

MASTER SALE AGREEMENT

made and entered into by and between

.....
trading as
(hereinafter referred to as "the Agency")

and

ASCENDANT CASHFLOW SOLUTIONS (Pty) Ltd

Reg. No. 2000/022346/07

trading as

ASCENDANT ADVANCE COMMISSION

(hereinafter referred to as "Ascendant")

WHEREAS the Agency is desirous of selling, from time to time, the right to the commission for an agreed purchase price;

AND WHEREAS Ascendant is desirous of purchasing same from time to time;

AND WHEREAS the parties have agreed upon the material terms, conditions and essentialia of such transactions of sale and wish same to be recorded in a written document;

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. **DEFINITIONS**

1.1 The headings to the clauses of this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause. In this Agreement, unless the contrary intention clearly appears:

1.1.1 Words importing:

1.1.1.1 any one gender include the other two genders;

1.1.1.2 the singular shall include the plural and vice versa;
natural persons include created entities (corporate and unincorporate) and vice versa.

1.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

1.2.1 **"the third party Agreement"** means a signed Agreement of Sale of property shares and/ or claims to loan accounts in a company or close corporation or for the sale/cession of rights or benefits in an to a trust, or for the sale of a business (whether from a company, close corporation, partnership, joint venture or otherwise), from which the right to the commission arises;

1.2.2 **"the applicable schedule"** means a request to sell commission which incorporates by reference the provisions of this agreement, in terms of which the Agency sells to Ascendant its right to claim payment of commission in terms of a third party agreement;

1.2.3 **"the property"** means any property being the subject matter of the third party agreement;

1.2.4 **"the commission"** means the full amount of money payable to the Agency in terms of the third party agreement, inclusive of VAT (if applicable)

1.2.5 **"the amount purchased"** means the actual portion of the commission sold by the Agency to Ascendant;

1.2.6 **"the purchase price"** means the agreed amount to be paid by Ascendant for the purchase of the right to the commission;

- 1.2.7 **"the excess"** means the commission less the amount purchased;
- 1.2.8 **"suspensive condition"** means any condition/s in the third party agreement which have the effect of suspending the coming into operation of the third party agreement;
- 1.2.9 **"the Conveyancer"** means the Conveyancing Attorney nominated in terms of the third party agreement or later nominated by either the property seller, property purchaser or the Agent as the case may be, to implement the terms of the third party agreement;
- 1.2.10 **"the initial payment"** means 70 % (seventy per cent) of the amount purchased;
- 1.2.11 **"the balance of the purchased price"** means the amount purchased less the initial payment, less the charges and/or penalties;
- 1.2.12 **"the property purchaser"** means the party signing the third party agreement as purchaser;
- 1.2.13 **"the property seller"** means the party signing the third party agreement as seller;
- 1.2.14 **"the transaction"** means any agreement of sale of the right to commission between the Agency and Ascendant;
- 1.2.15 **"the effective date"** means the date of signature hereof;
- 1.2.16 **"the penalty"** means the amount stipulated in the signed and accepted offer to purchase commission;
- 1.2.17 **"the parties"** means the Agency and Ascendant;
- 1.2.18 **"prime rate"** means the prime overdraft interest rate as charged by Absa Bank from time to time.

2. **IMPLEMENTATION**

- 2.1 In the event of the Agency wishing to sell the right to the commission or a portion or part of the right to the commission to Ascendant then and in such event the parties shall ensure that:
- 2.1.1 the Agency completes and signs a Request to sell Commission and telefaxes or delivers same to Ascendant;

- 2.1.2 upon receipt of same Ascendant shall, at their discretion, complete and sign an offer to Purchase Commission which will comprise the offer to be made by Ascendant to the Agency for the purchase of the right to the commission, and telefax or deliver same to the Agency;
- 2.1.3 upon receipt of this Offer, the Agency, shall if it chooses to accept the terms and conditions of the offer, sign same, and deliver or telefax it back to Ascendant and if telefaxed post the original to Ascendant;
- 2.1.4 Ascendant advises the Conveyancer in writing of the sale, in the format as set out in the Notice of Sale of Commission, and in certain circumstances at its sole discretion the property seller and property purchaser.

2.2 Immediately the signed telefaxed or delivered copy of the Offer comes to the attention of an authorised representative of Ascendant, an Agreement of Sale of the right to Commission will come into full force and effect, effectively ceding, transferring and making over to and in favour of Ascendant, all the Agency's right, title and interest in and to the commission.

3. **PURCHASE PRICE**

The purchase price will be the figure stipulated as the purchase price on the Offer and accepted by the Agency by means of an authorised signature being appended thereto.

4. **PAYMENT OF PURCHASE PRICE**

- 4.1 The initial payment will be made by Ascendant to the Agency as soon as practically possible after receipt by Ascendant of the duly signed and accepted Offer.
- 4.2 The balance of the purchase price, together with the excess (if applicable) will be paid by Ascendant to the Agency as soon as practically possible after Ascendant has been advised, in writing, by the Conveyancer that the property has been registered into the name of the property purchaser or that the shares and loan accounts of the company or close corporation have been registered in the name of and ceded, to the property purchaser, or that the rights and benefits in and to the trust have been ceded to the property purchaser as the case may be, or that the business has been transferred into the name of the property purchaser, and that all guarantees have been paid and all monies due by the property purchaser and property seller inclusive of the commission have been collected.

5. **WARRANTIES**

The Agency warrants in respect of each and every transaction that:

- 5.1 the third party agreement is a legally binding agreement between a genuine seller and a willing and able purchaser and is fully enforceable in law;
- 5.2 the Agency was the effective cause of the conclusion of the agreement and is the only party entitled to receive commission. In the event however of the commission being shared by the Agency then and in such event the Agency warrants that it has disclosed the exact amount to be shared, to Ascendant and the name/names of the party/parties with whom the commission is to be shared;
- 5.3 the commission is legally claimable by the Agency and that there is no impediment or reason that exists which could or would have the effect of preventing payment of same to Ascendant;
- 5.4 the Agency has disclosed to Ascendant all material facts of whatsoever nature that might or might not have affected Ascendant's decision to purchase the right to the commission, or to pay the purchase price;
- 5.5 the commission will be paid within the time period stipulated therefore in the Offer to Purchase;
- 5.6 the Agency warrants that it is not insolvent;
- 5.7 the Agency warrants that there are no garnishee orders or caveats of whatsoever nature that might have affected Ascendant's decision to purchase the commission.

6. **CANCELLATION**

- 6.1 Should the agreement of sale be void, lapse, be cancelled be terminated or any of the warranties breached for any reason or on any ground whatsoever and howsoever arising, Ascendant may cancel the agreement of sale in terms of the applicable schedule.
- 6.2 Should the agreement of sale in terms of the applicable schedule be cancelled, the Agency shall repay immediately to Ascendant an amount of money equivalent to the amount of the commission.

6.3 Paragraphs 6.1 and 6.2 above are in addition to and do not in any way derogate in any respect from Ascendant's rights in respect of the Agency's breach of any of the warranties, which rights would ordinarily be available to it at common law, which common law rights are hereby expressly reserved.

7. **THE EXCESS**

7.1 It is specifically recorded that although in some instances the amount purchased would be less than the right to the commission, the commission will be paid in full by the Conveyancer to Ascendant, subject to and without derogating from any clauses to the contrary in terms of this Agreement, who undertakes to pay the excess to The Agency together with the balance of the purchase price as per clause 4.2 above.

7.2 Ascendant is hereby authorised to, without prior notice, appropriate and apply and having done so re-appropriate and apply, in its sole discretion, any money received from or on behalf of the Agency or any other person to any actual or contingent liability or obligation be it under this Agreement or otherwise, or set off against any such liability or obligation any amount due by Ascendant to the Agency.

8. **RELAXATION AND VARIATION OF AGREEMENT**

8.1 This Agreement constitutes the entire Agreement entered into between the parties.

8.2 No amendment or consensual cancellation of this Agreement or any provision in terms thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

8.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any party in respect of its rights under this Agreement, nor shall it operate so as to preclude any such party thereafter from exercising its rights strictly in accordance with this Agreement.

9. **DOMICILIUM CITANDI**

9.1 The parties choose their domicilia citandi et executandi for all purposes under this Agreement, whether in respect of Court process, notices or other documents or communications of whatsoever nature (including the exercise of any options), the following addresses:

9.1.1 Physical address:

Postal address:

9.1.2 Ascendant: Jigsaw Park
 7 Einstein Street
 Highveld Techno Park
 Centurion
 0169

9.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

9.3 Any party may by notice to the other party change the physical address chosen as its domicilium citandi et executandi to another physical address in South Africa or its telefax number, provided that the change shall become effective on the seventh day after the receipt of the notice by the other party.

9.4 Any notice to a party:

9.4.1 sent by prepaid registered post (by airmail if appropriate) in the correctly addressed envelope to it at its domicilium citandi et executandi shall be deemed to have been received on the tenth business day after posting (unless the contrary is proved);

9.4.2 delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or

9.4.3 sent by telefax to its chosen telefax stipulated in clause 17 shall be deemed to have been received on the date of despatch (unless the contrary is proved).

9.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

10. **LEGAL COSTS**

The Agency shall be liable to Ascendant for legal costs on the scale as between Attorney and own Client in respect of any action brought by Ascendant against the Agency pursuant to this Agreement, as well as all arbitration costs, collection brokerage fee, tracing fees or any other ancillary fees that may be so incurred.

11. **INTEREST**

The Agency shall pay interest to Ascendant on any amount owing by the Agency to Ascendant at the prime rate plus 4%, calculated daily on the outstanding balance and compounded at the end of each month.

12. **CERTIFICATE OF BALANCE**

A certificate by any director or manager of Ascendant, whose appointment need not be proved, of any amount owing by the Agency to Ascendant in terms of any agreement of sale in terms of any applicable schedule shall by its mere production be *prima facie* proof of such amount, the fact that it is due and payable and any fact contained in such certificate.

13. **CESSION AS SECURITY**

The Agency hereby cedes and transfers to Ascendant all its existing and future claims of whatsoever nature and howsoever arising as security for the payment of any amount now owing or which may in future become owing by the Agency to Ascendant in terms of this agreement and any agreement of sale in terms of any applicable schedule.

14. **CREDIT BUREAU**

14.1 Ascendant may, without notice to the Agency, disclose to any credit bureau the Agency's payment history in terms of this agreement.

14.2 Ascendant may obtain any information in regard to the Agency from any credit bureau.

15. **CONSENT TO MAGISTRATE’S COURT JURISDICTION**

15.1 The Agency consents in terms of Section 45 of the Magistrate’s Court Act 1944, as amended, to the jurisdiction of the Magistrate’s Court in respect of any action or proceedings which may be brought against the Agency arising out of this agreement notwithstanding that the amount in question may exceed the jurisdiction of such court.

15.2 Notwithstanding the aforesaid, Ascendant shall be entitled to institute all or any proceedings against the Agency connected with this Agreement in any division of the Supreme Court of South Africa or any other court having jurisdiction.

16. **SUPERSEDES**

This Agreement supersedes all previous contracts (if any) between the Agency and Ascendant and notwithstanding the date of signature hereof, shall have full force and effect as from the effective date.

17. **ESTATE AGENCY PROFILE**

The Agency confirms the following details as correct and undertakes to advise Ascendant of any changes which may occur.

Details of principal of Estate Agency :

Principal Member : _____

Alternative Contact : _____

Telephone Numbers : _____

Telefax Numbers : _____

E-mail address : _____

Ownership details of Shareholders/Partners/Members/Directors:

Name	%	I.D.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Format of business, i.e. sole proprietorship, partnership, close corporation,
proprietary limited company : _____

Date business commenced : _____

Company Reg Number/Close Corporation Number (if applicable): _____

VAT Number (if applicable) : _____

Number of Agents employed by the Agency: _____

Accountant/bookkeeper (Ascendant will update with financial news):

Name : _____

Phone number : _____

Banking Account Details:

Bank : _____

Branch : _____

Branch Code : _____

Account Number : _____

Type of Account : _____

Account Name : _____

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 2009.

As witnesses

1. _____

For and on behalf of **THE AGENCY** who warrants
that he is duly authorised thereto

2. _____

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 2009.

As witnesses

1. _____

For and on behalf of **ASCENDANT CASHFLOW SOLUTIONS (PTY) LTD** who warrants that he is duly authorised thereto

2. _____

Please attach:

1. Cancelled cheque
2. Blank copy of the Agency's standard Agreement of Purchase and Sale/Offer to Purchase
3. Copy of Agency's Fidelity Fund Certificate
4. Copy of Certificate of Incorporation (if applicable)