

**MLS Rules and Regulations
for the
REALTORS[®] Association of Maui, Inc.
Multiple Listing Service**



*REALTORS[®]
Association of
Maui, Inc.*

Approved and Adopted by the Board of Directors
of the REALTORS[®] Association of Maui, Inc.
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SECTION 1. DEFINITIONS.

Section 1.1 General Definitions.

The following terms shall have the meanings given them in this Section 1.1 of this Agreement:

- a. Board means all boards and associations of REALTORS[®] recognized by the National Association of REALTORS[®] which are located in the state of Hawaii.
- b. Board of Choice has the meaning set forth in the National Association of REALTORS[®] Handbook on Multiple Listing Policy.
- c. Exclusive Agency Listing Agreement means a contractual agreement under which a Listing broker becomes the agent of the seller(s) and the seller(s) 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(s), the seller(s) is not obligated to pay a commission to the listing broker.
- d. Exclusive Right to Sell Listing Agreement means contractual agreement under which a listing broker becomes the agent of the seller(s) and the seller(s) agrees to pay a commission to the listing broker, regardless of whether the property is sold through the efforts of the listing broker, the seller(s), or anyone else, except that the seller(s) may 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(s) is not obligated to pay a commission to the listing broker.
- e. Graphics has the meaning set forth in Section 13.3 of these Rules and Regulations.
- f. IDX Database has the meaning set forth in Section 23.8 of these Rules and Regulations.
- g. Link has the meaning set forth in Section 23.1.1 of these Rules and Regulations.
- h. List Date means the date on which the last of the signatures of seller(s) and Broker have been obtained on a Listing Agreement.
- i. Listing(s) means collectively the data and other information regarding a parcel of real property, which is used in connection with the listing, marketing, and sale of real property.
- j. Listing Agreement means Exclusive Agency Listing Agreements and Exclusive Right to Sell Listing Agreements.
- k. Listings Intellectual Property has the meaning set forth in Section 13.3 of these Rules and Regulations.

- l. MLS Committee means the committee of the REALTORS[®] Association of Maui, Inc. (“RAM”) known as the Multiple Listing Service Committee.
- m. MLS Database means the compilation of multiple listings known as the RAM Multiple Listing Service, together with all documents and other information and data including in the MLS, such as seller disclosure forms, all as modified from time-to-time by RAM.
- n. MLS System means the computer system which makes the MLS Database available to Participants in accordance with these Rules and Regulations.
- o. Multiple Listing Service or MLS means the multiple listing service provided by RAM using the MLS Database.
- p. Office Assistant means an employee or agent of Participant who is an affiliated unlicensed administrative/clerical staff member, personal assistant, or individual seeking licensure or certification as real estate appraiser, provided that any such individual is under the direct supervision of a Participant, or the Participant’s licensed designee, who is granted certain rights under these Rules and Regulations, in RAM’s sole discretion, and who has accepted the terms and conditions of these Rules and Regulations.
- q. Participant means a principal real estate broker licensed in the state of Hawaii who is a member of a Board. Where the term REALTOR[®] is used in this definition of the term Participant, it shall be construed to mean the REALTOR[®] principal or principals of RAM, or any other Board, or a firm comprised of REALTOR[®] principals participating in a multiple listing service owned and operated by a Board. It shall not be construed to include individuals other than a principal or principals who are REALTOR[®] members of RAM or any other Board, or who are legally entitled to participate with Board membership. However, under no circumstances is any individual or firm, regardless of membership status, entitled to become a Participant unless he or she holds a current, valid Hawaii real estate broker’s license and offers and accepts 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. Under the “Board of Choice” policy, any REALTOR[®] (principal) or any firm comprised of REALTORS[®] (principals) may be a Participant, irrespective of where they hold primary membership, subject only to their agreement to abide by any multiple listing service rules or regulations, agreement to arbitrate disputes with other Participants, agreement to submit to ethics hearings with other Participants, and payment of any multiple listing service dues, fees, and charges. The universal access to services component of “Board of Choice” is to be interpreted as requiring that REALTOR[®] principals may be Participants, irrespective of where primary or secondary membership is held. This does not preclude RAM from assessing REALTORS[®] not holding primary or secondary membership locally fees, dues, or charges that exceed those or, alternatively, that are less than those charged Participants holding such memberships locally, or additional fees to offset actual expenses incurred in providing MLS services. Nothing in these Rules and Regulations shall be construed as requiring RAM to allow one to

become a Participant, under “Board of Choice,” where such rights have been previously terminated by action of the applicable Board’s Board of Directors.

- r. RAM means REALTORS[®] Association of Maui, Inc.
- s. RAM’s Website means the website with the uniform resource locator of www.ramaui.com, www.mauiboard.com, or a substitute website, in RAM’s sole discretion, or any other location where data may be made available to Participants pursuant to these Rules and Regulations.
- t. Rules and Regulations means these rules and regulations of RAM, which rules and regulations relate to the MLS.
- u. User means any person who has access to and use of any of the data included in the MLS or multiple listing services provided by RAM, and includes Participants, non-principal brokers, sales licensees and agents, licensed and certified real estate appraisers affiliated with a Participant, Office Assistants, and others authorized by RAM to have access to the MLS.
- v. User Agreement has the meaning set forth in Section 15 of these Rules and Regulations.

Section 1.2 Listing Status Definitions.

The following terms shall have the meanings given them in this Section 1.2 of this Agreement, as they relate to the status or nature of Listings:

- a. Active means a Listing which is being actively marketed for sale.
- b. Canceled means a Listing which has been withdrawn from the MLS prior to the expiration date of the Listing Agreement.
- c. Contingent – Escrow Canceling means a Listing for a property which is subject to a sale in escrow, but the escrow is in the process of being canceled. The Listing will continue to be shown and back-up offers accepted.
- d. Contingent – With Release means a Listing for a property which is subject to a sale in escrow, but the Listing Agreement includes a release clause with a specific time established for the release, such as seventy-two (72) hours.
- e. Expired means a Listing which has terminated or expired, but only after the full term of the Listing, in accordance with the applicable Listing Agreement.
- f. Pending – Continue to Show means a Listing for a property which is subject to a sale in escrow, but the property continues to be shown and back-up offers are being solicited.

- g. Pending – Do Not Show means a Listing for a property which is subject to a sale in escrow, and the property is not being marketed or shown and no back-up offers are being accepted.
- h. Sold means a Listing for a property for which the sale has closed.
- i. Temporarily Off Market means a Listing which the seller has requested be temporarily removed from the market, but is still subject to an enforceable Listing Agreement which has not expired or terminated.

Section 1.3 Definitions for Types of Listings.

The following terms shall have the meanings given them in this Section 1.3 of this Agreement:

- a. MLS Entry-Only Listing means a Listing under a Listing Agreement pursuant to which the listing broker will not provide any of the following services:
 - i. 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);
 - ii. 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);
 - iii. Advise the seller(s) as to the merits of offers to purchase;
 - iv. Assist the seller(s) in developing, communicating, or presenting counter-offers; or
 - v. Participate on the seller(s) behalf in negotiations leading to the sale of the listed property.
- b. Limited Service Listing means a Listing under a Listing Agreement pursuant to which the listing broker will not provide one, or more, of the following services:
 - i. 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);

- ii. 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);
 - iii. Advise the seller(s) as to the merits of offers to purchase;
 - iv. Assist the seller(s) in developing, communicating, or presenting counter-offers; or
 - v. Participate on the seller(s) behalf in negotiations leading to the sale of the listed property.
- c. Office Exclusive Listing means a Listing which the seller refuses to permit to be included in the MLS.

SECTION 2. LISTING PROCEDURES.

Section 2.1 Listing Procedures.

Listings of real property of the following types, which are listed subject to a Hawaii real estate broker's license, and are located within the territorial jurisdiction of RAM, and are taken by Participants under a Listing Agreement, shall be delivered to the MLS within two (2) business days after the List Date.

- a. Single family homes for sale or exchange.
- b. Vacant lots and acreage for sale or exchange.
- c. Two-family, three-family, and four-family residential buildings for sale or exchange.
- d. Condominium units, townhouses, or any other individual dwelling units in a multiple-unit structure or Planned Unit Development (PUD).

Section 2.2 Listings Subject to Rules and Regulations.

Any Listing taken under a Listing Agreement to be included in the Multiple Listing Service is subject to these Rules and Regulations upon signature of the seller(s). RAM's staff may request copies of Listing Agreements or change orders from a Participant for the purpose of verifying Multiple Listing Service data only. Participants are required to provide the information within two (2) business days of such request.

Section 2.3 Detail on Listings Included in the MLS.

Any Listing, including all information included on a listing input form, when submitted by the listing broker to RAM for inclusion in the MLS, shall be complete in every detail which is ascertainable as specified on the listing input form (listing input form may be either electronic or on paper). Public Remarks are mandatory input on all listings, to be included at time of initial data input. Failure to input at least one photo/image of Subject Property (or view from Subject Property) within two (2) business days of Input Date, for all Property Classes except Business, Commercial, and Rental, shall result in a fine of \$25 per day after the second business day following initial data input.

Section 2.4 Limited Service and MLS Entry-Only Listings.

Limited Service Listings and MLS Entry-Only Listings will be identified with appropriate codes, such as "Excl Agency-Limited Service" for Limited Service Listings, and "Excl Agency-MLS Only" for MLS Entry-Only Listings, in the MLS so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property.

Section 2.5 Office Exclusive Listings.

Office Exclusive Listings shall be submitted to RAM for inclusion in the MLS, but shall not be available to Participants. Filing of an Office Exclusive Listing shall be accompanied by certification, acceptable to RAM, signed by the seller that he or she does not desire the Listing to be included in the MLS and available to other Participants. The certification shall be submitted to RAM within two (2) business days after receipt by the listing broker. The blank Waiver of MLS Benefits form shall be provided by RAM.

Section 2.6 Change 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 submitted to RAM within two (2) business days after the authorized change is received by the listing broker.

Section 2.7 Change of Status.

The status of each Listing shall be appropriately shown in the MLS as one of the following:

- Active
- Canceled
- Contingent – Escrow Canceling
- Contingent – With Release
- Expired
- Pending – Continue to Show
- Pending – Do Not Show
- Sold
- Temporarily Off Market

The status of any Listing, except Pending-Continue to Show and Pending-Do Not Show will automatically be changed to Expired at midnight on the date of termination or expiration of the Listing under the applicable Listing Agreement; however, listing brokers should have the applicable Listing Agreement amended to extend the expiration date to at least the anticipated closing date for the transaction. RAM will change the status of a Listing to Canceled upon request of the listing broker, provided that written notice of cancellation and copy of the agreement between the listing broker and seller which authorizes such cancellation is delivered to RAM. Sellers do not have the unilateral right to require RAM to change the status of a Listing to Canceled without the listing broker's consent. However, when a seller can document that the agency relationship with the listing broker has been terminated pursuant to the terms of the Listing Agreement, RAM may change the Listing status to Canceled.

If a Listing has been Canceled or Expired for fewer than thirty (30) days and relisted by the same listing firm, the original Multiple Listing Service number and List Date will apply.

Section 2.8 Listing Price Specified.

The full gross Listing price stated in the Listing Agreement will be included in the information published in the MLS compilation of current Listings.

Section 2.9 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 listing input form. When part of a listed property has been sold, proper notification of the sale should be given to the MLS.

Section 2.10 No Control of Commission Rates or Fees Charged by Participant.

RAM shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, RAM shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating Participants or between Participants and non-Participants.

Section 2.11 Expiration of Listing.

Listings submitted to and included in the MLS will automatically be removed from the compilation of current Listings which are Active at midnight (Hawaii Standard Time) on the expiration date specified in the Listing Agreement, unless prior to that date RAM receives notice that the Listing has been extended or renewed.

Section 2.12 Expiration Date on Listings.

Listings submitted to and included in the MLS shall include a definite and final expiration date, as negotiated between the listing broker and the seller in the Listing Agreement.

Section 2.13 Jurisdiction.

Only Listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted to the MLS. Listings of property located outside Maui County will not be accepted.

Section 2.14 Listings of Suspended Participants.

When a Participant is suspended as a Participant for failing to abide by a membership duty (i.e., violation of the Code of Ethics, RAM bylaws, these Rules and Regulations, subscription agreement, any license agreement, or other membership obligation except failure to pay appropriate dues, fees, or charges), all Listings then-currently included in the MLS by the suspended Participant shall, at the Participant's option, be retained in the MLS until the Listing becomes Sold, Canceled, or Expired, and shall not be renewed or extended by the MLS beyond the termination date of the Listing Agreement in effect when the suspension became effective. If a Participant has been suspended from the Board (except where MLS participation without Board membership is permitted by law) or suspended as a Participant, or both, for failure to pay appropriate dues, fees, or charges, RAM is not obligated to provide MLS services, including continued inclusion of the suspended Participant's Listings in the MLS. Prior to any removal of a suspended Participant's Listings from the MLS, the suspended Participant should be advised, in writing, of the intended removal so that the suspended Participant may advise his or her clients.

Section 2.15 Listings of Expelled Participants.

When a Participant is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Board bylaws, multiple listing service bylaws, multiple listing service rules and regulations, subscription agreement, any license agreement, or other membership obligations except failure to pay appropriate dues, fees, or charges), all Listings then-currently included in the MLS shall, at the expelled Participant's option, be retained in the MLS until the Listing becomes Sold, Canceled, or Expired, and shall not be renewed or extended by the MLS beyond the termination date of the Listing Agreement in effect when the expulsion became effective. If a Participant has been expelled from a Board, as a member, (except where MLS participation without Board membership is permitted by law) or expelled as a Participant, or both, for failure to pay appropriate dues, fees, or charges, RAM is not obligated to provide MLS services, including continued inclusion of the expelled Participant's Listings in the MLS. Prior to any removal of an expelled Participant's Listings from the MLS, the expelled Participant should be advised, in writing, of the intended removal so that the expelled Participant may advise his or her clients.

Section 2.16 Listings of Resigned Participants.

When a Participant resigns as a Participant, RAM is not obligated to provide services, including continued inclusion of the resigned Participant's Listings in the MLS. Prior to any removal of a resigned Participant's Listings from the MLS, the resigned Participant should be advised, in writing, of the intended removal so that the resigned Participant may advise his or her clients.

SECTION 3. SELLING PROCEDURES.

Section 3.1 Showings and Negotiations.

Appointments for showings and negotiations with the seller for the purchase of listed property included in the MLS shall be conducted through the listing broker, except under the following circumstances:

- a. the listing broker gives the cooperating broker specific authority to show and/or negotiate directly, including for an MLS Entry-Only Listing, or
- b. after reasonable effort, the cooperating broker cannot contact the listing broker or his or her representative; however, the listing broker, at his or her option, may preclude such direct negotiations by cooperating brokers.

Section 3.2 Presentation of Offers.

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

Section 3.3 Submission of Written Offers.

The listing broker shall submit to the seller all written offers until closing of the previously accepted offer, unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing broker. Unless a subsequent back-up offer is contingent upon the termination of a previously accepted offer, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent back-up offer.

Section 3.4 Right of Cooperating Broker in Presentation of Offer.

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

Section 3.5 Right of Listing Broker in Presentation of Counter-Offer.

The listing broker or his or her representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He or she does not have the right to be present at any discussion or evaluation of a 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.

Section 3.6 Reporting Sales to RAM.

Sales shall be reported **within two (2) business days** to RAM by the listing broker, unless the negotiations were carried on under Section 3.1(a) or 3.1(b) hereof, in which case the cooperating broker shall report the change of status to Sold, and send a copy of the change order form to the listing broker within twenty-four (24) hours after acceptance of the offer.

All Users are required to report all sales (listed or unlisted, including assisted sales) in which they participate (as a principal or agent) to RAM within 2 business days of closing.

Failure to timely report a sale will result in a fine (see Schedule A).

Section 3.7 Reporting Cancellation of Pending Sale.

The listing broker shall report a canceled sale within two (2) business days to RAM, and the status of the Listing shall be changed to Contingent-Escrow Canceling until formal termination of the escrow for the transaction. Details shall be disclosed in REALTOR[®] remarks section of the Listing.

Section 3.8 Advertising of Listing Included in the MLS.

- a. Except as provided in Section 23 (IDX), a Listing shall not be advertised by any Participant, other than the listing broker, without the prior consent of the listing broker, either in writing or electronically.
- b. It is recommended that all advertisements include the MLS number (e.g., MLS# _____).

Section 3.9 Agent Contact Information.

- a. Listing agent and broker and/or seller contact information shall not be displayed in any area other than those accessible to REALTORS[®] only, such as agent reports and the REALTOR[®] remarks section of the Listing. Additionally, "Call Listor" type comments are prohibited in Public Remarks. Only exception allowed "Listor/Co-Listor is Seller" or "Listor/Co-Listor is related to Seller). (Amended 6-29-07)
- b. RAM acknowledges that all real estate advertising and promotional materials shall include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the State of Hawaii Business Registration Division and with Real Estate Commission of the State of Hawaii Department of Commerce and Consumer Affairs. However, notwithstanding the foregoing obligation, the name or other information to identify the listing agent or broker information shall not be displayed or discernable in the content or domain names of virtual tours, photographs, or videos entered into the MLS.

Section 3.10 Calculating Days on Market.

The days on market (DOM) will be calculated from the List Date until the time the Listing becomes Sold, Expired, or Canceled.

SECTION 4. REFUSAL TO SELL.

If the seller of any listed property included in the MLS refuses to accept a written offer satisfying the terms and conditions stated in the Listing, such fact shall be transmitted immediately to RAM and to all Participants by noting such in REALTOR[®] remarks section of the Listing.

SECTION 5. PROHIBITIONS.

Section 5.1 Information for Participants Only.

Any Listing included in the MLS shall not be made available to any non-Participant broker or firm without the prior consent of the listing broker.

Section 5.2 "For Sale" Signs.

Only the "For Sale" sign of the listing broker may be placed on a property.

Section 5.3 "In Escrow/Pending/Sold" Signs.

Prior to closing, only the "In Escrow/Pending/Sold" sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (buyer's) broker in writing to post such a sign.

Section 5.4 Solicitation of Listing Included in the MLS.

Participants shall not solicit a Listing on property included in the MLS 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 Listing to be included in the MLS by protecting them from being solicited, prior to expiration of the Listing, by brokers and salespersons seeking to list the property upon the expiration of the prior Listing.

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

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

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

Section 5.5 Use of the Terms MLS and Multiple Listing Service.

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

SECTION 6. DIVISION OF COMMISSIONS.

Section 6.1 Compensation Specified on Each Listing.

The listing broker shall specify, on each Listing submitted to RAM, the compensation offered to other 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 MLS would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including, but not limited to: why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the Listing Agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the Listing Agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the Listing Agreement might not be paid.

Note 1: By submitting a Listing to RAM for inclusion in the MLS, the Participant is making blanket unilateral offers of compensation to the other Participants, and shall therefore specify on each such Listing the compensation being offered to the other Participants. Specifying the compensation on each Listing is necessary because the cooperating broker has the right to know what his or her compensation shall be prior to his or her endeavor to sell.*

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

This shall not preclude the listing broker from offering any Participant compensation other than the compensation indicated on any Listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of his or her 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. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

RAM may not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his or her Listing Agreement, and RAM may not publish the total negotiated commission on a Listing that has been submitted to the MLS by a Participant. RAM may not disclose in any way the total commission negotiated between the seller and the listing broker.

Note 2: The listing broker may, from time-to-time, adjust the compensation offered to other Participants for their services with respect to any Listing by advance published notice to RAM so that all Participants will be advised.

**The compensation specified on Listings submitted to RAM shall appear in one of two forms. The essential and appropriate requirement by RAM 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 or her producing an offer to purchase. The compensation specified on Listings published by the MLS shall be shown in one of the following forms:*

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

Note 3: RAM shall make no rule on the division of commissions between Participants and non-Participants. This should remain solely the responsibility of the listing broker.

Note 4: RAM may, in its discretion, adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in Listing Agreements are subject to court approval or to lender approval; and that compensation payable to cooperating brokers may be reduced if the gross commission established in the Listing Agreement is reduced by a court or by a lender. In such instances, the fact that the gross commission is subject to court or to lender 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.

Section 6.2 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 published in the Multiple Listing Service, that person shall disclose that interest when the Listing is submitted to RAM and such information shall be disseminated to all Participants through the MLS, specifically in the public and REALTOR® remarks sections, and the disclosure data field of the Listing.

Section 6.3 Participant as Purchaser.

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

Section 6.4 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 entering “**Variable**” in the “Coop Broker Comp %” input field and prominently noting the details in REALTOR[®] remarks section of the Listing. 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.

- Examples of dual or variable rate commission:

Example #1: Broker lists property with variable rate listing agreement, such as for an in-house transaction:

- a. Company A lists property, Company B brings buyer = “X” %
- b. Company A lists property and brings buyer = “X” – 1 %
- c. Company A lists property and seller finds own buyer = “X” – 2 %

Example #2: variable (sliding scale) rate commission based on price:

Example #2 – property is listed in MLS for \$500,000

- Commission is “Y”% if sales price is \$500,000 or less
- Commission is “Y”- 1% if sales price is between \$500,001 and \$600,000
- Commission is “Y”- 2% if sales price is more than \$600,000

In both examples compensation details must be disclosed in REALTOR[®] remarks section of the Listing.

SECTION 7. SERVICE FEES, FINES AND CHARGES.

Service Fees, Fines and Charges are itemized in attached Schedule A.

Section 7.1 WAIVER: An MLS Participant may obtain a waiver of the payment of Service fees and charges for any licensed person associated with the MLS Participant's firm.

- a) A waiver is subject to the following conditions:
 1. The licensee must be eligible for a waiver according to the MLS Rules and Regulations.
 2. Written application is submitted to the MLS Participant's Board on the current form provided by the Service.

3. The term of the waiver shall not exceed one (1) year; it shall expire on the last day of each fiscal year.
 4. New applications required annually by MLS Participant to continue waiver eligibility.
- b) Those licensed persons who shall be eligible for a waiver of Service fees and charges are Property Managers who are required to be licensed by law to hold an active real estate license, but who do not actively participate in any of the functions intended to result in a sale of real property. (Arranging showings of property, actual showing of property, or any other sales related activity, would render the licensee ineligible). However, they may receive referral fees through their Broker for referring clients to a licensed Sales Agent.
- c) The procedure for obtaining a waiver is as follows:
1. MLS Participant submits the waiver application to the MLS Committee for review. A decision is made to either approve or deny the waiver by a majority vote of the MLS Committee.
 2. Notification of approval or denial is forwarded to the MLS Participant immediately after the MLS Committee's decision.
 3. Appeals to the MLS Committee's decision may be made to the Executive Committee of the REALTORS[®] Association of Maui, whose decision shall be final. Appeals must be made in writing within fourteen (14) calendar days from notification to the Designated REALTOR[®] of the decision of the MLS Committee, and must state the reason(s) for the appeal. Appeals are reviewed at the regularly scheduled Executive Committee Meetings.
- d) In the event the position of the eligible licensee changes and he/she is no longer eligible, the MLS Participant shall immediately notify the REALTORS[®] Association of Maui and voluntarily terminate the waiver of fees and charges. In the event the waiver herein granted shall be revoked by the REALTORS[®] Association of Maui for a change in eligibility or for a violation of the waiver privilege, the REALTORS[®] Association of Maui has the authority to impose the revocation retroactive to the date of the granting of the waiver, and the MLS Participant shall be liable for all Service fees and charges accrued against the licensee during the waived period.

SECTION 8. COMPLIANCE WITH RULES.

Section 8.1 Non-Compliance.

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

- a. For failure to pay any service charge or fee by the date due, all MLS services shall be discontinued until service charges or fees (including late fees) are paid in full.

- b. For failure to comply with any other rule, the provisions of Sections 10 and 10.1 shall apply.

Section 8.2 Applicability of Rules to Users

All Users are subject to these Rules and Regulations and may be disciplined for violations thereof. Further, failure of any User to abide by the Rules and/or any sanctions imposed for violations thereof can subject the applicable Participant to the same or other discipline. This provision does not eliminate the Participant's ultimate responsibility and accountability for all Users affiliated with the Participant.

SECTION 9. MEETINGS OF MLS COMMITTEE.

The MLS Committee shall meet for the transaction of its business at a time and place to be determined by the MLS Committee or at the call of the chairperson of the MLS Committee.

Section 9.1 Meetings of MLS Participants.

The MLS Committee may call meetings of the Participants.

Section 9.2 Conduct of the Meetings.

The chairperson or vice chairperson shall preside at all MLS Meetings or, in their absence, a temporary chairperson from the membership of the MLS Committee shall be named by the chairperson or, upon his or her failure to do so, by the MLS Committee.

SECTION 10. CONSIDERATION OF ALLEGED VIOLATIONS.

The MLS Committee shall give consideration to all written complaints regarding violations of these Rules and Regulations.

Section 10.1 Violations of Rules and Regulations.

If the alleged offense is a violation of these Rules and Regulations and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by the MLS Committee, and if a violation is determined, the MLS Committee may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the Professional Standards Committee of RAM in accordance with the Bylaws of RAM and these Rules and Regulations within twenty (20) days following receipt of the MLS Committee's decision.

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

Section 10.2 Complaints of Unethical Conduct.

All other complaints of unethical conduct shall be referred by the MLS Committee to the Professional Standards Administrator of RAM for appropriate action in accordance with the professional standards procedures established in RAM's Bylaws.

SECTION 11. CONFIDENTIALITY OF MLS INFORMATION.

Section 11.1 Confidentiality.

Any information provided by RAM to any Participant or User, including without limitation, the MLS Database, any Listing, Participant's or User's password to the MLS Database, any printouts of the MLS Database as provided under these Rules and Regulations (collectively "Confidential Information") shall be maintained by Participant and User as confidential and available exclusively for use by the Participant and User as provided in these Rules and Regulations. Participant and User shall not disclose any Confidential Information to anyone, except as ordered by a court of competent jurisdiction or as otherwise required by law. Participant and User shall not disclose any Confidential Information pursuant to a court order or as required by law until Participant or User has given RAM ten (10) days prior written notice and an opportunity to oppose such disclosure. Notwithstanding the foregoing, Participant and User may disclose Listings in the ordinary course of Participant's and User's business as a real estate professional and in accordance with these Rules and Regulations. Participant shall cause all Users associated with Participant to comply with the terms of this Section 11 of these Rules and Regulations.

Section 11.2 MLS Not Responsible for Accuracy of Information.

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

SECTION 12. MLS DATABASE.

Section 12.1 Access To MLS Database.

Subject to the payment of all fees owing by Participant, RAM grants to Participant and Users, a limited, non-exclusive, personal license to access the MLS Database to obtain information regarding Listings maintained on the MLS Database through the MLS System, or by another means provided by RAM, in its sole discretion. No person, except the Participant and Users, may access the MLS Database or any of the other services provided under these Rules and Regulations. Except as expressly authorized in these Rules and Regulations, Participant and User agree not to rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, store, or time-share the MLS Database. Participant and User further agree to take all reasonable steps to protect the MLS Database from unauthorized access, copying, or use.

Section 12.2 Passwords.

Participant and User shall not have access to the MLS Database without a password. Passwords are subject to change, suspension, or cancellation by RAM at any time. RAM may, at any time, require that passwords be changed. If, at any time, Participant or User has reason to believe that a password is being used or has been disclosed to anyone not authorized under these Rules and Regulations, Participant and User shall immediately give notice of such event to RAM.

SECTION 13. OWNERSHIP OF MLS COMPILATIONS AND INTELLECTUAL PROPERTY

Section 13.1 Authorization to Grant.

By the act of submission of any property Listing data to RAM, the Participant represents and warrants to RAM that he or she has been authorized to grant, and also thereby does grant, authority for RAM to include the property Listing data, photographs, remarks, and any other data, Graphics, information, or files submitted or delivered to RAM by or on behalf of Participant in the MLS Database, IDX Database, and any modifications of the MLS Database and IDX Database, in RAM's sole discretion.

Section 13.2 Intellectual Property.

Participant and each User acknowledge and agree that the MLS Database and IDX Database, including all copies, modifications, enhancements, derivative works of the same, and RAM's Website, are proprietary, original works of authorship of RAM, or licensed to RAM, protected under United States copyright, trademark, and trade secret laws of general applicability. Further, all Listings and other information and files submitted or delivered by or on behalf of Participant to RAM shall be deemed to be proprietary, confidential information of RAM. Participant and each User further acknowledge and agree that all right, title, and interest in and to the MLS Database and IDX Database, together with all copies, modifications, enhancements, and derivative works, including all copyright rights and other intellectual property rights, are and shall remain with RAM, including any modifications to the IDX Database made by Participant, and his or her respective agents who are Users, under these Rules and Regulations.

Section 13.3 Graphics.

Participant represents and warrants to RAM that all photographs, video clips, electronic image files, including portable document format and similar files, and other graphics in any form, Listings, remarks, and other text, and any other original work delivered or submitted at any time to RAM relating to any Listing ("Listings Intellectual Property") were and are at the time of delivery to RAM original works of Participant, or unconditionally assigned to Participant.

Section 13.4 Warranty Regarding Intellectual Property.

Each Participant represents and warrants that no other person or entity had or has any rights of any nature in or to any of the Listings Intellectual Property prior to the assignment of the Listings Intellectual Property to RAM, or such person unconditionally assigned all rights to Participant.

Section 13.5 Assignment.

Participant and each User hereby assign to RAM any and all rights which they may have or acquire in and to the Listings Intellectual Property, Graphics, remarks, any other text, and any other original work relating to any Listings, MLS Database, or IDX Database, together with any and all modifications to the IDX Database made by Participant or its agents or employees. Participant and each User agree to execute all documents and take all action reasonably requested by RAM in connection with the assignment of rights to RAM.

Section 13.6 Limits on License.

These Rules and Regulations do not convey to Participant or any User an interest in or to the MLS Database, IDX Database, or Listings Intellectual Property, but only a limited right of use, revocable in accordance with these Rules and Regulations. Participant and each User agree and acknowledge that any and all Listings, including all data, Graphics, documents, and other files, delivered or submitted to RAM by Participant, or any User employed by or otherwise associated with Participant, whether as an agent or otherwise, shall be a submission by Participant.

Section 13.7 Proprietary and Other Notices.

Participant and each User agrees that they will include and not alter or remove any digital markings, such as watermarks, or any other unique identifying marks, trademarks, copyright notices, disclaimers, or other notices located or used on, or in connection with, RAM's Website, the MLS Database, or the IDX Database, or any printouts of the same. Access to the IDX Database through any Link shall give notice, which is acceptable to RAM, to all Users that the source of the listings from the IDX Database is RAM.

SECTION 14. USE OF COPYRIGHTED MLS COMPILATIONS.

Section 14.1 Permissible Copies and Distribution of Copies.

RAM grants to Participant, and his or her respective agents who are Users, a limited, non-exclusive, personal license to print or deliver electronically through electronic mail, a reasonable number of individual Listings included in the MLS Database for the sole purpose of use by the Participant and such agents as a reference or worksheet, or to deliver to an identified potential buyer or seller, only for the ordinary business activities of attempting to locate ready, willing, and able buyers for the properties described in the MLS Database or to individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property.

Copies made in accordance with this section shall be printed in such a fashion that the Listings for properties other than that in which the potential buyer has expressed interest, or in which the Participant or such agents are seeking to promote interest, do not appear on such reproduction. All reproductions or copies of Listings, whether in electronic or other format, shall include the following notice, displayed in such a manner that is reasonably likely to provide the notice to the viewer:

Information is believed to be accurate; however should not be relied upon without verification. Copyright 1995 through [current year], REALTORS[®] Association of Maui,

Inc. All Rights Reserved. Featured properties may or may not be listed by the office/agent presenting this brochure. Data maintained by the MLS may not reflect all real estate activity in the market.

Section 14.2 Copies and Derivative Works.

No Participant User may do any of the following, either directly or indirectly, including assisting any other person or otherwise contributing in any way to any of the following:

- a. Make any copies of the MLS Database, or any portion of the MLS Database, including any specific listing included in the MLS Database, except as expressly provided in these Rules and Regulations.
- b. Create any derivative works, enhancements, or other modifications of the MLS Database.
- c. Download, except as expressly provided in these Rules and Regulations, distribute, export, or transmit the MLS Database, or any portion of the MLS Database, to any computer or other electronic device, or otherwise transmit electronically, or otherwise, the MLS Database, or any portion of the MLS Database.
- d. Publicly display the MLS Database.

Section 14.3 Use of Information.

Use of information developed by or published by RAM is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, nothing in these Rules and Regulations is intended to convey any right of access to information developed by or published by RAM where access to such information is prohibited by law.

SECTION 15. AGREEMENT WITH USERS.

As a condition to any rights and benefits under these Rules and Regulations, each User shall enter into an agreement with RAM, in a form and substance acceptable to RAM, in its sole discretion (a "User Agreement"), whereby each User agrees to comply with and accept the limitations and other terms and conditions of these Rules and Regulations, including without limitation, the obligation to maintain passwords as confidential, and shall not take any action or do anything inconsistent with the provisions of these Rules and Regulations.

SECTION 16. INTERRUPTIONS IN SERVICE.

Participant and each User acknowledge that RAM's Website and/or the MLS System, together with access to the IDX Database or MLS Database may from time-to-time be unavailable to Users, whether because of technical failures or interruptions, intentional downtime for service or changes to RAM's Website and/or MLS System, or otherwise. Participant and each User agree that any modification of RAM's Website or MLS System, and any interruption or unavailability of access to RAM's Website or MLS System, or access to the IDX Database or MLS Database, shall not constitute a default under these Rules and Regulations, and that RAM shall have no liability of any nature to

Participant or any User for any such modifications, interruptions, unavailability, or failure of access.

SECTION 17. REPRESENTATIONS, WARRANTIES, AND COVENANTS REGARDING LISTINGS.

Participant represents, warrants, and agrees, with respect to each Listing, or change to a Listing submitted to RAM under these Rules and Regulations, the following:

- a. The seller of the listed property has consented in writing, and Participant hereby consents to RAM including the Listing in the MLS Database and the IDX Database, the licensing of the IDX Database and MLS Database to anyone, including, without limitation, any aggregators of data, third party database service providers, or any other person, disclosure and public display of the Listing by RAM, and any other lawful use of the Listing by RAM. Notwithstanding the foregoing, and subject to the provisions of these Rules and Regulations regarding IDX, Participant may at any time, by notice to RAM, have his or her Listings removed from the Listings provided to a third party.
- b. The Listing complies in all respects with these Rules and Regulations.
- c. To the best of the Participant's and his or her respective agent's knowledge, and after reasonable due diligence to verify the accuracy of all information in the Listing, all information included in the Listing is accurate and not misleading.

Section 17.1 Listing in Accordance with Rules and Regulations.

All Listings shall be submitted in accordance with and shall be governed by these Rules and Regulations.

Section 17.2 Maintain Current Listings.

Participant agrees to take all action necessary to change/update Listings so they are in compliance with the terms of these Rules and Regulations, including the satisfaction of all conditions set forth in these Rules and Regulations, for example, real property taxes, maintenance fees, and community association fees.

SECTION 18. LIMITATIONS AND REMEDIES.

Section 18.1 No Warranty.

THE SERVICES PROVIDED AND LICENSES GRANTED UNDER THESE RULES AND REGULATIONS ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY NATURE. RAM EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, BUT WITHOUT LIMITATION, RAM DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY LISTINGS, ANY DATA IN THE LISTINGS, AND THEIR ACCURACY.

Section 18.2 Limitation of Liability.

RAM'S ENTIRE AND CUMULATIVE LIABILITY TO PARTICIPANT, ANY OTHER USER, OR ANY OTHER PARTY, FOR ANY LOSS OR DAMAGES RESULTING FROM

ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THESE RULES AND REGULATIONS, THE MLS DATABASE, THE IDX DATABASE, OR THE LINK, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY THE RESPECTIVE PARTICIPANT OR USER TO RAM DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM ARISES. WITHOUT WAIVER OF THE FOREGOING LIMITATION, IN NO EVENT SHALL RAM BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF RAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RAM SHALL HAVE NO LIABILITY OF ANY NATURE TO AGENTS.

Section 18.3 Injunction.

RAM, Participant, and other Users, agree that a breach or violation of Sections 11.1, 12.1, 13.1, 13.2, 13.3, 13.7, 14.1, 14.2, 14.3, 15, 19.3, 23.2, 23.3, 23.6, 23.7, and 22.11 of these Rules and Regulations will result in immediate and irreparable injury and harm to RAM. In such event, RAM shall have, in addition to any and all remedies of law and other consequences under these Rules and Regulations, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligations under these Rules and Regulations; provided however, that this shall in no way limit any other remedies which RAM may have, including without limitation, the right to seek monetary damages.

Section 18.4 Indemnification.

Participant, and each other User, agree to indemnify and hold harmless RAM and its officers, directors, employees, shareholders and agents, from and against any and all claims, demands, liabilities, and actions, including the payment of all legal expenses, including reasonable attorneys' fees and costs, arising out of or connected with any material breach of these Rules and Regulations, the submission to RAM of any Listing and the inclusion of any Listing by Participant in the MLS Database and IDX Database, and the use or display of the IDX Database, including, without limitation, any claims by sellers of properties which are the subject of any Listings. RAM shall have the right to control its own defense and engage legal counsel acceptable to RAM.

SECTION 19. TERMINATION OF MLS SERVICES.

Section 19.1 Termination by RAM.

RAM may terminate, or in its sole discretion, suspend until any default has been fully cured, all rights and licenses granted and all services provided under these Rules and Regulations, upon the occurrence of any of the following events:

- a. Participant fails to pay any fees when due for self or any other User affiliated with Participant.
- b. Participant, or any other User, discloses any Confidential Information, including without limitation, any password, except as expressly provided in these Rules and Regulations.
- c. Participant fails to submit all Listings required to be submitted under these Rules and Regulations.

- d. Participant, or any other User, fails to comply in all respects with these Rules and Regulations, the applicable Board Rules and Regulations, or the Code of Ethics and Standards of Practice of the National Association of REALTORS[®].
- e. Participant defaults under any material term or condition of these Rules and Regulations.
- f. Default by any User under any of the material terms and conditions of an applicable User Agreement, if such default is part of a pattern of defaults by the applicable Participant's User(s) and RAM has given thirty (30) days notice of such default; provided, however, if the default may cause irreparable harm, the suspension or termination may be immediate and without notice.

The termination or suspension of any rights of Participant under these Rules and Regulations shall cause an immediate termination of all rights and benefits of all affiliated Users, including all User Agreements.

Section 19.2 Termination by Participant.

Participant may terminate his or her rights under these Rules and Regulations at any time for any reason upon prior written notice.

Section 19.3 Participant's Duties Upon Termination.

Upon termination of rights under these Rules and Regulations, Participant and all other applicable Users shall:

- a. Immediately destroy any printouts of the MLS Database and any copies of the MLS Database in his or her possession or under his or her control;
- b. Deliver to RAM all copies of the IDX Database, software, and other programming code created in connection with these Rules and Regulations, including any software and other programming code for the creation of any Link and the display of the IDX Database, remove all copies of the IDX Database and such software from all computers on which the IDX Database and such software were loaded or copied, including the host server of Participant's website, and terminate the Link; and
- c. Deliver to RAM a certificate signed by Participant certifying that Participant, and all of his or her affiliated Users, have fully complied with the provisions of this Section 19.3 of these Rules and Regulations.

SECTION 20. COSTS OF LITIGATION.

If any action is brought by RAM, Participant, or any other User against another party, regarding the subject matter of these Rules and Regulations, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney fees, costs, and expenses of litigation.

SECTION 21. CHANGES IN RULES AND REGULATIONS.

Section 21.1 Changes in Rules and Regulations.

Amendments to these Rules and Regulations shall be by a majority vote of the members of the MLS Committee, subject to approval by the Board of Directors of RAM.

Section 21.2 Participant Responsibility for Users.

Nothing in these Rules and Regulations shall diminish the Participant's ultimate responsibility for ensuring compliance with the Rules and Regulations by all individuals affiliated with the Participant, including all Users.

SECTION 22. ORIENTATION.

Anyone applying to become a Participant and any licensee or other User affiliated with a Participant who has access to and use of the MLS shall complete an orientation program of no more than eight (8) classroom hours devoted to these Rules and Regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided.

SECTION 23. INTERNET DATA EXCHANGE (IDX).

Section 23.1 License to IDX Database.

Section 23.1.1 Grant Of License To Link. So long as Participant and his or her respective agents and Office Assistants who are Users are not in default under these Rules and Regulations, or any agreement with RAM, and Participant is an IDX participating broker as described in this Section 23 of these Rules and Regulations, RAM hereby grants to Participant, and Participant's agents who are Users, a non-exclusive, non-transferable, license to create either a hypertext link or a "smart" hypertext link on Participant's or the respective agents of Participant's websites which link RAM's Website with Participant's website (the "Link") and to display the IDX Database, all in accordance with the terms and conditions of these Rules and Regulations.

Section 23.1.2 License To Display IDX Database. So long as Participant, and each respective User of Participant who is an agent or Office Assistant, is not in default under these Rules and Regulations, or any agreement with RAM, and Participant is an IDX participating broker as described in this Section 23 of these Rules and Regulations, RAM agrees to grant to Participant, and agents of Participant's who are Users, a non-exclusive, non-transferable, license to display the IDX Database on websites maintained by Participant and the respective agents of Participants, subject to the terms of a license agreement in a form acceptable to RAM, in its sole discretion. IDX data may be obtained by either licensed data download or dynamic smart-linking to MLS's IDX server.

Section 23.2 Screen Display; IDX Database Display.

Participant, and his or her respective agents who are Users agree that they will at all times, maintain and display Participant's and such agent's websites in a professional manner, and that Participant's and such agent's websites will not include or display any material which is immoral, unethical, illegal, or inappropriate for a professional website.

Participant and such agent agree that they will at all times maintain the display of the IDX Database, Participant's and such agent's websites, and the content of RAM's Website, all of Participant's and such agent's business and business operations in accordance with all applicable federal, state, and local laws, ordinances, and regulations.

Section 23.3 IDX Database.

Participant and such agents agree that they will not create or maintain a database of listings, or any portion of the listings, for use in connection with the IDX Database. Listings for the IDX Database shall be provided exclusively by RAM.

Section 23.4 Changes To RAM Website.

Participant, and his or her respective agents who are Users agree that the license and rights granted under these Rules and Regulations are on an "as is" basis. RAM shall not be obligated to make any changes to RAM's Website, or any of the software running on RAM's Website, applicable protocols, or any other aspect of RAM's Website. RAM may, at any time, modify RAM's Website, in its sole discretion, and Participant and such agents understand that a modification of RAM's Website may require changes to Participant's and such agent's websites or Participant's and such agent's hardware or software to provide for a properly functioning Link. RAM makes no representations or warranties with respect to the response time for RAM's Website through the Link.

Section 23.5 Disclaimer.

Participant, and his or her respective agents who are Users, agree and acknowledge that the establishment of the Link does not constitute an endorsement, acceptance, or approval of Participant's or such agent's websites, or the content of Participant's or such agent's websites, including, without limitation, intellectual property infringement, content accuracy, defamation, and other unlawful content.

Section 23.6 Secure Host.

Participant, and his or her respective agents who are Users, agree to maintain at all times Participant's and such agent's websites as secure sites such that intruders may not access, damage, or alter files located on the host server for Participant's or such agent's websites. Specifically, Participant and such agent agree to maintain password access to files on the host server for Participant's and such agent's websites, or other reasonable security procedures.

Section 23.7 Limitation On Licenses.

Except as expressly provided in these Rules and Regulations, Participant, and his or her respective agents who are Users, agree that they will not, and they will not cause or allow the creator or host of Participant's or such agent's websites to (a) allow access to RAM's Website, through the Link, including the creation of any hypertext links, scripts, or any templates which allow such access, or (b) frame or otherwise alter the visual presentation of RAM's Website.

Section 23.8 IDX Defined.

Internet Data Exchange ("IDX") affords Participants, and agents of Participant who are Users, and who have been approved by Participant for participation, the option of

authorizing display of other Participants' Listings on a Participant's website(s) (the "IDX Database").

Section 23.9 Authorization.

Participant's consent for display of the Participant's Active Listings in the IDX Database by other Participants pursuant to these rules and regulations is presumed, unless a Participant affirmatively notifies RAM that the Participant refuses to include its listings in the IDX Database and 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 IDX Database, including the aggregated MLS data of other Participants. IDX applies only to the display of the IDX Database on the Internet; therefore, Participant's consent to display of their listings by other Participants is required to have their listings transmitted by the MLS to aggregators/publishers of real property ads. Additionally, only Listings made pursuant to an Exclusive Right to Sell Listings Agreement will be transmitted by RAM to aggregators/publishers of real property ads and to the MLS's IDX displays and data feeds.

Section 23.10 Participation.

Participation in IDX is available to all Participants who are REALTORS® who are engaged in real estate brokerage and who consent to the inclusion of their listings in the IDX Database and the display of their listings by other Participants. This requirement can be met by maintaining an office or Internet presence from which Participants are available to represent real estate sellers or buyers (or both).

Section 23.11 Display.

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

Section 23.11.1 Listings displayed pursuant to IDX shall contain only those fields of data designated by RAM. Display of all other fields (as determined by RAM) is prohibited. The display is solely for purposes of advertising Listings, and not for providing on-line brokerage services.

Section 23.11.2 Participants shall determine which listings or the types of listings they will display on their websites. Examples include property type ("condos," "single family detached," "multi-family," etc.), price, or location ("downtown").

Section 23.11.3 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.)

Section 23.11.4 All listings displayed pursuant to IDX shall identify the listing firm.

Section 23.11.5 Users who are agents 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 23.11.6 Listing information from the IDX Database downloaded and/or otherwise displayed pursuant to IDX shall be limited to properties listed on an exclusive right to sell basis.

Section 23.11.7 All listings displayed pursuant to IDX shall show RAM as the source of the information.

Section 23.11.8 Participants (and affiliated licensees, if applicable) must refresh all downloads and refresh all data at least once every seven (7) days.

Section 23.11.9 Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing.

Section 23.11.10 The data consumers can retrieve or download in response to an inquiry shall be limited in accordance with the terms of a license agreement entered into between RAM and the applicable Participant.

Section 23.11.11 The right to display other Participants' listings pursuant to IDX shall be limited to a Participant's office(s) holding participatory rights in the MLS.

Section 23.11.12 Listings obtained through IDX must be displayed separately from Listings obtained from other sources, regardless of whether the Listings are also included in the MLS, including information provided by other multiple listing services.

Section 23.11.13 No portion of the IDX database shall be used or provided to a third party for any purpose other than those expressly provided for in these Rules and Regulations.

Section 23.12 Service Fees And Charges.

Service fees and charges for participation in IDX shall be as established annually by RAM.

SECTION 24. VIRTUAL OFFICE WEBSITE (VOW) RULES FOR MLSs.

Section 24.1 (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 this Section 24 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 this Section 24 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

Section 24.2 (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 24.3 (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 24.4: 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 24.5: 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.

Section 24.6 (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:

SAMPLE
Seller Opt-Out Form

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.

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.

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.

Signature of Seller(s) _____

Date: _____

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

(i) 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 24.8, 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 24.8: 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 24.9: A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

Section 24.10: 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 24.11: 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 24.12: 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 24.13: 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 24.14: 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 24.15: A Participant's VOW may not make available for search by, or display to, Registrants any of the following information:

- a. The compensation offered to other MLS Participants.

b. Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property.

Section 24.16: 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 24.17: 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 24.18: A Participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

Section 24.19: A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than 100 current listings and not more than 100 sold listings in response to any inquiry.

Section 24.20: A Participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

Section 24.21: 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 24.22: 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 24.23: Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

Section 24.24: 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.

(11.03.08)

Schedule A: Service Fees, Fines, and Charges

Fee Schedule (Amended June 29, 2007)

Item	Fine
Deadline to enter New Listing or Status changes	\$25 per day fine after 2 business days
Input listing w/o Written Listing Agreement	\$500 fine and possible MLS Hearing
Failure to report sale of unlisted property	\$250 fine and possible MLS Hearing
Incorrect/Insufficient Data in required fields	\$25 per day if not corrected within 2 business days of notification (starting on day 3)
Incorrect Map Dots	\$25 per day if not corrected within 2 business days of notification (starting on day 3)
Agent Contact Info in public remarks, Virtual Tours	\$25 fine first offense, doubling for each offense within 1 year (365 days) of previous by same agent. RAM staff will edit for compliance
Failure to input at least one photo/image of Subject Property (or view from Subject Property) within 2 business days of Input Date, for all Property Classes except Business, Commercial and Rental.	\$25 per day after 2nd business day.

If you want your office to join the REALTORS® Association of Maui (RAM):

Item	Fee
<u>RAM Office Setup Fees</u>	
New	\$200
Reactivating	\$50

If you ARE a member of RAM & want to JOIN MLS:

Item	Fee
<u>MLS Office Setup Fees</u>	
New	\$320
Reactivating within 180 days	\$160
Reactivating after 180 days of placing office inactive	\$320
<u>MLS Participant/Subscriber Fees (per member)</u>	
Monthly	\$40
Annually	\$480

If you ARE NOT a member of RAM & want to JOIN RAM'S MLS ONLY:

Item	Fee
<u>MLS Office Setup Fees</u>	
New	
Reactivating within 180 days	\$320
Reactivating after 180 days of placing office inactive	\$160
	\$320
<u>MLS Participant/Subscriber Fees (per member)</u>	
Monthly	\$60
Annually	\$720

Additional Service Fees:

Item	Fee
<u>Data Input by RAM Staff (Broker Load Listings are free)</u> RAM MLS Member Non-RAM MLS Member (reciprocal listings) Duplicate Listing for different property classes (e.g., condo, residential, etc.) Process MLS Change Orders (for MLS subscribers)	\$25 \$50 (includes change orders) \$10 \$5
<u>Photo Input</u> Scan Photo (first photo free; each additional photo) Digital (first photo free; each additional photo)	\$5 \$2
<u>WebSearch (for RAM MLS participants/subscribers)</u> Go to: www.RAMaui.com > RAM Information > MLS Data Feeds	

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