

CT-2011-003

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**IN THE MATTER OF** an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*, and

**AND IN THE MATTER OF** certain rules, policies and agreements relating to the residential multiple listing service of the Toronto Real Estate Board.

**BETWEEN:**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE  <b>RECEIVED / REÇU</b> CT-2011-003 June 2, 2015 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 315

**THE COMMISSIONER OF COMPETITION**

**Applicant**

- AND -

**THE TORONTO REAL ESTATE BOARD**

**Respondent**

- AND -

**THE CANADIAN REAL ESTATE ASSOCIATION AND REALTYSELLERS  
REAL ESTATE INC.**

**Intervenors**

**UPDATED WITNESS STATEMENT OF GARY SIMONSEN**  
**~~August 3, 2012~~ June 1, 2015**

1. I am the Chief Executive Officer of The Canadian Real Estate Association ("CREA") and have held that position since July 3, 2011. Prior to becoming CEO, I was the Chief Operating Officer of CREA for approximately three

years, and prior to becoming COO in 2008, served CREA for approximately a decade as its Associate Executive Officer.

2. This witness statement updates, where necessary, my original witness statement dated August 3, 2012, as well as the testimony I gave at the initial hearing of this matter on October 9 and 10, 2012.

**A. CREA**

3. CREA was incorporated in 1954 under Part II of the *Canada Corporations Act* and is one of Canada's largest single-industry trade associations. CREA was continued under the Canada Not-for-profit Corporations Act on December 11, 2013.

4. ~~CREA represents~~At the time of the initial hearing, CREA represented over 105,000 real estate brokers and agents working through approximately 100 real estate boards and associations, including provincial and territorial associations. As of Q1, 2015, CREA's membership has grown to over 110,000 members. CREA now represents approximately 90 real estate boards and associations due to recent consolidations. Membership in CREA is open to real estate boards and associations, as well as their members in good standing, and is conditional on agreeing to be bound by, amongst other things, the REALTOR® Code (CREA's Code of Ethics), CREA's By-Laws, Rules ~~and Regulations~~, Privacy Code and Principles of Competition, as well as applicable federal and provincial laws. While CREA's governance and compliance documents formerly included "Regulations", their use has been discontinued.

5. Attached as Exhibit 1 (CREA S001453) [to my initial witness statement](#) is a copy of CREA's By-Laws, Rules and Regulations, as at March 2012. [A copy of CREA's current By-Laws and Rules, last updated in October 2013, is attached to this witness statement as Exhibit A.](#) Attached as Exhibit 2 (CREA S001509) [to my initial witness statement](#) is a copy of CREA's Code of Ethics, as at December 2011. [An updated version of this Code of Ethics, effective March 2015, is attached as Exhibit B to this witness statement.](#)

6. Each province/territory regulates and licences the brokers and agents within its jurisdiction. The regulatory regimes differ across Canada. Accordingly, there are differences across Canada in terms of the standards and requirements imposed on brokers and agents, which also impact boards and associations.

7. As the national voice for the Canadian real estate industry, CREA's key objectives include national representation of the industry on issues at the federal government level, assisting members in understanding the *Competition Act* and its effect on their business, formulating professional standards, acting as an interactive forum, and researching and disseminating information on issues affecting the real estate industry, including technological issues.

8. CREA has also taken a leadership role in ensuring that competition issues are properly addressed within the Canadian real estate industry. In 1999, CREA created the Principles of Competition, adherence to which is a condition of

membership. CREA also coordinates a national competition awareness campaign and provides an online competition compliance program for REALTORS®.

**B. CREA's MLS® and REALTOR® Trademarks and Board MLS® Systems**

9. CREA owns the Multiple Listing Service® trademark, the MLS® trademark, and the associated logos (the "MLS® Trademarks"). The MLS® Trademarks identify professional services provided by CREA members to effect the purchase and sale of real estate as part of a cooperative selling system.

10. The trademarks REALTOR® and REALTORS® and the associated logos (the "REALTOR® Trademarks") are owned by REALTOR® Canada Inc., a company owned by CREA and the National Association of REALTORS® ("NAR"), the national real estate industry association in the United States. In Canada, the REALTOR® Trademarks certify to the public that the real estate brokerage services are offered by professional and licensed real estate agents who are members of CREA and subject to CREA's rules, regulations and policies and, as a result, subscribe to a high standard of professional service and a strict code of ethics.

11. The MLS® Trademarks and REALTOR® Trademarks (together, "CREA's Trademarks") are certification marks. They are an assurance of integrity and identify a certain standard of brokerage services and professionalism. They can only be used in Canada by members in good standing of CREA.

12. An MLS® System is a cooperative selling system operated by a local board or association in association with the MLS® Trademarks (under license from CREA). An MLS® System provides an ongoing inventory of available

properties listed for sale by REALTORS®. This inventory is accessed by REALTORS® by virtue of their membership in the local board/association. Some boards also have inter-board agreements with other boards to allow access to MLS® listings.

13. An MLS® System ensures a certain level of accuracy of information, professionalism and cooperation among REALTORS® to effect the purchase and sale of real estate. The credibility of an MLS® System comes not from the number of listings in it but from adherence to the standards associated with the MLS® and REALTOR® Trademarks, which standards are closely related to its operation. REALTORS® who access an MLS® System do so to provide a high standard of service and professionalism consistent with the standards associated with the MLS® and REALTOR® Trademarks.

14. Attached as Exhibit 3 (CREA S000660) [to my initial witness statement](#) is a copy of the Certification Mark License Agreement between CREA and The Toronto Real Estate Board ("TREB"), pursuant to which CREA licenses the use of the MLS® Trademarks to TREB for use in association with the operation of TREB's MLS® System.

15. In order for a board or association's MLS® System to ~~operative~~[operate](#) effectively and to maintain the distinctiveness of the MLS® Trademarks, REALTORS® must adhere to certain standards which promote confidence in, and the reliability of, the System. These standards ensure that the quality of the information is high and available on a timely basis. CREA's rules

require members to be responsible to ensure the accuracy of information in an MLS® System. This ensures that members and the public recognize and value MLS® data as being the most reliable and current information available, and in turn promotes and supports CREA's Trademarks and the benefits of using a REALTOR® who uses an MLS® System on behalf of his/her clients.

16. While only REALTORS® can enter information concerning properties for sale on an MLS® System and access all the information entered by other REALTORS® on that System, a portion of the listing information contained within an MLS® System may be uploaded by local boards/associations to a public website at REALTOR.ca (formerly MLS.ca). REALTOR.ca is operated by CREA and is a means of disseminating information to the public about properties listed by REALTORS® across Canada.

17. The REALTOR® mark, when used in the www.realtor.ca domain name, certifies that the listings on the website are posted by REALTOR® members of CREA, for the purpose of marketing and selling their listings. The mark also certifies that the REALTOR® is responsible for, and stands behind the accuracy of, the listing information.

18. [CREA continues to take steps to protect CREA's trademarks for the use of its members, including control of the .MLS top level domain name and as the exclusive licensee for the .REALTOR top level domain name to CREA members in Canada.](#)

19. CREA has, over the years, consistently and diligently educated its members and the public about CREA's Trademarks and their proper use and has consistently taken action to protect those Trademarks. For example:

(a) CREA created a Trademark Tool Kit to explain CREA's Trademarks to board and association members and to provide guidelines and policies to ensure that the Trademarks are properly used and protected. This Tool Kit is designed to assist boards/associations in taking an active role in enforcing CREA's Trademarks which, under CREA's rules, they are required to do. A copy of the Trademark ~~Tool~~Kit (CREA 00041929) is attached [to my initial witness statement](#) as Exhibit 4. [The current Trademark Tool Kit, updated in 2014, is attached as Exhibit C to this witness statement.](#) Members can access these materials and videos on how to properly use CREA's Trademarks online and can take advantage of compliance programs offered by CREA. Members also have access to CREA's Trademark Manual which explains to REALTORS® how to properly use CREA's Trademarks.

(b) CREA has sent notices to members regarding the importance of protecting CREA's Trademarks and complying with CREA's rules and policies regarding those Trademarks. For example, attached as Exhibit 5 [to my initial witness statement](#) (TREB 00045896) is a notice sent to members regarding restrictions on use of CREA's Trademarks when contracting with non-members.

(c) CREA has provided boards and associations with templates for licence agreements to allow them to permit listings to be uploaded to REALTORS® or their third party service providers in a way that protects the integrity and security of the board/association's MLS® System and CREA's Trademarks which are associated with it. An example is attached as Exhibit 6 [to my initial witness statement](#) (TREB 00023934).

(d) CREA created a Data Protection Tool Kit to assist members in protecting their intellectual property rights and to ensure the high quality of content in MLS® Systems. A copy of this Tool Kit is attached as Exhibit 7 [to my initial witness statement](#) (TREB 00008404).

(e) To the extent that infringements of CREA's Trademarks come to CREA's attention, CREA, in conjunction with the relevant board/association, enforces the Trademarks by requiring those infringers to immediately cease and desist their improper use. CREA also monitors the trademark register and opposes any registrations that could pose a risk to CREA's Trademarks.

(f) CREA educates the public about CREA's Trademarks, including through advertising campaigns and through its public facing websites (such as [howrealtorshelp.ca](#)).

### C. PRIVACY

20. Privacy issues have received increased focus in the real estate industry because of the passage of the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") in 2004 and the increased use of the internet by both REALTORS® and consumers.

21. CREA has taken the lead in addressing privacy issues and concerns that are relevant to the Canadian real estate industry. For example, CREA has developed an information kit for all levels of real estate, including a brochure for distribution to home buyers and sellers outlining their privacy rights under PIPEDA. CREA also developed a Privacy Code for all members, a copy of which is attached as Exhibit [8 to my initial witness statement](#) (CREA S000611). The CREA Privacy Code is based on the 10 principles of PIPEDA, including the need to obtain consent for the collection, use or disclosure of personal information and the requirement that such information can only be used for the purposes discussed.

22. As I understand it, PIPEDA prohibits the disclosure of personal information about a person without that person's consent, unless the information is publicly available and is specified by the regulations. There have been a number of decisions from the Privacy Commissioner about the application of this principle to the disclosure of information about a real estate transaction. For example, the Privacy Commissioner has concluded that, in some contexts, personal information can include the purchase price of real estate and it is not enough for personal information to be simply available from a public source for an organization to be able to lawfully disclose it without obtaining consent; rather, it must also have been



collected from the publicly available source for the specific disclosure at issue. Attached as Exhibit 9 [to my initial witness statement](#) (TREB 00050068) is a copy of the Privacy Commissioner's decision that I am referring to.

23. Further, there is provincial legislation across the country that governs restrictions on advertising in the real estate industry, including when information about a transaction can be included in an advertisement and whose consent (seller or buyer or both) is required. In Ontario, this issue is governed by the Real Estate Commission of Ontario's ("RECO") Code of Ethics, which is Regulation 580/05 under the Real Estate Business and Brokers Act, 2002 ("REBBA"). [REBBARECO](#) has published advertising guidelines that are designed to assist compliance with RECO's Code of Ethics, a copy of which is attached as Exhibit 10 [to my initial witness statement](#) (GRMR1753\_00000117). [An updated version of these guidelines, as at February 2014, is attached as Exhibit D to this witness statement.](#) These guidelines state that:

- (a) One cannot identify any real estate in any advertising without the owner's written consent;
- (b) One cannot include any information in an advertisement that would identify a party to a transaction without that party's consent;
- (c) One needs the written consent of both parties before any information is included in an advertisement that could be used to identify the transaction terms; and
- (d) With the seller's written consent, one can advertise that a property has been sold once the transaction has been entered into provided that no information about the terms of the agreement are included. Once the transaction has closed, the buyer's consent is also required.

#### D. CREA's Response To Technology And The Use of the Internet

24. The internet has had a significant effect on the real estate industry. CREA has been at the forefront of the Canadian real estate industry's response to the challenges and opportunities created by the advent of the internet.

25. CREA's [Technology Committee, formerly named the](#) MLS® and Technology Council (the "MTC"), [referred to collectively as the "TC"](#), has been at the forefront of CREA's initiatives in relation to the internet. The [MTGTC](#) reports to CREA's board and is responsible for devising strategies and policies for the provision of national technological services (including data management, delivery and security), researching technology trends and their impact on the real estate industry, facilitating the creation of national data standards for the operation of MLS® Systems and facilitating in the determination of national data and information sharing solutions. Attached as Exhibit [11 to my initial witness statement](#) (CREA S000690) is a copy of MTC's Policy Manual, as at March 2012. [Attached as Exhibit E to this witness statement is a copy of the TC's Technology Policy Manual, as at January 2015.](#)

26. CREA supports the use of new and innovative business models which improve the services provided by REALTORS® to consumers. In that respect, CREA is supportive of the provision by REALTORS® of relevant, appropriate, accurate and up-to-date information to consumers through the internet in a manner which protects and preserves the integrity and quality associated with CREA's Trademarks, appropriately addresses privacy concerns and meets the requirements of the relevant provincial and federal legislation.

27. For the past decade, the [MTCIC](#) and CREA have studied the potential use of the internet to provide new and innovative services and have devised several proposals and policies to meet this objective. Throughout the consideration and implementation of these proposals and policies (which are discussed in more detail below), the [MTCIC](#) and CREA have recognized two important realities. First, it is possible to implement policies through a number of different methods and which method is appropriate for a particular board or association will depend, amongst other things, on its financial and technical capabilities as well as the rules and policies that govern it. Second, the development of internet data sharing vehicles raises a whole host of challenging issues, including in relation to CREA'S Trademarks, privacy and technology.

28. The major initiatives undertaken by CREA and [MTCthe\\_IC](#) are discussed below.

(i) **REALTOR.ca**

29. At the time when the internet began to gain prominence as a vehicle for commercial applications, CREA launched an initiative to respond to the technological revolution that the real estate industry was facing. One of the end results of this initiative was the establishment in 1995 of MLS.ca (the predecessor to REALTOR.ca), with the cooperation of boards/associations across the country. CREA assumed the operation of this public website in 1999.

30. REALTOR.ca contains a subset of listing content from MLS® Systems across the country. Boards/associations provide CREA with the consumer

facing listings data which is then uploaded four times daily onto REALTOR.ca. CREA requires certain mandatory fields of information to be provided for any listings that are uploaded to REALTOR.ca and some boards/associations provide information in addition to the mandatory fields. Accordingly, the information in the listings on REALTOR.ca does vary. Attached as Confidential (Level A) Exhibit 12 to my initial witness statement (CREA S000683) is a list of the mandatory fields of information that boards/associations must provide to CREA for upload onto REALTOR.ca, as well as a snapshot of the information that was provided by TREB for upload onto REALTOR.ca.

31. REALTOR.ca has been consistently identified by CREA members as one of the most important services provided by CREA. It is also a popular resource for consumers to gather information, especially at the start of the process of buying or selling real estate, as it allows them to privately search through listings without the need to call a broker or to provide their identity through a log-in mechanism. Over the past few years, REALTOR.ca has had between approximately 3 to 67.5 million unique visitors each month and generated over 250 million monthly page views. Both the monthly unique visits and page views have generally increased over time. REALTOR.ca contains over 350,000 listings at any one time.

32. REALTOR.ca has recently undergone a number of improvements. For example, in 2010 and 2011 CREA launched "apps" for most major mobile devices at no cost to consumers and no additional cost for REALTOR®/REALTORS®. Since April 2015, CREA has also offered an app for the

Apple Watch. These apps allow consumers to use REALTOR.ca to search for properties, including new listings and open houses in their vicinity, and to contact agents for more information about a property. CREA has experienced a significant take-up of these apps. As at the end of 2011, there were 361,488 downloads of these apps. ~~During~~From January to June 2012, there were over 300,000 further downloads. Since June 2012 CREA's apps have been downloaded an average of slightly more than 100,000 times per month; a rate corresponding to a total of 1.3 to 1.4 million downloads per year.

33. ~~There are also~~At the time of the initial hearing there were a number of improvements ~~that have or will be implemented~~awaiting implementation including a polygon search tool, the incorporation of social media links, the addition in 2013 of demographics at the neighbourhood level (such as average household income and education) and a consumer log-in which will give consumers the ability to customize and set preferences.

34. Since 2012, CREA has released an enhanced version of REALTOR.ca with an updated appearance and improved functionality such as keyword searching. CREA has also implemented the polygon search tool, the incorporation of social media links and the addition of demographics at the neighbourhood level. A consumer log-in to give consumers the ability to customize and set preferences will be implemented over the coming year.

35. Despite the availability of many third party websites that advertise real estate, REALTOR.ca remains popular with consumers. The following statistics

from Google Analytics show unique visitors to REALTOR.ca in the first six months of 2012 compared to the same period in 2011.

	<b>2011</b>	<b>2012</b>	<b>Increase/Decrease</b>
January	3,613,034	4,737,248	+31%
February	4,070,596	5,003,377	+23%
March	4,613,898	5,923,797	+28%
April	4,377,265	5,654,720	+29%
May	4,567,071	5,332,281	+17%
June	4,364,316	4,823,788	+11%

36. The number of pages viewed ~~have also~~ increased by on average of 17% in the first six months of 2012, compared to the same period in 2011.

37. [REALTOR.ca continues to remain popular with consumers. The following statistics from Google Analytics show unique visitors to REALTOR.ca only in 2014 compared to 2013, as well as the first four months of 2015.](#)

	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>Increase/Decrease</u></b> <b><u>(2013-2014)</u></b>	<b><u>2015</u></b>
<a href="#"><u>January</u></a>	<a href="#"><u>4,529,832</u></a>	<a href="#"><u>5,281,228</u></a>	<a href="#"><u>17%</u></a>	<a href="#"><u>4,660,391</u></a>
<a href="#"><u>February</u></a>	<a href="#"><u>4,919,062</u></a>	<a href="#"><u>5,281,029</u></a>	<a href="#"><u>7%</u></a>	<a href="#"><u>4,572,265</u></a>
<a href="#"><u>March</u></a>	<a href="#"><u>5,456,193</u></a>	<a href="#"><u>6,216,417</u></a>	<a href="#"><u>14%</u></a>	<a href="#"><u>5,267,701</u></a>
<a href="#"><u>April</u></a>	<a href="#"><u>5,662,554</u></a>	<a href="#"><u>6,264,990</u></a>	<a href="#"><u>11%</u></a>	<a href="#"><u>5,669,185</u></a>
<a href="#"><u>May</u></a>	<a href="#"><u>5,399,819</u></a>	<a href="#"><u>6,474,262</u></a>	<a href="#"><u>20%</u></a>	
<a href="#"><u>June</u></a>	<a href="#"><u>5,096,833</u></a>	<a href="#"><u>6,002,858</u></a>	<a href="#"><u>18%</u></a>	
<a href="#"><u>July</u></a>	<a href="#"><u>5,098,331</u></a>	<a href="#"><u>6,116,880</u></a>	<a href="#"><u>20%</u></a>	
<a href="#"><u>August</u></a>	<a href="#"><u>4,980,037</u></a>	<a href="#"><u>5,870,786</u></a>	<a href="#"><u>18%</u></a>	
<a href="#"><u>September</u></a>	<a href="#"><u>5,397,791</u></a>	<a href="#"><u>5,381,700</u></a>	<a href="#"><u>-0.2%</u></a>	
<a href="#"><u>October</u></a>	<a href="#"><u>5,194,440</u></a>	<a href="#"><u>4,898,213</u></a>	<a href="#"><u>-6%</u></a>	

	<u>2013</u>	<u>2014</u>	<u>Increase/Decrease (2013-2014)</u>	<u>2015</u>
<u>November</u>	<u>4,863,917</u>	<u>4,098,213</u>	<u>-19%</u>	
<u>December</u>	<u>3,922,570</u>	<u>3,457,090</u>	<u>-13%</u>	

38. Overall, usage of REALTOR.ca and its associated platforms (i.e., the mobile version of the website and various app versions) has increased. While there has been some visitor migration from the REALTOR.ca website to the mobile version and to CREA's app offerings as shown in the chart above, the chart below shows continuing increases in the combined total number of unique visitors to REALTOR.ca and associated platforms (i.e. including the mobile and app versions) in 2014 compared to 2013. The chart below also includes the figures for the first four months of 2015.

	<u>2013</u>	<u>2014</u>	<u>Increase/Decrease (2013-2014)</u>	<u>2015</u>
<u>January</u>	<u>4,927,277</u>	<u>6,237,548</u>	<u>27%</u>	<u>6,135,022</u>
<u>February</u>	<u>4,961,761</u>	<u>6,256,857</u>	<u>26%</u>	<u>6,048,575</u>
<u>March</u>	<u>5,942,768</u>	<u>7,441,511</u>	<u>25%</u>	<u>6,868,640</u>
<u>April</u>	<u>6,167,125</u>	<u>7,652,729</u>	<u>24%</u>	<u>7,510,129</u>
<u>May</u>	<u>5,908,101</u>	<u>7,863,132</u>	<u>33%</u>	
<u>June</u>	<u>5,611,186</u>	<u>7,446,918</u>	<u>33%</u>	
<u>July</u>	<u>5,615,691</u>	<u>7,593,085</u>	<u>35%</u>	
<u>August</u>	<u>5,512,718</u>	<u>7,245,865</u>	<u>31%</u>	
<u>September</u>	<u>4,697,808</u>	<u>6,866,603</u>	<u>46%</u>	
<u>October</u>	<u>5,578,847</u>	<u>6,133,924</u>	<u>10%</u>	
<u>November</u>	<u>5,159,076</u>	<u>5,310,456</u>	<u>3%</u>	
<u>December</u>	<u>4,255,428</u>	<u>4,412,446</u>	<u>4%</u>	

(ii) **CONNECT**

39. CONNECT is a program in Ontario that was created by a number of Ontario boards/associations to provide REALTORS® in Ontario with access to virtually all MLS® listings in Ontario, regardless of board boundaries, so that REALTORS® may better serve consumers.

40. In particular, CONNECT allows REALTORS® at participating boards/associations to search and view active listings and recent sales history of all other participating boards without the complexities and issues associated with actual data exchange. ~~Currently,~~In August 2012, Ontario boards representing 92% of the province's membership ~~are~~were participating in CONNECT.

41. CONNECT is a means by which information can be obtained by REALTORS® in Ontario. It does not offer the full functionality of an MLS® System. Attached as Exhibit 13 to my initial witness statement (CREA S000679) is a document which provides further details on the CONNECT program.

42. The CONNECT program has continued to grow since 2012 and enjoys widespread use among the members of Ontario boards. Currently, approximately 98% of members of the various Ontario real estate boards have access to CONNECT.

(iii) **Development of CREA's Permissions Management Solution**



43. In 2002, the [MTGIC](#) established the Electronic Data Usage Task Force (the "EDU Task Force") to develop guidelines for the use of electronic data for boards and associations across Canada.

44. The establishment of the EDU Task Force was prompted by the incredible growth of the internet as both a marketing tool for REALTORS® and a source of information for consumers, as well as certain developments in the United States.

45. In May 2000, NAR adopted a policy that required real estate associations in the United States and their MLS® Systems to enable MLS® participants to display on their public websites aggregated MLS® active listing information subject to the requirements of state law. This policy implemented internet data exchange networks or "[IDXs](#)", which I discuss in more detail below. The US experience at that time revealed that these public websites received significant traffic from consumers and were a positive influence in terms of brokers attracting and retaining consumers because they provided consumers with the information services they desired.

46. Around the same time, NAR was considering the issues associated with virtual office websites or "[VOWs](#)" and began working on a formal VOW policy for use by boards in the United States. NAR released a draft VOW policy in 2003. Litigation ensued between the US Department of Justice and NAR regarding the competitive impacts of the proposed VOW policy. Ultimately, a settlement was reached in 2008 and a formal VOW policy was implemented by NAR in the United

States. Attached as Exhibit [14 to my initial witness statement](#) (CREA S001059) is the NAR VOW Policy [as at 2012](#). Attached as Exhibits [15 to 17 to my initial witness statement](#) are NAR's summary of the settlement (CREA 00034069), FAQs prepared by NAR concerning its VOW policy (CREA S001430) and NAR's model rules for implementing the VOW policy (CREA S001443). [Attached as Exhibits F and G to this witness statement are the current versions of the NAR VOW policy and of the model rules for implementing that policy.](#)

47. Around 2002, CREA believed that it was time to consider the implementation of these internet data sharing tools for REALTORS® and consumers in Canada and the EDU Task Force was mandated to do that.

48. The EDU Task Force considered three vehicles for sharing data through the internet, as well as the provision of information for use by third parties. The three vehicles were IDXs, VOWs and Deep Link Framing ("DLF"). These vehicles are referred to as "permissions based technology". The EDU Task Force defined these vehicles as follows:

(a) An IDX is a reciprocal system whereby consenting brokerages agree to advertise on their internet websites each other's active property listings, either from the MLS® System of the relevant local board/association or from REALTOR.ca, subject to the rules of the relevant local board/association and the REALTOR®'s oversight.

(b) A VOW is a broker or REALTOR® internet website through which the REALTOR® provides real estate services to consumers with whom the REALTOR® has first established a broker-consumer relationship, where the consumer has the opportunity to search for MLS® data from the MLS® database of the board/association, subject to the rules of the relevant board/association and the REALTOR®'s oversight.

(c) A DLF is an inexpensive internet marketing tool using the current technology of REALTOR.ca for both display and searching of listings.

49. After considering the numerous issues raised by these three vehicles of permissions based technology, the EDU Task Force delivered a report in October, 2003. A copy of the EDU Task Force Report is attached as Exhibit [18 to my initial witness statement](#) (CREA 00005957).

50. In rendering the Report, the EDU Task Force and [MTGIC](#) were attempting to encourage local boards/associations to enable members to display on approved public websites aggregated MLS® active listing information and, at the same time, have a system that was flexible enough to respect the interests of consumers, REALTORS® and the boards. The solution was not to enforce national rules, but to provide guidelines and model rules that could be implemented, subject to board by-laws and provincial rules.

51. In that regard the EDU Task Force provided detailed guidelines and proposed rules that boards/associations could use in setting up their own permission based technology systems, including IDXs and VOWs, as well as a model contract for use with third parties who wish to provide these services to REALTORS®. Boards therefore had the option of offering their own permissions management technology by using their own MLS® data and the services of a third party technology company (such as the MLS® System provider).

52. CREA also developed Permissions Management Guidelines whereby CREA (as opposed to a local board/association) could provide the actual

technology services necessary for the implementation of IDXs, VOWs, and DLFs ("CREA PM Solution").<sup>1</sup>

53. ~~The~~ Due to improved technology and increasing obsolescence, the CREA PM Solution described above has been phased out and replaced by CREA's Data Distribution Facility®, which I describe in the following section. While no longer active, the goal of the CREA PM Solution was to provide a cost-effective alternative for a board/association to offer permission based technology to its members. A copy of the most recent version of CREA's Permissions Management Guidelines (version 2, published in 2005), is attached as Exhibit 19 to my initial witness statement (CREA 00005862). The CREA PM Solution ~~is~~was based on the REALTOR.ca database. A board that ~~takes~~took advantage of the CREA PM Solution ~~can~~could choose to administer the program on its own or have CREA administer it.

54. Boards/associations who allowed their members to access the technology services offered by CREA under the CREA PM Solution were required to comply with the Permission Management Rules specified by CREA in the Permissions Management Guidelines. The Permission Management Rules ~~contain~~contained detailed rules and requirements for the use of the CREA PM Solution in general (such as in relation to the use of CREA's Trademarks, privacy issues, obtaining authorization, content of frames created and display of pages) as well as separate detailed rules and requirements for using each of the CREA DLF, VOW and IDX vehicles.

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<sup>1</sup> Accordingly, VOWs and IDXs ~~can~~could be provided through CREA or through local

55. The Permission Management Rules were significantly influenced by the VOW and IDX policies implemented by NAR and by the need to protect confidential and private information. The confidential information which is the focus of this proceeding ~~is~~was not permitted to be included on an IDX or VOW data feed provided under the CREA PM Solution.

(iv) **Moving Forward – CREA's Data Distribution Facility®**

56. In 2009, with the increasing influence of the internet and the changing demands of consumers, CREA focused on whether the Canadian real estate industry was meeting the needs of both its members and consumers.

57. CREA began this process by commissioning an external report which examined consumers' view of the real estate industry and their wants and needs with respect to the buying and selling of real estate. Amongst other things, this report confirmed the increasing use by consumers of the internet to research real estate, including the use of third party websites.

58. It also became apparent that there was a significant problem with the accuracy and currency of the MLS® listing information being shown on third party websites. REALTORS® throughout the country were sending their MLS® listing information to numerous websites without proper contracts in place to protect the intellectual property rights in the listing content, to ensure the accuracy and currency of the content and to ensure the proper use of CREA's Trademarks. As a result, the internet was inundated with inaccurate and out of date listing information.

Also, REALTORS® were investing a considerable amount of time and money to send their listing content to various websites.

59. Shortly thereafter the [MTGIC](#) held a national forum with the goal of devising a national technology strategy that responded to the needs of members and consumers. Recognizing the increased use and influence of third party websites, the national strategy included moving towards the distribution of data to third parties in a way that ensured the accuracy and currency of the data and protected CREA's Trademarks.

60. Around the same time, some franchisors asked CREA to consider the creation of a National IDX, which would include MLS® listings from across Canada. A CREA solution for a National IDX was considered to be the most efficient and cost effective. CREA was also viewed as being in the best position to ensure the consistency and accuracy of the listing data, as well as to protect CREA's Trademarks.

61. These developments in 2009 and 2010 led to the creation of an [MTCa](#) Data Distribution Task Force which was mandated to consider policies to be administered by CREA concerning data sharing and data distribution. CREA's goal in establishing this Task Force was to support REALTORS® by providing tools and efficient services that would promote a positive REALTOR®/MLS® public perception through the display of quality data. Achieving this goal is essential to the protection of CREA's Trademarks, as well as to the success of the REALTOR®/consumer relationship.

62. The Task Force ultimately designed a data distribution facility for Canadian REALTORS® (the "[DDF Data Distribution Facility®](#)" or "[DDF®](#)"), after consultation with the industry. At its essence, the [DDF®](#) is intended to supply publicly available MLS® listing content for publication on both member and non-member (i.e., third party) websites. It is a permissions-based system that will allow brokers to share their listings with other brokers, receive a feed of their own listings for display on their website, and send their listings to third party websites. The [DDF®](#) consists of ~~three~~[four](#) modules.

63. Module One of the [DDF®](#), the National Shared Pool Module, allows brokers and their sales staff to contribute their listings to a national data pool and receive a feed from that pool to display all other participants' listings on their websites. Participants can filter the data they receive based on objective criteria. Brokers that decide to contribute their listings to the national data pool can also include them in a data feed provided to participating franchisors for display on the franchisors' websites.

64. Module Two, the Member Feed [DDF®](#) Module, allows brokers and salespeople to receive a feed of their own listings for display on their websites, ensures consistency and accuracy of the data and gives brokers the ability to track the success of their website as a marketing tool.

65. Module Three, the Third Party Module, involves the distribution of data to third party websites outside of organized real estate. It allows participating brokers and salespeople to distribute their listing content to third party websites such

as ~~Zoocasa~~[housingblock.com](http://housingblock.com). Zoocasa, mentioned in my initial witness statement as an example of a third party website, has since become a brokerage and now has access through Module One. Policies and procedures must be followed to ensure that information contained on third party sites remains accurate and up to date, and the parties must agree to terms and conditions that protect the use of the data and CREA's Trademarks.

66. Module Four, the Franchisor Direct Feed Module, was introduced following the initial hearing. This module allows franchisee participants to send listing content to their franchisors for the franchisor to display on its website.

67. Board participation in the National Shared Pool Module and the Franchisor Direct Feed Module is mandatory in that boards must provide or authorize a feed of the listings of their members who have chosen to participate in the DDF® to CREA and adopt and enforce the DDF® rules established by CREA. Boards must also participate in the Member Feed DDF® Module (Module Two) and the Third Party Module (Module Three), unless they provide a comparable facility to their members.

68. Some boards do not currently participate in Modules Two and Three because they provide comparable facilities for their members. For example, Saskatchewan's boards, which operate using a single, unified MLS® System, have opted out of Modules Two and Three.



69. [Additionally, the Manitoba and Saskatchewan boards do not fully participate in the National Shared Pool \(Module One\) or the Franchisor Direct Feed \(Module Four\) because of the position taken by their provincial regulators.](#)<sup>2</sup>

70. [In Quebec, CREA is has been working with the provincial regulator and will continue working with Quebec boards in order for them to offer Modules One and Four to their broker members in accordance with provincial regulations.](#)

71. The DDF® was developed and implemented because it addresses the needs of both consumers and REALTORS®. Sellers receive the benefit of their property being advertised accurately and consistently and on a wider range of websites. REALTORS® are able to provide this service to their clients without the need to invest in any additional infrastructure and with the confidence that the data quality is high. The importance of data quality cannot be overemphasized. Whether the consumer is a buyer or seller, the accuracy of the listing data sourced from an MLS® System is key, regardless of which website it is accessed from. The failure of a website to contain updated and accurate data creates the risk of negative consumer perception of MLS® listing data and the services provided by REALTORS®.

72. The DDF® was approved at CREA's Annual General Meeting on April 2, 2011. Boards/associations now have a positive obligation to comply with CREA's DDF® Policy as it is amended from time to time. A copy of the **current**

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<sup>2</sup> [This is explained in the CREA DDF® FAQs \(which are attached as Exhibit I to this witness statement\) and arises out of the fact that the Saskatchewan and Manitoba regulators consider it a](#)

CREA DDF® Policy and Rules, dated April 30, 2012, is attached as Exhibit 20 ~~(CREA S000916)~~to my initial witness statement (CREA S000916). The current DDF® Policy and Rules have now been incorporated into the Technology Policy Manual and are excerpted and attached as Exhibit H to this witness statement. Also attached as Exhibit 21 to my initial witness statement (CREA 00042502) is a copy of CREA's "Frequently Asked Questions" in relation to the DDF-~~Policy~~® Policy. An updated version of the "Frequently Asked Questions" document, as at October 2014, is attached as Exhibit I to this witness statement.

73. Both the National Shared Pool Module and the Member Feed DDF® Module were implemented in July 2012. ~~We expect that the~~The Third Party Module ~~will be implemented in the near future~~and the Franchisor Direct Feed (Modules Three and Four) have now been implemented.

74. The DDF® provides members with a number of analytical tools to assess the extent to which their listings are being viewed. Listing statistics may be accessed by a member from REALTORlink.ca, allowing members, for example, to review statistics regarding the number of views of one of their listings or the total aggregate views for all of the member's listings on a particular website.

(v) **CREA Vow Task Forces**

75. In July 2008, CREA created a VOW Task Force to review various areas of ~~concerns~~concern that had been raised by the Competition Bureau with respect to VOWs in Canada and to make recommendations if appropriate. The

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violation of their licensing legislation if a broker/salesperson displayed listings for

VOW Task Force held a number of meetings with the Bureau and consulted with CREA members across Canada on the issues relevant to a VOW policy. The Bureau and the VOW Task Force did not reach an agreement on the appropriate terms and conditions for a national VOW policy as of 2010, when discussions between the Bureau and CREA ceased.

76. In August 2011, CREA created a new VOW Task Force to assess and develop a national VOW policy. The 2011 Task Force intended to build upon the work of the 2008 Task Force with the ultimate goal of providing leadership and guidance to boards/associations and REALTORS® across Canada. ~~After some preliminary work, the 2011 Task Force is continuing its deliberations and is waiting for~~ Deliberations continue and CREA awaits the resolution of this proceeding before finalizing its recommendations.

(vi) **Futures Sessions**

77. As part of its continuing effort to respond to the evolving challenges faced by the Canadian real estate industry, CREA undertook what it has called the "Futures" project commencing in 2011.

78. The Futures project involved various sessions being held across the country where, using an innovative scenario planning exercise, industry participants discussed the challenges faced by REALTORS® and how best to address those challenges, and identified what consumers' needs will be in the next decade and how those needs impact on REALTORS®. The sessions were

designed to encourage "out of the box" thinking and to have participants discuss the issues faced by the industry.

79. The topics addressed in the Futures sessions included:

(a) The modern consumer who increasingly uses the internet to become informed and therefore wants quick access to the information they think they need;

(b) The effect of advancements in technology, including with respect to the internet;

(c) The rise of different service options for the consumer and the rise of competitors in the industry; and

(d) The tension that exists in the industry between those who embrace technology and those who do not.

80. CREA prepared a summary of the insights received from the Futures sessions, a copy of which is attached as Exhibit [22 to my initial witness statement](#) (CREA S000814). Important themes which arose from the Futures sessions can be summarized as follows:

(a) CREA should continue to make improvements to REALTOR.ca with the ultimate goal being to make it the best online portal for real estate and a one-stop shop for both consumers and REALTORS®.

(b) Industry participants are generally enthusiastic about CREA's DDF®. Consumers clearly want their properties advertised on multiple sites and REALTORS® want to provide this improved service to consumers.

(c) The perception of some members of the public of REALTORS® as gatekeepers of data is a challenge for REALTORS®. There is an increased recognition that the value of a REALTOR® for a consumer is not only in the data itself but also in the REALTORS® ability to interpret that data and to provide guidance throughout the transaction.

#### D. Status of Internet Data Sharing Vehicles in Canada

81. The experience of local boards/associations with VOWs, IDXs, DLFs and other internet data sharing vehicles has varied across the country. A number of boards/associations ~~have~~ opted into CREA's now-discontinued PM Solution. Relatively few have instituted formal policies of their own.

82. The different experiences across Canada are due to a number of factors, not all of which may be present in each situation. For example, each local board/association is subject to regulation by their province or territory, and those regulations do differ. In addition, the demand by both consumers and REALTORS® for internet data sharing vehicles is not consistent across the country. Further, the financial resources and technical capabilities of local boards/associations vary. Many don't have the financial resources to administer an internet data sharing solution. Many also don't currently have the technical capability to provide an internet data sharing solution.

83. I set out below some examples of how Canadian local boards/associations are permitting their members to use the internet to provide real estate information to consumers. This is in no way an exhaustive summary. My intention is to use examples (not already addressed by the Parties in their witness statements) to illustrate the variety of innovation that exists across the country, and the different experiences that boards/associations have had with the use and success of internet data sharing vehicles.

84. Starting with the [now-discontinued](#) CREA PM Solution for VOWs, IDXs and DLFs, as at September 2011, there were 873 CREA DLFs, 27 CREA IDXs and 36 CREA VOWs registered with CREA. Of those registered, no CREA VOWs were active and 27 CREA IDXs were active. CREA's DLFs ~~will behave now been~~ discontinued ~~in~~[along with](#) the ~~near future~~[PM Solution](#), having been made redundant by the DDF®.

85. In addition to TREB, there ~~are~~[were](#) a number of local boards/associations across Canada who ~~are~~[did](#) not ~~using~~[use](#) the [now-discontinued](#) CREA PM Solution, but ~~are~~, instead ~~providing~~, [provided](#) internet data sharing services for their membership, either directly or through a third party provider. A number of examples of such boards/associations are discussed below.

86. The Victoria Real Estate Board allows members to provide a VOW solution through its MLS® System software (Matrix client portal) and through third parties who receive a data feed supplied by the board. The data displayed to consumers is equivalent to the board's public feature sheet, which includes data beyond what is uploaded by the board to CREA for posting on REALTOR.ca.

87. The Greater Vancouver Real Estate Board has implemented an IDX/VOW advertising solution through third party providers. Attached as Exhibit [23 to my initial witness statement](#) (CREA 00047978) is a copy of the board's rules which include the policy. The [current version of the board's rules, revised November, 2013, is attached as Exhibit J to this witness statement.](#) The data for both IDXs and VOWs comes from the same pool of listings ~~so if a member wants~~

~~access to one facility, that member has to opt into both,~~ which includes listings from all brokers by default. Brokers may opt out of this pool. If a member wants to implement an IDX or VOW solution, they must participate in the pool, but it is not necessary to implement both an IDX and a VOW. With the consent of a broker, agents may also implement an IDX or VOW website. Currently, approximately ~~90~~95% of brokers have opted into the policy. The board estimates that approximately 30% of brokers have IDX solutions and approximately ~~23~~30% of brokers use a VOW solution.

88. The REALTORS® Association of Edmonton originally did not offer its own VOW or IDX solution to members. Rather, members could have their preferred third party providers receive access to the association's MLS® data (comparable to the level of information disclosed on REALTOR.ca) through third party agreements. Many of those third parties provided VOW and IDX solutions, although the association does not have a record of how many members have taken advantage of these services. More recently, the association began to also offer its own IDX solution through Marketlink at no cost to members, although the take-up has been minimal, likely because this solution is less advanced than that provided through third party providers. The anecdotal evidence is that while Edmonton REALTORS® interest in VOWs was relatively high approximately ~~5~~8 years ago, that interest has apparently waned and, more recently, the IDX solution appears to be satisfying the current demand.

89. The Saskatoon Region Association of REALTORS® facilitates the provision of data from each of the three associations in Saskatchewan who allow

access to an IDX and VOW solution. A copy of the IDX policy is attached as Exhibit [24 to my initial witness statement](#) (CREA 00048050). [An updated version of this policy is attached as Exhibit K to this witness statement.](#) A copy of the VOW policy is attached as Exhibit [25 to my initial witness statement](#) (CREA 00048045). For each association that authorizes access, a direct data feed (comparable to the data uploaded to REALTOR.ca) may be provided to third party service providers, who then provide the VOW and IDX services to members who chose to receive them. As at 2011, approximately 20% of the association's membership had chosen to receive VOW or IDX services. ~~Interest among members appears to be declining due to minimal, if any, interest from the public in Saskatchewan,~~ [which has increased to approximately 30% since 2012. Since 2012, approximately 160 members have chosen to receive IDX services. There have been no requests for VOWs and there are only 27 members who currently use VOWs.](#) This may partly be explained by the fact that Saskatchewan uses a single MLS® System for the entire province and already has a facility that is relatively equivalent to Module ~~3~~[Three](#) of the DDF®.

90. In 2003, the London St Thomas Association of ~~Realtors~~[REALTORS](#)® was the first board/association in Ontario (and the second in Canada) to implement an IDX solution for its members. Attached as Exhibit [26 to my initial witness statement](#) (CREA S001529) is a copy of the association's rules, which include the IDX policy. Since [approximately](#) 99% of association ~~members participate in this~~[brokers' listings are currently included in the IDX](#) facility, it has ~~become~~[become](#) a significant benefit for consumers. A person ~~can~~[could](#) go to any member's website and access virtually all the MLS® listings of the association.



91. The ~~London IDX facility is unique in that it does not involve a direct data feed to members. Rather, the~~ association still operates and keeps current an IDX website that members then frame onto their own personal websites. ~~Currently, a substantial number of the association's approximately 1500 members link to the association's IDX website. In addition, the association is currently rolling out the ability for members to provide an IDX feed to their web providers. There has been~~ Additionally, since 2012, the London association offers its 1556 members an IDX RETS<sup>3</sup> feed that allows them to customize their websites to a greater degree. Attached as Exhibit L to this witness statement is a copy of the association's IDX Data Feed Agreement. The IDX feed allows members to create customized websites displaying the MLS® listings. So far, 32 offices and 472 individuals have signed up to this new option. There continues to be virtually no interest by either members or the public in the provision of a VOW solution in the London St Thomas area, and I believe that this is due, at least in part, to the longstanding and successful IDX ~~solution~~ solutions operated by the association.

92. The Ottawa Real Estate Board does not have a formal policy for the provision of IDXs or VOWs. This board operates its own public website of active listings (with similar information as that contained on REALTOR.ca) and allows any member who chooses to do so to link to the public website.

93. In Quebec, an entity called Centris operates an MLS® System for the province of Quebec. Centris ca is an advertising vehicle similar to REALTOR.ca,

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<sup>3</sup> RETS, which stands for "Real Estate Transaction Standard", is a data transport standard that governs how data is transferred from one server to another.

as well as a provider of technology services. Centris includes all MLS® listings in the province of Quebec and consumers have access to all active MLS® listings with generally the same level of information as found on REALTOR.ca. Centris also provides a solution similar to Module Three of the DDF® in that it sends listing content to websites selected by brokers.

94. Lastly, CREA did a survey of its members in 2011 regarding their interest in using the DDF®. The results were that 93% of boards/associations intended to offer the CREA DDF® solution and 72.5% of those REALTORS® who responded indicated an intention to use it. Attached as Exhibit [27 to my initial witness statement](#) (CREA 00040718) is a copy of the May 2011 report which outlines the results of the survey. [Attached as Exhibit M to this witness statement are updated statistics on member participation in the DDF®, which show increasing participation over time.](#)

#### **E. Effect of Remedy Requested on CREA and its Members**

95. As I read it, the remedy requested by the Commissioner is broad. The Commissioner seeks to permit brokers to use the property listing information from the TREB MLS® System to provide services over the internet (including, but not restricted to, VOWs), without any restrictions. Regarding VOWs in particular, I understand that the Commissioner believes that they should include a complete inventory of information available on an MLS® System, including historical sales data and all properties currently listed for sale. Lastly, I understand that the Commissioner asks that the Tribunal "direct" TREB to "implement" resources and

facilities that are necessary to ensure the operation of VOWs or "similar services" in the manner in which the Commissioner believes they should be operated.

96. CREA has a number of very serious concerns about the effect of the remedy requested by the Commissioner on CREA, CREA's Trademarks and CREA's members across Canada.

97. First, the Commissioner appears to equate innovative use of the internet to provide services in the real estate industry with VOWs and VOWs alone. As explained above, this is not the case in Canada. The innovative use of the internet to provide information to consumers is reflected in a wide variety of vehicles in addition to VOWs, including REALTOR.ca, IDXs, ~~the CREA PM Solution~~, CREA's DDF®, the variety of services offered by boards/associations across Canada (examples of which were discussed above) and numerous third party websites. VOWs are only one of many options and it is important from CREA's perspective that this proceeding not have the harmful effect of endorsing one type of innovative tool to the exclusion of others.

98. Second, CREA is concerned that the Commissioner may intend to use any result in this proceeding as a precedent for Canadian boards/associations generally. CREA believes that this would be harmful to the industry and the ability of REALTORS® to provide the services that consumers request and need. The local boards/associations across Canada have different demands from consumers and members, and different levels of resources, both financially and technologically. Requiring a board to implement one type of internet data sharing vehicle, such as a

VOW, in priority to or to the exclusion of other innovation, regardless of that board's particular circumstances could harm or prevent the development of the particular innovation which may be of greatest benefit to that board's members and consumers. Accordingly, CREA believes that it is important that if the Tribunal makes any order against TREB in this proceeding, that it is clearly stated to be confined to the particular circumstances of TREB as reflected in the evidence in this proceeding.

99. Third, as already explained above, CREA has been diligent to ensure that its valuable Trademarks are used only by members in association with a high standard of professionalism and service, including the provision of appropriate, accurate and up-to-date information. Any misrepresentation or misuse on the internet of information sourced from an MLS® System could cause very serious harm to the MLS® Trademarks, and specifically, to the trust that Canadians have come to place in the standards of service and level of professionalism symbolized by the MLS® Trademarks, and in the accuracy of listing information obtained from an MLS® System. A significant loss of trust could imperil the Trademarks themselves.

100. CREA is very concerned that if a VOW is required to contain all property information available on a board's MLS® System, including the confidential data that TREB's VOW policy excludes from TREB's VOW data feed, consumers will lose faith in the credibility of both MLS® Systems, REALTOR.ca and the services of REALTORS®, which loss of faith will, in turn, significantly harm CREA's Trademarks.

101. There is no question that a REALTOR® making available confidential data on the internet raises serious confidentiality and privacy concerns today, especially in circumstances where it is not possible to confirm whether the appropriate consents to disclosure have been confirmed (and, for example, I do not see how those consents could be confirmed in respect of past sales that are recorded on an MLS® System). This is complicated by the uncertainty as to whether VOWs are properly viewed as a means of providing real estate services or a form of advertising (in which case the RECO Code of Ethics applies) or a combination of both. Views on the proper characterization of VOWs differ. This issue is further complicated by the decision of the Privacy Commissioner discussed above to the effect that to qualify as public information, the sold information at issue must have been actually derived from a public source.

102. CREA is concerned that the disclosure on the internet through VOWs of personal and confidential information could cause significant damage to the credibility of MLS® Systems and the services provided by REALTORS® using an MLS® System. Consumers may be upset by the disclosure of their confidential transactional information from an MLS® System and will blame the REALTOR® for what they view as improper disclosure. This could significantly impact the consumer's willingness to use the services of a REALTOR® and participate in an MLS® System. In short, a REALTOR® who makes private information from an MLS® System accessible over the internet will certainly not be associated in the public's mind with a high standard of professionalism and service.

103. CREA agrees that REALTORS® have to be given the tools to provide services on the internet that promote a positive and successful REALTOR®/consumer relationship for both parties in that relationship. These tools are not only essential to the success of the REALTOR®/consumer relationship, they are essential to the success of MLS® Systems and the continued existence of CREA's Trademarks. CREA is concerned that requiring the disclosure of personal and confidential information from an MLS® System onto the internet is contrary to these goals. Any benefit that may arguably result from such disclosure appears to be outweighed by the potential negative effects of such disclosure, especially when one takes into account the other available sources of information.



GARY SIMONSEN

File No. CT-2011-003

THE COMPETITION TRIBUNAL  
THE COMMISSIONER OF COMPETITION

Applicant

- AND -

## THE TORONTO REAL ESTATE BOARD

Respondent

- AND -

THE CANADIAN REAL ESTATE ASSOCIATION AND  
REALTYSELLERS  
REAL ESTATE INC.

Intervenors

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**EXHIBIT A**

# BY-LAWS AND RULES



**THE CANADIAN REAL ESTATE ASSOCIATION**

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**APPROVED OCTOBER 2013**

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**CREA** THE CANADIAN  
REAL ESTATE ASSOCIATION

REALTOR<sup>®</sup>

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**ARTICLE 1 – DEFINITIONS**

**Act** means the Canada Not-for-Profit Corporations Act as amended from time to time or any statute that may be substituted for that Act.

**Annual Meeting** means the business meeting of the Members, as required by the Act, and called each year pursuant to these By-Laws.

**Articles** means CREA's Articles of Continuance filed pursuant to the Act, and as amended from time to time.

**Board of Directors** means the board of directors of CREA.

**CREA or ACI** means The Canadian Real Estate Association - L'Association canadienne de l'immeuble.

**Director** means any individual duly elected or appointed to sit on the Board of Directors of CREA.

**Meeting of the Members** means any Special Meeting or Annual Meeting duly called pursuant to these By-Laws.

**Member** means a person or organization who has qualified under any category of membership established in these By-Laws and whose membership is in good standing.

**Ordinary Resolution** means a resolution passed by a majority of the votes cast on that resolution.

**Policy** means any internal, operational, membership, or other requirement duly established in writing by the Board of Directors that does not require ratification of the Members.

**REALTOR®** is a certification mark owned by REALTOR® Canada Inc., a subsidiary of CREA, and identifies a standard of brokerage service rendered by Members of CREA.

**REALTOR® Code** means the Code of Ethics of CREA.

**Special Meeting** means any business meeting of the Members other than the Annual Meeting.

**Special Resolution** means a resolution passed by a majority of not less than two thirds (2/3) of the votes cast on that resolution.

**Three-Way Agreement** means the written agreements between CREA and each Board and Association setting out membership and other obligations of each party.

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## ARTICLE 2 – BY-LAWS AND RULES

### 2.1: Adoption of Rules

The Board of Directors may from time to time adopt rules (hereinafter referred to as "Rules") consistent with these By-Laws relating to CREA's management and operation.

### 2.2: Immediate Force and Effect

Any By-Laws or Rules not embodied in the Articles may be repealed or amended by the Board of Directors and any subsequent amendments adopted by the Board of Directors shall have immediate force and effect, but shall cease to have force and effect unless ratified, with or without amendment, at the next Meeting of the Members.

## ARTICLE 3 – INTERPRETATIONS

### 3.1: Interpretations

In reading the By-Laws and Rules, words may be interpreted as meaning singular, plural, masculine or feminine, as the context requires. References to persons shall include firms, corporations and other legal entities.

## ARTICLE 4 – MEMBERSHIP

### 4.1: Classes of Membership

Membership in CREA shall consist of:

- 4.1.1: Boards – Local Real Estate Boards and Local Real Estate Associations.
- 4.1.2: Associations – Provincial and Territorial Real Estate Associations.
- 4.1.3: REALTOR® members – individuals who are licensed real estate practitioners and who are members in good standing of a Board or Association.

### 4.2: Qualifying For and Maintaining Membership

To qualify and to maintain membership in CREA, prospective and current members shall agree to adhere to and be bound by the following, as applicable, and as amended from time to time:

- 4.2.1: CREA's By-Laws, Rules and Policies;
- 4.2.2: The 3-Way Agreement;
- 4.2.3: The REALTOR® Code;
- 4.2.4: The Principles of Competition.

### 4.3: Failure to Comply

- 4.3.1: If a REALTOR® member appears to be in violation of CREA's By-Laws, Rules or Policies, CREA may refer the matter to the appropriate Board as a professional standards complaint or take such other action as is provided for in the Rules.

4.3.2: In the event of a complaint that a Board or Association has not complied with CREA's By-Laws, Rules or Policies, the Board of Directors has the authority to make such determination as it deems reasonable including termination of the Board or Association membership, in accordance with the procedure outlined in the Rules.

4.3.3: Upon termination of membership, all rights and privileges associated with membership in CREA shall immediately cease.

**4.4: Withdrawal**

4.4.1: A Board or Association may withdraw as a member from CREA by giving ninety (90) days written notice to CREA's Chief Executive Officer.

4.4.2: Upon withdrawal of membership, all rights and privileges associated with membership in CREA shall immediately cease.

**4.5: Effect of Board/Association Termination**

In the event a Board or Association ceases to be a Member of CREA, all REALTOR® members who are members of such Board or Association shall also be deemed to have terminated their membership, unless they have joined another Member Board or Association.

**4.6: Arbitration**

All REALTOR® members shall be conclusively deemed to have agreed to submit Claims to Arbitration as provided in CREA's Rules, the By-Laws and Rules and Regulations of the applicable Board/Association, and the REALTOR® Code.

**ARTICLE 5 – MEETINGS OF THE MEMBERS**

**5.1: Annual Meeting**

The Annual Meeting shall be held each year between the first day of March and the thirty-first day of May at such time and place as determined by the Board of Directors.

**5.2: Annual Financial Statements**

CREA may publish a notice in any manner to its Members stating that the annual financial statements and report of the auditor are available at the registered office of CREA and any Member may, on request, obtain a copy free of charge at the registered office or by prepaid mail.

**5.3: Special Meetings**

Special Meetings may be called by the Board of Directors on its own initiative, or by one or more Boards and Associations collectively holding at least five percent of the total votes available to be cast at the meeting.

**5.4: Form and Timing of Notice**

- 5.4.1: Notice of the time and place of any Meeting of the Members shall be in written or electronic format, given in the name of the President or Chief Executive Officer, and shall be communicated to each Member entitled to vote at the meeting, each CREA Director, and to the auditor of CREA.
- 5.4.2: The notice shall be communicated by regular mail, courier, facsimile, e-mail or other electronic means delivered to the persons identified in 5.4.1 at their last known address as shown on the records of CREA at least thirty (30) days before the meeting date.
- 5.4.3: The inadvertent omission to notify any persons, or the non-receipt of such notice by any persons, shall not invalidate the proceedings at any such meeting.
- 5.4.4: Any person who is entitled to notice of a Meeting of the Members may waive notice, and attendance of the person at the meeting is a waiver of notice of the meeting.

**5.5: Quorum**

A quorum at any Meeting of the Members shall be fifty (50) per cent of the Boards and Associations entitled to vote, present either through their voting delegates or by way of proxy.

**ARTICLE 6 – ATTENDANCE AND VOTING AT MEETINGS OF THE MEMBERS**

**6.1: Voting Rights**

Only Boards and Associations are entitled to vote at Meetings of the Members.

**6.2: Number of Votes**

The number of votes that each Board and Association has at a Meeting of the Members shall be as follows:

- 6.2.1: Each Board shall be entitled to one (1) vote for each five hundred (500) members or part thereof, from all membership categories;
- 6.2.2: Each Association shall be entitled to one (1) vote. Associations with direct REALTOR® members (i.e. REALTOR® members who are not members of a Board) shall be entitled to one (1) additional vote for each five hundred (500) direct REALTOR® members or part thereof.
- 6.2.3: "Members" in this Article means members in good standing as of December 31, whose dues are paid as of January 31st, according to CREA's records. In the case of dual membership, only the Board or Association that collects and remits the CREA dues on behalf of the member may include that person in its membership figures for the purposes of this Article.

**6.3: Voting Delegates**

Each Board or Association may send one or more voting delegates to carry their votes. Each voting delegate may carry one or more votes on behalf of the Board or Association, up to the total number of votes to which the Board or Association is entitled.

**6.4: Proxies**



A Board or Association, rather than sending a voting delegate, may appoint a proxyholder as its nominee to attend and act at the meeting in the manner and to the extent and with the authority conferred by the proxy. The proxy shall be in the form provided by CREA. The procedures for collecting, counting and reporting any vote by proxy will be the same procedures as those used for the voting delegates present in person.

**6.5: Votes Needed to Pass Motion**

Unless otherwise specifically provided for by the Act, or by these By-Laws, all questions at Meetings of the Members shall be determined as follows:

- 6.5.1: A Special Resolution to introduce a matter for which insufficient notice has been given may be brought to the floor if either the substance or timing indicates urgency.
- 6.5.2: All other matters shall be determined by an Ordinary Resolution.

**6.6: Voting Method**

At the discretion of the Chair, a vote may be conducted by show of hands, an electronic voting mechanism, or by secret ballot.

**6.7: Attendance**

All Members may attend and participate in any Meeting of the Members.

**ARTICLE 7 – BOARD OF DIRECTORS**

**7.1: Composition of Board of Directors**

The administration of CREA's affairs shall be vested in a Board of Directors comprised of:

- 7.1.1: the following individuals who shall be appointed as Directors by the Board of Directors immediately following the Annual Meeting:
  - 7.1.1.1: the individual who was the President-Elect in the preceding year, as President;
  - 7.1.1.2: the individual who was the President in the preceding year, or in the event that he/she cannot act, the most recent Past President so willing to act, as Immediate Past President;
- 7.1.2: the following individuals who shall be elected in accordance with the By-Laws:
  - 7.1.2.1: eight (8) Regional Directors;
  - 7.1.2.2: six (6) Directors-at-Large.

**7.2: Definitions**

**Director-at-Large** means a Director elected by all Boards and Associations at an Annual Meeting.

**Regional Director** means a Director elected by the Boards and Associations of a Region in accordance with the procedure outlined in Article 8.

Region refers to each of the following seven (7) Regions:

- (1) New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island (2 Directors);
- (2) Quebec;
- (3) Ontario;
- (4) Manitoba;
- (5) Saskatchewan;
- (6) Alberta/Northwest Territories;
- (7) British Columbia/Yukon Territory.

### **7.3: Terms of Office**

- 7.3.1: The President and the Immediate Past President shall hold office for a term of one (1) year.
- 7.3.2: The Regional Directors and the Directors-at-Large shall hold office for a term of two (2) years.
- 7.3.3: All terms of office are deemed to expire at the end of the Annual Meeting in the year the particular term ends.

### **7.4: Restriction on Holding Office**

- 7.4.1: No Director may hold more than one position as Director.
- 7.4.2: Any individual who holds the office of President is deemed to have resigned any other Director position such person would simultaneously hold. The balance of the term of an incoming President's term as a Director-at-Large or Regional Director (if any) will be filled by a qualified member elected at an Annual Meeting of the Members.

### **7.5: Term Limits**

- 7.5.1: Subject to the provisions of this section, Directors cannot serve more than four (4) consecutive two-year terms.
- 7.5.2: A Director who is elected Vice-President in his or her eighth (8th) year may run for a fifth (5th) consecutive term.
- 7.5.3: A majority of the Directors shall constitute a quorum at any meeting of Directors, and may exercise he or she were sitting for the first time.

### **7.6: Quorum**

A majority of the Directors shall constitute a quorum at any meeting of Directors, and may exercise all of the powers of the Board of Directors.

### **7.7: Meetings of the Board of Directors**

- 7.7.1: The Board of Directors shall meet not less than twice yearly upon the call of the President.
- 7.7.2: Meetings of the Board of Directors may also be called by:
  - 7.7.2.1: A motion of the Boards and Associations passed at a Meeting of the Members; or

7.7.2.2: Any five (5) members of the Board of Directors.

7.7.3: All meetings shall take place at the time specified in the call at CREA's registered office or such place as determined by the President.

#### 7.8: Form of Meeting

7.8.1: Any meeting of the Directors may be held in person, by teleconference or by other electronic means upon the call of the President.

7.8.2: Any Director, with the permission of the President, may participate in a meeting of the Directors in person, by teleconference or by other electronic means.

#### 7.9: Notice of Meetings of Directors

Notice of Board of Directors meetings shall be delivered or telephoned to each Director not less than ten (10) days before the meeting is to take place. A shorter notice period is permitted if all the Directors are present or if those absent have signified their consent to the meeting being held with the shorter notice period and in their absence.

#### 7.10: Director Honoraria

The Directors shall be allowed an honorarium for their services, and shall be paid for expenses incurred on behalf of CREA in accordance with the policy of the Board of Directors, provided that any proposed change in the amount of total honoraria for Directors, including Directors who are officers, is approved at a Meeting of the Members.

#### 7.11: Loss of Qualification during the Term of Office

7.11.1: A Director shall cease to hold office as a Director in the following circumstances:

7.11.1.1: If the Director:

7.11.1.1.1: Resigns by delivering a written resignation to the President and Chief Executive Officer;

7.11.1.1.2: Makes an assignment for the benefit of creditors, becomes bankrupt or insolvent, or takes the benefit of any act that may be in force for bankrupt or insolvent debtors.

7.11.1.1.3: Ceases to be a REALTOR® member;

7.11.1.1.4: Has been declared incapable; or

7.11.1.1.5: Dies.

7.11.1.2: If, at a Meeting of the Members, a resolution is passed that a Director be removed from office by the members who elected that Director.

7.11.1.3: If the Director:

7.11.1.3.1: Breaches CREA's By-Laws, Rules or Policies;

7.11.1.3.2: Breaches CREA's Practices, including, but not limited to, the Code of Conduct, Conflict of Interest and Director Performance practices;

7.11.1.3.3: Is convicted of an indictable offence or an offence involving theft, fraud or moral turpitude; or

7.11.1.3.4: Commits any other act that is, in the opinion of the Board of Directors, sufficient cause for loss of qualification.

- 7.11.2: The Board of Directors, by a resolution passed by at least seventy-five (75) per cent of the Directors, other than the Director who is the subject of the meeting, may determine that conduct in violation of 7.11.1.3 has occurred.
- 7.11.3: Directors who lose qualification as a result of 7.11.1.1 or 7.11.1.2 shall immediately be terminated from the Board of Directors.
- 7.11.4: In the event a Director is the subject of a resolution of the Board of Directors under 7.11.2, the Board of Directors has the authority to take any action, including suspending the Director, pending the ratification of that resolution by the Members.

#### **7.12: Vacancies**

If a vacancy occurs as a result of any of the foregoing reasons, the Directors remaining in office may exercise all of the powers of the Board of Directors provided that a quorum is sustained. The Board of Directors may fill a vacancy for the balance of the term:

- 7.12.1: by appointing a qualified Member; or
- 7.12.2: by recommending that a qualified Member be elected by the membership in accordance with these By-Laws.

### **ARTICLE 8 – ELECTION OF DIRECTORS-AT-LARGE AND REGIONAL DIRECTORS**

#### **8.1: Qualifications of Directors**

Individuals wishing to be elected either as a Director-at-Large or a Regional Director must:

- 8.1.1: Be a REALTOR® member;
- 8.1.2: Have been a REALTOR® member for at least five (5) years;
- 8.1.3: Have a minimum of three (3) years' experience as a director of a Board or Association;
- 8.1.4: Otherwise not be disqualified by the Act;
- 8.1.5: In the case of a Regional Director, be licensed in that Region.

#### **8.2: Only One Director Position**

A candidate for Director is eligible to run for election for only one Director position in any given year.

#### **8.3: Directors-at-Large**

- 8.3.1: Directors-at-Large shall be elected and retire in rotation. Three (3) Directors-at-Large shall be elected at each Annual Meeting;
- 8.3.2: All Boards and Associations are entitled to vote in the Director-at-Large elections, and shall carry the same number of votes as they do for the Annual Meeting voting.

#### **8.4: Regional Directors**

- 8.4.1: Only the Boards and Associations of the particular Region are entitled to vote in the Regional Director elections, and shall carry the same number of votes as they do for the Annual Meeting.
- 8.4.2: Regional Directors shall be elected and retire in rotation as follows:

8.4.2.1: In odd numbered years, Regional Directors shall be elected in the following regions:

British Columbia/Yukon (1 Director);  
Manitoba (1 director); Quebec (1 Director);  
New Brunswick/Newfoundland/Nova Scotia/Prince Edward Island (1 Director).

8.4.2.2: In even numbered years, Regional Directors shall be elected in the following regions:

Alberta/Northwest Territories (1 Director);  
Saskatchewan (1 Director);  
Ontario (1 Director);  
New Brunswick/Newfoundland/Nova Scotia/Prince Edward Island (1 Director).

#### **8.5: Place of Regional Director Election**

The Regional Director election may be held in the Region if a majority of the candidates running for Regional Director in that particular Region advise CREA's Chief Executive Officer in writing of their preference no later than sixty (60) days preceding the Annual Meeting. Otherwise, the election will be scheduled by CREA on a date preceding the Annual Meeting in the city scheduled for that meeting.

#### **8.6: Acclamation**

8.6.1: If the number of candidates seeking election to the Board of Directors is less than or equal to the number of vacancies open for that position, or, if a nominating committee constituted under the Rules nominates only the number of nominees necessary to fill vacancies on the directorate without the requirement for an election to be held, then those candidates shall be deemed to be elected by acclamation to that position.

8.6.2: If one of the acclaimed positions is for a term of one (1) year, and the candidates are unable to agree amongst themselves as to who will take that term, the candidate who shall have a term of only one (1) year shall be determined by random draw, conducted by the Chief Executive Officer.

#### **8.7: Voting**

8.7.1: Any candidates to be elected must receive a majority of the legal ballots cast. In any directorship category, where vacancies exist for both two-year and one-year terms, the candidates elected to the two-year terms shall be those receiving the greatest number of votes in descending order. Once candidates have been elected to all two-year terms, the candidates with the next highest number of votes shall be elected to any one-year term.

8.7.2: The candidate receiving the fewest number of ballots cast shall be deemed to have withdrawn from any subsequent ballot except where this would give rise to a position on the Board of Directors being filled by a candidate who did not receive a majority of the ballots cast.

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**ARTICLE 9 – COMMITTEES AND TASK FORCES****9.1: Committees and Task Forces**

The Board of Directors shall create an audit committee and may create such other committees, task forces and other bodies as it deems appropriate, and establish their mandates.

**9.2: Reporting**

All committees, task forces and other bodies shall report to the Board of Directors.

**ARTICLE 10 – FISCAL YEAR****10.1: Establishment of Fiscal Year**

Until changed by resolution of the Board of Directors, CREA's fiscal year shall end on December 31st.

**ARTICLE 11 – EXECUTION OF DOCUMENTS****11.1: Cheques, Notes, Drafts, etc.**

All cheques, drafts, electronic transfers or orders for the payment of money and all notes and acceptances of bills of exchange shall be signed or authorized by the person or persons designated in accordance with Board of Director policy.

**11.2: Execution of Documents**

Contracts, documents or any instruments in writing requiring the signature of CREA shall be signed by the officers of CREA, or such other persons as authorized by the Board of Directors, and all contracts, documents and instruments in writing so signed shall be binding upon CREA without any further authorization or formality. The Directors shall have power from time to time by resolution to appoint an officer or officers on behalf of CREA to sign specific contracts, documents and instruments in writing. The Directors may give CREA's power of attorney to any registered dealer in securities for the purposes of the transferring of and dealing with any stocks, bonds, and other securities of CREA.

**ARTICLE 12 – BANKING ARRANGEMENTS****12.1: Authorization**

The Board of Directors shall designate, by resolution, the persons authorized to transact the banking business of CREA, to have the authority set out in the resolution, including, unless otherwise restricted, the power to:

**12.1.1:** Choose the banker or bankers to operate CREA's accounts;

- 12.1.2: Make, sign, draw, accept, endorse, negotiate, lodge, deposit or transfer any of the cheques, promissory notes, drafts, acceptances, bills of exchange and orders for payment of money;
- 12.1.3: Execute any agreement relating to any banking business and defining the rights and powers of the parties thereto; and
- 12.1.4: Authorize any officer of the banker to do any act or thing on CREA's behalf to facilitate the banking business.

**12.2: Board Authorized Signatories**

The Board of Directors may authorize any person to negotiate and re-negotiate the terms and conditions of loans on behalf of CREA, including the security to be given.

**ARTICLE 13 – LIABILITY AND INDEMNITY OF DIRECTORS AND OFFICERS**

**13.1: Indemnity**

To the extent permitted by the Act every Director and officer of CREA and the heirs, executors and administrators, and estate and effects of such Director and officer, shall from time to time and at all times be indemnified and saved harmless, out of the funds of CREA, from and against:

- 13.1.1: All costs, charges and expenses whatsoever, which the Director or officer sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against such Director or officer for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by such Director or officer in or about the execution of the duties of the office; and
- 13.1.2: All other costs, charges and expenses, which such Director or officer sustains or incurs in or about or in relation to the affairs thereof.

**13.2: Insurance**

CREA shall purchase and maintain insurance, if available, on behalf of each and every of its Directors, officers, former Directors and former officers against any liability incurred or alleged to have been incurred by them by reason of being or having been Directors or officers of CREA. CREA shall purchase insurance in respect of potential liabilities of the Directors and officers whether or not CREA would have the power to indemnify them against any such liability.

**13.3: Protection of Directors and Officers**

Subject to the Act, no Directors or officers of CREA shall be liable for the acts, receipts, neglects or defaults of any other Director or officer or employee, or for joining in any receipt or act for conformity or for any loss, damage or expense happening to CREA through the insufficiency or deficiency of title to any property acquired by CREA or for or on behalf of CREA or for the insufficiency of any security in or upon which any of the money of or belonging to CREA shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or Corporation with whom or which any money, securities or effects shall be lodged or deposited or for any other loss,

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damage or misfortune whatever which may happen in the execution of the duties of his/her respective office or trust in relation thereto unless the same shall happen by or through the person's own wrongful and willful act or through wrongful or willful neglect or default of such Directors or officers.

**ARTICLE 14 – ACTIONS AND PROCEEDINGS**

- 14.1:** No action or proceeding, either at law or in equity, will be brought by any CREA Member against any other Member or against any Director, officer, employee, or any other servant or agent of CREA, or its member Boards and Associations, for any act or omission in relation to the administration or enforcement of these By-Laws.
- 14.2:** This Article may be pleaded as, and shall constitute, an absolute defence to any such claim or action.



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## RULES

### RULE 1 – DEFINITIONS

All defined terms in the By-Laws shall have the same meanings in the Rules.

### RULE 2 – QUALIFYING FOR MEMBERSHIP

#### 2.1: BOARDS AND ASSOCIATIONS

In order to qualify and maintain membership in CREA, all Boards and Associations must comply with the following requirements:

##### 2.1.1: Membership Requirements

- 2.1.1.1: A Board must consist of a minimum of two (2) real estate firms, with no common ownership or interest, direct or indirect.
- 2.1.1.2: A Board, as a minimum, must maintain a class of membership for an individual who is a licensed real estate practitioner in that province/territory.
- 2.1.1.3: A Board may maintain any other class of membership for individuals or organizations whose mandates support the aims and objectives of the Board.
- 2.1.1.4: An applicant for Board membership will provide, at the time of application, the initial list of membership of all classifications, including addresses and real estate firm affiliation. An updated membership list must be provided to CREA by each Board by December 31st of each year.

##### 2.1.2: Membership in Associations

To qualify and maintain membership in CREA a Board must also be a member in good standing of the provincial/territorial Association in its province or territory, where one exists.

##### 2.1.3: Corporate Jurisdiction

- 2.1.3.1: A Board must provide CREA with a detailed geographical description and a map of the Board's corporate jurisdiction for approval.
- 2.1.3.2: Unless otherwise agreed by the affected Boards, only one Board shall operate in each separate jurisdictional area.
- 2.1.3.3: Any proposed changes to the corporate jurisdiction of a Board must be approved by CREA and the appropriate Association. If the applicant Board is proposing to take any portion of the jurisdiction of another Board into its jurisdictional boundaries, the written approval of that affected Board is also required.

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**2.1.4: Dues**

2.1.4.1: A Board/Association will regularly collect and remit the appropriate CREA membership dues.

2.1.4.2: An applicant for Board/Association membership will submit, with its application, the dues for at least one full year for all members of the proposed Board/Association.

**2.1.5: The REALTOR® Code**

Each Board/Association shall adopt and enforce the REALTOR® Code in the manner and according to the standards established in the Three-Way Agreement and CREA's By-Laws, Rules and policies, all as amended from time to time and shall ensure through its By-Laws and membership agreements that all Board members are bound by the REALTOR® Code.

**2.1.6: Principles of Competition**

A Board/Association is required to abide by the Principles of Competition.

**2.1.7: Arbitration**

2.1.7.1: All Boards/Associations must have a binding arbitration process to deal with commission disputes between their members.

2.1.7.2: All Associations must have an arbitration/mediation process to deal with disputes between their member Boards.

**2.1.8: CREA's By-Laws, Rules and Policies**

A Board/Association must abide by the By-Laws, Rules and Policies of CREA, and must, through its By-Laws and membership agreements, establish the same requirement of its own members.

**2.1.9: Incorporation**

A Board/Association must be incorporated and be in compliance with the requirements of the appropriate incorporating legislation.

**2.1.10: CREA's Certification Marks**

2.1.10.1: All of CREA's certification marks, including, but not limited to, REALTOR®, REALTORS®, MLS®, Multiple Listing Service®, and the associated logos must only be used in accordance with the rules for use and certification mark policies as established by CREA from time to time.

2.1.10.2: A Board/Association must monitor trademark use within its jurisdiction, as required by CREA's By-Laws, Rules and Policies, and will assist CREA, as needed, in the enforcement of CREA's certification marks.

### 2.1.11: Board/Association Names

The proposed name of an applicant for Board/Association membership and applications for change of names submitted by existing Boards/Associations are subject to the approval of CREA. CREA's approval for a proposed Board name is conditional on the prior approval of the appropriate Association.

### 2.1.12: Agreements

Boards/Associations must execute and abide by all agreements with CREA including the Three-Way Agreement, the Certification Mark License Agreement and any other agreements reasonably requested by CREA to be signed. Any existing agreements must be re-signed by Boards/Associations that have changed their names.

### 2.1.13: Staff

#### 2.1.13.1: A Board/Association must:

2.1.13.1.1: maintain adequate staff support to co-ordinate its activities and administration, to enforce the REALTOR® Code and CREA's By-Laws, Rules and Policies, and to ensure the Board/Association complies with these Rules, and;

2.1.13.1.2: have an executive officer, chief executive officer or equivalent title, who possesses the Association Executive Competencies as set out in CREA's Succession Planning Guide.

2.1.13.2: A senior staff person at all Boards/Associations is required to attend at least one (1) risk management session approved by CREA's Chief Executive Officer each year;

2.1.13.3: At least one (1) senior staff person at all Boards/Associations must maintain membership in the Association Executive Network ("AEN"), and that person cannot actively transact or trade in real estate in a licensed capacity;

2.1.13.4: A senior staff person at all Boards/Association is required to attend at least one (1) CREA meeting or event each year. A CREA meeting or event means CREA's Annual Meeting, Special Meeting, Political Action Committee (PAC) days or the AEN Seminar.

2.1.13.5: Any new executive officer, chief executive officer, or equivalent, hired by a Board/Association after November 1, 2009, is required to:

2.1.13.5.1: Attend the first AEN seminar held following the date of hiring.

2.1.13.5.2: Complete the Canadian REALTOR® Association Executive designation course entitled "Module 1: Perspectives: Real Estate Association Yesterday, Today and Tomorrow" or its equivalent as soon as reasonably possible, but in any event, no later than the date of the AEN seminar referred to in 2.1.13.5.1 above.

2.1.13.6: CREA's Chief Executive Officer may grant an exemption or extension to any of the requirements set out in 2.1.13.2, 2.1.13.4 and 2.1.13.5 in any particular year. A Board/Association's request for an exemption must be in writing, and must set out in detail the reasons for the request.

### 2.1.14: By-Laws

The proposed By-Laws of an applicant for Board/Association membership must be submitted with the application for review and approval by CREA to ensure compliance with CREA's By-Laws, Rules, and Policies.

#### **2.1.15: Insurance**

A Board/Association must maintain Directors, Officers and Entity Liability Insurance.

#### **2.1.16: Legal Counsel**

A Board/Association must have a designated legal counsel to whom it has access when needed.

#### **2.1.17: Operational Responsibilities**

A Board/Association has an ongoing obligation to:

- 2.1.17.1: Ensure new members and its Board of Directors are aware of their responsibilities as members and/or governors of organized real estate;
- 2.1.17.2: Ensure its Board of Directors is knowledgeable regarding competition matters, including the Competition Act and Principles of Competition;
- 2.1.17.3: Conduct regular meetings in accordance with the By-Laws of the Board/Association; and
- 2.1.17.4: Maintain awareness within its membership and its Board of Directors of CREA's certification marks.

#### **2.1.18: Certification**

- 2.1.18.1: All Boards/Associations must annually complete a form provided by CREA certifying in writing that they continue to be in compliance with this Rule and that all Board/Association documents continue to be current and comprehensive. The certification for each year must be filed with CREA no later than January 31 of the following year.
- 2.1.18.2: Additionally, all Boards/Associations must when requested by CREA:
  - 2.1.18.2.1: Complete a Self-Evaluation Form intended to assess the status of a Board/Association in terms of these Rules.
  - 2.1.18.2.2: Provide copies of any Board/Association documents, including Bylaws, Rules, Policies, financial review engagement or audited financial statement, whichever is required under the Board/Association's incorporation legislation.

#### **2.1.19: Failure to Comply**

2.1.19.1: In the event a Board/Association fails to comply with 2.1.18, CREA may, in addition to any other powers set out in CREA's By-Laws and Rules, suspend the Board's voting rights at Meetings of the Members and/or suspend some or all of its services or subsidies otherwise provided to Boards/Associations.

#### **2.1.20: New Board/Association Membership Applications**

- 2.1.20.1: Applicants for Board/Association membership must complete a Board/Association Membership Application form and submit it to the Chief Executive Officer, together with all required documentation.
- 2.1.20.2: The Chief Executive Officer shall provide the application to the CREA Board of Directors.
- 2.1.20.3: The CREA Board of Directors may approve the application, subject to ratification at a Meeting of the Members.

#### **2.1.21 CREA's Data Distribution Facility**

Each Board/Association shall comply with CREA's Data Distribution Facility Policy as amended from time to time.

#### **2.2: REALTOR® MEMBERS**

REALTOR® members shall be considered members of CREA upon:

- 2.2.1: Written notification to CREA by the respective Board that their application for Board membership has been approved; and
- 2.2.2: Receipt by CREA of any dues, initiation fees or assessments owing.

#### **RULE 3 – FAILURE TO COMPLY WITH REQUIREMENTS OF MEMBERSHIP**

##### **3.1: BOARDS AND ASSOCIATIONS**

In the event of a complaint that a Board or Association has not complied with the requirements of membership, the following process shall be applied:

- 3.1.1: The complaint must be initiated either by CREA or an Association. In the latter case, the complaint must be in writing directed to CREA's Chief Executive Officer.
- 3.1.2: Upon receipt of a complaint the Chief Executive Officer shall forward to the Board, a notice setting out the details of the complaint, and a Self-Evaluation Form, which shall be completed by the Board and returned to the Chief Executive Officer within twenty (20) days of its date.
- 3.1.3: If, upon receipt of the Self Evaluation Form, or the expiry of the twenty (20) day period without the Form being returned, CREA's Board of Directors decides, after consultation with the appropriate Association, that a Board is not complying with the requirements of membership, a notice shall be sent to the Board setting out the details of the non-compliance and requiring that the problem be rectified within twenty (20) days of the date of the notice.
- 3.1.4: In the event the non-compliance is not addressed to the satisfaction of CREA within the twenty (20) day period, the Board of Directors may make such determination as it deems reasonable, including suspension or termination of the Board membership.
- 3.1.5: The complaint process set out in this Section applies equally to a complaint against an Association.

##### **3.2: REALTOR® MEMBERS**

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- 3.2.1: Complaints relating to the conduct of REALTOR® members will be referred by CREA to the executive officer of the Board or Association to which the Member belongs, with the request that the matter be dealt with through the Board's professional standards process.
  - 3.2.2: If the complaint involves the misuse of CREA's trademarks – including the MLS® and REALTOR® family of marks – or other intellectual property (including, but not limited to, REALTOR.ca, ICX.ca, realtorlink.ca and crea.ca), the complaint may, at the same time, be dealt with by the CREA Chief Executive Officer, who may make such determination as he or she deems expedient, including:
    - 3.2.2.1: Suspending or revoking the Member's license to display CREA's trademarks;
    - 3.2.2.2: Suspending or terminating the Member's passwords to CREA's websites; or
    - 3.2.2.3: Otherwise preventing access by the Member to any of CREA's intellectual property.
  - 3.2.3: Any decision of the Chief Executive Officer may be stated to be effective immediately or at such time as a determination is made on the complaint by the appropriate Board or Association.
  - 3.2.4: A Member affected by a decision under 3.2.2.2 above may appeal to the CREA Board of Directors within ten (10) days of notification of the decision.
  - 3.2.5: The Board of Directors shall review and consider the complaint and may make such determination as it deems reasonable. Any suspension or termination of rights imposed by the Chief Executive Officer shall remain in effect pending the decision of the Directors.

#### **RULE 4 – FEES, ASSESSMENTS AND DUES**

##### **4.1: Remittance of Fees, Assessments and Dues – Boards/Associations**

- 4.1.1: The Board of Directors shall establish fees, assessments, and membership dues to become effective when approved at a Meeting of the Members. A-la-carte fees are effective immediately and do not require approval at a Meeting of the Members.
- 4.1.2: CREA dues shall be remitted quarterly, based on a calendar year.
- 4.1.3: Each Board and Association shall remit to CREA, not later than the end of each calendar quarter, an amount representing at least one-fourth of the applicable CREA annual dues for each person who is a Member at any time during the calendar quarter.
- 4.1.4: Annual membership dues shall be prorated on a quarterly basis for those new members joining CREA during the calendar year.
- 4.1.5: In the event a Board fails to remit dues as required by CREA for a period of six (6) months, CREA's Board of Directors may terminate the membership of the Board.

#### **RULE 5 – MEETINGS OF THE MEMBERS**

##### **5.1.: Voting Delegates**

- 5.1.1: In order to exercise voting rights, a Board or Association must provide CREA's Chief Executive Officer with written notice of the names of its voting delegates at least forty-five (45) days prior to the Annual Meeting. The individuals named will also be deemed to be the Board or Association's voting delegates at any subsequent Special

Meeting held before the next Annual Meeting, unless the Board/Association otherwise notifies the Chief Executive Officer in writing.

- 5.1.2: Any Board or Association that did not comply with Rule 5.1.1 will nevertheless be entitled to vote at any subsequent Special Meeting held in the same fiscal year, provided it supplies the Chief Executive Officer with the names of its voting delegates at least thirty (30) days prior to the date of such subsequent meeting.
- 5.1.3: A Board or Association may change its voting delegates at any time, on written or electronic notice to the Chief Executive Officer.

## **RULE 6 – DIRECTOR RESPONSIBILITIES**

### **6.1: Board of Directors**

#### **6.1.1: Responsibility**

In addition to the duties and powers established in the Articles and By-Laws, the Board of Directors is responsible for the following:

- 6.1.1.1: To give direction to the Officers.
- 6.1.1.2: To review and approve the proposed annual budget for the following fiscal year.
- 6.1.1.3: To consider and approve policies that will further the objectives of CREA.
- 6.1.1.4: To identify major issues and trends affecting the profession and determine the position to be taken by CREA.
- 6.1.1.5: To ensure that there is a united national voice for the profession.
- 6.1.1.6: To develop standards of ethics and practice for the conduct of business in the profession.
- 6.1.1.7: To establish national objectives for CREA in the following areas:
  - 6.1.1.7.1: Governmental Affairs;
  - 6.1.1.7.2: Public Relations and Communications;
  - 6.1.1.7.3: Member Services;
  - 6.1.1.7.4: Technology;
  - 6.1.1.7.5: Education.
- 6.1.1.8: To determine the nature of co-operative relationships with foreign industry bodies.
- 6.1.1.9: To determine the nature of co-operative relationships with related national industry bodies.
- 6.1.1.10: To appoint the Chief Executive Officer.
- 6.1.1.11: To protect CREA's trademarks and designations.
- 6.1.1.12: To carry out such other general responsibilities as may be properly directed by the Members.

#### **6.1.2: Reporting**

The Board of Directors reports to the Members.

### **6.2: Directors**

- 6.2.1: All Directors shall:

6.2.1.1: Act as representatives of CREA to Boards and Associations across the country by attending Board/Association meetings as directed by the Board of Directors.

6.2.1.2: Undertake specific duties as assigned by the President or the Board of Directors.

6.2.2: Directors shall always act in the best interests of CREA.

## **RULE 7 – DIRECTOR NOMINATION PROCESS**

### **7.1: Notice of Director Elections**

7.1.1: The Chief Executive Officer shall send a notice to all real estate firms, at the addresses recorded in CREA's membership database and to all Boards and Associations, advising of upcoming vacancies on the Board of Directors and encouraging qualified individuals to let their names stand for election as Regional Director or Director-at-Large.

7.1.2: The notice may be in writing or electronic format, and may be communicated by regular mail, courier, facsimile, e-mail or other electronic means, at least one hundred and five (105) days before the Annual Meeting, and shall be posted on REALTOR Link®.

7.1.3: Boards and Associations shall distribute the notice to all of their current directors, as well as to those former directors and other qualified individuals the Board/Association believes would make a contribution to the CREA Board of Directors.

### **7.2: Candidates**

Interested candidates must complete CREA's Director Candidacy Form and submit it to the Chief Executive Officer no later than sixty (60) days prior to the Annual Meeting.

### **7.3: Referral to a nominating committee**

7.3.1: In the event that no qualified candidate has submitted his or her name for election for any particular category the matter shall be referred to a nominating committee.

### **7.4: Notification of Candidate Names**

The Chief Executive Officer shall circulate the names of the candidates to all Boards and Associations no later than thirty (30) days prior to the Annual Meeting.

## **RULE 8 – REALTOR® CODE**

### **8.1: Application**

8.1.1: No obligation under the REALTOR® Code is to be read as requiring a REALTOR® member to violate the law. If compliance with any particular Article of the REALTOR® Code would result in a REALTOR® member being in violation of applicable law, then that requirement has no force and effect with regard to that REALTOR® member.



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**8.2: Amendments**

8.2.1: Revisions to the Articles or Interpretations of the REALTOR® Code shall become effective when approved by the Members.

**8.3: Board Authority**

8.3.1: Each Board must either maintain a mechanism to effectively deal with and adjudicate complaints under the REALTOR® Code or delegate such enforcement to a regional or provincial body established by Boards or Associations for that purpose.

8.3.2: Each Board has the exclusive authority to interpret and apply the REALTOR® Code as it deems appropriate to complaints received by the Board.

**8.4: Process For Handling Complaints**

8.4.1: Complaints must be in writing and cannot be filed anonymously. Boards/Associations may establish in their own rules under what circumstances the complainant's identity is disclosed to any other party.

8.4.2: Complaints may come from any source including the public and REALTOR® members and can be initiated by the Board/Association itself. No rule, bylaw or contractual commitment may prevent a Board/Association from proceeding with a complaint simply because of its source;

8.4.3: Professional standard processes should include efficient methods of dealing with complaints that may not warrant a full hearing, such as a consent to discipline or Fast-Track process;

8.4.4: In processing a complaint, the Board will use the following criteria:

8.4.4.1: If the subject matter of the complaint falls under the REALTOR® Code and is not found in the provincial regulatory requirements, then the Board shall process the complaint under the REALTOR® Code.

8.4.4.2: If the subject matter of the complaint falls under the provincial regulatory requirements and is not found in the REALTOR® Code, then the complaint or complainant may be referred to the regulatory body responsible for enforcement of the provincial regulatory requirements.

8.4.4.3: If the subject matter of the complaint can be found in both the REALTOR® Code and the provincial regulatory requirements, the Board may refer the complaint or the complainant to the appropriate regulatory body or elect to deal with the complaint under the REALTOR® Code.

8.4.4.4: If one aspect of the complaint falls under the provincial regulatory requirements and another aspect falls under the REALTOR® Code, the

Board/Association may refer to the complaint or the complainant to the appropriate regulatory body and may, at its option deal with the other aspect of the complaint under the REALTOR® Code.

## **RULE 9 – CERTIFICATION MARKS**

### **9.1: The Marks**

- 9.1.1: The Certification Marks (collectively, the “Marks”) owned or controlled by CREA, and that are licensed by CREA pursuant to the terms and conditions herein, are as follows:  
 MLS®;  
 Multiple Listing Service®;  
 MLS® logos as shown in existing registrations and such variations as may be permitted by CREA in writing (collectively, the “MLS® Marks”);  
 REALTOR®;  
 REALTORS®;  
 REALTOR® logos as shown in existing registrations and such variations as may be permitted by CREA in writing (collectively, the “REALTOR® Marks”).
- 9.1.2: CREA may in the future adopt other marks as certification marks, and may license them in CREA's sole discretion, and on such terms and conditions as CREA may subsequently specify in writing.

### **9.2: Standards Associated with the Marks**

- 9.2.1: The Marks are registered under the Trade-marks Act as certification marks and are protected throughout Canada.
- 9.2.2: The REALTOR® Marks identify Members of CREA who provide real estate brokerage services (the “REALTOR® services”) in compliance with CREA's By-Laws and Rules, and the REALTOR® Code, as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations.
- 9.2.3: The MLS® Marks identify professional services rendered by members in good standing of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement," also known as a co-operative selling system (the "MLS® services"), in compliance with CREA's By-Laws and Rules, and the REALTOR® Code as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations. The MLS® Marks do not identify or describe a computer database of real estate listings.
- 9.2.4: An MLS® System is a co-operative selling system operated and promoted by a Board or Association in association with the MLS® Marks. An MLS® System includes an inventory of listings of participating REALTOR® members, and ensures a certain level of accuracy of information, professionalism and co-operation amongst REALTOR® members to affect the purchase and sale of real estate.

### **9.3: Licensees of the Marks**

- 9.3.1: Subject to the terms of this Rule, the following Members of CREA (collectively, “Licensees”) are licensed to use, reproduce and display the Marks:

- 9.3.1.1: Boards;
- 9.3.1.2: Associations;
- 9.3.1.3: REALTOR® members.
- 9.3.2: A corporation, partnership, or other entity operating as a licensed real estate firm may use, reproduce and display the Marks in the course of its business, provided that all licensed practitioners in any way affiliated with the real estate firm are REALTOR® members.
- 9.3.3: An individual, corporation, partnership or other entity who has been licensed by CREA in writing may use, reproduce and display one or more of the Marks for certain specific wares or services.
- 9.3.4: Former REALTOR® members who are no longer licensed, but who are:
- honorary life members or equivalent of a Board/Association; or
  - Honorary Affiliates of CREA
- may display the REALTOR® Marks in a manner consistent with their honorary status provided that:
- 9.3.4.1: any such display is solely for the purpose of promoting membership in CREA, and not for any commercial or business purpose:
- 9.3.4.2: the REALTOR® Marks are not displayed in any manner that would lead a consumer to believe that the person is a licensed real estate practitioner;
- 9.3.4.3: the person agrees in writing:
- 9.3.4.3.1: to be bound by the REALTOR® Code and CREA's By-Laws, Rules and Policies;
  - 9.3.4.3.2: to immediately cease displaying the REALTOR® Marks if requested to do so by CREA or the appropriate Board/Association.

#### **9.4: Restrictions on License**

- 9.4.1: Licensed Wares and Services
- 9.4.1.1: The Marks may only be used, reproduced and displayed in association with the REALTOR® services or the MLS® services, as the case may be, and such other wares, services or business as CREA may specifically permit in writing.
- 9.4.1.2: All Licenses granted pursuant to this Rule shall be non-exclusive.
- 9.4.2: Compliance with Standards
- 9.4.2.1: CREA owns or controls the Marks. As such, CREA has the absolute right to withhold, withdraw or suspend any Licensee's right to use, reproduce or display the Marks, or any one of them, at any time, subject only to the terms of any specific written license agreement between CREA and each Licensee.
- 9.4.2.2: The terms and standards of the license to use the Marks are established in CREA's By-Laws, Rules and Policies, as amended from time to time. The right to use the Marks is conditional on strict adherence to all terms and standards.
- 9.4.2.3: At the request of CREA, each Licensee shall promptly provide samples of all use of the Marks, or any of them, for CREA's review, and each Licensee shall promptly take such steps or make such changes as CREA may request to rectify any non-compliance with these terms and standards.

- 9.4.2.4: Licensees shall have no right to use, reproduce or display the Marks, except as specifically provided for in this Rule. All other rights are reserved to and remain with CREA. Without limiting the generality of the foregoing, Licensees shall have no right to sub-license or assign their right to use, reproduce or display the Marks, or any of them, except as may be permitted by CREA in writing.
- 9.4.3: Licensee Responsibility For Use of Marks By Third Parties
- 9.4.3.1: Licensees are responsible for ensuring that buyers and sellers for whom they are providing any service, as well as any other third parties in any way involved in transactions, do not use the Marks in any unauthorized manner.
- 9.4.3.2: Any Licensee who partners with a non-member in the provision of real estate related services and wishes to permit that non-member to display CREA's marks must:
- 9.4.3.2.1: Provide the non-member with a CREA notice of allowed displays of the Marks;
- 9.4.3.2.2: Enter into a written contract with the non-member which provides as a minimum that:
- 9.4.3.2.2.1: The non-member may only display the Marks in the manner specifically approved by CREA from time to time;
- 9.4.3.2.2.2: The Licensee has the right to terminate the agreement at any time in the event of non-compliance by the non-member;
- 9.4.3.2.2.3: Licensees are required to terminate these agreements in the event of a breach by a non-member.
- 9.4.4: Term and Termination
- 9.4.4.1: All Licenses granted pursuant to this Rule shall commence upon each Licensee satisfying the terms and conditions of CREA's By-Laws and Rules, and shall terminate upon each Licensee ceasing to be a Member in good standing of CREA, or upon CREA terminating the License as provided for in CREA's By-Laws and Rules, as amended from time to time.
- 9.4.4.2: Upon termination, each Licensee shall immediately cease any and all use, reproduction and/or display of the Marks, or any of them, and any and all similar marks, as, or as part of, any trademark, trade name, corporate name, domain name, or otherwise.
- 9.4.5: Estoppel
- Licensees agree that they will not at any time, either during the term of, or following the termination of this license:
- 9.4.5.1: Challenge the validity or distinctiveness of the Marks or any other trademarks of CREA, or CREA's ownership thereof;
- 9.4.5.2: Use, display or attempt to register (as trademarks, trade names, corporate names or domain names) any word, phrase, term, acronym, initials or design that incorporate, or are confusingly similar to the Marks or any of them or any other trademark of CREA.
- 9.4.6: Business Restriction
- The Marks may only be used by REALTOR® members in connection with their brokerage services relating to real estate transactions, as permitted by the relevant provincial or territorial real estate licensing legislation.

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## 9.5: Usage Rules

### 9.5.1: General Rule

- 9.5.1.1: The Marks must always be displayed in a manner that enforces their distinctiveness as certification marks, and emphasizes that they are not generic or descriptive words.
- 9.5.1.2: The detailed usage requirements found in CREA's Policies must be complied with in every use, display or reproduction of the Marks. Any repeated failure to comply with these requirements shall entitle CREA to terminate the license.

### 9.5.2: Form Requirements

- 9.5.2.1: The Marks must always be displayed in the exact form and manner in which they are registered, as follows:  
MLS<sup>®</sup>, Multiple Listing Service<sup>®</sup>;  
REALTOR<sup>®</sup>, REALTORS<sup>®</sup>.
- 9.5.2.2: The <sup>®</sup> registration symbol must always be displayed in conjunction with the Marks except in the case of any permitted new Marks that are not registered.
- 9.5.2.3: All business and promotional material displaying any of the Marks must, where possible, include the statement "Trademark owned or controlled by The Canadian Real Estate Association. Used under license."
- 9.5.2.4: The MLS<sup>®</sup> and REALTOR<sup>®</sup> logos must only be used, reproduced and displayed in the form as registered, or in such other form as may be approved by CREA in writing, as detailed in CREA's Policies as amended from time to time.

### 9.5.3: Exceptions to Form Requirements

- 9.5.3.1: National and local media outlets may display the REALTOR<sup>®</sup> marks by capitalizing only the "R," and are not required to display the <sup>®</sup> symbol following the Marks, all in accordance with the Associated Press Style Book or the United Press International Style Book.
- 9.5.3.2: Textbooks and other educational material may use the Marks without the <sup>®</sup> symbol provided that there is, at the beginning of the book or document, an explanation of the meaning and ownership of the Marks, which has been approved by CREA.

### 9.5.4: Specific Additional Requirements – REALTOR<sup>®</sup> Marks

- 9.5.4.1: The REALTOR<sup>®</sup> Marks must only be used to identify the real estate brokerage services and related professional services provided by members of CREA. The REALTOR<sup>®</sup> Marks must never be used as a generic or descriptive name to identify a salesperson, broker, or other real estate professional.
- 9.5.4.2: The REALTOR<sup>®</sup> Marks must never be used as part of a business name or trade name or corporate branding except as may be permitted by CREA in writing.

### 9.5.5: Specific Additional Requirements – MLS<sup>®</sup> Marks

- 9.5.5.1: The MLS<sup>®</sup> Marks must only be used to identify the professional services provided by Members of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement," also known as a co-

operative selling system. The MLS® Marks must never be used as a synonym for a "database of real estate listings."

- 9.5.5.2: When referring to the co-operative selling systems operated by Boards and Associations, the proper terminology is "the MLS® System of the Board."
- 9.5.5.3: The MLS® Marks must never be used as part of a business name, trade name, or corporate branding except as may be permitted by CREA in writing.
- 9.5.5.4: A REALTOR® member who does not have access to the MLS® System of a Board/Association may not use, reproduce or display the MLS® Marks.

#### **9.6: Use of Marks by Boards and Associations**

- 9.6.1: A Board may only use, reproduce or display the MLS® Marks if it operates, or otherwise provides its REALTOR® members with access to an MLS® System.
- 9.6.2: A Board or Association may use REALTOR® or REALTORS® as part of its corporate name and trade name, provided that:
  - 9.6.2.1: the proposed name is approved in accordance with CREA's Rules; and
  - 9.6.2.2: the Board or Association executes a written license agreement with CREA prior to using the name.
- 9.6.3: Each Board and Association is licensed to use REALTOR® or REALTORS® in the name of its building and in the titles of its publications, provided that each use is first approved by CREA in writing.

#### **9.7: Use of the Marks in Domain Names and on the Internet**

- 9.7.1: Licensees shall not use the Marks or any of them or any other CREA trademarks in domain names, e-mail addresses, meta-tags or other Internet search fields unless specifically authorized to do so by CREA's Policies.

#### **9.8: Enforcement**

- 9.8.1: Boards and Associations are responsible for monitoring and enforcing the proper use, reproduction and display of the Marks in their own jurisdiction. This includes ensuring that real estate firm names, websites and other advertising materials (print and electronic) are compliant, and that Boards and Associations respond to complaints regarding improper uses of the Marks, and conduct discipline hearings in a prompt manner, as required.

### **RULE 10 – OPERATION OF A BOARD'S MLS® SYSTEM**

#### **10.1: Acceptance of Listings**

##### **10.1.1: The Three (3) Pillars of the MLS® Mark**

Only listings that comply with the following three (3) pillars of the MLS® Mark can be placed on a Board/Association's MLS® System.

##### **10.1.1.1: Membership**

Only REALTOR® members may place a listing on a Board/Association's MLS® System.

**10.1.1.2: Agency**

A listing REALTOR® member/real estate firm must act as agent for the seller to post, amend or remove a property listing in a Board's MLS® System. The nature of any additional services to be provided by the listing REALTOR® member/real estate firm to the seller is determined by agreement between the listing REALTOR®/real estate firm and the seller.

**10.1.1.3: Compensation to Co-operating Broker**

The listing REALTOR® member agrees to pay to the co-operating (i.e. selling) REALTOR® member compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.

**10.2: Interpretations of the Three Pillars of the MLS® Mark**

10.2.1: The listing REALTOR® member shall be available to provide professional advice and counsel to the seller on all offers and counter offers unless otherwise directed by the seller in writing.

10.2.2: The listing REALTOR® member is responsible and accountable for the accuracy of information submitted to a Board/Association for inclusion in the Board's MLS® System, and the Board/Association is responsible for ensuring that the data submitted to it meets reasonable standards of quality.

10.2.3: Only REALTOR® members are permitted to display the MLS® trademarks in signage, advertising, etc.

10.2.4: Where the seller directs the listing REALTOR® member in writing to do so, the seller's contact information may appear in the REALTOR® member only remarks (non-public) section of a listing on a Board/Association's MLS® System. The seller's contact information shall not appear on REALTOR.ca or in the general (public) remarks section of a listing on a Board/Association's MLS® System.

The listing REALTOR® member may include a direction in the General Description section on REALTOR.ca or on websites operated by CREA or a Board/Association to visit the REALTOR® member website to obtain additional information about the listing (but the nature of such additional information shall not be specified).

10.2.5: Where the seller has reserved the right to sell the property himself/herself, that fact shall be specified in the Board/Association's MLS® System.

**10.3: Out of Jurisdiction Listings**

10.3.1: A Board/Association may, at its option, accept a listing of a property located outside the Board's corporate jurisdiction, including property located in another province or territory, or another country, provided that:

10.3.1.1: the REALTOR® member, in taking the listing, does not violate the provisions of applicable provincial/territorial licensing legislation; and

10.3.1.2: the listing complies with all other requirements of the Rules of CREA and the Board/Association, including the three (3) pillars of the MLS® Mark.

**10.4: Real Estate Component**

10.4.1: Only properties with a real estate component may be listed on a Board/Association's MLS® System.

10.4.2: The term “real estate” includes real property, a leasehold or other interest in real property less than a fee simple, and a time share agreement with regard to real property.

10.4.3: Provided they conform to the provisions of the provincial/territorial licensing legislation, a Board/Association may also, at its option, accept listings for:

10.4.3.1: a moveable dwelling that is designed for use as a permanent residence;

10.4.3.2: a business, including an interest or share of a business, with or without premises, and the fixtures, stock-in-trade, goods and chattels associated with the business, provided such items are sold in bulk as part of the business operation.

#### 10.5: Processing of Listings

##### 10.5.1: Listing Contracts

10.5.1.1: A Board/Association may, at its option, require either listing contracts or data input forms to be submitted within a reasonable period of time (as defined by the Board/Association MLS® Rules) after execution of the listing contract. A Board/Association has the right to require production of the executed listing contract prior to processing the listing.

10.5.1.2: All unconditional sales, and any changes to listing information, must be submitted to a Board/Association within a reasonable period of time (as defined by the Board/Association MLS® Rules). Boards/Associations may, at their option, require conditional sales to be reported.

10.5.1.3: All forms submitted to a Board/Association in relation to a listing must be complete and accurate.

#### 10.6: Non-Member Access to Limited Information

10.6.1: Information on a Board/Association’s MLS® System is intended for the exclusive use of REALTOR® members. However, a Board/Association may, at its option, permit limited access to such information by third parties other than REALTOR® members whose objectives support the interests of the Board/Association and its members, provided that such access:

10.6.1.1: is granted only by way of a written contract and not as a privilege of membership; and

10.6.1.2: is otherwise in compliance with the law.

#### 10.7: Board/Association Obligations

10.7.1: All Boards and Associations that operate MLS® Systems must:

10.7.1.1: Include in their rules and regulations, provisions that give general effect to the provisions of this Rule.

10.7.1.2: Ensure the high quality of listing information on the MLS® Systems and promote data integrity to ensure that MLS® Systems throughout Canada remain a reliable source of accurate information.

10.7.1.3: Every two (2) years, submit to CREA a form certifying that they have complied with CREA’s By-Laws, Rules and Policies dealing with proper use, reproduction and display of CREA’s Marks and have taken reasonable



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measures to ensure that users of their MLS® Systems have also complied with CREA's By-Laws, Rules and Policies.

#### **RULE 11 – DISPUTE RESOLUTION**

- 11.1: CREA shall maintain and administer a dispute resolution process to adjudicate disputes between:
- 11.1.1: REALTOR® members operating in different provinces or territories, relating to the division or disposition of commissions, including referral fees;
  - 11.1.2: A Board (or Boards) and an Association;
  - 11.1.3: Boards operating in different provinces or territories;
  - 11.1.4: Boards operating in the same province or territory, provided that the provincial dispute resolution process has been exhausted and does not involve binding arbitration.
- 11.2: REALTOR® members, for the purposes of 11.1.1, includes real estate firms, and any other entity that is legally entitled to pay or receive referral fees or other compensation, including, as the context requires, all licensed members of the brokerage who are members of CREA.
- 11.3: All inter-provincial REALTOR® member commission disputes shall be submitted to CREA unless otherwise agreed by all parties to the dispute, and the decision of the adjudicators is final and binding. All other disputes under this Rule may, at the option of the parties be submitted to CREA, provided that all parties to the dispute consent.
- 11.4: The dispute resolution process shall be in accordance with policies established by the Board of Directors.

#### **RULE 12 – CONFERENCE**

##### **12.1: Timing of Conference**

CREA shall organize and operate an annual Conference to be held in conjunction with a Meeting of the Members.

#### **RULE 13 – MINUTES**

##### **13.1: Minutes to Be Recorded and Filed**

13.1.1: Minutes of all proceedings, motions approved and decisions taken at Meetings of the Members, CREA Board of Directors, and all Committee and Task Force Meetings shall be recorded and filed at CREA's head office.

13.1.2: The Minutes of Meetings of the Members and the Board of Directors shall be signed by the Chief Executive Officer and, after approval, by the meeting Chair. All other CREA minutes shall be signed by the staff liaison and, after approval, by the Chair.

##### **13.2: Distribution of the Minutes of CREA Meetings**

13.2.1: Minutes of all meetings shall be distributed to all CREA Directors. Additionally:

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- 13.2.1.1: Minutes of Committee and Task Force meetings shall be distributed to all the members of the particular Committee or Task Force;
  - 13.2.1.2: Minutes of CREA Board of Directors meetings shall be made available to Boards and Associations on request;
  - 13.2.1.3: Minutes of Meetings of the Members shall be distributed to Boards and Associations;
  - 13.2.1.4: Posting the minutes on REALTOR Link® shall constitute “distribution” for the purposes of this Rule.

#### **RULE 14 – AFFILIATION**

##### **14.1: National and International Bodies**

The Board of Directors may establish relationships between CREA and any national or international real estate body and may enter into agreements setting out the terms of that relationship.

#### **RULE 15 – RULES OF ORDER**

##### **15.1: Robert’s Rules of Order**

Where not otherwise provided for in CREA’s By-Laws, Rules, Policies or Standing Rules for meetings, procedural issues at all CREA meetings shall be determined in accordance with the latest edition of “Robert’s Rules of Order.”

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Any questions or comments about the service or products CREA provides?  
You can contact us on-line at [info@crea.ca](mailto:info@crea.ca).

**CREA** THE CANADIAN  
REAL ESTATE ASSOCIATION

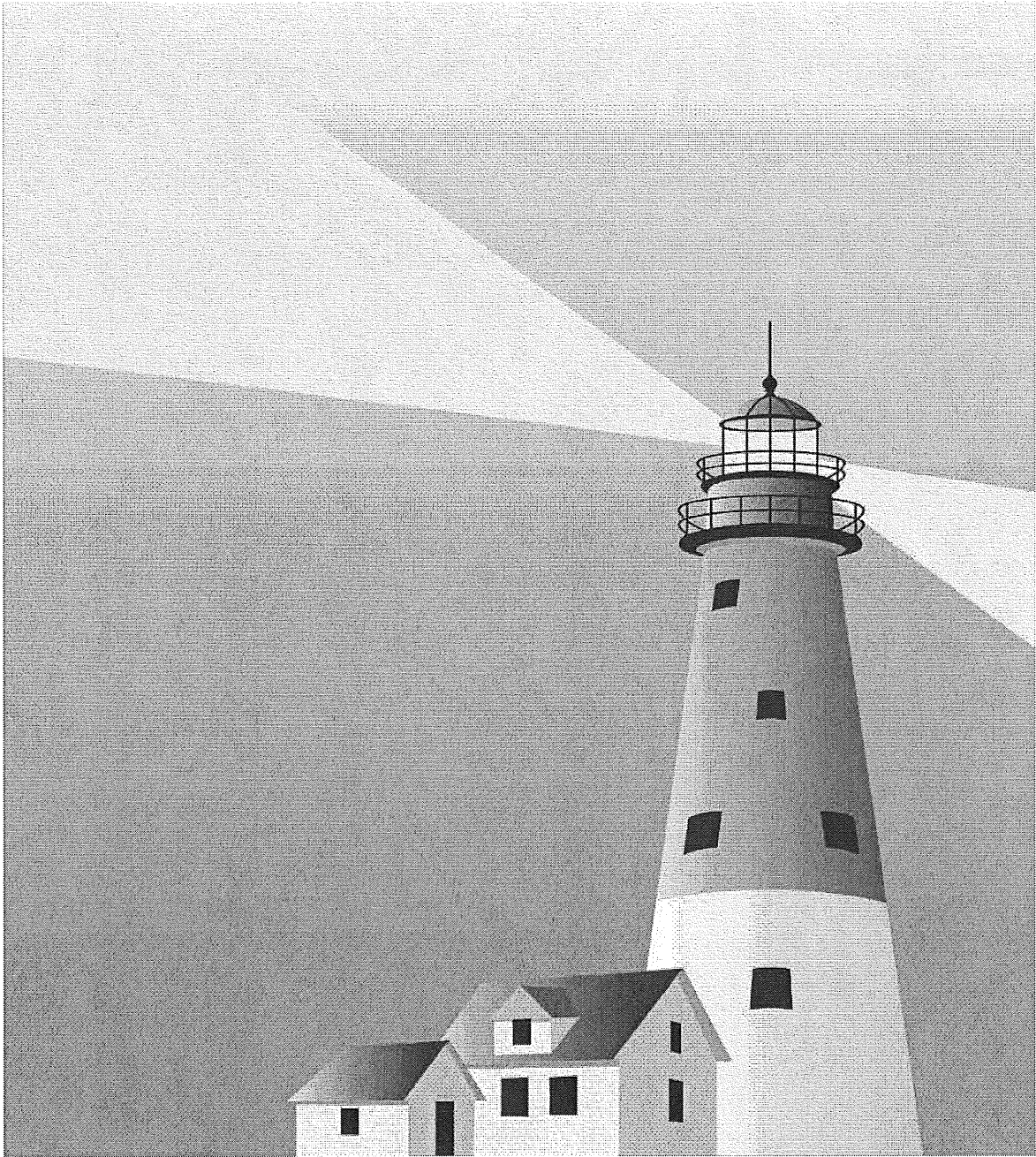
200 CATHERINE STREET, 6<sup>TH</sup> FLOOR, OTTAWA, ONTARIO, K2P 2K9

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**EXHIBIT B**



# The REALTOR® Code

*Effective March 2015*

**CREA** THE CANADIAN  
REAL ESTATE ASSOCIATION



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## PREAMBLE

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Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. Through the REALTOR®, the land resource of the nation reaches its highest use and private land ownership its widest distribution. The REALTOR® is instrumental in moulding the form of his or her community and the living and working conditions of its people.

Such functions impose grave social responsibilities which REALTORS® can meet only by diligent preparation, and considering it a civic duty to dedicate themselves to the fulfillment of a REALTOR®'s obligations to society.

The REALTOR® Code of The Canadian Real Estate Association (CREA) is universally recognized by real estate professionals and consumers alike as the measure of professionalism in real estate. The REALTOR® Code is intended to define the high standard of performance the public has a right to expect from those licensed to display the REALTOR® trademark.

In the same manner that the real estate marketplace is a dynamic, demanding environment, so the REALTOR® Code is, has been, and will continue to be a demanding document; a plan for professionalism in real estate, capable of including and accommodating every change, challenge and controversy which arises.

Since 1913, when the first Code of Ethics was approved by the National Association of Real Estate Boards, it has bound REALTORS® together in a common continuing quest for professionalism through ethical obligations based on honesty, integrity, fairness, accountability and professionally competent service.

The REALTOR® Code has been amended many times over the years to reflect the changing needs of the public and the values of society, and to act as an assurance of higher professional standards.

Any charge filed shall read as a violation of the REALTOR® Code and/or one or more of the Articles of the Standards of Business Practice. An Interpretation may only be cited in support of the charge or the defence. Penalties for violation of the REALTOR® Code shall be established by the local board or other body authorized to conduct discipline proceedings.

## THE REALTOR® CODE OF ETHICS

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The exclusive designation for a member of The Canadian Real Estate Association is the trademark REALTOR®. It symbolizes a commitment to competence, service and professional conduct.

In the quest for these high standards, REALTORS® in Canada have been bound together by a Code of Ethics since 1959.

As REALTORS®, we accept a personal obligation to the public and to our profession. The Code of Ethics of The Canadian Real Estate Association embodies these obligations. As REALTORS®, we are committed to:

- Professional competent service
- Absolute honesty and integrity in business dealings
  - Utmost civility
- Co-operation with and fairness to all
- Personal accountability through compliance with CREA's Standards of Business Practice.

To meet their obligations, REALTORS® pledge to observe the spirit of the Code in all of their activities and conduct their business whether personally or through employees, associates or others in accordance with the Standards of Business Practice and the Golden Rule —

*"Do unto others as you would have them do unto you."*

## STANDARDS OF BUSINESS PRACTICE

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### 1. Informed of Essential Facts

ARTICLE	INTERPRETATION
<p>A REALTOR® shall be informed regarding the essential facts which affect current market conditions.</p>	<p>1.1 A REALTOR® shall be aware of current legislation and, wherever reasonably possible, be aware of pending legislation (including zoning, government programs, etc.) which could affect trading conditions in the marketplace. (Also applies to Article 4.)</p> <p>1.2 A REALTOR® should attend educational programs and courses which will assist the REALTOR® in remaining up-to-date and aware of matters that could affect any aspect of a real estate transaction.</p> <p>1.3 A REALTOR® shall be aware of appropriate financing procedures, mortgaging requirements, etc. in order to properly discuss financial obligations on any transaction.</p> <p>1.4 A REALTOR® shall be familiar with the contents of the most current forms commonly used in real estate transactions.</p>

### 2. Disclosure of Role - Agency

ARTICLE	INTERPRETATION
<p>A REALTOR® shall fully disclose in writing to, and is advised to seek written acknowledgement from, his or her Clients and those Customers who are not represented by other Registrants regarding the role and nature of the service the REALTOR® will be providing. This disclosure shall be made at the earliest possible opportunity and in any event prior to the REALTOR® providing professional services which go beyond providing information as a result of incidental contact by a consumer.</p>	

### 3. Primary Duty to Client

ARTICLE	INTERPRETATION
<p>A REALTOR® shall protect and promote the interests of his or her Client. This primary obligation does not relieve the REALTOR® of the responsibility of dealing fairly with all parties to the transaction.</p>	<p>3.1 A REALTOR® shall fully disclose to his or her Client at the earliest opportunity any information that relates to the transaction.</p> <p>3.2 A REALTOR® shall not intentionally mislead anyone as to any matters pertaining to a property.</p> <p>3.3 A REALTOR® shall not, during or following the relationship with his/her Client, reveal Confidential Information of the Client.</p> <p>3.4 A REALTOR® shall not use any information of the Client to the Client's disadvantage.</p> <p>3.5 In a competing offer situation, a listing REALTOR® acting as a dual agent shall not use the information contained in another offer to put either client at a competitive advantage.</p> <p>3.6 A REALTOR® shall, at all times, be able to render a proper accounting to the REALTOR®'s Client with respect to monies and other property of the Client which have been entrusted to the care of the REALTOR®.</p> <p>3.7 A REALTOR® shall provide competent assistance when dealing with lawyers, mortgage lenders and other third parties needed to ensure the successful completion of any contract entered into between a Seller and a Buyer.</p> <p>3.8 An individual REALTOR® representing more than one Buyer on the same property shall disclose this fact to each Buyer and shall not use the information contained in another offer to put either client at a competitive advantage.</p> <p>3.9 "Dealing fairly" means acting honestly and professionally. The obligation to deal fairly does not in any way reduce a REALTOR®'s obligation to fulfill his or her fiduciary duties to a Client and follow the Client's lawful instructions.</p>

#### 4. Discovery of Facts

ARTICLE	INTERPRETATION
<p>A REALTOR® has an obligation to discover facts pertaining to a property which a prudent REALTOR® would discover in order to avoid error or misrepresentation.</p>	<p>4.1 <i>This Article applies equally to REALTORS® working with Buyers or Sellers.</i></p> <p>4.2 <i>This Article is not intended to increase the disclosure obligations of REALTORS® beyond those required by common or civil law or any other statutory or regulatory requirements.</i></p> <p>4.3 <i>The REALTOR® shall not be party to any agreement in any way to conceal any facts pertaining to a property.</i></p> <p>4.4 <i>Interpretations 1.1 &amp; 3.2 also apply to Article 4.</i></p>

#### 5. Written Service Agreements

ARTICLE	INTERPRETATION
<p>A REALTOR® shall ensure that all Service Agreements with consumers with the exception of Service Agreements with Buyers are in writing in clear and understandable language, expressing the specific terms, conditions, obligations and commitments of the parties to the agreement.</p>	<p>5.1 <i>Written agreements should be signed at the earliest possible opportunity and in any event prior to any offer to Purchase being presented or submitted.</i></p> <p>5.2 <i>Before entering into a Dual Agency, a REALTOR® shall have the parties' consent in writing to this form of representation by executing a Dual Agency agreement clearly setting out the duties owed by the REALTOR® to each Client.</i></p> <p>5.3 <i>Contracts entered into electronically shall be considered to be "in writing" for the purpose of this Article, provided such contracts comply with the requirements of applicable legislation.</i></p> <p>5.4 <i>A REALTOR® shall, prior to signing, provide the necessary explanations to enable a Client to understand the terms and conditions of a contract.</i></p> <p>5.5 <i>A REALTOR® shall ensure that documents pertaining to the Listing of real estate or to a Buyer agency relationship are kept current through the use of written extensions or amendments.</i></p> <p>5.6 <i>A REALTOR®, on entering into a Listing or other service contract with a Seller, shall discuss and</i></p>

ARTICLE	INTERPRETATION
	<p><i>disclose to the Seller the amount of Compensation offered to co-operating brokers.</i></p> <p><i>5.7 REALTORS® should make reasonable efforts to ensure that Service Agreements with Buyers are signed, and are required to do so in those jurisdictions that mandate written agreements.</i></p>

## 6. Written Transaction Agreements

ARTICLE	INTERPRETATION
<p>REALTORS® shall ensure that agreements regarding real estate transactions are in writing in clear and understandable language, expressing the specific terms, conditions, obligations and commitments of the parties to the agreement. A copy of each final agreement shall be furnished to each party upon their signing or initialing, and shall be dealt with in accordance with the instructions of the parties involved.</p>	<p><i>6.1 Where the distribution of contracts is regulated by the By-Laws and/or Rules and Regulations of the Board or by provincial regulations, such distribution shall be in accordance with the requirements of those By-Laws and/ or Rules and Regulations.</i></p> <p><i>6.2 REALTORS® shall ensure that documents pertaining to the Purchase or Sale of real estate are kept current through the use of written extensions or amendments.</i></p> <p><i>6.3 Interpretations 1.4 &amp; 5.3 also apply to Article 6.</i></p>

## 7. Expenses Related to the Transaction

ARTICLE	INTERPRETATION
<p>A REALTOR® shall, prior to the signing of any agreement, fully inform the signing party regarding the type of expenses directly related to the real estate transaction for which that party may normally be liable.</p>	<p><i>7.1 In explaining fees for services, the REALTOR® shall not state or suggest that the type or level of fees is based on direction from a real estate Board, Association, Institute, Society or Council to which the REALTOR® belongs.</i></p> <p><i>7.2 A REALTOR® shall be fully conversant with the routine type of expenses that a Seller and/or Buyer may incur.</i></p>

## 8. Disclosure of Benefits to Clients

ARTICLE	INTERPRETATION
<p>REALTORS® shall:</p> <p>(a) obtain the consent of their Clients prior to: (i) accepting Compensation from more than one party to a transaction, or (ii) accepting any rebate or profit on expenditures made for a Client.</p> <p>(b) disclose to their Clients any financial or other benefit the REALTOR® or his/her firm may receive as a result of recommending real estate products or services to that party.</p>	<p><i>8.1 Without limiting the generality of Article 8, reference to real estate products or services includes lending institutions, title insurance companies, lawyers, appraisers and moving companies, and other real estate brokerage firms from which the REALTOR® may receive a referral fee.</i></p>

## 9. Disclosure of Benefits to Customers

ARTICLE	INTERPRETATION
<p>REALTORS® shall disclose to Customers:</p> <p>a) any financial or other benefit the REALTOR® or his/her firm may receive as a result of recommending real estate products or services to that party.</p> <p>b) any rebate or profit accepted by the REALTOR® or his/her firm for expenditures made for that party.</p>	<p><i>9.1 The REALTOR® should not recommend or suggest to a party the use of services or products of any other organization or business in which the REALTOR® has a direct or indirect interest without disclosing such interest in writing at the time of the recommendation or suggestion.</i></p> <p><i>9.2 Interpretation 8.1 also applies to Article 9.</i></p>

## 10. Outside Professional Advice

ARTICLE	INTERPRETATION
<p>The REALTOR® shall encourage parties to a transaction to seek the advice of outside professionals where such advice is beyond the expertise of the REALTOR®.</p>	<p><i>10.1 Outside professional advice would include, without limitation, lawyers, appraisers, home inspectors, surveyors, accountants, insurance agents or brokers, mortgage consultants, land use planners and environmental consultants.</i></p>



## 11. Personal Interest in Property

ARTICLE	INTERPRETATION
<p>A REALTOR® shall not buy or sell, or attempt to buy or sell an interest in property either directly or indirectly for himself or herself, any member of his or her Immediate Family, or any entity in which the REALTOR® has a financial interest, without making the REALTOR®'s position known to the buyer or seller in writing.</p>	<p><i>11.1 Disclosure of the REALTOR®'s position shall include the fact that the REALTOR® is a licensed real estate practitioner, the nature of the interest held (when selling), the relationship of the REALTOR® to the Immediate Family member, and/or the fact that the REALTOR® has a financial interest in the buying or selling entity.</i></p> <p><i>11.2 This disclosure must be made regardless of the location of the property in question and regardless of whether the REALTOR® in question is represented by another registrant.</i></p> <p><i>11.3 Where disclosure regarding the Purchase or Sale is also required pursuant to provincial regulation, such additional disclosure shall be made in accordance with that regulation.</i></p> <p><i>11.4 Disclosure pursuant to Article 11 shall be made at the earliest possible opportunity, and in any event prior to the presentation of an offer to Purchase.</i></p> <p><i>11.5 When in doubt, disclose.</i></p>

## 12. Skilled and Conscientious Service

ARTICLE	INTERPRETATION
<p>A REALTOR® shall render a skilled and conscientious service, in conformity with standards of competence which are reasonably expected in the specific real estate disciplines in which the REALTOR® engages. When a REALTOR® is unable to render such service, either alone or with the aid of other professionals, the REALTOR® shall not accept the assignment or otherwise provide assistance in connection with the transaction.</p>	<p><i>12.1 Where a REALTOR® lacks sufficient expertise, he or she may only provide the service with the assistance of another professional who is properly qualified.</i></p> <p><i>12.2 A REALTOR® shall not provide an Opinion of Value if it is outside the REALTOR®'s field of expertise to do so unless this fact is disclosed in writing to the Client or assistance is obtained from another Person who has experience in this area.</i></p> <p><i>12.3 A REALTOR® shall not perform an Appraisal or Opinion of Value on a property in which the REALTOR® has a present or contemplated interest without first disclosing this fact to the Client.</i></p>

ARTICLE	INTERPRETATION
	<p>12.4 Fees charged for Appraisals or Opinions of Value shall not be based on the amount of value reported.</p> <p>12.5 A REALTOR® shall not perform an Appraisal unless he or she has the appropriate training.</p>

### 13. Advertising - Content/Accuracy

ARTICLE	INTERPRETATION
<p>All Advertising and promotion of properties shall accurately reflect property and other details and prominently display the name of the brokerage and any additional information required by provincial regulation.</p>	<p>13.1 REALTORS® shall not advertise or permit any person employed by them or otherwise affiliated with them to advertise real estate services or property without disclosing the name of the REALTOR®'s brokerage in a readily apparent fashion. If disclosing the name of the REALTOR®'s brokerage is impractical because of the nature of the display (e.g. text message, tweet, etc...) then no such disclosure is required, provided there is a link to a display that includes all of the required disclosures.</p> <p>13.2 The Internet website of a REALTOR® is an Advertising vehicle. In the event of a multiple page website, every page is an Advertising vehicle. All properties displayed and all representations made on a website must comply with the REALTOR® Code as well as applicable provincial, federal and any other requirements regarding Advertising.</p> <p>13.3 The advertised or offered price shall not be other than that which was agreed upon in writing with the Seller.</p>

## 14. Advertising Listings of Other REALTORS®

ARTICLE	INTERPRETATION
<p>REALTORS® may only advertise a property if such Advertising has not been restricted at the request of the Seller and is in accordance with provincial and federal regulations.</p>	<p><i>14.1 Listing brokerages may permit the Advertising of their properties by other brokerages when authorized in writing by the Seller to do so.</i></p> <p><i>14.2 Virtual Office Websites (VOWs), Internet Data Exchange Websites (IDXs) and any other similar sites or technologies which display properties of other REALTORS® shall be subject to all applicable laws, and be operated in accordance with the rules established by the appropriate real estate board(s) for such sites.</i></p> <p><i>14.3 Interpretation 13.1 also applies to Article 14, unless otherwise agreed upon in writing.</i></p>

## 15. Advertising Claims

ARTICLE	INTERPRETATION
<p>Claims or offerings in Advertising must be accurate, clear and understandable.</p>	<p><i>15.1 Advertising of Compensation shall include the details of services provided and whether any additional charges may apply. If the services to be provided for the advertised Compensation do not include listing on a Board's MLS® System, a statement to that effect must be included.</i></p> <p><i>15.2 Representations of performance (e.g. "#1," "top-selling," etc.) must include the geographical area referred to, the relevant time-frame (e.g. January-June 2004) and the source or basis on which the claim is based (e.g. based on the number of sales on the MLS® system of the relevant Board for the specified time period).</i></p> <p><i>15.3 Advertising of programs, initiatives or guarantees (e.g. "Buy a house with 0% down, "If I don't sell your house, I will buy it from you,") must clearly set out all significant details of how the program works, including, but not limited to, exceptions and time frames.</i></p> <p><i>15.4 Significant conditions, restrictions, limitations and additional charges shall be fully and prominently displayed in the body of the</i></p>

ARTICLE	INTERPRETATION
	<p><i>advertisement near the claim or offering in easily readable form and shall comply with all applicable laws.</i></p> <p><i>15.5 A condition, restriction, limitation or additional charge shall be considered "significant" if it would likely affect a consumer's decision to retain the REALTOR®/brokerage.</i></p> <p><i>15.6 Any claims or offerings in advertising must also comply with all applicable laws, including the Competition Act.</i></p> <p><i>15.7 Interpretation 13.2 Applies to Article 15.</i></p>

## 16. Discrimination

ARTICLE	INTERPRETATION
<p>The REALTOR® shall not deny professional services to or be a party to any plan to discriminate against any Person for reasons of race, national or ethnic origin, religion, colour, sex, family status, age, or sexual orientation, marital status or disability.</p>	<p><i>16.1 REALTORS® should be familiar with the applicable human rights legislation.</i></p>

## 17. Compliance with Board/ Association Bylaws

ARTICLE	INTERPRETATION
<p>The REALTOR® shall abide by the By-Laws, Rules, Regulations and policies established by the REALTOR®'s Real Estate Board, Provincial/Territorial Association, and The Canadian Real Estate Association (CREA).</p>	

## 18. Compliance with Statutory Requirements

ARTICLE	INTERPRETATION
<p>The business of a REALTOR® shall be conducted in strict accordance with all statutory and regulatory requirements.</p>	<p><i>18.1 A board may only charge a REALTOR® under this Article once he or she has been found to have violated a statute or regulation by the body duly authorized to make such a determination.</i></p> <p><i>18.2 A certificate of conviction or other proof of non-compliance issued by a duly authorized body may be relied on by a board as evidence of non-compliance with this Article.</i></p> <p><i>18.3 Nothing in this Article prevents a board from initiating discipline proceedings where the conduct which is the subject of charges under other statutes or regulations may also constitute a violation of the REALTOR® Code.</i></p>

## 19. Discrediting another Registrant

ARTICLE	INTERPRETATION
<p>The REALTOR® shall never publicly discredit any other Registrant. If the REALTOR®'s opinion is sought, it should be rendered with strict professional integrity and courtesy.</p>	<p><i>19.1 The REALTOR® should not comment in a derogatory manner as to the capacity, integrity, and competence of any other Registrant.</i></p> <p><i>19.2 Where any REALTOR® is asked to comment on a specific transaction or the business practices of another Registrant, such comments should be given with strict professional integrity, objectivity and courtesy.</i></p> <p><i>19.3 This Article does not apply to truthful Advertising by REALTORS®. Any Advertising by a REALTOR® which contains seemingly derogatory statements about other Registrants or competitors, their businesses or their business practices may form the basis of an ethics charge only if such statements are false or misleading within the meaning of the Competition Act, or are otherwise prohibited by law.</i></p>

## 20. Respecting Contractual Relationships

ARTICLE	INTERPRETATION
<p>The agency or other contractual relationship of a Registrant shall be respected by all REALTORS®.</p> <p>Negotiations regarding an offer or the acceptance of an offer with any party who is exclusively represented shall be carried on with the Registrant representing the party except with the consent of the Registrant.</p>	<p>20.1 A REALTOR® should not in any manner, by specific direction or suggestion, advise a party to a contract that the party should attempt to breach the contract.</p> <p>20.2 Prior to the expiry of an existing listing/buyer agency agreement, a REALTOR® may enter into a Listing agreement with a seller for the same property or a buyer agency agreement with the same buyer provided the following conditions are met: (a) Any communication with the seller/buyer: (i) may be initiated by the seller/buyer; or (ii) if initiated by the REALTOR® must comply with Board Bylaws/Rules concerning solicitation and any applicable provincial or federal legislation or regulation; and (b) any new Listing agreement for the property or buyer agency agreement with the buyer shall not commence until the expiry of the current Listing/buyer agency agreement.</p>

## 21. Conduct Unbecoming

ARTICLE	INTERPRETATION
<p>A REALTOR® shall not engage in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.</p>	<p>21.1 This Article is intended to deal with conduct that, having regard to all of the circumstances, is egregious in nature and goes beyond simple error.</p> <p>21.2 "Conduct" in this Article is not restricted to conduct in the course of providing real estate services.</p>

## 22. Principal (Broker) Responsibility

ARTICLE	INTERPRETATION
<p>The principal of a brokerage is required to supervise and control the activities of the REALTOR® and other personnel for whom he/she is responsible.</p>	<p>22.1 "Principal" means the individual designated as the representative of the firm, either for the purposes of the provincial real estate licensing legislation or with regard to the relationship between the brokerage and the local real estate</p>

ARTICLE	INTERPRETATION
	<p><i>Board/Association.</i></p> <p><i>22.2 In determining the adequacy of supervision, all relevant factors may be considered, including, but not limited to: (a) whether the brokerage had established written policies and procedures which were provided to all REALTORS® and other personnel; (b) whether office activities were regularly reviewed and updated to ensure that the policies and procedures were current and were being properly implemented; (c) whether the principal had undertaken all reasonable steps to ensure compliance by all REALTORS® and other personnel; (d) whether each transaction was reviewed by the principal, including trust deposits, sales record sheets, Listing and sales contracts and (e) whether the principal took remedial action when a violation by a REALTOR® or other personnel was discovered. (f) whether the brokerage regularly informed or updated the firm REALTORS® and other personnel on changes in legislation, rules and regulations or other relevant issues.</i></p>

**23. Cooperation with Board/Association**

ARTICLE	INTERPRETATION
<p>Should a REALTOR® be asked to co-operate in any way in connection with a disciplinary investigation or proceeding, the REALTOR® shall place all pertinent facts before the proper Committee of whichever real estate board or association is conducting the investigation or proceeding.</p>	<p><i>23.1 A REALTOR® who is being investigated for alleged unethical conduct should provide the appropriate Committee, upon request, with all materials and information in the REALTOR®'s possession in connection with the matter being investigated.</i></p> <p><i>23.2 Where a REALTOR® is asked to assist the appropriate Committee in connection with a disciplinary investigation or proceeding involving another REALTOR®, the REALTOR® should provide all relevant materials and information in that REALTOR®'s possession, and be prepared to testify at any hearing of the matter. Such assistance should not be deemed a "controversy" within the meaning and intent of Article 26.</i></p>

ARTICLE	INTERPRETATION
	<p>23.3 Where a REALTOR® has reasonable and probable grounds to believe: (a) that another REALTOR® has apparently breached the REALTOR® Code, and (b) that a person will likely suffer serious damage as a consequence of the apparent breach, the REALTOR® should immediately report the apparent breach to the appropriate Board in writing with the reporting REALTOR®'s name, address and telephone number. The report should be made bona fide without malice or ulterior motive.</p>

**24. Arbitration**

ARTICLE	INTERPRETATION
<p>In the event of a dispute between REALTORS® associated with different brokerages of the same local Board/Association regarding the Compensation earned or to be earned in connection with a real estate transaction, the dispute shall be submitted for arbitration in accordance with the By-Laws, Rules and Regulations of their local Board/Association.</p>	<p>24.1 A dispute between REALTORS® which is properly submitted for arbitration pursuant to this Article should not be deemed a "controversy" within the meaning and intent of Article 26.</p> <p>24.2 Where a REALTOR® fails to submit a dispute to arbitration in accordance with the applicable By- Laws and Rules and Regulations, this Article may be pleaded as a defence in any other action or proceeding.</p> <p>24.3 This Article does not require REALTORS® to arbitrate when all parties to the dispute advise their Board/Association in writing that they choose not to arbitrate before the Board/Association.</p>



## 25. Inter-Board and Inter-provincial Arbitration

ARTICLE	INTERPRETATION
<p>In the event of a dispute between REALTORS® associated with different brokerages and belonging to different local Boards/Associations, regarding the Compensation earned or to be earned in connection with a real estate transaction, the dispute shall be submitted to arbitration in accordance with the By- Laws and Rules and Regulations of the appropriate Provincial/Territorial Association. Should the REALTORS® belong to different Provincial/Territorial Associations, the dispute shall be arbitrated in accordance with the By-Laws and Rules and Regulations of The Canadian Real Estate Association.</p>	<p>25.1 Interpretations 24.1, 24.2 and 24.3 also apply to Article 25.</p>

## 26. Avoid Controversies

ARTICLE	INTERPRETATION
<p>The business of a REALTOR® shall be conducted so as to avoid controversies with other REALTORS®.</p>	<p>26.1 Any REALTOR® who is aware of or involved in a controversy with another REALTOR®, resulting from the alleged misconduct or impropriety of that other REALTOR®, should place such matters before the appropriate Committee for resolution in order that the matter may be resolved in accordance with the Rules and Regulations of the Board, Association, Society or Council to which the REALTOR® belongs.</p> <p>26.2 "Controversies," as used in this Article, does not include aggressive or innovative business practices, which are otherwise ethical and disputes over Compensation or the division of commissions/fees.</p> <p>26.3 A REALTOR® should not disrupt or obstruct a disciplinary investigation or proceeding relating to the alleged misconduct of another REALTOR®.</p> <p>26.4 A REALTOR® should not make any unauthorized disclosure or dissemination of</p>

ARTICLE	INTERPRETATION
	<p><i>allegations, findings or a decision in connection with a disciplinary investigation, hearing or appeal.</i></p> <p><i>26.5 A REALTOR® should not intentionally impede a disciplinary investigation or proceeding by filing multiple complaints based on the same event or transaction.</i></p>

## 27. CREA Trademarks

ARTICLE	INTERPRETATION
<p>A REALTOR® shall only use the trademarks of The Canadian Real Estate Association in accordance with CREA's rules, regulations and policies.</p>	<p><i>27.1 A REALTOR® shall not challenge the validity of CREA's Trademarks.</i></p> <p><i>27.2 A REALTOR® shall not use any of CREA's Trademarks in domain names, e-mail addresses or meta-tags unless specifically authorized to do so by CREA policies.</i></p> <p><i>27.3 CREA's Trademarks are not to be used as hypertext links in Internet websites.</i></p> <p><i>27.4 A REALTOR® shall not use, display, or attempt to register as trademarks any word, phrase, term, initials or design marks that incorporate, or are confusingly similar to, any trademark of CREA.</i></p> <p><i>27.5 A REALTOR® shall not incorporate into corporate or trade names any trademark of CREA or any confusingly similar mark.</i></p> <p><i>27.6 REALTORS® are responsible for ensuring that buyers and sellers, for whom they are providing any service, as well as any other third parties in any way involved in transactions, do not use CREA's Trademarks in any unauthorized manner. This obligation includes the requirement to contractually protect CREA's Trademarks as set out in CREA's By-Laws and Rules.</i></p>

## 28. Intellectual Property Rights of Boards/ Associations

ARTICLE	INTERPRETATION
<p>REALTORS® shall respect the intellectual property and other ownership rights of other REALTORS®, Boards, Provincial/Territorial Associations and CREA.</p>	<p>28.1 REALTORS® shall only access and use the websites and other databases of Boards, Associations, CREA and other REALTORS® in accordance with the policies for use established by the owner of the site.</p> <p>28.2 REALTORS® should not infringe the copyright or other ownership interest of another REALTOR® in his/her Listing.</p> <p>28.3 A REALTOR® shall not use the trade names or trademarks or confusingly similar trade names or trademarks of any firm, franchise, or other organization other than those with which the REALTOR® is affiliated or otherwise authorized in writing to use. This restriction includes but is not limited to, unauthorized Internet uses such as domain names, e-mail addresses and metatags.</p>

## 29. REALTOR® Acting as Principal

ARTICLE	INTERPRETATION
<p>A REALTOR®, when acting as a principal in a real estate transaction, remains obligated by the duties imposed by the REALTOR® Code.</p>	<p>29.1 A REALTOR® is acting as a principal when he or she is buying or selling or attempting to buy or sell an interest in the property either directly, on his or her own behalf or through any entity which the REALTOR® holds any direct or indirect interest.</p>

## DEFINITIONS

The following definitions are illustrative only and are intended simply to assist the reader's understanding of the REALTOR® Code. Throughout this document, words that are defined have been capitalized.

<b>ADVERTISING</b>	means any marketing activity to promote the brokerage, the REALTOR® or a transaction and includes any verbal, written or graphic representation in any form, including electronic media.
<b>APPRAISAL</b>	means an opinion of the value of specified interests in, or aspects of, identified real estate based on an analysis of relevant data and performed by persons who have the required training in the preparation of appraisals.
<b>BOARD</b>	means a member local real estate Board/ Association or provincial/territorial association and includes, where appropriate, a compliance body.
<b>BUYER</b>	means a Person acquiring or attempting to acquire an interest in real estate through a Purchase.
<b>CLIENT</b>	means a Buyer or a Seller whom a REALTOR® is representing as agent.
<b>COMPENSATION</b>	means the payment to a REALTOR® for services related to a Purchase or Sale and includes commissions, fees and any other form of remuneration or reward for services rendered by a REALTOR®.
<b>CONFIDENTIAL INFORMATION</b>	means any personal or business information relating to the individual that ought to be considered confidential by its nature.
<b>CUSTOMER</b>	means a Buyer or Seller who is not a Client.
<b>CREA'S TRADEMARKS</b>	include, but are not limited to, the words REALTOR® and REALTOR Link®, the REALTOR® and REALTOR Link® logos, Multiple Listing Service®, MLS® and the related MLS® logos.
<b>DUAL AGENCY</b>	means a relationship in which a brokerage or a REALTOR® represents, as agent, more than one party in the same Transaction.
<b>IDX</b>	("Internet Data Exchange"), refers to a reciprocal system whereby consenting brokerages agree to advertise on their Internet websites, each other's active listings, either from the MLS® database of the board or from REALTOR.ca, subject to the rules of the applicable real estate board and the REALTOR®'s oversight, supervision and accountability.

<b>IMMEDIATE FAMILY</b>	means a spouse, son, daughter, parent, brother or sister and includes persons who are in such categories because of marriage, common law relationships, or adoption as well as entities in which such persons have any direct or indirect financial interest.
<b>LISTING</b>	means an agreement between a brokerage and a Client granting the brokerage the authority to offer for sale the Client's real property with defined terms and conditions. A listing on MLS® must involve agency and an offer of compensation to the selling office.
<b>OPINION OF VALUE</b>	means an estimate of the value of specified interests in, or aspects of, identified real estate which may be based wholly or partly on comparative market analyses. An Opinion of Value may contain more or less analysis of relevant data than an appraisal and may be performed by a REALTOR®.
<b>PERSON</b>	includes, where applicable, an individual, a partnership, a corporation and any other entity legally capable of buying and selling real estate.
<b>PURCHASE</b>	includes an actual or proposed exchange, option, lease or other acquisition of an interest in real estate.
<b>REALTOR®</b>	is a registered trademark of REALTOR® Canada Inc., a company owned equally by The Canadian Real Estate Association and the National Association of REALTORS® and refers to licensed real estate practitioners who are members of The Canadian Real Estate Association.
<b>REGISTRANT</b>	means a person licensed by a jurisdiction to trade in real estate.
<b>SALE</b>	includes an actual or proposed exchange, option, lease or other disposition of an interest in real estate.
<b>SELLER</b>	means a Person disposing of or attempting to dispose of an interest in real estate by Sale.
<b>SERVICE AGREEMENT</b>	means an agreement that establishes a relationship between a brokerage and a Person which identifies the responsibilities of each party and includes the services to be performed by the brokerage and any compensation payable.

<b>VOW</b>	("Virtual Office Website") refers to a brokerage or REALTOR® Internet website, or a feature of a such Internet website, through which the REALTOR® provides real estate brokerage services to consumers with whom the REALTOR® has first established a broker-consumer relationship, where the consumer has the opportunity to search for MLS® data, either from the MLS® database of the board or from REALTOR.ca, subject to the rules of the applicable real estate board and the REALTOR®'s oversight, supervision and accountability.
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**CREA** THE CANADIAN  
REAL ESTATE ASSOCIATION

© Copyright The Canadian Real Estate Association 2011-2015

The trademarks REALTOR®, REALTORS® and the REALTOR® logo are controlled by  
The Canadian Real Estate Association (CREA)  
and identify real estate professionals who are members of CREA.



**EXHIBIT C**



# TRADEMARK TOOLKIT

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## The RULES for Proper Use of Trademarks

- 1. ALWAYS use capital letters:**
  - For REALTOR<sup>®</sup>, REALTORS<sup>®</sup> and MLS<sup>®</sup>
  - For the first letters of Multiple Listing Service<sup>®</sup>
  - For the "S" in "System" in the phrase "MLS<sup>®</sup> System"
- 2. ALWAYS include the ® registration mark in superscript.**
- 3. ALWAYS include trademark ownership text with any use of the REALTOR<sup>®</sup> or MLS<sup>®</sup> trademarks if possible.**
- 4. ALWAYS use the term "MLS<sup>®</sup> System of the XYZ Board" or "XYZ Board's MLS<sup>®</sup> System" when referring to the co-operative selling system of a Board/Association.**
- 5. NEVER alter or distort the words or the design marks.**
- 6. NEVER combine the marks with any other words or designs.**
- 7. NEVER use adjectives with the marks.**
- 8. NEVER use the marks in slogans, product or business names.**
- 9. NEVER use REALTOR<sup>®</sup> or REALTORS<sup>®</sup> in a way that implies it means "real estate agent".**
- 10. NEVER use MLS<sup>®</sup> in a way that implies it means a database.**
- 11. NEVER use MLS<sup>®</sup> as a noun.**
- 12. NEVER use MLS<sup>®</sup> in domain names.**
- 13. ONLY use REALTOR<sup>®</sup> in domain names in accordance with CREA's policies.**

## TRADEMARK Toolkit

### Foreword

The primary purpose of this Trademark Toolkit is to explain certain simple but essential policies and guidelines that have been adopted by The Canadian Real Estate Association (CREA) to govern and protect the usage of its trademarks. These CREA guidelines and policies are designed to encourage the widest possible consistent use of the trademarks while at the same time preserving and perpetuating their meaning. Without these guidelines and policies, and the cooperation and assistance of member Boards and Associations in ensuring proper use, the trademarks might become confused in the public mind and lose their valuable qualities that can be protected. To remain effective in identifying unique services or identification, the trademarks must be used consistently and correctly.

### Protection is everyone's business

Trademark owners, including CREA, can protect and even enhance the value of trademarks through proper trademark usage. Protection of a trademark begins at home. We need to ensure that REALTORS®, Boards and Associations know how to use our trademarks.

CREA has historically assumed the primary responsibility for protection and enforcement of the MLS® and REALTOR® marks. However, the advances in electronic communication, most importantly the Internet, have resulted in a morass of trademark infringements that no one body can adequately police.

The MLS® and REALTOR® trademarks are assets of organized real estate as a whole and it is absolutely critical to the strength of these industry trademarks that misuses be identified and stopped. A local Board is in the best position to see what is happening in its jurisdiction. With this in mind, CREA amended its By-Laws and Rules in 2009 to make Boards and Associations the primary enforcement authorities for the trademarks.

### The Trademark Toolkit

This Trademark Toolkit has been developed with a number of broad objectives in mind:

- to provide a background primer on trademarks, including a review of what a trademark is, how it adds value to your organization, what a trademark infringement is, and how trademark law in general works;
- to explain how CREA's Rules, policies and guidelines relate to the use of the MLS® and REALTOR® family of marks;
- to act as a resource manual for Boards and Associations, and to provide them with the tools necessary in developing their own trademark compliance programs.

### RESOURCES

This Trademark Toolkit is available on REALTOR Link®.

You can also refer to the federal Trade-marks Act by going to the Department of Justice website <http://laws-lois.justice.gc.ca/eng/acts/T-13/index.html>.



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**APPENDICES**





## INTRODUCTION

### I. The importance of trademark protection

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Trademark protection is everyone's business, and effective trademark protection begins at home. The subject of trademarks often conjures up images of a complex law reserved for the legal departments of multi-national companies. Nothing could be further from the truth. In fact, membership support and compliance with trademark rules are the first steps to building a strong national trademark.

CREA is the owner of various trademarks that serve to identify and brand the services of CREA, Boards/Associations and member salespeople and brokers. While CREA owns a number of trademarks, the most prominent are the MLS® and REALTOR® family of marks.

The purpose of this Trademark Toolkit is to assist Boards/Associations and members in protecting and enhancing these marks. However, before we begin talking about the "how to's" of trademark protection, we need to address a much more fundamental question –why?

The simple answer is that trademarks are not just ethereal concepts – they are valuable corporate assets and need to be treated as such. This concept is discussed in greater detail in this Toolkit, but for the time being, suffice it to say that a trademark owner uses trademarks properly and enforces improper use for the same reason he locks his office doors – to protect the assets of the company.

The MLS® and REALTOR® marks may be owned by CREA, but they are assets of organized real estate. They identify our membership and the services provided by that membership. Boards, Associations and CREA have spent millions of dollars at the local, provincial and national levels promoting the MLS® and REALTOR® marks. This advertising is an essential element of trademark protection, but is not enough on its own. True trademark protection is the result of a comprehensive strategy of registration, licensing, advertising and enforcement, undertaken jointly by all members at every level of organized real estate. This Toolkit is part of that strategy.



## II. Intellectual Property and Trademarks

### 1. Definition of Intellectual Property

A trademark is a sub-set of intellectual property. Intellectual property is a phrase used to describe rights in property of an intangible or “intellectual” nature. This can be a trademark, a process for manufacturing a chemical, or the name of a product. These rights may include the right to sell or transfer the property, the right to manufacture a product using certain technology, the right to exploit a name or famous character to market a product, or the right to reproduce a literary or musical work.

Intellectual property rights are different than physical property rights. Ownership of the physical property does not necessarily lead to ownership of the intellectual property, or vice versa. **For example**, when you own the physical property in a book you have the right to read the book, and to loan or sell the book to a friend. You do not have the intellectual property right to make a photocopy of the book, to adapt the book as a screenplay, or to publish the book.

Intellectual property generally includes five main areas: patents, copyrights, industrial designs, confidential information and trade secrets, and trademarks. These rights are protected in Canada by a combination of common law and legislation.

### 2. Defensive and Offensive Use of Intellectual Property

While this concept of intellectual, as opposed to physical, property may seem ethereal, it is important to remember that intellectual property can be as – or more – valuable to a business operation as the technology that runs it.

Ownership carries with it, substantial rights. The owner of a copyright, **for example**, is the only person authorized to reproduce, distribute or sell the copyrighted work. The owner of a trademark is the only person authorized to use it in association with certain goods or services. The owner of a patent is the only person authorized to incorporate the design or functionality into a product. Anyone else who wishes to do any of these things must deal with the owner and work out a license agreement. Using someone else’s intellectual property without consent may result in enormous financial consequences.

As a result, intellectual property ownership is a powerful tool that can be used as a sword or a shield.

The defensive use of intellectual property involves conducting due diligence before you launch any new product or service to ensure that you are not stepping on any intellectual property toes. If you are developing hardware or software, you will want to research current patents and copyrights to avoid infringement problems. If you are branding your product or yourself in some way, you should not introduce that brand without making sure there are no similar trademarks. **For example**, in expanding the functionality of REALTOR.ca, CREA considered a marketing program called HOUSE BY MOUSE, with a cute little stylized computer mouse with a tail. Before launching the program, a search of registered trademarks revealed that the idea was apparently so clever, many, many persons had registered variations on that theme. So the idea was dropped.

The offensive use of intellectual property refers simply to the process of protecting your original ideas once you have satisfied yourself that they are indeed original. Ideas, by themselves, are nothing, until they have been reduced to some form of product. Once you have conceived of the perfect mousetrap, you must flesh out that concept and register a patent. Otherwise, your idea becomes someone else’s retirement plan.



## PART 1 – A TRADEMARK PRIMER

### 3. Intellectual Property as a Valuable Business Asset

The information age is upon us. And what that means is that the business world has moved away from putting value exclusively on bricks and mortar, and now looks at the value of information, in its many forms when it assesses businesses. The North American economy is now knowledge based and technology driven. The vast majority of successful Internet based companies leverage nothing more than information. The shares of GOOGLE, **for example**, have not skyrocketed because of its knack in real estate investments. The foundation for Google's worth is its constant innovation in how to find and present information to consumers.

Officials of Google estimate that 20 per cent of search requests every day are new. They interpret this as a strategy that 20 per cent of their business changes daily.

If you look at the buyouts and mergers taking place every day, particularly in the high-tech sector, you will see in almost every case, they are simply the joining of complementary technologies – I've got a piece of software that, when combined with your hardware, will produce information in a totally novel manner. Or, my functionality, when marketed through your branding, will triple our customer base.

What is being bought and sold in these scenarios is really nothing more than intellectual property. For this reason, it is crucial to consider intellectual property in every aspect of business operations.

### 4. Intellectual Property as Part of a Strategic Plan

Because intellectual property has a very real, very tangible and very assessable value, it is in the best interests of any organization to leverage its intellectual property with its strategic plan. Intellectual property is inextricably bound up with effective commercial activity.

Every strategic plan has key elements. **For example**, the marketing plan, the financial plan, the sales plan, and the operational plan or strategy for implementation. These elements all combine to become the foundation for the strategies that will help the business deliver on its objectives for the coming year.

When considering the strategic plan, businesses should always be aware of the intellectual property tie-ins. **For example:**

- Databases are subject to copyright. If you are developing a database, what ownership rights do you want to assert - rights in the database as a whole or in the individual things that comprise the database? What kind of protection do you need in contracts with the users of the database and any other third party technology and content providers?
- Most of the material you produce is subject to copyright. What controls do you need to protect that right? Are third parties creating any of the documentation? If so, do you have contracts with them confirming your ownership? Have your employees waived their moral rights to the documents they are creating on your behalf?
- What are you doing to brand yourself or create consumer recognition? Any advertising, communication, packaging and consumer or customer activity involves trademarks and copyrights.



## 5. How Intellectual Property Fits With Business Objectives

It is important to give thought to how intellectual property fits with your business objectives. Some of the questions you need to ask when developing any new initiative are:

- Can intellectual property be leveraged for the product or service?
- If yes, what intellectual property rights are available to best protect this product?
- Is it to your advantage to create some brand and positioning?
- Is it even worthwhile to use intellectual property to protect this product (cost benefit analysis)?
- Is the branding you are thinking of “ownable”?

The bottom line is that in today’s knowledge-based economy, intellectual property must be a key consideration in day-to-day business decisions, and should be exploited at every possible opportunity.

Wrapping your products and service up with an intellectual property component serves 4 main purposes:

1. It turns ideas into assets;
2. It prevents competitors from copying or closely imitating your organization’s products or services;
3. It creates a recognizable corporate identity through branding strategies; and
4. It increases the market value of your organization.

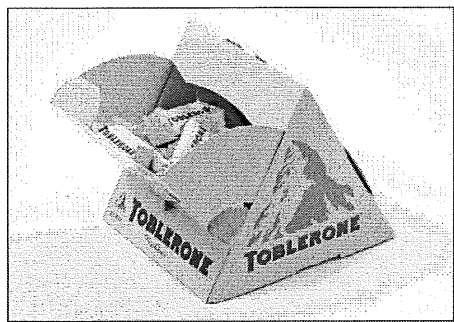


## PART 1 – A TRADEMARK PRIMER

### III. Trademarks

#### 1. Definition

A trademark is a word or a symbol that is used to distinguish the products or services of one person or organization from those of another in the marketplace. A word does not gain trademark significance simply because it refers to a particular product. In order to “distinguish” a product or service, the mark itself must be distinctive. **For example**, a toothpaste manufacturer cannot coin the word “toothpaste” to identify its product exclusively. Toothpaste is a common word of the English language used to identify any of the products used to clean teeth. No-one can “own” that word. But when you see the word CREST, you immediately conjure up an image of a particular brand of toothpaste.



Trademarks are not limited to just words and symbols. Even shapes can be imbued with trademark rights when they are sufficiently well known. The shape of a product or the way it is wrapped or packaged is known as a “distinguishing guise”. If the shape is sufficiently distinctive to “distinguish” or identify the owner’s goods from those of others, it may be given trademark protection. **For example**, look at the shape of the TOBLERONE bar. Those distinctive points, somewhat reminiscent of Bart Simpson’s head, are unique to this product, and can be protected by law from dubious chocolate makers who try to pass themselves off as pseudo Toblerones.

Colour may also form part of a trademark. The distinctive red, white and blue colour contrasts of the PEPSI logo, as an **example**, are integral to the identification of the mark.

#### 2. Certification Marks Versus Ordinary Trademarks

##### CERTIFICATION MARK

A certification trademark is one that is used to distinguish the products or services that are of a defined standard from others that do not meet that standard.



Both **REALTOR®** and **MLS®** are registered as certification marks.

A certification mark is a particular type of registration that is permitted by the Trade-marks Act. An understanding of the place of certification marks in the universe is essential to a discussion of CREA’s trademarks, as the bulk of those marks are, in fact, certification marks.

A certification trademark is one that is used to distinguish the products or services that are of a defined standard from others that do not meet that standard. This standard can relate to one or more of the following characteristics:

- the character or quality of the wares or services;
- the working conditions under which the wares have been produced or the services performed;

## PART 1 – A TRADEMARK PRIMER



- the class of persons by whom the wares have been produced or the services performed; or
- the area within which the wares have been produced or the services performed.

The owner of the certification mark cannot be involved in the services described by the mark. The mark itself is licensed to a group of people or organizations that meet the defined standard. The nice thing about a certification mark is that the owner does not have to enter into separate licensing agreements with each member of the defined group. The Trade-marks Act provides that use by any of the members of the group is deemed to be use by the owner.

A good **example** of an effective certification mark is the GOOD HOUSEKEEPING SEAL OF APPROVAL. This mark is licensed to those companies that meet a defined standard of service or quality of product. Those organizations that have raised the bar to that degree may apply to display the mark in association with that service or product. It says to the world that they have met a standard beyond that provided by other companies.



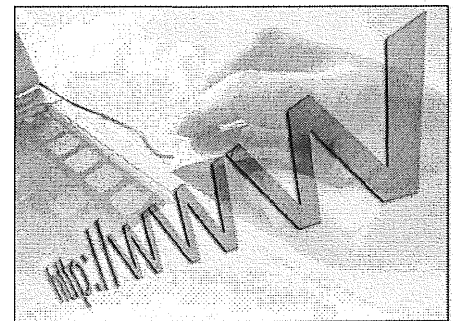
With this in mind, you can see how certification mark registrations mesh with the services provided by members of organized real estate. Many business organizations, unions, and professional associations have established a set of standards which members are required to maintain. The Canadian Real Estate Association is one of them.

These associations pride themselves on their standards and encourage members of the public to deal with association members. CREA's REALTOR® and MLS® families of trademarks are registered as certification marks because they denote a standard of excellence that CREA members must meet in order to maintain their membership. These concepts are discussed in greater detail in Part 2 of this Toolkit.

### 3. Trademarks and the Internet

#### Domain Names

Domain names are the unique Internet addresses assigned by various Internet administrators, such as "yahoo.com", "harvard.edu" or "cbc.ca". The domain names proprietary to the owners in these examples are Yahoo, Harvard and the Canadian Broadcasting Corporation (CBC). The endings ".com", ".edu" and ".ca" define the type of organization or the location of the organization – ".com" for commercial organization, ".edu" for educational organization and ".ca" for a Canadian organization.



A person who is searching the Internet for information on a certain company or product will often try to locate the company by using its company name or its main product name. In this way, a domain name can be an important marketing tool for a company, and a very effective way to promote use of the trademark.

Various court decisions over the last ten years have made it clear that trademark law applies to domain names. A prudent trademark owner will want to make sure it has registered its company name, its major brands, and its trademarks as domain names.



## PART 1 – A TRADEMARK PRIMER

### Meta-tags

Meta-tags can be used to lure Internet users away from competing sites. This is possible because all websites are created using a programming language called hypertext mark-up language (HTML). Like any computer program, a programmer may include non-operational lines of code in the program (i.e. programmer's notes), also known as meta-tags. When a website is viewed, the reader only sees text and graphics produced by the HTML programming, not the source code or the meta-tags. When an Internet user is searching for a website containing specific information, he or she will normally employ a search engine, such as "Yahoo" or "Google" to find the site. The user will enter a word or phrase and the search engine will produce a list of sites that contain the word or phrase. Most search engines will list sites by giving a higher rank to those sites with a greater frequency of the desired word or phrase.

The meta-tag problem occurs because some of the major search engines will consider the meta-tags to be part of the text of the website when conducting a search. An unscrupulous website operator may take advantage of this by including the names or trademarks of its competitors in the form of a meta-tag, often repeating the key words dozens of times.

The courts have confirmed that meta-tags are comparable to advertising and will be subject to the usual rules of trademark protection.

### Sponsored Keyword Searches

Sponsored keyword searches are used like meta-tags to attract Internet users to certain websites. A website owner can purchase a keyword from a provider, like Google Adwords, and their website will then be featured in the search results when an Internet user conducts a search for that word.

Keyword searches can be problematic where a website owner purchases the trademark or tradename of their competitors. Internet users may then be confused into thinking that the website featured in the search results is actually the website of the trademark owner or tradename owner. Canadian courts have confirmed that keyword searches must not be used in a manner that would result in Internet user confusion.

### Hyperlinks

Hyperlinks allow Internet users to switch from web page to web page without typing in new Internet addresses. Web pages often include links to other websites with similar content, or which complement the original site. **For example**, a running shoe company may provide "links" to professional sport websites. Hyperlinks usually appear on web pages in the form of words or logos, also the primary forms of trademarks. Thus, hyperlinks also can be used to imply association with a trademark holder, when none really exists, resulting in either the infringement or dilution of a trademark.

You must always obtain the prior written approval of the owner before creating a hyperlink in any form from a third party website to any page of the owner's website. The company may or may not give such approval at its absolute discretion.

Many companies will only allow a plain-text link and will reserve the right to rescind their approval at any time. Many of these agreements contain clauses that ensure that the person using the links will do so without alteration or deletion or without infringing the trademarks. The company will usually also reserve the right to review and approve the manner in which the company's content is displayed on the website.



## 4. The Four Step Formula to Protecting Your Trademarks

Trademark law is a harsh mistress, and effective trademark protection involves much more than simply registering a mark, or using it properly. In order to solidify and maintain one's rights, a trademark owner must actively and diligently follow this four-step formula:

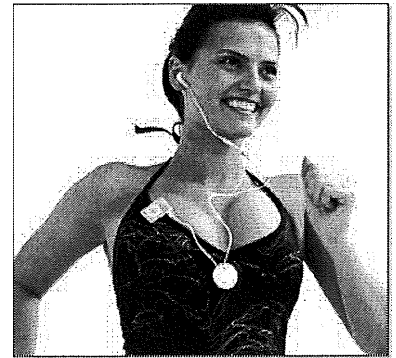
1. **Acquisition of Rights;**
2. **Licensing;**
3. **Marketing; and**
4. **Enforcement.**

### Acquisition of Rights

Before trademark rights can be enforced, they must be acquired.

Trademark rights are acquired, in a nutshell, by use. The Trade-marks Act is federal legislation that establishes a regime for the registration of trademarks, but registration is not necessary in order to protect a trademark. It is the use of the mark, not its registration, which creates ownership rights.

The use must be specific – i.e. the mark must be used for the purpose of distinguishing goods or services emanating from a particular source. It is not essential that the public know exactly who or what the source is, but they must be able to associate the mark with a particular product or service. The iPod MP3 player, for example, is distinguishable from all other MP3 players on the market today. You may not know or remember the name of the company that developed the iPod (*Apple Computer Inc.*) but that doesn't matter. The important thing is that the iPod name carries with it immediate brand recognition because of its extensive use, its massive sales and the large-scale advertising campaign that supports the product.



Trademark rights based on use are territorial in nature. A trademark owner relying on simple use may only be able to assert trademark rights in the jurisdiction in which the product is actually used or the service is rendered. If a roofer in Winnipeg has branded himself as the SHINGLE GUY, he can defend that phrase against other persons in the same type of business in the Winnipeg area where he does business and where his service is known. However, he may not be able to assert a case against another roofer in Halifax who adopts the SHINGLE GUY moniker because his use has been restricted to Winnipeg. If for some reason, the notoriety of the Winnipeg SHINGLE GUY has spread far and wide, and his reputation as a world-class roofer has become well known across Canada, this may be sufficient for him to have developed trademark rights in Halifax. It would, in each case, be a matter of fact.





## PART 1 – A TRADEMARK PRIMER

### Registration of a Trademark

The application can be filed online with the Canadian Intellectual Property Office (CIPO). More information on process and costs can be obtained from the CIPO website, which can be accessed from the federal government site located at <http://strategis.ic.gc.ca>. While it is possible to file a trademark application yourself, the process can be complex, and it is therefore recommended that you retain a lawyer or trademark agent to act on your behalf.

Registration of a trademark is done in accordance with the provisions of the Trade-marks Act. This legislation sets out the structure and rules regarding the registration and enforcement of trademark rights, including:

- What trademarks are registrable;
- What trademarks are prohibited;
- Who is entitled to register a trademark;
- The application and opposition process;
- What constitutes trademark infringement;
- The rights and obligations of trademark owners;
- How rights are lost.

### Advantages of Registration

Even though trademark rights can arise and can be enforced from a common law perspective simply as a result of use, there are a number of advantages to registration.

- A registered trademark gives the owner the exclusive right to its use throughout Canada even though the registered owner may have used it in only one location;
- A registration is good forever provided a nominal renewal fee is paid and the trademark continues to be used;
- A registered trademark is, for all practical purposes, a prerequisite for business expansion through licensed franchisees, or licensing agreements;
- A registered trademark is deemed to be distinctive to the products and services of the trademark owner and the onus is on the defendant to prove otherwise. In an action based on an unregistered mark, the owner must prove it is distinctive;
- A registration is a defined right that can be asserted against others. An owner has the legal right to defend his or her trademarks;
- As a definable right, it will enhance the value of a business by more clearly defining goodwill as an asset;
- The owner of an unregistered trademark can only sue if there is actual infringement by another party. The owner of a registered trademark can prevent the use of another mark in any manner that is likely to have the effect of depreciating the goodwill of the registered mark whether or not that use constitutes trademark infringement;
- A registration is property that can be bought and sold like any other asset;
- The registration is recorded in the Trade Marks Office. Confusing or similar trademark applications will be denied by the Office without any opposition or comment from the public or other trademark owners;
- Registration also serves as notice to others of the owner's trademark rights, in effect encouraging them to select non-confusing alternatives.

## PART 1 – A TRADEMARK PRIMER



### Who is Entitled to Register a Trademark?

As a general rule, the person entitled to register a trademark is the person who first “adopted” it. A trademark is adopted either when the person begins to use the trademark or make it known in Canada, or when the person makes application to register the trademark, whichever is the earliest.

### The Basis for Trademark Registration

A trademark application may be based on one or more of 4 grounds:

1. Use of the trademark in Canada - Using a trademark in association with services generally means displaying it in the course of performing the services. While the advertising of the services may be “use” to some degree, the fact is, advertising services without having actually performed the services or without having the ability or facilities to perform the services is likely not “use” within the meaning of the Trade-marks Act. Promoting or advertising your services is not performing the services. It is a secondary act. It could be that being available and willing to do to the services is enough, but it would depend on the circumstances.
2. Making the trademark known in Canada - A trademark is “made known” in Canada if:
  - It is used in a country which is a member of the World Trade Organization;
  - The products and services are distributed or advertised in Canada in association with the trademark in printed publications, radio and television broadcasts or on the Internet; and
  - The products or services have, in fact, become well known in Canada because of such distribution or advertising.
3. Proposed use of the trademark in Canada - An application for registration can be filed on the basis of proposed use. The advantage to this is that the registrant reserves the mark. However, before the trademark can actually be registered, the owner must have started using it, and must file a statutory declaration to that effect.
4. Registration in another country - If the applicant owns and uses the trademark in his or her country of origin in association with the same products or services, and is using the mark in any convention country, he or she may apply for a trademark registration in Canada.

### Licensing

Never allow your trademarks to be displayed by any other person or company without a written license agreement. Proper use strengthens a trademark. The more extensive the proper use, the larger the group using it, the stronger the mark becomes. By the same token, improper use by anyone, and any use by unauthorized persons, weakens the mark. The more extensive the improper use, the weaker the mark becomes, until eventually, it is lost. It is therefore crucial for trademark owners to ensure that any uses of the marks are within the limits of allowed uses and are properly controlled by the owner. This control is exercised through licensing agreements.

Trademark owners have the exclusive right to license the use of their marks to third parties. In these situations, the licensee has the authority from the owner to use the mark and the owner maintains the direct or indirect control over the quality or character of the wares or services with which the mark is used. Generally, these agreements contain clauses providing for the proposed uses of the marks and are subject to certain terms and conditions as established by the trademark owner. Through these license agreements, trademark owners exert the control necessary to meet the requirements of the Trade-marks Act.



## PART 1 – A TRADEMARK PRIMER



### Marketing

Trademark rights that you have acquired are not particularly valuable if you are the only one who knows the trademark exists. In order for a mark to be distinctive of a product or service, it has to be recognized by the public. The greater that recognition, the stronger and more valuable the mark will become.

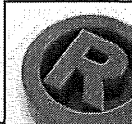
Part of successful marketing of a trademark is branding it to ensure that a consumer, when reading that word or looking at that design thinks of you. **For example**, a word or design may, through constant use and extensive advertising, attain a secondary meaning that relates directly to a particular product or service. The word McDONALD'S and the stylized "M" logo (known to the world as the "Golden Arches") are now synonymous with the restaurant services and products of the most famous hamburger joint in the world.

This did not happen by accident. The company

has spent tens of millions of dollars in advertising, which ties its symbols to its products. This is known in the business as "branding". A successful branding campaign—which invariably also includes many, many years of use—results in consumers immediately identifying your product or service with that word or symbol.

### Enforcement

Enforcement is really the other side of the coin to licensing. Licensing ensures that all authorized users are documented. Enforcement ensures that all unauthorized users are detected and stopped. There is no point in carefully documenting proper uses if there is rampant misuse of your mark by others in the commercial arena. In other words, if you are going to own trademarks, you need to take extreme care to monitor improper uses and establish effective procedures to deal with them.



## IV. How Trademarks are Violated

As already discussed, if you are going to own trademarks, you need to take extreme care to monitor improper uses and establish effective procedures to deal with them. The question now is what are improper uses?

People are familiar with the words “trademark infringement” and tend to think of that term as a catchall category for any type of improper use of another’s trademark. As with so many areas of the law, it isn’t quite that simple. While trademark infringement itself is a cause of action available to the owners of both registered and unregistered trademarks, the owners of registered trademarks have additional causes of action on which they can rely, all of which are explained further below.

### 1. Passing Off

As you probably realize by now, trademarks are not just words and symbols that serve no purpose but to decorate the page. They are very real, and very valuable, corporate assets. The value inherent in a trademark is known as “goodwill”. Goodwill is really the reputation of the company. The stronger a mark gets, the more clearly it identifies your product or your service or your company, with the result that your brand recognition—or goodwill—increases.

This reputation has monetary worth when your company is being valued. So, if someone is acting in a way that depreciates or lessens the value attributable to a trademark, you may take action. This conduct may or may not be an actual trademark infringement, but that is irrelevant for the purposes of this action.

Passing off is the only cause of action available to owners of unregistered trademarks. Passing off occurs when a trademark is used in such a way as to misrepresent to a consumer that the services or products of that person were offered, manufactured, performed or endorsed by the trademark owner.

Passing off is a powerful weapon for registered trademark owners, as it is based on “likely result” and therefore has a basis in common sense business practice. A plaintiff in a passing off action must prove 3 things:

1. It operates a business, which includes goodwill (or reputation), and that goodwill is connected with the trademark used by the business to identify its products or services;
2. There has been a misrepresentation by the defendant;
3. There is a likelihood of damage.

Providing evidence to establish the goodwill connected with the use of a trademark can be a very onerous task. Further, not all misrepresentations result in a likelihood of damage. Therefore, proving passing off can be very difficult. Establishing infringement of a registered trademark, on the other hand, is much easier, and yet another good reason why trademark owners should register their trademarks.



## PART 1 – A TRADEMARK PRIMER

### 2. Infringement

The Trade-marks Act gives the owner of a registered trademark the right of “exclusive use” of a trademark. This means that, unlike the situation in passing off actions, owners of registered trademarks do not have to introduce evidence of goodwill associated with the use of their trademark. That exclusive use is infringed upon when, in the words of the Act, “...a person not entitled to its use under this Act...sells, distributes or advertises wares or services in association with a confusing trade-mark or trade-name...”.

An infringement is therefore not limited to identical marks, but also includes confusingly similar marks.

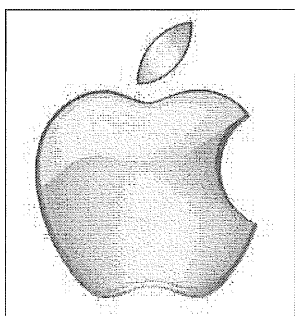
In order to bring an infringement action, it is not necessary to establish any kind of loss, which is again different from passing off where there has to be at least a likelihood of damage. There is a presumption that if a confusing trademark is being used, a loss occurs.

Generally, confusion is deemed to have occurred if the use of two trademarks in the same area would lead to the inference that the products or services are manufactured or performed by the same person. The basic test is a variation on the classic “reasonable man” test used in tort litigation. In this case, the question is what the reaction would be of a reasonable consumer who was familiar with one product and subsequently came into contact with the other. Would he or she be “confused”? While it is a test that is fact-based and will vary with the circumstances, the Trade-marks Act sets out some factors that will be considered in assessing confusion:

- The inherent distinctiveness of the trademark and the extent to which it has become known;
- The length of time the trademark has been in use;
- The nature of the wares, services or business; and
- The degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them.

### 3. Depreciation of Goodwill

Depreciation of goodwill is another cause of action that is available to owners of registered trademarks. In the words of the Trade-marks Act, this cause of action prevents the “use a trade-mark registered by another person in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto”. While this may only be obvious to lawyers, this cause of action is actually a lot broader than regular infringement.



In order to establish regular trademark infringement, the trademark owner has to show that there has been an unauthorized use of their mark (or a confusingly similar mark) when selling, distributing, or advertising goods or services. To establish depreciation of goodwill, the unauthorized use does not have to involve selling, distributing, or advertising goods or services – the cause of action arises from *any unauthorized use* of a mark that may depreciate the goodwill.

That said, proving that a particular use depreciates the goodwill of a trademark is a difficult task, which can usually only be achieved if the trademark in question is very famous.



## LET YOUR FINGERS DO THE WALKING



A Federal Court decision in the case of Tele-Direct (Publications) Inc. v. Canadian Business Online Inc. is an example of a Canadian court enforcing trademark protection against a Canadian website operator.

In this case, Canadian Business Online Inc. had set up web sites that provided basic contact information for individuals, companies and institutions including telephone number. The plaintiffs, the owners of the "Yellow Pages" and "Walking Fingers" trademarks, sought and received an injunction restraining the defendants from using the expression "Canadian Yellow Pages on the Internet" alongside a Walking Fingers design on its Internet website. Tele-Direct took the action to defend its "Yellow Pages" trademark and its well-known slogan, "*Let your fingers do the walking*".

Canadian Business Online was ordered to cease and desist using the term "Yellow Pages" and the walking fingers design.



## PART 1 – A TRADEMARK PRIMER

### V. What Constitutes Trademark Infringement?

It would be considered an infringement of CREA's trademarks if any of the following rules were not complied with.

#### 1. The Golden Rule

In the world of trademarks, there is one primary rule, one overriding principle from which all-else flows. It can be simply expressed as follows:

*"Trademarks must always be displayed in a way that enforces their distinctiveness as registered marks and emphasizes that they are not words of common usage in the English language."*

This is pure logic, and if you understand this Rule, you understand everything there is to know about why users of trademarks must respect them, and why owners of trademarks must be vigilant in monitoring and enforcing proper use.

There are innumerable general rules that flow from this Golden Rule, and apply to all trademarks—for example, you can't combine the trademark with any other text or design, you must comply with sizing restrictions, etc. but most of the rules for use fall under one of these two headings: FORM and CONTEXT.

#### 2. The FORM Rule

The FORM Rule is straightforward. A trademark must always be displayed in the exact form and manner in which it is registered. If a design mark has a required colour scheme, those colours must always be used. If a word is spelled in all capitals, then it must be spelled exactly the same way whenever used.

Adhering perfectly to the FORM Rule requires attention to at least three points:

1. Always use the ® symbol to identify a registered trademark and the ™ symbol to identify an unregistered trademark. These symbols traditionally appear on the "shoulder" of the trade mark, i.e. in the upper right hand corner. Canadian trademark law does not require the ® or ™ symbol to be used, but CREA's Rules do require their use;
2. Always spell the word exactly as used in the trademark registration, including using capitals, where required. Always duplicate a logo or design mark in its registered form, ensuring that colour schemes, sizing and any other requirements are respected;
3. Include a notation somewhere on the page on which the trademark is displayed, identifying the owner of the trademark. A note of this sort assists trademark owners in exercising the kind of control required under the Trade-marks Act.

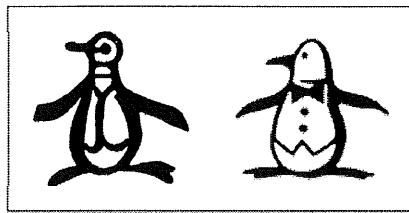
Some people may think that these are picky requirements and that straying from the exact form that a trademark is registered would not have significant consequences. However, there are good reasons why it is important to always use the correct form of a trademark.

## PART 1 – A TRADEMARK PRIMER



First, it reinforces the mark in the minds of consumers. Use of several slightly different variations of a trademark might cause confusion and lead consumers to believe that the wares they are looking at do not come from the supplier in question.

Secondly, using the same form all the time helps ensure that the trademark rights will not be lost. The Trade-marks Act contains provision that provide a registration will be invalid if the mark is abandoned. The use of a mark that is in a different form than what was registered could lead to allegations that the original mark was abandoned. **For example**, in *Promafil Canada Ltée. v. Munsingwear Inc.*, Promafil alleged that Munsingwear's trademark over the penguin logo on the left below was invalid because they had abandoned that mark and started using the penguin logo on the right.



### 3. The CONTEXT Rule

The CONTEXT Rule says that a trademark must always be displayed in a way that emphasizes its registered meaning. In other words, whenever readers, for example, come across a reference to a trademark in written text, they should immediately be aware of 2 things:

1. That they are dealing with something more than mere words of the English language (the FORM Rule should ensure this); and
2. The trademark should associate the reader with the owner of the product or service simply from the manner in which it is used.

Jacuzzi<sup>®</sup>, **for example**, is a registered trademark owned by Jacuzzi Brands, Inc., and is used to identify the hot tubs, whirlpools and other products sold by that company under the Jacuzzi<sup>®</sup> brand. When the Jacuzzi<sup>®</sup> mark is being displayed, it must conform to the Form and Context Rules.

**WRONG:** *"I just bought a new jacuzzi".*

This violates the FORM Rule as it is not spelled with a capital "J" and does not contain the ® symbol. It also breaches the CONTEXT Rule because it is not written in such a way as to identify the owner of the product, as opposed to the product itself. On the contrary, it is written to make it look like "Jacuzzi" is just another word for "hot tub"-a usage that is extraordinarily dangerous to the trademark.

**RIGHT:** *"I just bought a new Jacuzzi<sup>®</sup> hot tub".*

This sentence clearly identifies the word Jacuzzi<sup>®</sup> as a trademark and makes it clear that the Jacuzzi<sup>®</sup> term represents not just a hot tub, but the hot tubs sold by Jacuzzi Brands, Inc.





## PART 1 – A TRADEMARK PRIMER

### VI. Consequences of Allowing Misuse

Monitoring and ensuring proper use of trademarks is not just an academic exercise for trademark owners. It is a necessary and crucial strategy directed at protecting an extremely valuable asset. If misuses are allowed to continue, if trademarks are used to identify a “thing” rather than the maker of that “thing” (see Jacuzzi® above), if members of the public come to view a trademark as nothing more than another word in the English language, then all rights in that mark may be lost. Perception becomes reality, and that trademark becomes just another word. And when it becomes just another word, there is no longer any special meaning attributed to it. Nor is there any special protection afforded it. And perhaps most importantly- there is no longer any special value to the mark. It is gone. A corporate asset that may have been worth thousands or millions or tens of millions of dollars, has been lost forever to the owner.

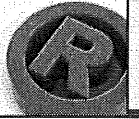
There are literally hundreds, if not thousands, of words in the dictionary that at one time or another were strong, valuable trademarks identifying the owners or creators of products. But they were victims of their own success. Members of the public so identified with the products themselves, that eventually, they lost their distinctiveness.

A few examples are:

- Ju Jubes
- Escalator
- Brassiere
- Thermos
- Cellophane

And the list goes on. One lost trademark that should serve as an object lesson to organized real estate is Mortician. The trademark Mortician once referred to an undertaker who was a member of the Mortician’s Association. Every Mortician was an undertaker, but every undertaker was not a Mortician. Eventually, people started referring to undertakers as “morticians”, the terms became synonymous, and were used interchangeably by members of the public. The trademark was not adequately protected, became generic, and all rights to it were extinguished. The similarities to the REALTOR® trademark are striking, and underline the need for constant diligence in defending this very valuable asset of organized real estate.

## PART 2 – CREA'S TRADEMARKS



### VII. A Summary of CREA's Trademarks

The Canadian Real Estate Association (CREA) owns a number of marks that are trademarks, and can therefore only be used by CREA, and a number of certification marks that can be used and displayed by CREA members who are licensed practitioners. As the primary purpose of this Trademark Toolkit is to act as a resource for Boards/Associations in establishing trademark compliance programs, the focus will be on CREA's two primary families of certification marks—namely MLS® and REALTOR®. However, the following non-exhaustive list of CREA trademarks and certification marks is included for reference purposes.

#### 1. CREA Trademarks REALTORS® are Licensed to Use

##### MLS® Family of Marks

The initials "MLS®".

The phrase "Multiple Listing Service®".

The **MLS® Design Mark**.  
(including Multiple Listing Service® phrase)



The **MLS® Design Mark**.  
(without Multiple Listing Service® phrase)



##### REALTOR® Family of Marks

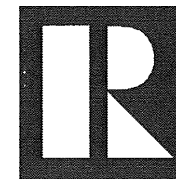
The word "REALTOR®".

The word "REALTORS®".

The **REALTOR® Design Mark**.  
(including REALTOR® word)



The **REALTOR® Design Mark**.  
(without REALTOR® word) –for use in  
province of Quebec only





## PART 2 – CREA'S TRADEMARKS

### REALTORS Care® Family of Marks

The phrase "REALTORS Care®".

The REALTORS Care® Design Mark:

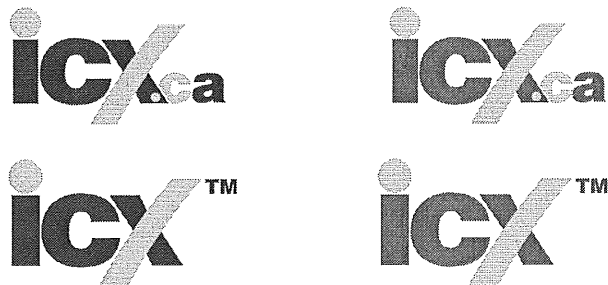


For more information see [www.realtorscare.ca](http://www.realtorscare.ca).

### The ICX™ Family of Marks

The word "ICX™".

The logos:



The ICX™ logos, or their French equivalents, may only be displayed in the exact form shown above. No modification in either style or colour is permitted.

### The MLS® Home Price Index Logos

The logos:



## PART 2 – CREA'S TRADEMARKS



### 2. Other Trademarks

*(for use only by CREA – cannot be used by members without permission)*

#### CREA

The registered trademark CREA may be used by members only when referring to The Canadian Real Estate Association or its activities, initiatives, products, publications and services.

The mark may not be used in connection with any person or private business or activities, or in any other manner that falsely suggests that the activities of other individuals or groups are associated with or endorsed by The Canadian Real Estate Association.

There are no associated logos for member use. The word mark CREA must only be used with capital letters without periods or gaps. It may not be used by anyone as part of a corporate name or trade name, or in connection with or as part of any other trademark, terminology, or designation.

The French language equivalent, ACI or l'Association canadienne de l'immeuble, is not a registered trademark.

#### REALTOR Link® Family of Marks

The phrase "REALTOR Link®".

The phrase "Lien IMMOBILIER<sup>MC</sup>".

The logos:

**REALTOR Link®**

**Lien IMMOBILIER<sup>MC</sup>**

#### DDF®

The word mark "DDF®".

The French language equivalent, "SDD<sup>MC</sup>".

Members may use the DDF® mark provided they comply with the following rules:

1. The letters DDF® must all be capitalized and followed by the registered trademark symbol;
2. The DDF® trademark can only be used by members of CREA to indicate their participation in the CREA DDF®;
3. Use of the DDF® mark must be accompanied, where possible, with the following statement "The trademark DDF® is owned by The Canadian Real Estate Association (CREA) and identifies CREA's Data Distribution Facility (DDF®)".



## PART 2 – CREA'S TRADEMARKS

### WEBForms® Family of Marks

The word "WEBForms®".

The logos and their French equivalents:



## PART 2 – CREA'S TRADEMARKS



### VIII. Identifying Improper Uses of the MLS® and REALTOR® Certification Marks – A Four Step Procedure

Let's look at the right and wrong ways of using the MLS® and REALTOR® certification marks.

**NOTE:** These considerations apply only to uses by CREA members. The idea being that members have the right to display the marks, and the question is whether that display conforms to CREA's Rules and policies. If the use is by a non-member, it is not necessary to go through this analysis. A non-member has no right to use the marks, and that is the end of the discussion. It is not necessary to look at "how" the marks are used.

Whenever you are asked to look at a particular use of the MLS® or REALTOR® marks, you must go through the following steps:

#### 1. Know what MLS® and REALTOR® mean

Enforcing a trademark you don't understand is like trying to speak a language you never heard before. Without that basic background information, you are fumbling in the dark, and you will get nowhere. How can you tell if a mark is being improperly used to mean something other than its registered meaning when you have no idea what that registered meaning is? That may sound trite, but the fact is that much of the uncertainty that exists surrounding the use of these marks results directly from a complete lack of understanding as to what they mean. So begin at the beginning—learn the meaning of the marks.

#### 2. Determine if the marks are used in the correct form

Does the manner of use comply with all three requirements of the FORM Rule?

#### 3. Determine if the marks are being used in the correct context

Does the manner of use comply with the CONTEXT Rule that states that the actual meaning of trademarks must be obvious from the context of its use? **For example**, would a consumer looking at this use of REALTOR® ever think that it means "real estate agent". If yes, the context rule has been offended.

#### 4. Determine if use of the marks complies with CREA's policies

In addition to the "general" trademark rules, CREA has developed specific restrictions that appear in CREA's Rules and various trademark policies. These include, **for example**, rules for use of the marks in domain names, e-mail addresses, meta tags and business names.

The following sections of this Toolkit will take you through these steps in more detail.



## PART 2 – CREA'S TRADEMARKS

### IX. Applying the Four Step Procedure

#### 1. The Meaning of the Marks

##### The meaning of the MLS® Marks

The four MLS® certification marks were registered at different times, with the earliest registration taking place in 1959. However, the MLS® marks have been used since at least 1954—over half a century ago—to describe the standard of service provided by members of organized real estate.

And this is the important point—as certification marks, the MLS® marks must refer to a standard of service, and not to a “thing”. The MLS® marks do not identify a computer database of real estate listings or any product related to how a database works.

The meaning of the four MLS® Marks is set out in **Rule 9.2.3** of CREA's Rules as follows:

**9.2.3** The MLS® Marks identify professional services rendered by members in good standing of CREA to effect the purchase and sale of real estate as part of a “plural system arrangement”, also known as a co-operative selling system (the “MLS® Services”), in compliance with CREA's By-Laws and Rules, and the REALTOR® Code as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations. The MLS® Marks do not identify or describe a computer database of real estate listings.



Trademark protection has been an issue since ads like this appeared in the 1950s.

##### MLS® versus “MLS® System”

The co-operative selling systems operated by real estate Boards under the MLS® certification marks are critical to the provision of MLS® Services. These systems contain the real property listings of member brokers, and are unique in the commercial world in the sense that competitors are sharing their inventory with each other, all for the purpose of better serving the consumer.

## PART 2 – CREA'S TRADEMARKS



CREA, as the owner of the MLS® marks, licenses its member real estate Boards to use those marks in association with the operation of their co-operative selling systems. Accordingly, the proper identification of these systems is "MLS® Systems".

Having said that, it is important to understand that the power of a Board's MLS® System does not come from the number of listings in the database or the computer functionality. The power of an MLS® System emanates from the underlying standards of the MLS® mark that are applied to its operation. Those members who access the MLS® System do so to provide a high standard of service in accordance with the MLS® mark—the MLS® Services.

Describing an MLS® System as a "database" is akin to describing the theory of relativity as a "bunch of numbers". It is so much more.

**Rule 9.2.4** of CREA's Rules contains a proper description of an MLS® System:

**9.2.4** An MLS® System is a co-operative selling system operated and promoted by a Board or Association in association with the MLS® Marks. An MLS® System includes an inventory of listings of participating REALTOR® members, and ensures a certain level of accuracy of information, professionalism and co-operation amongst REALTOR® members to effect the purchase and sale of real estate.

The standards inherent in the MLS® Marks and the operation of MLS® Systems include the integral concepts of membership in organized real estate, agency, co-operation, and offers of compensation.

Why are we spending so much time explaining the differences between these concepts? The distinction is critical because trademarks must always be used to clearly reflect their registered meaning. Failure to do so weakens the marks and may result in trademark rights being lost. Every time someone refers to a Board's MLS® System as "the MLS®", or defines MLS® as being a database of listings, they are pounding another nail into the coffin of the MLS® marks.

Why? For a multitude of reasons: MLS® is not a "noun"—It is not a "thing"—it is a certification mark and as such is only being properly used when it is used as an adjective. Secondly, MLS® refers to a standard of service—the MLS® Services—not a listing system. Even if MLS® were the proper term to refer to a Board's MLS® System (which it is not), that system is not a "database of listings". It is a co-operative selling system operating under the MLS® certification mark.

Proper use is incredibly important. And proper use requires an understanding of the meaning of the marks.

### The Meaning of the REALTOR® Marks

The REALTOR® family of certification marks has a long and checkered history, both in Canada and the United States. The term has been used by the National Association of REALTORS® (NAR) in the U.S. since 1916, and by CREA, or its Boards, since at least 1921, to identify members of organized real estate who adhere to a Code of Ethics.

Historically, both CREA and NAR took steps to protect the REALTOR® mark in their respective countries for the mutual interests of both. Many facets of organized real estate developed more or less simultaneously in both countries, and the issues of consistent usage of the REALTOR® mark on both sides of the border has been a constant focus of concern in terms of protecting the distinctiveness of the marks.





## PART 2 – CREA'S TRADEMARKS

The REALTOR® family of marks is owned in Canada by REALTOR® Canada Inc. (RCI), a non-profit company owned equally by CREA and NAR. This “split ownership” was undertaken to effectively protect and strengthen the REALTOR® marks in the United States and Canada and to make the meaning of the term uniform and consistent in the two countries.

The Shareholders Agreement within RCI provides that CREA controls all aspects of licensing REALTOR® in Canada. On the other side of the coin, the obligation to monitor and protect the mark in Canada is the responsibility of CREA and its member real estate Boards and provincial Associations.

The trademark legislation in the United States recognizes something called “collective membership marks”, which refer to persons. So NAR has registered REALTOR® to mean “member of the National Association of REALTORS®”. That’s nice and neat and simple.

Things are less neat and simple in Canada, however, because no such designation exists in our Trade-marks Act. Organizations wishing to identify “members” must do so through the use of certification marks. As discussed in **Part I**, certification marks refer to a standard of service provided by an identified group of people.

Since the REALTOR® registration in Canada cannot directly identify a “member”, it instead refers to the standard of brokerage services provided by members of CREA. In effect, it identifies members based on the services they provide.

But the branding of the REALTOR® marks go beyond pure service. REALTOR® is synonymous with professionalism. And professionalism means at least three things –service, competence and ethics. All three are essential ingredients in the REALTOR® recipe:



**Competence** is a result of education and training;

**Service** includes the provision of the MLS® Services discussed above;

**Ethics**, as established by the REALTOR® Code, governs the essence of how a REALTOR® provides this service and the relationship between a REALTOR® and the public.

The “standards” inherent in a certification mark are found in these elements. And that leads to what the REALTOR® certification mark has come to mean in organized real estate—a real estate professional who is a member of The Canadian Real Estate Association and, as such, subscribes to a high standard of professional service and a strict Code of Ethics.

What REALTOR® absolutely does not mean is “real estate agent”. It identifies only membership in CREA. It is not a synonym for salesperson, broker, or any other job that a real estate practitioner does. Any reference to REALTOR® in a context where a consumer might interpret the terms as meaning “real estate agent” is a misuse of the mark that could result in it becoming generic.

## PART 2 – CREA'S TRADEMARKS



### 2. Applying the FORM Rule

#### REALTOR®, REALTORS®, MLS®, and Multiple Listing Service®

The 3 elements of the Form Rule are:

1. The marks must be spelled exactly as registered
  - This means that the words MLS® and REALTOR® are to be spelled all in capitals, as are the first letters in Multiple Listing Service®; and
  - The marks cannot be distorted;
  - The mark REALTOR® should not be hyphenated (REAL-TOR), abbreviated (RLTR), expanded upon (REALTORIFIC), or combined with other words (REALTOR-Assistant or non-REALTOR).
2. The ® registration symbol must be displayed in superscript with every use of the marks;
3. Trademark ownership text must be included with the marks, where possible. The only exception is where the medium doesn't allow for such a statement (e.g. a REALTOR® pin).
  - The trademark ownership text for the REALTOR® marks is as follows: "The trademarks REALTOR®, REALTORS® and the REALTOR® logo are controlled by The Canadian Real Estate Association (CREA) and identify real estate professionals who are members of CREA. Used under license."
  - The trademark ownership text for the MLS® marks is as follows: "The trademarks MLS®, Multiple Listing Service® and the associated logos are owned by The Canadian Real Estate Association (CREA) and identify the quality of services provided by real estate professionals who are members of CREA. Used under license."

A few **examples** of "form" problems are listed below for illustrative purposes. They are not by any means intended to be all-inclusive. The examples are endless. For the purposes of this illustration, it is assumed that the trademark "statement" set out above is included.



## PART 2 – CREA'S TRADEMARKS

### Some Improper “Form” Uses

WRONG	WHY
mls	1. All letters must be capitalized (MLS). 2. The ® registration symbol is missing.
M.L.S®	The MLS® mark does not contain any periods.
MLS®	The mark cannot be distorted.
realtor	1. All letters must be capitalized. 2. The ® registration symbol is missing.
Realtor®	All letters must be capitalized.
REALTOR®-Asslstant	CREA's marks must never be combined with any other words or designs.
realtor.ca	The REALTOR® term must be capitalized when referring to CREA's website – REALTOR.ca.
REALTOR®	The mark cannot be distorted.

### Design Marks

The design marks must also be used in the same form as they were registered. This is set out in CREA's **Rules 9.5.2.4**, which states “the MLS® and REALTOR® logos must only be used, reproduced, and displayed in the form as registered”.

While the REALTOR® and MLS® design marks each have their own required elements, there are two very important restrictions that apply to both:

- The design marks must never be altered, reshaped, distorted or combined with any other logos in any way.
- The design marks must never be used as hypertext links to REALTOR.ca

To avoid inadvertent infringements, members are encouraged to only use the authorized versions of the design marks, which are available for download on REALTOR Link®. Buttons to use as hypertext links to REALTOR.ca are also available on the same site.

It would also be a misuse of the design marks if they were combined with other words or designs.

## PART 2 – CREA'S TRADEMARKS



The MLS® design is generally described as three identical shaped boxes designed to look like a house, rising to a point at the top. The letters “M”, “L” and “S” are each located in one box in that order, in bold block letters. If the full designation of “Multiple Listing Service®” is used, the words must be printed all capitals in block to fit exactly below the three “houses”, followed by the ® superscript.

The standard colour combinations involve the left and right boxes in solid red, with the letters “M” and “S” in white. The centre box is outlined in black, with the letter “L” also in black. Members are encouraged—but not required—to use this original black, white and red design (graphically referred to as black and one colour). A display using black only is also permitted.

### WHAT'S WRONG WITH THIS PROMO?

**Mike Likely Serves**  
up the power of



### ANSWER

The MLS® initials must never be used to create a new logo or design, or as part of “branding”. The logo must also never be combined with any other logo.

The official REALTOR® logo consists of an “R” in the Futura font, or typeface, on a contrasting rectangular background to form a block “R”. The word REALTOR® is then centered under the rectangle. Only members in Quebec are permitted to use the REALTOR® “R” logo without the term REALTOR® below the “R” block.

The dimensions of the rectangle, the size of the Futura “R” in relation to the rectangle’s dimensions, and the length and font size of the word REALTOR® are important design features of the REALTOR® logo. So is the space between the rectangle and the word REALTOR®. You can reduce the size of the overall logo to meet the needs of the intended application, but it must never be reduced to the point where the word REALTOR® cannot be read.

There is no official colour for the REALTOR® logo, but the following 3 rules must be adhered to:

1. Any 2-colour combinations may be used but the colours must be sharply contrasting.
2. The block surrounding the “R” and the REALTOR® term must be the same colour (i.e. if the block surrounding the “R” is black, then the REALTOR® term must also be black).
3. The “R” must be a sharply contrasting colour to the block and the REALTOR® term. If the block is dark, the “R” should be light. It is preferable, but not required, to have the “R” the same colour as the paper background.



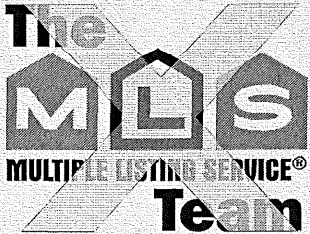

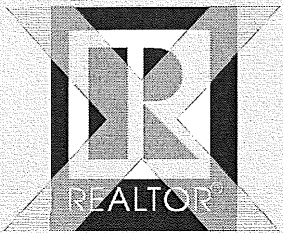

If you are using the logo on a dark background and intend to reverse the logo elements, make sure you reverse ALL of the elements. The usual colours must be reversed so both the rectangle and the word REALTOR® appear in a light colour on the dark background.

The REALTOR® logo must be separated from other logos or lettering, designs or emblems by a minimum distance of one-half the width of the rectangle, or “block R”. If the block “R” is one inch wide, it must be a half-inch away from any other logo. The logo must never be framed or outlined.



## PART 2 – CREA'S TRADEMARKS

Below are some **examples** of how the design marks can be misused.

WRONG	WHY	RIGHT
	<p>The mark is distorted to extend the text beyond the houses.</p>	
	<p>The mark is combined with other words.</p>	
	<p>An extra frame has been added around the outside of the mark.</p>	

### 3. Applying the CONTEXT Rule

The "Form" requirements are fairly straightforward in the sense that they are purely visual. You can look at the way a mark is written and, without a lot of effort, determine whether or not it complies with the way it is "supposed to look".

The "Context" rule, however, is more complicated, because it is directed not just at the way the mark looks, but at the message it conveys. When someone looks at what has been created, does the registered meaning of the mark jump out at him or her? Or is some other meaning implied?

This is much more subjective and subtle, and requires thoughtful consideration. In fact, many people are only aware of the form requirement and give no thought to context. They take great care to make sure capitals are used in the lettering, but pay no attention at all to the message they are conveying with the way they use the mark.

## PART 2 – CREA'S TRADEMARKS



### MLS®

The message that the MLS® marks are supposed to convey to consumers is set out in **CREA's Rule 9.5.5.1**:

The MLS® Marks must only be used to identify the professional services provided by Members of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement," also known as a co-operative selling system. The MLS® Marks must never be used as a synonym for a "database of real estate listings."

The key here is that the MLS® trademark should convey the notion of "MLS® Services", not the idea of a database. MLS® is an adjective, not a thing, and therefore should never be used as a noun. Saying that a person has posted a listing on "the MLS®" is an example of using the MLS® trademark as a noun and in a manner that suggests it represents a database, both of which are unacceptable. Every time someone refers to a Board's MLS® System as "the MLS®" or defines MLS® as being a database of listings, they add to consumer confusion and detract from the value of the mark.

Advertisements that refer to the MLS®# of a property listed on a Board's MLS® System also perpetuate the false belief that the MLS® trademark refers to a database of listings as opposed to cooperative services of REALTORS®. For this reason, it is recommended that advertisements of properties listed on MLS® Systems refer to ID# or Listing# instead of MLS®#.

As **CREA's Rule 9.5.5.2** provides that, when referring to a cooperative selling system, the proper terminology is the MLS® System of the Board or Board's MLS® System. This is how the marks should be used in their correct context.

**CREA's Rule 9.5.5.3** also establishes ground rules for using the MLS® marks in the correct context. It provides that the MLS® marks must never be used as part of a business name, trade name, or corporate branding. This means that the mark must not be combined with other words to create slogans or product names, such as "flat fee MLS®".

Below are some **examples** of incorrect usage of the MLS® marks and explanations of how those uses could be corrected.

#### WHAT'S WRONG WITH THIS PROMO?

#### ANSWER

The MLS® mark cannot be used in combination with other letters or another mark to "create" something else. In this case MLS® is also being used as a noun, which is also not permitted.



## PART 2 – CREA'S TRADEMARKS

### Some Improper “Context” Uses of MLS®

WRONG	WHY	RIGHT
“I placed a listing on the MLS®.”	<ol style="list-style-type: none"> <li>1. MLS® is NOT a NOUN. It is a certification mark identifying a standard of services and must always be used as an ADJECTIVE. References to “the MLS®” are ALWAYS wrong.</li> <li>2. MLS®, by itself, is never to be used to identify a real estate board’s co-operative listing system.</li> <li>3. CREA’s Rules define a Board’s listing system as an “MLS® System. And, when using the term “MLS® System”, you must clearly be referring to a real estate Board.</li> </ol>	“I placed a listing on the Ottawa Real Estate Board’s MLS® System.”
“ABC Realty just set up their own MLS® System (or Multiple Listing Service®).”	Only a member real estate Board is licensed by CREA to operate an “MLS® System”. Any company or individual can operate a property listing website or database, but it is NOT an MLS® System unless it is operated by a real estate Board under license with CREA.	“ABC Realty just set up their own listings site.”
“Remember this name for all of your real estate needs - <b>M</b> ary <b>L</b> ouise <b>S</b> mith.”	The MLS® mark cannot be combined with other words or designs to create another image or branding.	“Remember this name for all of your real estate needs - Mary Louise Smith.”
Mr. MLS®	<ol style="list-style-type: none"> <li>1. This is another attempt to develop a personal “branding” using the MLS® certification mark by combining the mark with text to “create” something else, which is not permitted.</li> <li>2. MLS® is being used as a noun.</li> <li>3. MLS® is a mark identifying the quality of services rendered by a group of people. It is improper for an individual to imply in advertising that he or she somehow has “better” access to the mark than someone else.</li> </ol>	N/A
“Ultimate MLS®”	<ol style="list-style-type: none"> <li>1. MLS® is being used as a noun, which is not permitted.</li> <li>2. Never use adjectives with certification marks as adjectives tend to give the marks a generic meaning – a “thing” rather than a certification mark.</li> </ol>	N/A
MLS® Explorer (as computer program name)	The MLS® mark cannot be used in “product” or program names. MLS® is being used as a noun.	N/A
Flat Fee MLS®	The MLS® mark cannot be used as a product name.	Flat Fee Listings

## PART 2 – CREA'S TRADEMARKS



### REALTOR®

The correct context for using the REALTOR® trademarks is set out in **CREA Rule 9.5.4.1:**

The REALTOR® Marks **must only** be used to identify the real estate brokerage services and related professional services provided by members of CREA. The REALTOR® Marks **must never be used as a generic or descriptive name** to identify a salesperson, broker, or other real estate professional.

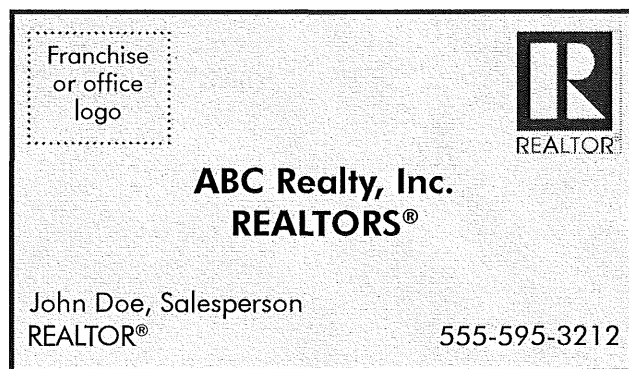
REALTOR® does not mean salesperson, broker, real estate agent, or any other job that a real estate practitioner does. Any use of the mark that implies "real estate agent" instead of "member of CREA" is wrong.

The REALTOR® certification mark is really intended to be a stand-alone mark. It should be displayed on its own in letterhead and on business cards to identify the individual as a member of CREA. It should never be used with adjectives, like in "green REALTOR®". In fact, to really reinforce the meaning of the marks, an ideal usage would be to follow the use of REALTOR® with the word "agent". This would help convey the message to consumers that REALTORS® are more than just real estate agents – they are members of CREA.

Like the MLS® marks, the REALTOR® marks must never be used as part of a business name or trade name or corporate branding (see **CREA Rule 9.5.4.2**). This means that the REALTOR® marks can never be used in slogans, product names, or business names. Members of CREA can use the REALTOR® marks in association with their name, but not as part of their name.

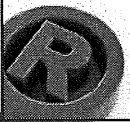
**For example**, a person could have on their business card "ABC Realty, REALTORS®", but they could not use "ABC REALTORS®".

What follows are some **examples** of misuses of the REALTOR® trademarks and explanations of how those uses can be corrected.



Use of REALTOR® logo as stand alone mark on business card.





## PART 2 – CREA'S TRADEMARKS

### Some Improper "Context" Uses of REALTOR®

WRONG	WHY	RIGHT
<p>Top Selling REALTOR®</p> <p>The Community REALTOR®</p> <p>The Virtual REALTOR®</p> <p>Your Toronto REALTOR®</p>	<p>Never use adjectives with the REALTOR® mark. Adjectives give the mark a generic meaning. Consumers read that as meaning "top selling real estate agent", which is an infringement.</p>	<p>Top Selling Salesperson</p> <p>The Community Real Estate Professional</p> <p>N/A</p> <p>Your Toronto Real Estate Professional</p>
<p>REALTOR® Connection</p> <p>REALTOR® Products</p>	<p>Never use REALTOR® in product or program names.</p>	<p>N/A</p>
<p>ABC REALTORS®</p>	<p>REALTOR® can be used in conjunction with a corporate name, but cannot be part of the name. In other words, you can display the REALTOR® mark after the corporate name, with proper punctuation separating it, but you cannot include the certification mark in the name itself.</p>	<p>ABC Realty, Inc, REALTORS®</p>
<p>"What do I do for a living? I'm a REALTOR®."</p>	<p>REALTOR® is not a job description. It does not identify what someone does to earn a living. It identifies a person as a member of CREA. Using the mark to mean "real estate professional" is an infringement.</p>	<p>"What do I do for a living? I'm a real estate professional. I'm also a REALTOR®."</p>
<p>REALTOR® king</p>	<p>Members can only use the REALTOR® mark in association with their name, preferably separated by punctuation.</p>	<p>John Doe, REALTOR®</p>

## PART 2 – CREA'S TRADEMARKS



### 4. Determine if use of the marks complies with CREA's policies

**CREA's Rule 9.7.1** states that CREA's trademarks shall not be used in domain names, email addresses, meta-tags or other Internet search fields unless specifically authorized by CREA's Policies. The question is: what do CREA's policies allow?

#### Use in Domain Names and E-mail Addresses

All of the Form and Context Rules are violated when trademarks are used in domain names, with the result that the marks are weakened. For that reason, CREA has developed specific policies for use of the MLS® and REALTOR® family of marks on the Internet.

The policies provide as follows:

1. MLS® and Multiple Listing Service® must never be used by members in domain names or e-mail addresses.
2. REALTOR® and REALTORS® can be used in domain names only in conjunction with the name of the member or the member's firm and ideally separated by punctuation. The use of punctuation, particularly a dash, visually sets off or distinguishes the REALTOR® mark from the balance of the domain name or email address. This highlights the significance of REALTOR® as describing the "class of persons" offering the service, which is precisely what the REALTOR® mark is intended to convey. To some extent this message gets lost if there is no punctuation. They can never be used alone or with geographical, descriptive or other modifiers.
3. None of the marks can never be used in meta tags, in the name of any website computer directory, or as sponsored keyword search terms.
4. In all advertising where the domain name is displayed, there must be an acknowledgment that the terms are trademarks of The Canadian Real Estate Association.

Some **examples** of proper and improper use of REALTOR® and REALTORS® in domain names are as follows:

<p><b>Improper Use in Domain Names</b></p> <p>www.calgaryrealtor.ca www.professionalrealtor.ca www.simontherealtor.ca</p>	<p><b>Proper Use In Domain Names</b></p> <p>www.johndoerealtor.ca www.johndoe-realtor.ca www.remaxseasiderealtor.ca www.remaxseaside-realtor.ca</p>
<p><b>Improper Use in E-mail Address</b></p> <p>realtor4@rogers.com superrealtor@shaw.ca thebestrealtors@sympatico.ca</p>	<p><b>Proper Use in E-mail Address</b></p> <p>johndoe-realtor@sympatico.ca johndoerealtor@sympatico.ca</p>



## PART 2 – CREA'S TRADEMARKS

### Use in Social Media

#### MLS®

Members are not permitted to use the MLS® and Multiple Listing Service® trademarks in their user names, email addresses or other forms of identification information in Social Media.

The MLS® and Multiple Listing Service® trademarks may be used in a tweet or posting on Social Media provided they comply with all of the general form and context rules. In particular:

1. The marks must be spelled exactly as registered. The term MLS® is to be spelled all in capitals, as are the first letters in Multiple Listing Service®.
2. The ® registration symbol must be displayed with every use of the marks.

When using the MLS® and Multiple Listing Service® trademarks in a tweet or posting, members are encouraged to include a statement that MLS® and Multiple Listing Service® are trademarks of The Canadian Real Estate Association, where possible.

Some **examples** of proper and improper use of MLS® in Social Media are as follows:

Example	Improper Use in Social Media	Proper Use in Social Media
Facebook Professional Page Name	ABCRealtyMLS	N/A
Twitter user name	@ABCRealtyMLS	N/A
In Facebook posting or Tweet	"I placed a listing on the Ottawa Real Estate Board's mls® System."	"I placed a listing on the Ottawa Real Estate Board's MLS® System."
In Facebook posting or Tweet	"I placed a listing on the Ottawa Real Estate Board's MLS System."	"I placed a listing on the Ottawa Real Estate Board's MLS® System."

## PART 2 – CREA'S TRADEMARKS



### REALTOR®

The REALTOR® trademarks may be used in user names, email addresses and other forms of identification information in Social Media. All of the general context and form rules apply, with the following exceptions:

1. The REALTOR® trademarks do not need to be entirely capitalized.
2. The ® registration symbol does not need to be displayed with every use of the marks.

Although not required, members are encouraged to use capitalization and the ® registered symbol in user names, email addresses and other forms of identification information where possible.

The REALTOR® trademarks may be used in a tweet or posting on Social Media provided they comply with all of the general form and context rules. In particular:

1. The marks must be spelled exactly as registered. The terms REALTOR® and REALTORS® are to be spelled all in capitals.
2. The ® registration symbol must be displayed with every use of the marks.

Members are encouraged to include a statement that REALTOR® is a trademark of The Canadian Real Estate Association, regardless of how the REALTOR® trademarks are used in Social Media, where possible.

Some **examples** of proper and improper use of REALTOR® and REALTORS® in Social Media are as follows:

Example	Improper Use in Social Media	Proper Use in Social Media
Facebook Professional Page Name	ABCRealtyTorontoREALTORS JohnDoeTopSellingREALTOR	ABCRealty, Realtors John Doe, Realtor
Twitter user name	@JohnDoeTopSellingREALTOR	@JohnDoe_REALTOR
In Facebook posting or Tweet	I am a real estate professional. I'm also a realtor®.	I am a real estate professional. I'm also a REALTOR®.
In Facebook posting or Tweet	I am a real estate professional. I'm also a REALTOR.	I am a real estate professional. I'm also a REALTOR®.



## PART 2 – CREA'S TRADEMARKS

### X. Use of the MLS® and REALTOR® Certification Marks by Boards and Associations

#### 1. Letterhead and Business Materials

Member real estate Boards and provincial Associations may display the REALTOR® and MLS® design marks on their business material in the same manner as other members.

The one exception to this rule is that real estate Boards that do not operate MLS® Systems or otherwise provide their members with access to an MLS® System are not permitted to display the MLS® marks. This restriction does not apply to provincial Associations.

#### 2. REALTOR® in Board/Association Names

Real estate Boards and provincial Associations may incorporate REALTOR® or REALTORS® as part of their business names. Realty firms are not permitted to do this, but an exception is carved out for Boards and Associations, provided that they have received the approval of CREA and have signed a license agreement for the use. Real estate Boards are also required to obtain the permission of the appropriate provincial Association.



#### 3. Domain Names and E-mail Addresses

Real estate Boards and provincial Associations may use the MLS® marks in their domain names and e-mail addresses, provided firstly that they are used in conjunction with appropriate geographical modifiers, and secondly that they are separated from other text by punctuation. A license agreement with CREA must also be signed. Boards and Associations that have REALTOR® or REALTORS® as part of their business name, may use domain names and email addresses that include their name, provided that a license agreement with CREA has been signed.

#### 4. Board/Association Logos and Awards

The REALTOR® and/or the MLS® design marks may be incorporated into a Board/Association logo, provided the design has been pre-approved by CREA and a license agreement with CREA has been signed. The word "REALTOR" may, at the option of the Board/Association, be removed from the block "R" REALTOR® logo for this purpose.



REALTORS®  
Association of  
Edmonton



WINDSOR-ESSEX COUNTY  
ASSOCIATION OF REALTORS®



REALTORS®  
ASSOCIATION  
of Hamilton-Burlington

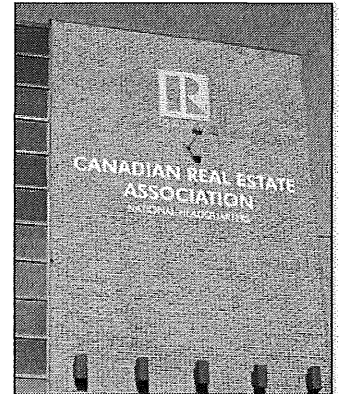
## PART 2 – CREA'S TRADEMARKS



Some Boards/Associations may also wish to develop other types of branding, such as design marks for award designations. As an example, a Board/Association may give out performance awards that incorporate CREA's trademarks, such as "MLS® Award" or "REALTOR® Excellence Award". These terminologies always require CREA's approval and, at CREA's option, the signing of a license agreement. This is particularly important where the designation includes a design element.

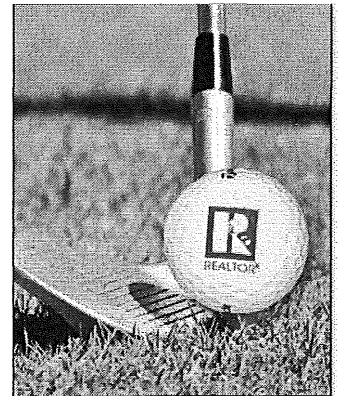
### 5. Names of Buildings or Publications

Boards and Associations may incorporate REALTOR® or REALTORS® into the name of its building, the titles of its publications, and educational courses, provided that CREA has approved each use in writing and the involvement of the Board or Association is noted with each use.



### 6. Incentive Items

Boards/Associations may display the MLS® and REALTOR® marks on incentive and promotional material such as clothing, pens, etc...provided the name of the Board/Association is included on the material.





## PART 2 – CREA'S TRADEMARKS

### XI. Use of the MLS® and REALTOR® Certification Marks by Non-Members

#### 1. General

Non-members are never authorized to use the marks. Only licensed real estate practitioners who belong to CREA (i.e. REALTORS®) are authorized to display the MLS® and REALTOR® marks. The marks may not be displayed by persons in other categories of Board membership (e.g. affiliate members), nor may they be displayed by non-members. When a non-member is using the marks, all of the policies and guidelines for proper use of the trademarks are irrelevant. It doesn't matter if the use would comply with the guidelines if used by a member.

Common unauthorized uses by non-members appear in various forms, including use of the trademarks in non-member trade names, corporate names, newspaper ads, business cards, website, letterhead, domain names and e-mail addresses, or in various forms of advertising. In addition, unauthorized uses may take the form of imitations or variations of the logos or the word marks.

Remember, however, that some trademark use may be unauthorized, but is known as permissible "collateral use". **For example**, a non-member broker cannot use the REALTOR® or MLS® marks in his advertising or on his website in a manner that implies an association with those marks or a right to use them.

However, it would be acceptable for the broker to state on his website that he was not a member of a real estate Board and therefore was not a REALTOR® and was not able to access an MLS® System. He is, in this case "displaying" the marks, but is not "using" them in the trademark sense because he is only referring to them for the purposes of clarifying to the reader that he is not an authorized user of the marks. This type of use is not an infringement.

Non-members working with members may say that a real estate company that is a member of a real estate Board has placed a listing for the property on a real estate Board's MLS® System. **For example**, a seller could say the following in an advertisement: "ABC Realty has placed a listing for this property on the MLS® System of the XYZ Real Estate Board, under N°. 123456". However, REALTOR® members are personally responsible for any improper use or display of CREA's trademarks by non-members with whom they have contracted. In those situations, REALTORS® must, pursuant to **Rule 9.4.3**:

- enter into a written agreement with the non-member;
- ensure that the written agreement requires the non-member to comply with these restrictions; ensure that the written agreement gives the member the right to terminate the agreement if the non-member violates these restrictions; and
- the member must terminate the agreement in the event of unrectified breaches.

## PART 2 – CREA'S TRADEMARKS



### 2. Media

Editors, publishers and broadcasters-including publications catering to the real estate industry- improperly use CREA's trademarks with frightening regularity. Even more distressing, many of the articles involve CREA members or even CREA Boards and Associations, where the opportunity existed to correct the improper uses before the offending article or interview was ever published or aired, yet the opportunity was lost.

Most newspapers follow the Associated Press or United Press Style Books in preparing news items for publications. These stylebooks do not call for use of full capitals or a federal registration symbol "®" even for registered marks.

To acknowledge the reality of this limitation, CREA's **Rule 9.5.3.1** allows the media to display REALTOR® by only capitalizing the "R". The Rule also provides that the ® is not necessary.

**NOTE: CREA Rules only allow a limited exception to the Form Rule. It is still critical that whenever the word is used, it conforms to the Context Rule and clearly refers to membership in CREA. If the usage implies "broker" or "salesperson" or any other "job" a real estate professional does be sure the context of usage is proper.**

Similarly, the MLS® mark may be used by media without the ® symbol. However, there is no other exception from the Form Rule, and it must be displayed all in capital letters. As with REALTOR®, there is no exception to the Context Rule. It must always be used in media in a manner that emphasizes its proper trademark meaning. This includes ensuring that Boards' MLS® Systems are never referred to as "MLS®'s" or "the MLS®".

Each time a Board/Association interacts with the media the trademark message should be at least included in the communication. This should include passive messages such as including the definition of the term REALTOR® and Multiple Listing Service® or MLS® on releases provided to the media.





## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS

There are at least 3 essential elements to an effective trademark compliance program:

1. An internal audit
2. Ongoing member audits
3. An effective enforcement process

### XII. Conducting an Internal Audit

Before a Board can start seeking out improper trademark uses amongst its members, it is critical that it takes a good hard look at how it is using the marks itself. Based on the “physician, heal thyself” principle, putting your own house in order is always a good first step to asking others to clean up theirs.

This is good business practice for 2 reasons. Firstly, it is an educational opportunity. The best way of learning the trademark rules is to actually apply them. It is very easy to fall into questionable usage practices, and many Boards will surprise themselves by discovering a host of trademark uses that do not comply. By going through the processes of analyzing the Board’s use of the trademarks, the Board staff is learning by doing. This will be an enormous asset in dealing with member use.

Secondly, members who are asked to correct trademark problems in their own business or promotional material will be quick to point out any irregularities with Board uses, and that will erode the Board’s “moral high ground” in asking for member compliance. We don’t have the luxury of saying “do like I say, not like I do”.

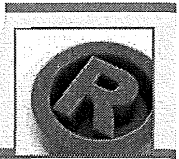
An internal audit does not have to be a complicated process. Think of it as a little look around to see what’s going on. It’s a relatively simple matter of determining what uses are made of CREA’s certification marks by the Board, and ensuring that they all comply with the usage guidelines.

Obviously, if this audit is undertaken with absolutely no concept of what constitutes a trademark infringement, what uses are allowed by CREA’s policies and what uses require license agreements, you are wasting your time. But if you understand the general rules and the allowable Board uses outlined in this Toolkit you should be able to quickly identify any problems.

The areas of review would include:

- Board Name;
- Board Logos;
- Letterhead;
- Board Newsletters, Publications, Educational Courses;
- Board Websites.

## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS



### 1. Board Name

If the REALTOR® mark (or a variation of the mark) is part of the Board name, ensure that:

- CREA's approval was obtained prior to using the name;
- A license agreement for the use of REALTOR® in the name has been executed;
- The word "Board" or "Association" is included in the name;
- REALTOR® complies with the "Form" rule in that it is spelled all in capitals and includes the ® registration symbol.

**NOTE: The Corporations Branch of the applicable government agency responsible for registering corporate names may not allow the "®" symbol to accompany the corporate name for registration. That's fine. However, the "®" symbol must appear in all uses of the name on business and promotional material, as well as websites.**

### 2. Board Logos

There are 2 logo situations—a design mark developed to identify the Board, and other design marks or phrases used by the Board to identify specific services or awards (e.g. "The Million Dollar MLS® Club" or the "REALTOR® Achievement Award").

If the Board incorporates any of CREA's trademarks—including both word and design marks—then the Board must ensure that:

- CREA's approval was obtained prior to using the design or the phrase;
- A license agreement for the use of REALTOR® or MLS® in the design or phrase has been executed;
- The REALTOR® or MLS® word (if applicable) complies with the "Form" rule in that it is spelled all in capitals and includes the ® registration symbol;
- The REALTOR® or MLS® design mark (if applicable) conform CREA's design mark specifications.

**NOTE: CREA permits the word "REALTOR®" to be removed from the logo for the purpose of incorporating the logo into a Board/Association logo.**

### 3. Letterhead

Does the Board display any of the REALTOR® or MLS® family of marks on letterhead or other promotional material? If yes, the Board must ensure that:

- The word or design marks conform to CREA's guidelines for proper usage (capital letters for the word marks, proper size and colour contrast for the design marks, ® registration symbol with all marks);
- The marks should always be used in a "stand-alone" fashion, in that they are not combined with any other text or design.



## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS

### 4. Board Newsletters, Publications, Educational Courses

These documents must be reviewed with 2 things in mind:

1. Do any of CREA's trademarks appear in the title of the publication (e.g. "The REALTOR® Connection")? If yes, ensure that CREA has approved the use in writing.
2. Are any of CREA's trademarks used in the body of the publication? If yes, ensure that:
  - The REALTOR® or MLS® words comply with the "Form" rule in that it is spelled all in capitals and includes the ® registration symbol;
  - The REALTOR® or MLS® word comply with the "Context" rule in that no-one reading it would mistake the word REALTOR® for "real estate agent" or MLS® for a "database". Ask yourself these questions -Have you properly used the term "MLS® System" to identify your listing system? Have you improperly used MLS® as a noun (e.g. "our members access the MLS®...");
  - All design marks conform to CREA's design mark specifications.

### 5. Board Websites

#### Domain Names

Does the Board own domain names or e-mail addresses that contain the MLS® or REALTOR® marks? If yes, ensure that:

- CREA has pre-approved the use;
- A license agreement with CREA has been signed.

**NOTE: CREA's MLS® marks may only be used in Board domain names and e-mail addresses in conjunction with a geographical modifier AND a separation between the MLS® mark and any other words (e.g. [www.toronto-mls.ca](http://www.toronto-mls.ca)). While Boards are encouraged to buy "offending" domain names ([www.topsellingrealtor.com](http://www.topsellingrealtor.com), [www.ultimatemls.com](http://www.ultimatemls.com) etc...) in order to protect them, they are not allowed to activate those names or have them point to the Board's website.**

#### Content of Website

Review the interior of the Board website in the same manner as you would with publications, as discussed above. The Board website is another advertising vehicle and subject to the same usage guidelines.

**NOTE: All publications intended for consumer use and all websites that contain the REALTOR® or MLS® marks:**

- **must include the disclaimer "Trademark owned or controlled by The Canadian Real Estate Association. Used under license".**
- **should include a definition of what a REALTOR® is, what MLS® means, and what an MLS® System is.**

This audit process may initially take some time, but should only need to be done once in this kind of detail. It is essential that Board staff be educated on proper trademark use, and become familiar with CREA's policies for use, as well as this toolkit. Going forward, then, basic maintenance should be all that is required.



### **XIII. Conducting a Member Audit**

When we talk about member audits, it is important to understand that we are not suggesting that Boards take each member individually and perform an audit on his or her operations in the same manner as described above for Board audits. Nor are we suggesting that Boards institute some kind of mandatory review process that requires members to get Board approval for business and promotional material or websites.

What is being suggested, however, is that Board staff persons educate themselves on trademark infringements and apply that knowledge to assist members in complying with the usage guidelines when displaying CREA's trademarks.

The fact is that the local Board is in the best position to see what is happening in its jurisdiction. In the normal course of business, Boards see much of the material produced by their members. Some of it comes across the desks of Board staff persons. Some is in the local newspapers that staff reads. And yet, a vast amount of member advertising and communication violates CREA's rules for the use of its trademarks. If Board personnel were able to look at this material with a critical eye, based on an understanding of the trademark rules, many of the problems would be stopped in the first instance before they become critical.

Here is a list of some of the most common problems with member use of the CREA trademarks.

#### **1. Realty Firm Names**

CREA's Rules provide that the REALTOR® and REALTORS® certification marks cannot form part of a business or trade name.

**For example**, the name "Riverside REALTORS®" violates the usage rules. The name "Riverside Realty, Inc., REALTORS®" is acceptable because the REALTORS® mark is not part of the firm name, but rather is used as an identifier after the name, properly separated by punctuation.

Neither the regulators nor the various government bodies charged with approving business names deal with trademarks, and they will not refuse names because they infringe trademark rights. It is not their job. Trademark protection is legally the responsibility of the owners of the mark.

So brokers can easily register firm names that violate CREA's rules.

However, as such names violate CREA's rules, as well as the REALTOR® Code, no broker should be allowed membership in these circumstances. They are in breach of the contractual obligation contained in the membership application and the Board bylaws.

Yet many infringing firm names make their way onto Board membership databases. That information is then directly uploaded to CREA's membership database, and may reside there for years before it is noticed that a problem exists. At that time, the member is arguing that he or she has been allowed this non-conforming use for years, and CREA now has no right to require compliance. This puts both the member and CREA in a difficult position.



## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS

Therefore, it is incumbent on Boards to:

- Refuse to process firm names that violate CREA's rules.
- When uploading firm names to the CREA database that use REALTOR® properly after the name, do not include the REALTOR® mark in the firm name. In the **example** Riverside Realty, Inc., REALTORS®, the trademark REALTORS® is not part of the firm name. It should be uploaded as "Riverside Realty Inc.", not as "Riverside Realty Inc., REALTORS®".

### 2. Member Advertising in Board Publications

All advertising containing any of CREA's trademarks, submitted to a Board for insertion in a Board publication should be reviewed for compliance with CREA's rules before it is accepted. Improper uses of the trademarks are particularly harmful when communicated in a Board publication.

### 3. Member Advertising in Other Media

When a Board staff person reads a local newspaper or gets a flyer from a member at their home, he or she should review the content for trademark problems. If any are identified, the Board should contact the member, pointing out the problem and requesting it be rectified.

### 4. Domain Names

Domain names that infringe CREA's trademarks represent the largest single challenge in trademark enforcement today. CREA has dealt with hundreds of non-compliant names, but on our own, we are barely scratching the surface of the problem.

Boards, however, are in a unique position to assist with compliance. Most Boards have the e-mail addresses of their members in the Board database. Many of these e-mail addresses are themselves trademark infringements (e.g. realtor@hotmail.com). But even the ones that are not, will in most cases lead to a website. **For example**, if the e-mail address is john@professionalrealtor.com the website is www.professionalrealtor.com. And we can tell right away that there is a problem—the website violates the rules for use of REALTOR® in domain names.

Therefore, Boards should:

Review the email addresses and websites currently on their membership database, compile a list of offending sites, and advise the members of the need to deactivate the domain names;

Review the contact information provided by new members, and any new information from existing members for compliance with the trademark rules.

**NOTE:** If the domain name would be considered "popular"—for example, something that contains a geographical reference such as www.winnipegmls.com, then the Board should require not only that the domain be deactivated, but also that it be transferred to the Board. That is the only way of protecting the domain from being bought by another person as soon as it is handed in by the member. CREA presently owns a multitude of offending domain names, but we are asking Boards to assist protecting these valuable marks.

## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS

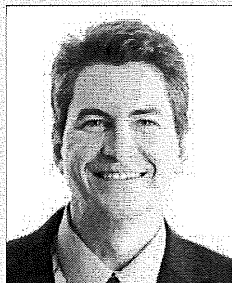


### 5. Member Websites

Websites are advertising vehicles and Boards should review the content of websites in the same manner as any other member advertising, with an eye on the use of both REALTOR® and MLS®. In addition to domain name problems, the improper uses in websites mirror the most common misuses that appear in other media. They include:

- Displaying MLS® improperly by using by using small letters or periods or omitting the ® symbol;
- Using MLS® as a noun (“I have access to the MLS®”);
- Displaying REALTOR® improperly by not using all capitals and/or not using the ® symbol;
- Using REALTOR® to mean “real estate agent” instead of “member of CREA”;
- Using REALTOR® or MLS® with adjectives or as part of a marketing “slogan” (“I’m Your Condo REALTOR®”; “Talk to me about our “MLS® Advantage” Program”).

#### WHAT’S WRONG WITH THIS PROMO?



Meet John Doe  
of ABC Realty Inc.

He’s **REALTORific!**

#### ANSWER

The REALTOR® term should never be used to create a new term or phrase, such as “REALTORific”. Modification of the term, in any manner, tends to weaken the distinctiveness of the mark and undermine its identifying functions.



## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS

### BRAMPTON REAL ESTATE BOARD

10 - 35 Van Kirk Drive

Brampton, Ontario L7A 1A5

Tel: (905) 791-9913

Fax: (905) 791-9430

[www.breb.org](http://www.breb.org)

[www.realtorlink.ca](http://www.realtorlink.ca)

[www.realtor.ca](http://www.realtor.ca)

#### E-mail sent February 15, 2009 to info@crea.ca

In browsing some of the real estate websites I found several, well, sad to say but most of them, that had trademark infringements. I e-mailed the contact person of each of the sites in regards to this and asked them to correct the situation. To my surprise, I have received e-mail replies very quickly thanking me and said they will make these changes right away. I have also not turned my head when I see a sign "REALTOR ON DUTY" outside an office. I have e-mailed the Broker of Record and within a couple days, a new sign has appeared "REALTOR® ON DUTY".

It's been great to see this and it's become a great tool I use with my Members. Asking them all too randomly search a few sites and then e-mail explaining the trademark issue and that they are adding to the risk of losing these trademarks. I've used the scenario; there are approx. 2,500 REALTORS® in our area, approx. 35,000 in Ontario and approx. 94,000 in Canada. What a statement they would make if they all just emailed a couple. Once they receive the replies they realize they do make a difference and then it starts, they become addicted to checking the trademarks.

Below is an e-mail I received from [REDACTED]. When searching 'real estate Ontario' a link comes up - [REDACTED]. This is how I found it. Throughout their material they reference REALTOR®, Multiple Listing Service® and MLS®; all incorrectly.

The emails I have been sending up until now basically reference the fact that these are owned by CREA, can only be used by Members of CREA and can never be used without permission.

I am starting to receive emails, such as this one below asking for more details and not being a lawyer, I would like to know if CREA has wording we could use in answering these types of questions. My first reaction would have been to tell them to get permission to use the two trademarks in their marketing materials, and then make sure they have the proper rules for the trademarks. I reference the Canadian Trademark Guidelines but now would like to know exactly what we should be saying.

Some of my members have been doing the same thing and are now asking the same question. Several I have heard back from know the answers and have agreed to make the corrections or replace the wording.

I present the Trademark issues every time I'm in front of my members, whether it's a Member's meeting, a education session or a Broker/Manager Forum. They are finally coming on board and I would really appreciate your help in letting them know exactly how they can pursue this.

Thank you in advance for any advice or suggestions you can give me,

Lynn M. Martin  
Executive Officer  
Brampton Real Estate Board

## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS



### XIV. Enforcement Process

#### 1. Getting Ready

As preparation for processing trademark complaints, the Board should ensure that following has been done:

##### Know the Rules

Trademark misuses fall into 2 general categories—unauthorized use by non-members, and improper use by members who are authorized to use the marks, but violate CREA's policies for use. Before you can recognize a misuse, you must know the rules and the reasons behind the rules. This toolkit sets out in considerable detail all of the usage rules and the rationale for them.

All Board staff should understand at least at a basic level how the rules work so that they all recognize obvious trademark infringements when they see them.

##### Appoint a Trademark Officer

One individual in the Board office should be appointed the person responsible for trademark compliance. The duties of this person would include training the staff on trademark issues, educating the members, responding to questions and complaints from members and other third parties, and establishing and supervising an internal procedure for dealing with trademark complaints. To be effective, a program of this nature should have one point of contact.

##### Develop a Record Keeping and Tracking System

It is critical to keep detailed records of everything that has transpired in the course of efforts to ensure compliance. A few of the things to keep in mind are:

- Maintain separate files for each trademark infringement, which are kept up to date. If you maintain only electronic files, ensure that all hard copy documentation is scanned and filed.
- Always maintain a paper or electronic trail of contacts with the complainant and the offending party. Written notes should always be taken during telephone conversations and should subsequently be filed. Where possible, always confirm discussions in writing or electronically. Remember, any individual enforcement process may end up either in court or before a Board discipline panel, and it is imperative that a complete file is available.
- Institute a tracking system that tells you at a glance what stage any particular trademark action is at. As an **example**, CREA created an electronic spreadsheet that includes the name of the offending party, the nature of the infringement, the date of first letter, the date and content of any response, the date of any second letter, the date of compliance (if any) and whatever follow-up action has been taken. This spreadsheet is cross-referenced so that if you have any piece of information—**for example**, the domain name that was the subject of the complaint—you can search that, and retrieve all of the information about that particular complaint.
- Create a tickler system that brings forward files when the next step has been reached. If, **for example**, an offending party has been given 10 days to cure an infringement, the Board's operational system should be structured so that a reminder comes forward that something needs to be done on this file.





## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS

### 2. Handling a Trademark Complaint

(See *Enforcement Process Flowchart in Appendix A for summary of complaint procedure*)

When the Board has received a complaint, here are the considerations to look at and the steps to take.

**Are the marks (or similar marks) being used in connection with real estate products or services?**

The focus of a trademark infringement is the possibility of “confusion”. If one person uses a mark to identify the quality of a service and another person is using that mark, or a similar mark, to identify the quality of the same or a similar service, the result is confusion in the minds of consumers. However, if similar marks are being used to identify completely different services, then no trademark infringement exists.

**For example**, Major League Soccer, Inc., a New York company, has registered an “MLS®” design mark in Canada that refers to soccer games and related apparel. As this has absolutely nothing to do with any aspect of real estate, it is not an infringement. If the registration had anything to do, directly or indirectly, with the purchase and sale of real property, or databases of real property, or products related to real estate it would be an infringement.

#### ACTION

If the mark only refers to activities or products that have nothing to do with real estate, it is not an infringement.

If the mark does refer to such activities, proceed to the next step.

**NOTE:** If there is any doubt, contact CREA.

**Is the trademark being used in Canada?**

**(a) No use at all in Canada**

CREA’s trademark registrations are valid throughout Canada. They have no application in other countries. A particular use that would be a problem in Canada is fine if the use is restricted to another country.

So the first thing a Board wants to determine is whether the use actually is in Canada. In most cases, this is obvious. But when the complaint involves a domain name or website, you need to be careful.

Let’s say, **for example**, the Board gets a complaint about the domain name [www.supermls.com](http://www.supermls.com). On the face of it, this is a clear violation of CREA’s rules, which do not permit the use of MLS® in domain names. In any case, MLS® can never be used with adjectives, so it looks like it offends a number of usage guidelines.

However, if you click on the domain and look at the site, it is a property listings site, located in the United States. You can only search for properties located in the U.S., and there is no connection whatsoever to Canada. MLS® is not a registered trademark in the U.S., and CREA’s rights end at the border. Therefore, it is not a trademark infringement, and the Board’s investigation is done.

## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS



While this type of analysis usually comes up when dealing with Internet applications, it may very well apply to other types of communications or advertising.

### ACTION

If the alleged infringement only involves MLS®, there is no more that can be done. Advise the complainant accordingly, and close the file.

If the complaint involves REALTOR®, then forward it to the National Association of REALTORS® (NAR). That organization is the owner of the REALTOR® trademark in the U.S. Send problems to:

**The National Association of REALTORS®**

**Attention: Mary Newill, Trademark Administrator**

**E-mail address: trademark@realtors.org**

### (b) Server/Company located in U.S. but cross-border marketing

The situation is different if the company or website originates in the U.S., but is marketing products or services in Canada. **For example**, e-mails or other advertising materials may come from a U.S. site, marketing a product like “MLS® Explorer” or soliciting listings on their website. Alternatively, when you look at the website, it may offer listings from Canada. In both of those circumstances, even though the site is located in the U.S., because the products or services are marketed or sold in Canada, all of the usual trademark rules apply. Even though MLS® is not a trademark in the United States, if it is being used by a U.S. company in Canada, any uses must comply with Canadian law and CREA’s Rules.

### ACTION

Report the use of REALTOR® to NAR, as described above.

Analyze the use of REALTOR® and/or MLS®, based on CREA’s rules and determine whether a violation exists. Proceed to the next step, as if the violation originated in Canada.

### Identify User

Is the offending party a member or a non-member? If it is a non-member, it is not necessary to determine whether the use conforms to CREA’s usage guidelines. That is irrelevant. A non-member is not licensed to use the marks and therefore has no right to display them unless the use is purely for reference purposes.

### Categorize Infringement (if offending party is a member)

If the offending party is a member, it is necessary to examine the particular use and determine whether or not it complies with CREA’s guidelines for use. If the use conforms, advise the complainant and close the file. If the use is not compliant, proceed to the next step.

**NOTE: If there is any question as to whether a particular use is problematic, contact CREA.**



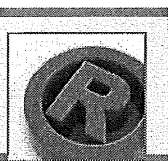
## PART 3 - A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS

### Gather the Information

When the Board is satisfied that the use is problematic, it should obtain and document as much of the following information as possible:

- A description, sample or copy, or website address (URL) of the alleged unauthorized use;
  - The person or firm responsible for the use;
  - The address of such person or firm;
  - The date of the use and/or the publication where the use appeared;
  - Whether the use is continuing;
  - Any information available regarding any possible relationship between the one misusing a trademark and any member should also be documented;
  - A note about domain names and websites;
  - CREA's experience has been that the vast majority of complaints involve the misuse of the marks in domain names. In view of that, a couple of comments specific to the handling of domain name complaints are warranted.
1. You need to find the owner of the domain name. A number of sites on the Internet can provide you with this information. If the domain name in question is a ".ca", you can do a search at [www.cira.ca](http://www.cira.ca). This is the site of the Canadian Internet Registration Authority, the governing body for .ca domain names. A broader search of any URL's, including .ca, can be conducted at [www.networksolutions.com](http://www.networksolutions.com). There are also numerous other websites that provide this information.
  2. A non-compliant domain name is usually just the tip of the iceberg, and your investigation should not be considered concluded once you have determined the name violates CREA's policies. The next step is to look at the website itself. CREA's experience has been that websites with infringing domain names are likely to be breeding grounds for all kinds of trademark misuses. Go into the site and review all of the uses of REALTOR® and MLS® throughout. Are the form and context rules being adhered to? Are any logos being used as hypertext links? Does the site refer to "mls.ca", which is now antiquated terminology? Does it refer to REALTOR.ca as an "MLS® system"? Are REALTOR® or MLS® used as meta-tags? You can find this out by right-clicking on the webpage and choosing 'View Source'. There is no point in fixing one problem (the domain name) and ignoring twenty other ones. Deal with everything at the same time.
  3. When a review of the website discloses misuses of the marks, make sure that the infringing web pages are either saved electronically or printed off. A number of software programs that capture and save web pages with the click of a mouse, are available.
  4. If the infringing domain name is unusual, in the sense that it is not likely to be of interest to another party—**for example**, [www.zootsuitrealtor.com](http://www.zootsuitrealtor.com) the request is that the domain name be deactivated.
  5. If the domain name is something that will likely be purchased by someone else if it is deactivated by the current owner—**for example**, one that includes a geographical reference such as [www.reginarealtor.com](http://www.reginarealtor.com) - the only way of fully protecting the marks is to require the current owner to transfer the domain name to the Board. That way, the Board keeps the name "off the market". The Board should automatically require any domain names with geographical references to be transferred to it.

## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS



6. Domain names are not being “used” if they are not active. If a person owns a domain name that would otherwise be an infringement, but it has not been activated, there is nothing that can be done. Nevertheless, they should still be contacted and put on notice that if they activate it or sell it to third party, an infringement has occurred.
7. Domain names are still active if they “point” to another site. **For instance**, someone with a site at [www.kelownamls.com](http://www.kelownamls.com) may, after being contacted by the Board, set up another site at [www.johnsmith.com](http://www.johnsmith.com), and “move” the content to that site. So far, so good. But instead of deactivating the “kelownamls” name, they “point” it to their new site, so that if users type in [www.kelownamls.com](http://www.kelownamls.com), they get sent to [www.johnsmith.com](http://www.johnsmith.com). Many people think this complies with the request to deactivate the name, but it does not. If the domain name takes you to any site at all, it is still “active” and is an infringement. In this particular example, of course, the Board requires the owner to transfer the name to the Board.

### Initial letter to offending party

When the initial investigation has been completed, and the information gathered, the Board should communicate with the individual or company identified as misusing a CREA trademark.

Template letters directed to both members and non-members, covering all of the most common types of infringements, are included on a CD in the Appendices. These letters may be customized for Board use.

### Non-members

When the offending party is not a member, a letter should be sent explaining that the trademark used is a registered mark owned or controlled by CREA in Canada, and that the trademark is reserved for the exclusive use of, or in reference to, members of CREA. The letter should conclude with a polite but clear and direct request that the unauthorized use of the trademark be promptly terminated. If the user is a real estate practitioner or a brokerage, this is an opportunity for the Board to explain the benefits of membership. Do not threaten litigation at this stage. The letter should include a request that the party confirm their intention to comply by a certain date.

### Members

When a member is using the marks improperly, the letter should include a description of CREA’s trademarks and their definitions, the fact that the member is licensed to use the marks, but must do so in accordance with usage rules, and an explanation of the misuses that were found. The member should also be politely asked to make the necessary changes within a certain time frame (e.g. within 2 weeks from when the letter is sent). The letter should include a request that the member confirm his or her intention to comply by a certain date.

**NOTE: If the alleged infringement involves a domain name, a decision must be made ahead of time as to whether the Board will require the domain name to be transferred to them, so that the letter can reflect that request.**

**NOTE: The vast majority of member infringements result from a simple misunderstanding of the usage rules. The letter should therefore be extremely polite and as helpful as possible in explaining the problem. It is not appropriate to be in any way threatening in the initial letter.**



## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS

### Review file status at deadline

The initial letter will result in one of five scenarios:

1. The party responds indicating they have complied. In this case:
  - Confirm compliance by checking website or materials;
  - Write a letter thanking the person for their co-operation;
  - Copy the file to CREA;
  - Close the file.
2. The party responds refusing to comply. In this case, send the second letter as described below.
3. The party does not respond. In this case, send the second letter as described below.
4. The party responds asking for clarification. In this case, politely respond to any questions. The greater the understanding, the more likely they will comply. At the same time, it is important to reinforce the need to comply, and a deadline should be agreed on at this time. If the party asks any questions the Board is uncertain about, CREA is happy to assist.
5. The party responds, agreeing to comply, but asks for more time to cure the problem. This is quite common in domain name and website issues. The party may be prepared to comply, but needs time to change over the domain name or revise the site content. CREA's policy is to allow any reasonable extension of time for people who are honestly trying to comply.

### Sending Second Letters

Given the fact that the offending party at this juncture is either ignoring the Board or choosing to defy its request, the second letter should be more direct and set out a new deadline for compliance—one that is considerably shorter than the original one in the first letter. It is suggested that the deadline be no more than 5 days from the date of the letter, if the letter is being sent electronically, or 8 days if the letter is being sent by mail.

If the offending party is a non-member, the letter should indicate that if the misuse is not rectified within the timeframe set out, the matter will be referred to legal counsel for further action.

If the offending party is a member, the letter should point out the following:

- The misuse of CREA's trademarks is a violation of **Article 26** of the REALTOR® Code and if the problem is not rectified within the timeframe set out, the matter will be sent to the Board's professional standards committee as a discipline complaint.
- The misuse of CREA's trademarks is also a violation of CREA's Rules, and if the problem is not rectified within the timeframe set out, the matter will be forwarded to CREA, who has the right to terminate or suspend the member's access to any of CREA's trademarks, as well as to REALTOR Link® and REALTOR.ca.
- Copy this letter to the offending party's broker.

## PART 3 – A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS



If, following receipt of the second letter, the offending party agrees to comply:

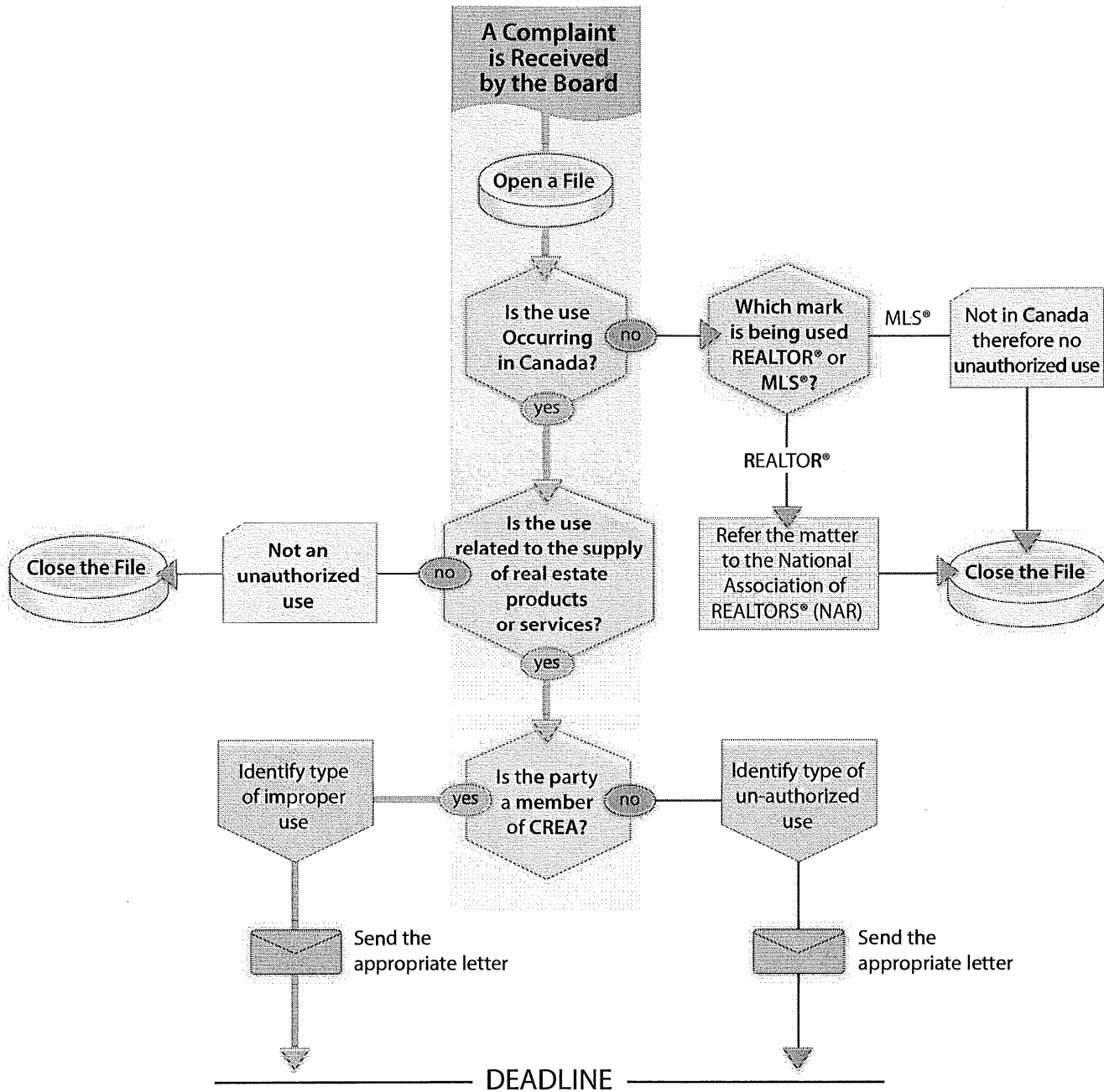
- Confirm compliance by checking website or materials.
- Write a letter thanking the person for their co-operation.
- Copy the file to CREA.
- Close the file.

If the offending party ignores the second letter or continues to refuse to comply:

- If the offending party is a non-member, forward the entire file to CREA for action.
- If the offending party is a member:
  - Forward the file to the appropriate Board body as a professional standards complaint;
  - Forward the entire file to CREA, confirming that the matter is the subject of a discipline complaint;
  - Update CREA regularly on the status of the discipline matter;
  - CREA will handle the matter from this point onwards.

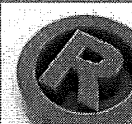


**PART 3 - A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS**



*(This is how the enforcement process should have gone so far.)*

**NOTE:** That template letters you can use for any trademark infringement are available on [www.realtorlink.ca](http://www.realtorlink.ca), or on the CD that was included with this Toolkit. There are more than 30 templates in all, covering the misuse of REALTOR® or MLS®, involving either a member or a member of the general public. If you have any questions about the use of these letter templates, please contact CREA.



### 3. CREA's Role in Enforcement

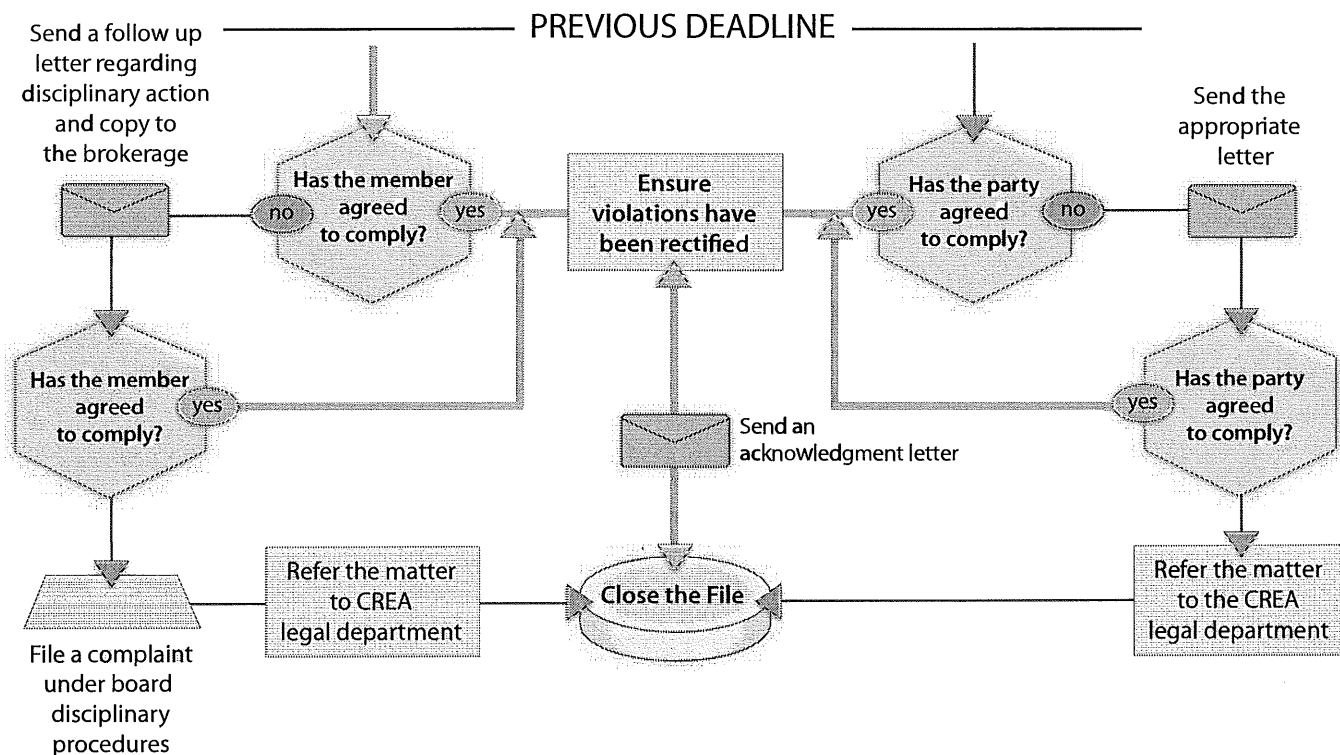
CREA is involved in the trademark enforcement process both as a resource and as the body primarily responsible for the proper use of the marks.

#### CREA as a Resource

As part of the enforcement process, CREA's legal department is available to provide advice and assistance to Boards at any stage of the enforcement process. CREA will work with Boards to help them understand how the trademarks work, and to answer questions at any stage of enforcement. If there is any issue as to whether a particular use of the marks is improper, or if an offending party requires clarification that the Board is unable to provide, CREA will help.

CREA also plays a role as part of the discipline process. If a member infringement has been referred by the Board to discipline, CREA will work with the Board in putting together the evidence. CREA can provide affidavit material analyzing the misuse and confirming it violates CREA's policies. If necessary, CREA can provide expert evidence at the hearing.

CREA can act as an enforcement body. CREA does not expect Boards to commence litigation against infringers. If the Board has gone through the enforcement process and the offending party has not ceased the misuse, CREA will take over the file at that point, and deal directly with the offending party.





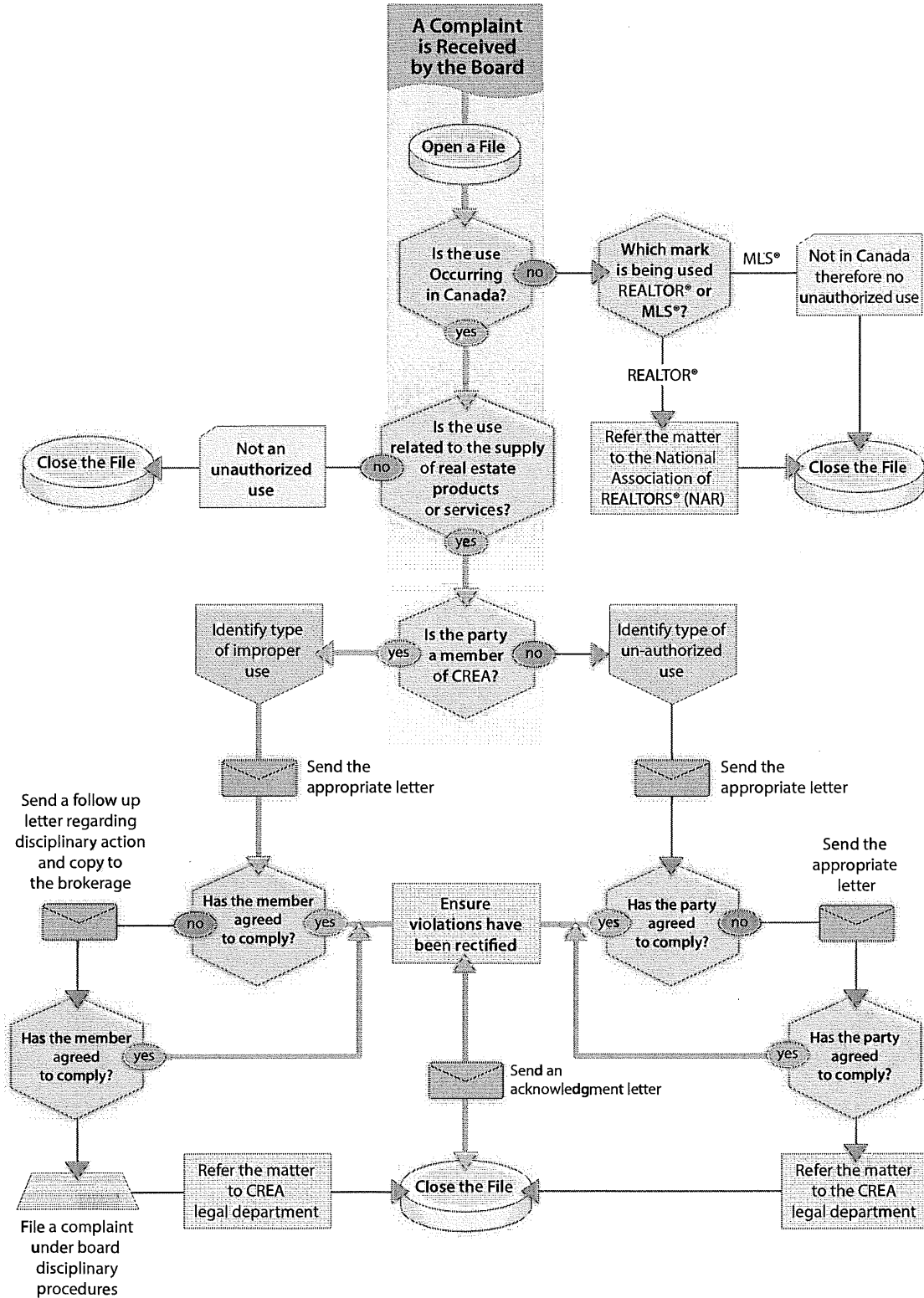


## APPENDICES

- A. Enforcement Process Flowchart.**
- B. Article 26 of the REALTOR® Code.**
- C. Rule 3.2 of CREA's Rules.**  
(Failure To Comply With Requirements of Membership – REALTORS® and Individual Members)
- D. Rule 9 of CREA's Rules.**  
(Certification Marks)
- E. CREA Policy for Use of REALTOR® in Domain Names and E-mail Addresses.**
- F. CREA Policy for Use of MLS® in Domain Names.**
- G. Domain Name Transfer Procedure.**



### The Complete Enforcement Process





## APPENDIX B

### REALTOR® Code

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#### **ARTICLE 26: CREA Trademarks**

A REALTOR® shall only use the trademarks of The Canadian Real Estate Association in accordance with CREA's rules, regulations and policies.

##### Interpretations

- 26.1** A REALTOR® shall not challenge the validity of CREA's Trademarks.
- 26.2** A REALTOR® shall not use any of CREA's Trademarks in domain names, e-mail addresses or meta-tags unless specifically authorized to do so by CREA policies.
- 26.3** CREA's Trademarks are not to be used as hypertext links in Internet websites.
- 26.4** A REALTOR® shall not use, display, or attempt to register as trademarks any word, phrase, term, initials or design marks that incorporate, or are confusingly similar to, any trademark of CREA.
- 26.5** A REALTOR® shall not incorporate into corporate or trade names any trademark of CREA or any confusingly similar mark.



## CREA's Rules

### **RULE 3.2: Failure to comply with requirements of membership**

#### **3.2: REALTOR® members**

- 3.2.1:** Complaints relating to the conduct of REALTOR® members will be referred by CREA to the executive officer of the Board or Association to which the Member belongs, with the request that the matter be dealt with through the Board's professional standards process.
- 3.2.2:** If the complaint involves the misuse of CREA's trademarks — including the MLS® and REALTOR® family of marks — or other intellectual property (including, but not limited to, REALTOR.ca, ICX.ca, realtorlink.ca and crea.ca), the complaint may, at the same time, be dealt with by the CREA Chief Executive Officer, who may make such determination as he or she deems expedient, including:
- 3.3.2.1: Suspending or revoking the Member's license to display CREA's trademarks;
  - 3.3.2.2: Suspending or terminating the Member's passwords to CREA's websites; or
  - 3.3.2.3: Otherwise preventing access by the Member to any of CREA's intellectual property.
- 3.2.3:** Any decision of the Chief Executive Officer may be stated to be effective immediately or at such time as a determination is made on the complaint by the appropriate Board or Association.
- 3.2.4:** A Member affected by a decision under 3.2.2.2 above may appeal to the CREA Board of Directors within ten (10) days of notification of the decision.
- 3.2.5:** The Board of Directors shall review and consider the complaint and may make such determination as it deems reasonable. Any suspension or termination of rights imposed by the Chief Executive Officer shall remain in effect pending the decision of the Directors.



## APPENDIX D

### RULE 9: Certification Marks

#### 9.1: The Marks

**9.1.1:** The Certification Marks (collectively, the "Marks") owned or controlled by CREA, and that are licensed by CREA pursuant to the terms and conditions herein, are as follows:

- MLS®;
- Multiple Listing Service®;
- MLS® logos as shown in existing registrations, and such variations as may be permitted by CREA in writing (collectively, the "MLS® Marks");
- REALTOR®;
- REALTORS®;
- REALTOR® logos as shown in existing registrations, and such variations as may be permitted by CREA in writing (collectively, the "REALTOR® Marks").

**9.1.2:** CREA may in the future adopt other marks as certification marks, and may license them in CREA's sole discretion, and on such terms and conditions as CREA may subsequently specify in writing.

#### 9.2: Standards Associated with the Marks

**9.2.1:** The Marks are registered under the Trade-marks Act as certification marks and are protected throughout Canada.

**9.2.2:** The REALTOR® Marks identify Members of CREA who provide real estate brokerage services (the "REALTOR® services") in compliance with CREA's By-Laws and Rules, and the REALTOR® Code, as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations.

**9.2.3:** The MLS® Marks identify professional services rendered by members in good standing of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement", also known as a co-operative selling system (the "MLS® services"), in compliance with CREA's By-Laws and Rules, and the REALTOR® Code as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations. The MLS® Marks do not identify or describe a computer database of real estate listings.

**9.2.4:** An MLS® System is a co-operative selling system operated and promoted by a Board or Association in association with the MLS® Marks. An MLS® System includes an inventory of listings of participating REALTOR® members, and ensures a certain level of accuracy of information, professionalism and co-operation amongst REALTOR® members to affect the purchase and sale of real estate.



### 9.3: Licensees of the Marks

- 9.3.1:** Subject to the terms of this Rule, the following Members of CREA (collectively, "Licensees") are licensed to use, reproduce and display the Marks:
- 9.3.1.1: Boards;
  - 9.3.1.2: Associations;
  - 9.3.1.3: REALTOR® members.
- 9.3.2:** A corporation, partnership, or other entity operating as a licensed real estate firm may use, reproduce and display the Marks in the course of its business, provided that all licensed practitioners in any way affiliated with the real estate firm are REALTOR® members.
- 9.3.3:** An individual, corporation, partnership or other entity who has been licensed by CREA in writing may use, reproduce and display one or more of the Marks for certain specific wares or services.
- 9.3.4:** Former REALTOR® members who are no longer licensed, but who are: honorary life members or equivalent of a Board/Association; or Honorary Affiliates of CREA, may display the REALTOR® Marks in a manner consistent with their honorary status provided that:
- 9.3.4.1: any such display is solely for the purpose of promoting membership in CREA, and not for any commercial or business purpose;
  - 9.3.4.2: the REALTOR® Marks are not displayed in any manner that would lead a consumer to believe that the person is a licensed real estate practitioner;
  - 9.3.4.3: the person agrees in writing:
    - 9.3.4.3.1: to be bound by the REALTOR® Code and CREA's By-Laws, Rules and Policies;
    - 9.3.4.3.2: to immediately cease displaying the REALTOR® Marks if requested to do so by CREA or the appropriate Board/Association.

### 9.4: Restrictions on License

- 9.4.1:** Licensed Wares and Services
- 9.4.1.1: The Marks may only be used, reproduced and displayed in association with the REALTOR® services or the MLS® services, as the case may be, and such other wares, services or business as CREA may specifically permit in writing.
  - 9.4.1.2: All Licenses granted pursuant to this Rule shall be non-exclusive.
- 9.4.2:** Compliance with Standards
- 9.4.2.1: CREA owns or controls the Marks. As such, CREA has the absolute right to withhold, withdraw or suspend any Licensee's right to use, reproduce or display the Marks, or any one of them, at any time, subject only to the terms of any specific written license agreement between CREA and each Licensee.
  - 9.4.2.2: The terms and standards of the license to use the Marks are established in CREA's By-Laws, Rules and Policies, as amended from time to time. The right to use the Marks is conditional on strict adherence to all terms and standards.



## APPENDIX D

- 9.4.2.3: At the request of CREA, each Licensee shall promptly provide samples of all use of the Marks, or any of them, for CREA's review, and each Licensee shall promptly take such steps or make such changes as CREA may request to rectify any non-compliance with these terms and standards.
- 9.4.2.4: Licensees shall have no right to use, reproduce or display the Marks, except as specifically provided for in this Rule. All other rights are reserved to and remain with CREA. Without limiting the generality of the foregoing, Licensees shall have no right to sub-license or assign their right to use, reproduce or display the Marks, or any of them, except as may be permitted by CREA in writing.

### **9.4.3: Licensee Responsibility For Use of Marks By Third Parties**

- 9.4.3.1: Licensees are responsible for ensuring that buyers and sellers for whom they are providing any service, as well as any other third parties in any way involved in transactions, do not use the Marks in any unauthorized manner.
- 9.4.3.2: Any Licensee who partners with a non-member in the provision of real estate related services and wishes to permit that non-member to display CREA's marks must:
  - 9.4.3.2.1: Provide the non-member with a CREA notice of allowed displays of the Marks;
  - 9.4.3.2.2: Enter into a written contract with the non-member which provides as a minimum that:
    - 9.4.3.2.2.1: The non-member may only display the Marks in the manner specifically approved by CREA from time to time;
    - 9.4.3.2.2.2: The Licensee has the right to terminate the agreement at any time in the event of non-compliance by the non-member;
    - 9.4.3.2.2.3: Licensees are required to terminate these agreements in the event of a breach by a non-member.

### **9.4.4: Term and Termination**

- 9.4.4.1: All Licenses granted pursuant to this Rule shall commence upon each Licensee satisfying the terms and conditions of CREA's By-Laws and Rules, and shall terminate upon each Licensee ceasing to be a Member in good standing of CREA, or upon CREA terminating the License as provided for in CREA's By-Laws and Rules, as amended from time to time.
- 9.4.4.2: Upon termination, each Licensee shall immediately cease any and all use, reproduction and/or display of the Marks, or any of them, and any and all similar marks, as, or as part of, any trademark, trade name, corporate name, domain name, or otherwise.

**9.4.5: Estoppel**

Licensees agree that they will not at any time, either during the term of, or following the termination of this license:

- 9.4.5.1: Challenge the validity or distinctiveness of the Marks or any other trademarks of CREA, or CREA's ownership thereof;
- 9.4.5.2: Use, display or attempt to register (as trademarks, trade names, corporate names or domain names) any word, phrase, term, acronym, initials or design that incorporate, or are confusingly similar to the Marks or any of them or any other trademark of CREA.

**9.4.6: Business Restriction**

The Marks may only be used by REALTOR® members in connection with their brokerage services relating to real estate transactions, as permitted by the relevant provincial or territorial real estate licensing legislation.

**9.5: Usage Rules****9.5.1: General Rule**

- 9.5.1.1: The Marks must always be displayed in a manner that enforces their distinctiveness as certification marks, and emphasizes that they are not generic or descriptive words.
- 9.5.1.2: The detailed usage requirements found in CREA's Policies must be complied with in every use, display or reproduction of the Marks. Any repeated failure to comply with these requirements shall entitle CREA to terminate the license.

**9.5.2: Form Requirements**

- 9.5.2.1: The Marks must always be displayed in the exact form and manner in which they are registered, as follows:
  - MLS®, Multiple Listing Service®;
  - REALTOR®, REALTORS®.
- 9.5.2.2: The ® registration symbol must always be displayed in conjunction with the Marks except in the case of any permitted new Marks that are not registered.
- 9.5.2.3: All business and promotional material displaying any of the Marks must, where possible, include the statement "Trademark owned or controlled by The Canadian Real Estate Association. Used under license."
- 9.5.2.4: The MLS® and REALTOR® logos must only be used, reproduced and displayed in the form as registered, or in such other form as may be approved by CREA in writing, as detailed in CREA's Policies as amended from time to time.





## APPENDIX D

### 9.5.3: Exceptions to Form Requirements

- 9.5.3.1: National and local media outlets may display the REALTOR® marks by capitalizing only the "R", and are not required to display the ® symbol following the Marks, all in accordance with the Associated Press Style Book or the United Press International Style Book.
- 9.5.3.2: Textbooks and other educational material may use the Marks without the ® symbol provided that there is, at the beginning of the book or document, an explanation of the meaning and ownership of the Marks which has been approved by CREA.

### 9.5.4: Specific Additional Requirements – REALTOR® Marks

- 9.5.4.1: The REALTOR® Marks must only be used to identify the real estate brokerage services and related professional services provided by members of CREA. The REALTOR® Marks must never be used as a generic or descriptive name to identify a salesperson, broker, or other real estate professional.
- 9.5.4.2: The REALTOR® Marks must never be used as part of a business name or trade name or corporate branding except as may be permitted by CREA in writing.

### 9.5.5: Specific Additional Requirements – MLS® Marks

- 9.5.5.1: The MLS® Marks must only be used to identify the professional services provided by Members of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement", also known as a co-operative selling system. The MLS® Marks must never be used as a synonym for a "database of real estate listings."
- 9.5.5.2: When referring to the co-operative selling systems operated by Boards and Associations, the proper terminology is "the MLS® System of the Board."
- 9.5.5.3: The MLS® Marks must never be used as part of a business name, trade name, or corporate branding except as may be permitted by CREA in writing.
- 9.5.5.4: A REALTOR® member who does not have access to the MLS® System of a Board/Association may not use, reproduce or display the MLS® Marks.

## 9.6: Use of Marks by Boards and Associations

- 9.6.1: A Board may only use, reproduce or display the MLS® Marks if it operates, or otherwise provides its REALTOR® members with access to an MLS® System.
- 9.6.2: A Board or Association may use REALTOR® or REALTORS® as part of its corporate name and trade name, provided that:
  - 9.6.2.1: the proposed name is approved in accordance with CREA's Rules; and
  - 9.6.2.2: the Board or Association executes a written license agreement with CREA prior to using the name.
- 9.6.3: Each Board and Association is licensed to use REALTOR® or REALTORS® in the name of its building and in the titles of its publications, provided that each use is first approved by CREA in writing.



### 9.7: Use of the Marks in Domain Names and on the Internet

**9.7.1:** Licensees shall not use the Marks or any of them or any other CREA trademarks in domain names, e-mail addresses, meta-tags or other Internet search fields unless specifically authorized to do so by CREA's Policies.

### 9.8: Enforcement

**9.8.1:** Boards and Associations are responsible for monitoring and enforcing the proper use, reproduction and display of the Marks in their own jurisdiction. This includes ensuring that real estate firm names, websites and other advertising materials (print and electronic) are compliant, and that Boards and Associations respond to complaints regarding improper uses of the Marks, and conduct discipline hearings in a prompt manner, as required.



## APPENDIX E

### CREA Policy for Use of REALTOR® in Domain Names and E-mail Addresses

1. Real estate Boards, provincial/territorial Associations, member firms and individuals may all use the REALTOR® mark in domain names and e-mail addresses in accordance with this policy.
2. Real estate Boards and provincial/territorial Associations may use a domain name or e-mail address which includes the term REALTOR® and a geographically descriptive term which is related to their corporate jurisdiction and consistent with their assigned name. **For example**, the Alberta Real Estate Association may use "albertarealtor.ca" or "altarealtor.ca" or some other variation.
3. Individual REALTORS® are permitted to use REALTOR® in their domain name or e-mail address only if the term refers to the member or the member's firm. Punctuation, while preferred, is not mandatory. **For example**, "johndoe-realtor.ca" and "johndoerealtor.ca" are both correct, as are "johndoe-realtor@sympatico.ca" and "johndoerealtor@sympatico.ca".
4. The REALTOR® term can never be used with descriptive words or phrases. **For example**, "professionalrealtor.ca" or "realtorlistings.ca" are all improper uses of the term.
5. As a limited exception to CREA's Rules regarding the use of the REALTOR® mark, the term can appear in lower case letters in domain names and e-mail addresses.
6. The REALTOR® logo is never to be used as a hypertext link.
7. Except as set out in this policy, all rules governing the proper use of the REALTOR® mark must be adhered to by all members.

The CREA Policy for use of REALTOR® Trademark in domain names was set out in Dispatch 99-07 issued on March 5th, 1999.



## CREA Policy for Use of MLS® in Domain Names

### CREA Internet Domain Name Policy

Rules for use of MLS® and S.I.A.® in Board domain names/e-mail addresses

(Revised May 2, 2005)

1. Only member Boards and Associations may apply to use MLS® in domain names/e-mail addresses. No individuals or firm members may use the marks in their domain names or e-mail addresses.
2. Boards/Associations wishing to incorporate MLS® into their domain names may do so only in conjunction with a geographical modifier within their jurisdictional area.
3. Any Board/Association wishing to use MLS® in domain names or e-mail addresses must sign a special license agreement in the form provided by CREA.
4. Any display of the domain name/e-mail address on any business or promotional material and in all advertising must show the MLS® initials in capital letters.
5. The MLS® initials must never be preceded or followed by any other letters or numbers. The initials must always be separated from any other text by a dot or an @.
6. All domain names/e-mail addresses incorporating MLS® must be pre-approved by CREA before they are registered.
7. Any local Board or Association entering into a contract with a supplier for Internet services must ensure that the contract specifically provides that:
  - (a) the initials MLS® cannot be used in the name of any website computer directory;
  - (b) all uses of MLS® on website pages must be approved by the local board/association before the pages are released to the Internet.
8. In all print advertising where the domain name is displayed, there must be an acknowledgment that MLS® and related logos are trademarks of The Canadian Real Estate Association.
9. All Boards/Associations currently using domain names/e-mail addresses which incorporate MLS® must modify them to conform with this policy and sign a license agreement.

The CREA policy for use of MLS® in Board/Association internet domain names and e-mail addresses as was set out in Dispatch 2005-03 issued on May 18th, 2005.



## APPENDIX F

### Examples of Proper and Improper use of MLS® in Domain Names, E-mail Addresses and Advertising

Improper Use of MLS® in Domain Names	Proper Use of MLS® In Domain Names
<p>www.mlsoffawa.ca            www.mls.ottawa.ca            www.mlssystem.ca</p>	<p>www.MLS.ottawa.ca            www.ottawa.MLS.ca            www.MLS.ottawarealestateboard.ca</p>
Improper Use of MLS® in E-mail Address	Proper Use of MLS® in in E-mail Address
<p>ottawamlsoffawa.ca            mls@ottawa.ca</p>	<p>MLS@ottawa.ca            MLS@ottawa.MLS.ca</p>



## Domain Name Transfer Procedure

This procedure is triggered when an infringing domain name refers to a major city or town. **For example**, “www.torontorealtor.com” or “www.princerpertmls.ca”.

There are two ways to transfer the domain name. The most efficient way is likely to be where the Board carries out the transfer.

### 1. The Board Carries Out the Transfer

- Request the domain name owner receiving the letter to change the e-mail contact address to an address owned or used by your board.

When the formal domain name transfer request is sent to the owner, the board can immediately approve the transfer on behalf of the owner.

- A domain name registrar approved by the Canadian Internet Registration Authority (CIRA)—likely working with your board’s IT staff—must generate the domain name transfer request.
- Your domain name registrar must ensure that the domain name has an “unlocked status” before the transfer request can be generated.

### 2. The Domain Name Owner Carries Out the Transfer

If the domain name owner cannot or does not want to change the e-mail contact address for their domain then your board should take the following steps.

- Your board should confirm with the domain owner that they can access the registered e-mail contact address for the domain name.
- If they cannot, advise them to contact their domain name host and/or CIRA in order to restore e-mail access. Ask them to let you know when their access has been restored.
- If they can access the e-mail address, a formal transfer request should be sent to them. The formal transfer is generated by a CIRA-approved domain name registrar and will contain authorization codes and the option for the owner to approve the transfer.
- The owner needs to click on <Accept> in the transfer request within a specified period of time. Presently, this is within seven (7) days of their having received the request.

If they fail to <Accept> within this time then the process may have to be repeated from scratch.

- If the owner is required to take any other steps (**for example**, such as logging in to the CIRA website) then those instructions will be contained in the transfer request that the domain name owner receives.





NOTES

Horizontal lines for writing notes.





Any questions or comments about the service or products CREA provides?  
You can contact us on-line at [info@crea.ca](mailto:info@crea.ca).

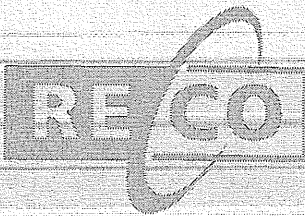
**CREA** THE CANADIAN  
REAL ESTATE ASSOCIATION

200 Catherine Street, 6th Floor, Ottawa, Ontario, K2P 2K9  
Tel: 613-237-7111, Fax: 613-234-2567



**EXHIBIT D**

# Advertising Guidelines



**Published by the  
Real Estate Council  
of Ontario**

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***Disclaimer: Registrant names used in these guidelines are fictitious names used for demonstrative purposes only and do not reflect current or potential registrants under REBBA 2002.***

# Introduction

These guidelines have been developed to assist registrants in complying with the advertising requirements and prohibitions found in the *Real Estate and Business Brokers Act, 2002* (the "Act") and Ontario Regulation 580/05 under the Act (known as the Code of Ethics).

These guidelines cannot hope to encompass every situation and every type of advertising material being used or contemplated by registrants. It does, however, convey many of the principles that the Registrar will consider in determining whether an advertisement complies with the Act and/or the Code of Ethics. Should a complaint about advertising be referred to the Discipline Committee, a Discipline Panel might also take these principles into consideration.

These guidelines are not intended as a comprehensive description of all applicable advertising laws. Many statutes impact advertising and related conduct in the marketplace. These include federal laws such as the *Competition Act*, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), and trademark and copyright statutes, provincial laws including consumer protection legislation, and municipal by-laws regarding things such as signage. The enforcement of these various statutes is outside of RECO's jurisdiction.

## APPLICATION

These guidelines apply to all advertising by or on behalf of all registrants. This includes all brokerages, brokers and salespersons.

"Advertising" means any notice, announcement or representation directed at the public that is authorized, made by or on behalf of a registrant and that is intended to promote a registrant or the business, services or real estate trades of a registrant in any medium including, but not limited to, print, radio, television, electronic media or publication on the internet (including websites and social media sites). Business cards, letterhead or fax cover sheets that contain promotional statements may be considered as "advertising".

## MINIMUM REQUIREMENTS FOR ADVERTISEMENTS

Section 36 of the Code of Ethics sets out four minimum requirements that must appear in all advertising. Those requirements are as follows:

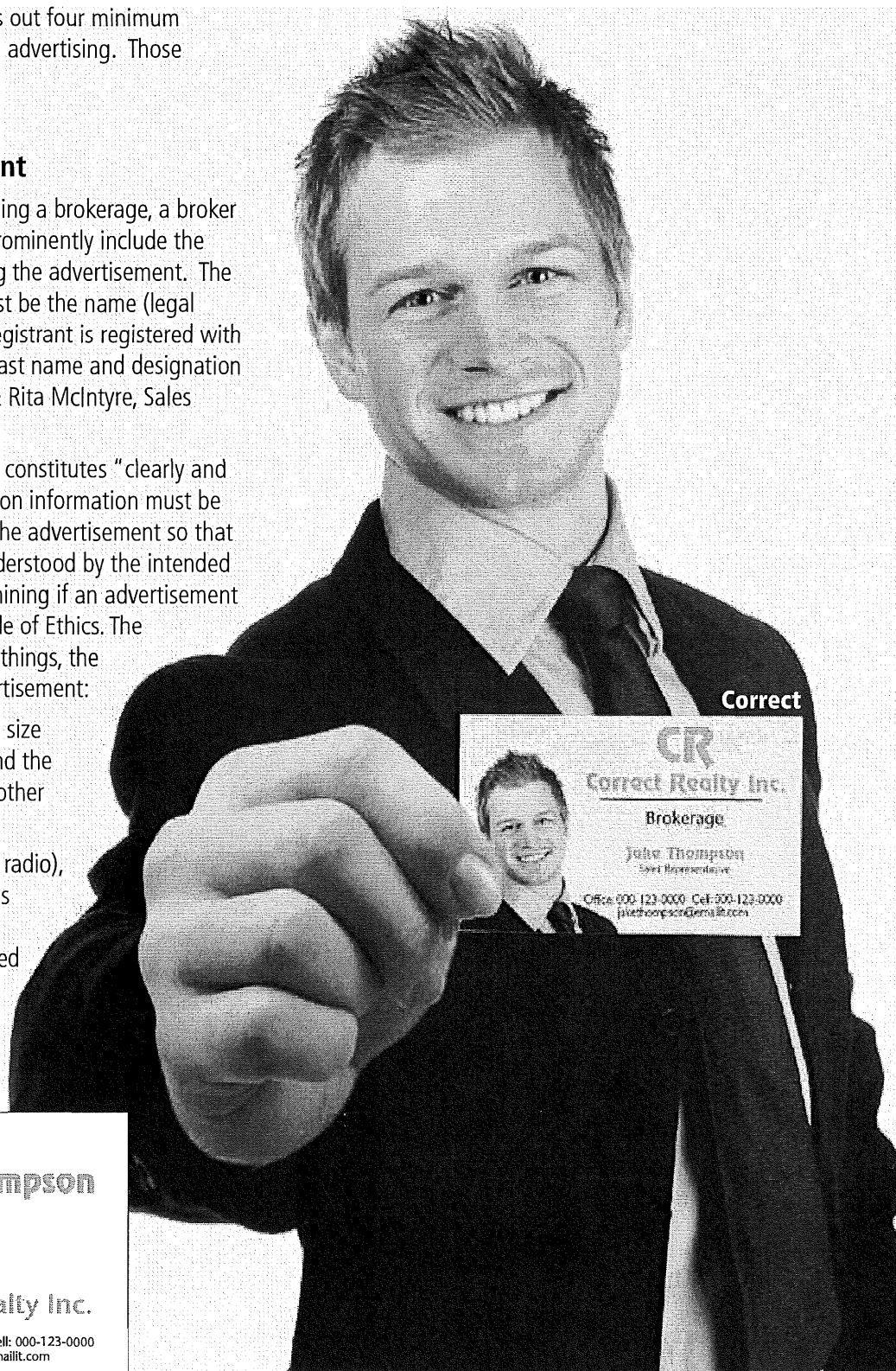
### a) Identification of registrant

All advertising by a registrant, including a brokerage, a broker or a salesperson, must clearly and prominently include the name of the registrant that is placing the advertisement. The name used in the advertisement must be the name (legal name or trade name) in which the registrant is registered with RECO. Registrants with a common last name and designation may be identified jointly (e.g., Tom & Rita McIntyre, Sales Representatives).

There are no formal criteria for what constitutes “clearly and prominently”. Registrant identification information must be sufficiently sized and placed within the advertisement so that it can reasonably be noticed and understood by the intended audience. For the purpose of determining if an advertisement appears to be in violation of the Code of Ethics, the Registrar will consider, among other things, the following characteristics of the advertisement:

- 1) For visually-based advertising, the size and legibility of the printed name, and the location of the name relative to the other elements of the advertisement;
- 2) For aurally-based advertising (i.e., radio), the frequency with which the name is used, the point in the advertisement when the name is used, and the speed with which the name is mentioned.

### Incorrect



Correct



**Z Brothers**  
Franchise Professionals Inc.,  
Brokerage  
Independently Owned & Operated

**Call Keiko & Jordan  
for a home evaluation**

**Keiko & Jordan Smith  
Brokers**

Office: 000-123-0000 Cell: 000-123-0000 [www.2broswebsite.com](http://www.2broswebsite.com)

**b) Identification of individuals**

If an individual broker or salesperson is identified by name, the name used must be the name in which the broker or salesperson is registered with RECO. Registrants with a common last name and designation may be identified jointly (e.g., Keiko & Jordan Smith, Brokers).

### c) Identification of brokerage

Every advertisement by a broker or a salesperson must clearly and prominently identify the brokerage that employs the broker or salesperson. The brokerage name used in the advertisement must be the name in which the brokerage is registered with RECO.

As noted in "Identification of registrant" on page 4, "clearly and prominently" will be assessed by the Registrar (or the Discipline Committee if an advertising complaint is referred to them) based on various characteristics of the advertisement.

A sole proprietorship brokerage must take special care to ensure that it is clear that the individual is both a registered brokerage and the broker of record.

**Correct**







#### **d) Description of registrant**

Where an advertisement identifies a registrant, the specific description of the registrant must be noted. Specifically:

##### **i. Salesperson**

The terms "salesperson", "real estate salesperson", "sales representative" or "real estate sales representative", or the French language equivalents "agent immobilier", "représentant commercial" or "représentant immobilier", must be used to describe any salesperson who is referred to in the advertisement;

##### **ii. Broker**

The terms "broker" or "real estate broker", or the French language equivalents "courtier" or "courtier immobilier", must be used to describe any broker who is referred to in the advertisement;

##### **iii. Broker of record**

The terms "broker of record" or "real estate broker of record", or the French language equivalents "courtier responsable" or "courtier immobilier responsable", must be used to describe any broker of record who is referred to in the advertisement; and

##### **iv. Brokerage**

The terms "brokerage" or "real estate brokerage", or the French language equivalents "maison de courtage" or "maison de courtage immobilier", must be used to describe any brokerage that is referred to in the advertisement.

##### **v. Other issues**

In larger advertisements where multiple registrants are identified, there may be a desire to eliminate the costs or visual clutter associated with repetition of terms such as "salesperson" and "broker" throughout the advertisement. Registrants are permitted to use a clear and visible symbol (such as an asterisk) to denote a description throughout the page. The symbol and associated reference must be clearly visible in the medium in question. In multiple page advertisements, or on multi-page websites, both the symbol and accompanying designation reference must appear on every page that refers to registrants.

If a registrant placing an advertisement is uncertain about the registered name or designation of a salesperson, broker or brokerage that is to be identified or described in the advertisement, they may confirm the information on MyWeb or through RECO's website at [www.reco.on.ca](http://www.reco.on.ca).

## PROHIBITIONS

Section 36 and 37 of the Code of Ethics and other sections of REBBA 2002 contain specific prohibitions related to advertising (i.e., things that are not allowed in advertising, or are only allowed in specific circumstances). Those prohibitions are as follows:

### a) Confusing terms

Registrants must not use any terms to describe a registrant in an advertisement if the term could reasonably be confused with registration status terms described in Section II(d) of these guidelines. Without limiting the generality of this prohibition, terms such as "sales agent", "sales associate" or "sales consultant" are not permitted. Subject to other advertising guidelines and requirements, registrants are permitted to use terms denoting an affiliation with a real estate group or association, but such terms must not appear as a substitute for the description of registrant noted on page 7.

### b) Identification of a party without consent

Registrants must not include anything in an advertisement (such as an image or text) that could reasonably be used to identify any party to a real estate transaction, unless the registrant has the written consent of that party to do so.

A registrant may, within the terms of a representation agreement or a customer service agreement, include wording that provides consent to allow advertising which includes the type of information noted above. Alternatively, separate written consent can be obtained. In a situation where a consent is required from a party to the transaction that was not represented by the registrant, communication must go through that party's brokerage to seek written consent.

### c) Identification of a property without consent

Registrants must not include anything in an advertisement (such as an image or text) that could reasonably be used to identify a specific property, unless the brokerage has the written consent of the owner of the property to do so. The provisions of a listing agreement signed by the seller are typically drafted to give authority to the listing brokerage to advertise the property and may include permission

for that property to be advertised on a real estate board Multiple Listing Service (MLS®) system and/or other media. Registrants should be familiar with the terms of their standard listing agreements in this regard.

A registrant, with the seller's written consent, may advertise that a property has sold, for example using a sold sign or distribution of sold cards, once a transaction has been entered into, provided that no information related to terms of the agreement are included in the advertisement and provided that the seller is the owner of the property at the time of the advertisement (see item (d) below). Once title to the property has transferred to the buyer (i.e. once the transaction has completed), a registrant would need the buyer's written consent to make any reference to the property in sold cards or other advertisements.

As noted in (b), consent can be obtained through specific wording in a representation or service agreement, and a registrant must communicate through the appropriate brokerage to seek consent.

### d) Identification of agreement details without consent

Registrants must not include anything in an advertisement (such as an image or text) that could reasonably be used to determine any of the contents of an agreement (such as price) regarding a real estate transaction, unless the registrant has the written consent of all the parties to the agreement to do so. For example, a registrant wishing to distribute sold cards that indicate a property sold for 95 % of asking price, would need the written consent of both the buyer and seller, regardless of who was the owner of the property at the time of the advertisement.

As noted in (b), consent can be obtained through specific wording in a representation or service agreement, and a registrant must communicate through the appropriate brokerage to seek consent.



### e) False, misleading or deceptive statements, and inaccurate representations

Consistent with RECO's principal objective of fostering public confidence and upholding integrity in real estate transactions, Section 37 of REBBA 2002 contains a general prohibition against false, misleading or deceptive statements in advertising by registrants. Section 37 of the Code of Ethics further prohibits a registrant from knowingly making an inaccurate representation in respect of the services provided by the registrant and in respect of a trade in real estate. This would include inaccurate representations made in an advertisement.

The issues giving rise to these prohibitions generally relate to claims, promises and statements made in advertising, such as comparative rankings (e.g., "#1 brokerage in town"), claims about business volume or trading activity (e.g., "Over 100 transactions last year"), promises of savings or rebates ("\$1,000 cash back"), and honours or awards received by the registrant.

False statements are those that can be shown to be factually incorrect. Generally, there is little room for interpretation in these situations. The assessment of statements that may be misleading, deceptive or inaccurate, however, is more subjective in nature.

A misleading statement is one that causes someone to have a wrong idea or impression. It does not require that all readers of the statement be misled in order for the statement or claim to be considered misleading.

Similarly, a deceptive statement is one that causes something to be easily mistaken for something else, or causes the reader

to believe something that is not true. It is a statement that is purposefully misleading.

An inaccurate representation is one that is imprecise. It would be inaccurate to make a statement that is true, but to make it in a vague or incomplete manner in circumstances where specificity is required to understand its truth. An inaccurate statement may or may not be misleading and/or deceptive.

It is not possible for these guidelines to address all the types of potentially false, misleading, deceptive or inaccurate statements that may appear in real estate advertising. RECO cannot provide a prescriptive set of rules that, if followed, will ensure that an advertisement will not breach REBBA 2002 or the Code of Ethics.

In general, registrants should assume that all statements in an advertisement will be taken at face value and interpreted based on their plain meaning (consistent with the "reasonable bystander" test used in legal cases). If the registrant's intent is to imply something else, or is aware that the statement could be interpreted in different ways, it would be better to spell out the intended meaning in plain language, or to provide some form of disclaimer within the advertisement. Failure to do so could result in the statement being deemed misleading, deceptive or inaccurate.

In assessing whether a statement might represent a breach of REBBA 2002 or the Code, the Registrar will apply a form of the "reasonable bystander" test noted above.

By way of guidance, however, there are a number of good practices which, if followed, should minimize the risk that a registrant's advertising will face scrutiny regarding these concerns. **These practices are as follows:**

### i. Comparative claims

An advertisement that expressly, or by implication, makes a comparative claim regarding a registrant's business performance, should disclose the basis of that comparison or claim including disclosure of the details of the information used to make the claim and the source of the information.

### Potentially misleading

**Collings Realty Brokerage Inc.**

**I SELL MORE HOMES** for more money **THAN ANYONE ELSE!**

I sell more homes than any other salesperson so when you list your home with me, my selling system will get you more money than another salesperson.

In today's market, selling a home fast is crucial. Otherwise, it will quickly become lost in the growing inventory of homes for sale. Getting your house sold while it's fresh and at the peak of interest, will benefit you and your wallet.

### Acceptable alternative

**Collings Realty Brokerage Inc.**

**No other sales representative in Town sells as many homes and as close to the asking price as I do.**

According to 2011 MLS\* statistics for Town Real Estate Board no other salesperson is the representative for as many sold homes as I am. In 2011 I was the salesperson for 83 properties whereas the next closest salesperson was 70.\*\*

**Further my list to sales price ratio is 89% whereas the average for each other salesperson in Town Real Estate Board is 80% or less.**

By listing with Collings Realty and me as your sales representative it is clear from these statistics and my many satisfied sellers that I can net you more money than another salesperson.

**Call me today!**

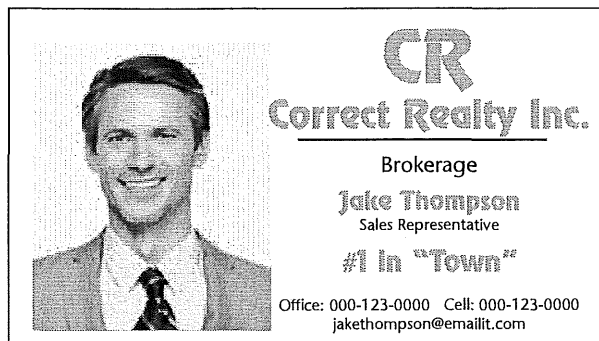
\*\* As an Equal Housing Opportunity Brokerage Firm Collings Realty will not discriminate on the basis of race, sex, religion, color or national origin in the sale, rental or advertising of real estate.

**ii. Statements re:  
business volume / trading activity**

An advertisement that includes statements or claims that state, imply, allude or refer to a volume of business or trading activity should be accompanied by disclosure of how that claim has been determined, including the relevant time period. By way of illustration, reference to terms such as "transaction" or "transaction side" or "end" or similar concepts should be accompanied by disclosure of how those terms are being used in that advertisement, including whether a transaction in which the salesperson, broker or brokerage, as applicable, represents more than one party to a particular transaction is being counted as one or two "sides", ends or transactions. Further, claims that refer to volume of business or trading activity should disclose the identity of the registrant, registrants or brokerage about whom that reference is made. If the basis of the claim concerns more than one registrant, including where the information concerns the brokerage activity or other registrant(s) activities within the brokerage cooperating as a team, then the claim should clearly disclose such brokerage or team activity as applicable.

When a "team" claim is used, the size of the team should be noted or the identities of the members of the team should be provided.

**Potentially misleading**



**CR**  
**Correct Realty Inc.**

Brokerage  
**Jake Thompson**  
Sales Representative  
**#1 In "Town"**

Office: 000-123-0000 Cell: 000-123-0000  
jakethompson@emailit.com

**Acceptable alternative**




### Acceptable examples



### iii. Promises and statements re: commission or savings

All claims within advertisements that refer to commission rates should be accompanied by disclosure of any conditions or circumstances in which that commission rate would not in fact be charged, unless the commission rate referred to is in fact charged in all transactions. This applies even when qualifying language, including for example "as low as" or similar language accompanies the claim. All claims of savings or comparisons regarding commission or other remuneration should be accompanied by sufficient information to enable an informed comparison to be made. Comparative claims between an advertised and hypothetical commission rate should be accompanied by information that clearly indicates the hypothetical rate as such and discloses that the hypothetical rate is not a fixed rate that is charged by all real estate brokerages. Advertisements must not indicate or suggest, directly or indirectly, that commissions or other fees are fixed or approved by RECO or any other government authority, real estate board or real estate association.

### Potentially misleading



**CR**  
**Correct Realty Inc.**

Brokerage  
**Jake Thompson**  
 Sales Representative

**CHAIRMAN CLUB WINNER**

Office: 000-123-0000 Cell: 000-123-0000  
 jakethompson@emailit.com

### Acceptable alternative



**CR**  
**Correct Realty Inc.**

Brokerage  
**Jake Thompson**  
 Sales Representative

 **Chairman's Club 2000\***

Office: 000-123-0000 Cell: 000-123-0000  
 jakethompson@emailit.com

\*Award given for earnings in excess of \$50,000 in year shown



#### iv. Statements or indications of honours and awards

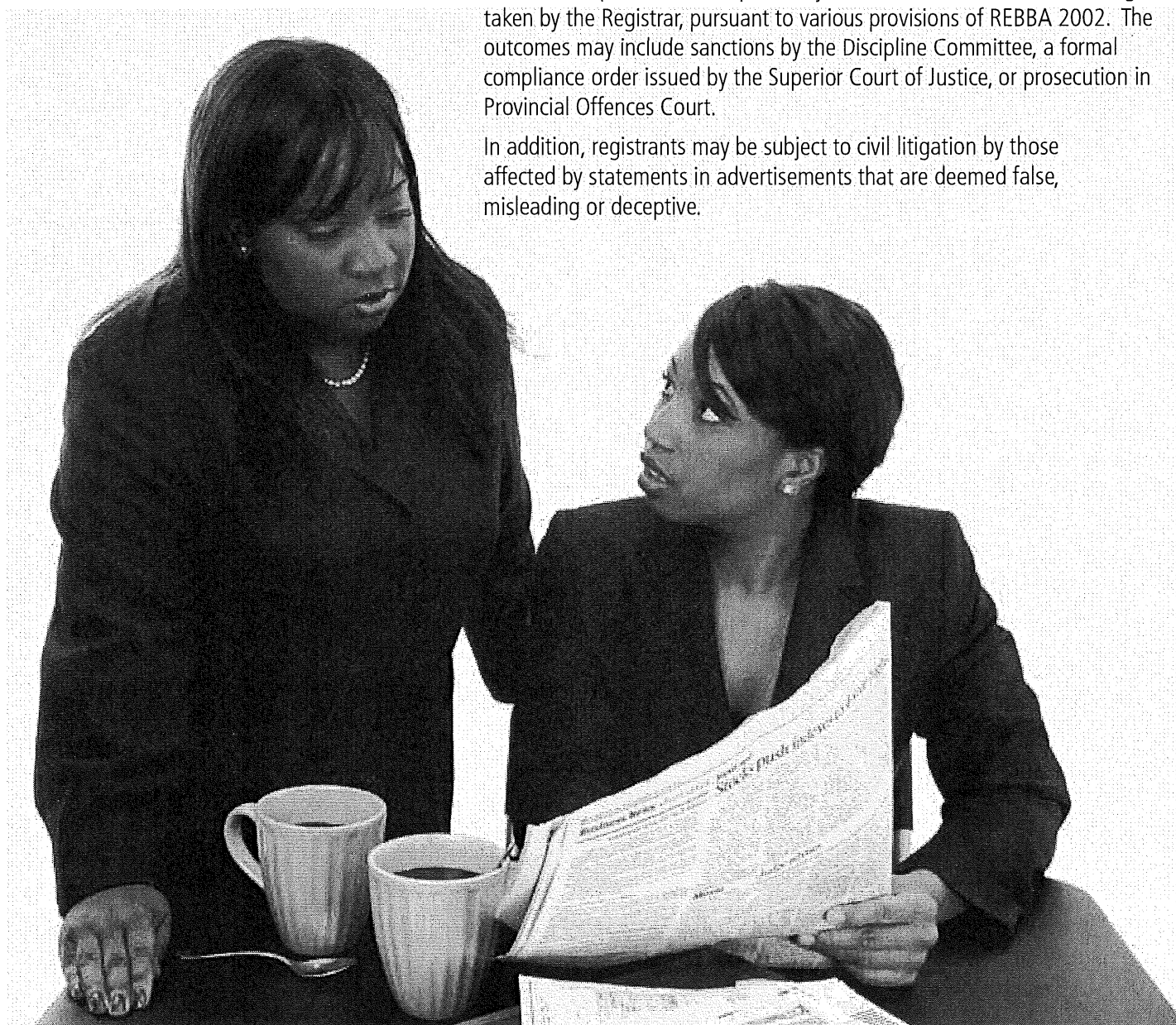
If an advertisement refers to an award or honour, then the source and date of that award or honour should be indicated. Registrant advertising should not refer to an award or honour that was shared amongst other registrants without clearly indicating that fact. Registrant advertising should not, directly or by inference, refer to anything as an award or honour if that thing was in any way purchased or paid for by, or on behalf of, the registrant.

## CONSEQUENCES OF NON-COMPLIANT ADVERTISING

It is RECO's objective and responsibility to ensure all registrant advertising is compliant with the requirements and prohibitions found in REBBA 2002 and the Code of Ethics. When an instance of non-compliant advertising is first discovered, the Registrar will contact the registrant in writing to identify the non-compliance and request prompt action to bring the advertisement into compliance.

Failure to respond to this request may result in more formal action being taken by the Registrar, pursuant to various provisions of REBBA 2002. The outcomes may include sanctions by the Discipline Committee, a formal compliance order issued by the Superior Court of Justice, or prosecution in Provincial Offences Court.

In addition, registrants may be subject to civil litigation by those affected by statements in advertisements that are deemed false, misleading or deceptive.



***Disclaimer: Registrant names used in these guidelines are fictitious names used for demonstrative purposes only and do not reflect current or potential registrants under REBBA 2002.***



## APPENDIX – EXTRACTS FROM REBBA 2002 AND O.REG. 580/05 (CODE OF ETHICS)

### REBBA 2002

37. No registrant shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to trading in real estate.

### ONTARIO REGULATION 580/05 - CODE OF ETHICS

#### Advertising

36. (1) A registrant shall clearly and prominently disclose the name in which the registrant is registered in all the registrant's advertisements.

(2) A brokerage that identifies a broker or salesperson by name in an advertisement shall use the name in which the broker or salesperson is registered.

(3) A broker or salesperson shall not advertise in any manner unless the advertisement clearly and prominently identifies the brokerage that employs the broker or salesperson, using the name in which the brokerage is registered.

(4) A registrant who advertises shall,

- (a) use the term "brokerage", "real estate brokerage", "maison de courtage" or "maison de courtage immobilier" to describe any brokerage that is referred to in the advertisement;
- (b) use the term "broker of record", "real estate broker of record", "courtier responsable" or "courtier immobilier responsable" to describe any broker of record who is referred to in the advertisement;
- (c) use the term "broker", "real estate broker", "courtier" or "courtier immobilier" to describe any broker who is referred to in the advertisement; and
- (d) use the term "salesperson", "real estate salesperson", "sales representative", "real estate sales representative", "agent immobilier", "représentant commercial" or "représentant immobilier" to describe any salesperson who is referred to in the advertisement.

(4.1) REVOKED:

(5) Despite clause (4) (c), a registrant who advertises may, before April 1, 2008, use the term "associate broker", "associate real estate broker", "courtier associé" or "courtier immobilier associé" to describe any broker who is referred to in the advertisement.

(6) A registrant who advertises shall not use a term to describe any registrant that is referred to in the advertisement if the term could reasonably be confused with a term that is required or authorized by subsection (4) or (5).

(7) A registrant shall not include anything in an advertisement that could reasonably be used to identify a party to the acquisition or disposition of an interest in real estate unless the party has consented in writing.

(8) A registrant shall not include anything in an advertisement that could reasonably be used to identify specific real estate unless the owner of the real estate has consented in writing.

(9) A registrant shall not include anything in an advertisement that could reasonably be used to determine any of the contents of an agreement that deals with the conveyance of an interest in real estate, including any provision of the agreement relating to the price, unless the parties to the agreement have consented in writing.

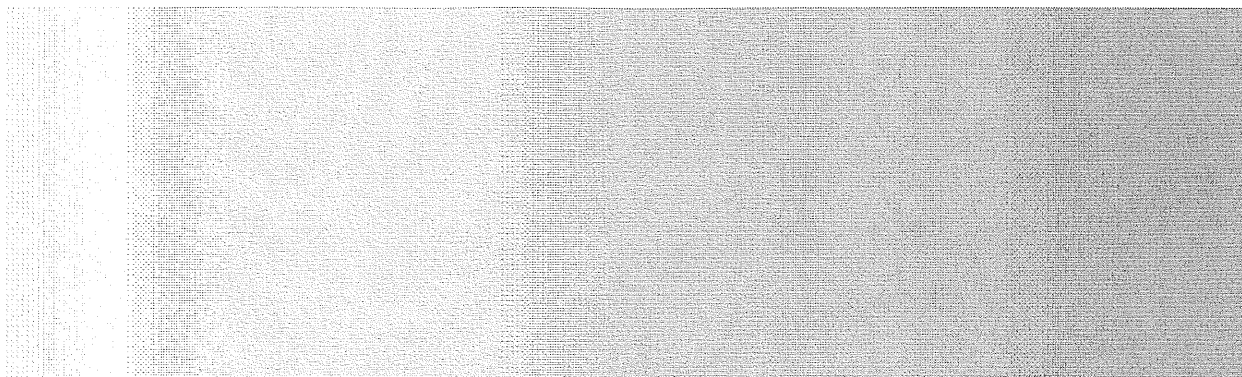
#### Inaccurate representations

37. (1) A registrant shall not knowingly make an inaccurate representation in respect of a trade in real estate.

(2) A registrant shall not knowingly make an inaccurate representation about services provided by the registrant.

#### Error, misrepresentation, fraud, etc.

38. A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate.



**Real Estate Council of Ontario**

Office of the Registrar

Phone: 416-207-4800

Toll Free: 1-800-245-6910

Fax: 416-207-4820

[www.reco.on.ca](http://www.reco.on.ca)

MyWeb: <https://myweb.reco.on.ca>

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**EXHIBIT E**

**The Canadian Real Estate Association  
Technology Policy Manual**

**Revised January, 2015**

CREA TECHNOLOGY  
POLICY MANUAL

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## **General Access To REALTOR.ca and ICX.ca Data by Third Parties (from Chapter 4 - EDU Task Force Report)**

### **Background**

The Electronic Data Usage Task Force recognizes that Third Party Suppliers are constantly requesting access to REALTOR.ca and ICX.CA data in order to provide a product or service that may be of benefit and/or of value to members. To provide the best possible service to the membership and in order not to overlook a potential opportunity, the Task Force recommends that the CREA staff investigate and review requests for access to data by Third Parties for merit, feasibility and costing provided that due consideration is given to the following guidelines. (Please note these guidelines are specific to the REALTOR.ca (CREA) data and the Member Boards would be free to act in their own best interests).

**The following guidelines are factors CREA may consider in assessing an application, but are not exhaustive:**

#### **1. General**

- a) For the purpose of this policy any member(s) creating technology products for commercial use that incorporate CREA technology and data will be considered Third Parties.
- b) "Access" means deep linking only - no downloading, scraping and storing or altering permitted unless agreed to by CREA.
- c) In reviewing the nature of the request, access to the data will cause no undue strain on existing system resources and the requested access facility will not degrade the existing system performance.
- d) There will be no exclusive access agreements with Third Parties.
- e) The requested access will not aid in providing a product or service that would be in direct competition to a product or service being offered by any Stakeholder. Board / Association
- f) Stakeholders can develop future products which may be competitive with those offered by Third Parties with access.
- g) The Third Party will ensure compatibility to CREA systems.
- h) All applications will be assessed and approved by delegated CREA staff person.
- i) CREA has the right, in its sole and absolute discretion, to approve or decline any particular application and under no circumstances will the approval of one application serve to commit CREA to the approval of another application.
- j) Any consent granted by CREA can be withdrawn at any time without cost to CREA. All suppliers must acknowledge and agree to this condition prior to receiving approval.
- k) CREA may, at its option, require a written contract or letter of agreement.

CREA TECHNOLOGY  
POLICY MANUAL

- l) CREA may, as a condition of approval, impose any condition it deems necessary, including the requirement that the supplier not use CREA's trademarks, that any marketing or educational material be approved by CREA or that payment be made to CREA as licensing or other fee.

## 2. Confidentiality and Security

- a) Confidentiality and limitations will be maintained with respect to use and redistribution of the membership (member) databases.
- b) Caution, care and control will be exercised by all parties in the release of and in providing access to all data.
- c) The Third Party will maintain strict confidentiality with respect to any and all system and/or data information.
- d) The Third Party may not redistribute data or create any derivatives of the data in any format whatsoever.
- e) The Third Party will maintain strict security mechanisms with respect to computer systems and/or personnel that have access to CREA systems.
- f) CREA will have the right to monitor and control access and use of data.
- g) Access will be controlled through authentication facilities. The Third Party must keep authentication facilities confidential and must specify URL and IP addresses of requesting website(s).

## 3. Third Party Fiscal and Administrative Responsibilities

- a) All costs, hard and soft, in the development and for the ongoing maintenance of the access facility, are the responsibility of and are to be borne entirely by the requesting Third Party, and the price will be set by CREA.
- b) Use of system resources shall be logged and billed to the Third Party (i.e. bandwidth).
- c) The Third Party will be responsible for all billing processes and administration of such to the Member directly.
- d) All help desk and support services specific to the services and/or products provided are the responsibility of the Third Party.
- e) The Third Party will provide all education requirements specific to the product or service to the members directly unless otherwise agreed to by CREA.

## 4. Trademark

- a) The Third Party agrees to display the “**Powered by REALTOR.ca**” prominently in any display of CREA data.
- b) The supplier may not use any trademark or CREA identifier without express consent and authority from CREA.

CREA TECHNOLOGY  
POLICY MANUAL

**5. Ownership**

- a) All CREA intellectual property will remain the property of CREA.
- b) Upon termination or conclusion of any agreement, all software and/or data shall be returned to CREA or in the case of data, certified as destroyed
- c) All suppliers agree to abide by all CREA policies and MLS® rules when delivering a product and/or service to or on behalf of a member.



CREA TECHNOLOGY  
POLICY MANUAL

## Web Service Policy For Specific Read Only Data Requests

To include policies for Web Services (such as RETS) in the EDU Report. Web Services is defined as real time requests from a server, for specific sets of data rather than for specific REALTOR.ca or ICX.CA.

CREA aggregated REALTOR.ca and ICX.ca listing data will be made available through Web Services (a Canadian equivalent of RETS) according to the following policy:

1. Real Estate Boards may access, use and display their own aggregated data on the Board branded website in the manner and style they see fit provided: provincial regulations are followed, there is display of the REALTOR® and MLS® trademark and of a Powered By REALTOR.ca and that the listing Board is given credit as the source of the data on a listing details display or print.
2. Real Estate Boards can provide co-branded (Board brand and a member brand) non-commercial use solutions in the same manner.
3. Third party access policies are as described in Chapter Four of the EDU report, adding " Web Services" as an access method in paragraph 1.b.
4. Web Services support will include support for Board controlled opt-in and opt-out permission maintenance for each Web Service arrangement. Opt-in permissions to be at the Board level and opt-in and opt-out permissions to be at the Broker level.
5. Customised navigation and data search support to be provided as priority and resources (CREA, Board or Consulting) permit on a cost-recovery basis. CREA will establish the priority and fees.

CREA TECHNOLOGY  
POLICY MANUAL**Access To National Authentication Facility (NAF) By Third Parties**

This is to define the policy regarding real time web services access to CREA's National Authentication Facility by Third Parties for the purpose of confirming if the visitor to the Third Party's website is a member of organized real estate in Canada.

**Effective Date:** December 16, 2005

**Policy:**

Access to NAF through real time web services will be granted on a contractual basis to Third Parties subject to the following rules:

1. Third Parties are business entities that are not members of Real Estate Boards, Provincial, Territorial or National Real Estate Associations in Canada.
2. The TC will review for approval or not, a proposal or business case from each Third Party for each product and will make a recommendation to CREA staff.
3. The Board opt-in / opt-out permission for this facility will be on a case-by-case basis, that is, allow or not each Third Party approved by CREA to have access to that Board's portion of the NAF database, based on the Board's own assessment of the Third Party business case.
4. Data and information supplied by NAF to the Third Party technology application is limited to an indication whether or not the member is currently active and if so, the type of membership, the role (e.g. staff), participation in REALTOR Link® groups and other similar information about participation in the affairs of organised real estate.
5. The data and information supplied by NAF to the Third Party technology application is subject to the data use policies for Third Parties documented in Chapter Four of the October 2003 EDU Task Force Report.
6. A Board or Association must initiate the request for Third Party access.
7. A one time set up fee and annual maintenance fee will be charged.

CREA TECHNOLOGY  
POLICY MANUAL**Access to National Authentication Facility (NAF) by Franchisors and Multi-Office Corporate Brokerages**

This policy defines real time web services access to CREA's National Authentication Facility (NAF) by Franchisors and multi-office Corporate Brokerages for the purpose of confirming if the visitor to the Franchisor's or Corporate Brokerage's website is a member of organized real estate in Canada.

Franchisors and multi-office Corporate Brokerages regularly offer technology products to REALTORS®, which require confirmation of the membership status of the REALTOR® and of the status and role of other members of organized real estate (staff, for example).

**Effective Date:** December 16, 2005

**Policy:**

Access to NAF through real time web services will be granted on a contractual basis to Franchisors and multi-office Corporate Brokerages subject to the following rules:

1. Franchisors and multi-office Corporate Brokerages are business entities that are not members of Real Estate Boards, Provincial, Territorial or National Real Estate Associations in Canada.
2. CREA will review for approval or not, a proposal or business case from Franchisor and multi-office Corporate Brokerage.
3. The Board opt-in / opt-out permission for this facility will be on a blanket basis (that is, allow all Franchisor and multi-office Corporate Brokerages approved by CREA to have access to that Board's portion of the NAF database or allow no access by any Franchisor or multi-office Corporate Brokerage.
4. Data and information supplied by NAF to the Franchisor or multi-office Corporate Brokerage technology application is limited to an indication whether or not the member is currently active and if so, the type of membership, the role (e.g. staff), participation in REALTOR Link® groups and other similar information about participation in the affairs of organized real estate.
5. The data and information supplied by NAF to the Franchisor or multi-office Corporate Brokerage technology application is subject to the data use policies for Third Parties documented in Chapter Four of the October 2003 EDU Task Force Report.

CREA TECHNOLOGY  
POLICY MANUAL

**Advertising On CREA Technology Websites  
(REALTOR.ca and REALTOR Link®)**

**Effective Date:** January 1, 2004

**Motion:** CREA Annual General Assembly March 23, 2003 (Motion # 18-2002(2))

**Policy:**

All advertising be eliminated from REALTOR.ca and REALTOR Link® effective January 1, 2004.

CREA TECHNOLOGY  
POLICY MANUAL

## **Availability of Data Downloads from REALTOR.ca to Broker Offices**

The objective of the policy is to recognize the technical resource constraints of IXN® as mandated by the General Assembly.

**Effective Date:** November 1, 2001

**Policy:**

Subject to written authorization from the respective Real Estate Boards or Associations, downloading of data from IXN® is available to Broker offices or groups of Broker offices on a cost- recovery basis, when technically feasible.

**Enforcement:**

There are no enforcement provisions for this policy.

CREA TECHNOLOGY  
POLICY MANUAL**Co-ordination of MLS® System Changes with REALTOR.ca**

This policy applies to those situations when a Board or Association wishes to make changes to its MLS® system that will have an impact on the way REALTOR.ca displays the data of that Board or Association. For example, a Board may want to add or remove geographical sub-areas from the representation of its jurisdictional area or a Board may want to add additional feature codes to its system for indicative display on REALTOR.ca.

The objective of the policy is to ensure that both the MLS® System and REALTOR.ca can be changed in a timely and predictable manner with minimum impact on the activities in progress. The policy outlines the procedure a Board or Association should follow.

**Effective Date:** November 1, 2001

**Policy:**

To synchronize changes between REALTOR.ca and the MLS® systems of Boards and Associations, the following procedure must be followed:

1. Advise [support@crea.ca](mailto:support@crea.ca) that you wish to make changes to the MLS® system and supply as many details of the planned changes as possible. Field
2. CREA will reply within 48 hours from receiving the notice. If more information is needed and if not, with a date when the REALTOR.ca changes will be ready for testing with the changes made to the Board system.
3. The Board then makes the changes to the MLS® system and conducts appropriate in-house testing.
4. When the appropriate changes have been made to REALTOR.ca by CREA, the Board conducts end to end testing with REALTOR.ca by verifying the information displayed on CREA's REALTOR.ca test system.

Note that the Board must verify that the properties are displayed by REALTOR.ca as expected. If adequate testing and verification are not performed by the Board, CREA cannot guarantee that adjustments can be made to what is displayed to the public in a short time frame.

**Enforcement:**

There are no enforcement provisions for this policy.

CREA TECHNOLOGY  
POLICY MANUAL**Extraction of Data From REALTOR.ca, ICX.ca  
or Other Web or Mobile Pages**

This policy applies to all websites. The objective of the policy is to ensure that listing data is not used without the permission of the listing REALTOR®, Board, Association or CREA as the case may be and to ensure that the data is only used for the purpose for which it was gathered.

**Effective Date:** November 1, 2001

**Policy:**

Data may not be extracted from the Internet or mobile pages created by REALTOR.ca, ICX.ca by any means whatsoever.

Data is made available through secure directories on passive ftp servers in accordance with the permissions granted by the owners of the data. Data can also be made available through the CREA Data Distribution Facility (DDF®).

**Enforcement:**

Programming code in REALTOR.ca and various programs, which monitor the data requested from REALTOR.ca will enforce the policy to the extent that is technically possible while remaining cost-effective. If necessary, legal action will be taken to protect the interests of the owners of the data.

CREA TECHNOLOGY  
POLICY MANUAL

## Alternate Feature Sheet

This policy applies exclusively to linking options for members/brokers with respect to displaying feature sheets from members/brokers own websites.

**Effective Date:** October 25, 2004

**Policy:**

Linking to feature sheets other than those supplied by REALTOR.ca or ICX.ca may occur subject to:

1. The member / broker site generated feature sheet opens a new window smaller than the REALTOR.ca window;
2. The feature sheet shall include a "Return to REALTOR.ca" button which results in the member/broker window being closed;
3. The link from the thumbnail to the feature sheet is for the specific property on the thumbnail result set;
4. The link must be permission based on an individual property basis and an agent specified URL is provided and supported; and
5. Seller contact information must not appear on alternate feature sheets (see Seller Contact Information policy).
6. Tracking code must be made available on the alternate feature sheet in order for CREA reporting purposes.



# CREA TECHNOLOGY POLICY MANUAL

Example of Alternate Feature Sheet:



CREA TECHNOLOGY  
POLICY MANUAL

## Security Groups

This policy defines and describes the Security Groups recognized by the National Authentication Facility (NAF). As this application controls access to information considered sensitive by CREA and other entities of organized real estate, the assignment of a security group should be consistent with these definitions.

**Effective Date:** March 1, 2002

**Policy:**

The following table defines the currently recognized Security Groups.

Group	Definition	Status
<b>Mutually Exclusive (Must be one of)</b>		
REALTOR®	A licensed real estate practitioner and member of CREA.	Y
STAFF	Staff of a Canadian organised real estate entity	Y
TEMP	A person who is given permission on a time limited basis, such as a vendor, partner. Must be approved by the Vice President Marketing and ITS.	
GUEST	An anonymous visitor.	Test
<b>Additional Security (May be one of)</b>		
PRESIDENT	Elected President of a Canadian organised real estate or affiliated entity.	Y
DIRECTOR	Elected Director of a Canadian organised real estate or affiliated entity.	Y
EO	Executive Officer (Staff) of a Canadian organised real estate or affiliated entity.	Y
TC	A member of the CREA Technology Committee.	Y
CCN	A member of the CREA Canadian Commercial Network.	Y
AEN	A member of the CREA Association Executive Network.	Y
PAC	A Political Action Group representative for a Canadian organised real estate entity.	Y

CREA TECHNOLOGY  
POLICY MANUAL

COMMITTEE	A member of a standing or ad-hoc Committee or Task Force.	Not supported
BROKER	The owner of a Broker office who employs REALTORS®.	Test
LICENSED	Licensed real estate practitioner who is not a member of CREA, Board or Association.	Not supported
TECHNICAL	Staff of a Canadian organised real estate r entity who is participating in shared application development.	Not supported
ADMINISTRATOR	Staff of a Canadian organised real estate entity who is responsible for data entry with EO security level.	Not supported

**Supplementary Security (provided by the particular computer application being used)**

Of CREA.
Of a particular Board.
Of a particular association.
Of a particular Committee or Task Force.

**Enforcement:**

The rules associated with each group will be enforced electronically.

The Boards and Associations and other suppliers of REALTOR Link® functionality are responsible for granting and / or denying specific security group labels to individuals and organizations.

**Examples:**

When a visitor signs on through NAF, the visitor is assigned to the appropriate Mutually Exclusive and Additional Security Groups and the information required for Supplementary Security checking by the application is made available to the application.

CREA TECHNOLOGY  
POLICY MANUAL**Use Of Multimedia Links**

REALTOR.ca is a member developed and financed site, the purpose of which is to augment the member-to-member Board MLS<sup>®</sup> Systems. This policy ensures that the member-to-member aspect is respected on REALTOR.ca and on direct multimedia links from REALTOR.ca to facilitate ongoing member participation on the site. Further, this policy ensures that REALTOR.ca displays information that consumers expect to see based on the link they wish to use. It is inappropriate to use links for any other purpose than what they are intended for. It is also not appropriate to have an advertisement of private sales on webpages linked directly from multimedia links. For the purpose of this policy, "advertisement of private sales" means calling to the attention of the public that a listing is a private sale. Examples of advertisement of private sales would include, but are not limited to:

- Any reference to "selling privately"
- References to dealing directly with the seller e.g. for showings, offers, etc.
- For Sale By Owner branded marketing materials e.g. a brochure that refers to or is branded with the logo or name of a FSBO company
- Directions or links to a FSBO company or website or otherwise referring to a FSBO company.

Seller contact information is itself a form of advertisement of private sales and should not appear on webpages linked directly from multimedia links. Advertisement of private sales, including seller contact information, is permitted on the REALTOR<sup>®</sup>'s own website or his or her brokerage website (subject to the Seller Contact Information policy set out above).

**Effective Date:** June, 2008

**Revised:** April, 2011

**Policy:**

1. Multimedia links displayed on REALTOR.ca must be as defined in the CREA dataload specifications version 5.2.

## CREA TECHNOLOGY POLICY MANUAL

The screenshot displays a REALTOR.ca property listing for MLS# 769136, priced at \$624,900. The listing includes a photograph of a house, a 'General Description' section, and a 'Map Tools' section. The 'General Description' text reads: "Consistently redone, being planned, ductwork, flooring, windows, exterior, kitchen, basement, roof over, great porch, backyard, etc. Very easy to see, 1500 sq. ft. Single home in the heart of Wellington Village ready to move in and enjoy. Modern finished basement with granite counter top, DuraVest TOILETS come in the living areas where appropriate. 5.2nd floor is under." The 'Map Tools' section shows a map of the property location in Ottawa, ON, with a street view and various map controls.

2. Each field provided through the upload for multimedia links must be used as a link to the identified service and must contain only property-specific information.

- Field 63 – alternate feature sheet
- Field 64 – virtual tour
- Field 65 – sound bites
- Field 66 – sales brochure
- Field 67 – additional photos
- Field 84 – Board preferred map service to locate property

3. Real estate Boards and Associations that provide a facility through their upload to REALTOR.ca are responsible for ensuring that the appropriate links are in their respective fields. In order to display multimedia links on REALTOR.ca, multimedia links must be provided through the Board/Association upload facility. Should the Board/Association not have a facility to provide such URLs through the upload facility, then the Board/Association must provide CREA with permission to upload multimedia links on their behalf through the CREA Helpdesk or FTP server.

4. Multimedia links that are provided to CREA as authorized by Boards and Associations must also be displayed as appropriate links in their respective fields.

5. The 'REALTOR® Website' link must be used as a link to the REALTOR®'s own website or to his or her brokerage website.

## CREA TECHNOLOGY POLICY MANUAL

Home Help News Buyers Info Sellers Info Legal Privacy Policy Contact Us Français

MLS# [ ] Advanced Search REALTOR Search Compare My Favourites

MLS#: 769136 For Sale: \$624,900

**REALTORS®**  
know real estate

**122 Oriole Ave**  
Ottawa, ON K1V 0G3

**For Sale: \$624,900**

**Property Details:**

- Building Type: House
- Bedrooms: 3
- Bathrooms: 3
- Stairways (Total): 2
- Age Of Building: Older building
- Land Size: 29' x 100'
- Title: Freehold
- Location: 122 Oriole Ave, Ottawa, ON K1V 0G3

**Salesperson:**  
Telephone: 613-276-9022 x3  
Email: REALTOR.ca  
REALTOR Website

**Brokerage:**  
1950 GUILDFE ROAD, SUITE 210  
GLoucester, Ontario K1J 9L3  
Telephone: 613-749-2323 x3  
Fax: 613-749-0898

**General Description:**  
Completely re-done, wiring, plumbing, ductwork, flooring, windows, exterior, kitchen, 3 baths, basement recroom, front porch, back yard deck, roof, family room - NEW, NEW, NEW, Single home in the heart of Wellington Village ready to move in and enjoy. Modern Bamboo flooring, Kitchen with granite counter top, Ensuite WALK-IN closet and big windows every where. Modern baths & 2nd floor Laundry.

**Property:**

- Structures: 1 Deck
- Parking: 1
- Parking Type: Open
- Building:

**Map Tools:** 122 Oriole Ave Ottawa, ON K1V 0G3

6. Advertising of private sales is not permitted on REALTOR.ca or on the webpages linked directly from REALTOR.ca through the multimedia links. For example, this means that multimedia links cannot be used to link to webpages that contain seller's contact information, a brochure that refers to a for-sale-by-owner company, etc.

7. Webpages linked directly from REALTOR.ca through the multimedia links cannot be used to link to webpages that indicate where private sale information can otherwise be located (e.g., brochures cannot say "see my website for seller contact information").

8. Webpages linked directly from REALTOR.ca through multimedia links or through the 'REALTOR® Website' link must not automatically redirect users to a third party site.

Fees: There are no fees associated with this program.

### Enforcement:

1. CREA will review all multimedia links it uploads via the CREA Helpdesk or FTP server. Any links that are identified as not complying with this policy will be removed.

2. Boards and Associations are required to conduct regular audits of multimedia links that they provide to REALTOR.ca to identify violations of this policy. Audits should be done on at least 10% of all listings processed by the Board/Association. A Board/Association shall remove any links that are identified as not complying with this policy.

CREA TECHNOLOGY  
POLICY MANUAL**Seller Contact Information**

This policy relates to CREA Rule 17.2.4, which states that where the seller directs the listing REALTOR® to do so, the seller's contact information may appear in the REALTOR® only remarks (non-public) section of a listing on a Board/Association's MLS® System. The seller's contact information shall not appear on REALTOR.ca or in the general (public) remarks section of a listing on a Board/Association's MLS® System. The listing REALTOR® may include a direction in the General Description section on REALTOR.ca or on websites operated by CREA or a Board/Association to visit the REALTOR® website to obtain additional information about the listing (but the nature of such additional information shall not be specified).

**Effective Date:** April, 2011

**Revised:** September, 2012

**Policy:**

1. Seller contact information may be displayed on a listing REALTOR® / brokerage website subject to paragraph 2 immediately below.
2. The listing REALTOR® / brokerage website may be linked to from REALTOR.ca through the 'REALTOR® Website' link that appears on REALTOR.ca feature sheets, but this specific page of the REALTOR® / brokerage website must not display seller contact information (see Use of Links policy for more details). Subsections of a webpage are considered part of the webpage upon which they appear, and consequently a subsection of the specific page referred to above must not conceal or otherwise be linked to seller contact information which could appear within that subsection on the webpage.
3. Seller contact information must not be displayed on alternate feature sheets.
4. Seller contact information must not be displayed on webpages that are linked directly from REALTOR.ca through multimedia links.

CREA TECHNOLOGY  
POLICY MANUAL

## **Interactive Mapping Mandatory Upload Fields**

This is to define the policy regarding fields Boards / Associations must provide to ensure the effectiveness of interactive mapping.

**Effective Date:** December, 2007

**Policy:**

Boards / Associations must supply, on a mandatory basis, the postal code and city / township / municipality for upload (not display) purposes. Boards / Associations will be encouraged to provide the civic address and / or XY coordinates, if the latter is owned by the Board and can be used for purposes other than locating the property on REALTOR.ca and ICX.ca.



CREA TECHNOLOGY  
POLICY MANUAL**Technical Peer Group - Terms of Reference****Objective**

The objective of the TPG (Technology Peer Group) is to provide a forum to encourage dialogue between the technical staff of Boards and Associations to share technical projects, ideas and experiences in order to enhance technical and IT services to the REALTOR® community. Creating a spirit of cooperation among technical staff will reduce redundancies, increase project successes, reduce costs and ultimately support standardizations across Canada.

**Effective Date:** April, 2010

**Revised:** April, 2011

Standing agenda items are:

- Round table with reports from all participating Boards and Associations
- CREA Update
- CREA Service Performance Reports and Review
- WEBForms® Update

Other example agenda items are:

- Industry presentations e.g. Microsoft
- Security
- MLS® systems
- Membership systems

**Mandate**

- 1.To discuss technical issues relating to technologies affecting the Boards, Associations and their members;
- 2.Provide policy recommendations to the Technology Committee;
- 3.Facilitate and support implementation of TC policies regarding technology sharing and reuse;
- 4.Share information on current and future projects;
- 5.Suggest technology for investigation by Technology Committee;
- 6.Provide feedback on national technology initiatives;
- 7.Promote Technology Committee initiatives locally.

**Deliverables**

TPG prepares reports and recommendations on technology for the Technology Committee

## CREA TECHNOLOGY POLICY MANUAL

### **Meetings**

Meetings are scheduled twice a year either immediately before or after the CREA AGM (spring) and at a time that is convenient in the fall. Meetings may be for one or two days depending on the agenda. Agenda preparation will be facilitated by CREA staff and CREA will provide a chair for each meeting in order to ensure continuity.

Meeting logistics are handled by the CREA Conference Department. Additional meetings / webinars may be scheduled as required.

### **Funding**

CREA currently budgets for one meeting and two conference calls per year. One technical staff or appointed consultant per Board or Association may be funded, but the Board or Association is free to fund additional participants. The budget covers travel, accommodation and meals in accordance with CREA's non-Director travel policy.

If meals are offered at organised TPG events, expenses can't be claimed for the same meals. All expense claims must be supported by full receipts (credit card transaction receipts are not acceptable), and submitted within one month after the event.

### **Participants**

Preferred participants are those staff whose responsibilities include involvement with the management, application, helpdesk or development of technology at the Board or Association. Consultants actively employed by Boards and Associations on technology projects are also invited. As TPG is partially funded by CREA, TPG members are expected to actively participate in TPG meetings through presentations, chairing discussions or workshops or providing valuable feedback via the TPG facilities on REALTOR Link®.

### **Confidentiality & Governance**

Boards and Associations may have third party technical staff attend the TPG meetings and have access to the TPG mailing list. However, Boards / Associations are responsible to ensure the third party "consultant" signs a non disclosure agreement (NDA) and must return a signed copy to CREA for their records. Third parties may attend TPG meetings. However, their costs will be the responsibility of the Board / Association. It is also the responsibility of the Board / Association to provide the third party "consultant" with an email address and the Board / Association agrees to advise CREA of any changes. Usage of an email address that is not provided by a Board / Association is subject to approval by CREA and may be subject to conditions. Due to the sensitive discussions that may arise from these meetings, MLS® service providers or their representatives are not permitted to participate on the TPG or be a member of the TPG mailing list. MLS®

## CREA TECHNOLOGY POLICY MANUAL

service provider staff may be explicitly invited for selected presentations, workshops or such.

Access to TPG member contact information is confidential information and may be used for the sole purpose of participating in TPG activities as outlined in this Terms of Reference.

### **Roles and Responsibilities**

#### **Chairperson**

The Chairperson for the TPG meetings is determined and appointed by CREA. Chairperson will perform the following duties:

1. Set the meeting dates. Dates for the following meeting should be announced at least at the previous event.
2. Agenda: through an email poll of TPG members, the chair will solicit agenda items for the meeting. CREA prepares the agenda.
3. Guest Speakers: TPG members or the chair may propose guest speakers, the chair will invite selected guest speakers, subject to budget availability.
4. Ensure arrangements are made for the entire group at a restaurant for the evening, should the meeting last more than one day..

#### **Technology Committee Liaison**

The Technology Committee Liaison is responsible to update the TC with issues raised by the TPG group and update the TPG with TC initiatives as well as activities. The TC liaison brings TPG recommendations to the TC, represent the context of discussions, and promote directions the TPG identifies for the industry. The TC liaison also presents the TC's views on TPG proposals or recommendations back to the TPG. The TC Liaison must be a TC committee member and should attend all TPG meetings.

#### **TPG Member**

TPG members are expected to actively participate as outlined on page 56. The TC Liaison and the TPG Chair may recommend cancellation of funding or exclusion from the group for TPG if individuals that make no effort to contribute or violate these Term of Reference in other ways. The TC makes the final decision.

CREA TECHNOLOGY  
POLICY MANUAL

## Shared Application and Development Protocol

### Introduction

Boards, Associations, Franchisors and other interested organisations are encouraged to participate with CREA in the shared development of technology applications.

The objective of this initiative is to eliminate duplication of effort, to reduce the cost of technology for REALTORS®, Boards and Associations and to provide the opportunity for Boards and Associations to influence the direction and priority of the development of products and services for members.

This protocol defines the responsibilities, accountabilities, decision-making authorities and performance expectations of CREA and the technical units of CREA and of participating Boards and Associations, in the provision of CREA sponsored Technology Products and Services (referred to herein as Technology Products).

By formalising these organisational dynamics, CREA wishes to encourage the technical units to act as a single, trans-Canada technology team whose strategic objective is to develop or acquire and deliver superior Technology Products that enhance members' success.

### Single Technology Team and Open Source

CREA encourages a single team approach in order to stimulate the sharing of technology development effort and resources as well as application administration activities.

In support of this objective, CREA makes available to the technical units of Boards, Associations and Third Parties, copies of the documentation and source code of the Technology Products owned by CREA.

Usage of source code owned by CREA must follow the following guidelines:

- can be used by Boards, Associations and Third Parties to augment existing CREA technology products and services;
- can be used to create new CREA technology products and services which do not duplicate or compete with CREA technology products and services;
- can be provided to Boards, Associations and Third Parties in trust and any license to use will be terminated at end of shared development;
- cannot be used to create commercially sold technology products and services;
- exclusive use for Boards, Associations and Third Parties;
- exclusive use for members, offices and franchisors; and
- subject to approval from CREA

## CREA TECHNOLOGY POLICY MANUAL

A participating organisation should have an in-house technical team or have the resources to employ and manage technical consultants.

CREA will negotiate the purchase of the intellectual property, documentation and source code of Technology Products developed and owned by Boards, Associations, Third Parties and Stakeholders if the following criteria can be applied:

1. The Technology Product is consistent with the CREA Strategic Plan and Development Plan for the Product;
2. The Technology Product can be made available to all Boards, Associations and members; and
3. The technical unit that developed the purchased Technology Product can continue to participate in the development of the Technology Product.

Examples of Technology Products that have previously been purchased for these objectives are REALTOR Link® and WEBForms™. A sample Purchase and Shared Development Agreement is included as Appendix A.

### **Shared Application Development Participation**

To initiate participation in the shared development of Technology Products (become a Developer Organisation) the organisation and its technical team would have to implement the following steps.

1. Sign the limited use agreement governing the use of the source code, ownership and deployment conditions for the developed applications and enhancements.
2. Set up a development workstation with the following configuration and components:
  - Visual Studio .Net 2003 / 2005
  - SQL Server 2000 / 2005
  - NET framework 1.1/2.0

Note: CREA wishes to stay open to other technologies if Boards have the expertise to develop and support it. Alternate technology will be reviewed on a per application basis. However, it is strongly recommended that development use Microsoft technologies if CREA is expected to maintain and support the application.

3. Request a copy of REALTOR.ca, ICX.CA, WEBForms™, REALTOR Link® or the appropriate application source code and links to the current versions of the NDS Data Model documentation.
4. Prepare a Requirements or Specifications document describing the application or enhancements for which development will be performed. The requirements should make specific reference to:

CREA TECHNOLOGY  
POLICY MANUAL

- Additions or changes to the NDS Data Model and entity documentation;

And should include sections on:

- Physical database model including tables, stored procedures and functions
- Application architecture diagrams
- List of technologies used
- List of system dependencies.

5. Obtain approval for and feedback on the proposed development from the CREA development team.
6. Develop and unit test the enhancements or application according to CREA development standards.
7. Transfer the source code to CREA for integration in the CREA test environment.
8. Participate in the quality and usability testing of the applications or enhancements.

### **Shared Application Development Process**

The participating organisation is expected to follow the Technology Product planning and development process as follows.

1. In conjunction with CREA staff, a joint development plan describing the strategic, tactical and operational development and management of the Technology Product is maintained by the participating organisation. Details of the plan include a list of projected development, maintenance, management and marketing activities as well as a budget for the anticipated expenses associated with the activities;
2. The priorities for development of the Technology Product are reviewed each six months by CREA and adjusted as necessary. A project plan describing the timelines for the delivery of the priorities is jointly maintained by CREA and the participating organisation;
3. The budget for the development of the Technology Product is reviewed and approved by CREA once a year for submission to the CREA Board each fall;
4. All software design, development and change management activities follow the CREA application development life cycle and project planning procedures, policies and assignment of responsibilities, accountabilities and decision-making authorities;
5. CREA staff and the staff of the participating organisation are expected to meet the performance standards and expectations documented in this protocol.

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**Appendix A – Sample Agreement**  
APPLICATION TRANSFER AGREEMENT

**BETWEEN:**

THE CANADIAN REAL ESTATE ASSOCIATION  
(CREA)

**AND**

<ORGANISATION NAME>  
(ORGANISATION ACRONYM)

**WHEREAS** <ORGANISATION ACRONYM> has developed an Internet-based application that .....(the “Application”);

**AND WHEREAS** CREA wishes to purchase from <ORGANISATION ACRONYM> all components of the Application;

In consideration of the mutual covenants set out in this Agreement, the parties agree as follows:

**1. TRANSFER OF RIGHTS**

<ORGANISATION ACRONYM> hereby transfers to CREA all of its right, title and interest in and to the Application, including, without limitation, all intellectual property rights, and all associated goodwill. The Application consists of the following:

- (i) All programs, statements, instructions, and data, however fixed, stored or recorded, all source codes, object codes, program files, data files, tools, libraries, application programming interfaces, data field and data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program sequence and program organization, and all other forms of computer software that operate the Application, and the copyright in the works authored or created by or on behalf of and owned by <ORGANISATION ACRONYM> (the “Software”);
- (ii) The content, look and feel of the Application, including text, graphic designs and images provided by <ORGANISATION ACRONYM> and the copyright in the works authored or created by or on behalf of <ORGANISATION ACRONYM> (the “Content”);

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- (iii) Documentation provided for the Software or any portion of the Software, and any documentation concerned with the operation of the Software which has been authored by or on behalf of <ORGANISATION ACRONYM>, if any, including the copyright in any such documentation (the "Documentation")
- (iv) Where such exist, the trade-mark and any other marks, names, business names, domain names and the like and any relevant registrations or applications, and all associated goodwill (the "Marks and Names");
- (v) Ongoing contracts with suppliers of services, if any, which are concerned exclusively with support, maintenance or operation of the Software, or the Application generally (the "Contracts"); and
- (vi) All other things as reasonably may be deemed necessary by CREA to operate the Application.

## 2. OWNERSHIP

<ORGANISATION ACRONYM> warrants that it is the owner of all rights being transferred, and has not assigned, licensed or otherwise alienated its right, title and interest in the Application or any of its components of to any third party. With regard to any of the works in which <ORGANISATION ACRONYM> is transferring copyright, <ORGANISATION ACRONYM> agrees that:

- (i) such works are original;
- (ii) to the extent that any such works were created by employees of <ORGANISATION ACRONYM>, the works were created in the course of their employment and waivers of moral rights have been obtained from the relevant employees; and
- (iii) to the extent that any such works were created by third parties, including employees of <ORGANISATION ACRONYM> outside the course of their employment, assignments of copyright and waivers of moral rights have been obtained from the relevant third parties.

## 3. PAYMENT

CREA shall pay the sum of \$ N.00 upon execution of this Agreement by both parties.

## 4. LICENSE

- (a) <ORGANISATION ACRONYM> shall be licensed on a sole, royalty-free basis to develop and manage the Application on behalf of CREA, in accordance with the process outlined in Section 5 below. Under this license, <ORGANISATION ACRONYM> shall provide services substantially the same, and at least as high quality, as those services performed on its own account prior to entering into this Agreement.
- (b) <ORGANISATION ACRONYM>'s development and management obligations will include participation in the Application software design, development, promotion and support, as requested by or as arranged with



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CREA, including testing, quality assurance, documentation, second level technical support and marketing.

- (c) <ORGANISATION ACRONYM> will develop and maintain a User Guide for use of the Application or contribute the Application section of the mls.ca / ICX.CA / guide as the case may be.
- (d) <ORGANISATION ACRONYM> will be responsible for hosting a server in <ORGANISATION NAME> for software development and testing purposes and shall have remote access to the necessary CREA source code management, development and testing environment, when technically feasible and not later than <date>.
- (e) CREA will pay for all mutually agreed-upon development and maintenance costs associated with the Application, including a minimum monthly programming allowance of 40 hours of maintenance a month, at a rate of \$10000 per hour, in accordance with the process outlined in Section 5 below.

## 5. DEVELOPMENT AND MODIFICATION PROCESS

- (a) <ORGANISATION ACRONYM>, in conjunction with CREA staff shall formulate a joint development plan regarding the development and management of the Application, the first version of which is to be completed by the end of <date>, and thereafter reviewed on an annual basis no later than the end of June of each subsequent year. The development plan shall include a list of projected development, maintenance, management and marketing activities and a budget for anticipated expenses in connection with these activities. The annual review shall include an assessment of the compensation paid to <ORGANISATION ACRONYM>.
- (b) CREA shall, in its absolute discretion, determine which development and/or maintenance initiatives to undertake.
- (c) The development plan for <year> shall focus on the transfer of the Application and Internet URLs to CREA's web sites infrastructure and on the establishment of a functional development environment in <ORGANISATION NAME>.
- (d) All modifications, enhancements and additional functionality developed under this Agreement form part of the Application and are the sole property of CREA.
- (e) All software design and development must follow the then current CREA application development life cycle and project planning procedures, policies and staff role assignments.
- (f) All Application and related infrastructure code changes shall follow CREA change management policies, procedures and staff role assignments. By way of clarification, there shall be no direct access to the CREA infrastructure other than what is granted to all development teams according to CREA policies and procedures.

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- (g) Any press release or other communication dealing with new developments in the Application will be issued only by CREA.

## **6. LIMITATION ON LICENSE**

The License granted to <ORGANISATION ACRONYM> in this Agreement does not include the right of <ORGANISATION ACRONYM> to sublicense any components of the Application, including any modifications or enhancements or to commercialize the Application, either during the term of this contract or any time after its termination or expiry.

## **7. CONFIDENTIALITY**

<ORGANISATION ACRONYM> acknowledges that the Application is a valuable trade secret, and is considered extremely confidential information. <ORGANISATION ACRONYM> agrees not to disclose any aspect of the Software, the Content, or any information relating to the operation of the Application to any third parties except necessary development staff for the purpose of complying with this agreement.

## **8. TERMINATION**

- (a) This license granted to <ORGANISATION ACRONYM> under this Agreement shall terminate immediately upon any of the following:
- (i) The issuance of a receivership, bankruptcy or winding up order in respect of <ORGANISATION ACRONYM>;
  - (ii) The cancellation of <ORGANISATION ACRONYM>'s Articles of Incorporation;
  - (iii) The withdrawal or termination of <ORGANISATION ACRONYM>'s membership in CREA;
  - (iv) Any breach of this Agreement by <ORGANISATION ACRONYM>, which <ORGANISATION ACRONYM> has failed to correct within thirty (30) days of receiving written notice from CREA.
- (b) CREA or <ORGANISATION ACRONYM> may terminate the License under this Agreement at any time on six (6) months written notice to the other party.
- (c) On termination:
- (i) All rights and obligations contained in the license to <ORGANISATION ACRONYM>, as set out in paragraphs 4 and 5 shall cease;
  - (ii) Ownership of the Internet URL, (if applicable) will be transferred to <ORGANISATION ACRONYM>;
  - (iii) Provided the termination is not under Section 8(a) (i) to (iii), <ORGANISATION ACRONYM> may apply under CREA's then current Shared Application Development Protocol for a copy of the source code of the application of which the Application is a component at the time of termination.

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**9. SURVIVAL OF WARRANTIES AND REPRESENTATIONS**

All warranties and representations contained herein shall survive the termination of this contract.

**10. NON-TRANSFERABLE**

This agreement, including the Application License, is non-transferable, by both parties.

**11. GOVERNING LAW**

This agreement shall be governed by the law of Ontario and the federal laws of Canada applicable in Ontario.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

THE CANADIAN REAL ESTATE  
ASSOCIATION

<ORGANISATION NAME>  
\_\_\_\_\_

per: \_\_\_\_\_ per: \_\_\_\_\_  
TITLE TITLE

TITLE per: \_\_\_\_\_

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## Minimum Security Compliance

### Objective

CREA has established a best practice that each year an IT security audit shall be conducted by an independent external auditor on the security of IT services delivered by or on behalf of CREA. The 2010 audit identified several vulnerabilities classified as 'high' by the auditor. CREA staff implemented counter measures to address those within its control. However, not all could be closed as some require changes by Boards and Associations that either contribute to CREA IT service delivery or access CREA IT services.

CREA staff proposed to CREA that a policy should be implemented that requires all member organisations of CREA to comply with minimum security standards, to make the required changes on their systems and environment to allow CREA to mitigate vulnerabilities classified as "high" or "critical" by an independent security auditor.

**Effective Date:** December 5, 2011

### Policy

1. Provided that CREA has approved the required budget, CREA must execute a security audit every year. This audit shall investigate CREA IT infrastructure and services for security vulnerabilities. This shall include services delivered by or on behalf of CREA.
2. CREA must address or mitigate any vulnerability classified as "critical" and "high" as result of such audits on a timely basis.
3. If reduction or elimination of such an identified vulnerability requires changes to an IT system or the IT environment of a Board or Association, the Board or Association is responsible for implementation of such changes within 90 days after being notified by CREA.
4. CREA may request an immediate change to the Board of Association depending on the nature of the vulnerability identified in the audit.

### Constraints:

The intent of this policy is not to define or mandate security policies or rules for a Board's / Association's operation or for IT services delivered by a Board / Association. This remains the responsibility and accountability of the Board / Association. Only services delivered by CREA and relevant interfaces are in scope of this policy.

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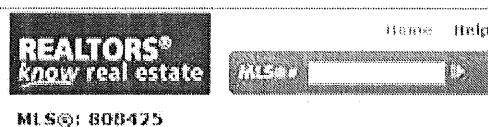
## Use of Listing ID # on REALTOR.ca

### Objective

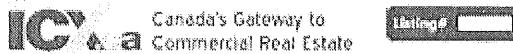
The objective of this policy is due to concerns about non-members advertising the MLS®# of a property on REALTOR.ca and to ensure proper use of the MLS® trademark.

CREA's legal department had received several complaints about non-members advertising the MLS®# of a property displayed on REALTOR.ca. The use of MLS® numbers to identify properties listed on Board/Association MLS® Systems perpetuates the false believe that MLS® Systems are merely databases.

Because of this concern, and in light of the fact that there could potentially be more MLS® listing content on the Internet soon as a result of the DDF®, it was recommended that the use of MLS®# numbers to identify properties on REALTOR.ca, as shown below, be changed to instead refer to Listing ID, like on ICX.ca.



MLS®: 808425



Listing ID: 8805483

While each feature sheet could be branded with the MLS® logo to indicate that the property is listed on a Board's / Association's MLS® System and associated with MLS® services, it was recommended to move away from using the MLS® trademark with an identifier number.

**Effective Date:** December 5, 2011

### Policy

That all occurrences of MLS® # on REALTOR.ca be changed to Listing ID.

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## Search Engine Indexing of REALTOR.ca

### Objective

The objective of this policy is to provide more exposure to property listings by being accessible to search engines. Indexing the full text of the web allows the search engine to go beyond simply matching single search terms. Most search engines give more priority to pages that have search terms near each other and in the same order as the query. They can also match multi-word phrases and sentences

Indexing gives a “richer” search result. As an example, if indexing were allowed on REALTOR.ca, and a user entered a property address as a search term, a link to that specific property on REALTOR.ca would be displayed in the search results. Clicking on the link would take a user directly to the thumbnail or feature sheet of the property. Currently, CREA does not allow indexing of REALTOR.ca content and that facility does not exist on REALTOR.ca. No one doing a property search through Google, for example, could enter an address and get a link to a specific property in the results.

**Effective Date:** December 5, 2011

### Policy

The indexing of listings on REALTOR.ca is permitted.

## Retirement of CREA Framing (Co-Brands)

### Objective

Framing uses outdated **mls.ca** infrastructure, maps are outdated and no longer maintained. Maintaining the infrastructure is costly. Since introduction of framing during 2003, there have been low adoption rates. Moving away from this product offering is in alignment with Technology Committee strategy, where the delivery of these services is done with 3<sup>rd</sup> parties which lets them compete and provide higher quality services to our members. Also, it is in alignment with Futures, which supports an open data platform. This policy allows CREA to concentrate on core services, reduces development and testing efforts by eliminating non-core services.

**Effective Date:** February 22, 2012

### Policy

#### Rationale for Retirement

- Rationale for Cobrand End-of-Life:
- Framing currently uses outdated **mls.ca** infrastructure
- Maps are outdated and no longer maintained
- Maintaining this legacy infrastructure is costly.
- Current uptake of service is less than 0.2% of CREA membership

#### Benefits to CREA for Cobrands Retirement

CREA Cobrands use outdated **mls.ca** infrastructure and as such the maps are outdated and no longer maintained. Maintaining the infrastructure is costly. Since introduction of cobrands in 2003, CREA has encountered low adoption rates of these services. There are currently fewer than 150 active cobrands. The cost to update the maps would be expensive and provide little return given the small number of users. Moving away from this product offering is in alignment with Technology Committee strategy, where the delivery of these types of services is left with 3<sup>rd</sup> parties in order to let them compete and provide higher quality services to our members. It also negates the necessity of maintaining the antiquated mapping technology used in this product. Also, retirement is in alignment with the Technology Committee Vision, where the aim is to support an open data platform. Retiring cobrands will also allow CREA to concentrate on core services and reduce our development and testing efforts by eliminating non-core services.

#### Cobrands EOL Options

With the launch of CREA's Data Distribution Facility (DDF®) in the summer of 2012, CREA members will have an alternative solution to cobrands. DDF® offers a similar solution with the main difference being that what the REALTOR® receives is a raw data

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feed rather than a frameable solution. Therefore, members will have to enlist a 3<sup>rd</sup> party provider for their website and incur the cost of this service.

The proposed strategy is to migrate all cobrand users to a DDF® solution.

If user feedback merits a business a case, CREA will investigate if CREA should create a frame-able solution using DDF® technology and current mapping infrastructure for REALTORS®. It is hoped though, that the few REALTORS® currently utilizing a cobrand solution will move on and enlist a third party to help them utilize the DDF® technology to satisfy their website needs.



CREA TECHNOLOGY  
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IXN® is a REALTOR® only information area for specific listings available to all other members through REALTOR Link®. It allows REALTORS® to see information for any MLS® listing uploaded by an IXN® participating Board.

IXN® uses outdated *mls.ca* infrastructure. IXN® has been and continues to be replaced by regional and provincial access to Board / Association MLS® systems.

**Effective Date: February 22, 2012**

**Policy**

CREA staff will prepare a plan for the retirement of IXN®. The approval of this recommendation will allow staff to focus on core services.

**Rationale for Retirement of IXN.REALTOR.ca**

Since the introduction of IXN®, CREA has seen other models evolve to compete with IXN®. However providing access to data rather than having Boards transfer data over the Internet was seen as preferable as data security was becoming more and more important.

During 2010 a group of Ontario Boards joined and formed "Connect" with the goal of allowing for member access to participating Board MLS® systems for the purposes of viewing information. This was seen as a better alternative to sending this information through the Internet.

The MLS® & Technology Council during 2010 created the "MTC Strategic Vision 2010 For Technology Products and Services" and the recommendation moving forward was to no longer provide enhancements to the front end of IXN®. It was also decided that any map or geo code changes would be undertaken on a user pay basis, on an outsourcing basis or an arrangement could be made under the shared development protocol to provide the source code to the Boards / Associations to update and maintain on their own data exchange.

Since changes as indicated above have occurred, coupled with the regionalization of MLS® systems, the need for a national facility such as IXN® is no longer required. Statistics demonstrate that IXN® monthly unique visitors has dropped from 5,000 visits to approximately 500 today.

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### **Benefits to CREA**

Bringing IXN.REALTOR.ca to EOL will mean one less product for CREA to maintain. It will also negate the necessity of bringing the application up to date with REALTOR.ca by incorporating interactive mapping and the other features currently available on REALTOR.ca. It also negates the necessity of maintaining the antiquated mapping technology used in this product. This would be a large project using resources that could be better utilized in other areas.

### **IXN® EOL Options**

There is still a need by REALTORS® to have access the set of REALTOR® only data associated with each property that is currently viewable on IXN.REALTOR.ca. Options to satisfy this need will have to be investigated. One option that exists is to create a REALTOR® sign on to REALTOR.ca and expose the private data to participating REALTORS® in this manner.

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### Deprecated Services

This section specifies services the Technology Committee has decided to deprecate and Technology Committee policies that need to be withdrawn or modified as a result.

Service	Date Deprecation decision	Date Deprecation completed	Affected Policies
IXN®	2012/02/22		
REALTOR.ca / ICX.ca DLF; Franchise Framers			
REALTOR.ca / ICX.ca IDX; VOW			

## Data Distribution Facility (DDF®) Policy and Rules

### Data Distribution Facility (DDF®) Overview

CREA has created a Data Distribution Facility (DDF®) to enable CREA's members to easily disseminate MLS® listing content to multiple websites, and to ensure that MLS® listing content that is displayed on these websites is accurate, up to date, and uses CREA's trademarks correctly.

The DDF® is permission based and consists of three modules: a National Shared Pool Module; a Member Feed Module; and a Third Party Module. Participating brokerages and salespeople can access a dashboard on REALTOR Link® to indicate where they want to send their listing information and how much information they want to send.

### Structure of the Data Distribution Facility (DDF®)

1. National Shared Pool Module - Participants can contribute their listings to a national data pool and receive a feed from that pool to display all other participants' listings on their websites. Participants can filter the data feed they receive based on objective criteria. Participants can also choose to contribute their listings to a data feed made available for display on participating franchisors' websites.
2. Member Feed Module—Participants can use this module to receive a data feed of their listings to display on their own website in order to track the success of their website as a marketing tool.
3. Third Party Module – Participants can choose to send listing content to a number of third party websites.
4. Technical Solutions Module – Participants who are Franchisees can choose to send listing content to their Franchisor.

### Participation

1. Board Participation
  - a) Participation in the National Shared Pool Module and the Technical Solutions Module is mandatory for all Boards/Associations. Boards/Associations must:
    - i) Provide or authorize a feed of the listings of their members who are participating in the DDF® to CREA; and
    - ii) Adopt and enforce the DDF® rules established by CREA.

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- b) Boards must participate in the Member Feed Module and the Third Party Module unless they provide a facility to their members that CREA determines to be comparable.
  - i) In general, a comparable facility for the Member Feed Module is one that enables members to retrieve their listings.
  - ii) In general, a comparable facility for the Third Party Module is one that enables members to have their listing content distributed to third party websites.

## 2. Brokerage Participation

- a) Brokerages have the option to participate or not to participate in the DDF®.
- b) In the National Shared Pool Module:
  - i) Brokerages have the option to participate or not to participate in the national data pool.
  - ii) Brokerages may also opt to contribute to the franchisor pool if they have opted to participate in the national data pool.
- c) Brokerages have the option to participate or not to participate in either or both of the Member Feed Module and the Third Party Module.
- d) Brokerages have the option to participate or not to participate in the Technical Solutions Module. Brokerages that are a Franchisee may opt to contribute their listings to the Franchisor's direct feed.

## 3. Salesperson Participation

- a) Salespeople have the option to participate in the CREA DDF® independent of their brokerages if:
  - i) The salesperson's brokerage is participating in the CREA DDF® and has given the salesperson permission to participate in the CREA DDF®; or
  - ii) The salesperson's brokerage is not itself participating in the CREA DDF® but has opted in for the purpose of giving its salesperson(s) permission to participate in the CREA DDF®.

## Enforcement

1. Boards and Associations that operate MLS® Systems must adopt and enforce the DDF® Rules established by CREA.
2. A Board / Association or CREA may suspend or terminate a participant's access to the CREA DDF® or disable DDF® functions and features for that participant if it is determined that there is a violation of any rule, regulation, or policy of the Board / Association or CREA.

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## DATA DISTRIBUTION FACILITY (DDF®) RULES

All Boards and Associations will be required to adopt and enforce the following rules. Any changes to the rules must be approved by CREA.

### 1. Definitions

- a. CREA DDF® – a permission based data distribution facility provided by CREA to facilitate the distribution of its participating members' listing information to National Pool Websites, Member Feed Websites, Franchisor Websites, and Third Party Websites.
- b. Franchisor – a company that owns the overall rights and trademarks of the company and enters into franchise agreements with another entity (a franchisee) to allow them to use these rights and trademarks to do business.
- c. Franchisor Direct Feed – a feed of Listing Content from a Franchisor's Franchisees that is made available to the Franchisor for display on their Website.
- d. Franchisor Pool – a pool of Listing Content that is made available to all participating Franchisors for display on their Website.
- e. Franchisor Website – a Website operated by a Franchisor who has entered into a contract with CREA to receive a data feed provided by the CREA DDF®.
- f. Listing Content – the MLS® listing information, including photographs and images, which a Participant chooses to send to National Pool Websites, Franchisor Websites, Member Feed Websites, and Third Party Websites based on data templates that contain a number of fields set by CREA.
- g. Listing Marketing and Permissions Management – an application provided by CREA used to opt-in to the CREA DDF® and define which destinations are to receive the Participant's listings.
- h. National Pool Website – a Website owned and operated by a Participant that displays the listings of other Participants, populated using a data feed provided by the National Shared Pool Module, which can be filtered based on defined and objective criteria.
- i. Participants – all Participating Brokerages and Participating Salespersons.
- j. Participating Brokerage – a member brokerage that is actively engaged in providing real estate brokerage services to buyers or sellers in real estate transactions and who consents to display of its listings on Websites through the CREA DDF®.

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- k. Participating Salesperson – a REALTOR® that is registered with a Participating Brokerage who also chooses to participate in the CREA DDF® with the consent of his or her brokerage.
- l. Member Feed Websites – a Website owned and operated by a Participant that displays just the Participant's own listings, populated using a data feed provided by the Member Feed Module.
- m. Recognized Search Engines – a search engine that is on the CREA maintained list of Recognized Search Engines.
- n. Scraping – use of a software program or other method to extract Listing Content, such as photographs and/or text, from a Website.
- o. Technology Provider – a company that has entered into a data access agreement developed by CREA to operate a National Pool Website or a Member Feed Website on behalf of a Participating Brokerage or Participating Salesperson.
- p. Third Party Websites – Websites other than National Pool Websites, Member Feed Websites, or Franchisor Websites that are provided a data feed of Participants' listing information from the Third Party Module.
- q. Website – any electronic display of or access to content in any manner including mobile applications.

## 2. General Application of Rules

All Participants must adhere to the following rules, all other MLS® rules and regulations, guidelines and policies that may be adopted by the Board/Association or CREA in relation to the DDF® from time to time, and to all applicable provincial or federal legislation and regulation.

## 3. Alteration and Addition of Data

- a) Participants shall not modify or manipulate information relating to other Participants' listings.
- b) Participants may augment their own Listing Content on their National Pool Website or Member Feed Website with additional data not otherwise prohibited from display, but they shall not add data to other Participants' Listing Content.
- c) Participants may co-mingle exclusive listings with the Listing Content they receive through the CREA DDF® on National Pool Websites and Member Feed Websites.

## 4. Authorization

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a) Participating Brokerage Consents

- i) Participating Brokerages' consent for display of their Listing Content on National Pool Websites, Member Feed Websites, Third Party Websites, and/or Franchisor Websites is provided by opting-in to these modules through the Listing Marketing and Permissions Management application.
- ii) A Participating Brokerage that has opted-in to the National Shared Pool Module may also consent to having its Listing Content sent to the Franchisor Websites by opting into the Franchisor Pool in this portion of the CREA DDF® through the Listing Marketing and Permissions Management application.
- iii) A Participating Brokerage that has opted-in to the Technical Solutions Module may consent to have their Listing Content sent to their Franchisor's Website by selecting the Franchisor's Direct Feed in the Listing Marketing and Permissions Management application.
- iv) A Participating Brokerage that has opted-in to any or all of the National Shared Pool Module, Member Feed Module, and Third Party Module may give permission to its salespeople to also participate in any or all of these modules through the Listing Marketing and Permissions Management application.
- v) If a brokerage chooses not to opt-in to the CREA DDF® (even for the limited purpose of permitting its salespeople to participate), its salespeople cannot participate in the CREA DDF®.
- vi) Participating Brokerages that opt-in to any of the CREA DDF® modules hereby grant CREA a royalty-free, perpetual license to use, reproduce, transmit, distribute, and exhibit the Listing Content for the purposes of the CREA DDF®.

b) Participating Salespersons' Consents

- i) Participating Salespeople that have the permission of their Participating Brokerage may choose to participate in the National Shared Pool Module and/or the Member Feed Module, which will enable them to receive a feed of data for display on their websites.
- ii) Participating Salespeople that have the permission of their Participating Brokerage may consent to participate in the Third Party Module, which will enable them to send Listing Content to Third Party Websites.
- iii) Participating Salesperson consent is provided by opting-in through the Listing Marketing and Permissions Management application.

c) Consent to Display Listings

- i) Participants must consent to contribute all their MLS® listings to the National Shared Pool Module unless they have been instructed by a seller not to include a particular listing in the DDF®.



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- ii) Where a property is listed by more than one brokerage or salesperson and any one of those brokerages or salespersons is participating in any data feeds of the CREA DDF® that property will be included in the applicable data feed(s).

## 5. Use of CREA DDF® Data Feed

- a. Participants operating National Pool Websites and Member Feed Websites must refresh their Websites at least once every 24 hours but no more frequently than once an hour.
- b. Participants may not use the Listing Content they receive through the CREA DDF® for any purpose other than:
  - i) display on their National Pool Websites and Member Feed Websites;
  - ii) to create a mobile app, the sole purpose of which would be to advertise the listing content they receive through the CREA DDF® in accordance with these rules; and
  - iii) to create marketing materials for their own listing content only.

This does not require participants to prevent indexing of the Listing Content by Recognized Search Engines.

- c. Participants may not operate more than five Websites using the Listing Content they receive through the CREA DDF®.
- d. Participants shall not use the Listing Content they receive through the CREA DDF® in the operation of a Website through which a member provides online brokerage services to consumers.
- e. Participants shall not allow consumers to write comments or reviews about a particular listing or displays a link to such comments or reviews about a particular listing on their National Pool Websites.
- f. The Listing Content that Participants receive, or any portion thereof, may not be displayed on any Website except a National Pool Website or a Member Feed Website.
- g. Participants must not permit any portion of the Listing Content they receive to be used or provided to any person or corporation for any purpose other than those expressly provided for in these rules.
- h. Participants may provide the Listing Content to a Technology Provider who is operating a National Shared Pool Website or a Member Feed Website on their behalf, but Participants are responsible for the conduct of any Technology Provider they use.
- i. Participants may provide their Listing Content to a marketing company who they have entered into a contract with to receive marketing materials, but Participants are responsible for the conduct of any marketing company they use.

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- j. Participants shall take reasonable precautions to prevent Scraping of their National Pool Websites and Member Feed Websites, and to prevent the Listing Content from being displayed on any internet Website other than National Pool Website or a Member Feed Website. Reasonable precautions shall include but not be limited to:
  - i) regularly monitoring their Website for signs of Scraping; and
  - ii) taking necessary steps against scrapers, such as blocking access.
- k. Participants shall immediately advise their Board/Association whenever they suspect that Scraping has occurred.
- l. Nothing in this policy prohibits Participants from providing to third parties or displaying on other Websites information concerning their own listings created by them or received independently of the CREA DDF®.

## 6. Display Requirements

- a. All Listing Content displayed on a National Pool Website or a Member Feed Website must:
  - i) Display the MLS® and REALTOR® logos;
  - ii) Display the listing brokerage name and any additional information that is required by provincial law/regulation, which must be prominently displayed in text large enough for a consumer to easily read, and appear with the Listing Content (not requiring consumers to click on any hyperlinks, etc.); and
  - iii) Display the watermarks provided by CREA on photographs.
- b. Listing Content must not display:
  - i) Any advertising or co-branding on a National Pool Website;
  - ii) Any confidential information including past sales prices, the cooperating commission or fee, etc. on a National Pool Website or a Member Feed Website.
- c. Every page of all National Pool Websites and Member Feed Websites must display the following text: "MLS®, REALTOR®, and the associated logos are trademarks of The Canadian Real Estate Association".
- d. All National Pool Websites must require consumers to agree to terms of use before accessing the Listing Content through a click-wrap agreement that contains, at a minimum:
  - i) Text that states CREA is the owner of the REALTOR® and MLS® trademarks: "REALTOR®, REALTORS®, and the REALTOR® logo are certification marks that are owned by REALTOR® Canada Inc. and licensed exclusively to The Canadian Real Estate Association (CREA). These certification marks identify real estate professionals who are members of CREA and who must abide by

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CREA's By-Laws, Rules, and the REALTOR® Code. The MLS® trademark and the MLS® logo are owned by CREA and identify the quality of services provided by real estate professionals who are members of CREA.”;

- ii) Text that disclaims liability of CREA as a result of providing the data feed: “The information contained on this site is based in whole or in part on information that is provided by members of The Canadian Real Estate Association, who are responsible for its accuracy. CREA reproduces and distributes this information as a service for its members and assumes no responsibility for its accuracy”;
- iii) Text that states the website is operated by a brokerage or salesperson who is a member of The Canadian Real Estate Association; and
- iv) Copyright ownership text: “The listing content on this website is protected by copyright and other laws, and is intended solely for the private, non-commercial use by individuals. Any other reproduction, distribution or use of the content, in whole or in part, is specifically forbidden. The prohibited uses include commercial use, “screen scraping”, “database scraping”, and any other activity intended to collect, store, reorganize or manipulate data on the pages produced by or displayed on this website.”

## 7. Filtering

- a. Participants may filter the listings they choose to display on their National Pool Websites based only on objective criteria.
- b. Subject to applicable laws and regulation, the only allowed filter criteria are:
  - i) Geography or location;
  - ii) List price;
  - iii) Rentals;
  - iv) Property type (e.g., condominiums, cooperatives, single-family, multi-family).
  - v) Property features (e.g., water front).
- c. Filtering of listings displayed on any National Pool Websites must be independently made by each Participant.

## 8. Enforcement

- a. Participants must make their National Pool Websites and Member Feed Websites directly accessible to Boards, Associations and CREA for the purpose of monitoring/ensuring compliance with the applicable rules and policies.

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- b. Within three business days after being requested by the Board/Association or CREA to do so, a Participant must make changes to its National Pool Website or a Member Feed Website as required by the Board/Association or CREA to resolve any violation of the rules, regulations, or policies, during which time the Board/Association or CREA may suspend the Participant's access to the CREA DDF®.
- c. Notwithstanding subsection b, if a Participant is in violation of any rule, regulation, or policy of the Board/Association or CREA relating to the operation of any of a National Pool Website or a Member Feed Website, the Board/Association or CREA may, in addition to all other remedies available, immediately terminate or suspend the Participant's access to the CREA DDF® or disable DDF® functions and features for that Participant, or direct CREA to immediately terminate or suspend the Participant's access to the CREA DDF® or disable DDF® functions and features for that Participant.
- d. If a Participant ceases to participate in the CREA DDF® or has their access terminated or suspended by their Board, Association, or CREA, they will not be able to contribute their listings to the DDF® nor receive a feed of listings for display on their website(s). They shall not display any Listing Content from the CREA DDF® and must destroy any local copies of the Listing Content.

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## Watermarks on Listing Photos

### Objective

The objective of this policy is to brand property photos with the REALTOR® trademark, thereby assisting the consumer in associating the consistency and quality of the data with the property photos as being provided by and made possible by REALTORS®. A secondary objective of applying a watermark to all property photos is to assist with detection of scraping.

**Effective Date: January 2015**

### Policy

Watermarks will be applied to the upper left hand corner of the property photos and will be applied to all photo sizes except the thumbnail. Implementation of the REALTOR® watermark will be on a Board by Board basis. Not all current photo formats lend themselves to the application of a watermark. Boards / Associations have the ability to opt out upon request.

### Example of Watermarked Photo



**EXHIBIT F**

7. All keys must be coded in a manner which prevents their identification with a particular property until issued by an authorized representative of the association or MLS.
8. Lost or stolen keys must be reported to the association or MLS as quickly as possible.
9. A police report must be filed as quickly as possible whenever a key is lost or stolen.
10. Any person losing a key must immediately advise the property owner and the listing broker and offer to have all necessary locks changed as quickly as possible.
11. The issuance of keys must be discontinued immediately upon request of the seller.
12. Keys must be issued for a specified period of time and failure to return a key within the allotted time shall be considered as a violation of the rules or procedures. When a key is more than twenty-four (24) hours overdue, the association or MLS must contact the person to whom the key was issued and the principal broker or branch manager of the firm to confirm the key has not been lost or stolen and to request its immediate return.
13. Keys must be destroyed upon expiration of the listing or upon closing (whichever occurs first) or earlier at the direction of the listing participant.
14. All rules and procedures for the operation of any centralized key repository must be in writing and be submitted to the National Association for review and approval prior to implementation.
15. Any association member or employee involved in the administration or operation of the system shall be bonded. **[M]**

## **I. Virtual Office Websites: Policy Governing Use of MLS Data in Connection with Internet Brokerage Services Offered by MLS Participants**

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

1. For purposes of this policy, the term "Virtual Office Website" (VOW) refers to a participant's Internet website, or a feature of a participant's Internet website, through which the participant is capable of providing real estate brokerage services to consumers with whom the participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS data, subject to the participant's oversight, supervision, and accountability.
  - a. A participant may designate an "Affiliated VOW Partner" (AVP) to operate a VOW on behalf of the participant, subject to the participant's supervision and accountability and the terms of this policy.
  - b. A non-principal broker or sales licensee affiliated with a participant may, with the participant's consent, operate a VOW or have a VOW operated on its behalf by an AVP. Such a VOW is subject to the participant's supervision and accountability and the terms of this policy.
  - c. Each use of the term "participant" in this policy shall also include a participant's non-principal brokers and sales licensees (with the exception of references in this section to the "participant's consent" and the "participant's supervision and accountability," and in Section III.10.a., below, to the "participant acknowledges"). Each reference to VOW or VOWs herein refers to all VOWs, whether operated by a participant, by a non-principal broker or sales licensee, or by an AVP.

2. The right to display listings in response to consumer searches is limited to display of MLS data supplied by the MLS(s) in which the participant has participatory rights. This does not preclude a firm with offices participating in different MLSs from operating a master website with links to such offices' VOWs.
3. Participants' Internet websites, including those operated for participants by AVPs, may also provide other features, information, or services, in addition to VOWs (including the "Internet Data Exchange" [IDX] function).
4. The display of listing information on a VOW does not require separate permission from the participant whose listings will be available on the VOW.
5. Except as permitted in Sections III. and IV., MLSs may not adopt rules or regulations that conflict with this policy or that otherwise restrict the operation of VOWs by participants.

## II. Policies Applicable to Participants' VOWs

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



- ii. that all data obtained from the VOW is intended only for the Registrant's personal, non-commercial use
- iii. that the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW
- iv. that the Registrant will not copy, redistribute, or retransmit any of the data or information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property
- v. that the Registrant acknowledges the MLS' ownership of and the validity of the MLS' copyright in the MLS database

After the Registrant has opened for viewing the terms of use agreement, a mouse click is sufficient to acknowledge agreement to those terms. The terms of use agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the participant.

The terms of use agreement shall also expressly authorize the MLS and other MLS participants or their duly authorized representatives to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of participants' listings by the VOW.

- d. An agreement entered into at any time between the participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the participant must be established separately from the terms of use, must be prominently labeled as such, and may not be accepted solely by mouse click.
3. A participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the participant to ask questions or get more information about properties displayed on the VOW. The participant or a non-principal broker or sales licensee licensed with the participant must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that participant and displayed on the VOW.
  4. A participant's VOW must protect the MLS data from misappropriation by employing reasonable efforts to monitor for and prevent scraping or other unauthorized accessing, reproduction, or use of the MLS database.
  5. A participant's VOW must comply with the following additional requirements.
    - a. No VOW shall display the listing or property address of any seller who has affirmatively directed its listing broker to withhold its listing or property address from display on the Internet. The listing broker or agent shall communicate to the MLS that a seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a participant who operates a VOW may provide to consumers via other delivery mechanisms, such as e-mail, fax, or otherwise, the listing or property address of a seller who has determined not to have the listing or address for its property displayed on the Internet.
    - b. A participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that conforms to the form attached to this policy as Appendix A. The participant shall retain such forms for at least one (1) year from the date they are signed.
    - c. With respect to any VOW that:
      - i. allows third parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
      - ii. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing, the VOW shall disable

or discontinue either or both of those features as to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all participants' websites. Except for the foregoing and subject to Subsection d., below, a participant's VOW may communicate the participant's professional judgment concerning any listing. Nothing shall prevent a VOW from notifying its customers that a particular feature has been disabled at the request of the seller.

- d. A VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the VOW operator beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The VOW operator shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for that property explaining why the data or information is false. However, the VOW operator shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.
  - e. Each VOW shall refresh MLS data available on the VOW not less frequently than every three (3) days.
  - f. Except as provided elsewhere in this policy or in MLS rules and regulations, no portion of the MLS database may be distributed, provided, or made accessible to any person or entity.
  - g. Every VOW must display a privacy policy that informs Registrants of the ways in which information obtained from them will be used.
  - h. A VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, or whether the listing broker is a REALTOR®.
6. A participant who intends to operate a VOW must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS participants for purposes of verifying compliance with this policy and any other applicable MLS rules or policies.
  7. A participant may operate more than one VOW itself or through an AVP. A participant who operates a VOW itself shall not be precluded from also operating VOWs in conjunction with AVPs.

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

1. A multiple listing service shall permit MLS participants to operate VOWs or to have VOWs operated for them by AVPs, subject to the requirements of state law and this policy.
2. An MLS shall, if requested by a participant, provide basic downloading of all MLS non-confidential listing data, including, without limitation, address fields, listing types, photographs, and links to virtual tours. Confidential data includes only that which participants are prohibited from providing to customers orally and by all other delivery mechanisms. They include fields containing the information described in Section IV.1. of this policy, provided that sold data (i.e., listing information relating to properties that have sold) shall be deemed confidential and withheld from a download only if the actual sales prices of completed transactions are not accessible from public records. For purposes of this policy, downloading means electronic transmission of data from MLS servers to a participant's or AVP's server on a persistent basis. An MLS may also offer a transient download. In such case, it shall also, if requested, provide a persistent download, provided that it may impose on users of such download the approximate additional costs incurred by it to do so.

3. This policy does not require an MLS to establish publicly accessible sites displaying participants' listings.
4. If an MLS provides a VOW-specific feed, that feed must include all of the non-confidential data included in the feed described in Subsection 2., above, except for listings or property addresses of sellers who have elected not to have their listings or addresses displayed on the Internet.
5. An MLS may pass on to those participants who will download listing information the reasonably estimated costs incurred by the MLS in adding or enhancing its downloading capacity to enable such participants to operate VOWs.
6. An MLS may require that participants:
  - a. utilize appropriate security protection, such as firewalls, as long as such requirement does not impose security obligations greater than those employed concurrently by the MLS, and/or
  - b. maintain an audit trail of Registrants' activity on the VOW and make that information available to the MLS if the MLS has reason to believe that any VOW has caused or permitted a breach in the security of the data or a violation of applicable MLS rules.
7. An MLS may not prohibit or regulate display of advertising or the identification of entities on VOWs (branding or co-branding), except to prohibit deceptive or misleading advertising or co-branding. For purposes of this provision, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information (or that of at least one participant, in the case of a VOW established and operated by or for more than one participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.
8. Except as provided in this policy, an MLS may not prohibit participants from enhancing their VOWs by providing information obtained from sources other than the MLS, additional technological services (such as mapping functionality), or information derived from non-confidential MLS data (such as an estimated monthly payment derived from the listed price), or regulate the use or display of such information or technological services on any VOW.
9. Except as provided in generally applicable rules or policies (such as the REALTOR® Code of Ethics), an MLS may not restrict the format of data display on a VOW or regulate the appearance of VOWs.
10. Subject to the provisions below, an MLS shall make MLS listing data available to an AVP for the exclusive purpose of operating a VOW on behalf of a participant. An MLS shall make MLS listing data available to an AVP under the same terms and conditions as those applicable to participants. No AVP has independent participation rights in the MLS by virtue of its right to receive data on behalf of a participant or the right to use MLS data, except in connection with operation of a VOW for a participant. AVP access to MLS data is derivative of the rights of the participant on whose behalf the AVP is downloading data.
  - a. A participant, non-principal broker or sales licensee, or AVP may establish the AVP's right to receive and use MLS data by providing to the MLS a writing in which the participant acknowledges its or its non-principal broker's or sales licensee's selection of the AVP to operate a VOW on its behalf.
  - b. An MLS may not charge an AVP, or a participant on whose behalf an AVP operates a VOW, more than a participant that chooses to operate a VOW itself (including any fees or costs associated with a license to receive MLS data, as described in Subsection g., below), except to the extent that the MLS incurs greater costs in providing listing data to the AVP than the MLS incurs in providing listing data to a participant.

- c. An MLS may not place data security requirements or restrictions on use of MLS listing data by an AVP that are not also imposed on participants.
- d. An MLS must permit an AVP to download listing information in the same manner (e.g., via a "Real Estate Transaction Standard" [RETS] feed or via a "File Transfer Protocol" [FTP] download), at the same times and with the same frequency that the MLS permits participants to download listing information.
- e. An MLS may not refuse to deal directly with an AVP in order to resolve technical problems with the data feed. However, the MLS may require that the participant on whose behalf the AVP is operating the VOW participate in such communications if the MLS reasonably believes that the involvement of the participant would be helpful in order to resolve the problem.
- f. An MLS may not condition an AVP's access to a data feed on the financial terms on which the AVP provides the site for the participant.
- g. An MLS may require participants and AVPs to execute license or similar agreements sufficient to ensure that participants and AVPs understand and agree that data provided by the MLS may be used only to establish and operate a VOW on behalf of the participant and not for any other purpose.
- h. An MLS may not:
  - i. prohibit an AVP from operating VOWs on behalf of more than one participant, and several participants may designate an AVP to operate a single VOW for them collectively,
  - ii. limit the number of entities that participants may designate as AVPs for purposes of operating VOWs, or
  - iii. prohibit participants from designating particular entities as AVPs, except that, if an AVP's access has been suspended or terminated by an MLS, that MLS may prevent an entity from being designated an AVP by another participant during the period of the AVP's suspension or termination.
- i. Except as stated below, an MLS may not suspend or terminate an AVP's access to data:
  - i. for reasons other than those that would allow an MLS to suspend or terminate a participant's access to data, or
  - ii. without giving the AVP and the associated participant(s) prior notice and the process set forth in the applicable provisions of the MLS rules for suspension or termination of a participant's access.

Notwithstanding the foregoing, an MLS may immediately terminate an AVP's access to data:

- i. if the AVP is no longer designated to provide VOW services to any participant,
  - ii. if the participant for whom the AVP operates a VOW ceases to maintain its status with the MLS,
  - iii. if the AVP has downloaded data in a manner not authorized for participants and that hinders the ability of participants to download data, or
  - iv. if the associated participant or AVP has failed to make required payments to the MLS in accordance with the MLS' generally applicable payment policies and practices.
- II. An MLS may not prohibit, restrict, or impede a participant from referring Registrants to any person or from obtaining a fee for such referral.

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

1. An MLS may impose any, all, or none of the following requirements on VOWs, but may impose them only to the extent that equivalent requirements are imposed on participants' use of MLS listing data in providing brokerage services via all other delivery mechanisms.
  - a. A participant's VOW may not make available for search by or display to Registrants the following data, intended exclusively for other MLS participants and their affiliated licensees:
    - i. expired, withdrawn, or pending listings
    - ii. sold data, unless the actual sales price of completed transactions is accessible from public records
    - iii. the compensation offered to other MLS participants
    - iv. the type of listing agreement, i.e., exclusive-right-to-sell or exclusive agency
    - v. the seller(s) and occupant(s) name(s), phone number(s) and e-mail address(es), where available
    - vi. instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property
  - b. The content of MLS data that is displayed on a VOW may not be changed from the content as it is provided in the MLS. MLS data may be augmented with additional data or information not otherwise prohibited from display as long as the source of such other data or information is clearly identified. This requirement does not restrict the format of MLS data display on VOWs or display of fewer than all of the listings or fewer authorized data fields.
  - c. There shall be a notice on all MLS data displayed indicating that the data is deemed reliable, but is not guaranteed accurate by the MLS. A participant's VOW may also include other appropriate disclaimers necessary to protect the participant and/or the MLS from liability.
  - d. Any listing displayed on a VOW shall identify the name of the listing firm in a readily visible color, and reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.
  - e. The number of current or, if permitted, sold listings that Registrants may view, retrieve, or download on or from a VOW in response to an inquiry may be limited to a reasonable number. Such number shall be determined by the MLS, but in no event may the limit be fewer than one hundred (100) listings or five percent (5%) of the listings in the MLS, whichever is less.
  - f. Any listing displayed on a VOW shall identify the name of the listing agent.
2. An MLS may also impose the following other requirements on the operation of VOWs.
  - a. Participants displaying other brokers' listings obtained from other sources, e.g., other MLSs, non-participating brokers, etc., shall display the source from which each such listing was obtained.
  - b. A maximum period, no shorter than ninety (90) days and determined by the MLS, during which Registrants' passwords are valid, after which such passwords must be changed or reconfirmed.
3. An MLS may not prohibit participants from downloading and displaying or framing listings obtained from other sources, e.g., other MLSs or from brokers not participating in that MLS, etc., but may require either:
  - a. that such information be searched separately from listings obtained from other sources, including other MLSs, or

- b. if such other sources are searched in conjunction with searches of the listings available on the VOW, that any display of listings from other sources identify such other source.

## V. Effective Date

MLSs have until not later than February 16, 2009 to adopt rules implementing the foregoing policies and to comply with the provisions of Section III., above, and participants shall have until not later than one hundred eighty (180) days following adoption and implementation of rules by an MLS in which they participate to cause their VOW to comply with such rules.

See Appendix A for Seller Opt-out Form.

### Appendix A

#### Seller Opt-out Form

1. Check one.
  - a.  I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.
  - b.  I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.
2. I understand and acknowledge that if I have selected Option a., consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their searches.

\_\_\_\_\_  
Initials of Seller

**EXHIBIT G**

**Section 18.3.16**

**Note:** Select one of the following two options.

**Option #1:** Advertising (including co-branding) on pages displaying IDX-provided listings is prohibited.

**Option #2:** Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information is larger than that of any third party. (Adopted 11/09)

**Section 18.4  
Service Fees and  
Charges**

Service fees and charges for participation in IDX shall be as established annually by the Board of Directors. (Adopted 11/01, Amended 5/05)

**Section 19****Virtual Office Websites (VOWs)**

**Note:** Adoption of Sections 19.1 through 19.14 is mandatory.

**Section 19.1  
VOW Defined**

- a. A "Virtual Office Website" (VOW) is a participant's Internet website, or a feature of a participant's website, through which the participant is capable of providing real estate brokerage services to consumers with whom the participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS listing information, subject to the participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a participant may, with his or her participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the participant's oversight, supervision, and accountability.
- b. As used in Section 19 of these rules, the term "participant" includes a participant's affiliated non-principal brokers and sales licensees — except when the term is used in the phrases "participant's consent" and "participant's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all Virtual Office Websites, 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 MLS and aggregated and distributed by the MLS to participants.

**Section 19.2**

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



- c. Except as otherwise provided in the VOW policy or in these rules, a participant need not obtain separate permission from other MLS participants whose listings will be displayed on the participant's VOW. **[M]**

### Section 19.3

- a. Before permitting any consumer to search for or retrieve any MLS listing information on his or her VOW, the participant must take each of the following steps.
  - i. The participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter, "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
  - ii. The participant must obtain the name of and a valid e-mail address for each Registrant. The participant must send an e-mail to the address provided by the Registrant confirming that the Registrant has agreed to the terms of use (described in Subsection d., below). The participant must verify that the e-mail address provided by the Registrant is valid and that the Registrant has agreed to the terms of use.
  - iii. The participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The participant must also assure that any e-mail address is associated with only one user name and password. **[M]**
- 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, e-mail address, user name, and current password of each Registrant. The participant must keep such records for not less than one hundred eighty (180) days after the expiration of the validity of the Registrant's password. **[M]**
- c. If the MLS has reason to believe that a participant's VOW has caused or permitted a breach in the security of MLS listing information or a violation of MLS rules, the participant shall, upon request of the MLS, provide the name, e-mail address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant. **[M]**
- d. The participant shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms of use provision that provides at least the following:
  - i. that the Registrant acknowledges entering into a lawful consumer-broker relationship with the participant
  - ii. that all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use
  - iii. that the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW
  - iv. that the Registrant will not copy, redistribute, or retransmit any of the information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property
  - v. that the Registrant acknowledges the MLS' ownership of and the validity of the MLS' copyright in the MLS database **[M]**

- e. The terms of use agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the participant. Any agreement entered into at any time between the participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the participant must be established separately from the terms of use, must be prominently labeled as such, and may not be accepted solely by mouse click. **[M]**
- f. The terms of use agreement shall also expressly authorize the MLS and other MLS participants or their duly authorized representatives to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of participants' listings by the VOW. The agreement may also include such other provisions as may be agreed to between the participant and the Registrant. **[M]**

#### Section 19.4

A participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the participant to ask questions or get more information about any property displayed on the VOW. The participant or a non-principal broker or sales licensee licensed with the participant must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that participant and displayed on the VOW. **[M]**

#### Section 19.5

A participant's VOW must employ reasonable efforts to monitor for and prevent misappropriation, scraping, and other unauthorized uses of MLS listing information. A participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS. **[M]**

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

#### Section 19.6

- a. A participant's VOW shall not display the listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a participant who operates a VOW may provide to consumers via other delivery mechanisms, such as e-mail, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet. **[M]**
- 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. **[M]**

### Seller Opt-out Form

1. Check one.

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

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

\_\_\_\_\_  
Initials of Seller

c. The participant shall retain such forms for at least one (1) year from the date they are signed or one (1) year from the date the listing goes off the market, whichever is greater. **[M]**

#### Section 19.7

- a. Subject to Subsection b., below, 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. to display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing. **[M]**
- b. Notwithstanding the foregoing, at the request of a seller, the participant shall disable or discontinue either or both of those features described in Subsection a. as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all participants' websites. Subject to the foregoing and to Section 19.8, a participant's VOW may communicate the participant's professional judgment concerning any listing. A participant's VOW may notify its customers that a particular feature has been disabled at the request of the seller. **[M]**

#### Section 19.8

A participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The participant shall correct or remove any false information relating to a specific property within forty-eight (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. **[M]**

#### 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. **[M]**

#### Section 19.10

Except as provided in these rules, in the NATIONAL ASSOCIATION OF REALTORS®' VOW policy, or in 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. **[M]**

**Section 19.11** A participant's VOW must display the participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

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

**Section 19.13** A participant who intends to operate a VOW to display MLS listing information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS participants for purposes of verifying compliance with these rules, the VOW policy, and any other applicable MLS rules or policies.

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

**Note:** Adoption of Sections 19.15 through 19.19 is at the discretion of the MLS. However, if any of the following sections are adopted, **an equivalent requirement must be imposed** on participants' use of MLS listing information in providing brokerage service through all other delivery mechanisms.

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

**Note:** If sold information is publicly accessible in the jurisdiction of the MLS, Subsection 19.15f. must be omitted.

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

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

- Section 19.18** 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** A participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than \_\_\_ current listings and not more than \_\_\_ sold listings in response to any inquiry.
- Note:** The number of listings that may be viewed, retrieved, or downloaded should be specified by the MLS in the context of this rule, but may not be fewer than one hundred (100) listings or five percent (5%) of the listings in the MLS, whichever is less.
- Note:** Adoption of Sections 19.20 through 19.25 is at the discretion of the MLS. It is not required that equivalent requirements be established related to other delivery mechanisms.
- Section 19.20** A participant shall require that Registrants' passwords be reconfirmed or changed every \_\_\_ days.
- Note:** The number of days passwords remain valid before being changed or reconfirmed must be specified by the MLS in the context of this rule and cannot be shorter than ninety (90) days. Participants may, at their option, require Registrants to reconfirm or change passwords more frequently.
- Section 19.21** A participant may display advertising and the identification of other entities ("co-branding") on any VOW the participant operates or that is operated on his or her behalf. However, a participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this section, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information (or that of at least one participant, in the case of a VOW established and operated on behalf of more than one participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.
- Section 19.22** A participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.
- Section 19.23** A participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.
- Section 19.24** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.
- Section 19.25** Where a seller affirmatively directs his or her listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within forty-eight (48) hours.

**EXHIBIT H**

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## DATA DISTRIBUTION FACILITY (DDF<sup>®</sup>) POLICY AND RULES

### DATA DISTRIBUTION FACILITY (DDF<sup>®</sup>) POLICY

#### Data Distribution Facility (DDF<sup>®</sup>) Overview

CREA has created a Data Distribution Facility (DDF<sup>®</sup>) to enable CREA's members to easily disseminate MLS<sup>®</sup> listing content to multiple websites, and to ensure that MLS<sup>®</sup> listing content that is displayed on these websites is accurate, up to date, and uses CREA's trademarks correctly.

The DDF<sup>®</sup> is permission based and consists of four modules: a National Shared Pool Module; a Member Feed Module; a Third Party Module; and a Franchisor Direct Feed Module. Participating brokerages and salespeople can access a dashboard on REALTOR Link<sup>®</sup> to indicate where they want to send their listing information and how much information they want to send.

#### Structure of the Data Distribution Facility (DDF<sup>®</sup>)

1. National Shared Pool Module - Participants can contribute their listings to a national data pool and receive a feed from that pool to display all other participants' listings on their websites. Participants can filter the data feed they receive based on objective criteria. Participants can also choose to contribute their listings to a data feed made available for display on participating franchisors' websites.
2. Member Feed Module—Participants can use this module to receive a data feed of their listings, or a data feed of all their Participating Brokerage's listings, to display on their own website in order to track the success of their website as a marketing tool.
3. Third Party Module – Participants can choose to send listing content to a number of third party websites.
4. Franchisor Direct Feed Module – Participants that are franchisees can choose to send listing content to their franchisor.

#### Participation

##### 1. Board Participation

- a) Participation in the National Shared Pool Module and the Franchisor Direct Feed Module is mandatory for all Boards/Associations. Boards/Associations must:
  - i) Provide or authorize a feed of the listings of their members who are participating in the DDF<sup>®</sup> to CREA; and

- ii) Adopt and enforce the DDF® rules established by CREA.
  - b) Boards must participate in the Member Feed Module and the Third Party Module unless they provide a facility to their members that CREA determines to be comparable.
    - i) In general, a comparable facility for the Member Feed Module is one that enables members to retrieve their listings.
    - ii) In general, a comparable facility for the Third Party Module is one that enables members to have their listing content distributed to third party websites.
2. Brokerage Participation
- a) Brokerages have the option to participate or not to participate in the DDF®.
  - b) In the National Shared Pool Module:
    - i) Brokerages have the option to participate or not to participate in the national data pool.
    - ii) Brokerages may also opt to contribute to the franchisor pool if they have opted to participate in the national data pool.
  - c) Brokerages have the option to participate or not to participate in either or both of the Member Feed Module and the Third Party Module.
  - d) Brokerages have the option to participate or not to participate in the Franchisor Direct Feed Module. Brokerages that are a franchisee may opt to contribute their listings to the franchisor's direct feed.
3. Salesperson Participation
- a) Salespeople have the option to participate in the CREA DDF® independent of their brokerages if:
    - i) The salesperson's brokerage is participating in the CREA DDF® and has given the salesperson permission to participate in the CREA DDF®; or
    - ii) The salesperson's brokerage is not itself participating in the CREA DDF® but has opted in for the purpose of giving its salesperson(s) permission to participate in the CREA DDF®.

### Enforcement

1. Boards and Associations that operate MLS® Systems must adopt and enforce the DDF® Rules established by CREA.
2. A Board/Association or CREA may suspend or terminate a participant's access to the CREA DDF® or disable DDF® functions and features for that participant if it is determined that there is a violation of any rule, regulation, or policy of the Board/Association or CREA.



## DATA DISTRIBUTION FACILITY (DDF®) RULES

All Boards and Associations will be required to adopt and enforce the following rules. Any changes to the rules must be approved by CREA.

### 1. Definitions

- a. CREA DDF® – a permission based data distribution facility provided by CREA to facilitate the distribution of its participating members' listing information to National Pool Websites, Member Feed Websites, Franchisor Websites, and Third Party Websites.
- b. Franchisor – a company that owns the overall rights and trademarks of the company and enters into franchise agreements with another entity (a franchisee) to allow them to use these rights and trademarks to do business.
- c. Franchisor Direct Feed – a feed of Listing Content from a Franchisor's franchisees that is made available to the Franchisor for display on their Website.
- d. Franchisor Pool – a pool of Listing Content that is made available to all participating Franchisors for display on their Website.
- e. Franchisor Website – a Website operated by a Franchisor who has entered into a contract with CREA to receive a data feed provided by the CREA DDF®.
- f. Listing Content – the MLS® listing information, including photographs and images, which a Participant chooses to send to National Pool Websites, Franchisor Websites, Member Feed Websites, and Third Party Websites based on data templates that contain a number of fields set by CREA.
- g. Listing Marketing and Permissions Management – an application provided by CREA used to opt-in to the CREA DDF® and define which destinations are to receive the Participant's listings.
- h. National Pool Website – a Website owned and operated by a Participant that displays the listings of other Participants, populated using a data feed provided by the National Shared Pool Module, which can be filtered based on defined and objective criteria.
- i. Participants – all Participating Brokerages and Participating Salespersons.
- j. Participating Brokerage – a member brokerage that is actively engaged in providing real estate brokerage services to buyers or sellers in real estate transactions and who consents to display of its listings on Websites through the CREA DDF®.
- k. Participating Salesperson – a REALTOR® that is registered with a Participating Brokerage who also chooses to participate in the CREA DDF® with the consent of his or her brokerage.
- l. Member Feed Websites – a Website owned and operated by a Participant that displays the Participant's own listings or a data feed of all their Participating Brokerage's listings populated using a data feed provided by the Member Feed Module.

- m. Recognized Search Engines – a search engine that is on the CREA maintained list of Recognized Search Engines.
- n. Scraping – use of a software program or other method to extract Listing Content, such as photographs and/or text, from a Website.
- o. Technology Provider – a company that has entered into a data access agreement developed by CREA to operate a National Pool Website or a Member Feed Website on behalf of a Participating Brokerage or Participating Salesperson.
- p. Third Party Websites – Websites other than National Pool Websites, Member Feed Websites, or Franchisor Websites that are provided a data feed of Participants' listing information from the Third Party Module.
- q. Website – any electronic display of or access to content in any manner including mobile applications.

## 2. General Application of Rules

All Participants must adhere to the following rules, all other MLS® rules and regulations, guidelines and policies that may be adopted by the Board/Association or CREA in relation to the DDF® from time to time, and to all applicable provincial or federal legislation and regulation.

## 3. Alteration and Addition of Data

- a) Participants shall not modify or manipulate information relating to other Participants' listings.
- b) Participants may augment their own Listing Content on their National Pool Website or Member Feed Website with additional data not otherwise prohibited from display, but they shall not add data to other Participants' Listing Content.
- c) Participants may co-mingle exclusive listings with the Listing Content they receive through the CREA DDF® on National Pool Websites and Member Feed Websites.

## 4. Authorization

- a) Participating Brokerage Consents
  - i) Participating Brokerages' consent for display of their Listing Content on National Pool Websites, Member Feed Websites, Third Party Websites, and/or Franchisor Websites is provided by opting-in to these modules through the Listing Marketing and Permissions Management application.
  - ii) A Participating Brokerage that has opted-in to the National Shared Pool Module may also consent to having its Listing Content sent to the Franchisor Websites by opting into the Franchisor Pool in this portion of the CREA DDF® through the Listing Marketing and Permissions Management application.

- iii) A Participating Brokerages that has opted-in to the Franchisor Direct Feed Module may consent to have their Listing Content sent to their Franchisor's Website by selecting the Franchisor's Direct Feed in the Listing Marketing and Permissions Management application.
  - iv) A Participating Brokerage that has opted-in to any or all of the National Shared Pool Module, Member Feed Module, and Third Party Module may give permission to its salespeople to also participate in any or all of these modules through the Listing Marketing and Permissions Management application.
  - v) If a brokerage chooses not to opt-in to the CREA DDF® (even for the limited purpose of permitting its salespeople to participate), its salespeople cannot participate in the CREA DDF®.
  - vi) Participating Brokerages that opt-in to any of the CREA DDF® modules hereby grant CREA a royalty-free, perpetual license to use, reproduce, transmit, distribute, and exhibit the Listing Content for the purposes of the CREA DDF®.
- b) Participating Salespersons' Consents
- i) Participating Salespeople that have the permission of their Participating Brokerage may choose to participate in the National Shared Pool Module and/or the Member Feed Module, which will enable them to receive a feed of data for display on their websites.
  - ii) Participating Salespeople that have the permission of their Participating Brokerage may consent to participate in the Third Party Module, which will enable them to send Listing Content to Third Party Websites.
  - iii) Participating Salesperson consent is provided by opting-in through the Listing Marketing and Permissions Management application.
- c) Consent to Display Listings
- i) Participants must consent to contribute all their MLS® listings to the National Shared Pool Module unless they have been instructed by a seller not to include a particular listing in the DDF®.
  - ii) Where a property is listed by more than one brokerage or salesperson and any one of those brokerages or salespersons is participating in any data feeds of the CREA DDF® that property will be included in the applicable data feed(s).
5. Use of CREA DDF® Data Feed
- a. Participants operating National Pool Websites and Member Feed Websites must refresh their Websites at least once every 24 hours but no more frequently than once an hour.
  - b. Participants may not use the Listing Content they receive through the CREA DDF® for any purpose other than:
    - i) display on their National Pool Websites and Member Feed Websites;
    - ii) to create a mobile app, the sole purpose of which would be to advertise the listing content they receive through the CREA DDF® in accordance with these rules; and
    - iii) to create marketing materials for their own listing content only.

This does not require participants to prevent indexing of the Listing Content by Recognized Search Engines.

- c. Participants may not operate more than five Websites using the Listing Content they receive through the CREA DDF®.
- d. Participants shall not use the Listing Content they receive through the CREA DDF® in the operation of a Website through which a member provides online brokerage services to consumers.
- e. Participants shall not allow consumers to write comments or reviews about a particular listing or displays a link to such comments or reviews about a particular listing on their National Pool Websites.
- f. The Listing Content that Participants receive, or any portion thereof, may not be displayed on any Website except a National Pool Website or a Member Feed Website.
- g. Participants must not permit any portion of the Listing Content they receive to be used or provided to any person or corporation for any purpose other than those expressly provided for in these rules.
- h. Participants may provide the Listing Content to a Technology Provider who is operating a National Shared Pool Website or a Member Feed Website on their behalf, but Participants are responsible for the conduct of any Technology Provider they use.
- i. Participants may provide their Listing Content to a marketing company who they have entered into a contract with to receive marketing materials, but Participants are responsible for the conduct of any marketing company they use.
- j. Participants shall take reasonable precautions to prevent Scraping of their National Pool Websites and Member Feed Websites, and to prevent the Listing Content from being displayed on any internet Website other than National Pool Website or a Member Feed Website. Reasonable precautions shall include but not be limited to:
  - i) regularly monitoring their Website for signs of Scraping; and
  - ii) taking necessary steps against scrapers, such as blocking access.
- k. Participants shall immediately advise their Board/Association whenever they suspect that Scraping has occurred.
- l. Nothing in this policy prohibits Participants from providing to third parties or displaying on other Websites information concerning their own listings created by them or received independently of the CREA DDF®.

## 6. Display Requirements

- a. All Listing Content displayed on a National Pool Website or a Member Feed Website must:
  - i) Display the MLS® and REALTOR® logos;
  - ii) Display the listing brokerage name and any additional information that is required by provincial law/regulation, which must be prominently displayed in text large enough for a

consumer to easily read, and appear with the Listing Content (not requiring consumers to click on any hyperlinks, etc.); and

- iii) Display the watermarks provided by CREA on photographs.
- b. Listing Content must not display:
- i) Any advertising or co-branding on a National Pool Website;
  - ii) Any confidential information including past sales prices, the cooperating commission or fee, etc. on a National Pool Website or a Member Feed Website.
- c. Every page of all National Pool Websites and Member Feed Websites must display the following text: "MLS®, REALTOR®, and the associated logos are trademarks of The Canadian Real Estate Association".
- d. All National Pool Websites must require consumers to agree to terms of use before accessing the Listing Content through a click-wrap agreement that contains, at a minimum:
- i) Text that states CREA is the owner of the REALTOR® and MLS® trademarks: "REALTOR®, REALTORS®, and the REALTOR® logo are certification marks that are owned by REALTOR® Canada Inc. and licensed exclusively to The Canadian Real Estate Association (CREA). These certification marks identify real estate professionals who are members of CREA and who must abide by CREA's By-Laws, Rules, and the REALTOR® Code. The MLS® trademark and the MLS® logo are owned by CREA and identify the quality of services provided by real estate professionals who are members of CREA.";
  - ii) Text that disclaims liability of CREA as a result of providing the data feed: "The information contained on this site is based in whole or in part on information that is provided by members of The Canadian Real Estate Association, who are responsible for its accuracy. CREA reproduces and distributes this information as a service for its members and assumes no responsibility for its accuracy";
  - iii) Text that states the website is operated by a brokerage or salesperson who is a member of The Canadian Real Estate Association; and
  - iv) Copyright ownership text: "The listing content on this website is protected by copyright and other laws, and is intended solely for the private, non-commercial use by individuals. Any other reproduction, distribution or use of the content, in whole or in part, is specifically forbidden. The prohibited uses include commercial use, "screen scraping", "database scraping", and any other activity intended to collect, store, reorganize or manipulate data on the pages produced by or displayed on this website."

## 7. Filtering

- a. Participants may filter the listings they choose to display on their National Pool Websites based only on objective criteria.
- b. Subject to applicable laws and regulation, the only allowed filter criteria are:
  - i) Geography or location;

- ii) List price;
  - iii) Rentals;
  - iv) Property type (e.g., condominiums, cooperatives, single-family, multi-family).
  - v) Property features (e.g., water front).
- c. Filtering of listings displayed on any National Pool Websites must be independently made by each Participant.

#### 8. Enforcement

- a. Participants must make their National Pool Websites and Member Feed Websites directly accessible to Boards, Associations and CREA for the purpose of monitoring/ensuring compliance with the applicable rules and policies.
- b. Within three business days after being requested by the Board/Association or CREA to do so, a Participant must make changes to its National Pool Website or a Member Feed Website as required by the Board/Association or CREA to resolve any violation of the rules, regulations, or policies, during which time the Board/Association or CREA may suspend the Participant's access to the CREA DDF®.
- c. Notwithstanding subsection b, if a Participant is in violation of any rule, regulation, or policy of the Board/Association or CREA relating to the operation of any of a National Pool Website or a Member Feed Website, the Board/Association or CREA may, in addition to all other remedies available, immediately terminate or suspend the Participant's access to the CREA DDF® or disable DDF® functions and features for that Participant, or direct CREA to immediately terminate or suspend the Participant's access to the CREA DDF® or disable DDF® functions and features for that Participant.
- d. If a Participant ceases to participate in the CREA DDF® or has their access terminated or suspended by their Board, Association, or CREA, they will not be able to contribute their listings to the DDF® nor receive a feed of listings for display on their website(s). They shall not display any Listing Content from the CREA DDF® and must destroy any local copies of the Listing Content.

**EXHIBIT I**

THE CANADIAN  
REAL ESTATE ASSOCIATION



L'ASSOCIATION CANADIENNE  
DE L'IMMEUBLE

## CREA DDF<sup>®</sup> FAQ

Q: What is the CREA DDF<sup>®</sup>?

A: The CREA DDF<sup>®</sup> is a data distribution facility that CREA created to enable its members to easily disseminate MLS<sup>®</sup> listing content to multiple websites, and to ensure that MLS<sup>®</sup> listing content that is displayed on these websites is accurate, up to date, and uses CREA's trademarks correctly.

The DDF<sup>®</sup> is permission based and consists of four modules: a National Shared Pool Module; a Member Feed Module; a Third Party Module; and a Franchisor Direct Feed Module. Participating brokerages and salespeople can access a dashboard on REALTOR Link<sup>®</sup> to indicate where they want to send their listing information and how much information they want to send.

Q: Will creating this facility lead to another investigation from the Competition Bureau?

A: The DDF<sup>®</sup> could result in greater dissemination of MLS<sup>®</sup> listing content to a variety of websites, which would be considered pro-competitive. That said, there is always risk that the Competition Bureau may have concerns over the details of the implementation of the DDF<sup>®</sup>. For that reason, CREA has been extremely diligent in briefing the Competition Bureau on the DDF<sup>®</sup> structure and in consulting with outside competition counsel on the proposed structure and implementation of the DDF<sup>®</sup> in order to minimize the potential for competition concerns.

Q: Advertising real estate listings is covered by the licensing legislation in each province. Has CREA checked with Regulators to see if the proposed DDF<sup>®</sup> complies with provincial and territorial legislation?

A: CREA has written to all the provincial and territorial regulators asking for feedback in response to the proposed DDF<sup>®</sup>. We are currently communicating with the regulators and reviewing the DDF<sup>®</sup> policy and rules to ensure any concerns that are mentioned are addressed. It is likely that the actual display requirements on member DDF<sup>®</sup> websites will vary in certain provinces. CREA will provide more information when it becomes available.

Q: What do I need to display to comply with provincial regulation?

A: At this time, there are a few jurisdictions that have not told us what is specifically required to comply with their licensing legislation. That said, there are a couple of regulators that have provided us with rulings that are very important for ALL Participants to be aware of.

Saskatchewan and Manitoba



The Saskatchewan and Manitoba regulators have informed us that it would be a violation of their licensing legislation if a broker or salesperson displayed listings for properties in those provinces on their websites without a license to trade in real estate in Saskatchewan and Manitoba. Therefore, all Participants in the National Shared Pool that are not licensed in Saskatchewan and Manitoba will not be able to display properties from those provinces on their National Pool Websites. Participants that are licensed in Saskatchewan and Manitoba, on the other hand, will be able to display the properties of all other Participants on their National Pool Websites.

The CREA DDF<sup>®</sup> does not currently have the functionality necessary to automatically filter out properties from certain provinces from the feed of Listing Content that Participants in the National Shared Pool receive. Therefore, in order to comply with the Saskatchewan and Manitoba regulator's rulings, all Participants in the National Shared Pool would have to filter out Saskatchewan and Manitoba properties from the feed of Listing Content they receive from the CREA DDF<sup>®</sup> before publishing Listing Content on their National Pool Websites.

We feel that these responses from the Saskatchewan and Manitoba regulators give Participants that are licensed in the provinces an unfair advantage over all other Participants. Further, we recognize that putting the onus on Participants to ensure that they filter out the required listings is a less than desirable solution. For these reasons, we will temporarily not be allowing any Saskatchewan or Manitoba licensees to contribute their listings to the National Shared Pool or receive a feed of Listing Content from that pool until a technical solution to this issue can be implemented. That way all Participants in the National Shared Pool will be able to display all the Listing Content they receive through the CREA DDF<sup>®</sup> on their websites.

#### Alberta

The Real Estate Council of Alberta (RECA) has advised CREA that in order for Alberta brokers or salespersons to participate in CREA's DDF<sup>®</sup> facility, they must satisfy certain minimum requirements on their DDF<sup>®</sup> websites. In essence RECA requires that:

- the websites must make the distinction clear between Alberta listings and those listings from other jurisdictions;
- a statement must be displayed making it clear to consumers that the Alberta broker/salesperson can only "trade" in Alberta listings, and is therefore simply "publishing" the other listings; and
- consumers should only contact the Alberta licensee when dealing with an Alberta listing. For all other listings, they must be advised to contact the listing agent directly.

It is important to understand that CREA's DDF<sup>®</sup> facility simply provides participating REALTOR<sup>®</sup> members with a feed of the listings of other participants. CREA is not involved in any way with the design, or the look and feel of the websites of any of the participants. **Therefore, it is incumbent on each participant to ensure that their own websites comply with all regulatory requirements.**

In order to meet the Alberta regulator's requirements, Alberta participants should do the following:

1. Design their webpages in a way to distinguish their listings from the listings of other DDF<sup>®</sup> Participants. See the screenshot below as an example of how such a website could be designed.



2. Include the following statement on every webpage of their National Pool Websites:

*I am authorized to trade in real estate in Alberta pursuant to the Alberta Real Estate Act. I am publishing a list of out-of-province listings for purchase and sale on this site and this does not constitute a trade in real estate or any offer of services for those listings. Please contact listing agents directly for out-of-province listings.*

3. If the website includes a 'contact me' page or a statement those statements should also make it clear that the Alberta participant can only be contacted about properties in the province/territory where they are licensed.

It is suggested, but not required, that all other Participants use a similar approach to that of Alberta participants on their National Pool Websites, modifying the following statement as appropriate:

*I am authorized to trade in real estate in [insert province/territory] pursuant to the [insert Act name]. I am publishing a list of out-of-province listings for purchase and sale on this site and this does not constitute a trade in real estate or any offer of services for those listings. Please contact listing agents directly for out-of-province listings.*

CREA will continue to update this FAQ with any additional information it receives from the regulators that Participants should take into consideration.

Q: Why does CREA want to give my data away?

A: The CREA DDF<sup>®</sup> will not be used to give away members' data. The proposed DDF<sup>®</sup> would be a member service that would enable brokerages and REALTOR<sup>®</sup> members to more easily disseminate their own MLS<sup>®</sup> listing content, which they are already doing today. Only the listing content that members instruct CREA to send out will be distributed through the DDF<sup>®</sup>.

### Participation

Q: Why is Board and Association participation in the National Share Pool Module mandatory?

A: It is our view that brokerages should have the choice whether or not they want to contribute their listings to the National Shared Pool. Making Board participation in the first module mandatory ensures that every brokerage has the same opportunity to participate, and no-one is excluded.

Q: Why should a brokerage have to participate in the National Shared Pool in order to provide a feed to the franchisor pool?

A: CREA structured the facility this way so that independent brokerage members (with no franchise affiliation) of CREA would have the potential to receive the same amount of listing content, if not more, than the franchisors. If a brokerage of a franchise does not want to participate in the National Shared Pool, they can still provide their own listings to their franchisor in the same way that they do today, which is not through the DDF<sup>®</sup>.

Q: Will independent brokerages that have several offices be considered a Franchisor that could receive a feed of listing content from the Franchisor Pool?

A: No, independent brokerages by definition do not qualify as Franchisors. That said, being able to receive a feed of listing content through the Franchisor Pool would not be a benefit to independent brokerages. Independent brokerages, unlike Franchisors, are members of CREA and therefore can choose to receive a feed of listing content through the National Shared Pool. This pool will contain the same amount of listing content, if not more, than that in the Franchisor Pool.

Q: What does "actively engaged in providing real estate brokerage services" mean in the definition of participating brokerage?

A: This means that mere possession of a brokerage's license is not sufficient to qualify for participation in the DDF<sup>®</sup>. A Participating Brokerage must actively endeavor during the operation of its real estate business to list real property on a Board's MLS<sup>®</sup> System and/or to accept offers of cooperation and compensation made by listing brokerages. "Actively" means on a continual and on-going basis during the operation of the Participating Brokerage's real estate business. The requirement to be active is not intended to preclude 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 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 deny participation based on the level of service provided by the participant or potential participant as long as the level of service satisfies provincial and federal law.

Q: Is CREA going to automatically send out all our data when the DDF<sup>®</sup> is implemented?

A: No. The CREA DDF<sup>®</sup> operates on an opt-in basis. What this means is that brokerages will be opted out of all four modules as a default position. They will have to go into a dashboard on REALTOR Link<sup>®</sup> (or the Board/Association MLS<sup>®</sup> System) and choose which modules they want to participate in, which data templates they want to use, and what third parties are to receive their listing content if they are participating in the Third Party Module. CREA will not send a member's listing content to any website through the DDF<sup>®</sup> until this has been done.

Q: Do we have to use this facility to send listing content to third parties?

A: No. Brokerages and salespersons can choose not to participate in the Third Party Module. Members may choose not to send their listing content to any third party website or to continue distributing listing content through facilities they are already using instead of using the CREA DDF<sup>®</sup>. This will not change. All the DDF<sup>®</sup> will do is provide members with the option that CREA can handle the dissemination of listing content for them.

#### DDF<sup>®</sup> Rules

Q: Will Boards have to have two sets of IDX rules?

A: Possibly. Boards and Associations will be required to adopt the DDF<sup>®</sup> rules established by CREA. These rules have been drafted to govern brokerage and salesperson participation in all four modules of the DDF<sup>®</sup>. However, Boards and Associations are able to opt-out of the Member Feed Module and the Third Party Module if they provide a comparable facility to their members. If a Board chooses to opt-out of the Member Feed Module and/or Third Party Module they will still have to adopt the CREA DDF<sup>®</sup> rules for their members' participation in the National Shared Pool Module. Further, they would likely have rules for their own facility that enabled them to opt-out of the part of the CREA DDF<sup>®</sup>. In these cases, those Boards would have to maintain and enforce two sets of IDX rules.

Q: What would happen to permissions management and what would Boards have to do with the existing permission management rules?

A: Right now, CREA does not have any plans to discontinue the framing that it offers through Permissions Management. If a Board has incorporated CREA's Permission Management rules into their Board rules, whether or not they have to keep those rules will depend on they continue using CREA's Permission Management solutions. Theoretically, a Board may choose to use the DDF<sup>®</sup> instead of the Permission Management IDX solution. If this is the case, that Board would have to adopt the DDF<sup>®</sup> rules but could then remove the Permission Management IDX rules from their Board rules. The business case for continuing to offer these services will be reassessed in time.

Q: Do the Board rules allow Participants to use the Listing Content they receive through the CREA DDF<sup>®</sup> in print materials?

A: Yes, the rules provide that members may use their own listing content that they receive through the DDF<sup>®</sup> to create marketing materials. Those materials may be in print form or digital. If a Participant is going to use a marketing company to create the materials, they must enter into a contract with the marketing company and will be responsible for the conduct of that company. Participants may not use the listing content of other Participants to create marketing materials, or for any other purpose other than display on their DDF<sup>®</sup> websites or mobile apps.

Q: Can I replace the pictures in my listings with higher quality pictures?

A: Yes. Rule 3(a) provides that Participants must not modify or manipulate information relating to *other* Participants' listings. However, they are able to modify or manipulate their own listing content. This means you could choose to replace the pictures from your listings only with higher resolution pictures on your National Shared Pool or Member Feed Website provided that the alterations in no way erode the accuracy of the listing content.

Q: Can I use any domain name for a National Shared Pool or Member Feed Website?

A: You can use any domain name you choose; however, if the domain name contains any of CREA's trademarks, it must comply with CREA's policy for use of its trademarks on the Internet, which are explained in the Trademark Manual, available on REALTOR Link<sup>®</sup>.

Q: Will displaying all the information provided in the data feed I receive ensure that I comply with all federal and provincial legislation as required in section 2 of the DDF<sup>®</sup> Rules?

A: No. Displaying all of the information provided in the data feed you receive will ensure that you comply with the minimum amount of information required by provincial law (e.g., brokerage name and listing agent name, etc.). However, there may be a specific way in which the information must be displayed in order to comply with all provincial/territorial legislation. For example, as trading in real estate without a license would violate provincial legislation, Participants should make it very clear in which provinces/territories they are licensed. See Q and A on page 1 of this FAQ.

Q: Why do the rules prevent use of the CREA DDF<sup>®</sup> to provide online brokerage services?

A: The purpose of creating the DDF<sup>®</sup> is to enable CREA's members to easily disseminate MLS<sup>®</sup> listing content to advertise listings and ensure that online advertisements of listing content are accurate, up to date, and use CREA's trademarks correctly. The CREA DDF<sup>®</sup> was not created to facilitate the provision of online brokerage services, which would require additional polices and rules and further analysis of all provincial/territorial licensing legislation.

**Q:** The rules require participants operating National Shared Pool websites to display a click-wrap agreement that users must agree to before entering their websites. How will brokerages know what to include in those click-wrap agreements?

**A:** The following paragraphs contain template language that participants can use for the click-wrap agreements. The template language is sufficient to comply with the DDF<sup>®</sup> rules, but participants may want to add additional terms to address other concerns, such as compliance with federal and provincial legislation or liability.

#### TEMPLATE TERMS OF USE AGREEMENT

##### Terms of Use

This website is operated by [insert brokerage/REALTOR<sup>®</sup> name], a [insert the word **brokerage** or the word **salesperson**] who is a member of The Canadian Real Estate Association (CREA). The content on this website is owned or controlled by CREA. By accessing this website, the user agrees to be bound by these terms of use as amended from time to time, and agrees that these terms of use constitute a binding contract between the user, [insert brokerage/REALTOR<sup>®</sup> name], and CREA.

##### Copyright

The content on this website is protected by copyright and other laws, and is intended solely for the private, non-commercial use by individuals. Any other reproduction, distribution or use of the content, in whole or in part, is specifically prohibited. Prohibited uses include commercial use, "screen scraping", "database scraping", and any other activity intended to collect, store, reorganize or manipulate the content of this website.

##### Trademarks

REALTOR<sup>®</sup>, REALTORS<sup>®</sup>, and the REALTOR<sup>®</sup> logo are certification marks that are owned by REALTOR<sup>®</sup> Canada Inc. and licensed exclusively to The Canadian Real Estate Association (CREA). These certification marks identify real estate professionals who are members of CREA and who must abide by CREA's By-Laws, Rules, and the REALTOR<sup>®</sup> Code. The MLS<sup>®</sup> trademark and the MLS<sup>®</sup> logo are owned by CREA and identify the professional real estate services provided by members of CREA.

##### Liability and Warranty Disclaimer

The information contained on this website is based in whole or in part on information that is provided by members of CREA, who are responsible for its accuracy. CREA reproduces and distributes this information as a service for its members, and assumes no responsibility for its completeness or accuracy.

##### Amendments

[insert brokerage/REALTOR<sup>®</sup> name] may at any time amend these Terms of Use by updating this posting. All users of this site are bound by these amendments should they wish to continue accessing the website, and should therefore periodically visit this page to review any and all such amendments.

### Third Party Module

Q: How will CREA determine what third party websites will be available through the Third Party Module?

A: CREA is developing a number of criteria that all third parties will have to comply with in order to participate in the Third Party Module. For example, the third party's website will have to be an advertising vehicle (e.g., Yahoo Real Estate or kijiji) and the third party may not itself use the data feed to offer its own real estate services. Third parties will also be prohibited from further disseminating the listing content they receive, and from using the data feed to generate referral fees from CREA's members, they will be required to refresh the data feed at least every 24 hours, and they will be required to use CREA's trademarks properly. All third parties will have to agree to these terms in order to participate in the Third Party Module. Members continue to have the choice to provide their listings directly to third party websites without using the DDF<sup>®</sup>.

CREA is also creating a list of third parties that will be included in the Third Party Module from the onset of the DDF<sup>®</sup>. Any eligible third party that is not already included in the DDF<sup>®</sup> may be added if they make a request to CREA and they are willing to comply with the applicable third party criteria.

Q: Will CREA send listing content to FSBO websites through the Third Party Module?

A: No. FSBO websites that focus on providing real estate services would not meet all the criteria required to participate in the Third Party Module.

Q: Will the information sent to third parties involve sold information?

A: No. Participants in the CREA DDF<sup>®</sup> will be able to choose how much information they want to send to third parties using data templates. One data template will likely consist of all the fields that are currently displayed on REALTOR.ca. Another data template will be a 'shallow listing', which will consist of only a few fields and a link to additional information. That link could be a link to the brokerage website, salesperson website, or to REALTOR.ca. Sold information will not be a field included in any of the data templates.

### Branding

Q: Will the listing content disseminated through the CREA DDF<sup>®</sup> be branded in some way?

A: Yes. Participants in the National Shared Pool Module and the Member Feed Module will be required to display the MLS<sup>®</sup> and REALTOR<sup>®</sup> marks on the listing content and to display text that states the marks are owned or controlled by CREA. The REALTOR<sup>®</sup> and MLS<sup>®</sup> trademarks will also be included in the listing content sent to third parties through the Third Party Module and third parties will be contractually obligated to properly display CREA's trademarks.

Q: Will the pictures in the listing content be watermarked?

A: Yes.

Q: Will co-mingling MLS® listings with other listings on third party sites affect the trademarks?

A: CREA's trademarks are detrimentally affected in advertising when they are associated with inaccurate information or when they are being used, or appear to be used, by non-members. The CREA DDF® will serve to protect the marks from both of these dangers. It will help ensure that listing content on third party sites is more accurate and up to date and, in that respect, could potentially strengthen the MLS® marks. Further, contracts and rules will be put in place requiring that the trademarks be only displayed within a listing, in a particular form, and in clear association with the member listing brokerage. The fact that the page may also contain a FSBO listing will not serve to weaken the marks, provided that they are used properly and the FSBO listings do not make improper use of CREA's trademarks. It is expected that these rules will substantially reduce the number of trademark infringements that currently exist on third party sites.

#### Enforcement

Q: What will CREA do to stop third parties from storing the data and creating a database of the listing content?

A: This will be built into the contracts that third parties enter into in order to participate in the Third Party Module. They will be prohibited from creating a database of information and from using the information for any purpose other than display on their websites.

Q: How will the listing content on member websites be protected from scraping?

A: Participants in the National Shared Pool and the Member Feed Module will be required to take reasonable measures to prevent scraping.

Q: Who is going to enforce all of this?

A: Enforcement will be a collaborative effort between CREA, Boards and Associations, and REALTOR® members. Boards and Associations will be responsible for enforcing the DDF® rules they adopt. CREA will be responsible for enforcing the contracts they enter into with third parties for the Third Party Module. CREA and Boards and Associations will rely on REALTOR® members to report problems they see to them.



**EXHIBIT J**

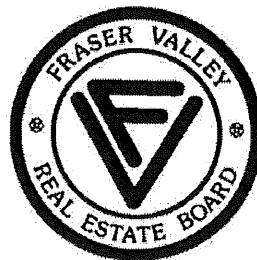
# **RULES OF COOPERATION**

*of the*

**CHILLIWACK & DISTRICT REAL ESTATE BOARD**  
**ERASER VALLEY REAL ESTATE BOARD**  
**REAL ESTATE BOARD OF GREATER VANCOUVER**

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Revised November 2013



**RULES of COOPERATION**  
**OF THE**  
**CHILLIWACK & DISTRICT REAL ESTATE BOARD,**  
**FRASER VALLEY REAL ESTATE BOARD**  
**AND REAL ESTATE BOARD OF GREATER VANCOUVER**

**SECTION 1 – DEFINITIONS**

In these Rules of Cooperation:

“Assessment” means assessments, listing or sale charges or other fees payable to the Board, as established from time to time by the Board;

“Board” means the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board or Real Estate Board of Greater Vancouver, as the context requires;

“Cooperating Brokerage” means an individual, firm or corporation that is licensed as a brokerage under the *Real Estate Services Act* acting for a prospective buyer or, with a written consent of the seller, acting as a sub-agent of the Listing Brokerage;

“Internet Remarks” means the free form description of the property submitted by the Listing Brokerage, with the intended audience being the public on the Internet. Where separate Internet Remarks are not submitted by the Listing Brokerage, the Public Remarks automatically appear in the Internet description;

“Listing Brokerage” means an individual, firm or corporation that is licensed as a brokerage under the *Real Estate Services Act* authorized by the seller to list a property;

“Member” means a member of the Board;

“MLS®” means the Multiple Listing Service® of the Board;

“MLS® Link Boards” means the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board and Real Estate Board of Greater Vancouver;

“MLS® Reciprocity” means the facility for MLS® Reciprocity Participants to show active MLS® Reciprocity Data on their MLS® Reciprocity Internet Website.

“Public Remarks” means the free form description of the property submitted by the Listing Brokerage, with the intended audience being Members and the public;

“REALTOR® Remarks” means comments submitted by the Listing Brokerage with an intended audience of Members only;

## RULES of COOPERATION of the CADREB, FVREB and REBGV

“Virtual Office Website” or “VOW” means an Internet website controlled and operated by an MLS® VOW Participant or a feature of such Internet website through which the MLS® VOW Participant provides real estate services to consumers with whom the MLS® VOW Participant has established a brokerage/ consumer or REALTOR®/consumer relationship where the consumer has an opportunity to search for MLS® Data, either from the MLS® Database or from REALTOR.ca, subject to the rules of the Board and the oversight, supervision and accountability of the MLS® VOW Participant.

## RULES of COOPERATION of the CADREB, FVREB and REBGV

**SECTION 2 – COMPLIANCE**

The By-laws of the Board, including the Code of Ethics and Standards of Business Practice, apply to all transactions and activities. The Rules of Cooperation are enforceable under the By-laws of the Board.

Failure to comply with any of the Rules of Cooperation renders the offending Member liable to discipline under the Board's By-laws and may result in the suspension of MLS® privileges.

Should any Member have any complaint or criticism about another Member concerning any transactions or activities connected with the MLS®, such complaint or criticism must be made to the management of the office of that other Member, and where the matter of the complaint or criticism is not settled to the satisfaction of all concerned, then such complaint or criticism shall be made in writing addressed to the Executive Officer of the Board of that other Member.

All listings submitted to the MLS® are subject to current policies and procedures of the MLS®, as published and circulated from time to time by the Board. Members are obligated to keep currently informed of these policies and procedures.

In order to be placed on the Board's MLS® System, a listing must comply with CREA's Rules and Regulations, including the Three Pillars of the MLS® Mark and the Interpretations as approved by the CREA General Assembly. The Three Pillars of the MLS® Mark are as follows:

**Membership:** Only licensed Members (REALTORS®) may place a listing on a Board/Association's MLS® system;

**Agency:** A listing Member must act as agent for the seller to post, amend or remove a property listing in a Board's MLS® System. The nature of any additional services to be provided by the listing Member to the seller is determined by agreement between the listing Member and the seller;

**Compensation:** The listing Member agrees to pay to the cooperating Member compensation for the cooperative selling of the property. An offer of compensation of zero is not acceptable.

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**SECTION 3 – LISTINGS**

**3.01 Jurisdiction of MLS®**

MLS® Listings when taken come under the jurisdiction of the MLS® as of the effective date of the listing. The responsibility for the information therein and the servicing thereof remains with the Listing Brokerage.

**3.02 Assessments**

Assessments may be established by the Board from time to time. Such Assessments, if applicable, shall be charged to the Listing Brokerage unless payment is received in advance.

**3.03 Standard MLS® Listing Contract**

All listings shall be contracted for on the appropriate standard MLS® Listing Contract of the Board which may not be altered or amended except as provided herein, and SHALL BE COMPLETE IN EVERY DETAIL.

An MLS® listing where the standard form MLS® Listing Contract has been altered will not be accepted by the MLS® except where the seller has crossed out and initialed specific provisions as follows:

- (a) MLS® Listing Contract
  - restriction of advertising of the property to the Listing Brokerage only
  - placement of “For Sale” and “Sold” signs upon the property
- (b) Authority to Lease Contract
  - placement of “For Lease” and “Leased” signs upon the property
  - commission payable upon exercise of option for renewal, where the landlord has indicated no renewal option.

**3.04 Co-Listings**

An MLS® Listing Contract must be signed by ONE Listing Brokerage only, and instructions or changes to the listing will be accepted by the MLS® only from that Listing Brokerage.

**3.05 Contact Information in Remarks**

Contact information including but not limited to names, phone numbers, email addresses and web addresses may not appear in the Public or Internet Remarks of a listing. The REALTOR® Remarks may include the name, address, telephone and/or facsimile number and/or email address of the Listing Brokerage and Members or other individuals, including the seller where the seller has directed the Listing Brokerage in writing to do so, to be contacted for more information concerning the property.

The Listing Brokerage or Member may include a direction in the Public or Internet Remarks of a listing to visit the Listing Brokerage’s or Member’s website to obtain additional information about the listing, but the nature of such additional information

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shall not be specified. The promotion of REALTORS® or properties not currently on MLS® is not otherwise permitted in free form fields.

**3.06 Accuracy of Listing Information**

It is the responsibility of every Member to provide to other Members clear, accurate and factual information concerning any listing by such Member.

IT SHALL BE THE RESPONSIBILITY OF THE LISTING BROKERAGE TO CHECK ALL LISTINGS AND AMENDMENTS OF LISTINGS AFTER THEY HAVE BEEN PUBLISHED BY THE MLS® AND TO ENSURE THEIR COMPLETE ACCURACY, INCLUDING COMMISSION PAYABLE TO A CO-OPERATING BROKERAGE.

**3.07 Property Disclosure Statement**

In the case of a residential listing contract, the Listing Brokerage must state that the seller has either completed and signed the appropriate Property Disclosure Statement, or does not wish to or is unable to do so.

**3.08 Signing Authority**

It is the responsibility of the Listing Brokerage to ensure that appropriate signatures are obtained on all documentation processed by the MLS®.

In general, only listings signed by the registered owners will be accepted by the MLS®. Certain listings from other than registered owners may be processed by the MLS®, however, full disclosure of all pertinent details is required together with all supporting documentation. Such listings may include: entered Court Orders, registered Options, registered Rights to Purchase, or registered Agreements for Sale.

All listing contracts and any other MLS® forms involving the alteration of any material terms of the contract must contain:

- (a) the names and signatures of all registered owners. A legal Power of Attorney is acceptable in lieu of a signature, but a copy of the Power of Attorney must be filed with the MLS®;
- (b) in the case of a corporate owner, the signature of a duly authorized signatory, specifying the capacity in which each such person signed;
- (c) in the case of an estate, the signature of an executor or administrator, together with a copy of Letters Probate, or Letters of Administration confirming the authority;
- (d) in the case of properties under the jurisdiction of a Receiver-Manager or Public Trustee, a properly authorized signature together with confirmation of appointment as may be required by the MLS®;
- (e) in the case of a court ordered sale, the signature of a person authorized under Section 3.26 of these Rules of Cooperation.

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**3.09 Minimum Listing Period**

MLS® Listing Contracts shall be for a period of NOT less than 60 days and shall bear a definite effective and final termination date. The Listing Brokerage, however, shall have the right to extend the final termination date of the contract.

**3.10 Deadline for Submission of Listings**

Listings for data entry by the MLS® must be delivered to the Board within three (3) calendar days (excluding statutory holidays) after the effective date of the listing, otherwise the listing shall be deemed late. "Listings" include documentation as required by the Board.

Listing Brokerage loaded listings must be entered within three (3) calendar days (excluding statutory holidays) after the effective date of the listing, otherwise the listing shall be deemed late. Documentation as required by the Board must be delivered to the Board office in accordance with Rule 3.11.

**3.11 Listing Documentation**

Documentation required by the Board for listings for data entry by the MLS® shall include the standard form MLS® Listing Contract, including Schedule "A" describing the real estate services to be provided, and data input form.

In general, for all Listing Brokerage loaded listings, documentation including but not limited to the listing contract and data input forms must be submitted to the Board by the Listing Brokerage within five (5) calendar days after entry or the listing will be deleted from the MLS® system.

For the Real Estate Board of Greater Vancouver, documentation will not be required for Listing Brokerage loaded listings; however, listings selected at random will be required to provide documentation.

The brochure entitled Working With A REALTOR® shall be provided to every seller and a signed receipt retained on file in the office of the Listing Brokerage, as evidence of the Listing Brokerage's efforts to comply with the *Real Estate Services Act* and the *Personal Information Protection Act*. Where the seller refuses to sign, a notation to that effect, including the date the brochure was provided to the seller and by whom, shall be retained on file in the office of the Listing Brokerage. The Listing Brokerage shall produce any such documentation upon request by the Board.

**3.12 Manager Approval of Listing Brokerage Loaded Listings**

Listing Brokerage loaded listings must, prior to circulation, be approved by the manager of the Listing Brokerage's office where the listing originated. Listing Brokerage loaded listings which are not approved within three (3) days of entry will be deleted from the MLS® system.



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### **3.13 Review of Listing Brokerage Loaded Listings**

All Listing Brokerage loaded listings will be subject to review by the MLS® to ensure complete and accurate listing information, to preserve the integrity of the system. The Board reserves the right to request documentation from the Listing Brokerage, and the Listing Brokerage shall produce requested documentation on demand.

### **3.14 Changes to Listing Information**

Any change in the MLS® listing information on the listing contract must be on the appropriate form of the MLS® and delivered to the Board or where permitted, Listing Brokerage loaded within two (2) calendar days after the Listing Brokerage has received the change in writing, signed by the seller(s).

Any changes to MLS® listing information must be communicated by the Listing Brokerage to any Cooperating Brokerage or potential buyer that shows interest in the property, from the time the change was made and until such change has been published on the MLS® and such period of time thereafter as is reasonable in the circumstances.

An extension of the MLS® Listing Contract must be on the appropriate form, signed by the seller(s) prior to the expiry date of the listing and delivered to the Board not later than two (2) calendar days after the expiry date shown on the listing.

Changes to the information on the data input form may be communicated to the MLS® by telephone, email or fax, at the discretion of the MLS®.

### **3.15 Corrections to Listing Brokerage Loaded Listings**

If a Listing Brokerage loaded MLS® listing is found to be in contravention of the Rules of Cooperation, a correction must be made within one (1) day after notification. In addition to other consequences that might apply, failure to correct the listing may result in the listing being removed from the MLS® system.

### **3.16 Change of Listing Brokerage**

In order for the MLS® to process a change in Listing Brokerage, the Transfer of Listing form must be completed and signed by the Member-Link of the original Listing Brokerage and of the new Listing Brokerage and by the seller(s).

### **3.17 Cancellation of Listing**

The cancellation of an MLS® listing will be processed by the MLS® upon the written request of the Listing Brokerage, in a form acceptable to MLS®, under the terms agreed to by all the contracting parties.

The cancellation of an MLS® listing may not be Listing Brokerage loaded.

Where an MLS® listing has been cancelled by the submission to the MLS® of a Cancellation Form, the MLS® will accept a new listing for the property with another Listing Brokerage during the cancellation period set out on the Cancellation Form ("Cancellation Period") provided that the MLS® receives a letter signed by the seller(s) and the manager or managing broker of the new Listing Brokerage stating that the seller(s) understands, acknowledges and accepts that by signing the new listing contract

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within the Cancellation Period, the seller(s) agrees to pay commission under both the original listing contract and the new listing contract if an offer for sale is accepted or the property is sold during the Cancellation Period.

**3.18 Change of Property Type**

A change of property type (i.e. from "Residential" to "Land Only") will be accepted by the MLS® when the new data input form is submitted. The seller's signature is not required. The original listing will be cancelled and the listing re-entered based on the new data input form.

**3.19 Contingent Listings**

Contingent listings will be processed by the MLS® when such contingency is stated in the listing contract and noted in the REALTOR® Remarks. The responsibility for submitting details of a contingency or unusual condition on any listing shall be the responsibility of the Listing Brokerage.

**3.20 Seller's Rights Reserved**

Where the seller has reserved the right to sell the property themselves that fact shall be noted in the REALTOR® Remarks.

**3.21 Member Access to Listed Properties**

Access to listings accepted and processed by the MLS® shall be made available to all Members subject to these Rules of Cooperation.

- (a) A new listing that cannot be shown for a defined period of up to seven (7) calendar days from the effective date of the listing will be accepted as a contingent listing, and such contingency, including the specific date on which showings and/or offers will be accommodated, must be stated on Schedule "A" and noted in the REALTOR® Remarks. A new listing that cannot be shown for an undefined period or a period that exceeds seven (7) calendar days from the effective date of the listing will not be accepted by the MLS®, and the Listing Brokerage will be advised accordingly.
- (b) If an existing listing cannot be shown for a defined period of up to seven (7) calendar days, the listing will be considered a contingent listing and the details of the contingency will be added to the REALTOR® Remarks by the MLS®. An existing listing that cannot be shown for an undefined period or a period that exceeds seven (7) calendar days cannot be active on the MLS® system, and a Hold Action not exceeding fourteen (14) calendar days or cancellation instruction must be submitted in the appropriate form. Failure by the Listing Brokerage to submit the appropriate documentation will result in the listing being removed from "Active" status and placed in "Cancelled" status, and cancel protected until the expiry date of the listing.
- (c) In the event the Listing Brokerage receives a written offer during a "no show" period, the Listing Brokerage shall, prior to presenting the offer, inform all

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Cooperating Brokerages that have requested a viewing appointment that an offer is scheduled for presentation.

### 3.22 Business Listings

All business listings submitted to the MLS® must show a current place of business, the address and business name of which will be suppressed by the MLS® upon the written request of the Listing Brokerage.

### 3.23 Unauthorized Accommodation

Listings of property containing “unauthorized suites” will be accepted by the MLS® when noted in the REALTOR® Remarks that “PROPERTY CONTAINS ACCOMMODATION WHICH IS NOT AUTHORIZED.”

### 3.24 Photographs, Pictures and Sketches

Images that are provided to the Board in respect of an MLS® listing shall become the property of the Board and may be used by the Board at its discretion. Only MLS®-approved watermarks may appear on images. The display of a child’s image on an MLS® listing is prohibited. The Board reserves the right to remove images which in the opinion of the Board are inappropriate.

Other than the front exterior photo, additional listing photos shall not be used in future listings without the consent of the originating Brokerage.

Images that contain information that is considered to be promotion of a Member will not be permitted.

Images are to relate only to the real property for sale. No comments or additional information will be permitted to be placed on the image.

### 3.25 Title Searches

In order to confirm registered ownership of the property, one basic title search will be conducted on all listings of property for sale submitted to the MLS® except business-without-land listings, manufactured home listings and except where title to land consists of shares of a co-operative or time share.

One basic title search only will be conducted on properties listed in bulk as a project. When requested by the Listing Brokerage, additional searches for specific units within the project will be provided at the discretion of the MLS®.

A Manufactured Home Registry search will be provided upon request of the Listing Brokerage on listings of Manufactured Homes. The cost of the search will be charged to the Listing Brokerage at the current rate.

On listings containing multiple titles (the exception being duplexes, triplexes, fourplexes and Manufactured Home Registry searches) the Board will provide one basic title search free of charge. Any additional titles searched will attract charges at the current rate. The Listing Brokerage will be notified before the Board orders the additional searches.

The title search is provided to the Listing Brokerage.

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**3.26 Assignment of Contract of Purchase and Sale**

An Assignment of Contract of Purchase and Sale will be accepted for listing by the MLS® where the following conditions are met:

- (a) the name of the buyer of the property must show as the seller's name at the top of the MLS® Listing Contract;
- (b) REALTOR® Remarks must include "Assignment of Contract"; and
- (c) listing documentation must include a letter or other documentation from the original seller giving the buyer permission to list the property for sale prior to completion of the original transaction.

**3.27 Court Ordered Sales**

A listing of property under Court Ordered Sale will be processed by the MLS® under the following conditions:

- (a) if currently listed with the MLS®, the Court Order giving the exclusive right to list the property will take precedence;
- (b) the listing contract is accompanied by a photocopy or certified copy of the entered Order Nisi of Foreclosure or other Order (the "Order"), giving a particular named party the exclusive right to list the property for sale, setting out the legal description of the property and authorizing the payment of commission; or if the Listing Brokerage obtains from the lawyer who obtained the Order, a letter which states the following:
  - (i) the date the lawyer obtained the Court Order;
  - (ii) that a copy of the Court Order giving the exclusive right to list the property has been submitted to the Registry for signature and entry;
  - (iii) confirmation that the Order has been drafted in the terms approved by the Judge; and
  - (iv) that upon entry of the Order, a copy of the entered Order will be sent to the Listing Brokerage who must then send a copy of the entered Order to the Board.
- (c) the listing contract makes specific reference to any sale being "subject to the approval of The Supreme Court of British Columbia";
- (d) the party named in the Order or someone, other than the Listing Brokerage, acting on behalf of that party (e.g. an officer or solicitor) has signed the listing contract as "seller";
- (e) the Listing Brokerage may be required to provide the MLS® with a letter stating that the person or persons signing the listing contract has or have authority to do

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so and, where applicable, specifying the capacity in which each such person signed (e.g. President, Secretary); and

- (f) the Order makes provision for showing the property to prospective buyers or otherwise makes satisfactory provision for the listing of the property with the MLS® and for its sale subject to the approval of the Court.

**3.28 Listings Taken in Trade**

“Trade listings” shall be processed by the MLS® on the following basis:

- (a) a copy of the Contract of Purchase and Sale must be provided, showing that it is a trade situation or a guaranteed purchase; or
- (b) a copy of the State of Title Certificate, or Form A Freehold Transfer with details of acceptance for registration, must be provided showing that the property has been transferred into the name of the Member; and
- (c) the property must be re-listed with the MLS® for a minimum period of sixty (60) days following the date of registration or acceptance for registration; and
- (d) where a property, which is currently listed with the MLS®, is accepted “in trade” on the purchase of another property, no sales charges will be levied provided that the Listing Brokerage does not receive a commission and the property is re-listed with the MLS® for a minimum period of sixty (60) days.

**3.29 Relocation Services and Corporate Guarantees**

Listings or sales involving “corporate guarantees”, or on behalf of relocation services or other special “authorities to sell”, will be processed by the MLS® on the following basis:

- (a) on receipt of a new listing contract or sales report with an acceptable explanation in writing from the Listing Brokerage, together with all supporting documentation; and
- (b) the property must be re-listed with the MLS® for a minimum period of sixty (60) days following the date of the change.

**3.30 Right of First Refusal**

The MLS® will process listings of properties where a party has been granted a “right of first refusal” to purchase the property, to be exercised within a specified time period, on the same terms and conditions as are acceptable to the seller, when such an offer is received from a prospective buyer. Such listings must meet the following conditions:

- (a) a copy of the right of first refusal must be filed with the MLS®;
- (b) the listing contract must specify the existence of the right of first refusal;
- (c) the seller must have agreed to pay the agreed upon commission on a sale, whether the right of first refusal is exercised or not; and

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- (d) if an offer is presented to and accepted by the seller, which offer is subject to a right of first refusal but is otherwise unconditional, and the party holding the “right” exercises the “right” accordingly, it is understood that the Listing Brokerage shall share the commission earned with the Cooperating Brokerage securing the offer, in the manner indicated on the listing contract.

**3.31 Manufactured Homes**

Listing contracts covering manufactured homes shall be accepted by the MLS® on the following basis:

- (a) where the manufactured home is registered in the Manufactured Home Registry for British Columbia and where the manufactured home is situated in a recognized manufactured home park, affixed to a designated “pad” and the right to use that “pad” is transferable to a buyer upon entering into a satisfactory rental agreement with the operator of the manufactured home park; (NOTE: Such listing contracts must state the amount of pad rental and the Manufactured Home Registry number) or
- (b) where the manufactured home is affixed to land which is owned by the seller, other than land in a manufactured home park, and is duly registered in the Land Title Office and where both the land and the manufactured home thereon are included for sale in the listing; or
- (c) where the manufactured home is affixed to land which is leased by the seller, other than land in a manufactured home park, and is registered in the Manufactured Home Registry for British Columbia and affords the right to a buyer to continue to reside at that location upon assuming the balance of the current lease and/or options or entering into a satisfactory lease agreement with the owner of the property (NOTE: Such listing contracts must include the Manufactured Home Registry number); and
- (d) listings will not be accepted on manufactured homes without both the MHR number and a CSA or B.C. Electrical Inspection Label number.

**3.32 Non-Registered Strata Properties**

Listing contracts covering strata lots where the Strata Plan has not yet been registered at the Land Title Office will be processed by the MLS® if the strata lot can be satisfactorily identified by reference to a plan or sketch prepared by a named surveyor or architect and, if required, a Disclosure Statement has been filed with the Superintendent of Real Estate, on the understanding that as soon as available the MLS® will be supplied with the registration number of the Strata Plan and of the Strata Lot(s) comprising the listed strata properties.

In the case of a listing contract on less than five (5) strata lots on a Plan yet to be registered at the Land Title Office, where a Disclosure Statement is not presently required under the *Real Estate Development and Marketing Act*, the listing will be processed by the MLS® if the strata lots can be satisfactorily identified by reference to a plan or sketch

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prepared by a named surveyor or architect, on the understanding that as soon as available the MLS® will be supplied with the number of the Strata Plan and of the Strata Lot(s) created by it as registered at the Land Title Office.

Listings of these properties must state in the REALTOR® Remarks “Non-registered Strata Property – contact L.R.”

A notation must be included in the listing contract requiring that the Cooperating Brokerage be made aware that the sale cannot be completed until the Strata Plan has been registered; and the completion date must be scheduled accordingly.

### 3.33 Building Lots

Where a builder has entered into an agreement with a seller to purchase one or more lots and wishes to list or re-list such lot or lots, including a building contract, such listings will be processed under the following conditions:

- (a) where the original listing is a Multiple Listing, a sales report is filed with the MLS® and the sale published;
- (b) a copy of the Contract of Purchase and Sale (or other sale agreement) is attached and the contract includes, as a condition of the purchase (or by separate witnessed document), authorization by the seller to allow the builder to offer the lot or lots with a building contract for sale prior to the completion of the particular purchase; and
- (c) the Member agrees to remit to the MLS®, when due, the MLS® sales charges (where applicable) on the original sale to the builder.

(NOTE: If for some reason the original transaction fails to complete, the MLS® must be notified immediately and the appropriate documentation filed.)

### 3.34 Building Contracts

Listings of lots that are to be sold together with a building contract will be processed by the MLS® under the following conditions:

- (a) the vacant property submitted to the MLS® must be a properly registered, subdivided lot with a complete legal description and where available a street address;
- (b) the list price of the said lot must be clearly indicated on the listing form if the lot may be sold separately;
- (c) a copy of the building plans and list of specifications must be available to the Cooperating Brokerage upon request;
- (d) complete details must be submitted in respect to zoning and services available to the subject lot;

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- (e) the MLS® assessments (where applicable) are payable on the completion of conveyance;
- (f) where a builder holds an interest by way of a Contract of Purchase and Sale (or other sale agreement), the builder may sign the listing contract as “seller” and a copy of that Contract of Purchase and Sale (or other sale agreement) must accompany the listing, which must specifically disclose the nature of the interest held; and
- (g) listing documentation must include a letter or other documentation from the original seller giving the buyer permission to list the property for sale prior to completion of the original transaction.

**3.35 Non-Registered Lots**

Listing contracts covering lots for which no subdivision plan has yet been registered in the Land Title Office, will be processed by the MLS® where:

- (a) a subdivision plan creating the proposed lots has been prepared by a named surveyor and has been approved in principle by the appropriate Approving Officer;
- (b) the lots can be satisfactorily identified by reference to the civic address or plan referred to in (a);
- (c) a Disclosure Statement has been filed with the Superintendent of Real Estate, where required under the *Real Estate Development and Marketing Act* or, where a Disclosure Statement is not required, a copy of the Preliminary Letter of Approval issued by the appropriate governing body has been submitted to the MLS®;
- (d) the MLS® will be supplied with the registration numbers of the subdivision plan and the legal descriptions of the lots as soon as they are available; and
- (e) listings of these properties must state in the REALTOR® Remarks: “non-registered subdivision lot – contact L.R.”.

**3.36 Floating Homes**

Listing contracts covering a floating home shall be accepted by the MLS® on the following basis:

- (a) where the floating home is situated in a strata title marina and where both the strata lot and the floating home are included for sale in the listing (NOTE: legal description must include the legal description of the marina including the strata lot number); or
- (b) where the floating home is moored in a licensed marina pursuant to a lease and the rights under the lease are transferable to a buyer upon entering into a satisfactory agreement with the marina (NOTE: legal description must include reference to the lease interest and the legal description of the marina); and



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- (c) where the floating home has a motor and can be navigated, the Vessel License Number or Official Registration Number shall be included in the legal description.

A floating home that is not moored in accordance with (a) or (b) may not be listed on the MLS®.

**3.37 Interboard Listings**

- (a) The Board will accept MLS® listings of properties within the Board's geographical jurisdiction from REALTOR® members of any reciprocating real estate board in the province for an Assessment which may be established from time to time.
- (b) In the case of any conflict with another board/association's Rules and Regulations, the Rules of the board in whose jurisdiction the property is located shall apply.
- (c) In the case of a co-listing, any Assessment will be payable to the board in whose jurisdiction the property is located.
- (d) For Members of MLS® Link Boards, all MLS® listings for properties located outside the geographical jurisdiction of the MLS® Link Boards must be listed on the system of the board in whose jurisdiction the property is located before being listed on the system of the Listing Brokerage's "home" Board.
- (e) For members of reciprocating non-MLS® Link Boards, the Board may accept MLS® listings of properties outside the geographical jurisdiction of the Board only after the property has been listed on the system of the board in whose jurisdiction the property is located. An Assessment for such listings may be established from time to time.

**3.38 Auction Listings**

In order for auction listings to be placed on the MLS®, in addition to complying with these Rules of Cooperation:

- (a) the list price must be the minimum reserve bid agreed to by the seller, and
- (b) the Public and Internet Remarks must contain a statement indicating whether the seller is willing to accept offers prior to the auction date.

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**SECTION 4 – OFFERS****4.01 Confidentiality of Offers**

A Cooperating Brokerage who has an offer to purchase shall not be required to disclose any details of that offer prior to the presentation to the seller. All offers and counter-offers under consideration shall be held in strict confidence, unless otherwise instructed by the seller in writing.

**4.02 Presentation of Offers**

Unless otherwise instructed by the seller in writing:

- (a) offers must be presented to the seller, without delay, through the Listing Brokerage;
- (b) a Cooperating Brokerage submitting an offer shall have the right to be present during the presentation; and
- (c) the Listing Brokerage shall without delay make the seller's decision on the offer known to Cooperating Brokerages which had submitted offers. If requested by the Cooperating Brokerage such decision on the offer shall be provided in writing.

A copy of the seller's written instruction obtained under this Section shall be provided to the Cooperating Brokerage upon request.

**4.03 Presentation of Counter-offers**

All counter-offers must be presented to the buyer through the Cooperating Brokerage unless otherwise instructed by the buyer in writing, and to the seller through the Listing Brokerage unless otherwise instructed by the seller in writing. With the consent of the buyer or seller receiving the counter-offer the Listing Brokerage or Cooperating Brokerage submitting the counter-offer shall have the right to be present during the presentation.

**4.04 Multiple Offers**

In the event that the Listing Brokerage has more than one written offer to be presented, the following procedures shall be adhered to:

- (a) unless otherwise instructed by the seller in writing, the Listing Brokerage shall, prior to any offer being presented, inform the other Cooperating Brokerages involved of the existence of the other offers or counter-offers, without disclosing their specific terms and conditions, provided, however, that should all but one offer or counter-offer be withdrawn prior to presentation resulting in there no longer being more than one written offer to be presented, the Listing Brokerage must so advise the remaining Cooperating Brokerage prior to presentation of their offer;
- (b) the Listing Brokerage should present each competing offer and counter-offer to the seller in the order in which they were received;

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- (c) the Cooperating Brokerage submitting the offer or counter-offer may be present, unless otherwise instructed by the seller in writing, only during the presentation of their particular offer or counter-offer and then shall withdraw from the premises but hold themselves available while the other offers and counter-offers are being presented in a like manner;
- (d) the Listing Brokerage shall ensure that all offers and counter-offers are presented up until the time an offer has actually been accepted (NOTE: Listing Brokerages are required to notify the seller of all offers up to the time of completion.); and
- (e) after all offers and counter-offers have been presented, the Listing Brokerage shall consult in private with the seller.  
(NOTE: Subject to any limitations to which the seller has agreed, the Listing Brokerage has a responsibility to give the seller their proper recommendations without prejudice to any particular offer and always in the best interest of the seller.)

A copy of the seller's written instruction obtained under this Section shall be provided to the Cooperating Brokerage upon request.

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**SECTION 5 – SALES****5.01 Reporting Sales**

The Listing Brokerage is responsible and accountable for the accuracy of sales information submitted to the Board for inclusion in the Board's MLS® System. IT SHALL BE THE RESPONSIBILITY OF THE LISTING BROKERAGE TO CHECK ALL SALES AFTER THEY HAVE BEEN PUBLISHED BY THE MLS® AND TO ENSURE THEIR COMPLETE ACCURACY.

An important part of the inherent value of the MLS® is the transaction data accumulated for sales of listed properties. It is the responsibility of all Members to ensure, regardless of their business model, that property sales information for properties listed on the MLS® be reported to the Board. In general, sales shall be reported to the MLS® by the Listing Brokerage, on the Sales Report Form together with a legible copy of the Contract of Purchase and Sale within five (5) calendar days of the contract becoming unconditional. Members are not permitted to avoid these reporting responsibilities by, for example, cancelling a listing between receipt (or anticipated receipt) and acceptance of an offer, or encouraging a seller to do so.

For the Real Estate Board of Greater Vancouver and Chilliwack and District Real Estate Board, only the Sales Report Form signed by the Manager or designate of the Listing Brokerage is required for the reporting of sales; however, upon request by the Board, the Member shall provide a legible copy of the contract of Purchase and Sale form and any Addendums or Amendments.

Sales may not be Listing Brokerage Loaded.

The brochure entitled Working With a REALTOR® shall be provided to every buyer and a signed receipt retained on file in the office of the Cooperating Brokerage, as evidence of the Cooperating Brokerage's efforts to comply with the *Real Estate Services Act* and the *Personal Information Protection Act*. Where the buyer refuses to sign, a notation to that effect, including the date the brochure was provided to the buyer and by whom, shall be retained on file in the office of the Cooperating Brokerage. The Cooperating Brokerage shall produce any such documentation upon request by the Listing Brokerage or the Board.

**5.02 Collapsed Sales**

The Listing Brokerage must notify the MLS® immediately of the collapse of any sale, using the form approved by the MLS®. Where the Cooperating Brokerage has first knowledge of the collapse of a sale, they shall immediately notify the Listing Brokerage.

**5.03 Board Assessment on Completed Sales**

The Listing Brokerage shall forward the Assessment due to the Board immediately upon receipt of funds or upon registration of the transfer of the property in question, whichever first occurs.

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**SECTION 6 – PROFESSIONAL CONDUCT****6.01 Cooperating Brokerages**

Unless specifically authorized by the seller in writing:

- (a) a Cooperating Brokerage is not a sub-agent to the Listing Brokerage and is presumed to be the agent of the buyer; and
- (b) communication between Cooperating Brokerages and the seller must be limited to arranging appointments as designated in the published listing and showing the listed property with appropriate assistance, during the term of the listing.

**6.02 Appointments**

Appointments by Cooperating Brokerages to inspect or show property may not be made directly with the seller unless otherwise specified on the data input form and published listing information.

**6.03 Title Searches**

Unless otherwise instructed by the seller in writing, a Listing Brokerage shall, upon request from a Cooperating Brokerage, provide a copy of the basic search received from the MLS® to the Cooperating Brokerage for its use. An online title search library provided by the Board and accessible to the Cooperating Brokerage would satisfy the Listing Brokerage's obligation under this Rule.

**6.04 Strata Properties**

- (a) Unless otherwise instructed by the seller in writing, for each strata MLS® listing, the Listing Brokerage shall at the time of taking the listing obtain current relevant strata corporation documents including but not limited to two (2) years of strata council minutes and strata corporation minutes, registered strata corporation by-laws, financial statements, registered strata plans, and information concerning special assessments, either proposed or levied.
- (b) Unless otherwise instructed by the seller in writing, the Listing Brokerage shall, upon request by a Cooperating Brokerage after the seller and buyer have an accepted Contract of Purchase and Sale, provide to the Cooperating Brokerage current relevant strata corporation documents including but not limited to those documents referred to in (a) above and a current Information Certificate (Form "B").
- (c) In the event that the Listing Brokerage has received written instructions from the seller not to provide all or some of the documents described in (a) and (b) above to buyers and Cooperating Brokerages, a notation to that effect must be included in the REALTOR® Remarks, and, where the seller is not providing such information directly to buyers and Cooperating Brokerages, the Listing Brokerage shall provide written authority from the seller to the Cooperating Brokerage to obtain the Form "B" and other pertinent information directly from the strata corporation. The responsibility for the cost of these documents should be detailed in the appropriate condition clause in the Contract of Purchase and Sale.

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**6.05 No Solicitation Prior to Expiry**

Listings and other agency contracts expire automatically at 11:59 p.m. on the expiry date shown on the contract. Before this time any Member other than the Brokerage under contract is EXPRESSLY FORBIDDEN TO SOLICIT SUCH CONTRACT or encourage any alteration in the existing contract.

**6.06 Privacy-Protected Listings**

No Member shall use MLS® listing information for the purpose of communicating with a seller of an MLS® listing to determine whether the seller requires additional real estate services when that seller has expressly opted-out of their personal information being used for this purpose.

**6.07 Solicitation Guidelines**

A Member shall not solicit a listing that is currently listed exclusively (hereinafter “exclusively listed” or “exclusive agreement” refers to an Exclusive listing and MLS® exclusive listing) with another brokerage. However, if the Listing Brokerage, when asked by a Member, refuses to disclose the expiration date and the nature of such listing (i.e. an exclusive right to sell, an exclusive relationship, an open listing or other form of contractual agreement between the Listing Brokerage and the client), the Member may contact the owner to secure such information and may discuss the terms upon which the Member might take a future listing.

A Member shall not solicit buyer/tenant representation agreements from buyers/ tenants who are subject to exclusive buyer/tenant representation agreements. However, if a buyer/tenant agent, when asked by a Member, refuses to disclose the expiration date of the exclusive buyer/tenant representation agreement, the Member may contact the buyer/tenant to secure such information and may discuss the terms upon which the Member might enter into a future buyer/tenant representation agreement.

The fact that an agreement has been entered into with a Member shall not preclude or inhibit any other Member from entering into a similar agreement after expiration of the prior agreement.

When Members are contacted by the client of another Member regarding the creation of a relationship to provide the same type of service, and Members have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement.

The above-mentioned rules do not preclude Members from making general announcements, messages or advertisements (hereinafter referred to as “general announcements” or “announcement”) to prospective clients describing their services and the terms of their availability even though some recipients may have entered into representation agreements with another Member, provided such general announcements include a clear, prominent and emphasized statement that the announcement is not intended to cause or induce breach of an existing agency agreement. A general canvass, general mailing or distribution addressed to all prospective clients in a given geographical area or in a given profession, business, club or organization, or other classification or

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group, is deemed “general” for the purposes of this rule if it is a mass-produced announcement in identical form to the general public, or an identifiable group of the public, whether communicated by radio, television, newspaper, flyers, form letters (even though personally addressed) or computerized telephone messages.

This rule recognizes as prohibited practices two basic types of solicitation: (a) telephone and/or personal solicitations of property owners who have been identified by a real estate sign or information on a real estate data base service operated under the MLS® or associated trademarks, or other information, as having exclusively listed their property with another Member; and, (b) mail or other forms of written solicitations of prospective clients whose properties are exclusively listed with another Member (whether listed under an “Exclusive” or “MLS®” agreement) when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings under MLS® or identified by “for sale” or “for rent” signs or other sources of information.

Members, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the client is subject to a current, valid exclusive agreement to provide the same type of real estate service.

This rule does not preclude Members from contacting the client of another brokerage for the purpose of offering to provide, or entering into a listing arrangement where the original and current Listing Brokerage has negotiated a cancellation clause with the seller, and the seller has not otherwise indicated he/she does not wish to be solicited during the term of that contract.

This rule does not preclude Members from contacting the client of another brokerage for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g. property management as opposed to brokerage). However, real estate database information received through MLS® may not be used to target clients of other Members to whom such offers to provide services may be made.

**6.08 Professional Conduct**

- (a) A Member shall not conduct himself nor permit his employees to conduct themselves in such a manner as to prejudice his reputation or the reputation of the Board.
- (b) A Member shall not injure falsely or maliciously, directly or indirectly, the reputation, prospects or business of another Member.

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**SECTION 7 – COMMISSION****7.01 Commission Stated in Listing Contract**

All contracts must show the amount of commission payable as negotiated by the Listing Brokerage and the seller. That portion of the Listing Brokerage's commission available to Cooperating Brokerages must be shown on the listing contract.

**7.02 Reference to Commission in Remarks**

References to commission or bonuses are restricted to the REALTOR® Remarks and may not be included in the Public Remarks.

**7.03 Disclosure of Reduced Commission**

Where the Listing Brokerage is presenting its own offer in competition with one or more Cooperating Brokerages, and the Listing Brokerage is reducing the commission from that stated in the MLS® Listing Contract, the Listing Brokerage shall disclose any such reduction to all Cooperating Brokerages with competing offers, in order that such competing agents shall not be at a disadvantage and the seller shall receive the full benefit of competition from such Cooperating Brokerages.

**7.04 Commission Payable to Cooperating Brokerage upon Completion**

Where a particular transaction completes, that portion of the Listing Brokerage's commission available to Cooperating Brokerages is payable to the Cooperating Brokerage upon completion unless the Listing Brokerage and Cooperating Brokerage mutually agree, in writing, to alter said commission.

**7.05 Commission Payable to Cooperating Brokerage where Sale does not Complete**

Where a particular transaction does not complete, and the Listing Brokerage is successful in receiving payment of, or compensation in lieu of, some or all of the commission, the Cooperating Brokerage shall, at the Cooperating Brokerage's option, after the Listing Brokerage has deducted its reasonable costs incurred to recover the commission, receive its proportionate share. The receipt of such payment or compensation by the Listing Brokerage shall be deemed to be a completed transaction for the purposes of the Board's By-laws.

**7.06 Assignment to Cooperating Brokerage**

When the owner of a property listed with a Member does not complete as agreed and the Listing Brokerage does not take steps to enforce payment of commission which may be due, the Listing Brokerage shall, upon receipt of the written demand of the Cooperating Brokerage, assign to the Cooperating Brokerage all of the rights of the Listing Brokerage to enforce the listing contract.



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**7.07 “Two Cheque System” of Commission Disbursement**

- (a) A real estate company holding a trust deposit in a finalized transaction deducts an amount equal to its portion of the commission owing on completion to that company from the deposit held and forwards the balance of any excess deposit under trust to the named conveyancer; or
- (b) the company holding the trust deposit will send a request to the conveyancer for any balance owing if the deposit being held in trust is less than the amount equal to that company’s portion of the commission owing; and
- (c) upon completion, the conveyancer forwards the commission owing to any companies from the proceeds of the sale.

**7.08 Modification of Listing Brokerage’s Offer of Compensation**

A Cooperating Brokerage, when negotiating on behalf of a buyer, may only use the terms of an offer to purchase to modify the Listing Brokerage’s offer of compensation to Cooperating Brokerages if:

- (a) The buyer has authorized the Cooperating Brokerage to do so in a separate written document; and
- (b) There has been prior consultation regarding compensation between the Cooperating Brokerage and the Listing Brokerage.

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**SECTION 8 – ADVERTISING****8.01 Advertising - General**

Members shall not advertise in any manner that is false or misleading, prohibited by law or restricted by the seller.

**8.02 Price and Terms Authorized by Seller in Writing**

No Member may offer or advertise a property at a price or terms other than the price and terms as authorized in writing by the seller.

**8.03 Advertising Another Member's Listings**

Subject to Sections 8.04 and 8.05, advertising, in any form whatsoever, of a listed property by any Member other than the Listing Brokerage shall only be done with the prior approval of the Listing Brokerage, unless otherwise indicated in the listing contract.

**8.04 Advertising Another Member's Listings on the Internet**

Where Reciprocity or VOW have been adopted by a Board, a Member may republish another Member's listings on the Internet in accordance with MLS® Reciprocity described in Section 8.12 and VOW in 8.13.

**8.05 Advertising by Cooperating Brokerage**

A Cooperating Brokerage, after publication by the MLS® of the sale of that property, may advertise their involvement in the sale of that property and may include in such advertisement only MLS® Reciprocity Data as described in these Rules of Cooperation. Any advertising by a Cooperating Brokerage of a sold property must include the name of the Listing Brokerage.

**8.06 Advertising of Sale Price**

A sale price shall not be advertised prior to that information being publicly available through a government registry, unless prior approval is provided by both buyer and seller in writing.

**8.07 "SOLD" Signs**

The privilege of placing "SOLD" signs on a property within the jurisdictional area of the Board shall be at the discretion of the seller. The Cooperating Brokerage may, through the Listing Brokerage, request permission from the seller to place a sold sign on a property subject to any local municipal sign regulations.

**8.08 Public Representations**

Any advertisement, publication or other form of public representation made by or on behalf of any Member must be factual and clearly demonstrate the criteria upon which such representations are based including, without limitation, the period of time over which such representations are based.

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**8.09 Reproduction of Board Information**

Any representation which includes the reproduction of information generated by the Board must include the disclaimer which accompanied the information in its original form or the following notice:

“NOTE: this representation is based in whole or in part on data generated by the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board or Real Estate Board of Greater Vancouver which assume no responsibility for its accuracy.”

**8.10 Other Advertising Requirements**

In addition to the Rules of Cooperation, Members should make themselves aware of any advertising guidelines/policies contained in the Board’s Code of Ethics and Standards of Business Practice and in the Real Estate Council of B.C.’s “Licensee Practice Manual”.

**8.11 Medallion/President’s Club Advertising**

Members should refer to the Medallion/President’s Club Policies for advertising policies specific to the Medallion/President’s Club. Medallion/President’s Club Policies are enforceable under these Rules of Cooperation.

**8.12 MLS® Reciprocity**

Where Reciprocity has been adopted:

(a) In this section the following terms have the following meanings:

“Detail Display” means enlarged photo, the MLS® number and additional text display of individual properties selected from a Thumbnail Display;

“MLS® Reciprocity” means a program which enables MLS® Reciprocity Participants to display on their MLS® Reciprocity Internet Websites the listings of MLS® Reciprocity Corporate Members in accordance with this Section 8;

“MLS® Reciprocity Active Member” means an active Member of the Board whose license is issued and maintained in an office of an MLS® Reciprocity Corporate Member;

“MLS® Reciprocity Corporate Member” means a corporate Member of the Board that has not advised the Board in writing that it does not wish to take part in MLS® Reciprocity;

“MLS® Reciprocity Data” means the MLS® property data as prescribed by the Board from time to time relating to the listings of MLS® Reciprocity Corporate Members, which is made available by the Board to MLS® Reciprocity Participants from time to time for display on MLS® Reciprocity Internet Websites;

“MLS® Reciprocity Internet Website” means an Internet website controlled and operated by an MLS® Reciprocity Participant or a feature of such Internet website

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where the MLS® Reciprocity Participant displays the listings of MLS® Reciprocity Corporate Members subject to the rules of the Board and the oversight, supervision and accountability of the MLS® Reciprocity Participant;

“MLS® Reciprocity Logo” means a logo designed and approved by the Board for use in association with MLS® Reciprocity;

“MLS® Reciprocity Participant” means: (i) an MLS® Reciprocity Corporate Member that is a party to an executed “MLS® Reciprocity – Corporate Member Agreement” with the Board which has not expired or been terminated, and (ii) an MLS® Reciprocity Active Member who is a party to an executed “MLS® Reciprocity – Salesperson Agreement” with the Board which has not expired or been terminated;

“MLS® Reciprocity Thumbnail Icon” means an icon designed and approved by the Board identifying MLS® Reciprocity in a Thumbnail Display. The MLS® Reciprocity Thumbnail Icon shall be at least 35 pixels by 35 pixels;

“Scraping” means use of a software program or other method to extract photographs and text from an MLS® Reciprocity Internet Website for use on an internet website other than an MLS® Reciprocity Internet Website or for use in any manner except as permitted by this Section 8;

“Thumbnail Display” means a summary display of one or more-property listings per page that must include the name of the Listing Brokerage and may include a small photograph and such limited text data as may be permitted by the Board from time to time. The MLS® Reciprocity Logo must be displayed at the top of the summary page and shall be at least 95 pixels by 35 pixels;

- (b) In addition to the obligations set out in the “MLS® Reciprocity – Corporate Member Agreement” and the “MLS® Reciprocity – Salesperson Agreement”, MLS® Reciprocity Participants must adhere to the following rules and all other Rules of Cooperation that may be adopted by the Board from time to time:
- (i) MLS® Reciprocity Participants must not alter, modify, manipulate or obscure the MLS® Reciprocity Data (or any disclaimers or notices therein) in any way without the Board’s prior written approval.
  - (ii) A Thumbnail Display on an MLS® Reciprocity Internet Website of another MLS® Reciprocity Corporate Member’s listing must not include any contact information or branding of any person or corporation other than the Listing Brokerage.

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- (iii) A Thumbnail Display must include the name of the Listing Brokerage and may only include the following:
1. text data about the listing property; and
  2. a photo of the listing property.
- (iv) Where a search of the MLS® Data generates a Detail Display on an MLS® Reciprocity Internet Website of another MLS® Reciprocity Corporate Member's listing, the Detail Display shall bear that MLS® Reciprocity Corporate Member's name, the MLS® Reciprocity Logo and the MLS® copyright notice immediately following the property information all of which shall be of the same colour and at least as large as the largest type size used to display the listing data.
- (v) A Detail Display on an MLS® Reciprocity Internet Website of another MLS® Reciprocity Corporate Member's listing may not include any contact information or branding of any person or corporation other than the Listing Brokerage within the "body" of the listing data. (The "body" shall be the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data.)
- (vi) Any Thumbnail Display or Detail Display on an MLS® Reciprocity Internet Website of another MLS® Reciprocity Corporate Member's listing must include any disclaimer which accompanied the information in its original form, or the following notice:
- "NOTE: This representation is based in whole or in part on data generated by the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board or Real Estate Board of Greater Vancouver which assumes no responsibility for its accuracy."
- (vii) The MLS® Reciprocity Data or any portion thereof may not be displayed on any internet website except an MLS® Reciprocity Internet Website.
- (viii) MLS® Reciprocity Participants shall take all reasonable precautions to prevent Scraping of the MLS® Reciprocity Data from their MLS® Reciprocity Internet Websites, and to prevent the MLS® Reciprocity Data from being displayed on any internet website other than an MLS® Reciprocity Internet Website. Reasonable precautions shall include but not be limited to:
1. monitoring its MLS® Reciprocity Internet Website for signs that a third party is Scraping data; and

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2. prominently posting a notice on its MLS® Reciprocity Internet Website explaining that the website must only be used by consumers for the purpose of locating and purchasing real estate.
- (ix) The MLS® Reciprocity Participant shall immediately advise the Board whenever the MLS® Reciprocity Participant suspects or has evidence that Scraping has occurred.
  - (x) Within fourteen days after being requested by the Board to do so, an MLS® Reciprocity Participant must make such changes to its MLS® Reciprocity Internet Website as required by the Board to cure any violation of the Rules of Cooperation, Board regulations, guidelines and policies.
  - (xi) MLS® Reciprocity Participants must not permit any portion of the MLS® Reciprocity Data to be used or provided to any person or corporation for any purpose other than those expressly provided for in the Rules of Cooperation, Board regulations, guidelines and policies.
  - (xii) MLS® Reciprocity Participants must not permit any portion of the MLS® Reciprocity Data to be co-mingled with any non-MLS® listings on any MLS® Reciprocity Internet Website.
  - (xiii) an MLS® Reciprocity Participant will cease displaying on their MLS® Reciprocity Internet Website the listings of MLS® Reciprocity Corporate Participants and is not entitled to access the MLS® Reciprocity Data if:
    1. the MLS® Reciprocity Participant or the MLS® Reciprocity Corporate Member in whose office the license of an MLS® Reciprocity Participant is issued and maintained notifies the Board in writing, in a form satisfactory to the Board, that it is ceasing to participate in MLS® Reciprocity;
    2. the MLS® Reciprocity Participant or the MLS® Reciprocity Corporate Member in whose office the license of an MLS® Reciprocity Participant is issued and maintained ceases to be a member of the Board or is terminated or suspended from membership in the Board;
    3. the right of the MLS® Reciprocity Participant or the MLS® Reciprocity Corporate Member in whose office the license of an MLS® Reciprocity Participant is issued and maintained to take part in MLS® Reciprocity or to have access to MLS® Reciprocity Data has been suspended or terminated pursuant to an order under Appendix B of the Board's Bylaws;

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4. the MLS® Reciprocity Participant is in breach of its obligations under this Section 8.12 and fails to remedy the default within fourteen (14) calendar days after receiving a written demand to do so from the Board; or
  5. the MLS® Reciprocity Participant has been in breach of its obligations under this Section 8.12 more than three (3) times in any twelve (12) month period, regardless of whether those breaches have been remedied.
- (xiv) In addition to Section 8.12(b)(xiii) the Board may immediately suspend an MLS® Reciprocity Participant's access to the MLS® Reciprocity Data if, in the sole discretion of the Board,
1. the Board knows or suspects an event described in Section 8.12(b)(xiii) has occurred or is about to occur; or
  2. the Board concludes that the MLS® Reciprocity Participant has defaulted in its obligations under this Section 8.12 and such default is or may be detrimental to MLS® Reciprocity.

**8.13 Virtual Office Website (VOW)**

- (a) In this section 8.13 the following terms have the following meanings:

“Authorized Individual Participant” means a Member providing services under the supervision of an MLS® VOW Corporate Participant who has been authorized by that MLS® VOW Corporate Participant to operate an MLS® VOW subject to the overview, supervision and responsibility of that MLS® VOW Corporate Participant.

“Detail Display” means enlarged photo and additional text display of individual properties selected from a Thumbnail Display.

“MLS® Data” means MLS® property data maintained in the MLS® Database regarding the listings of corporate Members of the Board and corporate members of other real estate boards and associations.

“MLS® Database” means a single proprietary database of text, images and related information pertaining to properties listed for sale compiled by the Board.

“MLS® VOW” means a virtual office website controlled and operated by an MLS® VOW Participant through which the MLS® VOW Participant provides real estate services to consumers with whom the MLS® VOW Participant has established a relationship.

“MLS® VOW Corporate Participant” means a corporate Member of the Board that has not advised the Board in writing that it does not wish to take part in the MLS® VOW Program.

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“MLS® VOW Data” means MLS® Data prescribed by the Board from time to time and relating to the listings of MLS® VOW Corporate Participants, which is made available by the Board to MLS® VOW Participants from time to time for display on an MLS® VOW.

“MLS® VOW Participant” means

- (i) an MLS® VOW Corporate Participant that is a party to an executed MLS® VOW Corporate Participant Agreement with the Board which has not expired or been terminated; and
- (ii) an Authorized Individual Participant who is a party to an executed MLS® VOW Authorized Individual Agreement with the Board which has not expired or been terminated.

“MLS® VOW Program” means a program which enables MLS® VOW Participants to display on their MLS® VOW the listings of MLS® VOW Corporate Participants in accordance with this Section 8.13.

“Registrant” means a consumer who has entered into a relationship with a MLS® VOW Participant through an MLS® VOW in accordance with this Section 8.13.

“Scraping” means use of a software program or other method to extract photographs and text from an MLS® VOW for use on an internet website other than an MLS® VOW or for use in any manner except as permitted by this Section 8.13.

“Terms of Use” means a written series of statements displayed on an MLS® VOW to which a Registrant can agree.

“Thumbnail Display” means a summary of a search displaying multiple property listings per page that must include the name of the Listing Brokerage and may include a small photograph and such limited text data as may be permitted by the Board from time to time.

- (b) MLS® VOW Corporate Participants may authorize Authorized Individual Participants to operate an MLS® VOW subject to the MLS® VOW Corporate Participant’s overview, supervision and responsibility of the Authorized Individual Participant and their MLS® VOW. Any breach of this Section 8.13 by an Authorized Individual Participant shall be deemed to be a breach by the MLS® VOW Corporate Participant that authorized the Authorized Individual Participant to operate the MLS® VOW.
- (c) In addition to the obligations set out in the MLS® VOW Corporate Participant Agreement and the MLS® VOW Authorized Individual Agreement, MLS® VOW Participants must adhere to the following rules and all other Rules of Cooperation that may be adopted by the Board from time to time:



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- (i) MLS® VOW Participants must make the MLS® VOW directly accessible to the Board for purposes of monitoring and ensuring compliance with the Board's Bylaws including the Code of Ethics and Standards of Business Practices, the Board's regulations, guidelines and policies including all Rules of Cooperation.
- (ii) only MLS® VOW Participants may establish an MLS® VOW.
- (iii) An MLS® VOW Participant must not provide a Registrant with access to MLS® VOW Data through the MLS® VOW Participant's MLS® VOW unless and until:
  - 1. the Registrant has provided the MLS® VOW Participant, through the MLS® VOW, with the Registrant's name, telephone number and valid e-mail address and, at the option of the MLS® VOW Participant, other information;
  - 2. the MLS® VOW Participant has displayed the Terms of Use to the Registrant on the MLS® VOW;
  - 3. the Registrant has opened the Terms of Use and agreed to them by "mouse-clicking" an acknowledgement of agreement displayed on the MLS® VOW;
  - 4. the Registrant has supplied the MLS® VOW Participant with a user name and a password, both of which must be unique to the Registrant, (the user name and password may be established by the Registrant or may be supplied by the MLS® VOW Participant at the option of the MLS® VOW Participant). The Registrant's password and access to MLS® VOW Data must expire on a date not later than 30 days after being issued. Passwords may not be automatically renewed upon expiration;
  - 5. the MLS® VOW Participant has sent an e-mail to the Registrant at the e-mail address described in 1 above confirming the user name and password and the Registrant has acknowledged receipt of the e-mail by mouse-clicking an acknowledgment of receipt displayed in the e-mail; and
  - 6. upon expiration of their password the Registrant must provide the MLS® VOW Participant with a new password to regain access to the MLS® VOW Data. The MLS® VOW Participant shall not permit the Registrant to regain access to the MLS® VOW Data until the MLS® VOW Participant has sent an e-mail to the Registrant at the e-mail address described in 1 above confirming the new password and the Registrant has acknowledged receipt of the e-mail by mouse-clicking an acknowledgement of receipt displayed in the e-mail.

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- (iv) The Terms of Use must include an acknowledgement by the Registrant:
1. that the Registrant has received, read and understand the brochure published by the British Columbia Real Estate Association entitled "Working With a REALTOR®" (this document may be linked);
  2. that the Terms of Use do not create an agency relationship with the Registrant;
  3. that all data obtained from the MLS® VOW is intended only for the Registrant's personal, non-commercial use;
  4. that the Registrant has a bona fide interest in the purchase, sale or lease of real estate of the type being offered through the MLS® VOW;
  5. that the Registrant will not copy, redistribute or retransmit any of the MLS® VOW Data or information provided; and
  6. that the Registrant acknowledges the Board's copyright in the MLS® VOW Data.
- (v) A Terms of Use Agreement may not impose a financial obligation on a Registrant or create an agency agreement with the Registrant. Any financial obligation or agency agreement entered into by a Registrant through an MLS® VOW must be set forth separately from the Terms of Use, must be prominently labelled and may not be accepted solely by mouse click. The Registrant must also receive a subsequent confirmation of the terms of any such financial obligation or agency agreement and the financial obligation or agency agreement may not become effective until the Registrant acknowledges acceptance of those terms by mouse click. Prior to entering into an agency agreement with a Registrant the MLS® VOW Participant must ask the Registrant whether the Registrant is a party to any other agency agreements.
- (vi) An MLS® VOW may not make available for search by or display to Registrants the following data:
1. expired, cancelled, withdrawn, pending or sold listings;
  2. the compensation offered;
  3. the seller and occupant's name, phone number and e-mail address where available;
  4. instructions or remarks intended for Cooperating Brokerages only, such as those regarding showing or security of the listing property;

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5. listings other than current listings, listings of corporate Members that are not MLS® VOW Corporate Participants and such other listings, data or information as determined by the Board from time to time (all information provided on an MLS® VOW must be refreshed at least once every seven (7) days and the MLS® VOW must indicate the date of the last update); and
6. MLS® Data other than MLS® VOW Data.
  - (vii) An MLS® VOW may display information set out on the MLS® VOW Data display field except where prohibited by this Section 8.13;
  - (viii) The MLS® VOW Participant must maintain a record of the name, telephone number, e-mail address and, if required by the MLS® VOW Participant the street address supplied by the Registrant, and the user name and current password of each Registrant during the currency of the Registrant's password and for not less than one hundred and eighty (180) days after the expiration of the validity of the Registrant's password.
  - (ix) An MLS® VOW must display a privacy policy that informs Registrants of the ways in which information obtained from them will be used.
  - (x) An MLS® VOW must visibly and clearly display, at the top of every page of the MLS® VOW, the MLS® VOW Corporate Participant's name in type larger than any other type on the page.
  - (xi) An MLS® VOW Participant may not offer or provide the identity of a Registrant to any other person, including another MLS® VOW Participant, except as permitted in this Section 8.13(c)(xi). Despite the foregoing an MLS® VOW Participant may provide the identity of a Registrant to a corporate Member of the Board, a corporate member of another real estate board or association or a licensee whose license is maintained in the office of a corporate Member of the Board or a corporate member of another real estate board or association if:
    1. the MLS® VOW Participant's real estate trading service activities principally consist of listing or selling the type of properties listed on the MLS® (for the purposes of this paragraph selling does not include making referrals of prospective purchasers and listing does not include making referrals of prospective sellers);
    2. the Registrant is seeking property of a type, in a price range or in a location for which the MLS® VOW Participant does not ordinarily provide real estate trading services;

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3. the number of Registrant identities provided is an insubstantial portion of the MLS® VOW Participant's real estate trading service activities; and
  4. permission to offer or provide that information has been granted by the Registrant by mouse-clicking an acknowledgement of agreement, displayed on the MLS® VOW, that is separate and apart from the acknowledgement described in Section 8.13(c)(iii)(3).
- (xii) MLS® VOW Participants must not alter, modify, manipulate or obscure the MLS® VOW Data (or any disclaimers or notices therein) in any way without the Board's prior written approval.
- (xiii) A Thumbnail Display on an MLS® VOW of an MLS® VOW Corporate Participant's listing must not include any contact information or branding of any person or corporation other than the Listing Brokerage.
- (xiv) A Thumbnail Display may only include the following:
1. Text data about the listing property;
  2. A photo of the listing property; and
  3. The logo of the Listing Brokerage if the Listing Brokerage is the owner of the MLS® VOW displaying the Thumbnail Display.
- (xv) Where a search of the MLS® VOW Data generates a Detail Display on an MLS® VOW of an MLS® VOW Corporate Participant's listing, the Detail Display shall bear that MLS® VOW Corporate Participant's name and the MLS® copyright notice immediately following the property information all of which shall be at least as large as the largest type size used to display the listing data.
- (xvi) A Detail Display on an MLS® VOW of another MLS® VOW Corporate Participant's listing may not include any contact information or branding of any person or corporation other than the Listing Brokerage within the "body" of the listing data. (The "body" shall be the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data.)
- (xvii) Any Thumbnail Display or Detail Display on an MLS® VOW of another MLS® VOW Corporate Participant's listing must include any disclaimer which accompanied the information in its original form, or the following notice:

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"NOTE: This representation is based in whole or in part on data generated by the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board or Real Estate Board of Greater Vancouver which assume no responsibility for its accuracy."

- (xviii) The MLS® VOW Data or any portion thereof may not be displayed on any internet website except an MLS® VOW.
- (xix) MLS® VOW Participants shall take all reasonable precautions to prevent Scraping of the MLS® VOW Data from their MLS® VOW, and to prevent the MLS® VOW Data from being displayed on any internet website other than an MLS® VOW or being used other than in accordance with this Section 8.13 and the Rules of Cooperation and Board regulations, guidelines and policies.

Reasonable precautions shall include but not be limited to:

1. Monitoring the MLS® VOW for signs that a third party is Scraping data; and
  2. Prominently posting a notice on the MLS® VOW explaining that the website must only be used by consumers for the purpose of locating and purchasing real estate.
- (xx) The MLS® VOW Participant shall immediately advise the Board whenever the MLS® VOW Participant suspects or has evidence that Scraping has occurred.
  - (xxi) If the Board has reason to believe that an MLS® VOW Participant's MLS® VOW has caused or permitted a breach in the security of the MLS® VOW Data or a violation of the Rules of Cooperation or any Board regulations, guidelines and policies related to its use the MLS® VOW Participant shall, upon request, provide to the Board a copy of the record of the name, e-mail address, user name and current password of each Registrant, or those Registrants identified by the Board to be suspected of involvement in the violation.
  - (xxii) Within fourteen (14) days after being requested by the Board to do so, an MLS® VOW Participant must make such changes to its MLS® VOW as required by the Board to cure any violation of the Rules of Cooperation and Board regulations, guidelines and policies.
  - (xxiii) MLS® VOW Participants must not permit any portion of the MLS® VOW Data to be used or provided to any person or corporation for any purpose other than those expressly provided for in the Rules of Cooperation and Board regulations, guidelines and policies.

## RULES of COOPERATION of the CADREB, FVREB and REBGV

- (xxiv) MLS® VOW Participants must not permit any portion of the MLS® VOW Data to be co-mingled with any non-MLS® listings on any MLS® VOW.
- (xxv) Where an MLS® VOW Corporate Participant provides the Board with written evidence, in a form satisfactory to the Board, that a seller represented by that MLS® VOW Corporate Participant does not wish their listing to be displayed on any and all MLS® VOWs the Board will thereafter identify that listing and that listing shall not be made available to Registrants.
- (xxvi) An MLS® VOW Participant may only exclude MLS® Data from display on its MLS® VOW in accordance with Section 8.13(c)(vi) and (xxv) or based on some objective criteria such as type of property, listed price or geographical location.
- (xxvii) An MLS® VOW Corporate Participant will cease operating an MLS® VOW, will not display MLS® VOW Data on that MLS® VOW and is not entitled to access the MLS® VOW Data if:
1. the MLS® VOW Corporate Participant notifies the Board in writing, in a form satisfactory to the Board, that it is ceasing to participate in the MLS® VOW Program;
  2. the MLS® VOW Corporate Participant ceases to be a corporate Member of the Board or is terminated or suspended from corporate membership in the Board;
  3. the MLS® VOW Corporate Participant's right to take part in the MLS® VOW Program or to have access to MLS® VOW Data has been suspended or terminated pursuant to an order under Appendix B of the Board's Bylaws;
  4. the MLS® VOW Corporate Participant is in breach of its obligations under this Section 8.13 and fails to remedy the default within fourteen (14) calendar days after receiving a written demand to do so from the Board; or
  5. the MLS® VOW Corporate Participant has been in breach of its obligations under this Section 8.13 more than three (3) times in any twelve (12) month period, regardless of whether those breaches have been remedied.
- (xxviii) An Authorized Individual Participant will cease operating an MLS® VOW, will not display MLS® VOW Data on that MLS® VOW and is not entitled to access the MLS® VOW Data if:

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1. the MLS® VOW Corporate Participant that authorized the Authorized Individual Participant to operate the MLS® VOW ceases to be a Member of the Board or is terminated or suspended from membership in the Board;
  2. the Authorized Individual Participant notifies the Board in writing, in a form satisfactory to the Board, that they are ceasing to participate in the MLS® VOW Program;
  3. the Authorized Individual Participant ceases to be a Member of the Board or is terminated or suspended from membership in the Board;
  4. the right of the Authorized Individual Participant to take part in the MLS® VOW Program or to have access to the MLS® VOW Data has been suspended or terminated pursuant to an order under Appendix B of the Board's Bylaws;
  5. the Authorized Individual Participant is in breach of its obligations under this Section 8.13 and fails to remedy the default within fourteen (14) calendar days after receiving a written demand to do so from the Board; or
  6. the Authorized Individual Participant has been in breach of its obligations under this Section 8.13 more than three (3) times in any twelve month period, regardless of whether those breaches have been remedied.
- (xxix) In addition to Sections 8.13(c)(xxvii) and (xxviii) the Board may immediately suspend an MLS® VOW Participant's access to the MLS® VOW Data if, in the sole discretion of the Board:
1. the Board knows or suspects an event described in Sections 8.13(c)(xxvii) or (xxviii) has occurred or is about to occur; or
  2. the Board concludes that the MLS® VOW Participant has defaulted in its obligations under this Section 8.13 and such default is or may be detrimental to the MLS® VOW Program.
- (xxx) Immediately upon termination of the MLS® VOW Participant's right to take part in the MLS® VOW Program the MLS® VOW Participant will return to the Board or destroy, or direct the return to the Board or the destruction of the MLS® VOW Data then in its possession or under its control. Within fifteen (15) days of termination of its right to participate in the MLS® VOW Program, the MLS® VOW Participant shall deliver to the Board a written statement signed and certified by a duly authorized officer of the MLS® VOW Corporate Participant indicating that the provisions of this Section 8.13(c)(xxx) have been fulfilled.

## RULES of COOPERATION of the CADREB, FVREB and REBGV

**SECTION 9 – KEY BOXES AND ACCESS CARDS****9.01 Terms of Use**

The use of key boxes and access cards is a privilege extended to Members and contract subscribers of the Board only and shall be governed by the terms of any contract entered into by them with the Board as well as the Rules of Cooperation including the following:

- (a) access cards are issued and registered for the exclusive use by an individual Member and are NOT TO BE LOANED under any circumstances;
- (b) in the event that access cards are lost, misplaced or stolen, the Board must be immediately notified;
- (c) PIN codes are to be kept confidential and any written record of the code must not be attached to or kept with the access card;
- (d) an access card may be programmed for any licensee who is affiliated with any British Columbia board/association, provided there is an existing agreement between the member and their home board/association;
- (e) directions for the use of key boxes (if any) as published on the listing must be strictly adhered to;
- (f) keys removed from key boxes must be replaced immediately following use;
- (g) it is the responsibility of the user to ensure that all security precautions are taken prior to departing the property; and
- (h) in the event of termination of membership in the Board the access card and key boxes may be transferred to another Member with documentation presented to the Board.



## RULES of COOPERATION of the CADREB, FVREB and REBGV

**SECTION 10 – USE OF MLS® DATA****10.01 British Columbia Assessment Information**

No Member, or their unlicensed assistants or administrators where permitted by the Board, shall use or permit or allow the use of British Columbia Assessment information to obtain addresses for solicitation or mailing purposes of any kind, and will use their best efforts to ensure that no information supplied pursuant to the agreement with British Columbia Assessment is used in the harassment of members of the public or contrary to the public interest, or in an otherwise improper manner.

**10.02 Misuse of MLS® Information**

Except as provided in the Rules of Cooperation, no Member, or their unlicensed assistants or administrators where permitted by the Board, except in the ordinary course of their business, shall make available to any unlicensed person, firm or corporation information distributed by the MLS®. The Member will be held responsible for any misuse by non-Members of MLS® information supplied by the Member.

**10.03 Access Codes**

Access codes to the MLS® computer systems are provided to Members, and to Members' unlicensed assistants and/or administrators where permitted by the Board, in order to maintain security of the computer system. Notwithstanding any other provision of the Rules of Cooperation no Member or employee of a corporate Member shall make available to any other individual, firm or corporation access codes to the MLS® computer system operated by the Board on behalf of its Members. For the purposes of this section "access codes" shall mean such identification, access codes and passwords that the Board determines, from time to time, are required for access to the MLS® computer system.

**10.04 Errors and Omissions in Database**

The Board shall not be liable to the Member for any interruption of services or for any error or omission contained in the database of the Board. The Board shall not be liable for any damages, whether direct or indirect, which may arise from such errors or omissions.

**10.05 License Agreement**

Members must comply with all of the terms and conditions of any license agreement entered into between the Member and the Board or a third party with respect to access to and use of the MLS® computer system and a breach of such license agreement shall constitute a breach of these Rules of Cooperation.

**10.6 Termination of Access**

Members may only access and use the MLS® computer system so long as they are Members in good standing of the Board. Upon termination or suspension of membership or suspension of all of the privileges of membership the Member's access to the MLS® computer system will be terminated.

## RULES of COOPERATION of the CADREB, FVREB and REBGV

**SECTION 11 – GENERAL****11.1 Forms Software**

Any forms (paper or electronic) created with publishing software must be authorized by and contain the logo and copyright notice of BCREA and/or the Board. Only software programs that do not allow the body of the form to be modified will be eligible to receive the required authorization.

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**EXHIBIT K**

## SCHEDULE "B2"

### SRAR IDX (INTERNET DATA EXCHANGE) RULES

An IDX website (also referred to as a 'broker reciprocity' website) is an advertising site which allows IDX participants to display all IDX participant data on their public websites. *Only members of brokerages participating in SRAR's IDX program may operate an IDX website.*

The following rules are in accordance with the Third Party Data Agreement between SRAR and the Third Party Subscriber, and must be adhered to for all IDX sites:

#### 1) Data provided

- a. SRAR (or appropriate regional council, as indicated in the *Member Website Broker Approval Form*) 'On Market' listings, including 'active' and 'conditional sale' status listings, for all IDX Brokerages.
- b. Data will contain
  - All fields available on REALTOR.ca
  - Any links (i.e., virtual tours) which have been added
  - All associated listing photos in Matrix.

#### 2) IDX Rules

- a. IDX data, or any portion of an IDX data feed, may not be displayed on any website except an approved IDX website.
- b. IDX websites can only be created for IDX participants.
- c. IDX searches must not display more than 200 results. If more than 200 results are identified by the query, the user may only view the first 200 and must refine the search in order to view additional properties within the total result set.
- d. *Brokerage Display* – The listing brokerage name must be clearly displayed anywhere listing information is displayed, including thumbnail views.
  - The listing brokerage name must be in the same font and size (or larger) of the largest font size within the frame of the listing content, and not visually separated from the listing display.  
Efforts (or omissions) to make the listings appear as though they have been listed by any brokerage other than the listing brokerage are strictly prohibited.
- e. *Display of Member Contact Information* – any display of IDX Broker data on an IDX website must not include any contact information or branding of any person or corporation other than the listing agent and/or brokerage.
  - Contact information and branding of the IDX website owner must be kept distinctly separate from IDX data of other IDX participants
- f. The following disclaimers must be displayed on all pages where MLS® System data is displayed:  
**"The Saskatoon Region Association of REALTORS® (SRAR) IDX Reciprocity listings are displayed in accordance with SRAR's MLS® Data Access Agreement and are copyright of the Saskatoon Region Association of REALTORS®"**  
 as well as  
**"The above information is from sources deemed reliable but should not be relied upon without independent verification. The information presented here is for general interest only, no guarantees apply."**
- g. No IDX Data (including photos) may be altered, modified, manipulated or obscured in any way, without the prior written consent of the Association.
  - The *SaskMatrix* watermark must remain unaltered and intact on all photos
  - No additional watermarks or photos are permitted on photos provided through the IDX program

- h. All IDX sites must access SRAR listing data using RETS (see *Schedule D*), with an IDX login provided by SRAR.
- i. Third Parties may cache approved data for brokerages. This cache **MUST** be updated at **least once each 24 hours** to keep all advertising accurate and current.

- A disclaimer stating the period of data refresh must appear on all pages where IDX data is displayed. With the appropriate information, an acceptable disclaimer may appear as:

**MLS® System data of the Saskatoon Region Association of REALTORS® displayed on this site is refreshed every XXX hours/minutes.**

SRAR recommends the following setup for cached data:

- Cached data must be overwritten when updating occurs as per rule 2)i.
  - Any data that has been cached must not be stored longer than the next data refresh (i.e., once cached data has been updated as per 2)i, data that was previously cached must be deleted).
- j. Any and all data obtained from the Association must not leave the physical borders of Canada or The United States of America for any reason; all servers must be physically located within these borders, this includes those that choose to utilize Cloud Services.
- In the event that the 3<sup>rd</sup> Party Subscriber opts to utilize Cloud Services, the Cloud Server Farm must physically reside within the borders of Canada or the United States of America.
- k. Where a third party subscriber has been granted access to multiple Saskatchewan associations' listings, the subscriber must:
- ensure there is no cross search and display capabilities between Associations;
  - keep the login accounts provided separate and never mixed, linked or combined in anyway.
- l. Sold data – or any reference to sold or conditionally sold data – may not be displayed on IDX websites, under any circumstances.
- m. Syndication of IDX data or similar method is not permitted.
- n. NO INACTIVE LISTING DATA MAY BE DISPLAYED UNDER ANY CIRCUMSTANCE.
- Storing inactive listing data is strictly prohibited.
- o. IDX sites must not claim to provide full access to the MLS® System or the data therein.
- p. IDX participants must ensure there is a clear distinction between non-MLS® System Data and MLS® System Data in all information displays and must not be displayed within the same search results or frame.
- q. Subscribers must ensure data is secured from scraping and other unauthorized access. Appropriate actions shall include but not be limited to:
- Monitoring the website for signs that data is being scraped;
  - Posting a notice on the website explaining that the website must only be used by consumers for the purpose of locating and purchasing real estate. The following notice may be used:
- The data provided must only be used by consumers for the purpose of listing and purchasing real estate and may not be used for any commercial purpose.**
- r. The third party subscriber company name must be displayed on all IDX sites. This name can either appear at the bottom of the page or in the HTML metadata.
- When the solution offered to a member for any IDX site is in the form of a plugin (See *Explanation of Usage Rules*), the subscriber company name must be displayed at the bottom of the plugin frame.
  - The subscriber must not use the MLS® System data accessed through this Schedule to populate any back office systems (see *Exhibit B4*).
- r. IDX participants must ensure that any changes to its IDX site, as required by the association to resolve any violation of these regulations and policies, are made within 14 days of the request.

## EXPLANATION OF USAGE RULES

DATABASE:

The Saskatchewan Region Association of REALTORS® holds ownership, and retains responsibility, for the MLS® System data of its members via the consents obtained by property owners through the *MLS® System Exclusive Seller's Brokerage Contract*. Third-party subscribers wishing to access (through RETS) listings of members from multiple Saskatchewan boards will be required to apply for data access directly to each board for whom they require data.

Third party subscribers will have separate login accounts for each board/association, and must not combine or link those accounts, or the data obtained through use of the accounts/login credentials, in anyway. Every effort must be implemented by the subscriber to ensure data of all Associations/Boards/Councils is kept separate.

**Purpose:** To ensure that the use of MLS® System data is consistent with the consents obtained from property owners, each Association/Board operates its own member-to-member IDX advertising program, to which subscribers must request access, individually.

#### ONLY RETS:

The method of accessing the MLS® System database is only available through RETS.

**Purpose:** RETS is the industry standard for sharing of real estate data which provides granular control of MLS® System data. Data returned by queries is controlled by the login provided in order to access IDX data.

#### PARALLEL DATABASES AND CACHING:

Use of MLS® System data on parallel databases to create a search product is permitted. All data must be refreshed at least once each 24 hours.

**Purpose:** To protect the integrity of the MLS® System by ensuring all data is current and accurate.

#### MAXIMUM 200 LISTINGS:

The subscriber must implement rules to limit the number of results to no greater than 200.

**Purpose:** A search that yields more than 200 listings is not specific enough to meet a user's needs. The limit will help adhere to the requirement.

#### DISCLAIMER:

**Purpose:** To continue to enforce the ownership of the MLS® System data and trademarks, and to provide a disclaimer against any inaccuracy in the system data.

#### LISTING BROKERAGE DISPLAY:

The name of the Listing Brokerage must be displayed wherever the IDX listing is displayed. This includes, but is not limited to, Thumbnail and Full Display views.

**Purpose:** To comply with advertising requirements, as described under the laws of the Province of Saskatchewan.

#### NO DISPLAY OF SOLD OR INACTIVE LISTINGS:

IDX listings that are being displayed on an IDX website that have been changed from an On-Market status to an Off-Market status, must not be displayed anywhere.

**Purpose:** Components of real estate data are protected by Canadian privacy legislation. Restricting display of off-market status properties ensures compliance with privacy legislation.

#### DISPLAY OF NON MLS® SYSTEM DATA:

Non-MLS® System data may be displayed on a member's IDX website. Non-MLS® System listings must be displayed separately and distinctly on a member's IDX website, it must be made clear that these listings are not from SRAR's MLS® System. Accomplishing this could be done by making individual search and results for MLS® Listings and Non MLS® Listings, and ensuring the appropriate disclaimers appear on the site.

**Purpose:** To protect the integrity of the MLS® System.

#### IDX SITES MUST NOT CLAIM TO PROVIDE FULL ACCESS TO THE MLS® SYSTEM DATA:

IDX sites are for advertising purposes, and therefore only contain a subset of the MLS® System data limited to active listings of brokerages which have opted into the IDX program.

**Purpose:** The IDX program is for the purpose of advertising property, and is not meant to displace the cooperative marketing system for members.

**DATA MUST BE SECURED AGAINST SCRAPING AND OTHER UNAUTHORIZED ACCESS:**

Scraping is unauthorized access for the purpose of populating another database by parties other than the authorized third party subscriber.

**Purpose:** To protect the security and integrity of the MLS® System.

**WATERMARKING OF PHOTOS**

Watermarking or placing graphics of any kind over the MLS® System data photos is prohibited.

**Purpose:** Photos that are placed within the MLS® System are watermarked with "SaskMatrix" to clearly that the photo came from the MLS® System.

**TERMS:**

**IDX Data** means MLS® data, or the property data relating to the listings of an IDX Broker, which is made available by the Association to IDX Participants for display on IDX Internet websites.

**IDX Participant** means: (i) an IDX Broker; or (ii) an IDX Active Member

**IDX Active Member** means an active member of the Association whose license is issued and maintained in an office of an IDX Broker.

**IDX Broker** means a broker of the Association that has not advised the Board/Association in writing that it does not wish to take part in the IDX Program.

**IDX Program** means a program which enables IDX Participants to display on their IDX Internet websites the listings of IDX Brokers.

**IDX Internet Website** means a website controlled and operated by an IDX Participant.

**Detail Display** means enlarged photo and additional text display of individual properties selected from a Thumbnail Display.

**Thumbnail Display** means a summary of a search displaying multiple property listings per page that may include a small photograph and limited text data.

**Scraping** means use of a software program or other method to extract photographs and text from an IDX Internet website for use on an Internet website other than an IDX Internet Website or for use in any manner except as permitted by Section 4.

**EXHIBIT L**



## LONDON AND ST THOMAS ASSOCIATION OF REALTORS

### INTERNET DATA EXCHANGE ("IDX") DATA AGREEMENT – DATA FEEDS

#### IMPORTANT: PLEASE READ CAREFULLY

**PLEASE REVIEW THE TERMS AND CONDITIONS OF THIS IDX DATA AGREEMENT (the "Agreement") CAREFULLY BEFORE INDICATING YOUR ACCEPTANCE BY SIGNING BELOW. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SIGN THIS AGREEMENT, IN WHICH CASE YOU WILL NOT BE PERMITTED TO ACCESS OR USE THE IDX SYSTEM OR SERVICES PROVIDED PURSUANT HERETO.**

This Agreement together with all materials referenced herein is a legal agreement and is made and entered into by and between the London and St. Thomas Association of REALTORS® ("LSTAR"), a corporation incorporated pursuant to the laws of the Province of Ontario, and \_\_\_\_\_ ("IDX Data Subscriber") and if applicable, \_\_\_\_\_ ("Third Party Service Provider"). In consideration of the mutual undertakings contained in this Agreement, the parties agree as follows:

#### ARTICLE 1 PARTICIPATION IN IDX SYSTEM

- 1.1 By electing to participate in the IDX System or any part thereof, IDX Data Subscriber hereby consents and agrees that all or part of any IDX Data (as may be designated by LSTAR from time to time) provided by IDX Data Subscriber, may be included in the IDX System and may appear on any Participating IDX Data Subscriber IDX website in accordance with the terms and conditions of this Agreement.
- 1.2 By electing to no longer participate in the IDX System of any part thereof, or upon suspension or termination of this Agreement for any reason whatsoever, pursuant to Article 12 herein, neither IDX Data Subscriber nor Third Party Service Provider shall have any access to the IDX System or any part thereof, including to any IDX Data at the time of electing not to participate, suspension, or termination of this Agreement, whichever occurs first. Any IDX Data of IDX Data Subscriber will be removed from the IDX System within seven (7) business days of such event and any IDX Data (including IDX Data transmitted through an IDX Datafeed) used or accessed by IDX Data Subscriber or Third Party Service Provider must be erased, deleted and destroyed in accordance with section 12.6 herein.

#### ARTICLE 2 GENERAL

- 2.1 This Agreement sets out the requirements for the orderly and efficient operation of the IDX System (as defined below) and is intended to make the IDX Data Subscriber and Third Party Service Provider aware of, among other things, what LSTAR deems to be both acceptable use and unacceptable use of the IDX System and any part thereof.
- 2.2 This Agreement should be read in conjunction with LSTAR Requirements (as defined below).

- 2.3 By using the IDX System or any part thereof, IDX Data Subscriber and Third Party Service Provider agree to, and must comply with, this Agreement and the LSTAR Requirements.
- 2.4 IDX Data Subscriber and Brokerage are fully responsible for all access to and use of the IDX System and any part thereof, whether through IDX Data Subscriber's assigned personal account, or through Third Party Service Provider's assigned personal account.
- 2.5 In the event of any conflict or inconsistency between this Agreement and any LSTAR Requirements, the LSTAR Requirements shall govern.

### ARTICLE 3 DEFINITIONS

- 3.1 Any capitalized term used herein shall have the same meaning as contained in the MLS® Rules and Policies, unless otherwise expressly defined in this Agreement.
- 3.2 The following terms shall have the meanings set forth below:

**"Agreement" or "IDX Data Agreement"** means this agreement, including any preamble and schedules, as amended, restated or replaced by LSTAR from time to time.

**"Confidential Information"** has the meaning set out at Article 8 herein.

**"Consumer(s)"** means a consumer with whom the Member has first established a lawful broker-consumer relationship, including, where necessary, completion of any actions required by provincial and/or federal law in connection with providing real estate brokerage services to clients and customers.

**"Effective Date"** shall be the date set out by the parties at the signature section of this Agreement.

**"Fees"** has the meaning set out at Article 4 herein.

**"IDX Data"** means all or any part of the subset of active listings extracted by LSTAR from the Listing(s) (which may include photos, provided by Participating IDX Data Subscribers and Brokerages and compiled and aggregated into the IDX Database and which information can be accessed by other Participating IDX Data Subscribers through the IDX System, and includes information transmitted through an IDX Datafeed, all of which may be determined at the exclusive discretion of LSTAR from time to time.

**"IDX Database"** means the compilation, aggregation and storage of all IDX Data, or any part thereof, as well as its selection, assembly and/or arrangement from time to time, and any associated software, which is incorporated into and is a part of the IDX System, as may be amended from time to time.

**"IDX Datafeed"** means an electronic transmission of IDX Data from LSTAR to IDX Data Subscriber or Third Party Service Provider, as provided by LSTAR from time to time in its sole discretion, and which information transmitted will, at all times, be subject to the LSTAR Requirements and this Agreement.

**"IDX Data Subscriber"** means the Participating IDX Data Subscriber that is a party to this Agreement.



**"IDX System"** means the proprietary internet-based IDX service owned and operated by or on behalf of LSTAR, and any successor or replacement service thereto and includes the IDX Database, IDX Data, IDX Datafeed and any information transmitted through an IDX Datafeed.

**"Internet Data Exchange" or "IDX"** is the exchange of IDX Data between Participating IDX Data Subscribers and Brokerages for the purpose of IDX Data Subscriber carrying on its business of a *bona fide* trade in real estate in Ontario for the Brokerage that employs it.

**"Member"** shall have the meaning designated in Article 2 of the By-laws and shall also include a Member's brokers and salespersons.

**"MLS® Database"** means the compilation, collection, aggregation, and storage of all, or any part of, the information, comments, opinions, statements, advice, descriptions, services, offers, data, files, links, ideas, images, graphics, audio clips, video clips, icons, or any other form of content of information, as well as its selection, assembly and arrangement, as may be amended from time to time, and any associated software, which form a part of LSTAR's MLS® System, and any successor or replacement service thereto.

**"MLS® Rules and Policies"** means the rules and policies enacted by LSTAR, and as may be amended, restated or replaced from time to time, by LSTAR in its sole discretion, which govern, among other things, the operation and use of LSTAR's MLS® System.

**"Participating IDX Data Subscribers"** means Members and their Brokerages (where applicable) that subscribe to and participate in the IDX System and execute an agreement in the form of this IDX Data Agreement.

**"Personal Information"** shall have the meaning attributed to such term in *the Personal Information Protection and Electronic Documents Act S.C. 2000, c.5*, as such legislation may be amended from time to time.

**"Purpose"** means to permit IDX Data Subscriber to display on Subscriber Website given IDX Data which is transmitted through an IDX Datafeed to IDX Data Subscriber for the purpose of use by Consumers that have a *bona fide* interest in the purchase, sale, or lease of real estate of the type being offered through Subscriber Website and for the purpose of IDX Data Subscriber carrying on its business of a *bona fide* trade in real estate in Ontario for the Brokerage that employs it.

**"REBBA"** means *the Real Estate and Business Brokers Act, 2002 S.O. 2002, c. 30* and the regulations thereunder, as such legislation may be amended from time to time.

**"Services"** shall have the meaning set out at Article 4 herein.

**"Standards"** means the document(s) created and/or amended from time to time by the Board of Directors of LSTAR which sets out the minimum technological standards relating to the hardware and software configuration and technology needed to access and use LSTAR's MLS® System and IDX System.

**“Subscriber Website”** refers to an IDX Data Subscriber’s internet website, or a feature of IDX Data Subscriber’s internet website, and includes any website maintained and operated by a Third Party Service Provider on behalf of IDX Data Subscriber, subject to IDX Data Subscriber’s oversight, supervision, and accountability and in accordance with the LSTAR Requirements.

**“Third Party Service Provider”** refers to an entity or person designated by an IDX Data Subscriber to operate a Subscriber Website on behalf of IDX Data Subscriber, subject to IDX Data Subscriber’s supervision, accountability and compliance with the LSTAR Requirements and this Agreement. No Third Party Service Provider has independent participation rights in the LSTAR MLS® System or IDX System by virtue of its right to receive information on behalf of an IDX Data Subscriber. No Third Party Service Provider has the right to use IDX Data expect such data used in connection with operation of a Subscriber Website on behalf of one or more IDX Data Subscribers. Access by a Third Party Service Provider to any such data is derivative of the rights of the IDX Data Subscriber on whose behalf the Third Party Service Provider operates a Subscriber Website.

**“LSTAR Intellectual Property”** shall have the meaning set out at Article 7 of this Agreement.

**“LSTAR Requirements”** means the agreements, rules, regulations, policies, guidelines and other documents which govern or regulate the access to and use of any software, computer system, wireless devices, or Internet-based application owned by LSTAR or to which LSTAR provides access, and includes but is not limited to, LSTAR’s Authorized User Agreement, the MLS® Rules and Policies, the LSTAR By-Laws, the Standards, and any other LSTAR documents by which the Brokerage, IDX Data Subscriber and Third Party Service Provider is each bound, including with respect to, among other things, confidentiality, privacy, network security, information or data security and/or the operation of the IDX System; as any of the foregoing may be amended and/or replaced from time to time; and all applicable laws and regulations as may be amended from time to time.

#### ARTICLE 4 SERVICES, LICENSE AND FEES

- 4.1 Services and License. Subject to the terms and conditions herein, LSTAR shall provide to IDX Data Subscriber or to Third Party Service Provider, if operating Subscriber Website on behalf of IDX Data Subscriber, an IDX Datafeed to IDX Data Subscriber or Third Party Service Provider, solely and exclusively for the Purpose(“Services”). Subject to the terms and conditions herein, LSTAR hereby grants to IDX Data Subscriber Third Party Service Provider, if operating Subscriber Website on behalf of IDX Data Subscriber, a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use such IDX Data as may be provided to IDX Data Subscriber or Third Party Service Provider through the IDX Datafeed strictly and exclusively for the Purpose.
- 4.2 Fees and Payment. In consideration for the Services and rights granted under this Agreement, IDX Data Subscriber agrees to pay to LSTAR the non-refundable license fees and other fees described at Schedule A attached to this Agreement (the “Fees”) as may

be amended by LSTAR from time to time. The Fees shall be due and payable as provided at Schedule A attached hereto.

- 4.3 Payment Default. In the event that IDX Data Subscriber is late or otherwise fails to pay any such payment due hereunder, IDX Data Subscriber shall be liable to LSTAR for such amounts until paid and IDX Data Subscriber shall pay interest at the rate of 1.25% per month on all outstanding amounts from the date the amount was due until the full amount is received by LSTAR. IDX Data Subscriber shall also reimburse LSTAR for all expenses and costs incurred by LSTAR for collection of unpaid amounts, including, without limitation, attorneys' fees and costs. LSTAR is entitled to receive the amounts provided for under this Agreement in addition to any other rights or remedies available to LSTAR with respect to IDX Data Subscriber and/or Third Party Service Provider's breach of any obligation under this Agreement.
- 4.4 Own Expenses and Costs. IDX Data Subscriber and Third Party Service Provider shall each be responsible for its own expenses and costs under this Agreement, and LSTAR shall have no obligation whatsoever to reimburse Third Party Service Provider or IDX Data Subscriber for any expenses or costs incurred by Third Party Service Provider or IDX Data Subscriber in the exercise of IDX Data Subscriber's or Third Party Service Provider's rights or in the performance of IDX Data Subscriber's and Third Party Service Provider's duties under this Agreement.

#### **ARTICLE 5      **IDX DATAFEED, MONITOR, SECURITY, AUDIT****

- 5.1 Means of Receiving IDX Datafeed. Receipt by IDX Data Subscriber or Third Party Service Provider, as applicable, of IDX Datafeed shall be exclusively by the means, including the format and method of delivery, designated by LSTAR from time to time. LSTAR may, in its sole discretion and at any time, change the means and nature of delivery of IDX Datafeed to IDX Data Subscriber or Third Party Service Provider. LSTAR will endeavour to provide IDX Data Subscriber and Third Party Service Provider (if applicable) reasonable notice, but is not obligated to do so.
- 5.2 LSTAR Monitoring Rights and Access to Subscriber Website. IDX Data Subscriber and Third Party Service Provider shall, at all times, make Subscriber Website readily accessible to LSTAR and Participating IDX Data Subscribers for purposes of verifying compliance with the LSTAR Requirements and this Agreement. Without limiting the generality of the foregoing, for security, monitoring and network maintenance purposes, and the like, at any time, LSTAR and Participating IDX Data Subscribers are authorized, but not obligated, to monitor and access applications and systems, monitor network traffic and usage, and to obtain full access to Subscriber Website, Third Party Service Provider server, and all applicable systems to ensure that any data transmitted through an IDX Datafeed is displayed on Subscriber Website in accordance with this Agreement and with the LSTAR Requirements. IDX Data Subscriber and Third Party Service Provider agree to render reasonable assistance and cooperation to LSTAR if so requested in connection with any of the foregoing.
- 5.3 Interruption, etc. of IDX Datafeed. LSTAR shall not be obligated to make any changes to LSTAR server(s), including any software running on LSTAR server(s), the configuration, applicable protocols, or any other aspect of LSTAR server(s) for any reason. IDX Data

Subscriber and Third Party Service Provider acknowledge that the IDX System and/or receipt of IDX Datafeed may, from time to time, be unavailable to IDX Data Subscriber or Third Party Service Provider for any reason, including without limitation, whether because of technical failures or interruptions, hardware malfunctions, software malfunctions, upgrades, intentional downtime for service, or changes to LSTAR server(s), causes beyond the reasonable control of LSTAR and/or not reasonably foreseeable by LSTAR, or otherwise. IDX Data Subscriber and Third Party Service Provider agree that any modification of LSTAR server(s), an interruption, delay, omission, or unavailability of the IDX System or any part thereof, the Services, or receipt of, or display of IDX Datafeed shall not constitute a default under this Agreement. LSTAR shall not, in any way be responsible for any such interruption or prevention of receipt of and/or display of IDX Datafeed, Services and/or access to or use of IDX System or any part thereof, and LSTAR shall have no liability of any nature to IDX Data Subscriber or Third Party Service Provider for, and IDX Data Subscriber and Third Party Service Provider waive all claims arising out of, any of the foregoing, or otherwise.

- 5.4 IDX Data Subscriber and Third Party Service Provider Security and Audit. IDX Data Subscriber and Third Party Service Provider shall utilize appropriate security protection measures, such as firewalls and shall maintain an audit trail of Consumers' activity on Subscriber Website and through any Third Party Service Provider server and make that information available to LSTAR, if LSTAR has determined in its sole discretion that any Subscriber Website or Third Party Service Provider server has been the cause of, and/or permitted a breach in, the security of the IDX System or any part thereof, LSTAR's MLS® System or a violation of any LSTAR Requirements.
- 5.5 Use of Internet. IDX Data Subscriber and Third Party Service Provider acknowledge that there are certain security, corruption, transmission errors, and access availability risks associated with using open networks such as the internet and IDX Data Subscriber and Third Party Service Provider hereby expressly assume all such risks. LSTAR shall not be responsible for any failure in providing the IDX Datafeed and/or access or use of the IDX System or any part thereof due to malfunction or loss of IDX Data Subscriber or Third Party Service Provider system or internet service providers or from the malfunction or failure of hardware, software or services used by IDX Data Subscriber or Third Party Service Provider.
- 5.6 IDX Data Subscriber and Third Party Service Provider Software and Hardware. Each of IDX Data Subscriber and Third Party Service Provider is solely responsible, at its expense, for acquiring, providing, servicing, updating, maintaining, and ensuring the compatibility with, all the software, hardware and communication services owned or operated by it, in order to ensure access to the IDX System or any part thereof in accordance with the terms herein.
- 5.7 Notification. IDX Data Subscriber and Third Party Service Provider shall each promptly notify LSTAR if either becomes aware of any error, bug, or security breach, or any unauthorized use, reproduction or distribution of the IDX System or any part thereof. Subject to the foregoing, IDX Data Subscriber and Third Party Service Provider shall each maintain all such information in confidence in accordance with the confidentiality provisions herein.

- 5.8 Liability for Use of IDX Datafeed. IDX Data Subscriber is responsible for any liability or loss of goodwill associated with problems of data integrity, accuracy or timeliness arising from IDX Data Subscriber's use, either directly, or indirectly through Third Party Service Provider, of the IDX System or any part thereof.

#### ARTICLE 6 **CONDITIONS AND RESTRICTIONS ON USE**

- 6.1 Compliance. When using the IDX System or any part thereof, IDX Data Subscriber and Third Party Service Provider must comply with the terms and conditions of this Agreement and all of the LSTAR Requirements.
- 6.2 Restrictions. Except as expressly authorized in this Agreement or by LSTAR in writing, IDX Data Subscriber and Third Party Service Provider shall not facilitate, cause, assist, or allow any person or third party, directly or indirectly, to do under any circumstances whatsoever, any unauthorized activity, including without limitation:
- (a) access or use the IDX System or any part thereof, in a manner that is contrary to or in violation of the LSTAR Requirements, and/or for any purpose other than as permitted herein. Without limiting the generality of the foregoing, except as permitted herein, neither IDX Data Subscriber nor Third Party Service Provider shall use the IDX System or any part thereof, in connection with any website (other than display on Subscriber Website), wireless device, other electronic or digital devices, or any other means, or internet posting, advertising, unsolicited products or services, promotional material or any other display, distribution, publication or republication to the public or any group or third party;
  - (b) assist, allow or permit any person or entity to gain access to or use of the IDX System or any part thereof, by or through IDX Data Subscriber or Third Party Service Provider, or through IDX Data Subscriber's or Third Party Service Provider's password, Authenticator and/or assigned personal accounts, or access or use the IDX System or any part thereof, and/or to provide service bureau, hosting or time-sharing services or to support the operations of any other person or entity;
  - (c) use or attempt to use another Participating IDX Data Subscriber's or authorized third party service provider's password, Authenticator, assigned personal accounts or other access information to gain access to or use of the IDX System or any part thereof;
  - (d) fail to maintain reasonable security precautions to protect its password and/or Authenticator and assigned personal accounts, or other access information from unauthorized access, use or disclosure, fail to maintain reasonable security precautions to prevent scraping, data mining, data piracy and other unauthorized access, use and/or exploitation of the IDX System or any part thereof, fail to monitor its website for indications that any such information is being scraped, mined, or other unauthorized access, use and/or exploitation of any such information and/or fail to immediately notify LSTAR upon becoming aware of any of the foregoing;
  - (e) attempt, in any way whatsoever, to circumvent any computer security measures or resource restrictions, or attempt to gain unauthorized access to LSTAR operating systems, servers and/or networks, including by obscuring or falsifying the identity of IDX Data Subscriber or Third Party Service Provider;

- (f) distribute, redistribute, copy, produce, reproduce, publish, republish, duplicate, alter, modify, or transfer, the IDX System or any part thereof, or merge IDX Data or any part thereof, with other data, or publish IDX Data in any form, in whole or in part or in any other way exploit any such data;
- (g) scrape, date mine, download, distribute, redistribute, export, merge, deliver, or transmit the IDX System or any part thereof, including to any computer, wireless device, or any other electronic or digital device, except downloading to IDX Data Subscriber server or Third Party Service Provider server, as applicable, as permitted under this Agreement. Without limiting the foregoing, prohibited uses include "screen scraping", "database scraping" and any other activity intended to collect, store, reorganize, profile, extract patterns, and/or manipulate the IDX System or any part thereof;
- (h) market, sell, resell, assign, exchange, barter or transfer, convey, loan, lease, rent, grant access to, license or sublicense, or in any other manner exploit the IDX System or any part thereof. IDX Data Subscriber or Third Party Service Provider agree to take all reasonable steps necessary to protect the IDX System and any part thereof, from any of the foregoing, including but not limited to, unauthorized access, distribution, reproduction, copying, use, or in any other way, exploit the IDX System or any part thereof;
- (i) access or use the IDX System or any part thereof in a manner that is contrary to or in violation of this Agreement, LSTAR Requirements and/or for any purpose other than as permitted herein;
- (j) use a robot, spider, scraper, or other automatic device, software, or manual process for any purpose, including to directly or indirectly access, monitor, or copy the IDX System or any part thereof;
- (k) use any device, software or routine to bypass LSTAR robot exclusion headers or any other security measures, or interfere, or attempt to interfere, with LSTAR servers, the IDX System or any part thereof;
- (l) decompile, reverse engineer, disassemble, modify and/or adapt the IDX System or any part thereof, or any software owned or licensed by LSTAR, or attempt to create any source code that is derived from the IDX System or any part thereof, or any software owned or licensed by LSTAR;
- (m) use the IDX System or any part thereof, Subscriber Website and/or any other means to conduct any abusive practices including transmitting anything defamatory, threatening, hateful, harassing, vulgar, obscene, harmful, or invasive of anyone's privacy;
- (n) impair, jeopardize, violate or infringe the rights of LSTAR, Participating IDX Data Subscribers or any person or entity, including, without limitation, intellectual property, privacy, and/or contractual rights;
- (o) cause excessive strain on LSTAR server(s) or system(s), or cause unwarranted or unsolicited interference with other Participating IDX Data Subscribers' or their third party service providers' use of or access to the IDX System or any part thereof;

- (p) cause or permit anything that will prejudice or hamper the reputation or goodwill of LSTAR;
- (q) disclose, or permit the disclosure of, the IDX System or any part thereof, to any person except as specifically permitted in this Agreement;
- (r) syndicate or redistribute, by any means, the IDX System or any part thereof;
- (s) cause or take any action which might reasonably be construed as injurious or detrimental to the interests of LSTAR or of any other Participating IDX Data Subscribers; and/or
- (t) represent or suggest any affiliation between LSTAR and IDX Data Subscriber and/or between LSTAR and Third Party Service Provider.

6.3 Conditions on Operating Subscriber Website. In operating Subscriber Website, in addition to its obligations under this Agreement and the LSTAR Requirements, IDX Data Subscriber and Third Party Service Provider shall comply with the following requirements, as may be amended from time to time in LSTAR's sole discretion:

- (a) No Listing(s) other than the data transmitted through an IDX Datafeed may be displayed on Subscriber Website.
- (b) The number of Listing(s) that Consumers may view or retrieve on or from a Subscriber Website in response to an inquiry will be limited to 100 Listing(s);
- (c) The listing Brokerage must be clearly displayed for all Listing(s) including thumbnail views. The listing Brokerage must be in the same font and size as the other Listing(s) details and not visually separated from the Listing(s) display;
- (d) The display of other Brokerages' Listing(s) obtained from other sources (e.g., other MLS® non-participating Brokerages, etc.) on Subscriber Website shall display the source from which each such Listing(s) was obtained; and
- (e) The contact information of the IDX Data Subscriber operating Subscriber Website must be clearly separated from the detail display of a Listing(s) which is listed by a Brokerage other than the IDX Data Subscriber's own Listing(s).
- (f) The content of any information transmitted through an IDX Datafeed, or any part thereof, may not be changed in any way from the content as it is provided by LSTAR. Notwithstanding the foregoing, any information transmitted through an IDX Datafeed may only be reformatted but only to the extent of choosing which fields to display based on objective criteria such as geography or type of property.
- (g) Each Subscriber Website must be preapproved by the managing Broker of Record or its designate using an "IDX Data Subscriber Website Brokerage Approval Form", in the form attached hereto at Schedule B, an executed copy of which shall be provided to LSTAR.
- (h) IDX Data Subscriber shall ensure that the information transmitted through an IDX Datafeed displayed on Subscriber Website is refreshed not less than every 24 hours.

- (i) IDX Data Subscriber shall have the following notices on all information transmitted through an IDX Data Feed displayed on IDX Subscriber's Website indicating:
- i) *The data relating to real estate on this web site comes in part from the Internet Data Exchange (IDX) program of the London and St. Thomas Association of REALTORS®. The information herein is believed to be accurate and timely, but no warranty as such is expressed or implied.*
  - ii) *The trademarks MLS®, Multiple Listing Service® and the associated logos are owned by The Canadian Real Estate Association (CREA) and identify the quality of services provided by real estate professionals who are members of CREA. Used under license.*
- (j) Subscriber Website must not claim to provide full access to LSTAR's MLS® System or IDX System.
- (k) IDX Data Subscriber shall prominently post a notice on Subscriber Website stating that the Subscriber Website may only be used to Consumers that have *bona fide* interest in the purchase, sale, or lease of real estate of the type being offered through Subscriber Website. The following notice may be used: "The information provided herein must only be used by consumers that have a *bona fide* interest in the purchase, sale, or lease of real estate and may not be used for any commercial purpose or any other purpose."

6.4 Authorization of Third Party Service Provider to Receive IDX Datafeed. Third Party Service Provider hereby acknowledges and agrees that (i) Third Party Service Provider has no independent Member rights in IDX Data received via an IDX Datafeed by virtue of this Agreement; (ii) Third Party Service Provider shall not use IDX Data except such IDX Data as may be provided through an IDX Datafeed in connection with operation of Subscriber Website pursuant to this Agreement; and (iii) receipt by Third Party Service Provider of the IDX Datafeed is derivative of the rights of IDX Data Subscriber. For greater certainty, the termination of the rights and license granted herein to IDX Data Subscriber shall result in the termination of the rights and license granted herein to Third Party Service Provider.

## ARTICLE 7 INTELLECTUAL PROPERTY

7.1 Ownership of Intellectual Property. IDX Data Subscriber and Third Party Service Provider acknowledge and agree that the LSTAR's MLS® System, MLS® Database, IDX System and any part thereof, are proprietary to LSTAR and/or its licensors and are protected by copyright, trademark, patent and other intellectual property laws of Canada and international treaties and conventions and other applicable laws (collectively "LSTAR Intellectual Property"). Third Party Service Provider and IDX Data Subscriber each further acknowledges and agrees that all right, title, and interest (including without limitation all copyright, trademark, patent and trade secret rights) now existing or hereafter coming into force, in and to LSTAR Intellectual Property are and shall remain the sole property of LSTAR and/or its licensors. Nothing in this Agreement shall be construed as conveying or granting to IDX Data Subscriber or Third Party Service Provider an interest or right of any kind, express or implied, in or to any LSTAR Intellectual Property and any other rights, including in relation to all of the foregoing, except for the limited rights granted herein.



- 7.2 Trademark License. LSTAR further grants to IDX Data Subscriber or Third Party Service Provider, if Third Party Service Provider is operating IDX Data Subscriber's website, a limited, non-exclusive, non-transferable, non-sublicenseable revocable license to use LSTAR's trademark(s) identified in Schedule C attached hereto ("LSTAR Trademark") for the sole purpose of identifying LSTAR as the owner of any LSTAR Intellectual Property, including any LSTAR Trademark(s) and any associated goods/services. LSTAR may subsequently grant similar rights to IDX Data Subscriber and Third Party Service Provider, if Third Party Service Provider is operating IDX Data Subscriber's website, to use other trademarks of LSTAR, and IDX Data Subscriber and Third Party Service Provider's use thereof shall be subject to applicable provisions of this paragraph and any other requirements as may be provided by LSTAR from time to time.
- 7.3 No Rights. IDX Data Subscriber and Third Party Service Provider acknowledge and agree that neither has any rights in and to and shall not obtain, through the terms of this Agreement or otherwise, any rights in and to any copyright, trademarks, patent, and/or other proprietary or intellectual property rights of LSTAR and/or its licensors, now or hereafter coming into existence, including without limitation, in and to LSTAR Intellectual Property, and any part of, or relating to, any of the foregoing.
- 7.4 Restrictions. IDX Data Subscriber and Third Party Service Provider shall not, nor shall either assist any person or entity, in Canada, or any other country or territory, to: (a) take any action or cause or permit anything that will impair, negate, invalidate, jeopardize, violate, diminish the value, infringe or otherwise, the intellectual property and/or proprietary rights of LSTAR, including without limitation, in and to LSTAR Intellectual Property and any part of, and/or relating to, any of the foregoing, trademarks, copyright, and/or patents; (b) directly or indirectly dispute or contest the ownership, validity, or enforceability of the intellectual property and proprietary rights of LSTAR including, without limitation, in and to LSTAR Intellectual Property and any part of, or relating to, any of the foregoing, trademarks, copyright, and/or patents; and/or (c) claim, assert any rights or interest to, use, or apply to register, record, or file any trademark or design application that is identical or similar to any LSTAR trademarks.
- 7.5 Waiver of Third Party Claims. Each of IDX Data Subscriber and Third Party Service Provider waives any claims against LSTAR resulting from rights that others may assert against IDX Data Subscriber and/or Third party Service Provider based on IDX Data Subscriber's and/or Third Party Service Provider's exercise of the rights granted under this Agreement, including without limitation claims of trademark, copyright and/or patent infringement and/or violation of other intellectual property or proprietary rights.
- 7.6 Proprietary and Other Notices. Each of IDX Data Subscriber and Third Party Service Provider agrees that it will include and not alter or remove any trademark; copyright, other notices, and/or any disclaimers or other legends located or used on or in connection with the IDX System and any part thereof as required by LSTAR from time to time.

## ARTICLE 8 CONFIDENTIAL INFORMATION

- 8.1 Confidential Information. For the purposes herein, "Confidential Information" means any and all information and material proprietary to LSTAR and not generally know to the

public, including confidential information, trade secret information, knowledge, processes, systems, technology, software and data and information of every kind, including IDX Data and information transmitted through IDX Datafeed (except to the extent to which this Agreement permits disclosure), IDX System and any part thereof, IP addresses, access codes and passwords, disclosed by LSTAR to IDX Data Subscriber or Third Party Service Provider pursuant hereto or that IDX Data Subscriber or Third Party Service Provider may obtain knowledge or access to as a result of this Agreement. Without limiting the generality of the foregoing, LSTAR may mark Confidential Information "confidential" or "proprietary" but regardless of whether so marked or identified, any information or material, whether in oral, visual, audio, written or other form, that IDX Data Subscriber and Third Party Subscriber each knew or ought to have known was considered confidential or proprietary to LSTAR will be considered Confidential Information.

- 8.2 Exclusions. Notwithstanding the foregoing, IDX Data Subscriber and Third Party Service Provider shall not have any obligation under this Article 8, as evidenced by written record, with respect to any information, knowledge and/or data disclosed pursuant hereto to the extent same: (a) is or hereafter becomes part of the public domain through no wrongful act of IDX Data Subscriber or Third Party Service Provider; (b) is known to IDX Data Subscriber or Third Party Service Provider free of any obligation of confidentiality at the time of first disclosure hereunder; (c) is lawfully obtained by IDX Data Subscriber or Third Party Service Provider from a third party without obligation of confidentiality and without knowledge of breach of any obligation of confidentiality; (d) is independently developed by IDX Data Subscriber or Third Party Service Provider; or (e) is disclosed pursuant to a court order or other legal compulsion; provided, however, that prior to any such disclosure, IDX Data Subscriber or Third Party Service Provider, as applicable, shall, unless legally prohibited, promptly notify LSTAR in writing of the requirement or request to disclose, and cooperate with LSTAR in protecting against or limiting the scope of any such disclosure.
- 8.3 Confidentiality. IDX Data Subscriber and Third Party Service Provider each covenants and agrees that it shall: (a) receive and maintain all Confidential Information received hereunder in strict confidence; (b) use Confidential Information received hereunder strictly as permitted herein lawfully exercising the rights and/or performing its obligations hereunder and for no other purpose whatsoever; (c) use the highest degree of care to protect and handle Confidential Information received hereunder; and (d) advise LSTAR immediately of any circumstances, incidents or events which may impact, compromise, or in any way relate to, the privacy, confidentiality, availability or security of the Confidential Information, including, without limitation, the violation or non-observance of any term or condition contained in this Agreement.
- 8.4 Ownership of Confidential Information. All Confidential Information is and will remain the exclusive property of LSTAR and/or its licensors, and neither IDX Data Subscriber nor Third Party Service Provider will have any rights, by license or otherwise, to Confidential Information except as expressly provided herein.

**ARTICLE 9      PRIVACY**

- 9.1 Compliance with Privacy Laws. IDX Data Subscriber and Third Party Service Provider shall each ensure that all Personal Information that may be collected by IDX Data Subscriber or Third Party Service Provider in connection with its access to or use of the IDX System or any part thereof, will be collected, used, disclosed and maintained strictly in accordance with the requirements of applicable privacy legislation including the *Personal Information Protection and Electronic Documents Act* and with the LSTAR Requirements.
- 9.2 Listings. IDX Data Subscriber and Third Party Service Provider will, at all times, treat any personally identifiable information contained in the IDX System and any part thereof, as Personal Information and will protect and safeguard such Personal Information from any collection, use or disclosure that is not expressly permitted by this Agreement.
- 9.3 Consent. By agreeing to the terms of this Agreement and by accessing and using the IDX System or any part thereof and exercising any other rights granted herein, IDX Data Subscriber and Third Party Service Provider each consents to the collection, use and disclosure of its Personal Information by LSTAR in accordance with LSTAR's privacy policy located at LSTAR's website, including to the extent necessary for LSTAR to communicate with IDX Data Subscriber and Third Party Service Provider and to administer and enforce this Agreement and the LSTAR Requirements. IDX Data Subscriber and Third Party Service Provider each acknowledges having read, understanding and agreeing to be bound by such a privacy policy.

**ARTICLE 10     DISCLAIMER AND LIMITATION OF LIABILITY**

- 10.1 DISCLAIMER. BROKERAGE, IDX DATA SUBSCRIBER AND THIRD PARTY SERVICE PROVIDER ACKNOWLEDGE AND AGREE THAT THE IDX SYSTEM AND ANY PART THEREOF, AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY GUARANTEE, REPRESENTATION, CONDITION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION OR GUARANTEE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, TITLE OR NON-INFRINGEMENT OR WITH RESPECT TO THE ACCURACY, CORRECTNESS, CURRENCY, RELIABILITY, USEFULNESS, OR COMPLETENESS OF IDX DATA, IDX DATAFEED OR WITH RESPECT TO THE USE OR THE RESULTS OF THE USE OF THE IDX SYSTEM AND ANY PART THEREOF, ANY SERVICES AND THOSE ARISING BY LAW, STATUTE, USAGE OF TRADE OR COURSE OF DEALING. LSTAR MAKES NO GUARANTEE, REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, AND ASSUMES NO LIABILITY WHATSOEVER WITH RESPECT TO THE ADEQUACY OF THE SERVICES, IDX SYSTEM, IDX DATAFEED, OR IDX DATA FOR ANY PARTICULAR PURPOSE OR WITH RESPECT TO ITS ADEQUACY TO PRODUCE ANY PARTICULAR RESULT OR THAT THE IDX SYSTEM AND ANY PART THEREOF, AND/OR SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED.
- 10.2 LIMITATION OF LIABILITY. NEITHER LSTAR NOR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS WILL BE LIABLE TO BROKERAGE, IDX DATA SUBSCRIBER, THIRD PARTY SERVICE PROVIDER, OR ANY THIRD PARTY (INCLUDING WITHOUT LIMITATION IDX DATA SUBSCRIBER'S CLIENTS OR CUSTOMERS) FOR ANY DIRECT, INDIRECT, SPECIAL,

INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR DAMAGES OF ANY NATURE, INCLUDING AND LOSS OF PROFITS OR REVENUE OR GOODWILL, OR INTERRUPTION OF BUSINESS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT INCLUDING WITHOUT LIMITATION ANY INACCURATE, INCORRECT, UNRELIABLE, NOT CURRENT, NOT USEFUL, OR INCOMPLETE IDX DATA, IDX DATAFEED, THE TERMINATION OF THIS AGREEMENT, THE PERFORMANCE OR NON-PERFORMANCE OF THE IDX SYSTEM, THE IDX DATAFEED, THE SERVICES AND/OR THE USE OF ANY IDX DATA OR IDX DATAFEED MADE AVAILABLE PURSUANT HERETO, HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION, WHETHER IN CONTRACT, TORT, (INCLUDING NEGLIGENCE) FUNDAMENTAL BREACH OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

- 10.3 THIRD PARTY WEBSITES. THE IDX DATA OR ANY INFORMATION TRANSMITTED THROUGH AN IDX DATAFEED MAY INCLUDE LINKS TO THIRD PARTY WEBSITES OR FEEDS FROM THIRD PARTY WEBSITES (COLLECTIVELY "THIRD PARTY WEBSITES"). LSTAR DOES NOT WARRANT OR ENDORSE THE CONTENT CONTAINED IN ANY THIRD PARTY WEBSITE. LSTAR DOES NOT MAKE ANY ENDORSEMENT, REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, OR STATUTORY, OF ANY KIND REGARDING ANY THIRD PARTY WEBSITE, INCLUDING REGARDING THE LEGALITY, ACCURACY, RELIABILITY, QUALITY, USEFULNESS, COMPLETENESS, TIMELINESS, NON-INFRINGEMENT, SECURITY, OR SUITABILITY OF ANY CONTENT ON A THIRD PARTY WEBSITE OR WHETHER OR NOT AN NECESSARY CONSENTS REQUIRED UNDER APPLICABLE PRIVACY LAWS OR OTHER LAWS FOR ANY ASPECT OF ANY THIRD PARTY WEBSITE HAVE BEEN PROPERLY OBTAINED. LSTAR DOES NOT MAKE ANY ENDORSEMENT, REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, REGARDING THE MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE OF ANY CONTENT, FUNCTIONS, GOODS OR SERVICES ON OR MADE AVAILABLE THROUGH ANY THIRD PARTY WEBSITES OR THAT THE OPERATION OF ANY THIRD PARTY WEBSITE WILL BE UNINTERRUPTED, FREE OF ERROR, VIRUSES, DEFECTS, OR ANY OTHER HARMFUL COMPONENTS OR THAT ANY OF THE FOREGOING WILL BE CORRECTED. THE CONTENT, FUNCTIONS, GOOD AND/OR SERVICES AVAILABLE ON OR THROUGH ANY THIRD PARTY WEBSITE IS NOT UNDER LSTAR'S CONTROL IN ANY WAY WHATSOEVER AND IF THIRD PARTY SERVICE PROVIDER OR IDX DATA SUBSCRIBER CHOOSES TO ACCESS OR HAVE ANY DEALING WITH ANY THIRD PARTY WEBSITE, IDX DATA SUBSCRIBER AND THIRD PARTY SERVICE PROVIDER DO SO ENTIRELY AT THEIR OWN RISK.

## **ARTICLE 11 INDEMNITY AND REPRESENTATIONS AND WARRANTIES**

- 11.1 Indemnity. Brokerage, IDX Data Subscriber and Third Party Service Provider jointly and severally agree to indemnify, defend and hold harmless LSTAR, its directors, officers, employees and agents, from and against any and all claims, demands, suits, proceedings, actions, causes of action and/or liability of any kind whatsoever, for any and all damages, losses, costs and/or expenses (including the payment of all legal expenses, including reasonable attorneys' fees and costs) arising out of or related to any and all breaches by IDX Data Subscriber and/or Third Party Service Provider of any term or condition of this Agreement, including any breach of representation or warranty set forth in this Agreement, receipt of the IDX Datafeed, and the use and display of information transmitted through an IDX Datafeed. Each of IDX Data Subscriber and

Brokerage is and shall be fully and directly liable for any breach by Third Party Service Provider under this Agreement and/or LSTAR Requirements. LSTAR shall have the right to control its own defence and engage legal counsel of its choosing.

11.2 Representations and Warranties.

- (a) Each party represents and warrants to the others that this Agreement, when executed by such party, will be valid, binding and enforceable with respect to such party in accordance with its terms.
- (b) IDX Data Subscriber represents and warrants that:
  - (i) IDX Data (including Data transmitted through an IDX Datafeed) will be used by IDX Data Subscriber and Third Party Service Provider strictly as permitted herein;
  - (ii) it has executed an agreement with Third Party Service Provider establishing the Third Party Service Provider's right to receive and access IDX Datafeed (per the "Third Party Service Provider IDX Data Transfer Authorization Form" attached hereto at Schedule D) and shall provide to LSTAR a copy of such agreement in which IDX Data Subscriber acknowledges its selection of Third Party Service Provider to operate Subscriber Website on its behalf;
  - (iii) it has made Third Party Service Provider aware of LSTAR Requirements;
  - (iv) Subscriber Website terms of use are compliant with LSTAR Requirements and it has made Third Party Service Provider aware of such terms of use;
  - (v) the execution of this Agreement and/or the performance of its obligations under this Agreement will not constitute a default, or an event which with the passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which it is bound; and
  - (vi) it is a Member in good standing in accordance with LSTAR's By-Laws and REBBA.
- (c) Third Party Service Provider represents and warrants that:
  - (i) it is not and shall not be under any disability, restriction, or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement;
  - (ii) that the grant of rights herein to Third Party Service Provider and the fulfillment of its obligations as contemplated under this Agreement are proper and lawful; and
  - (iii) the execution of this Agreement and/or the performance of its obligations under this Agreement will not constitute a default, or an event which with the passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which it is bound.

**ARTICLE 12 TERM AND SUSPENSION OR TERMINATION**

- 12.1 Term. The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until or unless suspended or terminated as further described herein.

- 12.2 Suspension. In the event IDX Data Subscriber or Third Party Service Provider is in breach of this Agreement, or of any of the LSTAR Requirements, as determined by LSTAR in its sole discretion, LSTAR may immediately suspend without notice IDX Data Subscriber's and Third Party Service Provider's access to and use of the IDX System. LSTAR may end a suspension, at its sole discretion, by notice to IDX Data Subscriber.
- 12.3 Termination. Without limiting any other rights or remedies available to LSTAR under the terms of this Agreement, the LSTAR Requirements, at law or in equity, LSTAR may immediately terminate this Agreement and IDX Data Subscriber's and Third Party Service Provider's access to and use of the IDX System, in which case IDX Data Subscriber and Third Party Service Provider shall comply with any applicable procedures and obligations contained herein and/or in the LSTAR Requirements in the event of any of the following:
- (a) IDX Data Subscriber or Third Party Service Provider is in breach of:
    - (i) any term or condition of this Agreement, which is not cured (if capable of being cured) within 10 days after notice from LSTAR;
    - (ii) any representation, warranty, covenant, term or condition contained in the LSTAR Requirements, which is not cured within the applicable cure period, if any, as set forth in the LSTAR Requirements in respect of the specific breach; or
    - (iii) any provisions contained in REBBA, the LSTAR By-Laws or any other applicable laws;
  - (b) Third Party Service Provider no longer being designated by IDX Data Subscriber to operate Subscriber Website;
  - (c) IDX Data Subscriber ceasing to maintain its status with LSTAR;
  - (d) IDX Data Subscriber or Third Party Service Provider accessing the IDX System and/or downloading IDX Datafeed in an unauthorized manner and/or that hinders the ability of Participating IDX Data Subscribers from accessing the IDX System and/or receiving or downloading IDX Datafeed;
  - (e) IDX Data Subscriber or Third Party Service Provider violating or breaching and LSTAR Requirements or this Agreement; or
  - (f) IDX Data Subscriber or Third Party Service Provider failing to make any required payments to LSTAR.
- 12.4 Notice of Termination. IDX Data Subscriber may elect to no longer participate in the IDX System and thereby terminate this Agreement upon fifteen (15) business days written notice to LSTAR of such termination and upon completion of the "LSTAR IDX Unsubscribe Notice Form", attached hereto at Schedule E, an executed copy of which shall be submitted to LSTAR.

- 12.5 Discontinuance of IDX System. In the even LSTAR, in its sole discretion, decides at any time to discontinue offering the IDX System or any part thereof, LSTAR may terminate this Agreement and accordingly terminate IDX Data Subscriber and Third Party Service Provider access to and use of the IDX System and any part thereof.
- 12.6 Return, Destruction, etc. Each of IDX Data Subscriber and Third Party Service Provider shall promptly cease all use of Confidential Information, Personal Information, IDX System and any part thereof, and any other proprietary and confidential information received hereunder upon any suspension or termination of its access to and use of the IDX System and any part thereof pursuant to this Agreement and shall promptly, by secure means, permanently delete, erase and destroy any and all Confidential Information, Personal Information, IDX Data (including IDX Data transmitted through an IDX Datafeed) and any materials (in any medium) containing or reflecting any IDX Data (including any IDX Data transmitted through an IDX Datafeed) including all copies, extracts, reproductions, or otherwise, in whole or in part, that each has stored anywhere and by any means, including without limitation on magnetic media or other electronic or digital storage, including all backup copies, in its possession or under its control, as well as any copies in the possession or under the control of its representatives, immediately upon termination of this Agreement, but in any event, not later than seven (7) days after termination of this Agreement, for any reason whatsoever. IDX Data Subscriber and Third Party Service Provider shall each certify in writing to LSTAR that each has complied with the foregoing.
- 12.7 Effect of Suspension or Termination; Survival. Upon any suspension or termination of this Agreement for any reason whatsoever, or IDX Data Subscriber's rights hereunder, any and all licenses and rights granted herein to IDX Data Subscriber and Third Party Service Provider to access and use the IDX System and any part thereof shall immediately terminate. Suspension or termination of this Agreement, for any reason whatsoever, shall not limit LSTAR from pursuing any other remedies available to it under the LSTAR Requirements, or at law or in equity, including, if applicable, injunctive relief.
- 12.8 Nonrefundable. No Fees, portion of Fees, or other fees payable by IDX Data Subscriber or Third Party Service Provider under this Agreement will be refunded to Third Party Service Provider or IDX Data Subscriber upon suspension or termination of this Agreement for any reason whatsoever.
- 12.9 LSTAR Requirements. Suspension or termination of this Agreement for any reason whatsoever shall not relieve each of Brokerage, IDX Data Subscriber, and Third Party Service Provider of any of its responsibilities, obligations, liabilities, and/or indemnifications herein, including the LSTAR Requirements, which responsibilities, obligations, liabilities, and/or indemnifications shall survive the termination of this Agreement.

**ARTICLE 13 REMEDIES**

- 13.1 Remedies. IDX Data Subscriber and Third Party Service Provider agree that a breach of this Agreement will result in immediate and irreparable injury and harm to LSTAR. In such event, LSTAR shall have the right to immediately terminate the right of IDX Data Subscriber and Third Party Service Provider to receive the IDX Datafeed and access the IDX System and to obtain an injunction, specific performance, and/or other equitable relief to prevent the breach under this Agreement; provided, however, that this shall in no way limit any other remedies which LSTAR may have including, without limitation, the right to seek monetary damages.

**ARTICLE 14 GENERAL**

- 14.1 Notices. Any notice, direction or other communication require or permitted to be given hereunder shall be in writing and shall be sufficiently given if delivered personally, mailed by prepaid registered mail, or transmitted by facsimile or other form of recorded communication to the appropriate party as follows:

- (a) in the case of LSTAR, at:

342 Commissioners Rd. W  
London, ON  
N6J 1Y3  
Fax: 519-641-1419  
Email: [betty@lstar.ca](mailto:betty@lstar.ca)  
Attention: Betty Doré EVP

- (b) in the case of IDX Data Subscriber: at IDX Data Subscriber's business address, facsimile number or email address last filed by IDX Data Subscriber with LSTAR, addressed to the attention of IDX Data Subscriber.
- (c) in the case of Third Party Service Provider: at the Third Party Service Provider's business address, facsimile number or email address last filed by Third Party Service Provider with LSTAR, addressed to the attention of Third Party Service Provider.

Any party may change its address for service from time to time by written notice given to the other parties in accordance with this Agreement.

Notwithstanding the foregoing, IDX Data Subscriber and Third Party Service Provider hereby agree and consent to the receipt of electronic legal notices regarding this Agreement upon access to the IDX System.

- 14.2 Entire Agreement. The terms of this Agreement, together with the LSTAR Requirements, constitute the entire agreement between the parties with respect to the subject matter herein. There are no representations, warranties, terms, conditions, promises,



undertakings or collateral agreements, oral or written, among the parties with respect to the subject matter herein other than those set forth or expressly referred to herein.

- 14.3 Amendment. LSTAR may, in its sole discretion, change, modify, add or delete portions of this Agreement at any time and from time to time without notice to IDX Data Subscriber or Third Party Service Provider by posting the then current version of this Agreement on LSTAR's website, LSTAR's MLS® System or the IDX System.
- 14.4 Further Assurances. The parties shall, from time to time, execute and deliver all such other and further deeds, documents, instruments and assurances as may be reasonably necessary or required to carry into force and effect the purpose and intent of this Agreement.
- 14.5 Relationship. Nothing in this Agreement shall be construed to create a partnership, joint venture, franchise, fiduciary, employment or agency relationship between LSTAR and IDX Data Subscriber or between LSTAR and Third Party Service Provider. Neither IDX Data Subscriber nor Third Party Service Provider has any express or implied authority to assume or create any obligations on behalf of LSTAR or to bind LSTAR to any contract, agreement or undertaking with any third party.
- 14.6 Waiver. The waiver by LSTAR or the failure of LSTAR, to require or enforce the performance of any provision of this Agreement or to take action with respect to any breach of any term, covenant, or condition herein contained shall not be construed as a waiver of any provision or right nor to be deemed to be a continuing waiver or waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement. A waiver by LSTAR of any default hereunder or of any of the terms and conditions of this Agreement shall be in writing signed by LSTAR and shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed.
- 14.7 Assignment. Neither this Agreement nor any of the rights or obligations under this Agreement may be sublicensed, conveyed, sold, given, assigned or otherwise transferred, including by operation of law, by IDX Data Subscriber or Third Party Service Provider, without the prior written consent of LSTAR. LSTAR may assign its rights and obligations under this Agreement.
- 14.8 Enurement. This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.
- 14.9 Governing Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (excluding and conflict of laws or choice of law principles). The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of

Ontario and the federal courts of Canada with subject matter jurisdiction with respect to any matter arising hereunder or relating hereto.

- 14.10 Severability. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, in whole or in part, by a court of competent jurisdiction, the validity, legality and enforceability of any of the remaining provisions or part thereof shall not in any way be affected or impaired.
- 14.11 Force Majeure. LSTAR shall not be responsible to Brokerage, IDX Data Subscriber, Third Party Service Provider, or any third party for any failure or delay in performance due to circumstances or causes beyond its reasonable control, including any labour dispute, acts of God, natural disasters, fire, utility or communications failures, vandalism, war, acts of terrorism, riots, embargoes, or laws, regulations or orders of any governmental or regulatory entity.
- 14.12 Headings, Gender, Number and Including. The division of this Agreement into articles and sections and the use of headings are for purposes of reference only and shall not limit or otherwise affect the interpretation of this Agreement. In this Agreement, unless there is something in the subject matter or context inconsistent therewith, words importing a specific gender include all genders and words importing the singular include the plural and vice versa. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".
- 14.13 Language. This Agreement and any documents relation thereto have been prepared in the English language at the express request of the parties. Les parties ont exigé, et par les présentes confirment leur demande, que ce contrat soit rédigé en anglais seulement.
- 14.14 Survival. The following Articles shall survive the suspension or termination of this Agreement, regardless of the reasons for suspension or termination, in addition to any other provision herein which by law or by its nature should survive: Articles 1 to 3 and 5 to 14.
- 14.15 Execution. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument. Facsimile signatures are deemed to be equivalent to original signatures for the purposes of this Agreement.

IN WITNESS WHEREOF the parties have duly executed this Agreement by their authorized representatives as of the Effective Date.

Effective Date: \_\_\_\_\_

**London and St. Thomas Association of REALTORS (LSTAR)**

**Address: 342 Commissioners Rd. W., London, Ontario, N6J 1Y3 Telephone Number: 519-641-1434**

By: \_\_\_\_\_  
E. L. Betty Dore, EVP

Date: \_\_\_\_\_

Witness: \_\_\_\_\_  
Name Title

Date: \_\_\_\_\_

IDX Data Subscriber Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

By: \_\_\_\_\_ IDX Data Subscriber  
Name Title

Date: \_\_\_\_\_

Witness: \_\_\_\_\_  
Name Title

Date: \_\_\_\_\_

Third Party Service Provider: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

By: \_\_\_\_\_ Third Party Service Provider  
Name Title

Date: \_\_\_\_\_

Witness: \_\_\_\_\_  
Name: Title

Date: \_\_\_\_\_

(CONTINUED ON NEXT PAGE)

**ACKNOWLEDGEMENT AND AGREEMENT BY BROKERAGE**

The undersigned Brokerage hereby acknowledges and confirms that it has read, understands and agrees to be bound by the terms and conditions of this Agreement and specifically including sections 2.4, 6.3(g), 10.1, 10.2, 11.1, 12.9 and 14.11 herein.

Brokerage further acknowledges and confirms that:

- 1. it has opted-in to the IDX and is bound thereto;
- 2. this Agreement is valid, binding and enforceable with respect to Brokerage;
- 3. it is and shall be fully and directly liable for any breach or any other unauthorized activity by IDX Data Subscriber and Third Party Service Provider under, or in any way relating to, this Agreement; and
- 4. LSTAR shall have no liability of any nature to Brokerage for, and waives all claims arising out of, or related in any way, to this Agreement.

EXECUTED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Brokerage: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

By: \_\_\_\_\_  
Name Title

Date: \_\_\_\_\_

Witness: \_\_\_\_\_  
Name Title

Date: \_\_\_\_\_

**Schedule A**  
**(Fees and Payment Terms)**

While LSTAR does not currently charge for feeds we wish to advise you that Millennium will be charging your web provider as per the following:

Millennium Real Estate Solutions, Inc. will invoice each Third Party an annual maintenance fee which covers setup, testing and support for each data feed. Millennium at its discretion may adjust fees from time to time with 60 days notice to reflect industry or technology changes. Millennium will contact the third party directly with respect to either maintenance fees or custom feed requests. Annual maintenance fees will be \$250 plus applicable taxes for third parties with 1-10 feeds and \$500 for 11+ data feeds.

Schedule B  
(IDX Data Subscriber Website Brokerage Approval Form)



IDX Data Subscriber Website Brokerage Approval Form

With this form, the undersigned Broker of Record acknowledges to LSTAR that the Brokerage identified below, along with all of its associated offices, approves the IDX Data Subscriber Website to receive IDX Datafeed from LSTAR, either directly or through its Third Party Service Provider, as described in the IDX Data Agreement.

Brokerage Name \_\_\_\_\_

Brokerage/Branch Code: 

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Brokerage Address \_\_\_\_\_

Phone: \_\_\_\_\_

Broker of Record Name Printed:  
  
\_\_\_\_\_

I am the Broker of Record for the Brokerage whose Brokerage/Branch code(s) are noted above and represent and warrant that I have the authority to execute this form on behalf of such firm(s).

Broker of Record Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule C**  
**(LSTAR Trademark(s))**

Include all of CREA's Trademarks.

Please see page 10 (i) ii) for notice that must be displayed and reads:

*The trademarks MLS®, Multiple Listing Service® and the associated logos are owned by The Canadian Real Estate Association (CREA) and identify the quality of services provided by real estate professionals who are members of CREA. Used under license.*

Schedule D  
(Third Party Service Provider IDX Data Transfer Authorization Form)



Third Party Service Provider IDX Data Transfer Authorization Form

With this form, the undersigned IDX Data Subscriber and Broker of Record acknowledge to LSTAR that the IDX Data Subscriber and Brokerage identified below along with all of its associated offices, approve the undersigned Third Party Service Provider to receive IDX Datafeed on behalf of IDX Data Subscriber, as described in the IDX Data Agreement.

IDX Data Subscriber hereby authorizes and directs LSTAR to permit access of IDX Datafeed to Third Party Service Provider identified in this Authorization pursuant to the terms and conditions of the IDX Data Agreement executed between LSTAR, IDX Data Subscriber and Third Party Service Provider and agreed to and acknowledged by Brokerage.

IDX Data Subscriber represents, warrants and covenants that the IDX Datafeed will be received and used by Third Party Service Provider (i) as an authorized agent of the IDX Data Subscriber only for the purposes set out in the IDX Data Agreement, (ii) only by the Third Party Service Provider on behalf of the IDX Data Subscriber and for no other purpose or person, and (iii) in full compliance with all applicable laws, statutes and regulations including the *Personal Information and Electronic Documents Act* (Canada) and the LSTAR Requirements.

IDX Data Subscriber covenants and agrees that as between it and LSTAR, it will be fully responsible for the actions and omissions of Third Party Service Provider. Should Third Party Service Provider use the IDX Datafeed in any way that contravenes this Authorization, including without limitation, in a manner not permitted by the IDX Data Agreement, LSTAR shall immediately cease delivery of the IDX Datafeed to such Third Party Service Provider without prejudice to any other rights or remedies LSTAR may have against IDX Data Subscriber or Third Party Service Provider.

This Authorization includes all the terms and conditions set out in the IDX Data Agreement, which each of Brokerage, IDX Data Subscriber and Third Party Service Provider acknowledges having read, understood and executed and to which each agrees and acknowledges it is bound.

**Broker of Record:**

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Brokerage Name \_\_\_\_\_

Brokerage/Branch Code: \_\_\_\_\_

Brokerage Address \_\_\_\_\_

Phone: \_\_\_\_\_

Broker of Record Name Printed:

\_\_\_\_\_

I am the Broker of Record for the Brokerage whose Brokerage/Branch code(s) are noted above and represent and warrant that I have the authority to execute this form on behalf of such firm(s).

Broker of Record Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**IDX Data Subscriber:**

Printed Name of IDX Data Subscriber

Authorized Signature (IDX Data Subscriber)

(I have the authority to bind IDX Data Subscriber)

Contact

Address

Contact e-mail Address

Town

Contact Phone Number

Province

IDX Subscribers Website

Date:

Postal Code

### Third Party Service Provider Acknowledgement

The undersigned Third Party Service Provider acknowledges this Third Party Service Provider IDX Datafeed Authorization and, for good and valuable consideration, the sufficiency of which is acknowledged, the undersigned Third Party Service Provider accepts and agrees with the contents of this Authorization.

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Printed Name of Third Party Service Provider

Authorized Signature (Third Party Service Provider)

(I have the authority to bind Third Party Service Provider)

---

Contact

Address

---

Contact e-mail Address

Town

---

Contact Phone Number

Province

---

Internet address:

Postal Code

---

Date:

**EXHIBIT M**

## DDF® Participation Statistics

DDF® Component	Brokerage Owners Opted In	Offices Opted In	Members Opted In	Percent of Eligible Members	Listings Included	Percent of Eligible Listings	Feeds Created	Active Feeds
May 2014 National Shared Pool (NSP)	1042	1868	52677	59%	120198	49%	2724	491
May 2015 National Shared Pool (NSP)	1451	2457	66081	73%	138563	57%	3968	3489
Percent Change	28%	24%	20%	20%	13%	13%	31%	86%
May 2014 National Franchisor Pool (NFP)	883	1634	45421	50%	106205	44%	9	8
May 2015 National Franchisor Pool (NFP)	1210	2085	52568	58%	118533	49%	9	9
Percent Change	27%	22%	14%	14%	10%	10%	0%	11%
May 2014 Member Website Feeds	1084	1976	53862	60%	103514	43%	1348	190
May 2015 Member Website Feeds	1490	2574	67044	74%	113658	47%	1669	1464
Percent Change	27%	23%	20%	20%	9%	9%	19%	87%
May 2014 Third Party Destinations	940	1562	38832	43%	103594	42%	n/a	n/a
May 2015 Third Party Destinations	1293	2186	50028	56%	118400	48%	n/a	n/a
Percent Change	27%	29%	22%	22%	13%	13%	n/a	n/a