

## INDEPENDENT CONTRACTOR AGREEMENT

\_\_\_\_\_ (“Broker”)

is licensed as a real estate broker in the State of New Hampshire and performs acts designated within N.H. RSA 331-A, enjoys goodwill and a reputation for dealing with the public, and maintains an office for the purpose of serving the public as a real estate broker.

\_\_\_\_\_ (“Associate”)

is licensed as a  salesperson (license number \_\_\_\_\_)  associate broker (license number \_\_\_\_\_) in the State of New Hampshire and is properly qualified to deal with the public as such.

Effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“effective date”), Broker and Associate agree to associate pursuant to the following terms and conditions.

**1. Independent Contractor Relationship.** Broker retains Associate as an independent contractor to assist Broker in the performance of real estate-related activities. With respect to the clients and customers for whom service is performed within the scope of this Agreement, Associate will be construed to be an agent of Broker, otherwise, Associate will not be deemed a servant, employee, joint venturer or partner of Broker for any purpose. Associate is not an employee for Federal tax purposes, federal unemployment tax purposes, social security tax purposes, Fair Labor Standards Act purposes, state unemployment compensation purposes, worker’s compensation purposes and all other purposes with respect to the services performed for Broker under this Agreement. Associate represents that he/she possesses a federal employer identification number or a social security number, and agrees that he/she will submit proof of the foregoing upon request. Associate is responsible for paying his/her own estimated income tax payments, self-employment taxes, occupational taxes and other taxes, if any, to the appropriate governmental entities. Broker will not withhold any taxes from compensation due to Associate, and will report such income as is reportable pursuant to the IRS 1099 form, as may be required. Not in limitation of the above, Broker and Associate agree that Broker shall **not** be responsible for any of the following duties or obligations to Associate:

- i. Worker’s Compensation or any similar statutory scheme for injured employees;
- ii. Payment of minimum wage, salary or overtime time pay pursuant to the Fair Labor Standards Act;
- iii. Unemployment Compensation or any similar statutory requirement;
- iv. Medical plans or benefits;
- v. Retirement plans, individual retirement accounts, or any similar provisions, including any contributions thereto;
- vi. Sick pay or leave, or any similar benefits;
- vii. Family or personal leave or any similar benefits; and
- viii. Any other statutory or common law obligations as may be imposed upon an employer, with respect to an employee.

Associate specifically agrees to the above provisions, and acknowledges that Broker relies upon said representations by Associate. Associate assumes all risks relative to acting as an independent contractor, releasing all such rights as may be conferred upon an employee, whether specifically waived in this Agreement or not.

2. **Associate Responsibilities.** Associate will use his/her best efforts to procure real estate-related business for Broker and will conduct his/her business in a reputable manner and in conformance with all laws, rules, regulations and codes of ethics that are binding upon or applicable to real estate licensees, and with Broker's office policy manual, if any.
  - A. **Compliance.** Associate recognizes and acknowledges the obligation to keep abreast of all legal and other issues that affect the real estate industry as they may change from time to time. Associate will not commit any act that violates New Hampshire law related to Associate's real estate license or is contrary to Associate's legal and ethical duties and obligations.
    - (1) **Fair Housing.** Broker and Broker's company support and practice Fair Housing principles. Associate has been advised that failure to comply with Fair Housing principles will result in appropriate disciplinary action and possible termination of this Agreement. Associate warrants and represents that it is Associate's intent to keep current on developments in Fair Housing as it affects real estate marketing and sales, and comply with the Fair Housing laws and regulations. Associate understands this acknowledgment, warranty and representation and agrees to it voluntarily.
    - (2) **Office Policy Manual.** Broker  maintains  does not maintain an office policy manual. Associate has received a copy, and agrees to comply with the manual and such modifications, addenda and changes as may be incorporated therein from time to time. Failure to comply with any policy may result in immediate termination of this Agreement.
  - B. **License Renewal; Continuing Education; Dues.** Associate will be responsible for timely renewing Associate's real estate license and for completing all legally required continuing education in a timely manner and maintaining the records that evidence such completion as required by the New Hampshire Real Estate Commission. Associate will be responsible for paying all license fees, membership dues and fines.
  - C. **Broker Supervision.** Associate will be deemed to be working under Broker's supervision only to the extent required by N.H. RSA 331-A. Associate will perform all activities, including those activities Broker requires Associate to perform, independently without Broker's supervision or control. Associate does not receive instructions from the Broker as to which customers the Associate should service or which property the Associate should market and sell; and, the Associate is not required to file reports with Broker concerning the Associate's business conduct or status of sale. Associate is responsible for ensuring that for each transaction all documents necessary to comply with the law are executed and properly maintained in accordance

with Broker's administrative procedures. Any statutory or legal duty of supervision and control by Broker shall not be deemed to affect Associate's status as an independent contractor.

- D. **Schedule.** Associate shall have control over the time when the services are performed, and Associate is not required to maintain any specific work schedule. Associate is able to schedule vacations as the Associate desires.
- E. **Broker Property.** Associate acknowledges that all agency agreements taken during the term of this Agreement are Broker's property. All programs, forms, data, keys, manuals, signs and other paraphernalia relative to the business of Broker are Broker's property, as are all documents and other items pertaining to transactions.
- F. **Property of Others.** In accordance with New Hampshire law, Associate will deliver to Broker as soon as possible and no later than the end of the next business day following receipt, any funds or other items that a consumer has entrusted to Associate in connection with a real estate transaction.
- G. **Responsibility.** Broker will not be liable to Associate for any expenses incurred by Associate nor for any of Associate's acts. Associate will have no authority to bind Broker by any promise or representation, oral or otherwise, unless specifically authorized in writing in a particular transaction. Suits, whether for fees or otherwise, against clients, customers and others in the real estate business will be maintained only in Broker's name. Associate is responsible for providing all tools necessary to perform the duties outlined. Associate will also be responsible for providing Associate's own automobile and is responsible for transportation expenses including insurance in the minimum amount of \$\_\_\_\_\_ for public liability, and property damage insurance in the minimum amount of \$\_\_\_\_\_, and other expenses incidental to performing Associate's duties without receiving any reimbursement from Broker. Broker will be named as an additional insured in all such policies. Associate is responsible for all entertainment expenses or other expenses incidental to Associate's responsibilities without receiving any reimbursement.
- H. **Indemnification.** Associate will indemnify and hold Broker, its officers, directors and employees harmless from all claims, demands, suits, costs and expenses, including reasonable attorneys' fees at all levels, of whatever nature and description to the extent based on Associate's representations, acts, omissions, negligence, willful misconduct, or violation of laws, rules, regulations, codes of ethics, this Agreement or office policy manual, if any.

### 3. **Broker Responsibilities.**

- A. **Access to Listings.** Broker will provide Associate with access to all current listings of Broker and listings made available to Broker through offers of cooperation, except those listings that Broker, in his/her/its discretion places exclusively in the possession of another salesperson.

- B. **Access to Facilities.** Associate may utilize Broker's then existing office facilities for the performance of Associate's duties as described above.
- C. **Compensation.** Broker will negotiate all terms and conditions of fees charged clients including but not limited to, the amount and payment date. Broker will compensate Associate in proportion to Associate's output with regard to real estate-related activities and not to hours worked by Associate. Such compensation will be solely through commissions as described below or in Broker's office policy manual, if any. In the event of conflict between Broker's office policy manual and this Agreement, the terms of the office policy manual will prevail. Broker may deduct from Associate's compensation any amounts due from Associate to Broker.

(1) **Amount; Payment.** When Associate performs any Brokerage service for Broker and Broker earns and collects a fee for such service, Broker will pay Associate within \_\_\_\_\_ days after the funds are collected and have cleared:

- \_\_\_\_\_% of the fee as commission for \_\_\_\_\_  
 \_\_\_\_\_% of the fee as commission for \_\_\_\_\_  
 \_\_\_\_\_% of the fee as commission for \_\_\_\_\_

See attached fee schedule incorporated herein.

(2) **Dividing Compensation With Other Licensees.** If two or more associates participate in rendering a brokerage service to the public, or claim to have done so, Broker will determine, in Broker's sole and absolute discretion, the amount of the fee due Associate.

(3) **Incentives.** If a seller or listing office offers a premium, bonus or other incentive, if such premium, incentive or bonus is in the form of money, then \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If such incentive is other than money (i.e., cruise, trip, or other matter having economic value but not delivered in money), then such premium, bonus or incentive will go to  Broker  Associate. If a non-monetary incentive goes to Associate, Broker will report the fair market value of the incentive as income to Associate, as Broker must collect and deliver the incentive to Associate to preserve the respective legal positions of the parties.

D. **Errors and Omissions Insurance.**  Broker maintains Errors & Omission insurance which coverage includes Associate.  Associate will pay a portion of Errors & Omission coverage, as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_.

4. **Term; Termination.** This Agreement will be in effect for \_\_\_\_\_ year(s) from the effective date. Either party may terminate this Agreement by \_\_\_\_\_ days' advance written notice to the other party. Broker may terminate this Agreement without notice for wrongful conduct by Associate. Failure by either party to maintain active licensure status pursuant to N.H. RSA 331-A will be deemed automatic termination. Associate will not, after termination of this Agreement, use to his/her own advantage, or to the advantage of any other person or entity, any information gained from the business of the Broker relating to property for sale, lease or rental, or Broker's customers or clients. Upon termination of this Agreement, Associate will return all Broker's property to Broker with no copies made or retained by Associate.
  
5. **Confidentiality.** Associate acknowledges that Broker may disclose confidential information to Associate during the course of this Agreement. Any such information that is or should be reasonably understood to be confidential or proprietary to Broker, including mailing lists, customer and client lists, sales, costs, unpublished financial information, product and business plans, projections, marketing data, computer data, computer programs and supporting documentation, and Broker's office policy manual, if any, are considered confidential property of Broker. Associate will take reasonable steps and use due care during the term of this Agreement and for \_\_\_\_\_ months after its termination to prevent the duplication or disclosure of confidential information, other than by or to Broker's employees or agents who must have access to the information to perform their duties for Broker.
  
6. **Dispute Resolution:** This agreement will be construed under New Hampshire law. All disputes between Associate and another associate in Broker's firm will be resolved by Broker. All disputes between Broker and Associate will be mediated by a mediator agreed upon by parties. The parties will equally divide the mediation fee, if any.
  
7. **Litigation:** In any litigation between Broker and Associate, the prevailing party will be entitled to recover reasonable attorneys' fees and costs at all levels, unless the following box is checked and initialed:
 

<input type="checkbox"/>		
	Initials	Initials

8. **Additional Terms.** \_\_\_\_\_

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**This Agreement is an important legal document. Prior to signing you should have fully reviewed and understood its contents. You should consult with your attorney before signing.**

**Brokerage**

**Name:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Broker**

\_\_\_\_\_

**Associate**