**MUSIC VIDEO PRODUCTION SERVICES AGREEMENT**

**DATED 2021**

**[PARTY 1]**

**(AS THE “EMPLOYER”)**

**- AND -**

**[PARTY 2]**

**(AS THE “INDEPENDENT CONTRACTOR”)**

**-IN RESPECT OF-**

**[PROVISION OF SERVICES IN THE PRODUCTION OF A MUSIC VIDEO]**



**CM Advocates LLP**

I & M Bank Building, 7th Floor,

2nd Ngong Avenue

P. O. Box 22588-00505

**Nairobi.**

**www.cmadvocates.com**

**TABLE OF CONTENTS**

[1. Definitions and Interpretation 1](#_Toc78865958)

[2. Recording Expenses 3](#_Toc78865959)

[3. Consideration 3](#_Toc78865960)

[4. Rights in Audiovisual Recording 3](#_Toc78865961)

[5. Names & Likeness 4](#_Toc78865962)

[6. Credit 4](#_Toc78865963)

[7. Warranties 4](#_Toc78865964)

[8. Legal Costs 5](#_Toc78865965)

[9. No admission 5](#_Toc78865966)

[10. Severability 5](#_Toc78865967)

[11. Entire agreement 5](#_Toc78865968)

[12. Confidentiality 5](#_Toc78865969)

[13. Waiver and Amendments 6](#_Toc78865970)

[14. Notices 6](#_Toc78865971)

[15. Benefit of Agreement 6](#_Toc78865972)

[16. Counterparts 6](#_Toc78865973)

[17. Force Majeure 6](#_Toc78865974)

[18. Dispute Resolution 7](#_Toc78865975)

[19. Governing law and jurisdiction 8](#_Toc78865976)

**MUSIC VIDEO PRODUCTION SERVICES 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 “**Independent Contractor**” together with his/her personal representatives or permitted assigns).

**WHEREAS**

1. The Independent Contractor has agreed to provide services in the production of a music video.
2. The Independent Contractor shall perform production services and produce an Audiovisual Recording of the vocal and theatrical performances of the group professionally known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_("Artist") performing the song "\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_" ("Music Video") for inclusion, at Employer's election, in Audiovisual Products. Production of the Audiovisual Recordings shall take place at dates and times to be mutually agreed upon by Employer and Independent Contractor.

**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. "**Audiovisual Products**" shall mean and include without limitation all forms of audiovisual reproduction by which the Audiovisual Recordings may be fixed, embodied, by any method now known or later developed, that can be perceived for any and all public or commercial uses including recording tape, digital video disc, Digital Formats, laser disc, film, electronic video tapes or recordings, and any other medium or device now known or later developed;
        3. "**Audiovisual Recordings**" 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 Audiovisual Products.
        4. **“Consideration”** means Kenya Shillings ……………………….;
        5. "**Digital Format**" shall mean the format of the Audiovisual Recordings other than a physical configuration typically created in a computer file format (e.g. MPEG, MV1, AVI, WMV, etc. ) that are distributed and sold to consumers in any format including Digital Transmission;
        6. "**Digital** **Transmissions**" shall mean the transmission and distribution to the consumer, other than the distribution of Audiovisual 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 Audiovisual Recordings 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;
        7. **“Employer**” includes reference to the Employer’s representatives, successors and assigns;
        8. **“Independent Contractor”** includes reference to the Side Artist’s representatives, successors and assigns; and
        9. **“Term”** means **……………………………………………..**
  2. **Interpretation**
     1. In this Agreement, unless the context otherwise requires, reference to:
        1. 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;
        2. 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);
        3. Clauses shall be construed as references to Clauses of this Agreement;
        4. 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;
        5. indemnifying any person against any circumstance includes indemnifying and keeping him 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;
        6. 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
        7. 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.
        8. 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.

# Recording Expenses

* 1. The filming sessions for the Music Video shall be conducted by the Employer at Employer's sole cost and expense.
  2. The Employer shall pay all for all the costs to create and produce the Music Video as and when due.
  3. The Independent Contractor shall deliver to the Employer upon completion, a fully mixed, edited, and equalized Audiovisual Recording in a format to be mutually agreed to by the parties, commercially satisfactory to the Employer for use in Audiovisual Products.
  4. The Independent Contractor shall act diligently in completion of the Music Video.

# Consideration

* + 1. The Employer shall pay the Independent Contractor a Consideration in the sum of Kenya Shillings ……………….. (Kshs. ……….) for the Independent Contractor's services under this Agreement.

# Rights in Audiovisual Recording

* 1. The Audiovisual Recording made under this Agreement, from the inception of filming and recording, shall be considered a work made for hire for Employer. If any such Audiovisual Recording is deemed not to be a work made for hire, all rights, title and interest in the Audiovisual Recordings which are attributable to the Independent Contractor's participation in its authorship shall be deemed transferred to the Employer by this Agreement and this Agreement may be filed with the Kenya Copyrights Board as an official transfer of copyright if necessary.
  2. The Audiovisual Recording made under this Agreement, from the inception of filming and recording and Audiovisual Products derived therefrom, shall be the sole property of the Employer, free from any claims whatsoever by Independent Contractor or any other person; and the Employer shall have the exclusive right to claim ownership of and register the copyright to those Audiovisual Recordings in its name as the owner and author of them and to secure any and all renewals and extensions of such copyright throughout the world.

# Names & Likeness

* + 1. The Employer shall have the world wide right in perpetuity to use and to permit others to use the Independent Contractor's name, (both legal and professional), likeness, other identification, and biographical material concerning the Independent Contractor for purposes of trade without restriction in connection with the Audiovisual Recordings recorded and the Audiovisual Products derived therefrom.

# Credit

* 1. The Employer shall give the Independent Contractor appropriate production credit on all Audiovisual Products that embodies the Audiovisual Recordings created and on all cover line notes, such credit shall be in substantial form: "Music video produced by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_."
  2. If the Employer fails to comply with this clause in any instance the Employer shall use its's best efforts to rectify the error in all materials prepared after receipt of the notice of such failure. No inadvertent failure by the Employer to satisfy the credit obligation set forth herein shall be deemed a breach of this Agreement.

# Warranties

* 1. The Independent Contractor hereby warrants that the Audiovisual Recordings shall be entirely the property of the Employer, free of any claims whatsoever by the Independent Contractor or any person deriving any rights or interest from the Independent Contractor.
  2. The Independent Contractor warrants that it is the sole owner of the performances on the Audiovisual Recordings and/or has been granted all rights associated with the recording of the music embodied on the Audiovisual Recordings and hereby has the right to grant the terms of this Agreement. The songs and performances embodied in the Recordings, and any use thereof by the Employer or its grantees, licensees, or assigns, shall not violate or infringe upon the rights of any third party.
  3. The Independent Contractor warrants that the he/she/it has secured all proper licenses and contracts for the rights of the performances of any person providing services for the production of the Music Video or any person performing in the Music Video. If Independent Contractor has not secured such right, then the Independent Contractor shall notify the Employer and the Employer has agreed in a separate agreement to secure such rights.
  4. The Independent Contractor agrees to indemnify and hold harmless the Employer, its officers, agents, employees and assignees, from and against any and all claims, damages, liabilities, costs and expenses including but not limited to legal fees, arising out of any breach of any representation, warranty, term or agreement made or to be performed by this Agreement.

# Legal Costs

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

# No admission

* + 1. This Agreement 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 Agreement or any other person or entity.

# Severability

* + 1. If any provision or part-provision of this Agreement 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 Agreement.

# Entire agreement

* 1. This Agreement 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 Agreement.

# Confidentiality

* + 1. The parties shall treat as confidential the provisions of this Agreement, 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 Agreement 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 Agreement 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.

# Benefit of Agreement

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

This document has been executed as a Agreement 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 Independent Contractor, in the presence of:    *Advocate* | )  )  )  )  )  )  )  )  ) I.D./Passport No.:  ) PIN No.:  )  ) Signature/Thumb Print: | |