**AGENCY AGREEMENT**

**DATED 2021**

**[PARTY 1]**

**(AS THE “PRINCIPAL”)**

**- AND -**

**[PARTY 2]**

**(AS THE “AGENT”)**

**-IN RESPECT OF-**

**[INSERT A SUMMARY OF WHAT THE AGENCY IS IN RESPECT OF]**



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**AGENCY AGREEMENT**

**THIS AGREEMENT** is made on the ……………………. day of …………………. Two Thousand and Twenty-One.

**BETWEEN: -**

1. [FULL COMPANY NAME] a limited liability company incorporated in the Republic of Kenya with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Principal); and
2. [FULL COMPANY NAME] a limited liability company incorporated in the Republic of Kenya with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Agent).

OR IF AN INDIVIDUAL

[FULL NAMES] of Identification /Passport Number [INSERT THE NUMBER] and whose address is [INSERT THE ADDRESS] (hereinafter referred to as the Agent together with his/her personal representatives or permitted assigns).

**WHEREAS: -**

1. The Principal carries on the business [BRIEF DESCRIPTION OF THE NATURE OF BUSINESS THAT THE PRINCIPAL CARRIES OUT].
2. The Principal has agreed to hire the Agent on an exclusive basis to perform the Services (defined below) in consideration for the Commission (a term herein defined) and the Parties’ relationship shall be governed by the terms and conditions of this Agency and Commission Agreement.

**THEREFORE**, in consideration of mutual promises, representations, covenants and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to the following terms and conditions and to be bound thereby: -

# DEFINITIONS AND INTERPRETATION

* 1. **Definitions**
  2. In this agreement and its recitals: -
     + 1. **“Business Day”** means a day other than a Saturday, Sunday or public holiday in Kenya when banks in Kenya are open for business;
       2. **“Commencement Date”** means the date of this Agreement;
       3. “**Commission**” means [INSERT THE COMMISSION PERCENTAGE] of the total purchase price paid by the Buyer to the Principal in respect of any batch of the Products supplied by the Principal to the Buyer pursuant to the provisions of clause 4 of this Agreement;
       4. “**Contract Period**” means the date referred to in Clause 2.1 of this Agreement;
       5. “**Interest**” means the rate of [INSERT] above the [Central Bank of Kenya’s base lending rate];
       6. “**Product**” means [DESCRIBE THE PRODUCTS TO BE SUPPLIED];
       7. “**Services**” means the services provided by the Agent to the Principal as set out in clause 3 herein; and
       8. “**The Agent’s Advocates**” means [INSERT].
       9. “**The Principal’s Advocates**” means [INSERT].
  3. **Interpretations**
     + 1. Clause headings shall not affect the interpretation of this Agreement.
       2. Unless the context otherwise requires, references to clauses are to the clauses of this Agreement.
       3. Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.
       4. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
       5. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
       6. A reference to writing or written includes fax and email.
       7. Where the words include(s), including, or in particular are used in this Agreement, they are deemed to have the words "without limitation" following them.
       8. Other and otherwise are illustrative and shall not limit the sense of the words preceding them.
       9. A reference to a claim includes any claim, demand, action or proceeding of any kind, actual or contingent.

# APPOINTMENT

* + 1. With effect from the Commencement Date, the Principal hereby appoints the Agent on an [exclusive] OR [non-exclusive] basis for purposes of performing the Services for an initial period of [INSERT THE PERIOD OF THE CONTRACT] from the date hereof (the “**Contract Period**”) to the extent that if the Agent does not procure the Buyer to purchase the Products within the said period, this Agreement shall be deemed to have lapsed PROVIDED THAT the Contract Period may be renewed for such period as the parties shall agree in writing on the lapse of the Contract Period.

# SERVICES

* 1. [LIST THE SERVICES TO BE PROVIDED]

# THE PRINCIPAL’S OBLIGATIONS

* 1. [LIST THE PRINCIPAL’S OBLIGATIONS]

# PAYMENT

* 1. In consideration of the Agent performing the Services, the Principal agrees to pay the Agent the Commission.
  2. The Parties hereby agree that the Commission shall become due and payable to the Agent within [Seven (7) days] of the Principal receiving from the Buyer the payment for the Products supplied to the Buyer through the Agent [PROVIDED THAT if the Principal fails to pay the Commission within the seven (7) days, the Principal shall pay Interest on the outstanding amount from the date the amount becomes due until the amount is paid in full];
  3. The Commission shall be paid to the Agent (without any deduction, set-off or withholding) through the Agent’s nominated bankers in Kenya as shall be communicated to the Principal at the time of payment.

# CONTRACT PERIOD

* + 1. Subject to the provisions of Clause 2, this Agreement shall remain valid and binding upon the Parties from the Commencement Date until after the payment of the Commission to the Agent in terms of Clause 5 herein.

# 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. In this regard, should a situation not addressed by this Agreement arise, then the Parties shall cooperate to resolve it bearing in mind the completion timelines for the performance of the Services.

# WARRANTY AND INDEMNITY

* 1. The Principal warrants to the Agent that:
     + 1. it is under no restriction likely to prevent it from performing this Agreement; and
       2. it has the full right, power and authority to execute, deliver and perform this Agreement.
  2. The Principal hereby undertakes and agrees to unconditionally indemnify the Agent against any and all losses (including legal fees as a result of litigation), penalties or damages that the Agent may incur as a result of the failure by the Principal to supply the requested Product amounts or supply the Products within the stipulated timelines or breach of any other term of this Agreement.

# CONFIDENTIALITY

* + 1. Neither the Principal 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. 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 or pursuant to this Agreement or which comes into its knowledge or possession as a result of this Agreement.

# DISPUTE RESOLUTION

* 1. **Good Faith Negotiations**
     1. In case of any dispute arising out of this Agreement including any question regarding its interpretation, existence, validity or termination, each party will use its best efforts to resolve the dispute by good faith negotiation within a period of Thirty (30) Business Days following notification of the dispute.
  2. **Mediation**
     + 1. If the dispute has not been settled pursuant to the Good Faith Negotiations under clause 10.1 within (30) Business Days from when the settlement discussions were instituted, any party may elect to refer the dispute to mediation. The mediation shall take place in in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015.
       2. The mediator shall be appointed by mutual agreement between the Parties or in default of such agreement within five (5) days of the notification of a dispute, upon the application of either Party, by the Registrar of the Nairobi Centre for International Arbitration in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015.
       3. The mediation shall take place in Nairobi and shall be conducted in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015.
       4. Unless otherwise agreed, the mediation will start not later than Fourteen (14) Business Days from the of notification of the dispute. No party may commence any court proceedings or arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and the mediation has terminated.
       5. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.
  3. **Arbitration**
     + 1. If the dispute has not been settled pursuant to Good Faith Negotiations under Clause 10.1 or under Mediation under clause 10.2 above within thirty (30) Business Days (or such longer period as may be agreed upon between the parties) from when the settlement discussions were instituted, any party may elect to commence arbitration. Such arbitration shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement within fourteen (14) days of the notification of a dispute, upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitration of the United Kingdom.
       2. Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.
       3. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.
       4. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.
       5. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

# TERMINATION

* + 1. Subject to any extension of the Contract Period, this Agreement shall automatically terminate upon the lapse of the Contract Period.

# NON- CIRCUMVENTION

* 1. For the duration of this Agreement, the Principal shall learn from the Agent, the names and telephone numbers of buyers, sellers, investors, agents, individuals and/or trusts (hereinafter called “**Contacts**”).
  2. The Principal agrees to keep confidential the names of any Contacts introduced or revealed to it by the Agent, and that their company, associates, corporations, joint ventures, partnerships, divisions, subsidiaries, employees, agents, heirs, assigns, designees, or consultants.
  3. The Principal agrees not to contact, deal with, negotiate or participate in any transactions with the Contacts without first entering a written agreement with the Agent and paying the Agent a Commission unless the Agent gives prior written permission.
  4. The Parties agree not to disclose, reveal or make use of any information during discussion or observation regarding methods, concepts, ideas, product/services, or proposed new products or services, nor to do business with any of the revealed contacts without the written consent of the introducing party or parties.

# NOTICES

* 1. Except as specifically provided elsewhere in this Agreement, all notices required or permitted to be given under this Agreement shall be in writing and shall be sufficient if;
     + 1. personally, delivered to the registered office of the intended recipient, on the next working day; or
       2. sent by fax or email, upon receipt of transmission confirmation by the sender using the correct email address of its relevant personnel; or
       3. sent by prepaid post or registered mail within fourteen (14) working days from the date of posting provided that the same is also sent by email to the intended addresses.
  2. All notices shall be sent to respective Parties at the addresses hereinabove indicated or at the recipient’s last known principal place of business. Either party may change its address by notice to the other party as aforesaid.

# COSTS

* + 1. Each party shall bear its own costs incurred in the negotiation, preparation and execution of this Agreement.

# GENERAL

* 1. The Parties undertake to observe the utmost good faith in their dealings with each other and to co-operate in the implementation of their respective obligations under this Agreement.
  2. Payment of any amounts payable hereunder by the Principal shall be made free and clear of and without any set-off counterclaim or deduction whatsoever. If at any time, whether now or in the future, any applicable law regulation or regulatory requirement or any competent taxing authority requires the Principal to make any deduction or withholding in respect of taxes from any payment due under this Agreement for the account of the Agent the sum due from the Principal in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Agent receives a net sum equal to the sum which the Agent would have received had no such deduction or withholding been required to be made and the Principal shall indemnify the Agent against any losses or costs incurred by the Agent by reason of any failure of the Principal to make any such deduction or withholding.
  3. No failure or delay to exercise any power, right or remedy by the Agent 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.
  4. The rights and remedies of the Agent 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. [Time is](https://www.lawinsider.com/clause/time-is-of-the-essence) of the essence of this Agreement; provided, however, that notwithstanding anything to the contrary in this Agreement, if the time period for the performance of any covenant or obligation, satisfaction of any condition or delivery of any notice or item required under this Agreement shall expire on a day other than a Business Day, such time period shall be extended automatically to the next Business Day.
  8. This Agreement or any rights or benefits hereunder shall not be assignable, transferable or divisible in whole or in part by either Party without the prior written consent of the other Party.
  9. Each party, on receipt of notice from the other party, will sign or cause to be signed all further documents, do or cause to be done all further acts, and provide all assurances as may reasonably be necessary or desirable to give effect to the terms of this agreement.
  10. The Parties warrant that they have the authority to enter into this agreement and that the individual executing this Agreement on behalf of each Party has been fully empowered to execute this Agreement on behalf of such Party and that all necessary corporate action to authorise the execution of this Agreement has been taken by such Party.
  11. Each of the parties hereby agrees and confirms that it has executed this Agreement with the intention to bind itself to the contents hereof.
  12. This Agreement may be executed in several counterparts, each of which shall be an original but all of which shall together constitute one and the same Agreement.
  13. The construction, validity and performance of this Agreement shall be governed by and construed in accordance with the Kenya and the parties hereby agree to submit to the jurisdiction of the Kenyan courts.
  14. This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes all other agreements statements representations or warranties made by or between the Parties or either of them the subject matter herein.
  15. This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**IN WITNESS WHEREOF** this Agreement has been duly executed by the Parties hereto as of the day and year first above written.

**=======================space deliberately left blank==============**

**SIGNED** by the duly authorized signatories of )

**[INSERT]** )

in the presence of:- )

)

)

**Authorized Signatory** )

Name:)

Passport/ID No.  )

)

Signature………………………… )

)

**Authorized Signatory** )

Name:)

Passport/ID No.  )

)

Signature………………………… )

Before me:- )

)

)

)

**Advocate** )

**Certificate of Attestation**

**I CERTIFY** that the above named **………………………………….** and **………………………….** being the authorized signatory of the Principal appeared before me on the day of , 2021 and being known to me duly witnessed the affixation of the Principal’s Common Seal to this Agreement and confirm that they duly understood its contents and legal implications thereof.

……………….……………………………..

**ADVOCATE**

**=====================space deliberately left blank=================**

**SIGNED** by the duly authorized signatories of )

**[INSERT]** )

in the presence of:- )

)

)

**Authorized Signatory** )

Name:)

Passport/ID No.  )

)

Signature………………………… )

)

**Authorized Signatory** )

Name:)

Passport/ID No.  )

)

Signature………………………… )

Before me:- )

)

)

)

**Advocate** )

**Certificate of Attestation**

**I CERTIFY** that the above named **……………..**and **………………**being the authorized signatory of the Agent appeared before me on the day of , 2021 and being known to me duly witnessed the affixation of the Agent’s Common Seal to this Agreement and confirm that they duly understood its contents and legal implications thereof.

……………….……………………………..

**ADVOCATE**

**Drawn By:-**

**CM Advocates LLP**

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2nd Ngong Avenue

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**Nairobi.**

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