

HICENTRAL MLS, LTD. IDX USER AGREEMENT

Note: This form is a legally binding contract between you and HiCentral MLS, Ltd. This form/contract must be filled out completely and signed by the MLS Participant and MLS Subscriber. There are no exceptions. Once you have filled it out and signed it, fax # 683-7038 or mail it to HiCentral MLS, Ltd. at 1136 12th Ave., Suite 200, Honolulu, HI 96816. HiCentral MLS, Ltd. will sign the form/contract and return a copy to you with information on how to access the data feed.

AGREEMENT

1. This Agreement is made and entered into by and among HiCentral MLS, Ltd., the MLS Participant and/or MLS Subscriber (collectively "IDX User") and the companies/individuals (collectively "the Consultant"), all of whose names and contact information appear on the signature pages of this Agreement.

RECITALS

2. IDX User wishes to obtain, and HiCentral MLS, Ltd. wishes to provide, data for IDX User's web site, including the active listing data of other real estate brokerages participating in HiCentral MLS, Ltd. IDX program. IDX User may wish to engage Consultants, i.e., other companies or individuals who are not employees of IDX User, to perform data downloading, manipulation, and formatting, as well as programming and web design.

DEFINITIONS

3. For purposes of this Agreement, the following terms shall have the meanings set forth below.

3.1 Internet Data Exchange Database or IDX Data: The current aggregate compilation of all active exclusive right to sell listings of all MLS Participants except those listings where the property seller has opted out of Internet publication by so indicating on the listing contract. HiCentral MLS, Ltd. owns the IDX Data.

3.2 IDX User: A MLS Subscriber who has given permission to other MLS Subscribers to display his/her active listings on other MLS Subscribers' web sites in return for their permission to advertise their listings on its web site. The MLS Participant (Designated REALTOR or Broker-in-Charge), of the firm the MLS Subscriber is affiliated with must join into this agreement as an IDX User.

3.3 Multiple Listing Service: A means for collecting and disseminating information about real property that is or has been for sale, including a means for real estate brokers to make offers of cooperation and compensation to each other. Multiple Listing Services may also include, without limitation, the provision of data processing, technical support, consulting, and other information technology services to real estate brokers and appraisers in connection with the sale and appraisal of real property.

3.4 Rules: The MLS Rules and Regulations of the HiCentral MLS, Ltd., as amended from time to time, and any operating policies relating to the IDX Data promulgated by HiCentral MLS, Ltd.

3.5 MLS Participant: A REALTOR®, irrespective of where he holds primary membership who is a principal, partner, corporate officer or trustee of a real estate brokerage and holds a current, active, valid real estate broker's license and is participating in HiCentral MLS, Ltd.'s MLS.

3.6 MLS Subscriber: A licensee employed by or affiliated with a MLS Participant as an independent contractor.

3.7 Listing Data: Data relating to real estate for sale, previously sold or listed for sale, and data relating to MLS Participants and MLS Subscribers, entered into HiCentral MLS, Ltd. MLS System. HiCentral MLS, Ltd. owns the Listing Data.

HICENTRAL MLS, LTD. OBLIGATIONS

4. During the term of this Agreement, HiCentral MLS, Ltd. grants to IDX User a license to:
 - 4.1 Display the IDX Data on IDX User's web site;
 - 4.2 Make copies of the IDX Data to the extent necessary to deliver the IDX Data to consumers on IDX User's website.
5. During the term of this Agreement, HiCentral MLS, Ltd. agrees to provide to IDX User and its consultants:
 - 5.1 Access to the IDX Data via (select **only one** of the following options):
 - I download data via third party software (Matrix™ export function, etc.) or manually enter authorized listings to my website, or use the IDX framing solution from Matrix™.
 - Subscription to HiCentral MLS, Ltd.'s Active-Only Dataset with set-up fee. (see pg. 6)
 - Subscription to HiCentral MLS, Ltd.'s APS Dataset with set-up fee and monthly recurring fees determined by HiCentral MLS, Ltd... (see pg. 6)
 - Subscription to HiCentral MLS, Ltd.'s Full Dataset with set-up fee and monthly recurring fees determined by HiCentral MLS, Ltd... (see pg. 6)
 - 5.2 Seven (7) days' advance notice of changes to the file and record formats of the IDX Data;
 - 5.3 Seven (7) days' advance notice of changes to the Rules.

IDX USER'S OBLIGATIONS

6. IDX User shall comply with the Rules at all times.
7. IDX User acknowledges HiCentral MLS, Ltd.'s ownership of the copyrights in the Listing Data and the IDX Data.
8. IDX User shall comply with the requirements relating to Confidential Information set forth below.
9. In the event that IDX User desires to make the IDX Data or the Confidential Information available to any consulting third party, IDX User agrees to require such third party to execute this Agreement and become a Consultant.
10. If HiCentral MLS, Ltd. notifies IDX User of a breach of the Rules or this Agreement and IDX User does not immediately cure such breach, IDX User agrees that HiCentral MLS, Ltd. may seek cure from the Consultants, or any one of them.
11. IDX User shall notify HiCentral MLS, Ltd. within five (5) business days of any change to the information relating to IDX User on the IDX User Information and Signature page below.
12. If HiCentral MLS, Ltd. IDX Data Feed is selected, remittance of initial set up fee is required. If RETS is selected remittance of set up fee and monthly recurring charges is required.

CONSULTANT'S OBLIGATIONS

13. If HiCentral MLS, Ltd. notifies IDX User of a breach of the Rules or this Agreement and IDX User does not immediately cure such breach, HiCentral MLS, Ltd. may contact Consultant to cure any such breach that is within Consultant's control.
14. Consultant agrees to cooperate with HiCentral MLS, Ltd. and act immediately upon notification by HiCentral MLS, Ltd. of an uncured breach by IDX User.
15. Each Consultant acknowledges HiCentral MLS, Ltd.'s ownership of the copyrights in the MLS Participant Data and the IDX Data.
16. Each Consultant shall comply with the requirements relating to Confidential Information set forth below.
17. Each Consultant shall notify HiCentral MLS, Ltd. within five (5) business days of any change to the information relating to it on the Consultant Information and Signature page below.

CONFIDENTIAL INFORMATION

18. **"Confidential Information"** is information or material proprietary to HiCentral MLS, Ltd. or designated "confidential" by HiCentral MLS, Ltd. and not generally known to the public that IDX User or Consultants or any one of them (the Receiving Party") may obtain knowledge of or access to as a result of access under this Agreement. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether in oral, visual, audio, written or other form):

18.1 All Participant Data, except the IDX Data to the extent to which this Agreement and the Rules permit its disclosure;

18.2 All documentation and other tangible or intangible discoveries, ideas, concepts, designs, drawings, specifications, models;

18.3 Software, source code, objects code, diagrams, flow charts;

18.4 Techniques, procedures;

18.5 IP addresses, access codes and passwords;

18.6 Information that HiCentral MLS, Ltd. obtains from any third party that HiCentral MLS, Ltd. treats as proprietary or designates as Confidential Information, whether or not owned or developed by HiCentral MLS, Ltd.

19. **Exceptions.** The Confidential Information does not include information that:

19.1 Is in the public domain at the time of disclosure;

19.2 Is known to the receiving party at the time of disclosure;

19.3 Is used or disclosed by the receiving party with the prior written consent of HiCentral MLS, Ltd. to the extent of such consent;

19.4 Becomes known to the receiving party from a source other than HiCentral MLS, Ltd. without breach of this agreement by the receiving party and provided that such source is not known by the receiving party to be bound by a confidentiality agreement with HiCentral MLS, Ltd.

19.5 Is required to be disclosed by judicial order or other compulsion of law, provided that the receiving party provides to HiCentral MLS, Ltd. prompt notice of any such order.

- 20. Title.** The Receiving Party acknowledges that title to the Confidential Information remains at all times with HiCentral MLS, Ltd. or with the third parties in whom title existed prior to this Agreement or prior to disclosure by HiCentral MLS, Ltd.
- 21. Restrictions on Use – Scope of Use.** The Receiving Party will use or access the Confidential Information only as expressly permitted under this Agreement and the Rules and the Receiving Party will not use its access or the Confidential Information for any other purpose. The Receiving Party will employ measures to protect the Confidential Information from disclosure at least as rigorous as those it uses to protect its own trade secrets, but in no event less than reasonable care.
- 22. Restrictions on Use – Unauthorized Uses.** The Receiving Party will not make copies of the Confidential Information. The Receiving Party will not directly or indirectly disclose, display, provide, transfer or otherwise make available the Confidential Information to any person or entity, unless the Receiving Party has received prior written consent of HiCentral MLS, Ltd. to do so. At no time and under no circumstances will the Receiving Party reverse engineer, decompile, or disassemble any software constituting part of the Confidential Information. The Receiving Party will not incorporate the Confidential Information into any other work or product.
- 23. Restrictions on Use – No Third Party Access.** Only the Receiving Party’s own employees will access the Confidential Information. The Receiving Party will not provide access to the Confidential Information to third parties, including consultants or independent contractors, without prior written consent from HiCentral MLS, Ltd. If HiCentral MLS, Ltd. grants consent, the Receiving Party will execute an agreement with the third party that imposes at least as strict a confidentiality obligation on the third party as that imposed by this Agreement on the Receiving Party.
- 24. Restrictions on Use – Location restriction.** The Receiving Party will not remove the Confidential Information from its principal place of business without HiCentral MLS, Ltd.’s prior written consent. In the event HiCentral MLS, Ltd. grants consent, the Receiving Party is not relieved of any of its obligations under this Agreement.
- 25. Termination and Return of Materials.** Within five (5) days of the end of the term of this Agreement or receipt of notice of termination by HiCentral MLS, Ltd., the Receiving Party will return to HiCentral MLS, Ltd. all Confidential Information and all other materials provided by HiCentral MLS, Ltd. to the Receiving Party. The Receiving Party will also erase, delete, or destroy any Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the request of HiCentral MLS, Ltd., an officer of the Receiving Party will certify in writing that all materials have been returned to HiCentral MLS, Ltd. and all magnetic or computer data have been destroyed.

TERM AND TERMINATION

- 26. Term.** The term of this Agreement begins on the “Effective Date” set forth on the “HiCentral MLS, Ltd. Information and Signature Page” below. HiCentral MLS, Ltd. has the right at any time and in its sole discretion to terminate this Agreement. This Agreement shall terminate upon the occurrence of any of the following events:
- 26.1** If HiCentral MLS, Ltd.’s RETS access is selected, non-payment of recurring monthly fee by the 15th of the current month;
- 26.2** IDX User’s notice to HiCentral MLS, Ltd. that it no longer intends to display IDX Data on its web site;
- 26.3** Suspension or termination of MLS services by MLS Participant or HiCentral MLS, Ltd.;
- 26.4** Violations of Section XVII Internet Data Exchange of the MLS Rules and Regulations.

GENERAL PROVISIONS

- 27. Survival of Obligations.** The obligations of IDX User set forth under "IDX User's Obligations" above and the obligations of Consultants under "Consultants' Obligations" above shall survive the termination or expiration of this Agreement.
- 28. HiCentral MLS, Ltd.'s Remedies.** Because of the unique nature of the IDX User Data and Confidential Information, IDX User and Consultants acknowledge that HiCentral MLS, Ltd. would suffer irreparable harm in the event that any of them breaches its obligation under this Agreement, and that monetary damages would be inadequate to compensate HiCentral MLS, Ltd. for a breach. HiCentral MLS, Ltd. is therefore entitled, in addition to all other forms of relief, to injunctive relief as may be necessary to restrain any continuing or further breach by IDX User or Consultants or any one of them, without showing or proving any actual damages sustained by HiCentral MLS, Ltd.
- 29. Attorney's fees.** If HiCentral MLS, Ltd. prevails in any action to enforce or interpret this Agreement or any provision hereof, the party against whom enforcement or interpretation was sought will pay HiCentral MLS, Ltd.'s reasonable attorney's fees and costs for such legal action.
- 30. Limitation of Liability.** HiCentral MLS, Ltd.'s liability to IDX User and Consultants for damages under this Agreement, whether in contract or tort, shall be limited to the aggregate amounts paid by IDX User and Consultants to HiCentral MLS, Ltd., if any, under this Agreement. IDX User's and Consultant's only other remedy shall be termination of this Agreement. HiCentral MLS, Ltd. shall not be liable for any incidental or consequential damages under any circumstances, even if HiCentral MLS, Ltd. has been advised of the possibility of such damages. HiCentral MLS, Ltd. shall have no liability for inaccuracies in the IDX Data or the Listing Data.
- 31. 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 below or such other address of which any party may advise the others in writing during the term of this Agreement.
- 32. No Waiver.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.
- 33. No Assignment.** Neither IDX User nor Consultants, nor any of them, may assign or otherwise transfer any of their rights under this Agreement to any party without the prior written consent of HiCentral MLS, Ltd.
- 34. Entire Agreement.** This Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings whether oral or written. The previous sentence notwithstanding, the Rules are expressly incorporated into this Agreement by reference.
- 35. Applicable law.** This Agreement is governed by and enforced according to the laws of the State of Hawaii.

IDX USER INFORMATION AND SIGNATURE

IDX USER NAME: _____ MEMBER NO. _____
(MLS Subscriber)

IDX USER NAME: _____ MEMBER NO. _____
(MLS Participant - Principal Broker/Broker-in-Charge)

PRIMARY CONTACT NAME: _____
(MLS Participant or MLS Subscriber)

PRIMARY E-MAIL ADDRESS: _____
(You **must** supply an e-mail address here. This address will be HiCentral MLS, Ltd.'s principal means of communicating with you for notices under this Agreement.)

WEB SITE ADDRESS (URL): _____

SIGNATURE: IDX USER/MLS SUBSCRIBER DATE _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: _____ OTHER (CELL/PAGER/FAX): _____

SIGNATURE: IDX USER/MLS PARTICIPANT DATE _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: _____ OTHER (CELL/PAGER/FAX): _____

SELECT BILLING OPTION: _____ OFFICE _____ AGENT

SELECT ONE BELOW:

_____ **FRAMING SOLUTION FROM MATRIX™ -** COST: **NONE**
This is a search engine directly linked to your MLS system, which would allow visitors to your site the ability to search for active listings and see customer displays.

_____ **IDX DATASET*** COST: **\$78.53**** (one-time set-up fee)
An active, In Escrow limited dataset that includes listing and open house data.

_____ **APS DATASET*** COST: **\$130.89**** (\$75 set-up + \$25/month)
An Active, In Escrow, Sold (3 years) limited dataset that includes listing and open house data.

_____ **FULL DATASET*** COST: **\$235.60**** (\$75 set-up + \$75/month)
All statuses and all data fields are included in this dataset. It will include listings, open house, agent, office, media, and history tables.

* All Datasets use the RETS standard for acquiring MLS data

** All fees include tax. This amount reflects the set-up fee and 2 calendar months in advance.

CONSULTANT INFORMATION AND SIGNATURE

NOTE TO IDX USER: Reproduce this page for each individual/company to whom you intend to provide access to the IDX Data under this Agreement.

CONSULTANT (COMPANY OR INDIVIDUAL) NAME: _____

E-MAIL ADDRESS: _____
(You must supply an e-mail address here. This address will be HiCentral MLS, Ltd.'s principal means of communicating with you for notices under this Agreement.)

CONSULTANT'S WEB SITE ADDRESS (URL): _____

SIGNATURE - CONSULTANT

DATE

PRINT NAME

TITLE

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: _____ OTHER (CELL/PAGER/FAX): _____

NOTE TO CONSULTANT: Be sure to enter into this IDX Agreement with HICENTRAL MLS, LTD. and every real estate agent to which you provide services. If you sign only one and that IDX User's access to the IDX Data is terminated, you will not be able to get the data for your other clients.