

# COMMISSION DISCOUNTING AGREEMENT

## 1 INTERPRETATION

In this Agreement, if applicable and unless the context indicates a contrary intention, the words and expressions recorded below shall bear the meanings assigned to them, cognate expressions bear corresponding meanings, and the provisions of clauses 1.21 to 1.26 shall apply in the interpretation of this Agreement:

- 1.1 **%Agreement+** . means these Terms and Conditions together with the Commission Schedule as signed *inter alia* by the Agent and Rodel;
- 1.2 **%Agent+** . means the party referred to as such in the Commission Schedule who is entitled to be paid the Agent's Commission and who is selling the Claim to Rodel;
- 1.3 **"Agency"** . means the party referred to as such in the Commission Schedule;
- 1.4 **%Agent's Commission+** . means the commission amount payable to the Agent (inclusive of any value added tax if applicable) as set out in the Commission Schedule;
- 1.5 **%Claim+** . means the Agent's legal rights to claim payment of the Agent's Commission upon the registration of the transfer of the Property into the name of the Purchaser;
- 1.6 **%Commission Schedule+** . means the schedule of information relating to the sale of the Agent's Claim to Rodel, which has been signed by the Agent and Rodel and which forms part of and is subject to these Terms and Conditions;
- 1.7 **"Conveyancer"** . means the person, firm or entity appointed to attend to the registration of the transfer of the Property pursuant to the Sale Agreement in the appropriate Deeds Registry as set out in the Commission Schedule;
- 1.8 **%Discounting Fee+** . means the fee payable by the Agent to Rodel as calculated and determined in accordance with and as set out in the Commission Schedule;
- 1.9 **"First Payment"** . means the initial amount payable by Rodel to the Agent (as part of the Purchase Price) as set out in the Commission Schedule;
- 1.10 **%Interest Rate+** . means the maximum rate of interest permissible from time to time in terms of the National Credit Act 2005 and any regulations or notices promulgated in terms thereof;
- 1.11 **%the Property+** . means the immovable property as described in the Sale Agreement and the Commission Schedule;
- 1.12 **%Purchaser+** . means the purchaser of the Property as described in the Sale Agreement;
- 1.13 **"Purchase Price"** . means the consideration payable by Rodel to the Agent as determined in accordance with the terms of this Agreement, for the Claim, as set out in the Commission Schedule;
- 1.14 **%Registration Date+** . means the date on which transfer of the Property from the Seller to the Purchaser is registered in the appropriate Deeds Registry;
- 1.15 **"Rodel"** . means Rodel Financial Services (Proprietary) Limited, Registration Number 1998/024426/07, of The Manor House, 14 Nuttall Gardens, Morningside, Durban;
- 1.16 **%Sale Agreement+** . means the written agreement between the Seller and the Purchaser in terms of which the Seller sells the Property to the Purchaser through the Agency thereby giving rise to the Claim;
- 1.17 **%Seller+** . means the seller of the Property as described in the Sale Agreement;
- 1.18 **%Settlement Date+** . means the date on which the Discounting Fee is paid in full to Rodel in terms of this Agreement;
- 1.19 **"Signature Date"** . means the latest date the Commission Schedule is signed by the parties thereto;
- 1.20 **"Termination Date"** . means the date on which Rodel terminates this Agreement in terms of clause 7.
- 1.21 Clause headings are for convenience only and are not to be used in its interpretation.
- 1.22 An expression, which denotes any gender, includes the other genders, a natural person includes a juristic person and vice versa, and the singular includes the plural and vice versa.
- 1.23 Any substantive provision, conferring rights or imposing obligations on a party and appearing in any of the definitions in this clause 1 or elsewhere in this Agreement, will be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.24 Words and expressions defined in any clause will, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.25 This Agreement incorporates the Commission Schedule, which Commission Schedule will have the same force and effect as if set out in the body of this Agreement.
- 1.26 Signature of the Commission Schedule by the Agent shall constitute an offer by the Agent to Rodel for the purchase of the Agent's Claim and signature of the Commission Schedule by Rodel shall constitute Rodel's acceptance of the offer, whereupon a valid and binding agreement for the sale and cession of the Claim, subject to these Terms and Conditions, shall be deemed to have come into effect.
- 1.27 By Signing the Commission Schedule, the Agent consents to Rodel performing any credit enquiries and/or searches that Rodel may deem necessary in order to assess its risk.

- 2.1 The Agent hereby sells the Claim to Rodel and Rodel hereby purchases the same upon and subject to the terms and conditions recorded in this Agreement.
- 2.2 Upon the execution of the Commission Schedule by the Agent and Rodel, the Agent cedes transfers and makes over to Rodel, his right, title and interest in and to the Claim and Rodel accepts such cession upon the terms and conditions recorded herein.
- 2.3 The Agent shall procure that the Seller and/or the Agency authorises and instructs the Conveyancer in writing to pay to Rodel the Agent's Commission and shall procure that the Conveyancer furnishes Rodel with a written undertaking, in a form acceptable to Rodel, in terms of which the Conveyancer irrevocably undertakes to pay to Rodel such amount on the Registration Date.
- 3 ASSUMPTION OF OBLIGATIONS AND OWNERSHIP AND RIGHT OF RODEL TO CANCEL THIS AGREEMENT**
- 3.1 Notwithstanding anything to the contrary contained herein and for the avoidance of doubt, Rodel does not assume the obligations of the Agent under the Sale Agreement, or otherwise in relation to the Property, all of which remain with the Agent.
- 3.2 Ownership in and to the Claim shall pass to Rodel upon payment by Rodel of the First Payment as set out in the Commission Schedule and the cession and transfer shall thereupon be of full force and effect without any further act of delivery being required.
- 3.3 Notwithstanding anything to the contrary contained herein, Rodel shall be entitled, upon written notice to the Agent, to cancel this Agreement at any time after the Signature Date but prior to payment having been made by it to the Agent in terms of clause 4.1, if Rodel, in its sole discretion, for any reason considers it necessary or desirable that it should do so in order to protect its interests.
- 4 PAYMENT OF THE PURCHASE PRICE**
- 4.1 Rodel shall pay the First Payment as set out in the Commission Schedule to the Agent within 2 (two) business days after: (i) acceptance of the Agent's offer as set out in the Commission Schedule; and (ii) receipt of the written undertaking from the Conveyancer together with such other security or documentation as Rodel may reasonably require.
- 4.2 The Purchase Price shall be reduced by an amount equal to the Discounting Fee as at the Settlement Date.
- 4.3 If on the Registration Date or date of termination of this Agreement, as the case may be, the Purchase Price has been reduced, as contemplated in clause 4.2, by an amount that is greater than the difference between the Purchase Price and the First Payment, thereby resulting in an overpayment of the Purchase Price, as recalculated, then the Agent shall repay the amount of such overpayment to Rodel upon demand, together with interest thereon at the Interest Rate, calculated from the date of the demand to the date of payment.
- 5 WARRANTIES**
- The Agent warrants, represents and undertakes to Rodel as follows:
- 5.1 The Sale Agreement is valid and enforceable in all respects and in particular:
- 5.1.1 was completed in every respect before signature; and
- 5.1.2 was completed within the ambit of the provisions of the Alienation of Land Act No. 68 of 1981, as amended, insofar as it may be applicable, as well as any regulations published thereunder.
- 5.2 The Agency has, as at the date hereof, fully and timeously discharged all its obligations as agent in terms of the Sale Agreement and shall continue hereafter to do so.
- 5.3 The Property and all structures thereon, which constitutes the subject matter of the Sale Agreement, is fit for the purpose intended and is not subject to any patent or latent defects known to the Agent and not disclosed to the Purchaser.
- 5.4 The Agent is owed the Agent's Commission and is not obliged to split or share the Agent's Commission with any third party.
- 5.5 All documents relevant to the Sale Agreement have been delivered to Rodel.
- 5.6 The Agent is not aware of any fact, matter or circumstance pertaining to the Seller or the Property, which might prevent the Property from being transferred to the Purchaser in accordance with the Sale Agreement or which might cause the Registration Date to be delayed by more than 90 (ninety) days after the Signature Date and shall forthwith notify Rodel in writing in the event of the Sale Agreement being cancelled, or if any dispute arises between the parties thereto, or any reason exists as to why the registration of the transfer may not proceed within the 90 (ninety) day period referred to above.
- 5.7 The Agent's Commission will be payable to the Agent upon the registration of the transfer of the Property into the name of the Purchaser.
- 5.8 Rodel shall not be required to do anything (other than comply with this Agreement) or to pay any amount in order to procure the transfer of the Property to the Purchaser.
- 5.9 Save as expressly provided for in the Sale Agreement, no commission or other amount is or shall be due to any agent or other person as a result of the conclusion of the Sale Agreement.
- 5.10 The Sale Agreement or any part thereof will not be amended or altered in any way prior to the Registration Date, without the prior written approval of Rodel.
- 5.11 The Property is not subject to any interdict, caveat of whatsoever nature or attachment in terms of a Warrant of Execution or any similar Court process.

- 5.12 The Claim or any part thereof is not subject to a prior cession, pledge or similar encumbrance.
- 5.13 The Agent is not insolvent, nor to the best of his knowledge, have any steps been taken or threatened for the liquidation or sequestration of the Agent's estate, whether provisional or final or for the placing of the Agent under judicial management.
- 5.14 The Agent has no overdue income tax or VAT owed to the South African Revenue Services.
- 5.15 The Agent has accurately disclosed to Rodel all facts and information relating to the Sale Agreement, the Property, the Seller and the Purchaser which may be relevant to a purchaser of the Claim and the information set out in the Commission Schedule is true and correct.
- The Agent acknowledges that Rodel has entered into this Agreement in reliance of the warranties set out in this clause, all of which are material, and that if any of the warranties are or become, to any extent, inaccurate or breached, the Agent will have committed a fraud against Rodel.
- 6 TERMINATION**
- Rodel may summarily terminate this Agreement without payment of compensation or other damages caused to the Agent solely by such termination, by giving notice in writing to the Agent if any one or more of the following events occurs or which Rodel reasonably anticipates is likely to occur for any reason:
- 6.1 The Agent commits a breach of any of its obligations under this Agreement; or
- 6.2 Any warranty, representation or undertaking given herein is to any extent inaccurate or has been breached; or
- 6.3 The Purchaser is not properly fulfilling his obligations in terms of the Sale Agreement; or
- 6.4 The Purchaser has repudiated liability in terms of the Sale Agreement; or
- 6.5 The Sale Agreement has not become or will cease to be of force or effect, whether by cancellation or otherwise; or
- 6.6 The Registration Date does not occur for any reason whatsoever within a period of 90 (ninety) days after the Signature Date; or
- 6.7 The Agent's Commission is not or will not be paid to Rodel within 2 (two) days of the date upon which transfer of the Property is registered in the name of the Purchaser for any reason; or
- 6.8 Rodel's rights or ability to enforce its rights in terms of this Agreement will be prejudiced for any reason; or
- 6.9 The Purchaser will not or will not be able to pay or procure the payment of the Purchase Price of the Property on the date upon which transfer of the Property is registered in the name of the Purchaser; or
- 6.10 The Agent will or will not be able to pay any amount which might become payable by the Agent to Rodel in terms of this Agreement; or
- 6.11 This Agreement is, or becomes, either wholly or in part, unenforceable or is declared to be invalid, for any reason.
- 7 CONSEQUENCES OF TERMINATION**
- 7.1 If this Agreement is cancelled then:
- 7.1.1 all rights acquired by Rodel in terms of the cession referred to in clause 2 of this Agreement shall be deemed to have been ceded and transferred back to the Agent upon and against compliance by the Agent with clause 7.1.2 and all other outstanding obligations in terms of this Agreement;
- 7.1.2 the Agent shall refund to Rodel in full any amount or amounts paid by Rodel to the Agent or any other person on its behalf in respect of the Purchase Price, together with the Discounting Fee (calculated up to and including the Termination Date) and interest thereon at the Interest Rate, calculated from the Termination Date to the date of such refund by the Agent.
- 7.2 On termination of this Agreement by Rodel pursuant to clause 7, Rodel shall be entitled (without prejudice to any other rights or remedies it may have) to recover from the Agent the amount of all damages and loss suffered by Rodel as a result (directly or indirectly) of the Agent's failure, together with all sums previously paid to the Agent under or in connection with this Agreement and as security for the payment of such damages and losses, the Agent hereby cedes, assigns and transfers to Rodel all the Agent's right, title and interest in and to all agent's commissions due and to become due to the Agent from any other sale transaction or howsoever arising.
- 8 INDEMNITY AND PAYMENTS**
- 8.1 Without prejudice to any of the rights of Rodel at law or in terms of any other provision of this Agreement, the Agent indemnifies Rodel against all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and own client and any additional legal costs) and expenses of any nature whatsoever which Rodel may suffer or incur (whether arising from contract, delict, a failure to comply with any law or otherwise) as a result of or in connection with this Agreement or the termination thereof.
- 8.2 Any amount presently or in future payable by the Agent to Rodel shall be paid immediately upon demand by Rodel therefore, in cash and without set-off or deduction of any nature whatever and at such address as Rodel may have stipulated for this purpose by notice.
- 8.3 Any amount falling due for payment by the Agent to Rodel in connection with this Agreement and not being paid, shall bear interest at the Interest Rate, calculated from the due date for payment thereof or, in the case of amounts due by way of

	indemnity or damage (whether liquidated or not) from the date upon which the relevant indemnified loss or damage is sustained.	12.3.2	posted by prepaid registered post to either party; postal domicilium for the time being shall be deemed to have been received by the receiving party on the 7 <sup>th</sup> (seventh) day after the date of posting;
9	<b>RENUNCIATION OF BENEFITS</b>		
	The Agent renounces the benefits of all legal exceptions whatsoever which could be taken to any action by Rodel in terms of or arising out of this Agreement. Without detracting from the generality of the foregoing, the Agent expressly renounces the benefit of the exceptions non numeratae pecuniae, excussion, division and de duobus vel pluribus reis debendi, insofar as each may be appropriate, and acknowledges to be fully acquainted with the contents of these exceptions and the effect of the renunciation thereof.	12.3.3	successfully transmitted by facsimile to either party; facsimile domicilium for the time being shall be deemed to have been received by the receiving party on the day immediately succeeding the date of the successful transmission thereof.
		12.4	Nothing in this clause shall operate so as to invalidate the giving or receipt of any written notice, which is actually received by a party other than by a method referred to in this clause.
10	<b>PROOF OF AMOUNT OWING AND RATES</b>	13	<b>GENERAL</b>
10.1	A certificate issued under the hand of any director of Rodel, whose status need not be proved, shall be prima facie proof of the facts stated therein in regard to any applicable Interest Rate and amount owing by the Agent for the purpose of obtaining the grant of judgement, summary judgement and provisional sentence by any competent Court.	13.1	This Agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. Rodel shall not be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written between the parties in respect of the subject matter hereof.
10.2	In the event of the Agent disputing the content of the certificate, the onus shall be on the Agent to disprove the content of the certificate.	13.2	No addition to, variation, novation or agreed cancellation of any provision of this Agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.
11	<b>JURISDICTION</b>		
11.1	The Agent hereby consents to the jurisdiction of the Magistrates Court having jurisdiction over its person in respect of all legal proceedings related to this Agreement, notwithstanding that the value of the matter in dispute might exceed the jurisdiction of the Magistrates Court.	13.3	No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
11.2	Notwithstanding the foregoing, Rodel is entitled to institute action in the High Court having jurisdiction.	13.4	Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator or trustee of either party shall be bound by this Agreement.
12	<b>DOMICILIUM</b>		
12.1	The parties choose domicilium citandi et executandi ( <del>to</del> domicilium) for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum and the serving of any process, at the respective addresses and facsimile numbers set out in the Commission Schedule.	14	<b>SEVERABILITY</b>
12.2	Each party shall be entitled from time to time, by giving notice to the other party, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa, to vary its postal domicilium to any other postal address within the Republic of South Africa and to vary its facsimile domicilium to any other facsimile number.		All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this Agreement shall remain of full force and effect. The parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
12.3	Any notice given by either party to the other party which is .		
12.3.1	delivered by hand between the hours of 9:00 and 17:00 hours on any business day to that party; physical domicilium for the time being shall be deemed to have been received by that party at the time of delivery;		