**LIVE PERFORMANCE SIDE ARTIST EMPLOYMENT AGREEMENT**

**DATED 2021**

**[PARTY 1]**

**(AS THE “EMPLOYER”)**

**- AND -**

**[PARTY 2]**

**(AS THE “SIDE ARTIST”)**

**-IN RESPECT OF-**

**[INSERT THE PURPOSE OF THE LIVE PERFORMANCE]**



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**LIVE PERFORMANCE SIDE ARTIST EMPLOYMENT AGREEMENT**

**THIS DEED** is made on the ……………………. day of …………………. Two Thousand and Twenty-One.

**BETWEEN: -**

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 “**Employer”**); and
2. [FULL NAMES] of Identification /Passport Number [INSERT THE NUMBER] and whose address is [INSERT THE ADDRESS] (hereinafter referred to as the “**Artist**” together with his/her personal representatives or permitted assigns).

**WHEREAS**

1. The Side Artist has agreed to render non-exclusive­­ services to Employer in the entertainment field and provide musical performance services for the artist known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Artist”) whether for a single performance or for a tour.
2. Employer hereby employs Side Artist’s non-exclusive services as a musician and the Side Artist hereby accepts such employment and agrees to appear and perform in at such times and places as Employer shall designate.

**NOW THIS AGREEMENT WITNESSETH** as follows: -

# Definitions and Interpretation

* 1. **Definitions**
     1. In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:
        1. **“Agreement”** means this agreement;
        2. **“Consideration”** means Kenya Shillings ……………………….
        3. **“Employer**” includes reference to the Employer’s representatives, successors and assigns;
        4. **“Side Artist”** includes reference to the Side Artist’s representatives, successors and assigns; and
        5. **“Term”** means **……………………………………………..**
  2. **Interpretation**
     + 1. In this Agreement, unless the context otherwise requires, reference to:
       2. words importing the singular number only shall include the plural number also and vice versa and words importing the masculine gender include the feminine gender and neuter and vice versa;
       3. the expression “person” shall include any legal or natural person, partnership, trust, company, joint venture, agency, government or local authority department or other body (whether corporate or unincorporate);
       4. Clauses shall be construed as references to Clauses of this Agreement;
       5. any statute or any provision of any statute shall be deemed to refer to any statutory modification or re-enactment thereof and to any statutory instrument, order or regulation made thereunder or under any such re-enactment;
       6. indemnifying any person against any circumstance includes indemnifying and keeping him/her/it harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which could not have arisen but for that circumstance;
       7. costs, charges, expenses or remuneration shall be deemed to include, in addition, references to any value added tax or similar tax charged or chargeable in respect thereof; and
       8. any reference to any document means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.
       9. the term “parties” means the parties to this Agreement and “party” shall be construed accordingly;
  3. **Headings**
     1. Headings to clauses are for convenience only and shall not affect the construction or interpretation of this Agreement.

# Services

* 1. TheEmployer hereby employs the Side Artist’s non-exclusive services as a musician and the Side Artist hereby accepts such employment and agrees to appear and perform in at such times and places as the Employer shall designate in relation to the performance of the Side Artist at a live performance at which he/she will perform (hereinafter “**Live Performance**”) including, without limitation, personal appearance engagements, rehearsal sessions, photographic sessions, promotional appearances, tapings for television, or other promotional audio-visual recordings.
  2. The Side Artist shall diligently, competently, and to the best of his/her/their ability, experience and talent perform to the Employer’s satisfaction all the services required to be performed by the Side Artist.

# Compensation

* + 1. During the Term of this Agreement, the Employer shall pay the Side Artist the following as full and complete Consideration for the Side Artist’s services hereunder:
       1. A payment of Kenya Shillings \_\_\_\_\_\_\_\_\_\_\_\_\_ (Kshs. …………….) for each live performance contracted for and completed by Artist. The Side Artist shall be paid for any live performance contracted by the Artist. The Side Artist shall not be paid for any live performance contracted by the Artist which shall not be performed by the Artist, as a result of cancellation by a third party for which the Artist is not paid.
       2. An amount equal to \_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_\_%) of Net Live Performance Income received by the Artist during the Term hereof. The term "Net Live Performance Income" shall mean an amount equal to gross monies paid to and received by the Artist during the Term hereof in connection with the live concert engagements performed by the Artist, at which the Side Artist also performs, less an amount equal to the costs and expenses incurred by the Employer with respect to such live concert engagements, including, without limitation, commissions paid to managers and agents, costs of travel and accommodations, equipment, rental lighting, and stage crew and musicians' salaries.

# Travel Expenses

* 1. All travel expenses shall be paid by the Employer and shall be paid in advance.
  2. Travel expenses shall be as follows: Cost of travel to and from the site of a Live Performance, hotel accommodations and a per diem of Kenya Shillings ………… (Kshs. ….) per day. The Side Artist shall be provided with separate accommodations and shall not be required to share lodging accommodations without Side Artist’s consent.
  3. In the event, the Side Artist shall incur any expense on behalf of the Artist at the request or approval of the Artist, the Side Artist shall be reimbursed such expense immediately upon presentation of a receipt for such expense to the Employer.

# Payment of the Consideration

* 1. The payment for the Consideration owed to the Side Artist for the live performance(s) shall be paid to Side Artist within ……………… (……) days from the date of the performance.
  2. All payments payable and contemplated under this Agreement shall be paid into the Side Artist’s account whose details are as follows: -

**Account Name:**

**Bank:**

**Branch:**

**Account No.:**

# Rights granted to the Employer

* 1. The Side Artist grants the Employer all rights of every nature in relation to the Side Artist’s services and performances rendered, including and without limitation, to the unconditional and exclusive worldwide ownership in perpetuity of all master recordings and audiovisual reproductions embodying the Side Artist’s recorded musical performance that occurs during a Live Performance.
  2. The Side Artist hereby transfers all copyright to the Employer on any product created as a result of the service performed during the Term of this Agreement. The Employer shall have the sole and exclusive right to copyright of any such master recordings and/or audiovisual recordings embodying the Side Artist’s performances in his/hers/its, as the sole owner and author thereof, and to secure any and all renewals and extensions of such copyrights.
  3. The Side Artist shall, upon its request, execute and deliver to the Employer any assignments of copyright or other documents relating to the master recordings and/or audiovisual recordings as the Employer may deem necessary and the Side Artist hereby irrevocably appoints the Employer as the Side Artist’s attorney for the purpose of executing such assignments in the Side Artist’s name.
  4. The Side Artist understands and agrees that the Employer or the Artist shall not owe the Side Artist any additional compensation for any exploitation of the master recording or audiovisual recording, even if such exploitation yields income to the Employer or the Artist, other than the compensation paid to the Side Artist for the Live Performance.

# Indemnification

* 1. The parties hereby indemnify the other party harmless from any and all damages, liabilities, costs, losses and expenses (including legal costs) arising out of or connected with any claim, demand or action by a third party which is as a result of any action or omission by the other party.
  2. Each party agrees to reimburse the other on demand, for any payment made with respect to any such damage, liability, cost, loss or expense to which the foregoing indemnity applies.

# Termination

* 1. The Side Artist shall have the right to terminate the Term of this Agreement by giving the Employer thirty (30) days’ written notice. Upon receipt of the Side Artist’s notice, the Employer shall have the right, to require the Side Artist to continue to perform his/hers/its obligations for the conclusion of any tour/performance that he/she/it may be engaged in at the time the notice is received if such performance would extend beyond thirty (30) days.
  2. In the event, the Side Artist shall fail to issue the Employer with such written notice and to fully perform all his/hers/its obligations within the thirty (30) day period, or such portion thereof as the Employer may designate, the Employer shall be immediately relieved of any further obligations under this Agreement except to pay the Side Artist any monies owed to him/her/it for the Side Artist’s rendering his/her/its services at any Live Performance pursuant to this Agreement. In the event of a breach by Side Artist of the Side Artist’s legal obligations, legal duties and agreements to the Employer under this Agreement, the Employer shall, in addition to any other rights or remedies available to the Employer, have the right to terminate the Term of this Agreement by providing seven (7) days written notice to the Side Artist at any time, in which event the Employer shall immediately be relieved of any further obligations to utilize the Side Artist’s services.

# Independent Contractor

* + 1. The Side Artist hereby acknowledges and agrees that the Side Artist’s services are being provided as an independent contractor.

# Legal Costs

* + 1. The parties shall each bear their own legal costs in relation to the preparation, negotiation and enforcement of this Deed.

# Warranties and authority

* + 1. Each party warrants and represents to the other with respect to itself that it has the full right, power and authority to execute, deliver and perform this deed.

# No admission

* + 1. This Deed is entered into in connection with the mutual agreement between the Employer and the Side Artist and in light of other considerations. It is not, and shall not be represented or construed by any party as, an admission of liability or wrongdoing on the part of either party to this Deed or any other person or entity.

# Severability

* + 1. If any provision or part-provision of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this deed.

# Entire agreement

* 1. This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this deed.

# Confidentiality

* + 1. The parties shall treat as confidential the provisions of this Deed, the process of negotiations and all information about the other party obtained or received by them as a result of the negotiations, entering into or performing their obligations under this Deed and shall not publish or otherwise disclose to any other person such information except where:-
       1. it is required during any court proceedings or by the provisions of any law, statute or by any regulatory or governmental body having jurisdiction over it; or
       2. the information has come into the public domain through no fault of that party.

# Waiver and Amendments

* + 1. None of the terms or provisions of this Deed shall be waived, altered, modified or amended in any respect except in writing signed by the Parties.

# Notices

* + 1. Where a notice is to be given to any party it may be served by leaving it at the registered office or last known address of that party or by sending it by registered post to the registered office or the last known address of that party then it shall be deemed to have been served at the expiration of Seven (7) days after it has been posted or on the day on which it was delivered by hand or sent by electronic mail or facsimile or telex as aforesaid (provided that in the case of a notice sent by telex, the correct answer back acknowledgement is received and in the case of a notice sent by facsimile a printed confirmation of transmission is received and a hard copy of such notice is forthwith sent by prepaid post as above).

# Benefit of Agreement

* + 1. This Deed and the provisions hereof shall be binding on and shall ensure for the benefit of and be enforceable by the successors and assigns (as the case may be) of the parties.

# Counterparts

* 1. This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
  2. No counterpart shall be effective until each party has executed and delivered their counterpart.

# Force Majeure

* 1. For the purposes of this Deed, “Force Majeure” means an event which could not reasonably have been avoided by a diligent party in the circumstances, which is beyond the reasonable control of a party and which makes a party’s performance of its responsibilities hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances and includes, but is not limited to, war, riots, civil disorder, earthquake, storm, flood or adverse weather conditions, strikes, lockouts or other industrial action, terrorist acts, confiscation or any other action by government agencies.
  2. Force Majeure shall not include any event which is caused by the negligence or intentional action of a Party or such Party’s subcontractors or agents or employees, or by a failure to observe good professional practice.
  3. The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Deed insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this Deed.
  4. A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party’s inability to fulfil its obligations hereunder with a minimum of delay. The Parties shall take all reasonable measures to minimise the consequence of any event of Force Majeure.
  5. A Party affected by an event of Force Majeure shall notify in writing the other Party of such event as soon as possible, and in any event not later than five (5) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
  6. Not later than fourteen (14) days after Debtor, as a result of an event of Force Majeure, has become unable to discharge a material portion of its obligations, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

# Dispute Resolution

* 1. In case of any dispute arising out of this Deed 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 fourteen [14] Business Days following notification of the dispute.
  2. If the dispute has not been settled pursuant to amicable settlement under clause 15.1 above within Fourteen (14) 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.
  3. 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.
  4. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.
  5. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.
  6. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

# Governing law and jurisdiction

* + 1. This Deed is governed by, and shall be construed in accordance with, the laws of Kenya.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

|  |  |
| --- | --- |
| **SEALED** with the Common Seal of the Employer,        Limited in the presence of:    Director  I.D./Passport No.:  KRA Pin:    Director/Secretary  I.D./Passport No.:  KRA Pin:    *Advocate* | )  )  )  )  ) [affix seal]  )  )  )  )  )  )  )  )  )  )  )  ) |

|  |  |  |
| --- | --- | --- |
|  | |  |
| **SIGNED** by the Side Artist in the presence of:    *Advocate* | )  )  )  )  )  )  )  )  ) I.D./Passport No.:  ) PIN No.:  )  ) Signature/Thumb Print: | |