



INDEPENDENT CONTRACTOR AGREEMENT FOR REAL ESTATE AGENTS Hawaii Association of REALTORS Standard Form Revised 2/09 (NC) For Release 5/16 includes revisions from subcomm 6/23/16

COPYRIGHT AND TRADEMARK NOTICE: This copyrighted Hawaii Association of REALTORS Standard Form is licensed for use by the entire real estate industry on condition that there shall be no alteration of the printed portions, pagination, or paragraph numbers or breaks. The use of this form is not intended to identify the real estate licensee as a REALTOR. REALTOR is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS and who subscribe to its Code of Ethics.

This Agreement is effective _____, 20____, between ("Brokerage Firm"), _____ and _____ ("Independent Contractor"). Brokerage Firm is a Member of the _____ ("Local Board or Association of REALTORS").

RECITALS

Brokerage Firm is duly licensed as a real estate broker by the State of Hawaii and maintains offices, properly equipped with furnishings, equipment, and staff, to provide services to the public. Independent Contractor is duly licensed by the State of Hawaii to engage in the business of real estate. Brokerage Firm and Independent Contractor believe it is to their mutual advantage to enter into the business arrangement established by this Agreement.

AGREEMENT

Based upon the above understanding, Brokerage Firm and Independent Contractor agree as follows:

- 1. Business Relationship. Independent Contractor specifically requests independent contractor status, and Brokerage Firm agrees to accept that business relationship. Independent Contractor recognizes that he or she is not an employee of Brokerage Firm and is not entitled to employment benefits... 2. Sales Activities. Without affecting the independent contractor relationship, Brokerage Firm shall provide mandatory training and orientation... 3. Office Facilities and Programs. Brokerage Firm may shall make available to Independent Contractor... 4. Membership. Independent Contractor shall be, and shall remain, a member in good standing of the National Association of REALTORS, the Hawaii Association of REALTORS, the Local Board or Association of REALTORS, and the Multiple Listing Service.

INDEPENDENT CONTRACTOR'S INITIALS & DATE

PRINCIPAL BROKER/BROKER-IN-CHARGE BROKERAGE FIRM'S INITIALS & DATE



5. **Compliance with Law, the Code of Ethics, and Good Business Practices.** Independent Contractor shall maintain his or her license in a current and active status during the term of this Agreement, including satisfying any mandatory continuing education requirements and obtaining any necessary tax clearances. Independent Contractor shall at all times conduct himself or herself in accordance with the ethical and professional standards of the industry and shall abide by the Code of Ethics of the National Association of REALTORS®. Independent Contractor shall commit no act in violation of federal or Hawaii law and, in particular, shall commit no act for which the Hawaii Real Estate Commission is authorized to restrict, suspend, or revoke Independent Contractor's license or impose other discipline. Independent Contractor shall handle all trust funds in strict compliance with Chapter 467, Hawaii Revised Statutes, and Chapter 16-99, Hawaii Administrative Rules. Further, Independent Contractor shall abide by all of the rules of the Hawaii Association of REALTORS®, the Local Board or Association of REALTORS®, and the rules and regulations of the Multiple Listing Service. In addition, Independent Contractor shall do nothing which will expose Brokerage Firm, its Principal Broker, Broker in Charge, or any of its licensees to any charges of the type described in this paragraph or which would reflect negatively upon them.

6. **Listing Commissions.** Unless otherwise specifically agreed to in writing by Brokerage Firm, all listings taken by Independent Contractor shall be charged the usual and customary commission rates of Brokerage Firm then in effect. Brokerage Firm retains the exclusive right, in its sole discretion, to set and charge commissions on properties listed with it. Brokerage Firm shall advise Independent Contractor of any special commission rate established for any of Brokerage Firm's listings.

7. **Compensation to Independent Contractor.** All commissions shall be paid to Brokerage Firm. Independent Contractor's only remuneration under this Agreement shall be his or her proportionate share, if any, of commissions collected by Brokerage Firm on transactions in which Independent Contractor was a participant.

Any decision to pursue a claim for commission against a client by way of litigation or arbitration shall be exclusively the decision of Brokerage Firm and not Independent Contractor. Similarly, a decision by Brokerage Firm to give all of a Buyer's deposit to Seller when a transaction fails to close is exclusively the decision of Brokerage Firm and not Independent Contractor. Independent Contractor's share of any commission shall be determined by Brokerage Firm's then current Commission Schedule and Related Policies and shall be based solely upon sales produced and not upon hours worked. The schedule for sharing commissions may be varied by written agreement between Brokerage Firm and Independent Contractor before closing of any particular transaction. In the event one or more licensees associated with Brokerage Firm participate with Independent Contractor in a transaction which generates a commission, Independent Contractor's share of the commission shall be divided between the participating licensees according to written agreement or, if no written agreement, by arbitration.

Neither Brokerage Firm nor Independent Contractor shall be liable to the other for any portion of commissions not collected.

8. **Independent Contractor Expenses.** Independent Contractor shall provide and pay for all professional licenses, supplies, services, and other items required in connection with the conduct of Independent Contractor's activities under this Agreement or with respect to any listing or transaction without reimbursement from Brokerage Firm, except as required by law. Brokerage Firm, in its sole discretion, may offer some supplies and services without charge to Independent Contractor and other licensees associated with Brokerage Firm, which Independent Contractor may choose to accept.

In the event that Brokerage Firm elects to advance funds to pay Independent Contractor expenses (e.g., MLS fees and charges or group advertising charges), Independent Contractor shall repay the full amount advanced upon demand. Should Independent Contractor fail to make such payment upon demand, Brokerage Firm, in its sole discretion, may elect to terminate this Agreement or to deduct the full amount from any commissions due Independent Contractor on any transaction without advance notice.

Expenses incurred in the collection of commissions shall be paid by Brokerage Firm and Independent Contractor in the same proportion that the commission is to be shared.

9. **Termination.** Upon written notice being given, and in accordance with Brokerage Firm's policies and procedures, Brokerage Firm or Independent Contractor may terminate this Agreement for any reason which the party, in its sole discretion, deems appropriate. Upon termination, Independent Contractor shall cooperate as may be reasonably necessary to deliver the appropriate notification form to the Real Estate Commission. Brokerage Firm's policies and procedures and the Commission Schedule and Related Policies shall govern the rights and obligations of the parties in the event of any voluntary or involuntary termination and shall be binding upon the parties after termination.

10. **Mediation and Arbitration.** All disputes or claims arising between Independent Contractor and any licensee associated with Brokerage Firm which cannot be resolved by the parties shall be submitted to internal mediation in accordance with Brokerage Firm's policies and procedures. All disputes or claims arising between Independent Contractor and Brokerage Firm which cannot be resolved by the parties shall be submitted to mediation before the Local Board or Association of REALTORS®. If mediation is not successful, the dispute shall be submitted to binding arbitration before the Local Board or Association of REALTORS® or before a private arbitration organization pursuant to its rules of commercial arbitration should the Local Board or Association of REALTORS® decline jurisdiction. This paragraph shall survive termination of the Agreement and shall remain binding upon all parties.

11. **Legal Claims.**

a. **Errors and Omissions.** If Brokerage Firm has an errors and omissions insurance policy and, if Independent Contractor has acted consistently with the policies and procedures of Brokerage Firm as determined in good faith by the Brokerage Firm, and a transaction leads to a claim against Brokerage Firm, thereby triggering legal defense and/or coverage under the Brokerage Firm's errors and omissions policy, the cost of the then applicable deductible under the errors and omissions policy shall be shared by Independent Contractor and Brokerage Firm in the same proportion as the commission is shared by them for that transaction. If Brokerage Firm determines in good faith that Independent Contractor has not acted consistently with the policies and procedures of the Brokerage Firm based upon a prima facie review of the applicable transaction file, then the applicable deductible under the errors and omissions policy shall be paid solely by Independent Contractor; provided, however, that if Brokerage Firm prevails against such claims, then Brokerage Firm will share in the cost of the deductible and reimburse Independent Contractor Brokerage Firm's share of the deductible in proportion to the sharing of the commission between Brokerage Firm and Independent Contractor.

b. **Claims Regarding Brokerage Firm's Commission.** In addition, if the Independent Contractor is not at fault, any extraordinary legal costs associated with a transaction, either before or after closing (e.g., the collection of a commission), shall be shared between Independent Contractor and Brokerage Firm in the same proportion as the commission is to be shared for the transaction, at closing, or as soon thereafter as such expenses may be incurred, up to the total commission earned by Independent Contractor on the transaction.

c. **Claims Unrelated to Brokerage Firm.** If Brokerage Firm is involved in any claim or incurs extraordinary legal costs in a transaction, or in any other real estate related activity, which does not involve a Brokerage Firm commission (e.g., a claim arising from Independent Contractor's previous Brokerage Firm affiliation), the deductible portion of any errors and omissions policy claim and any other legal costs shall be paid solely by Independent Contractor. Brokerage Firm shall have no obligation to contribute in any way to the defense of any charge brought against Independent Contractor for

INDEPENDENT CONTRACTOR'S INITIALS & DATE

PRINCIPAL BROKER/BROKER-IN-CHARGE
BROKERAGE FIRM'S INITIALS & DATE

criminal activity, fraud, or for a charge involving one of Independent Contractor's personal transactions.

DRAFT

INDEPENDENT CONTRACTOR'S INITIALS & DATE

PRINCIPAL BROKER/BROKER-IN-CHARGE
BROKERAGE FIRM'S INITIALS & DATE

d. **Litigation/Settlement Authority.** In any litigation brought by any third party in which Brokerage Firm and Independent Contractor are named, Independent Contractor grants to Brokerage Firm the sole authority to make litigation policy and strategy decisions (including decisions on settlement) on behalf of both parties.

12. **Proprietary Information.** Independent Contractor recognizes that the business and files of Brokerage Firm contain information of significant proprietary value to Brokerage Firm. Both during the term of this Agreement and after termination, Independent Contractor shall not use, for his or her own advantage or for the advantage of any other person, business, or entity, any information gained for or from the business or files of Brokerage Firm. All files and documents pertaining to listings or other transactions are the property of Brokerage Firm and are retained for the purpose of creating a document trail in the event of subsequent legal action.

13. **Attorneys' Fees and Costs.** In the event of any dispute arising from this Agreement which requires arbitration or litigation between Brokerage Firm and Independent Contractor, the prevailing party shall, in the discretion of the court or arbitrator, be entitled to reasonable attorneys' fees and costs in addition to other appropriate relief.

14. **Entire Agreement and Modification.** This Agreement constitutes the entire agreement between Brokerage Firm and Independent Contractor with regard to their relationship and replaces in full any pre-existing agreement between the parties. This Agreement may only be modified, altered, or changed in writing signed by Brokerage Firm and Independent Contractor.

15. **Special Terms.**

INDEPENDENT CONTRACTOR: _____ BROKERAGE FIRM: _____

"Independent Contractor" _____ "Date" _____

By _____
Licensee State License No. _____ Its Principal Broker/Broker-in-Charge
_____ "Brokerage Firm" _____ "Date" _____

INDEPENDENT CONTRACTOR _____ **IND**

"Independent Contractor" _____ "Date" _____

State License No. _____

NOTE: THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language. But there is no promise that it is in plain

INDEPENDENT CONTRACTOR'S INITIALS & DATE

PRINCIPAL BROKER/BROKER-IN-CHARGE
BROKERAGE FIRM'S INITIALS & DATE

language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, AS AMENDED. This means that the Hawaii Association of REALTORS® is not liable to any Buyer, Seller, or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).

Disclaimer: Brokerage Firms and Independent Contractors understand that the intent of this form is to assist in compliance with Federal and State laws and should in no way substitute for legal advice regarding the Independent Contractor relationship.

DRAFT

INDEPENDENT CONTRACTOR'S INITIALS & DATE

PRINCIPAL BROKER/BROKER-IN-CHARGE
BROKERAGE FIRM'S INITIALS & DATE