



PARTICIPANT DATA ACCESS AGREEMENT

This PARTICIPANT DATA ACCESS AGREEMENT is made and entered into by, between, and among HiCentral MLS, Ltd. (“**HiCentral MLS**”), with offices at 1136 12th Avenue, Suite 200, Honolulu, Hawaii 96816; “Participant Party” as identified on the signature page below (“**Participant Party**”); and the Subscribers affiliated with Participant Party who are identified on the signature page below and in Exhibit A, if any (collectively the “**Subscriber Party**”); and the individual or business association identified as “Consultant” on the signature page below, if any (“**Consultant**”).

DEFINITIONS

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

Audio Device: Any audio delivery of IDX data authorized by HiCentral MLS Policies and listed in Exhibit A that are not web sites or Mobile Applications. “Audio Device” does not include mass media delivery of HiCentral MLS Data.

Confidential Information: “Confidential Information” means information or material proprietary to a party or designated “confidential” by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or another form): (a) all HiCentral MLS Data, except to the extent to which this Agreement and the HiCentral MLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that HiCentral MLS obtains from any third party that HiCentral MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by HiCentral MLS; (d) any information defined as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims and evidence presented by any party in any arbitration under this Agreement. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

Data Interface: The transport protocols and data storage formats provided by HiCentral MLS for use by Participant Party, Subscriber Party, and Consultant; HiCentral MLS may modify the Data Interface in its sole discretion from time to time.

HiCentral MLS Data: Data relating to real estate for sale, previously sold, or listed for sale, and to HiCentral MLS Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into HiCentral MLS’s databases by HiCentral MLS Participants and HiCentral MLS, or on their behalf.

HiCentral MLS Participant: This term has the meaning given to it in the HiCentral MLS Policies. For purposes of this Agreement, “HiCentral MLS Participant” does not apply to participants of MLSs other than HiCentral MLS. Where applied in this Agreement to HiCentral MLS Participants other than Participant Party, “HiCentral MLS Participant” also includes Subscribers affiliated with those HiCentral MLS Participants for whom the HiCentral MLS Participants are responsible under the laws of the State of Hawaii.

HiCentral MLS Policies: The then-current HiCentral MLS’s Rules and Regulations, the HiCentral MLS Bylaws and governing documents, and any operating policies promulgated by HiCentral MLS, as amended from time to time in HiCentral MLS’s sole discretion.

IDX: Use and display of portions of the HiCentral MLS Data under the IDX provisions of the HiCentral MLS Policies.

Participant Party Internal Use: Any use of those portions of the HiCentral MLS Data relating to listings of Participant Party and HiCentral MLS Participants other than Participant Party that exposes HiCentral MLS

Data only to Participant Party-Related Persons and to Subscribers affiliated with Participant Party, subject to the HiCentral MLS Policies.

Participant Party-Related Persons: Consultant, if any, and employees of Participant Party who are not Subscribers or broker/managers.

Mobile Applications: Any displays of IDX data authorized by HiCentral MLS Policies and listed in Exhibit A that are not websites. “Mobile Applications” does not include a mass media display of HiCentral MLS Data.

Participant Data Use: Any use of those portions of the HiCentral MLS Data relating to Participant Party’s own listings.

Permitted Use: One or more of the following permitted data uses: Participant Party Internal Use, IDX, IDX Plus, Participant Data Use or VOW as specified on the signature page and in Exhibit A, as permitted under the HiCentral MLS Policies.

Second Level Domain: “Second Level Domain” has the meaning given to it in this paragraph. “**URL**” means a web address, including the “http://” and any material appearing after a slash in the address. “**Domain Name**” means a URL, less the “http://” and any material appearing to the right of the next slash (/) in the address. (So for example, in the URL “http://janessmith.abcrealty.com/homepage.html” the Domain Name is “JANESMITH.ABCREALTY.COM”). “**Top Level Domain**” means the portion of the Domain Name to the right of the right-most period. (In the example, “COM”). “**Second Level Domain**” means that portion of a domain name to the left of the right-most period, up to the second period from the right, if any, plus the Top Level Domain. (In the example, “ABCREALTY.COM”). “**Third Level Domain**” means that portion of a domain name to the left of the second period from the right, if any, up to the third period from the right, if any, plus the Second Level Domain. (In the example, “JANESMITH.ABCREALTY.COM”).

Subscriber: Any person holding a real estate license in Hawaii who is not a HiCentral MLS Participant but who is affiliated with and subject to a HiCentral MLS Participant’s supervision under the laws of Hawaii.

VOW: Use and display of portions of the HiCentral MLS Data under the Virtual Office Website (VOW) provisions of the HiCentral MLS Policies.

HICENTRAL MLS’S OBLIGATIONS

2. HiCentral MLS grants to Participant Party and Subscriber Party a terminable, non-transferable, non-exclusive, revocable, world-wide license solely for the limited purpose of the Permitted Use as defined under this Agreement and as permitted by the HiCentral MLS Policies, and the right to sublicense the same to Consultant, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement and the HiCentral MLS Policies; any other use of the HiCentral MLS Data is hereby prohibited. Participant Party and Subscriber Party may sublicense its rights to Consultant, but not the right to sublicense, only so Consultant may provide services on behalf of Participant Party or Subscriber Party to exercise the Permitted Uses only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement and the HiCentral MLS Policies; any other use of the HiCentral MLS Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. HiCentral MLS retains all rights not expressly granted herein.

3. HiCentral MLS agrees to provide to Participant Party, Subscriber Party, and Consultant, during the term of this Agreement, (a) access to the HiCentral MLS Data via the Data Interface under the same terms and conditions HiCentral MLS offers to other HiCentral MLS Participants; (b) seven days advance notice of changes to the Data Interface; and (c) seven days advance notice of changes to the HiCentral MLS Policies to the extent they are applicable or related to the Permitted Use. HiCentral MLS does not undertake to provide technical support for the Data Interface or the

HiCentral MLS Data. The Data Interface, together with access to the HiCentral MLS Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or HiCentral MLS Data shall not constitute a default by HiCentral MLS under this Agreement. HiCentral MLS may use a third party contractor, determined in HiCentral MLS's sole discretion, to facilitate the data access and any other responsibilities or rights of HiCentral MLS under this Agreement.

PARTICIPANT PARTY'S OBLIGATIONS

4. Participant Party and Subscriber Party shall comply with the HiCentral MLS Policies and this Agreement, including the provisions underlying Confidential Information, at all times. In the event of any perceived or actual conflict between the HiCentral MLS Policies and this Agreement, the HiCentral MLS Policies shall govern. Additionally, Participant Party and Subscriber Party shall comply with all applicable laws, statutes, ordinances and regulations in performance of their respective obligations under this Agreement.

5. Participant Party and Subscriber Party shall use the HiCentral MLS Data obtained under this Agreement for the Permitted Use only. Any other use is strictly prohibited. Participant Party and Subscriber Party shall not make the HiCentral MLS Data or the Confidential Information available to any third party, including without limitation affiliates, franchisors, and subsidiaries, unless expressly authorized to do so under this Agreement. Participant Party and Subscriber Party may display or deliver the HiCentral MLS Data on web sites, Mobile Applications, and Audio Devices only to the extent permitted by the HiCentral MLS Policies and then only on a site or sites resident at the Second Level and Third Level Domain(s), Mobile Applications, and Audio Devices expressly indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Participant Party and Subscriber Party acknowledge that ownership and use rights relating to copyrights in the HiCentral MLS Data are defined in the HiCentral MLS Policies or in the terms of the participant and subscriber agreements between HiCentral MLS, Participant Party and Subscriber Party, or both. Participant Party and Subscriber Party shall not challenge or take any action inconsistent with HiCentral MLS's ownership of or rights in the HiCentral MLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If HiCentral MLS notifies Participant Party or Subscriber Party of a breach of the HiCentral MLS Policies or this Agreement and Participant Party or Subscriber Party does not immediately cure the breach, Participant Party and Subscriber Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with HiCentral MLS under Paragraph 10.

8. Participant Party and Subscriber Party shall pay the fees, if any, that HiCentral MLS (or its shareholder associations/MLSs) customarily charges other HiCentral MLS Participants for data access. Participant Party and Subscriber Party acknowledge receipt of HiCentral MLS's current schedule of such fees, if any. HiCentral MLS may in its sole discretion establish or modify its schedule of fees upon 30 days written notice to Participant Party and Subscriber Party. Participant Party and Subscriber Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Participant Party is surety for Subscriber Party's and Consultant's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

CONSULTANT'S OBLIGATIONS

10. Consultant shall immediately correct any breach of this Agreement or violation of the HiCentral MLS Policies within its control, whether committed by Participant Party, Subscriber Party, or Consultant, upon notice from HiCentral MLS.

11. Consultant acknowledges that (as among the parties to this Agreement) Participant Party and HiCentral MLS possess all right, title, and interest in all copyrights in the HiCentral MLS Data. Consultant shall not

challenge or take any action inconsistent with HiCentral MLS's and Participant Party's ownership of or rights in the HiCentral MLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

12. Consultant shall not make the HiCentral MLS Data or the Confidential Information available to any third party, including without limitation affiliates, franchisors, and subsidiaries, except on behalf of Participant Party and Subscriber Party and in a manner consistent with Participant Party's and Subscriber Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the HiCentral MLS Data, whether commercial or personal. **In the event that Consultant provides services to HiCentral MLS Participants other than Participant Party (or to Subscribers affiliated with Participant Party other than the Subscriber Party), Consultant must enter separate contracts with HiCentral MLS. Consultant must ascertain, using the Data Interface on a daily basis, that each HiCentral MLS Participant to which Consultant provides services remains an eligible HiCentral MLS Participant; and in the case of Subscribers, that each Subscriber Party remains affiliated with Participant Party. Failure to comply with the provisions of this paragraph, will result in HiCentral MLS terminating all of Consultant's access to the HiCentral MLS Data under this Agreement and all similar agreements.** The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

13. Consultant warrants that any effort or use of the HiCentral MLS Data will not constitute patent infringement or other intellectual property rights of any third party. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity. Additionally, Consultant shall comply with all applicable laws, statutes, ordinances and regulations in performance of its respective obligations under this Agreement.

14. Consultant represents that it currently, and through the term of this Agreement, shall use industry best practices for firewalls and other network protocols to increase the security of its systems and shall employ reasonable physical, technical, and administrative security measures to protect the Confidential Information and prevent unauthorized third-parties from accessing and using the Confidential Information. Consultant will comply fully with all applicable laws, and regulations relating to personally identifiable information ("PII") and data privacy with regards to the Confidential Information. Consultant agrees that it will monitor and test its security protocols from time to time and adjust the same as necessary. In the event a security breach of Consultant's systems or use of the Confidential Information by unauthorized third parties, Consultant shall immediately notify HiCentral MLS of such breach by confirmed email or confirmed telephone call. In the event of such security breach, Consultant will (i) cooperate with HiCentral MLS at Consultant's expense to prevent or stop such a security breach; (ii) comply with all applicable laws and take appropriate steps to remedy such a security breach; (iii) indemnify, hold harmless and defend HiCentral MLS against any and all loss, damage, claims, liabilities, or expenses, including reasonable attorneys' fees, arising out of or relating to a third party claim or suit from breach by Consultant of its obligations described in this paragraph.

15. Consultant shall pay the fees, if any, that HiCentral MLS customarily charges other consultants for data access. Consultant acknowledges receipt of HiCentral MLS's current schedule of such fees, if any. HiCentral MLS may in its sole discretion establish or modify its schedule of fees upon 30 days written notice to Consultant. Consultant shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

16. Consultant is surety for Participant Party's and Subscriber Party's obligations to pay fees under Paragraph 8. The provisions of the preceding sentence shall survive the expiration or other termination of this Agreement in perpetuity. Consultant shall notify HiCentral MLS within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

AUDITS OF COMPLIANCE

17. HiCentral MLS may in its reasonable discretion conduct periodic compliance reviews of Participant Party's, Subscriber Party's, and Consultant's use of the HiCentral MLS Data under this Agreement. Participant Party, Subscriber Party, and Consultant will respond within 72 hours of any compliance inquiry by HiCentral MLS. HiCentral MLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Participant Party, Subscriber Party, and Consultant to the extent reasonably necessary to ascertain Participant Party's, Subscriber Party's, and Consultant's compliance with this Agreement ("Audit"). HiCentral MLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Participant Party's, Subscriber Party's, and Consultant's web sites, Mobile Applications, Audio Devices, and systems to ensure that HiCentral MLS Data is displayed in accordance with the HiCentral MLS Policies; using all features available to end-users of Participant Party's, Subscriber Party's, and Consultant's systems that employ the HiCentral MLS Data; and posing as consumers to register and test services Participant Party, Subscriber Party, and Consultant make available to consumers using the HiCentral MLS Data. HiCentral MLS shall pay the costs it incurs, and the out-of-pocket costs Participant Party, Subscriber Party, and Consultant incur, as part of any Audit; provided, however, Participant Party or Subscriber Party shall be liable for all costs of any Audit that discloses that Participant Party, Subscriber Party, or Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

18. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after the termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

19. The term of this Agreement begins on the date that this Agreement is fully executed by all relevant parties, which would constitute the "Effective Date" of this Agreement. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Participant Party's privileges as a Participant in HiCentral MLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured during the 10-day notice period; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Participant Party's notice to a Consultant that Consultant is no longer designated to provide IDX, or VOW services to it; (f) with regard to any Subscriber Party, immediately upon any event that results in the Subscriber Party no longer being affiliated with Participant Party; (g) as provided in Paragraphs 29 and 32.

20. In the event Participant Party's privileges as a HiCentral MLS Participant (including Subscriber Party's privileges of affiliation with Participant Party) are terminated while this Agreement is in effect, and HiCentral MLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if HiCentral MLS resumes its obligations under Paragraphs 2 and 3. In the event Participant Party, Subscriber Party, or Consultant breaches this Agreement and entitles HiCentral MLS to terminate under Paragraph 19, HiCentral MLS may in its sole discretion suspend its

performance instead of terminating this Agreement. HiCentral MLS may make this election by notice to the other parties within three days after the initiation of the suspension. Participant Party's, Subscriber Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any termination of this Agreement, Participant Party, Subscriber Party, and Consultant shall delete the HiCentral MLS Data and may not use it for the Permitted Use (except the portions of it relating to Participant Party's own listings). In the event of any suspension of this Agreement, Participant Party, Subscriber Party, and Consultant shall make no further use of the HiCentral MLS Data (except the portions of it relating to Participant Party's own listings) until and unless Participant Party's or Subscriber Party's rights under this Agreement are restored.

GENERAL PROVISIONS

21. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of Hawaii, without regard to its conflicts and choice of law provisions.

22. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

23. **HiCentral MLS's Remedies.** (a) Injunctive relief: Because of the unique nature of the HiCentral MLS Data and Confidential Information, Participant Party, Subscriber Party, and Consultant acknowledge and agree that HiCentral MLS would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate HiCentral MLS for a breach. HiCentral MLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Participant Party, Subscriber Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by HiCentral MLS, and without posting any bond. (b) Liquidated damages: Participant Party, Subscriber Party, and Consultant acknowledge that damages suffered by HiCentral MLS from access to the HiCentral MLS Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the HiCentral MLS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to HiCentral MLS to enter into this Agreement, Participant Party, Subscriber Party, and Consultant agree that in the event Participant Party, Subscriber Party, Participant Party-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the HiCentral MLS Data or disclose the HiCentral MLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Participant Party, Subscriber Party, and Consultant shall be liable to HiCentral MLS for liquidated damages in the amount of \$5,000 for each such disclosure and termination of this Agreement. Liability of Participant Party, Subscriber Party, and Consultant under this paragraph is joint and several.

24. **Limitation of liability/exclusion of warranties. IN NO EVENT SHALL HICENTRAL MLS BE LIABLE TO PARTICIPANT PARTY, SUBSCRIBER PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF HICENTRAL MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL HICENTRAL MLS BE LIABLE TO PARTICIPANT PARTY, SUBSCRIBER PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES PARTICIPANT PARTY, SUBSCRIBER PARTY, AND CONSULTANT HAVE PAID HICENTRAL MLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. PARTICIPANT PARTY, SUBSCRIBER PARTY, AND CONSULTANT ACKNOWLEDGE THAT HICENTRAL MLS PROVIDES THE HICENTRAL MLS DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY. HICENTRAL MLS SHALL NOT BE LIABLE TO PARTICIPANT PARTY, SUBSCRIBER PARTY, OR CONSULTANT FOR**

ANY CLAIM ARISING FROM INACCURACIES IN THE HICENTRAL MLS DATA, ANY FAILURE TO UPDATE THE HICENTRAL MLS DATA PROMPTLY, OR THE HICENTRAL MLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL.

HICENTRAL MLS makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.

25. **Dispute resolution; Attorney's fees.** In the event HiCentral MLS claims that Participant Party, Sales Associate Party, or Consultant has violated the HiCentral MLS Policies, HiCentral MLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the HiCentral MLS Policies, provided HiCentral MLS does not also base a claim that Participant Party, Sales Associate Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any and all claims, controversies or disputes arising out of or relating to the interpretation or enforcement of this Agreement, or the breach thereof, which remain unresolved after direct negotiations between the parties, shall first be submitted to confidential Mediation in accordance with the Rules, Procedures, and Protocols for Mediation of Disputes of Dispute Prevention & Resolution, Inc. (Hawaii), then in effect. If any issues, claims or disputes remain unresolved after mediation concludes, the parties shall submit any such issues to binding arbitration before one arbitrator in accordance with the Rules, Procedures, and Protocols for Arbitration of Disputes of Dispute Prevention & Resolution, Inc., then in effect. The parties further agree that the award of the arbitrator shall be binding upon the parties and that judgment upon the award rendered may be entered in any court of competent jurisdiction. As may be necessary, the parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Hawaii located in Honolulu County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to HiCentral MLS's disciplinary procedures or to arbitration. Nothing in this section shall prevent HiCentral MLS from exercising any of its rights under Section 23. If HiCentral MLS prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

26. **Indemnification.** Subject to Paragraph 24, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. Consultant shall defend, indemnify, and hold harmless HiCentral MLS, Participant Party, Subscriber Party, or customers of HiCentral MLS, Participant Party, or Subscriber Party, to whom Consultant provides a product or service using HiCentral MLS Data, against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from any third party claim of patent infringement. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and

(b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

27. **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.

28. **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.

29. **Assignment.** Participant Party, Subscriber Party, and Consultant may not assign or otherwise transfer any of its respective rights or obligations under this Agreement to any other party. Any purported assignment or delegation by Participant Party, Subscriber Party, or Consultant in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

30. **Entire Agreement; Amendment.** Subject to HiCentral MLS Policies, 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, relating to the same. 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. HiCentral MLS may amend this agreement by providing 30 days advance notice of the amendment to all other parties; if any party continues to use the Data Interface or the HiCentral MLS Data after the expiration of the 30-day notice period, that party will be deemed to have agreed to the terms as amended.

31. **Relationship of the Parties.** The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of HiCentral MLS or have any authority to make any agreements or representations on behalf of HiCentral MLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

32. **Severability.** 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. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

33. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

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PARTICIPANT DATA ACCESS AGREEMENT

Under this Agreement, **PARTICIPANT PARTY AND SUBSCRIBER PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE.** If Participant Party or Subscriber Party chooses to engage a different consultant or additional consultants, Participant Party must enter into a new version of this Agreement with HiCentral MLS and each such consultant.

Under this Agreement, **CONSULTANT IS PERMITTED TO WORK ONLY WITH THE PARTICIPANT PARTY AND SUBSCRIBER PARTY NAMED HERE.** Consultant may not use data obtained under this Agreement to provide services to HiCentral MLS Participants other than Participant Party, or with Subscribers affiliated with Participant Party except Subscriber Party. Consultant must enter into a new version of this Agreement with HiCentral MLS and each additional HiCentral MLS Participant or amend this Agreement with HiCentral MLS to add additional Subscribers affiliated with Participant Party as Subscriber Parties.

If Participant Party or Subscriber Party will perform their own technical work and there is no Consultant party to this Agreement, Participant Party should cross out the Consultant signature box.

If this Agreement is for services to Participant Party only, and there is no Subscriber Party, Participant Party should cross out the Subscriber Party signature box.

This Agreement is for the following Permitted Use(s) (check all that apply):

- IDX** **IDX Plus** **VOW** **Participant Party Internal Use**
- Participant Data Use (Including Zillow Rental Feed)**

(The remainder of this page intentionally left blank; signatures on next page.)



PARTICIPANT DATA ACCESS AGREEMENT

In consideration of the mutual covenants set forth in this Agreement, the parties affirm and adopt this Agreement by setting their signatures below.

PARTICIPANT PARTY (Broker)

Participant Party
Signature _____

Participant Party
Name _____

Brokerage / Firm
Name _____

Participant contact information

Phone: _____

Email: _____

Mailing Address: _____

Second or Third Level Domain, Mobile Application, or Audio Device (URL/website address):

(If more than one will be used, specify each on Exhibit A.)

SUBSCRIBER PARTY (Agent)

(If more than one, provide all names and signatures on Exhibit A.)

Subscriber Party
Signature _____

Subscriber Party
Name _____

Contact for notices and operations matters

Name: _____

Phone: _____

Email: _____

Mailing Address: _____

Second or Third Level Domain, Mobile Application, or Audio Device (URL/website address):

(If more than one will be used, specify each on Exhibit A.)

CONSULTANT

Owner/Officer
Signature _____

Owner/Officer
Name _____

Consultant Firm
Name _____

Contact for notices and operations matters

Name: _____

Phone: _____

Email: _____

Mailing Address: _____

HiCentral MLS, Ltd.

HiCentral MLS
Signature _____

HiCentral MLS
Name _____

Effective Date of
Agreement _____

MLS contact for notices and operations matters:

Name: Bruce Wee

Phone: 808-792-4933

Email: idx@hicalmls.com

Mailing Address: HiCentral MLS, Ltd.
 1136 12th Ave Ste 200
 Honolulu HI 96816



PARTICIPANT DATA ACCESS AGREEMENT

Exhibit A – Additional Information

Attach additional pages if necessary.

1. Additional Domains, Mobile Applications, and Audio Devices. In addition to the Second and Third Level Domains specified on the signature page Participant Party, Subscriber Party, and Consultant may display HiCentral MLS Data subject to the terms of this Agreement at the following Second and Third Level Domains, Mobile Applications, and Audio Devices (URLs/website addresses):

2. Additional Subscriber Parties: If there are two or more Subscriber Parties, each Subscriber Party after the first is identified by name here, and each must sign this Agreement. Each Subscriber Party listed here consents to HiCentral MLS making communications and notices under this Agreement to Participant Party only.

_____ Name	_____ Signature
_____ Name	_____ Signature
_____ Name	_____ Signature
_____ Name	_____ Signature
_____ Name	_____ Signature
_____ Name	_____ Signature
_____ Name	_____ Signature
_____ Name	_____ Signature



PARTICIPANT DATA LICENSING REQUEST FORM

Thank you for your interest in licensing HiCentral MLS Participant Data. This request form allows you to select your preferred level of data licensing. If you have questions, please reach out to idx@hicalmls.com or call 808-792-4933.

Before you start: Who does the website/license belong to? Will it be used by an office/brokerage (Participant) or an individual (Subscriber)?

Please indicate the billable party: Participant (brokerage/office) Subscriber (agent)

Participant – Office/Brokerage Name	PB/BIC Name
PB/BIC Email Address	PB/BIC Telephone Number
Firm/Office Code (MLS use only):	

Subscriber Name	Subscriber MLS ID
Subscriber Email Address	Subscriber Telephone Number

Technical (Consultant) Company	Consultant Name
Consultant Email	Consultant Telephone Number

DATA LICENSE AND DATA FEED REQUESTED			Startup Costs			Monthly Cost	
MUST SELECT ONE	License Type	Total Due at Activation	Setup Fee	First Two Months in Advance	GET (4.712%)	Monthly Charge	Monthly Payment with GET
<input type="checkbox"/>	IDX	\$ 78.53	\$ 75.00	\$ -	\$ 3.53	\$ -	\$ -
	A limited dataset of active and in escrow listings: includes agent, office, and open house data.						
<input type="checkbox"/>	IDX Plus	\$ 130.89	\$ 75.00	\$ 50.00	\$ 5.89	\$ 25.00	\$ 26.18
	The IDX dataset plus three (3) years of sold information.						
<input type="checkbox"/>	Full Data	\$ 235.60	\$ 75.00	\$ 150.00	\$ 10.60	\$ 75.00	\$ 78.53
	A full dataset including all statuses and data fields. Use cases include VOW, statistics, CRM, etc. History information is available back to 2012.						

- Both *IDX Plus* and *Full Data* require payment for the first two calendar months (current plus one) at the time of activation.
- Monthly fees are not prorated.
- Monthly billing will start with the third calendar month. For example, if you sign up in February, your initial payment will include February and March. Your monthly billing will begin with April.

Once you submit this form and the attached Participant Data Access Agreement, you will receive an invoice for the applicable startup costs. Please allow 3 to 5 business days for processing.