



TEXAS ASSOCIATION OF REALTORS®

INDEPENDENT CONTRACTOR AGREEMENT FOR SALES ASSOCIATE

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1. PARTIES. The parties to this agreement are:

Broker: _____; and
Associate: _____.

2. TERM: This agreement commences on _____ (Commencement Date) and ends at such time as either party terminates this agreement in accordance with Paragraph 21.

3. DEFINITIONS:

- A. *“Brokerage services”* means assistance and services to prospects that are reasonably necessary to negotiate and bring about the successful closing of transactions for the sale, purchase, or lease of real estate.
- B. *“Files”* means any documents, instruments, contracts, written agreements, disclosures, memoranda, books, publications, records, correspondence, reports, data, lists, compilations, studies, surveys, images, and all other data, whether in written or electronic format, which are related to Broker’s real estate business. The term “files” includes excludes Associate’s prospect lists.
- C. *“Prospect”* means: (1) a buyer, prospective buyer, seller, prospective seller, landlord, prospective landlord, tenant, or prospective tenant of real estate; or (2) a client or customer of Broker or Associate.
- D. *“Real estate business”* means all business related to the acts of a real estate broker as defined by Section 1101.002, Occupations Code (the Real Estate License Act).

4. BEST EFFORTS: Associate will use Associate’s best professional efforts to:

- A. solicit listings and prospects for Broker’s real estate business; and
- B. provide brokerage services to prospects procured by or assigned to Associate.

5. EXCLUSIVE ASSOCIATION: Associate will perform the services contemplated by this agreement exclusively for Broker. Associate may not engage in the brokerage of businesses or in the management of property without Broker’s knowledge and written consent.

6. LEGAL AND ETHICAL COMPLIANCE: When delivering brokerage services to prospects and when otherwise performing under this agreement, the parties agree to comply with all applicable laws and standards of practice, including but not limited to the Real Estate License Act, the Rules of the Texas Real Estate Commission, the Code of Ethics of the National Association of REALTORS®, the bylaws of the national, state, and applicable local associations of REALTORS®, any rules and regulations of any listing services to which the parties may subscribe, and any standards or policies Broker adopts.

7. LICENSES AND TRADE ASSOCIATIONS:

- A. Broker’s License and Membership Status: Broker is a licensed real estate broker in the State of Texas and is a member of the National Association of REALTORS®, the Texas Association of REALTORS®, and the following local associations of REALTORS®: _____
_____. Broker will maintain Broker’s license and REALTOR® membership status active and in good standing at all times while this agreement is in effect.

B. Associate's License and Membership Status: Associate is a licensed real estate salesperson broker in the State of Texas and is will become a member of the National Association of REALTORS®, the Texas Association of REALTORS®, and the following local associations of REALTORS®: _____.

Associate will maintain Associate's license and REALTOR® membership status active and in good standing at all times while this agreement is in effect.

8. INDEPENDENT CONTRACTOR:

A. Contractor: Associate is an independent contractor and is not Broker's employee. Broker will not withhold any amounts for taxes from the fees paid to Associate under this agreement, unless ordered to do so by a court of law or the Internal Revenue Service. Broker will not pay any amounts for FICA, unemployment compensation, or worker's compensation for Associate.

B. **Statement of Understanding**: On or about the first day of _____ of each calendar year this agreement is in effect, Associate will execute and deliver to Broker a **Statement of Understanding, a copy of which is attached to this agreement.**

C. Not a Partnership: This agreement does not create a partnership between the parties. Except as provided by this agreement, neither party is liable to the other party for any expense or obligation incurred by the other party.

9. ASSOCIATE'S AUTHORITY:

A. Signing Brokerage Service Agreements: Associate may sign listing agreements, buyer or tenant representation agreements, and commission agreements on Broker's behalf provided that Associate complies with Paragraph 6 and any standards and policies Broker adopts with respect to signing such agreements.

B. Submission of Agreements: All listings, representation agreements, commission agreements, and other agreements for brokerage services that Associate procures or signs must be taken in Broker's name and must be submitted to Broker within _____ days after the listing, representation agreement, commission agreement, or other agreement is taken by Associate.

C. Cancellations or Termination of Brokerage Service Agreements: Associate may not cancel, terminate, or compromise any agreement to which Broker is a party without Broker's written approval.

D. Other Agreements: Unless specifically authorized by this agreement or by Broker in writing, Associate may not bind or obligate Broker to any agreement or relationship.

10. FILES AND CONFIDENTIALITY OF OPERATIONS:

A. Obligation to Maintain a File: In any transaction related to Broker's real estate business in which Associate is involved, Associate must maintain a file at Broker's office that contains all applicable items described under the definition of "files" under Paragraph 3B. Associate will maintain the file in a format that Broker regularly maintains such files in Broker's office.

B. Confidentiality of Files: The parties agree that all files related to Broker's real estate business are Broker's confidential business property. Associate agrees to hold all files and information in the files confidential and not disclose such information to any person without Broker's knowledge and consent unless:

- (1) required by law or a court order to disclose such information; or
- (2) such information is otherwise public information.

- C. **Prospects and Operations:** Unless required by law or expressly permitted by Broker, Associate may not furnish any person with information about:
 - (1) Broker's prospects or Broker's relationship with any prospects; or
 - (2) Broker's policies and business operations.

D. **Survival:** This Paragraph 10 survives termination of this agreement.

E. **NOTICE:** *All Internet data that is composed, transmitted, or received on the Broker's computers or network is considered to be part of the Broker's records and, as such, is subject to: (1) Broker's review; and (2) disclosure to law enforcement agencies or as the law may otherwise require. The unauthorized use, installation, copying, or distribution of trademark or patented material on the Internet or by other means is prohibited.*

11. OWNERSHIP OF LISTINGS AND REPRESENTATION AGREEMENTS: All listings, representation agreements, commission agreements, and other agreements for brokerage services in which Broker is named as a party are owned exclusively by Broker.

12. RECEIPT OF MONEY BY ASSOCIATE:

A. **Compliance with Contracts:** Associate must promptly deposit all checks or funds Associate receives in trust for others in accordance with the contracts under which the checks or funds are received. Associate may not maintain a separate trust, escrow, or management account for real estate business purposes.

B. **Receipt of Brokerage Fees:** Unless otherwise authorized by Broker, Associate must deliver any compensation for brokerage services received from any client, customer, escrow agent, title company, prospect, or any other person to Broker for disbursement in accordance with this agreement, including but not limited to any check, credit card, debit card, draft, or any negotiable instrument made payable or issued to Associate.

13. FACILITIES: Broker will furnish to Associate the following office facilities at Broker's office for uses related to Broker's real estate business: _____

Performance under this agreement does not require Associate to be present in Broker's office.

14. ADVERTISING:

A. All advertising related to Broker's real estate business, including brokerage services performed by Associate, may be placed only by Broker or only with Broker's knowledge and consent. Broker will, at Broker's discretion, include Associate's name in such advertising when appropriate. Associate will not cause any advertisement that is related to Broker's real estate business to be published without Broker's prior knowledge and consent.

B. "Advertising" includes any written or oral statement which is intended to induce the public to use Associate's or Broker's services, and includes without limitation all publications, newsletters, radio or television broadcasts, all electronic media including e-mail and the Internet, business stationary, business cards, signs, and billboards.

15. ASSIGNMENT OF PROSPECTS:

A. **Definition:** Under this Paragraph 15, "assign" means to appoint an associate to deal with a prospect on Broker's behalf.

- B. Assignments: Broker gives to Associate the right, together with Broker, to deal with prospects that Associate procures and with prospects that Broker assigns to Associate. Broker retains the right and sole discretion to assign leads and prospects that are procured by Broker through Broker's real estate business to any of Broker's associates as Broker determines appropriate.
- C. Reassignments: Broker may reassign a prospect with whom Associate deals to another associate if: (1) Broker determines that a reassignment of the prospect is necessary for the orderly, ethical, or lawful operation of Broker's real estate business; (2) Associate is not capable of continuing to service the prospect; or (3) this agreement terminates. This provision applies to all prospects, regardless of who procured the prospect.
- D. No Interference: Associate may not interfere with any assignments or reassignments of prospects or leads that Broker may make.

16. ASSOCIATE'S FEES:

- A. Brokerage Fees are Paid to Broker: All fees and compensation that Broker or Associate earn for providing brokerage services to prospects (for example, fees earned under listing agreements, buyer or tenant representation agreements, agreements between brokers) are payable to and belong to Broker.
- B. Amount of Associate's Fees: Broker will pay Associate fees for the brokerage services that Associate provides under this agreement at the rates or in the amounts specified in:
 - (1) the attached fee schedule.
 - (2) _____, which is incorporated into this agreement.
- C. When Associate's Fees are Earned and Payable: Associate's fees under this agreement are earned at the time Broker's fees are earned under the applicable agreements for brokerage services that Associate performs for Broker. Associate's fees under this agreement are payable when Broker receives Broker's fees under the applicable agreements for brokerage services, unless the fees are subject to arbitration, litigation, or a court order.
- D. Disputes between Associates: If another associate of Broker claims a fee from a transaction for which Associate also claims a fee, the amount of the fee payable to Associate will be divided between Associate and the other associate claiming the fee in accordance with an agreement between them. If no such agreement is reached, the dispute will be resolved by Broker's internal dispute resolution policy; and, if no such policy exists, by arbitration. Before disbursing any fee, Broker may require written authorization from any associate claiming the fee. Associate agrees not to hold Broker liable for holding, in trust, any disputed funds between associates.
- E. Delinquent Brokerage Fees: Broker is not liable to Associate for any fees not collected from a prospect. Broker retains complete discretion to enforce or not enforce any agreement for brokerage services with a prospect.
- F. Bonuses: Associate may not accept any fee, bonus, or other compensation directly; whether such is in money, gift cards, credit cards, trips, or other benefits or personal property. All fees, bonuses, and other compensation must be paid to Broker for distribution in accordance with this agreement. Unless otherwise agreed in writing between the parties to this agreement, bonuses will be considered as part of the gross compensation Broker receives under the applicable agreements for brokerage services and will be disbursed in accordance with:
 - (1) the attached fee schedule.
 - (2) _____, which is incorporated into this agreement.

- G. Fees upon Reassignment of Prospects: If Broker reassigns a prospect with whom Associate deals to another associate or if Broker reassigns a prospect with whom another associate deals to Associate, Broker will pay Associate a fee in accordance with:
- (1) the attached fee schedule.
 - (2) _____, which is incorporated into this agreement.
- H. Other: If an attached fee schedule or other document incorporated into this agreement does not specifically address the amount of the fee or compensation due to Associate under any given circumstances, the amount of the fee or compensation will be an amount that Broker determines is reasonable and equitable.
- I. Assignment of Fees: Associate may not assign any interest in fees or compensation due under this agreement to any other person.

17. EXPENSES:

- A. No Liability for Another's Expense: Unless the parties agree otherwise, Broker is not liable for any expense incurred by Associate. Unless the parties agree otherwise, Associate is not liable to Broker for the expenses for the office facilities that Broker will provide under this agreement.
- B. Special Expenses: "*Special expenses*" means expenses that Broker incurs for _____

_____.
(Note: Special expenses may include items such as desk fees, transaction fees, E&O premiums, franchise fees, etc.). Special expenses will be:
- (1) deducted from the gross fees that Broker receives under this agreement for brokerage services and paid to the providers of the special services before calculating Associate's fees payable under this agreement.
 - (2) invoiced to Associate by Broker and will become payable upon receipt of the invoice.
 - (3) charged to Associate in accordance with:
 - (a) the attached fee schedule.
 - (b) _____, which is incorporated into this agreement.
- C. License and Membership Fees: Each party is responsible to pay all their respective license and membership fees. Associate must immediately reimburse Broker any fee, expense, or penalty that Broker incurs as a result of:
- (1) the parties' association; or
 - (2) Associate's failure to maintain Associate's license or REALTOR® membership status as required by this agreement.
- D. Automobile Expenses: Associate will furnish his or her own automobile and pay all such expenses. Broker is not liable or responsible for Associate's automobile or its expenses. Associate must maintain liability and property damage insurance satisfactory to Broker and must name Broker as an additional insured in any such policy. Upon execution of this agreement, Associate must deliver to Broker satisfactory evidence of the insurance required by this agreement and must deliver evidence of the renewal of such insurance at the time the insurance policy is renewed. If Associate fails to maintain the required insurance in full force and effect at times this agreement is in effect, Broker may:
- (1) purchase insurance that will provide Broker with the same coverage as required by this paragraph and Associate must immediately reimburse Broker for such expense; or
 - (2) terminate this agreement.

E. **Other Expenses:** Associate is responsible for all of Associate's expenses necessary to perform the services required of Associate under this agreement, including but not limited to, license fees, association dues, entertainment costs, club dues, mobile phone expenses, education expenses, computer service access charges, periodical expenses, and other related expenses. Although not obligated to do so, if Broker pays any such expense for or on behalf of Associate, Associate will reimburse Broker such amount upon demand.

18. OFFSET: Broker retains the right of offset for all purposes. Broker may deduct amounts Associate owes Broker from any amounts Broker owes to Associate under this agreement.

19. DEFENSE OF DISPUTES AND LITIGATION:

A. **Cooperation:** If a dispute, litigation, or complaint against Broker or Associate occurs in a transaction in which Associate is involved and which is related to Broker's real estate business, the parties will cooperate fully with each other in defending the action.

B. **Insurance Deductible:** If Broker and Associate are named as defendants in a dispute, litigation, or complaint, any deductible for errors and omissions insurance that may cover the defense or payment of any liability under the dispute, litigation, or complaint will be paid as follows: _____.

C. **Mutual Defense:** If any defense expenses are not paid by an errors and omissions insurer, Broker and Associate will share all such expenses and costs related to defend the dispute, litigation, or complaint in the same proportion as they would share the fee resulting from the transaction as if there were no dispute, litigation, or complaint; provided that both Broker and Associate are named as defendants or respondents to the dispute, litigation, or complaint. If either party determines that it cannot mutually defend a dispute, litigation, or complaint with the other party, each party will be responsible for its own costs to defend the dispute, litigation, or complaint from the time one party notifies the other of such a determination.

D. **Defense Management in a Mutual Defense:** If the parties mutually defend a dispute, litigation, or complaint, Broker maintains sole discretion to:
(1) determine whether to defend or compromise the dispute, litigation, or complaint;
(2) employ attorneys or other experts;
(3) direct the course of any defense strategy; and
(4) determine the terms and conditions of any compromise or settlement, provided that Broker may not obligate Associate to pay anything of value without Associate's written consent.

E. **Liability for Damages:** Except as provided in Paragraph 19F, each party is responsible for the payment of any amounts for which it is found liable. The sharing of defense costs provided in this Paragraph 19 does not apply to the payment of damages for which a party is found liable by a court of law, arbitrator, or state agency.

F. **Reimbursement and Indemnity:** If Broker is found to be liable by a court, arbitrator, or government agency as a result of Associate's negligence, misrepresentations, fraud, false statements, violation of the Real Estate License Act, or violation of any other state or federal statute, Associate will indemnify and reimburse Broker all such amounts and all attorney's fees, costs, and other expenses necessary to defend the action including those defense costs that were previously shared under this Paragraph 19.

G. **Survival:** This Paragraph 19 survives the termination of this agreement.

20. PROSECUTION OF CLAIMS: For all matters related to Broker's real estate business, Broker retains sole discretion to prosecute, complain, compromise, or settle any claim that Broker may have against any other person, including but not limited to other brokers, and Broker's or Associate's clients, customers, and prospects.

21. TERMINATION:

- A. Either Party may Terminate: Either party may terminate this agreement, with or without cause, by providing written notice to the other party.
- B. Entitlement to Fees: Any fee to Associate that remains unpaid on the date of termination will be paid in accordance with:
 - (1) the attached fee schedule.
 - (2) _____, which is incorporated into this agreement.
- C. Services to Prospects: Upon termination of this agreement, all negotiations and other brokerage services with prospects commenced by Associate before termination will be assumed by Broker. Associate will cooperate with Broker to provide for an orderly transition and assumption of such service by Broker.
- D. Associate's Obligations upon Termination: At the time this agreement ends, Associate must:
 - (1) cease all negotiations and other dealings that concern Broker's real estate business commenced by Associate before this agreement ends;
 - (2) provide Broker a written list of all current listings and pending sales and leases;
 - (3) turn over to Broker all files related to Broker's real estate business and that Associate may have or control; and
 - (4) turn over to Broker all Broker's personal property including but not limited to key safes, signs, equipment, supplies, manuals, forms, and keys.
- E. Files: Associate may not remove any files related to Broker's real estate business from Broker's office without Broker's prior knowledge and consent. Associate is entitled to copies of relevant documents concerning pending transaction in which Associate has a bona fide interest. Broker will not unreasonably withhold copies of such documents.

22. NOTICES: All notices under this agreement must be in writing and are effective when hand-delivered, mailed, sent by facsimile transmission, or sent by electronic mail from one party to the other.

23. SPECIAL PROVISIONS:

24. AGREEMENT OF THE PARTIES:

- A. Addenda: Attached to and incorporated into this agreement are:
 - (1) the Fee Schedule dated _____;
 - (2) the Statement of Understanding (which should be reviewed and signed each year);
 - (3) IRS Form W-9; and
 - (4) _____

- B. Entire Agreement: This document contains the entire agreement between the parties and may not be changed except by written agreement.
- C. No Assignment: Neither party may assign this agreement or any interest in this agreement without the written consent of the other party.
- D. Heirs and Successors: The parties' obligations under this agreement and the parties' entitlement to any compensation, reimbursement, or indemnity under this agreement inures to the benefit of the respective party's successors, permitted assigns, heirs, executors, and administrators.
- E. Controlling Law: The laws of the State of Texas govern the interpretation, validity, performance, and enforcement of this agreement.
- F. Severable Clauses: If any clause in this agreement is found to be invalid or unenforceable by a court of law, the remainder of this agreement will not be affected and all other provisions of this agreement will remain valid and enforceable.
- G. Waiver: Waiver of any provision in this agreement by any party is effective only if the waiver is in writing. A waiver, whether in writing or otherwise, may not be construed as a waiver of any subsequent breach or failure of the same provision or any other provision of this agreement.

This is intended to be a legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this agreement, consult your attorney BEFORE signing.

Associate's Name Printed (as it appears on license)

Broker's Name Printed

License No.

Associate's Signature

Date

By: _____
Signature

Date

License No.

License Expiration Date

Title

Home Address

Office Address

City, State, Zip Code

City, State, Zip Code

Home Phone

Mobile Phone

Office Phone

Fax Number

E-mail

E-mail