

MLS HAWAII, INC.*dba***HAWAII INFORMATION SERVICE****PRINCIPAL BROKER SUBSCRIBER LICENSE & ACCESS AGREEMENT**

This Principal Broker Subscriber License and Access Agreement ("Agreement") is made as of the Effective Date on the signature page below between (i) MLS HAWAII, INC. (hereinafter Hawaii Information Service or HIS), a Hawaii corporation with offices at 677 Ala Moana Blvd. #200, Honolulu, Hi. 96813, and (ii) the undersigned Principal Broker Subscriber (PBS) described in Exhibit A, who, intending to be legally bound, hereby agrees as follows:

1. INTRODUCTION.

HIS offers a computer online, interactive regional real estate information service (the "HIS Service"), which is accessible through printer terminals and personal computers using HIS supplied proprietary computer software (the "HIS Software"), and an appropriate modem and telecommunications line. PBS wishes to obtain, and HIS agrees to make available to PBS, the HIS Software and access to the HIS Service all in accordance with the terms and conditions of this Agreement. PBS agrees to comply with all HIS Bylaws, Policies and Procedures Manual and all HIS Rules and Regulations provided to PBS in connection with PBS's use of the HIS Software and HIS Service.

2. HIS SERVICE.

2.1 Information. HIS maintains regional real estate information, as more fully described in Section 5, in electronic form on one or more centralized computers, (the "HIS System") and makes such information available for access and retrieval by PBSs and other authorized users through the HIS Service. HIS is not obligated to and does not review or edit the information or exercise any other form of editorial control over the information; however, HIS reserves the right to take any actions HIS determines necessary to insure that HIS is not legally exposed to claims under any discrimination or other similar laws. PBS agrees that the information obtained through the HIS Service shall not be reproduced or electronically manipulated for any other purpose than the selling, listing or appraising of real estate, and may not be resold, licensed or otherwise distributed without the written consent of HIS. Under no circumstance shall PBS receive any form of compensation for this information from third parties.

2.2 Evaluation of Information. PBS acknowledges that HIS does not investigate or confirm any information which may be accessed and retrieved through the HIS Service and, as more fully provided in Section 6, HIS neither warrants nor endorses any such information for any purpose.

2.3 Help Desk. HIS shall maintain a help-desk to answer questions regarding the HIS Software & database and HIS Service. Telephone support will be made available during normal business hours. HIS shall also monitor its email box during normal business hours for inquiries and support requests and respond to such inquiries and requests as soon as practicable under the circumstances. All training materials will be available on line, and significant on-line help will also be available.

2.4 Training. HIS will provide training in the use of its products on a schedule that will provide at least monthly classes on the island where the Subscriber has his or her primary place of business.

2.5 User ID & Password. Upon execution of this Agreement and the "Introduction to HIS" course, HIS shall assign to PBS one (1) unique User ID & Password. The assigned Password shall be confidential to PBS and may not be used by any other person. The PBS shall be responsible for properly using the User ID & Password with the appropriate HIS Software, equipment and telecommunications connection to access and use the HIS Service, and PBS shall be responsible for payment of all fees specified in this Agreement which result from such use.

2.6 Security. PBS is responsible for safeguarding and maintaining the confidentiality of the Password and is liable for any consequences that may result from its disclosure, including but not limited to immediate termination of this Agreement and liability for liquidated damages in accordance with Section 10 in connection with use of the HIS Service by any unauthorized person through PBS's Password.

2.7 Equipment. PBS is responsible for obtaining all personal computers, modems, telecommunications connections and computer software, other than the HIS Software, that may be necessary or useful for accessing and using the HIS Service and for the proper use thereof.

2.8 Modifications. HIS reserves the right to modify the HIS Service and/or make access to and use of any information available through the HIS Service subject to additional terms or conditions. PBS shall have the right to terminate this Agreement at any time without refund or pro rata fee adjustment if any modification to the HIS Service or to the terms and conditions under which information is made available are unacceptable to PBS.

2.9 Authorized User Saved Information. The HIS Service allows Subscriber to store particular items of information within the HIS Service for access and use in later online sessions. HIS and its licensor(s) have configured the HIS Service so as to make such stored information unavailable, insofar as possible, for access and use by any unauthorized users of the HIS Service. HIS shall not be responsible for unauthorized access to, or loss of, the stored information of Subscriber, and Subscriber is responsible for retention of any information that may be necessary to reconstruct any stored information that may be lost or destroyed for any reason.

2.10 PBS Information. HIS reserves the right to distribute to prospective PBSs and other third parties certain nonconfidential information concerning PBS such as name and address. In addition, HIS may collect and compile information regarding frequency of use or specific uses of the HIS Service by all users, but will not distribute, publish or disclose any information concerning frequency of use of, or specific uses, of the HIS Service specifically by PBS.

2.11 HIS Service Marks and Logos. PBS shall have the right, during the term of this Agreement, to use the HIS trade name and the service mark and logo for the HIS Service in advertising, promotion and marketing materials solely for the purpose of announcing PBS's use of the HIS Service to prospective customers. PBS

may republish any description of the HIS Service which has been published by HIS, provided the description is republished on a verbatim basis; but shall not, under any circumstances, make any unauthorized representations or warranties regarding the HIS Service or any information which may be accessed and retrieved through the HIS Service. The HIS Service Mark License Agreement must be signed prior to use of HIS Service Marks and Logos.

2.12 Limited Publication. PBS shall not knowingly publish any information about the HIS Service to competitors or potential competitors of HIS.

2.13 Eligibility. Only PBSs who are capable of offering and accepting compensation to and from other PBSs may enter and retrieve listing information. The Principal Broker must subscribe to HIS prior to any licensees in his/her firm subscribing to HIS.

3. HIS SOFTWARE.

3.1 License Grant. HIS hereby grants to PBS, for the term set forth in Section 8, a personal nonexclusive, nontransferable license to:

- (a) use the HIS Software (Research™ and WebREsearch™ and Rainmaker™) for the purpose of accessing and using the HIS Service and the information therein;
- (b) access, download and store in such personal computers any information available on the HIS Service; and
- (d) display and/or print out a paper copy of any information available on the HIS service for prospective real estate purchasers and sellers only.

3.2 License Restrictions. PBS is expressly prohibited from:

- (a) assigning, timesharing, selling, leasing, lending or renting the HIS software and/or access to the HIS database;
- (b) using the HIS Software for any purpose other than accessing, using and retrieving information from the HIS Service;
- (c) causing or permitting the reverse engineering, reformatting, recasting, disassembly or decompilation of the HIS Software and/or database; and
- (d) disclosing, demonstrating or displaying the HIS Software to anyone except bona fide prospective home buyers and sellers.

3.3 Title. Title to the HIS Software is retained by HIS and shall not pass to PBS.

4. BROKER AUTHORIZATION AND RESPONSIBILITY.

4.1 HIS Subscriptions. PBS shall be responsible for assuring that all Associate Subscribers and licensed and unlicensed personal assistants affiliated with PBS subscribe to HIS.

4.2 Written Consent. PBS, as the owner of the listing information provided to HIS for use in the HIS Service by PBS, PBS's Associate Subscribers, licensed personal assistants and unlicensed personal assistants affiliated with PBS, including listing information transferred to the HIS System from other computerized listing systems, 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. PBS 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 PBS 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.)

4.3 Compliance. PBS shall abide by the Rules & Regulations Manual of HIS and ensure that all Associate Subscribers, licensed personal assistants and unlicensed personal assistants affiliated with PBS comply with the terms of the HIS PBS License and Access Agreement and abide by the Rules & Regulations Manual. PBS shall assume full responsibility for the acts of Associate Subscribers affiliated with PBS and for all licensed & unlicensed assistants who have access to HIS Service in any of PBS's offices as well as for any financial obligations which may arise by virtue of said acts by any of the Associate Subscriber, licensed or unlicensed personal assistants affiliated with PBS. PBS covenants & agrees that all data supplied to HIS database by PBS and/or his/her Associate Subscribers, licensed, and unlicensed personal assistants will comply with all Federal and state laws, including but not limited to, the Federal Fair Housing Act.

4.4 PBS. PBS will provide HIS will a current list of all Associate Subscribers, licensed and unlicensed personal assistants affiliated with PBS. The list shall be updated, maintained on a current basis and provided by HIS as soon thereafter as possible so that HIS shall always have a complete, current, and accurate list.

5. REGIONAL REAL ESTATE INFORMATION.

5.1 Listing Information. If PBS is a listing agent for real property, PBS shall be entitled to submit to HIS listing information for listed properties and PBS's personal listing agent information. The listing information is provided to HIS for the purpose of informing other PBSs of the listing. Such information shall include the particular data specified on Exhibit A and shall be submitted in the format, and according to the procedures set forth on Exhibit A. The PBS shall obtain written consent to include any photographs, floor plans or other information pertaining to listed properties that the PBS includes in the HIS System from the owner of such photographs, floor plans or other information. The PBS authorizes HIS to reproduce, display and distribute such listing information through the HIS Service electronically and in such other form or manner as HIS deems appropriate at no cost to HIS. PBS shall use reasonable care to ensure the accuracy of such submitted information and shall be responsible for correcting and updating all information PBS has submitted within not more than 48 hours after any change in such information (e.g., sale of listed property or change in asking price). HIS, may, in its sole discretion, charge special fees for any listing information beyond the standard listing.

5.2 Optional Information. From time to time, the HIS Service may, but shall not be obligated to, make available information other than real estate listing information, which HIS determines is relevant to PBSs. Such information may include, but need not be limited to, public records data (such as property tax, assessment, title, mortgage, permit and census information), mortgage qualification data and amortization schedule data.

5.3 HIS Database. The term "HIS Database" includes, but is not limited to, all information included on the HIS Service or any portion thereof, as well as all

printouts of information from the HIS Database and any publication of information from the HIS Database.

5.4 Proprietary Rights and Restrictions. PBS acknowledges that the information available through the HIS Service may include textual, statistical, financial, photographic, video and audio components which are protected by United States Copyright Law. PBS acknowledges that this information is confidential and its use is restricted to PBSs of the HIS Service. Except as expressly provided in Section 3.1, PBS shall not reproduce, redistribute, publish, display, retransmit, broadcast, sell or license or allow anyone else to reproduce, distribute, publish, display, retransmit, broadcast, sell or license any such HIS database information in any format to anyone. PBS agrees to comply with any additional use restrictions which may be announced by HIS at any time regarding specific information in the HIS Database.

5.5 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 PBS and PBS's Associate Subscribers, licensed personal assistants and unlicensed personal assistants such as listing information shall remain with PBS as the owner of such listing information.

5.6 Consent to Use Information. PBS acknowledges that information available through the HIS Service is provided with the consent of the PBS 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. PBS acknowledges that governmental agencies may be provided access to the HIS database.

6. WARRANTY DISCLAIMER.

PBS EXPRESSLY AGREES THAT THE HIS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE HIS SERVICE ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, AND THAT USE OF THE HIS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE HIS SERVICE ARE AT THE SOLE RISK OF PBS. HIS AND ITS LICENSORS DO NOT WARRANT THAT THE HIS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND HIS, ITS LICENSORS AND THIRD-PARTY INFORMATION SUPPLIERS MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE HIS SERVICE. HIS, ITS LICENSORS AND THIRD-PARTY INFORMATION SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE HIS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE HIS SERVICE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. SERVICE FEES.

7.1 Fees. In consideration for the rights to access and use the HIS Service and the license granted for use of the HIS Software, PBS shall pay HIS the following fees in accordance with the rates set forth on the Schedule of Fees attached hereto as Exhibit B:

- (a) **Initial Subscription Fee.** A non-refundable fee assessed for delivery of the HIS Software and issuance of the PBS User ID and Password;
- (b) **Monthly Fee.** A flat fee assessed monthly in advance for PBS's right to continuing access to the HIS Service;
- (c) **Training Reservation Fee.** A fee assessed to all applicants to reserve space in a training class;
- (d) **Additional Fees.** Other fees and charges as listed on Exhibit B; and
- (e) **Reinstatement Fee.** A fee shall be assessed to any PBS who desires to reactivate his or her access to the HIS Service within one year after termination.

7.2 Assistants. Personal assistants or administrative support personnel supporting the PBS shall be individually assessed monthly fees. The PBS is responsible for assuring all Associate Subscribers and personal assistants subscribe to the HIS Service individually.

7.3 Payment. PBS shall be assessed on the first day of the month following PBS's activation date and monthly thereafter in advance. Fees are non-refundable and will not be pro-rated.

7.4 Taxes. All fees described herein are exclusive of all 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, PBS will pay all such taxes and levies other than any tax or levy on the net income of HIS.

7.5 Increases. HIS may increase the Initial Subscription Fee, Monthly Fees and any of the Additional Fees at any time by written notice to PBS at least thirty (30) days in advance of the effective date of such increase. If PBS objects to such increase, PBS may terminate this Agreement by written notice to HIS at any time before such effective date.

8. INDEMNIFICATION.

PBS 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 (a) inaccuracy of any listing information supplied for the HIS Service by PBS or by any of PBS's Associate Subscribers, (b) any unauthorized use of PBS's Password, (c) any unauthorized use of the HIS Database, (d) 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 (e) 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 PBS or PBSs Associate Subscribers, licensed or unlicensed personal assistants, invasion of privacy or any other tort claims, and causes of action or demands whether arising in contract or tort. PBS shall assist HIS, at PBS's expense, in the defense or settlement of any claim to which this indemnification obligation applies.

9. TERM. TERMINATION.

9.1 Term. The initial term of this Agreement shall commence upon the date first written below and shall continue thereafter on a month-to-month basis subject to the PBS's payment of the Monthly Fees and any other Fees to HIS when due and observance and performance of the terms and obligations of the Agreement.

9.2 Termination. This Agreement and the licensed rights granted hereunder may be terminated by either party 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 (3) days after receipt of written notice thereof if the breach or nonperformance has not then been remedied. Notice of non-payment of dues will be sent on the 5th of every month. Service will be terminated for non-payment on the 10th of every month. Promptly upon any termination or expiration of this Agreement, HIS shall deactivate PBS's User ID & Password, and PBS shall have no further access to the HIS Service. PBS shall thereupon purge all copies of the HIS Software from PBS's personal computers. PBS acknowledges that HIS shall have no obligation to refund any fees or charges or any portion thereof paid to HIS prior to termination.

In the event of non-payment of fees, HIS shall have the right to terminate service without being subject to arbitration, and any claims for fees by HIS will be subject to a small claims court claim by HIS.

Failure to comply with Rules & Regulations of HIS will result in termination of service.

HIS reserves the right to cancel the service to any person at any time for any reason, subject to the obligations not to discriminate as prohibited by law.

9.3 PBS Termination. Should the PBS terminate from HIS, any HIS Subscriber affiliated with that will also be terminated.

10. UNAUTHORIZED USE OF HIS SERVICE.

10.1 Unauthorized Use of PBS's Password. PBS acknowledges that damages suffered by HIS from access to the HIS Service by an unauthorized third party as a result of disclosure of PBS's Password would be speculative and difficult to quantify. Accordingly, as a material inducement to HIS to enter into this Agreement with PBS, PBS agrees that in the event that any disclosure of PBS's Password resulting in access to the HIS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, PBS shall be liable to HIS, for liquidated damages in the amount of \$500 and/or, at the option of HIS, termination of service.

10.2 Unauthorized Disclosure of HIS Database by PBS. PBS acknowledges that damages suffered by HIS from access to the HIS Database by an unauthorized disclosure to a third party by PBS would be speculative and difficult to quantify. Accordingly, as an inducement to HIS to enter into this Agreement, PBS agrees that in the event any PBS makes such unauthorized disclosure of this information to any third party, PBS shall be liable, at the option of HIS, for liquidated damages in the amount of five hundred dollars (\$500.00) for each real estate listing disclosed and/or, at the option of HIS, termination of service.

11. EXCLUSION AND LIMITATION OF LIABILITY.

11.1 Limitations and Exclusions. NEITHER HIS NOR ANY OF ITS AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES OR LICENSORS SHALL BE LIABLE TO PBS 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 PBS 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.

11.2 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 PBS HEREUNDER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

11.3 Acknowledgment. PBS 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 PBS 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 PBS or revoking PBS's access to the HIS Service.

12. REMEDIES.

PBS 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 such by PBS, no remedy at law may be adequate. Therefore, PBS agrees that in the event of such unauthorized disclosure of HIS Software or HIS Database, HIS may seek injunctive relief or other equitable remedies against PBS in addition to all available remedies at law.

13. DISPUTE RESOLUTION.

Except for the right of HIS to seek injunctive relief or other equitable remedies under Section 12 of this Agreement, 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. PBS 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.

14 LEGAL FEES AND COSTS.

In the event legal action or arbitration is taken against PBS, and HIS prevails in obtaining equitable relief or monetary damages, PBS will be obligated to reimburse HIS for the reasonable attorney's fees, costs and expenses it incurred in pursuing such legal action or arbitration. PBS will also be responsible for any legal fees and costs incurred by HIS in enforcing any order or collecting any judgment.

15. NO THIRD PARTY BENEFICIARIES.

This Agreement is entered into solely between, and may be enforced only by, HIS and PBS, 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.

16. 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 PBS which are hereby rejected. Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by PBS. 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.

4/99

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

____ Please bill me for my agents

____ Please bill my agents direct. I understand that if I select this option, I am still ultimately responsible for the payment of fees uncollected from my agents. Agents billed direct will be required to provide either a credit card authorization or a bank account (checking or savings) debit for automatic processing by HIS. I understand that notices of non-payment will be provided on the 5th of every month. I understand that service will be terminated on the 10th of the month if payment in full has not been received by HIS.

____ Please deliver my books to my office

____ I'll pick up my books

By: _____

(Signature)

Name: _____

(Please Print)

Soc. Sec. No _____

Effective Date: _____

Please fax or mail this page of your Subscription Agreement along with [Exhibit A](#), [Exhibit C](#) and a copy of
your license to:

MLS Hawaii, Inc.

677 Ala Moana Blvd., #200, Honolulu, Hi. 96813

1-800-628-3121 voice;1-888-628-3121 fax; 1-808-599-4224; 1-808-536-6499 fax

ceo@HawaiiInformation.com

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