

**The Western Arizona REALTORS Data Exchange (WARDEX)  
Rules and Regulations  
Latest revision March 24, 2010**

**Listing Procedures**

**Section 1: Listing Procedures**

Listings of real or personal property of the following types, which are listed subject to a real estate broker's license, and are located within the territorial jurisdiction of the Western Arizona REALTORS Data Exchange (WARDEX or "The Service"), as provided in Section 3.1 of the WARDEX Bylaws, and are taken by Participants on an **exclusive right-to-sell** or **exclusive agency basis**. Such listings shall be entered into the Service within one (1) business day after all necessary signatures of seller(s) and Broker have been obtained: as per Section 1.1.1 of these Rules and Regulations.

**Note 1:** The Service shall not require a Participant to submit listings on a form other than the form the Participant individually chooses to utilize provided the listing is of a type accepted by the service, although a property data form may be required as approved by the Service. However, the Service, through its legal counsel:

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

The Service shall accept exclusive right-to-sell listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing Broker to offer compensation to the other Participants of the service acting as subagents, buyer agents, or both.

The listing agreement must include the seller's written authorization to submit the agreement to the Service. The different types of listing agreements include:

- (a) Exclusive right-to-sell
- (b) Open
- (c) Exclusive agency
- (d) Net

The Service may not accept **net listings** because they are deemed unethical and, in most states, illegal. **Open listings** are not accepted except where required by law because the inherent nature of an open listing is such as to usually not include the authority to cooperate and compensate other brokers and inherently provides a disincentive for cooperation.

Property listed below current debt service and closing cost, that requires written approval of the lender to sell for that price and where the Broker cannot provide compensation or guarantee cooperation from the sale, will not be accepted by the service.

The **exclusive right-to-sell** listing is the conventional form of listing submitted to the Service in that the seller authorizes the listing Broker to cooperate with and to compensate other Brokers.

The **exclusive agency** listing also authorizes the listing Broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves to the seller the general right to sell the property on an unlimited or restrictive basis. Exclusive agency listings and exclusive right-to-sell listings with named prospects exempted should be clearly distinguished by a simple designation such as a code or symbol from exclusive right-to-sell listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right-to-sell listings with no named prospects exempted. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right-to-sell listings with prospect reservations.

**Note 2:** The Service does not regulate the type of listings its members may take. This does not mean that the Service must accept every type of listing. The Service shall decline to accept open listings (except where acceptance is required by law) and net listings, and it may limit its service to listings of certain kinds of property. But, if it chooses to limit the kind of listings it will accept, it shall leave its members free to accept such listings to be handled outside the Service.

**Note 3:** The Service may, as a matter of local option, accept exclusively listed property that is subject to auction or short sales. If such listings do not show a listed price, they may be included in a separate section of the Service compilation of current listings. The list price of these properties should reflect current market value or lender approved value. (Adopted 11/92)

### **Section 1.1: Types of Properties**

The following are some of the types of properties that may be published through the service, including types described in the preceding paragraph that are required to be filed with the service and other types that may be filed with the service at the participant's option provided, however, that Any listing submitted is entered into within the scope of the participant's licensure as a real estate Broker for sale, exchange or rent:

- (a) residential
- (b) motel-hotel
- (c) residential income / multi-family
- (d) manufactured homes
- (e) subdivided vacant lot
- (f) manufactured home parks
- (g) land and ranch
- (h) commercial
- (i) business opportunity
- (j) industrial
- (k) model home
- (l) home without land
- (m) mining claims
- (n) rentals

#### **Section 1.1.1: Listing Subject to Rules and Regulations of the Service**

Any listing taken on a contract to be filed with the Service is subject to the rules and regulations of

the service upon signature of the seller(s) and Broker.

**Section 1.2: Detail on Listings Filed with the Service**

A listing agreement or property data form, when filed with the Service by the listing Broker, shall be complete in every detail which is ascertainable as specified on the property data input form.

**Section 1.2a: Disclosure of Short Sales and Foreclosures.** It is mandatory to mark the Short Sale box under Coded Features/Special Information when a property is a short sale (see Section 5.0.1). *(Adopted 1/10)* It is mandatory to mark the Foreclosed box under Coded Features/Special Information when a property is a foreclosure. *(Adopted 2/10)*

**Section 1.2.1: Limited Service Listings**

Listing agreements under which the listing Broker will not provide one, or more, of the following services:

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

Limited Service listings shall have Yes selected by "Limited Service Y/N" field.

**Section 1.2.2 MLS Entry-only Listings**

Listing agreements under which the listing Broker will not provide any of the following services:

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

Service Entry-only listings shall have Yes selected by "Entry Only Y/N" field.

**Section 1.2.3 Homes that do not include lot:**

(a) Model not to be sold:

A listing that is for a builder's model which is already built, but not to be sold, other than a replication on someone else's lot, is to be input as "model."

(b) Homes without lot:

Builders homes without a lot should be input as "home without lot". Leave the fields pertaining to the lot blank.

**Section 1.2.4 New Construction:**

New construction can not be entered into the system until building has exterior framing. See Appendix 1, Policy 2.

### **Section 1.2.5 Pictures, Remarks:**

- (a) The public remarks section of a listing shall only be used for information that is descriptive and relevant to an accurate portrayal of the property being marketed.
- (b) Any information which is confidential and/or to be viewed by agents only is to be placed in the "REALTOR ONLY" section. This does not include sensitive information such as lock box codes and alarm codes. Security information is not to be entered into the Remarks. Lock box, alarm and gate codes may be included but only as an attachment to the listing.
- (c) The placement of the listing agent name, phone number, e-mail address, web address and other information of this nature that is not descriptive in nature and relevant to an accurate portrayal of the property being marketed are not permitted to be placed in a Virtual Tour or the Public Remarks section of the listing. These are referred to as unbranded.
- (d) A virtual tour link shall link only to a site that provides information that is descriptive and relevant to the accurate portrayal of the property being marketed.
- (e) The placement of any names, email addresses, web addresses, links and/or phone numbers including services such as lenders, title companies, appraisers, inspectors etc. are not allowed in the Public Remarks section of the listing.

### **Section 1.2.5.1 Photos**

- (a) All listings put in the service, other than land, must have a photo, including new construction. Photos are required to be input in the service within 3-days of the listing. A fine will be levied at the end of the 3<sup>rd</sup> day if the photo is still missing. See Appendix 1, Policy 1.
- (b) Twelve (12) pictures total. No duplicates.
- (c) The main or top photo must be a photo of the exterior of the home. This may be the most marketable photo of the house as long as it is a true representation of the home. If the main photo is not a photo taken from the street then the second photo must be. (rev. 3/24/2010)
- (d) Photo cannot be touched up in any way to alter the true picture of the property or the surroundings including the addition of company logos or other titles. Company "for sale" sign cannot be predominant.
- (e) Any photos that are new construction and have a main photo of another house that is "similar to" it must have the words "similar to" on the photo. Also, the photo must be the home that is being constructed.
- (f) Any new construction picture that shows a home in the framing stages must be changed out with a picture of the home when it has been final graded.
- (g) Condos, apartment buildings and complexes must have photo showing the actual complex from the street/water. If taken outside an entry gate, complex must be in the photo. Interior photos, pool, fitness center and the like can not be used as the main photo.
- (h) The main photo can not be an aerial photo.
- (i) Agents may not use another agent's photo without the permission of the other agent.
- (j) A photo is not required for Business Only listings. (rev. 7/15/09)

### **Section 1.3: Exempted Listings**

If the seller refuses to permit the listing to be disseminated by the service, the participant may then take the listing (office exclusive) and such listing shall be submitted in writing to the service but not disseminated to the participants. The WARDEX Office Exclusive Listing form must be signed by the seller and listing Broker and emailed or faxed to the WARDEX office. This form can be found on the WARDEX website.

### **Section 1.4: Change of Status of Listing**

Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller and shall be **entered into** the service within one (1) business day after the authorized change is received by the listing broker. The WARDEX Change Order form must be used. This form can be found on the WARDEX website.

### **Section 1.5: Withdrawal of Listing Prior to Expiration**

Listings of property may be withdrawn from the Service by the listing Broker before the expiration date of the listing agreement, provided notice is filed with the Service, including a copy of the agreement between the seller and the listing broker which authorizes the withdrawal. The WARDEX Change Order form must be used. This form can be found on the WARDEX website. (Adopted 11/96)

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

### **Section 1.6: Contingencies Applicable to Listings**

Any contingency or conditions of any term in a listing shall be specified and noticed to the Participants by entering the information in the private remarks section when entering into the Service data base. If such contingency or condition is a change from that previously entered then the listing broker shall enter the change in the Service database within one (1) business day.

#### **Section 1.6.1: Lot for Sale with Contingencies**

Lots that have a contingency that require a buyer to put a builder's house on the lot are not "for sale" in the true sense of the word. Enter under vacant land. These lots must have "Restrictions>Owner/builder must build" checked under coded features.

### **Section 1.7: Listing Price Specified**

The full gross listing price stated in the listing contract will be included in the information published in the Service compilation of current listings, unless the property is subject to auction or short sale. (Amended 11/92)

### **Section 1.8: Listing Multiple Unit Properties**

All properties which are to be sold or which may be sold separately must be indicated individually in the listing and on the property data form. When part of a listed property has been sold, notification should be given to the Service within two (2) business days

**Section 1.8.1: Duplicate Listing:** Duplicate listing discovered by the Service shall be brought to the attention of the Brokers involved and it shall be their responsibility to reconcile the situation within one (1) business day and so advise the service. The Service is instructed to remove/delete the last listing filed pending receipt of information to the contrary. Properties which are for sale and well as for lease may be entered separately into the system as long as there is a separate listing agreement for each entry. (war. rev. 6/17/09)

### **Section 1.9: No Control of Commission Rates or Fees Charged to Participants**

The Service shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by participants. Further, the Service shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating participants or between participants and nonparticipants.

### **Section 1.10: Expiration of Listings**

Listings filed with the Service will automatically be removed from the compilation of current listings on the expiration date specified in the agreement-moved to history, unless prior to that

date the Service receives notice that the listing has been extended or renewed.

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

*(Amended 11/01)*

#### **Section 1.11: Termination Date on Listings**

Listings published in the Service shall bear a definite and final termination date, as negotiated between the listing Broker and the seller.

#### **Section 1.12: Jurisdiction**

Only listings of the designated types of property located within the jurisdiction of the Service are required to be published in the Service. Listings of property located outside the Service's jurisdiction will be accepted if submitted voluntarily by a Participant, but cannot be required by the Service, however if such listings are entered, they shall be complete in every detail as ascertainable. *(Amended 11/01)*

#### **Section 1.13: Listing of Suspended Participants**

When a Participant of the Service is suspended from the Service for failing to abide by a membership duty (i.e., violation of the Code of Ethics, association bylaws, Service bylaws, Service rules and regulations, or other membership obligation except failure to pay appropriate dues, fees, or charges), all listings currently filed with the Service by the suspended Participant shall, at the Participant's option, be retained in the Service until sold, withdrawn or expired, and shall not be renewed or extended by the Service beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the association (except where Service participation without association membership is permitted by law) or Service (or both) for failure to pay appropriate dues, fees, or charges, an association or the Service is not obligated to provide services, including continued inclusion of the suspended Participant's listings in the Service compilation of current listing information. Prior to any cancellation of a suspended Participant's listings from the Service, the suspended Participant should be advised, in writing, of the intended removal so that the suspended Participant may advise his clients.

#### **Section 1.14: Listing of Expelled Participants**

When a Participant of the Service is expelled from the Service for failing to abide by a membership duty (i.e., violation of the Code of Ethics, association bylaws, Service bylaws, Service rules and regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed with the Service by the expelled Participant shall, at the Participant's option, be retained in the service until sold, withdrawn, or expired, and shall not be renewed or extended by the Service beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the association (except where Service participation without association membership is permitted by law) or Service (or both) for failure to pay appropriate dues, fees, or charges, an association or the Service is not obligated to provide services, including continued inclusion of the expelled Participant's listings in the Service compilation of current listing information. Prior to any cancellation of an expelled Participant's listings from the Service, the expelled Participant should

be advised, in writing, of the intended removal so that the expelled Participant may advise his clients.

#### **Section 1.15: Listing of Resigned Participants**

When a Participant resigns from the Service, the Service is not obligated to provide services, including continued inclusion of the resigned Participant's listings in the Service compilation of current listing information. Prior to any cancellation of a resigned Participant's listings from the Service, the resigned Participant should be advised, in writing, of the intended removal so that the resigned participant may advise his clients.

#### **Section 1.16: Intentionally omitted.**

#### **Section 1.17: Listings subject to Rules and Regulations of the Service**

Any listing taken on a contract to be **input in the data base of the Service** is subject to the rules and regulations of the service upon signature of the seller(s) and acceptance by the Designated Realtor®.

#### **Section 1.18: Data Base Errors**

Any data base errors found by staff or reported to staff by any member will be sent to the listing agent with a notice that they have 3 days to correct the error or a fine will be assessed. See Appendix 1, Policy 1. Any question as to the legitimacy of the error may be appealed to the Service committee with final appeal to the WARDEX Board of Directors in accordance with Section 9 herein below.

#### **Section 1.18.1: Unpaid Fees, Fines or other Assessments.**

Fees, Fines and/or other assessments that are not paid within 30 days from the invoice issued by WARDEX will result in the suspension of the listing Participant and all Subscribers in his/her office.

#### **Section 1.19: Computer Input Authorization**

- (a) The Designated Broker will have an input status of "60." The Designated Broker may authorize a status "60" for Branch Managers and 55 for non-licensed Administrators.
- (b) The Designated Broker may authorize agents to have a "45" status, which allows that agent to also input their own listings.
- (c) The Designated Broker may limit agents to a "40" status, which allows them to search listings, but not input listings.
- (d) All users must attend WARDEX InnoVia training and be certified by WARDEX to receive a status above "40".

## **Selling Procedures**

### **Section 2: Showings and Negotiations**

Appointments for showings and negotiations with the seller for the purchase of listed property filed with the Service shall be conducted through the listing Broker, except under the following circumstances:

- (a) the listing Broker gives the cooperating Broker specific authority to show and/or negotiate directly; or
- (b) after reasonable effort, the cooperating Broker cannot contact the listing Broker or his representative; however, the listing Broker, at his option, may preclude such direct negotiations by cooperating Brokers. *(Amended 4/92)*

### **Section 2.1: Presentation of Offers**

The listing Broker must make arrangements to present the offer within 24 hours, or give the cooperating Broker a satisfactory reason for not doing so. *(Amended 4/92)*

### **Section 2.2: 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 agreed otherwise in writing between the seller and the listing Broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing Broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer.

Participants representing buyers or tenants shall submit to the buyer or tenant all offers and counter-offers until acceptance, and shall recommend that buyers and tenants obtain legal advice where there is a question about whether a pre-existing contract has been terminated. *(Amended 11/05)*

### **Section 2.3: Right of Cooperating Broker in Presentation of Offer**

The cooperating Broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing Broker. However, if the seller or lessor gives written instructions to the listing Broker that the cooperating Broker not be present when an offer the cooperating Broker secured is presented; the cooperating Broker has the right to a copy of the seller's or lessor's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations. *(Amended 4/92)*

### **Section 2.4: Right of Listing Broker in Presentation of Counter-Offer**

The listing Broker or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except when the cooperating Broker is a subagent). However, if the purchaser or lessee gives written instructions to the cooperating Broker that the listing Broker not be present when a counter-offer is presented, the listing Broker has the right to a copy of the purchaser's or lessee's written instructions. *(Amended 11/93)*

### **Section 2.5; Reporting (Publishing) Sales to the Service**

***Status changes, including final closing of sales, shall be reported to the Service by the listing Broker within twenty-four (24) hours after they have occurred. If negotiations were carried on under Section 2(a) or (b) hereof, the cooperating Broker shall report the status changes, to the listing Broker within twenty-four (24) hours after occurrence. And the listing broker shall report them to the MLS within twenty-four (24) hours after receiving notice from the cooperating broker. (Amended 4/92, 5/07)***

(a) Pending sales: this status change must be published with the Service by the listing Broker within one (1) business day after acceptance. "Acceptance" is construed as meaning the date the fully executed contract is received by the listing Broker.

(b) Upon notice of acceptance of an offer in writing from the REO company of a foreclosed property, the listing must be pended in the Service within one (1) business day. This notice can be done by electronic transmission. *(Amended 10/09)*

(c) Closed sales shall be reported to the Service within 1 business day after final close of escrow.

**Section 2.5.1: Listings sold before put into the service**

Listings sold before being published in the Service may be entered as pended or sold. These listings must contain the required photo, complete and correct data.

**Note:** The listing agreement of a property filed with the Service by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listing with the Service; to provide timely notice of status changes of the listing to the Service; and to provide sales information including selling price to the Service upon sale of the property. If deemed desirable by the Service to publish sales information prior to final closing (settlement) of a sales transaction, the listing agreement should also include a provision expressly granting the listing broker the right to authorize dissemination of this information by the Service to its participants. *(Amended 11/01)*

**Section 2.6: Reporting Resolution of Contingencies**

The listing Broker shall report to the Service within one (1) business day that a contingency on file with the Service has been fulfilled or renewed, or the agreement cancelled.

**Section 2.7: Advertising of Listings published in the Service**

A listing shall not be advertised by any participant other than the listing broker without the prior consent of the listing Broker.

**Section 2.8: Reporting Cancellation of Pending Sale**

The listing Broker shall reported within one (1) business day to the Service the cancellation of any pending sale, and the listing shall be reinstated immediately.

**Section 2.9: Disclosing the Existence of Offers**

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

**Section 2.10: Availability of Listed Property**

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

**Section 2.11: Lockboxes**

***The Service does not distribute or administer lockboxes. The local Shareholder Associations distribute and administer the lockboxes. Listing Brokers must adhere to the Lockbox Policy of the local Association.***

**Refusal to Sell**

### **Section 3: Refusal to Sell**

If the seller of any listed property filed with the Service refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted within one (1) business day to the Service and to all Participants.

## **Prohibitions**

### **Section 4: Information for Participants Only**

Any listing published in the Service shall not be made available to any Broker or firm not a member of the Service without the prior consent of the listing Broker.

#### **Section 4.1: For Sale Signs**

Only the for sale sign of the listing Broker may be placed on a property. *(Amended 11/89)*

#### **Section 4.2: Sold Signs**

Prior to closing, only the sold sign of the listing Broker may be placed on a property, unless the listing Broker authorizes the cooperating (selling) Broker to post such a sign. *(Amended 4/96)*

#### **Section 4.3: Solicitation of Listing Filed with the Service**

Participants shall not solicit a listing on property published in the Service unless such solicitation is consistent with Article 16 of the REALTORS®' Code of Ethics, its Standards of Practice, and its Case Interpretations.

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

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

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

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

## **Division of Commissions**

### **Section 5: Compensation Specified on Each Listing**

The listing Broker shall specify, on each listing filed with the Service, the compensation offered to other Service Participants for their services in the sale of such listing. Such offers are

unconditional except that entitlement to compensation is determined by the cooperating Broker's performance as the procuring cause of the sale (or lease) or as otherwise provided for in this rule. The listing Broker's obligation to compensate any cooperating Broker as the procuring cause of the sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing Broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing Broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through the Service would be a question to be determined by arbitration hearing panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing Broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing Broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing Broker communicated to cooperating Brokers that the commission established in the listing agreement might not be paid.

In filing a property with the Service of an Association of REALTOR®, the participant of the service is making blanket unilateral offers of compensation to the other Service Participants, and shall therefore specify on each listing filed with the service, the compensation being offered to the other Service Participants. Specifying the compensation on each listing is necessary, because the cooperating Broker has the right to know what his compensation shall be prior to his endeavor to sell.

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

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

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

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

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

**Note 2:** The listing Broker may, from time to time, adjust the compensation offered to other

Service participants for their services with respect to any listing by advance published notice to the service so that all participants will be advised.

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

**Note 4:** The Services at its discretion, may adopt rules and procedures enabling listing Brokers to communicate to potential cooperating Brokers that gross commissions established in listing contracts are subject to court approval; and that compensation payable to cooperating Brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating Brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating Brokers prior to the time they produce an offer that ultimately results in a successful transaction. Disclosure Statement: **“As a Short Sale, this listing may be subject to a commission reduction by the court or a lender”** should be placed in REALTOR remarks when a short sale is entered into the MLS.

**Note 5:** Nothing in these Service rules precludes a listing Participant and a cooperating Participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction. *(Adopted 11/05)*

**Note 6:** Multiple Listing Services must give participants the ability to disclose to other participants any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers; where the sale price is insufficient to pay the total of all liens and costs of sale; and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple Listing Services may, as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they must also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales must be communicated through dedicated fields or confidential “remarks” available only to participants and subscribers. *(Adopted 5/08)*

**Section 5.0.1:** Participants must disclose potential short sales when reasonably known to the listing participants. The Short Sale box in coded features under Special Information must be checked. *(Adopted 1/10)* When disclosed, participants may, at their discretion, 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. *(Adopted 5/08)*

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

*by showing a percentage of the gross selling price  
by showing a definite dollar amount (Amended 11/95)*

### **Section 5.1: Participant as Principal**

If a Participant or any licensee (or licensed or certified appraiser) affiliated with a Participant has any ownership interest in a property, the listing of which is to be disseminated through the Service, that person shall disclose that interest when the listing is filed with the Service and such information shall be disseminated to all Service participants by selecting Owner/Licensee under Special Information in the Coded Features section.

### **Section 5.2: Participant as Purchaser**

If a Participant or any licensee (including licensed and certified appraisers) affiliated with a Participant wishes to acquire an interest in property listed with another Participant, such contemplated interest shall be disclosed, in writing, to the listing Broker not later than the time an offer to purchase is submitted to the listing Broker. *(Adopted 4/92)*

### **Section 5.3: Dual or Variable Rate Commission Arrangements**

The existence of a dual or variable rate commission arrangement (i.e., one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing Broker without assistance and a different commission if the sale/lease results through the efforts of a cooperating Broker; or one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing Broker either with or without the assistance of a cooperating Broker and a different commission if the sale/lease results through the efforts of a seller/landlord) shall be disclosed by the listing Broker by a key, code or symbol as required by the Service. The listing Broker shall, in response to inquiries from potential cooperating Brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale/lease that results through the efforts of the seller/landlord. If the cooperating Broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 5/01)*

## **Service Charges**

### **Section 6: Shareholder Service Fees and Charges**

Participants and Subscribers will pay an initial application and/or service fee established by their local Association, acting as a Service Center. A branch office of a Shareholder Participant may also be charged an initial service fee to be set by the Participant's local Association.

Any Participant may withdraw and subsequently rejoin the Service within the same billing year with no repayment of the service fee provided all fines and fees owed to the Service by said Participant are paid in full at the time of rejoining.

### **Section 6.1: Service Fees**

All Participants/Subscribers: All Service fees and charges, including, but not limited to initial participation fees, recurring participation fees, listing origination fees, subscription fees, etc., shall be assessed to Participants and to individual users as Subscribers. If direct billing of Subscribers is utilized, the ultimate responsibility for delinquent dues, fees and charges is that of the Participant exclusively. If a Subscriber's individual access to Service services is denied for non-payment of delinquent fees and charges the Broker shall be notified. Upon proper notification to the Participant, all subscription fees for that Subscriber will be the responsibility of the Participant as long as the Subscriber is licensed with the Participant or until the Subscriber pays all delinquent fees plus applicable reactivation fees.

Fees shall be established by the Board of Directors. The Board of Directors shall, at least annually, review the financial position of the service and, if applicable, adjust or change the service fees to members.

### **Section 6.2: Exemption of service Fees, Dues, and Charges**

Recurring service fees, dues and charges may be based upon the total number of real estate Brokers, sales licensees and licensed or certified real estate appraisers affiliated with or employed by a Service Participant when related to the operation of a computerized system that provides information and services in addition to the compilation of current listing information. However, a Service Participant may not be assessed any charges with respect to any individual who is engaged solely and exclusively in a specialty of the real estate business separate and apart from listing, selling, renting, or appraising the type of properties which are required to be filed with the Service.

### **Section 6.3: Waivers of Fees:**

Waivers from the fees can be granted by the Board of Directors to a Service Subscriber in good standing with a Shareholder Association.

## **Compliance with Rules**

### **Section 7: Authority to Impose Discipline**

By becoming and remaining a Participant or Subscriber in this Service, each Participant and Subscriber agrees to be subject to the rules and regulations and any other Service governance provision. The Service may, through the administration and hearing procedures established in these rules, impose discipline for violations of the rules and other Service governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- a. letter of warning
- b. letter of reprimand
- c. attendance at MLS orientation or other appropriate courses or seminars which the Participant or Subscriber can reasonably attend taking into consideration cost, location and duration
- d. appropriate, reasonable fine not to exceed \$15,000
- e. probation for a stated period of time not less than thirty (30) days nor more than one (1) year
- f. suspension of MLS rights, privileges and services for not less than thirty (30) days nor more than one (1) year
- g. termination of MLS rights, privileges and services with no right to reapply for a specified period not to exceed three (3) years. (Adopted 11/07)

### **Section 7.1: Compliance with Rules**

The following action may be taken for noncompliance with the rules:

- (a). for failure to pay any service charge or fee within one (1) month of the date due, and provided that at least ten (10) days' notice has been given, the service shall be suspended until service charges or fees are paid in full;

(b). for failure to comply with any other rule, the provisions of Sections 1.18, 1.18.1 or 9 shall apply.

### **Section 7.2: Applicability of Rules to Users and/or Subscribers**

Non-principal Brokers, sales licensees, appraisers, and others authorized to have access to information published by the Service are subject to these rules and regulations and may be disciplined for violations thereof provided that the user or Subscriber has signed an agreement acknowledging that access to and use of Service information is contingent on compliance with the rules and regulations. Further, failure of any user or Subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the Participant to the same or other discipline. This provision does not eliminate the Participant's ultimate responsibility and accountability for all users or Subscribers affiliated with the Participant.

## **Meetings**

### **Section 8: Meetings**

The meetings of the Participants in the service or the Board of Directors of the Service for the transaction of business of the service shall be held in accordance with the provisions of **Article 7**, Bylaws of the service.

## **Enforcement of Rules or Disputes**

### **Section 9: Considerations of Alleged Violations**

Written Complaints of the Service Rules & Regulations: The board of directors shall give consideration to all written complaints having to do with violations of the rules and regulations. *(Amended 2/98)*

#### **9.1: Violations of Rules and Regulations**

(a) Participants and Subscribers: If the alleged offense is a violation of the Rules and Regulations of the Service and does not involve a charge of alleged unethical conduct, or a request for arbitration, it will be administratively considered. Use the WARDEX Rules & Regulations Violation form to report any offense. If a violation is determined, the Directors may direct the imposition of sanction, provided the recipient of such sanction may request a hearing by the Board of Directors. Requests for a hearing must be submitted within twenty (20) days following receipt of the sanction. Absent a request for a hearing, the sanction imposed by the Board of Directors shall be final. *(Amended 11/96)*

(b) Investigation of Complaints: Prior to issuing a sanction the Board of Directors may ascertain any information necessary to verify facts relative to the alleged offense. Such investigation may include an inquiry conducted at a regular or special meeting of the Directors, provided the respondent(s) receive not less than 10 days written notification of such inquiry.

(c) Conducting a Hearing: In conducting the hearing, the Directors shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses and offer evidence, subject to the Director's judgment as to its relevance. The

hearing process and imposition of additional sanctions shall be conducted in accordance with the National Association of Realtors® Code of Ethics and Arbitration Manual and Handbook on Multiple Listing Policy as they relate to Services.

### **9.2: Complaints of Unethical Conduct**

All other complaints of unethical conduct against REALTOR® members shall be referred to the Board or Association in which that member holds primary membership for appropriate action in accordance with the professional standards procedures established by the Bylaws of that Association. *(Amended 11/88)*

### **9.3: Participant and Subscriber Contact Information**

- (a) All Participants and Subscribers must maintain a valid email address and contact phone number.
- (b) Other contact information including address must be updated within 10 days of change.

## **Confidentiality of SERVICE Information**

### **Section 10: Confidentiality of Service Information**

Any information provided by the Service to the Participants shall be considered official information of the Service. Such information shall be considered confidential and exclusively for the use of Participants and real estate licensees affiliated with such Participants and those Participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such Participants. *(Amended 4/92)*

### **Section 10.1: Service Responsibility for Accuracy of Information**

The information published and disseminated by the service is communicated verbatim, without change by the service, as filed with the Service by the Participant. The Service does not verify such information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold the service harmless against any liability arising from any inaccuracy or inadequacy of the information such participant provides.

### **Section 10.2: Access to Comparable and Statistical Information**

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

## **Ownership of Service Compilation\* and Copyright**

### **Section 11:**

By the act of submitting any property listing content to the service the Participant represents that he has been authorized to grant and also thereby does grant authority for the Service to include the property listing content in its copyrighted Service compilation and also in any statistical report on comparables. Listing content includes, but is not limited to, photographs, images, graphics,

audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property. *(Amended 5/06)*

**Section 11.1:**

All right, title, and interest in each copy of every multiple listing compilation created and copyrighted by the Service and in the copyrights therein, shall at all times remain vested in the WARDEX Service.

**Section 11.1.1:**

The use of the acronym WARDEX is expressly prohibited. This includes use in email names, website names, email signatures, fax cover documents etc.

**Section 11.2:**

Each Participant shall be entitled to lease from the service a number of copies of each Service compilation sufficient to provide the Participant and each person affiliated as a licensee (including licensed or certified appraisers) with such Participant with one copy of such compilation. The Participant shall pay for each such copy the rental fee set by the association.\*\* Participants shall acquire by such lease only the right to use the service compilation in accordance with these rules.

\*The term SERVICE compilation, as used in Sections 11 and 12 herein, shall be construed to include any format in which property listing data is collected and disseminated to the Participants, including but not limited to bound book, loose-leaf binder, computer database, card file, or any other format whatever.

\*\*This section should not be construed to require the Participant to lease a copy of the SERVICE compilation for any licensee (or licensed or certified appraiser) affiliated with the Participant who is engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties which are required to be filed with the SERVICE and who does not, at any time, have access to or use of the SERVICE information or SERVICE facility of the association

## **Use of Copyrighted Service Compilation**

**Section 12: Distribution**

Participants shall, at all times, maintain control over and responsibility for each copy of any Service compilation leased to them by the WARDEX, and shall not distribute any such copies to persons other than subscribers who are affiliated with such participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other subscribers as authorized pursuant to the governing documents of the Service. Use of information developed by or published by the WARDEX is strictly limited to the activities authorized under a participant's licensure(s) or certification, and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed or published by the WARDEX where access to such information is prohibited by law.

**Section 12.1: Display**

Participants and those persons affiliated as licensees with such participants shall be permitted to display the Service compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers for the properties described in said Service compilation.

**Section 12.2: Reproduction**

Participants or their affiliated licensees shall not reproduce any Service compilation or any portion

thereof, except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the Service compilation and distribute to prospective purchasers a reasonable\* number of single copies of property listing data contained in the Service compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participant or their affiliated licensees, be interested.

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

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

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

None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, sold information, comparables, or statistical information from utilizing such information to support an estimate of value on a particular property for a particular client. However, only such information that an association or association-owned Service has deemed to be non-confidential and necessary to support the estimate of value may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations.

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

## **Use of Service Information**

### **Section 13: Limitations on Use of SERVICE Information**

Use of information from Service compilation of current listing information, from the association's statistical report, or from any sold or comparable report of the association or Service for public mass-media advertising by a Service participant or in other public representations, may not be prohibited.

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the association or its Service must clearly

demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

***“Based on information from the Western Arizona REALTORS® Data Exchange for the period (date) through (date).” (Amended 11/93)***

## **Changes in Rules and Regulations**

### **Section 14: Changes in Rules and Regulations**

Amendments to the rules and regulations of the service shall be by consideration and approval of the Board of Directors of the Service

## **Arbitration of Disputes**

### **Section 15: Arbitration of Disputes**

By becoming and remaining a Participant, each Participant agrees to arbitrate disputes involving contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4 of the Code of Ethics with Service Participants in different firms arising out of their relationships as Service Participants, subject to the following qualifications.

- a. If all disputants are members of the same association of REALTORS® or have their principal place of business within the same association's territorial jurisdiction, they shall arbitrate pursuant to the procedures of that association of REALTORS®.
- b. If the disputants are members of different associations of REALTORS® or if their principal place of business is located within the territorial jurisdiction of different associations of REALTORS®, they remain obligated to arbitrate in accordance with the procedures of **the Arizona Association of REALTORS®**.

## **Definitions**

### **Section 16: Roofing**

Whatever type of roofing covers at least 80% of the roof will be the roof type. Mark one (1) only on the data form. Example: a Santa Fe style, flat roof, hot mop roof with a section of tile over the front door is not a tile roof. A shingle roof with tile just along the trim is not a tile roof. A tile roof with a shingle pad around the a/c unit is a tile roof.

### **Section 16.1: Motor Home Parking**

In order to consider an area on the side of a house motor home parking it must be accessible to drive into with a minimum 10 foot clearance from all obstructions such as overhangs, ground mounted a/c units, etc.

### **Section 16.2: RV Parking**

In order to consider an area on the side of a house R.V. parking it must be accessible to drive into with a level driving area of 8 ft. minimum width measured from the house wall outward.

### **Section 16.3: Room Additions:**

Only include room additions in the square footage of a home or mobile where the addition was done with a city approved permit, also the room must be heated and cooled.

**Section 16.4: Bedroom vs. Den**

A bedroom is a bedroom – you may set it up as a den, but a den is only a den and cannot be used as a bedroom unless it meets these basic requirements. A bedroom must have a closet, an outside window and it cannot have a door from the garage into it. If you have a room that meets all these requirements, then it's a bedroom, not a den. In any case, only one may be entered in database.

**Section 16.5: Santa Fe Design:**

This is a house with parapet walls that in most cases go above the roof line, actually blocking out the roofing type. There are many variations to this design. The most common also has the lodge pole sticking out of the front elevation of the house.

**Section 16.6: Garage:**

Keyword "garage opening" will mean an opening on the side or front of a residence which can be driven into from the street by a vehicle the width of the largest standard vehicle allowed to be driven on the street. Garage spaces will be an area in a garage approximately 10 x 20.

**Orientation**

Any applicant for Service participation and any licensee (including licensed or certified appraisers) affiliated with an Service Participant who has access to and use of Service-generated information shall complete an orientation program of no more than twelve (12) classroom hours devoted to the Service rules and regulations and computer training related to Service information entry and retrieval and the operation of the Service within sixty (60) days after access has been provided, as per the Bylaws. This orientation is to be conducted by the local REALTORS® Association to which they joined. (Amended 11/04)

**Internet Data Exchange (IDX)****Section 18: IDX Defined**

IDX affords Service participants the option of authorizing display of their active listings on other Participants' Internet Web sites.

**Section 18.1: Authorization**

Participants' consent for display of their active listings by other Participants pursuant to these rules and regulations is presumed unless a Participant affirmatively notifies the Service that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of that Participant's listings, that Participant may not download or frame the aggregated Service data of other Participants. Even where Participants have given blanket authority for other Participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis as instructed by the seller.

**Section 18.1.1: Objective**

To maintain and protect data integrity and to be a reliable source of property information for all Participants and Subscribers of the data exchange.

**Section 18.1.2: Policy**

WARDEX will not generally distribute the data outside of direct Participant use, nor shall the data be used for outside profit.

**Section 18.2: Participation**

Participation in IDX is available to all Service Participants who are REALTORS® and who consent to

display of their listings by other Participants. Participants are to complete the IDX Agreement and submit it directly to Marketlinx with a copy to the Service. Marketlinx will then obtain approval from the WARDEX staff.

**Section 18.2.1:**

Participants must notify the Service of their intention to establish an IDX site by submitting a copy of the IDX package and must make their site directly accessible to the Service for purposes of monitoring/ensuring compliance with applicable rules and policies.

**Section 18.2.2:**

Participants must protect IDX information from misappropriation by employing reasonable efforts to monitor and prevent “scraping” or other unauthorized accessing, reproduction, or use of the Service database.

**Section 18.2.3:**

Listings or property addresses of sellers who have directed their listing Brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly-accessible Web sites or VOWs) shall not be accessible via IDX sites. Notwithstanding this prohibition, Listing Brokers may display on their IDX sites or their other Web site(s) the listing or property address of consenting sellers.

**Section 18.2.4:**

Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location (“uptown,” “downtown,” etc.), list price, type of property (e.g. condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g. exclusive right-to-sell, exclusive agency, or open listing), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each Participant. *(Amended 11/06)*

**Section 18.2.5:**

Participants must refresh all Service downloads and refresh all Service data at least once every seven (7) days.

**Section 18.2.6:**

Except as provided in these rules, an IDX site or a participant or user operating an IDX site may not distribute, provide, or make any portion of the Service database available to any person or entity including a third party vendor.

**Section 18.2.7:**

When displaying listing content, a participant's or user's IDX site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.

**Section 18.3: Display**

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

**Section 18.3.1:**

Listings displayed pursuant to IDX shall contain only those fields of data designated by the

Service. Display of all other fields (as determined by the Service) is prohibited. Confidential fields intended only for other Service participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed on IDX sites.

**Section 18.3.1.1:**

The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed on IDX sites.

**Section 18.3.2:**

Participants shall not modify or manipulate information relating to other Participants' listings. (This is not a limitation on site design but refers to changes to actual listing data.) Service data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of Service data display or display of fewer than all of the available listings or fewer authorized data fields.

**Section 18.3.3:**

All listings displayed pursuant to IDX shall identify the listing firm in a readily visible color and typeface not smaller than the median used in the display of listing data.

**Section 18.3.4: Deleted**

**Section 18.3.5:**

Non-principal Brokers and sales licensees affiliated with IDX Participants may display information available through IDX on their own Web sites subject to their Participant's consent and control and the requirements of state law and/or regulation.

**Section 18.3.6: Deleted**

**Section 18.3.7:**

All listings displayed pursuant to IDX shall show the Service as the source of the information.

**Section 18.3.8;**

Participants (and their affiliated licensees, if applicable) shall indicate on their Web sites 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 Service. The Service may, at its discretion, require use of other disclaimers as necessary to protect Participants and/or the Service from liability.

**Section 18.3.9: Deleted**

**Section 18.3.10:**

The right to display other Participants' listings pursuant to IDX shall be limited to a Participant's office(s) holding participatory rights in this Service.

**Section 18.3.11:**

Listings obtained through IDX must be displayed separately from listings obtained from other sources, including information provided by other Service Listings obtained from other sources

(e.g., from other multiple listing services, from non-participating Brokers, etc.) must display the source from which each such listing was obtained.

**Section 18.3.12:**

Display of expired, withdrawn, and pending listings is prohibited.

**Section 18.3.13:**

Display of seller's(s') and/or occupant's(s') name(s), phone number(s), and email address(s) is prohibited.

**Section 18.3.14:**

Participants are required to employ appropriate security protection such as firewalls, provided that any security measures required may not be greater than those employed by the Service.

**Section 18.3.15**

IDX operators must maintain an audit trail of consumer activity on the IDX site and make that information available to the Service if the Service believes the IDX site has caused or permitted a breach in the security of the data or a violation of Service rules related to use by consumers.

**Section 18.4 Service Fees and Charges**

Service fees and charges for participation in IDX shall be as established annually by the Board of Directors.

**Section 18.5 Written Agreement Required for Member to Download WARDEX Database**

Members shall not electronically transfer information from the Service's database to the member's own database (download) for any purpose, including republishing on the internet, without signing the Internet Data Display agreement. The agreement shall include, without limitation, the following provisions:

- 1. Joiner of Computer Consultant or Internet Service Provider:** That any third party computer expert or consultant or internet service provider (collectively "consultant") advising or assisting the member in the transfer also sign the agreement.
- 2. Information to be retained by member:** That the member retains all of the information from the Service database which has been so transferred (except to the extent that information is republished on the internet consistent with the Service Rules & Regulations).
- 3. Service Rules Continue to Apply:** That all Service Bylaws and Rules & Regulations continue to apply to such information even though it may be processed by the member's own computer (as opposed to an on-line terminal) and in a format different that it appears on the Service's online system.
- 4. Consultant Retains No Part of Information Obtained from Service's Database:** That consultant does not take any information whatsoever from the Service's database from the member's possession or control. Either during the time consultant is performing services for the member or thereafter.
- 5. The Service May Terminate at Any Time:** That the Service shall have the right at any time and in the Service's sole discretion to terminate the member's right to transfer information (download) forthwith, upon written notice to the member. Delivery of such written notice to the member shall constitute delivery of said written notice to the consultant.
- 6. Delivery of Information to the Service Upon Written Termination of Membership:** That upon termination of membership, a member shall either deliver all portions of information theretofore transferred from the Service's database (downloaded) by the member to the Service,

or, if the Service approves the delivery in writing, to another member of the Service.

**7. Transfer By Process Defined by the Service Only:**

The process and procedure for downloading shall be by such equipment and procedure as may be determined by the Service from time to time in its sole discretion.

**8. Download Costs:**

All the cost of the downloading process will be the responsibility of the participant.

**INTERNET DATA EXCHANGE SOLUTIONS**

Offutt (InnoVia) will maintain a database of all active WARDEX listings approved for Internet Data Exchange. This data base will contain a standard set of displays and a subset of listing data, as determined by Offutt and Lessee.

The following IDX Solutions will be offered by Offutt (InnoVia) to Lessee's Firms and Agents:

- **Firm Links:** This solution will consist of links to be placed on the subscribing Firms' website, consisting of an "Our Listings" button which will generate a "one-line" and "more detail" display of the subscribing Firms listings, and a "Search All" button allowing for searches of the entire IDX Database. The cost for this solution is a **\$195.00 one-time setup fee**, and an **annual fee of \$200.00**.
- **Agent Links:** This solution will consist of links to be placed on the subscribing Agents website, consisting of a "My Listings" button which will generate a "one-line" and "more detail" display of the subscribing Agents listings, an "Our Listings" button which generates displays of the subscribing Agents Firms listings, and "Search All" button which allows for searches of the entire IDX Database. The cost for this solution is a **\$95.00 one-time setup fee**, and an **annual fee of \$200.00**.
- **FTP Data Push:** This solution will consist of a full IDX database file and an incremental photos file that will be pushed via FTP, to the Server location designated by the subscribing Firm/Agent, on a nightly basis. The cost for this solution is a **\$225.00 one-time setup fee**, and an **annual fee of \$200.00**

***All fees for the above are due in advance of any work done by Offutt (InnoVia). The above fees will be handled directly between Offutt and the Board members themselves. Before subscribing to any of the above solutions the Participant and Agent must complete appropriate forms required by WARDEX. Send package to Marketlinx and forward a copy to WARDEX. See Appendix 1, Policy 4.***

**Virtual Office Website (VOW)**

**Section 19.1 (a):** A Virtual Office Website ("VOW") is a Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant's oversight, supervision, and accountability.

**(b)** As used in Section 19 of these Rules, the term “Participant” includes a Participant’s affiliated non-principal brokers and sales licensees – except when the term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability”. References to “VOW” and “VOWs” include all 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.

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

**(d)** As used in Section 19 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by by Participants to the MLS and aggregated and distributed by the MLS to Participants.

**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”).

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

**Section 19.3 (a):** Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:

**(i)** The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter “Registrants”).

Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.

**(ii)** The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.

**(iii)** The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

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

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

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

i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;

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

iii. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the

type being offered through the VOW;

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

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

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

(f) The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

**Section 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 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 MLS.

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

**Section 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 MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

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

**Seller Opt-Out Form**

1. Please check either Option a or Option b

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

OR

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

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

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

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

**Section 19.7:**

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

(b) Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 19.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**Section 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 MLS and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

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

**Section 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 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 19.13:** A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

**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 19.15:** A Participant's VOW may not make available for search by, or display to, Registrants any of the following information: (*Amended 11/09*)

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

**Section 19.16:** A Participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields

**Section 19.17:** A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

**Section 19.18:** Left Blank

**Section 19.19:** Left Blank

**Section 19.20:** A Participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

**Section 19.21:** A Participant may display advertising and the identification of other entities ("co-branding") on any VOW the Participant operates or that is operated on his or her behalf. However, a Participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this Section, co-branding will be presumed not to be deceptive or misleading if the Participant's logo and contact information (or that of at least one Participant, in the case of a VOW established and operated on behalf of more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

**Section 19.22:** A Participant shall cause any listing displayed on his or her VOW that is obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

**Section 19.23:** A Participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

**Section 19.24:** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

**Section 19.25:** Where a seller affirmatively directs their listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within 48 hours.

(Adopted 1/27/09)