



## **INDEPENDENT CONTRACTOR AGREEMENT**

THIS AGREEMENT made and entered into 2019 in Scottsdale, Arizona under and pursuant to the Laws of the State of Arizona between:

HomeSmart L.L.C., dba HomeSmart (hereinafter referred to as "Company") and [REDACTED] hereinafter referred to as the "Independent Contractor").

WHEREAS, said Company, has developed and perfected a system for providing valuable service to the public, a real estate service, including leasing, listing, purchasing, referral, selling, trading and other services of a distinctive nature, including marks, names, insignias, emblems, signs and other features.

WHEREAS, Independent Contractor is, or will be, a licensed real estate broker or salesperson in good standing with the State of Arizona;

THEREFORE, in consideration of the foregoing recitals, other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants and agreements herein set forth, the parties do hereby covenant and agree, as follows:

### **1. COVENANTS OF COMPANY**

During the term or any extended term of this Agreement, Company agrees:

- (a) To accept Independent Contractor under its Company license as a licensed real estate broker or salesperson;
- (b) To make available for purchase by Independent Contractor: signs, brochures or other sales materials for use by Independent Contractor in the conduct of business.
- (c) To pay over to Independent Contractor when collected by Company 100% of real estate commissions received as a result of Independent Contractor's conduct as a licensed real estate salesperson, less any local, state or federal required insurance, taxes or that amount determined by Company to be paid as a risk management fee which includes an errors and omissions policy premium, reserves for general legal expenses, training and other related expenses. Company shall have the right to deduct from payment of said commissions, fines or penalties, errors and omissions insurance deductibles, marketing materials, monies or fees, including late charges as outlined in the Policies and Procedures manual, an amount equal to any indebtedness owing Company by Independent Contractor. Any such commissions shall be reduced by payment of a part thereof to other participating salespeople who are deemed to have earned a part of said commissions. Company shall not be liable for any commissions not collected. Company shall maintain exclusive right to determine when commission is considered earned, based on file completion compliance and in accordance with Company's Policies and Procedures manual.

### **2. COVENANTS OF INDEPENDENT CONTRACTOR**

During the term, any extended term and subsequent to termination of this Agreement, Independent Contractor represents, warrants, covenants and agrees:

- (a) To conduct affairs as an independent licensed real estate salesperson with Company, pursuant to the requirements applicable to Independent Contractor's and Company's real estate licenses. Independent Contractor agrees to conduct business in compliance with the standards of conduct prescribed by Company's Policies and Procedures manual, with local, state and federal laws that govern real estate brokerage, and with the By-Laws and Codes of Ethics of each trade or professional organization of which Independent Contractor or Company is a member.
- (b) To assume and retain full responsibility and discretion for Independent Contractor's conduct and to regulate habits so as to maintain and increase rather than diminish the goodwill and reputation of Company.
- (c) To maintain Independent Contractor's real estate license in good standing and maintain membership with a Board of Realtors. Should the Independent contractor fail to comply with this section, Independent Contractor may transfer real estate license and all right of this contract to Company's affiliated company, Smart Referral Network, LLC, until Independent Contractor restores license to good standing with a Board of Realtors. Independent contractor shall be responsible for all fees related to said transfer. This section shall not negate Company's right to terminate this agreement pursuant to Section 8 of this agreement.
- (d) To maintain in force and effect personal automobile liability insurance with Company named as an additional insured.
- (e) To permit Company to pay unto any "cooperating" real estate broker an agreed percentage of any commission earned by Independent Contractor.
- (f) That the herein above covenants this paragraph numbered two (2) on part of Independent Contractor shall be construed as agreements independent of any other provisions hereunder, and the existence of any claim or cause of action of Independent Contractor against Company or Company's Licensor, whether predicated on this agreement or otherwise, shall not constitute a defense to the enforcement of said covenants.
- (g) To acknowledge Company's commitment and support for all state and federal housing, antitrust and agency laws and to understand that Company expects Independent Contractor to be knowledgeable concerning these laws and to conduct business practices accordingly.
- (h) To comply with all laws and all Company policies and procedures that apply to the dissemination of unsolicited email ("spam") and faxes, and to the use of telephone calls to market Independent Contractor's services or to solicit clients.
- (i) To comply with guidelines set forth in Company's Policies and Procedures manual that relate to (i) the use of Company's name, logo, or trademark on the internet, and (ii) the ownership, registration, and use of any domain name for websites that display or use Company's name, logo or trademark.
- (j) Independent Contractor agrees that all real estate listings that Independent Contractor obtains during the term or any extended term of this Agreement, and all real estate transactions in which Independent Contractor engages, shall be in the name of Company.



### 3. LEGAL ISSUES

During the term, any extended term and subsequent to termination of this Agreement, Independent Contractor represents, warrants, covenants and agrees:

- (a) To indemnify and hold harmless Company from and against in respect of any and all liabilities, obligations, assessments, suits, actions, proceedings, claims or demands asserted against Independent Contractor or Company, or any judgments, damages, losses, including any loss of business or credit, costs, expenses and fees, including reasonable attorney's fees incurred by Company arising from Independent Contractor's negligent disregard or breach of any law, regulation or standard of conduct that applies to Independent Contractor's actions or activities as a licensed real estate associate, or breach of or default in any provision of this agreement, and/or arising out of any transaction in which Independent Contractor acted as a real estate licensee through the Company that resulted in any claim, action or demand against Company (even if Independent Contractor was not negligent and/or otherwise at fault or in breach), but is expressly not limited to civil lawsuits, and does include administrative or regulatory actions by or before the Arizona Association of Realtors, the Arizona Department of Real Estate and any and all other Regulatory Authorities, Self-Regulating Agencies or the like, including without limitation, any costs, expenses and fees, including reasonable attorney's fees incurred by Company in enforcing any provision of this Agreement.
- (b) To defend, indemnify and hold harmless Company's Designated Broker of record with the Department of Real Estate from and against in respect of any and all liabilities, obligations, assessments, suits, actions, proceedings, claims or demands asserted against Independent Contractor or Designated Broker, or any judgments, damages, losses, including any loss of business or credit, costs, expenses and fees, including reasonable attorney's fees incurred by Designated Broker arising from Independent Contractor's negligent disregard or breach of any law, regulation or standard of conduct that applies to Independent Contractor's actions or activities as a licensed real estate associate, or breach of or default in any provision of this agreement, including without limitation, any costs, expenses and fees, including reasonable attorney's fees incurred by Designated Broker in enforcing any provision of this Agreement.
- (c) That Company shall have discretion whether any and all claims are to be submitted to Company's errors and omissions insurance carrier or settled directly. Independent Contractor further agrees to cooperate in the settlement of any and all disputes.

### 4. AUTHORITY OF INDEPENDENT CONTRACTOR

The relationship created hereby between the parties hereto, except as may be deemed otherwise solely for the purpose of applicable law pertaining to real estate brokers and agents and the association of agent with broker, is that of independent contractors and shall not be construed and deemed to be that of employer-employee, joint venture or partnership.

Independent Contractor will have no authority to incur obligations on Company's behalf and promises: not to sign any contract, agreement, lease or note in the name of Company; not to open or maintain any bank account or investment account in the name of Company; and not to endorse for collection or deposit in Independent Contractor's personal account any check, money order or other negotiable instrument made payable to Company. Independent Contractor shall not in any manner advertise, represent or appear to be authorized to act on behalf of Company.

### 5. TAXATION AND WORKER'S COMPENSATION

Independent Contractor understands that Independent Contractor is entering into this Agreement as an independent contractor and not as an employee. Company will have no responsibility to withhold or pay any income or other taxes on Independent Contractor's compensation or to provide any insurance, retirement or other employee benefits to Independent Contractor. Independent Contractor will not be treated as an employee with respect to services rendered by Independent Contractor pursuant to the Agreement for either federal tax purposes or for the purpose of Chapter 6, Title 23, Arizona Revised Statutes, relating to Worker's Compensation.

### 6. AGREEMENTS AND AMENDMENTS

This Agreement, including Schedule A and Company's Policies and Procedures manual, constitutes the entire Agreement between the parties hereto with relation to the subject matter hereof, and supersedes any previous agreement or understanding, whether verbal or otherwise, with relation hereto.

- (a) This Agreement, including Schedule A and Company's Policies and Procedures manual, may be amended, changed, revised, or altered by Company at any time, with notice provided, in writing or by email, to Independent Contractor no later than five (5) days prior to said amendment. This provision shall supercede any other provisions of this Agreement.
- (b) This Agreement, including Schedule A and Company's Policies and Procedures manual, may not be amended, changed, revised, or altered by Independent Contractor for any reason without an instrument in writing signed by all of the parties hereto.

### 7. EMPLOYEES

While your agreement is in force and for a period of six months after it ends, you must not solicit or offer employment to any of our current employees or anyone who has left our employment in the last three months. If you do, we estimate our loss at the equivalent of one year's salary for each of the employees concerned and you must pay us damages equal to that amount.



## 8. TERMINATION

- (a) This Agreement shall be deemed terminated (i) upon the occurrence of expiration, suspension, revocation or termination of Independent Contractor's real estate license for any cause or reason whatsoever, (ii) upon the voluntary or involuntary proceeding in insolvency, bankruptcy, or assignment for the benefit of creditors, or upon the appointment of a receiver for the assets or affairs, or any part thereof, of Independent Contractor, (iii) upon written notice from either party to the other party of the intent to terminate this Agreement for breach of any provision hereof and (iv) upon written notice from either party to the other party of the intent, with or without cause, to terminate this Agreement.
- (b) Upon termination of this Agreement, for any cause, Independent Contractor agrees to cease use of any and all sales materials or similar items that bear the name or inscription of Company, in any manner whatsoever.
- (c) Upon termination of this agreement, for any cause, Company will release those listings without an existing contract of sale, provided account of Independent Contractor is paid in full, and the property owner wishes the listing released. After Independent Contractor's association with Company terminates, Company will continue to pay Independent Contractor's commission on transactions pending as of termination date, upon successful close of escrow and completion of file, in accordance with the terms set forth on the Schedule A of this Agreement. Company shall be deemed released from all claims for commissions not yet earned under law by Independent Contractor.

## 9. LEGAL CONSTRUCTION

It is agreed and understood that this Agreement shall be governed by and construed in accordance with the statutes, laws and decisions of and effective within the herein above-mentioned State as of the date hereof. Should any portion or provision of the Agreement be deemed invalid or void at law, this Agreement shall be construed as though such portion or provision had not been inserted herein, and the remainder of this Agreement shall remain in full force and effect. Title to paragraphs used in this Agreement are for convenience only and shall not be construed as a part of this Agreement or construed to define, limit or amplify the provisions hereof.

## 10. WAIVER

Waiver of, or failure to strictly enforce, by the parties hereto, any of the provisions of this Agreement or any default hereunder shall not constitute or operate as a waiver of such parties' right to demand strict performance of this or any other provision hereof or any other default hereunder.

## 11. DISPUTES

Company and Independent Contractor hereby agree that any disputes arising out of or relating to this Agreement and/or the affiliation between Independent Contractor and Company are subject to mandatory and binding arbitration, to be conducted through and pursuant to the rules of the American Arbitration Association ("AAA") or upon mutually agreed to alternative arbitration procedure. Further, Company and Independent Contractor agree that class action and representative action procedures shall not be asserted, nor will they apply in any arbitration pursuant to this Agreement and that Company and Independent Contractor shall only submit their own, individual claims in arbitration.

## 12. ASSIGNMENT

This Agreement may not be assigned in whole or part by Independent Contractor, except upon Company's prior written consent, but may be assigned by Company to any successor to its business in whole or part.

## 13. BINDING EFFECT

This Agreement shall be binding upon an inure to the benefit of the parties hereto and their respective heirs, personal representatives, assigns and successors in interest, and shall be enforceable within law or equity by specific performance, injunction or otherwise.

The parties hereby execute this Agreement on the day and year indicated above.

By: \_\_\_\_\_  
HomeSmart Authorized Representative  
8388 E. Hartford Dr. Ste. 100  
Scottsdale, AZ 85255

\_\_\_\_\_  
Agent



## SCHEDULE A – FEE SCHEDULE

**Startup Fee:** \$99.00

Option Chosen:

- **Option A** - Monthly Fee: \$25 – Transaction Fees: \$299 for each transaction side, uncapped
- **Option B** - Monthly Fee: \$75 – Transaction Fees: \$299 for each transaction side, capped at \$5,000 (cap does not include Risk Reduction or Monthly Dues)
- Option C: Teams: Monthly Fee for Team Leader: \$75, Monthly Fee for Team Members: \$25, Transaction Fees: \$299 for each transaction side completed by the team leader and team member, Team Leader Transaction Fee is Capped at \$5000, Team Member Transaction Fee is capped at \$2500 (cap for both Team Leader and Team Member does not include Risk Reduction or Monthly Dues)
  - o The transaction fee can be split between the team leader and team member according to team agreement terms that may be previously agreed upon, with HomeSmart assured to receive a full transaction fee on each transaction until a team leader and the team member involved in the transaction is capped. Additionally, applies to transactions where more than one team member on a given transaction occurs.

### Teams

- Team Leaders and Team Members can select Option C only
- Plan changes for agents entering or exiting a team will be applied immediately
- If a Team Leader severs from the company, team members will default to Option A, unless another option or team is selected by the agent through the appropriate process

### Risk Reduction:

Sales: \$50.00 per transaction side (regardless of plan option, in accordance with Risk Reduction Review Addendum)

Leases: \$10.00 per transaction side (regardless of plan option, in accordance with Risk Reduction Review Addendum)

First transaction closed in calendar year: Additional \$295 Risk Reduction fee (regardless of plan option, in accordance with Risk Reduction Review Addendum)

### Leases:

Residential Rental Transactions: 10% of commission (Min. \$50 – Max. \$300)

Commercial Rental Transactions: 1/2 of 1% of gross lease value (Minimum \$50)

### Referrals:

Residential Referral Transactions: 10% of incoming referral commission (Min. \$50 – Max. \$300)

Commercial Referral Transactions: 10% of incoming referral commission (Minimum \$50)

**Additional Transaction Fees for Sales:** In addition to the above transaction fees, the following transactions will be subject to additional transaction fees listed below:

- Land Sales \$1,000,000 and above = additional fee of 1/2 of 1% (.005) of sales price (Maximum of \$5,000 per transaction and \$20,000 per calendar year)
- Commercial Sales \$1,000,000 and above = additional fee of 1/2 of 1% (.005) of sales price (Maximum of \$5,000 per transaction and \$0,000 per calendar year)

### Broker Price Opinion:

HomeSmart will endorse all BPO checks over to the agent directly and will report BPO income on form 1099 to the IRS. Should the agent's bank refuse to cash the third-party check, the following processing fees will apply: \$50/month, unlimited checks per Agent. Checks cut once per week.

### Miscellaneous Income (Including Forfeited Earnest Money, Retainer Fees, Listing Cancellation Fees, Consulting Fees, Buyer/Broker Agreements, and Mediation Payments):

- 10% of amount received Min. \$50 – Max. \$300)

### Plan Option Changes:

A HomeSmart Plan Change Request Form must be submitted to change plan option. Change will take effect 90 days after HomeSmart approval of request. Any accepted contracts will remain under the agent's current plan. All contracts written after the 91st day will convert to the new plan, with said approval.

### Account Balances:

Dues are billed on a quarterly basis. We require AutoPay to be set up upon hiring. If AutoPay is not set up the independent contractor will be assessed an additional \$25 per month administration fee. Balances not paid by the due date will be charged a \$25.00 late fee and are subject to recurring late charges of 18% per annum.



**Severance:**

All closing packages that are delivered after license severance and/or close escrow after license severance from HomeSmart will be charged a \$299 transaction fee, a \$50 risk reduction fee regardless of plan option and closing in month, and any additional transaction fees outlined above. **An administrative fee of \$150 will be charged to agent's account should agent sever their real estate license from HomeSmart within 180 days of hire date as documented by the Arizona Department of Real Estate.**

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent

\_\_\_\_\_  
Date

**AGENT ACKNOWLEDGEMENT FORM**

**KEY CARD RECEIPT**

I have received 1 (one) electronic key card to the HomeSmart offices. I understand that this key remains the property of HomeSmart and must be surrendered to HomeSmart on demand. I further understand that I am not authorized to copy or duplicate the key under any circumstances. There is a \$25 usage fee for this key card that is non-refundable.

\_\_\_\_\_  
Initials

**BOARD AFFILIATION**

I hereby agree to maintain a board affiliation with a local Board of REALTORS® that is endorsed by and associated with the National Association of REALTORS®. I further agree to pay all board dues in a timely manner in order to maintain my affiliation with the board in good status. If I fail to pay my dues as required by this agreement, and HomeSmart is consequently billed and chooses to pay for said dues, I agree to reimburse and indemnify HomeSmart for any and all past due amounts, late fees, or reinstatement fees that my account incurs. I agree to reimburse HomeSmart for any costs, expenses and fees, including reasonable attorneys' fees incurred in any attempt to collect said fees. Upon joining or renewing board membership, I agree to send a copy of my receipt to [agentservices@hsmove.com](mailto:agentservices@hsmove.com) for proof of membership.

I further agree to provide HomeSmart with proof of joining an association within 10 days. If I fail to do so, I am at risk of being severed and I will forfeit my \$99 startup fee.

\_\_\_\_\_  
Initials

**NO OTHER REAL ESTATE ACTIVITY**

I hereby affirm that I am in no way performing any other activities that are real estate related or that may require a real estate license outside of those activities allowed and being performed under HomeSmart. This includes, but is not limited to, property management for properties other than my own. Further, I shall maintain this status during my license activation with HomeSmart and notify HomeSmart immediately about any change to said status.

\_\_\_\_\_  
Initials

**POLICIES AND PROCEDURES MANUAL RECEIPT AND ACKNOWLEDGEMENT**

I acknowledge that that the HomeSmart Policies and Procedures Manual is available for my review on the HomeSmart Agent portal. I understand that this manual shall serve as an addendum to my Independent Contractor Agreement and I agree to abide by all terms and conditions set forth herein.

\_\_\_\_\_  
Initials

**THE SALE OF AGENT OWNED PROPERTIES**

I acknowledge that the sale of any property where I have an ownership or financial interest will require the "HomeSmart Owner Agent Addendum to the Purchase Contract". In addition, Agent agrees to defend, indemnify and hold harmless HomeSmart, its Broker and Owners from any and all claims that may result from the sale of a property where the Agent has any ownership or financial interest. Should a demand or claim be made against HomeSmart, its Broker and Owners, on a property where the Agent has an ownership or financial interest, the Agent shall pay the first \$20,000 in fees and costs associated with defending the claim or demand.

\_\_\_\_\_  
Initials



## AGENT ACKNOWLEDGEMENT FORM

### OUTGOING REFERRAL FEES

Agent acknowledges that it is the Agent's responsibility to upload any outgoing referral agreement and indicate the amount of the referral fee to be paid to an outside brokerage. Should Agent fail to upload and enter the referral fee details, the Agent shall be solely responsible for the payment of the fee and HomeSmart may withhold the referral fee amount from subsequent commissions.

\_\_\_\_\_  
Initials

### MASTER LISTING AGREEMENTS

Agent acknowledges that they will be required to sign an additional addendum to their ICA should they elect to enter into a Master Listing for an REO property. Agent will be required to obtain additional general liability insurance to cover activities outside the scope of the errors and omission insurance policy.

\_\_\_\_\_  
Initials

### COLLECTIONS

Should it become necessary for the company to retain the services of a collection agency to collect any monies due, the Independent Contractor agrees to pay all collection fees or costs incurred by the company, or the company's collection agent. Agency collection fees may equal up to fifty percent (50%) of the total debt.

\_\_\_\_\_  
Initials

### SEVER NOTIFICATION

Should agent choose to sever license from HomeSmart, Agent agrees to notify HomeSmart, in writing, of their intent to sever their license from HomeSmart. Agent acknowledges that HomeSmart will continue to charge the Agent HomeSmart fees until such written notification is received.

\_\_\_\_\_  
Initials

\_\_\_\_\_  
Agent Name

\_\_\_\_\_  
Agent Signature

\_\_\_\_\_  
Date



## **RISK REDUCTION REVIEW ADDENDUM**

In an ongoing effort to reduce claims, minimize liability, and ensure legal compliance of transactional documents, Independent Contractor agrees to allow Creative Services, LLC (hereinafter referred to as "CSL") to provide a third party review of transactional documents. Such review may include any or all transactional documents associated with listings, sales, rentals, or any transactions being conducted by COMPANY and/or its' Agents and/or Independent Contractors.

In consideration for Services provided by CSL on behalf of Independent Contractor, COMPANY will remit a service fee to CSL on behalf of Independent Contractor equal to the Risk Reduction Fees ("Review Fees") as payable by Independent Contractor under Schedule A of this Agreement ("Schedule A Fees"). The Review Fees shall be due and payable in the same manner and jointly with the other fees outlined in Schedule A of this Agreement.

It is anticipated that both Schedule A Fees and Review Fees will be pooled and shared between COMPANY and CSL proportionately to the rights and services provided Independent Contractor as stated above.

To provide for a unified billing system, and for the convenience of the Independent Contractor, COMPANY will be responsible for invoicing and collecting the Review Fees from Independent Contractor as CSL's authorized collecting agent. Review Fees will be subsequently remitted to CSL in the form and manner mutually agreed between COMPANY and CSL as proportionately determined by COMPANY.

If the Independent Contractor is in default of any Schedule A Fee, Independent Contractor agrees that any and all collection action against Independent Contractor will be taken on behalf of both COMPANY and CSL.





