

File No. 150537

Committee Item No. 7  
Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date June 10, 2015

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER

(Use back side if additional space is needed)

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Completed by: Linda Wong Date June 5, 2015

Completed by: Linda Wong Date \_\_\_\_\_

1 [Accept In-Kind Gift - San Francisco Association of Realtors® - Online Content Subscription -  
2 \$20,000 in Annual Value]

3 **Resolution authorizing the Office of Assessor-Recorder to accept an in-kind gift not to**  
4 **exceed \$20,000 in annual value from the San Francisco Association of Realtors® to**  
5 **improve the accuracy of appraising and developing valuations for properties within the**  
6 **City and County of San Francisco.**

7  
8 WHEREAS, The Office of the Assessor-Recorder is committed to providing quality  
9 customer service to the citizens of San Francisco and is responsible for administering the  
10 State constitutional responsibilities relating to property taxation within the City & County of  
11 San Francisco (City); and

12 WHEREAS, There are 205,130 parcels located in 89 identified neighborhood market  
13 areas in the City; and

14 WHEREAS, The ability to accurately and fairly value or reassess properties in the City  
15 depends on obtaining timely and complete market sales data for similar properties; and

16 WHEREAS, The San Francisco Association of Realtors® (SFAR) owns and manages  
17 access to the SFAR Multiple Listing Service (SFARMLS), a valuable real property data tool  
18 used by real estate professionals that lists up-to-date information on properties that have sold,  
19 including building condition at the time of sale and other comparable sales data; and

20 WHEREAS, SFAR is prepared to provide to the City access to SFARMLS in order to  
21 ensure more accurate and fair tax assessments for all San Francisco property owners and  
22 taxpayers; and

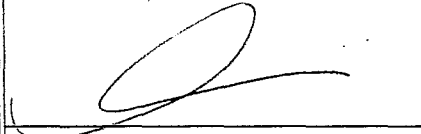
23 WHEREAS, The terms and conditions of the gift are detailed in a proposed Gift  
24 Agreement on file with the Clerk of the Board of Supervisors in File No. 150537,  
25 which is hereby declared to be part of this resolution as set forth fully herein; and

1 WHEREAS, The Assessor-Recorder agrees to utilize this in-kind gift in accordance  
2 with the terms of the Gift Agreement, in order to administer the Assessor-Recorder's duties  
3 under the requirements of the California State Constitution, the California Revenue and  
4 Taxation Code, and the City and County of San Francisco Charter; now, therefore, be it

5 RESOLVED, That the Board of Supervisors hereby authorizes the Office of the  
6 Assessor-Recorder to accept the in-kind gift for online subscription to SFARMLS in an amount  
7 not to exceed \$20,000 in annual value beginning grant period fiscal year 2014-2015 and for  
8 future fiscal years until terminated by either party as provided in the Gift Agreement; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors authorizes the Assessor-  
10 Recorder to enter into any modifications to the proposed Gift Agreement that the Assessor-  
11 Recorder determines, in consultation with the City Attorney, are in the best interests of the  
12 City and do not materially increase the obligations or liabilities of the City, are necessary or  
13 advisable to effectuate the purposes of the Gift or this Resolution, and are in compliance with  
14 all applicable laws, including the City's Charter.

15  
16 Recommended:

17   
18 \_\_\_\_\_

19 Department Head

20  
21 Approved:   
22 \_\_\_\_\_

23 Mayor

24  
25 Approved:   
\_\_\_\_\_

Controller

**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Edward McCaffrey, Office of the Assessor-Recorder  
**DATE:** May 12, 2015  
**SUBJECT:** Accept and Expend Resolution for Subject Grant  
  
**TITLE:** Accept In-Kind Gift – Online Content Subscription -  
\$20,000 Annual Value

---

Attached please find the original\* and 1 copy of each of the following:

- ☒ Proposed grant resolution; original\* signed by Department, Mayor, Controller
- ☒ Grant information form, including disability checklist
- ☐ Grant budget
- ☐ Grant application
- ☐ Grant award letter from funding agency
- ☐ Ethics Form 126 (if applicable)
- ☒ Contracts, Leases/Agreements (if applicable)
- ☐ Other (Explain):

**Special Timeline Requirements:**

**Departmental representative to receive a copy of the adopted resolution:**

Name: Edward McCaffrey  
Interoffice Mail Address: City Hall, Room 190

Phone: 415.554.5231

Certified copy required Yes ☒

No ☐

(Note: certified copies have the seal of the City/County affixed and are occasionally required by funding agencies. In most cases ordinary copies without the seal are sufficient).

**File Number:** \_\_\_\_\_

(Provided by Clerk of Board of Supervisors)

**Grant Resolution Information Form**

(Effective July 2011)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a Department to accept and expend grant funds.

The following describes the grant referred to in the accompanying resolution:

1. Grant Title: Accept In-Kind Gift – Online Content Subscription - \$20,000 Annual Value

2. Department: Assessor-Recorder

3. Contact Person: Edward McCaffrey

Telephone: 415.554.5231

4. Grant Approval Status (check one): n/a

☐ Approved by funding agency

☐ Not yet approved

5. Amount of Grant Funding Approved or Applied for: n/a

6. a. Matching Funds Required: None, in-kind gift

b. Source(s) of matching funds (if applicable):

7. a. Grant Source Agency: n/a

b. Grant Pass-Through Agency (if applicable):

8. Proposed Grant Project Summary: The role of the Office of the Assessor-Recorder is to administer its state constitutional responsibilities relating to property taxation by accurately and fairly valuing or reassessing properties in the City and County of San Francisco (CCSF). The San Francisco Association of Realtors (SFAR) manages access to the SFAR Multiple Listing Service (SFARMLS), a real property data tool that provides up-to-date information on properties that have sold, including building conditions and comparable sales data. By accepting SFAR's gift, the Office of the Assessor-Recorder will improve its ability to accurately appraise and develop valuations for properties within CCSF.

9. Grant Project Schedule, as allowed in approval documents, or as proposed:

Start-Date:

End-Date: continuing gift

10. a. Amount budgeted for contractual services: n/a

b. Will contractual services be put out to bid? n/a

c. If so, will contract services help to further the goals of the Department's Local Business Enterprise (LBE) requirements? n/a

d. Is this likely to be a one-time or ongoing request for contracting out? n/a

11. a. Does the budget include indirect costs?

☐ Yes ☒ No

b. 1. If yes, how much? \$ n/a

b. 2. How was the amount calculated? n/a

c. 1. If no, why are indirect costs not included?

☐ Not allowed by granting agency

☐ To maximize use of grant funds on direct services

☒ Other (please explain): Not relevant to an in-kind gift.

- c. 2. If no indirect costs are included, what would have been the indirect costs? The department does not have an established indirect cost rate in order to calculate what would have been the indirect costs.

**12. Any other significant grant requirements or comments. n/a**

**\*\*Disability Access Checklist\*\* (Department must forward a copy of all completed Grant Information Forms to the Mayor's Office of Disability)**

13. This Grant is intended for activities at (check all that apply):

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Existing Site(s)      | <input type="checkbox"/> Existing Structure(s)      | <input checked="" type="checkbox"/> Existing Program(s) or Service(s) |
| <input type="checkbox"/> Rehabilitated Site(s) | <input type="checkbox"/> Rehabilitated Structure(s) | <input type="checkbox"/> New Program(s) or Service(s)                 |
| <input type="checkbox"/> New Site(s)           | <input type="checkbox"/> New Structure(s)           |   |

14. The Departmental ADA Coordinator or the Mayor's Office on Disability have reviewed the proposal and concluded that the project as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local disability rights laws and regulations and will allow the full inclusion of persons with disabilities. These requirements include, but are not limited to:

1. Having staff trained in how to provide reasonable modifications in policies, practices and procedures;
2. Having auxiliary aids and services available in a timely manner in order to ensure communication access;
3. Ensuring that any service areas and related facilities open to the public are architecturally accessible and have been inspected and approved by the DPW Access Compliance Officer or the Mayor's Office on Disability Compliance Officers.

If such access would be technically infeasible, this is described in the comments section below:


Comments:

Departmental ADA Coordinator or Mayor's Office of Disability Reviewer:

Michael Nettles  
(Name)

Senior Personnel Analyst  
(Title)

Date Reviewed: 5/6/15

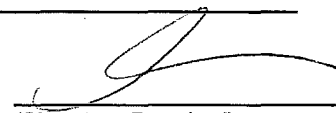
  
(Signature Required)

Department Head or Designee Approval of Grant Information Form:

Carmen Chu  
(Name)

Assessor-Recorder  
(Title)

Date Reviewed: 5/13/2015

  
(Signature Required)

**SAN FRANCISCO ASSOCIATION OF REALTORS®**  
**MULTIPLE LISTING SERVICE (M.L.S.)**

**GIFT OF LICENSE AGREEMENT**

THIS GIFT OF LICENSE AGREEMENT ("Agreement"), is made this 5 day of ~~May~~, in the year 2015, in the City and County of San Francisco, State of California, by and between the San Francisco Association of Realtors®, hereinafter referred to as "Licensor," and the City and County of San Francisco, a municipal corporation, ("Licensee" or "City") acting by and through the Office of the Assessor-Recorder ("Department" or "Office of the Assessor-Recorder").

**RECITALS**

WHEREAS, Licensor is the owner and provider of certain content and information ("San Francisco Association of Realtors® Multiple Listing Service" or "MLS"), which is published by Licensor and made digitally accessible via the Internet or private network access to its MLS participants and subscribers; and

WHEREAS, the Office of the Assessor-Recorder wishes to make available to its authorized staff a portion of the aforesaid content and information to assist in performing its duties under the California State Constitution, the California Revenue and Taxation Code, and the San Francisco Charter, including, to search for comparable sales, verify the physical condition of properties and the characteristics of properties, and analyze such information for the purposes of appraising and developing valuations for properties within the City; and

WHEREAS, Licensor wishes to provide the Office of the Assessor-Recorder with access to a portion of the aforesaid content and information ("Licensed Materials," as defined in Section 1.5 below) as a gift and for no charge, provided that such access is limited solely to the Office of the Assessor-Recorder, and that the Office of the Assessor-Recorder utilizes its access to the Licensed Materials solely for the purpose of administering the Department's duties under the California State Constitution, the California Revenue and Taxation Code, and the San Francisco Charter, including, to search for comparable sales, verify the physical condition of properties and the characteristics of properties, and analyze such information for the purposes of appraising and developing valuations for properties within the City; and

WHEREAS, Licensor values the access to the Licensed Material to be provided to the Office of the Assessor-Recorder at a value not to exceed \$20,000 annually;

Now, THEREFORE, the parties agree as follows:

## **1. Definitions.**

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

- 1.1 Agreement.** “Agreement” means this document and any attachments, appendices and exhibits, including the Licensor’s MLS Rules & Regulations.
- 1.2 Authorized Users.** “Authorized Users” means all persons holding a valid ID and password issued by the Office of the Assessor-Recorder. For purposes of this definition, an ID and password is valid if issued in accordance with the Office of the Assessor-Recorder’s “Protocol on Multiple Listing Service (MLS) Usage.”
- 1.3 Document.** “Document” means this document and any attachments, appendices and exhibits, excluding the Licensor’s MLS Rules & Regulations.
- 1.4 Gift.** “Gift” means the Licensee’s access to the Licensed Materials and support under the terms of this Agreement.
- 1.5 Licensor’s MLS Rules & Regulations.** “Licensor’s MLS Rules & Regulations” means the “Rules and Regulations, Multiple Listing Service, San Francisco Association of Realtors® (As Amended June 9, 2014) and attached hereto as Appendix B, as amended from time to time.
- 1.6 Licensed Materials.** “Licensed Materials” means the content and information published by Licensor, as set forth in Appendix A, “Description of Licensed Materials,” and made accessible to Authorized Users under this Agreement.

## **2. Gift of License**

- 2.1 Gift to the City.** Licensor hereby grants to Licensee, at no charge, a limited, non-exclusive, revocable, non-transferrable license to the Licensed Materials described in Appendix A – “Description of Licensed Materials” for the sole use of the Office of the Assessor-Recorder through its Authorized Users under the terms of this Agreement.
- 2.2 Support.** Licensor shall provide to the Office of the Assessor-Recorder through its Authorized Users its usual and customary support and training for MLS participants and subscribers.



**2.3 Licensors's Valuation of Gift.** Licensors values the Gift at a value not to exceed twenty thousand dollars (\$20,000) annually.

**3. Effective Date of the Agreement.** Licensee shall submit to the Board of Supervisors ("Board") legislation authorizing Licensee to accept the Gift. The Board may approve or reject the Gift in its sole discretion. In the event the Board authorizes the Licensee to accept the Gift, the effective date of the legislation shall be the effective date of this Agreement. In the event that the Board does not approve the acceptance of the Gift, then this Agreement shall be of no force or effect.

**4. Term of the Agreement.** The term of this Agreement shall commence upon the effective date of the Agreement, as provided in Section 3, and shall continue until either the Licensors or Office of the Assessor-Recorder gives notice of termination of this Agreement as provided herein.

**5. Delivery/Availability of Licensed Materials to Licensee.** Licensors will provide the Licensed Materials to the Office of the Assessor-Recorder in the following manner.

**5.1 Network Access.** Licensors shall allow the Office of the Assessor-Recorder through its Authorized Users access to the Licensed Materials by a means and method that Licensors determines, in its sole discretion, on an "as is, as available" basis and shall have no obligation to modify its servers, software, property or business practices in connection with its performance of this Agreement.

**5.2 Network Unavailability.** Licensee acknowledges that access to the Licensed Materials may from time-to-time be unavailable to Licensee on a temporary basis for no longer than two (2) business days, whether because of technical failures or interruptions, intentional downtime for service or changes to the database, or otherwise ("Service Interruption"). Licensee agrees Licensors shall have no liability of any nature to Licensee and Licensee hereby waives all claims arising out of any such Service Interruption.

**6. Access by and Authentications of Authorized Users.**

**6.1 IP Addresses.** Authorized Users shall be identified by the use of Internet Protocol ("IP") addresses provided by Licensee, through the Office of the Assessor-Recorder, to Licensors.

**6.2 Passwords.** Authorized Users shall be identified and then authenticated by the use of their employee ID and pin number assigned by Licensee, through the Office of the Assessor-Recorder.

- 6.3 Procedure.** An ID and password is valid if issued in accordance with the Office of the Assessor-Recorder's Protocol on Multiple Listing Service (MLS) Usage.

**7. Scope of Agreement.**

- 7.1 Access to Licensed Materials.** The Office of the Assessor-Recorder through its Authorized Users shall have full access to the Licensed Materials, including built-in reports.
- 7.2 Authorized Uses of Licensed Materials.** The Office of the Assessor-Recorder through its Authorized Users may use the Licensed Materials, including extraction and analysis of MLS data, for the following purposes: (1) to appraise properties for tax purposes; and (2) update the Office of the Assessor-Recorder's property characteristics records. Authorized Users may, to the extent permitted by law and the Office of the Assessor-Recorder's Protocol on Multiple Listing Service (MLS) Usage, disclose information contained in and reports prepared from the Licensed Materials in the performance of the Department's constitutional and statutory duties, subject to limitations provided by law. Licensor acknowledges that property characteristic information developed by the Office of the Assessor-Recorder is generally public information, regardless of its source.
- 7.3 Licensor's MLS Rules & Regulations.** The parties agree that in the event of conflicting language between Licensor's MLS Rules & Regulations and the provisions of this Agreement not expressly addressed above, the provisions of this Document and any policies and procedures of the Assessor-Recorder that pertain to its use of the MLS database shall take precedence except as expressly provided in this Document. The Licensor's sole remedy for any misuse of the Licensed Materials by the Licensee, or other breach of any Licensee obligation, is termination of this License. Notwithstanding any other provision of this Agreement, in no event shall Licensee, the Assessor-Recorder of the City and County of San Francisco, or any Authorized User be subject to fines, discipline, or any other action imposed by SFAR under Licensor's MLS Rules & Regulations.

**8. Specific Restrictions on Use of Licensed Materials.**

- 8.1 Unauthorized Use and Disclosure.** Except as specifically provided elsewhere in this Agreement or required by law, Licensee shall not knowingly permit anyone other than the Office of the Assessor-Recorder through its Authorized Users to access, inspect, use, or obtain from the Office of the Assessor-Recorder the Licensed Materials for any purpose,

including (1) any other official, division, department or employee of County; (2) to any person or entity engaged in law enforcement; (3) to any person or entity seeking the information for the purpose of aiding in the investigation of a violation, enforcement or compliance with any building code, law or other code or regulation; or (4) for any other purpose other than as allowed by this Agreement, including, but not limited to, County's purchase, sale or lease of real property or for use in eminent domain proceedings.

**8.2 Removal of Copyright Notice.** Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

**8.3 Commercial Purposes.** Other than as specifically permitted in this Agreement, Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

**9. Proprietary Rights; Limited Warranty; Limitation of Liability.**

**9.1 Proprietary Rights.** Licensor owns all rights, titles, interest and goodwill associated with the Licensed Materials and Licensor shall retain all intellectual property rights, titles, and interests in the Licensed Materials. Licensee acknowledges that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with Licensor and/or its suppliers. Neither the Office of the Assessor-Recorder nor its Authorized Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement. Notwithstanding Licensor's rights in this regard, nothing in this section or Agreement grants Licensor access or rights to Licensee's confidential records and files. Notwithstanding anything to the contrary in this Agreement, no term or provision of this contract shall be interpreted to limit or restrict the preexisting rights of the Office of the Assessor-Recorder through its Authorized Users, including Fair Use Rights, as provided by U.S. Copyright Act Sections 107 and 108 and other applicable intellectual property law.

**9.2 Warranties: Right to Grant License.** Licensor warrants that it has the right to license the rights granted under this Agreement to access and use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

**10. Notice to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

**To Licensee:** Gigi Whitley, Deputy Director for Administration and Finance  
Office of the Assessor-Recorder  
City Hall, Room 190  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 190  
San Francisco, CA 94102  
Tel: (415) 554-5598  
Email: Gigi.Whitley@sfgov.org

**To Licensors:** Walter Baczkoski, Chief Executive Officer  
San Francisco Association of Realtors®  
301 Grove Street  
San Francisco, CA 94102  
Tel: (415) 431-8500  
Email: walt@sfrealtors.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. Any notice of default must be sent by certified mail.

**11. Termination.**

**11.1** Licensee, through the Office of the Assessor-Recorder, and Licensors shall each have the option, in each one's sole discretion, to terminate this Agreement at any time during the term hereof, for convenience and without cause. Exercise of this option shall be by giving the noticed party written notice of termination. The notice shall specify the date on which termination shall become effective.

**11.2** This Section and the following sections of this Agreement shall survive termination or expiration of this Agreement:

Section 12. Proprietary or Confidential Information of Licensee  
Section 14. Use of City Opinion  
Section 16. Modification of Agreement  
Section 18. Agreement Made in California, Venue  
Section 20. Construction  
Section 23. Non-Waiver of Rights

11.3 Subject to the immediately preceding subsection, upon termination of this Agreement prior to expiration of the term specified in Section 3, this Agreement shall terminate and be of no further force or effect. This subsection shall survive termination of this Agreement.

11.4 Upon receipt of notice by the Licensee that it is terminating this Agreement, whether for convenience or for cause, Licenser shall commence and perform, with diligence, all actions necessary on the part of Licenser to effect the termination of this Agreement on the date specified by the Licensee.

12. **Proprietary or Confidential Information of Licensee.** Licenser understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Licenser may have access to private or confidential information which may be owned or controlled by Licensee and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Licensee. Licenser agrees that all information disclosed by Licensee to Licenser shall be held in confidence and used only in performance of the Agreement. Licenser shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

13. **Compliance with Laws.** Licenser shall make reasonable efforts to keep itself fully informed of the Licensee's Charter, codes, ordinances and regulations of the Licensee and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

14. **Use of City Opinion.** Licenser shall not quote, paraphrase, or otherwise refer to or use any opinion of Licensee, its officers or agents, regarding Licenser or Licenser's performance under this Agreement without prior written permission of the Office of the Assessor-Recorder.

15. **Assignment.** This Agreement is not assignable.

16. **Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

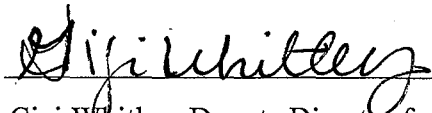
17. **Governing Law.** The parties expressly agree that this Agreement, including its validity and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement will be construed pursuant to and in accordance with the laws of the State of California.

18. **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
19. **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Licensor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.
20. **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.
21. **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.
22. **Partial Invalidation.** The invalidity in whole or in part of any covenant, promise or undertaking, or any section, subsection, sentence, clause, phrase or words, or any provisions of this Agreement shall not affect the validity of the remaining portions hereof.
23. **Non-Waiver of Rights.** No delay or omission in this exercise of any power, remedy, or right herein provided or otherwise available to any party shall impair or affect the right of such party thereafter to exercise the same. Any extension of time or other indulgence granted to a party hereunder shall not otherwise alter or affect any power, remedy or right of any other, or the obligations of the party to whom such extension or indulgence is granted except as specifically waived.
24. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute once and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**LICENSEE**

Recommended by:

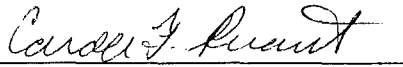


Gigi Whitley, Deputy Director for  
Administration and Finance  
Office of the Assessor-Recorder

Approved as to Form:

DENNIS J. HERRERA

City Attorney

By 

Carole F. Ruwart  
Deputy City Attorney

**LICENSOR**

San Francisco Association of REALTORS®

City Vendor Number: 62141



Authorized Signature

Walter Baczkowski

Printed Name

Chief Executive Officer  
Title

301 Grove Street

Address

San Francisco, CA 94102

City, State, ZIP

415-431-8500

Phone Number



Patrick Barber  
President, San Francisco Association  
of REALTORS®

## **Appendix A**

### **Description of Licensed Materials**

Licensed Materials includes the following: “MLS Compilation,” “Active Listing MLS Compilation,” and “Comparable Data MLS Compilation,” as defined in Sections 11.1, 11.2, and 11.3 of the Licensors’ MLS Rules & Regulations (as amended June 9, 2014).



## **Appendix B**

### **Rules and Regulations, Multiple Listing Service, San Francisco Association of Realtors® As Amended June 9, 2014**

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Please see attached.

**RULES AND REGULATIONS  
MULTIPLE LISTING SERVICE  
SAN FRANCISCO ASSOCIATION OF REALTORS®  
(As Amended June 9<sup>th</sup>, 2014)**

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**1. AUTHORITY.**

An Association of REALTORS® or a regional grouping of Associations of REALTORS® (“AOR/Regional MLS”) may maintain for the use of licensed real estate brokers and salespersons, and licensed or certified appraisers, a Multiple Listing Service (hereinafter referred to as “MLS” or “service”), which shall be subject to the bylaws of the AOR/Regional MLS and such rules and regulations as may be hereinafter adopted by the Board of Directors of the AOR/Regional MLS (hereinafter “Board of Directors”).

**2. PURPOSE.**

A Multiple Listing Service is a means by which authorized MLS broker Participants establish legal relationships with other Participants by making a blanket unilateral contractual offer of compensation and cooperation to other broker Participants; by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals and other valuations of real property; 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 among the Participants so that they may better serve their clients, customers and the public. Entitlement to compensation is determined by the cooperating broker’s performance as a procuring cause of the sale or lease.

**3. MULTIPLE LISTING SERVICE COMMITTEE.**

The MLS shall be governed by the Multiple Listing Service Committee (hereinafter “MLS Committee”) in accordance with the bylaws of the AOR and such rules and regulations as adopted by the Board of Directors. All actions of the MLS Committee shall be subject to the approval of the Board of Directors.

**4. PARTICIPATION AND AUTHORIZED ACCESS**

**4.1 Participant.**

A Participant is any individual who applies and is accepted by the MLS, meets and continues to meet all of the following requirements of either a broker Participant or an appraiser Participant as defined below in sections 4.1.1 and 4.1.2.

**4.1.1 Broker Participant.**

A broker Participant is a Participant who meets all of the following requirements:

- a. The individual or corporation, for which the individual acts as a broker/officer, holds a valid California real estate broker’s license;
- b. The individual is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal;
- c. The individual or corporation for which the individual acts as a broker/officer offers and/or accepts compensation in the capacity of a real estate broker\*;
- d. The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- e. The individual pays all applicable MLS fees.

\*Note: Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm “offers and/or accepts compensation” means that the Participant actively endeavors during the operation of its

real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and on-going basis during the operation of the Participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website ("VOW") [See Rule No. 12.17] (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant "actively endeavors during the operation of its real estate business" to "offer and/or accept compensation" only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so.

The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants.

#### **4.1.2 Appraiser Participant.**

An appraiser Participant is a Participant who meets all of the following requirements:

- a. The individual holds a valid California appraisers certification or license;
- b. The individual is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal;
- c. The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- d. The individual pays all applicable MLS fees.

#### **4.1.3 Redundant Participant Qualifications.**

Participant type (Broker or Appraiser) must be selected during application for participation. A Participant with both a California Real Estate Broker's license and a California Appraiser's certification or license must join as a "Broker Participant" to be a listing broker under Section 4.6 or a cooperating broker or selling broker under Section 4.7.



## **4.2 Subscriber.**

A Subscriber is an individual who applies and is accepted by the MLS, meets and continues to meet all of the following requirements of either a real estate Subscriber or appraiser Subscriber as defined below in sections 4.2.1 and 4.2.2:

### **4.2.1 Real Estate Subscriber.**

A real estate Subscriber is a Subscriber who meets all of the following requirements:

- a. The individual holds a valid California real estate salesperson's or broker's license;
- b. The individual is employed by or affiliated as an independent contractor with a broker Participant;
- c. The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- d. The individual pays all applicable MLS fees.

### **4.2.2 Appraiser Subscriber.**

An appraiser Subscriber is a Subscriber who meets all of the following requirements:

- a. The individual holds a valid California real estate appraisers certification or license;
- b. The individual is employed by or affiliated as an independent contractor with an Appraiser Participant;
- c. The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- d. The individual pays all applicable MLS fees.

### **4.2.3 Redundant Subscriber Qualifications.**

Subscriber type, real estate or appraiser, must correlate to the Participant type. A Subscriber who is both a California Real Estate Licensee and a California certified or licensed appraiser must join as a R.E. Subscriber, unless their employing or affiliated Participant is an Appraiser Participant.

## **4.3 Clerical Users.**

Clerical Users are individuals (whether licensed or unlicensed) under the direct supervision of an MLS Participant or Subscriber that perform only administrative and clerical tasks that do not require a real estate license or an Appraiser's certificate or license. Clerical Users may join the MLS through their employing Participant or Subscriber. The Participant shall be responsible for the conduct of the Clerical User. Clerical Users shall be linked in the system to at least one Participant. They may also be linked to a particular Subscriber. Each Participant and Subscriber shall provide the MLS with a list of all Clerical Users employed by or affiliated as independent contractors with the Participant or Subscriber and shall immediately notify the MLS of any changes, additions or deletions from the list. Clerical Users shall also be subject to the following requirements:

- a. Clerical Users are given a unique passcode;

- b. Clerical Users must have any fees paid in full;
- c. Participant or Subscriber linked to the Clerical User may be fined, disciplined or terminated for Clerical User's misconduct; and
- d. Clerical Users shall sign a written agreement to abide by the rules and regulations of the MLS

#### **4.4 Notification of Licensees.**

Each Participant shall provide the MLS with a list of all real estate licensees or certified or licensed appraisers employed by or affiliated as independent contractors with such Participant or with such Participant's firm and shall immediately notify the MLS of any changes, additions or deletions from the list. This list shall include any licensees under any broker associate affiliated with the Participant.

**For violation of this section, see Appendix B, Citable Infractions, 1.1, Use of MLS System by Unauthorized Party.**

#### **4.5 Participation.**

Not Transferable. Participation in the MLS is on an individual basis and may not be transferred or sold to any corporation, firm or other individual. Any reimbursement of MLS fees is a matter of negotiation between those transferring the business or determined by internal contract arrangement within the firm. However, providing the first Participant consents, the AOR/Regional MLS shall allow a firm to designate a different person as a Participant within the firm without additional initial participation fees. The AOR /Regional MLS may charge an administrative fee for this service of reassigning Participants within a firm.

#### **4.6 Listing Broker Defined.**

For purposes of these MLS rules, a listing broker is a broker Participant who is also a listing agent as defined in Civil Code § 1086 who has obtained a written listing agreement by which the broker has been authorized to act as an agent to sell or lease the property or to find or obtain a buyer or lessee. Whenever these rules refer to the listing broker, the term shall include the real estate Subscriber or a licensee acting for the listing broker but shall not relieve the listing broker of responsibility for the act or rule specified.

#### **4.7 Cooperating Broker or Selling Broker Defined.**

For purposes of these MLS rules, a cooperating broker or selling broker is a broker Participant who is also a selling agent as defined in Civil Code Section 1086 who acts in cooperation with a listing broker to accept the offer of compensation and/or subagency to find or obtain a buyer or lessee. The cooperating broker or selling broker may be the agent of the buyer or, if subagency is offered and accepted, may be the agent of the seller. Whenever these rules refer to the cooperating broker or selling broker, the term shall include the real estate Subscriber or licensee acting for the cooperating or selling broker but shall not relieve that broker Participant of responsibility for the act or rule specified.

#### **4.8 Appraiser Defined.**

For purposes of these MLS rules, an appraiser is an appraiser Participant, appraiser Subscriber, or a licensed or certified appraiser acting for the appraiser Participant or appraiser Subscriber. Whenever these rules refer to the appraiser, the term shall also include the appraiser Subscriber or a licensed or certified appraiser employed by or affiliated as an independent contractor with the firm that employs the appraiser but shall not relieve that appraiser Participant of responsibility for the act or rule specified.

#### **4.9 Denied Application.**

In the event an application for participation in the MLS is rejected by the MLS, the applicant, and his or her broker, if applicable, will be promptly notified in writing of the reason for the rejection. The broker shall have the right to respond in writing, and to request a hearing in accordance with the California Code of Ethics and Arbitration Manual.

### **5. MLS FEES AND CHARGES**

#### **5.1 Service Fees and Charges.**

The MLS Committee, subject to approval of the Board of Directors, shall establish a schedule of MLS fees applicable to the MLS, which may include the following service fees and charges:

##### **5.1.1 Initial Participation and/or Application Fee.**

An applicant for broker participation in the MLS shall pay an initial participation fee.

##### **5.1.2 Quarterly User Fee.**

Each broker Participant shall pay a quarterly user fee which shall be an amount times the combined total of (1) the broker Participant plus (2) the number of salespersons who have access to and use of the MLS, whether licensed as brokers or salespersons, who are employed by or affiliated as independent contractors with such Participant or the Participant's firm. If more than one principal broker in the same firm elects to be a Participant, the number of salespersons in the firm will only be used once in calculating the quarterly user fee. A broker Participant is not obligated to pay quarterly user fees or other MLS fees and charges for real estate licensees affiliated with the Participant or the Participant's firm if such licensees work out of a branch office of the Participant or the Participant's firm that does not participate in or otherwise use the MLS.

Each appraiser Participant shall pay a quarterly user fee which shall be an amount times the combined total of (1) the appraiser Participant plus (2) the number of appraisers who have access to and use of the MLS, who are employed by or affiliated as independent contractors with such Participant or the Participant's firm. If more than one principal appraiser in the same firm elects to be a Participant, the number of appraisers in the firm will only be used once in calculating the quarterly user fee. An appraiser Participant is not obligated to pay quarterly user fees or other MLS fees and charges for certified or licensed appraisers affiliated with the Participant or the Participant's firm if such appraisers work out of a branch office of the Participant or the Participant's firm that does not participate in or otherwise use the MLS.

##### **5.1.3 Listing Fee.**

A broker Participant shall pay a listing fee for each listing submitted to the MLS staff for input.

##### **5.1.4 Book Fees.**

If applicable, the Participant shall be responsible for book fees for each MLS book the Participant wishes to lease. The Participant may not obtain more MLS books than the total number of Subscribers affiliated with the Participant.

##### **5.1.5 Computer Access Fees.**

If applicable, the recurring computer access fee for each Participant shall be an amount times the total number of Subscribers and salespersons licensed or certified as appraisers, brokers or salespersons, who are employed by or affiliated as independent contractors with such Participant.

**5.1.6 Certification of Nonuse.**

Participants may be relieved from payment under section 5.1.2 and 5.1.5 hereunder by certifying in writing to the MLS that a licensed or certified person in the office is engaged solely in activities that do not require a real estate license or certification (clerical, etc.), or that the real estate licensee or licensed or certified appraiser will not use the MLS or MLS compilation in any way. In the event a real estate licensee or appraiser is found in violation of the nonuse certification, the Participant shall be subject to all MLS fees dating back to the date of the certification. The Participant and Subscriber may also be subject to any other sanction imposed for violation of MLS rules including, but not limited to, a citation and suspension or termination of participation rights and access to the service.

**For violation of this section, see Appendix B, Citable Infractions, 1.1, Use of MLS System by Unauthorized Party.**

**5.1.7 Clerical Users.**

Clerical users may be assessed application fees, computer access fees and other fees. The Participant for the clerical user shall be responsible for all such fees.

**5.1.8 Other Fees.**

Other fees that are reasonably related to the operation of the MLS may be adopted.

**5.2 Failure to Pay Service Charges.**

For failure to pay any service charge or fee within thirty (30) days of the date due, and provided that at least ten (10) days' notice of the delinquency has been given, a Participant shall be suspended until the service charges or fees are paid in full, including a delinquency fee which shall be twice the amount outstanding but not exceeding \$25.

**6. REGIONAL AND RECIPROCAL AGREEMENTS**

The MLS Committee may recommend, subject to the Board of Directors' approval, that the MLS enter into reciprocal or regional agreements with other Associations of REALTORS® or MLS Corporations owned solely by Associations of REALTORS® to allow the other MLS Participants and Subscribers access to the service in exchange for comparable benefits to the Participants and Subscribers of this service. In the event of such agreements, the Participants and Subscribers agree to abide by the respective rules of the other MLSs receiving and publishing a listing pursuant to such agreements and to abide by such rules when accessing the other MLSs' databases.

**7. LISTING PROCEDURES**

**7.1 Listings Subject to Rules and Regulations of the Service.**

Any listing filed with the service is subject to the rules and regulations of the service.

**7.2 Types of Listings; Responsibility for Classification.**

The service shall accept exclusive right to sell, exclusive agency, open, and probate listings as defined in California Civil Code Section 1086 et. seq. that satisfy the requirements of these MLS rules. Exclusive right to sell listings that contain any exceptions whereby the owner need not pay a commission if the property is sold to particular individuals shall be classified for purposes of these rules as an exclusive right to sell listing but the listing broker shall notify all Participants of the exceptions. It shall be the responsibility of the broker Participant and real estate Subscriber to properly classify the type of listing, and if necessary, obtain a legal opinion to determine the correct classification. By classifying the type of the listing, the listing broker certifies that the listing falls under the legal classification designated. The MLS shall have no affirmative

responsibility to verify the listing type of any listing filed with the service. However, the MLS shall have the right to have legal counsel make a determination as to the classification of the listing type and if the listing broker does not reclassify it accordingly, the AOR/Regional MLS shall have the right to reject or remove any such listing that it determines falsely represents the classification of listing type.

**For violation of this section, see Appendix B, Citable Infractions, 3.1., Reporting and Accuracy of Information.**

#### **7.2.1 Scope of Service; Limited Services Listings.**

Limited Service listings are listings whereby the listing broker, pursuant to the listing agreement, will not provide one, or more, of the following services:

- a. provide cooperating brokers with any additional information regarding the property not already displayed in the MLS but instead gives cooperating brokers authority to contact the seller(s) directly for further information;
- 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; or participate on the seller(s) behalf in negotiations leading to the sale of the listed property.

Said Limited Service listings will be identified with an appropriate code or symbol (e.g. "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 broker's clients, prior to initiating efforts to show or sell the property.

#### **7.2.2 Scope of Service; MLS Entry-Only Listings.**

MLS Entry-Only listings are listings whereby the listing broker, pursuant to the listing agreement, will not provide any of the following services:

- a. provide cooperating brokers with any additional information regarding the property not already displayed in the MLS but instead gives cooperating brokers authority to contact the seller(s) directly for further information;
- 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; or participate on the seller(s) behalf in negotiations leading to the sale of the listed property.

Said MLS Entry-Only listings will be identified with an appropriate code or symbol (e.g. "EO") 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 broker's clients, prior to initiating efforts to show or sell the property.

**7.2.3 Scope of Service; Legal Obligations.**

The scope of service classifications set forth in these rules do not alter any obligations otherwise imposed on real estate licensees under California law, including Department of Real Estate regulations, statutory law and common law. The MLS's acceptance or publication of listings eligible for MLS submission in no way constitutes a validation that said obligations have been met.

**7.3 Types of Properties; Responsibility for Classification.**

The MLS shall accept listings that satisfy the requirements of these rules on the following types of property:

**7.3.1 Residential**

**7.3.2 Condominium/Stock Cooperative/Tenancy in Common**

**7.3.3 Residential Income (4 residential units or fewer)**

**7.3.4 Investment (5 residential units or more)**

**7.3.5 Business Opportunity**

**7.3.6 Lots and Acreage**

**7.3.7 Commercial**

**7.3.8 Lease (Residential, Apartment, and Commercial)**

It shall be the responsibility of the broker Participant and real estate Subscriber to properly classify the class of property listed, and if necessary, obtain a legal opinion to determine the correct classification. By specifying the class of property listed, the listing broker certifies that the listing falls under the classification designated. The MLS shall have no affirmative responsibility to verify the property class of any listing filed with the service. However, the MLS shall have the right to have legal counsel make a determination as to the classification of the property class and if the listing broker does not reclassify it accordingly, the AOR/Regional MLS shall have the right to reject or remove any such listing that it determines falsely represents the property class of the listing. Submission of duplicate listings is prohibited except in the following three situations: As a single-family home and 2 units if the property has a second minor unit and the property is classified as 2 units on the 3R Report; 2-4 units and TIC or condo, or commercial and condo.

**For violation of this section, see Appendix B, Citable Infractions, 3.1.7, Submission of Duplicate Listings by the Same Participant within the Same Property Class.**

**7.4 Compliance with California and Federal Law.**

Notwithstanding any other provision of these MLS rules and regulations to the contrary, the service shall accept any listing that it is required to accept under California or federal law.

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#### **7.4.1. Time Frame Definitions.**

Unless otherwise expressly indicated, where compliance time frames set forth "days," "days" mean calendar days; "days after" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 p.m. on the final day; and "days prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.

#### **7.5 Mandatory Submission.**

Broker Participants shall input exclusive right to sell or exclusive agency listings on one to four unit residential property and vacant lots located within the service area of the MLS by the end of the third business day after all necessary signatures of the seller(s) have been obtained on the listing. Only those listings that are within the service area of the MLS must be input. Open listings or listings of property located outside the MLS's service area (see section 7.7) are not required by the service, but may be input at the broker Participant's option. Commercial/Industrial, 5+ Units, Business Opportunities, or Rental categories are not required to be included in the MLS Database.

**For violation of this section, see Appendix B, Citable Infractions, 2.1, Listing Not Loaded Within Time Required**

#### **7.6 Exempted Listings.**

If the seller refuses to permit the listing to be disseminated by the service, the listing broker shall submit to the service by the end of the third business day after all necessary signatures of the seller(s) have been obtained on the listing certification signed by the seller that the seller does not authorize the listing to be disseminated by the service during the specified waiver period.

**For violation of this section, see Appendix B, Citable Infractions, 2.2, Listing Waiver Not Submitted to MLS Within The Time Required**

#### **7.7 Service Area.**

The MLS's service area shall be determined by the MLS Committee, subject to approval by the Board of Directors. If the AOR has entered into regional MLS agreements or a regional MLS corporation with other MLSs and has enlarged the service area as part of the agreement or corporation, submission of the type of listings specified in section 7.5 is mandatory for the area covered by the combined service areas of the Associations signatory to the regional MLS agreement or part of the regional MLS corporation.

#### **7.8 Change of Listing Information.**

Listing brokers shall input any change in listing information, including the listed price or other change in the original listing agreement, to the MLS by the end of the third business day after the authorized change is received by the listing broker. By inputting such changes to the MLS, the listing broker represents that the listing agreement has been modified in writing to reflect such change or that the listing broker has obtained other legally sufficient written authorization to make such change.

**For violation of this section, see Appendix B, Citable Infractions, 2.3, Status Changes Not Reported by Deadline.**



**7.9 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 listing agreement provided the listing broker has received written permission from the seller to withdraw the listing. The MLS may require the listing broker to provide a copy of such written permission. Sellers do not have the unilateral right to require the MLS to withdraw a listing without the listing broker's concurrence. However, the MLS reserves the right to remove a listing from the MLS database if the seller can document that his or her listing agreement with the listing broker has been terminated or is invalid. Listings that have been withdrawn from the MLS and subsequently resubmitted to the service by the same listing agent or same listing office within 30 days of the withdrawal will reflect the prior listings' days on market.

**For violation of this section, see Appendix B, Citable Infractions, 3.4., Purposely Manipulating the MLS System to Circumvent the Rules.**

**7.10 Contingencies.**

Any contingency or condition of any term in a listing shall be specified and noticed to the Participants and Subscribers.

**7.11 Detail on Listings Filed With the Service.**

All listings input into the MLS shall be complete in every detail including full gross listing price, listing expiration date; compensation offered to other broker Participants and any other information required to be included as determined by the MLS Committee and approved by the Board of Directors. Listings that are incomplete shall be ineligible for publication in the MLS and subject to immediate removal.

**For violation of this section, see Appendix B, Citable Infractions, 3.1, Submission of Listings That Do Not Satisfy the Requirements of the MLS Rules.**

**7.12 Unilateral Contractual Offer; Subagency Optional.**

In filing a property with the MLS, the broker Participant makes a blanket unilateral contractual offer of compensation to the other MLS broker Participants for their services in selling the property. Except as set forth in Rule 7.15 below or pursuant to California Civil Code Section 1087, a broker Participant must specify some compensation to be paid to either a buyer's agent or a subagent and the offer of compensation must be stated in one, or a combination of, the following forms (1) a percentage of the gross selling price; or (2) a definite dollar amount. The amount of compensation offered through the MLS may not contain any provision that varies the amount of compensation offered based on conditions precedent or subsequent or on any performance, activity or event. Furthermore, the MLS reserves the right to remove a listing from the MLS database that does not conform to the requirements of this section. At the broker Participant's option, a broker Participant may limit his or her offer of compensation to buyer's agents only, to subagents only, or make the offer of compensation to both. Any such limitations must be specified on the property data form and in the MLS. The amount of compensation offered to buyers' agents or subagents may be the same or different but must be clearly specified on the property data profile sheet. Broker Participants wishing to offer subagency to the other MLS broker Participants must so specify on the property data profile sheet and on the MLS, otherwise, the offer of compensation does not constitute an offer of subagency.

**7.13 Acceptance of Contractual Offer.**

The broker Participant's contractual offer (with or without subagency) is accepted by the Participant/selling broker by procuring a buyer which ultimately results in the creation of a sales or lease contract. Payment of compensation by the Participant/listing broker to the Participant/cooperating broker under this section is contingent upon **either** (1) the final closing or (2) the Participant/listing broker's receipt of monies resulting from the seller's or buyer's default of the underlying sales or lease contract. Notwithstanding this section, the listing broker and/or cooperating broker shall still retain any remedies they may have against either the buyer or seller due to a default under the terms of the purchase agreement, listing agreement or other specific contract. Any dispute between Participants arising out of this section shall be arbitrated under Section 16 of these rules and shall not be considered a MLS rules violation.

**7.14 Consent to Act as Dual Agent.**

By offering compensation and/or subagency to broker Participants, the listing broker is not automatically representing that the seller has consented to the cooperating broker acting as a dual agent representing both the buyer and the seller. No cooperating broker shall act as both an agent of the buyer and the seller without first contacting the listing broker and ascertaining that the seller has consented to such dual agency.

**7.15 Estate Sale, Probate, Bankruptcy and Lender Approval Listings.**

**7.15.1 Estate Sale, Probate and Bankruptcy Listings.**

Compensation offered through the MLS to cooperating brokers on estate sale, probate or bankruptcy listings is for the amount published therein as long as the cooperating broker produces the contract which is ultimately successful and confirmed by the court, if court confirmation is required. In the event the contract produced by the cooperating broker is overbid in court and the overbid contract is confirmed, the original cooperating broker shall receive the amount of compensation specified as "unconfirmed cooperating broker's compensation" or "u.c.b." in the property data profile sheet and on the MLS. For estate sale or probate listings, the compensation offered through the service under these rules and this section shall be considered an agreement as referred to in California Probate Code Section 10165 and will therefore supersede any commission splits provided by statute when there is no agreement. This section contemplates that estate sale, probate and bankruptcy judges have broad discretion and therefore are not intended as a guarantee of a specific result as to commissions in every probate or bankruptcy sale.

**7.15.2 Lender Approval Listings.**

Compensation offered through the MLS to cooperating brokers on listings which require lender approval (commonly referred to as "short sale" listings) is for the amount published therein unless the listing broker indicates on the MLS the following: (a) the fact that the sale and gross commission are subject to lender approval; and (b) the amount or method by which the compensation offered through the MLS will be reduced if the lender reduces the gross commission. This section does not allow an additional reduction from the commission offered for items such as a short sale negotiator fee or other administrative costs of the transaction. Any reductions from the commission offered for such items should be factored in as a reduced amount the listing broker initially offers to a cooperating broker and may not be made a condition of the offer.

**7.16 Changes to Offer of Compensation by Listing Broker to All Broker Participants.**

The listing broker may, from time to time, adjust the published compensation offered to all MLS broker Participants with respect to any listing by changing the compensation offered on the MLS or providing written notice to the MLS of the change. Any change in compensation will be effective after the change is published in the MLS, either through electronic transmission or printed form, whichever occurs first. The listing broker may revoke or modify the offer of compensation in advance as to any individual broker Participant in accordance with general contract principles but in no event shall the listing broker revoke or modify the offer of compensation without the cooperating broker's consent later than the time the cooperating broker (a) physically delivers or transmits by fax or e-mail to the listing broker a signed offer from a prospective buyer to purchase the property for which the compensation has been offered through the MLS, or (b) notifies the listing broker in person or by telephone, fax or e-mail that the cooperating broker is in possession of a signed offer from a prospective buyer to purchase the property for which the compensation has been offered through the MLS and is awaiting instructions from the listing broker as to the manner of presentation or delivery of that offer. Any independent advance revocations, modifications of the offer or agreements between real estate brokers are solely the responsibility of such brokers and shall not be submitted to, published by, or governed in any way by the service.

**7.17 Broker Participant or Real Estate Subscriber as Principal.**

If a listing broker has any interest in property, the listing of which is to be disseminated through the service, that person shall disclose that interest on the MLS.

**7.18 Multiple Unit Properties.**

All properties which are to be sold or which may be sold separately must be indicated individually in the MLS and will be published separately. When part of a listed property has been sold, the listing broker shall input the appropriate changes on the MLS.

**7.19 Expiration, Extension, and Renewal of Listings.**

Listings shall be removed from the MLS database on the expiration date specified on the listing unless the listing is extended or renewed by the listing broker. The listing broker shall obtain written authorization from the seller(s) before filing any extension or renewal of a listing. Any renewals or extensions received after the expiration date of the original listing shall be treated as a new listing and will be subject to any fees applicable to new listings. At any time and for any reason, the MLS has the right to request a copy of the seller's written authorization to extend or renew a listing. If a listing broker is requested to provide a copy of such authorization and does not do so within twenty four (24) hours of the request, the listing shall be subject to immediate removal from the MLS.

**7.19.1 Resetting Days on Market**

Listings previously reported as Withdrawn/Cancelled or Expired by the same listing agent or office will reflect the previous listings' days on market unless the listing is off-market for more than 30 days. Listings changed to any of the Active statuses from Temporarily Off Market will always reflect the time previously on market.

**For violation of this section, see Appendix B, Citable Infractions, 3.4, Purposely Manipulating the MLS System to Circumvent the Rules.**

## **7.20 Listings of Participants or Subscribers Suspended, Expelled or Resigned.**

### **7.20.1 Failure to Pay MLS Fees; Resignation.**

When a Participant or Subscriber is suspended or expelled from the service for failure to pay MLS fees or charges, or if the Participant or Subscriber resigns from the service, the MLS shall cease to provide services to such Participant or Subscriber, including for broker Participants the continued inclusion of listings in the MLS compilation of current listing information. In the event listings are removed from the MLS pursuant to this section, it shall be the sole responsibility of the Participant to notify the seller(s) that the property is no longer listed in the MLS.

### **7.20.2 Violation of MLS Rules.**

When a Participant or Subscriber is suspended or expelled from the service for a violation of the MLS rules and regulations, the MLS shall cease to provide services to such Participant or Subscriber except that the listings in the MLS at the time of suspension or expulsion shall, at the suspended or expelled Participant's option, be retained in the MLS compilation of current listing information 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. In the event listings are removed from the MLS pursuant to this section, it shall be the responsibility of the Participant to notify the seller(s) that the property is no longer listed in the MLS. If a suspended or expelled Participant opts to keep listings in the MLS until sold, withdrawn or expired under this Section 7.20.2, the Participant must comply with all applicable MLS rules and regulations during such time or the MLS may immediately remove the listings from further display.

### **7.21 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 nonParticipants.

### **7.22 Dual or Variable Rate Commission Arrangements.**

The existence of a dual or variable commission arrangement shall be disclosed by the listing broker by a key, code or symbol as required by the MLS. A dual or variable rate commission arrangement is one in which the seller or owner agrees to pay a specified commission if the property is sold by the listing broker without assistance and a different commission if the sale results through the efforts of a cooperating broker, or one in which the seller or owner agrees to pay a specified commission if the property is sold by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale results through the efforts of a seller or owner. 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 that results through the efforts of the seller or owner. If the cooperating broker is representing a buyer or tenant, the cooperating broker must then disclose such information to his or her client before the client makes an offer to purchase or lease.

**For violation of this section, see Appendix B, Citable Infractions, 3.4, Purposely Manipulating the MLS System to Circumvent the Rules.**

**7.23 Right of Listing Broker and Presentation of Counter Offers.**

The listing broker has the right to participate in the presentation of any counter-offer made by the seller or lessor. The listing broker does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except where the cooperating broker is a subagent). However, if the purchaser or lessee gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser's or lessee's written instructions.

**7.24 Auction Listings.**

Auction listings entered into the MLS system shall have listing contracts as required under these rules and be clearly labeled as auction listings. Auction listings shall further specify the following:

- a. The seller's minimum acceptable bid price
- b. Whether the auction is with or without the seller's right of reservation;
- c. The date, time and place of the auction;
- d. All of the required procedures for Participants/Subscribers to register their representation of a potential bidder;
- e. The compensation to be paid to the Participant representing the successful bidder;
- f. The time or manner in which potential bidders may inspect the listed property;
- g. Whether or not the seller will accept a purchase offer prior to the scheduled auction and if so, the compensation to be paid to the cooperating Participant in the event of such a pre-auction sale as well as any other necessary pre-auction details; and
- h. Any other material rules or procedures for the auction.

**7.25 Co-listings.**

Only the listings of Participants and Subscribers will be accepted by the MLS. Inclusion of co-listings where the co-listing broker/agent is not a Participant or Subscriber in the MLS is prohibited.

**7.27 REO Disclosure.**

Participants and Subscribers submitting foreclosure, bankowned or real estate owned ("REO") listings to the service shall disclose said status upon submission of the listing to the service.

**8. DOCUMENTATION; PERMISSION; ACCURACY OF INFORMATION**

**8.1 Listing Agreement and Seller's Permission.**

Prior to inputting a listing to the service, the listing broker shall obtain the written agreement of the seller expressly granting the listing broker authority to: (1) file the listing with the service for publication and dissemination to those authorized by the MLS; (2) act as an agent for the seller; (3) abide by the rules of the service; (4) provide timely notice of status changes of the listing to the service; (5) provide sales information including selling price to the service upon sale of the property for publication and dissemination to those authorized by the MLS and (6) publish accurate sales information after the final closing of a sales transaction in accordance with these MLS rules (See Section 10.1).

## **8.2 Written Documentation.**

Listing brokers filing listings with the service shall have a written listing agreement with all necessary signatures in their possession. Only listings that create an agency relationship between the seller and the broker Participant are eligible for submission to the service. By inputting a listing to the service, broker Participants and real estate Subscribers represent that they have in their possession such written agreements establishing agency and the represented type of listing agreement. The service shall have the right to demand a copy of such written listing agreements and verify the listing's existence and adequacy at any time. The service shall also have the right to demand a copy of seller's written authorization required under these rules. If the broker Participant or real estate Subscriber fails to provide documentation requested by the service within 24 hours, the service shall have the right to immediately withdraw any listings from the database in addition to disciplining the broker Participant and real estate Subscriber for a violation of MLS rules.

**For violation of this section, see Appendix B, Citable Infractions, 3.4, Purposely Manipulating the MLS System to Circumvent the Rules.**

## **8.3 Accuracy of Information; Responsibility for Accuracy.**

By inputting information into the MLS computer database, the listing broker represents that the information input is accurate to the best of the listing broker's knowledge. The listing broker shall use good faith efforts to determine the accuracy of the information and shall not submit or input information which the listing broker knows to be inaccurate. Upon receipt of the first publication or electronic transfer by the MLS of such information the listing broker shall make all necessary corrections. The MLS merely publishes the MLS information and has no affirmative responsibility to verify the accuracy of the MLS information. The MLS, however, reserves the right to require broker Participants and real estate Subscribers to change their MLS information if the MLS is made aware of alleged inaccuracies in the MLS information and the MLS determines that such inaccuracies do in fact exist. If a broker Participant or real estate Subscriber fails to make necessary or required corrections to their MLS information, the broker Participant and real estate Subscriber shall indemnify and hold harmless the service for any claims, costs, damage or losses, including reasonable attorney fees and court costs, incurred by the MLS as a result of such failure. In no event will the MLS be liable to any MLS Participant, Subscriber or any other party for any indirect, special or consequential damages arising out of any information published in the MLS and all other damages shall be limited to an amount not to exceed the MLS fees paid by the listing broker.

**For violation of this section, see Appendix B, Citable Infractions, 3.1, Submission of Listings That Do Not Satisfy the Requirements of the MLS Rules and 3.4, Purposely Manipulating the MLS System to Circumvent the Rules.**

## **8.4 Input Defined.**

All references or uses of the word "input" shall also include information which is submitted to the MLS for input in the MLS data base by the MLS staff, whether such information was provided to the MLS staff on a "property data form" or otherwise.

## **8.5 Buyer, Seller, Purchase and Sale Defined.**

All references to the buyer shall also include lessee. All references to the seller shall also include lessor. All references to a purchase shall also include a lease. All references to a sale shall also include a lease. All references to a sale shall also include a lease/rental agreement.

## **9. SELLING PROCEDURES**

### **9.1 Showings and Negotiations.**

Appointments for showings and negotiations with the seller for the purchase of listed property filed with the service 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 with the seller, or
- b. after reasonable effort and no less than 24 hours, the cooperating broker cannot contact the listing broker or his representative. However, the listing broker, at his option, may preclude such direct negotiations by the cooperating broker by giving notice to all Participants through the MLS.

In the event all showings and negotiations will be conducted solely by the seller, the listing broker shall clearly set forth such fact in the listing information published by the service.

**For violation of this section, see Appendix B, Citable Infractions, 3.1, Submission of Listings That Do Not Satisfy the Requirements of the MLS Rules.**

#### **9.1.1 Showing Access.**

Properties entered into the system must be available to show within three business days unless otherwise directed by the seller to the listing broker in writing, which shall be noted in the confidential remarks.

**For violation of this section, see Appendix B, Citable Infractions, 5.1, Showings and Access.**

### **9.2 Disclosing the Existence of Offers.**

Listing brokers, in response to inquiries from buyers or cooperating brokers, shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, the listing broker shall also disclose whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a cooperating broker.

### **9.3 Availability to Show or Inspect.**

Listing brokers shall not misrepresent the availability of access to show or inspect a listed property.

### **9.4 Presentation of Offers.**

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. In the event a listing broker will not be participating in the presentation of offers, the listing broker shall clearly indicate this fact in the listing information published by the service.

### **9.5 Submission of Offers and Counter-Offers.**

The listing broker shall submit to the seller/landlord all offers until closing unless precluded by law, governmental rule or expressly instructed by the seller/landlord otherwise. The cooperating broker acting for buyer/tenant, shall submit to buyer/tenant all offers and counter-offers until acceptance.

**9.6 Right of Cooperating Broker in Presentation of Offer.**

The cooperating broker has the right to participate in the presentation of any offer to purchase he secures. The cooperating broker does not have the right to be present at any discussion or evaluation of that offer by the seller and the listing broker. However, if the seller gives written instructions to the listing broker requesting that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker shall convey the offer to the listing broker for presentation. In such event, the cooperating broker shall have the right to receive a copy of the seller's written instructions from the listing broker. Nothing in this section diminishes or restricts the listing broker's right to control the establishment of appointments for offer presentations.

**9.7 Change of Compensation Offer by Cooperating Broker.**

Cooperating broker Participants and real estate Subscribers shall not use the terms of an offer to purchase to attempt to modify the listing broker's offer of compensation nor make the submission of an executed offer to purchase contingent on the listing broker's agreement to modify the offer of compensation. However, failure of a cooperating broker to comply with this rule shall not relieve a listing broker of the obligation to submit all offers to the seller as required by Section 9.3.

**9.8 Cooperating Broker as a Purchaser.**

If a cooperating broker wishes to acquire an interest in property listed with a listing broker, such contemplated interest shall be disclosed to the listing broker prior to the time an offer to purchase is submitted to the listing broker.

(NOTE: Nothing in these rules shall preclude the listing broker and cooperating broker from entering into a mutual agreement to change cooperative compensation.)

**10. REPORTING SALES AND OTHER INFORMATION TO THE SERVICE**

**10.1 Statuses.**

The definitions of the stages of property status are set forth as follows:

**10.1.1 On Market Statuses.**

- a. Active (A): A valid listing contract exists and no offer (with or without contingencies) has been accepted. This is an On-Market status.
- b. Active—Contingent Short Sale (C): An offer has been accepted, pending lender approval, Seller requests the property be marketed for back-up offers. This is an On-Market status.
- c. Active—Contingent Release Clause (C): An offer has been accepted with a subject to sale Seller release clause, Seller requests the property be marketed for back-up offers. This is an On-Market status.
- d. Active—Contingent Show (C): An offer has been accepted with one or more Buyer contingencies such as property inspections, Seller requests the property be marketed for back-up offers. This is an On-Market status.
- e. Active—Contingent No Show (C): An offer has been accepted with one or more Buyer contingencies such as property inspections with the provision that this listing is also NOT to be shown any further. This is an On-Market status.



- f. ~~Active—Contingent Probate (C):~~ An offer has been accepted, available to be overbid through the court confirmation process. This is an On-Market status.

#### **10.1.2 Off-Market Statuses.**

- a. Pending (P): The Seller has accepted an offer and is not soliciting further offers through the MLS. This is an Off-Market status.
- b. Temporarily Off-Market (O): A valid listing contract is in effect, however, the Seller has requested that temporarily there be no showings. This is an Off-Market status.
- c. Withdrawn—Cancelled (W): The listing agreement has been cancelled in writing. This is an Off-Market status.
- d. Withdrawn—Duplicate (W): The property was listed in another category, and is reported as pending or sold under that other listing. This is an Off-Market status.
- e. Expired (X): The listing agreement is expired. The time frame of the existing listing contract has run out. This is an Off-Market status.
- f. Sold (S): Escrow has closed. This is an Off-Market status.
- g. Coming Soon (I): A valid listing contract exists but the listing is not to be included as On-Market until the specified On Market Date (OMD). Days On Market will not start counting because the property is not ready for marketing to the public. This is an Off-Market status.

#### **10.1.3 Coming Soon Listings**

It shall be the responsibility of the broker participant (Section 4.1.1) and real estate subscriber (Section 4.2.1) to follow said rules when placing a property in the Coming Soon section of the multiple listings service (MLS). Broker participant and real estate subscriber shall only place a property in the coming soon section of the MLS if the participant/subscriber has met necessary criteria for MLS input. (Section 7.5 & 7.6)

Said participant/subscriber is required to input an on market date (OMD) to proceed in placing a listing in the Coming Soon section of the MLS. The listing will automatically transition from Coming Soon to Active on the OMD. Changes to the OMD are made by sending a new OMD, in writing, to the SFARMLS department THREE DAYS PRIOR TO THE CURRENT OMD. Listing brokers shall follow Change of Listing Information Rules (Section 7.8). Listings entered into MLS with Coming Soon status shall automatically transition to an on market active listing. Once the listing moves from Coming Soon to any Active status it cannot revert back to Coming Soon.

Coming Soon status is not viewable by the general public nor does DOM begin when a property is placed in Coming Soon status. Participants and subscribers acknowledges the restriction to go from Active back to Coming Soon status. Once said listing is Active participant/subscriber must adhere to current MLS rules and regulations regarding status changes as described throughout this section.

## **10.2 Reporting of Sales.**

Listings with accepted offers shall be reported to the MLS or input into the MLS database as "pending" by the end of the third business day of the acceptance, by the listing broker unless the negotiations were carried on under Section 9.1 (a) or (b), in which case, the cooperating broker shall report to the MLS or input the listing in the MLS as "pending" and send a copy of the listing's changed status to the listing broker by the end of the third business day after acceptance. The listing shall be published on the MLS as pending with no price or terms prior to the final closing. Upon final closing, the listing broker shall report or input the listing in the MLS as "sold", with the true and accurate sale price, by the end of the third business day after the final closing date.

Listings that were not input into the MLS as a result of the seller's instructions may be input into the MLS as sold at the listing broker's option. All required listing information must be input in the MLS and the first words of the marketing remarks must state "For Comp Purposes Only". The listing may not be submitted, rather saved as incomplete. A "Request and Authorization to Submit Comparable Sale Information" form must be completed, and returned to the service within 30 days of close of escrow. MLS staff will complete the reporting process.

## **10.3 Removal of Listings for Refusal/Failure to Timely Report Status Changes.**

The MLS is authorized to remove any listing from the MLS compilation of current listings where the Participant or Subscriber has refused or failed to timely report status changes. Prior to the removal of any listing from the MLS, the Participant and/or Subscriber shall be advised of the intended removal so the Participant and/or Subscriber can advise his or her client(s).

**For violation of this section, see Appendix B, Citable Infractions, 2.3, Status Changes Not Reported by Deadline and 4.1, Misuse of Remarks.**

## **10.4 Reporting Cancellation of Pending Sale.**

The listing broker shall report to the service by the end of the third business day the cancellation of any pending sale and the listing shall be reinstated immediately as long as there is still a valid listing.

**For violation of this section, see Appendix B, Citable Infractions, 2.3, Status Changes Not Reported by Deadline.**

## **10.5 Refusal to Sell.**

If the seller of any listed property filed with the service refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted immediately to the service and to all Participants and Subscribers.

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

### **11.1 MLS Compilation Defined.**

The term "MLS compilation" includes, but is not limited to, the MLS computer data base and all data and content therein, including but not limited to photographs, images (including maps), graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, statistics and other details or information related to listed property, all printouts of data and content from the MLS computer database, and all MLS publications. The MLS Compilation is protected by all applicable intellectual property laws..

### **11.2 Active Listing MLS Compilation Defined.**

"Active listing MLS compilation" shall mean that portion of the MLS compilation which includes listings currently for sale and all other indexes and other information relating to the current listing information approved for distribution by the MLS.

### **11.3 Comparable Data MLS Compilation Defined.**

"Comparable data MLS compilation" shall mean that portion of the MLS compilation that includes the off market data, sold and appraisal information regarding properties that are not currently for sale and all indexes and information relating to the sold information compilation.

### **11.4 Authority to Put Listings in MLS Compilation.**

By submitting any property listing data form to the MLS or inputting listing information into the MLS compilation, broker Participants and real estate Subscribers represent that they have been authorized to grant and also thereby do grant authority for the AOR/Regional MLS to include the property listing data in its copyrighted MLS compilation. By submitting any property listing data form to the MLS, broker Participants and real estate Subscribers represent that they have been authorized to report information about the sales, price and terms of a listing, have authority to grant and also thereby does grant authority for the AOR /Regional MLS to include the sold information in its copyrighted MLS compilation.

### **11.5 Photographs on the MLS.**

By submitting photographs to the MLS, the Participant and/or Subscriber represents and warrants that it either owns the right to reproduce and display these photographs or has procured such rights from the appropriate party, and has the authority to grant and hereby grants the MLS and the other Participants and Subscribers the right to reproduce and display the photographs in accordance with these rules and regulations. Use of photographs by a subsequent listing agent requires prior written authorization from the originating listing agent or appropriate party. Branding of photographs with any information or additional images is prohibited.

**For violation of this section, see Appendix B, Citable Infractions, 3.1, Submission of Listings That Do Not Satisfy the Requirements of the MLS Rules.**

### **11.6 Copyright Ownership.**

All right, title, and interest in each copy of every MLS compilation created and copyrighted by the AOR/Regional MLS, and in the copyrights therein, shall at all times remain vested in the AOR/Regional MLS. The AOR/Regional MLS shall have the right to license such compilations or portions thereof to any entity pursuant to terms agreed upon by the Board of Directors.

### **11.7 Licensing of MLS Compilations.**

Each Participant shall be entitled to license from the A.O.R. the number of copies of each MLS

compilation of active listing and comparable data information sufficient to provide the Participant and Subscriber with one copy of such MLS compilation. Participants and Subscribers shall acquire by such license only the right to use the MLS compilations in accordance with these rules. Clerical Users may have access to the information solely under the direction and supervision of the Participant or Subscriber. Clerical Users may not provide any MLS compilation or information to persons other than the Participant or the Subscriber under whom the clerical user is registered.

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**11.8 Database Preservation.**

No data may be removed from the MLS compilation other than by the service. Although a listing may be removed from display in the MLS compilation of current listing information, all data submitted to the MLS will remain in the database for historical and other purposes approved by the service.

**12. PROHIBITIONS AND REQUIREMENTS**

**12.1 Notification of California Department of Real Estate (DRE) or California Office of Real Estate Appraisers (OREA) Action.**

Participants and Subscribers are required to notify the MLS within 24 hours of any final action taken by the DRE or the OREA against the Participant, Subscriber or any licensee affiliated with the Participant or Subscriber including, but not limited to any final decisions restricting, suspending or revoking a real estate license or appraiser's certification or license of a Participant, the Participant's firm or corporation under which the Participant or Subscriber acts, or any licensee affiliated with the Participant or the Participant's firm or licensee or appraiser who was affiliated with the Participant or Participant's firm at the time of the underlying act.

**12.2 Violations of the Law.**

If a Participant, Subscriber, appraiser or a licensee affiliated with a Participant or Subscriber commits a felony or a crime involving moral turpitude or violates the Real Estate Law or the laws relating to appraisers, the Participant and Subscriber shall be in violation of this section. However, a Participant or Subscriber shall not be found to have violated this section unless the Participant, Subscriber, appraiser or salesperson licensed to the Participant has been convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (1) a felony, or (2) a crime involving moral turpitude, or (3) on a determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the Participant or Subscriber violated a provision of the California Real Estate Law or a Regulation of the Real Estate Commissioner or law relating to appraisers.

**12.3 Supervision of Licensees and Appraisers.**

In addition to the notification requirements of paragraph 12.1, a Participant may not allow any licensee, under the Participant's license, whose license has been revoked, suspended or restricted by the DRE to use the MLS in any manner while the DRE discipline is in effect except that the licensee may use the MLS under a restricted license providing such use is consistent with and does not violate such license restrictions.

#### **12.4 Solicitation of Listing Filed With the MLS.**

Broker Participants and real estate Subscribers shall not solicit a listing filed with the service unless such solicitation is consistent with Article 16 of the N.A.R. Code of Ethics, its Standards of Practice and its Case Interpretations. The purpose of this section is to encourage sellers to permit their properties to be filed with the service by protecting them from being solicited through unwanted phone calls, visits and communications, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration. This section is also intended to encourage all licensed real estate brokers to participate in the service by assuring them that other broker Participants and real estate Subscribers will not attempt to persuade the seller to breach the listing agreement or to interfere with the listing broker's attempts to market the property. This section does not preclude solicitation of listings under circumstances otherwise permitted under Article 16 of the N.A.R. Code of Ethics, its Standards of Practice and its Case Interpretations.

#### **12.5 Misuse of Remarks.**

Participants and Subscribers may not use the remarks in a property data profile sheet or listing submitted to the MLS or inputted directly into the MLS database for purposes of disparaging other real estate agents or conveying information about other offices or for conveying any other information that does not directly relate to the marketing of the listing.

##### **12.5.1 Public Remarks Restrictions and Requirements**

- a. Information in the public remarks shall only relate to the marketing, description and condition of the property.
- b. No contact information is permitted, including names, phone or fax numbers, email addresses or website addresses (including virtual tours and transaction tracking URLs). However, Below Market Rate (BMR) listings may include a link to the Mayor's Office of Housing website.
- c. No showing instructions are permitted, including references to lockbox, alarm, gate or other security codes, or the vacancy of the property. However, a statement that the property shall be delivered vacant is not a violation.
- d. No information directed toward real estate agents or brokers, including compensation or bonuses offered to cooperating brokers may be shown in public remarks. However, Probate listings may list the overbid amount and court confirmation hearing date.
- e. No other information may be provided that goes beyond a description of the property.

**For violation of this section, see Appendix B, Citable Infractions, 4.2, Misuse of Public Remarks.**

##### **12.5.2 Confidential Remarks Restrictions and Requirements**

- a. "For Comp Purposes Only" must appear in the first line of confidential remarks when a listing is entered for that purpose.
- b. References to burglar alarm, security system or gate codes may be placed in confidential remarks only with seller's written permission.

- c. Caution: Title or escrow information may be entered in confidential remarks; however, Participants/Subscribers should note that any verbiage which implies a requirement to use a specific title company or escrow service may be a violation of RESPA. You are advised to seek legal counsel for specific advice when using such verbiage.
- d. Except for reciprocal listings, no reference may be made to licensees who are not Participants or Subscribers.

**For violation of this section, see Appendix B, Citable Infractions, 4.3, Misuse of Confidential Remarks.**

**12.6 “For Sale” Signs.**

Only the “For Sale” signs of the listing broker may be placed on the property.

**12.7 “Sold” Signs and Use of the Term “Sold.”**

Only broker Participants or real estate Subscribers who participated in the transaction as the listing broker or cooperating broker may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign on a property only with the consent of the listing broker. This section does not, however, prohibit any broker from advertising the addresses and prices of the properties that have sold in a neighborhood after the information regarding the properties has been published as long as the advertisement does not imply the agent was involved in the transaction unless such is the case and as long as the advertisement otherwise presents a “true picture” as is meant under Article 12 of the N.A.R. Code of Ethics, its Standards of Practice and its Case Interpretations.

**12.8 Advertising of Listing Filed With the MLS.**

A listing shall not be advertised by any Participant or Subscriber, other than the listing broker, without the prior consent of the listing broker except as provided in Section 12.16 and 12.17 relating to display of listings on the internet.

**For violation of this section, see Appendix B, Citable Infractions, 5.2, Violation of IDX Rules and 5.3, Advertising of Listing Filed with the MLS (Outside scope of IDX).**

**12.9 Limitations on Use of Association or MLS Information in Advertising.**

Except as provided in Sections 12.7, 12.8, 12.11 and 12.15, truthful use of information from the MLS compilation of current listing information, from the AOR/Regional MLS’s “statistical report,” or from any “sold” or “comparable” report of the AOR or MLS for public mass media advertising by an MLS Participant or Subscriber or in other public representations for purposes of demonstrating market share is not prohibited. However, any print or non-print forms of advertising or other forms of public representations 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 \_\_\_\_\_ /Association of REALTORS®  
(alternatively, from the \_\_\_\_\_ MLS) for the period (date) through  
(date). Display of MLS data is deemed reliable but is not guaranteed accurate by the MLS.

**For violation of this section, see Appendix B, Citable Infractions, 5.3, Advertising of Listing Filed with the MLS (outside the scope of IDX).**

**12.10 False or Misleading Advertising and Representations; True Picture Standard of Conduct.**

Participants and Subscribers may not engage in false or misleading advertising, including, but not limited to, advertisements or representations regarding the Participant's or Subscriber's relationship to the service, about the service itself, or about any property listed with the service. MLS Participants and Subscribers shall present a true picture in their advertising and representations to the public, including the URLs and domain names they use, and Participants and Subscribers may not:

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

**12.11 Use of MLS Information.**

In recognition that the purpose of the MLS is to market properties and offer compensation to other broker Participants and real estate Subscribers for the sole purpose of selling the property, and that sellers of properties filed with the service have not given permission to disseminate the information for any other purpose, Participants and Subscribers are expressly prohibited from using MLS information for any purpose other than to market property to bonafide prospective purchasers or to support market evaluations or appraisals as specifically allowed by Sections 12.14, 12.15, 12.16, and 12.17. Any uses of MLS information inconsistent with these Sections is expressly prohibited. Nothing in this Section, however, shall limit the AOR/Regional MLS from entering into licensing agreements with MLS Participants and Subscribers or other third parties for use of the MLS information.

**For violation of this section, see Appendix B, Citable Infractions, 1.2, Misuse of MLS Information.**

**12.12 Confidentiality of MLS Information.**

Any information provided by the service to the Participants and Subscribers shall be considered and treated as confidential by Participants and Subscribers and shall be for the exclusive use of the Participants and Subscribers for purposes described in Sections 2, 12.7, 12.11, 12.14, 12.15, 12.16, 12.17 and this section. Participants and Subscribers shall at all times maintain control over and responsibility for each copy of any MLS compilation and shall not distribute any such copies to persons other than Participants and Subscribers. Participants and Subscribers are responsible for the security of their passcodes and shall not give or allow use of or make available their passcodes to any person. Participants and Subscribers may reproduce or display the information as provided in these rules.

**12.12.1 Clerical Users.**

Clerical users may have access to MLS information solely under the direction and supervision of a Participant or Subscriber. Clerical users may not provide any MLS information to persons other than the Participant or Subscriber under whom they are registered. Access by clerical users to the database is solely for clerical and administrative functions for the Participant or Subscriber under whom the clerical user is registered.

**For violation of this section, see Appendix B, Citable Infractions, 1.2, Misuse of MLS Information.**

### **12.13 Access to Comparable and Statistical Information.**

Association members who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development, or building, but who do not participate in the Service, 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 Association members who are 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 specified in these Rules and Regulations.

### **12.14 Display.**

Subject to Sections 12.15, 12.16 and 12.17 broker Participants and real estate Subscribers shall be permitted to display the MLS compilation in either electronic or printed format to specifically identified and bonafide 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. Broker Participants and real estate Subscribers shall be permitted to display the MLS compilation in either electronic or printed format to specifically identified and bonafide sellers or prospective sellers only in conjunction with their ordinary business activities in listing properties. Appraiser Participants and appraiser Subscribers shall be permitted to display the MLS compilation to the person requesting the appraisal only in conjunction with their ordinary business activities of producing a written appraisal. Such displays under this section shall be only in the immediate presence of the MLS Participant or Subscriber.

**For violation of this section, see Appendix B, Citable Infractions, 1.1, Misuse of MLS Information.**

#### **12.14.1 Clerical Users.**

Clerical users are expressly prohibited from displaying or distributing MLS information to anyone other than the Participant or Subscribers under whom the clerical user is registered.

**For violation of this section, see Appendix B, Citable Infractions, 1.1, Misuse of MLS Information.**

### **12.15 Reproduction.**

"Reproduction" shall include, but not be limited to, making photocopies, computer printouts, electronic transfers (including email), or downloading of MLS data or compilations. Participants and Subscribers or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof except as provided in Section 12.16 and 12.17 and in the following limited circumstances:

#### **12.15.1 Copies to Prospective Purchasers.**

Broker Participants and real estate Subscribers may reproduce from the MLS compilation, and distribute to prospective real estate purchasers, copies of those portions of the MLS compilation consisting only of a description of the property, including the address, features, financing and price. Such "client copies" shall also comply with the following:

- a. Permissible MLS data may be augmented with additional data not otherwise prohibited from display, provided the source of any additional data is clearly identified.



- b. No more than 500 current listings and 500 sold listing may be provided in response to any inquiry.
- c. A disclaimer statement shall be made indicating that the MLS data is deemed reliable but is not guaranteed accurate by the MLS.

**For violation of this section, see Appendix B, Citable Infractions, 1.2, Misuse of MLS Information.**

#### **12.15.2 Information Prohibited from Reproduction/Confidential Fields.**

Unless the Participant or Subscriber obtains prior written consent from the listing broker, the information reproduced pursuant to this section shall not include the following:

- a. Property owner's name, phone number, and address (if different than the listed property);
- b. Instructions or remarks intended for cooperating brokers, including but not limited to showing instructions or security references (ex: lock box, burglar alarm or security system, vacancies) regarding the listed property;
- c. Type of listing;
- d. Compensation or bonuses offered to cooperating brokers.
- e. Other information that goes beyond a description of the property.

**For violation of this section, see Appendix B, Citable Infractions, 1.2, Misuse of MLS Information.**

#### **12.15.3 Copies for Appraisals.**

Participants and Subscribers may reproduce from the MLS compilation, and attach to an appraisal as supporting documentation copies of those portions of the MLS compilation consisting only of such information on properties necessary to support a written appraisal or estimate of value on a particular property.

#### **12.15.4 Downloading into Computers.**

Participants and Subscribers may download MLS information, from the MLS user interface(s) or MLS provided applications, into their computer system as long as:

- a. Access to the computer or computer system receiving the information is strictly limited to authorized Participants, Subscribers and Clerical Users as defined in these rules; and
- b. The information is only retransmitted to the Participants, Subscribers and Clerical Users authorized to access the computer or computer system by these rules; and
- c. The information is not reformatted or used to create another product except as may be used by the Participant or Subscriber who downloaded the data and such use strictly complies with sections 12.7, 12.11, 12.15, and 12.19.

**For violation of this section, see Appendix B, Citable Infractions, 1.2, Misuse of MLS Information.**

#### **12.15.5 Sold Information.**

Individuals legitimately in possession of current listing information, “sold” information, “comparables” or statistical information may utilize such information to support an estimate of value on a particular property for a particular client. However, only such information that the MLS has deemed to be non-confidential and necessary to support the estimate of value may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations.

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#### **12.16 Use of Active Listing Information on Internet. [Also known as Internet Data Exchange (“IDX”).]**

“Internet Data Exchange” (“IDX”) is a means by which listing brokers permit other participating Broker Participants and R.E. Subscribers to display the listing brokers’ listings, in accordance with the IDX rules set forth herein, on said Broker Participants’ and R.E. Subscribers’ IDX websites.

- a. **Authorization.** Subject to paragraphs (b) through (r) below, and subject to an executed IDX Access Agreement with the MLS, notwithstanding anything in these rules and regulations to the contrary, broker Participants and real estate Subscribers may display on their public websites aggregated MLS active listing information through either downloading and placing the data on the Participant public access websites or by framing such information on the MLS or association public access website (if such a site is available).
- b. **Consent.** The listing brokers’ consent for such internet display is presumed, in satisfaction of Rule 12.8, unless a listing broker affirmatively notifies the MLS that the listing broker refuses to permit display on either on a blanket or on a listing-by listing basis. Listing brokers that refuse to permit other Broker Participants or R.E. Subscribers to display their listing information on a blanket basis may not display MLS active listing information of other brokers’ listings.
- c. **Display Content.** Broker Participants and real estate Subscribers shall not display confidential information fields, as determined by the MLS in the MLSs’ sole discretion, such as that information intended for cooperating brokers rather than consumers.
- d. **Listing Attribution.** All listings on a broker Participant or real estate Subscriber’s site displayed by framing or other electronic means, shall display the name of the listing firm and the name of the listing agent in a manner designed to easily identify such listing firm or agent. Listing firm and listing agent name shall be displayed in a readily visible color and typeface not smaller than the median used in the display of the listing data.
- e. **Modifications.** Broker Participants and real estate Subscribers shall not modify the information displayed pursuant to these MLS rules. However, permissible MLS data may be augmented with additional data not otherwise prohibited from display, provided the source of any additional data is clearly identified.
- f. **Source and Update.** Information displayed shall indicate the source of the information being displayed and the most recent date updated. Broker Participants and real estate Subscribers shall update all downloads and refresh all data at least once every three [3] days.

- g. **Usage and Distribution Limitations.** Sharing of the MLS compilation with any third party not authorized by the MLS is prohibited. Broker Participants and real estate Subscribers shall indicate on their websites that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing.
- h. **Display Purpose.** Broker Participants and R.E. Subscribers may not use IDX-provided listings for any purpose other than display on their websites. This does not require Broker Participants and R.E. Subscribers to prevent indexing of IDX listings by recognized search engines.
- i. **Restricted Display.** Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or their property address from display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) shall not be accessible via IDX sites.
- j. **Selective Listing Display.** Not all listings from the MLS must be displayed as long as any exclusions from display on Broker Participants' and R.E. Subscribers' IDX sites are based on objective criteria, e.g. type of property, listed price or geographical location.
- k. **Restricted Access.** No portion of the MLS database shall be distributed, provided to or made accessible to any person except as provided for in these rules and/or in the National Association of REALTORS IDX policy.
- l. **Brokerage Identification.** When displaying listing content, a Broker Participant's or R.E. Subscriber's website must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.
- m. **Co-Mingling.** A Broker Participant or R.E. Subscriber may co-mingle the listings of other Participants with listings from other MLS sources on its website, provided all such displays are consistent with these rules. Co-mingling is (a) the ability for a visitor to the website to execute a single search that searches any portion of the IDX database at the same time it searches listing data from any other source(s); or (b) the display on a single web page of any portion of the IDX database and listing data from any other source.
- n. **Third Party Comments and Automated Value Estimates.** Any IDX site 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, shall disable or discontinue either or both of those features as to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Broker Participants' and R.E. Subscribers' websites. Except for the foregoing and subject to section (o) below, a Broker Participant's or R.E. Subscriber's IDX site may communicate the Broker Participant's or R.E. Subscriber's professional judgment concerning any listing. Nothing shall prevent an IDX site from notifying its viewers that a particular feature has been disabled at the request of the seller.
- o. **Making Corrections.** Broker Participants and R.E. Subscribers 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 Broker Participants and R.E. Subscribers beyond that supplied by the MLS and that relates to a specific property displayed on the IDX site. Broker Participants and R.E. Subscribers shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing

agent for that property explaining why the data or information is false. However, the Broker Participants and R.E. Subscribers shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

- p. **Search Result Limitation.** Broker Participants and R.E. Subscribers shall limit the number of listings that a viewer may view, retrieve, or download to not more than 500 in response to any inquiry.
- q. **Advertising.** 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 to be deceptive or misleading if the Broker Participant's and/or R.E. Subscriber's logo and contact information is larger than that of any third party.
- r. **Indemnification.** In making data from the Service available to the general public through Participants' individual web sites, the web site owner expressly agrees to indemnify and hold harmless the Association and the Service from any and all claims, causes of action, expenses, losses and costs, including attorney's fees, incurred on account of, or in any way related to, the use of data, or on account of errors or omissions in data transfer, and from any and all third party injuries of any nature relating to a property being identified from the web site listing.
- s. Each web site page shall contain the following notice: "Listings on this page identified as belonging to another listing firm are based upon data obtained from the SFAR MLS, which data is copyrighted by the San Francisco Association of REALTORS®, but is not warranted."

**For violation of this section, see Appendix B, Citable Infractions, 5.2, Violation of IDX Rules.**

**12.16.1 Notification by Authorized Broker Participants and Real Estate Subscribers.**

Broker Participants and real estate Subscribers partaking in the display of MLS active listing information of other brokers' listings pursuant to Section 12.16 must notify the MLS before displaying said MLS active listing information and must make their website directly accessible to the MLS and other MLS Participants for purposes of monitoring/ensuring compliance with applicable rules and policies.

**For violation of this section, see Appendix B, Citable Infractions, 5.2, Violation of IDX Rules.**

**12.16.2 Right to Charge for Download.**

The MLS has the right to charge the costs of adding or enhancing its downloading capacity to broker Participants and real estate Subscribers who request downloading of listing information pursuant to Section 12.16.

**12.16.3 Intention of IDX Display.**

IDX is intended to allow broker Participants and real estate Subscribers to display limited active MLS data on their public Internet websites. Display of this information is limited to Internet sites accessible by the public. IDX is in no way intended to negate provisions of these Rules that prohibit advertising of another agent's listings without permission, as stated in Section 12.8.

**For violation of this section, see Appendix B, Citable Infractions, 5.2, Violation of IDX Rules.**

#### **12.16.4 Listing Broker's Right to Opt Out of Internet Advertising of MLS Information.**

If the AOR/Regional MLS advertises MLS information on the Internet or licenses MLS information for advertising on the Internet, the listing broker also shall have the right to opt out of such advertising in accordance with the MLS's procedures for opting out. The listing broker shall have the right to refuse to have listings displayed on a blanket basis or on a listing-by-listing basis in accordance with Section 12.16 by affirmatively notifying the MLS in accordance with the MLS procedures for opting out. Notwithstanding anything in these rules and regulations to the contrary, the AOR/Regional MLS reserves the right to determine whether to provide Internet advertising services and whether such services are to be made available to non-AOR/Regional MLS members.

#### **12.17 Website Name and Status Disclosure.**

MLS Participants' firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner. Websites of Subscribers affiliated with a Participant's firm shall disclose the firm's name and the Subscriber's state(s) of licensure in a reasonable and readily apparent manner.

#### **12.18 Virtual Office Websites ["VOW"].**

- 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 (i.e. Subscriber) may, with his or her Participant's consent, operate a VOW. Any VOW of a Subscriber is subject to the Participant's oversight, supervision, and accountability.
- b. As used in Section 12.18 of these Rules, the term "Participant" includes a Participant's affiliated non-principal brokers and sales licensees (i.e. Subscribers)—except when the term is used in the phrases "Participant's consent" and "Participant's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all VOWs, whether operated by a Participant, by a Subscriber, or by an Affiliated VOW Partner ("AVP") on behalf of a Participant.
- 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 12.18 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.

#### 12.18.1

- a. The right of a Participant's VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.
- b. Subject to the provisions of the VOW Policy and these Rules, a Participant's VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange ("IDX") as set forth in Rule 12.16.
- 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.

#### 12.18.2

- a. Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:
  - i. The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
  - ii. The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.
  - iii. The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.
- b. The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

- 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.
  - vi. 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.
  - vii. 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.

### 12.18.3

A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant (i.e. Subscriber), 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.

**12.18.4**

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.

**12.18.5**

- 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 to 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



**12.18.6**

- a. Subject to subsection (b), a Participant's VOW may allow third-parties (i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing.
- b. Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 12.17.8, 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."

**12.18.7**

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

**12.18.8**

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

**12.18.9**

Except as provided in these rules, the VOW Policy set forth in Appendix A hereto 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.

**12.18.10**

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.

**12.18.11**

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®.

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**12.18.12**

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 set forth in Appendix A hereto and any other applicable MLS rules or policies.

**12.18.13**

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~~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.

**12.18.14**

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

- a. Expired or withdrawn listings.
- b. The compensation offered to other MLS Participants.
- c. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- d. The seller's and occupant's name(s), phone number(s), or e-mail address(es).
- e. Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property.

**12.18.15**

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 of the listings or fewer than all of the authorized information fields.

**12.18.16**

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.

**12.18.17**

A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than 100 current listings and not more than 100 sold listings in response to any inquiry.

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**12.18.18**

A Participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

**12.18.19**

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 of 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 third party.

**12.18.20**

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.

**12.18.21**

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

**12.18.22**

Where a seller affirmatively directs their listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within 48 hours.

**12.19 Use of the Terms MLS and Multiple Listing Service.**

No MLS Participant or Subscriber shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other way represent, suggest, or imply that the individual or firm is an MLS, or that they operate an MLS. Participants and Subscribers shall not represent, suggest, or imply that consumers or others have direct access to MLS databases, or that consumers or others are able to search MLS databases available only to Participants and Subscribers. This does not prohibit Participants and Subscribers from representing that any information they are authorized under MLS rules to provide to clients or customers is available on their websites or otherwise.

**12.20 Applicability of Rules to MLS or Association.**

Nothing in these rules shall limit the right of the AOR or MLS to enter into licensing agreements with third parties for use of the MLS compilations or any portion thereof in accordance with terms approved by the Board of Directors.

**12.21 Participant and Subscriber Standards of Conduct.**

The services that Participants and Subscribers provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

Participants and Subscribers shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

### **13. LOCKBOXES**

#### **13.1 Eligibility for Lockbox Privileges.**

MLS Participants and Subscribers are eligible for lockbox privileges if they otherwise qualify under this section. Clerical users are not eligible for lockbox privileges. MLS Participants and Subscribers shall be eligible to hold a lockbox key provided:

- a. The key holder signs a lease agreement with the MLS.
- b. The Participant to which the key holder is licensed cosigns the lease agreement with the AOR.
- c. The key holder continues to comply with all MLS rules relating to lockbox keys.
- d. The key holder and Participant to whom the key holder is licensed remain eligible for MLS services.

#### **13.2 Key Use and Service.**

Keys may only be used for the purpose of facilitating the sale or lease of a listed property.

##### **13.2.1 Use of Lockbox Contents.**

Participants and Subscribers shall at all times follow the showing instructions published in the MLS. Participants and Subscribers shall not remove contents of the lockbox for purposes other than showing the home and shall promptly return the contents to the lockbox upon exiting the property. Participants and Subscribers shall keep lockbox contents in their possession at all times after removal from the lockbox. The lockbox and/or contents shall not be removed from the property site without prior consent from the listing agent.

- a. Listing Broker's Permission. No Participant or Subscriber may enter a property with or without a lockbox without the listing broker's permission. The listing broker may grant such permission by specifying permission to use the lockbox through the MLS. Appraiser Participants are expressly prohibited from using lockbox keys to enter a property without either the owner's or listing broker's permission.
- b. Participants and Subscribers shall at all times follow the showing instructions published in the MLS.
- c. Participants and Subscribers shall not remove contents of the lockbox for purposes other than showing the home and shall promptly return the contents to the lockbox upon exiting the property.

- d. Participants and Subscribers shall keep lockbox contents in their possession at all times after removal from the lockbox. The lockbox and/or contents shall not be removed from the property site without prior consent from the listing agent.

**13.2.2 Lockbox Type Requirements.**

SFAR only supports and services the Supra iBox BT LE, designed to work with all Bluetooth supported devices, which was deployed on March 12, 2014.

**For violation of this section, see Appendix B, Citable Infractions, 5.1., Showings and Access.**

**13.3 Key Use and Service.**

Keys may not be used under any circumstances by anyone other than the key holder, including, but not limited to, lending, borrowing or sharing keys with others. The AOR is not obligated to provide service on keys or lock boxes to individuals who are not the registered lessee or owner of the component.

**For violation of this section, see Appendix B, Citable Infractions, 5.1, Showings and Access.**

**13.4 Accountability.**

Key holders must account for keys at the time of any inventory conducted by the AOR or at any time requested by the AOR. Key holders who cease to participate or subscribe to the MLS shall return all key(s) in their possession to the AOR. Failure to return a key(s) will subject the key holder and/or the key holder's Participant to fines and penalties and to being responsible for all costs incurred by the AOR to secure the lock box key system as a result of the failure to return the key(s).

**13.5 Deemed Unaccountable.**

Keys shall be deemed unaccounted for if a key holder refuses or is unable to demonstrate that the key is within the key holder's physical control.

**13.6 Written Authority.**

Participants and Subscribers shall not place a lockbox on a property without written authority from the seller and occupant if other than the seller. Inclusions in MLS compilations cannot be required as a condition of placing lockboxes on listed property.

**For violation of this section, see Appendix B, Citable Infractions, 5.1, Showings and Access.**

**13.7 Removal of Lockbox.**

Upon sale of the property, the lockbox must be removed.

**For violation of this section, see Appendix B, Citable Infractions, 5.1, Showings and Access.**

**13.8 Unaccountable Keys.**

Key holders and Participants cosigning with a key holder shall report lost, stolen or otherwise unaccountable keys to the A.O.R. immediately upon discovery.

### **13.9 Deposits.**

All key holders shall be required to give the AOR deposits in accordance with the deposit schedule adopted by the MLS Committee and approved by the Board of Directors. Key holders shall forfeit the deposits if the key is lost, stolen or unaccounted for. Key holders shall not be entitled to any interest on their deposits. The AOR is not obligated to refund deposits to individuals who are not the registered lessee or owner of the key.

### **13.10 Rules Violations.**

~~Failure to abide by rules relating to lockboxes as set forth in this section or failure to abide by the~~ key lease agreement may result in discipline as provided in sections 14 and 15 of these rules, in addition to loss of or restriction on all lockbox and key privileges.

### **13.11 Right to Limit Access.**

The AOR reserves the right to refuse to issue a key or limit access to lockboxes if, in its sole discretion, it determines the security of the system would be compromised by issuing such keys or granting access to lockboxes.

### **13.12 Advertising Lockboxes on Properties Listed with the Service.**

Listings which advertise lockbox access must have a Supra iBox installed at the property.

## **14. VIOLATIONS OF RULES AND REGULATIONS**

### **14.1 Grounds for Disciplinary Action and Sanctions.**

After a hearing by a hearing panel as provided in the *California Code of Ethics and Arbitration Manual*, the Board of Directors may take disciplinary action and impose sanctions against any Participant and Subscriber:

- a. For violation of any MLS rule;
- b. On the Participant's or Subscriber's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (1) a felony, or (2) a crime involving moral turpitude, or (3) on a determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the Participant or Subscriber violated a provision of the California Real Estate Law or a Regulation of the Real Estate Commissioner or the laws relating to appraisers or a regulation of the OREA.
- c. For any violation of subsection (a) by any person, including but not limited to a clerical user or a salesperson, who is not a Participant or Subscriber but is employed by or affiliated with such Participant or Subscriber and was providing real estate related services within the scope of the Participant's or Subscriber's license. Lack of knowledge by the Participant or Subscriber of such salesperson's conduct shall only go to mitigation of discipline imposed.
- d. For any violation of the N.A.R. Code of Ethics while a member of any Association of REALTORS®.

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**14.2 Sanctions.**

Sanctions or disciplinary action for violation of an MLS Rule may consist of one or more of those specified in the *California Code of Ethics and Arbitration Manual*.

**14.3 Citations.**

The MLS Committee, subject to approval of the Board of Directors, may implement a schedule of fines for certain MLS rules violations and direct staff to issue citations for the specified MLS rules violations and implement a procedure whereby the Participant and Subscriber receiving the citation may either pay the amount specified on the citation or request a full hearing in accordance with the procedures set forth in the *California Code of Ethics and Arbitration Manual*.

**15. PROCEDURES FOR MLS RULES HEARINGS**

All MLS rules hearings shall be processed in accordance with the California Code of Ethics and Arbitration Manual as from time to time amended which is hereby incorporated by reference. Failure to abide by the procedures of the California Code of Ethics and Arbitration Manual shall be a violation of these MLS rules.

**16. ARBITRATION****16.1 Mandatory Arbitration.**

By becoming and remaining a Participant or Subscriber in the MLS, each Participant and Subscriber agrees to submit disputes arising out of the real estate business which also arises out of, or is in conjunction with, any listing filed with the MLS or any appraisal, to binding arbitration with any other Participant or Subscriber of this MLS, or Participants or Subscribers of any other MLS who are authorized to have access to this MLS under Section 6 of these rules. Such arbitrations shall be governed by the *California Code of Ethics and Arbitration Manual* as from time to time amended which is hereby incorporated by reference. This shall be deemed an arbitration agreement within the meaning of Part 3, Title 9 of the California Code of Civil Procedure. Failure to submit to arbitration as provided herein shall be a violation of these MLS rules.

**16.2 Other Arbitration Agreements.**

Notwithstanding any other provision of these rules, if any Participant or Subscriber enters into an agreement (either before or after a dispute arises) with another Participant or Subscriber to arbitrate a dispute utilizing non-Association facilities, such persons are not bound to arbitrate the dispute covered by such agreement under these rules utilizing AOR facilities.

**16.3 Arbitration between Association Members.**

Notwithstanding any other provision of these rules:

- a. If all disputants are members of the same Association of REALTORS®, they shall arbitrate at that Association of REALTORS® in accordance with its rules.
- b. If the disputants are members of different Associations of REALTORS®, they shall arbitrate in accordance with any applicable regional or shared professional standards agreement. In the absence of such an agreement, the disputants remain obligated to arbitrate at the California Association of REALTORS® ("C.A.R.") in accordance with the C.A.R. Interboard Arbitration Rules.

#### **16.4. Arbitration Involving Non-Association Members.**

Notwithstanding any other provision of these rules:

- a. If all disputants are non-association members and they receive MLS services through the same A.O.R., they shall arbitrate at the A.O.R. unless the A.O.R. participates in a regional MLS, in which case, they shall arbitrate in accordance with any applicable regional agreements between the A.O.R. and the regional MLS.
- b. If one or more of the disputants are non-association members and all disputants receive MLS services through the same A.O.R., they shall arbitrate at the A.O.R. unless the A.O.R. participates in a regional MLS, in which case, they shall arbitrate in accordance with any applicable regional agreements between the A.O.R. and the regional MLS.
- c. If one or more of the disputants are non-association members and the disputants receive MLS services through different A.O.R.s and the A.O.R.s participate in a regional MLS, they shall arbitrate in accordance with any applicable regional agreements between the A.O.R.s and the regional MLS.
- d. In the absence of a regional agreement regarding the location of the arbitration, any dispute under subsection (a)-(c) may be conducted at any A.O.R. where the respondent(s) holds association membership or receives MLS services.

#### **16.5 Same Firm.**

Arbitration between persons from the same firm shall not be available and is not mandated by these rules unless covered by arbitration rules relating to the obligations of AOR members to arbitrate.

#### **16.6 Timing.**

For purposes of this Section 16, the duty to arbitrate shall be determined when facts giving rise to the dispute occurred. Therefore, a Participant or Subscriber shall have a duty to arbitrate if the person was an MLS Participant or Subscriber when facts giving rise to the dispute occurred. Termination of MLS participation or subscription shall not relieve the arbitration duty under this section for disputes that arose when the person was an MLS Participant or Subscriber. Requests for arbitration must be filed within one hundred and eighty (180) days after the closing of the transaction, if any, or after the facts constituting the matter could have been known in the exercise of reasonable diligence, whichever is later.

### **17. NONPAYMENT OF MLS FEES**

#### **17.1. Nonpayment of MLS Fees.**

If MLS fees, fines, charges or other amounts owed the MLS by any Participant or MLS Subscriber employed by or affiliated as an independent contractor with that Participant are not paid within one month after the due date, the Participant shall become solely responsible for the payment of such MLS fees, fines, charges or other amounts. If the Participant does not pay the fees, fines, charges or other amounts within five days thereafter, MLS services provided to the Participant and all MLS Subscribers employed by or affiliated as independent contractors with that Participant shall be suspended provided the MLS gives the Participant at least twenty (20) calendar days prior notice of the proposed suspension date. Such notice may be included with the original billing statement for MLS fees, fines or charges or any time thereafter. In the event the amounts owed remain unpaid for three months after the due date, the nonpaying Participant and/or Subscriber's MLS services shall automatically terminate regardless if notice of such termination is given.



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**17.2 Disputed Amounts.**

If a Participant and/or Subscriber disputes the accuracy of amount owed, the Participant and/or Subscriber may request a hearing before the Board of Directors. In order to request such a hearing, the Participant and/or Subscriber must first pay the disputed amount in whole, which may be refunded in whole or part in accordance with the Board of Directors' determination. Hearings under this section shall be conducted in accordance with the *California Code of Ethics and Arbitration Manual*. In the event the Board of Directors confirms the accuracy of the amount owed, the Participant and/or Subscriber shall also be subject to paying interest at the rate of ten (10%) per annum on such past due amounts.

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**17.3 Reinstatement.**

Any Participant and/or Subscriber whose MLS services have been terminated for nonpayment of MLS fees may reapply for participation in the MLS. However, prior to being granted access, such Participant and/or Subscriber must pay all fees applicable to new applicants and all past due amounts owed, including paying interest at the rate of ten (10%) per annum on such past due amounts.

**18. CHANGES IN RULES AND REGULATIONS**

The rules and regulations of the MLS may be amended by a two-thirds vote of all members of the MLS Committee, subject to approval by the Board of Directors. Any changes to these rules and regulations which are mandated by the National Association of REALTORS® shall automatically be incorporated into these rules and regulations and do not require MLS Committee or Board of Directors approval.

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## **APPENDIX A—VOW POLICY**

### **SAN FRANCISCO ASSOCIATION OF REALTORS® MULTIPLE LISTING SERVICE**

National Association of Realtors® VOW Policy (“VOW Policy”)

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

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#### **I. Definitions and Scope of Policy.**

1. For purposes of this Policy, the term Virtual Office Website (“VOW”) refers to a Participant’s Internet website, or a feature of a Participant’s Internet website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS data, subject to the Participant’s oversight, supervision, and accountability.
  - a. A Participant may designate an Affiliated VOW Partner (“AVP”) to operate a VOW on behalf of the Participant, subject to the Participant’s supervision and accountability and the terms of this Policy.
  - b. A non-principal broker or sales licensee, affiliated with a Participant, may, with the Participant’s consent, operate a VOW or have a VOW operated on its behalf by an AVP. Such a VOW is subject to the Participant’s supervision and accountability and the terms of this Policy.
  - c. Each use of the term “Participant” in this Policy shall also include a Participant’s non-principal brokers and sales licensees (with the exception of references in this section to the “Participant’s consent” and the “Participant’s supervision and accountability,” and in section III.10.a, below, to the “Participant acknowledges”). Each reference to “VOW” or “VOWs” herein refers to all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an AVP.
2. The right to display listings in response to consumer searches is limited to display of MLS data supplied by the MLS(s) in which the Participant has participatory rights. This does not preclude a firm with offices participating in different MLSs from operating a master website with links to such offices’ VOWs.
3. Participants’ Internet websites, including those operated for Participants by AVPs, may also provide other features, information, or services in addition to VOWs (including the Internet Data Exchange (“IDX”) function).
4. The display of listing information on a VOW does not require separate permission from the Participant whose listings will be available on the VOW.
5. Except as permitted in Sections III and IV, MLSs may not adopt rules or regulations that conflict with this Policy or that otherwise restrict the operation of VOWs by Participants.

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## II. Policies Applicable to Participants' VOWs.

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1. A Participant may provide brokerage services via a VOW that include making MLS active listing data available, but only to consumers with whom the Participant has first established a lawful consumer-broker relationship, including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreement(s).
2. A Participant's VOW must obtain the identity of each Registrant and obtain each Registrant's agreement to Terms of Use of the VOW, as follows:
  - a. A Registrant must provide his or her name and a valid email address. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection c below). The Registrant may be permitted to access the VOW only after the Participant has verified that the email address provided is valid and that Registrant received the Terms of Use confirmation.
  - b. The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants on the VOW, before being permitted to search and retrieve information from the MLS database via the VOW. The user name and password may be established by the Registrant or may be supplied by the Participant, at the option of the Participant. An email address may be associated with only one user name and password. The Registrant's password and access must expire on a date certain but may be renewed. The Participant must at all times maintain a record of the name and email address supplied by the Registrant, and the username and current password of each Registrant. Such records must be kept for not less than 180 days after the expiration of the validity of the Registrant's password. If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by one or more Registrants, the Participant shall, upon request, provide to the MLS a copy of the record of the name, email address, user name, current password, and audit trail, if required, of any Registrant identified by the MLS to be suspected of involvement in the violation.
  - c. The Registrant must be required affirmatively to express agreement to a "Terms of Use" provision that requires the Registrant to open and review an agreement that provides at least the following:
    - i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
    - ii. That all data obtained from the VOW is intended only for the Registrant's personal, non-commercial use;
    - iii. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;

- iv. That the Registrant will not copy, redistribute, or retransmit any of the data or information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property;
- v. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

After the Registrant has opened for viewing the Terms of Use agreement, a "mouse click" is sufficient to acknowledge agreement to those terms. The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. The Terms of Use agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW.

- d. An agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.
- 3. A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about properties displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.
  - 4. A Participant's VOW must protect the MLS data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" or other unauthorized accessing, reproduction, or use of the MLS database.
  - 5. A Participant's VOW must comply with the following additional requirements:
    - a. No VOW shall display listing or property address of any seller who have affirmatively directed its listing broker to withhold its listing or property address from display on the Internet. The listing broker or agent shall communicate to the MLS that a seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listing or property address of a seller who has determined not to have the listing or address for its property displayed on the Internet.
    - b. A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that conforms to the form attached to this Policy as Appendix B. The Participant shall retain such forms for at least one year from the date they are signed.

- c. ~~With respect to any VOW that: (i) allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing, the VOW shall disable or discontinue either or both of those features as to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Except for the foregoing and subject to subparagraph (d) below, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. Nothing shall prevent a VOW from notifying its customers that a particular feature has been disabled "at the request of the seller."~~
- d. A VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the VOW operator beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The VOW operator shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for that property explaining why the data or information is false. However, the VOW operator shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.
- e. Each VOW shall refresh MLS data available on the VOW not less frequently than every 3 days.
- f. Except as provided elsewhere in this Policy or in MLS rules and regulations, no portion of the MLS database may be distributed, provided, or made accessible to any person or entity.
- g. Every VOW must display a privacy Policy that informs Registrants of the ways in which information obtained from them will be used.
- h. A VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, or whether the listing broker is a Realtor®.
6. A Participant who intends to operate a VOW must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with this Policy and any other applicable MLS rules or policies.
7. A Participant may operate more than one VOW itself or through an AVP. A Participant who operates a VOW itself shall not be precluded from also operating VOWs in conjunction with AVPs.

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### III. Policies Applicable to Multiple Listing Services.

1. A Multiple Listing Service shall permit MLS Participants to operate VOWs, or to have VOWs operated for them by AVPs, subject to the requirements of state law and this Policy.
2. An MLS shall, if requested by a Participant, provide basic “downloading” of all MLS non-confidential listing data, including without limitation address fields, listings types, photographs, and links to virtual tours. Confidential data includes only that which ~~Participants are prohibited from providing to customers orally and by all other delivery mechanisms.~~ They include fields containing the information described in paragraph IV(1) of this Policy, provided that sold data (i.e., listing information relating to properties that have sold) shall be deemed confidential and withheld from a download only if the actual sales prices of completed transactions are not accessible from public records. For purposes of this Policy, “downloading” means electronic transmission of data from MLS servers to a Participant’s or AVP’s server on a persistent basis. An MLS may also offer a transient download. In such case, it shall also, if requested, provide a persistent download, provided that it may impose on users of such download the approximate additional costs incurred by it to do so.
3. This Policy does not require an MLS to establish publicly accessible sites displaying Participants’ listings.
4. If an MLS provides a VOW-specific feed, that feed must include all of the non-confidential data included in the feed described in paragraph 2 above except for listings or property addresses of sellers who have elected not to have their listings or addresses displayed on the Internet.
5. An MLS may pass on to those Participants who will download listing information the reasonably estimated costs incurred by the MLS in adding or enhancing its “downloading” capacity to enable such Participants to operate VOWs.
6. An MLS may require that Participants (1) utilize appropriate security protection, such as firewalls, as long as such requirement does not impose security obligations greater than those employed concurrently by the MLS, and/or (2) maintain an audit trail of Registrants’ activity on the VOW and make that information available to the MLS if the MLS has reason to believe that any VOW has caused or permitted a breach in the security of the data or a violation of applicable MLS rules.
7. An MLS may not prohibit or regulate display of advertising or the identification of entities on VOWs (“branding” or “co-branding”), except to prohibit deceptive or misleading advertising or co-branding. For purposes of this provision, co-branding will be presumed not to be deceptive or misleading if the Participant’s logo and contact information (or that of at least one Participant, in the case of a VOW established and operated by or for more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

8. Except as provided in this Policy, an MLS may not prohibit Participants from enhancing their VOWs by providing information obtained from sources other than the MLS, additional technological services (such as mapping functionality), or information derived from non-confidential MLS data (such as an estimated monthly payment derived from the listed price), or regulate the use or display of such information or technological services on any VOW.
9. Except as provided in generally applicable rules or policies (such as the Realtor® Code of Ethics), an MLS may not restrict the format of data display on a VOW or regulate the appearance of VOWs.
10. Subject to the provisions below, an MLS shall make MLS listing data available to an AVP for the exclusive purpose of operating a VOW on behalf of a Participant. An MLS shall make MLS listing data available to an AVP under the same terms and conditions as those applicable to Participants. No AVP has independent participation rights in the MLS by virtue of its right to receive data on behalf of a Participant, or the right to use MLS data except in connection with operation of a VOW for a Participant. AVP access to MLS data is derivative of the rights of the Participant on whose behalf the AVP is downloading data.
  - a. A Participant, non-principal broker or sales licensee, or AVP may establish the AVP's right to receive and use MLS data by providing to the MLS a writing in which the Participant acknowledges its or its non-principal broker's or sales licensee's selection of the AVP to operate a VOW on its behalf.
  - b. An MLS may not charge an AVP, or a Participant on whose behalf an AVP operates a VOW, more than a Participant that chooses to operate a VOW itself (including any fees or costs associated with a license to receive MLS data, as described in (g), below), except to the extent that the MLS incurs greater costs in providing listing data to the AVP than the MLS incurs in providing listing data to a Participant.
  - c. An MLS may not place data security requirements or restrictions on use of MLS listing data by an AVP that are not also imposed on Participants.
  - d. An MLS must permit an AVP to download listing information in the same manner (e.g., via a RETS feed or via an FTP download), at the same times and with the same frequency that the MLS permits Participants to download listing information.
  - e. An MLS may not refuse to deal directly with an AVP in order to resolve technical problems with the data feed. However, the MLS may require that the Participant on whose behalf the AVP is operating the VOW participate in such communications if the MLS reasonably believes that the involvement of the Participant would be helpful in order to resolve the problem.
  - f. An MLS may not condition an AVP's access to a data feed on the financial terms on which the AVP provides the site for the Participant.
  - g. An MLS may require Participants and AVPs to execute license or similar agreements sufficient to ensure that Participants and AVPs understand and agree that data provided by the MLS may be used only to establish and operate a VOW on behalf of the Participant and not for any other purpose.

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

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

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

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

1. An MLS may impose any, all, or none of the following requirements on VOWs but may impose them only to the extent that equivalent requirements are imposed on Participants' use of MLS listing data in providing brokerage services via all other delivery mechanisms:
- a. A Participant's VOW may not make available for search by or display to Registrants the following data intended exclusively for other MLS Participants and their affiliated licensees:
- i. Expired, withdrawn, or pending listings.
  - ii. Sold data unless the actual sales price of completed transactions is accessible from public records.
  - iii. The compensation offered to other MLS Participants.
  - iv. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
  - v. The seller(s) and occupant(s) name(s), phone number(s) and email address(es), where available.
  - vi. Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.



- b. The content of MLS data that is displayed on a VOW may not be changed from the content as it is provided in the MLS. MLS data may be augmented with additional data or information not otherwise prohibited from display as long as the source of such other data or information is clearly identified. This requirement does not restrict the format of MLS data display on VOWs or display of fewer than all of the listings or fewer authorized data fields.
  - c. There shall be a notice on all MLS data displayed indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may also include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.
  - d. Any listing displayed on a VOW shall identify the name of the listing firm in a readily visible color, and reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.
  - e. The number of current or, if permitted, sold listings that Registrants may view, retrieve, or download on or from a VOW in response to an inquiry may be limited to a reasonable number. Such number shall be determined by the MLS, but in no event may the limit be fewer than 100 listings or 5% of the listings in the MLS, whichever is less.
  - f. Any listing displayed on a VOW shall identify the name of the listing agent.
2. An MLS may also impose the following other requirements on the operation of VOWs:
- a. Participants displaying other brokers' listings obtained from other sources, e.g., other MLSs, non-participating brokers, etc. shall display the source from which each such listing was obtained.
  - b. A maximum period, no shorter than 90 days and determined by the MLS, during which Registrants' passwords are valid, after which such passwords must be changed or reconfirmed.
3. An MLS may not prohibit Participants from downloading and displaying or framing listings obtained from other sources, e.g., other MLSs or from brokers not participating in that MLS, etc., but may require either that (i) such information be searched separately from listings obtained from other sources, including other MLSs, or (ii) if such other sources are searched in conjunction with searches of the listings available on the VOW, require that any display of listings from other sources identify such other source.

EFFECTIVE DATE: MLSs have until not later than February 15, 2009 to adopt rules implementing the foregoing policies and to comply with the provisions of section III above, and (2) Participants shall have until not later than 180 days following adoption and implementation of rules by an MLS in which they participate to cause their VOW to comply with such rules.

See attached Exhibit 1 for Seller Opt-Out Form.

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**Exhibit 1 to VOW Policy**

**Seller Opt-Out Form**

1. Check either [a.] or [b.] below:

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

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

\_\_\_\_\_ initials of seller

## **APPENDIX B—CITABLE INFRACTIONS**

### **WITH REFERENCE TO APPLICABLE RULES**

#### **1. Unauthorized Access to MLS**

- |       |  |                     |
|-------|--|---------------------|
| 1.1   | <b>Use of MLS System by Unauthorized Party (Sec. 4, 12.1, 12.2, 12.3, 12.14, 12.14.1)</b>  |                     |
| 1.1.1 | Filing of False Participation Waiver, Violation of Participation Waiver (Sec. 4)   | <u>FINE LEVEL D</u> |
| 1.1.2 | Failure of Participant to Notify the MLS Within 10 days of Termination,<br>Transfer or Addition of an Associate under Participant's License (Sec. 4.4) | <u>FINE LEVEL D</u> |
| 1.2   | <b>Misuse of MLS Information</b>   |                     |
| 1.2.1 | Reproducing MLS Information for Unauthorized Purposes (Sec. 12.15.2)   | <u>FINE LEVEL D</u> |
| 1.2.2 | Reproducing and Distributing Unauthorized Portions of the MLS<br>Database (Sec. 12.15.2)   | <u>FINE LEVEL D</u> |
| 1.2.3 | Unauthorized Computer Download or Transmission of Data (Sec. 12.15)  | <u>FINE LEVEL D</u> |
| 1.2.4 | Use of MLS Data for Other Than the Intended/Permitted Purposes<br>(Sec. 12.11, 2, 11.7, 12.14, 12.14.1)  | <u>FINE LEVEL D</u> |

#### **2. Loading Listings and Reporting Status Changes By Deadline**

- |       |  |                     |
|-------|--|---------------------|
| 2.1   | <b>Listing Not Loaded Within the Required Timeframe of Start Date of Listing (Sec. 7.5)</b>                      | <u>FINE LEVEL B</u> |
| 2.2   | <b>Listing Waiver Not Submitted to MLS Within the Required Timeframe of Start Date<br/>of Listing (Sec. 7.6)</b> | <u>FINE LEVEL B</u> |
| 2.3   | <b>Status Changes Not Reported By Deadline</b>   |                     |
| 2.3.1 | Sale Not Reported by the Required Timeframe (Sec. 10.2)  | <u>FINE LEVEL B</u> |
| 2.3.2 | Pending Sale Not Reported by the Required Timeframe (Sec. 10.2)  | <u>FINE LEVEL B</u> |
| 2.3.3 | Contingent Sale Not Reported by the Required Timeframe (Sec. 10.2)   | <u>FINE LEVEL B</u> |
| 2.3.4 | Cancellation of Pending Sale Not Reported by the Required Timeframe (Sec. 10.3)                                  | <u>FINE LEVEL B</u> |
| 2.3.5 | Withdrawal of Listing Not Reported by the Required Timeframe (Sec. 7.8)  | <u>FINE LEVEL B</u> |
| 2.3.6 | Resolution of All Contingencies Not Reported by the Required<br>Timeframe (Sec. 10.2)                            | <u>FINE LEVEL B</u> |

#### **3. Reporting and Accuracy of Information**

- |        |   |                     |
|--------|---|---------------------|
| 3.1    | <b>Submission of Listings That Do Not Satisfy the Requirements of the MLS Rules</b>   |                     |
| 3.1.1  | Failure to Properly Specify Listing Class (Sec. 7.3)  | <u>FINE LEVEL C</u> |
| 3.1.2  | Entry of Inaccurate or Non-Text Information Anywhere in a Listing (Sec. 8.3)  | <u>FINE LEVEL B</u> |
| 3.1.3  | Listing Information Incomplete or Not Kept Current (Sec. 7.11, 7.2, 7.9, 7.2.2)   | <u>FINE LEVEL B</u> |
| 3.1.4  | Failure to Enter Accurate Information in a Required Data Field<br>(Sec. 7.11, 8.3, 7.2, 7.9, 7.2.2)   | <u>FINE LEVEL B</u> |
| 3.1.5  | Using a Data Field for a Purpose Other Than its Intended Use (Sec. 8.3)   | <u>FINE LEVEL B</u> |
| 3.1.6  | Failure to Correct Incomplete or Inaccurate Information Within 24 Hours<br>After Notification by Staff (Sec. 8.2)                                       | <u>FINE LEVEL C</u> |
| 3.1.7  | Submission of Duplicate Listings by the Same Participant within<br>The Same Property Class (Sec. 7.3)   | <u>FINE LEVEL C</u> |
| 3.1.8  | Entry of a Non-Property-Specific Virtual Media Link Anywhere<br>In a Listing (Sec. 12.15.2.e)   | <u>FINE LEVEL C</u> |
| 3.1.9  | Including Contact Information, such as Email Addresses,<br>Website Addresses, or other Non-Property Descriptive Text, on Photos (Sec. 11.5)             | <u>FINE LEVEL B</u> |
| 3.1.10 | Use of Photographs on a Listing Without Proper Authorization (Sec. 11.5)  | <u>FINE LEVEL C</u> |
| 3.2    | <b>Failure to Withdraw a Listing after Written Permission/Instruction to Withdraw the<br/>Listing Has Been Received from the Seller (Sec. 7.8, 7.9)</b> | <u>FINE LEVEL D</u> |
| 3.3    | <b>Failure to Report the Correct Sales Price on a Closed Sale (Sec. 8.1)</b>  | <u>FINE LEVEL D</u> |

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**3.4 Purposely Manipulating the MLS System to Circumvent the Rules**

- |       |  |                            |
|-------|--|----------------------------|
| 3.4.1 | Entry of Inaccurate or Prohibited Information (Sec. 8.3)                                       | <u><b>FINE LEVEL B</b></u> |
| 3.4.2 | Posting of a Listing to the MLS Without Having a Written Listing Agreement (Sec. 8.1)          | <u><b>FINE LEVEL D</b></u> |
| 3.4.3 | Submitting a Listing as Withdrawn When Not Withdrawn by Seller (Sec. 8.3)                      | <u><b>FINE LEVEL D</b></u> |
| 3.4.4 | Extending a Listing Without Written Authorization from the Seller (Sec. 8.3)                   | <u><b>FINE LEVEL D</b></u> |
| 3.4.5 | Failure to Report a Dual or Variable Rate Commission (Sec. 7.22)                               | <u><b>FINE LEVEL D</b></u> |
| 3.4.6 | Refusal to Report Accurate Information or to Correct Inaccurate Information (Sec. 8.3)         | <u><b>FINE LEVEL D</b></u> |
| 3.4.7 | Entry of a Listing as New after Withdrawn Without a New or Amended Listing Contract (Sec. 8.2) | <u><b>FINE LEVEL D</b></u> |
- 
- |       |  |                            |
|-------|--|----------------------------|
| 3.4.8 | Reentry of a Withdrawn Listing Within 30 Days (Sec. 7.9) | <u><b>FINE LEVEL D</b></u> |
|-------|--|----------------------------|

**4. Remarks****4.1 Misuse of Public Remarks – Publishing: (Sec. 12.5.1)**

- |       |                                |                            |
|-------|--------------------------------|----------------------------|
| 4.1.1 | Telephone Numbers              | <u><b>FINE LEVEL B</b></u> |
| 4.1.2 | Names, Including Company Names | <u><b>FINE LEVEL B</b></u> |
| 4.1.3 | Email Addresses                | <u><b>FINE LEVEL B</b></u> |
| 4.1.4 | Websites                       | <u><b>FINE LEVEL B</b></u> |
| 4.1.5 | Security Codes                 | <u><b>FINE LEVEL C</b></u> |
| 4.1.6 | Lockbox Codes                  | <u><b>FINE LEVEL C</b></u> |
| 4.1.7 | Virtual Tour Links             | <u><b>FINE LEVEL C</b></u> |
| 4.1.8 | Current Vacancy of Property    | <u><b>FINE LEVEL A</b></u> |
| 4.1.9 | Title or Escrow Instructions   | <u><b>FINE LEVEL B</b></u> |

**4.2 Misuse of Confidential Remarks (Sec. 12.5.2)**

- |       |   |                            |
|-------|---|----------------------------|
| 4.2.1 | Publishing Security Codes Without Seller's Written Permission (Sec. 12.5.2b)                              | <u><b>FINE LEVEL B</b></u> |
| 4.2.2 | Publishing Reference to Licensed Non-Subscribers Except in the Case of Reciprocal Listings (Sec. 12.5.2d) | <u><b>FINE LEVEL D</b></u> |

**5. Miscellaneous****5.1 Showings and Access**

- |       |   |                            |
|-------|---|----------------------------|
| 5.1.1 | Listing Not Ready for Showing Within 3 Business Days After Submission of Listing (Sec. 9.1.1) | <u><b>FINE LEVEL A</b></u> |
| 5.1.2 | Use of Lockbox Key by Someone Other than Registered Keyholder (Sec. 13.2)                     | <u><b>FINE LEVEL D</b></u> |
| 5.1.3 | Placement of Lockbox without Written Authority of Seller (Sec. 13.6)                          | <u><b>FINE LEVEL B</b></u> |
| 5.1.4 | Failure to Remove Lockbox after Close of Escrow (Sec. 13.7)                                   | <u><b>FINE LEVEL B</b></u> |

**5.2 Violation of IDX rules**

- |        |  |                            |
|--------|--|----------------------------|
| 5.2.1  | Display of Confidential Information (Sec. 12.16c)  | <u><b>FINE LEVEL C</b></u> |
| 5.2.2  | Failure to Display Name of Listing Firm and Agent in Easily Identifiable Manner (Sec. 12.16d)        | <u><b>FINE LEVEL B</b></u> |
| 5.2.3  | Modification of Information Displayed (Sec. 12.16e)  | <u><b>FINE LEVEL C</b></u> |
| 5.2.4  | Failure to Indicate Source of Information/Failure to Update Downloads And Refresh Data (Sec. 12.16f) | <u><b>FINE LEVEL B</b></u> |
| 5.2.5  | Sharing MLS Compilation with Third Party/Failure to Post Notice (Sec. 12.16g)                        | <u><b>FINE LEVEL D</b></u> |
| 5.2.6  | Display of Listings or Property Addresses Not Authorized for IDX (Sec. 12.16i)                       | <u><b>FINE LEVEL C</b></u> |
| 5.2.7  | Excluding Listings from Display Based on Nonobjective Criteria (Sec. 12.16j)                         | <u><b>FINE LEVEL B</b></u> |
| 5.2.8  | Distribution to Unauthorized Person (Sec. 12.16k)  | <u><b>FINE LEVEL D</b></u> |
| 5.2.9  | Failure to Display Brokerage Firm Name on Website (Sec. 12.16l)                                      | <u><b>FINE LEVEL B</b></u> |
| 5.2.10 | Failure to Post SFARMLS Copyright/Warranty Notice (Sec. 12.16s)                                      | <u><b>FINE LEVEL B</b></u> |
| 5.2.11 | Violation of Maximum Search Response Number Limit (Sec. 12.16p)                                      | <u><b>FINE LEVEL B</b></u> |

**5.3 Advertising of Listing Filed with the MLS (Outside scope of IDX) (Sec. 12.8)****FINE LEVEL D**

5.4 Failure to Provide Adequate Informational Notice on Print or Non-Print Forms of Advertising or Other Forms of Public Representations (Sec. 12.9)

FINE LEVEL A

5.5 Failure to Pay Any MLS Fees (Sec. 17.1)

FINE LEVEL A

FINE LEVEL A = \$ 50

FINE LEVEL B = \$ 100

FINE LEVEL C = \$ 500

FINE LEVEL D = \$ 1,000

*First offense—warning*

*Second offense—fine per fine schedule*

*Third offense—two times the fine per fine schedule*

*Fourth offense—three times the fine per fine schedule*

**Introduction Form**

By a Member of the Board of Supervisors or the Mayor

RWD  
IN BOARD

S. 19

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- ☒ 1. For reference to Committee.  
An ordinance, resolution, motion, or charter amendment.
- ☐ 2. Request for next printed agenda without reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee.
- ☐ 4. Request for letter beginning "Supervisor [ ] inquires"
- ☐ 5. City Attorney request.
- ☐ 6. Call File No. [ ] from Committee.
- ☐ 7. Budget Analyst request (attach written motion).
- ☐ 8. Substitute Legislation File No. [ ]
- ☐ 9. Request for Closed Session (attach written motion).
- ☐ 10. Board to Sit as A Committee of the Whole.
- ☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- ☐ Small Business Commission    ☐ Youth Commission    ☐ Ethics Commission
- ☐ Planning Commission    ☐ Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative****Sponsor(s):**

Supervisor Wiener

**Subject:**

Accept In-Kind Gift - Online Content Subscription - \$20,000

**The text is listed below or attached:**

Resolution authorizing the Office of Assessor-Recorder to accept an in-kind gift not to exceed \$20,000 in annual value from the San Francisco Association of Realtors to improve the accuracy of appraising and developing valuations for properties within the City and County of San Francisco.

Signature of Sponsoring Supervisor:

*Scott Wiener*

For Clerk's Use Only:

150537