**PRODUCER AND ARTIST PRODUCTION AGREEMENT**

This **PRODUCER AND ARTIST PRODUCTION AGREEMENT** (the “Agreement”) dated the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2\_\_\_\_, between

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

**WHEREAS: -**

1. The Producer is a record production firm and has represented, warranted and guaranteed to the Artist that it has the requisite professional skills and capacity to perform/offer record production services hereinafter defined.
2. The Artist has engaged the Producer for the Term to offer the Services hereinafter defined upon the terms and conditions hereinafter appearing.

# Definitions:

* 1. "**Audio Product**" shall mean all forms of sound reproductions whether now known or unknown, on or by which sound may be recorded for later transmission to listeners, embodying sound, including, without limitation, discs of any speed or size, vinyl, compact disc, reel-to-reel tapes, cartridges, cassettes, audiovisual recordings, Digital Formats, Digital Transmissions, direct transmissions or any other configurations now known or created in the future.
  2. "**Digital** **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 The Artist's performance on Masters 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.
  3. "**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 that is produced by The Producer for The Artist under this Agreement.
  4. “**Net Receipts**” shall mean the gross receipts paid to and received by The Artist or credited to The Artist’s account from the exploitation of the Masters created under this Agreement less any and all recording costs, including any Fee paid to The Producer under this Agreement that are recouped from The Artist’s royalties by the record company that releases the Masters (“The Artist’s Record Company”). Any future advances or recording costs for master recordings not recorded hereunder that are cross collateralized from the sale of the Masters by The Artist’s Record Company shall not affect the payment of royalties owed to The Producer from Audio Products sold that are derived from the Masters.
  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. **“PPD (Price Per Dealer)”** shall mean the price to dealers for the sale of an Audio Product, utilized by The Artist or its distributors as applicable throughout each country within the Territory. If no PPD can be established for a country within the Territory, or if The Artist chooses, PPD shall mean the actual amount paid to and received by The Artist for the sale of an Audio Product.

# Engagement:

* 1. The Artist hereby engages the Producer to perform record production services and produce a master recording or recordings of performances of the Artist for inclusion, at the Artist's election in Audio Products whether now known or unknown (the “**Masters**”).
  2. Production of the Masters shall take place at dates and times to be mutually agreed upon by the Artist and the Producer.
  3. The number of Masters to be produced under this Agreement is: \_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_).

# Recording Procedure:

* 1. Recording sessions for the Masters will be conducted at the Artist's sole cost and expense.
  2. The Producer shall deliver to the Artist upon completion, a fully mixed, edited, and equalized Master in a format to be mutually agreed to by the parties, commercially satisfactory to the Artist for use on Audio Products and all original and duplicate Masters of the music, lyrics and all other material recorded.
  3. The Producer shall act diligently in completion of production of the Master.
  4. All Songs recorded hereunder shall be listed on Schedule “A” attached to this Agreement.

# Compensation:

* 1. The Artist shall pay the Producer the following for the Producer's services listed in this Agreement:
  2. A one off fee (hereinafter the “Fee”) of Kenya Shillings………. (KShs.\_\_\_\_\_\_) shall for the Producer’s services provided hereunder.
  3. In addition to the Fee set forth herein, the Producer shall also receive a royalty (“Royalty”) on exploitations of the Masters as follows:
  4. Audio Products: The Artist shall pay the Producer an amount equal to \_\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_%)of the Published Price to Dealer for the sale of Audio Products. Additionally, the Producer’s Royalty shall be divided by a fraction, the numerator of which shall be one (1) and the denominator of which shall be the number of other the producers whose performances are embodied on a Master. Additionally, the Producer’s Royalty for sales of Audio Products shall be divided by a fraction, the numerator of which shall be the number of Masters produced by the Producer appearing on any Audio Product embodying the Masters and the denominator of which shall be the total the number of all Royaltybearing masters appearing on the Audio Product.
  5. On Demand Usages: The Artist shall pay to the Producer\_\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_%) of the Net Receipts the Artist is paid, or credited to the Artist’s account, for On-Demand Usages for non-interactive sound recording performance royalties. For all royalties paid to and received by the Artist directly from third parties (i.e. Spotify), the Artist shall account to and pay the Producer such percentage. If the Artist is contractually obligated to a record company that will release the Masters recorded by the Producer under this Agreement, the Artist shall sign a letter of direction to Record Company directing the record company to pay the Producer, the Producer’s share of royalties directly.
  6. Non-Interactive Sound Recording Performance Royalties: The Producer shall be entitled to receive \_\_\_\_\_\_\_\_\_\_ percent (\_\_\_%) of the amounts paid to, or credited to the Artist’s account, for non-interactive sound recording performance royalties collected by the Artist’s Sound Recording Performance Royalty Organization (hereinafter “Sound Recording PRO”). The Artist shall instruct the Sound Recording PRO, to pay the Producer the percentage, set forth in this subparagraph, of the royalties otherwise payable to the Artist. The Artist shall execute a letter of direction simultaneous with the execution of this Agreement. This Agreement shall not be valid and effective until a fully executed letter of direction is delivered to the Producer.
  7. All other exploitations: The Producer shall be entitled to receive \_\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_%) of the Net Receipts the Artist is paid, or credited to the Artist’s account, for all other uses of the Masters now known or created in the future.

# Rights in Recording:

* + 1. All rights, title and interest in the Masters which are produced under this Agreement by the Producer will be deemed subject to clause 10 above 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. All Masters made under this Agreement, from the inception of recording and Audio Products derived therefrom, shall be the sole property of the Artist, free from any claims whatsoever by the Producer 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.

# Name & likeness:

* + 1. The Artist shall have the world wide right in perpetuity to use and to permit others to use the Producer's name, (both legal and professional, and whether presently or hereafter used by the Producer), approved likeness, other approved identification, and approved biographical material concerning the Producer without restriction in connection with the sale marketing or promotion of the Masters recorded hereunder or the Audio Products derived therefrom.

# Credit:

* + 1. The Artist shall give the Producer appropriate production and songwriting credit on all compact discs, record and cassette labels or any other record configuration manufactured which is now known or created in the future that embodies the Masters created hereunder and on all cover liner notes. Such credit shall be in substantial form: "Produced by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ". Further, for those songs that are arranged by the Producer, the Producer shall receive a credit as having arranged the song. The Artist shall provide the Producer with a copy of the Audio Product, and any accompanying artwork thirty (30) days prior to release of the Audio Product, along with a notification of the official release date. In the event the Artist manufactures physical configurations of an Audio Product, the Artist shall provide the Producer with five (5) copies of the completed Audio Product in the physical configuration format within thirty (30) days after manufacture of the configuration.

# Musical Compositions ("Songs"):

* + 1. Subject to clause 10 above, all songs or material recorded on the Masters recorded hereunder which are written, composed or arranged by the Producer, in whole or in part, alone or in collaboration with the Artist or with others employed by the Artist, shall be deemed transferred to the Artist by this Agreement. All such songs or material recorded under this Agreement, from the inception of recording, shall be the sole property of the Artist, free from any claims whatsoever by the Producer or any other person; and the Artist shall have the exclusive right to claim copyright in those songs or collaborations in the Artist's name as the owner and author of them and to secure any and all renewals and extensions of such copyright throughout the world.

# Mechanical licensing and royalties:

* + 1. All musical compositions or material recorded and appearing on the Masters pursuant to this Agreement (“Songs”), which are written or composed, in whole or in part, or owned or controlled directly or indirectly by the Producer (hereinafter "Controlled Compositions"), shall be and are hereby perpetually licensed to the Artist for a reasonable license fee in accordance with industry practice and relevant legislation in Kenya. Appropriate credit as a songwriter showing the Producer’s performance right society affiliation shall be given to the Producer based on the Controlled Compositions written or co-written by the Producer under this Agreement.

# Accounting:

* 1. The Artist shall account to the Producer for any Royalties due under this Agreement within sixty (60) days of receipt of payment by the Artist. The Artist shall send such accounting with payment, if any, to The Producer at The Producer's address listed below. In the event The Producer's address changes, The Artist shall have no obligation to send the accounting and royalty payment to any other address until The Producer shall give to The Artist in writing such new address.
  2. The Producer shall be deemed to have consented to all royalty statements and all other accountings rendered by the Artist hereunder and each such royalty statement or other accounting shall be conclusive, final, and binding, and shall not be subject to any objection for any reason whatsoever unless specific objection in writing, stating the basis thereof, is given by the Producer to the Artist within two (2) years after the date rendered.
  3. The Artist shall maintain books of account concerning the sale of Audio Products hereunder. The Producer, or a representative, on the Producer's behalf, may, at the Producer's sole expense, examine the Artist’s books (relating to the sale of Audio Products hereunder) for the sole purpose of verifying the accuracy thereof, during the Artist’s normal business hours and upon reasonable written notice. The Artist’s books relating to any particular royalty statement may be examined as aforesaid only within two (2) years after the date rendered and the Artist shall have no obligation to permit the Producer to so examine the Artist's such books relating to any particular royalty statement more than once.

# Warranties:

* 1. The Producer hereby warrants that the Masters shall be entirely the property of The Artist, free of any claims whatsoever by the Producer or any person deriving any rights or interest from the Producer.
  2. The Producer warrants that he is the sole owner of the performances on the Masters created by the Producer and/or has been granted all rights associated with the performance embodied on the Masters and hereby has the right to grant the terms of this Agreement. The performances embodied in the Masters, and any use thereof by The Artist or its grantees, licensees, or assigns, will not violate or infringe upon the rights of any third party.
  3. The Producer agrees to indemnify and hold harmless the Artist, its officers, agents, employees, attorneys and assignees, from and against any and all claims, damages, liabilities, costs and expenses including but not limited to attorney's fees, arising out of any breach of any representation, warranty, term or agreement made or to be performed by this Agreement.

# 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
  2. (hereinafter called a “**Force Majeure Event**”) for so long as and to the extent that the effects of the Force Majeure Event continue.
  3. 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.
  4. 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.
  5. 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 Artist  **………………………………………..**  *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* |

**Schedule “A”**

**List of songs**

**Title Author’s Name Ownership %**