

**New York State Alliance of Multiple Listing Service's  
(NYSAMLS)  
Multiple Listing Rules and Regulations – adopted by CNYIS, Inc.**

NYSAMLS, Inc. is a Multiple Listing Service Joint Venture. Shareholders are the owners of Central New York Information Service, Inc.(CNYIS), Western New York Real Estate Information Services, LLC.(WNYREIS) and Genesee Regional Informational Service, Inc.(GENRIS). Members/Participants are Broker Owners who meet the requirements of membership. Subscribers are Licensees of Members/Participants. All Shareholders, Members/Participants & Subscribers shall adhere to the Code of Ethics of the National Association of REALTORS®.

## **Listing Procedures**

**Section 1 Listing Procedures:** Listings of real or personal property of the following types:

- a) single family homes for sale or exchange, including condominiums and townhouses
- b) vacant lots and acreage for sale
- c) two-family, three-family and four-family residential buildings for sale or exchange,

which are listed subject to a real estate broker's license, and are located within the territorial jurisdiction of the multiple listing service, and taken by Participants on an Exclusive Right to Sell or an Exclusive Agency listing contract, shall be delivered (entered into the computer system) to the Multiple Listing Service **within twenty-four (24) hours (excepting weekends, holidays, and postal holidays)**, after all the necessary signatures of seller(s) have been obtained. Listings of property located outside of the MLS's jurisdiction will be accepted if submitted voluntarily by a Participant, but cannot be required by the Service. (*Refer to Appendix A for penalty fee*)

**A copy of the listing contract may be requested via computer audit and/or staff. Refer to Section 1.16 – Monitoring of Listings.** The listing service member shall retain the listing agreement and the property data form for at least three (3) years.

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

- May reserve the right to refuse to accept a listing form which fails to adequately protect the interest of the public and the Participants.
- Assure that no listing form filed with the multiple listing service establishes, directly or indirectly, any contractual relationship between the multiple listing service and the client (buyer or seller).

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

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

The different types of listing agreement include:

- exclusive right to sell
- exclusive agency
- open
- net (not acceptable in NYS)

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

The **exclusive right to sell listing** is the conventional form of listing submitted to the multiple listing service in that the seller authorizes the listing broker to cooperate with and to compensate other brokers.

The **exclusive agency listing** also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves to the seller the general right to sell the property on an unlimited or restrictive basis. Exclusive agency listings and exclusive right to sell listings with named prospects exempted should be clearly distinguished by a simple designation such as a code or a symbol from the exclusive right to sell listings with no named prospects exempted, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right to sell listings with no named prospects exempted. Care should be exercised to insure that different codes or symbols are used to denote exclusive agency and exclusive right to sell listings with prospect reservations. (Listing Types: ER ó Exclusive Right to Sell or EA ó Exclusive Agency, if Limited Service or MLS Only add öLSö or öMOö. If Prospect Reservations included indicate öYö in the öSpecial Conditions Apply Call Listing Brokerö field,)

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

**NOTE 3:** A multiple listing service may, as a matter of local option, accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings.

**Section 1.1 Types of Properties** - Following are some of the types of properties that may be published through the service, including types described in the preceding paragraph that are required to be filed with the service and other types that may be filed with the service at the participant's option provided, however, that any listing submitted is entered into within the scope of the participant's licensure as a real estate broker:

Éresidential	Émotel-hotel
Éresidential income	Émobile homes which include real property (lease negotiations)
Ésubdivided vacant lot	Émobile home parks
Éland and ranch	Écommercial income
Ébusiness opportunity	Éindustrial

**Section 1.1.1 Listings Subject to Rules and Regulations of the Service** - Any listing taken on a contract to be submitted with the service is subject to the rules and regulations of the service upon signature of the seller(s). (*Refer to Appendix A for penalty fee*)

**Section 1.2 Detail on Listings Filed with the Service** - A listing agreement or property data form, when filed with the multiple listing service by the listing broker, shall be complete in every detail which is ascertainable as specified on the property data form.

1. **Required Information:** You must input all Required information requested on the property data form **within 5 business days**. It is the responsibility of the Designated REALTOR® to ensure accuracy at all times.
2. **Owner's Name:** The Owner's Name must always be filled in with the actual name(s) as appears on the deed. If the owner(s) do not wish their name to appear in the MLS, then a letter from the owner must be required by the listing agent or noted on the listing agreement and filed with the service for approval. Authorizations must be on file with the MLS. The listing should state "Authorization on file" in owner's name.
  - a. **Owner of Record** - not permitted.
  - b. **Estate Owner** - Enter "Estate of" followed by the name of the deceased.
  - c. **Bank or Mortgage Company** - Enter the name of the Bank or Mortgage company instead of the word "Bank." (Ex. "ABC Bank.")
  - d. **Relocation or Third Party Owner** - Enter the name of the company (ex. "XYZ Relocation.")
3. **Listing Agent's Name and ALL contact Information:** The listing agent's name/all phone numbers/mail address/website addresses must appear only in the field(s) designated for such. A fine will be levied to those firms who show an agent's name and/or any phone number and/or email address in any other field in the MLS (i.e. - agent's phone number; whether home, voice mail, pager, etc., **cannot show** in "Public Remarks" and/or "directions" field.)
4. **Photos:** All property types, except vacant land and all statuses must include the exterior front view as the first photo and it must be submitted within five (5) business days from the time the property was listed. (An exception would be a "to be built" property). New Construction may use a comparable rendering or photo. Office, agent and personal promotion information is prohibited from being included anywhere on the property photo. **Photos entered into the MLS are the property of the listing broker and cannot be reused by another broker without the consent of the listing broker who originated the photo(s).** Any and all photos submitted cannot contain watermarks. (*Refer to Appendix A for penalty fee*)
5. **Attachments:** The attachments must contain information, (i.e. disclosure forms, photos, floor plans, maps virtual tours) specifically related to the property being offered. These attachments should not be used for listing agent, company or personal promotion
6. **Virtual Tour Field:** The Virtual Tour field shall contain only a URL link directly to the Virtual Tour for that specific property listing. A Virtual Tour is defined as a 360-degree tour of a property, or a slide show of static pictures, which may include audio. Visual or audio information regarding the listing agent and/or company is prohibited. Advertisements are not allowed. Links or framing that show or lead to contact information or advertisements are also prohibited. For violations of this section, the MLS may remove the violation and/or fine the Participant (*Refer to Appendix A for penalty fee*). In addition, a letter will go to the Participant asking him/her to correct the information within 5 business days or the Participant's access to the MLS will be terminated until the violation is corrected.
7. **Remarks Section:** All information contained in the "Public" and "Private" Remarks Sections must be in compliance with all local, state and/or federal Fair Housing Laws. (*Refer to Appendix A for penalty fee*)
  - a. "Public" Remarks Section - This section is reserved to further describe the property being offered for sale or lease. It should NOT contain: personal information; company information; web addresses; phone numbers; co-listers; links; bonus information; other inappropriate information.
  - b. "Private" Remarks Section - This section is reserved for information to be shared with other MLS Participants. This includes: bonus information; lock box location; appointment information; web addresses; commission explanation [i.e. - In the event an offer including seller contributions is accepted, co-broker compensation will be based upon the adjusted (actual less contributions) sale price.]

8. **Do Not Show (DNS Notices):** DNS notices are allowed. All listings in the Service that are not immediately available for showing must have the owner(s) complete the **required** DNS Form. This form must be filed with the MLS when requested by the service
9. **Directions:** The Directions fields must contain directions that any reasonable, prudent person can use to locate the property. Consult map, see agent, sign names, company identity, websites and other inappropriate information, are not permitted.
10. **Address:** The address field requires the house number and street name only. DO NOT put any other information in this space (ex. Bonus, EZ Show, LBEC, ASSUME, etc.) Bonus information should be located in the Private Remarks section. If there is a directional, such as N for north, enter in the Pre or Post directional field. Other directional input should go in the Directions section.
11. **Tax Information:** Enter only the Total True Taxes. Do not enter taxes reflecting any exemptions. Exemption value can vary from individual to individual. The Tax ID# must match the Tax ID# supplied by the MLS tax vendor.
12. **Proper MLS Area/Property Type:** All properties must be listed according to address and assessment jurisdiction only. CNYIS will not accept an additional listing for a property because the listing office wants to emphasize the school district, zip code, etc. A second listing can be entered into the MLS under a different property type provided:
  - a. It is zoned properly.
  - b. The first line of the Private REMARKS in the second listing must identify the listing number of the first listing.
  - c. The listing office is required to notify the MLS Services Department to **delete the second listing** when the property is sold or expired in order for statistics to be accurate.
  - d. A fee may be required (*See Appendix A – Fees.*)
13. **Exclusive Right to Sell Contract:** All information in the Exclusive Right to Sell Contract must correspond with the Property Data Form and the information entered in the MLS. When taking a listing for a To Be Built lot (RES) or vacant land, an Exclusive Right to Sell Contract and Property Data Form for each lot listed is not required but the listing contract must list all of the lots to be sold. (ex: If twenty-two (22) lots are allocated to be sold in a subdivision, each lot will have a separate ML number and be listed on an Exclusive Right to Sell Contract.)
14. **Changes -** All changes to the listing agreement information must be entered into the service within 24 hours and in any case no later than the next business day.
15. **Square Footage** Square Footage should match the tax records. If it is determined that the tax records are incorrect, it should be noted in the Realtor Remarks. For reference, Square Footage is area which is above grade and heated living area. Best way to obtain the sq. ft. is to measure the exterior dimensions of the dwelling. Fannie Mae & Freddie Mac guidelines and FHA & VA allow 50% of a below grade area to be used as sq. ft. but only if access and egress exists on two levels, such as a hillside. On a Cape Cod the second floor should be measured using the area that is at least 5 ft. or higher.

### **Section 1.2.1 Limited Service Listings**

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

- a. arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s)
- b. accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s)

- c. advise the seller(s) as to the merits of offers to purchase
- d. assist the seller(s) in developing, communicating, or presenting counter-offers
- e. participate on the seller(s) behalf in negotiations leading to the sale of the listed property

will be identified in the appropriate field in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers clients, prior to initiating efforts to show or sell the property.

**Section 1.2.2 MLS Entry-only Listings**

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

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

will be identified with an appropriate code or symbol (e.g., **MO**) in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers clients, prior to initiating efforts to show or sell the property.

**Section 1.3 Exempted Listings** - If the seller refuses to permit the listing to be disseminated by the Service, the Participant may then take the listing (Office Exclusive) and such listing shall be filed with the Service but not disseminated to the Participants. Filing of the listing should be accompanied by certification (office exclusive form) signed by the seller that he does not desire the listing to be disseminated by the Service. The listing contract and certification form (office exclusive) must be received at the service within 2 business days of the listing date on the contract.

**Section 1.4 Change of Status of Listing** - Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller and shall be filed with the service within twenty-four (24) hours (excepting weekends, holidays, and postal holidays) after the authorized change is received by the listing broker.

Status	Translation	Explanation
<b>On Market Statuses</b>		
A	Active	Property available to be shown, no signed contract exists.
C	Continue to Show - Under Contract	Property available to be shown, contract exists - See Realtor Remarks
<b>Off Market Statuses</b>		
U	Under Contract - Do not show	Property is not to be shown, contract exists - See Realtor Remarks
P	Pending Sale	Contract exists and is waiting for closing (Sale Information not requested.)
S	Closed Sale/Rented	Property Closed/Rented (Sale information added at this time)
T	Temporarily Off Market	Property temporarily unavailable, should be back on market
W	Withdrawn	Property no longer on the market, cannot be listed by another broker until expiration date
X	Expired	Property Expired, can be listed by another broker

**Section 1.5 Withdrawal Of Listing Prior To Expiration:** Listings of property may be withdrawn from the Multiple Listing Service by the listing broker before the expiration date of the listing agreement provided notice is filed with the Service including a copy of the agreement between the seller and the listing broker which authorizes the withdrawal.

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

**Section 1.6 Contingencies Applicable To Listings:** Any contingency or conditions of any term in a listing shall be specified and noticed to the Participants. REALTORS<sup>®</sup> shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation.

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

The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings, unless the property is subject to auction. In the case of value range pricing, the VRP field must be completed with a Y (Yes) and the gross listing price is to be entered into the high price range and the first line of the "REMARKS" field must state: Seller (s) will entertain offers between \$xxx,xxx (low price) and \$yyy,yyy (high price).

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

All properties which are to be sold or which may be sold separately must be indicated individually in the listing and on the property data form. When part of a listed property has been sold, proper notification should be given to the multiple listing service.

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

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

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

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

If notice of renewal or extension is received after the listing has been removed from the compilation of current listings, the extension or renewal will be published in the same manner as a new listing. Extensions and renewals of listings must be signed by the seller(s) and filed with the service. *(Refer to Appendix A for penalty fee)*

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

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

### **Section 1.12 Jurisdiction**

Only listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted to the service. Listings of property located outside the MLS's jurisdiction will be accepted if submitted voluntarily by a participant, but cannot be required by the service. (Amended 11/01)

**Section 1.13 Listings Of Suspended Participants:** When a Participant of the Service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the suspended Participant shall, at the Participant's option, be retained in the Service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the Association (except where MLS Participation without Association Membership is permitted by Law) or MLS (or both) for failure to pay appropriate dues, fees or charges, an Association MLS is not obligated to provide MLS services, including continued inclusion of the suspended Participants listings in the MLS compilation of current listing information. Prior to any removal of a suspended Participants' listings from the MLS, the suspended Participant should be advised, in writing, of the intended removal so that the suspended Participant may advise his clients.

**Section 1.14 Listings Of Expelled Participants:** When a Participant of the Service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the expelled Participant shall, at the Participant's option, be retained in the Service until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the Association (except where MLS Participation without Association Membership is permitted by Law) or MLS (or both) for failure to pay appropriate dues, fees or charges, an Association MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participants listings in the MLS compilation of current listing information. Prior to any removal of an expelled Participants' listings from the MLS, the expelled Participant should be advised, in writing, of the intended removal so that the expelled Participant may advise his clients.

**Section 1.15 Listings Of Resigned Participants:** When a participant resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned participant's listings in the MLS compilation of current listing information. Prior to any removal of a resigned participant's listings from the MLS, the resigned participant should be advised, in writing, of the intended removal so that the resigned participant may advise his clients.

### **Section 1.16 Monitoring Of Listings: Listing Contract Random Audit and Complaint Procedure:**

#### **Random Audits**

The listing check software will automatically request a copy of a listing contract every 25<sup>th</sup> contract. Requested contracts must be received at the MLS office within 5 business days of the listing check request, preferably via email to: [Yerdon@cnyrealtor.com](mailto:Yerdon@cnyrealtor.com) (naming the document the MLS #), but it can be submitted via fax or USPS. Failure to submit the contract within the specified time frame will result in a fine to be paid within 30 days. If fine is not paid by the due date, a ten day suspension notice will be sent. Services will remain suspended until the fine is paid.

The requested contracts will be reviewed for compliance with the MLS rules. Non-compliance may result in additional fines.

**Renewals** The listing check software will randomly automatically send out requests for the renewal paperwork (either listing contract or form.) Requested paperwork must be received at the MLS office within 5 business days of the listing check request, preferably via email to: [yerdon@cnyrealtor.com](mailto:yerdon@cnyrealtor.com) (naming the document the

MLS #), but it can be submitted via fax or USPS. Failure to submit the paperwork within the specified time frame will result in a fine to be paid within 30 days. If fine is not paid by the due date, a ten day suspension notice will be sent. Services will remain suspended until the fine is paid.

The requested information will be reviewed for compliance with the MLS rules. Non-compliance may result in additional fines.

### **Complaints**

If a complaint is received by the MLS and a copy of the listing contract/withdrawal form/mutual termination form, etc. is requested, the agent/manager/office must produce the contract within the following time frame:

AM request 6 by 4:00 p.m. the same day.

PM request 6 by Noon the following business day.

Failure to submit the contract within the specified time frame will result in a fine to be paid within 30 days. If the fine is not paid by the due date, a ten day suspension notice will be sent. Services will remain suspended until fine is paid.

Note: the request will be made via phone call to the Designated REALTOR, office manager or secretary. The request time frame will be based on the time that personal contact was made with the manager or secretary.

**Section 1.17 Duplicate Listings:** In order to protect the database the listing agent, must monitor his/her listings and sales and see that they are appropriately accounted for even if the transaction on the property continues after the expiration date (Pending status). Always search the database prior to entering a new listing. This will assure that a listing is not a duplicate.

**Section 1.18 Relocation:** If a property goes to Relocation or other third party company and is listed with a new listing agent, the former listing agent must obtain and submit a "Mutual Termination" Form signed by the previous owner(s) and Broker/Office Manager and "Expire" the listing. The new listing office shall obtain an Exclusive Right to Sell Contract from the Relocation or third party company and enter it as a new listing.

**Section 1.19 Withdrawals:** Withdrawals of listings must be submitted to the MLS within twenty-four (24) hours (excluding Saturdays, Sundays and holidays). The "Withdrawal" form must be signed by the owner(s) and the Designated REALTOR/Office Manager/or any other authorized individual.

## **Selling Procedures**

**Section 2. Showings And Negotiations:** Appointments for showings and negotiations with the seller for the purchase of listed property filed with the Multiple Listing Service shall be conducted through the listing broker except under the following circumstances:

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

**Section 2.1 Presentation Of Offers:** The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so.

**Section 2.2** **Submission Of Written Offers And Counter-Offers:** The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller(s) obtain the advice of legal counsel prior to acceptance of the subsequent offer.

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

**Section 2.3** **Right Of Cooperating Broker In Presentation Of Offer:** The cooperating broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's written instructions. None of the foregoing diminishes the listing brokers right to control the establishment of appointments for such presentations.

**Section 2.4** **Right Of Listing Broker In Presentation Of Counter-Offer:** The listing broker or his representative shall have the right to participate in the presentation of any counter-offer made by the seller or lessor but does not have the right to be present in any discussion or evaluation of a counter-offer by the purchaser or lessee (except when the cooperating broker is a subagent). However, if the purchaser or lessee gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser's or lessee's written instructions.

**Section 2.5** **Reporting Sales To The Service:** Status changes including final closing of sales, shall be reported to the multiple listing service by the listing broker within 24 hours (excepting weekends, holidays, and postal holidays) after they have occurred. If negotiations were carried on under Section 2a. or b. hereof, the cooperating broker shall report accepted offers to the listing broker within twenty-four (24) hours after occurrence and the listing broker shall report to the MLS within twenty-four (24) hours after receiving notice from the cooperating broker. In addition, no participant will report a single sale more than one time on any property filed with the Multiple Listing Service. (*Refer to Appendix A for penalty fees*)

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

**Section 2.6** **Reporting Resolutions Of Contingencies:** The listing broker shall report to the multiple listing service within twenty-four (24) hours that a contingency on file with the multiple listing service has been fulfilled or renewed, or the agreement cancelled.

**Section 2.7** **Advertising Of Listings Filed With The Service:** A listing shall not be advertised by any participant other than the listing broker without the prior consent of the listing broker.

**Section 2.8** **Reporting Cancellation Of Pending Sale:** The listing broker shall report immediately to the Service the cancellation of any pending sale, and the listing shall be reinstated immediately.

**Section 2.9** **Disclosing The Existence Of Offers:** Listing Brokers, in response to inquiries from buyers or cooperating brokers, shall, with the seller's approval, disclose the existence of offers on the property. Where disclosure

is authorized, the listing broker shall also disclose whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a cooperating broker.

**Section 2.10 Availability Of Listed Property:** Listing brokers shall not misrepresent the availability of access to show or inspect listed property.

## **Refusal To Sell**

**Section 3 Refusal To Sell:** If the seller of any listed property filed with the Multiple Listing Service refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted immediately to the Service and to all Participants.

## **Prohibitions**

**Section 4 Information For Participants Only:** Any listing filed with the Service shall not be made available to any broker or firm not a Member of the MLS without the prior consent of the listing broker.

**Section 4.1 “For Sale” Signs:** Only the for sale sign of the listing broker may be placed on a property.

**Section 4.2 “Sold” Signs:** Prior to closing, only the “sold” sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

**Section 4.3 Solicitation of Listing Filed with the Service:** Participants shall not solicit a listing on property filed with the service unless such solicitation is consistent with Article 16 of the REALTOR® Code of Ethics, its Standards of Practice, and its Case Interpretations.

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

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

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

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

**Section 4.4 Use of the Terms MLS and Multiple Listing Service:** No MLS participant, subscriber, or licensee affiliated with any participant shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other way represent, suggest, or imply that the individual or firm is an MLS, or that they operate an MLS. Participants, subscribers and licensees affiliated with participants shall not represent, suggest, or imply that consumers or others have direct access to MLS databases, or that consumers or others are able to search MLS databases available only to participants and subscribers. This does not prohibit participants and subscribers from representing that

any information they are authorized under MLS rules to provide to clients or customers is available on their websites or otherwise.

## **Division of Commissions**

**Section 5 Compensation Specified On Each Listing:** The listing broker shall specify, on each listing filed with the Multiple Listing Service, the compensation offered to other multiple listing participants for their services in the sale of such listings. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease) or as otherwise provided for in this Rule. The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through the MLS would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.

In filing a property with the multiple listing service, the participant of the service is making blanket unilateral offers of compensation to the other MLS participants, and shall therefore specify on each listing filed with the service, the compensation being offered to the other MLS participants. Specifying the compensation on each listing is necessary, because the cooperating broker has the right to know what his compensation shall be prior to his endeavor to sell\*.

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

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

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

This shall not preclude the listing broker from offering any MLS Participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of his producing an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participants in the Service. Any superseding offer of compensation must

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

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

**Note 3:** The multiple listing service shall make no rule on the division of commissions between participants and non-participants. This should remain solely the responsibility of the listing broker.

**Note 4:** Multiple listing services, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval, and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they produce an offer that ultimately results in a successful transaction.

**Note 5:** Nothing in these MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction.

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

*(Refer to Appendix A for penalty fee)*

**Section 5.0.1 Disclosing Potential Short Sales:** - (Option #1): Participants may, but are not required to, disclose potential short sales to other participants and subscribers. When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants.

**Section 5.1 Participant As Principal:** If a participant or any licensee (or licensed or certified appraiser) affiliated with a participant has any ownership interest in a property, the listing of which is to be disseminated through the multiple listing service, that person shall disclose that interest when the listing is filed with the multiple listing service and such information shall be disseminated to all multiple listing service participants.

**Section 5.2 Participant As Purchaser:** If a participant or any licensee (including licensed or certified appraisers) affiliated with a Participant wishes to acquire an interest in property listed with another Participant, such contemplated interest shall be disclosed, in writing, to the listing broker not later than the time an offer to purchase is submitted to the listing broker.

## Service Charges

**Section 6 SERVICE FEES AND CHARGES:** The following service charges for operation of the Multiple Listing Service are in effect to defray the costs of the Service and are subject to change from time to time in the manner prescribed:

**Initial Participation Fee:** An applicant for participation in the Service shall pay an application fee of \$(*Refer to Appendix A - Fees*) with such fee to accompany the application. The application fee is predicated upon participation remaining in force. If a Participant is inactive for a year or more, a new fee will be required to reactivate the Participant's status.

**Recurring Participation Fee:** The participation fee of each participant shall be an amount equal to \$(*Refer to Appendix A - Fees*) times each salesperson and licensed or certified appraiser who has access to and use of the service, whether licensed as a broker, salesperson or licensed or certified appraiser who is employed by or affiliated as an independent contractor with such participant. Payment of such fees shall be made on or before the first day of the fiscal year of the Multiple Listing Service. Fees shall be prorated per schedule in Appendix A - Fees.

**Note 1:** A multiple listing service may elect to have such fees payable on a quarterly or even on a monthly basis. However, added administrative services are necessitated by increased frequency of such payments.

**Subscription Fees:** One complete set of current listings shall be supplied to the participant upon payment of the application fee and the participation fee, and the participant shall be responsible for a subscription fee of \$(*See Appendix A - Fees*) for each additional set of listings to be supplied to each individual, employed by or affiliated as an independent contractor (including licensed or certified appraisers) with the participant who has access to and who utilizes the service.

**Note 1:** This should be a minimal charge based on actual costs of producing and distributing the information.

**Note 2:** Any combination of charges may be used if they are in accordance with the National Association's MLS Antitrust Compliance Policy Point No. 3. which prohibits a fee that is contingent on the sale of a listed property.

**Note 3:** Financing from the multiple listing service should be adequate but not in such amounts as to be the source of financing the association's operation. The multiple listing service should pay its own way and allow for a reasonable operating reserve, but it is merely another service of the association and not the principal activity or reason for the association's existence. As long as it is able to restrict its services exclusively or primarily to association members, the service is not properly an association profit center.

**Note 4:** Multiple listing services that choose to include affiliated unlicensed administrative and clerical staff, personal assistants, and/or individuals seeking licensure or certification as real estate appraisers among those eligible for access to and use of MLS information as subscribers may, at their discretion, amend Section 6, recurring participation fee and subscription fees, as necessary to include such individuals in the computation of MLS fees and charges (*Refer to Appendix A - Fees.*) (Adopted 4/92) **R**

**Listing Fees:** (*Refer to Appendix A - Fees.*)

**Staff Fees:** An MLS may charge for the use of staff time. (*Refer to Appendix A - Fees.*)

**Census:** A census may be conducted for the purpose of tracking licensees of Participants and licensed or Certified Appraisers who are licensed under or working for a MLS Participant. An invoice will be sent on behalf of the above

mentioned licensee. Failure of the Participant to report such individuals after receipt of invoice will result in suspension. At the time of the census, brokers must verify any clerical staff and their passwords.

**Refunds:** (*Refer to Appendix A*)

**Assessments:** The MLS is authorized to levy special assessments for the purpose of meeting current operating expenses of the Service provided; however, that such special assessment during any calendar year shall not increase the annual participation fee for each Participant and participating licensee in excess of \$(*See Appendix A*).

**Other Fees:** Other fees for Keybox system, Security program, etc. may be instituted. (*Refer to Appendix A.*)

## **Compliance With Rules**

**Section 7 Compliance with Rules—Authority to Impose Discipline:** By becoming and remaining a participant or subscriber in this MLS, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. The MLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

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

**Section 7.1 Compliance with Rules:** The following action may be taken for noncompliance with the Rules:

- a. For failure to pay any service charge or assessment within one (1) month of the date due, and provided that at least ten (10) days notice has been given, the service shall be suspended until service charges or fees are paid in full. (See Appendix A)
- b. For failure to comply with any other rule, the provisions of Sections 9 and 9.1 shall apply.

Upon notification to the MLS of any infraction of the MLS Rules and Policies, the MLS Staff will do the following: Contact the listing agent or manager or Designated REALTOR® of the firm to resolve the infraction. If the infraction is not corrected within forty-eight (48) hours, the appropriate sanction will be imposed on the Designated REALTOR®.

**Note:** Generally, warning, censure, and the imposition of a moderate fine are sufficient to constitute a deterrent to violation of the rules and regulations of the multiple listing service. Suspension or termination is an extreme sanction to be used in cases of extreme or repeated violation of the rules and regulations of the service. If the MLS desires to establish a series of moderate fines, they should be clearly specified in the rules and regulations.

**Section 7.2 Applicability Of Rules To Users And/Or Subscribers:** Non-principal brokers, sales licensees, appraisers and others authorized to have access to information published by the MLS are subject to these Rules and Regulations and may be disciplined for violations thereof provided that the user or subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the Rules and Regulations. Further failure of any

user or subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the Participant to the same or other discipline. This provision does not eliminate the Participants ultimate responsibility and accountability for all users or subscribers affiliated with the Participant.

**Section 8** **Meetings:** The meetings of the Participants in the Service or the Board of Managers/Directors of the MLS for the transaction of business of the Service shall be held in accordance with the provisions of the Operating Agreement of Central New York Information Service, Inc.

## **Enforcement Of Rules Or Disputes**

**Section 9** **Consideration Of Alleged Violations:** The **Rules & Regulations Committee** of Central New York Information Service, Inc. shall give consideration to all written complaints having to do with violations of the Rules and Regulations.

**Section 9.1** **Violations Of Rules And Regulations:** If the alleged offense is a violation of the rules and regulations of the service and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by the board of directors of the service, and if a violation is determined, the board of directors may direct the imposition of sanction, provided the recipient of such sanction may request a hearing before the professional standards committee of the primary association in accordance with the bylaws and rules and regulations of the primary association of REALTORS® within twenty (20) days following receipt of the directors' decision.

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

**Section 9.2** **Complaints Of Unethical Conduct:** All other complaints of unethical conduct shall be referred by the Rules & Regulations Committee to the Secretary of the Primary Association of REALTORS® for appropriate action in accordance with the professional standards procedures established in the primary Association's Bylaws.

## **Confidentiality Of MLS Information**

**Section 10** **Confidentiality Of MLS Information:** Any information provided by the multiple listing service to the participants shall be considered official information of the service. Such information shall be considered confidential and exclusively for the use of participants and real estate licensees affiliated with such participants and those participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such participants.

**Section 10.1** **MLS Not Responsible For Accuracy Of Information:** The information published and disseminated by the service is communicated verbatim, without change by the service, as filed with the service by the participant. The service does not verify such information provided and disclaims any responsibility for its accuracy. Each participant agrees to hold the service harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides.

## **Ownership Of MLS Compilation\* And Copyright**

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

**Section 11** By the act of submitting any property listing content to the MLS the participant represents that he has been authorized to grant and also thereby does grant authority for the MLS to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparables. Listing content includes, but is not limited to, photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property..

**Section 11.1** All rights, title, and interest in each copy of every multiple listing compilation created and copyrighted by the MLS and in the copyrights therein, shall at all times remain vested in the MLS.

**Section 11.2** Each Participant shall be entitled to lease from the MLS a number of copies of each Service Compilation sufficient to provide the participant and each person affiliated as a licensee (including licensed or certified appraisers) with such participant with one copy of such Compilation. The participant shall pay, for each such copy, the rental fee set by the MLS.

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

## **Use Of Copyrighted MLS Compilations**

**Section 12** **Distribution:** Participants shall, at all times, maintain control over and responsibility for each copy of any MLS Compilation leased to them by CNYIS and shall not distribute any such copies to persons other than subscribers who are affiliated with such Participant as licensees, those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, and any other subscribers as authorized pursuant to the governing documents of the MLS. Use of information developed by or published by CNYIS Multiple Listing Service is strictly limited to activities authorized under a participant's licensure(s) or certification, and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed or published by CNYIS Multiple Listing Service where access to such information is prohibited by law.

**Section 12.1** **Display:** Participants and those persons affiliated as licensees with such participants shall be permitted to display the MLS compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers for the properties described in said MLS compilation.

**Section 12.2** **Reproduction:** (Option 1) Participants or their affiliated licensees shall not reproduce any MLS Compilation or any portion thereof, except in the following limited circumstances:

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

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

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

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

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

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

## Use Of MLS Information

**Section 13 Limitations on Use of MLS Information:** (Option #2) Information from MLS compilations of current listing information, from statistical reports, and from any sold or comparable report of the MLS may be used by MLS participants as the basis for aggregated demonstrations of market share or comparisons of firms in public mass-media advertising or in other public representations. This authority does not convey the right to include in any such advertising or representation information about specific properties which are listed with other participants, or which were sold by other participants (as either listing or cooperating broker).

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the association or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice: **Based on information from the New York State Alliance of MLS's for the period (date) through (date).**

## Changes In Rules And Regulations

**Section 14 Changes In Rules And Regulations:** Amendments to the rules and regulations of the service shall be recommended for approval to the Board of Managers by the rules and regulations committee.

**Section 15 Arbitration of disputes:** This section is not applicable for NYSAMLS.

**Section 16 Standards of conduct of MLS Participants:** This section is not applicable for NYSAMLS.

**Section 17 Orientation:** Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with an MLS participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations and

computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided.

## **Internet Data Exchange ("IDX")**

**Section 18** **IDX Defined:** IDX affords MLS participants the option of authorizing display of their active listings on other participants' websites.

**Section 18.1 Authorization:** (Option #1) Participants' consent for display of their active listings by other Participants pursuant to these rules and regulations is presumed unless a Participant affirmatively notifies the MLS that the Participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of that Participant's listings, that Participant may not download or frame the aggregated MLS data of other Participants. Even where participants have given blanket authority for other participants to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis as instructed by the seller. An IDX Consent Form is provided to assist members in opting out or back in of the IDX program. It is also required that a Data Access Agreement be submitted if your firm uses the authorized data on your firm's website. (This will allow you access to the Participants listing data and provide MLS staff with a contact name for your IDX vendor with related updates and information.)

**Section 18.2 Participation:** (Option #4) Participation in IDX is available to all MLS Participants who are REALTORS® who are engaged in real estate brokerage and who consent to display of their listings by other Participants. This requirement can be met by maintaining an office or Internet presence from which Participants are available to represent real estate sellers or buyers (or both).

**Section 18.2.1** Participants must notify the MLS of their intention to establish an IDX site and must make their site directly accessible to the MLS for purposes of monitor/ensuring compliance with applicable rules and policies.

**Section 18.2.2** Participants must protect IDX information from misappropriation by employing reasonable efforts to monitor and prevent scraping of other unauthorized accessing, reproduction, of use of the MLS database.

**Section 18.2.3** Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly-accessible Web sites or VOWs) shall not be accessible via IDX sites. Notwithstanding this prohibition, listing brokers may display on their IDX sites or their other Web site(s) the listing or property address of consenting sellers.

All Active listings that belong to IDX Participants, and are marked "Y" in the "IDX" field, from the following Property Types: Single Family Residential, Multifamily, Condo/Townhouse, Commercial, Apartment and Land. Listings that are marked "N" in the "IDX" Y/N field are prohibited from display on an IDX website.

**Section 18.2.4** Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location (uptown, downtown, etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell, or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each participant.

**Section 18.2.5** Participants must refresh all MLS downloads and refresh all MLS data at least once every 7 days.

**Section 18.2.6** Except as provided in these rules, an IDX site or a participant or user operating an IDX site may not distribute, provide, or make any portion of the MLS database available to any person or entity.

**Section 18.2.7** When displaying listing content, a participant's or user's IDX site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.

**Section 18.3** Display: Display of listing information pursuant to IDX is subject to the following rules:

**Section 18.3.1** Listings displayed pursuant to IDX shall contain only those fields of data designated by the MLS. Display of all other fields (as determined by the MLS) is prohibited. Confidential fields intended only for other MLS Participants and users (e.g., cooperative compensation offers, showing instructions, property security information, etc.) may not be displayed on IDX sites. (See IDX Field List.)

**Section 18.3.1.1** The type of listing agreement (e.g., exclusive right to sell, exclusive agency, etc.) may not be displayed on IDX sites.

**Section 18.3.2** Participants shall not modify or manipulate information relating to other participants' listings. (This is not a limitation on site design but refers to changes to actual listing data.) MLS data may be augmented with additional data not otherwise prohibited from display so long as the source of the additional data is clearly identified. This requirement does not restrict the format of MLS data display or display of fewer than all of the available listings or fewer authorized data fields.

**Section 18.3.3** All listings displayed pursuant to IDX shall identify the listing firm in a readily visible color and typeface not smaller than the median used in the display of listing data.

**Section 18.3.4** Not adopted by NYSAMLS's.

**Section 18.3.5** Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own Web sites subject to their participant's consent and control and the requirements of state law and/or regulation.

**Section 18.3.6** Deleted by NAR 2006.

**Section 18.3.7** All listings displayed pursuant to IDX shall show that CNYIS, Inc., GENRIS and WNYREIS as the source of the information.

**Section 18.3.8** Participants (and their affiliated licensees, if applicable) shall indicate on their websites that IDX information is provided exclusively for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing, and that the data is deemed reliable by is not guaranteed accurate by the MLS. The MLS may, at its discretion, require use of other disclaimers as necessary to protect participants and/or the MLS from liability.

**Section 18.3.9** The data consumers can retrieve or download in response to an inquiry shall be limited to twenty-five (25) listings per search page.

**Section 18.3.10** The right to display other Participants' listings pursuant to IDX shall be limited to a Participant's office(s) holding participatory rights in this MLS.

**Section 18.3.11** Listings obtained through IDX must be displayed separately from listings obtained from other sources, including information provided by other MLSs. Listings obtained from other sources (e.g., from other MLSs, from non-participating brokers, etc.) must display the source from which each such listing was obtained.

**Section 18.3.12** Display of expired, withdrawn, and pending listings is prohibited.

**Section 18.3.13** Display of seller(s) and/or occupant(s) name(s), phone number(s), and email address(es) is prohibited.

**Section 18.3.14** Participants are required to employ appropriate security protection such as firewalls, provided that any security measures required may not be greater than those employed by the MLS.

**Section 18.3.15** IDX operators must maintain an audit trail of consumer activity on the IDX site and make that information available to the MLS if the MLS believes the IDX site has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by consumers.

**Section 18.4** Service Fees and Charges: Service fees and charges for participation in IDX shall be as established annually by the Board of Managers. Refer to Appendix A fees.

## **Virtual Office Websites (VOWs)**

### **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.

## **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.
- 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.
- 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.
- d. The participant shall require each Registrant to review and affirmatively to express agreement (by mouse click or otherwise) to a terms of use provision that provides at least the following:
  - i. that the Registrant acknowledges entering into a lawful consumer-broker relationship with the participant
  - ii. that all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use

- iii. that the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW
  - iv. that the Registrant will not copy, redistribute, or retransmit any of the information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property
  - v. that the Registrant acknowledges the MLS's ownership of and the validity of the MLS's copyright in the MLS database.
- e. The terms of use agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the participant. Any agreement entered into at any time between the participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the participant must be established separately from the terms of use, must be prominently labeled as such, and may not be accepted solely by mouse click.
- f. The terms of use agreement shall also expressly authorize the MLS and other MLS participants or their duly authorized representatives to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of participants' listings by the VOW. The agreement may also include such other provisions as may be agreed to between the participant and the Registrant.

**Section 19.4** A participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the participant to ask questions or get more information about any property displayed on the VOW. The participant or a non-principal broker or sales licensee licensed with the participant must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that participant and displayed on the VOW.

**Section 19.5** A participant's VOW must employ reasonable efforts to monitor for and prevent misappropriation, scraping, and other unauthorized 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.

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

**Seller Opt-out Form**

1. 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.

**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.

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 participant's websites. Subject to the foregoing and to Section 19.8, a participant's VOW may communicate the participant's professional judgment concerning any listing. A participant's VOW may notify its customers that a particular feature has been disabled at the request of the seller.

**Section 19.8-** A participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The participant shall correct or remove any false information relating to a specific property within 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.

**Section 19.9** - A participant shall cause the MLS listing information available on its VOW to be refreshed at least once every three (3) days.

**Section 19.10** - Except as provided in these rules, in the NATIONAL ASSOCIATION OF REALTORS®'s 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.

**Section 19.11** - A participant's VOW must display the participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

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

**Section 19.13** - A participant who intends to operate a VOW to display MLS listing information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS participants for purposes of verifying compliance with these rules, the VOW policy, and any other applicable MLS rules or policies.

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

**Section 20 - Other Rules:** Each Participating MLS may provide other services (Electronic Keys, keyboxes, etc.) which will append additional rules.

## Appendix A

### Penalties, Service Fees, Charges and Non Compliance

**Penalties:**

**Section 1: Listing Procedures** ó Violations of not entering a listing within twenty-four (24 hrs) (excepting weekends, holidays, and postal holidays) will result in escalated penalties. Within a twelve month period, first offense \$50.00, second offense \$100.00 and the third offense \$250.00

**Section 1.1.1: Listings Subject to Rules and Regulations of the Service** ó In the event of a violation of any provision of these Rules and Regulations (excluding those matters addressed in Section 6 Census) there shall be levied a penalty of \$25.00 per violation.

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

**4. Photos:** A penalty of \$25.00 may be levied per missing photo.

**6. Virtual Tour:** Violation of this section, the MLS may remove the violation and/or fine the Participant \$50.00.

**7. Remarks Section:** Violation of this section the MLS may remove the violation and/or fine the Participant \$50.00. In addition, a letter will go to the Participant asking him/her to correct the information within 7 calendar days or the Participant's access to the MLS will be terminated until the violation is corrected.

**12. Proper MLS Area/Property Type:** d. \$25.00 penalty

**Section 1.10: Expiration of Listings** ó If the expiration date of a listing contract is extended without the Homeowner(s) signature, the MLS will penalize \$100.00 to the Subscriber.

**Section 2.5: Reporting Sales to the Service** - \$20.00 penalty for not reporting status changes including final closing of sales to the MLS by the Listing Broker within 24 hours (excepting weekends, holidays, and postal holidays) after they have occurred. \$25.00 penalty for reporting a more than a single sale one time on any property filed with the MLS.

**Section 5: Compensation Specified On Each Listing** – A \$25.00 penalty will be levied for any listing entered into the Multiple Listing Service without a commission being offered to either the Broker's Agent or the Buyer's Agent or to the Sub-Agent or all.

**Service Fees and Charges:**

**Section 6:**

Initial Participation Fee:	\$1,000.00
Recurring Participation Fee:	\$25.00 - \$150.00 (Quarterly Fees)
Subscription Fee:	\$25.00 - \$150.00 (Quarterly Fees)
Listing Fees:	\$50.00 for Reciprocal Listing
Staff Fee:	\$20.00 for entering a Listing
	\$ 5.00 for entering an Open House
	\$ 5.00 for entering a Status Change
	\$ 5.00 for Reactivating a Listing
Refunds:	There will be no refunds to any Subscriber
Assessments:	

**Other Fees:**

Keybox:	\$68.00 to \$100.00 per missing ibox (keybox)
	\$25.00 per Bogus ibox Serial Number
	\$20.00 per incident on failure to report transfer of ibox
Security:	\$1,000 up to for violation of any Policy, Procedure or User Agreement (i.e.: Safemls , Security Token)

**Non Compliance with Rules:**

**Section 7.1 Compliance with Rules:** The following action may be taken for noncompliance with the rules

- a. For failure to pay service fees or access fees when due, there will be a \$15.00 late charge. If such fees remain unpaid 30 days after the due date, provided that at least a 10 day notice has been given, the MLS services and access may be suspended until service charges or fees are paid in full.
- Any Participant belonging to the MLS would be held accountable for all subscribers or appraisers that use the system. Penalty would be suspension of the Participants service.
- On the day a Subscriber is turned off, a certified letter will be sent to the Participant stating which Subscriber still owe his/her MLS Access Fee and any other miscellaneous charges due to CYNIS. If the Subscriber does not pay or the Participant does not notify CNYIS with a copy of a DOS Termination Card and the Participant does not pay for the Subscriber, the Participant's MLS service will be turned off 10 days from the date the Subscriber was turned off.
- If MLS service is allowed to lapse, a penalty charge of \$75.00 will be charged to have service restored.
- Once service fees or access fees are paid in full, staff has up to one business day to restore service.

## **Appendix B**

### **CNYIS MLS Security Agreement**

This Agreement entered into by and between the Central New York Information Service, Inc. (CNYIS) Multiple Listing Service and the undersigned Subscriber. It is acknowledged by the parties that both the CNYIS and Subscriber have an interest in protecting the security of the CNYIS System (the "System") and the CNYIS Data contained within the System. It is further acknowledged that Subscriber wishes to access and utilize such Service through a Participant Broker ("Participant"). For the purpose of this Agreement the term "Participant" shall mean the principal broker or appraiser manager that supervises Subscriber's real estate activities and on whose behalf Subscriber conducts those real estate activities. Subscriber desires to receive Services in accordance with this Agreement, and in consideration of receiving such Services, Subscriber agrees to abide by the mutual covenants, promises, terms and conditions as herein set forth.

1) **REPRESENTATION OF SUBSCRIBER** Subscriber represents and warrants that, as of the date set forth below, he/she is a real estate licensee or an appraiser licensed or certified by the state of New York, or are employed by or acts upon behalf of a real estate licensee or an appraiser licensed or certified by the state of New York who is affiliated with a Participant and will continue in such capacity at all times while this Agreement is in effect. If Subscriber at any time during the term of this Agreement is no longer affiliated with a Participant in good standing, Subscriber agrees to notify the CNYIS promptly.

2) **CNYIS SYSTEM ACCESS.** The CNYIS will issue to Subscriber one "User ID" and "token" (key fob) that, along with a Subscriber generated "*PIN*", will entitle Subscriber to use and access the System through a System compatible computer using Subscriber's own Internet connection. Simultaneous access to the System using the same User ID is prohibited. **THE PIN AND KEY FOB ARE PROVIDED EXCLUSIVELY FOR THE SOLE USE OF SUBSCRIBER AND MAY NOT BE SHARED WITH OR USED BY ANY OTHER PERSON.** Failure to comply with this provision will result in a significant fine and possible loss of CNYIS System access as set forth in the CNYIS Policies.

a) The Subscriber agrees to prohibit access to the System by those not authorized to use the System, and agrees to keep confidential any security features, including but not limited to the PIN.

b) The Subscriber agrees not to sell, publish, reformat, recompile nor resell CNYIS Data, derive products or analyses from the CNYIS Data, nor distribute in written, printed or electronic form proprietary or copyrighted information of the CNYIS other than that of his/her Participant's own data, to any person, firm, corporation or entity, whether or not for compensation, without the express written consent of the CNYIS and the property owner whose information is so disseminated, except for appraisal or comparative market analysis ("CMA") purposes or the marketing of properties or prospective purchasers or tenants.

3) **TERM.** The term of this Agreement shall commence as soon as Subscriber has executed and returned this Agreement to the CNYIS and Subscriber has paid all fees that are due and the CNYIS has accepted this Agreement. This Agreement shall continue in full force and effect until such time as Subscriber is no longer eligible to receive the Services provided under this Agreement, or until such time as membership or access has been terminated in accordance with the CNYIS Policies. Subscriber acknowledges that he/she may not terminate this Agreement so long as he/she remains affiliated with a broker/appraiser manager that is subject to a Participant Access Agreement with the CNYIS. Subscriber understands that, upon the termination of this Agreement, his/her User ID, PIN and token will no longer be valid and he/she will not be able to access or use the System and will not be eligible to receive any other Services or products under this Agreement. Upon the termination of this Agreement Subscriber shall purge all copies of the CNYIS Software and the CNYIS Database from Subscribers personal computers, handheld computers, websites and any other such media; and all licenses granted hereunder shall immediately terminate. Subscriber is responsible for returning the token to CNYIS office within 5 days of termination.

**4) FEES AND PAYMENT TERMS.** The Participant Access Agreement between the CNYIS and Participant establishes the fees and payment terms applicable to this Agreement. If Participant has permitted the CNYIS to bill Subscriber directly for services, then Subscriber must provide either a credit card authorization, a bank debit authorization or other acceptable form of electronic payment, at the CNYIS option, to enable the CNYIS to process payments automatically.

**5) OWNERSHIP AND MISUSE OF INFORMATION.** Unless otherwise agreed to in writing, Subscriber acknowledges that all information stored in the System (i.e., "CNYIS Data") remain the property of the CNYIS and that the CNYIS, and not Subscriber, shall retain all right, title and/or interest therein.

(a) Assignment from Subscriber. Unless otherwise agreed to in writing, Subscriber hereby assigns to the CNYIS all right, title and interest, including all rights under U.S. and international copyright law, in the Subscriber Contribution and Subscriber warrants that it has the authority to make this assignment. Subscriber further warrants that the Subscriber Contribution does not infringe on the copyright or other intellectual property rights of any third party and Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to the CNYIS. For the purpose of this Agreement the term "Subscriber Contribution" shall mean all CNYIS Data that the Subscriber submits, contributes, or inputs in the CNYIS System, including text, binary, and photographic image data.

(b) License. The CNYIS hereby grants Subscriber a license to use the CNYIS Database, subject to the permission of Participant and the CNYIS Policies and according to the terms of the Participant Access Agreement between the CNYIS and the Participant. All other uses are prohibited.

**6) EMAIL ADDRESS REQUIRED.** Subscriber agrees to maintain on file with the CNYIS at all times a valid working email address. Failure to do so will negate Subscriber's ability to generate a temporary emergency password.

**7) LIMITATION OF LIABILITY.** The CNYIS shall not have any liability for inaccuracies in CNYIS Data input into the system by Subscriber. Subscriber understands and affirms that CNYIS does not have any direct control over the operation of the System or Subscriber's ability to gain access to the Internet Accordingly, Subscriber hereby waives any and all claims which he/she has or may acquire against the CNYIS with respect to any failure in the System, the operation of the System itself, Subscriber's inability to gain access to the Internet for any reason, or activities relating to or the providing of products or Services pursuant to this Agreement. **THE CNYIS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL INFORMATION CONTAINED WITHIN THE SYSTEM IS MADE AVAILABLE TO THE SUBSCRIBER ON AN "AS IS, AS AVAILABLE" BASIS AND THE CNYIS DOES NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF ANY SUCH CNYIS DATA.**

The CNYIS shall not be liable for incidental damages or consequential damages under any circumstances, even if the CNYIS has been advised as to the possibility of such damages. The CNYIS liability to Subscriber for any reason shall not exceed the total charges paid by Subscriber hereunder and Subscriber agrees that the CNYIS will not be liable for any lost profits or for any claims asserted against Subscriber by any other party.

**8) COMPLIANCE WITH THE CNYIS RULES, REGULATIONS AND POLICY.** Subscriber acknowledges that access to and use of the System is contingent upon Subscriber's compliance with the CNYIS Policies with respect to said System. For the purpose of this Agreement the term "CNYIS Policies" shall include all policies, procedures, rules and regulations as the CNYIS amends them from time to time with respect to said System. Subscriber understands that failure to comply may result in a fine and/or suspension of CNYIS Service, which includes loss of use of the CNYIS System access and deactivation of the key that is used to gain access to the CNYIS sponsored lockbox program.

**9) INDEMNITY.** Subscriber agrees to indemnify, defend and hold harmless the CNYIS from any and all claims, demands, liabilities and costs, including attorney fees, arising from the failure of Subscriber to comply with any of

Subscriber's obligations or responsibilities set forth in this Agreement. Subscriber expressly waives, releases and agrees to hold harmless the CNYIS against any actual damages, consequential damages and lost business and any other claim arising from Subscriber's use of the System. These indemnity and release Agreements of Subscriber shall survive the termination of this Agreement.

10) ATTORNEY FEES. If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney fees, including such costs and fees on appeal.

11) SEVERABILITY. In the case that anyone or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12) WAIVER. The failure of either party to enforce at any time or for any period of time any of the provisions of this Agreement will not be construed to be a waiver of such provisions or of its right thereafter to enforce such provisions and each and every provision thereafter, unless such provisions are expressly waived in a signed, written Agreement by both parties.

13) AUTHORIZATION. The parties represent and warrant that the signatories hereto are duly authorized to enter into this Agreement.

I ACKNOWLEDGE THAT I HAVE READ AND FULLY UNDERSTAND ALL OF THE TERMS AND CONDITIONS SET FORTH IN THE CNYIS SUBSCRIBER AGREEMENT AND I AGREE TO ABIDE BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.