



MLS Hawaii, Inc.  
d/b/a Hawaii Information Service  
Subscriber License and Access Agreement

This Subscriber License and Access Agreement (“Agreement”) is made as of the Effective Date on the signature page below between MLS Hawaii, Inc., d/b/a Hawaii Information Service (“HIS”), a Hawaii corporation with offices at 680 Iwilei Rd, Suite 670, Honolulu, HI 96817, and the undersigned subscriber (“Subscriber”), who, intending to be legally bound, hereby agree as follow:

**1. Definitions and usage.**

(a) Definitions.

“Associate Subscriber” means the status that may be ascribed to Subscriber in Section 2 (a) and is a non-principal licensed broker or agent or a non-principal certified real estate appraiser who is associated with a PBS or PAS either as an employee or independent contractor who performs acts related to real estate sales or receives commissions, quotes prices, or appraises real estate.

“HIS Affiliates” means HIS and its officers, directors, employees, agents, representatives, licensors and shareholders.

“HIS Database” means all data available to Subscriber on the HIS System, including the Subscriber Contribution and all other text, binary, photographic image data, pictorial, renderings, graphic, audiovisual works and similar content, in any form now known or hereafter discovered.

“HIS Policies” means HIS’s bylaws, policies and procedures manual, and rules and regulations, as HIS amends them from time to time.

“HIS Service” means the services HIS provides to Subscriber under this Agreement and similar services HIS provides to third parties under similar agreements, including any access or license to the HIS Software, the HIS Database, and the HIS System.

“HIS Software” means HIS’s proprietary web browser interface(s), mobile applications, and other front-end platforms that enable access to the HIS System.

“HIS System” means the aggregate of all hardware and telecommunications systems that HIS maintains in order to make access to the HIS Database available to Subscriber.

“PAS” means the status that may be ascribed to Subscriber in Section 2 (a).

“PBS” means the status that may be ascribed to Subscriber in Section 2 (a).

“Saved Information” means information that Subscriber Affiliates store in the HIS System for their own later use that is not intended by them to be available to HIS’s other customers, including client prospect and contact information.

“Subscriber Affiliates” means PBS's or PAS's Associate Subscribers, Support Subscribers, and its employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

“Subscriber Compilation Contribution” or “SCC” means all selection, coordination, and arrangement by Subscriber of listing information submitted, contributed, or input in the HIS System, including the choice, classification, categorization, ordering, and grouping of material or data that is included in the HIS System. SCC does not include original text or photographs.

“Subscriber Contribution” means all data that the Subscriber submits, contributes, or inputs in the HIS System, including text, binary, and photographic image data, pictorial, renderings,

graphic, audiovisual works, and other materials, in any form now known, or hereafter discovered, except the SCC.

“Subscriber’s Firm” means the real estate brokerage firm or principal appraisal company with who the PBS or PAS is affiliated with. A PBS or PAS who enters into this Agreement binds their Subscriber’s Firm to the Subscriber’s obligations under this Agreement.

“Support Subscriber” means the status that may be ascribed to Subscriber in Section 2(a) and is an individual, licensed or unlicensed, who is associated with a PBS or PAS, who works in a support capacity to the PBS, PAS or Associate Subscriber. Support subscribers do not perform acts related to real estate sales and/or do not receive any commissions or quotes prices.

(b) **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

(i) Wherever the term “including” is used, it means “including, but not limited to.”

(ii) The singular and plural numbers and masculine, feminine, and neuter genders of words are fully interchangeable.

(iii) Wherever the term “law” is used, it means all statutes, regulations, and case law, both state and federal, as they are amended. Without limiting the generality of the foregoing, “law” expressly includes all state and federal fair housing statutes and regulations.

**2. Subscriber’s status.**

(a) For purposes of this Agreement, Subscriber is (check one of the following boxes; this Agreement is not effective unless one of these boxes is checked):

- Principal Broker Subscriber (“PBS”)
- Principal Appraisal Subscriber (“PAS”)
- Associate Subscriber
- Licensed Support Subscriber
- Unlicensed Support Subscriber

(b) If Subscriber is a PBS or PAS, Subscriber directs HIS to (check one and only one of the following boxes):

- Bill Subscriber for all its Subscriber Affiliates’ access to the HIS Service
- Bill Subscriber for only its Support Subscribers’ access to the HIS Service
- Bill its Subscriber Affiliates directly

**3. HIS’s obligations.**

(a) **ID and password.** HIS shall provide one unique user ID and password to each of the Subscriber Affiliates that is authorized to obtain access to the HIS service by virtue of this Agreement or another license and access agreement. The user ID and

password will provide Subscriber access to all data and functions in the HIS Service to which Subscriber is entitled under the HIS Policies. HIS makes no warranties, however, that the HIS Service will be available at all times. HIS may use a third party contractor or contractors, as determined in HIS's sole discretion, to facilitate its responsibilities under this Agreement.

- (b) **Help desk.** HIS shall provide help desk services to Subscriber to answer questions relating to the HIS Service. During its regular business hours, HIS shall make telephone support available to Subscriber and monitor its email box for inquiries and requests from Subscriber. HIS makes no warranties, however, that the help desk will respond within a certain time or be able to answer all questions.
- (c) **Training.** HIS will make training in the use of the HIS Service available to Subscriber on a regular, on-going basis, either in-person at a location selected by HIS or virtually (e.g., via webinar, pre-recorded videos, or similar) as determined by HIS.
- (d) **Protect Saved Information.** HIS shall make commercially reasonable efforts to make Saved Information available only to Subscriber Affiliates.

#### **4. Subscriber acknowledgments.**

- (a) **Modifications to service.** HIS may, but is not required to, modify the HIS Service, including removing information and making additional information available, and adding and removing system functions.
- (b) **Editorial control.** HIS is not required to, and does not, review, edit, or exercise editorial control over the HIS Database or the Subscriber Contribution; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, HIS may take any steps necessary in its judgment, including deleting the Subscriber Contribution or portions thereof, to avoid or remedy any violation of law or infringement of intellectual property right. Additionally, HIS shall have the right to alter and/or remove metadata and copyright management information contained in the Subscriber Contribution.
- (c) **Conditions of service.** Subscriber's continued compliance with all the terms of this Agreement is a condition to each and every performance of HIS hereunder. Subscriber will comply with HIS Policies at all times during the term of this Agreement. Additionally, Subscriber will comply with all applicable laws, statutes, ordinances and regulations in performance of their respective obligations under this Agreement, including the Fair Housing Act (42 U.S.C. §3601 et. seq.) and the Americans with Disabilities Act (42 U.S.C. §12101 et. seq.).
- (d) **Saved Information.** Saved Information may not always be available to Subscriber and may become available to unauthorized persons. HIS is not liable for unauthorized access to or loss of Saved Information; Subscriber is responsible for retention of any information that may be necessary to reconstruct Saved Information if it is lost or destroyed.
- (e) **Disclosure to third parties.** HIS reserves the right to distribute to third parties certain non-confidential information about Subscriber, including Subscriber's name and address. HIS reserves the right to distribute to third parties aggregated information about HIS customers' use of the HIS Service, but not about Subscriber's use specifically.
- (f) **Disclosure to government.** Subscriber acknowledges that HIS may provide government agencies access to the HIS Service at any time in HIS's sole discretion.
- (g) **If Subscriber is a PBS or PAS:**
  - (i) Subscriber must enter into this Agreement before any other Subscriber Affiliate may obtain access to the HIS Service. Subscriptions of other Subscriber Affiliates are dependent on this Agreement; any

termination or suspension of this Agreement will result in termination or suspension of dependent Subscriber Affiliate agreements.

- (ii) Subscriber Affiliates may enter and retrieve active listing information on the HIS Service only if Subscriber is capable of offering compensation to and accepting compensation from other principal brokers.
- (h) **If Subscriber is a PAS,** Subscriber acknowledges that certain information in the HIS Database, including information about listings currently for sale, may be withheld from Subscriber pursuant to the HIS Policies.
- (i) **If Subscriber is an Associate Subscriber or Support Subscriber,** Subscriber acknowledges that this Agreement is dependent upon the license and access agreement between HIS and Subscriber's principal broker or appraisal firm manager; any termination or suspension of that agreement will result in termination or suspension of this Agreement.

#### **5. Subscriber's obligations.**

- (a) **Use limited.** Subscriber shall use the HIS Service solely for the purpose of selling, listing, leasing, and appraising real estate. Except as expressly provided in this Agreement, Subscriber shall not copy, create derivative works of, distribute, perform, or display the HIS Service or any part of it.
- (b) **Confidentiality.** Subscriber shall maintain the confidentiality of its user ID and password; Subscriber shall not provide its ID and password to any other Subscriber Affiliate or to any third party. Subscriber will not make its user ID, password, the HIS Database, or HIS System available to any third party, including without limitation, affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement or the HIS Policies. If Subscriber is a PBS or PAS, Subscriber shall ensure that the Subscriber Affiliates maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscriber Affiliates obtains access to the HIS Service or any part of it. Failure to comply with this provision will result in liquidated damages, as set forth in Section 10(c).
- (c) **Equipment.** Subscriber shall acquire and maintain all personal computers, modems, telecommunications connections, and computer software, other than the HIS Software, necessary for Subscriber's use of the HIS Service.
- (d) **Subscriber representations.** Subscriber shall not make any representations or warranties to any third party regarding the HIS Service or any part of it; Subscriber may, however, republish verbatim any description of the HIS Service that HIS publishes.
- (e) **Disclosures to third parties.** Subscriber shall not knowingly publish or disclose any information about HIS or the HIS Service to any competitor or potential competitor of HIS.
- (f) **Subscriber Contribution.** When making a Subscriber Contribution to the HIS Service, Subscriber shall ensure that the information submitted complies with the HIS Policies with regard to (i) required data fields; (ii) format of submission; and (iii) procedures for submission and all applicable laws, statutes, ordinances, and regulations. Subscriber warrants that the Subscriber Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation or proceeding pending or threatened with respect to the Subscriber Contribution.
- (g) **If Subscriber is a PBS or PAS**
  - (i) **Affiliate agreements.** In accordance with the HIS Policies, Subscriber shall ensure that each real estate and appraiser licensee affiliated with Subscriber who will have access to the HIS Service enters into a license and access agreement with HIS as a PBS, PAS,

Associate Subscriber or Support Subscriber. Subscriber's breach of this subsection shall entitle HIS to terminate this agreement under Section 8(d).

**Please note that all actively licensed real estate brokers, salespersons and appraisers located on the islands of Kauai and Hawaii employed by the PBS/PAS must subscribe to the service, except as expressly stated in the HIS Policies. Failure to comply with this requirement may cause suspension or termination of the service to the PBS/PAS and to all of their Associate and Support**

- (ii) **Affiliate supervision.** Subscriber shall ensure that all Subscriber Affiliates comply at all times with the HIS Policies and with applicable laws. Subscriber is liable for any Subscriber Affiliate's breach of any agreement between the Subscriber Affiliate and HIS relating to the HIS Service or violation of any of the HIS Policies as if Subscriber had committed it themselves.
- (iii) **List of affiliates.** Subscriber shall provide to HIS, a current list of all of Subscriber Affiliates; **Subscriber shall inform HIS in writing of any change in the Subscriber Affiliates within 24 hours of the change.**
- (iv) **Accurate information.** Subscriber shall use reasonable care to ensure the accuracy of the Subscriber Contribution and its compliance with all laws. Subscriber shall ensure that any changes to the Subscriber Contribution are made on the HIS System within 24 hours or within such other time as HIS shall provide in the HIS Policies.
- (v) **Confidentiality.** Subscriber shall ensure that the Subscriber Affiliates maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscriber Affiliates obtains access to the HIS Service or any part of it.

## **6. Intellectual property.**

**If Subscriber is a PBS, PBS: Election regarding copyrights in Subscriber Contributions.** If Subscriber is a PBS, Subscriber must elect from the following options. If no election is indicated, then Subscriber is deemed to have selected Option I.

### **OPTION I**

- (a) **Assignment from Subscriber.** Subscriber hereby unconditionally assigns to HIS all right, title and interest, including all right, title and interest in the Subscriber Contribution, including, without limitation, any copyrights therein under U.S. and international copyright law; Subscriber warrants that it has the authority to make this assignment. HIS agrees during the term of this Agreement not to license or distribute the Subscriber Contribution to any third party that is not a real estate brokerage or appraisal subscriber to the HIS Service if Subscriber has indicated in writing its desire to withhold the Subscriber Contribution from such third party. Subscriber acknowledges that once it has made the election agreeing to this section, all copyrights in all portions of the Subscriber Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in HIS.
- (b) **HIS Obligations.** HIS hereby grants to Subscriber a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Subscriber Contribution and those portions of the HIS Database relating to Participant's listings. HIS shall secure the rights of Subscriber hereunder by obtaining assignments and licenses from Subscriber Affiliates and others as necessary; HIS shall use reasonable efforts to make periodic

registrations of the copyrights in the HIS Database, including the Subscriber Contribution; HIS shall employ reasonable efforts to detect and hinder third parties using the Subscriber Contribution without Subscriber's permission.

### **OPTION II**

- (a) **License from Subscriber.** Subscriber hereby grants to HIS a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Subscriber Contribution. Subscriber warrants that it has the authority to grant this license. HIS agrees during the term of this Agreement not to license or distribute the Subscriber Contribution to any third party that is not a real estate brokerage or appraisal subscriber to the HIS Service if Subscriber has indicated in writing its desire to withhold the Subscriber Contribution from such third party.
- (b) **HIS has no obligations to protect.** Subscriber acknowledges that: (i) HIS makes no grant of license or assignment to Subscriber of any rights in the HIS Database except as set forth in Section 6(e); (ii) HIS will make no effort to register the copyrights in the Subscriber Contribution, and Subscriber will be responsible for all costs and efforts associated with registration; (iii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; (iv) ***HIS will employ no efforts whatsoever to detect or hinder third parties using the Subscriber Contribution without Subscriber's permission;*** (v) HIS will make no effort to secure for Subscriber the right to use copyright works created by Subscriber Affiliates or third parties.
- (c) **If Subscriber is an Associate Subscriber or Support Subscriber.** Depending on whether Subscriber's PBS or PAS has selected Option I or Option II above, the following terms shall apply:
  - (i) If Subscriber's PBS or PAS has selected Option I, Subscriber hereby unconditionally assigns to HIS all right, title and interest, including all rights under U.S. and international copyright law, in the Subscriber Contribution. To the extent that Subscriber has also purported to assign its interests in the Subscriber Contribution to Subscriber's PBS or PAS, the assignment in this paragraph is null and void. To the extent that Subscriber does not possess the rights to permit the foregoing assignment, Subscriber hereby grants to HIS a non-exclusive, perpetual, world-wide, transferable, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Subscriber Contribution. Subscriber may use the Subscriber Contribution only as necessary to achieve the aims of Subscriber's PBS or PAS unless Subscriber's PBS or PAS provides otherwise.
  - (ii) If Subscriber's PBS or PAS has selected Option II, Subscriber hereby grants to HIS a non-exclusive, perpetual, world-wide, royalty-free license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Subscriber Contribution and those portions of the HIS Database relating to Subscriber's listings.
- (d) **Warranties.** Subscriber warrants that it has the authority to make all assignments and licenses set out in this Agreement. Subscriber further warrants that (i) the Subscriber Contribution does not infringe on the copyright or other intellectual property

rights of any third party; and (ii) Subscriber has the written consent of any party necessary to provide the Subscriber Contribution to HIS. If the Subscriber is a PBS or PAS, that they have the authority to bind the PBS's or PSA's Subscriber Firm to the terms of this Agreement.

(e) **Other provisions.** Pursuant to the HIS Policies, the SCC shall be a work made for hire by Subscriber for the benefit of HIS, which shall be deemed the SCC's author for purposes of copyright law. HIS hereby grants Subscriber a license to use the HIS Software and the HIS Database (excluding the Subscriber Contribution) (collectively, the "Licensed Materials"), subject to the following terms:

(i) **Scope.** License to the Licensed Materials is personal, non-exclusive, non-transferable, and royalty-free. Subscriber may use the Licensed Materials only to the extent expressly permitted by this Agreement and the HIS Policies and only to deliver real estate brokerage or appraisal services to Subscriber's bona fide customers.

(ii) **Duration.** The licenses to the Licensed Materials terminate upon termination of this Agreement.

(iii) **Restrictions:** All uses of the Licensed Materials not expressly authorized in this Agreement and the HIS policies are prohibited, including (A) assigning, timesharing, selling, leasing, lending or renting the Licensed Materials or access to the HIS Database; (B) causing or permitting the reverse engineering, reformatting, recasting, disassembly or decompilation of the Licensed Materials; and (C) disclosing, demonstrating and displaying the Licensed Materials to anyone except bona fide prospective home buyers and sellers.

(iv) **Title.** Title to the Licensed Materials remains at all times in HIS and shall not pass to Subscriber.

(f) **HIS marks and logos.** During the term of this Agreement, Subscriber is eligible to display the service and trademarks of HIS only to the extent expressly provided in the HIS Policies.

## **7. Fees and payment terms.**

(a) **Applicable fees.** Subscriber shall pay the fees set forth in HIS's official Schedule of Fees, the current version of which is set forth in Exhibit B-1 (subsequent versions may be updated under Section 7 (e)).

(b) **Payment terms.** Fees are due and payable on the first day of each payment period for that period's services. HIS reserves the right to suspend or terminate this Agreement without further notice to Subscriber for non-payment.

(c) **No refunds.** HIS does not refund or pro-rate fees in the event of termination or suspension of this Agreement.

(d) **Taxes.** All fees for the HIS Service are exclusive of federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and, accordingly, Subscriber shall pay all such taxes and levies other than any tax or levy on the net income of HIS.

(e) **Fee increases.** HIS may amend the Schedule of Fees at any time at its sole discretion. HIS shall provide written notice to Subscriber at least thirty days in advance of the effective date of any fee increase. If Subscriber objects to the increase, Subscriber may terminate this Agreement by written notice to HIS at any time before the effective date of the increase.

(f) **If Subscriber is a PBS or PAS**

(i) Subscriber and Subscriber's Firm are jointly and severally liable for periodic fees for each and every Subscriber Affiliate according to the Schedule of Fees.

(ii) If Subscriber chooses in Section 2 (b) to have HIS bill Subscriber Affiliates directly, Subscriber and/or Subscriber's Firm shall pay any fees that HIS is unable to collect from Subscriber Affiliates upon invoice by HIS.

(g) **Associate Subscribers or Support Subscribers.** If Subscriber is an Associate Subscriber or Support Subscriber and Subscriber's principal broker has permitted HIS to bill Subscriber directly for services, then Subscriber must provide either a credit card authorization or bank debit authorization for HIS to process payments automatically.

(h) **Fines.** HIS may collect fines from Subscriber for violation of the HIS Policies by Subscriber. Payment amounts and terms for fines are set out in Exhibit B-2. HIS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

## **8. Term and termination.**

(a) **Term.** This Agreement shall commence upon the date first written below and shall continue thereafter on a month-to-month basis subject to the Subscriber's payment of fees and compliance with this Agreement.

(b) **Termination for breach.** Either party may terminate this Agreement in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement. Any such termination shall become effective upon the expiration of three days after written notice thereof if the breach or nonperformance has not then been remedied.

(c) **Termination for breach of HIS Policies.** HIS may terminate this Agreement upon notice if Subscriber fails to comply with the HIS Policies.

(d) **Termination for failure to pay.** In the event Subscriber fails to pay any fees required under this Agreement, HIS may terminate service without being subject to arbitration, and HIS may bring any claims for fees to small claims court.

(e) **Termination for convenience.** Either party may terminate this Agreement with or without cause, upon thirty days' written notice.

(f) **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (i) HIS shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the HIS Service; (ii) Subscriber shall purge all copies of the HIS Software and the HIS Database (except the Subscriber Contribution) from Subscriber's personal computers; and (iii) all licenses granted hereunder, except the license to the Subscriber Contribution in Section 6 (b), shall immediately terminate.

(g) **If Subscriber is a PBS or PAS,** upon termination of this Agreement the license and access agreements of all other Subscriber Affiliates shall also terminate at the same time, together with the rights of the Subscriber's Firm, if any.

(h) **If Subscriber is an Associate Subscriber or Support Subscriber,** this Agreement will terminate immediately and without notice if the license and access agreement between HIS and Subscriber's principal broker or principal appraisal firm manager is terminated for any reason.

## **9. Disclaimer, limitation of liability, and indemnification.**

(a) **DISCLAIMER OF WARRANTIES.** HIS PROVIDES THE HIS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE HIS SERVICE

AND THE INFORMATION AVAILABLE THROUGH THE HIS SERVICE ARE AT THE SOLE RISK OF SUBSCRIBER. THE HIS AFFILIATES DO NOT WARRANT THAT THE HIS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE HIS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE HIS SERVICE. THE HIS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE HIS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE HIS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- (b) **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE HIS AFFILIATES SHALL BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE HIS SERVICE, INCLUDING RELIANCE BY ANY SUBSCRIBER AFFILIATE ON ANY INFORMATION OBTAINED THROUGH USE OF THE HIS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE HIS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE HIS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.
- (c) **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL THE LIABILITY OF THE HIS AFFILIATES ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE 6 MONTHS IMMEDIATELY PRECEDING THE LAST EVENT GIVING RISE TO SUCH CLAIM.
- (d) **Indemnification.** Subscriber shall defend, indemnify and hold the HIS Affiliates harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the HIS Affiliates arising from any acts of Subscriber Affiliates, including (i) putting inaccurate information into the HIS Service; (ii) making unauthorized use of Subscriber Affiliate's password; (iii) making unauthorized use of the HIS Database; (iv) infringing any proprietary or contract right of any third party; and (v) violating this or any other Agreement or any law.
- (e) **Acknowledgment.** Subscriber 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.

## **10. Disputes and remedies.**

- (a) **Injunctive relief.** Subscriber acknowledges and agrees that the HIS Software and HIS Database are confidential and proprietary products of HIS and that in the event there is an unauthorized disclosure of them by Subscriber, no remedy at law will be adequate. Subscriber therefore agrees that in the event of such unauthorized disclosure of HIS Software or HIS Database, HIS may obtain injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law.

- (b) **Dispute resolution.** Except as provided in Section 8 (d), any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Honolulu, Hawaii, except that it may be held by telephone where the Arbitration Rules expressly so permit. Subscriber herewith agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the courts of the State of Hawaii sitting in the First Judicial Circuit.
- (c) **Liquidated damages.** Subscriber acknowledges that damages suffered by HIS from (i) access to the HIS Service by an unauthorized third party as a result of disclosure of Subscriber's password or (ii) an unauthorized disclosure by Subscriber of the HIS Database to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to HIS to enter into this Agreement with Subscriber, Subscriber agrees that (x) in the event that any disclosure of Subscriber's password results in access to the HIS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Subscriber shall be liable to HIS for liquidated damages in the amount of \$1,000 and termination of this Agreement; and (xi) in the event that Subscriber makes unauthorized disclosure of any portion of the HIS Database to any third party, Subscriber shall be liable for liquidated damages in the amount of \$500 for each real estate listing disclosed and termination of this Agreement.
- (d) **Legal fees.** In the event of legal action or arbitration between HIS and Subscriber, Subscriber's Firm or HIS and any Subscriber Affiliate, on account of or in respect to this Agreement, 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. If HIS is the prevailing party in an action against a Subscriber Affiliate, Subscriber shall be obligated to pay these costs on the Subscriber Affiliate's behalf.

## **11. Miscellaneous.**

- (a) **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, HIS and Subscriber, 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 party.
- (b) **Interpretation and amendment.** Except as provided in Section 11(g), this Agreement may not be amended except by written instrument executed by both parties. Should any purchase order, confirmation or acknowledgment of Subscriber contain additional or different terms, those terms shall be considered proposals by Subscriber which are hereby rejected.
- (c) **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Subscriber. Any assignment in contravention of this section is null and void *ab initio*.
- (d) **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. In the event of any dispute regarding the interpretation of the terms of this Agreement, it shall not be construed for or against any party on

the grounds that the Agreement was prepared by any one of the parties. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.

- (e) **Governing law.** 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.
- (f) **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission. Subscriber expressly consents to receiving electronic communications from HIS regarding the HIS Service.
- (g) **Amendment.** Subscriber expressly consents to the execution of amendments by electronic means (such as web site “click through” agreements). HIS may amend this agreement by providing 30 days’ advance notice of the amendment to Subscriber or the Subscriber Affiliates continue to use the HIS Service or HIS Software after the expiration of the 30-day notice period, Subscriber will be deemed to have agreed to the terms as amended.
- (h) **Binding Effect.** The provisions of this Agreement shall be binding and effective upon the Subscriber, the Subscriber’s Firm, all Subscriber Affiliates and Support Subscribers both jointly and severally.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

Having read this Subscriber License and Access Agreement, the parties express their will to be bound by its terms by setting their signatures below.

Company/Firm/Employer's Information			
Name of Company/Firm/Employer:			
Name of Principal Broker/Appraiser or Sole Owner:			
Registered Business Address: _____			
Street Address	City	State	Zip Code
Mailing Address: _____			
(If not same as above)			
Street Address	City	State	Zip Code
Office Phone #:	Office Fax #:	Office Email Address:	
Company URL/Website Address (If any):			
Subscriber Information			
Subscriber's Full Name: _____			
(If Licensed, please provide your name as it appears on your license)			
State License Type and #:	Email Address:		
Mailing Address: _____			
Street Address	City	State	Zip Code
Business Phone #:	Mobile Phone #:	Business Fax #:	
Subscriber's URL/Website Address (If any):			
Please check off the local Board or Association of REALTORS® that you are a member of below. If you do not belong to a Board or Association of REALTORS®, please check off "None".			
<input type="checkbox"/> HIR (Hawaii Island Realtors)	<input type="checkbox"/> WHAR (West Hawaii Association of Realtors)	<input type="checkbox"/> KBR (Kauai Board of Realtors)	<input type="checkbox"/> HBR (Honolulu Board of Realtors)
<input type="checkbox"/> RAM (Realtors Association of Maui)	<input type="checkbox"/> Other	<input type="checkbox"/> None	
If you have a NAR NRDS ID #, please provide it below.		If you checked off "Other" above please provide the name of the Board of REALTORS® that you are a member of below.	
Subscriber's Signature: X		Date:	

**If the Subscriber is a real estate licensee and is not a Principal Broker Subscriber (PBS), the PBS must complete the following Authorization for Data Entry section to authorize the level of access that this Subscriber may have. (Not applicable to Appraiser subscribers.)**

Authorization for Data Entry for Associate & Support Subscribers (Not applicable to Appraisers.)
To be completed by the PBS for Associate and Support Subscribers. The PBS automatically has authorization to release and modify any listing in their office.
This Associate Subscriber/Support Subscriber is: (Please check off one of the boxes below.)
<input type="checkbox"/> Not authorized to release & modify listings. Only the PBS or designated authorized subscribers in the office may release or modify listings.
<input type="checkbox"/> Authorized to release & modify their own listings only.
<input type="checkbox"/> Authorized to release & modify any listing in the office.

**If the Subscriber is not a Principal Broker Subscriber (PBS) or Principal Appraiser Subscriber (PAS), the PBS or PAS must also sign this agreement below.**

Principal Broker Subscriber/Principal Appraiser Subscriber: (Please review this agreement and sign below.)
I hereby authorize the Subscriber above to access the service under my firm's account. I understand that I will be responsible for any fees not paid by my Associate and Support Subscribers and that failure to pay fees when due may result in the assessment of late fees and/or suspension or termination of service to PBS/PAS and its subscriber affiliates. I also understand that a \$25.00 processing fee may be assessed for returned checks, credit card or ACH charge denials, and for any changes to payment method or billing cycle requested after the billing has been processed.
Principal Broker/Appraiser
Subscriber's Signature: X
Date:

Please complete the information above and fax this agreement form to 1-888-628-3121, if faxing from the neighbor islands, or 536-6499, if faxing from Oahu. It may also be emailed to [Membership@hiinfo.com](mailto:Membership@hiinfo.com). If mailing, please mail this agreement form to: Hawaii Information Service, Attn: Membership, 680 Iwilei Road #670, Honolulu, HI, 96817