

Inspect Hawaii, LLC INSPECTION AGREEMENT

THIS AGREEMENT LIMITS OUR LIABILITY -- PLEASE READ IT CAREFULLY

Client: _____ **Inspection Date:** _____

Property Address _____

This Inspection Agreement is entered into between the Client and *Inspect Hawaii, LLC*, including its inspectors.

SCOPE OF INSPECTION: In consideration of the terms and conditions set forth below, the Inspection Company agrees to perform a visual inspection (the "Inspection") of the property listed above (the Residence), and to prepare and provide to the Client an Inspection Report (the Report). The Inspection will be in accordance with the Standards of Practice of the American Society of Home Inspectors® (ASHI®). A copy of the ASHI Standards of Practice is available to the Client at *ashi.com*. This is not a building code inspection. The Inspection will consist of visual observation of readily and safely accessible areas of the Residence. As specified in the ASHI Standards for multiple occurring items such as outlets, windows, and doors - only a representative number will be inspected/tested. The Inspection is limited only to visual observation of apparent conditions existing at the time of the Inspection. The copyright of the Report shall remain with the Company.

INSPECTION COMPONENTS: The Inspection is strictly limited only to the following components of the Residence: Structure, Foundation, Exterior, Roof, Attic, Major Systems (heating, air conditioning, electric, plumbing), Built-in Appliances¹, Interior (floors, ceilings, walls, windows, doors). ¹ Beyond the scope of the ASHI Standard of Practice.

EXCLUSIONS FROM THE INSPECTION: The following items, components and issues are specifically not included in the Inspection: product recalls by the CPSC or manufacturers or others; the presence or absence of termites, dry rot, fungus, mold or other wood destroying pests; the interior condition of chimney flues; all concealed or underground items, including without limitation, plumbing and electrical components, septic systems or cesspools, well and its water quality; water softeners and purification systems; swimming pool/spa and systems; automatic sprinkler systems; any system that is shut down; lighting of pilot lights; alarm, intercom, and low voltage systems, including without limitation, yard fixtures, timers, de-icing systems, and solar systems; storm windows, screens, and doors; shutters, awnings and related accessories; broken windowpanes & "THERMO-PANES"; all portable/moveable appliances including, without limitation, the refrigerator/freezer,; the temperature calibration, self-cleaning feature, and timer operation of the stove/oven; the heat exchanger; radiant heating system; compliance with past or present state and local building code requirements; evaluation or analysis of soil conditions and geological stability; evaluation of engineering and architectural issues; compliance with any federal, state, or local environmental laws, rules, and ordinances; the existence of any hazardous wastes and toxic substances on, in, or around the Residence including, without limitation, asbestos, radon gas, lead and lead-based paint, mold, or methamphetamine.

Latent and Future Defects: The Inspection is not a technically exhaustive investigation or evaluation of every aspect of the Residence. The Client acknowledges and agrees that the Inspection and the Report will not reveal every existing deficiency and future condition affecting the Residence. The Inspection Company is not responsible for the non-discovery of any latent defects in the Residence, or any problems that may occur or become evident after the date of the Inspection. Latent defects in the Residence include, but are not limited, to: cracking, leaking, surface dislocations, or landslides resulting from, without limitation, water leaks, land subsistence, or other geological problems. The Inspection Company is not responsible for future defects, failures and repairs. The Inspection Company shall have a

reasonable opportunity, weather permitting, to access the subject property to evaluate the situation prior to any corrective action being taken by the Client. However, immediate "first aid" should be undertaken by the Client as needed.

FEE: \$ _____. This Fee is for the Inspection and Report, and payable at the time of the inspection. If payment received more than 14 days after the date of inspection, there will be a late payment penalty in the amount of \$50.00, and will accrue interest at the rate 1.5% monthly (18% per annum) from the date of delinquency until paid. The Client also agrees to pay all attorney fees and associated costs for the Company to collect the amount due. Remedy for non-payment shall be adjudicated in small claims court.

GENERAL CONDITIONS

- 1. No Warranty or Guarantee:** The Inspection and the Report are not intended; nor shall they be used or treated by the Client or anyone else, as a guarantee or warranty expressed or implied, regarding the adequacy, performance or condition of any aspect of the Residence. The Client acknowledges and agrees that the Company is not an insurer of any inspected or non-inspected conditions at the Residence. The Client acknowledges that the Company has explained that home warranty plans are available which offer valuable protection against certain unforeseen repair expenses.
- 2. Limits of Liability:** The Client agrees that the limit of liability is the cost of the inspection, and is unrelated to the costs of repairing or correcting any defects in the subject property. The Inspection Company assumes no liability for the cost of repairing or replacing any reported or unreported defect or deficiency in the Residence, either current or arising in the future, or for any property damage, consequential damage, or bodily injury of any nature. The Inspection and Report are conducted and prepared for the sole, confidential and exclusive use of the Client. Consequential and third party damages are excluded; and the client indemnifies the company from all such claims. **Even though the report may have been a material factor in the client's decision to purchase the residence, the client agrees that should the company be found liable for any loss or damages resulting from a failure to perform any of the company's obligations, including but not limited to negligence, breach of contract, or any other legal theory or cause of action, the liability of the company shall be limited solely to the cost of the inspection.**
- 3. Claims/Legal Action:** The Client agrees to submit to the Inspection Company, in written form, any claims and/or complaints 90 days in advance to taking any action thereupon. Failure to do so constitutes breach of this agreement. Any legal action or proceeding of any kind, whether sounding in tort or contract, against the Inspection Company or its officers, agents, or employees, must be brought within 90 Days from the date of the inspection or will be deemed waived and forever barred. Service will be made on the agent for service of process for the Inspection Company.
- 4. Choice of Law and Forum:** Client and Inspector agree that this contract is governed by the laws of the State of Hawaii, and further agree to litigate any and all disputes arising from this agreement in the state courts in Oahu, in the State of Hawaii.
- 5. No Liability for Repairs:** Neither the inspector, nor his company, agents, principals or employees shall be liable for any repairs or replacement of any component, system, structure or the property or the contents therein, either during or after the inspection.
- 6. Review Recommendations:** Customer agrees and understands that, for the purposes of this inspection, the Inspector is acting as an ASHI (American Society of Home Inspectors) Certified Home Inspector and not as a professional engineer, plumber, electrician, HVAC Tech, roofer, or other specialized contractor. **The Inspector will be held to the standard of care of a Home Inspector and not to the standard of care of any of the above referenced**

specialized contractors or engineers for the purposes of the subject

property. Inspector will make recommendations to the customer to engage the services of any of the above referenced specialized contractors or engineer for the purposes of the subject property if deemed necessary by the Inspector.

7. **Duty to Defend and Indemnify:** To the fullest extent permitted by law, the client shall defend and indemnify and hold harmless the Inspector and any consultants and agents and employees of any of the same, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the inspection, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Inspector, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. **This duty to defend and indemnify the Inspector shall arise at the inception of any litigation bringing forth or sounding legal claims or factual allegations regarding allegedly deficient inspection, respectively, against Inspector. Inspector's tender of defense is not required.**
8. **Attorney's Fees:** In the event that any person brings a suit in any civil court alleging claims arising out of this agreement or the services performed here under, the customer agrees to pay to the inspector all litigation and expert costs, expenses, and attorneys' fees incurred by the inspector, his agents, employees, insurer in defense of such a suit. **This duty to defend the Inspector shall arise at the inception of any litigation bringing forth or sounding legal claims or factual allegations regarding allegedly deficient inspection, respectively, against Inspector. Inspector's tender of defense is not required for this duty to defend Inspector to arise.**
9. **Amendment of the Report:** The inspector/ inspection company reserves the right to amend, modify or update the inspection report to further explain and /or clarify information and findings in the report for up to 72 hours after the inspection.
10. **No Recordings:** The inspector has the right to prohibit audio and video recordings of the inspection.
11. **Pro-Rated and Show-Up Fees:** The inspector has the right to stop the inspection at any time for cause. Any fee paid may be prorated for return. Shall the inspector show up for a scheduled inspection and for any reason beyond his control, the inspector cannot complete the home inspection, a "show up Fee" of one half of the inspection fee shall be billed and payable in addition to the standard inspection fee.
12. **Severability:** If a court of competent jurisdiction determines that a portion of this agreement is void or unenforceable the remaining provisions shall remain in full force and effect.
13. **No Third Party Beneficiaries:** This report is for the sole and exclusive use of the client for whom it was exclusively prepared. Neither the inspector nor the inspection company shall have any liability whatsoever to any third party using or relying on its contents. The customer agrees to defend, indemnify and hold the inspector and the inspection company harmless from any claims resulting from another person relying on the report.

14. **Binding on Successors.** This Agreement and the covenants and conditions contained herein shall apply to, and be binding upon or inure to, the administrators, executors, legal representatives, heirs, assignees, successors, agents and assigns of the Parties hereto.
15. **Construction.** This Agreement shall not be construed against the Party preparing it, but shall be construed as if all Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party. This Agreement is to be interpreted, enforced and governed by and under the laws of the State of Hawaii, without giving effect to the conflict-of-laws, rules and principles thereof.
16. **Modification.** This Agreement shall not be modified by any Party by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Party to be charged therewith.
17. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement to be effective as of the Effective Date. Photocopies or facsimile copies of executed copies of this Agreement may be treated as an original.
18. **Severability.** The Parties agree that if any provision of this Agreement should become inconsistent with present or future law having jurisdiction over and otherwise properly governing the subject matter of the provision, such provision shall be deemed to be rescinded or modified in accordance with any such law. In all other respects, the Parties agree that the other provisions of this Agreement shall continue and remain in full force and effect.
19. **Confidentiality.** The Parties agree that the terms of this Agreement shall remain confidential and shall not be disclosed to anyone not a Party to this Agreement, other than legal and accounting professionals who are or may be retained by any of the Parties, and who will also be instructed by the Parties to adhere to the same confidentiality agreement, and except to the extent such disclosure is expressly agreed to in writing by the non-disclosing party or is otherwise required by law or the Court.
20. **Entire Agreement.** This Agreement contains the entire understanding and agreement between the Parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the Parties hereto. The Parties hereto acknowledge that each Party has not executed this Agreement in reliance on any such promise, representation or warranty.

AGREED TO:

Client Name Signature

Date