

**Rules and Regulations of  
MLS Hawaii, Inc. d/b/a  
*HAWAII INFORMATION SERVICE*  
("HIS")**

**Adopted September 15, 2016**

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## **Article I Applicability of rules; eligibility to participate.**

**Section 1.01. Purpose.** HIS provides a multiple listing service (“the service”). The service is a means and facility by which authorized participants make blanket unilateral offers of compensation to other participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law); which enhances cooperation among participants; which accumulates and disseminates information to enable authorized participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which participants engaging in real estate appraisal contribute to common databases; and which permits the orderly correlation and dissemination of listing information so participants may better serve their clients and the public.

**SECTION 1.02. NO CONTROL OF COMMISSIONS OR FEES.** *HIS does not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by participants. HIS does not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating participants or between participants and non-participants. HIS does not require or request participants to disclose to the service or to other participants the total commission negotiated between listing broker and seller in a contractual agreement. HIS will not in any way display the total commission negotiated between listing broker and seller in a contractual agreement.*

**Section 1.03. Eligibility.** Eligible participants in the service are those individuals and entities described as participants in Article II. Under no circumstances are individuals or firms, regardless of membership status, entitled to ‘membership’ or ‘participation’ in the service unless they hold current, valid real estate broker’s licenses and offer or accept cooperation and compensation to and from other participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. If at any time the license or certification of a participant required under this section is revoked, its participation shall immediately terminate, and access to the service by all its affiliated associate and support subscribers shall also immediately terminate.

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm offers or accepts cooperation and 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 ongoing 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) (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 or accept cooperation and 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 in a nondiscriminatory manner to all participants and potential participants.

**Section 1.04. Orientation.** Any applicant for participation in the service and any subscriber affiliated with a participant who has access to and use of listing records and listing compilations must complete an orientation

program of 3 classroom hours devoted to these rules and computer training related to information entry and retrieval and the operation of the service within 45 days after the service has provided access.

**Section 1.05. Applicability of rules to associate and support subscribers.** Associate and Support Subscribers are subject to these rules and may be disciplined for violations thereof.

**Section 1.06. Listings subject to rules and regulations.** Any listing taken on a contract to be filed with the service is subject to the rules upon signature of the seller.

**Section 1.07. Authority.** Participants acknowledge that the HIS board of directors has the following authority: (a) to adopt rules of the service and amendments to them; (b) to interpret the rules; (c) to establish fines, processing fees and sanctions for violations of the rules; and (d) to enforce the rules.

**Section 1.08. Use of the term REALTOR®.** Nothing in these rules confers on any participant, associate or support subscriber that is not a member of the National Association of REALTORS® the right to use the terms “REALTOR®” or “REALTORS®” in any form. Such participants, associate and support subscribers must make reasonable efforts to ensure that consumers and other participants understand that they are not REALTORS®.

**Section 1.09. Fair housing and other laws.** The service reminds participants, associate, and support subscribers to be cognizant of all applicable laws, including fair housing laws.

## **Article II Definitions and usage.**

These terms have the meanings given to them in this Article II. Other terms may be defined elsewhere in these rules.

“**Active listing record**” means a listing record with any of the following statuses: “Active” or “Contingent.”

“**Associate Subscriber**” means each non-principal broker, sales licensee, and licensed or certified real estate appraiser affiliated with a participant.

“**Board of REALTORS®**” means one of the boards or associations of REALTORS®.

“**Buyer**” means an individual, individuals, legal entity or legal entities seeking to purchase an interest in a property.

“**Code of Ethics**” means the Code of Ethics of the National Association of REALTORS® including its Standards of Practice and Case Interpretations.

“**Contractual agreement**” means a contract between a broker and a seller engaging the broker to undertake activities to bring about the sale of the seller’s property.

“**Cooperating broker**” means a broker, other than the listing broker, that facilitates a sale by bringing a buyer to the transaction.

“**Dual or variable rate commission arrangement**” means a contractual agreement in which the seller agrees to pay a specified commission to the listing broker if the listing broker sells the property without assistance and a different commission if the sale results through the efforts of a cooperating broker; or one in which the seller agrees to pay a specified commission to the listing broker if the listing broker sells the property either with or without the assistance of a cooperating broker and a different commission if the sale results through the efforts of the seller.

“**Entry-only listing**” means a contractual agreement where the listing broker and seller agree to *all* of the terms set forth in paragraphs (a) – (e) under “Limited Service Listing” below.

**“Exclusive agency listing”** means a contractual agreement under which the listing broker acts as the agent or as the legally recognized non-agency representative of the seller and the seller agrees to pay a commission to the listing broker if the property is sold through the efforts of any real estate broker; if the property is sold solely through the efforts of the seller, the seller is not obligated to pay a commission to the listing broker. (To the extent state law or regulation defines this term and that definition conflicts with this one, the definition in law or regulation shall govern these rules.)

**“Exclusive right to sell listing”** means a contractual agreement under which the listing broker acts as the agent or as the legally recognized non-agency representative of the seller and the seller agrees to pay a commission to the listing broker if the property is sold, regardless of whether the property is sold through the efforts of the listing broker, the seller, or anyone else. An exclusive right to sell listing may provide that the seller name one or more individuals or entities as exemptions in the listing agreement, and if the property is sold to any exempted individual or entity, the seller is not obligated to pay a commission to the listing broker. (To the extent state law or regulation defines this term and that definition conflicts with this one, the definition in law or regulation shall govern these rules.)

**“Including”** means “including, but not limited to” unless the context clearly indicates otherwise.

**“Jurisdiction”** means the State of Hawaii.

**“Limited Service Listing”** means a contractual agreement where the listing broker and seller agree to *one or more* of the following terms:

- a. The listing broker will not arrange appointments for cooperating brokers to show listed property to potential buyers but instead gives cooperating brokers authority to make such appointments directly with the seller.
- b. The listing broker will not accept and present to the seller offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller.
- c. The listing broker will not advise the seller as to the merits of offers to purchase.
- d. The listing broker will not assist the seller in developing, communicating, and presenting counter-offers.
- e. The listing broker will not participate on the seller’s behalf in negotiations leading to the sale of the property.

**“Listing broker”** means the broker engaged under a contractual agreement.

**“Listing compilation”** means any publication or aggregation of listing records created by the service, including online databases, bound books, loose-leaf binders, proprietary databases, and card files.

**“Listing record”** means the database record in the service relating to a contractual agreement.

**“Off-market listing record”** means a listing record that is not an active listing record.

**“Open listing”** means a contractual agreement under which the listing broker acts as the agent or as the legally recognized non-agency representative of the seller and the seller agrees to pay a commission to the listing broker only if the property is sold through the efforts of the listing broker; if the property is sold through the efforts of the seller or of another real estate broker, the seller is not obligated to pay a commission to the listing broker. (To the extent state law or regulation defines this term and that definition conflicts with this one, the definition in law or regulation shall govern these rules.)

**“Participant”** means a principal broker or principal licensed or certified real estate appraiser participating in HIS who has executed the service’s participant/subscriber agreement, and who satisfies all the obligations of participation set forth in that agreement and in these rules.

**“Property”** means real property.

**“Purchase agreement”** or **“purchase contract”** means a contract for the sale of real property. For purposes of these rules, purchase agreement includes agreements to lease.

**“Rules”** means these rules and regulations of the service.

**“Sell,” “sale”** and **“purchase”** refer to the sale, exchange or lease of property.

**“Seller”** means an individual, individuals, legal entity or legal entities seeking to sell property in which the seller holds an interest.

**“Service”** or **“MLS”** means the HIS multiple listing service.

**“Status”** means the listing’s status with regard to pending escrow or purchase agreement, availability for showing, and expiration of the listing record on the service’s system. The following statuses have the meanings given to them here:

**A/Active**

The property is available for immediate showing, and there is no pending escrow or purchase agreement. The listing will automatically expire according to the expiration date in the system.

**T/Temporarily Withdrawn**

There is no pending escrow or purchase agreement on the property, but the property is temporarily unavailable for showing. The listing will automatically expire according to the expiration date in the system.

**W/Withdrawn**

There is no pending escrow or purchase agreement on the property. The property has been withdrawn from the MLS by the listing broker and is no longer available for showing. The listing will not automatically expire in the system.

**C/Contingent**

There is a pending purchase agreement or the property is in escrow, and the property is available for immediate showing pursuant to the seller’s instructions. The listing will not automatically expire in the system.

**U/Under Contract**

There is a pending purchase agreement or the property is in escrow, and the seller has directed that no further showings are to be allowed. The listing will not automatically expire in the system.

**S/Sold**

Legal title has changed hands. The listing will not automatically be purged from the system.

**E/Expired**

The listing has automatically expired as a result of reaching the expiration date entered on it. The property is not available for showings. Only Active and Temporarily Withdrawn listings automatically expire.

**P/Preview**

There is a valid listing contract between the seller and the listing broker, and there is no pending escrow or purchase agreement. The property is not yet ready for marketing to the public and is not subject to Section 5.01, Showings available; agency disclosed, in regards to showing availability. The listing will be placed in W/Withdrawn status if not released to A/Active status within thirty (30) days. Once the listing is released to A/Active status, the

listing may not be put back into P/Preview status. The listing will not automatically expire in the system.

#### **H/Holding**

There is no pending escrow or purchase agreement on the property, and the property is not yet available for immediate showing. The agent shall release the listing from holding status to P/Preview or A/Active status when the agent has a listing contract in place with the seller.

“**Submit**” means, with regard to a listing or listing record, entry by the listing broker of the listing record or a modification of the listing record directly into the service or delivery to the service of all information the service requires for the service to enter the listing record or its modification on the listing broker’s behalf.

“**Support Subscriber**” means each non-principal broker, non-sales licensee or certified real estate appraiser who does not do appraisals, unlicensed administrative or clerical staff person, personal assistant, and individual seeking licensure or certification as a real estate broker, sales person or appraiser affiliated with a participant and entitled to access to listing compilations under the service’s policies.

### **Article III Listing procedures.**

**Section 3.01. Eligible listings.** The listing broker may submit a listing to the service if the listing meets all the following requirements:

- a. The listing broker is a participant.
- b. The contractual agreement includes the seller’s **written authorization** for the listing broker to submit the listing.
- c. The listing relates to property of an eligible property type. “**Eligible property type**” means single family homes, condos, vacant land, leased/fee interest, and business and commercial properties for sale.
- d. The listing is of an eligible contract type. “**Eligible contract type**” means exclusive right to sell and exclusive agency listings.
- e. The contractual agreement bears a definite and **final termination date** negotiated between the listing broker and the seller.
- f. The property that is the subject of the listing is located in the jurisdiction.
- g. The property that is the subject of the listing is not represented in an active listing record for which another participant is the listing broker.

**Section 3.02. Required listings.** A participant must submit all required listings to the service. A “**required listing**” is one where the listed property is listed subject to a real estate broker’s license, is of a required property type, and is located on the island of Hawaii or Kauai. “**Required property type**” means single family homes, condos, vacant land, leased/fee interest, and business and commercial properties for sale.

**Section 3.03. Exempted listings.** If the seller refuses to permit a required listing to be disseminated by the service, the participant may take the listing as an office exclusive, provided the seller shall sign the service’s approved “Certification to Withhold from MLS” form or another written certification requesting the listing to be withheld from MLS. The listing broker shall deliver to the service the Certification to Withhold from MLS form, signed by the listing broker certifying that the listing broker provided the form to the seller, and the seller’s written certification (whether on the service’s form or in another form chosen by the seller), signed by the seller within the time specified as the time for submission of required listings.

**Section 3.04. Property data form.** The listing broker must collect all data for a listing to be submitted on the appropriate property data form approved by the service. The data collected on the property data form must be complete and accurate in every ascertainable detail. The listing broker must obtain the seller’s signature on any disclosures and acknowledgements that appear on the property data form, including seller’s acknowledgement

that the listing broker must provide timely notice of status changes and sales information (including selling price) to the service.

**Section 3.05. Information in listing records limited.**

- a. Fields designated by the service as public remarks fields and web sites that can be reached by links from listing records may contain only descriptions of the physical traits of the listed properties and their vicinities and the required disclosures stated in Section 3.12(e), (f), and (h). Participant may, but is not required, to disclose the existence of a potential short sale in the public remarks provided the seller has consented to the disclosure; regardless whether participant discloses a potential short sale in the public remarks, the participant is still subject to the requirements of Section 4.09.

Inclusion of participant or associate subscriber marketing or promotional messages or contact information for any listor, seller, owner, or other entity, including phone numbers, email addresses, and web site addresses, is expressly prohibited.

- b. Photographic images and video and virtual tours submitted on listing records shall only contain depictions of the physical characteristics of the listed property and its immediate vicinity. If there are structures on the listed properties, there must be at least one photograph of the frontal view of the primary structure submitted on each listing record. Inclusion of marketing or promotional messages or contact information including phone numbers, email addresses, and web site addresses for any participant or associate subscriber, seller, owner, or other entity is expressly prohibited. Images of “for-sale” signs and pictures of persons are expressly prohibited. This prohibition also bans active hyperlinks and website or URL addresses to websites or web pages that contain marketing or promotional messages, contact information or banned images. Sellers of listed properties may direct that photographs or other graphic representations of the property be withheld from MLS.

**Section 3.06. Contractual agreement form.** The service does not require a participant to use a contractual agreement form other than the form the participant individually chooses to use. The service reserves the right, however, to reject a listing if in the judgment of the service’s legal counsel the contractual agreement fails to adequately protect the interests of the public and the other participants, or the contractual agreement appears or purports to establish, directly or indirectly, any contractual relationship between the service and the seller.

**Section 3.07. Time of submission.** The participant must submit a required listing within four (4) calendar days after execution of the contractual agreement. The participant must submit a property photo in compliance with Section 3.05(b) for any listing record within four (4) calendar days after submission of the listing record to the service. Photos for listings that are in P/Preview status are permitted but not required.

**Section 3.08. Broker free to accept listings.** While the service accepts submissions of listings only of the eligible listing types, the service does not regulate the types of contractual agreements into which participants may enter with sellers.

**Section 3.09. Auction listings.** A listing broker may submit a listing of an eligible listing type that is subject to auction only if it displays a definite listing price and the circumstances under which cooperating brokers will be compensated in the event of a successful closing. The listing record for a property subject to auction must specify in the Private Remarks section of the listing record the type of auction (for example, absolute, minimum bid, or reserve).

**Section 3.10. [DELETED.]**

**Section 3.11. Limited Service listings; entry-only listings.** The listing broker must identify a limited service listing or entry-only listing on the property data form in the manner designated by the service. This requirement ensures potential cooperating brokers will know, prior to initiating efforts to show or sell the listed property, the extent of the services the listing broker will provide to the seller; and potential cooperating brokers will be able to assess the potential that the seller will ask the cooperating broker to provide some or all of these services.

**Section 3.12. Required listing elements.** The listing broker shall include the following elements in each listing record when submitting it, so that potential cooperating brokers will have advance, unambiguous notice of them.

- a. The full gross listing price stated in the contractual agreement, unless the property is subject to auction.
- b. The compensation the listing broker is offering to other participants for their services in the sale of the listing in compliance with Article IV relating to commissions.
- c. Any contingency or conditions of any term in the listing.
- d. The existence of a dual or variable rate commission arrangement.
- e. Disclosure that the listing broker or one of its affiliated subscribers has an ownership interest in the listed property. This disclosure must be entered into the listing record in the field the service has designated for private remarks.
- f. Disclosure that another broker is jointly listing the property with the submitting participant. This disclosure must be entered into the listing record in the field the service has designated for private remarks.
- g. Disclosure that there are named excluded prospects in the contractual agreement. (Names of excluded prospects should not be disclosed. Potential cooperating brokers should contact the listing broker directly for the identities of named excluded prospects.)
- h. Disclosure that the property listed is pending CPR (Condominium Property Regime) or subdivision. This disclosure must be entered into the listing record in the field the service has designated for public remarks.
- i. Disclosure that the property is unavailable for showing pursuant to the written instruction by the seller must be entered into the listing record in the field the service has designated for public remarks.

**Section 3.13. Listings of multiple unit properties.** All properties that will or may be sold separately (for example when a single parcel of land that contains multiple lots is listed) must be identified individually in the listing record and on the property data form. The listing broker must enter a listing record and report the terms of sale for each portion of such a listing that sells, with reference to the group listing in the private remarks.

**Section 3.14. Duplicate listings.** When a property satisfies the definition for more than one eligible property type, the listing broker may (but need not) submit the listing in each appropriate property type, provided that each listing record is complete and accurate in itself and each is cross-referenced by listing number with any other listing of the same property. If the property is sold, the listing broker must submit the sale against one listing record and withdraw any other.

**Section 3.15. Change of status of listing.** The listing broker must submit all status changes, including change in list price or terms, pending sale, withdrawal, or extension, to the service within four (4) calendar days of the time they become effective. Further requirements apply in certain circumstances:

- a. **Withdrawal of listing prior to expiration.** The listing broker may withdraw a listing record from the service before the scheduled expiration date of the contractual agreement, provided the listing broker delivers to the service a copy of the agreement between the seller and the listing broker that authorizes the withdrawal.
- b. **Seller's direct request for withdrawal.** Sellers do not have the unilateral right to require the service to withdraw a listing without the listing broker's concurrence. When a seller can demonstrate conclusively to the service that the seller's exclusive relationship with the listing broker has terminated, the service may withdraw an active listing at the seller's request.
- c. **Expired listing records.** The service will automatically remove listing records from active status on the scheduled expiration date indicated in the listing record, unless the listing broker submits an extension or renewal of the contractual agreement before the automatic expiration date. The service will retain a



listing in active status or return it to active status after expiration if the listing broker obtains a signed extension or renewal from the seller.

- d. **Part of multiple unit property.** When part of a listed property has been sold, the listing broker must submit proper notification of it to the service.
- e. **Sales reports by the service.** The service may report as “sold” any listing in the service, whether it is listed by a currently active participant, or by a suspended, expelled, or resigned participant, provided the sale information is derived from public record or other reliable third parties at the service’s disposal.

**Section 3.16. Listings of suspended, expelled and resigned participants.**

- a. A participant suspended or expelled for violating the service’s bylaws, these rules and regulations, or any other obligation of participants except the obligation to pay dues, fees and charges, may choose whether to leave its active listings in the service or to withdraw them. If the participant chooses to leave the listings in the service, they will expire on the scheduled expiration date on the listing record as of the date of the participant’s suspension or expulsion.
- b. The service may withdraw active listings of any former participant that becomes ineligible under Section 1.03, any resigned participant and any participant suspended or expelled for failure to pay dues, fees and charges to the service, immediately upon written notice to the listing broker of the service’s intent to withdraw the listings.

**Section 3.17. Maintenance of and access to documentation.** The listing broker must maintain in its files the contractual agreement, any amendments to the contractual agreement, the property data form, and all other documents necessary to verify the participant’s compliance with these rules for each listing submitted to the service. The participant shall maintain these files for no less than one year after the expiration or sale of each listing, whichever is later. The participant shall deliver these records or copies of them to the service within three days of the service’s request for them.

**Section 3.18. “For Sale” signs.** Only the “For Sale” sign of the listing broker shall be placed on a property submitted to the service.

**Section 3.19. Solicitation of listing filed with the service.** A participant may solicit a contractual agreement on property for which another participant has an active listing only if the solicitation would be consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice, and its Case Interpretations. The service will construe this section in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This Section does not preclude solicitation of listings under the circumstances otherwise recognized by the Standards of Practice related to Article 16 of the Code of Ethics.

**Section 3.20. Service’s right to remove listings that violate rules.** The service reserves the right to remove listing records that violate the rules or applicable law in the judgment of the service.

**Article IV Commissions.**

**Section 4.01. Compensation for cooperating brokers.** By submitting a listing to the service, the listing broker is making blanket unilateral offers of compensation to the other participants; the listing broker must therefore specify, on each listing filed with the service, the compensation offered to other participants for their services in the sale of the listing. The service does not fix, control, recommend, suggest, or maintain rates, fees, or commissions paid by listing brokers to cooperating brokers (whether they are participants or non-participants). The listing broker retains the right to determine the amount of compensation it offers to other brokers (whether they act as subagents, buyer agents, or in other agency or non-agency capacities defined by law and whether they are participants or non-participants) which may be the same for all cooperating brokers or different.

**Section 4.02. Offers unconditional.** Offers of cooperating compensation are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale or as otherwise provided for in these rules.

**Section 4.03. Obligation to compensate may be excused.** The listing broker's obligation to compensate the cooperating broker as the procuring cause of the sale may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the contractual agreement. In such instances, entitlement to cooperating compensation offered through the service would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the contractual agreement; at what point in the transaction the listing broker knew (or should have known) that some or all of the commission established in the contractual agreement might not be paid; and how promptly the listing broker communicated to cooperating brokers that the commission established in the contractual agreement might not be paid.

**Section 4.04. Form of indicating compensation.** The listing broker must indicate cooperating compensation in the form of a percentage of the gross selling price or a definite dollar amount. The offered compensation must be greater than zero.

**Section 4.05. Listing broker's right to vary compensation and decline cooperation.** The listing broker may offer any other participant compensation other than that indicated on the listing record published in the service; the listing broker may also decline to cooperate with any other participant. (Note: REALTOR® brokers are bound to cooperate according to the Code of Ethics.) The listing broker may do so by informing the other participant of the cooperating compensation or refusal to cooperate in writing in advance of the other participant submitting an offer to purchase the property. The form of the superseding offer of compensation must meet the requirements of Section 4.04. Participants must not agree or discuss among them whether to modify compensation or refuse cooperation to other participants; in every case, each participant must make an independent decision regarding the compensation it will offer.

**Section 4.06. Changes to published compensation.** The listing broker may change the cooperating compensation it is offering to other participants on a listing at any time, provided it immediately submits the change to the service to ensure other participants are advised of it.

**Section 4.07. No disclosure of total commission.** The service does not require the listing broker to disclose the total commission negotiated between the listing broker and the seller. The service does not request this information, and if it is submitted, the service will not disclose it in any way to any individual or entity.

**Section 4.08. Compensation subject to third party approval.** If the gross commission established in a contractual agreement is subject to reduction by a court or lender, and the compensation payable to cooperating brokers may be reduced in the event the gross commission is reduced, the listing broker must disclose this fact to all potential cooperating brokers prior to the time any of them submits an offer to purchase. In such instances, the listing broker must clearly communicate either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated.

**Section 4.09. Short Sales:** Participants must disclose potential short sales when reasonably known to the listing participants, by placing the following language in the Agent Information field: **Potential short sale.** "Short sale" means a transaction where title transfers; where the sale price is insufficient to pay the total of all liens and costs of sale; and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. When disclosed, participants must advise other participants whether and how any reduction in the gross commission established in the listing agreement, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales must be communicated in the Non Public Remarks available only to participants and subscribers.

**Section 4.10. Dual or variable rate commission.** In the event of a dual or variable rate commission arrangement, 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. If the cooperating broker is a buyer representative, the cooperating broker must disclose this information to its client before the client makes an offer to purchase.

## **Article V Selling procedures.**

**Section 5.01. Showings available; agency disclosed.** Listing broker shall permit potential cooperating brokers to show an active listing within 72 hours of the cooperating broker's request unless instructed to the contrary in writing by the seller and a disclosure that the property is unavailable for showing must be included in the public remarks.

The cooperating broker must disclose its agency status, or lack thereof, upon its first contact with the listing broker, and shall provide written confirmation of that disclosure to the listing broker not later than execution of a purchase agreement or lease.

**Section 5.02. Showings and negotiations.** Cooperating brokers must conduct appointments for showings and negotiations for the purchase of listed property submitted to the service through the listing broker, except under the following circumstances:

- a. The listing broker gives the cooperating broker specific authority to show or negotiate directly with the seller. Listing broker may grant this authority either by direct communication to a specific cooperating broker or by indicating it generally in the listing record.
- b. If, after reasonable effort, the cooperating broker is unable to contact the listing broker or listing broker's representative, the cooperating broker may contact the seller directly. The listing broker may, at its option, preclude such direct negotiations with the seller in this case either by direct communication to a specific cooperating broker or by indicating it generally in the listing record.

**Section 5.03. Physical access to properties strictly limited; damage reported.** No participant, associate subscriber, or support subscriber shall provide to any person, except another participant, associate subscriber, or support subscriber, whether intentionally or through negligence, information providing a means for that person to enter a property listed in the service unless the listing broker, associate subscriber, or support subscriber affiliated with the listing broker, has given specific permission for such access. If, upon showing a property, a participant, associate subscriber, or support subscriber finds that the property's key is missing from a lock box or that the property is unlocked or damaged, the participant, associate subscriber, or support subscriber shall notify the listing broker, or one of its subscribers or staff, immediately.

**Section 5.04. Presentation of offers.** The listing broker must make arrangements to present an offer as soon as possible or give the cooperating broker a satisfactory reason for not doing so.

**Section 5.05. Submission of written offers.** The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or unless the seller and the listing broker agree otherwise in writing. If the seller has already accepted an offer, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to accepting a subsequent offer, unless the subsequent offer is contingent upon the termination of the existing contract.

**Section 5.06. Right of cooperating broker in presentation of offer.** The cooperating broker (whether subagent or buyer agent) or cooperating broker's representative has the right to participate in the presentation to the seller of any offer he secures to purchase, unless the seller gives written instructions to the contrary. 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. A cooperating broker excluded from an offer presentation under this section is entitled to a copy of the seller's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for offer presentations.

**Section 5.07. Right of listing broker in presentation of counter-offer.** The listing broker or listing broker's representative has the right to participate in the presentation to the buyer of any counter-offer made by the seller, unless the buyer gives written instructions to the contrary. The listing broker does not have the right to be present at any discussion or evaluation of that counter-offer by the buyer and the cooperating broker. A listing broker excluded from a counter-offer presentation under this section is entitled to a copy of the buyer's written instructions.

**Section 5.08. Participant as purchaser.** If the cooperating listing broker or one of its licensed salespeople (or licensed or certified appraisers) contemplates acquiring an ownership interest in a listed property, the cooperating broker must disclose this fact in writing to the listing broker at or before the time an offer to purchase is submitted to the listing broker.

**Section 5.09. Reporting status changes to the service.** The listing broker must report to the service status changes, including final closing of sales and sale prices, within the time specified in Section 3.15. If the cooperating broker carried out negotiations directly with the seller (as permitted in some circumstances by these rules) the cooperating broker shall report the accepted offers and prices to the listing broker within the time specified in Section 3.15, who shall then immediately submit it to the service within the same time period. The sale of any listed property cannot be submitted to the service if the listing record does not have a photo in compliance with Section 3.05(b).

**Section 5.10. Optional reporting of sales of unlisted properties.** A participant who has participated in the sale of unlisted property may report the sale to the service for inclusion in its listing compilation by completing a property data form and submitting it to the service along with certification of the settlement date and price.

**Section 5.11. Reporting resolutions of contingencies.** The listing broker must submit notice to the service that a contingency on a listing record has been fulfilled or renewed, or the agreement cancelled, by putting the listing back into an active status according to the service's "back-on-market" procedure, if the listing agreement has not expired. This notice is due within 48 hours of the time the change becomes effective.

**Section 5.12. Reporting cancellation of pending sale.** The listing broker must submit notice to the service of the cancellation of any pending sale and reinstate the subject listing immediately according to the service's "back-on-market" procedure. This notice is due within 48 hours of the time the change becomes effective.

**Section 5.13. "Sold" signs.** Prior to closing, only the "Sold" sign of the listing broker may be placed on a property submitted to the service, unless the listing broker authorizes the cooperating broker to post such a sign.

**Section 5.14. 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 record, the listing broker must submit notice of such fact to the service immediately by indicating it in the private remarks.

## **Article VI Standards of conduct. (This section has been deleted.)**

## **Article VII Proprietary and confidential information.**

**Section 7.01. Confidentiality of MLS information.** All information the service provides to the participants is official information of the service. This information is proprietary, confidential, and exclusively for the use of participants, associate and support subscribers.

**Section 7.02. Option to assign intellectual property; Authority to submit listing content<sup>1</sup>.** At the option of each participant, and associated associate subscribers, and support subscribers, the intellectual property rights,

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<sup>1</sup> Note: The Digital Millennium Copyright Act (DMCA) is a federal copyright law that enhances the penalties for copyright infringement occurring on the Internet. The law provides exemptions or "safe harbors" from copyright infringement liability for online service providers (OSP) that satisfy certain criteria. Courts construe the definition of "online service provider" broadly, which would likely include MLSs as well as participants and subscribers hosting an IDX display.

including copyrights in the listing content may be assigned to the service pursuant to a separate agreement between the participant, associate subscriber, or support subscriber and the service. In the event there is no assignment, by submitting any property listing content to the service, the participant, associate subscriber, or support subscriber represents that he or she has been authorized to grant and also thereby grant authority for the service to include the property listing content in its copyright MLS compilation and use as necessary to fulfill the purpose of the service as defined in Section 1.01. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property. If a participant, associate subscriber, or support subscriber, obtains photographs from a photographer, he or she must receive a written assignment from the photographer before including the photographs in the service.

NOTE: In order to assure compliance with these rules, each participant, associate subscriber, or support subscriber who engages a third party photographer and submits photos to the service is advised to obtain a written agreement with the photographer assigning all rights, including copyrights, in the photographs, to the participant or subscriber, or at a minimum granting the participant, associate subscriber, or support subscriber and the service a broad license to use the photos. The following provision or one substantially similar to it should be included in the agreement with the photographer:

“Photographer hereby assigns all right, title, and interest, including copyrights, in photographs to [insert name of participant or subscriber] and agrees to execute any further documents which may reasonably be necessary to effect such assignment.”

Or

“Photographer hereby grants to [insert name of participant or subscriber] and Hawaii Information Service, a perpetual, world-wide, royalty-free license to copy, distribute, display, perform, and create derivative works from Photographer’s photographs. Photographer agrees to execute any further document necessary to effect such license.”

**Section 7.03. Infringement indemnification.** The participants shall indemnify, defend, and hold the service harmless against any liability arising from a claim that use by the service of text or photos submitted by the participant infringes the copyright of a third party.

**Section 7.04. Titled vested in service.** All right, title, and interest in each copy of every listing compilation and in the copyrights therein shall at all times remain vested in the service.

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

To qualify for this safe harbor, the OSP must:

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

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

**Section 7.05. Service not responsible for information accuracy.** The information published and disseminated by the service is communicated as submitted by participants verbatim, without change by the service, except as provided in these rules. The service does not verify information and disclaims any responsibility for its accuracy. Each participant agrees to indemnify, defend and hold the service harmless against any liability arising from any inaccuracy or inadequacy of the information the participant provides.

## **Article VIII Eligible recipients of listing data.**

**Section 8.01. Service for participants only.** No participant, associate subscriber, or support subscriber may make any listing submitted to the service available to any broker or firm that is not a participant in the service without the prior consent of the listing broker.

**Section 8.02. Use permitted for licensed activities.** Use of information developed by or published by the service is strictly limited to the activities authorized under the participant's licensures and certifications. All other uses are prohibited, including the sharing of lists of participants and subscriber contact information with third parties.

**Section 8.03. Access for associate subscribers and support subscribers.** Each participant is entitled to lease from the service a number of login ID/passwords to each listing compilation sufficient to provide the participant and each associate subscriber or support subscriber (if authorized by the service) affiliated with the participant access to the listing compilation. The participant shall pay for each such access the rental fee set by the service. By these leases, participants acquire only the right to use the listing compilation in accordance with these rules and regulations.

**Section 8.04. Participant to control access.** Participants must, at all times, maintain control over and responsibility for each copy of and access to any listing compilation leased to them by the service. Participants may not provide access to any listing compilation to persons other than associate subscribers and support subscribers who are affiliated with the participant and entitled to access under these rules. Such information may not be transmitted, retransmitted, or provided in any manner to any other individual, office, or firm, except as expressly provided in these rules.

**Section 8.05. Sale or lease of listing records or compilations prohibited.** Except as expressly provided in these rules, no participant may reproduce or transmit listing records or compilations, or data derived from them, in any form to any individual or entity for compensation, whether or not the intended recipient is a participant, without the written authorization of the service.

**Section 8.06. Control over web sites.** A participant must exercise control over any web site belonging to the participant and associate subscriber affiliated with the participant, if the web site displays listing records from the service.

**Section 8.07. No conflict with law.** These rules and regulations do not convey "participation" or "membership" in the service or any right of access to information developed or published by the service where doing so is prohibited by law.

## **Article IX Display, reproduction and advertising.**

**Section 9.01. Display.** Participants and associate subscribers are permitted to display listing records and listing compilations to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers for the properties in the listing compilation. Participants and associate subscribers are not permitted to display P/Preview status listing information. Each display to prospective purchasers must also comply with the requirements of Section 11.07 of these rules.

**Section 9.02. Reproduction.** Participants and their affiliated subscribers shall not reproduce any listing compilation or any portion thereof, except under the following circumstances.

- a. **Reproduction permitted.** Participants and their affiliated subscribers may reproduce from listing compilations and distribute to prospective purchasers a reasonable number of single copies of listing records which relate to properties in which the prospective purchasers are or may, in the judgment of the participant or associate subscriber, be interested. Reproductions made in accordance with this section shall be prepared in such a fashion that listing records other than that in which the prospective purchaser has expressed interest, or in which the participant and its affiliated subscribers are seeking to promote interest, do not appear in any reproduction.
- b. **Where participant is listing-broker.** Nothing contained in these rules and regulations shall be construed to preclude any participant from using, displaying, distributing, or reproducing listing records pertaining exclusively to listing records for which that participant is the listing broker.
- c. **Valuations permitted.** None of the foregoing shall be construed to prevent any participant or associate subscriber legitimately in possession of active listing information, off-market listing information, or statistical information from using the information to support valuations on particular properties for clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLS must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLS may require execution of a third-party license agreement where deemed appropriate by the MLS. MLS may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. The participant or associate subscriber may reproduce and attach to the valuation report as supporting documentation only those listing records and data elements reasonably necessary to support the estimate of value. Any other use of such information is unauthorized and prohibited.
- d. **“Reasonable number” defined.** The term “reasonable number,” as used in Section 9.2(a), should be interpreted as the approximate number of listing records necessary to facilitate the buyer’s decision-making process in the consideration of a purchase. Factors to be considered in deciding whether a reasonable number of listing records have been reproduced in a given circumstance include, but are not limited to, the total number of listings in the service’s compilation; how closely the types of properties contained in such listings accord with the desires and ability to purchase the buyer has expressed to the participant; whether participant exercised professional judgment in selecting the listing records reproduced; and whether the reproduced listing records are consistent with a normal itinerary of properties which would be shown to the buyer.

**Section 9.03. Advertising listings.** A participant may not advertise a listing unless the participant has the prior consent of the listing broker to advertise it.

**Section 9.04. Limitations on promotional use.**

- a. Participants may use information from listing compilations, from the service’s statistical report, and from any sold or comparable report of the service as the basis for aggregated demonstrations of market share or comparisons of firms in public mass-media advertising or in other public representations. Participants do not have the right to include in any such advertising or representation information about specific properties for which other participants are the listing brokers or which were sold by other participants (as either listing or cooperating brokers).
- b. A participant who creates any form of advertising, print or otherwise, or other form of public representation based in whole or in part on information supplied by the service must clearly indicate in the representation the criteria used to select the listing records for inclusion and the period of time from which the listing records are drawn and must include the following, or substantially similar, notice:

*Based on information from the Hawaii Information Service for the period [date] through [date], including listings.*

**Section 9.05. Use of content from listing records relating to other brokers’ contractual agreements.** If a listing broker takes a contractual agreement on a property for which another broker previously submitted original content (photos, images, graphics, audio and video recordings, virtual tours, drawings, narratives) to a listing record in the service, the new listing broker shall not copy or otherwise use the previously submitted

original content to market the property under the new contractual agreement without the permission of the listing broker who originally submitted the original content. The foregoing notwithstanding, participants are entitled to reproduce the original content appearing in listings of other brokers under the terms of Section 9.02.

**Section 9.06. Transmittal of Participant's listings to aggregators.** If an MLS transmits participants' listings to third-party aggregators and/or operates a public website displaying listing information, all exclusive listings, regardless of type, will be included in the data feed (unless a participant withholds consent for such transmission), except that Hawaii Information Service may exclude from such data feed any listing in the P/Preview status, and any listing where both of the following conditions are present: (1) the listed property's street address or a graphic display of the property's specific location will be displayed to the public; and (2) the seller displays on the property a "For Sale By Owner" sign or another sign or notice indicating that the seller is soliciting direct contact from buyers.

**Section 9.07. No modification of other participants' content.** (NAR Section 19.16) A participant shall not change the content of any MLS Listing Information (as that term is defined in Section 11.01 of these rules) of any other participant from the content as it is provided in the service, without regard to the means by which it is disclosed, including oral disclosure or disclosure through a VOW. A participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these rules as long as the source of such other information is clearly identified. This rule does not otherwise restrict the format of display of MLS Listing Information or the display of fewer than all of the listings or fewer than all of the authorized information fields

**Section 9.08. Disclaimer of liability.** (NAR Section 19.17) In any display or disclosure of MLS Listing Information (as that term is defined in Section 11.01 of these rules), including oral disclosure and display on a VOW, a participant shall include a notice indicating that the MLS Listing Information is deemed reliable but is not guaranteed accurate by the service. A participant's display or disclosure may include other appropriate disclaimers necessary to protect the participant and the service from liability.

## **Article X    IDX**

### **Section 10.01. Definitions.**

- a. "IDX" affords each participant subscribing to the IDX program (the "IDX participant") the ability to authorize limited electronic display of its listings appearing in MLS by other participants, subject to the requirements of this Article X.
- b. "IDX database" is the current aggregate compilation of all listings of all IDX participants except those listings where the property seller has opted out of Internet publication by so indicating on the contractual agreement.

**Section 10.02. Participation presumed.** The service will presume participants' consent for display of their listings by other participants pursuant to these rules (i.e., the service will presume that the participant is an IDX participant) unless the participant affirmatively notifies the service that the participant refuses to permit display (either on a blanket or listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of its listings, it is not an IDX participant and may not download, frame, or display the IDX database pursuant to this Article X. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display.

**Section 10.03. Publication permitted.** An IDX participant may republish all or a portion of the IDX database on the Internet in accordance with the provisions of this Article X and in keeping with any policies that the service may adopt from time to time. Unless expressly contravened by the provisions of this Article X, all other rules and regulations remain in full force and effect.

**Section 10.04. Permitted and required fields and records.** Listings displayed pursuant to IDX may contain only those fields of data identified by the service as permissible for IDX displays and must include fields



identified by the service as required for use with IDX. Display of seller or occupant names, phone numbers, and email addresses, and type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) is prohibited. Confidential fields intended only for other MLS participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed on IDX sites. An IDX participant may select the listings it displays on its IDX sites based only on objective criteria, including factors such as geography or location (e.g., "uptown," "downtown," etc.), list price, type of property (e.g., condominium, cooperative, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right to sell or exclusive agency), or the level of service being provided by the listing firm. Each IDX participant shall select the listings for its IDX display independently of, and without consulting, other participants.

**Section 10.05. Eligibility.** Participation in IDX is available to all MLS participants engaged in real estate brokerage who consent to display of their listings by other participants.

**Section 10.06.01 Notification of IDX site.** Participants must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring and ensuring compliance with applicable rules and policies.

**Section 10.06. Frequency of updates.** An IDX participant must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every 12 hours. The IDX participant's IDX web site must indicate the date and time of the last update of data.

**Section 10.07. Modification of listings.** An IDX participant may not modify or manipulate the data relating to another participant's listing. An IDX participant may augment their IDX displays of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated from the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of IDX displays or prevent display of fewer than all available IDX database listings or fewer than all permitted fields.

**Section 10.08. Notification.** The service's approved IDX icon and an explanation that those properties marked with the icon are provided courtesy of the service must appear on the first page where any listing data is displayed. The service may adopt a standard form that the explanation must take.

**Section 10.09. Displays.** A display of another participant's listing must bear the service's copyright notice ("© 201\_ MLS Hawaii, Inc. All rights reserved.") immediately following the property information.

**Section 10.10. End-user license agreement.** Once during each viewing session of the IDX participant's web site, the IDX participant's web site must require the visiting consumer to assent to the terms of the "End User License Agreement for consumers accessing public MLS and broker web sites, including IDX sites" (the "EULA"), promulgated by the service. The IDX participant's web site must obtain the consumer's assent by means of the consumer's affirmative act before the consumer views any portion of the IDX database. The IDX participant may satisfy this requirement by displaying a 'search ' button that says "Search – I AGREE to the License Agreement" or equivalent; and a link next to that button to the EULA itself. The Service may in its sole discretion amend the EULA at any time; each IDX participant shall begin using the most recent version of the EULA within 30 days of the date that the service adopts it.

**Section 10.11. Disclaimer required.** Participants and their affiliated licensees shall indicate on their websites that IDX information is provided exclusively for consumers' personal, non-commercial use, that it may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable but is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants or the MLS from liability. Displays of minimal information (e.g., thumbnails," text messages, "tweets," etc., of two hundred (200) characters of less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 10.12. IDX under participant control.** Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own websites subject to their participant's consent and control and the requirements of state law and/or regulation.

**Section 10.13. MLS as source of information.** All listings displayed pursuant to IDX shall show the MLS as the source of the information. Displays of minimal information (e.g., thumbnails," text messages, "tweets," etc., of two hundred (200) characters of less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 10.14. Prohibited display.** Display of expired and withdrawn listings is prohibited.

**Section 10.15. Security protection.** Participants are required to employ appropriate security protection such as firewalls on their websites and displays, provided that any security measures required may not be greater than those employed by the MLS.

**Section 10.16. Deceptive advertising prohibited.** 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 participant's logo and contact information is larger than that of any third party.

**Section 10.17. Participant control and branding.**

- a. Any IDX display must be under the actual and apparent control of a single participant and must be advertised as that Participant's display. For purposes of the IDX policy and these rules, actual control means that the participant has either built the site for its own use with internal resources or obtained technology for the site under an agreement with a third party that provides the participant final control over the operations of the site, including the ability to add, delete, modify, and update information as required by the IDX policy and MLS rules. Apparent control means that a reasonable consumer viewing the site would conclude that it is under the control of the participant. The following are currently deemed to be evidence of apparent control: that the participant's branding is more prominent than that of any other entity and that the domain name and branding on the site distinguish the participant from non-participating firms, e.g., from other franchisees of the same franchise, if applicable.
- b. Any IDX display controlled by a participant shall include brokerage branding. The Participant's branding shall appear at the top of the page and shall consist, at a minimum, of the brokerage firm's full name with all text displayed in such a manner as to clearly communicate that the brokerage is the source of the data, and with a hyperlink from the brokerage's name or logo to the brokerage firm's home page. The display will be as clearly legible as the listing data on the same page. Brokerage firm name here means the full name of the firm as registered with the service (e.g., "Century 21" or "RE/MAX" is not enough; it must include the entire firm name). Displays of minimal information (e.g., "thumbnails," text messages, "tweets," etc., of two hundred (200) characters of less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 10.18. Associate subscriber sites.** All associate subscribers' IDX displays are subject to the participant's control. Associate subscribers may display portions of the IDX database only subject to an agreement prescribed by the service among the participant, the associate subscriber, the Web Site vendor, and the service, and all such displays are subject to these rules including, without limitation, rules applicable to participant control and branding, if any. Participants may operate multiple Web Sites displaying the IDX database, each of which meets the requirements of these rules applicable to participant control and branding, but which give the appearance of being Web Sites jointly branded by the participant and one or more of its associate subscribers.

**Section 10.19. Limited use of listing data.** MLS participants may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require participants to prevent indexing of IDX listings by recognized search engines.

**Section 10.20. Suspicious activity reported.** If an IDX participant suspects “scraping” of the data or any other wrongful activity has occurred, the participant must report the suspicion and any evidence to the service immediately for investigation and action.

**Section 10.21. Compliance with rules.** An IDX participant must make changes to an Internet site or display as otherwise permitted necessary to cure a violation of these rules within five business days of notice from the service of the violation.

**Section 10.22. No unauthorized distribution.** Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity.

**Section 10.23. Co-mingling MLS IDX listings.** A participant or subscriber may co-mingle the listings of other brokers received in an IDX feed with listings available from other MLS IDX feeds, provided all such displays are consistent with the IDX rules, and the participant or subscriber holds participatory rights in those MLSs. As used in this policy, “co-mingling” means that consumers are able to execute a single property search of multiple IDX data feeds resulting in the display of IDX information from each of the MLSs on a single search results page; and that participants may display listings from each IDX feed on a single webpage or display.

**Section 10.24. Co-mingling non-MLS listings.** No portion of the IDX database may be co-mingled with any non-MLS listings on the IDX participant’s Internet web site.

**Section 10.25. Third party contractors.** Any IDX participant using a third party to develop or design its IDX display must have a written agreement with that third party in the form prescribed by service.

**Section 10.26. Seller information withheld.** Listings, including property addresses, can be included in IDX displays except where sellers have directed their listing brokers to withhold their listing or the listing’s property address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs).

**Section 10.27. Third-party commentary and AVMs.** Any IDX display controlled by a participant or subscriber that (a) allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (b) displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing, either or both of these features shall be disabled or discontinued for 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 displays controlled by participants. Except for the foregoing and subject to Section 10.22, a participant’s IDX display may communicate the participant’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller.

**Section 10.28. Accuracy of IDX information.** Participants shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property. Participants shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for the property explaining why the data or information is false. However, participants shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

## **Article XI Virtual Office Websites (VOWs).**

(Provisions in this article XI include references to section numbers in the NAR model rules for VOWs. Those references appear as “NAR Section x.x.” These reference numbers appear here only to ease comparisons of these rules with the NAR model rules.)

**Section 11.01. Definitions and Usage.** (NAR Section 19.1)

- a. A “VOW” or “Virtual Office Website” 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. References to “VOW” and “VOWs” include all VOWs, whether operated by a participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner (“AVP”) on behalf of a participant.
- b. “Participant,” as used in Article XI of these rules, includes a participant’s affiliated non-principal brokers and sales licensees – except when the term is used in the phrases “participant’s consent” and “participant’s oversight, supervision, and accountability”. A non-principal broker or sales licensee affiliated with a participant may, with his or her participant’s consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the participant’s oversight, supervision, and accountability.
- c. “AVP” or “Affiliated VOW Partner” 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. “MLS Listing Information,” as used in this Article XI, refers to, active, pending, and off-market listing information and sold data provided by participants to the service and aggregated and distributed by the service to participants.
- e. “VOW Policy” means the Virtual Office Website Policy of the service, adopted pursuant to the requirements of the National Association of REALTORS®.
- f. “Registrant” has the meaning given to it in Section 11.03(a)(i).
- g. “Terms of use” has the meaning given to it in Section 11.03(d).

**Section 11.02. Scope limited; Other services permitted; No listing broker permission required.** (NAR Section 19.2)

- a. The right of a participant’s VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the participant has participatory rights. However, a participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.
- 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”). (NAR Section 19.2(b).)
- c. Except as otherwise provided in the VOW Policy or in these rules, a participant need not obtain separate permission from other service participants whose listings will be displayed on the participant’s VOW. (NAR Section 19.2(c).)

**Section 11.03. Prerequisites for access; Registration; terms of use.** (NAR Section 19.3)

- a. **Prerequisites for access.** 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 his or her user name and password. The participant must also assure that any email address is associated with only one user name and password.
- b. **Password expiration; Retention of records.** 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. **Disclosure of records to the service.** 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 rules, the participant shall, upon request of the service, 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 service, provide an audit trail of activity by any such registrant.
  - d. **Terms of use.** 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) the registrant's acknowledgement that he or she has entered into a lawful consumer-broker relationship with the participant;
    - (ii) the registrant's agreement to use information obtained by the registrant from the VOW only for the registrant's personal, non-commercial use;
    - (iii) the registration's representation and warranty the 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) the registrant's agreement not to 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) the registrant's acknowledgement of the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.
  - e. **Terms of use impose no financial obligation or representation.** The terms of use agreement may not impose a financial obligation on the registrant or create any representation agreement between the registrant and the participant. Any agreement entered into at any time between the participant and registrant imposing a financial obligation on the registrant or creating representation of the registrant by the participant must be established separately from the terms of use, must be prominently labeled as such, and may not be accepted solely by mouse click.
  - f. **Access for review purposes.** The terms of use agreement shall also expressly authorize the service, and other MLS participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with rules and monitoring display of participants' listings by the VOW. The agreement may also include such other provisions as may be agreed to between the participant and the registrant.

**Section 11.04. Contact information; Response to inquiries.** (NAR Section 19.4) A participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the participant to ask questions, or get more information, about any property displayed on the VOW. The participant, or a non-principal broker or sales

licensee licensed with the participant, must be willing and able to respond knowledgeably to inquiries from registrants about properties within the market area served by that participant and displayed on the VOW.

**Section 11.05. Preventing unauthorized use of data.** (NAR Section 19.5) A participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the service.

**Section 11.06. Sellers withholding listings and addresses from Internet.** (NAR Section 19.6)

- a. A participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the service 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.

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 after the date they are signed, or one year after the date the listing goes off the market, whichever is later.

**Section 11.07. Third-party commentary; Automated valuation; Professional judgment.** (NAR Section 19.7)

- a. Subject to Section 11.07(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. 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 service 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 11.08, a participant's VOW may communicate the participant's professional judgment concerning any listing. A participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**Section 11.08. Means to correct errors.** (NAR Section 19.8.) A participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the participant beyond that supplied by the service and that relates to a specific property displayed on the VOW. The participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the data or information is false. The participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 11.09. Frequency of updates.** (NAR Section 19.9) A participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 11.10. No other distribution permitted.** (NAR Section 19.10) Except as provided in these rules, the VOW Policy, or any other applicable MLS rules or policies, no participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

**Section 11.11. Privacy policy required.** (NAR Section 19.11) A participant's VOW must display the participant's privacy policy informing registrants of all of the ways in which information that they provide may be used.

**Section 11.12. Listings excluded from display based on objective criteria.** (NAR Section 19.12). A participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

**Section 11.13. Access to VOW for compliance evaluation.** (NAR Section 19.13) A participant who intends to operate a VOW to display MLS Listing Information must notify the service of its intention to establish a VOW and must make the VOW readily accessible to the service and to all MLS participants for purposes of verifying compliance with these rules, the VOW Policy, and any other applicable MLS rules or policies.

**Section 11.14. Multiple VOWs permitted.** (NAR Section 19.14) A participant may operate more than one VOW himself or herself or through an AVP. A participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a participant by an AVP is subject to the supervision and accountability of the participant.

**Section 11.15. License agreement required.** (NAR Section 19.24) Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the service.

## **Article XII Arbitration of disputes.**

**Section 12.01. Arbitration mandatory.** By becoming and remaining a participant, each participant agrees that any controversy or claim between or among participants arising from their involvement in a transaction, the subject property of which corresponds to a listing in the service, shall be settled by arbitration administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The foregoing notwithstanding, if all parties to a controversy are members of the National Association of REALTORS®, they must resolve the controversy according to their obligations as members of that organization.

## **Article XIII Service fees.**

**Section 13.01. Obligation to pay fees.** In consideration for participation in the service, each participant must pay all fees set out in the service's current schedule of fees, which may be amended from time to time by the service with notice to all participants. The fees applicable may, but need not, include application fees, initial participation fees, recurring participation fees, listing fees, computer access fees, fees for associate subscribers and support subscribers affiliated with participants, listing fees, printed compilation subscription fees and

optional service fees. Each participant is responsible for fees associated with associate subscribers and support subscribers affiliated with it, if the schedule of fees provides for them.

**Section 13.02. Fees assessed for all subscribers.** The service may require each participant to lease a copy or access code or both for each associate subscriber and support subscriber affiliated with the participant, except for any associate subscriber or support subscriber who is engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties that are required to be submitted to the service, and who does not, at any time, have access to or use of any listing compilation.

**Section 13.03. Participant's duty to notify service when subscribers and other users change.** The participant must notify the service of any change in associate subscribers and support subscribers affiliated with the participant within 24 hours of the effective time of the change.

## **Article XIV Rule enforcement.**

**Section 14.01. Authority to Impose Discipline.** By becoming and remaining a participant or subscriber in Hawaii Information Service, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. Hawaii Information Service may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may consist only of one or more of the following:

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

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

**Section 14.02. Participant responsibility.** Each participant has ultimate responsibility and accountability for compliance with the rules by associate subscribers and support subscribers affiliated with the participant. Failure of any associate subscriber or support subscriber to abide by the rules or to satisfy any sanction imposed for violations of the rules may subject the participant with whom the associate subscriber or support subscriber or is affiliated to discipline.

**Section 14.03. Failure to pay.** Failure to pay dues and fees as provided in Article XII according to the terms provided in the service's schedule of fees will result in suspension or termination of participation upon written notice to participant according to the terms provided in the schedule of fees.

**Section 14.04. Consideration of alleged violations.** The service will give consideration to all complaints having to do with violations of the rules and regulations according to the procedures for reviewing alleged violations adopted by the service's board of directors. Each participant must cooperate reasonably in any investigation by the service of an alleged violation of the rules. If the service determines a violation has



occurred, the service may impose a sanction administratively, provided the participant or associate subscriber may request a hearing according to the Rules Enforcement Policy adopted by the service's board of directors. In the event that a hearing results in a determination that the participant or subscriber has violated these rules, the participant or subscriber may appeal that determination according to the procedures adopted by the service's board of directors.

**Section 14.05. Processing fees authorized.** The service is authorized to levy processing fees against participants for violations of these rules.

**Section 14.06. Reinstatement fees authorized.** If a participant's participation in the service is terminated or suspended, the service may impose a reinstatement fee before it reinstates the participant.

## **Article XV Messaging restrictions.**

**Section 15.01. Use of service's communication channels.** The service may provide bulletin boards, mailboxes, and other messaging services to participants, subscribers and other users (the service's "communication channels"). Use of these capabilities is strictly limited to promoting the sale of properties listed in the service.

**Section 15.02. "Junk mail" and other solicitations prohibited.** No participant, associate subscriber or support subscriber may publish junk mail or other solicitations on the service's communication channels. The use of the service's communication channels shall only be for the purpose of the sale or the resale of real estate.

**Section 15.03. Defamation and fair housing concerns.** No use of the service's communication channels may carry defamatory or obscene remarks or violate fair housing or other laws.

**Section 15.04. Service's right to suppress messages.** The service has the right, in its sole and complete discretion, to remove or delete any message or communication that it believes may violate Section 15.03. The service may suspend a participant's access to the communication channels if the participant or its affiliated subscribers or other users repeatedly violate the provisions of this Article XV.

**Section 15.05. Indemnification.** Participant agrees to indemnify, defend and hold the service harmless against liability, including reasonable attorney fees, arising from any claim that the participant or an associate subscriber or support subscriber affiliated with the participant has violated the provisions of this Article XV.

## **Article XVI Amendments.**

The service may amend these rules and regulations subject to the bylaws of the service upon notice to the participants. All notices required to be served from the service to participants shall be mailed, sent via facsimile transmission, or electronically mailed at the respective addresses which participants have advised the service in writing from time to time during the term of their participation; and shall be effective the earlier of the date of receipt or three (3) days after mailing or other transmission.