

# HAWAII INFORMATION SERVICE

## FOREIGN LISTINGS LICENSE AGREEMENT

This Foreign Listings License and Access Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_ between (i) Hawaii Information Service (hereinafter HIS), a Hawaii corporation with offices at 680 Iwilei Road Suite 670, Honolulu, Hawaii 96817, and (ii) the undersigned Foreign Subscriber (FS), who, intending to be legally bound, hereby agrees as follows:

### 1. HIS SERVICE.

1.1 HIS maintains an on-line real estate information database and provides data to various Internet sites.

1.2 HIS agrees to make listing data submitted by FS available to all Internet sites supplied by HIS and to all other eligible subscribers to HIS

### 2. BROKER AUTHORIZATION AND RESPONSIBILITY.

Written Consent. Foreign Subscriber's Principal Broker, as the owner of the listing information provided to HIS for use in the HIS database, hereby grants HIS the right to reproduce, use, distribute, display and grant access to such listing information through the HIS Service electronically and in such other form or manner as HIS deems appropriate at no cost to HIS. FS's Principal Broker represents and warrants to HIS that any photographs, floor plans or other information pertaining to listed properties that are included in the listing information for which FS's Principal Broker is the designated broker, is included in the HIS System with the written consent of the appropriate party (e.g. homeowner, photographer, builder, architect, etc.)

Copyright Ownership. All rights, title and interest in each and every HIS Database compilation created by HIS, and in the ownership of the copyright therein, shall at all times remain vested in HIS. HIS shall have the right to license such compilations or portions thereof to any entity pursuant to the terms agreed upon by the HIS at no cost to HIS. Title to the information supplied by the FS such as listing information shall remain with FS's Principal Broker as the owner of such listing information.

Consent to Use Information. FS acknowledges that information available through the HIS Service is provided with the consent of the FS and third-party licensors. HIS has the right to remove information from the HIS Database at anytime if HIS determines the information is or may be infringing or otherwise violates or may violate rights of any third-party or HIS's right to include such information in the HIS Database which has been terminated for any reason. FS acknowledges that governmental agencies may be provided access to portions of the HIS database.

Original Listing. FS will provide data on HIS form(s) provided for that purpose. FS agrees to provide up to five (5) photos for inclusion on the web page. Listings will NOT be accepted without a minimum of one (1) photo. Photo(s) may be mailed in original format and HIS will scan photo or FS may provide .jpeg via e-mail to photos@HawaiiInformation.com. Listing will not be forwarded to the Internet until at least one (1) photo is attached to listing data.

Status Changes. FS agrees to submit all status changes promptly to HIS for input. HIS assumes no liability for incorrect data.

### 3. SERVICE FEES.

3.1 Fees. In consideration for the rights to submit listings to the HIS database, FS shall pay HIS the following fees:

(a) Initial Subscription Fee. A one-time, non-refundable fee of \$150.00 per listing.

3.2 Payment. FS shall submit payment at effective date of contract and upon submission of data to HIS for entry thereafter.

3.3 Taxes. All fees described herein are inclusive of all federal, state, municipal or other governmental excise, sales taxes.

**4. INDEMNIFICATION.** FS shall indemnify and hold HIS and its officers, directors, employees, agents, representatives, licensors and shareholders harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) arising from any claim, demand, action or proceeding initiated by any third-party against any of them based upon (i) FS's breach of or default under any term or provision of this Agreement or (ii) actions of FS that result in (a) inaccuracy of any listing information supplied for the HIS Service by FS, (b) infringement of any proprietary or contract right of any third party as a result of the availability of such information through the HIS Service and (c) any violations or claimed violations of this agreement, or any laws, including the Federal Fair Housing Act & other similar Federal & state laws, agreements, or contracts by the FS, invasion of privacy or any other tort claims, and causes of action or demands whether arising in contract or tort. FS shall assist HIS, at FS's expense, in the defense or settlement of any claim to which this indemnification obligation applies. The indemnification provided under this agreement shall survive the termination of this agreement.

**5. TERMINATION; WITHDRAWAL; REFUSAL.** This agreement shall commence upon acceptance of license application by HIS and continue thereafter indefinitely until FS ceases to submit listings to HIS for entry into the database or until HIS ceases to provide listing data to websites. HIS reserves the right to refuse listings that are unlawful, offensive, violate third party rights, or are not in good taste. HIS reserves the right to withdraw data and return fees at any time or cancel the service to any person at any time for any reason, subject to the obligations not to discriminate as prohibited by law. The FS may remove active listings from the database at anytime by so instructing HIS in writing and/or via email.

## **6. EXCLUSION AND LIMITATION OF LIABILITY.**

6.1 Limitations and Exclusions. NEITHER HIS NOR ANY OF ITS AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES OR LICENSORS SHALL BE LIABLE TO FS OR ANYONE ELSE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE HIS SERVICE, INCLUDING, BUT NOT LIMITED TO, RELIANCE BY ANY FS OR AUTHORIZED USER ON ANY INFORMATION OBTAINED THROUGH USE OF THE HIS SERVICE OR THAT RESULT FROM MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION, INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE HIS SERVICE, VIRUSES OR FAILURES OF PERFORMANCE, WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, THEFT OR DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO, THE HIS SERVICE OR RELATED INFORMATION, RECORDS OR PROGRAMS.

6.2 Maximum Aggregate Liability. IN NO EVENT SHALL THE LIABILITY OF HIS, ITS AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES AND LICENSORS ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY FS HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

6.3 Acknowledgment. FS acknowledges that HIS has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties. The FS irrevocably waives all claims against HIS or any of its affiliates, shareholders, officers, directors, employees, agents, representatives and licensors for any action in connection with the HIS Service and particularly as to acts imposing liquidated damages upon FS or revoking FS's access to the HIS Service.

**7. DISPUTE RESOLUTION.** All claims, disputes and controversies (except the non-payment of fees) and other matters in question between the parties to this Agreement, arising out of, or relating to this Agreement, the breach thereof, which cannot be resolved by the parties, shall be settled by binding arbitration pursuant to the rules then in effect of the American Arbitration Association by a single arbitrator in Honolulu, Hawaii under its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding any provisions in such rules to the contrary, the arbitrator shall have no authority to add or detract from the agreements of the parties. FS herewith agrees to submit any disputes or claims under this Agreement to the jurisdiction and venue of the First Circuit Court of the State of Hawaii.

**8. LEGAL FEES AND COSTS.** In the event legal action or arbitration is taken against FS, the prevailing party in such action or arbitration shall be entitled to recover its reasonable attorney's fees, costs, and expenses incurred in such action or arbitration.

**9. NO THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely between, and may be enforced only by, HIS and FS, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third parties.

**10. MISCELLANEOUS.** This Agreement may not be amended except by written instrument executed by both parties. This Agreement shall not be contravened by any terms contained in any purchase order, confirmation or acknowledgment signed by the parties hereto, and no modification or amendment of this Agreement shall be deemed effected by any purchase order, confirmation or acknowledgment containing other or different terms. Should any such purchase order, confirmation or acknowledgment contain additional or different terms, those terms shall be considered proposals by FS which are hereby rejected. Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by FS. This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Hawaii applicable to contacts made and performed in Hawaii.

IN WITNESS WHEREOF, the FS hereto has executed this Agreement as of the date set forth below.

Name: \_\_\_\_\_  
First Name Middle Initial Last Name Nickname  
(Name as recorded with DCCA and Real Estate Commission – Please print)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

**Principal Broker consent: (required)**

Name: \_\_\_\_\_  
First Name Middle Initial Last Name Nickname  
(Name as recorded with DCCA and Real Estate Commission – Please print)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**SUBSCRIBER INFORMATION;**

**INFORMATION BELOW WILL REMAIN CONFIDENTIAL:**

Home Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Hi DL # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**INFORMATION BELOW WILL APPEAR WHEREVER POSSIBLE:**

Phone \_\_\_\_\_ Pager \_\_\_\_\_ Cel \_\_\_\_\_

Home Phone \_\_\_\_\_ Home Fax \_\_\_\_\_

E-mail \_\_\_\_\_ URL: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Office Address: \_\_\_\_\_ City : \_\_\_\_\_ Zip : \_\_\_\_\_

Office Phone: \_\_\_\_\_ Office fax: \_\_\_\_\_

Agent/Office Phone \_\_\_\_\_ Agent Office fax \_\_\_\_\_

I would like my mail to go to my office address  Yes  No

I would like my home phone number kept confidential?  Yes  No

Are you a member of a Board of Realtors?  Yes  No If yes, which one? \_\_\_\_\_

Preferred listing verification method: \_\_\_\_\_ Fax \_\_\_\_\_ Email

## Foreign Listing PRICING WORKSHEET

#\_\_\_ of Listings @ \$150.00 per listing \$\_\_\_\_\_

Total to include GET Tax \$\_\_\_\_\_

**Total Amount: (Make payable to Hawaii Information Service)** \$\_\_\_\_\_

-

### Charge It! VISA Mastercard Number:

Expiration Date: \_\_\_\_\_ Authorizing Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Hawaii Information Service is currently providing data to the following sites:

HawaiiInformation.com

Alohaliving.com

**Please fax or mail the completed Agreement forms to:**

**Hawaii Information Service**

680 Iwilei Road, Suite 670

Honolulu, Hawaii 96817

Toll Free Phone: 1-800-628-3121

Toll Free Fax.: 1-888-628-3121

Phone: 1-808-599-4224

Fax.: 1-808-536-6499

Email: Membership@HawaiiInformation.com