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**Multiple Listing Service Rules**

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## **MIDLANDS MLS INC.** **RULES AND REGULATIONS**

### **Article 1. MLS PARTICIPATION**

1.1       **PARTICIPATION.** Participation in the Midlands MLS Inc. ("MLS") shall be as provided in Article IV, of the Bylaws of Midlands MLS Inc. Each Participant shall be responsible to represent the Participant's firm in its relationship and responsibilities to the MLS.

1.2       **TRANSFERS.** Participations are not transferable, and cannot be placed on an inactive basis, temporarily or permanently.

1.3       **PARTICIPATION FEES.** Initial participation fees must accompany applications for participation, and are not refundable should the firm discontinue the service.

### **Article 2. LISTING PROCEDURES**

21       **LISTING PROPERTIES.** information entered in the Database Listing of real or personal property which is listed subject to a real estate broker's license, located within the territorial jurisdiction of the MLS, taken by Participants on listing forms acceptable to the MLS, shall be entered in the Database by the listing Participant within two business days after the day when all necessary signatures of seller/landlord have been obtained (except weekends and holidays). When a residential Listing is entered in the Database, the Lead Based Paint Disclosure Form, if the property was built before 1978 and the Seller Property Condition Disclosure Statement if required for the property under Neb. Rev. Stat. § 76-2,120 shall be included with the listing information entered in the Database except where sellers expressly direct that such disclosure documents not be disseminated in the MLS. If the listing Participant desires that the MLS enter the Listing, the MLS may charge an appropriate fee for such service. The MLS as a matter of local discretion has required submission of all legally required seller disclosure information (lead paint disclosure and sellers property condition disclosure statement).

22       **FORM OF LISTING.** The MLS shall not require a Participant to submit a listing contract on a form other than the form the Participant individually chooses to utilize, provided the listing form is of a type acceptable to the MLS, although a "Property Data Form" may be required as approved by the MLS. The MLS, through its legal counsel, may:

22.1       reserve the right to refuse to accept a listing form which fails to adequately protect the interest of the public and the Participants;

222 assure that no listing form entered in the Database establishes, either directly or indirectly, any contractual relationship between the MLS and the client (buyer/tenant or seller/landlord).

23 **TYPE OF LISTING.** The MLS shall accept exclusive right to sell listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer cooperation and compensation to the other Participants of the MLS acting as subagents, buyer agents, or both. The listing agreement must include the seller/landlord's authorization to submit the agreement to the MLS.

23.1 The MLS will not accept net Listings because they are deemed unethical and, in Nebraska, illegal. Open Listings are not accepted because the nature of an open Listing is such as to usually not include the authority to cooperate with and compensate other brokers and inherently provides a disincentive for cooperation.

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

23.3 The exclusive agency Listing also authorizes the listing broker , as exclusive agent, to offer cooperation and compensation on a blanket unilateral basis, but also reserves to the seller/landlord the general right to sell/lease the property on an unlimited or restrictive basis. The exclusive agency Listings and exclusive right to sell Listings with named prospects exempted, shall be clearly distinguished from the exclusive right to sell Listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell Listings with no named prospects exempted.

234 Participant of a Buyer's Agent representing the buyer of a property not listed with any Participant may process property data and selling information, for statistical purposes as otherwise provided, after closing of the transaction.

**24 LISTINGS SUBJECT TO RULES AND REGULATIONS OF THE MLS.** A

Participant, by taking a Listing and entering it in the Database, agrees to abide by and follow the Rules and Regulations of the MLS as they may be amended from time to time. If the property is sold/leased before the Listing is entered in the Database, the Listing shall be entered as a new Listing with the information that the property is under contract being entered at the same time, unless the seller/landlord specifically requests that the Listing not be entered in the Database.

**25 DETAIL ON LISTINGS ENTERED IN THE MLS.** Listing information when entered

in the Database shall be complete in every detail which is ascertainable, as shown on the property data form. Incomplete or inaccurate listing information shall be subject to such penalties as may be established by the MLS.

**26 EXEMPTED LISTINGS.** If the seller/landlord refuses to permit the property to be

entered in the Database, the Participant may then take an exclusive right to sell or exclusive agency on a "Do Not Process" basis. The document signed by the seller/landlord declining to participate in the MLS shall be filed with the MLS. When "Do Not Process" Listings are closed, data concerning the Listing will be entered in the Database by the listing broker for statistical and comparable purposes, providing the seller/landlord has previously given consent to the entry of the data.

**27 CHANGE OF STATUS OR TERMS OF LISTING AGREEMENT.** Any change in

listed price or other changes in the original listing agreement shall be made only when authorized in writing by the seller/landlord. Changes in status such as the sale of a listed property that does not require the seller/landlord to continue marketing the property shall also be entered in the Database. All such changes shall be entered in the Database within two business days after the day when all necessary signatures have been obtained by the listing Participant. Changes in status, such as a sale of a listed property, do not require the signature of the seller/landlord. The MMLS Staff may request and, if so, the Participant shall provide documentation justifying change prior to MMLS staff making additions, deletions and/or modifications to the MLS data.

**28 WITHDRAWAL OF LISTINGS PRIOR TO EXPIRATION.** Listings of property

may be withdrawn from the MLS by the listing broker before the expiration date of the listing agreement if the listing broker has secured the written agreement of the seller/landlord authorizing the withdrawal. The agreement shall be maintained by the listing broker as part of the file for such Listing and shall be furnished to the MLS upon request of the Executive Vice President of the MLS. Sellers/landlords do not have the unilateral right to require the MLS to withdraw a Listing without the listing broker's concurrence. However, when a seller/landlord can document that his exclusive relationship with the listing broker has been terminated, the MLS may remove the Listing at the request of the seller/landlord.

29 **LISTING MULTIPLE UNIT PROPERTIES.** All improved properties which are to be or may be sold/leased separately must be entered individually, unless it adjoins unimproved property. When part of a property which has been entered in the Database has been sold/leased, proper notification shall be given to the MLS.

2.10 **COOPERATION WITH OTHER BROKERS.** Any Listing submitted to the MLS shall provide for cooperation by other brokers participating in MLS. Except for new construction properties, if a Listing is entered in the Database, cooperating brokers must be permitted to show the property immediately upon its entry.

2.11 **EXPIRATION, EXTENSION AND RENEWAL OF LISTINGS.** Any Listing entered in the MLS automatically expires on the date specified in the listing agreement unless renewed by the listing broker, and notice of renewal or extension is entered in the Database prior to expiration. If notice of renewal or extension is dated more than 30 days after the expiration date of the original listing agreement, then a new listing agreement must be secured for the Listing to be entered in the Database. It should then be published as a new Listing. Any extension or renewal of a listing agreement must be signed by the seller/landlord and be entered in the Database.

2.12 **TIME PERIODS SPECIFIED.** All time periods referred to herein concerning entering and/or reporting shall begin subsequent to date of the listing agreement or date of action. Saturdays, Sundays, and holidays are excluded from the calculation of said periods.

2.13 **EXPIRATION DATE.** Listings entered in the Database shall bear a definite and final expiration date as negotiated between listing broker and the seller/landlord.

2.14 **JURISDICTION.** Only Listings of the designated types of property located within the jurisdiction of the Board of REALTORS® are required to be submitted to the MLS. Listings of properties located outside the Board's jurisdiction will not be accepted.

2.15 **NO CONTROL OF COMMISSION RATES OR FEE CHARGES 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.

2.16 **LISTINGS OF SUSPENDED OR EXPELLED PARTICIPANTS.** When a Participant of the MLS is suspended or expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board By-Laws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees or charges), all Listings currently

entered in the Database by the suspended or expelled Participant shall, at the Participant's option, be retained in the Database until sold/leased, 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 Board or MLS (or both) for failure to pay appropriate dues, fees or charges, the MLS is not obligated to provide MLS services, including continued inclusion of the suspended or expelled Participant's Listings in the Database. Prior to any removal of a suspended or expelled Participant's Listings from the Database, the suspended Participant should be advised in writing of the intended removal so that the suspended or expelled Participant may advise Participant's clients.

2.17 **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 Listings in the Database. Prior to any removal of a resigned Participant's Listings from the Database, the resigned Participant should be advised in writing of the intended removal so that the resigned Participant may advise Participant's clients.

### **Article 3. SELLING/LEASING PROCEDURES**

3.1 **APPOINTMENTS FOR ACCESSING OR SHOWING AND NEGOTIATIONS FOR PURCHASE.** Negotiations for purchase/lease of properties or for making arrangements for accessing or showings of properties listed in the Database shall be conducted through the listing broker, except if:

- 3.1.1 the seller/landlord and listing agent have agreed on a different manner of making arrangements for showings, or
- 3.1.2 the listing broker gives the selling broker specific authority for showings of property or to negotiate directly, or
- 3.1.3 after reasonable effort, the selling broker cannot contact the listing broker or the broker's representative, the selling broker shall notify the Executive Vice President of the MLS. Such officer may grant authority to the selling agent to present an offer when accompanied by such officer or to contact the seller/landlord directly for the purpose of arranging the showing of a property. However, the listing broker shall have the option to preclude such direct negotiations by cooperating brokers.

3.2 **PRESENTING OFFER.** The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so.

3.3 **RIGHT OF COOPERATING BROKER IN PRESENTATION OF OFFER.** The cooperating broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller/landlord of any offer he secures for purchase/lease. Such individual does not have the right to be present at any discussion or evaluation of that offer by the seller/landlord and the listing broker. However, if the seller/landlord gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker has secured is presented, the cooperating broker has the right to a copy of the seller/landlord's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

**3.4 RIGHT OF LISTING BROKER IN PRESENTATION OF COUNTER-OFFER.**

The listing broker or his representative has the right to participate in the presentation of any counter-offer made by the seller/landlord. Such individual does not have the right to be present at any discussion or evaluation of a counter-offer by the buyer/tenant (except when the cooperating broker is a subagent). However, if the buyer/tenant gives instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has a right to a copy of the buyer/tenant's written instructions.

3.5 **ALL WRITTEN OFFERS SUBMITTED.** The listing broker shall submit to the seller/landlord all written offers until closing unless precluded by law, government rules, regulation, or agreed otherwise in writing between the seller/landlord and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend the seller/landlord obtain the advice of legal counsel prior to acceptance of the subsequent offer.

3.6 **REPORTING OF SALES.** Status changes, including final closing of sales, shall be entered in the Database by the listing office within two business days after they have occurred. If negotiations were carried on under paragraph 3.1.1, 3.1.2, or 3.1.3 the selling broker shall report accepted offers to the listing office within one business day after the occurrence, and the listing office shall enter the data in the Database within one business day after receiving notice from the selling broker.

3.7 **ADVERTISING LISTINGS.** Advertising of any Listing by a Participant, other than the listing office, is permissible only with consent of the listing office. This paragraph shall not prohibit reproduction of data in accordance with the terms of paragraph 9.5, participation in IDX in accordance with Article 14 or operation of a VOW in accordance with Article 15.

3.8 **PENDING SALE NOT CONSUMMATED**. The listing office shall report immediately to the MLS at the time any pending sale or lease is not consummated and the Listing shall be reprocessed immediately.

3.9 **CONTINGENCY ACTIONS**. The listing broker shall enter in the Database if a Listing has been cancelled or a contingency in a Listing has been fulfilled or renewed, within two business days after the event.

3.10 **INPUT RULES**. The following rules shall pertain to inputting data in the Database:

- 3.101 **Simulated Photos.** The word “simulated” shall be placed across the photographs set forth in the Database where the Listing does not feature the actual photograph.
- 3.102 **Model Homes.** The word “MODEL” shall be inputted in the ‘Street Name’ field, directly behind the actual street name on all model home Listings, (i.e., Vine MODEL or Beechwood MODEL). The actual address of the model home shall be disclosed in the ‘Agent Remarks’ field. The words “SOLD, MODEL HOME” shall appear at the beginning of Agent Remarks. The word “MODEL” shall also be placed across the photograph set forth in the Database.
- 3.103 **Patio Homes.** A Patio Home may be entered under the additional property types of Detached Residential and/or Attached/Condo/Townhome. The words “PATIO HOME” shall be inputted at the beginning of Marketing and Agent Remarks. The words “PATIO HOME” shall also be placed across the photograph set forth in the Database. All duplicate Listings must be cross-referenced in the ‘Agent Remarks’ field by MLS number, i.e. “Duplicate Listing #123456.” Only the actual Patio Home Listing may be placed on pending (or sold) status, with the other duplicate Listing(s) being withdrawn at the time the Listing goes under contract.
- 3.104 **Duplicate Listings.** All duplicate Listings must be cross-referenced in the ‘Agent Remarks’ field by MLS number, i.e. “Duplicate Listing #123456.” Only one Listing may be placed on pending (or sold) status, with the other duplicate Listing being withdrawn at the time the Listing goes under contract.
- 3.105 **REALTOR® Information.** Information regarding the listing agent and/or listing company (including, but not limited to, names, logos, phone numbers, e-

mail and Internet site addresses), as well as information regarding the seller/landlord and the showing of the property, shall be allowed only in the ‘Agent Remarks’ and other data fields specifically labeled for such information, and shall not be permitted to be displayed in text fields, graphics, or hypertext-linked displays that are publicly viewable. This restriction does not apply to the name of the builder, a “Listing Courtesy of (Broker Name)” statement consistent with the IDX public display, or an ownership or copyright identifier (limited to the Participant’s company logo, company name and/or company URL) located in a photograph in the bottom ten percent of the picture area. In addition, third-party promotional or advertising information including, without limitation, company names, logos, URLs, trademarks, trade names, and the like shall not be permitted to be displayed in text fields, system graphics, or other publicly-viewable fields.

3.106 **Expired Listings - Right to Call.** If a listing broker receives notification from a seller/landlord after a listing agreement of the seller/landlord’s property has expired, that the seller/landlord wishes to terminate the consent they gave to receive contacts by telephone or otherwise from the Subscribers of the MLS, the listing company agrees to enter this information into an appropriate data field in the Database. The listing company, by being a Participant in the MLS, agrees to indemnify and hold harmless any other Participant and the Subscribers associated with such Participant, from any liability, fines or civil penalties that might result from the listing company’s failure to comply with this rule.

3.107 **Use of Additional Photos by Subsequent Agent.** If a listing agent places photographs in the MLS, those photographs may not be used by another listing agent who subsequently lists the property without the permission of the original listing agent.

3.108 **Agent Remarks Section.** All remarks in the ‘Agent Remarks’ field shall be directly related to the sale of the listed property and shall not refer to the business models or policy decisions of the listing company or other Participants.

3.109 **Auction.** If a property placed in the MLS is to be sold at auction, the following rules shall apply:

- 3.10.9.1 The word “AUCTION” shall be placed at the beginning of the ‘Agent Remarks’ field, followed by the date and time of the auction.
- 3.10.9.2 The word “AUCTION” shall be placed at the beginning of the publicly viewable ‘remarks’ field.
- 3.10.9.3 Any photo that is to be displayed in the electronic MLS shall have the word “AUCTION” placed across the photograph.
- 3.10.9.4 The word “AUCTION” shall be inputted in the ‘Street Name’ field directly behind the actual street name on all auction listings (i.e. Vine AUCTION, or Beechwood AUCTION).

3.11 **PENDING CONTINGENT CONTRACT – CONTINUED ACTIVE.** Upon acceptance of a contingent contract and the agreement in writing by all parties to the transaction to maintain the listing or marketing in active status, the listing Participant shall update the listing by disclosing at the beginning of the Agent Remarks in the MLS as follows: “Contact Listing Agent prior to showing.”

#### **Article 4. REFUSAL TO SELL/LEASE**

4.1 **REFUSAL TO SELL/LEASE.** If the seller/landlord of any listed property filed with the MLS refuses to accept a written offer satisfying the terms and conditions stated in the listing agreement, such fact shall be transmitted immediately to the MLS and to all Participants.

#### **Article 5. PROHIBITIONS**

5.1 **LISTINGS NOT AVAILABLE TO NON-PARTICIPANTS.** Except as otherwise specifically provided in Article 14 or Article 15, no Listing entered in the Database shall be made available to any non-Participant in the MLS without the consent of the listing broker, except the Board of Directors of Midlands MLS Inc. may, upon a two-thirds vote of the MLS Board of Directors, grant access to the Database to governmental entities with or without charge. This rule shall not prohibit use of the Database by office personnel and personal assistants who have been issued a private access password to the Database and who are performing tasks which do not require the individual to hold a Nebraska real estate license.

5.2 **SPECIAL ISSUANCE OF PASSWORD.** Office personnel and personal assistants who have been approved by the Participant of an office may be issued a private access password to the Database upon the Participant registering such individual with the MLS. Registration shall include the Participant, office personnel, personal assistant and sales person(s) with whom the personal assistant is

associated, as the case may be, signing a Request for Private Access Password form. Access to the Database shall be used by office personnel and personal assistants who have been issued a private access password pursuant to the terms of this paragraph shall be limited to activities that do not require a Nebraska real estate license. Additionally, access to, or use of the information contained in the Database shall be subject to these Rules and Regulations.

5.3 **UNAUTHORIZED USE OF PASSWORD.** No person shall permit the private access password assigned to them to be used by any person other than an individual who currently has a private access password to the Database issued to them. Each REALTOR® shall promptly report any violation of this Rule to the MLS Executive Vice President.

5.4 **USE OF LOCK KEYS.** Use of lock keys shall be in accordance with the Lock Box Security Requirement policies set forth in the handbook on Multiple Listing Policy of the National Association of REALTORS®, as they now exist or as they may be amended or modified in the future. In addition to use of lock keys by REALTOR® members, Affiliate members engaged in real estate related fields such as heating, plumbing, electrical and air conditioning inspection and maintenance, building maintenance and repair, surveying and mapping, property inspection, pest control, and such other fields as may from time to time be authorized by MLS, may be granted authorization to accept custody and responsibility for lock key use in connection with providing services directly related to their field. No affiliate shall use a lock key to access a property without first having made arrangements in accordance with rule 3.1. Office personnel and personal assistants who do not hold real estate licenses may obtain a key for use in connection with their real estate office activities for purposes that do not require the individual to hold a Nebraska real estate license, upon receiving prior approval from the broker of the office where they are affiliated. No individual key holder shall permit their key to be used by any other person.

5.5 **REMOVAL OF LOCK BOX.** Whenever the status of a Listing in the MLS is no longer active or pending, the listing agent shall promptly remove any lock box from the property. Failure to remove a lock box within five days after the Listing is no longer active or pending without the seller/landlord's consent shall constitute a violation of the MLS Rules and Regulations.

5.6 **SOLICITATIONS FOR LISTINGS.** Participants shall not solicit a listing on property filed with the MLS unless such solicitation is consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice, and its Case Interpretations.

5.7 **FOR SALE SIGNS.** Only the "FOR SALE" signs of the listing broker may be placed on a property.

5.8 **"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.

5.9 **AGENT REPORTS AVAILABLE ONLY TO PARTICIPANTS AND SUBSCRIBERS.** Any and all reports generated by or available from the MLS Database which are

designated as any type of “Agent” report shall not be provided or made available to any person or party other than a Participant or Subscriber.

## **Article 6. DIVISIONS OF COMMISSIONS**

**6.1 COOPERATIVE COMPENSATION SPECIFIED ON EACH LISTING.** The listing broker shall specify, on each Listing entered in the Database, the compensation offered to other Participants for their services in the sale/lease of such property. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker’s performance as the procuring cause of the sale/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/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 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 submitting a Listing to the MLS, the Participant is making blanket unilateral offers of compensation to other Participants, and shall therefore specify on each Listing the compensation being offered to the other Participants. Specifying the compensation on each Listing is necessary, because the cooperating broker has the right to know what compensation shall be prior to his endeavor to sell.

The compensation specified on Listings published by the MLS shall appear in one of two forms. The essential and appropriate requirement by the MLS is that the information to be published shall clearly inform 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 published by the MLS shall be shown in one of the following forms:

- 1) by showing a percentage of the gross selling price; or
- 2) by showing a definite dollar amount; or
- 3) by showing asterisks when compensation is affected by a third party, explanation required in agent remarks.

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

This subsection 6.1 shall not preclude the listing broker from offering any 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 MLS. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

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

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

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

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.

The MLS shall 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. The MLS 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.

**62 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.

63        **OFFERING SELLING/LEASING BONUSES.** A selling/leasing bonus, when offered on properties entered in the Database, shall contain the specific amount of the bonus, specific terms, conditions, time limitations and other appropriate details of the bonus offer, and shall be entered in the Database. All selling/leasing bonuses shall be payable by the listing broker to the cooperating broker.

64        **ACTING AS PRINCIPAL.** If a Participant or any licensee (or licensed or certified appraiser) affiliated with a Participant has any interest in property, the Listing of which is to be disseminated through the Database, that person shall disclose that interest when the Listing is entered in the Database and such information shall be disseminated to all Participants. If a Participant or any licensee (including licensed or 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 seller/landlord not later than the time the offer of purchase is submitted to the listing broker.

65        **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 their client before the client makes an offer to purchase/lease.

66        **COMPENSATION PAYOUT.** Compensation of cooperating broker, if any is due, shall be paid to the cooperating broker by the listing broker the later of when due or five (5) business days after the listing broker receives the compensation from which the cooperating compensation is due.

## **Article 7. MLS CHARGES**

7.1        **SCHEDULE OF CHARGES.** Service charges shall be made for operation of the MLS, to defray its costs. The charges and fees for services may be set by MLS and adjusted from time to time.

7.2        **EXEMPTION RULE.** The REALTOR® Participant of the MLS shall be exempt from payment of the MLS charge for any individual employed by or affiliated as a licensee with the Participant if such individual is involved solely in property management. Such exemption shall be effective for the fiscal year in which the exemption is granted, and shall be reaffirmed annually. The exemption shall be effective when approved by the MLS.              The exemption for any individual shall

automatically be revoked upon the individual's utilization of the MLS or being involved in the Listing or sale of real property in any manner. If the exemption is revoked, dues shall be assessed for the entire fiscal year in which revocation took place.

7.3        **BILLING PROCEDURES**. Monthly payment of fees for MLS services shall be paid by Subscribers as follows:

- 7.3.1        By electronically deducting such charges from an account designated by each Subscriber on the first business day of each month for the current month's MLS service, or
- 7.3.2        If the electronic transaction fails for the first time during any six-month period due to the fault of the Subscriber (such as for non-sufficient funds or for a closed account), a delinquent notice will be mailed to both the Subscriber and the Participant requiring full payment by the Subscriber of all MLS service fees within ten days from the date of mailing.
- 7.3.3        The accounts of Subscribers:
  - 7.3.3.1        with unpaid electronic accounts at the end of the ten-day period referred to in paragraph 7.3.2, or
  - 7.3.3.2        if the electronic transaction has failed more than once during any six-month period to the fault of the Subscriber (such as for non-sufficient funds or a closed account), or
  - 7.3.3.3        with any unpaid prepayment accounts will be dealt with as follows:
    - 7.3.3.1        The Subscriber shall be immediately suspended from further service and the Subscriber and the Participant's firm's broker shall be notified by mail of the suspension. The notification shall warn of the impending termination of the Participant's firm from the MLS as is provided in paragraph 7.3.3.3.3 below.
    - 7.3.3.2        The Subscriber's suspension will remain in force until the account is paid in full, together with any bank charges which have been imposed upon the MLS as the result of Subscriber's account, plus the payment of such reinstatement penalty as may be set by the Board of Directors from time to time.

73.3.3 If the Subscriber is still affiliated with the Participant at the end of 30 days after the date of Subscriber's suspension, the Participant's MLS service will be terminated and the Participant will be required to pay all fees associated with the setup of a new MLS firm to reestablish service. The Subscriber will be considered as no longer being affiliated with the Participant's firm when the Participant has turned in the Subscriber's real estate license to the Nebraska Real Estate Commission or the license has been transferred to another firm.

73.3.4 The Participant shall not be liable for the fees of any suspended or terminated Subscriber.

7.4 **WAIVER OF SERVICES AND FEES.** Waiver of MLS services and fees will normally be granted for periods of not less than 90 days and shall be limited to humanitarian or non-elective medical reasons. Granting of such waiver will be conditional upon the individual not having any active listing entered in the MLS, and will carry the same conditions as specified in Article 7.2 with regard to effective date and revocation.

## **Article 8. OWNERSHIP AND PROTECTION OF MLS COMPILATIONS AND COPYRIGHTS**

8.1 **AUTHOR.** Subscriber represents and warrants that Subscriber is the original author of all information relating to specific properties, including any and all copyrightable information contained therein, including photographs, (collectively, the "Listing") the Subscriber provides to Participant for inclusion in the Database or directly inputs into the Database, or that Subscriber has obtained an assignment of all copyrights that may be contained in the Listing from the original author of such information.

8.2 **INTENT.** By the act of submitting any property listing content to the MLS the Participant represents that he has been authorized to grant and also thereby does grant authority for the MLS to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparables. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property.

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 MLSSs 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 LSSs, 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.

**8.3        OWNERSHIP.** All right, title, and interest in each copy of every multiple listing compilation created and copyrighted by the Midlands MLS and in the copyrights therein, shall at all times remain vested in the Midlands MLS .

**8.4        AUTHORIZED USE.** Each Participant shall be entitled to lease from the Midlands MLS 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 rental fee set by the association. Participants shall acquire by such lease only the right to use the MLS compilation in accordance with these rules.

8.5 **SYMBOL.** All copies of the MLS compilation, reproduced or distributed, shall bear the copyright symbol, ©, the current year, and attribute ownership of the copyright to "Midlands MLS, Inc".

## **Article 9. USE OF COPYRIGHTED MLS MATERIALS**

91 **USE BY MLS.** The MLS shall have the right to use, copy, distribute, and display in the private MLS website, the Listings provided by Participant in the Database, to create derivative works based upon the Listings in the Database, and to license any entity to undertake any of the foregoing pursuant to terms agreed upon by the MLS Board of Directors.

In consideration of the creation of such joint works, MLS agrees it will not use, or allow others who are not MLS Subscribers or authorized users to use, copy, distribute, or display the Listing provided by Participant, without the consent of Participant, except as provided in paragraphs 9.2, 9.4 , and 9.5.

92 **USE BY PARTICIPANT.** Participant shall have an unlimited right to use, copy, distribute, and display Listings which Participant or Participant's Subscribers provide to the MLS for inclusion in the Database. Participant shall have a limited transferrable license which may be assigned to Subscribers of the Participant to reprint and reproduce Listings provided by other Participants to the MLS for inclusion in the Database for direct distribution to prospective buyers/tenants subject to the limitations of paragraphs 9.4 and 9.5. In addition, a Participant who participates in the Internet Data Exchange defined in Article 14 shall have the right to use, copy, distribute, and display on Participant's website Listings provided by other Participants who also participate in the Internet Data Exchange, subject to the limitations set forth in Article 14. Further, a Participant who operates a VOW, as defined in Article 15, shall have the right to use, copy distribute and display on the Participant's VOW Listings provided by other Participants subject to and only accordance with the provisions of Article 15. Participants who do not participate in the Internet Data Exchange and who do not operate a VOW shall have no right to use, copy, distribute or display on their website Listings provided by other Participants, unless specific consent for such use or uses has been given.

93 **LIMITATION.** Notwithstanding the foregoing, (I) MLS's rights in and to the Listings contained in the Database are limited by Rules, and (ii) each individual Participant's ownership is subject to, and does not extend to, materials included in the Database or Listings that are owned by MLS's third-party licensors or other Participants. Use of any such materials is limited by any restrictions that have or may be imposed by the applicable owner of such materials and shall be subject to the provisions of Article 14 and Article 15.

94 **DISPLAY.** Participants and those persons affiliated as licensees with such Participants and Subscribers shall be permitted to display Listings provided by other Participants for inclusion in the Database to prospective buyers/tenants only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers/tenants for the properties described in the Database.

95 **USE OF MLS WEBSITE LISTINGS.** Participants and their Subscribers shall have a limited license to use, copy, reproduce, or distribute Listings provided by other Participants or any portion thereof, in accordance with Article 14 and Article 15 hereof and in the following limited circumstances:

- 95.1 Participants or their Subscribers may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable\* number of single copies of property listing data contained in the MLS compilation which, in the judgment of the Participant or Subscriber, relate to any properties in which the prospective buyers/tenants are or may be interested.
- 95.2 Reproductions made in accordance with paragraph 9.5.1 shall be prepared in such a fashion that the property listing data of properties other than those in which the prospective buyer/tenant has expressed interest, or those which the Participant or Subscriber is seeking to promote interest, does not appear on such reproduction.
- 95.3 All Listings reproduced or distributed shall contain the copyright symbol, ©, the current year, and attribute ownership of the copyright to "Midlands MLS, Inc. and the Listing Broker."
- 95.4 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 or lease with the Participant.
- 95.5 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.
- 95.6 None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, "sold" information, "comparables," or statistical information from utilizing such information to support valuations on particular properties for clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. 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. (Amended 05/14)

96 **REPRODUCTION OF FORMS.** All copyright rights contained in forms produced by the MLS are reserved by Midlands MLS, Inc. The forms are intended for the exclusive use of the Participants and Subscribers to the MLS. No Participant or Subscriber to the MLS may give, copy, or in any manner distribute MLS forms to third parties, except copies clearly marked "SAMPLE" may be copied and used for education in connection with real estate licensing activities. Any copies reproduced or distributed must contain the copyright symbol, ©, the current year, and attribute ownership to "Midlands MLS Inc. and the Listing Broker."

## **Article 10. VIOLATIONS OF RULES**

10.1 **PENALTIES.** Penalties as determined by the MLS, may be imposed by the MLS for the following violations of the MLS Rules and Regulations:

- 10.1.1 failure to submit a listing within the required time limit after all required signatures are received.
- 10.1.2 entry of incomplete or inaccurate listing information in the Database.
- 10.1.3 failure to complete a Pre-Sold, New construction Residential Data Input Form within two business days after closing of the transaction if the listing information has not previously been inputted in the Database.
- 10.1.4 failure to report any change in listed price or other change in original listing agreement within two business days after the event.
- 10.1.5 failure to submit a pending report within two business days after the date of acceptance of the offer.

- 10.1.6 failure to submit sold information within ten days after closing date.
- 10.1.7 violation of paragraph 5.1 regarding the Database, paragraphs 5.2 or 5.3 regarding passwords, paragraph 5.4 regarding lock keys or paragraph 5.5 regarding lock box removal.
- 10.1.8 violation of the input rules set forth in paragraph 3.10.

10.2 **PROCEDURES FOR PENALTIES.**

- 10.2.1 If a penalty is called for in paragraph 10.1, such penalty shall be established by the Board of Directors of the MLS with a list of such penalties being published to the Participants on a regular basis. Written notification of a penalty shall be given to the MLS member and their broker. Any member against whom a penalty has been levied shall have the right to request an appearance before the Board of Directors of the MLS for the purpose of discussing the facts which gave rise to the penalty and asking for reconsideration of the imposition and/or amount of the penalty. The request shall be in writing and given to the Executive Vice President within 30 days from the date of the written notification of imposition of the penalty.
- 10.2.2 If a penalty has not been paid within 30 days of notification of the imposition of the penalty or within 30 days following a review of the penalty after an appearance by the member before the Board of Directors of the MLS as provided in Article 10.2.1, such failure shall be considered the same as an unpaid account and the actions set forth in paragraph 7.3.3 shall be carried out.
- 10.2.3 If, in the opinion of the MLS Board of Directors, after due notice and opportunity for a hearing, a Subscriber or Participant shows unwillingness to comply with or disregard of the operating rules and procedures, such Subscriber or Participant may be suspended.

10.3 **OTHER VIOLATIONS.** For failure to comply with any rule other than those set forth in paragraph 10.1, the provisions of paragraphs 11.1 and 11.2 shall apply.

10.4 **AUTHORITY TO IMPOSE DISCIPLINE.** By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other

MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- 104.1 letter or warning.
- 104.2 letter of reprimand.
- 104.3 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.
- 104.4 appropriate, reasonable fine not to exceed \$15,000.
- 104.5 suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year.
- 104.6 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 subscriber can be placed on probation. Probation is not a form of discipline. When a participant or subscriber 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.

## **Article 11. ENFORCEMENT OF RULES OR DISPUTES**

11.1 **CONSIDERATION OF COMPLAINTS.** The MLS Board of Directors shall give consideration to all written complaints from Subscribers and Participants having to do with a violation of the Rules and Regulations.

11.2 **COMPLAINTS REFERRED TO PROFESSIONAL STANDARDS.** If the alleged offense is a violation of the Rules and Regulations of the MLS and does not involve a charge of alleged unethical conduct or request for arbitration, it may be considered by the MLS Board of Directors. The party complained against shall be given a copy of the complaint and thereafter a hearing shall be held by the MLS Board of Directors concerning such complaint. The respondent shall be afforded due process in connection with the hearing. If a violation is determined, the MLS Board of Directors may direct the imposition of such sanctions as are appropriate in the circumstances which will be limited to the sanctions set forth in the Code of Ethics and Arbitration Manual of the National Association of Realtors, as amended from time to time, as sanctions which may be imposed against a member of a Board of Realtors for violation of the Code of Ethics except any reference to the right of an individual to membership or affecting membership shall be construed to apply to a member's status as a Participant or Subscriber in the MLS. The recipient of a sanction pursuant to this paragraph may request a hearing before the Professional Standards Committee of the REALTORS® Association of Lincoln and if the REALTORS® Association of Lincoln has entered into a Statewide Professional Standards Agreement, the hearing concerning such matter shall be before a committee established by such agreement.

11.3 **COMPLAINTS OF UNETHICAL CONDUCT.** All other complaints of unethical conduct shall be referred by the MLS Board of Directors to the Executive Vice President of the REALTORS® Association of Lincoln, for appropriate action in accordance with the professional standards procedures established in the REALTORS® Association of Lincoln Bylaws.

## **Article 12. CONFIDENTIALITY OF MLS INFORMATION**

12.1 **CONFIDENTIALITY OF MLS 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.

12.2 **MLS NOT RESPONSIBLE FOR ACCURACY OF INFORMATION.** The information published and disseminated by the Database is communicated verbatim, without change by the MLS, as entered in the Database by the Participant. The MLS does not verify such information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold MLS harmless from and pay the cost of defense of any claim arising from any inaccuracy or inadequacy of the information such Participant places in the Database.

123 **REMINDER OF OBLIGATION TO ABIDE BY FAIR HOUSING LAWS.**

Participants are responsible to determine that all data electronically entered into the Database complies with all fair housing laws. Each Participant agrees to hold MLS harmless from and pay the cost of defense of any claim arising from any information the Participant places in the Database which results in a charge or finding that such information is in violation of such laws.

124 **ACCESS TO COMPARABLE AND STATISTICAL INFORMATION.** Board

Members who are actively engaged in real estate brokerage, management, appraising, land development, or building, but who do not participate in the MLS, are nonetheless entitled to receive, by purchase or lease, all information other than current listing information that is generated wholly or in part by the MLS including "comparable" information, "sold" information, and statistical reports. This information is provided for the exclusive use of Board Members and individuals affiliated with Board Members who are also engaged in the real estate business and may not be transmitted, retransmitted or provided in any manner to any unauthorized individual, office or firm except as otherwise provided in these Rules and Regulations.

**Article 13. USE OF MLS INFORMATION**

13.1 **LIMITATIONS ON USE OF MLS INFORMATION.** Information from MLS compilations of current listing information, from statistical reports, and from any "sold" or "comparable" report of the REALTORS® Association of Lincoln or Midlands MLS Inc. may be used by Participants as the basis for aggregated demonstrations of market share or comparisons of firms in public mass-media advertising or in other public representations. This authority does not convey the right to include in any such advertising or representation information about specific properties which are listed with other Participants, or which were sold by other Participants, as either listing or cooperating broker. However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the REALTORS® Association of Lincoln or the MLS must clearly demonstrate the period of time over which such claims are based and must include the following notice:

"NOTE: This representation is based in whole or in part on data supplied by the REALTORS® Association of Lincoln or Midlands MLS Inc. Neither the REALTORS® Association of Lincoln nor Midlands MLS Inc. guarantees or is in any way responsible for its accuracy. Data maintained by the REALTORS® Association of Lincoln or Midlands MLS Inc. may not reflect all real estate activity in the market."

This shall not preclude the Participant's use of such information for internal management purposes.

## **Article 14. INTERNET DATA EXCHANGE (IDX) RULES**

14.1 **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, 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 where the seller has prohibited all Internet display. (Amended 5/12)

- 14.1.1 IDX affords Participants the ability to authorize limited electronic display of their listing by other Participants. (Amended 5/12).
- 14.1.2 Participation in IDX is available to all MLS Participants who are REALTORS who are engaged in real estate brokerage and who consent to display of their listing by other Participants.
- 14.1.3 Unless consent has been withheld, Participants are conclusively presumed to give consent and a license for the use, reproduction, display and distribution on their website to other cooperating Participants and their affiliated Subscribers, for the Internet Data Exchange (IDX) display of all of Participant's Listings, in the Database. Any withholding of consent shall be in writing to the MLS. A Participant shall not have the ability to use, reproduce, display or distribute Listings of other Participants during any time when a Participant has withheld such consent.
- 14.1.4 A Participant may cease participation in IDX at any time and re-start participation in IDX at any time by giving written notification to MLS.
- 14.1.5 A Participant may withhold consent on an individual listing basis, provided the seller/landlord has indicated in writing that the seller/landlord does not wish the listed property to be advertised on the Internet. Withholding consent on individual Listings shall not affect the Participant's right to use reproduce, display or distribute the Listings of other Participants.

14.2 **PARTICIPATION.**

- 14.2.1 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. (Amended 5/12)
- 14.2.2 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. (5/12)
- 14.2.3 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. of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly accessible Web sites or VOWs). (Amended 5/12)
- 14.2.4 Participants may select the listings they chose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location (e.g., "uptown," "downtown," etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, types 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.
- 14.2.5 Participants must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every twelve (12) hours. (Amended 11/14)
- 14.2.6 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. (Amended 5/12)
- 14.2.7 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. (Amended 5/12)

14.2.8 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 14.2.9, 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. (Amended 5/12)

14.2.9 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. (Amended 5/12)

14.2.10 Display of listing information pursuant to IDX is subject to the following rules.

14.2.11 A Participant may display its Listings on the Internet in a legal and ethical manner, independent of and unrelated to an IDX display.

14.2.12 All IDX displays shall be accessed only from the Internet sites of Participants and their Subscribers where the site owner is clearly identified as a REALTOR® engaged in the real estate brokerage business.

- 14.2.13 Any hyperlink connected directly to a Listing must be from an Internet page where the Participant or Subscriber is clearly identified as a REALTOR® engaged in the real estate brokerage business and holds a Nebraska broker, associate broker or salesperson's license.
- 14.2.14 Each Participant may determine the fields of data to be searched upon and displayed on their company's Internet site, however, only publicly viewable fields of data as approved from time-to-time by the Board of Directors may be displayed or searched upon.
- 14.2.15 Participants may display Listings by either (a) a "smart-framing" function of the Rapattoni MLS system; or (b) by a data extraction process that will be established when a request is made by a Participant.
- 14.2.16 Participants and IDX Subscribers shall indicate on their websites that the information being provided is for consumers' personal, non-commercial use.
- 14.2.17 All Listings that are reproduced, displayed, or distributed shall contain at a minimum, the copyright symbol ©, the current year, and attribute ownership of the copyright to Midlands MLS and the Listing Broker." 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. (Amended 5/12)
- 14.2.18 Unauthorized distribution of Listings which are obtained through the smart-framing process or data extraction process may result in substantial penalties, including termination of membership in the MLS.
- 14.2.19 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 data fields.
- 14.2.20 Listings obtained through IDX feeds from REALTOR® Association MLSs where the MLS Participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained from

other sources (e.g., from other MLSs, from non-participating brokers, etc. ) must display the source from which each such listing was obtained. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. (Amended 11/14)

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.

- 14.2.21 Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not be deceptive or misleading if the Participant’s logo and contact information is larger than that of any third party. (Adopted 11/09)
- 14.2.22 Display of expired, withdrawn, or sold listings\* is prohibited.

\*Note: If “sold” information is publically accessible, display of “sold” listings may not be prohibited. (Amended 11/14)

#### 14.3 **SMART FRAMING RULES.**

- 14.3.1 “Smart-framing” of Listings from the Rapattoni MLS system will be available without cost to Participants and their Subscribers.
- 14.3.2 A Subscriber of a Participant may also utilize the “smart-framing” process available with the Rapattoni MLS system, to use, reproduce, display or distribute Listings on their Internet site, provided that their Participant grants a license to the Subscriber for such use and the data is displayed in a legal and ethical manner that is acceptable to the Participant providing the license. At all times, a Subscriber’s Internet site shall prominently display the name of the Participant with whom the

Subscriber is associated as well as the information contained in Paragraph 14.2.17.

**14.4 DATA EXTRACTION PROCESS RULES.**

- 14.4.1 Each Participant electing to participate in IDX by utilizing the data extraction process shall first sign a separate contract with Midlands regarding the use and distribution of the data.
- 14.4.2 Participants electing to participate in IDX by utilizing the data extraction process shall sign an agreement with Midlands regarding the data extraction process, which may contain a provision requiring the Participant to pay the costs that reasonably relate to the actual costs incurred by Midlands in providing such service. Service fees and charges for participation in IDX shall be as established annually by the Board of Directors. (Amended 5/05)
- 14.4.3 Listings obtained by a Participant through the data extraction process shall have displayed on the websites where it is used that the information being provided is for consumers' personal, non-commercial use. 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. (Amended 5/12)
- 14.4.4 The Listing of a Participant utilizing the data extraction process, may be framed by a Subscriber with the Participant's permission. Subscribers are not permitted under these rules to possess or control copies of the extracted data.
- 14.4.5 Participants using the data extraction process, and their Subscribers framing the Listings as described above, shall indicate the source and copyright ownership of the Listing as described in Paragraph 14.2.17.
- 14.4.6 Participants electing to participate in IDX by utilizing the data extraction process shall not display Listings in a manner other than is possible when utilizing the "smart-framing" function of the Rapattoni MLS System.
- 14.4.7 Nothing herein shall prohibit a Participant allowing a subscriber under the supervision of such Participant to have a website populated by the data allowed to such Participant provided such website is under the supervision of such Participant and all other rules regarding display of information for a Participant under this section are followed.

## **Article 15. VIRTUAL OFFICE WEBSITE (VOW) RULES**

### **15.1 TERMS AND DEFINITIONS.**

- 15.1.1 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.
- 15.1.2 As used in Section 15 of these Rules, the term “Participant” includes a Participant’s affiliated non-principal brokers and sales licensees - except when term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability.” References to “VOW” and “VOWs” includes all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner (“AVP”) on behalf of a Participant.
- 15.1.3 “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.
- 15.1.4 As used in Section 15 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

### **15.2 RIGHTS OF PARTICIPANT.**

- 15.2.1 The right of a Participant’s VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights.

However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.

- 1522 Subject to the provisions of the VOW Policy and these Rules, a Participant's VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange ("IDX").
- 1523 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 a Participant's VOW.

### **15.3 TERMS OF USE BY REGISTRANT.**

- 153.1 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:
  - 153.1.1 The Participant must first establish with the 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 "Registrant"). 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.
  - 153.1.2 The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection 15.3.4 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.
  - 153.1.3 The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

1532 The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

1533 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.

1534 The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to a "Term of Use" provision that provides at least the following:

- 15.34.1 That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
- 15.34.2 That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;
- 15.34.3 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;
- 15.34.4 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; and
- 15.34.5 That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in the MLS database.

1535 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.

1536 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.

#### **15.4 PARTICIPANT CONTACT INFORMATION TO BE DISPLAYED.** A

Participant's VOW must prominently display an email 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.

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

#### **15.6 RIGHT OF SELLER TO ELECT TO WITHHOLD INFORMATION.**

1561 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.

1562 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 selection Option (a), consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.

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

15.63 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.

### **15.7 THIRD PARTY FEATURES.**

15.7.1 Subject to subsection 15.7.2, a Participant's VOW may allow third-parties (I) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing.

15.72 Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection 15.7.1 as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 15.8, 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."

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

**15.9 UPDATE OF MLS LISTING INFORMATION ON VOW.** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**15.10 RESTRICTION OF USE OF MLS LISTING INFORMATION.** 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.

**15.11 PRIVACY POLICY.** A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

**15.12 EXCLUSION FROM DISPLAY.** 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®.

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

15.14 **OPERATION OF MORE THAN ONE VOW.** 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.

15.15 **RESTRICTION OF SEARCH OR DISPLAY.** A Participant's VOW may only make available for search by, or display to, Registrants publicly viewable fields of data as approved from time to time by the Board of Directors and available to members from the MLS Database.

15.16 **CHANGES TO DISPLAYED LISTING INFORMATION.** 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 of the listings or fewer than all of the authorized information fields.

15.17 **DISCLAIMERS.** 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.

15.18 **PASSWORD CONFIRMATION.** A Participant shall require that Registrants' passwords be reconfirmed or changed at least every 90 days.

15.19 **IDENTIFICATION OF SOURCES OTHER THAN MLS.** 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 clearly identify the source of the listing.

15.20 **SOURCES OTHER THAN MLS SEARCHED SEPARATELY.** A Participant shall cause any listing displayed on his or her VOW obtained from other sources, included from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

15.21 **LICENSE AGREEMENT.** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

## **Article 16. CHANGES IN RULES AND REGULATIONS**

16.1 **CHANGES.** Changes in rules and regulations of MLS may be made by a two-thirds vote of the MLS Board of Directors.

Adopted: July 10, 1996

Amended:

November 8, 1996	August 20, 2003
April 24, 1997	September 24, 2003
July 24, 1997	December 3, 2003
September 18, 1997	June 23, 2004
April 13, 1998	May 18, 2005
June 18, 1998	July 19, 2006
March 18, 1999	December 19, 2007
September 16, 1999	February 20, 2008
November 18, 1999	April 23, 2008
December 16, 1999	November 19, 2008
May 25, 2000	January 21, 2009
December 21, 2000	June 19, 2009
March 14, 2001	October 20, 2010
August 16, 2001	August 15, 2012
December 20, 2001	January 15, 2014
May 22, 2002	October 15, 2014
January 15, 2003	May 20, 2015
March 26, 2003	October 21, 2015
July 16, 2003	June 26, 2016

Approved by Board on 7/28/16

Approval by NAR: 8/5/16