**SIDE ARTIST AGREEMENT**

This **SIDE ARTIST AGREEMENT** (this “**Agreement**”) is made on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ between

1. ……………………………………………of Post Office Box Number………,………,…….;…( hereinafter the “**Employer**”) and
2. ……………………………………………of Post Office Box Number (hereinafter the “**Side Artist**”).

**WHEREAS:**

1. The Employer has engaged the Side Artist to perform as a …………on the Master embodying the performances of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Artist**”) for inclusion, at Employer’s election, on a recording to be released for sale to the public ("**Record**").
2. The Side Artist and the Manager have recorded the terms hereinafter appearing to govern the engagement.

# **Definitions**

* 1. "**Audio Products**" shall mean and include without limitation all forms of recording and record reproduction by which sound may be fixed, embodied, or recorded by any method now known or later developed, for any and all public or commercial uses including magnetic recording tape, compact disc, Digital Formats, Electronic Transmissions, On Demand Usages, laser disc, film, electronic video tapes or recordings, and any other medium or device now known or later developed.
  2. "**Digital Format**" shall mean the format of the Masters other than a physical configuration typically created in a computer file format (e.g. MP3, WAV, etc. ) that are distributed and sold to consumers by Electronic Transmission.
  3. "**Electronic** **Transmissions**" shall mean the transmission and distribution to the consumer, other than the distribution of physical Audio Products to consumers, whether of sound alone, sound coupled with an image or sound coupled with data, in any form including but not limited to the downloading or other conveyance of Artist's performance on Masters, Digital Formats or audiovisual recordings recorded hereunder by telephone, satellite, cable, direct transmission over wire or through the air, and on-line computers whether a direct or indirect charge is made to receive the transmission.
  4. "**Master**" shall mean every recording of sound, whether or not coupled with a visual image, by any method and on any substance or material, whether now or hereafter known, which is used or useful in the recording production and/or manufacture of Audio Products.
  5. “**On-Demand Usages**” shall mean licensed usages of the Licensed Masters, other than as Audio Products, as part of a service containing a functionality which permits a consumer to access a particular Licensed Master on a so-called “on-demand” basis including so-called music subscription services (e.g. Spotify).
  6. "**Recording Costs**" shall mean all direct expenses paid or incurred by Employer in connection with the production, mixing and mastering of the Master including but not limited to studio rentals, tape, engineering, editing, instrument rental, and mastering, any per diems of any other person rendering services in connection with the recording of the Masters.

# **Side artist's services:**

* 1. The Side Artist shall perform as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(musician/vocalist)* on the Master embodying the performances of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Artist”) for inclusion, at the Employer’s election, on a recording to be released for sale to the public ("Record").
  2. Production of the Master shall take place at dates and times to be mutually agreed upon by the Employer and the Side Artist.
  3. The Side Artist shall perform on the song(s) presently titled "\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_" (“Song(s)”).
  4. Recording sessions for the Master will be conducted by the Artist at the Artist's sole cost and expense.
  5. The Employer shall pay all Recording Costs of the Masters recorded hereunder as and when due.

# **Compensation**

* + 1. The Employer shall pay the Side Artist for Side Artist’s services listed in this Agreement a payment of Kenya Shillings \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(KShs……….)

# **Master ownership**

* 1. Each Master made under this Agreement, from the inception of recording, will be will be deemed transferred to the Artist by this Agreement and this Agreement may be filed with the Kenya Copyright Board as an official transfer of copyright if such be necessary.
  2. All Masters made under this Agreement, from the inception of recording and Audio Products derived therefrom, shall be the sole property of Artist, free from any claims whatsoever by Side Artist or any other person; and the Artist shall have the exclusive right to claim ownership of and register the copyright to those Masters in his name as the owner and author of them and to secure any and all renewals and extensions of such copyright throughout the world.

# **Musical Compositions (“Songs”)**

* + 1. It is acknowledged that all song(s) or material recorded on the Masters ("Song(s) are owned by the Artist and or the Employer and that the Side Artist makes no claims to ownership in the Songs. In the event the Side Artist makes any contribution of authorship to the Songs, in whole or in part, alone or in collaboration with Employer or with others employed by Employer, then any such contribution will be deemed transferred to the Employer by this Agreement. The Side Artist acknowledges that the Employer shall have the exclusive right to claim copyright in those Song(s) or collaborations in the name of the Side Artist as the owner and author and to secure any and all renewals and extensions of such copyright throughout the world.

# **Rights to use name**

* + 1. Employer shall have the world wide right in perpetuity to use and to permit others to use the Side Artist's name, (both legal and professional, and whether presently or hereafter used by the Side Artist), likeness, other identification, and biographical material concerning the Side Artist for the sole purposes of trade and otherwise without restriction in connection with the Masters recorded hereunder, and the Audio Products derived therefrom.

# **Credit**

* + 1. The Employer shall give Side Artist appropriate credit on Record packaging whether printed or in a format for internet, digital or electronic sales as is customary in the music industry for all configurations. Such credit shall be in substantial form: “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_appears as a *vocalist/musician* on the song titled \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ”.

# **Independent contractor**

* + 1. The Side Artist hereby acknowledges and agrees that the Side Artist's services are being provided hereunder as an independent contractor [and nothing](https://www.lawinsider.com/clause/independent-contractors) contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between the Employer and the Side Artist. At no time shall one Party make commitments or incur any charges or expenses for or in the name of the other Party.

# **Notice**

* + 1. Any notice, request or demand required or permitted to be given, made or served under this Agreement shall be in writing and shall be deemed to have been duly given, made or served when addressed and sent by registered postage by a party to the other intended to be served through the recipient party’s postal address as contained in this Agreement or whose change is subsequently notified to the other in writing or alternatively delivered to the postal address of the firm of Advocates acting for and on behalf of the recipient party as contained in this Agreement or whose change is subsequently notified to the other party’s Advocates in writing or alternatively delivered by hand to the recipient party’s Advocates address aforesaid and duly acknowledged by stamping on a counter-part copy thereof. Any notice, request or demand sent by registered postage shall be deemed to have been made, served and received within three (3) days from the date of being sent by registered postage as evidenced by the registered postage receipt issued by the postal service thereof.

# **Assignment**

* + 1. This Agreement shall be binding on the parties and their respective successors and assigns. None of the parties shall be entitled to assign this Agreement or any of its rights and obligations hereunder except as expressly permitted in this Agreement.

# **Further Assurance**

* + 1. Each party shall co-operate with the others and execute and deliver to the others such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.

# **Force Majeure**

* 1. Neither Party shall not be liable in respect of any delay in performing, failure to perform, or failure to adequately perform any of his or its obligations hereunder in consequence of any act, cause or event which:
     + 1. was not within his or its control;
       2. was not caused or precipitated by his or its negligence; and
       3. could not have been prevented by his or its reasonable diligence, including without limitation:
       4. any act of God;
       5. any war or hostilities (whether war be declared or not);
       6. any act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization;
       7. any plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions;
       8. any sabotage, riots or other act of civil disobedience, civil commotion, rebellion, act of a public enemy or invasions;
       9. any judicial actions, strikes, lockouts, industrial disputes or actions of such nature;
       10. any actions or inactions of any government or any agency or department;
       11. any act of terror;
       12. any storms, floods or other inclement, weather, earthquakes, subsidence, epidemics or other natural physical disasters; and
       13. fire, accident, explosion or shortage of labour
     1. (hereinafter called a “**Force Majeure Event**”) for so long as and to the extent that the effects of the Force Majeure Event continue.
  2. The Party which claims that a Force Majeure Event has prevented it from fulfilling any of his or its obligations under this Agreement shall, within five (5) days of the occurrence of a Force Majeure Event, notify the other Party (the “**Force Majeure Notice**”) of the Force Majeure Event in sufficient detail including the nature and effect of the Force Majeure Event. Similarly, Such Party shall notify the other Party when the Force Majeure Event ceases.
  3. Where the Force Majeure Event continues for more than one (1) months after the date of the Force Majeure Notice either party may terminate this Agreement but without prejudice to any accrued rights either party may have against the other but subject to agreement, such affected Party undertakes to continue its performance of obligations under this Agreement immediately the Force Majeure event ceases.
  4. Any payment obligations arising during the subsistence of the Force Majeure event shall be deemed to be suspended. In the event that the Agreement is terminated in accordance with the terms of this Clause 21, the Vendor shall refund to the Purchaser any monies that have been paid to the Vendor by the Purchaser under the terms of this Agreement within thirty (30) days of such termination.

# **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 15.1 above 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 date 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 15.1 or under Mediation under clause 15.2 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.

# **Severance**

* + 1. If any provision of this Agreement or part thereof is rendered under any law void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

# **Survival Of Rights, Duties And Obligations**

* + 1. Termination of this Agreement for any cause shall not release a party from any liability which at the time of termination has already accrued to another party or which thereafter may accrue in respect of any act or omission prior to such termination.

# **Merger**

* + 1. This Agreement shall merge on completion of the sale and purchase of the Vehicle. However, completion shall not limit, cancel or extinguish the performance of any outstanding duties or obligations under this Agreement.

# **Waiver**

* + 1. No failure or delay to exercise any power, right or remedy by either Party 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.

# **Variation**

* + 1. 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.

# **Cumulative Rights And Remedies**

* + 1. The rights and remedies of the Parties provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

# **Entire Agreement**

* + 1. This Agreement and the documents referred to herein constitute the entire agreement between the parties and, save as otherwise expressly provided, no modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless made in writing specifically referring to this Agreement and duly signed by the parties.

# **Governing Law**

* + 1. The construction, validity and performance of this agreement shall be governed by Kenyan law.

**IN WITNESS HEREOF**, the parties have executed this agreement as of the effective date of this Agreement set forth above.

|  |  |
| --- | --- |
| Signed by the duly authorised representative of the Manager  **………………………………………..**  *Signature:*  *Name:*  *Designation:* | Signed by the duly authorised representative of the Producer  **……………………………………………**  *Signature:*  *Name:*  *Designation:* |
| in the presence of: -  *Witness’s signature*  *Witness’s Name:*  *Witness’s Designation*  *Witness’s Address* | in the presence of: -  *Witness’s signature*  *Witness’s Name:*  *Witness’s Designation:*  *Witness’s Address* |