SAMPLE: NYS Independent Contractor Relationship Agreement for Use by Brokers

AGREEMENT, this _____ day of _____, 20 , by and between_____
_____ residing at
_____
(hereinafter referred to as the "Sales Associate") and _____
having a principal place of business at _____
_____(hereinafter referred to as the "Broker").

WITNESSETH:

WHEREAS, Sales Associate and Broker are each respectively duly licensed pursuant to Article 12-A of the Real Property Law of the State of New York, and WHEREAS, the parties hereto have freely and voluntarily entered into this Agreement, without duress. Paragraphs 14-18 are included to comply with New York State General Business Law Article 44-A and New York City Administrative Code Title 20: Consumer Affairs, Chapter 10: Freelance Workers (FIFA).

NOW, THEREFORE, in consideration of the mutual promises herein contained, it is hereby agreed as follows:

1. Sales Associate is engaged as an independent contractor associated with the Broker pursuant to Article 12-A of the Real Property Law and shall be treated as such for all purposes, including but not limited to Federal and State Income taxation, withholding tax regulations, Unemployment Insurance and Workers' Compensation coverages.

2. Sales Associate (a) shall be paid a commission on Sales Associate's gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (b) shall not be entitled to a draw against commissions; (c) shall not receive any remuneration related to the number of hours worked; and (d) shall not be treated as an employee with respect to such services for Federal and State Income tax purposes.

3. Sales Associate shall be permitted to work such hours as Sales Associate may elect to work.

4. Sales Associate shall be permitted to work out of Sales Associate's residence or the offices of Broker or any other location in the sole discretion of Sales Associate.

5. Sales Associate shall be free to engage in outside employment.

6. Broker may provide office facilities and supplies for the use of Sales Associate. All other expenses, including but not limited to automobile, travel, and entertainment expenses shall be borne by Sales Associate.

7. Broker may offer initial training and hold periodic sales meetings. The attendance by Sales Associate at such sessions shall be at the option of Sales Associate.

8. Broker may offer a group insurance plan, and if Sales Associate wishes to participate therein all premiums shall be paid by Sales Associate.

9. Broker may elect, but shall be under no obligation, to assign leads to Sales Associate on a rotating basis. Sales Associate shall be responsible for procuring Sales Associate's own leads.

10. Broker and Sales Associate shall comply with the requirements of Article 12-A of the Real Property Law and the regulations pertaining thereto. Such compliance shall not affect Sales Associate's status as an independent contractor nor shall such compliance be construed as an indication that Sales Associate is an employee of Broker for any purpose whatsoever.

11. This contract and the association created thereby may be terminated by either party hereto at any time upon notice given by one party to the other.

12. For purposes of this Agreement the term "Broker" shall include individual real estate brokers, real estate brokerage companies, real estate brokerage corporations and any other entity acting as a principal broker and the term "Sales Associate" shall include real estate sales associates and real estate brokers, who, as real estate licensees, associate with and place their real estate license with a principal broker.

13. Sales Associate hereby agrees to and hereby assigns to Broker irrevocably and without the necessity of any additional consideration, all of Sales Associate’s right, title and interest in any copyright rights or other intellectual property rights in any property listing posted by Sales Associate in the MLS system or otherwise provided to the MLS. Such right, title and interest shall be deemed assigned as of the moment of creation without any further action on the part of either party. During and after the term of this independent contractor agreement, Sales Associate shall confirm such assignment by executing and delivering such assignments or other instruments and take any action necessary to enable Broker to secure, protect, enforce and defend its copyrights in such data and/or content.

14. The Sales Associate will provide the following services for the Broker:

    lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates or offers or attempts to negotiate, a loan secured or to be secured by a mortgage, other than a residential mortgage loan, as defined in §590 of the Banking Law, or other incumbrance upon or transfer of real estate, or is engaged in the business of a tenant relocator, as defined in §590 of the Real Property Law or who, notwithstanding any other provision of law, performs any of the above stated functions with respect to the resale of condominium property originally sold pursuant to the provisions of the General Business Law governing real estate syndication offerings. In the sale of lots pursuant to the provisions of article 9-A of the Real Property Law employed by or on behalf of the owner or owners of lots or other parcels of real estate, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or

exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

15. Sales Associate shall be paid a commission on Sales Associates sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output. The amount of the commission between the Sales Associate and Broker shall be set forth by a separate written agreement. Such commission shall be paid when the Sales Associate is the "procuring cause" of a transaction that closes. A Broker must provide the date by which a Sales Associate is required to submit a list of services or documents rendered under such contract if the Broker requires such submission to meet any internal processing deadlines of such Broker for the purposes of compensation being timely rendered by the agreed-upon date as set forth below.

    Payment will be made to the Sales Associate

    a. within 30 days of the receipt of the full commission paid to the Broker for the transaction or
    b. in a time and manner pursuant to a separate "Commission Agreement" between the Sales Associate and Broker attached hereto and made a part hereof

16. Broker shall not threaten, intimidate, discipline, harass, deny a work opportunity to or discriminate against a Sales Associate, or take any other action that penalizes a Sales Associate for, or is reasonably likely to deter a Sales Associate from, exercising or attempting to exercise any right guaranteed under the law, or from obtaining future work opportunity because the Sales Associate has done so.

17. For the purposes of compliance with NYS General Business Law and New York City Administrative Code, the term "Sales Associate" shall also mean "Freelance Worker" and the term "Broker" shall also mean "Hiring Party" as defined in NYS General Business Law and the New York City Administrative Code.

18. The parties understand that the Sales Associate is an Independent Contractor and the language included to comply with NYS General Business Law and NYC Administrative Code does not create nor is it intended to create an employer/employee relationship of any kind directly or inferred.

19. This Agreement shall be governed and construed in accordance with the laws of the State of New York.

20. No waiver of any of the provisions of this agreement or any of the rights or remedies of the parties hereto shall be valid unless such waiver is legal and in writing, signed by the party to be charged therewith.

21. Whenever in this Agreement any notices are required to be given, such notices shall be in writing and shall be sent by registered mail or certified mail, return receipt requested, to the party entitled to receive the same.

22. This Agreement and all of its terms, covenants and provisions insofar as applicable, shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the individual parties hereto have hereunto set their hands and seals, and any corporate party has caused this instrument to be signed by a corporate officer and caused its corporate seal to be hereunto affixed, all as of the day and year first above written.

_____ _____

Sales Associate Broker

ACKNOWLEDGMENTS

STATE OF NEW YORK)
COUNTY OF) ss:

On the _____ day of _____ in the year 20 , before me the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK)

COUNTY OF)ss:

On the _____ day of _____ in the year 20 , before me the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public