

# Vail Multi-List Service

## Rules & Regulations

*August 13, 2018*

### DEFINITIONS

The following terms shall have the following meanings. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

“**Agreement**” means that certain Compliance Agreement by and among a participant, [VMLS] and a Vendor relating to the use of the MLS.

“**Board**” means Vail Multi-List Service, Inc. Board of Directors.

“**Confidential Information**” refers to information submitted to the MLS that is designated as confidential by these Rules and Regulations.

“**IDX**” means Internet Data Exchange, also referred to as IDX, as further defined in Section 18.

“**Listing**” means the data and other information regarding certain real property, which is used in connection with the listing, marketing, and sale of real property.

“**Listing Agreement**” means the contract, as it may be amended from time to time, between a seller and a listing broker who is a subscriber of the MLS whereby the broker undertakes to market real property at a particular price (the “List Price”).

“**Listing Content**” means photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property.

“**Listing Input Form**” means the collection of data entry fields made available by the MLS to subscribers for listing input, changes to listings, and similar purposes, whether such form is in printed form or electronic form.

“**Mandatory Listing Area**” means Eagle County, excluding the towns of Basalt and El Jebel.

“**MLS**” means the data collection and dissemination system of the Board, which makes the Private MLS available to subscribers in accordance with these Rules and Regulations.

“**VMLS**” represents the service of MLS provided by the Vail Multi-List Service.

“**MLS Director**” means the individual or individuals designated by the Board to manage the MLS.

“**MLS Compilation**” means any format in which property listing data is collected and disseminated to the subscribers, including, but not limited to, bound book, loose-leaf binder, computer database, card file, or any other format determined by the Board.

**“Modified Public MLS”** means that portion of the Private MLS that the MLS elects to make available to subscribers for use on the subscriber’s web-site, as further defined in Section 13 of the MLS Rules and Regulations.

**"Participant"** Any REALTOR<sup>®</sup> of this or any other Board who is a principal, partner, corporate officer, or branch officer manager acting on behalf of the principal, without further qualification, except as otherwise stipulated in these bylaws, shall be eligible to participate in Multiple Listing Service upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto.\* If MLS access is requested by a participant, then all licensees affiliated with the participant must also be members of the MLS. However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service “membership” or “participation” unless they hold a current, valid real estate broker’s license and offer or accept 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.\*\* Use of information developed by or published by a Board Multiple Listing Service is strictly limited to the activities authorized under 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 to access to information developed by or published by a Board of Multiple Listing Service where access to such information is prohibited by law.

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

The key is that the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a participant or potential participant that operates a Virtual Office Website (“VOW”) (including a VOW that the participant uses to refer customers to other participants) if the participant or potential participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a participant or potential participant “actively endeavors during the operation of its real estate business” to “offer or accept cooperation and compensation” only if the MLS has a reasonable basis to believe that the participant or potential participant is in fact not doing so. The membership requirement shall be applied on a nondiscriminatory manner to all participants and potential participants.

**“Service Area”** means the State of Colorado.

**"Subscriber"** Where the terms subscriber or user are used in connection with a multiple listing service owned or operated by an association of REALTORS<sup>®</sup>, they refer to non-principal brokers, sales licensees, and

licensed and certified real estate appraisers affiliated with an MLS participant and may, as a matter of local option, also include a participant's affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers provided that any such individuals is under the direct supervision of an MLS participant or the participant's licensed designee. If such access is available to unlicensed or uncertified individuals, their access is subject to the rules and regulations, the payment of applicable fees and charges (if any), and the limitations and restrictions of state law. None of the foregoing shall diminish the participant's ultimate responsibility for ensuring compliance with the rules and regulations of the MLS by all individuals affiliated with the participant.

Under the Board of Choice policy, MLS participatory rights shall be available to any REALTOR<sup>®</sup> (principal) or any firm comprised of REALTORS<sup>®</sup> (principals) irrespective of where they hold primary membership subject only to their agreement to abide by any MLS rules or regulations; agreement to arbitrate disputes with other participants; and payment of any MLS dues, fees, and charges. Participatory rights granted under Board of Choice do not confer voting privileges or eligibility for office as an MLS committee member, officer, or director, except as granted at the discretion of the local board and/or MLS.

The universal access to services component of Board of Choice is to be interpreted as requiring that MLS participatory rights be available to REALTOR<sup>®</sup> principals, or to firms comprised of REALTOR<sup>®</sup> principals, irrespective of where primary or secondary membership is held. This does not preclude an MLS from assessing REALTORS<sup>®</sup> 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 such as courier charges, long distance phone charges, etc., or for charging any participant specific fees for optional additional services.

None of the foregoing shall be construed as requiring an association to grant MLS participatory rights, under Board of Choice, where such rights have been previously terminated by action of that association's Board of Directors.

**“Private MLS”** means all of the data in the MLS available to subscribers in compliance with the MLS Rules and Regulations.

**“Public MLS”** means that portion of the Private MLS that the Board determines to display on the MLS public website. The Vail MLS may not elect to have such a website.

A **“Required Field”** is a portion of the Input Form that the Board has determined must be completed in order for the Listing to be included in the MLS.

**“Submit”** means providing data to the MLS for inclusion in the MLS. Submission may be by electronic submission [also known as “broker load”], by providing the MLS Director with a completed Listing Input Form, or any other form of data entry authorized by the Board.

## **Listing Procedures**

The listing broker owns the listing agreement. Prior to submitting a listing to the MLS, the listing broker should own, or have the authority to license all listing content (e.g. photographs, images, graphics, audio and

video recordings, virtual tours, drawings, descriptions, remarks narratives, pricing information, and other details or information related to listed property to be published in the MLS compilation of listing information.

Use of listings and listing information by MLSs for purposes other than the defined purposes of MLS requires participants' consent. Such consent cannot be required as a condition of obtaining or maintaining MLS participatory rights. MLSs may presume such consent provided that listing brokers are given adequate prior notice of any intended use unrelated to the defined purpose of MLS, and given the opportunity to affirmatively withhold consent for that use.

Participants cannot be required to transfer ownership rights (including intellectual property rights) in their listings or listing content to MLS to obtain or maintain participatory rights except that MLSs may require participants to grant the licenses necessary for storage, reproduction, compiling, and distribution of listings and listing information to the extent necessary to fulfill the defined purposes of MLS. MLSs may also require participants to warrant that they have the right in submitted information necessary to grant these rights to MLS.

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

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 Mandatory Listing Area of the MLS, and are taken by participants on an exclusive right-to-sell or exclusive-agency listing, shall be delivered to the Vail Multiple Listing VMLS, Inc. ("MLS or the VMLS") within two (2) business days after all necessary signatures of seller(s) have been obtained, i.e. it becomes a listing:

- 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. Commercial
- e. Rental
- f. Shared Interest

*The VMLS 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 VMLS acting as transaction-brokers, buyer agents, or both.

The listing agreement must include the seller's written authorization to submit the agreement to the VMLS.

The different types of listing agreements include:

- a. Exclusive right-to-sell
- b. Exclusive agency
- c. Net listings
- d. Open listings

The VMLS 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. An **open listing** is a contractual agreement under which the listing broker acts as the agent as the legally recognized non-agency representative of the seller(s), and the seller(s) agrees to pay a commission to the listing broker only if the property is sold through the efforts of the listing broker.

The **exclusive right-to-sell** listing is the conventional form of listing submitted to the multiple listing 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 bases. Exclusive agency listings and exclusive right-to-sell listings with named prospects exempt should be clearly distinguished by a simple designation such as a code or symbol from exclusive right-to-sell listings with no named prospects exempt, 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 exempt. 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.

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

Any listing taken on a contract to be filed with the VMLS is subject to the rules and regulations of the VMLS upon the signatures of the seller(s). In the event that the listing of a participant has as its listing agent or salesperson a licensee who is subject to a fee waiver under Section 6.1 then that listing shall be ineligible for submission to the service.

### **Section 1.2: Detail on Listings Filed with the VMLS**

A listing agreement or property data form, when filed with the VMLS by the listing broker, shall be complete in every detail which is ascertainable as specified on the property data form. The participant is responsible for the accuracy of all data entered into the MLS system and shall revise inaccurate data as soon as participant becomes aware of any inaccuracy. Inaccurate data not corrected within the prescribed time in these Rules and Regulations will subject participant to fines and/or suspension (see Exhibit A). Participants shall be responsible for complying with all standards of practice for data entry.

- (a) **DATA.** The data categories which are relevant to the effective operation of the MLS are “Active”, which signifies that a property is listed in the MLS and being actively marketed; “Under Contract”, which signifies that a property is under contract; “Withdrawn”, which signifies that a property is temporarily withdrawn from MLS; “Deleted” which signifies that a property which should not have been entered is permanently removed, along with its history from the MLS; “Cancelled”, signifies the Seller is permanently cancelling the listing with the listing broker prior to the expiration date of the listing agreement, “Expired”, which signifies that the end of the listing period, as entered in the MLS, has arrived; and “Sold”, which signifies that a property has sold and closed.
- (b) **TIMING.** Relevant data for the above data categories must be entered into the MLS by the participant no later than two (2) business days after the Effective Date, which is defined as the Contract Date or the Listing Date or the date on which the last required signature on the relevant document is received by the participant, whichever is later. Receipt of the last signature may be evidenced by e-mail receipt (acknowledgement), facsimile transmission heading, by mailing envelope showing the date of receipt of same, or if delivered in person, by signed acknowledgement by the deliverer. The “Sold Date” is the date the property was actually closed and title transferred. The “Contract Date” is defined as the date at the top of the Contract to Buy and Sell Real Estate. The “Listing Date” is defined as the date at the top of the Listing Contract or, if later, the first day of the Listing Period, as defined in the Listing Agreement. The “Under Contract” date is defined as the date of mutual execution of contract.

Note:

- a. A listing shall be entered in its proper area and subdivision in which it is located.
- b. Land listings will appear only once in the MLS.

- c. A listing shall be entered as the proper property type and subtype. Example: Partial ownership and anything less than 100% ownership in a property shall not be entered into Residential property type.
- d. The property subtype shall be as the property physically appears, regardless of zoning, subdivision or association documents.
- e. Required fields shall be entered into the MLS accurately by an authorized source.

### **Section 1.3: County Schedule Numbers**

All listings shall have a correct schedule number entered at the time of listing. Schedule numbers shall be obtained from the Eagle County Tax Assessors Office prior to data entry. This number is the key for tracking listing history and its accuracy is essential to the operation of the MLS. All property types under construction shall choose New or Under Construction until the Eagle County Tax Assessors Office assigns a permanent schedule number. The listing agent is required to remove New or Under Construction and replace this with the permanent number at or before changing the listing status to "Sold" in the MLS, if applicable.

Properties that have more than one schedule number i.e. joined condos, properties residing on both grazing land and residential by county will be entered with one schedule number. The listing agent will pick the schedule number that best represents the property listed and disclose the additional schedule number within the realtor remarks field(s).

### **Section 1.4: Co-Listing Properties**

All listed properties will be entered into the VMLS once with one unique VMLS number issued. The inputting agent will be determined between the Co-Listing Agents. The inputting agent will be responsible for inputting the other Co-Listing Agent contact information. The inputting agent must not be a licensee subject to a fee waiver under Section 6.1.

### **Section 1.5: Furnished & Unfurnished Listings**

Properties shall be entered into the MLS once regardless of furnished or unfurnished list price(s). The listing agent will decide which price will be entered (furnished or unfurnished) and disclose other pricing options within the Realtor Remarks field.

### **Section 1.6: Exempted Listings**

If the seller refuses to permit the listing to be disseminated by the VMLS, the participant may then take the listing (office exclusive) and such listing shall be filed with the VMLS but not disseminated to the participants. Filing of the listing should be accompanied by certification signed by the seller that he does not desire the listing to be disseminated by the VMLS.

For listings where the seller has requested the property not be in the MLS, the listing subscriber must notify the VMLS of such listing by email to [vbrae@vbr.net](mailto:vbrae@vbr.net) before using the VBR Broadcast email service. The name of the property address and area name of listing is required in the email notification.

Notwithstanding the limitations established in the Code of Ethics and Arbitration Manual or in any other NAR policy, multiple listing services operated as committees of associations of REALTORS<sup>®</sup> or as separate, wholly-owned subsidiaries of one or more association of REALTORS<sup>®</sup> are authorized to remove listings from the MLS where the participant has repeatedly refused or failed to timely report status changes. Prior to the removal of any listing(s) from the MLS, the participant shall be advised of the intended removal so the participant can advise his or her client(s).

### **Section 1.7: 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 filed with the MLS within twenty-four (24) hours (excepting weekends, holidays, and postal holidays) after the authorized change is received by the listing broker.

### **Section 1.8: Withdrawal/Cancellation of Listing Prior to Expiration**

Listings of property may be temporarily withdrawn from the MLS by the listing broker before the expiration date of the listing agreement, provided notice is filed with the VMLS, including been extended or renewed. a copy of the agreement between the seller and the listing broker which authorizes the withdrawal.

Sellers do not have the unilateral right to require an MLS 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 multiple listing service may remove the listing at the request of the seller.

Withdrawal of listings from the MLS, before the expiration date, will require notification to the VMLS by changing the status in the MLS. The withdrawal must be in writing, signed by the listing subscriber and seller. Withdrawal of a listing is a temporary status.

Note: Cancelled Listing.

Sellers do not have the unilateral right to require the MLS to cancel 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, i.e. "cancelled", the VMLS may remove the listing at the request of the seller.

### **Section 1.9: Contingencies Applicable to Listings**

Any contingency or conditions of any term in a listing shall be specified and noticed to the participants.

### **Section 1.10: Listing Price Specified**

The full gross listing price state in the listing contract will be included in the information published in the VMLS compilation of current listings, unless the property is subject to auction.\* In the case of a "VALUE RANGE LISTING", the List Price shall be the High Price of the value range listing. The low price of the value range shall be entered into the VMLS as the Low Price.

Note: Listing with a Low Price falling within the parameters of a search will be included in the properties resulting from that search. The search tools have been designed to accommodate value range pricing. The presence of a Low Price in a listing is notice that the listing is a value range property.

For example: A hypothetical listing, List Price = \$550,000, Low Price = \$450,000. A participant searching for property priced between \$300,000 and \$460,000 will see this listing in their search results.

\*The VMLS will allow auction properties listed at reserve price (the price the seller must accept) with comments in the public remarks specifying the auction date and the reserve terms. The reserve price must be specified in the listing agreement.

### **Section 1.11: 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 a change in status, proper notification shall be given to the VMLS.

### **Section 1.12: No Control of Commission Rates or Fees Charged to Participants**

The VMLS shall not fix, control, recommend, suggest, or maintain commission rates or fees for Services to be rendered by participants. Further the VMLS shall not fix, control, recommend, suggest or maintain

the division of commission or fees between cooperating participants or between participants and non-participants.

### **Section 1.13: Expiration of Listings**

Listings filed with the VMLS will automatically be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date the VMLS receives notice that the listing has been renewed or extended. 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) and filed with the VMLS.

### **Section 1.14: Termination Date on Listings**

Listings filed with the VMLS shall bear a definite and final termination date, as negotiated between the listing broker and seller.

### **Section 1.15: Service Area and Mandatory Listing Area.**

Only listings of the designated types of property located within the Mandatory Listing Area of the VMLS are required to be submitted to the VMLS. Listings of property located outside the Mandatory Listing Area but within the Service Area will be accepted if submitted voluntarily by a Participant. Listings of property located outside the VMLS's Service Area will be accepted if submitted voluntarily by a participant, but cannot be required by the VMLS.

### **Section 1.16: Listing of Suspended Participants**

When a participant of the VMLS is suspended from the VMLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, association bylaws, VMLS bylaws, VMLS rules and regulations, or other membership obligation except failure to pay appropriate dues, fees, or charges), all listings currently filed with the VMLS by the suspended participant shall, at the participant's option, be retained in the VMLS until sold, withdrawn or expired, and shall not be renewed or extended by the VMLS 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 MLS participation without association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, an association MLS is not obligated to provide MLS Services, including continued inclusion of the suspended participant's listings in the MLS compilation of current listing information. 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 clients.

### **Section 1.17: Listing of Expelled Participants**

When a participant of the VMLS is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, association bylaws, VMLS bylaws, VMLS rules and regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed with the VMLS by expelled participant shall, at the participant's option, be retained in the VMLS until sold, withdrawn, or expired, and shall not be renewed or extended by the VMLS 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 MLS participation without association membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, an association MLS is not obligated to provide MLS Services, including continued inclusion of the expelled participant's listings in the MLS compilation of current listing information. 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 clients.

### **Section 1.18: Listing of Resigned Participants**

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

### **Section 1.19: Photographs are Mandatory**

In addition to the above, participants shall include a photograph, or in the case of new construction, a schematic diagram or floor plan, with each new Active listing entered into the VMLS. A listing status will not be allowed to be changed to "Active" until a photo has been added. The photograph shall fill the entire space provided for in the image box within VMLS (no white borders). Multiple Listing Services may, as a matter of local discretion, require submission of a reasonable number of photographs or other graphic representations that accurately depict listed property except where sellers expressly direct that photographs not appear in VMLS compilations.

No promotional signs shall appear in any photograph submitted pursuant to this Section 1.18. In the event a participant fails to comply with the terms of this Section 1.18 the participant shall be warned and fined a fee as may be set by VMLS (See Exhibit A). This charge will appear on the participant's monthly billing invoice.

#### **Section 1.19.1: Copyright Considerations for MLS Photographs**

There are a number of different ways in which photographs of properties arrive in a MLS. The MLS participant (or one of their employees) may take the photograph or a photographer may take the photograph. If the participant or an employee of the participant has taken the photographs, the participant will own the copyright to the photographs. If a third-party photographer is used, the agreement with the photographer can either: (i) expressly license the Board/MLS/participant to use the photographs in certain manners or (ii) it may transfer all of the rights to the photographs to the MLS. Uploading copyrighted material into VMLS is prohibited.

### **Section 1.20: Virtual Tours**

VMLS participants wishing to provide virtual tours for display within the Private and the Public MLS, (commonly referred to as IDX), systems of the VMLS, Inc. shall comply with the following standards.

- a. The virtual tour shall link to a URL, i.e. <http://myvirtualtour.com/>. Executable, virtual tours shall not be permitted, i.e. myvirtualtour.exe.
- b. The virtual tour shall launch into a separate pop-up window.
- c. The only information that may be displayed within the virtual tour pop-up window shall be the navigational control panel necessary to manipulate the virtual tour view, i.e. tour photography or video. Optionally, a short one line description of the tour view, i.e. Master Bedroom, Kitchen, and Exterior shall be permitted within the window.
- d. All links directed from VMLS are to be unbranded. Any link originating from VMLS shall not contain broker information. Any links to any videos shall not have any branding. The logo of a third party virtual tour vendor, such as IPIX that displays momentarily during the site launch is permissible.

## **Selling Procedures**

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

Appointments for showings and negotiations with the seller for the purchase of listed property filed with the VMLS 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.

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

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

### **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.

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

The cooperating broker (transaction-broker 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.

### **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. 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 2.5: Reporting Sales to the MLS**

Status changes, including final closing of sales and sale prices, shall be reported to the VMLS by the listing broker within two (2) business days after they have occurred. If negotiations were carried on under Section 2(a) or (b) hereof, the cooperating broker shall report accepted offers and prices to the listing broker within twenty-four (24) hours after occurrence and the listing broker shall report them to the VMLS within two (2) business days after receiving notice from the cooperating broker.

Note 1: The listing agreement of a property filed with the VMLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listings with the VMLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information

including the selling price to the VMLS upon sale of the property. If deemed desirable by the VMLS 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 VMLS to its participants.

Note 2: In disclosure states, if the sale price of a listed property is recorded, the reporting of the sale price may be required by the MLS.

In states where the actual sale prices of completed transactions are not publicly accessible, failure to report sale prices can result in disciplinary action only if the MLS:

1. categorizes sale price information as confidential and
2. limits use of sale price information to participants and subscribers in providing real estate services, including appraisals and other valuations, to customers and clients; and to governmental bodies and third-party entities only as provided below.

The MLS may provide sale price information to governmental bodies only to be used for statistical purposes (including use of aggregated data for purposes of valuing property) and to confirm the accuracy of information submitted by property owners or their representative in connection with property valuation challenges; and to third-party entities only to be used for academic research, statistical analysis, or for providing services to participants and subscribers. In any instance where a governmental body and third-party entity makes sale price information provided by the VMLS available other than as provided for in this provision, a listing participant may request the sale price information for a specific property be withheld from dissemination for these purposes with written authorization from the seller, and withholding of sale price information from these entities shall not be construed as a violation of the requirement to report sales prices.

Note 3: As established in the Virtual Office Website (“VOW”) policy, sale prices can only be categorized as confidential in states where the actual sale prices of completed transactions are not accessible from public records.

### **Section 2.6: Reporting Resolution of Contingencies**

The listing broker shall report to the VMLS within two (2) business days that a contingency on file with the VMLS has been fulfilled or renewed, or the agreement cancelled.

### **Section 2.7: Advertising of Listings Filed with the VMLS**

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 participant shall submit to the VMLS within two (2) business days after the cancellation of any pending sale, and the listing shall be changed to its current proper status i.e., active, expired or withdrawn.

### **Section 2.9: Availability of Listed Property**

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

## **Refusal to Sell**

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

If the seller of any listed property filed with the VMLS refuses to accept a written offer satisfying the

terms and conditions stated in the listing, such fact shall be transmitted immediately to the VMLS and to all participants.

## **Prohibitions**

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

Any listing filed with the VMLS shall not be made available to any broker or firm not a member of the VMLS without the prior consent of the listing brokers. A participant with licensees who are subject to a fee waiver under Section 6.1 may not make available to those licensees listings of other brokers in the MLS. The preceding sentence does not prohibit a licensee from accessing listing records from another MLS or from any other source lawfully available to the licensee.

#### **Section 4.1: Usernames or Login Information**

Participants and subscribers shall not allow usernames or login information for the VMLS system to be distributed or sold to any other persons. Any ongoing use of the VMLS system must have a unique user ID and password provided by the VMLS. A fine schedule for violating this policy is displayed in Exhibit A of these rules and regulations.

#### **Section 4.2: For Sale Signs**

Only the for sale sign of the listing broker may be placed on a property.

#### **Section 4.3: 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.

#### **Section 4.4: Solicitation of Listing Filed with the VMLS**

Participants shall not solicit a listing of a property filed with the VMLS unless such solicitation is consistent with Article 16 of the REALTORS<sup>®</sup>, Code of Ethics, its Standards of Practice, and its Case Interpretations. The prohibition in the previous sentence applies to licensees affiliated with a participant who are subject to a fee waiver under Section 6.1.

Note: This section is to be construed in a manner consistent with Article 16 of the Code of Ethics and particular Standards 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 salesperson seeking the listing upon its expiration.

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 service by assuring them that other participants will not attempt to persuade the seller to breach the listing agreement or interfere with their attempts to market the property. Absent the protection afforded by this section, listing brokers would 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 4.5: Use of the terms MLS and Multiple List Service**

No VMLS participant, subscriber or licensees 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 consumer or others have direct access to the VMLS databases, or that the consumer or others are able to search the VMLS databases available only to participants and subscribers. This does not prohibit participants and subscribers from representing that any information they are authorized under VMLS rules to provide to clients or customer is available on their websites or otherwise. The provisions of this section apply to licensees affiliated with a participant who are subject to a fee waiver under Section 6.1.

### **Division of Commissions**

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

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

In filing a property with the VMLS, the participant of the VMLS is making blanket unilateral offers of compensation to the other VMLS participants, and shall therefore specify on each listing filed with the VMLS, the compensation being offered to the other VMLS 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 compensation specified on listings filed with the VMLS 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 submitting an offer to purchase. The compensation specified on listings published by the VMLS shall be shown in one of the following forms:

- a. By showing a percentage of the gross selling price
- b. By showing a definite dollar amount

Note: The listing broker retains the right to determine the amount of compensations offered to other participants (acting as transaction-brokers, buyer agents, or in other agency or non-agency capacities defined by the law) which may be the same or different.

This shall not preclude the listing broker from offering any VMLS participant compensation other than the compensation indicated on any listing published by the VMLS, provided the listing broker informs the other broker, in writing, in advance of submitting an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other participants in the VMLS. 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 multiple listing service shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his listing contract, and the VMLS shall not publish the total negotiated commission on a listing which has been submitted to the VMLS by a participant. The VMLS shall not disclose in any way the total commission negotiated between the seller and the listing broker.

#### **Section 5.0.1: Short Sales**

Participants may, but are not required to, disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) to other participants and subscribers.

When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants.

#### **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 VMLS, that person shall disclose that interest when the listing is filed with the VMLS and such information shall be disseminated to all VMLS participants.

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

If a participant, subscriber or any licensee (including licensed and certified appraisers) 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 no later than the time an offer to purchase is submitted to the listing broker.

#### **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 VMLS. 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.

#### **Section 5.4: No Compensation for Fee-Waived Salesperson**

The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) shall be excused if it is determined through arbitration that the selling salesperson affiliated with the cooperating broker was subject to fee waiver under Section 6.1 at any time between the offer to purchase and the closing of the sale.

## **VMLS Charges**

### **Section 6: VMLS Fees and Charges**

The following VMLS charges for operation of the VMLS are in effect to defray the costs of the VMLS and are subject to change from time to time in the manner prescribed. Such charges are set forth in Exhibit A and are subject to change from time to time as determined by the Board of Directors of the Service and the Board of Directors of the Vail Board of REALTORS®

**Section 6.01 Initial Participation Fee:** An applicant for participation in the VMLS shall pay an application fee of that according to Exhibit A, with such fee to accompany the application.

**Section 6.02 Recurring Participation Fee:** The monthly participation fee of each participant office shall be an amount equal to that according to Exhibit A, times each salesperson and licensed or certified appraiser in the office who has access to and use of the VMLS, whether licensed as a broker, sales licensee, or licensed or certified appraiser who is employed by or affiliated as an independent contractor with such participant, except that this fee shall be waived for licensees subject to a fee waiver under Section 6.1. Payment of such fees shall be due upon receipt and in no case later than the last day of the month of the billing statement. Fees shall be prorated on a monthly basis.

### **Section 6.1: Subscriber Fee Waivers**

MLS provides participants the option of a no-cost waiver of MLS fees, dues, and charges for any licensee or licensed or certified appraiser in a participating office who can demonstrate subscription to a different MLS where the principal broker for the office also participates. MLS requires waiver recipients and their participants to sign a certification for nonuse of MLS services, which includes penalties and termination of the waiver if violated.

Normally, under Section 6.02, any per-subscriber fee is calculated based on each salesperson and licensed or certified appraiser affiliated with a participating office. The effect of fee waiver is that the number of subscribers in a participating office for purposes of any recurring per-subscriber fees paid by a participant under Section 6.02 shall be reduced by the number of licensees and certified appraisers who are subject to waiver under this Section 6.1. For purposes of this Section 6.1 and all rule provisions referring to it, "licensee" refers to non-principal salespersons and licensed and certified appraisers. Section 6.1.1 sets out the conditions for fee waiver, Section 6.1.2 the process for obtaining and maintaining waivers, Section 6.1.3 circumstances under which waiver is revoked and consequences of revocation, and Section 6.1.4 the consequences of repeated violations of these policies.

#### **Section 6.1.1: Conditions for Waiver**

Fee waivers are available for non-principal broker and non-principal appraiser licensees in offices participating in MLS, provided the participant and any fee-waived licensee(s) meet all the following requirements:

- a. Any fee-waived licensee must be a subscriber in another multiple listing service.
- b. During any period for which a licensee's fees are waived, the licensee shall refrain from using any of the following services of this MLS:

1. Using this MLS's systems, databases, lockboxes, etc. This does not include accessing listing information of the licensee's own broker or of other brokers through the participant's IDX site or elsewhere. It does include accessing such information on the participant's VOW (which is for consumers' personal use).
2. Being identified as a listing agent on an active or pending property listing in this MLS.
3. Working as the selling agent on a property listed in this MLS by a firm other than participant's, unless the listing appears in an MLS to which the selling agent is a subscriber. This does not apply to the fee-waived participant's own listings, because the participant is free to share them within its firm (and anywhere else) without MLS consent or involvement.
4. Use of any data feed from this MLS (except one that includes listings only of the licensee's broker).
5. Using this MLS's data on an IDX or VOW website identified as the fee-waived subscriber's site or page.
6. Using MLS's data in an automated valuation product or tool in any product or service identified as coming from the fee-waived subscriber.

### **Section 6.1.2: Process for Obtaining and Maintaining Waivers**

The participant must at all times provide to MLS up-to-date information on all licensees, whether they are subscribers or fee-waived licensees, in each participating office. The participant must identify which licensees are subject to fee waivers and for each waived licensee the other MLS in which he/she is a subscriber on the waiver certification form. In order to obtain a waiver for any licensee in the participant's office, the participant must execute the MLS's form for listing fee-waived licensees and the certification on it.

### **Section 6.1.3: Revocation of Waiver**

The fee waiver for a licensee may be revoked under various circumstances, and the consequences of the revocation vary depending on its circumstances, as provided in this section.

- a. The participant or fee-waived licensee may revoke the waiver at any time upon notice to this MLS. In that case, the fee-waived licensee immediately becomes a subscriber and any fees due to MLS under its normal fee schedule for the current period for the subscriber (including pro-rata fees for any partial service period and any application fees if none have previously been paid for the subscriber) shall immediately become due and payable. In the event a fee-waived licensee appears as a listing agent on an active or pending listing in this MLS, the participant and fee-waived licensee shall be deemed to have revoked the waiver under this subsection (a).
- b. If this MLS determines that the fee-waived licensee has used any of the services of this MLS listed in Section 6.1.1(b) during a fee-waiver period, MLS may terminate the fee waiver upon notice to the participant and subscriber. In this case, the consequences of subsection (a) apply, and in addition to them, MLS may recover from participant or subscriber the fine as described in Exhibit A. After six months, the participant and subscriber can re-certify the subscriber to be a fee-waived licensee.

### **Section 6.1.4: Consequences of Repeated Violations**

A pattern of repeated violations of Section 6.1.1(b) exists when a participant allows any combination of three or more violations of Section 6.1.1(b), whether the participant is aware of

the violations and whether committed by one fee-waived licensee or more; or when a subscriber commits three or more violations of Section 6.1.1(b). In the event that a participant or subscriber exhibits a pattern of repeated violations of Section 6.1.1(b), MLS may suspend all fee waivers for the participant or subscriber (or both) for a period of up to three years. If, after such a period of suspension, a participant or subscriber again exhibits a pattern of repeated violations, MLS may permanently terminate fee waivers for the participant or subscriber (or both). In the event a participant or subscriber subject to suspension or termination of waivers moves to a new office as a participant, that office shall be ineligible for waivers during the pendency of its participant's suspension or termination. In the event a participant or subscriber subject to suspension or termination of waivers moves to a new office as a non-principal licensee, that non-principal licensee shall be ineligible for waivers during the pendency of his or her suspension or termination.

### **Section 6.2: Listing input by VMLS**

An input fee shall be charged for listing input by VMLS at the request of the Listing Broker or participant. (See Exhibit A)

### **Section 6.3: Lockbox usage**

See Exhibit B.

### **Section 6.4: Administration and Fines**

Failure to enter relevant data into the MLS within the required time frame shall constitute a violation of these Rules and Regulations; for each violation, a fine (MLS Violation) in the amount set forth on Exhibit A shall be charged to the non-complying participant. Whenever the MLS Director has reason to believe that a violation of these Rules and Regulations has occurred, the MLS Director will promptly send e-mail transmission or personal delivery to the non-complying participant a notice of violation. If the participant does not correct the violation by 5 PM the next business day, the VMLS Director shall provide all relevant information in the manner provided in Section 9 of these Rules and Regulations to the Board of Directors of the Service for determination of whether a violation has occurred. Each additional two (2) business days without compliance shall be deemed to be an additional violation and shall result in additional fines (see Exhibit A).

## **Compliance with Rules**

### **Section 7: Compliance with Rules**

By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. Each participant is subject to these rules with regard to licensees affiliated with the participant who are subject to fee waiver under Section 6.1. The VMLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline to be imposed consists of the appropriate, reasonable fine not to exceed \$5,000.00 per Exhibit A.

#### **Section 7.1:**

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

- a. MLS billing shall be done on the first day of each calendar month. All VMLS charges and fees are due upon receipt. If VMLS charges and fees plus any late fees incurred are not paid within 30 days after payment is due, the participant shall be suspended. If VMLS charges and fees plus any fees

incurred are not paid within 60 days after payment is due, the participant shall be terminated from MLS participation.

- b. to be reinstated, the removed participant shall bring his/her account up to date and pay a reinstatement fee. (see Exhibit A)
- c. for failure to comply with any other rule, the provisions of Sections 9 and 9.1 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 VMLS 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 MLS 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. The participant is subject to these rules with regard to licensees affiliated with the participant who are subject to fee waiver under Section 6.1. This provision does not eliminate the participant's ultimate responsibility and accountability for all users or subscribers affiliated with the participant.

## **Meetings**

### **Section 8:**

The meetings of the participants in the VMLS or the board of directors of the VMLS for the transaction of business of the VMLS shall be held in accordance with the provisions of Article the transaction of business of the VMLS shall be held in accordance with the provisions of Article 7, bylaws of the Vail Multi-List Service, Inc.

### **Section 8.1: Meetings of the VMLS Board of Directors**

The Board of Directors of the Service shall meet for the transaction of its business at a time and place to be determined by the Board of Directors of the Service or at the call of the Chairman of the Board of Directors of the Service.

### **Section 8.2: Meetings of the VMLS Participants**

The Board of Directors of the Service may call meetings of the participants in the Service, which shall be known as meetings of the VMLS.

## **Enforcement of Rules or Disputes**

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

The committee shall give consideration to all written complaints having to do with violations of the rules and regulations.

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

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 request for arbitration, it may be administratively considered and determined by the Board of Directors of the Service, and if a violation is determined, the Board of Directors of the Service may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the professional standards committee of the association in accordance with the bylaws and rules and regulations of the association of REALTORS<sup>®</sup> within twenty (20) days following receipt of the Board's decision.

If, rather than conducting an administrative review, the Board of Directors of the Service has a procedure established to conduct hearings the decision of the hearing tribunal may be appealed to the Board of Directors of the Vail Board of REALTORS® within twenty (20) days of the tribunal's decision. Alleged violations involving unethical conduct shall be referred to the association's grievance committee for processing in accordance with the professional standards procedures of the association. If the charge alleges a refusal to arbitrate, such charge shall be referred directly to the Board of Directors of the Vail Board of REALTORS®.

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

All other complaints of unethical conduct shall be referred by the Board of Directors of the Service to the Colorado Association of REALTORS® or the Vail Board of REALTORS® for appropriate action in accordance with the professional standards procedures established in the association's bylaws.

### **Section 9.3: Enforcement**

- a. Upon request from the Board, each participant promptly shall forward by email each fully executed Listing Agreement for which the seller specified that the property not be entered into the VMLS. Failure to do so will result in the levying a fine, when discovered, as set forth in Exhibit A. Otherwise, enforcement shall rely on participants or subscribers, reporting occurrences as they are discovered. Any participant or subscriber shall report the name of a non-complying participant or subscriber verbally or otherwise to the VMLS. The MLS Director will then contact the non-complying participant and request a copy of the relevant document. The non-complying participant shall immediately provide any evidence, which would support a legitimate reason, why the information was not entered into the VMLS. Any fine resulting from a violation of this rule shall be levied as set forth in Exhibit A.
- b. Any real property entered into the MLS or VMLS e-mail system, as available for sale without a valid listing agreement, shall be a violation and fine shall be levied against the participant in accordance with Exhibit A.

### **Section 9.4: Failure to pay**

Fines shall appear on the participant broker's monthly billing summary. Failure of a participant to pay fines levied shall be handled by the VMLS in the same way as failure to pay dues.

## **Confidentiality of MLS Information**

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

Any information provided by the VMLS to the participants shall be considered official information of the VMLS. Such information shall be considered confidential and exclusively for the use of participants and real estate licenses affiliated with such participants entitled to access and those participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property licensed or certified appraisers affiliated with such participants entitled to access.

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

The information published and disseminated by the VMLS is communicated verbatim, without change by the VMLS, as filed with the VMLS by the participants. The VMLS does not verify such information provided and disclaims any responsibility for its accuracy. Each participant agrees to hold the VMLS harmless against any liability arising from any inaccuracy or inadequacy of the information such participant provides to the extent of any actual loss and all attorney fees and expenses incurred by the Vail Board of REALTORS® or the Vail Multi-List Service, Inc.

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

### **Section 11:**

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

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

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

To qualify for this safe harbor, the OSP must:

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

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

### **Section 11.1:**

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

### **Section 11.2:**

Each participant shall be entitled to lease from the VMLS a number of copies of each MLS Compilation sufficient to provide the participant and each person affiliated as a licensee (including licensed or certified

appraisers, but not including any licensee subject to fee waiver under Section 6.1) with such participant with one copy of such compilation. The participant shall pay for each such copy the rental fee set by the Board.\*

Participants shall acquire by such lease only the right to use the VMLS compilation in accordance with these rules.

## **Use of Copyrighted MLS Compilation**

### **Section 12: Distribution**

Participants shall, at all times, maintain control over and responsibility for each copy of any MLS compilation leased to them by the VMLS, and shall not distribute and such copies to persons other than subscribers who are affiliated with such participant as licenses, 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 VMLS. Use of information developed by or published by the VMLS 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 VMLS where access to such information is prohibited by law.

\*The term MLS 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 compilation, loose-leaf binder, computer database, card file, or any other format whatever.

### **Section 12.1: Display**

Participants and those persons affiliated as licensees with such participants shall be permitted to display the MLS 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 MLS compilation. "Persons affiliated as licensees" in the previous sentence does not include licensees subject to fee waiver under Section 6.1.

### **Section 12.2: Reproduction**

Participants or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof, except in the following limited circumstances:

Participants or their affiliated licensees may reproduce from the MLS compilation and distribute to prospective purchasers a reasonable\* number of single copies of property listing data contained in the MLS compilation which relate to any properties in which the prospective purchasers are or may, in the judgment of the participant or their affiliated licensees, be interested. "Persons affiliated as licensees" in the previous sentence does not include licensees subject to fee waiver under Section 6.1.

Reproductions made in accordance with this rule shall be prepared in such fashion that the property listing date 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 MLS information, whether provided in written or printed form, provided electronically, or provided in any other form or format, is provided for the exclusive use of the participant and those licensees affiliated with the participant who are authorized to have access to such information. (The previous sentence does not apply to licensees subject to fee waiver under Section 6.1.) 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 valuations on particular properties for clients and customers. Any MLS content in data feeds available to participants for real estate brokerage purposes must also be available to participants for valuation purposes, including automated valuations. MLSs must either permit use of existing data feeds, or create a separate data feed, to satisfy this requirement. MLSs may require execution of a third-party license agreement where deemed appropriate by the MLS. MLSs may require participants who will use such data feeds to pay the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity for this purpose. Information deemed confidential may not be used as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations.

\*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 MLS 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 MLS Information**

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

Use of information from MLS compilation of current listing information, from the association's statistical report, or from any sold or comparable report of the association or VMLS for public mass-media advertising by an MLS 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 the VMLS 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 VMLS for the period <i>(date)</i> through <i>(date)</i> .
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## **Changes in Rules and Regulations**

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

Amendments to the rules and regulations of the VMLS shall be by consideration and approval of the

Board of Directors of the Service, subject to final approval by the Board of Directors of Vail Association of REALTORS® (shareholder).

**Section 15: ELIMINATED**

**Section 16: ELIMINATED**

**Orientation**

**Section 17: Orientation**

Any applicant for VMLS participation and any licensee (including licensed or certified appraisers) affiliated with the VMLS participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the VMLS rules and regulations and computer training related to VMLS information entry and retrieval and the operation of the VMLS within training related to the VMLS thirty days (30) days after access has been provided. The previous sentence applies to licensees subject to fee waiver under Section 6.1 only if their waiver status is revoked.

Participants and subscribers may be required, at the discretion of the MLS, to complete additional training of not more than four (4) classroom hours in any twelve (12) month period when deemed necessary by the MLS to familiarize participants and subscribers with system changes or enhancement and/or changes to MLS rules or policies. Participants and subscribers must be given the opportunity to complete any mandated orientation and additional training remotely.

**Internet Data Exchange (IDX)**

**Section 18: IDX Defined**

IDX affords MLS participants the ability to authorize limited electronic display and delivery of their listings by other

Participants via the following authorized mediums under the participants control: websites, mobile apps, and audio devices. As used throughout these rules, “display” includes “delivery” of such listings.

**Section 18.1: Authorization**

Participants’ consent for display of their listings by other participants pursuant to these rules and regulations is presumed unless a participant affirmatively notifies the VMLS that the participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a participant refuses on a blanket basis to permit the display of that participant’s listings, that participant may not download, frame, or display the aggregated MLS data of other participants.

\*Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis where the Seller has prohibited all internet display or other electronic forms of display or distribution.

**Section 18.2: Participation**

Participation in IDX is available to all VMLS participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other participants.

**Section 18.2.1:**

Participants must notify the VMLS of their intention to display IDX information and must give the VMLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies within 3 business days of notice.

**Section 18.2.2:**

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

**Section 18.2.3:**

MLSs are not required to transmit participants' listings to third-party aggregators or to operate a public website displaying listing information. If an MLS transmits listings to third party aggregators and /or operates a public website displaying listing information, all exclusive listings, regardless of type, will be included in the data feed (unless a participant withholds consent for such transmission). The VMLS will exclude from such data feed any listing where both of the following conditions are present: (a) the listed property's street address or a graphic display of the property's specific location will be displayed to the public; and (b) the seller displays on the property a "For Sale By Owner" sign or another sign or notice indicating that the seller is soliciting direct contact from buyers.

**Section 18.2.4:**

Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing's property address from all display on the Internet (including, but limited to, publicly-accessible websites or VOWs) or other electronic forms of display or distribution.

**Section 18.2.5:**

Participants may select the listings they choose to display through IDX 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 or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed through IDX must be independently made by each participant.

**Section 18.2.6:**

Participants must refresh all VMLS downloads and IDX displays automatically fed by those downloads not less frequently than every twelve (12) hours.

**Section 18.2.7:**

Except as provided in the IDX policy and these rules, an IDX site or a participant or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity.

**Section 18.2.8:**

Any IDX display controlled by a participant must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purpose of the IDX policy and these rules "control" means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules.

**Section 18.2.9:**

Any IDX display controlled by a participant or subscriber that

- a. allows third-parties to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

either or both of those features shall be disabled or discontinued for the seller's listings at the request of the seller. The listing broker or agent shall communicate to the VMLS that the seller has elected to have one or both of these features disabled or discontinued on all displays controlled by participants. Except for the foregoing and subject to Section 18.2.10, a participant's IDX display may communicate the participant's professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller.

#### **Section 18.2.10:**

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

#### **Section 18.2.11:**

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

#### **Section 18.2.12**

Participants shall not modify or manipulate information relating to other participants listings. MLS participants may augment their IDX display of MLS data with applicable property information from other sources to appear on the same webpage or display, clearly separated by the data supplied by the MLS. The source(s) of the information must be clearly identified in the immediate proximity to such data. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized fields.

#### **Section 18.2.13**

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

\*Display of minimal information (e.g., "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less) are exempt from this requirement but only when linked directly to a display that includes all required disclosures. For audio delivery of listing content, all required disclosures must be subsequently delivered electronically to the registered consumer performing the property search or linked to through the device application.

### **Section 18.3: Display**

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

#### **Section 18.3.1: ELIMINATED**

#### **Section 18.3.2:**

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

#### **Section 18.33: ELIMINATED**

#### **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. The previous sentence does not apply to licensees subject to fee waiver under Section 6.1.

#### **Section 18.3.6: ELIMINATED**

#### **Section 18.3.7:**

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 VMLS. The VMLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the VMLS from liability. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

#### **Section 18.3.8: ELIMINATED**

#### **Section 18.3.9:**

The right to display other participants' listings pursuant to IDX shall be limited to a participant's office(s) holding participatory rights and licensees holding subscribers' rights in this MLS.

#### **Section 18.3.10:**

Listings obtained through IDX feeds from REALTOR® Association MLSs where the MLS participant holds participatory rights must be displayed separately from listings obtained from other sources. Listings obtained (e.g. from other MLSs from non-participating brokers, etc.) must display the source from which each such listing was obtained. Displays of minimal information (e.g. "thumbnails", text messages, "tweets", etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

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

**Section 18.3.11:**

Display of expired, withdrawn and sold listings\* are prohibited.

\*Note: If “sold” information is publicly accessible, display of “sold” listings may not be prohibited.

**Section 18.3.12:**

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

**Section 18.3.13:**

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

**Section 18.3.14:**

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

**Section 18.3.15:**

IDX disclosure to be displayed at the bottom of search data output page is as follows:



Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

**Section 18.3.17: Broker Disclosure to be displayed:**

Centered at the bottom of each detailed search results display (Border is optional) shall appear: *This listing courtesy of: (insert Listing Company Name)*

**18.3.18: ELIMINATED**

**18.3.19: Copyright:**

The following copyright is to be displayed at the very bottom of each search results page in the same type and size as the body text:

“Copyright © 2018 Vail Multi List, Inc. (VMLS). The information displayed herein was derived from sources believed to be accurate, but has not been verified by VMLS. Buyers are cautioned to verify all information to their own satisfaction. This information is exclusively for viewers’ personal, non-commercial use. Any republication or reproduction of the information herein without the express permission of the VMLS is strictly prohibited.”

Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

#### **Section 18.4: VMLS Fees and Charges**

VMLS fees and charges for participation in IDX shall be as established by the Board of Directors of the Service, and are published herein in the VMLS rules and regulations, Exhibit A.

#### **Section 18.5:**

Any search result identifying another IDX participant’s listing in a brief or “thumbnail” format shall in the case of another participants listing bear the IDX –approved icon. Or in the case of the Brokers own MLS listing data, the broker’s corporate logo. A thumbnail display of another’s IDX listing may not include any contact information or branding of the IDX participant or any subscriber who owns the web site. A thumbnail display may only include the following: text VMLS data about the listing property, a photo of the property, the participant’s logo in the case of a participants listings or the IDX –approved icon, if displaying another IDX participant’s listing a navigation “button” providing a link to other more detailed information about the property. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

#### **Section 18.6:**

A search result producing a detailed display of another IDX participant’s listing data shall bear that participant’s name, the VMLS-approved icon, and VMLS copyright notice immediately following the property information. (As a footer at the bottom of each display or print formatted page) The listing participant’s name, VMLS-approved icon, and copyright notice shall be least as large as the largest type size used to display the listing data. A detailed display of another IDX participant’s listing may not include any contact information or branding of the participants who owns the web site or any of its agents within the “body” of the listing data. The “body” is defined as the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text photo data. Displays of minimal information (e.g. “thumbnails”, text messages, “tweets”, etc., of two hundred (200) characters or less are exempt from this requirement but only when linked directly to a display that includes all required disclosures.

### **Section 19: VOW’s**

#### **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 participants 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, except one subject to fee waiver under Section 6.1, 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 other than those subject to fee waiver under Section 6.1 – 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 participants to the VMLS and aggregated and distributed by the VMLS 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 VMLS(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 VMLS 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 VMLS 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 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 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 VMLS 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 VMLS rules, the participant shall, upon request of the VMLS, 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 VMLS, 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 VMLS's ownership of, and the validity of the VMLS's copyright in, the VMLS database.
- (d) 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.
- (e) The Terms of Use Agreement shall also expressly authorize the VMLS, and other VMLS participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with VMLS 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 email address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which 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 VMLS.

**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 VMLS 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

(a) 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 VMLS 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 VMLS 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<sup>®</sup> 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 provided 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<sup>®</sup>

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**Section 19.13:**

A participant who intends to operate a VOW to display MLS listing information must notify the VMLS of its intention to establish a VOW and must make the VOW readily accessible to the VMLS and to all VMLS participants for purposes of verifying compliance with these rules, the VOW Policy, and any other application MLS rules or policies.

**Section 19.14:**

A participant may operate more than one (1) 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:

- a. Expired or withdrawn listings.
- b. The compensation offered to other MLS participants.
- c. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- d. The seller's and occupant's name(s), phone number(s), or e-mail address(es).

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

**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 VMLS. 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:**

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 19.19: ELIMINATED**

**Section 19.20:**

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 19.21:**

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 19.22:**

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

## Exhibit A – 2018

### 1. VAIL BOARD OR REALTOR FEES

Description	Fee
(a) NEW COMPANY FEE TO JOIN VBR	\$600 one time
(b) NEW MEMBER APPLICATION FEE TO JOIN VBR	\$1,000 one time
(c) NEW BRANCH OFFICE FEE	\$350 per occurrence
(d) MEMBER VBR REACTIVATION FEE (0-12 months of inactivation)	\$500/fee may be waived once in a 36 month period
(e) MEMBER VBR REACTIVATION FEE (>12 months or more of inactivation) <i>Please note: Member must complete full VBR application &amp;</i>	\$1,000
(f) COMPANY VBR REACTIVATION FEE (0-12 months of inactivation)	\$200/fee may be waived once in a 36 month period
(g) COMPANY VBR REACTIVATION FEE (>12 months of inactivation)	\$500
(h) LICENSED ASSISTANT FEE	\$494/yr-not prorated

### 2. VAIL MULTIPLE LISTING SERVICE FEES

Description	Fee
(a) NEW COMPANY FEE TO JOIN VMLS (New company, never held membership VMLS)	\$600 one time
(b) NEW VMLS BRANCH OFFICE FEE/REACTIVATION FEE	\$350/occurrence
(c) NEW SERVICE MEMBER MLS SETUP FEE	\$1,000 one time
(d) COMPANY REACTIVATION FEE (0-12 months of inactivation) (Company must have same Employing Broker to be considered for reactivation, may have different name)	\$200/fee may be waived in a 36 month period
(e) COMPANY REACTIVATION FEE(>12 months of inactivation)	\$500
(f) MEMBER MLS REACTIVATION FEE (0-6 months of inactivation)  <i>Requires reactivation of VBR Membership</i>	\$500 fee may be waived once in a 36 month period
(g) MEMBER MLS REACTIVATION FEE (>6 months or more inactivation) <i>Please note: Member must complete full VBR &amp; MLS applications and fees</i>	\$1,000
(h) VMLS DATABASE FEE FOR EACH REALTOR SUBSCRIBER	\$48/month
(i) NON-VBR MEMBER APPLICATION FEE TO JOIN VMLS	\$2,000
(j) NEW NON-VBR MEMBER COMPANY FEE	\$2,000
(k) NEW NON-VBR MEMBER COMPANY BRANCH	\$2,000
(l) NON-MEMBER VMLS DATABASE SUBSCRIBER FEE	\$125/month
(m) LATE FEE (ASSESSED AFTER 30 DAYS POST BILLING)	10% /month
(n) REINSTATEMENT FEE	\$100
(o) SENTRILOCKELECTRONIC LOCKBOX	\$99
(p) SENTRISMART APP/SENTRICARD	\$16/month billed to broker
(q) LICENSED OR UNLICENSED ASSISTANT SENTRISMART APP/SENTRICARD(must have proper E & O/liability insurance & comply with all other key card usage rules)	\$16/month
(r) RETS FEE PER VENDOR/VMLS CLIENT	\$80/year

## 2. VAIL MULTIPLE LISTING SERVICE FEES CONT.

Description	Fee
(s) RETS FEE APPLICATION PER MEMBER	\$50/occurrence
(t) RETS FEE NON-VMLS MEMBER	\$2,500/year

## 3. VAIL MULTIPLE LISTING SERVICE FINES\*

Description	Fee
(a) FIRST OFFENSE OF MLS VIOLATION PER SECTION 1.3 OF THE VMLS RULES AND REGULATIONS	Warning to fix w/in two (2) business days
(b) FIRST OFFENSE OF SECTION 2.5, OR SECOND OFFENSE OF FAILURE TO COMPLY WITHIN TWO (2) BUSINESS DAYS OF FIRST WARNING OF MLS VIOLATION PER SECTION 1.3 OF THE VMLS	\$50/occurrence of a violation
(c) THIRD OFFENSE OF MLS VIOLATION PER SECTION 1.3 OF THE VMLS RULES AND REGULATIONS	\$100/occurrence of a violation
(d) FIRST OFFENSE OF ALLOWING ANY OTHER PERSON THE USE OF ACCESS METHOD TO ELECTRONIC LOCKBOXES	\$1,000 one time
(e) SECOND OFFENSE OF ALLOWING ANY OTHER PERSON ACCESS TO ELECTRONIC LOCK BOXES	\$5,000 one time
(f) FIRST OFFENSE OF AFFILIATE OR UNLICENSED ASSISTANT SENTRICARD USE RULES (EXHIBIT B OF VMLS RULES & REGULATIONS)	\$500
(g) SECOND OFFENSE OF AFFILIATE OR UNLICENSED ASSISTANT SENTRICARD USE RULES (EXHIBIT B OF VMLS RULES)	\$1,000 and possible Membership Termination
(h) THIRD OFFENSE OF AFFILIATE OR UNLICENSED ASSISTANT SENTRICARD USE RULES (EXHIBIT B OF VMLS RULES & REGULATIONS)	VMLS MEMBERSHIP TERMINATION
(i) ENTERING ANY PROPERTY INTO THE VMLS WITHOUT A VALID LISTING CONTRACT	\$1,000/occurrence*
(j) FIRST OFFENSE ALLOWING ANY OTHER PERSON USE OF VMLS USERNAMES OR LOGINS	In Company-Warning Out of Company-\$2,000 fine & possible VMLS termination
(k) SECOND OFFENSE ALLOWING ANY OTHER PERSONS USE OF VMLS USERNAMES OR LOGINS	In Company-\$2,000 fine & possible VMLS termination Out of Company-VMLS termination
(l) THIRD OFFENSE ALLOWING ANY OTHER PERSONS USE OF VMLS USERNAMES OR LOGINS	In Company-VMLS termination
(m) FIRST OFFENSE OF IDX RULES IN SECTION 18 of VMLS RULES & REGULATIONS	\$250/occurrence*

### 3. VAIL MULTIPLE LISTING SERVICE FEES CONT.

Description	Fee
(n) SECOND OFFENSE OF IDX RULES IN SECTION 18 of VMLS RULES & REGULATIONS	\$500/occurrence*
(o) THIRD OFFENSE OF IDX RULES IN SECTION 18 of VMLS RULES & REGULATIONS	\$1,000/occurrence*
(p) BOARD PHOTO FINE	\$50/MLS number \$1,000 cap/listing
(q) UPLOADING UNAUTHORIZED COPYRIGHTED PHOTO	\$500/photo
(r) VIOLATION OF SECTION 6.1 SUBSCRIBER FEE WAIVERS	\$2,000

### 4. AFFILIATE FEES

Description	Fee
(a) AFFILIATE MEMBERSHIP (PER BRANCH)	\$200/annually
(b) AFFILIATE THIRD AUTHORIZED USER <i>Does not provide MLS access</i>	\$50/annually
(c) AFFILIATE ACTIVE KEY CARD (must present liability insurance and comply with all other SentiLock usage rules)	\$16/month

### 5. BROADCAST EMAIL SERVICE SUSPENSIONS/FINES\*\*

Description	Fee
(a) 1 <sup>ST</sup> NOTIFICATION OF IMPROPER USE OF BROADCAST EMAIL SYSTEM (Proper usage outlined in Exhibit C)	Warning
(b) 2ND NOTIFICATION W/IN 6 MONTHS OF 1 <sup>ST</sup> WARNING OF IMPROPER USE OF BROADCAST EMAIL SYSTEM	2 week suspension from Broadcast Email System
(c) 3 <sup>rd</sup> NOTIFICATION W/IN 6 MONTHS OF 1 <sup>ST</sup> WARNING OF IMPROPER USE OF BROADCAST EMAIL SYSTEM	1 month suspension from Broadcast Email System
(d) FIRST AND ONLY WARNING NOTIFICATION - ADVERTISING A PROPERTY WITHOUT SIGNED LISTING AGREEMENT (if Seller agrees to withhold from MLS, listing agreement must be sent to VBR <b>prior</b> to advertising on email system) If said broker advertises a property after courtesy warning and the property is not in the VMLS & VBR is not notified <b>prior</b> to advertise in broadcast email, fine will apply. Fine will also apply if there is no valid listing agreement.	Courtesy warning-only 1 warning allowed per broker – after warning fine will apply. Warning is not specific to one property.
(e) ADVERTISING POCKET LISTING OR FOR SALE BY OWNER	\$1,000/occurrence

\* PARTICIPANT SHALL HAVE TWO (2) BUSINESS DAYS FROM NOTIFICATION TO CORRECT INACCURATE INFORMATION IN MLS OR IDX DISPLAY.

\*\*PER OCCURANCE SHALL BE PER DAY, PER VIOLATION FOR INACCURATE DATA IN MLS and PHOTO VIOLATIONS.

\*\* FINES ASSESSED PER OCCURANCE WILL BE ASSESSED PER EMAIL SENT

## Exhibit B

### VAIL MULTI-LIST SERVICE, INC.

#### Rules and Regulations for the Electronic Lock Box System

The use of a lock box is not mandatory on property listed with the Vail Multi-List Service, Inc. However, the Vail Multi-List Service, Inc. provides an Electronic Lock Box System (the "System") that may be used by Lock Box subscribers subject to their execution of a lease agreement with the Board. The Board has established the following rules and regulations for the System.

1. **Definitions** (unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Rules and Regulations of the Vail Multi-List Service, Inc.):
  - (a) "Lock Box subscriber" is defined as a participant or subscriber in good standing of the Vail Multi-List Service, Inc., Affiliate Members of the Vail Board of REALTORS® (as defined in the Bylaws of the Vail Board of REALTORS® and the Affiliate Member's application) specifically approved by the Board, or unlicensed real estate assistants of participants or subscribers specifically approved by the Board; and
  - (b) "Lock Box" is an electronic lock box.
  - (c) "SentriCard" is a card used to open a Lock Box.
2. **Eligibility:** Lock Box subscribers are eligible to participate in the System if they meet the following criteria:
  - (a) Are a participant or subscriber in the VMLS, Affiliate Members of the Vail Board of REALTORS® (as defined in the Bylaws of the Vail Board of REALTORS® and the Affiliate Member's application) specifically approved by the Board, or unlicensed real estate assistants of participants or subscribers specifically approved by the Board; and
  - (b) Pay all fees and charges associated with the System.

**Anyone not indicated in the definition of Lockbox subscriber is prohibited from using the System.**

3. **Lock Boxes:**
  - (a) Lock Box subscribers may lease lock boxes from the Board or from other lock box subscribers. Lock boxes must be registered on the System. Lock box subscribers may transfer lock boxes from lock box subscriber to lock box subscriber provided prior written notice of the transfer is provided to the Board. A lockbox subscriber who completes a transfer of a lock box is required to immediately notify the Board of the serial number of the lock box and the name of the transferee subscriber. Failure to report the transfer of a lock box may result in a fine and/or removal from the System for both parties involved in the transfer. Lock box subscribers participating in the System are not required to place lock boxes on listed property. However, lock box Subscribers are encouraged to use lock boxes on all listed property to provide for documented access to the property. Lock box subscribers shall obtain the owner's written permission prior to placing a lock box on a listed property.
  - (b) Lock box subscribers shall retain possession for safekeeping all lock boxes not placed upon listed property.

- (c) Except as otherwise set forth herein, a lock box subscriber shall not loan, borrow or transfer lock boxes.
  - (d) Lock boxes purchased from another entity outside the VMLS are not accepted. (i.e. eBay, another association, etc.)
  - (e) Shackle codes will not be given out over the phone. If you lose the shackle code to your lock box, the shackle code will be emailed to the owner of the lock box at the email address the association has on file.
  - (f) Affiliate Members and unlicensed real estate assistants may not purchase lock boxes.
  - (g). Lock box subscribers shall not give or disclose their PIN to anyone.
  - (h) Lock box subscribers shall immediately notify the Board, by telephone and in writing, should their SentiCard ever be lost or stolen, indicating the circumstances surrounding the loss.
  - (i) Lock box subscribers shall immediately surrender to Board any lock boxes that come into their possession that are not the property of the lock box subscriber, indicating the circumstances surrounding the acquisition.
  - (j) Lost or stolen SentiCards shall be immediately deactivated in the System.
  - (k) Affiliate Members and unlicensed real estate assistants working for a participant or subscriber, may have access to the SentiSmart application.
  - (l) Affiliates of the Vail Board of REALTORS® who wish to apply for the SentiSmart application must obtain Membership status with the Vail Board of REALTORS® and demonstrate a necessity for SentiSmart application.
  - (m) Affiliate Members with the SentiSmart application may enter listings only through scheduling of appointments with the listing broker. If an Affiliate Member enters a property without first obtaining approval, the Affiliate Member is subject to a fine and revocation of SentiLock.
  - (n) Unlicensed real estate assistants may obtain a SentiCard for the sole purpose of opening the lock boxes of the REALTOR® participant or subscriber for whom they work. Access to lock boxes other than the REALTOR® participant or subscriber's for whom such unlicensed real estate assistant works is strictly prohibited and subject to fines and revocation of SentiCard.
  - (o) The fees for an unlicensed real estate assistant's SentiCard will be billed to the employing REALTOR® participant or subscriber.
  - (p) Prior to obtaining the SentiCard/SentiSmart application, Affiliate Members & unlicensed real estate assistants must provide proof of liability insurance to the VMLS in form and substance satisfactory to VMLS.
5. **Code Changes**: Changes requested by a lock box subscriber for programming of their Lock Box may be made by the staff of the Board or the registered owner. Board staff members are authorized to do the following:

- (a) Reprogram the Lock Box subscriber's PIN (Personal Identification Number) provided that the number requested is unique.
  - (b) Reprogram the Lock Box shackle code.
  - (c) Reprogram the lock box subscriber's Lock Box for hours other than the predetermined timed access currently in the Lock Box.
6. **Access:** There are currently four categories of access.
- (a) **Call Before Showing** ("CBS"). The listing broker has not authorized access through the System without prior notification of the showing. Lock Box subscribers must call the listing office to obtain authorization.
  - (b) **Standard Hour Access.** The listing broker has place a Lock Box on the property and left the hours of access at the standard setting.
  - (c) **24 Hour Access.** The listing broker has placed a Lock Box on the property and selected the 24-hour access option so Lock Box subscribers may access the property 24 hours of the day.
  - (d) **Non-Standard Hours of Access.** The listing broker has placed a Lock Box on the property and within the specified hours of access.
7. **Audit and Inspection.** Board reserves the right to audit the Lock Box subscriber's use of the System at any time upon advance notice. If the Board believes that the System is in danger of a security breach, the Board may audit a Lock Box subscriber's use of the System without notice. Lock Box subscribers shall be prepared to document or evidence the location of each Lock Box or SentiCard indicated as being in their possession. Failure or refusal to evidence that such Lock Box or SentiCard is in the control of the Lock Box subscriber, whether located on a property or in the Lock Box subscriber's physical possession, shall be conclusive proof that it is lost. The Board reserves the right to deactivate any SentiCard it reasonably believes to be outside the possession and control of the designated Lock Box subscriber.
8. **Responsibilities and Warranties:**
- (a) Lock Box subscribers shall attend instructional meetings as scheduled by the Board on the operation and use of Lock Boxes, SentiSmart application and the System.
  - (b) Lock Box subscribers shall be responsible for the update of all SentiCards and Lock Boxes in their possession.
  - (c) Subscribers, by acceptance of Lock Boxes and SentiCards have agreed to abide by these Rules and Regulations.
  - (d) **Each Lock Box subscriber agrees to indemnify, and hold harmless, the Board against any and all actions, suit, costs, expenses and liabilities, including reasonable attorney's fees incurred by the Board, without limitation, that result from the subscriber's participation in, use or misuse of any Lock Box, SentiCard, SentiSmart application, or the System. This obligation shall be personal to each of the Lock Box subscriber. The Board does not offer any warranty, either express or implied and excludes the warranties of merchantability and of fitness for a particular purpose, regarding the design, use or operation of the System, any Lock Box or any SentiCard. The warranty provided by the manufacturer is the sole warranty available to the Lock Box subscriber. The Board shall not be liable to any Lock Box subscriber for any malfunction of the System or otherwise as a result of the Lock Box subscriber's use or misuse of the System.**

9. **Enforcement and Termination:** These rule and regulations regarding the System shall be enforced in accordance with the provisions of Exhibit A of the Rules and Regulations.
- (a) Lock Box subscribers shall comply with the National Association of REALTORS® requirements for use of a Lockbox system. Such requirements shall be considered as a minimum standard. THE MLS may establish requirements that are more restrictive than those of the National Association of REALTORS®.
  - (b) Lock Box subscribers, by executing the License Agreement(s), affirm that they have received a copy of these Rules and Regulations and shall be bound by the same and as they may be changed from time to time by THE MLS. Lock Box subscribers agree to indemnify THE MLS against, and hold THE MLS harmless from, any and all actions, suits, costs, expenses and liabilities, including reasonable actual attorney's fees incurred by THE MLS, without limitation, whether accrued or threatened, that result from Lock Box subscriber's participation in, use or misuse of: any Lock Box, SentiCard, SentiSmart application, or the System, including any and all expenses incurred by THE MLS in attempting to enforce any and all fees and expenses including but not limited to attorney's fees or incurred in the recovery of any Lock Box or SentiCard which are related to the Lock Box subscriber's use of the System and for re-securing the System. This obligation shall be personal to the Lock Box subscriber who executed the License Agreement(s) with THE MLS.
  - (c) The MLS does not offer any warranty regarding the design, use or operation of the System, any Lock Box or SentiCard, SentiSmart application. The warranty provided by the manufacturer is the sole warranty. The MLS shall not be liable to any Lock Box subscribers for any malfunction of the System or otherwise as a result of the participant's use or any Lock Box subscriber's use or misuse of the System. The MLS shall not be liable in any event to any Lock Box subscribers relating to the System, a Lock Box, a SentiCard, SentiSmart application or the action or inaction of another Lock Box subscriber.
  - (d) Upon receipt of a complaint against a Lock Box subscriber alleging violation of these Rules or Regulations that complaint shall be processed by the MLS in the same manner as complaints relating to violations of the VMLS Rules and Regulations pursuant to procedures promulgated by the National Association of REALTORS® as properly modified and adopted by the VMLS. Lock Box subscriber acknowledges that if, after a hearing before the appropriate hearing panel of the MLS, they are determined to have violated these Rules and Regulations, and/or the License Agreement(s), she/he may be subject to the provisions described in Exhibit A
  - (e) Lock Box subscriber's privileges may be terminated for non-payment of fees in the same manner as specified in the VMLS Rules and Regulations.

**EXHIBIT C**  
**VAIL MULTI-LIST SERVICE, INC.**  
**Rules and Regulations for the Broadcast Email System**

The Vail Board of REALTORS® broadcast email service is a member benefit to all active REALTOR® and affiliate members. Through the service, members may send emails to fellow members to any one or more of the following groups:

**For.Sale** - This list sends emails concerning non-real estate items for sale to all subscribed members. To post to the list, send email to [for.sale@vbrbes.org](mailto:for.sale@vbrbes.org)

\*Please include “need” or “available” and the item in the **subject line**.

**General.News** - This list sends emails concerning general news to subscribed members. Notices in this list include anything that does not fit into the other lists. To post to the list, send email to [general.news@vbrbes.org](mailto:general.news@vbrbes.org)

Only affiliate members are allowed to promote their business. Members may not proactively advertise the services of a non-member individual or business.

Members of the broadcast email service are free to solicit inquiries for related services such as plumbers, home repair services, etc. as long as the inquiry is stated as an open-ended question. For instance, members may inquire, “Does anyone know of a reliable plumber”?

Sponsored Events – Only brokerages/affiliates are allowed to send out announcements for events that they are sponsoring. Brokerage/affiliate business name and/or logo needs to be on the flyer for the sponsored event.

“Help Wanted/Job Openings” shall only be sent out through general.news. The help wanted/job openings have to be real estate related.

**Open.House** – This list sends emails regarding open houses to all subscribed members. To post to the list, send email to [open.house@vbrbes.org](mailto:open.house@vbrbes.org)

**TOPIC**

- \***Broker Tour** – Organized broker tour with 2 or more listings
- \***Public** – One or more open houses from one member
- \***Save The Date** – To communicate an upcoming Broker Tour/Open House

**Subject line is as follows:**

Topic – Area - Building/Subdivision (where applicable)

**Sample:**

Public - Eagle Ranch - Aiden’s Meadow  
Broker Tour – Vail Village

It is not necessary to include “Open House” in the subject line.

A Broker Tour and/or Open House should be announced via one email from the Broker/Team and may be followed up with one reminder email prior to the Open House.

Winners of Broker Tours/Open Houses announced here.

Subject line should read: Broker Tour – Winners Announced

**New.Build**- This list sends mail concerning New Construction Projects, New Developments and Remodels. Multiple Lots in the same area should be sent through this list . Do not send a separate email for each lot/unit for sale.

To post to this List, send email to [new.build@vbrbes.org](mailto:new.build@vbrbes.org)

**TOPIC:**

**New Construction**- -Emails can be sent once a month. Once the residence is completed, the residence is no longer considered “new construction” and the once a month emails are no longer allowed.

**New Development**- new developments being built in The Vail Valley. Emails can be sent per development 2x a month – first half and second half of the month. This category will include project updates for developments. No individual emails for each property in the development

**Real.Estate** - This list sends mail concerning real estate information to subscribed members. To post to the list, send e-mail to [real.estate@vbrbes.org](mailto:real.estate@vbrbes.org).

OPTIONAL: Property type after the topic. Property type includes: Residential, Land, Parking, Commercial For Sale, Commercial For Lease, Partial Ownership

**TOPIC**

\***New Listing** – Emails can be sent if active within the last 2 weeks.

\***Price Change** – Emails can be sent if the price changed within the last 2 weeks.

\***Need** – Searching for a specific property. Can be sent 1x week

\***Incentive** – Client incentives, credits, bonuses to purchase or to broker. Emails can only be sent 1 time per week.

\***Vacant** – A property that is often rented or owner occupied and will be available to show. Emails can only be sent 1 time per week.

\***Back On The Market** – The property was under contract, withdrawn or cancelled within the last 2 weeks. Email can only be sent 1 time per week for only 2 weeks.

\***Not In The MLS** - Within the last 2 weeks. Email can only be sent 1 time per week. The property must have an active listing agreement. See Vail MLS Rules and Regulations Section 9.3: Enforcement.

\***New Media/Photos**-Emails can be sent if there is new media (virtual tour/aerial videos) and/or new photos uploaded in the MLS. Any new media changes must be substantial in nature New photos include seasonal photo change out. Emails can be sent 1 time per week for 2 weeks, of the new media/photos being uploaded to the Vail MLS.

**Subject line is as follows:**

Topic – Area - Building/Subdivision (where applicable)

**Samples:**

New Listing - Vail Village - Solaris

Incentive - Gypsum: Cotton Ranch

Price Change – Commercial – Avon – Avon Center

Incentive – Partial – BC- St. James (optional property type sample)

1) Postings to the Real Estate category are to be used only for property for which the posting broker has a valid signed listing agreement. A listing must be entered into the VMLS prior to using the broadcast email system to advertise that listing. There will be a one-time courtesy warning per real

estate broker, if an email is sent out again of a similar nature, even for a different property, a fine of \$1,000.00 will be assessed per occurrence after the courtesy warning if no active listing agreement is presented to the VBR. For listings where the seller has requested the property not to be in the MLS, the listing subscriber must notify the Vail Multi-List Service (VMLS) of such listing by email to [vbrae@vbr.net](mailto:vbrae@vbr.net) or via fax notification before using the VBR Broadcast email service. The name of the property, address and area name of listing is required in the notification.

2) Deviations from this policy, “For Sale by Owner” and “Pocket Listings” are expressly prohibited. If the real estate broker has already been notified with a courtesy warning regarding advertising a property without a valid listing agreement the \$1,000.00 fine will be assessed without warning, if advertised through the broadcast email service.

**Rental.Information** - This list sends mail concerning rental information to subscribed members. To post to the list, send e-mail to [rental.information@vbrbes.org](mailto:rental.information@vbrbes.org)

Area may include “Up-Valley” or “Down Valley” if the member is searching more broadly.

#### **TOPIC**

\***Long Term Need** – Searching for longer term rentals, generally for months or more.  
Typical for a year lease.

\***Short Term Need** – Searching for rentals less than 30 days.

\***Long Term Available** – Offering longer term rentals, generally for months or more.  
Typical for a year lease.

\***Short Term Available** – Rentals less than 30 days.

#### **Subject line is as follows:**

Topic – Area - Building/Subdivision (where applicable)

#### **Sample:**

Short Term Need - Lionshead

Long Term Available – Avon

**Open.Forum** – This list sends mail concerning discussion items such as political opinions, community discussions, etc. To post to the list, send email to [open.forum@vbrbes.org](mailto:open.forum@vbrbes.org).

### **General BES Rules And Regulations**

1) Email messages posted to the VBR broadcast email system shall always be posted to the proper Group/List. If you are unsure as to which Group/List to email to, please contact the MLS Director Assistance. **The posting of an improperly categorized message shall be considered a violation of VBR and MLS policy and shall result in the following:**

a) **1<sup>st</sup>** offense: The member will receive notice via reply email from the Vail Board of REALTORS<sup>®</sup> staff.

b) **2<sup>nd</sup>** offense within 6 months of 1<sup>st</sup> warning: 2 weeks suspension from the Broad Cast Email System

c) **3<sup>rd</sup>** offense within 6 months of 1<sup>st</sup> warning: 1-month suspension from Broadcast Email System

2) All active REALTOR<sup>®</sup> and affiliate members may subscribe to any of the six distribution groups. In addition, administrative assistants or office staff **working on behalf of an active** member may also subscribe to the service and send broadcast emails, provided that it is readily apparent that the email has been sent on behalf of the active member.

3) All broadcast email should be limited to a total file size of less than 750k including photos and attachments. If you're unsure of the size of your email, click the "Save" button on the toolbar of your mail client and look in the "Drafts" folder. It will indicate the total file size. Total file size can be reduced by including low resolution photos and minimizing attachments. Be aware that the broadcast email service hosts more than 100 Internet Service Providers; many of whom will treat any email with attachments as junk mail.

4) If you will not be able to access your email account for more than three days, unsubscribe from all broadcast distribution groups. Member mail accounts that reject new mail due to a full inbox will be unsubscribed from all accounts by the service administrator. Upon return, you will need to re-subscribe to the desired groups.

5) "Reply All" is prohibited for all broadcast email groups.

6) "Fw" is prohibited in all subject lines.

**Broadcast Email Suspensions/Fines are also outlined in the Vail MLS Rules and Regulations; Exhibit A.**

# EXHIBIT D

## VMLS Rules and Regulations Standards for Data Entry

Each participant shall be responsible for compliance with the Rules and Regulations and the Standards of Data Entry as outlined herein. These standards are adopted to help define that the Vail MLS has accurate data. The listing broker is responsible for the completeness and accuracy of all data entered or submitted into the Vail MLS. Violation of these Standards is a violation of the Rules and Regulations and shall subject the participant to enforcement action as provided for in Section 9.1 Violations of Rules and Regulations (§9.1). The MLS may revise these Standards from time to time and it shall be the responsibility of each participant to abide by, and keep informed of such Standards. Many features of the MLS data structure build upon data previously entered by another MLS participant. The cooperation of all participants is necessary to preserve the data integrity of the Vail MLS.

### **Proper Use of the Remarks field in MLS Listings:**

Remarks are intended to be read by the public as well as providing general information for MLS users. They are printed in client formatted reports and emails. Remarks are also included in the Realtor.com and RDX web site data feeds. As a result, certain types of information within the Remarks field are prohibited.

#### **Inappropriate entries include:**

- Phone numbers
- Contact information
- Email addresses
- References to branded websites; url may not include brokerage and agent name, and no contact information may appear in the unbranded website
- References to the listing broker
- Showing instructions (e.g. "The key is under the front door mat.")
- Marketing Comments intended for Realtors. (e.g. "Seller is desperate and will take any reasonable offer.")
- Any other personally identifiable information. Owners name, etc
- No self-promotion in uploaded photos, example: For Sale/Open House signs

### **Tax Information**

- Current Year Tax information
- Input accurate Transfer fee/Tax/Assessment

### **Status Changes**

- Status changes will occur no more than two (2) business days

### **Additional Data Entry**

- Each "Sold" entry shall reflect the correct selling Broker Office and Agent
- Accurate square footage disclosure; the source of the information is required at the time of listing.
- Bedroom – requirements to be a bedroom: egress to the exterior of the property.
- Den/Loft included in the bedroom count: the den/loft must have egress to the exterior of the property to be included in the bedroom count
- Input current HOA dues, correct billing cycle, (ie., monthly, quarterly, yearly)
- Input accurate HOA dues inclusions
- Ski-in: ability to ski-in directly to their property line which is adjacent to the ski area
- Ski-out: ability to ski-out from their property line which is adjacent to the ski area
- Sold price entered must be the same sold price as recorded with the Eagle County Clerk and Recorder

### **Photography**

- Photographs are to represent the property, i.e., views are to be taken from the listed property, photographs shall not be copyright infringed.

- MLS participants shall present a true picture in their advertising and representations to the public, including Internet content posted, and the URL's and domain names they use, and participants may not:
  - a. Engage in deceptive or unauthorized framing of real estate brokerage websites;
  - b. Manipulate (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
  - c. Deceptively use metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic;
  - d. Present content developed by others without either attribution or without permission; or otherwise mislead consumers