



INDEPENDENT CONTRACTOR AGREEMENT (Between Broker and Associate-Licensee) (C.A.R. Form ICA, Revised 4/09)

This Agreement, dated _____, is made between _____ ("Broker") and _____ ("Associate-Licensee").

In consideration of the covenants and representations contained in this Agreement, Broker and Associate-Licensee agree as follows:

1. BROKER: Broker represents that Broker is duly licensed as a real estate broker by the State of California, [] doing business as _____ (firm name), [] a sole proprietorship, [] a partnership, or [] a corporation.

Broker is a member of the _____ Association(s) of REALTORS®, and a subscriber to the _____ Multiple Listing Service(s). Broker shall keep Broker's license current during the term of this Agreement.

2. ASSOCIATE-LICENSEE: Associate-Licensee represents that: (i) he/she is duly licensed by the State of California as a [] real estate broker, [] real estate salesperson, and (ii) he/she has not used any other names within the past five years, except _____

Associate-Licensee shall keep his/her license current during the term of this Agreement, including satisfying all applicable continuing education and provisional license requirements.

3. INDEPENDENT CONTRACTOR RELATIONSHIP:

A. Broker and Associate-Licensee intend that, to the maximum extent permissible by law: (i) This Agreement does not constitute an employment agreement by either party; (ii) Broker and Associate-Licensee are independent contracting parties with respect to all services rendered under this Agreement; and (iii) This Agreement shall not be construed as a partnership.

B. Broker shall not: (i) restrict Associate-Licensee's activities to particular geographical areas or, (ii) dictate Associate-Licensee's activities with regard to hours, leads, open houses, opportunity or floor time, production, prospects, sales meetings, schedule, inventory, time off, vacation, or similar activities, except to the extent required by law.

C. Associate-Licensee shall not be required to accept an assignment by Broker to service any particular current or prospective listing or parties.

D. Except as required by law: (i) Associate-Licensee retains sole and absolute discretion and judgment in the methods, techniques, and procedures to be used in soliciting and obtaining listings, sales, exchanges, leases, rentals, or other transactions, and in carrying out Associate-Licensee's selling and soliciting activities, (ii) Associate-Licensee is under the control of Broker as to the results of Associate-Licensee's work only, and not as to the means by which those results are accomplished, (iii) Associate-Licensee has no authority to bind Broker by any promise or representation and (iv) Broker shall not be liable for any obligation or liability incurred by Associate-Licensee.

E. Associate-Licensee's only remuneration shall be the compensation specified in paragraph 8.

F. Associate-Licensee who only performs as a real estate sales agent, shall not be treated as an employee for state and federal tax purposes. However, an Associate-Licensee who performs loan activity shall be treated as an employee for state and federal tax purposes unless the activity satisfies the legal requirements to establish an independent contractor relationship.

G. The fact the Broker may carry worker compensation insurance for Broker's own benefit and for the mutual benefit of Broker and licensees associated with Broker, including Associate-Licensee, shall not create an inference of employment.

(Workers' Compensation Advisory: Even though Associate-Licensees may be treated as independent contractors for tax and other purposes, the California Labor and Workforce Development Agency considers them to be employees for workers' compensation purposes. According to that Agency, (i) Broker must obtain workers' compensation insurance for Associate-Licensees and (ii) Broker, not Associate-Licensees, must bear the cost of workers' compensation insurance. Penalties for failure to carry workers' compensation include, among others, the issuance of stop-work orders and fines of up to \$1,000 per agent, not to exceed \$100,000 per company.)

4. LICENSED ACTIVITY: All listings of property, and all agreements, acts or actions for performance of licensed acts, which are taken or performed in connection with this Agreement, shall be taken and performed in the name of Broker. Associate-Licensee agrees to and does hereby contribute all right and title to such listings to Broker for the benefit and use of Broker, Associate-Licensee, and other licensees associated with Broker. Broker shall make available to Associate-Licensee, equally with other licensees associated with Broker, all current listings in Broker's office, except any listing which Broker may choose to place in the exclusive servicing of Associate-Licensee or one or more other specific licensees associated with Broker. Associate-Licensee shall provide and pay for all professional licenses, supplies, services, and other items required in connection with Associate-Licensee's activities under this Agreement, or any listing or transaction, without reimbursement from Broker except as required by law. Associate-Licensee shall work diligently and with his/her best efforts: (i) sell, exchange, lease, or rent properties listed with Broker or other cooperating Brokers; (ii) solicit additional listings, clients, and customers; and (iii) otherwise promote the business of serving the public in real estate transactions to the end that Broker and Associate-Licensee may derive the greatest benefit possible, in accordance with law. Associate-Licensee shall not commit any unlawful act under federal, state or local law or regulation while conducting licensed activity. Associate-Licensee shall at all times be familiar, and comply, with all applicable federal, state and local laws, including, but not limited to, anti-discrimination laws and restrictions against the giving or accepting a fee, or other thing of value, for the referral of business to title companies, escrow companies, home inspection companies, pest control companies and other settlement service providers pursuant to the California Business and Professions Code and the Real Estate Settlement Procedures Acts (RESPA). Broker shall make available for Associate-Licensee's use, along with other licensees associated with Broker, the facilities of the real estate office operated by Broker at _____

_____ and the facilities of any other office locations made available by Broker pursuant to this Agreement.

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Broker's Initials (_____) (_____)

Associate-Licensee's Initials (_____) (_____)

Reviewed by _____ Date _____



5. **PROPRIETARY INFORMATION AND FILES:** (A) All files and documents pertaining to listings, leads and transactions are the property of Broker and shall be delivered to Broker by Associate-Licensee immediately upon request or termination of this Agreement. (B) Associate-Licensee acknowledges that Broker's method of conducting business is a protected trade secret. (C) Associate-Licensee shall not use to his/her own advantage, or the advantage of any other person, business, or entity, except as specifically agreed in writing, either during Associate-Licensee's association with Broker, or thereafter, any information gained for or from the business, or files of Broker.

6. **SUPERVISION:** Associate-Licensee, within 24 hours (or _____) after preparing, signing, or receiving same, shall submit to Broker, or Broker's designated licensee: (i) all documents which may have a material effect upon the rights and duties of principals in a transaction, (ii) any documents or other items connected with a transaction pursuant to this Agreement in the possession of or available to; Associate-Licensee and; (iii) all documents associated with any real estate transaction in which Associate-Licensee is a principal.

7. **TRUST FUNDS:** All trust funds shall be handled in compliance with the Business and Professions Code, and other applicable laws.

8. **COMPENSATION:**

A. **TO BROKER:** Compensation shall be charged to parties who enter into listing or other agreements for services requiring a real estate license:

as shown in "Exhibit A" attached, which is incorporated as a part of this Agreement by reference, or

as follows: _____

Any deviation which is not approved in writing in advance by Broker, shall be: (1) deducted from Associate-Licensee's compensation, if lower than the amount or rate approved above; and, (2) subject to Broker approval, if higher than the amount approved above. Any permanent change in commission schedule shall be disseminated by Broker to Associate-Licensee.

B. **TO ASSOCIATE-LICENSEE:** Associate-Licensee shall receive a share of compensation actually collected by Broker, on listings or other agreements for services requiring a real estate license, which are solicited and obtained by Associate-Licensee, and on transactions of which Associate-Licensee's activities are the procuring cause, as follows:

as shown in "Exhibit B" attached, which is incorporated as a part of this Agreement by reference, or

other: _____

C. **PARTNERS, TEAMS, AND AGREEMENTS WITH OTHER ASSOCIATE-LICENSEES IN OFFICE:** If Associate-Licensee and one or more other Associate-Licensees affiliated with Broker participate on the same side (either listing or selling) of a transaction, the commission allocated to their combined activities shall be divided by Broker and paid to them according to their written agreement. Broker shall have the right to withhold total compensation if there is a dispute between associate-licensees, or if there is no written agreement, or if no written agreement has been provided to Broker.

D. **EXPENSES AND OFFSETS:** If Broker elects to advance funds to pay expenses or liabilities of Associate-Licensee, or for an advance payment of, or draw upon, future compensation, Broker may deduct the full amount advanced from compensation payable to Associate-Licensee on any transaction without notice. If Associate-Licensee's compensation is subject to a lien, garnishment or other restriction on payment, Broker shall charge Associate-Licensee a fee for complying with such restriction.

E. **PAYMENT:** (i) All compensation collected by Broker and due to Associate-Licensee shall be paid to Associate-Licensee, after deduction of expenses and offsets, immediately or as soon thereafter as practicable, except as otherwise provided in this Agreement, or a separate written agreement between Broker and Associate-Licensee. (ii) Compensation shall not to be paid to Associate-Licensee until both the transaction and file are complete. (iii) Broker is under no obligation to pursue collection of compensation from any person or entity responsible for payment. Associate-Licensee does not have the independent right to pursue collection of compensation for activities which require a real estate license which were done in the name of Broker. (iv) Expenses which are incurred in the attempt to collect compensation shall be paid by Broker and Associate-Licensee in the same proportion as set forth for the division of compensation (paragraph 8(B)). (v) If there is a known or pending claim against Broker or Associate-Licensee on transactions for which Associate-Licensee has not yet been paid, Broker may withhold from compensation due Associate-Licensee on that transaction amounts for which Associate-Licensee could be responsible under paragraph 14, until such claim is resolved. (vi) Associate-Licensee shall not be entitled to any advance payment from Broker upon future compensation.

F. **UPON OR AFTER TERMINATION:** If this Agreement is terminated while Associate-Licensee has listings or pending transactions that require further work normally rendered by Associate-Licensee, Broker shall make arrangements with another associate-licensee to perform the required work, or Broker shall perform the work him/herself. The licensee performing the work shall be reasonably compensated for completing work on those listings or transactions, and such reasonable compensation shall be deducted from Associate-Licensee's share of compensation. Except for such offset, Associate-Licensee shall receive the compensation due as specified above.

9. **TERMINATION OF RELATIONSHIP:** Broker or Associate-Licensee may terminate their relationship under this Agreement at any time, with or without cause. After termination, Associate-Licensee shall not solicit: (i) prospective or existing clients or customers based upon company-generated leads obtained during the time Associate-Licensee was affiliated with Broker; (ii) any principal with existing contractual obligations to Broker; or (iii) any principal with a contractual transactional obligation for which Broker is entitled to be compensated. Even after termination, this Agreement shall govern all disputes and claims between Broker and Associate-Licensee connected with their relationship under this Agreement, including obligations and liabilities arising from existing and completed listings, transactions, and services.

Broker's Initials (_____) (_____)

Associate-Licensee's Initials (_____) (_____)

Reviewed by _____ Date _____



10. DISPUTE RESOLUTION:

- A. Mediation:** Mediation is recommended as a method of resolving disputes arising out of this Agreement between Broker and Associate-Licensee.
- B. Arbitration:** All disputes or claims between Associate-Licensee and other licensee(s) associated with Broker, or between Associate-Licensee and Broker, arising from or connected in any way with this Agreement, which cannot be adjusted between the parties involved, shall be submitted to the Association of REALTORS® of which all such disputing parties are members for arbitration pursuant to the provisions of its Bylaws, as may be amended from time to time, which are incorporated as a part of this Agreement by reference. If the Bylaws of the Association do not cover arbitration of the dispute, or if the Association declines jurisdiction over the dispute, then arbitration shall be pursuant to the rules of California law. The Federal Arbitration Act, Title 9, U.S. Code, Section 1, et seq., shall govern this Agreement.

11. AUTOMOBILE: Associate-Licensee shall maintain automobile insurance coverage for liability and property damage in the following amounts \$ _____ /\$ _____. Broker shall be named as an additional insured party on Associate-Licensee's policies. A copy of the endorsement showing Broker as an additional insured shall be provided to Broker.

12. PERSONAL ASSISTANTS: Associate-Licensee may make use of a personal assistant, provided the following requirements are satisfied. Associate-Licensee shall have a written agreement with the personal assistant which establishes the terms and responsibilities of the parties to the employment agreement, including, but not limited to, compensation, supervision and compliance with applicable law. The agreement shall be subject to Broker's review and approval. Unless otherwise agreed, if the personal assistant has a real estate license, that license must be provided to the Broker. Both Associate-Licensee and personal assistant must sign any agreement that Broker has established for such purposes.

13. OFFICE POLICY MANUAL: If Broker's office policy manual, now or as modified in the future, conflicts with or differs from the terms of this Agreement, the terms of the office policy manual shall govern the relationship between Broker and Associate-Licensee.

14. INDEMNITY AND HOLD HARMLESS; NOTICE OF CLAIMS: A. Regarding any action taken or omitted by Associate-Licensee, or others working through, or on behalf of Associate-Licensee in connection with services rendered or to be rendered pursuant to this Agreement: (i) Associate-Licensee agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, awards, costs and attorney's fees, arising therefrom and (ii) Associate-Licensee shall immediately notify Broker if Associate-Licensee is served with or becomes aware of a lawsuit or claim regarding any such action. **B.** Any such claims or costs payable pursuant to this Agreement, are due as follows:

- Paid in full by Associate-Licensee, who hereby agrees to indemnify and hold harmless Broker for all such sums, or
- In the same ratio as the compensation split as it existed at the time the compensation was earned by Associate-Licensee
- Other: _____

Payment from Associate-Licensee is due at the time Broker makes such payment and can be offset from any compensation due Associate-Licensee as above. Broker retains the authority to settle claims or disputes, whether or not Associate-Licensee consents to such settlement.

15. ADDITIONAL PROVISIONS: _____

16. DEFINITIONS: As used in this Agreement, the following terms have the meanings indicated:

- (A)** "Listing" means an agreement with a property owner or other party to locate a buyer, exchange party, lessee, or other party to a transaction involving real property, a mobile home, or other property or transaction which may be brokered by a real estate licensee, or an agreement with a party to locate or negotiate for any such property or transaction.
- (B)** "Compensation" means compensation for acts requiring a real estate license, regardless of whether calculated as a percentage of transaction price, flat fee, hourly rate, or in any other manner.
- (C)** "Transaction" means a sale, exchange, lease, or rental of real property, a business opportunity, or a manufactured home, which may lawfully be brokered by a real estate licensee.

17. ATTORNEY FEES: In any action, proceeding, or arbitration between Broker and Associate-Licensee arising from or related to this Agreement, the prevailing Broker or Associate-Licensee shall be entitled to reasonable attorney fees and costs.

18. ENTIRE AGREEMENT: All prior agreements between the parties concerning their relationship as Broker and Associate-Licensee are incorporated in this Agreement, which constitutes the entire contract. Its terms are intended by the parties as a final and complete expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be amended, modified, altered, or changed except by a further agreement in writing executed by Broker and Associate-Licensee.

Broker:

 (Brokerage firm name)
 By _____
 Its Broker Office manager (check one)

 (Print name)

 (Address)

 (City, State, Zip)

 (Telephone) _____ (Fax) _____

Associate-Licensee:

 (Signature)

 (Print name)

 (Address)

 (City, State, Zip)

 (Telephone) _____ (Fax) _____

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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Reviewed by _____ Date _____

