

TERMS & CONDITIONS AND OPERATIONS AGREEMENT

This Agreement (The “Agreement”) is made and effective this-----day of--

BETWEEN: SmoothCartoonsNigeria (the “Producer”) a registered business name under the Companies and Allied Matters Act, Cap C20 Laws of the Federation, Federal Republic of Nigeria with Business Name NO **LAZ 138098_** and its address at **No 5 Ajasa Crescent Alagbado Lagos State** which expression shall where the context so admits include its successors-in-title and assigns of the one part.

AND: ----- (the “Client”) an individual/organisation/company with main address located at -----which expression shall where the context so admits include his successors-in-title and assigns) of the other part.

Whereas, the Producer is a studio which designs and develops cartoon characters, animations with the aim of featuring them in Comic Books, Graphic Novel, Book Covers, Storyboards, TV, Web, Movies, commercial advertisements, magazines, brochures, wallpapers, business newsletters, PowerPoint presentations, cartoons for training manuals, cartoons for customer newsletters, in-house newsletters, your local business journal, training presentations, meeting presentations, cartoons for business newspaper, cartoons for business magazines, cartoon stock for any kind of print or electronic media. and other social media networks.

Whereas, the Client desires has contracted the Producer to develop the cartoon characters, and all works of art(cartoon strips, illustrations, book cover illustrations, storyboards), animations etc relating to the production of the project including music and soundtrack production.

In consideration of the terms and covenants of this agreement and other valuable considerations hereinafter stipulated, the parties hereby agree as follows:

THE PROJECT

- **Editing and changes:** There shall be no changes to the client's requirements as indicated and contained in the proposal or quote provided to the client. The Producer must be informed of any subsequent changes from the specified brief in writing and such changes may incur further cost negotiable between parties.
- **Termination or suspension of Project:** Should the client terminate or alter the parameters of the project or suspend the project, the client will be liable to pay in full *quantum meruit*. The client will also be responsible to pay the balance of the originally agreed upon fee within two weeks. ANY additional work that has commenced will be estimated and charged by the Producer and such costs will be presented to the client for payment.
- **Management Re-assigning:** Upon the commencement of the project the client may not re- assign the management of the project or enforce collaboration with any third party including any digital artists, engineers, producers, directors and other key personnel. Breach of this condition will lead to a suspension of the project and no creative and proprietary material will be handed over to the client.
- **Publishing or Broadcasting of Works:** SmoothCartoonsNigeria Studios will not be held liable to any party for any errors on any medium after the project has been duly handed over to the client and the client has

confirmed in writing that the content is correct and accurate and should be posted, published or broadcast.

- **Promotional Material:** The Client grants SmoothCartoonsNigeria Studios the right to use the Project for promotional purposes and/or to cross-link it with other marketing campaigns developed by SmoothCartoonsNigeria Studios.
- **Project Manipulation:** The client has no right to assign, sell, modify or otherwise alter the Project, except upon the express written advance approval of SmoothCartoonsNigeria Studios, which consent can be reasonably withheld.
- **Delivery of Project:** SmoothCartoonsNigeria shall not be held responsible for any delay in the completion of the Project due to actions or negligence of the client, transportation delays, illness, or circumstances outside the control of SmoothCartoonsNigeria Studios which may alter the delivery date.
- **Project Delivery Deadline:** Any contract requiring SmoothCartoonsNigeria Studios to work to specific deadlines provided within the written agreement will be deemed to include a proviso that the clients will make themselves reasonably available to communicate and cooperate fully and timeously with the Producer of SmoothCartoonsNigeria Studios. Failure on the part of the client to comply with this condition shall not make SmoothCartoonsNigeria Studios liable for delay in delivery.
- **Review, Approval and Delays:** Should the client cause unreasonable delays by not approving or actively engaging with the project resulting in

indeterminate completion, the producer will be required to invoice for further additional deposits to ensure continuation of the project. All major content decisions with the project shall be made by the Client in accordance with information supplied and review of uploads of the work in progress. The client is also required to be hands on to assist and oversee during production to ensure smooth operation. Failure to supply such and comply shall render rights of review and final product approval void.

- **Storage of Footage / Hard Drive Space:** SmoothCartoonsNigeria Studios shall charge for storage of footage and hard drive space or cancel the project without refund of any monies, in the event that the post production project is delayed by the client beyond 30 days.
- **Re-editing and Re-shooting:** SmoothCartoonsNigeria Studios is not responsible for re-shoots and / or re-edits due to subsequent property re-modelling, renovation, or program and product changes within the same production and quote. Re-edits of product due to changes will incur additional charges as quoted separately by SmoothCartoonsNigeria Studios.
- **Stock Footage, and Visual Effects:** Any Stock footage, illustrations, cartoons, 3D animation, Motion graphic or Visual Effect, used in the production is strictly allowed only to appear in the final production as per clients usage rights. Ownership of this footage is the property of SmoothCartoonsNigeria Studios. The client may not use the said footage, animation or effect in another project, neither shall the client hold any right to transfer any of such material to any third party whatsoever without the knowledge and consent of SmoothCartoonsNigeria.
- **The final produced product** may not be transferred, edited, or used in any other format or application.

PAYMENT

- Any additional bookings for talent, equipment, accommodation or other travel arrangements will only be reserved on receipt of a signed confirmation or written order.
- Final Product will be delivered once final payment has been received and cleared.
- Final Product (Cartoons, Illustrations, Animations) will belong to the client only after all outstanding costs have been settled in full. Original and edit masters remain the property of the producer.

INDEMNITY

The client indemnifies the producer (SmoothCartoonsNigeria Studios) and holds them harmless against all or any claims of every nature or description, civil, or criminal, which may be brought or instituted against the producer by any third party or authority, alleged to arise from or relate to the subject matter of any recording taken by, processed or otherwise dealt with by the producer and its employees, at the instance or request by the client.

COPYRIGHT & OWNERSHIP- RIGHTS OF THE PARTIES

- **Ownership Of Proprietary Material:** The client warrants that everything it gives SmoothCartoonsNigeria Studios to include in the project is legally owned or licensed to the Client. The Client agrees to indemnify and hold SmoothCartoonsNigeria Studios harmless from any and all claims brought by any third-party relating to Client's Proprietary Material provided by the Client to SmoothCartoonsNigeria Studios including any and all demands, liabilities, losses, reasonable associated costs and claims including reasonable attorney's fees arising out of injury caused by Clients'

Proprietary Material supplied by Customer to Designers, copyright infringement, and defective products sold as a result of Customer's distribution of the Project

- **Ownership of copyright:** Except for Clients Proprietary Material contained in the Project, SmoothCartoonsNigeria Studios holds continuously all rights, title, and interest in all original artwork, whether in draft, mock- up, concept or final development for the Project. Specifically, but without limitation, SmoothCartoonsNigeria Studios shall hold all rights, title, and interest in and to:

(a). All text, graphics or digital components including artwork(Cartoons, Illustrations, Animations), source and processed working digital files of the Project.

(b) All layouts, logos, structures or arrangements or other components of any materials presented to the client that comprises the Project.

(c) All literal and non-literal expressions of ideas that operate, cause, create, direct, manipulate, access, or otherwise affect the Content

(d) All copyrights, patents, trade secrets, and other intellectual or industrial property rights in the Project or any component or characteristic thereof except the proprietary material given to the Producer by the client at the beginning of the project.

(e) Produced material, proprietary technology and methodology as well as any working or processed digital files arising from the provision of the services hereunder shall remain vested in the producer (SmoothCartoonsNigeria) as the original author. Client shall not do anything that may infringe upon or in any way undermine SmoothCartoonsNigeria Studios' right, title, and interest in the Project.

- **Intellectual Property Rights:** Producer will retain ownership of any and all right, title and interest, including but not limited to copyright, in any

programming, software, software code, delivery methods and/or propriety technology and any text, graphics and other material developed or licensed for use in the Project as a result of the performance of the Services and delivery of the Deliverables.

CREDITS:

SmoothCartoonsNigeria Studios shall reserve the right to insert or have listed a production credit in the main titles of the project as follows:

- a) Embedded within production “A SmoothCartoonsNigeria Studios Production”
- b) “SmoothCartoonsNigeria Studios © 2012/An Olaogbebikan Olumide Animation Films”. Symbol and website address on every production and CD label.
- c) “SmoothCartoonsNigeria Studios © 2014 / An Olaogbebikan Olumide Animation Films “or “A SmoothCartoonsNigeria Studios production
- d) “www.smoothcartoonsnigeria.com © 2014 / Olaogbebikan Olumide “ or “A SmoothCartoonsNigeria Studios production“
- e) An Olaogbebikan Olumide Animation Films” or “Footage supplied courtesy of SmoothCartoonsNigeria Studios” where any other separate SmoothCartoonsNigeria Studios footage is supplied for television or other promotional use

REPRESENTATION AND WARRANTY

- **Authority Of Parties/Signatories:** Each person signing this agreement represents and warrants to the other party that he/she is duly authorized and has legal capacity to execute and deliver this agreement. Each party represents and warrants to the other that

execution and delivery of the agreement and the performance of such party's obligations have been duly authorized and that the agreement is valid and legally binding on such party and enforceable in accordance with its terms.

- The Producer warrants that the promotions provided is not false and misleading, does not contain any defamatory, harmful, abusive or obscene materials, is in compliance with all applicable laws, does not infringe on the rights of any other party , including but not limited to copyrights, trademarks , privacy rights , moral rights , trade secrets , patents and any other rights.

EXCEPT AS OTHERWISE EXPRESSLY STATED, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL CONSEQUENTIAL SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY.

GENERAL

- **Force Majeure:** SmoothCartoonsNigeria Studios shall be under no liability if unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike, loss/stolen data or such occurrences. During the continuance of such a contingency the client may, by written notice to SmoothCartoonsNigeria Studios, elect to terminate the contract and pay for work done and materials used but subject thereto shall otherwise accept delivery when available.
- **Good Faith:** Each party represents and warrants to the other that such party has acted in good faith, and agrees to continue to so act, in the negotiation, execution, delivery, performance, and any termination of this Agreement.

- **Jurisdiction:** This Agreement shall be governed and construed in accordance with Nigerian Law.
- **SEVERABILITY:** If any Article or provision of this agreement is for any reason held by a court of competent jurisdiction to be invalid or unenforceable, then such Article or provision shall not be voided but rather shall be enforced to the maximum extent permissible under the applicable law so as to reasonably effect the intent of the parties and the remainder of the agreement shall remain in full force and effect.
- **WAIVER:** No waiver of a breach, failure of any condition, right or remedy contained or granted by the covenants of this agreement shall be effective unless it is in writing and signed by the waiving party. However, this or any other waiver shall not constitute a continuing waiver unless the writing so specifies.
- **AMBIGUITIES:** Each party and its counsel have participated fully in the review and revision of this agreement. Any rule of construction to the effect that the ambiguities are to be resolved against the drafting party shall not apply in interpreting this agreement. The language in this agreement shall at all material times be interpreted as to its fair meaning and not strictly for or against any party.
- **NOTICES:** All notices and other communication called for in this agreement shall be to parties at the address contained above and shall be by email in which case delivery shall be deemed to occur upon transmission or by certified mail, return receipt requested or by a reputable national overnight delivery or courier service.
- **ENTIRE AGREEMENT:** This agreement (subject to consent by parties) constitutes and contains the entire understanding between the parties with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreement, representations or warranties between them respecting the subject matter.
- **DISPUTE RESOLUTION:** Where any question, dispute, difference or controversy arising out of, concerning, in consequence of, or in connection

with this agreement, or as to the interpretation of any provisions or the validity or invalidity of the performance under it,

- a. It shall be resolved by mutual negotiations between the parties.
- b. Where mutual negotiation fails, at the request of either party to this agreement, regards shall be had to Arbitration in accordance with The Arbitration and Conciliation Act, CAP A18, Laws of The Federation of Nigeria and any decision reached by an arbitration tribunal shall be final.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SIGNED SEALED AND DELIVERED BY

The Proprietor of the within named Producer SmoothCartoonsNigeria Studios

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In the presence of

Name:

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Address:

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Occupation:

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Signature:

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SIGNED SEALED AND DELIVERED BY

The within named Client

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In the presence of

Name:

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Address:

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Occupation:

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Signature:

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