

INDEPENDENT CONTRACTOR AND CONFIDENTIALITY AGREEMENT

This Independent Contractor and Confidentiality Agreement ("Agreement") is entered into between iServe, Inc. ("Broker"), and the person whose name and signature appears on the last page of this Agreement, herein "Contractor."

Recitals

Whereas, Broker is a licensed real estate broker engaged as a Limited Function Referral Organization ("LFRO") in soliciting or referring clients and customers to Century 21 Mike Bowman, Inc. ("C21 Bowman"); and

Whereas, Contractor is licensed by the Texas Real Estate Commission ("TREC") as a salesperson or broker, who desires to solicit and refer clients and customers for Broker's referral to C 21 Bowman;

Whereas, Contractor understands that while sponsored by Broker pursuant to this Agreement Contractor shall be a LFRO agent and cannot perform any real estate brokerage (or appraisal) services except soliciting and referring clients and customers for Broker and C21 Bowman;

Whereas, Broker, alone and in conjunction with others, including C21 Bowman, has developed and continues to develop business systems and practices, computer programs and software, and printed, written and graphic material, designed to enhance the productivity and profitability of real estate brokerage offices and their agents, including LFRO brokerages and agents; and

Whereas, during Contractor's engagement with Broker, Contractor may be given access to and acquire knowledge about Broker's and C 21 Bowman's trade secrets, and other confidential and proprietary information, and the use of such trade secrets and information in a real estate brokerage office and in soliciting clients and customers.

NOW, THEREFORE, in consideration of the engagement and the granting to Contractor of access to Broker's and C21 Bowman's trade secrets, and other confidential and proprietary information, and the mutual promises, covenants and agreements set forth herein, Broker and Contractor agree as follows.

1. Exclusive Association and Independent Contractor

- A. Broker agrees to sponsor Contractor and Contractor agrees to provide services to Broker on the terms and conditions set forth herein. Contractor shall not work for or with any other real estate broker or real estate brokerage office, including C21 Bowman, during the term of this Agreement. Contractor shall engage in the

brokerage of businesses or the management of real property during the term of this Agreement.

- B. Contractor is an independent contractor and not an employee of Broker. Broker will not withhold any amounts for taxes from the compensation paid to Contractor pursuant to this Agreement. Broker will not obtain any errors and omissions insurance coverage for Contractor, and will not pay any amounts for unemployment compensation or worker's compensation for Contractor.
- C. This Agreement does not create a partnership between the parties, and neither party shall be liable for any expense or obligation incurred by the other party. Contractor has no authority and shall not execute any instruments for or on behalf of Broker except those instruments which Contractor is expressly authorized in writing to execute by Broker. Contractor has no authority and shall not make any statements or representations to any prospective client or customer concerning the services to be provided or fees to be charged by C21 Bowman, nor bind or obligate Broker or C21 Bowman to any agreement or relationship.

2. Duties

- A. Contractor shall solicit and refer prospective clients and customers to Broker for referral to C21 Bowman. During the term of this Agreement, Contractor shall not engage in any other real estate brokerage activities or engage in any real estate appraisal activities, including but not limited to, listing, selling, leasing, or managing, real property for any person, or assisting any agent, broker, seller or buyer, including any friend, relative or other person referred to C21 Bowman, in the listing, selling or buying of real property.
- B. Contractor shall follow the instructions of the President of Broker in performing Contractor's services. Contractor shall maintain a cooperative, courteous and professional relationship with all employees, agents, associates, clients and customers of Broker and C21 Bowman.
- C. Contractor shall comply with all applicable laws, standards of practice, and procedures and policies of Broker, applicable to Contractor and Contractor's status as a LFRO agent, including applicable provisions of the Texas Real Estate License Act, the Rules of the Texas Real Estate Commission, the Code of Ethics of the National Association of Realtors, and any rules and regulations to which C21 Bowman may subscribe.
- D. Contractor shall provide a Statement of Understanding and Certification when and in the form requested by Broker from time-to-time.

- E. During the term of this Agreement, Contractor agrees not to (i) solely or jointly with others undertake or join in planning for, participating in, or organization of, any business or business activity which is or may be competitive with the business of Broker and C21 Bowman, or (ii) directly or indirectly, engage or participate in any other activities in conflict with the best interests of Broker and C21 Bowman.

3. Referrals; Referral Fees

- A. All prospects generated by Contractor shall be referred to Broker for referral to C21 Bowman. Broker owns all such referrals and will coordinate with C21 Bowman regarding such referrals and the fees to be paid to Broker for such referrals. All listings, representation agreements, commission agreements and other agreements for Brokerage services resulting from referrals pursuant to this Agreement shall be owned exclusively by C21 Bowman.
- B. C21 Bowman shall have the sole right and authority to negotiate, modify, amend, or terminate any listing agreement, buyer's representation agreement or referral fee agreement, and to enter into settlements and any other agreements with any party relating to any such agreements, and the rights, duties and responsibilities of C21 Bowman and its agents under or relating to those agreements. C21 Bowman may, but is not required to, consult with Broker and Contractor prior to entering into any such agreements, even though Contractor's referral fee under this Agreement may be reduced by such actions.
- C. For each property C21 Bowman receives a commission as a seller's or buyer's representative for a prospect referred to C21 Bowman through a referral from Contractor ("Contractor's Prospect"), Contractor shall receive a referral fee. The referral fee will be based on the commission or other amount paid to C21 Bowman as a result of the representation of Contractor's Prospect (either as seller or buyer), after deducting C21 Bowman's regional service fee equal to 6% of the commission or other amount paid to C21 Bowman. If C21 Bowman represents Contractor's Prospect in more than one transaction within a six (6) month period, calculated from the date of closing of the first transaction, for example as a seller of one property and as a buyer of another property, or as a seller or buyer of more than one property, Contractor will receive a referral fee for each transaction.
- D. A prospect will be considered Contractor's Prospect, and Contractor will receive a referral fee for C21 Bowman's representation of such prospect, if the prospect actually closes the sale or purchase of a property through C21 Bowman, or enters into a listing agreement or buyer's representation agreement with C21 Bowman, within one year from the date of the initial referral; and, thereafter, the prospect will continue to be considered Contractor's Prospect for as long as the prospect actually closes the sale or purchase of a property through C21 Bowman with no lapse of more than six (6) month's from the date of the previous closing. Further, if the prospect

does not close a transaction within six (6) month's from the last closed transaction, but enters into a listing agreement or buyer's representation agreement with C21 Bowman during that period, the six (6) month period will be extended until the closing of a transaction under that agreement or the expiration or termination of the agreement without a closed transaction.

- E. Generally, the referral fee to be paid to Contractor will be equal to twenty (20%) percent of the commission paid to C21 Bowman, calculated after deducting the six (6%) percent regional service fee. However, some restrictions will apply on a case-by-case basis, depending on the nature of the transaction, which may reduce or increase Contractor's percentage referral fee. For instance, but not by way of limitation, if Contractor's Prospect is referred by C21 Bowman to a broker in another city or state, C21 Bowman will attempt to negotiate a referral fee from the other broker. In such case, Contractor will receive a referral fee equal to twenty (20%) percent to fifty (50%) percent of the referral fee actually paid to C21 Bowman, depending on the amount of the referral fee paid to C21 Bowman, calculated after deducting C21 Bowman's regional service fee of six (6%) percent of the amount received by C21 Bowman. Broker and Contractor shall endeavor to identify situations in which the referral fee will be different and agree on the referral fee before referring the prospect to C21 Bowman.
- F. Contractor's referral fee will be paid to Contractor within ten (10) days after Broker receives the referral fee from C21 Bowman; which generally will be within three (3) days after a transaction actually closes. In no event shall Broker (or C21 Bowman) be responsible or liable for paying a referral fee to Contractor until C21 Bowman actually receives the commission, referral fee or other amount from which Contractor's referral fee would be paid; and neither C21 Bowman, nor Broker, shall have any responsibility to pursue the collection of any compensation which is earned but not paid to C21 Bowman for any reason.

5. Broker's Fee.

- A. Contractor shall pay Broker a fee of \$25.00 per month or \$260.00 per year during the term of this Agreement, as determined prior to execution of this Agreement.
- B. If Broker terminates this Agreement prior to the completion of the month or year for which a fee has been paid, except for "Cause," as defined below, Broker shall refund a pro-rated portion of the fee paid based on the date of termination. If Contractor terminates this Agreement, there shall be no refund. Monthly fees will be due on or before the first day of each month and annual fees will be due on or before each anniversary date of this Agreement. If any fee is not actually received by Broker on or before its due date, Broker shall have the right to terminate this Agreement and its sponsorship of Contractor's real estate license without notice to Contractor.

- C. In the event of any adjustment in the fees paid to and collected by C21 Bowman and Broker, which results in an over payment or under payment of the amount due Contractor hereunder, Broker or Contractor, as the case may be, shall pay to the other the amount necessary to correct such over payment or under payment.
- D. Broker is hereby authorized to deduct from any payment due to Contractor hereunder any amount owed to Broker by Contractor for any reason, whether or not related to this Agreement. In the event of any dispute between Broker and Contractor concerning any such indebtedness or any amount due hereunder, Broker shall be entitled to withhold any amounts due Contractor under this Agreement, and no interest shall be charged or accrue as to the amount withheld, until such dispute is resolved. This provision shall survive the termination of this Agreement.

6. Term of Agreement; Termination

- A. This Agreement shall be for an initial term of one year from the Effective Date, and shall continue month-to-month thereafter (unless Contractor and Broker agree to an annual renewal period with an annual fee paid to Broker) until either party gives the other party thirty (30) day written notice of termination, in which event, it will terminate on the last day of the month following expiration of the thirty (30) notice period; **provided that the stated term shall in no way alter the right of Broker or Contractor to terminate this Agreement and at will relationship, at any time, for any reason or for no reason at all.**
- B. Broker may terminate this Agreement for "Cause," effective as of the date of the event giving rise to the termination for Cause, without notice.

For purposes of this Agreement, "Cause" is defined as any one or more of the following:

- (i) Contractor's failure or refusal to follow the instructions provided to Contractor by or at the direction of Broker's President;
- (ii) Contractor's failure or refusal to maintain a cooperative, courteous and professional relationship with all employees, agents, clients and customers of Broker and C21 Bowman;
- (iii) Contractor's failure or refusal to strictly adhere to Broker's and C21 Bowman's rules, policies and procedures, as the same may exist or be adopted or modified, from time to time;
- (iv) Contractor's engaging in any activity or conduct which is in conflict with or which may not be in the best interest of Broker or C21 Bowman;

- (v) Contractor's engaging in any activity or conduct which is not professional, or which is unethical, illegal, dishonest or fraudulent, or any activity or conduct which may discredit Broker or C21 Bowman or be detrimental to Broker's or C21 Bowman's reputation and standing in the real estate industry or in the communities in which Broker and C21 Bowman engage in business;
 - (vi) Contractor's violation of the Texas Real Estate License Act, the Rules and Regulations of TREC, or the Constitution, By-Laws, Code of Ethics and Standards of Practice of the National Association of Realtors and any local Board of Realtors of which C21 Bowman is a member;
 - (vii) Contractor's engaging in any real estate brokerage business other than soliciting or referring clients and customers to Broker for referral to C21 Bowman;
 - (viii) Contractor's solicitation or referral of any clients and customers to any other real estate broker or agreeing to or accepting compensation from any other broker or any salesperson, including any C21 Bowman salesperson or associate broker;
 - (ix) Contractor's breach or attempted breach of the confidentiality provisions set forth below;
 - (x) the expiration, termination or suspension of Contractor's license from the Texas Real Estate Commission; or
 - (xi) Contractor's breach of any other material term or provision of this Agreement.
- C. Upon expiration or termination of this Agreement, except termination pursuant to Sections 6 B (v), (vi) (vii), (viii), (ix) and (x), Contractor shall continue to receive the referral fees Contractor due under this Agreement for any Contractor's Prospects referred to C21 Bowman prior to the effective date of the termination. If this Agreement is terminated pursuant to Sections 6 B (v), (vi) (vii), (viii), (ix) or (x), Contractor shall not be entitled to receive any referral fees for transactions which close after the effective date of the termination of this Agreement.

7. Confidentiality

- A. During the term of this Agreement, Broker may grant Contractor access to and Contractor may become acquainted with various trade secrets and other confidential and proprietary information which are owned by Broker and/or C21 Bowman and which are used in the operation of Broker's and C21 Bowman's business.

- B. As used in this Agreement, “Broker’s trade secrets, and other confidential and proprietary information” include, for example, and not intending to be all inclusive, Broker’s and C21 Bowman’s business records, contracts, reports, business and management processes and techniques, training processes and techniques, agent lists, rosters, and files, commission splits and other incentives and compensation for agents and employees, lists of past, existing and prospective clients and customers and methods of compiling, sorting and categorizing such client and customer lists, software and computer programs and systems, techniques, and methodologies, developed or utilized by Broker and C21 Bowman, and any other information concerning the business of the Broker and C21 Bowman and Broker's.
- C. Contractor agrees not to disclose or use in any manner, directly or indirectly, any such trade secrets, and other confidential and proprietary information, either during the term of this Agreement or at any time thereafter, except as required in the course of Contractor’s engagement with Broker. All such trade secrets, and other confidential and proprietary information, are and shall remain the sole and exclusive property and proprietary information of Broker and C21 Bowman, and are disclosed in confidence by Broker and C21 Bowman in reliance on Contractor's agreement to maintain them in confidence and not to use or disclose them to any other person except in furtherance of Broker's and C21 Bowman’s business.
- D. Contractor agrees that upon the expiration or termination of this Agreement, Contractor shall turn over to Broker all written, printed or graphic material, all disks or other computer media, and all other material in Contractor's possession or under Contractor's control that may contain or be derived from Broker’s and C21 Bowman’s trade secrets and other confidential and proprietary information, or which are connected with or derived from Contractor's services for Broker.
- E. In the event of a breach or threatened breach by Contractor of any of the provisions of this Agreement, Contractor agrees that Broker and C21 Bowman, in addition to and not in limitation of any other rights, remedies, or damages available to Broker and C21 Bowman at law or in equity, shall be entitled to a temporary and permanent injunction in order to prevent or restrain any such breach by Contractor or by Contractor's partners, agents, representatives, servants, contractors, and/or any and all persons or entities directly or indirectly acting for or with Contractor.
- F. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

8. Defense of Disputes ; Indemnification

- A. If a dispute, litigation, or complaint is filed by any person against Broker or Contractor in a matter involving Contractor and which is related to Broker’s business, the parties will cooperate in defending the action. If both Broker and

Contractor are named as defendants, the parties will share all costs of defense, unless one party elects to have separate representation and notifies the other party.

- B. If the parties mutually defend an action, Broker maintains sole discretion in determining whether to defend the action or to compromise or settle the action, and in the selection of attorneys and in directing the course of the defense; provided that Broker may not obligate Contractor to pay anything of value to compromise or settle a dispute, litigation of complaint, without Contractor's consent.
- C. Except as provided below, each party is responsible for the payment of any amounts for which such party is found liable. The sharing of defense costs provided above does not apply to the payment of damages for which a party is found liable by a court, arbitrator or government agency.
- D. If Broker is found liable by a court, arbitrator or government agency as a result of Contractor's negligence, misrepresentations, fraud, false statement, or violation of the Real Estate License Act or this Agreement, Contractor will indemnify and reimburse Broker all such amounts and all attorney's fees, costs and other expenses incurred by Broker in defending the action, including those fees, costs and expenses which were previously shared pursuant to this Agreement.

9. Notices

Any notices which are necessary or appropriate hereunder shall be given in writing and delivered in person, by U. S. Mail or other mail courier service, or by facsimile or e-mail to the other party at the addresses set below such party's signature, or at such other addresses as may hereafter be provided by written notice. Notice shall be deemed delivered upon receipt or three (3) business days after depositing such notice with the U. S. Postal Service, properly addressed and postage pre-paid, for delivery by certified mail, return receipt requested. Any notice delivered by facsimile or e-mail after 5:00 p. m., CST, shall be deemed to have been delivered the next business day. Any notice of termination of this Agreement or notice of a breach or violation of this Agreement may be delivered by any means and will be effective upon delivery, provided that a copy of the notice is mailed by certified mail, return receipt requested, within two (2) business days after delivery of the notice by any other means.

10. Complete Agreement, Modification and Waiver

This Agreement supersedes all previous correspondence, promises, representations, and agreements, if any, either written or oral. No provision of this Agreement may be modified except by a writing signed both by Broker and Contractor. Waiver of any provision of this Agreement by any party is effective only if in writing. Any waiver may not be construed as a waiver of any subsequent breach or failure to perform under any provision of this Agreement unless such subsequent waiver is in writing.

11. Severability

In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Agreement.

12. Governing Law

This Agreement is executed in and shall be performed in Tarrant County, Texas, and shall be construed and enforced according to the laws of the State of Texas. All legal actions arising under this Agreement shall be instituted in, and both Broker and Contractor consent to jurisdiction and venue in, Tarrant County, Texas.

13. Attorney's Fees

If either party finds it necessary to hire an attorney to enforce any provision of this Agreement, or in the event of a dispute between the parties, the prevailing party shall be entitled to recover reasonable attorney's fees and all costs incurred by such party.

14. Agreement, Read, Understood, and Fair

Contractor has carefully read and considered all provisions of this Agreement and agrees that all of the restrictions set forth are fair and reasonable and are reasonably required for the protection of the interests of Broker.

IN WITNESS WHEREOF, this Agreement is executed by the parties effective as of the date accepted by Contractor.

Broker:

iServe, Inc.

By: /s/ Mike Bowman
Mike Bowman, President
150 Westpark Way, Suite 120
Euless, Texas 76040
817/354-7653 Fax 817/571-9202

Contractor:

Print Name _____

Signature TREC License No. _____

Street or P. O. Box Address _____

City State Zip Code
() _____ Fax () _____

E-mail address: _____