**MUSIC PRODUCTION AGREEMENT**

**DATED 20\_\_**

**-BETWEEN-**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AND

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Drawn By:-**

**CM Advocates LLP**

I & M Building, 7th Floor,

2nd Ngong Avenue

P.O. Box 22588 - 00505

**Nairobi.**

[www.cmadvocates.com](http://www.cmadvocates.com)

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**MUSIC PRODUCTION AGREEMENT**

This Agreement is made and entered into on the…………. day of ………………. 2020 by and **BETWEEN**:

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED**, a limited liability company incorporated in Kenya under Certificate of Incorporation Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and of P. O. Box \_\_\_\_\_\_ -00200, Nairobi, Kenya (hereinafter referred to as the **“Company”** which expression shall where the context so requires, include its successors in title and permitted assigns) of the one part;

AND

1. **………………………..** holder of Kenyan National Identity Number \_\_\_\_\_\_\_\_\_\_\_\_ and of Post Office Box Number \_\_\_\_\_\_\_\_\_\_ - 00\_00 Nairobi in the Republic of Kenya (hereinafter referred to as "**Artist**" which shall, where the context so requires, include his/her personal representatives and permitted assigns) of the other part.

**WHEREAS:**

1. The Producer is engaged in the business of provision of production services (hereinafter defined).
2. The Artist wishes to engage the Producer in the provision of the Production Services subject to the terms and conditions of this Agreement.

**NOW, IN CONSIDERATION OF**, the premises and the mutual covenants contained herein, the Producer and Artist do hereby agree as follows:

# Definitions and Interpretation

* 1. In this Agreement:
     + 1. **“Agreement”** means any agreements entered into between the Producer and the Artist to which these standard terms and conditions apply;
       2. “**Artist’s Advocates**” means Messrs. CM Advocates LLP, I & M Bank House, 7th Floor, Post Office Box Number 22588-00505, Nairobi;
       3. **“Business Day” or day** means any day, other than a Saturday or Sunday and gazetted public holidays, on which banks are open for business in Kenya.
       4. **“Commencement Date”** means the date set out in clause 3;
       5. **“Confidential Information”** means all information in whatever form including, without limitation, any information relating to suppliers, operations, plans, inventions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium;
       6. **“Master”** means the original record of the song;
       7. **“Parties”** means ……………… Limited and …………………. and  **“Party”** shall be construed to refer to either of them as the context may require;
       8. **“Producer’s Advocates”** means ……………………… Advocates, Apartment 307, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Apartments, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Road, P. O. Box \_\_\_\_\_\_\_ – 00\_00 Nairobi;
       9. “**Production** **Services**” means the production, recording, mixing and mastering of the Recordings;
       10. “**Recordings**” means all Masters owned by the Artist prior to or during the Term and/or delivered under this Agreement
       11. “**Royalty**” means the royalty payable to the Parties in relation to clause 7; and
       12. “**Territory**” means worldwide.
  2. In this Agreement, unless the context otherwise requires, any reference to:
     + 1. the singular includes the plural and *vice versa* and reference to the masculine includes a reference to the feminine gender and neuter and vice versa and words importing the whole shall be treated as including a reference to any part thereof*;*
       2. a person includes reference to a natural person, body corporate, unincorporated body, state, state agency, governmental authority or firm;
       3. any written law includes that law as amended, extended or re-enacted from time to time provided that, as between the Parties, no such amendment, extension or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party;
       4. any agreement or other document includes that agreement or other document as varied or replaced from time to time;
       5. a clause is to the relevant clause of this Agreement;
       6. Clause headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

# Recording Services

* 1. Subject to the terms and conditions of this Agreement, the Artist hereby engages the services of the Producer to exclusively produce the Recordings.
  2. The Producer hereby agrees to provide Production Services and produce the Recordings including the Master to the best of the Producer's ability at all times.
  3. During the Term the Producer shall produce the Recordings on and within two (2) months of the Commencement Date.

# Commencement and Term

* + 1. This Agreement shall come into force on the date hereof (“Commencement Date”) and shall remain in force for a period of two (2) months (hereinafter the “Term”) unless otherwise agreed between the Parties in writing.

# Location

* + 1. It is hereby agreed that production of the Recordings shall take place at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ STUDIOS or as may be agreed from time to time as between the Parties.

# Delivery

* 1. Subject to Clause 6 below, the Artiste shall receive the Recordings including the Master on or before such date falling two (2) months after the Commencement Date.
  2. For the purposes of this Agreement, delivery shall mean the receipt by the Artist of first-class Recordings including the Master that are technically suitable for commercial release and artistically commensurate with any high quality recording in the market.

# Fees

* + - 1. In consideration of the Producer’s Services hereunder, the Artist agrees to pay the Producer the sum of Kenya Shillings \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Kshs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) (exclusive of Value Added Tax) on or before the Delivery Date specified under Clause 5 above.
      2. The Recordings shall remain the property of the Producer until all monies due to the Producer from the Artist are received by the Producer.
      3. If the Producer is engaged to produce the Artist's recordings for a record company, and the Producer shall be entitled to a pro-rata share of Artist's advance based on the Producer receiving a production fee of Kenya Shillings \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Kshs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) per album track produced by the Producer hereunder paid on record one, without regard to the Artist’s recoupment of recording costs.

# Ownership

* 1. All Recordings pursuant to this Agreement together with the performances embodied therein, shall, from the inception of their creation, belong to the Artist exclusively. The Artist shall have the right to secure registration of the sound recording copyright in and to the Masters and any and all renewals of such copyright PROVIDED that the Artist shall secure the registration of the sound recording copyright in the names of both the Artist and the Producer as co-authors sharing the royalty payable at equal ratio of fifty (50%) per cent each.
  2. The Artist (and its Licensees) shall have the sole and exclusive right to use the Masters throughout the Territory or any part thereof in any manner it sees fit, including, without limitation, the sole and exclusive right throughout the Territory
     + 1. To manufacture, advertise, distribute, lease, license, or otherwise use or dispose of the Masters and Records embodying the songs, in any or all fields of use, by any method now or hereafter known, upon such terms and conditions as Artist may elect or, in its sole discretion, refrain therefrom;
       2. To use and publish the names (including all professional, group, and assumed or fictitious names), photographs and biographical material or Artist, in connection with the promotion, exploitation and sale of Records; and
       3. To release derivatives of any one or more of the Masters on any medium or device now or hereafter known, under any name, trademark or label which Artist and its licensees may from time to time elect.
  3. The provision of entitlement under Clause 7(a) above shall extend to all advancements made to the Artist for the use of any such recordings made pursuant to this contract including sale of merchandise and other related advancements

# Termination

* 1. Either Party may terminate production of Recordings by giving one (1) months’ notice.
  2. In the event the Artist or the Producer terminates production of Recordings, the Artist must pay the Producer all monies owed of any and all work performed by the Producer in accordance with Clause 2 of this Agreement.
  3. To be binding and in full effect, termination by either Party must be in writing, signed, dated, notarized, and delivered by Party seeking termination.
  4. The Producer and Artist acknowledge and agree that this Agreement between them may not cover every situation and circumstance that may arise in the future concerning the Recordings. In such an event, the Producer and Artist agree to discuss and negotiate any such situation or circumstance in good faith, toward the goal of reaching a mutually satisfactory resolution thereof, consistent with the spirit and intent of this Agreement.

# Waiver

* + 1. The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy.

# Legal Costs and Expenses

* + 1. Each party shall bear its own costs and expenses relating to the preparation negotiation and execution of this Agreement.

# Notices

* + 1. Any notice or communication under or in connection with this Agreement shall be in writing shall be delivered by hand or sent by post or fax to the addresses aforesaid (for the both parties) or in case of the Company delivered by hand or sent by registered post, telex or fax to the registered office of the Company or at the principal place of business of the Company in Kenya or upon the directors or Company Secretary of the Company or at such other address as the recipient may have notified to the other parties in writing. In the absence of evidence of earlier receipt, any notice or communication shall be deemed to have been received, if delivered by hand, at the time of delivery or, if sent by post, seven days after posting or, if sent by fax, on the completion of transmission**.**

# Arbitration

* 1. The Parties agree that should a dispute arise with respect to the legally binding provisions of this Agreement, they shall make good faith efforts to resolve the dispute on a business basis through negotiations between the Parties’ duly authorised representatives. Such consultations shall begin immediately after either of the Parties has delivered to the other a written request for such consultation. If within fifteen (15) days following the date in which such notice is given the dispute cannot be resolved, the Parties agree to submit the matter to a single arbitrator to be appointed by the Parties jointly and failing agreement by the Chairman, for the time being, of the Chartered Institute of Arbitrators, Kenya branch.
  2. Such arbitration shall be conducted in Nairobi and resolved in accordance with the provisions of the Arbitration Act of 1995 as amended from time to time.

# General

* 1. No failure or delay to exercise any power, right or remedy by the Company 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 rights and remedies of the Company provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
  3. The Parties intend that the contents of this Agreement shall be legally binding and enforceable.
  4. 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.
  5. 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.
  6. 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 instrument.
  7. This Agreement constitutes the whole Agreement between the parties hereto in relation to the subject matter of this Agreement and no variations thereof shall be effective unless made in writing and signed by all the parties. This Agreement supersedes and replaces any Agreement whatsoever that may have subsisted between the parties hereto in any way relating to the subject matter.
  8. 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.
  9. Each of the parties hereby agrees and confirms for the purposes of the Law of Contract Act (Chapter 23, Laws of Kenya) and the Companies 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 the year and date first hereinabove written:

**SIGNED** on behalf of **\_\_\_\_\_\_\_\_\_\_\_** ]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED** ]

by: ]

]

Director ] ……………………..

]

**In the presence of** ]

]

**Witness** ] Signature: ……………………………..

] Name: ……………………………..

] Date: ……………………………..

Signed by )

**……………………………** ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

)

)

in the presence of: )

)

**Witness** ) Signature: ……………………………..

) Name: ……………………………..

) Date: ……………………………..

**Drawn By:-**

**CM Advocates LLP**

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