



# SELLER BROKERAGE AGREEMENT

Approved by the Nova Scotia Real Estate Commission for use by Industry Members under the Real Estate Trading Act



This exclusive Seller Brokerage Agreement (this Agreement) is Between:

## The Seller:

and

## the Seller's Brokerage (the Brokerage):

Name \_\_\_\_\_

Brokerage Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_ (postal code)

Email \_\_\_\_\_

Email \_\_\_\_\_

THE SELLER AND THE BROKERAGE AGREE that the Brokerage will list the Seller's property known as:

PID(s)# \_\_\_\_\_

(the Property) and the Seller gives the Brokerage the exclusive right to offer for sale the Property for the price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) plus applicable HST and other relevant taxes and upon the terms, if any, set out in the Schedule hereto, or at such other price and terms acceptable to the Seller, and on the following terms:

### 1. Term of Agreement

\_\_\_\_\_  
\_\_\_\_\_  
Seller(s) initials

This Agreement will commence at \_\_\_\_\_ a.m. / p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and will expire at 11.59 p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Seller(s) initials

- Exempt from HST
- Not exempt from HST; included in the purchase price
- Not exempt from HST; over and above the purchase price

### 2. Type of Listing

\_\_\_\_\_  
\_\_\_\_\_  
Seller(s) initials

(a) To list the Property with the Multiple Listing Service (MLS®) of the association/board and to distribute the information to its members.

**OR**

(b) The Seller hereby requests an exclusive listing and instructs the Brokerage to \_\_\_\_\_ cooperate OR \_\_\_\_\_ not cooperate with all other brokerages in the marketing of my Property. The Seller acknowledges that should "not cooperate" be selected, the brokerage(s) excluded will not be able to show or market the Seller's Property and the Seller may lose opportunities to sell the Property.

**NOTE: It is the Seller's responsibility to determine whether the proposed transaction is subject to HST and the Seller is advised to obtain whatever professional assistance the Seller deems necessary to make that decision. The Brokerage cannot make that determination.**

If the conveyance contemplated by this Agreement is exempt from HST, the Seller agrees to provide the Buyer on or before closing date a certificate in a form reasonably satisfactory to the Buyer certifying that the conveyance contemplated by this Agreement is exempt from HST. If the conveyance contemplated by this Agreement is subject to HST, then the HST shall be remitted in accordance with the applicable legislation.

### 3. HST

All conveyances of real property in Nova Scotia are subject to the Harmonized Sales Tax (HST) unless the conveyance is specifically exempt pursuant to the Excise Tax Act. The facts required to determine the exemption from HST are entirely dependant upon the use of the Property by the Seller or the intention of the Seller when the Property was purchased and are therefore accordingly within the knowledge of the Seller only. The conveyance contemplated by this Agreement shall be:

### 4. Brokerage Mandate

**4.1 Obligations:** The Brokerage will discharge the following obligations:

- (a) to use best efforts to market the Property and to promote the interests of the Seller;
- (b) at the earliest reasonable opportunity, to advise any buyer interested in the Property that the Brokerage is the Seller's agent;
- (c) subject to clause 14, to act as only the Seller's agent;
- (d) to obey all lawful instructions of the Seller;
- (e) to fulfill its fiduciary obligations of loyalty, confidentiality and of full disclosure of all conflicts of interest that may arise between the Seller's interests and those of the Brokerage or buyers;
- (f) to exercise reasonable care and skill in the performance of this Agreement;

- (g) to assist the Seller in negotiating favourable terms and conditions with a buyer and in preparing and complying with a legally binding Agreement of Purchase and Sale for the Property;
- (h) to disclose to buyers all material latent defects affecting the Property known to the Brokerage;
- (i) to present, in a timely manner, all offers and counter-offers to and from the Seller even when the Property is already the subject of an Agreement of Purchase and Sale;
- (j) to disclose, in a timely manner, to the Seller all relevant facts affecting the transaction known to the Brokerage;
- (k) to keep the Seller fully informed regarding the progress of the transaction;
- (l) to advise the Seller to obtain expert advice on matters of importance to the Seller;
- (m) to comply with the provisions of the Real Estate Trading Act, its regulations and the By-Law of the Nova Scotia Real Estate Commission.

- (d) make such other use of the information as the listing service deems appropriate in connection with the listing, marketing and selling of real estate.

**5.4** If the Seller has instructed the Brokerage not to cooperate, the Seller does \_\_\_\_\_ does not \_\_\_\_\_ agree that the Brokerage may distribute the sale information to any persons, which may include the MLS® service, other brokerages, government departments, appraisers, municipal organizations and others; compile, retain and publish any statistics including historical sales data; and make such other use of the information as appropriate.

Seller(s) initials

**5.5** The Seller authorizes the Brokerage to publish interior pictures of the Property in its marketing. YES  NO

**5.6** The Seller authorizes the Brokerage to allow the Buyer to take interior pictures of the property: YES  NO

**4.2 Additional Services:** The Seller requests, and the Brokerage agrees to provide, the following additional services:

- (a) to market the Property, at its option, in any medium including electronic media; YES  NO
- (b) to place a "for sale" sign on the Property; YES  NO
- (c) to install a lock-box on the Property to provide access to authorized persons; YES  NO
- (d) to show the Property at times acceptable to the Seller and, if any, tenants; YES  NO
- (e) to place a sold sign on the Property upon removal of conditions; YES  NO
- (f) the services listed below:

Seller(s) initials

\_\_\_\_\_  
\_\_\_\_\_

**6. Brokerage's Remuneration:**

**6.1 Remuneration:** The Seller will pay the Brokerage as Remuneration:

- (a) \_\_\_\_\_ percent of the purchase price  **OR**
- (b) a flat fee of \$ \_\_\_\_\_  **OR**
- (c) a fee for services as specified in writing, signed by the Seller, in the Addendum attached to this Agreement

Seller(s) initials

**(PLUS applicable HST and any other taxes payable in respect of the Remuneration):**

- (i) if, during the term of this Agreement, a legally enforceable Agreement of Purchase and Sale, from whatever source obtained, is entered into between the Seller and a buyer (other than a buyer who has been specifically excluded in writing from this Agreement) AND the sale is completed OR the Seller, without legal justification, fails to complete the sale; OR
- (ii) if, within 180 days (the Hold-Over Period) of the expiration of this Agreement, a legally enforceable Agreement of Purchase and Sale is entered into between the Seller and a buyer (other than a buyer who has been specifically excluded in writing from this Agreement) who was introduced to the Property or the Seller during the term of this Agreement, by whatever means or person and whether or not the Brokerage is the effective cause of such agreement of purchase and sale AND the sale is completed OR the Seller, without legal justification, fails to complete the sale; OR
- (iii) if, during the term of this Agreement, an unconditional offer to purchase the Property upon the terms specified in this Agreement is presented to the Seller which the Seller refuses to accept;

PROVIDED that under clause 6.1(ii) if, on the expiration of this Agreement, the Seller enters an exclusive Seller Brokerage Agreement with another brokerage for the payment of remuneration, the Seller's liability to the Brokerage will be reduced by the amount paid by the Seller under the subsequent exclusive Seller Brokerage Agreement.

**6.2 Reimbursement Should Seller Withdraw Property from the Market:**

If, during the term of this Agreement, the Seller should withdraw the Property from the market, the Seller will reimburse the Brokerage for all reasonable expenses incurred in the performance of this Agreement prior to the date on which the Seller notifies the Brokerage in writing of the Seller's decision, provided that such reimbursement will not prejudice any other claim to Remuneration to which the Brokerage may become entitled under clause 6 of this Agreement. The reimbursement is to be paid by the Seller to the Brokerage within 30 days of the property being withdrawn from the market.

**5. Use and Distribution of Information**

**5.1** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of this Agreement and such other use as is consistent with listing and marketing of the Property including, but not limited to:

- (a) retaining and disclosing any listing and sales information, including price, which may be used by the Brokerage for any purpose relating to its business including conducting comparative analyses and disclosing such information to other persons such as appraisers and brokerages;
- (b) providing to present and past customers and clients marketing materials, newsletters and other information that the Brokerage believes may be of interest to them.

**5.2** Subject to clause 2(a), the Seller consents to placement of the listing and sales information by the Brokerage into the database of the appropriate MLS® service and acknowledges that the database of the MLS® service is the property of the association/board and can be licensed, resold or otherwise dealt with as they see fit.

**5.3** The Seller, subject to clause 2(a), further acknowledges that the Brokerage and the MLS® service may:

- (a) distribute the information to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others;
- (b) compile, retain and publish any statistics including historical listing service data which may be used by the Brokerage and MLS® members to conduct comparative market analyses;
- (c) to publish in the MLS® service the sale price of the Property once all the conditions unrelated to title have been met; and

**6.3 Payment of Remuneration:** The Seller will pay the Remuneration owing to the Brokerage on the date established for completion of the sale of the Property.

**6.4 Deduction of Remuneration from Deposit and Proceeds of Sale:**

- (a) The Seller authorizes the Brokerage, upon the date established for the completion of the sale, to deduct the Remuneration owed to the Brokerage from the deposit, if any, held by the Brokerage and will pay any balance of Remuneration owed in accordance with clause 6.3.
- (b) The Seller irrevocably and unconditionally instructs any lawyer acting on behalf of the Seller to deduct from the deposit and proceeds of sale, or monies forfeited by or recovered from the Buyer any Remuneration that remains owing to the Brokerage after it has exercised its right, if any, under clause 6.4(a) and to pay such Remuneration to the Brokerage.

**6.5 Sharing of Remuneration:** To assist in obtaining a buyer for the property, the Seller's Brokerage will offer to each co-operating brokerage a portion of the Seller's Brokerage's commission in the amount of \$\_\_\_\_\_ or \_\_\_\_\_% of the sale price of the property plus all applicable taxes in respect of that portion of the commission.

Seller(s) initials

**6.6 Limitation on Other Remuneration:** The Brokerage agrees not to accept any other remuneration, whatever its form (including finder's fees, referral fees and gifts) and from whatever source (including the buyer, a mortgage lender, another brokerage or contractor), directly or indirectly related to its agency under this Agreement, unless, before accepting such remuneration, the Brokerage has:

- (i) fully disclosed in writing to the Seller all relevant facts relating to the offer of remuneration including the maximum amount to be received; and
- (ii) obtained the Seller's written consent to the Brokerage receiving such remuneration.

**7. Referral of Inquiries**

The Seller will immediately advise the Brokerage:

- (i) during the term of this Agreement, of all inquiries by, and to deliver to it all offers to purchase from interested buyers or their representatives received by the Seller; and
- (ii) during the Hold-Over Period, of any offers presented to the Seller by, or made by the Seller to, a buyer introduced to the Seller during the term of this Agreement which offer is accepted by the Seller or a buyer as the case may be.

**8. Seller's Warranty**

The Seller warrants that:

Seller(s) initials

- (a) the Seller has the authority to sell the Property and to enter into this Agreement;
- (b) spousal consent:
- (i) for the sale of the Property has been obtained  **OR**
- (ii) is not necessary for the sale of the Property
- (c) the Seller has disclosed to the Brokerage all third party claims and interests in the Property known to the Seller;
- (d) the Property is not currently the subject of any other exclusive Seller Brokerage Agreement;
- (e) the Seller has disclosed to the Brokerage all material latent defects affecting the Property known to the Seller;
- (f) the Seller will provide the Brokerage with all information necessary for the listing and marketing of the Property;

- (g) all information provided to the Brokerage is accurate to the best of the Seller's knowledge;
- (h) the Seller will immediately advise the Brokerage of any material change in the physical condition or status of the Property or in the information provided by the Seller.

**9. Indemnification**

The Seller will hold harmless and indemnify the Brokerage and any co-operating brokerage for any claims that may arise from their reasonable and good faith reliance on representations made and information provided by the Seller.

**10. Miscellaneous Provisions**

The Seller agrees that:

- (a) the Brokerage may represent other sellers and, subject to clause 14, buyers;
- (b) the Brokerage cannot disclose to the Seller confidential information obtained through any other agency relationship;
- (c) the Brokerage will not be obligated to seek additional offers to purchase while the Property is subject to an unconditional Agreement of Purchase and Sale;
- (d) if the Property is owned by a limited company, a sale of shares representing a controlling interest in the limited company will constitute a sale for the purposes of this Agreement;
- (e) this Agreement will be governed by the laws of the Province of Nova Scotia and the Seller and the Brokerage will submit to the jurisdiction of the Courts of the Province of Nova Scotia for the resolution of any disputes that may arise out of this Agreement; and

Seller(s) initials

(f) in situations where Multiple Offers are received by the Brokerage, the Seller does \_\_\_\_\_ does not \_\_\_\_\_ direct the Brokerage to inform the competing parties that there are competing offers.

**11. Termination of this Agreement**

Without prejudice to the acquired rights of the Seller or the Brokerage, this Agreement will terminate:

- (a) on the expiration of the term of this Agreement as specified in clause 1;
- (b) on an earlier date than that specified in clause 1 if mutually agreed to by the Seller and the Brokerage in writing;
- (c) on a completed sale of the Property prior to the expiration of the term of this Agreement;
- (d) on the suspension or cancellation of the Brokerage's licence to trade in real estate;
- (e) on the bankruptcy or insolvency of the Brokerage or if it is in receivership;
- (f) at the option of the non-defaulting party, exercised in writing, on a material breach of any of the terms of this Agreement by either the Seller or the Brokerage.

**12. Brokerage's Duties on Termination of the Agreement**

Immediately on the termination of this Agreement, the Brokerage will:

- (a) remove the Property as an active listing on any listing service;
- (b) cease all marketing activities on behalf of the Seller;
- (c) remove all signs from the Property;
- (d) return all documents and other materials provided by the Seller;
- (e) remove any lockbox installed on the property

**13. Continuing Duties**

The termination of this Agreement does not relieve the Brokerage from its duty:

- (a) to account for all monies received by the Brokerage;
- (b) of confidentiality to the Seller.



**14. Change in Representative Capacity of the Brokerage**

- 14.1** If the Brokerage is the agent of a buyer and the buyer wishes to view the Seller's Property, the Brokerage will:
- (a) disclose this fact to both the buyer and the seller; and,
  - (b) unless instructed otherwise by the Seller, facilitate the viewing of the Property by that buyer and make available the marketing information that is available to all potential buyers; however, the mere viewing of the property will not mean that the buyer is interested in the property for the purposes of clause 14.2 below.
- 14.2** If the Brokerage is also the agent of a buyer who becomes interested in the Property, the Brokerage will:
- (a) immediately advise the Seller and the Buyer of all relevant facts and of the implications of concurrent representation;
  - (b) give the Seller and the Buyer an opportunity to seek independent advice; and
  - (c) then seek their written informed consent to the Brokerage continuing to provide services to the Seller and the Buyer as Transaction Facilitator on the terms and conditions specified in the Transaction Brokerage Agreement and in the "Working With A REALTOR<sup>®</sup>" brochure.
- 14.3** Should the Seller refuse to consent, the Brokerage will continue to represent the party, be it the Seller or the Buyer, with whom it first entered into an agency relationship and the Brokerage will offer:
- (a) to treat the other party as a customer; or
  - (b) to refer the other party to another brokerage.

**15. Additional Provisions:**

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**16. Definitions**

For the purposes of this Agreement:

"brokerage" means a business organization that holds a brokerage licence and includes all the industry members licensed with the brokerage;

"buyer" means a person acquiring or attempting to acquire an interest in real estate by purchase;

"purchase" includes an exchange, option, lease or other acquisition of an interest in real estate;

"sale" includes any trade, exchange, option, lease or other disposition of an interest in real estate;

"seller" means a person disposing or attempting to dispose of an interest in real estate by sale.

**17. This Agreement:**

- (a) This Agreement includes, if signed by the Seller and attached to this Agreement, the following documents:
- Listing Addendum
  - Property Condition Disclosure Statement
- \_\_\_\_\_
- \_\_\_\_\_
- (b) No amendment to the terms of this Agreement shall be effective unless it is in writing and signed by the Seller and the Brokerage.
  - (c) The Seller agrees to be bound by offers and counter offers and related documentation that may be transmitted electronically and that reproductions of the signatures therein will be treated as originals.
  - (d) If there is conflict or discrepancy between any provision added to this Agreement and any provision in the standard pre-set portion hereof, the added provision will supersede the standard pre-set provision to the extent of such conflict or discrepancy.
  - (e) This Agreement will constitute the entire agreement between the Seller and Brokerage, and there are no representations, warranties, collateral agreements or conditions which affect this Agreement other than as expressed herein.
  - (f) This Agreement will be read with all changes of number required by the context.

**18. Seller's Acknowledgement**

The Seller, having received and read both this Agreement and the "Working With A REALTOR<sup>®</sup>" brochure, and having been given the opportunity to request further information concerning this Agreement and the representation relationships described in the "Working With A REALTOR<sup>®</sup>" brochure, agrees that:

- (a) this Agreement accurately sets out the terms agreed to by the Seller and the Brokerage; and
- (b) the Seller has received a true copy of this Agreement.

SIGNED AND DELIVERED

this \_\_\_\_\_ of \_\_\_\_\_, 20 \_\_\_\_\_.

Signature of Seller \_\_\_\_\_

Printed Name \_\_\_\_\_

Signature of Witness \_\_\_\_\_

Signature of Seller \_\_\_\_\_

Printed Name \_\_\_\_\_

Signature of Witness \_\_\_\_\_

Signature of Brokerage Representative \_\_\_\_\_

Printed Name \_\_\_\_\_

Signature of Witness \_\_\_\_\_