

# SELLER DESIGNATED BROKERAGE AGREEMENT

Approved by the Nova Scotia Real Estate Commission (NSREC) for use by licensees under the *Nova Scotia Real Estate Trading Act*.  
The NSREC is the regulatory body for real estate in Nova Scotia.

This Seller Designated Brokerage Agreement (this Agreement) is between:

## The Seller:

and

## The Brokerage:

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

CITY \_\_\_\_\_ POSTAL CODE \_\_\_\_\_

CITY \_\_\_\_\_ POSTAL CODE \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Seller Email 1: \_\_\_\_\_

Email: \_\_\_\_\_

Seller Email 2: \_\_\_\_\_

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

PID(s)/Serial #: \_\_\_\_\_

and the Seller gives the Brokerage the exclusive right to offer for sale the Property for the price of:

\_\_\_\_\_ Dollars (\$) \_\_\_\_\_ CDN)

plus 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. Appointment of Designated Agent(s)

1.1. This Agreement is entered into by the Seller and the Brokerage on the basis of the following facts:

- a) Designated Agency means the contract is with the Brokerage and agency representation is with the Designated Agent(s); and
- b) the Brokerage is prepared to designate a separate agent to act as the sole agent, and in the interests, of the Seller. The Brokerage may also designate separate agents for any buyer(s) interested in the Property also represented by the Brokerage.

The Brokerage designates:

\_\_\_\_\_

As the Designated Agent(s) to serve as sole agent for the Seller, subject to clause 11. If additional space is required, ☐ see Addendum.

1.2. If for any reason, the Designated Agent(s) ceases to be licensed with the Brokerage, the Brokerage will designate another member of the Brokerage to serve as the sole agent for the Seller by amendment.

### 2. Brokerage's Obligations

2.1. The Seller agrees that the Brokerage's responsibilities will be limited to:

- a) treating the interests of both the Seller and the Buyer(s) represented by the Designated Agent(s) in an even-handed, objective and impartial manner;
- b) ensuring compliance of all relevant provisions of the Brokerage's policies and procedures, the *Nova Scotia Real Estate Trading Act*, its Regulations and the NSREC By-law by the Designated Agent(s), the Brokerage and the Brokerage's support staff; and
- c) holding all monies or property received by the Brokerage in trust in accordance with the provisions of the *Nova Scotia Real Estate Trading Act*.

2.2. The Brokerage and the Designated Agent(s) undertake that they will not:

- a) use the confidential information received from the Seller, or obtained as a

result of providing services under this Agreement, for their own gain or the gain of its employees or to the prejudice of the Seller's interests; and

- b) disclose, any confidential information concerning the Seller to any other person unless:
  - i) authorized by the Seller; or
  - ii) required by law.

### 3. Designated Agent's Obligations

3.1. The Designated Agent(s) will:

- a) use their best efforts to market the Property and promote the interests of the Seller;
- b) subject to clause 11, act as only the Seller's agent;
- c) obey all lawful instructions of the Seller;
- d) fulfill its fiduciary obligations of loyalty, confidentiality and of full disclosure of all conflicts of interest;
- e) exercise reasonable care and skill in the performance of this Agreement;
- f) use their best efforts to discover and disclose to the Seller all relevant facts affecting the transaction known to the Brokerage;
- g) disclose to buyers all material latent defects affecting the Property known to the Designated Agent(s);
- h) advise the Seller to obtain expert advice when necessary;
- i) 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;
- j) present all offers and counter-offers promptly to and from the Seller even when the Property is already the subject to an Agreement of Purchase and Sale;
- k) keep the Seller fully informed regarding the transaction;
- l) act in the best interests of the Seller; and
- m) explain all forms and documents to the Seller prior to execution.

**3.2 Optional Services:** The Seller requests and the Designated Agent(s) agrees to provide the following additional services:

- a) to place a "for sale" sign on the Property; YES ☐ NO ☐
- b) to install a lockbox on the Property to provide access to authorized persons; YES ☐ NO ☐
- c) to place a sold sign on the Property once the conditions unrelated to title have been met; YES ☐ NO ☐
- d) to show the Property at times acceptable to the Seller and, if any, tenants; and
- e) the services listed below:

**3.3 Disclosure of Availability:** The Designated Agent(s) has disclosed that they will be regularly available to service this agreement, subject to any exceptions outlined in clause 3.4.

**3.4.** If applicable, the Designated Agent(s) has disclosed that they will not be available on the following dates/times: \_\_\_\_\_

#### 4. Effective Dates

**4.1.** This Agreement will commence on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and will expire at 11:59 p.m. Atlantic Time on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

#### 5. Type of Listing

**5.1.** The Seller authorizes that the Property be listed

- a) ☐ with the Multiple Listing Service (MLS®) of the Nova Scotia Association of REALTORS® (NSAR);  
**OR**
- b) ☐ Exclusively with the Brokerage and instructs the Brokerage to \_\_\_\_\_ co-operate **OR** \_\_\_\_\_ not co-operate with all other brokerages. The Seller acknowledges that should "not co-operate" be selected, the Seller may lose opportunities to sell the Property.

#### 6. Seller's Obligations

**6.1.** The Seller warrants that:

- a) the Seller has the sole authority to sell the Property and to enter into this Agreement;
- b) the Seller has disclosed to the Designated Agent(s) all third party claims and interests in the Property known to the Seller;
- c) the Property is not currently the subject of any other Seller Brokerage Agreement/Seller Designated Brokerage Agreement;
- d) the Seller has disclosed to the Designated Agent(s), in writing, all material latent defects, as defined in Form 100: Working With the Real Estate Industry, affecting the Property known to the Seller;
- e) the Seller will provide the Designated Agent(s) with all information necessary for the listing and marketing of the Property;
- f) all information provided to the Designated Agent(s) is accurate to the best of the Seller's knowledge;
- g) the Seller will immediately advise the Designated Agent(s) of any material change in the physical condition or status of the Property or in the information provided by the Seller; and
- h) 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.

**6.2. Referral of Inquiries:** The Seller will immediately advise the Designated Agent(s) during the term of this Agreement:

- a) of all inquiries by interested buyers or their representatives received by the Seller, and will deliver all offers to purchase received by the Seller to the Designated Agent(s) during the term of this Agreement; and
- b) during the Holdover Period (clause 9.4) of any accepted offers presented to the Seller by, or made by the Seller to, a buyer who was introduced to the Property during the term of this Agreement.

**6.3. Indemnification:** The Seller will hold harmless the Brokerage, the Designated Agent(s), 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.

**6.4. Seller Covenants:** The Seller agrees that:

- a) the Designated Agent(s) may represent other sellers and, subject to clause 11, buyers;
- b) the Brokerage and the Designated Agent(s) cannot disclose to the Seller confidential information obtained through any other agency relationship to which the Brokerage or Designated Agent(s) is or was a party;
- c) the Brokerage or the Designated Agent(s) will not be obligated to seek additional offers to purchase while the Property is subject to an Agreement of Purchase and Sale once the conditions unrelated to title have been met;
- 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 purchase for the purposes of this Agreement; and
- e) the Brokerage may share the contents of the transaction file within the Brokerage for administrative purposes.

#### 7. Harmonized Sales Tax (HST)

**7.1. It is the Seller's responsibility to determine whether the proposed transaction is subject to HST pursuant to the Excise Tax Act. The Seller is advised to obtain whatever professional assistance the Seller deems necessary to make that decision. The Brokerage cannot make that determination.**

The Seller has determined that the Property is:

- ☐ Exempt from HST
- ☐ Partially subject to HST; included in purchase price
- ☐ Partially subject to HST; over and above purchase price
- ☐ Subject to HST; included in purchase price
- ☐ Subject to HST; over and above purchase price

**7.2.** If the conveyance contemplated by this Agreement is or partially 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.

#### 8. Competing Offers

- 8.1. a)** In situations where competing offers are received by the Designated Agent(s), the Seller directs the Designated Agent(s) to:
  - ☐ inform the competing buyers that they are competing and how many buyers they are competing with; **OR**
  - ☐ inform the competing buyers that they are competing but not how many buyers they are competing with; **OR**
  - ☐ not inform the competing buyers that they are competing.
- b) The Seller understands that the Designated Agent(s) will not disclose the contents of any offer to the competing buyers.
- c) Should a seller change their instruction regarding disclosure of competing offers, this Agreement must be amended accordingly.



## 9. Brokerage's Remuneration

### 9.1. Remuneration: The Seller will pay the Brokerage as remuneration:

The Seller will agree to (a), (b) or (c) individually, **or a combination of two or all options** (i.e. a percentage of the purchase price and a fee for services).

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

**(plus applicable HST and any other taxes payable in respect of the remuneration.)**

### 9.2. Sharing of Brokerage's 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 remuneration in the amount of \_\_\_\_\_ % **OR** \$ \_\_\_\_\_ CDN of the purchase price of the Property plus all applicable taxes in respect to that portion of the remuneration.

### 9.3. Payment of Remuneration: The Brokerage's remuneration will be paid per 9.1 on closing 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 purchase is completed **OR** the Seller, without legal justification, fails to complete the purchase.

### 9.4. Holdover Period: The Seller will be liable to the Brokerage for the remuneration payable under this Agreement if within 180 days (the Holdover Period) of the expiration or termination 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 purchase is completed **OR** the Seller, without legal justification, fails to complete the purchase.

### 9.5. If this Agreement expires or is terminated without a legally enforceable Agreement of Purchase and Sale, the Seller may list with another brokerage and not be liable for remuneration payable under this Agreement.

### 9.6. Deduction of Remuneration from Deposit and Proceeds of Sale:

- a) Upon notice from the Seller or the Seller's lawyer that the transaction is closed, the Seller authorizes the Brokerage to apply the deposit, if any, to the Brokerage's remuneration as specified in clause 9.1.
- b) Upon closing, the Seller instructs their lawyer to pay any remuneration owed to the Brokerage from the deposit, if any held by the lawyer, and/or from the proceeds of sale as specified in clause 9.1 after it has exercised its right, if any, under clause 9.6(a).

### 9.7. Limitation on other Remuneration: The Brokerage and the Designated Agent(s) agree 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 and Designated Agent(s) have:

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

## 10. Use and Distribution of Information

### 10.1. The Seller consents to the collection, use and disclosure of their personal information by the Brokerage and the Designated Agent(s) related to this Agreement and such other use as is consistent with listing and marketing of the Property including, but not limited to:

- a) disclosing all or some of it to government departments, appraisers, municipal organizations and others; and
- b) providing to present and past unrepresented parties and clients marketing materials, newsletters and other information that the Brokerage believes may be of interest to them.

### 10.2. The Seller, subject to clause 5.1 (a), consents to placement of the listing and purchase information by the Brokerage and the Designated Agent(s) into the database of the appropriate MLS® and acknowledges that the database of the MLS® is the property of the NSAR and can be licensed, resold or otherwise dealt with as they see fit. The Seller further acknowledges that some or all of the information, including the purchase price, may be published and distributed in print, before the closing in accordance with MLS® rules, and made available on the internet through public websites including those maintained by licensees and brokerages, and by the Canadian Real Estate Association on realtor.ca.

### 10.3. The Seller authorizes the Brokerage to publish interior pictures of the Property in its marketing. YES ☐ NO ☐

### 10.4. The Seller authorizes the Brokerage to allow the prospective buyer to take interior pictures of the Property. YES ☐ NO ☐

## 11. Change in Representative Capacity of the Designated Agent(s)

### 11.1. If the Designated Agent(s) has a Buyer client who wants to view the Seller's Property, the Designated Agent(s) will:

- a) disclose this fact to both the Buyer and the Seller;
- b) unless instructed otherwise by the Seller, facilitate the viewing of the Property by that buyer and make available the marketing information 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 11.2 and therefore would not create a conflict of interest between the parties; and
- c) proceed in accordance with clause 11.2 should the Buyer express interest in the Seller's Property.

### 11.2. If the Designated Agent(s) has a Buyer client who becomes interested in the Property, the Designated Agent(s) will:

- a) immediately advise the Seller and the Buyer of the implications of concurrent representation as specified in clause 11.2 (d);
- b) give the Seller and the Buyer an opportunity to seek independent advice; and
- c) offer to continue to represent the one party, be it the seller or the buyer, with whom it first entered into an agency relationship, subject to any conflicts of interest, and the brokerage will offer the option to:
  - i) recommend the other party to another brokerage or designated agent where the other party can receive the benefit of agency representation; or
  - ii) be treated as an unrepresented party (see definition in Form 100: Working With the Real Estate Industry.)
- d) If the Buyer and the Seller have been presented with the options in subsection (c)(i) or (ii) and still wish to continue the transaction with the same designated agent(s), without any representation, the Buyer and the Seller may be offered the option of entering into a transaction brokerage relationship prior to the preparation of the agreement to facilitate the sale of the property under the terms and conditions specified in the Transaction Brokerage Agreement.

### 11.3. If the interests of the Brokerage or Designated Agent(s), including any individual in a management or ownership position, conflict or may conflict with the interests of the client, refer to by-laws 733 and 734.



**12. Termination of this Agreement**

- 12.1. Without prejudice to the acquired rights of the Seller or the Brokerage, this Agreement will terminate:
- a) on the expiration date of this Agreement as specified in clause 4;
  - b) on an earlier date than that specified in clause 4 if mutually agreed to by the Seller and the Brokerage in writing;
  - c) on a completed sale of the Property prior to the expiration date of this Agreement;
  - d) on the suspension or termination 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, the Brokerage or the Designated Agent(s);
  - g) at the option of the Brokerage, if after reasonable effort, the Brokerage is unable to contact the Seller to satisfy this Agreement; or
  - h) at the option of the Seller, if after reasonable effort, the Seller is unable to contact the Brokerage to satisfy this Agreement.

**13. Brokerage's and Designated Agent's Duties on Termination of the Agreement**

- 13.1. Immediately on the expiration or termination of this Agreement, the Brokerage and the Designated Agent(s) will:
- a) remove the Property from any electronic medium authorized by the Brokerage;
  - 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; and
  - e) remove the lockbox(s) installed on the Property.

**14. Continuing Duties**

- 14.1. The termination of this Agreement does not relieve the Brokerage and the Designated Agent(s) from their duty:
- a) to account for all property and money received by the Brokerage; and
  - b) of confidentiality to the Seller.

**15. Miscellaneous Provisions**

- 15.1. The Seller agrees that:
- a) this Agreement will be governed by the laws of the Province of Nova Scotia and the Seller, the Brokerage, and the Designated Agent(s) 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;
  - b) no amendment to the terms of this Agreement shall be effective unless it is in writing and signed by the Seller and a Brokerage Representative;
  - c) 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; and
  - d) this Agreement will be read with all changes of number and gender required by the context.

**16. This Agreement**

- 16.1. This Agreement includes, if signed by the Seller and attached to this Agreement, the following documents:
- ☐ Listing Addendum
  - ☐ Property Disclosure Statement
  - ☐ Equipment Schedule
  - ☐ Brokerage Addendum

**17. Additional Provisions**

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**18. Acceptance**

This Agreement will constitute the entire Agreement between the Seller, the Designated Agent(s), and the Brokerage, and there are no representations, warranties, collateral agreements or conditions which affect this Agreement other than as expressed herein.

The Seller hereby agrees and acknowledges having read and accept this Agreement on the terms set forth, and have received a true copy of this Agreement.

Signed and delivered in the presence of:

In Witness whereof I have hereunto set my hand:

Witness

Seller

Date

Witness

Seller

Date

Witness

Brokerage Representative

Date

