

MLS HAWAII, INC.
License to Display Data
Agent Website

THIS AGREEMENT (this "*Agreement*") is made and entered into and effective this ____ day of _____, 2007 by and between **MLS HAWAII, INC.**, a Hawaii Corporation, dba Hawaii Information Service, having its principal place of business at 680 Iwilei Road Suite 777, Honolulu, Hi. 96817 (MLSHI) and _____ (**LICENSEE**) having its principal place of business at _____, Hawaii 96____;

WHEREAS, MLSHI operates a multiple listing service for participating Members ("Participants") who are authorized to use its services.

WHEREAS, MLSHI maintains an online computer service to provide its Participants access to a database of real property listings (the "MLSHI database")

WHEREAS, LICENSEE desires to include portions of the MSLHI database on LICENSEE's website, whose current Internet address is _____;

WHEREAS, MLSHI is willing, subject to LICENSEE's strict adherence to the terms and conditions herein contained, to make *specified limited portions of its MLSHI database* available to the public by allowing LICENSEE to use certain specified portions of the MLSHI database for inclusion in LICENSEE's Service (as hereinafter defined) for this purpose.

WHEREAS, MLSHI is willing to license the Licensed Data (as hereinafter defined), on a non exclusive basis to LICENSEE, solely for the use specifically permitted under this Agreement, and no other use.

NOW THEREFORE, in consideration of the premises and mutual agreements contained herein, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth herein, and shall be equally applicable to the singular and plural forms. Any agreement referred to herein shall mean such agreement as amended supplemented and modified from time to time to the extent permitted by the applicable provisions thereof.

"**Confidential Information**" shall mean the Licensed Data (as hereinafter defined) and any information disclosed during the terms of this Agreement which is marked as confidential or proprietary to the disclosing party, including technical processes, formulas, source codes, product designs, sales, cost and other unpublished financial information, product and business plans, projections and marketing data and all data and information transmitted by MLS Hawaii, Inc. to LICENSEE. "Confidential Information" shall not include information: (a) already lawfully known to or independently developed by the receiving party prior to disclosure under this Agreement; (b) disclosed in published materials authorized by this Agreement and consistent with its terms; (c) generally known to the public; (d) lawfully obtained from any third party; or (e) contained within or relating to the terms of this Agreement; or (f) required to be disclosed by law.

"**Domain Site**" shall mean that site on the Internet URL address known as of the date of this Agreement as www._____.com (.net, etc.)

"Internet" shall mean the worldwide network of computers commonly referred to as the Internet.

"Service" shall mean a single web site with a particular web site "address" on the Internet that is owned, operated or authorized to be operated by LICENSEE, its affiliates or its authorized subcontractors through which LICENSEE has elected to offer data, including, but not limited to Licensed Data (as hereinafter defined).

"Electronic Display" shall mean the display of all information contemplated to be located at the Domain Site in a form such that it may be viewed or accessed by consumers via electronic transmission through the Internet or systems substantially like the Internet (such as America On-Line or @Home).

"Liabilities" shall have the meaning set forth in Section 7 of this Agreement.

"Licensed Data" shall mean the textual data, information and available digital images related to Properties, including any updates included in MLSHI's database or a subset of data fields from such database, being those data fields specified in Exhibit A, attached hereto and incorporated herein by reference as though fully set forth, in an electronic form adequate for LICENSEE to display the Licensed Data to consumers at the Domain Site, provided that Licensed Data shall not include any Properties, and the information with respect thereto, for which the seller, the listing agent or broker has prohibited MLSHI from providing to LICENSEE.

"Property", including the plural "Properties" shall mean 1) residential property: house, condominium, townhouse, duplex, land, farm, 2) improved and unimproved commercial real property and 3) improved business properties for which MLSHI maintains listing information in the MLSHI database relating to same. Other forms of property may be added upon mutual written consent of MLSHI and LICENSEE and shall be deemed "property" for the purpose of this agreement.

2. Duties, Rights and Agreements of MLS Hawaii, Inc.. Subject to Licensee's strict compliance with its duties hereunder, MLSHI agrees to:

- a. make available to Licensee, on a non exclusive basis, the Licensed Data via an Active Server Page to reside on the HIS server which will deliver data and photos to LICENSEE's website.
- b. make available updates, as provided by Participants of MLS Hawaii, Inc., of Licensed Data;
- c. identify the Properties, if any, to be excluded from the Licensed Data on Service
- d. to be free of any and all liability to Licensee, of any kind or character, save and except for liability arising out of MLSHI's intentional misconduct and/or willful neglect.

3. Duties, Rights and Agreements of LICENSEE. LICENSEE shall, throughout the term of this agreement:

- a. pay MLSHI a one time set-up fee of \$_____ unless otherwise approved;
- b. pay MLSHI a monthly maintenance fee of \$_____. Set up fee and one month's maintenance is due at the time the license is signed by LICENSEE;
- c. have and maintain operational, technical, managerial and day-to-day control over the operation of the Domain Site, Service and all other forms of Electronic Display;

- d. provide any and all necessary computer, telecommunications, software and other equipment and technology or resources to store Licensed Data and to implement, support and host the Domain Site so that the same will function as an operational WWW site on the Internet;
- e. Display a notice of MLSHI's copyright in the Licensed Data on any and all computer screens or WWW "pages" where the Licensed Data is displayed. Where data from any other source is displayed on any computer screen or WWW "page" together with any portion of the Licensed Data, LICENSEE shall distinguish such other data from the Licensed Data by its source and ownership. Licensee shall further display on every page a disclosure that not all listings are LICENSEE listings.
- f. Refrain from : (i) sublicensing or reselling the Licensed Data; (ii) using or allowing third parties to use the Licensed Data for the purpose of compiling, enhancing, verifying, supplementing, adding to or deleting from any mailing list, geographic or trade directories, business directories, classified directories, classified advertising, or other compilation of information which is sold, rented, published, furnished or in any manner provided to a third party; (iii) using the Licensed Data in any service or product not specifically authorized in this Agreement or offering it through any third party; or (iv) disassembling, decompiling, reverse engineering, modifying or otherwise altering the Licensed Data or any part thereof without MLSHI's prior written consent, such consent may be withheld in MLSHI's sole discretion.
- g. comply with all applicable laws and refrain from the infringement of any copyrights, trademarks or other proprietary information not belonging to Licensee in the use and display of Licensed Data.
- h. Display the following language at the beginning of the display of Licensed Data "On this page not only will you see properties represented by [INSERT ACTUAL NAME OF LICENSEE], you may also see properties represented by other members of Hawaii Information Service."
- j. LICENSEE acknowledges that its access to Licensed Data shall be nonexclusive and that MLSHI is providing or granting access to the Licensed Data to others whose products and services may compete with the Service provided by the LICENSEE.
- k. Refrain from contesting and/or challenging in any way MLSHI's ownership of and copyright in the Licensed Data

4. License Grant. (A). During the term of this Agreement, and subject to LICENSEE's strict compliance with its obligations hereunder and its remaining a Participant in the Multiple Listing Service known as MLS Hawaii, Inc. (dba Hawaii Information Service), MLSHI hereby grants to LICENSEE a worldwide non-exclusive license to display the Licensed Data solely through the Domain Site, and to copy the Licensed Data, solely to the extent that the copying is necessary in order to allow Licensee to exercise its right to display the Licensed Data.

(B) Any use of the Licensed Data not expressly authorized in this Agreement is strictly prohibited. Without limiting the generality of the foregoing, Licensee and any company, organization or individual, which has access to the Licensed Data for its own internal use through Licensee under the terms of this Agreement is expressly prohibited from: (i) sublicensing or reselling the Licensed Data; (ii) using or allowing third parties to use the Licensed Data for the purpose of compiling, enhancing, verifying, supplementing, adding to or deleting from any mailing list, geographic or trade directories, business directories, classified directories, classified advertising, or other compilation of information which is sold, rented, published, furnished or in any manner provided to a third party; (iii) using the Licensed Data in any service or product not specifically authorized in this Agreement or offering it through any third party; or (iv) disassembling, decompiling, reverse engineering, modifying or otherwise altering the Licensed Data or any part thereof without MLSHI's prior written consent, such consent may be withheld in MLSHI's sole discretion.

5. Confidentiality. Each party acknowledges that Confidential Information may be disclosed to the other party during the course of this Agreement. Each party agrees that it shall take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information (but in no event less than due care), during the Initial Term, any Renewal Term and for a period of three (3) years following expiration or earlier termination of this Agreement, to prevent the duplication or disclosure of Confidential Information, other than by or to its employees or agents and the employees and agents of its affiliates and authorized subcontractors who must have access to the Confidential Information to perform such party's obligations hereunder, who shall each agree in writing to comply with this Section 5.

6. Representations and Warranties.

a. By LICENSEE. LICENSEE represents and warrants to MLSHI that: (i) it has all right, power and authority to enter into and perform its obligations set forth in this Agreement in accordance with its terms; (ii) it shall provide all computer, telecommunications, software and other equipment and technology or resources necessary to implement, support and host the Domain Site; (iii) it has clear title or license to all other data, software or other intellectual property that will be employed in operating the Service; and (iv) it will undertake reasonable efforts to ensure that no infringing, misleading or defamatory material will be displayed on the Service.

b. By MLS Hawaii, Inc. 1. MLSHI warrants and represents that it has the necessary power and authority to enter into and perform its obligations under this Agreement and to grant the license granted to Licensee under this Agreement; and that it has no actual knowledge that the Licensed Data and associated trademarks infringes upon any copyright, patent, trademark or proprietary right (collectively "Intellectual Property Rights") of any third party.

2. Except for those warranties previously set forth above, the Licensed Data is licensed on an "AS IS" basis without guarantee, and MLSHI does not guarantee that the Licensed Data will meet the Licensee's requirements; that it will operate in the combinations, or in the equipment, selected by the Licensee; or that its operation will be error-free or without interruption. MLSHI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF MERCHANTABILITY. MLSHI SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OR FOR ANY LOST PROFITS OR ANY CLAIM OR DEMAND OF A SIMILAR NATURE OR KIND, WHETHER ASSERTED BY LICENSEE AGAINST MLSHI OR AGAINST LICENSEE BY ANY OTHER PARTY, EVEN IF MLSHI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND LICENSEE AGREES TO DEFEND, INDEMNIFY AND HOLD MLSHI HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, DEMANDS, OR OTHER LIABILITY (INCLUDING ATTORNEYS' FEES) TO THIRD PARTIES WHICH RESULT FROM THE USE OF THE LICENSED DATA THROUGH LICENSEE. MLSHI'S ENTIRE AGGREGATE LIABILITY FOR DAMAGES, IF ANY, IN CONNECTION WITH THE USE OF THE LICENSED DATA (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE FEES ACTUALLY PAID BY LICENSEE DURING ANY ONE YEAR OF THE AGREEMENT.

7. LIMITATION OF LIABILITY: DISCLAIMER: INDEMNIFICATION.

a. Limitation on Liability. UNDER NO CIRCUMSTANCES, SAVE AND EXCEPT THE WILLFUL MISCONDUCT OF MLSHI, SHALL MLSHI, ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION BASED ON ANY CLAIM, WHETHER IN CONTRACT OR IN TORT, ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER OR NOT MLSHI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL MLSHI'S LIABILITY TO LICENSEE FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING CLAIMS OF WILLFUL MISCONDUCT) EXCEED THE FEES ACTUALLY PAID MLSHI BY LICENSEE DURING ANY ONE YEAR OF THIS AGREEMENT.

b. Indemnity. LICENSEE shall indemnify, defend, and hold harmless MLSHI, its officers, directors, agents, affiliates, subcontractors, and employees from any and all third party claims, demands, liabilities, costs or expenses, including reasonable attorneys' fees ("liabilities") resulting from LICENSEE's use, display, transmission, reproduction or distribution of the Licensed Data or for any material breach of any obligation, representation or warranty set forth in this Agreement, except where Liabilities result from the gross negligence or willful conduct of MLSHI.

8. Term. The term of this Agreement shall commence on the Effective Date and shall continue on a month to month basis.

9. Termination. Either Party may terminate this Agreement upon thirty (30) days written notice.

10. Consequences of Termination or Expiration. Upon the termination or expiration of this Agreement for any reason: (a) the license granted pursuant to Section 4 shall terminate; (b) LICENSEE shall promptly remove all Licensed Data of MLSHI from the Domain Site, and at the sole option of LICENSEE, destroy or return the same to MLSHI; and (c) each party shall promptly prepare an accounting of all sums (if any) due to each other, and each party shall pay the same within fifteen (15) days of receipt of an invoice therefor.

11. Applicable Law; Venue. This Agreement and all remedies shall be construed and enforced in accordance with the laws of the State of Hawaii. The Parties agree and submit to personal jurisdiction in the State of Hawaii for purposes of any action or proceeding brought to enforce or construe the terms of this Agreement. The venue for any such action or proceeding shall be the state of federal courts in Honolulu, Hawaii.

12. Assignment. MLSHI retains the right to assign its responsibilities under this Agreement. Neither this Agreement nor any right or obligation arising hereunder may be assigned (voluntarily, by operation of law or otherwise), in whole or in part, by LICENSEE without the prior written consent of MLS Hawaii, Inc.

13. Successors and Assigns. Subject to Section 12 this Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

14. Complete Agreement. This Agreement and its attachments set forth the entire agreement between the parties with respect to the subject matter hereof, and supersede all prior or contemporaneous understandings, communications or agreements, whether written or oral, regarding such subject matter.

15. Amendment. This Agreement and its attachments may not be amended or modified in any manner, except by a written instrument signed by the parties hereto.

16. Notice. All notices, consents and approvals given under this Agreement shall be in writing and shall be delivered in person, by first class or express mail or facsimile addressed as follows:

LICENSEE:

MLS Hawaii, Inc.	_____
680 Iwilei Road Suite 777	_____
Honolulu, Hi. 96817	_____
Attn.: Lin McIntosh, President	_____
Telephone: 808-599-4224	_____
Facsimile: 808-536-6499	_____
If to Operator:	_____

Either party may change its address or addressee for the purposes of this Section by notice. Notice given in accordance with this Section shall be deemed given when received.

17. Waiver. No waiver by either party of any breach or default by any other shall be deemed a waiver of any other breach or default.

18. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to either party. Upon such determination that any term or other provisions is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions be consummated as originally contemplated to the fullest extent possible.

19. Survival. The provisions of Sections 5, 7, 8, and 11, shall survive any expiration or termination of this Agreement for any reason.

20. Relation of Parties. Nothing herein contained shall be construed as creating a partnership or joint venture between MLSHI and Licensee. Each party's relationship to the other party is that of Licensor and Licensee. The parties are not partners nor joint venturers with one another, and do not intend to form a partnership or joint venture.

21. Force Majeure. Neither party hereto shall be deemed to be in default of any provision of this Agreement or for failure in performance, resulting from acts or events beyond the reasonable control of such party and arising without its fault or negligence; provided that prompt written notice of any such act or event is given to the other party. Such acts shall include, but not e limited to, acts of God, civil or military authority, interruption of electric or telecommunication services, civil disturbances, war, strikes, fires, floods or other catastrophes. If for any of the reasons set forth above either party shall be unable to perform any obligation when due such party shall immediately notify the other party of such inability and of the period over which such inability is expected to continue. Affected obligations of the parties shall be temporarily suspended during the period of force majeure and the time for performance under this Agreement shall, as applicable, be extended by the duration of any such period.

22. Duly Authorized Signatories. Each party represents and warrants that its signatory whose signature appears below has been and is on the date of this Agreement duly authorized by all necessary corporate or other appropriate action to execute this Agreement.

23. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by both parties and delivered to the other party. The agreement may be signed and delivered by facsimile and the signatures contained on the facsimile delivered counterpart shall be deemed originals for all purposes.

AGREED AND ENTERED INTO in _____, _____ as of the date first written above.

MLS Hawaii, Inc.

By: _____

By:

Name: **Lin McIntosh**
Title: **CEO**

Name: _____
Title: _____

Broker Signature: _____

Name: _____

