ORGANIZATION: **CM ADVOCATES LLP**

DEPARTMENT: **CORPORATE COMMERCIAL**

DOCUMENT**: ENTERTAINMENT AGREEMENT**

LAST MODIFIED:

**Notes:**

1. This precedent is intended to act as a guide in drafting the Entertainment Agreement. It may be modified or amended as need may be.
2. This template covers entertainment of all types that is, Television, Radio, Music, Internet, News, Media, publishing etc

**ENTERTAINMENT CONTRACT AGREEMENT**

Dated 2021

**between**

**[PARTY 1]**

**(the “**Company**”)**

**and**

**PARTY 2**

**(the “Artist”)**

**-in respect of-**

**[ ]**

**Drawn By: -**



I&M Bank House, 7th Floor

2ndNgong Avenue

P.O. Box 22588-00505,

**Nairobi.**

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**ENTERTAINMENT CONTRACT AGREEMENT**

This Entertainment Agreement is dated ………………………. day of …………………………20…

**Parties**

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] (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
2. [FULL AGENT’S OR COMPANY’S OR ARTIST(S)/NAME] a limited liability company incorporated in the Republic of Kenya with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (hereinafter referred to as the **“**Artist” which expression shall where the context so requires, include its successors in title and permitted assigns) of the other part.

As the context may require, “Company” and “Artist” and are hereinafter collectively referred to as “Parties” and individually as “Party”.

**WHEREAS**:

1. The Company wishes to contract for the services of Artist(s) as (an) independent contractor(s), not as (an) employee(s), on the terms and conditions set out below.
2. The Artist(s) agrees to render the services to the Company subject to the terms and conditions as set out in this agreement.

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS: -**

# Definitions and Interpretation

* 1. In this Agreement and the Appendices and/or Special Terms hereto, the words and terms defined in this section will have the meanings ascribed to them, unless inconsistent with or otherwise required by or indicated in the context”
     + 1. “**Agreement**” means the whole formed by these contractual provisions, complemented where applicable, by the Appendices and/or Special Terms, signed by both Parties, to the exclusion of any other document, notably those which may be issued by the Purchaser before or after the execution of the Agreement.
       2. **“Business Day”** means a day other than a Saturday, Sunday or public holiday in Kenya, when Banks in Kenya are open for business;
       3. **“Delivery Date”** means [the date of this event OR the date set out in Schedule 1];
       4. **“Delivery Location”** means the location of this event set out in Schedule 1;
       5. [**“Documentation”**: means all documents [, plans] [, drawings] [, service documents] [, user manuals] [and operating manuals] relating to the Asset];
       6. **“Intellectual Property Rights”** means patents, utility models, rights to inventions, copyright related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
       7. **“Payment Amount”** means the amount and mode of payment as described in Schedule 1;
       8. **“Payment Date”** means the date of signing this agreement or the date set out on Schedule 1;
       9. **“Service”** means the Artist’s services as described in Schedule 1;
       10. **“Time Frame”** means time of performance from arrival to finish time **OR** (the time as set out in schedule 1) ;
  2. In this Agreement, unless the contrary is expressly stated or appears clearly from the context:
     + 1. The preamble forms part of this Agreement;
       2. The headings to the clauses are for ease of reference only and shall play no part in the interpretation thereof;
       3. The singular shall include the plural and *vice versa;*
       4. References to any gender shall include the other gender;
       5. Words and phrases defined in any clause will, for the purpose of that clause and in any other clause of the Agreement where appropriate, bear the meaning therein assigned to them;
       6. References to “clauses’ and “sub-clauses” will be to clauses and sub-clauses of this Agreement, unless otherwise indicated;
       7. This Agreement constitutes the entire Agreement between the Parties. No amendments, additions, deletions, substitutions or variations thereof shall be valid unless reduced to writing and signed by both Parties;

# Independent Contractor

* 1. The Company contracts for the services of the Artist(s) as (an) independent contractor(s) and not as (an) employee(s).
  2. The performer(s) are self-employed or employees of the Artist who will have the duty of and will be responsible for complying with Laws of Kenya and regulations pertaining to the withholding of taxes and social security, and for complying with any union or rules pertaining to deduction for dues and any health or welfare fund, and any other union or legal deduction or payment, and Artist(s) will hold the Company harmless and indemnify it for any claims therefrom.
  3. With the exception of Artist(s), performers and their employees or contractors; all stagehands, stage carpenters, electricians, electrical operators and other support personnel required for this performance shall be employees of the Company or subcontracted by the Company.

# Payment

* 1. In consideration of the performance of the Artist’s Services hereunder, the Company agrees to pay the Artist the hourly sum of Kenya Shillings \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Kshs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) (exclusive of Value Added Tax) for the stipulated period of the provision of the Services and the sum of Kenya Shillings \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Kshs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) for any additional hour of performance of the Services thereafter until the completion of the performance.
  2. Only those items or services specifically delineated in this contract and any Schedules attached hereto are being provided or paid for by the Company. No additional costs for items or services will be borne by the Company without its prior expressed written consent.

# Access

* + 1. The Artist(s) will be allowed reasonable access to the facility used for the engagement before and after the engagement for the purpose of assembling and removing equipment. The Artist(s) will arrive at engagement at timeframe designated on (Schedule 1) of this agreement. Agent will be allowed access for consultation with Artist(s) at any time. The Artist(s) may not be accompanied by guest(s). Requests for complimentary tickets for the Artist’s guests should be submitted to the Company for approval in advance of the performance.

# Force Majeure

* 1. Where any party is rendered unable, wholly or in part, to carry out its obligations hereunder due to any cause or event beyond the reasonable control of and without the fault or negligence of the party concerned (Force Majeure) such as war (whether declared or not), revolution or insurrection, earthquakes and natural catastrophes, acts of a government in its sovereign capacity, blockades or embargos, that party’s duty to perform those obligations affected by Force Majeure shall be suspended for a period equal to the delay directly resulting from the occurrence of such event.
  2. A party so affected shall promptly notify the other party in writing of the Force Majeure with reasonably full particulars including the basis for claim of force majeure.
  3. If any event of force majeure arises, the parties hereto shall use their best efforts to minimize the effect thereof and to find a reasonable solution in mutual consultation.

# Security

* + 1. The Company shall provide such security as it deems reasonably necessary incidental to the performance, and in the event Artist(s) have their own security, Artist(s) shall inform and identify to the Company, their security personnel at least 24 hours prior to the commencement of the performance and said security shall comply with all local laws, ordinances and regulations, and they shall be under the supervision and control of the Company’s security at all times while on the premises of the Company.

# Indemnity & Limitation of Liability

* 1. The Artist(s) shall reimburse, indemnify and hold harmless the Company for all loss to the Company resulting from the negligence of Artist(s) in the performance of this contract. In further consideration, Artist hereby agrees to assume all liability, jointly and severally, for any injuries or damages that may be performance related, or that the Artist or its employees, contractors or performers may cause to any persons or property during Artist’s use of and visit to the Company’s Designated Venue while the Artist is engaged in the activities described hereinabove. In addition, the Artist agrees to provide to the Company/Publisher a certificate of insurance showing proof of the relevant insurance cover and, if applicable, Workers Compensation coverage as required by the Laws of Kenya, and agrees to name the Company/Publisher as an additional insured in respect to liability and the Artist’s activities/event described hereinabove.
  2. The Company shall not be liable for any damages or injuries of the Artist(s), their performers, contractors or their equipment, while on the premises of the Company, and Artist hereby releases the Company from all form and manner of risks inherent or relating to such activities, and agrees to waive all claims and demands of any nature arising from said campus visit, performance or related activities, except for those losses or claims arising from the sole or willful negligence of the Company.

# Royalties

* + 1. The Artist(s) shall be solely responsible for the payment of any and all royalty fees payable as a result of the performance of any copyrighted music or matters performed pursuant to the copyright laws of the Kenya or any other country and will hold the Company harmless and indemnify the Company from any claims therefrom.

# Reasonable Care

* + 1. The Company agrees to exercise reasonable care to prevent the recordation, reproduction or transmission of the performance of Artist(s), in any manner or means whatsoever, in the absence of a specific written agreement with Artist(s) to the contrary. Any agreement to permit recordation, reproduction, or transmission of this performance must be in writing and attached to this agreement as a rider in order to be binding upon the parties of this agreement.

# Termination of Agreement

* 1. If in the Company’s sole determination, the Artist(s) or their performers or employees appear on or near the performance site noticeably under the influence of alcoholic beverages, narcotics, drugs, or other controlled substances, or exhibit behavior, conduct or acts that would reflect negatively upon the Company or are socially unacceptable as determined by the Company or its staff, the Company shall have the right to terminate this contract and/or trespass and have the offenders removed from the premises with no liability on the part of the Company. The Artist(s) shall be liable to the Company for payment within thirty (30) days after demand of all of Company’s costs, expenses, damages, and claims resulting from such cancellation, including reasonable attorney’s fees and costs incurred in the enforcement of this provision. Artist(s) acknowledge(s) that no weapons of any kind, alcoholic beverages, narcotics, drugs, or other controlled substances are permitted on or to be consumed on Venue/Company’s designated venue or at or near the performance site. Non-alcoholic beverages as requested by Artist(s) should be provided if separately agreed to in writing by the Company and Artist(s).
  2. This Agreement may be terminated any time by either Party giving one (1) months’ notice in writing.
  3. Either party may terminate this Agreement upon giving thirty (30) days written notice to the other in case of any material breach of the terms of this Agreement.
  4. This Agreement shall be subject to immediate termination by either Party upon the occurrence of the following events:-
     + 1. If either Party hereto defaults on any of its material obligations, representations or warranties under this Agreement, the non-defaulting Party shall notify the defaulting Party in writing specifying in sufficient detail the nature of and extent of such breach and, unless within five (5) working days after written notice of such default the defaulting party remedies the default, this Agreement will terminate;
       2. If either party files a petition for bankruptcy or is adjudged to be bankrupt;
       3. If either party becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement for its creditors pursuant to any bankruptcy law;
       4. If either party discontinues its business, then the other party shall have the right to terminate this Agreement immediately upon written notice to the Party; or
       5. In the event that the Parties fail to agree on the revised Agreement price pursuant to clause 4.2 above.
  5. In any case of termination, there will be no further payment due to the Company for the Services, but appropriate adjustment may be made for any payments due and owing for Services undertaken by the Company prior to the effective date of termination provided that the termination of this Agreement shall not affect the rights of the Parties which have accrued on or before termination.

# Schedules

* + 1. It is mutually agreed that any attached contract, or any schedule(s)/addendums thereto, by and between the Company and Artist(s) pertaining to this engagement is supplemental and subordinate to this entertainment Contract. The terms and conditions of this Entertainment Contract and the rights, privileges, duties, and obligations arising pursuant thereto shall at all times and in all events and situations be controlling and prevailing.

# Concession Rights

* + 1. In the event that Artist(s) desire(s) to have souvenir concession rights at the performance, those rights shall be subject to approval by the Company, and controlled by all applicable Company rules and regulations and such other requirements as the Company may invoke. Artist(s) will be responsible for State sales tax and any vendor’s fees, etc. required by law. The Company shall not be held responsible for the security or storage of Artist(s) souvenir concession goods or items and Artist shall hold harmless the Company and its staff, or volunteers who might assist the Artist(s) with their souvenir concession activities.

# 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 28.1 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 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 28.1 or under Mediation under clause 28.2 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.

# General

* + - 1. No failure or delay to exercise any power, right or remedy by a 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.
      2. The rights and remedies of the Parties 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 THEREFORE**, the parties hereby agree and accept the foregoing terms and provisions of this Agreement and each of the parties have authorized their official representatives to execute on the date as shown herein.

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

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

by: ]

]

Director ] ……………………..

]

**In the presence of** ]

]

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

] Name: ……………………………..

] Date: ……………………………..

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

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

by: ]

]

Director ] ……………………..

]

**In the presence of** ]

]

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

] Name: ……………………………..

] Date: ……………………………..

**SCHEDULE 1**

**Name of Artist, Entertainer, Show, Event:**

**Date(s) of Event:**

**Campus Location of event**

**Type of Show/Event:**

**Hours of Performance:**

**Timeframe Artist Will Arrive on Campus:**

**Drawn By:-**

**CM Advocates LLP**

I & M Bank House, 7th Floor

2nd Ngong Avenue

P.O. Box 22588 - 00505

**Nairobi.**

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