES**

**Section 6 - Service Fees and Charges:** Each participant shall pay a reasonable monthly service fee to cover general expenses of the MLS. The monthly service fee (the company fee) will be assessed per physical location or branch office, even though there may be one broker in charge (“BIC”) for multiple locations. The monthly participation fee of each participant shall be an amount set by the Board of Directors of the MLS (as it may determine from time to time) which charge shall be multiplied times each salesperson or licensed or certified appraiser who has access to and use of the MLS, whether licensed as a broker, salesperson, or licensed or certified appraiser who is employed by or affiliated as an independent contractor with such participant. Fees are subject to change from time to time at the discretion and by vote of the Board of Directors. All fees are due on the first (1<sup>st</sup>) of each month and payable by the tenth (10<sup>th</sup>) of each month. Late fees (set by the Board of Directors from time to time) go into effect if the fees are not received by the MLS by the 10<sup>th</sup> of each month.

When any property is filed with the MLS, a listing filing fee shall be due in an amount set by the Board of Directors of the MLS from time to time.

If a participant’s charges and fees payable to the MLS are unpaid by the end of the month in which they become due, the MLS shall have the right to discontinue access to and use of the MLS until all charges and late fees are paid current.

The MLS will provide participants the option of a no-cost waiver of MLS fees, dues, and charges for any licensee or licensed or certified appraiser who can demonstrate subscription to a different

MLS where the principal broker participates. The MLS may, at its discretion, require waiver recipients and their participants to sign a certification for nonuse of its MLS services, which can include penalties and termination of the waiver if violated.

## **SECTION 7** **COMPLIANCE WITH RULES**

**Section 7 - Compliance with Rules:** By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- a. letter of warning
- b. letter of reprimand
- c. attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration
- d. appropriate, reasonable fine not to exceed \$15,000
- e. suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year
- f. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years.

Note: A participant (or user/subscriber, where appropriate) can be placed on probation. Probation is not a form of discipline. When a participant (or user/subscriber, where appropriate) is placed on probation the discipline is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the MLS rules during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the individual's record will reflect the fulfillment. The fact that one or more forms of discipline are held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance.

**Section 7.1 – Compliance with Rules:** Additionally, The following actions may be taken by the MLS for noncompliance with the rules:

- (a) for failure to pay any service charge or fee within one (1) month of the date due, and provided that at least ten (10) days' notice has been given, the MLS shall have the right to suspend the participants use of the MLS until service charges or fees are paid in full; and
- (b) for failure to comply with any rules and regulations and any other MLS governance provision, the provisions of Sections 9 and 9.1 shall apply

**Section 7.2 - Failure to Comply:** In addition to the other provisions of these Rules and Regulation, when the participant is notified of any violation of rules and regulations of the MLS,

the participant will have ten (10) days after delivery of the notification to become compliant. If the participant fails to comply within ten (10) days of notification of a violation, the MLS may, in addition to any and all other remedies available to the MLS, charge the noncompliant participant \$25.00 each day such violation continues, such daily charge not to exceed thirty (30) consecutive days. If the participant is still noncompliant after the 30-day period ends, the MLS shall have the right, in addition to any and all other remedies available to the MLS, to suspend the participant (including the primary office and branch offices) from use of the MLS until such time as the participant complies with these Rules and Regulations.

**Section 7.3 – Applicability of Rules to Users and/or Subscribers:** Non-principal brokers, sales licensees, appraisers and others authorized to have access to information published by the MLS are subject to these rules and regulations and that access to and use of MLS information is contingent on compliance with the rules and regulations. Further, failure of any user or subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the participant to the same or other discipline. This provision does not eliminate the participant’s ultimate responsibility and accountability for all users or subscribers affiliated with the participant.

## **SECTION 8** **MEETINGS**

**Section 8 – Meetings:** The meetings of the participants in the MLS or the Board of Directors of the MLS for the transaction of business of the Service shall be held in accordance with the provisions of SECTION 7, of the bylaws of the MLS.

## **SECTION 9** **ENFORCEMENT OF RULES OR DISPUTES**

**Section 9 - Consideration of Alleged Violations:** The Board of Directors will give consideration to all written complaints having to do with violations of these Rules and Regulations and any other MLS governance provision. The Board of Directors may also establish a committee to give consideration to all written complaints having to do with violations of these Rules and Regulations and any other MLS governance provision.

**Section 9.1 – Violations of Rules and Regulations:** If the alleged offense is in violation of Rules and Regulations of the MLS and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by the Board of Directors, and if a violation is determined, the Board of Directors may direct the imposition of sanction, provided that the recipient of such sanction may request a hearing before the Professional Standards Committee of the Association in accordance with the Bylaws and Rules and Regulations of the Association of REALTORS® within twenty (20) days following receipt of the Director’s decision.



If, rather than conducting an administrative review, the MLS has established a committee and a procedure to conduct hearings, any appeal of the decision of the hearing committee may be appealed to the Board of Directors of the MLS within twenty (20) days of the committee's decision. Alleged violations involving unethical conduct shall be referred to the professional standards committee of the Association for processing in accordance with the professional standards procedures of the Association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the board of directors of the Association.

Each participant is responsible for compliance with all Rules and Regulations for himself or herself and for all persons affiliated with him or her who use the MLS.

**Section 9.2 - Complaints of Unethical Conduct:** All other complaints of unethical conduct shall be referred by the Board of Directors of the MLS to the Association for appropriate action in accordance with the professional standards procedures established in the Association's bylaws.

**Section 9.3 – Complaints of Unauthorized Use of Listing Content:** Any participant who believes another participant has engaged in the unauthorized use or display of listing content, including photographs, images, audio or video recordings, and virtual tours, shall send notice of such alleged unauthorized use to the MLS. Such notice shall be in writing, shall specifically identify the allegedly unauthorized content, and shall be delivered to the MLS not more than sixty (60) days after the alleged misuse was first identified. No participant may pursue action over the alleged unauthorized use and display of listing content in a court of law without first completing the notice and response procedures outlined in this Section 9.3 of the MLS rules. Upon receiving a notice, the Board of Directors (or its designated committee) will send the notice to the participant who is accused of unauthorized use. Within ten (10) days from receipt, the accused participant must either: 1) remove the allegedly unauthorized content, or 2) provide proof to the Board of Directors (or its designated committee) that the use is authorized. Any proof submitted will be considered by the Board of Directors (or its designated committee), and a decision of whether it establishes authority to use the listing content will be made within thirty (30) days. If the Board of Directors (or its designated committee) determines that the use of the content was unauthorized, the Board of Directors (or its designated committee) may issue a sanction pursuant to SECTION 7 of these Rules and Regulations, including a request to remove and/or stop the use of the unauthorized content within ten (10) days after transmittal of the decision. If the unauthorized use stems from a violation of these Rules and Regulations, that too will be considered at the time of establishing an appropriate sanction. If after ten (10) days following transmittal of the Board of Directors (or its designated committee) determination the alleged violation remains uncured (i.e. the content is not removed or the rules violation remains uncured), then the complaining party may seek action through a court of law.

**Section 9.4 Multiple Listing Service Rules Violations:** MLS participants may not take legal action against another participant for alleged violation(s) of these Rules and Regulations unless the complaining participant has first exhausted the remedies provided in these rules.

**SECTION 10**  
**CONFIDENTIALITY OF MULTIPLE LISTING SERVICE INFORMATION**

**Section 10 – Confidentiality of Information:** Any information provided by the MLS to the participants shall be considered official information of the MLS. Such information shall be considered confidential and exclusively for the use of participants and real estate licensees affiliated with such participants and those participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such participants.

Each participant must inform its employees and agents of the confidential nature of the official information of the MLS and the requirement that they must abide by the terms and requirements of these Rules and Regulations when such information is made know to them by the participant on when using the MLS software online. In addition to the other provisions of these Rules and Regulation, when a participant or its employees or agents violate the confidentiality provisions of these Rules and Regulations, the participant shall, in addition to and any all other remedies available to the MLS, be subject to the following fines:

- First offense - \$1000.00 fine and service suspended until fine is paid.
- Second offense - \$2000.00 fine and service suspended until fine is paid.
- Third offense – Loss of MLS access.

**Section 10.1 – Multiple Listing Service Not Responsible for Accuracy of Information:** The information published and disseminated by the MLS is communicated verbatim, without change by the MLS, as filed with the MLS by the participant. The MLS does not verify such information provided and disclaims any responsibility for its accuracy. Each participant agrees releases any claim they may have against the MLS related to the accuracy of the information filed with the MLS by each participant and agrees to hold the MLS harmless against any liability arising from any inaccuracy or inadequacy of the information such participant provides.

## **SECTION 11** **OWNERSHIP OF MULTIPLE LISTING SERVICE COMPILATIONS AND** **COPYRIGHTS**

**Section 11** - By the act of submitting any property listing content to the MLS, the participant represents and warrants that he or she is fully authorized to license the property listing content as contemplated by and in compliance with this section and these rules and regulations, and also thereby does grant to the MLS license to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparables. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to the listed property. Each participant who submits listing content to the MLS agrees to defend and hold the MLS and every other participant harmless from and against any liability or claim arising from any inaccuracy of the submitted listing content or any inadequacy of ownership, license, or title to the submitted listing content. The term MLS compilation, as used in Sections 11 and 12 herein, shall be construed to include any format in which property listing data is collected and disseminated to the participants, including but not limited to bound book, loose-leaf binder, computer database, card file, or any other format whatsoever.

**Note:** The Digital Millennium Copyright Act (DMCA) is a federal copyright law that enhances the penalties for copyright infringement occurring on the Internet. The law provides exemptions or “safe harbors” from copyright infringement liability for online service providers (OSP) that satisfy certain criteria. Courts construe the definition of “online service provider” broadly, which would likely include MLSs as well as participants and subscribers hosting an IDX display.

One safe harbor limits the liability of an OSP that hosts a system, network or website on which Internet users may post user-generated content. If an OSP complies with the provisions of this DMCA safe harbor, it cannot be liable for copyright infringement if a user posts infringing material on its website. This protects an OSP from incurring significant sums in copyright infringement damages, as statutory damages are as high as \$150,000 per work. For this reason, it is highly recommended that MLSs, participants and subscribers comply with the DMCA safe harbor provisions discussed herein.

To qualify for this safe harbor, the OSP must:

1. Designate on its website and register with the Copyright Office an agent to receive takedown requests. The agent could be the MLS, participant, subscriber, or other individual or entity.
2. Develop and post a DMCA-compliant website policy that addresses repeat offenders.
3. Comply with the DMCA takedown procedure. If a copyright owner submits a takedown notice to the OSP, which alleges infringement of its copyright at a certain location, then the OSP must promptly remove allegedly infringing material. The alleged infringer may submit a counter-notice that the OSP must share with the copyright owner. If the copyright owner fails to initiate a copyright lawsuit within ten (10) days, then the OSP may restore the removed material.
4. Have no actual knowledge of any complained-of infringing activity.
5. Not be aware of facts or circumstances from which complained-of infringing activity is apparent.
6. Not receive a financial benefit attributable to complained-of infringing activity when the OSP is capable of controlling such activity.

Full compliance with these DMCA safe harbor criteria will mitigate an OSP’s copyright infringement liability. For more information see 17 U.S.C. §512.

**Section 11.1** – All right, title and interest in each copy of every MLS Compilation created or copyrighted by the Association and in the copyrights therein, shall at all times remain vested in the Association.

**Section 11.2** – Each participant in good standing and a member of this or any other Association of REALTORS® shall be entitled to lease from the Association a number of copies of each MLS Compilation sufficient to provide the participant and each person affiliated as a licensee (including licensed or certified appraisers) with such participant with one copy of such

compilation. The participant shall pay, for each such copy, the fee set by the Association. Participants shall acquire by such lease only the right to use the MLS compilation in accordance with these rules. This section should not be construed to require the participant to lease a copy of the MLS compilation for any licensee (or licensed or certified appraiser) affiliated with the participant who is engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties which are required to be filed with the MLS and who does not, at any time, have access to or use of the MLS information or the MLS facility of the Association.

## **ARTICLE 12** **USE OF COPYRIGHTED MULTIPLE LISTING SERVICE COMPILATIONS**

**Section 12 - Distribution:** Participants shall at all times maintain control over and responsibility for each copy of any MLS Compilation leased to them by the Association, and shall not distribute any such copies to persons other than subscribers who are affiliated with such participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other subscribers as authorized pursuant to the governing documents of the MLS. Use of information developed by or published by the MLS is strictly limited to the activities authorized under a participant's licensure(s) or certification, and any right of access to information developed or published by the MLS where access to such information is prohibited by law.

**Section 12.1 – Display:** participants and those persons affiliated as licensees with such participants shall be permitted to display the MLS Compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS Compilation.

**Section 12.2 – Reproduction:** Participants or their affiliated licensees shall not reproduce any MLS Compilation or any portion thereof except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS Compilation and distribute to prospective purchasers a reasonable<sup>1</sup> number of single copies of property listing data contained in the MLS Compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participant or their affiliated licensees, be interested.

Reproductions made in accordance with this rule shall be prepared in such a fashion that the property listing data of properties other than that in which the prospective purchaser has expressed interest, or in which the participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.

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<sup>1</sup> *It is intended that the participant be permitted to provide prospective purchasers with listing data relating to properties which the prospective purchaser has a bona fide interest in purchasing or in which the participant is seeking to promote interest. The term "reasonable" as used herein should, therefore, be construed to permit only limited reproduction of property listing data intended to facilitate the prospective purchaser's decision-making process in the consideration of a purchase. Factors which shall be considered in deciding whether the reproductions made are consistent with this intent, and thus "reasonable" in number, shall include, but are not limited to, the total number of listings in the Multiple Listing Service Compilation, how closely the types of properties contained in such listings accord with the prospective purchaser's expressed desires and ability to purchase, whether the reproductions were made on a selective basis, and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties, which would be shown to the prospective purchaser.*

Nothing contained herein shall be construed to preclude any participant from utilizing, displaying, distributing or reproducing property listing sheets or other compilations of data pertaining exclusively to properties currently listed for sale with the participant.

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables or statistical information from utilizing such information to support particular properties for particular clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be used as supporting documentation. Any other use of such information is unauthorized and prohibited by these Rules and Regulations.

### **SECTION 13** **USE OF MULTIPLE LISTING SERVICE INFORMATION**

**Section 13 - Limitations on Use of Multiple Listing Service Information:** Use of the information from MLS Compilation of current listing information, from the Association's statistical report, or from any sold or comparable report of the Association or MLS for public mass-media advertising by the MLS participant or in other public representations may not be prohibited.

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

***“Based on information from the Western Upstate MLS for the period (date) through (date).”***

### **SECTION 14** **CHANGES IN RULES AND REGULATIONS**

**Section 14 – Amendments:** Amendments to these Rules and Regulations shall be subject to a final decision and approval by the Board of Directors of the MLS and the Board of Directors of the Western Upstate Association of REALTORS®, Inc.

## **SECTION 15** **ORIENTATION**

**Section 15 – Orientation:** Any applicant for MLS participation and any licensee affiliated with an MLS participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS Rules and Regulations and computer training related to the MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided or, in the event that no such orientation program is scheduled within such 30-day period, the next scheduled orientation program date after access has been provided.

Participants and subscribers may be required, at the discretion of the MLS, to complete additional training of not more than four (4) classroom hours in any twelve (12) month period when deemed necessary by the MLS to familiarize participants and subscribers with system changes or enhancement and/or changes to MLS rules or policies. Participants and subscribers must be given the opportunity to complete any mandated additional training remotely.

## **SECTION 16** **INTERNET DATA EXCHANGE (IDX)**

**Section 16 – IDX Defined:** IDX affords MLS participants the ability to authorize limited electronic display of their listings by other participants via the following authorized mediums under the participant’s control: websites, mobile apps, and audio devices. As used throughout these rules, “display” includes “delivery” of such listing.

**Section 16.1 – Authorization:** Participants’ consent for display of their listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the MLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant’s listings, that participant may not download, or frame or display the aggregated MLS data of other participants. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis by where the seller has prohibited all Internet display.

**Section 16.2 – Participation:** Participation in IDX is available to all MLS participants who are REALTORS® and who consent to display of their listings by other participants.

**Section 16.2.1** – Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies.

**Section 16.2.2** - MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines.

**Section 16.2.3** - Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing’s property address from all

display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) or other forms of display or distribution.

**Section 16.2.4** – Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location (“uptown,” “downtown,” etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each participant.

**Section 16.2.5** – Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours.

**Section 16.2.6** – Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide or make any portion of the MLS database available to any person or entity.

**Section 16.2.7** – Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, “control” means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules.

**Section 16.2.8** - Any IDX display controlled by a participant or subscriber that:

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

either or both of those features shall be disabled or discontinued for the seller’s listings at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants. Except for the foregoing and subject to Section 16.2.9, a participant’s IDX display may communicate the participant’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller.

**Section 16.2.9** - Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to

remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 16.2.10** - A MLS participant (or where permitted locally, a MLS subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS participant (or MLS subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display.

**Section 16.2.11** – Participants shall not modify or manipulate information relating to other participants listings. MLS participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized fields.

**Section 16.2.12** - All listings displayed pursuant to IDX shall identify the listing firm in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data.

**Section 16.3 – Display:** Display of listing information pursuant to IDX is subject to the following rules:

**Section 16.3.1** – Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed.

**Section 16.3.2** – All listings displayed pursuant to IDX shall identify the listing agent.

**Section 16.3.3** – Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own websites subject to their participant’s consent and control and the requirements of state law and/or regulation.

**Section 16.3.4** – All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 16.3.5** – Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers’ personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties



consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the device application.

**Section 16.3.6** – Participants shall display at the start of any IDX property search the following disclaimer:

*“This information is deemed reliable, but not guaranteed. Neither, the Western Upstate Association of REALTORS<sup>®</sup>, Inc. or Western Upstate MLS of South Carolina, Inc., nor the listing broker, nor their agents are responsible for the accuracy of the information. The buyer is responsible for verifying all information. This information is provided by the Western Upstate Association of REALTORS<sup>®</sup>, Inc. and Western Upstate MLS of South Carolina, Inc. for use by its members and is not intended for the use for any other purpose.”*

**Section 16.3.8** – Participants shall display on each page of displayed search results, the following disclaimer:

*“The data relating to real estate for sale on this Web site comes in part from the Broker Reciprocity Program of the Western Upstate Association of REALTORS<sup>®</sup>, Inc. and the Western Upstate MLS, Inc.”*

**Section 16.3.9** – The data consumers can retrieve or download in response to an inquiry shall be determined by the MLS but in no instance shall be limited to fewer than five hundred (500) listings or fifty percent (50%) of the listings available for IDX display, whichever is fewer.

**Section 16.3.10** – The right to display other participants’ listings pursuant to IDX shall be limited to a participant’s office(s) holding participatory rights in this MLS.

**Section 16.3.11** - Listings obtained through IDX feeds from REALTOR<sup>®</sup> Association MLSs where the MLS participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from other sources (e.g., from other MLS’, from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the device application.

Note: An MLS participant (or where permitted locally, an MLS Subscriber) may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the MLS participant (or MLS Subscriber) holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds

resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display.

**Section 16.4 – Service Fees and Charges:** Service fees and charges for participation in IDX shall be as established annually by the Board of Directors.

**Section 16.5 – Monitoring of Data:** It is recommended that the Participating Broker-in-Charge and listing agent review any sites displaying company listings for accuracy and appropriateness.

## **SECTION 17** **MULTIPLE LISTING LOCK BOXES AND KEYS**

**Section 17 – Lock Box Security Requirements** - The MLS has adopted verbatim Part 2H, Section 2, NAR Lock Box Security Requirements, of the most current *Handbook on Multiple Listing Policy*.

It is strongly recommended that all participants use only the electronic lock boxes approved by the MLS, or, at a minimum, use combination lock boxes or such other lock boxes which can be opened only by a method that cannot be readily copied. Physical key lock boxes may not be used. participants who use combination lock boxes must comply with the following requirements: (1) Combinations must be regularly changed; (2) participants must report any possible combination compromise to the MLS; and (3) participants must immediately change all combinations when any possible compromise occurs.

## **SECTION 18** **VIRTUAL OFFICE WEBSITE (VOW)**

### **Section 18.1 – VOW Defined**

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

(b)As used in Section 18 of these rules, the term “participant” includes a participant’s affiliated non-principal brokers and sales licensees—except when the term is used in the phrases “participant’s consent” and “participant’s oversight, supervision, and accountability”. References to “VOW” and “VOWs” include all Virtual Office Websites, whether operated by a participant, by a non-principal broker or sales licensee, or by an “Affiliated VOW Partner” (AVP) on behalf of a participant.

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

(d)As used in Section 18 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by the participants to the MLS and aggregated and distributed by the MLS to participants.

## **Section 18.2**

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

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

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

## **Section 18.3**

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

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

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

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

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

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

(i) that the Registrant acknowledges entering into a lawful consumer-broker relationship with the participant;

(ii) that all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;

(iii) that the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;

(iv) that the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;

(v) that the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

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

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

VOW. The agreement may also include such other provisions as may be agreed to between the participant and the Registrant.

**Section 18.4:** A participant’s VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the participant to ask questions, or get more information, about any property displayed on the VOW. The participant, or a non-principal broker or sales licensee licensed with the participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that participant and displayed on the VOW.

**Section 18.5:** A participant’s VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, “scraping”, and other unauthorized use of MLS Listing Information. A participant’s VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not pose security obligations greater than those employed concurrently by the MLS.

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

**Section 18.6**

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

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

**Seller Opt-Out Form**

1. Please check either Option a or Option b

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

OR

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

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

Initials of seller

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

**Section 18.7:**

(a) Subject to subsection (b), below, a participant's VOW may allow third-parties:

- i. to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- ii. to display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing.

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(b) Notwithstanding the foregoing, at the request of a seller the participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all participant's websites. Subject to the foregoing and to Section 18.8, a participant's VOW may communicate the participant's professional judgment concerning any listing. A participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**Section 18.8:** A participant's VOW shall maintain a means (e.g., e-mail addresses, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The participant shall correct or remove any false information relating to a specific property within forty-eight (48) hours following receipt of a communication from the listing broker explaining why the data or information is false. The participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 18.9:** A participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 18.10:** Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or any other applicable MLS rules or policies, no participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

**Section 18.11:** A participant's VOW must display the participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

**Section 18.12:** A participant’s VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

**Section 18.13:** A participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS participants for purpose of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

**Section 18.14:** A participant may operate more than one VOW himself or herself or through an AVP. A participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a participant by an AVP is subject to the supervision and accountability of the participant.

**Section 18.15:** A participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the display on VOWs of fewer than all the listings or fewer than all of the authorized information fields.

**Section 18.16:** A participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by the MLS. A participant’s VOW may include other appropriate disclaimers necessary to protect the participant and/or the MLS from liability.

**Section 18.17:** A participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in the typeface not smaller than the median typeface used in the display of listing data.

**Section 18.18:** A participant may display advertising and the identification of other entities (“co-branding”) on any VOW the participant operates or that is operated on his or her behalf. However, a participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this Section, co-branding will be presumed not to be deceptive or misleading if the participant’s logo and contact information (or that at least one participant, in the case of a VOW established and operated on behalf of more than one participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all participants displayed on the VOW is as large as the logo of the AVP and larger than that of any other third party.

**Section 18.19:** A participant shall cause any listing displayed on his or her VOW that is obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

**Section 18.20:** A participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

**Section 18.21:** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.