

CONTENT PARTNER COMMERCIAL AGREEMENT

Between

(the "Content Partner")	AFRIPODS LIMITED
A.K.A.	
Registration number	
Address	Kenya
P. O. Box	
Email	abhishek.yadav@gmail.com
Signed at	14-07-2023
Name	
Designation	Artist

AND

SPICE DIGITAL SOUTH AFRICA (Pty.) LIMITED

("SPICE")

Registration number	M2011/010897/07
Address	8 th Floor Sinosteel Building, 159 Rivonia Road Sandton, Johannesburg, South Africa
Email	infosva@spiceafrica.com

Effective Date	07/14/2023
Territory / Countries of Distribution	Specified in Appendix B
Nature of Exclusivity	Exclusive for Distribution Channels listed in Appendix B
License Fee	Specified in Appendix B

Reporting	Within 10 days of Spice receiving the reports from the third parties, i.e. Telecom Operator, YouTube etc.
Payment	On or before 10th of succeeding month in respect of payments received by Spice in a particular calendar month
Currency of Payment	
Content Licensed	Appendix A
Initial Term	_____ year(s)
Renewal of Term	After completion of the Initial Term, the Agreement shall get automatically renewed on a year by year basis unless terminated earlier by either Party
Liquidated Damages	
Lock in Period	
Minimum Accrued Amount	
Declaration by Content Partner	Appendix D

CONTENT PARTNER COMMERCIAL AGREEMENT

This Agreement is made on this Friday day of **July, 2023** between:

AFRIPODS LIMITED, an individual residing at **Kenya** (hereinafter referred to as the “**Content Partner**”, which expression shall unless repugnant to the context or meaning thereof shall mean and include its legal heirs, successors and permitted assigns) of the First Part.

AND

SpiceDigital South Africa (Pty.) Limited, a Company incorporated in **South Africa** having its registered office at **8th Floor Sinosteel Building, 159 Rivonia Road Sandton, Johannesburg, South Africa** (hereinafter referred to as “**SPICE**”, which expression shall unless repugnant to the context or meaning thereof shall mean

and include its successors and permitted assigns) of the Other Part;

Hereinafter SPICE and Content Partner may be referred to individually as the **“Party”** and collectively as the **“Parties”**

WHEREAS:

1. Content Partner has legally developed/ acquired Content for monetization on the Distribution Channel;
2. SPICE is in the business of providing technology driven value added services on the Distribution Channel;
3. SPICE and Content Partner are desirous of entering into this Agreement for commercial distribution of Content through the Distribution Channel subject to the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual promises set forth herein and for other good and reasonable considerations, the receipt of which is hereby acknowledged by each Party, the Parties agree as follows:

1. DEFINITIONS

1.1 The following capitalized words where used in this Agreement will have the meanings as set out next to them:

1.1.1 “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party;

1.1.2 "Agreement" means the terms and conditions of this agreement alongwith all its appendices and cover sheet;

1.1.3 “Content”mean all literary, artistic and musical works, information and services including without limitation, any text, music, sound recordings, audio, audio-visual and video recordings, cinematographic films alongwith all underlying works, photographs, artist pictures in public domain, metadata; as more specifically, though not exhaustively, described in Appendix A;

- **"Distribution Channel"** shall mean and include mediums, technology, mobile application, website, device, digital distribution platforms and portals, the details whereof are specified in Appendix B;
- **“Download”** shall mean an electronic digital transmission of Content which results in creation of an electronic digital format copy of the Content on the device or computer of the End User;
- **“End-User”**shall mean an individual person or entity who ultimately uses the Contents for his/her own use through the Services offered vide the Distribution Channel;
- **“Media Partner”** shall mean any media agency or electronic and print media platform, including but not limited to, TV, radio, newspapers, magazines, web sites or web portals used by SPICE for promotion of the Content and Services;
- **“Net Content Sales Revenue”** shall mean all revenues (excluding subscription revenue) collected by SPICE from the distribution and licensing of the Content through a Distribution Channel after deducting the following (i) all statutory and regulatory taxes, withholding taxes; (ii) the revenue share of Telecom Operators; (iii) any agency fees; (iv) the fee of Distribution Channel; (v) the costs and expenses of Media Partners;

1.1.9 “Proportionate Usage” it shall mean the ratio of usage of the Content Partner’s Content with the usage of Spice Content on the Service using a Distribution Channel and represented as a percentage;

1.1.10 "Promotions" shall mean marketing and promotion of the (i) third party products and services on which

the Content of the Content Partner is distributed and (ii) the Content on all mediums and by all modes and includes marketing and promotion by using Content Partner's images, audio and audio-visual advertising, promotional display, contest, campaigns, use of Content/ marketing materials and documents in any language, conducting End-User surveys, free trials and other activities aimed at encouraging End Users and/ or inviting other users, to use or download such third party products and services and the Content;**1.1.11“Rights”** shall include publishing rights, public performance rights, mechanical rights, master rights, recording rights, print rights, synchronisation right, broadcasting rights, translation rights, adaptation rights, sampling rights, mixing rights, new media rights and creating derivative content including the rights to commercially exploit, reproduce in any material form, adapt, reformat, store, digitize, transmit, encode, download, sub-license, market, promote, distribute (including direct distribution to End Users), use in Promotions, issue copies to the public, communicate to the public in the manner enabling any person to have interactive access to such Content from any place and at any time at its own choice, by browsing, streaming and/or download through the Distribution Channel for the benefit of the End User.

1.1.12 “Service” Shall mean the provision of value added service comprising of the Content by SPICE and/ or any of its authorized distribution partner to the End User through a Distribution Channel;

1.1.13 “Spice Content” means collection of all Content licensed to SPICE by its content partners;

1.1.14 “Spice Net Revenue” shall mean all revenues collected by SPICE from advertising, download, subscription and the distribution and licensing of the Spice Content through a Distribution Channel after deducting the following (i) all statutory and regulatory taxes, withholding taxes ; (ii) the revenue share of Telecom Operators; (iii) any agency fees; (iv) the fee of Distribution Channel; (v) the costs and expenses of Media Partners;

1.1.15“Telecom Operator” means an entity, who provides telecommunication services including wireless and fixed line telecom services in the Territory under a Government/ regulatory licenses;

2. GRANT OF LICENSE

- During the Term of this Agreement and throughout the Territory (mentioned in Appendix B), Content Partner hereby grants to SPICE the rights for Promotions and the exclusive license with the Rights to use, distribute and sub-license the Content, by means of the Distribution Channels, for the provision of the Content in the Services to the End Users and SPICE accepts the same, in consideration of license fees to be payable to the Content Partner and subject to the terms and conditions of this Agreement.
- Exclusive license means that Spice, to the exclusion of all other parties including the Content Partner itself, has the sole right to monetize and distribute the licensed Content on the Distribution Channels (as stated in Appendix B) in consonance with the terms of this Agreement.

3. RESPONSIBILITIES/ OBLIGATIONS OF THE PARTIES

3.1 Content Partner shall:

3.1.1 be obliged for providing the Content as per Appendix A with complete and accurate metadata on a continuous and regular basis to SPICE.

3.1.2 be obliged to provide all reasonable assistance to SPICE for Promotions, including on social networking pages of the Content Partner;

3.1.3 be obliged, within 15 days of Effective Date, to initiate termination of any and all existing agreements which are in direct or indirect conflict with the Rights and license granted to SPICE herein;

3.1.4 be responsible for all legal/ copyright issues pertaining to the Content licensed herein;

3.1.5 provide details as to his identity and address, being a copy of passport or a similar government issued id, Certificate of incorporation (in case of a company) which shall form Appendix C;

3.1.6 be obliged, at its own cost and expenses, to procure any and all necessary licenses from any collecting society, entity, music publisher, author, composer, administrator or other copyright holder for the commercial use or exploitation of the Content by SPICE under this Agreement;

3.1.7 be obliged to deliver the Content to SPICE in the PCM, pulse code modulation, (uncompressed .wav format) including the album art together with the right to use all artist images as mentioned herein;

3.2 SPICE's Rights and Obligations

3.2.1 SPICE may endeavor to use its reasonable efforts for Promotions, marketing and distribution of the Content and reserves the right to engage, at its sole discretion, with any Media Partner(s), the revenue share of which will be intimated to the Content Partner;

3.2.2 SPICE shall share the reports and make payments to the Content Partner as mentioned herein;

3.2.3 SPICE reserves the right to reject any part of the Content on the premise of it being inappropriate for distribution, deficient quality, format, bit rate or any other technical deficiency.

3.2.4 Services offered by SPICE may enable End Users to share and exchange reviews and comments against the Content. SPICE does not accept any responsibility for the comments and reviews of End Users pertaining to the Content, nor is SPICE obliged to monitor or moderate comments and reviews.

4. REPORTING AND PAYMENT OF LICENSE FEES

4.1 In consideration of the license and the Rights granted by the Content Partner to SPICE under this Agreement, SPICE shall pay to the Content Partner, the license fees, as set forth in Appendix - B.

4.2 REPORTING

4.2.1 Content used on SPICE Platform

Within 30 days from the end of each calendar month, SPICE will share with the Content Partner a Content usage report in the electronic format, or

4.2.2 Content used on Non SPICE Platform

For Content used on non-SPICE platform, SPICE will share with the Content Partner a Content usage report in the electronic format within 10 days from the date on which SPICE receives them from the Telecom Operator(s) or third parties;

4.3 Payment. Subject to statutory taxes and deductions, including withholding tax, and on the basis of the revenues collected by SPICE in a particular month from the Telecom Operators and/ or the third parties in respect of the Content used, SPICE will pay to the Content Partner the license fee on or before the tenth of the succeeding month. However, SPICE will not be obliged to effect the aforesaid payment unless the aggregate of license fee payable for a particular month together with the unpaid accrued license fee for the preceding month(s), if any, exceeds the Minimum Accrued Amount as specified in cover sheet and in such a case, the aggregate of the unpaid license fee shall be accrued and carried forward for payment till such time until the payable license fee exceeds the Minimum Accrued Amount;

4.4 License Fee Payment Mechanism. Subject to statutory taxes and deductions, and withholding tax, license fee will be paid to Content Partner in the currency specified in the cover sheet and in the Bank and Account Number nominated by the Content Partner in Appendix C;

Provided that, if subsequently, it is discovered that SPICE has paid any extra/ additional amount to the Content Partner then SPICE reserves the right to set-off such extra/ additional amount;

4.5 Minimum Usage. Content usage by an End User, in a single session, accesses/ uses, for less than 10 seconds will accrue no revenue to be payable as license fee.

4.6 Free Trial. Spice, for marketing and promotional purposes, may, at its sole discretion, offer to the end users, a free trial period of up to 30 days for the sale of Content on any Distribution Channel, individually, which can be extended by SPICE with the consent of the Content Partner, such consent not to be withheld unreasonably by the Content Partner;

5. OWNERSHIP

5.1 Subject to what is granted herein, the ownership of and the intellectual property right to the Content and trademarks of the Content Partner shall remain fully with Content Partner.

5.2 The ownership of the intellectual property right in SPICE's technology, software, know-how, applications, trademarks, copyrights and patents shall at all times remain fully the property of SPICE.

6. Confidential Information

6.1 Neither Party shall disclose, share or provide access to any non-public, confidential or proprietary information of the other party to anyone other than its employees or authorised contractors who are in need to know such confidential information to exercise such Party's rights or perform such Party's obligations under this Agreement;

6.2 The recipient may disclose confidential information if such disclosure is mandated by law, Courts or Government orders after giving a reasonable notice to the discloser so as to enable the discloser to seek a protective order or a similar relief under the law for preventing such disclosure.

7. TERM AND TERMINATION

7.1 This Agreement shall commence on the Effective Date and continue for the Initial Term set forth on the cover sheet. On expiry this Agreement shall get automatically renewed on a year by year basis (the “**Renewal Term**”) unless either Party serves a written notice to discontinue the Agreement, 90 days prior to the expiry of Initial Term or any of the Renewal Term(s) thereafter.

7.2 Except for Clause 7.5, this Agreement cannot be terminated by the Content Partner during the Lock-in Period mentioned in the cover sheet. Termination within Lock-in Period by the Content Partner will entitle SPICE, in addition to other remedies under law or in equity, (i) to the remedy prescribed in Clause 7.3; and also (ii) to obtain specific performance of this Agreement including obtaining an injunction order.

7.3 Except for Clause 7.5, termination of this Agreement by the Content Partner within the Lock-in Period will attract payment of pre-estimated Liquidated Damages by the Content Partner, without any demur or protest. The Parties agree that in case SPICE is compelled to terminate this Agreement during the Lock-in Period, under Clause 7.5 of this Agreement, then the Content Partner shall be liable in the same manner as if the Agreement had been terminated by the Content Partner itself/ themselves.

7.4 **Termination.** Subject to Clause 7.2 herein, either Party may terminate this Agreement upon serving a written notice of 90 days on the other Party.

7.5 **Breach.** If a Party (defaulting Party) is in breach of any representation, warranty or an obligation comprising the essence of this Agreement and such defaulting Party fails to cure such breach within thirty (30) days from the date of receipt of a written request to cure such breach from the non-defaulting Party then the non-defaulting may terminate this Agreement with a further written notice of 15 days. However, if the defaulting Party cures the reported breach within 30 days of receipt of such notice of breach then such notice shall be deemed to be automatically withdrawn on the date of such breach being cured. Accordingly, for the cured breach, the non-defaulting cannot thereafter terminate this Agreement under this clause;

7.6 Either Party may terminate this Agreement immediately, upon written notice, if the other Party becomes insolvent, or makes an assignment for the benefit of its creditors, or a receiver is appointed for its business, or an order is made for its winding up.

7.7 Consequence of Termination Upon expiration and/or early termination of this Agreement, all rights granted to SPICE under this Agreement shall cease to have any force. However, the termination or expiry of this Agreement, for any reason, whatsoever, shall not affect any rights and / or obligations, which;

- accrued before the date of such termination or expiry; or
- expressed or intended to continue in force after and despite expiry or termination.

8. REPRESENTATIONS AND WARRANTIES

8.1 No Conflicts. Each Party hereby represents and warrants that it has the requisite legal capacity and authority to execute this Agreement and is not debarred by any prevailing law or other similar restriction and that the execution and performance of this Agreement is not violative of any law and/ or any contractual or legal rights of any third party.

8.2 Content Partner Representation and Warranties: Content Partner represents and warrants that:-

8.2.1 it is the owner and/ or validly controls all legal rights in the Content for granting exclusive license and Rights to SPICE under this Agreement;

8.2.2 it has not granted and will not, during the subsistence of this Agreement, grant Rights vide assignment, license or in any manner whatsoever, in respect of the Content, or any portion thereof, to any third party, individual or entity that would prevent the Content Partner from entering into this Agreement and/ or discharging its obligation and/ or preventing SPICE from commercially exploiting the Content;

8.2.3 the Content licensed does not violate the law and that the distribution of the same is not illegal throughout the Territory, in any manner whatsoever;

8.2.4 it has not and will not create any encumbrances including but not limited to a lien or a charge, in any manner whatsoever, on or in respect of the Content, or any portion thereof;

8.2.5 it will not engage in any act of commission or omission or abetment which would diminish the value of the Content and/ or prejudice or affect the enforceability of this Agreement;

8.2.6 it acknowledges that SPICE has executed this Agreement on the basis of the representation and warranties provided by the Content Partner.

9. INDEMNIFICATION

9.1 Each Party hereby defends and indemnifies the other and shall always keep indemnified and hold harmless the other from any and all claims (including third party claims), liabilities, losses, damages, costs and expenses, including reasonable attorney's fees and ancillary and incidental expenses, arising out of or relating to (i) the breach of any representation and warranty under this Agreement; (ii) the breach of any terms and conditions under this Agreement; (iii) breach/ violation of any applicable laws/ regulation/ rules throughout the Territory; (iv) breach/ infringement/ passing-off of any third party intellectual property rights, with respect to the Content, including any portion thereof, Rights and/ or license, in any manner whatsoever.

9.2 Survival. This clause shall survive the early termination or expiry of this Agreement.

10. LIMITATION OF LIABILITY

10.1 Except for infringements of the other Party's intellectual property rights, Confidential Information and save as provided herein and in no other event shall either Party be liable to the other for any indirect, incidental, punitive, special or consequential damages, including, but not limited to, any damages for loss of profits or interruption of business, however arising, whether under theories of contract, tort / delict (including negligence), strict liability or otherwise, even if such Party has been advised of the possibility of such damages.

10.2 SPICE's total aggregate liability as per this clause shall be limited to ten percent of the license fee paid by SPICE to the Content Partner in the preceding quarter in which the liability is alleged to have arisen.

11. NON-CIRCUMVENTION

11.1 During the subsistence of this Agreement the Content Partner shall not circumvent this Agreement by releasing, distributing, licensing, assigning or transferring the Content to any third party, person or entity, in any manner whatsoever, including but not limited to the Content Partner using an entity with a different name or a different label or through an Affiliate or in and under a different name/ professional name or in any other manner thereto;

11.2 In the absence of a prior written consent of SPICE, the Content Partner agrees and acknowledges that during the subsistence of this Agreement, any agreement or arrangement entered into by the Content Partner with a third party, person or entity in respect of the Content, Rights and license granted herein and/ or which violates or supersedes the terms of this Agreement, shall be null and void ab-initio.

11.3 If, however, the Content Partner circumvents or attempts to circumvent this Agreement, then the Content Partner agrees that the Content Partner shall promptly pay to SPICE, on demand, Liquidated Damages without any demur or protest.

12. GENERAL

12.1 Waiver: No waiver of any provision hereof shall be effective unless made in writing and signed by the Parties;

12.2 Assignment: Neither Party shall have the right to assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided that, SPICE may freely assign this Agreement to its Affiliates or to successors-in-interest or successors-in-title;

12.3 Force Majeure: Neither Party shall be liable under this Agreement by reason of any failure or delay in the performance of its obligations under this Agreement on account of riots, insurrections, fires, floods, storms, explosions, acts of nature, acts of terrorism, war, governmental action, earthquakes, or any other cause that is beyond the reasonable control of such Party;

12.4 Notices: All notices under this Agreement shall be in writing in English language and shall be sent by one Party to the other Party at the formal and official address set out on the cover sheet;

12.5 This Agreement supersedes and replaces any and all previous communications, writings and agreements between the Parties in relation to the subject matter hereof;

12.6 Arbitration & Governing Law: This Agreement shall be governed by the Laws of South Africa. If a dispute arises in connection with or relating to this Agreement, the Parties shall first attempt to resolve such dispute through good faith negotiation. If such disputes cannot be so resolved within thirty (30) days, either Party may refer the dispute to a binding arbitration by serving written notice of its intention to arbitrate the dispute with the other Party. The arbitration shall be conducted by a single arbitrator in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa. All arbitration proceedings shall take place in Johannesburg, South Africa and conducted in the English language. The decision of the arbitrator shall be final and binding. Subject to the resolution of the dispute by Arbitration in accordance with the manner laid down herein, the Courts/Tribunals at Johannesburg, South Africa shall have the exclusive jurisdiction;

12.7 Relationship: Nothing contained in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or employment between the Parties. The relationship of Parties hereto shall be that of Principal to Principal;

12.8 Amendment: All variation, amendment, deletion or consensual cancellation of this Agreement or any part

thereof shall be in writing and signed by the Parties or their duly authorised representatives;

12.9 Survival: Any and all obligations under this Agreement which, by their very nature should reasonably survive the termination or expiration of this Agreement, will so survive;

12.10 Invalidity and severability: If any part of this Agreement is adjudged by a Court of law to be invalid or unenforceable or contrary to any applicable law or regulation,

- ○ ■ the remainder of the Agreement will continue in full force and effect;

12.11 This Agreement supersedes all previous agreements and discussions between the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves/ their authorized representatives as of the Effective Date.

For and on behalf of For and on behalf of

THE CONTENT PARTNER SPICE DIGITAL SOUTH AFRICA (Pty.) LIMITED

BY: BY:

TITLE: TITLE:

DATE: DATE:

APPENDIX A

Content List

<u>S. No.</u>	<u>Artiste</u>	<u>Song Name</u>

Note:

1. The list of existing Content is non-exhaustive;
2. The Content Partner in addition to the aforesaid Content has also licensed his/ their future Content which shall be automatically added as part of this Appendix, even though such Content is not expressly mentioned;
3. The Content Partner is further obliged to provide SPICE with the audio as well as video recordings of the Content in a physical medium or any other medium which may be specified by Spice, from time to time;
4. The Content Partner shall provide SPICE with a release schedule for each new audio song and/ or video song at least 15 days before the release date. The release schedule shall include the name of the song(s), name of the artiste(s), date of release of audio as well as audio-video, and supporting artwork and a 30-seconds clip for promotions;

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APPENDIX B

License Fee

B	Digital and Internet Channels	<u>Territory</u>	<u>License Fee (being, % of Net Content Sales Revenue)</u>
	(Category - 1)		
1.	All Video Streaming services including but not limited to YouTube, Dailymotion etc.	World Wide	40%
2.	All Download based services including but not limited to iTunes etc.	World Wide	40%
C	Digital and Internet Channels	<u>Territory</u>	<u>License Fee</u>
	(Category - 2)		

1.	All Audio Streaming services including but not limited to iRadio, Deezer, Spotify, Pandora, Kleeek, etc.	World Wide	License Fee = 40% of the Spice Net Revenue generated from a Service x Proportionate Usage of the Content
E	Other Digital Channels	Territory	License Fee (Spice Net Revenue on proportionate usage)
1.	Radio	Africa	40%
2.	Television	Africa	40%

APPENDIX C

1. Bank Details of the Content Partner

<u>CONTENT PARTNER'S DETAILS</u>		
1	NAME:	
2	ADDRESS:	
3	e-mail ID:	
4	CONTACT No	
5	TIN	

CONTENT PARTNER'S BANK AND ACCOUNT DETAILS

1	BENEFICIARY NAME	
2	ACCOUNT TYPE	

3	ACCOUNT NUMBER	
4	BANK AND BRANCH NAME	
5	BRANCH ADDRESS	
6	BRANCH NUMBER/ CODE	
7	SWIFT CODE	
8	SORT CODE	

1. Proof of Identity of the Content Partner

Appendix D

To Whomsoever It May Concern

Date: 07/14/2023

I, AFRIPODS LIMITED

, the undersigned, has executed a Content Partner Commercial Agreement with Spice Digital South Africa (Pty.) Limited on 07/14/2023 (the '**Agreement**'). I hereby declare and confirm that, unless mentioned in this declaration, I have not executed any conflicting license agreements in respect of my existing and future Content for being distributed on the digital platforms which includes but are not limited to mobile networks, Internet etc.

I therefore, declare and affirm that Spice is my sole and exclusive licensee for distributing my Content on all digital platforms as per the terms and conditions of the Agreement.

I further undertake that in case there are any conflicting license agreements which may have been executed by me or on my behalf shall stand to be terminated by me and that the Agreement shall supersede and prevail against any and all conflicting third party claims.

List of Conflicting License Agreement, if any (please mention the name else Not Applicable)

Name: AFRIPODS LIMITED

Artist

Date: 07/14/2023