

# The Smart Inspector Home Inspection Agreement

The Smart Inspector PLLC

2101 Stonehill Court,

Arlington, TX 76012

CONTRACT FOR VISUAL INPECTION AND LIMITED CONSULTING AGREEMENT

BE ADVISED THAT THIS IS A LEGALY BINDING AGREEMENT AND CONTAINS WORDING LIMITING LIABILITY. PLEASE READ CAREFULLY BEFORE BOOKING YOUR INSPECTION.

YOU HAVE THE RIGHT TO CONSULT YOUR ATTORNEY PRIOR TO SIGNING THIS AGREEMENT. PLEASE ASK QUESTIONS IF YOU ARE UNSURE. THIS DOCUMENT SHOULD BE REVIEWED BY THE CLIENT AND REALTOR BEFORE THE INSPECTION IS SCHEDULED.

For the sole purpose of this agreement the following definition of terms are as follows:

1. **THE SMART INSPECTOR PLLC** (hereinafter TSI) means any **INSPECTOR**, independent contractor, owner, officer, agent or employee of **THE SMART INSPECTOR PLLC**.
2. **CLIENT** means persons or entities specified as **CLIENT**: on the "book your inspection form" including all undisclosed spouse, partners, relatives, realtor, or entities to this transaction.
3. **STANDARDS** means a guideline document created by the Texas Real Estate Commission (TREC). The Standards of Practice defines the inspection scope, limitations, exclusions, and departures.
4. **INSPECTOR** means a person who is licensed by the TREC to inspect.
5. **PROPERTY** means only the primary residential dwelling unit located at the Property: noted on the "book your inspection form" unless otherwise specified in the **REPORT**, including the septic system, pool, well, well water, irrigation system or any other item requested to be inspected.
6. **REPORT** means the written TREC **REPORT**, the Standards of Practice, photos, internet addenda references in the TREC **REPORT**, other addendum's and this agreement.

7. BOOK YOUR INSPECTION FORM " means the form that the client or realtor submitted on The Smart Inspector website to book the inspection(s).

SUBJECT TO THE FOREGOING TERMS THE PARTIES AGREES TO AS FOLLOWS;

1. THE CLIENT represents and warrants that CLIENT has secured all approvals necessary for the Inspector to conduct the inspection of the property.

2. If TSI performance of this agreement is prevented in whole or part, by any cause, then TSI shall be excused from this agreement and held harmless.

3. In consideration for the Inspection Fee paid to TSI by the CLIENT, TSI shall provide the services of an INSPECTOR to perform a limited visual inspection of the property using Standards of Practice Promulgated by TREC. The inspection is for the following services:

List of what is included in the inspection - scope of services

\_\_\_\_ Current Texas Real Estate Commission guidelines as provided in the preamble to TREC form 7-6.

\_\_\_\_ Any additional services shall be an additional cost to the CLIENT and are specifically not included in the inspection or are in addition to the normal inspection.

List of what is not included in the inspection

\_\_\_\_ Mold and related problems,

\_\_\_\_ Structural integrity that is based on a professional engineering analysis,

\_\_\_\_ Radon Gas,

\_\_\_\_ Termites/wood destroying insects and organisms,

\_\_\_\_ Swimming pools and spas,

\_\_\_\_ Termite inspection,

\_\_\_\_ (Other) \_\_\_\_\_.

4. The inspection should be noted as visual only, the inspector is not offering or performing any engineering or architectural services. Professional engineering and architecture require specialized formal education and state licensing. The STANDARDS define the scope and limitations of the inspection. The inspection is limited in time and scope. The inspection is solely an attempt to identify obvious adverse material deficiencies that, in the opinion of the

INSPECTOR, significantly affect the performance of the item inspected. The visual inspection addresses obvious conditions at readily accessible areas which exist at the time of inspection and are recognized and subsequently judged to be deficient by the INSPECTOR. Items are operated using only normal controls or modes if, in the opinion of the INSPECTOR, consequential damage will not occur. The INSPECTOR shall not move personal or stored items to access obstructed areas; any such effort is partial in context. Discovery of deficiencies where evidence is discrete, implied or requires observation from multiple perspectives are beyond the scope of this inspection but may be commented on if recognized. The INSPECTOR is acting as a generalist and not an expert regardless of any specialty license, certification, or degree the INSPECTOR may have.

5. The REPORT provided by TSI provides good-faith opinions or advice concerning the need for repair or replacement of certain observable items. The report will comply to Texas Real Estate Commission (TREC) guidelines, currently as provided in TREC form 7-6. The opinions are not statements of fact. This Consulting Agreement is in full effect by the CLIENT signing or receiving the report, the CLIENT understands that the services provided by the INSPECTOR fall within the Professional Services Exemption of the Texas Deceptive Trade Practices Act (DPTA) and agrees that no cause of action exists under the DPTA related to the services provided. TSI expressly reserves the right to revise opinions as information changes and welcomes further relevant information.

6. The INSPECTORs opinions may not reflect the total extent of defects or damage; defects that have been cosmetically masked to impair detection or which are discrete; conditions in inaccessible areas; defects that may have or could have been disclosed by a Sellers Disclosure or an inspection performed by an Engineer, Specialists; defects that may have or could have been disclosed by an inspection using special tools; deficiencies that may become evident later under different conditions and usage.

7. CLIENT agrees to carefully read the REPORT, the Standards of Practice, and any photos or addendum prior to purchase. Oral opinions provided by the INSPECTOR are partial in context and superseded by the written REPORT. CLIENT is advised to have REPORTed items investigated by appropriate experts prior to purchasing the property.

8. INSPECTOR may provide gratuitous limited comments about wood destroying insects in the Home Inspection REPORT; however, TSI is not licensed to do WDI Inspections, and does not do them. As a convenience to our customers, we will schedule a WDI Inspection with a licensed Pest Control Company if the client so desires. CLIENT is advised that almost all homes experience termites.

9. Exclusivity: CLIENT gives permission to INSPECTOR to distribute and discuss REPORT findings with parties related to this transaction, including real estate agents. The Inspection and Report are for the sole and exclusive use and possession of the named

consumer/CLIENT; and, that others should not rely upon the report including future purchasers. The report is time sensitive and for the purposes of the immediate transaction.

10. CLIENT agrees to be fully responsible for themselves and any guests of the CLIENT during the inspection. CLIENT is advised that ladders and areas such as roofs, attics, or crawl spaces are unsafe.

11. Limitations and Exclusions: CLIENT is advised, that unless specified in the REPORT,

(1) INSPECTOR does not inspect items other than those listed in the Standards of Practice; anything buried, hidden, latent, or concealed; cosmetic or aesthetic conditions; automated or programmable control systems, automatic shut-off, photoelectric sensors, timers, clocks, metering devices, signal lights, lightning arrestors, remote controls, security or data distribution system. (2) INSPECTOR does not REPORT: past repairs that appear or are judged by the INSPECTOR to be effective and workmanlike; finish damages that are unlikely to affect performance or unrelated to water penetration. (3) INSPECTOR does not determine: the priority, significance, or ramification of deficiency discoveries; conditions prior or subsequent to inspection; insurability, warrant ability, habitability, adequacy, capacity, reliability, marketability, operating costs, recalls, life expectancy, age, insulation characteristics, energy efficiency, thermostatic operation, code compliance, utility sources, manufacturer or regulatory requirements; presence or absence of pests or wood-destroying organisms; presence, absence or risk of any environmental pathogen (e.g. mold, mildew, fungi), carcinogen, toxin or poison; types of wood, preservative treatment or fastener compatibility. (4) INSPECTOR does not warrant: absence of leakage; future performance of any item. (5) INSPECTOR does not operate or inspect items requiring use of codes, keys, combinations or other such devices including shut-off, safety or stop valves; designate conditions as hazardous or safe; recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, realty or instructions, repair plans, cost estimates, disclosure documents, or other REPORTs; operate or verify inaccessible drain systems, recirculation or sump pumps, pressure or pressure regulation devices; remedy conditions preventing inspection of any item; apply open flame to operate any appliance; turn on decommissioned equipment, systems, or utility services; walk on roofs where eave is higher than 10 feet from ground; access steep roofs or roofs that are slippery or where damage may occur; enter crawl space areas lower than 18 inches below the joists. CLIENT agrees that any comment by INSPECTOR regarding these limitations is partial in context, gratuitous and does not establish precedent. Many more limitations and exclusions are contained in the Texas Standards of Practice REPORT and addenda.

12. Attorney Fees: CLIENT agrees that in the event any dispute or controversy arises as a result of this agreement, and the services provided the INSPECTOR is entitled to recover all reasonable and necessary attorney's fees and costs incurred by that party. CLIENT agrees to pay all of INSPECTORs fees if they do not prevail on all claims. CLIENT agrees to reimburse INSPECTOR for any professional liability deductible, up to \$5000.00, within 30 days of any claim payment to the CLIENT.

13. If any portion of this agreement is found to be invalid or unenforceable by any court or arbitrator, the remaining terms shall remain in force between the INSPECTOR and the CLIENT(S).

14. By signing this agreement, CLIENT authorizes INSPECTOR to provide your contact information (including telephone number) to a third party service provider (TPSP) in order to offer you additional value-added services. CLIENT agrees to waive and release any restrictions that may prevent the TPSP from contacting you (including by telephone) regarding utility survives, home care, special home alarm system offers, etc.

15. Disclaimer or Warranties: No guarantee or warranty. The CLIENT understands and agrees that INSPECTOR makes no guarantee or warranty, express or implied, as to any of the following: (1) That all defects have been found or that the INSPECTOR will pay for repair or undisclosed defects; (2) That any of the items inspected are designed or constructed in a good and workmanlike manner; (3) That any of the items inspected will continue to perform in the future as they were performing at the time of the inspection; and (4) That any of the items inspected are merchantable or fit for any particular use. The parties agree that there is no warranty for the professional opinions of the inspector compared to no warranty for the systems and items themselves inspected.

16. CLIENT agrees to pay the fees NO LESS than the pricing structure noted on [www.thesmartinspector.com](http://www.thesmartinspector.com). If CLIENT provides INSPECTOR with credit card information, this agreement gives permission to INSPECTOR to process the card for the agreed fee plus a 3% convenience fee. Payment is due at the time of inspection and prior to REPORT delivery, unless otherwise agreed. Deferred payments are subject to a \$30 handling fee. The report will not be sent until the inspection(s) are paid for in full. Current estimates of service are as follows;

#### Fees per square feet

- a) 1999 square feet or lower = \$325 (Initial Estimate),
- b) 2000 to 3000 square feet = \$375 (Initial Estimate),
- c) 3000 to 3499 square feet = \$425 (Initial Estimate),
- d) 3499 to 3999 square feet = \$475 (Initial Estimate),
- e) 4000 to 4499 square feet = \$525 (Initial Estimate),
- f) 4500 to 4999 square feet = \$575 (Initial Estimate),
- g) 5000 to 5499 square feet = \$725 (Initial Estimate),
- h) 5500 to 5999 square feet = \$775 (Initial Estimate),
- i) 6000 to 6499 square feet = \$825 (Initial Estimate),

- j) 6500 to 6999 square feet = \$875 (Initial Estimate),
- k) 7000 + square feet = \$1000 for first 10 hours + \$100/ per additional hour, (Initial Estimate).

Additional fees per house requirements or condition

- a) House < 20 years = +\$0 (Initial Estimate),
- b) 20 - 29 years old = +\$25 (Initial Estimate),
- c) 30 - 39 years old = +\$50 (Initial Estimate),
- d) 40 - 49 years old = +\$75 (Initial Estimate),
- e) 50+ years old = +\$100 (Initial Estimate),
- f) Sprinkler systems inspection = +\$50 (Initial Estimate),
- g) Pool Inspection = +\$100 (Initial Estimate),
- h) Crawl Space = +\$75 (Initial Estimate),
- i) WDI Inspection, performed by a 3rd party = +\$125 (Initial Estimate)

All prices provided are estimates and subject to changes on the web site and subject to changes per each individual property requirements or conditions. The parties will agree in writing or by electronic approval of any other estimates.

17. CLIENT agrees that prior to taking any action, legal or otherwise, CLIENT shall:

- (1) Submit a written claim to INSPECTOR within (10) days of the deficiency discovery to the address on the top of this agreement. The written claim shall describe the suspected deficiency.
- (2) Allow TSI, their agent or legal representative to perform a re-inspection of deficiencies stated in the claim.
- (3) Agree not to disturb or repair the disputed item prior to a re-inspection except in cases where injury or subsequent property damage may occur. Any claim must be presented within one (1) year from the date of the inspection. INSPECTOR shall have no liability for any claim presented one year or more after the date of the inspection.
- (4) The CLIENT will not slander the reputation of TSI until the claim is completely resolved or CLIENT may be liable for punitive damages.

(5) If a claim has been resolved details of that claim will remain between the CLIENT and TSI and not shared publicly.

18. **LIMITATION OF DAMAGES**, both parties acknowledge in advance the difficulties of determining the amount of damages if there is a contractual breach. The CLIENT agrees to liquidated damages equal to double (X2) the inspection fee as liquidated damages for breach of contract. This liquidated amount is to cover the loss and to avoid the need for a later calculation or contest and is binding on the CLIENT.

19. Cost of repair estimates if provided by the inspector are good faith estimates and shall not be considered binding on the inspector. The CLIENT specifically acknowledges that any estimates provided are provided for informational purposes only and bares no risk or warranty by the inspector.

20. **NOTICE TO CONSUMERS AND SERVICE RECIPIENTS:** A recovery fund is available for aggrieved persons through the Texas Real Estate Commission P.O. Box 12188, Austin, TX 78711-2188 800-250-8732 or 512-459-66544 **LIMITATIONS OF LIABILITY:** By booking your TSI inspection and receiving your inspection report, CLIENT is agreeing to this agreement, CLIENT understands, agrees, and acknowledges that the Inspection Fee paid to TSI is small relative to the risk of liability associated with performing home inspections. CLIENT acknowledges that without the ability to limit liability TSI would be forced to charge CLIENT much more than the Inspection Fee agreed upon. CLIENT acknowledges being given the opportunity to have this Agreement reviewed by counsel of their choosing and further acknowledges that opportunity of hiring a different INSPECTOR to perform the Inspection. By booking your inspection, receiving the inspection report, and/or this Agreement, CLIENT agrees that TSI and insurance total liability is limited to the amount of the Inspection Fee paid and this liability shall be exclusive. **DISPUTE RESOLUTION:** Any dispute, controversy, interpretation, or claim, including claims for but not limited to, professional liability, insurance compensation, breach of contract, any form of negligence, fraud, or misrepresentation arising out of, from, or related to the inspection and inspection REPORT shall be submitted for final and binding arbitration under the Rules and Procedures of the Expedited Arbitration of Home Inspection Disputes of Construction Arbitration Services, Inc. ([www.casusa.org](http://www.casusa.org)) pursuant to Chapter 171 of the Texas Civil Practice & Remedies Code and in accordance with the arbitration agreement. This Service Agreement, the Texas Standards of Practice, and the REPORT shall govern the dispute and any settlement.

**BY BOOKING YOUR INSPECTION AND/OR RECEIVING THE REPORT, THE CLIENT ACKNOWLEDGES THAT THEY HAVE READ THIS CONTRACT; THAT CLEINT**

UNDERSTAND THE TERMS AND CONDITIONS AND THAT CLIENT AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. IF THIS IS A JOINT PURCHASE, CLIENTS AGREE THAT WARRANTS EXPRESSED CONSENT AND AUTHORITY TO AGREE FOR ALL UNSIGNED PARTIES OR PARTIES ABSENT FROM THE INSPECTION.