**COMMISSION SHARING AGREEMENT**

**DATED 20**

**BETWEEN**

***{Insert name}*
(THE “CONSULTANT”)**

**- AND –**

***{Insert name}***

**(THE “AGENT”)**

**-RELATING TO-**

 **PROPOSED SALE AND PURCHASE OF L.R. NO *{Insert description of property}***

**(THE “PROPERTY)**

**Drawn By:-**

**COMMISSION SHARING AGREEMENT**

**THIS COMMISSION SHARING AGREEMENT** is made on the................of.....................Two Thousand and ……………………….. BETWEEN: -

1. ***{insert name and address}*** (hereinafter referred to as the **“Consultant”** which expression shall where the context so admits include her personal representatives and assigns) of the one part; and
2. ***{insert name and address}*** (hereinafter referred to as the **“Agent”** which expression shall where the context so admits include the Agent’s ’s successors in title and assigns) of the other part.

**WHEREAS: -**

1. The Consultant has represented to the Agent that he/she has been engaged on an exclusive basis to secure a purchaser for some Property at a commission (a term herein defined).
2. The Agent’s core business is real estate sale, development and management and also possess the requisite licences to carry out its business.
3. The Consultant has further represented to the Agent that he/she has the requisite skills, competencies and financial resources to professionally source for a Purchaser of the Property.
4. The Agent has in reliance upon the representations of the Consultant in Clause (C) above agreed to allow the Consultant to work as an independent Consultant under it and to utilize its agent to secure a Purchaser for the Property and the Parties have agreed to this engagement on the terms and conditions herein contained and to be bound thereby.

**IT IS HEREBY AGREED** as follows:-

1. **Definitions and Interpretation**
	1. **Definitions**

In this agreement and its recitals:

1. **“Agreement”** means this Agreement and includes any schedules attached hereto;
2. **“Commencement Date”** means the date of this Agreement;
3. “**Commission**” means ***{insert percentage}*** of the commission payable to the Consultant and which amount shall be paid to the Agent under this Agreement;
4. “**Contract Period**” means the period referred to in Clause 6 of this Agreement;
5. “**Parties’ Advocates**” ***{insert particulars};*** and
6. **“Services”** means the property sale services to be provided by the Agent as set out in Clause 3 hereunder.
7. **Appointment**
	1. With effect fromthe Commencement Date, the Consultant shall undertake the Services as an independent consultant under the Agent’s name.
	2. The Consultant shall be an independent contractor and shall not have any authority whatsoever, to bind the Agent.
	3. The Consultant undertakes that he/she shall not represent to any person whomsoever, that he/she has the authority to bind the Agent or contract or sign documents whatsoever, for or on behalf of the Agent.
	4. The Consultant shall perform the Services at his/her own costs and expense, and shall not seek any reimbursement from the Agent.
	5. During the term of this Agreement, the Consultant shall keep the Agent duly updated of all progress and efforts made towards looking for a suitable buyer for the Property and progress of the subsequent transaction.
8. **Services**

The Agent has been appointed by the registered owner of the Property to be the lawful agent for purposes of advertising the Property as necessary, liaising with potential buyers, arranging/carrying out viewings, obtaining references and entering into negotiations for the purchase of Property at such price as shall have been agreed with the owner of the Property (the “Reserve Price”).

1. **Payment**
	1. In consideration for the Agent agreeing to the use by the Consultant of its licenses in performing the Services, the Consultant covenants to pay the Agent the Commission.
	2. The Commission shall become due and payable upon the signing of the Agreement for Sale of the Property between the Vendor and a suitable buyer identified, sourced, or introduced to the Vendor by the Consultant free and clear off and without any set-off, counterclaim or deductions whatsoever.
	3. The Commission shall be paid through the Agent’s nominated bank account, details of which shall be availed to the Consultant or the Parties’ Advocates.
2. **Contract Period**

This Agreement shall be valid and binding upon the Parties until the Agent is paid its Commission in full or upon termination by the Parties as provided under this Agreement.

1. **Co-operation**
	1. The Parties recognise that this Agreement cannot reasonably take into consideration all matters or circumstances that may arise during the performance of the Services.
	2. In this regard, should a situation not addressed by this Agreement arise, the Parties shall cooperate to resolve it bearing in mind the completion timelines for the performance of the Services.
2. **Confidentiality**
	1. Neither the Consultant nor the Agent shall at any time disclose, directly or indirectly to any other person whatsoever (including to the public or any section of the public) any information concerning this Agreement or any other information of any nature whatsoever concerning the other Party, whether such information or matter is stated to be confidential or not, without the express written permission of the other Party.
	2. Each Party irrevocably covenants that, during the term of this Agreement and subsequent to its termination, keep confidential, documents, data and information concerning the activities and other information of the other Party which is provided under the terms of this Agreement or which comes into its possession as a result of this Agreement.
3. **Termination**
	1. Each Party shall be entitled to terminate this Agreement by giving notice in writing to the other party of such termination.
	2. The notice shall be effective immediately upon the giving of the said notice if:-
		1. The other party fails to comply with its obligations under this agreement and if failure can be cured, fails to cure such a failure within fourteen (14) days of receipt of written notice from the other Party or declares that it will not be able to remedy the default within such time; or
		2. in the event of either party being prohibited by law or official requirement from complying with the terms of this Agreement.
	3. Notwithstanding anything contained in this Agreement, this Agreement shall terminate:-
		1. automatically and without need for a notice if either Party shall become legally incapacitated, insolvent or an insolvency petition is instituted in a Court of competent jurisdiction against it or otherwise makes an arrangement or composition with its creditor(s); or
		2. upon the receipt by the Agent of the Commission in full.
4. **Notices**

Any notices to be given shall be deemed to have been delivered four (4) days after sending by registered post to the addresses provided herein or hand delivered to the respective Party and receipt acknowledged.

1. **Costs**

 Each party shall bear its own costs in relation to the negotiation, preparation, execution of this Agreement.

1. **General**
	1. No failure or delay to exercise any power, right or remedy by the either of the Parties hereto shall operate as a waiver of that right, power or remedy and no single or partial exercise by that party of any right, power or remedy shall preclude its further exercise or the exercise of any other right, power or remedy.
	2. The terms of this Agreement will be binding on the personal representatives, successors and assigns of both Parties as the case may be. Neither the Consultant nor the Agent may assign or transfer this Agreement or any interest benefit therein or thereof without the consent of the other Party.
	3. This Agreement contains the whole agreement and understanding between the Parties relating to the transaction provided for herein and supersedes all previous agreements (if any) whether written or oral between the Parties in respect of such matters.
	4. The rights and remedies of both Parties provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
	5. Each of the provisions of this Agreement is severable and distinct from the others and, if at any time one or more of these provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
	6. No amendment or variation to this Agreement shall be effectual or binding on the Parties hereto unless it is in writing and duly executed by or on behalf of the Parties hereto.
	7. The construction, validity and performance of this Agreement shall be governed by and construed in accordance with the Laws of Kenya and the parties hereby agree to submit to the jurisdiction of the Kenyan courts.
	8. Each of the parties hereby agrees and confirms for the purposes of the Law of Contract Act (Chapter 23, Laws of Kenya) and the Land Act that it has executed this Agreement with the intention to bind itself to the contents hereof.

**IN WITNESS WHEREOF** this Agreement has been duly executed by or on behalf of the Parties on this ................... day of .............................., 20….

|  |  |
| --- | --- |
| Signed by the Consultant:-***{insert name}****Signature:* *Name:...............................................................* *Designation:......................................................*  | Signed by the duly authorised representative of the Agent:-***{insert name}****Signature:* *Name:.............................................................* *Designation:...................................................*  |
| in the presence of:-*Witness’s signature* *Witness’s Name: ..............................................**Witness’s Designation:...................................*  | in the presence of:-*Witness’s signature* *Witness’s Name:.................................................**Witness’s Designation:*........................................ |

**Drawn By:-**