

DATED THIS _____ DAY OF _____, _____

GENERAL CONDITIONS OF CONTRACT
(attached to the Form of Content License Agreement entered into between the parties)

between

CONTENT AGGREGATION LIMITED

and

DRAWN BY:
MBOYA WANGONG'U & WAIYAKI
ADVOCATES
LEX CHAMBERS
MAJI MAZURI ROAD
OFF JAMES GICHURU ROAD
LAVINGTON
P.O. BOX 74041 - 00200
NAIROBI

mboya wangong'u & waiyaki

This Content License Agreement is made this ____ day of _____, ____ between:

1. **CONTENT AGGREGATION LIMITED**, a company incorporated in the Republic of Kenya with its principal office at Westlands Office Park, Waiyaki Way and of P. O. Box 7468-00300 Nairobi (hereafter referred to as “**CAL**”, which expression shall, where the context so requires, include its successors in title and permitted assigns); and
2. **[INSERT COMPANY NAME]** a company incorporated in the Republic of Kenya with its principal office at [insert] and of P. O. Box [INSERT] [OR] [INSERT NAME OF INDIVIDUAL] of P. O. Box [insert] and of [insert national ID or passport number] (hereafter referred to as “**CP**”, which expression shall include the CP’s successors in title, personal representatives and permitted assigns).

(together referred to as the “parties” and each individually as a “**party**”).

BACKGROUND

- I. CAL is an aggregator of Content, which Content is provided to subscribers of a platform known as VIUSASA (the “**Platform**” or “**VIUSASA**”) on an on-demand basis, which Platform is or will be made available on mobile devices, Set Top Boxes and Online platforms. CAL is also a licensed Content distributor and reseller;
- II. CP is a producer/provider of Content and is the owner and proprietor of the Content;
- III. CAL wishes to procure Content from the CP and the CP wishes to provide Content to CAL for purposes of CAL (i) making such Content available on the Platform and, (ii) distributing and reselling some of such Content to MNOs; and
- IV. The parties have agreed to enter into this Agreement in order to define their rights and obligations in relation thereto.

AGREED TERMS

NOW THEREFORE, the Parties have agreed as follows:

1. DEFINITIONS

- 1.1. In this Agreement (including its recitals and the Schedule) unless the context otherwise requires the following terms shall have the following meanings:
 - 1.1.1. “**Advertising Revenue**” means revenue generated by CAL from the display of advertisements and announcements, whether by way of text, banners, videos or other mode, on the Platform;
 - 1.1.2. “**Content**” means (a) any text, graphics, audio, visual (including still visual images) and/or audio-visual material including music, Short Clip Video Content and other multimedia content, information and material sequentially or otherwise aggregated into DJ Mixes, including the metadata relating to any such content, provided by the CP to CAL under this Agreement, as more specifically set out in Schedule 1 hereto and the contents of Schedule 1 may be updated, revised, amended or altered by the parties in writing from time to time with any such update, revision, amendment or alteration forming part of this Agreement, and (b) any other audio, visual or audio-visual content that the Parties may agree on from time to time;

- 1.1.3. **“Short Clip Video Content”** means short-form video content that: (i) has a beginning arc, middle arc and ending arc, (ii) is ten minutes or less and (iii) is in a format that is ready for consumption by the general public and which is derived from the Content;
- 1.1.4. **“MNO”** means any mobile network operators or telecommunication or mobile telephony service provider licensed for that purpose by the Communications Authority of Kenya and shall include, without limitation, the operators of Safaricom, Airtel, Telkom Kenya, and Equitel networks;
- 1.1.5. **“Net Revenue”** means, (i) in relation to Content Used by CAL, all revenue earned from end users of the Content, including Advertising Revenue (if any), and less applicable Taxes and any deductions including, without limitation, costs associated with compliance by CAL with clause 7.3. hereto, and (ii) in relation to Content distributed, sublicensed, sold or the rights of use of which are granted by CAL for purposes of Wireless Use, revenue collected by CAL from MNOs less any fees, commissions or other dues payable or paid to such MNOs and less applicable Taxes and any deductions including, without limitation, costs associated with compliance by CAL with clause 7.3. hereto;
- 1.1.6. **“CMO”** means such society or other body of persons as shall have been authorized by the Kenya Copyright Board to be a copyright collecting society under the Copyright Act (Chapter 130, laws of Kenya) in relation to any works contained in the Content;
- 1.1.7. **“Content Fee”** means the fee set out in clause 6.1 and Schedule 2 hereto;
- 1.1.8. **“DJ Mix”** means any sequence or formation of music and other audio, visual or audiovisual content or works aggregated, edited, compressed, repackaged and otherwise manipulated and recorded in order to appear and be Used as one or more continuous tracks and **“DJ Mixes”** has the corresponding plural meaning;
- 1.1.9. **“Intellectual Property Rights”** means all intellectual property rights including patents, registered designs, trademarks and service marks (whether registered or not), rights in the nature of unfair competition rights, master rights, copyrights, database right, design right and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, performances, business names, goodwill and the style and presentation of goods or services and applications for protection of any of the above rights;
- 1.1.10. **“Launch Date”** means, with regard to each specific Content, the date from which such Content shall be made available on the Platform;
- 1.1.11. **“Platform”** has the meaning set out in recital 1 above;
- 1.1.12. **“Tariff”** means any amount published as remittable to the CMO by users of content or works such as those contained in the Content;
- 1.1.13. **“Tax”** or **“Taxation”** means all forms of taxation in Kenya including (i) any charge, tax, duty, levy, impost, withholding or liability wherever chargeable imposed by any national, state, federal, municipal or local government or (ii) any other person; and any penalty, fine, surcharge, interest, charges or costs payable in connection with any taxation in (i) above;
- 1.1.14. **“Term”** means the term of this Agreement as set out in clause 2.1 and as may be extended in accordance with clause 2.2.

1.1.15. **"Use"** means, by CAL or the Platform, to (a) digitise, encode, aggregate, compress, re-package, re-format, index, technically manipulate, and otherwise change or modify the Content and to deploy the Content to the Platform with such deployment to include copying, hosting, electronically storing, caching, displaying, communicating, transmitting, making available and distributing the Content to subscribers and consumption of such Content by the Platform's subscribers, and (b) subject to clause 3.1.2 below, reproduce, compress, re-package, re-format, index, cut, edit, copy, technically manipulate, and otherwise change or modify the Content for subsequent reselling, distribution and sublicensing of the Content or any version thereof resulting from such change or modification, whether individually or as a collection or compilation, to MNOs for Wireless Use.

1.1.16. **"Wireless Use"** means the use of Content, or of any part or version thereof resulting from a Use, on mobile phones, handheld email devices, personal digital assistants (PDAs) and LCD display screens, whether in the form of ringtones, message and call notification tones, ring-back tones, audio recordings, video recordings, video links, albums (video & audio), Short Messaging Services (SMS) and Multi Media Services (MMS) alerts and/or applications, voice recorded greetings or messages, or otherwise howsoever by the subscribers of any MNO.

1.2. In this Agreement, unless the context otherwise requires, any reference to:

1.2.1. a covenant by a party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person so far as this is within the party's power or control;

1.2.2. the singular includes the plural and vice versa;

1.2.3. any reference to the male gender includes the female and the neuter gender;

1.2.4. a person includes reference to a body corporate or other legal entity;

1.2.5. any written law includes that law as amended or re-enacted from time to time;

1.2.6. any agreement or other document includes that agreement or other document as varied or replaced by the Parties in writing from time to time;

1.2.7. a clause is to the relevant clause of this Agreement;

1.2.8. any Party includes that Party's successors and assigns.

1.3. Clause headings are inserted for convenience only and shall be ignored in construing this Agreement.

1.4. Where the Agreement provides for the giving or issue of any notice, consent, approval certificate or determination, it shall be in writing and the words notify, certify or determine shall be construed accordingly.

2. TERM OF LICENSE

2.1. Subject to Clause 10.3, this Agreement shall come into force on the date of its signature by the last party to sign and shall remain in force for an initial period of three (3) years thereafter ("**Initial Term**").

- 2.2. Subject to Clause 10.3, upon expiry of the Initial Term, it may be renewed at the option of CAL on the same terms or such other terms as the parties may agree for further periods of two (2) years, or such longer or shorter periods as the parties shall agree, unless earlier terminated in accordance with the termination provisions of this Agreement.

3. LICENSE

- 3.1. Upon signature of this Agreement by both parties, subject to the terms and conditions of this Agreement and in consideration of the Content Fee, the CP hereby:
- 3.1.1. grants to CAL and the Platform a royalty free licence to the Content for the duration of this Agreement and, in respect of Content which CAL has specifically commissioned the CP to produce for the Platform, an exclusive and absolute ownership, to:
- (a) Use any Content provided by the CP to CAL from time to time; and
 - (b) Collect the Content, by using such data collection protocol as shall be specified by CAL direct from the CP's internet server or other collection point; and
- 3.1.2. appoints CAL as a distributor and Intellectual Property Rights reseller and sub-licensor of the Content provided hereunder, save for DJ Mixes, and authorises CAL to distribute or sell, and grant rights to use, such Content to any MNO for purposes of further distribution to such MNO's subscribers and, for that purpose, to enter into any agreements or other arrangements with any MNO and any other person and to provide them with a limited, non-exclusive sub-license to Intellectual Property Rights to Content so distributed or sold which sub-license shall include a right by MNOs to grant the right of Wireless Use of such Content to its subscribers. For the avoidance of doubt, this clause shall not be read or interpreted to allow CAL to distribute any DJ Mixes (or any part thereof) provided by the CP hereunder to any MNO.
- 3.2. The CP, by granting the licence detailed in clause 3.1.1, also grants CAL the express right and platform to grant a sub-licence or other rights of use to subscribers and consumers on the Platform to the extent necessary for such subscribers and consumers to view the Content.
- 3.3. CAL shall have the right, and not the obligation, to do any of the matters set out in clause 3.1 directly or through the Platform.
- 3.4. No term contained in this Agreement shall be construed as requiring CAL to source the Content or any other content exclusively from the CP.

4. CP RIGHTS AND OBLIGATIONS

SPECIFIC RIGHTS AND OBLIGATIONS

- 4.1. The CP shall, at its own cost, provide CAL with the Content in such format as CAL shall specify.
- 4.2. The CP shall ensure that the Content complies with the requirements set out in this Agreement and as specifically detailed in Schedule 1 and any other requirements that CAL may specify from time to time.
- 4.3. The CP shall be entitled to payment of the Content Fee specified under clause 6.1 and Schedule 2 hereto.

4.4. The CP shall invoice CAL on a monthly basis in arrears for Content Fees due to it under this Agreement. The invoice shall account for all relevant tax and shall comply with all applicable tax laws. The invoice shall be based on the revenue computation set out in Schedule 2 as prepared and provided by CAL. The invoice shall comply with such direction as may be given by CAL from time to time.

GENERAL OBLIGATIONS

4.5. The CP shall protect, defend, indemnify and hold harmless CAL against all claims, proceedings, damages, costs, expenses and losses whatsoever and howsoever arising:

4.5.1. from any negligence, wilful default, fraud, breach of the terms of this Agreement or breach of any applicable law by the CP or any of its agents, partners, employees or servants;

4.5.2. as a result of or in connection with any claim or action that the Use by CAL or the platform of the Content or any part of the Content in accordance with this Agreement infringes the Intellectual Property Rights of a third party or breaches any applicable law or regulation.

4.6. The CP recognises that CAL shall continually vet the Content provided by CP to ensure that the Content and the CPs meet the standards required by CAL and as such the CP hereby agrees that it shall comply with any instructions issued by CAL in this regard to remedy or improve on the Content.

4.7. The CP recognizes that CAL shall have the right to decline to host any or all of the Content on the Platform, or remove any or all of the Content hosted on the Platform, if it does not meet standards and the quality requirements as determined by CAL from time to time or if it does not receive adequate viewership without any obligation to notify the CP of such decision. Parties agree that CAL shall give the CP at least two (2) days' prior notice of removal of any of the Content from the Platform. Provided that nothing in this clause shall be read or interpreted to require CAL to consult the CP before such removal.

4.8. The CP shall comply with all of its obligations under this Agreement and will observe the best business practices employed in the media industry. Furthermore, the CP, its officers, employee, representatives and agents will at all times promote and uphold the good name of CAL and the Platform.

4.9. The CP shall ensure that the representations and warranties set out in this Agreement remain true and accurate at all times and shall inform CAL as soon as it becomes aware that any of the representation or warranties is no longer true or accurate.

5. CAL RIGHTS AND OBLIGATIONS

5.1. CAL hereby agrees to create, maintain and provide the Platform aimed at providing informative, entertaining, educational content in English, Kiswahili and multiple local languages with mass appeal. CAL shall strive to make the Platform state-of-the-art and use all reasonable efforts to aggregate dynamic short-form freshly updated video content at affordable rates. Specifically, CAL shall:

5.1.1. Make the CP's content available on the Platform at no additional cost as per the terms of this Agreement;

5.1.2. Avail and continuously maintain and update the technology used for the Platform;

- 5.1.3. Store the Content and ensure appropriate controls to prevent use of the Content by third parties (other than Subscribers and authorised consumers) outside this Agreement;
 - 5.1.4. Market and promote the Platform and, by extension, the CP content through the platform. CAL reserves the right to market and promote specific content and to come up with specific content promotion plans. The promotion will specifically be on radio, road shows, online and television networks with such promotion covering all targeted customer segments;
 - 5.1.5. Provide customer care and subscriber management;
 - 5.1.6. Provide billing and revenue collection functions on behalf of the CP subject to the terms of the revenue share formula;
 - 5.1.7. Procure the payment of the Content Fee to the CP which shall be computed in accordance with the formula set out in Schedule 2 hereto;
 - 5.1.8. Give access to relevant content usage trends and strategic market insights for the purposes of content development;
 - 5.1.9. Pay the amount of the Tariff to the CMO at such times as shall be specified under the applicable law or by the CMO in accordance with such law.
- 5.2. The Content Fee shall be exclusive of value added Tax and subject to any withholding tax at the time of payment.
 - 5.3. If applicable CAL shall deduct from and pay to the Kenya Revenue Authority withholding tax payable on the monies due to the CP at such rate as may be prescribed by the Kenya Government from time to time. Upon such deduction CAL shall present the CP with a Withholding Tax Certificate in such form and within timelines as may be prescribed under law from time to time.
 - 5.4. CAL shall provide the CP with such reasonable information, including reasonable access to the Platform, as the CP may require to enable the CP to confirm the revenue computation in connection with Content Fees as prepared by CAL provided that such information shall not disclose, and the CP shall not demand disclosure of, details of or information concerning any subscriber or customer of the Platform or any content provider other than the CP.
 - 5.5. Without prejudice to any other right or remedy that CAL may have under this Agreement or any applicable law, CAL reserves the right to set off any amount owing at any time from CAL to the CP against any amount payable by the CP to CAL under this Agreement.
 - 5.6. CAL shall create an account on the Platform for the CP and shall endeavour, on a best efforts basis and without guarantee or warranty by CAL to the CP in that regard, to:
 - 5.6.1. Avail to the CP relevant data on viewership of the CP's Content on the Platform during the preceding calendar month; and
 - 5.6.2. To procure and relay to MNOs usage and payment data in relation to Wireless Use of the CP's Content by subscribers of MNOs to whom CAL shall have distributed, sold, sub-licensed or granted rights of use of such Content.

6. CONTENT FEE

6.1. Subject to clause 5.1.9, CAL shall pay the CP a Content Fee computed in accordance with Schedule 2 of this Agreement. For this purpose, the Parties agree that Net Revenue shall be shared between CAL and the CP as follows:

6.1.1. For Use of the Content, revenue share shall be calculated in accordance with Schedule 2A based on viewership of the Content on the Platform, which viewership shall be determined from Content consumption data collected and provided to the CP by CAL.; and

6.1.2. For distribution, sublicense, sale or grant of rights of use of the Content to MNOs in accordance with clause 3.1.2, Net Revenue shall be calculated in accordance with Schedule 2B and shall be based on the following revenue sharing proportions:

- i. CP - 70%; and
- ii. CAL - 30%.

6.2. Content Fees payable under this clause shall be paid in accordance with clauses 4 and 5.

7. CONTENT QUALITY

7.1. OWNERSHIP RIGHTS

7.1.1. The CP shall ensure that any Content provided to CAL:

- (a) is wholly owned by the CP and developed in compliance with all applicable laws;
- (b) is not the subject of any dispute of ownership or other Intellectual Property Rights and further that Use; or distribution, sale, sub-licensing and/or grant of rights by CAL; or Wireless Use of the Content or any part thereof does not violate any copyright, trademark, trade secret or other intellectual property right.

7.1.2. In confirmation of the above clause 7.1.1 but in addition, and without prejudice, to all other rights of CAL and obligations of the CP hereunder, the CP shall complete and sign Schedule 3 (*Image Rights Release*).

7.2. CONTENT ETHICS

The CP shall ensure that the Content developed and/or provided to CAL is not:

- 7.2.1. In breach of any applicable law or regulation, or code of practice adopted by any applicable industry regulator or any policy or conditions which may be communicated to the CP by CAL;
- 7.2.2. Abusive, indecent, defamatory, obscene, offensive or menacing;
- 7.2.3. In breach of confidence, Intellectual property rights, privacy or any right of a third party;
- 7.2.4. Against public interest, public order or national harmony;
- 7.2.5. Prejudicial in any manner to the business interests of CAL, the Platform or any of the parties thereunder; and/or
- 7.2.6. In infringement of the copyright, patent, trademark, trade secret or other proprietary rights of any third party.

7.3. CAL may, but shall not be obliged to and without prejudice to the CP's obligations hereunder, procure that any Content provided by the CP is approved and censored by any applicable industry regulators including but not limited to the Kenya Film Classification Board, the Kenya Film Commission and the Performers Rights Society of Kenya.

8. REPRESENTATION AND WARRANTIES

Without prejudice to clauses 6 and 7, the CP warrants to CAL as follows as at the date of this Agreement and as at every time any new Content is provided by the CP to CAL:

- 8.1. That at all times during the subsistence of this Agreement all the information it shall furnish to CAL in relation to any Content provided will to the best of its knowledge be true and accurate in all material respects and that such information will not omit any material information which might reasonably be expected to affect the decision of CAL to enter into this Agreement or Use the Content;
- 8.2. That any Content provided to CAL will be in accordance with all specifications set out in this Agreement or otherwise specified by CAL, in conformity with clause 7 of this Agreement and generally of overall merchantable quality that is customary for the industry;
- 8.3. That the CP has not previously granted and will not grant any rights in or to the Content to any third party that are inconsistent with the rights granted to CAL herein, or which would interfere with the performance and continuance of this Agreement;
- 8.4. There are no proceedings pending or, to its knowledge, threatened, and there is no existing basis for any such proceedings, against or affecting it by or before any court, arbitrator, or other governmental authority which, if adversely determined, individually or in the aggregate might be reasonably expected to materially and adversely affect its properties, business, prospects, profits or condition or adversely affect its ability to perform its obligations under this Agreement;
- 8.5. It validly exists under the laws of Kenya and has all the necessary power and authority to enter into and perform all of its obligations under this Agreement, has in addition obtained all necessary permits, licences and consents from all relevant regulatory authorities and has, in addition, not taken any corporate action or other action for its winding up, dissolution or re-organisation or for the appointment of a receiver, trustee or similar officer of it or of any or all of its assets or revenues or for bankruptcy (where applicable);
- 8.6. That its execution, delivery and performance of this Agreement will not be in conflict with or breach any other agreement or obligation to which it is a party or is bound;
- 8.7. That the Content does not infringe:
 - 8.7.1. Any copyright;
 - 8.7.2. Any patent or trademark;
 - 8.7.3. Any right of publicity, right of privacy or other proprietary rights of any third party and does not contain any matter which, if published, will be libellous or defamatory in all cases under Kenyan Law; or
 - 8.7.4. Any Intellectual Property Rights;

- 8.8. That no third party, officer or employee of CAL has received or will receive any material or other benefit for the purpose of influencing the action of a CAL officer or employee in the execution, retention or amendment of this Agreement or securing any determination in respect to the CP's performance;
- 8.9. The CP hereby undertakes to indemnify and hold CAL, its directors, officers, agents and employees harmless for any cost, claim or liability arising from the breach of the aforesaid warranties and representations (including, without limitation, all costs and damages incurred as a result of any third-party claims that Use, distribution, sale, sub-licensing and/or grant of rights by CAL, or Wireless Use by any person, of the Content or any part thereof infringes on any rights of any third party, including any person who holds or claims Intellectual Property Rights in any work comprising the Content);
- 8.10. In the event that any such infringement claim arises or in CAL's opinion is likely to arise, the CP shall at his/her expense and at CAL's option procure for CAL the right to continue using the Content.
- 8.11. Where the infringement claim relates to a severable item of Content provided hereunder, then at the option of CAL, the CP will terminate this Agreement in relation to such severable part, and otherwise the Agreement shall continue in full force and effect.

9. INTELLECTUAL PROPERTY

- 9.1. Unless otherwise agreed by the parties in this Agreement or otherwise in writing, the Content shall be owned by the CP. Provided that, without prejudice to clauses 6, 7 and 8 above, Content may contain works not owned by the CP.
- 9.2. Nothing in the Agreement shall grant, suggest, or imply any authority for the CP to use the name, trademarks, service marks, or trade names of CAL and the platform for any purpose whatsoever unless such use is done with the prior written consent of CAL.
- 9.3. The CP shall take all reasonable steps available to it to restrain infringements by third parties of the Intellectual Property Rights in the Content which might, if not restrained, damage the ability of CAL to exploit its rights hereunder.

10. TERMINATION

- 10.1. Subject to Clause 10.3, this Agreement shall automatically terminate on the expiry of the Initial Term and shall automatically renew, at the option of CAL, on the same terms for further periods of two (2) years unless earlier terminated in accordance with the termination provisions of this Agreement.
- 10.2. Subject to Clause 10.3, each Party shall be entitled to terminate this Agreement by giving written notice to the other Party (such termination immediately effective upon the giving of such notice of termination):
- 10.2.1. If one Party ceases or threatens to cease to carry on its business;
- 10.2.2. If either fails to comply with its obligations under this Agreement, and, if the failure can be cured, the defaulting party fails to cure such a failure within fourteen (14) days of written notice from the other party (or such longer period as may be indicated in the notice)

or where the defaulting party declares that it will not be able to remedy the default within such time.

10.2.3. If a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other Party;

10.2.4. If one Party makes any arrangement for the benefit of its creditors;

10.2.5. If one Party goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;

10.2.6. In the event of either party being prohibited by any law or official requirement from complying with the terms of this Agreement.

10.3. CAL shall be entitled to terminate this Agreement at any time, without cause, by giving the CP ninety (90) days prior written notice.

10.4. Upon termination of this Agreement howsoever occurring, CAL shall continue to be entitled to Use of the Content already delivered to it by the CP on the same payment terms. Consequently, the following clauses shall survive termination for this additional period:

10.4.1. The CP's obligations under clauses 7 and clause 9;

10.4.2. The content fee and billing procedure in clauses 4.3 and 4.4;

10.4.3. CAL's payment obligation in clauses 5 and 6;

10.4.4. The CP's general obligations set out in Clauses 4.5 to 4.9;

10.4.5. The representations and warranties in clause 8; and

10.4.6. The intellectual property provisions in clause 9.

10.5. Termination of this Agreement, howsoever occurring, shall not prejudice any accrued rights of either Party.

11. NOTICES

11.1. The Parties select as their respective addresses, the addresses set out below for all purposes arising out of or in connection with this Agreement at which addresses only all processes and notices arising out of or in connection with this Agreement may validly be served upon or delivered by the Parties.

CAL: The Chief Executive Officer
Content Aggregation Limited
Westlands Office Park
Waiyaki Way
P.O Box 7468-00300
Email:

CP: [Insert]
[Physical Address]
P.O Box: [Insert]
Email: [Insert]

12. GENERAL/MISCELLANEOUS

12.1. INDEPENDENT RELATIONSHIP

The Parties are independent entities and are not and shall not be construed as joint venture parties, partners, employer/employee, or agents of the other, and neither shall have the power to bind or obligate the other, except as set forth in this Agreement.

12.2. LIMITATION OF LIABILITY

It is hereby agreed between all the parties that:

12.2.1. CAL shall not at any time be responsible for any loss or damage to the CP (whether or not awarded by a judicial or legally constituted tribunal) howsoever occurring under this Agreement unless such loss or damage arises from the gross negligence, wilful default or fraud of CAL;

12.2.2. no warranty or guarantee is provided by CAL in connection with the revenue that the CP may earn through Content Fees;

12.2.3. that no guarantee is provided by CAL to the CP on availability of the Platform to subscribers and customers and any suspension of services on the Platform or the removal or suspension of Content on the Platform will not create any liability on the part of CAL.

12.3. MODIFICATION OF AGREEMENT

In the event any of the provisions in this Agreement are to be modified after the Agreement has been signed, the modifications shall be made in writing and signed by the authorised representatives of the Parties.

12.4. ASSIGNMENT OF AGREEMENT

CP may not assign or transfer or purport to assign or transfer its rights or obligations under this Agreement without having first sought and obtained the written consent of CAL. For the purposes of this Agreement CP must notify CAL of any change of control (as defined under the Competition Act, 2010) within ten (10) days of such changes taking effect and CAL may at its sole discretion repudiate this Agreement without consequence if such changes are not in its opinion beneficial to its business **PROVIDED** that such discretion is exercised within thirty (30) days of receipt of official notification of the said changes from CP.

12.5. CONFIDENTIALITY

CP shall not at any time disclose, directly or indirectly to any other person whatsoever (including to the public or any section of the public) any information concerning this Agreement or any other information of any nature whatsoever concerning CAL or the Platform or any other matter, whether such information or matter is stated to be confidential or not, without the express written permission of CAL. The CP on its own behalf gives this covenant and CP also undertakes to ensure that it will take all reasonable steps to enforce obligations in like form against its directors and personnel.

12.6. ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties relating to the subject matter of this Agreement and no variation, extension or cancellation of the expressed terms of this Agreement shall be binding upon CAL as the case may be unless and until such variation, extension or cancellation is confirmed in writing under the hands of authorised representatives of both Parties.

12.7. NO WAIVER

Except where this Agreement provides otherwise, the rights and remedies contained in it are cumulative and not exclusive to rights or remedies provided by law. The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

12.8. SEVERABILITY

If any provision of this Agreement is declared by any judicial or other competent authority or an arbitrator appointed hereunder to be void, voidable, illegal or otherwise unenforceable, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of CAL it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

12.9. COUNTERPARTS

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 Agreement.

12.10. COSTS

Each party shall bear its own costs incurred in the negotiation, preparation and execution of this Agreement.

13. GOVERNING LAW AND DISPUTE RESOLUTION

13.1. Kenyan law shall govern the construction, validity and performance of this Agreement in all respects.

13.2. The parties shall use their best efforts to settle amicably any dispute arising from or in connection with this Agreement or the interpretation thereof.

13.3. If the dispute has not been settled pursuant to the mediation within ten (10) days from when the mediation was 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.

- 13.4. 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.
- 13.5. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.
- 13.6. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.
- 13.7. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

SIGNED BY:)
 Duly authorized for and on behalf of:)
CONTENT AGGREGATION LIMITED)
 In the presence of:)
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SIGNED BY:)
 Duly authorized for and on behalf of)
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 In the presence of:)
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SCHEDULE 1 - CONTENT SPECIFICATIONS

(Details and format in which to be delivered)

- 1.** All mix or audio mixes by the mix content producer currently in existence.
- 2.** Future mix or audio mixes releases by the musician which shall be shared with CAL by the music content producer.
- 3.** Any new music mixes to be released **EXCLUSIVELY** on the Viusasa Platform as agreed separately between the music mix content producer and CAL.
- 4.** The Music mixes will be delivered preferably in HD format. However, where not available, the same may be delivered in any other available format PROVIDED that it is MP4.
- 5.** The following details shall be provided: -
 - a. The name of the mix content producer
 - b. Name of musicians in the songs
 - c. Description of the musicians
 - d. Song Titles
 - e. Language Used
 - f. Rating (GE, PG, PG13, PG18)
 - g. Release Date
 - h. Run Time
 - i. Video or audio music Description (maximum two sentences)

SCHEDULE 2 - CONTENT FEE

(A) CONTENT FEE FOR USE OF CONTENT

GENERAL PRINCIPLE IN CONNECTION WITH REVENUE SHARE

- CAL will pay 40% of all Net Revenue generated by the Platform to all content producers (including the CP) who supply content for the Platform (“**Revenue Share**”).
- This Net Revenue is distributed to all content producers (including the CP) who supply content for the Platform based on, and in proportion to, the viewership received for their respective content.
- The net revenue will be shared out equally to the music mix content producers, together with the artists, based on the number of transactional purchases of the specific music mixes.
- The net revenue will be summed up and at the end of the month for each respective artist, music mix producer and the number of times the music mix was purchased.

COMPUTATION OF STREAMS

- In order for any Content (or components thereof) to participate in the Revenue Share in any month, such Content (or components thereof) must have been watched for at least 50% of its length by at least a single subscriber.
- Upon qualifying as such, the Content (or any component thereof) shall be referred to as a Stream.
- A subscriber can generate more than one Stream in relation to the CP by watching more than one clip (for at least 50% of its length) from Content provided by the CP.
- A video clip will generate multiple Streams where multiple subscribers watch it (for at least 50% of its length).
- Duplicate viewership of a video clip will not generate multiple Streams.

Therefore:

- The number of Streams for a video clip in one month is therefore the total number of subscribers who have watched that video clip for at least 50% of its length in that month.
- The number of Streams for the CP is the aggregate number of Streams for all video clips derived from Content provided by that CP.
- The total number of Streams in a month for the Platform is the aggregate number of Streams for all video clips hosted on the Platform.

E.g. if the Platform has 1000 subscribers and 100 clips in total in a given month, out of which, 60 clips were then watched for over 50% of their respective length by all the subscribers, then the total Streams for the month shall be:

1000subscribers x 60clips = 60,000 Streams.

Similarly, if 500 subscribers watched all the available (100) clips for more than 50% of their respective lengths, then the total Streams will be:

$$500 \times 100 = 50,000 \text{ streams}$$

COMPUTATION OF SHARE OF REVENUE – CONTENT FEES

- The CPs Revenue Share for a month is computed based on total time spent viewing that CPs Streams divided by total time spent on all the Streams.
- The length of time spent watching a CP's Streams is the aggregate number of minutes spent watching the Streams.

Therefore:

- CPs Revenue Share for a month is the length of time spent watching the CPs Streams divided by the total amount of time spent watching all the Streams on the Platform in that month.
- Any viewership of a clip for less than 50% of its length does not count and shall not be considered a Stream. Duplicate viewership of a clip by one subscriber does not count and shall not be considered a Stream.

e.g. if total Streams for the month generated viewing time of 5000 minutes and the CPs 500 streams a total of 400 minutes, then, the CPs share of revenue is 8% of the content share of the Net Revenue (i.e. 8% of 40% of the Net Revenue).

(B) CONTENT FEE FOR DISTRIBUTION AND SALE OF CONTENT TO MNOS

The Parties agree that the share of the Net Revenue in relation to Content distributed, sold or sublicensed by CAL to the various MNOS under this Agreement shall be as follows: -

- CP – 70% of Net Revenue (see definition under clause 1.1.5 of the Agreement).
- CAL – 30% of Net Revenue (see definition under clause 1.1.5 of the Agreement).

SCHEDULE 3 - IMAGE RIGHTS RELEASE

IMAGE RIGHTS RELEASE

BETWEEN

CONTENT AGGREGATION LIMITED T/A VIUSASA

&

[INSERT NAME]

["LICENSOR" OR "CP"]

PREAMBLE: IMAGE RIGHTS ARE THE PUBLIC EXPRESSION OF AN INDIVIDUAL/INDIVIDUALS' voice, signature, likeness, appearance, silhouette, feature, face, expressions (verbal or facial), gestures, mannerisms, any other distinctive characteristics or personal attribute of a personage

The Content License Agreement is entered into by and between _____ ("*Licensor*") and, CAL (or '*Licensee*') for the purpose of granting limited license to the use of Licensor's Content (as defined under the Content License Agreement). Further to the provisions of the Content License Agreement, I, the CP therein, hereby:

1. grant the Licensee, and its assigns a royalty free licence limited license and all authorisations and clearances to use, copy, reproduce, reproduce, compress, re-package, re-format, index, cut, mix, duplicate, re-use, edit, and/or technically manipulate (as the case may be) my image, branding likeness, all copyright and residual rights as embodied in the audio-visual works contained in the Content (defined under the Content License Agreement) as listed to the Content License Agreement as 'Schedule 1' and for Use in accordance with the Content License Agreement. This limited grant further embodies use of my image and personality rights, *in toto*, taken or submitted by myself for use on the Platform, in multi-media, digital and social media awareness now known or later developed;
2. grant The Licensee and its assigns usage rights in all digital works embodied in the audio-visual works, but, limited to visual use on the Platform and only for non-commercial usage by the subscribers to the Platform;
3. further grant the Licensee and it's assigns the right to publish, broadcast, exhibit, market and otherwise distribute the said audio-visual works, either in whole or in parts, and alone or with other products, for commercial or non-commercial publishing and distribution, subject however to the terms of the Content License Agreement signed on the _____ day of _____ 2018;
4. confirm that I have the right to enter into the Content License Agreement, absolutely not restricted by any commitments and no financial, copyrights, intellectual property and or legal commitments or obligations.

5. expressly release and indemnify the Licensee and its officers, employees, agents and designees from any and all claims known and unknown arising out any breach of representations of warranty by the Licensor, breach of agreement or covenant by the Licensors with any of their third party assigns, losses incurred by Licensor's assigns or third party associate third party claims for the production specific matter, that is, claims of infringement and/or misappropriation of Intellectual Property Rights through misrepresentation, or any claims of or in any way connected with the above granted uses and representations. The rights herein are limited, time bound to the parent agreement and worldwide;
6. By executing the Content License Agreement as the CP, I, either individually, or as an agent or representative, represents and warrants that I am eighteen (18) years of age or above, and further, if executing said contract as agent or representative, that I have the authority to enter into the Content License Agreement and should I have not have such authority, I personally accepts and assumes full responsibility and liability under the terms of this contract;
7. Notwithstanding the date of signature of this Schedule 3 (*Image Rights Release*), the rights granted hereunder shall commence on the _____ day of _____ 2018 ("the commencement date") and continue for the term of the Content License Agreement; and
8. I am fully aware, and agree, that the Content may be used outside the geographical confinements of Kenya given the advancement of the Internet and digital media and the nature of the Platform and the MNOs business.

I have read the foregoing and understand its terms and stipulations and agree to all of them:

The Content License Agreement, including this Schedule 3, and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has [signed](#) the Agreement and this Schedule 3 through its authorized representative.

SIGNED ON THIS _____ DAY OF _____ 2018

Executed by LICENSOR by or in the presence of:

 LICENSOR

 WITNESS | LICENSOR

Executed by CONTENT AGGREGATION LIMITED by or in the presence of:

 SIGNATURE

 SIGNATURE

