

TERMS AND CONDITIONS OF BUSINESS

THIS AGREEMENT is made on _____ BETWEEN:

(1) gearBoB Consultants a PR Agency registered in India whose registered corporate office is at 520 Ocean Complex P6, Sector 18 NOIDA IN (the "Consultancy");

(2) _____, a company registered in _____ whose registered office is at _____ (the "Client").

BACKGROUND

The Client has agreed to appoint the Consultancy to provide public relations services, and the Consultancy has agreed to such appointment, in accordance with the terms and conditions of this Agreement.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The words defined shall have the meanings assigned to them.

1.2 All other defined words and phrases shall have the meaning given to them when they first appear in that form.

2. APPOINTMENT AND TERM

2.1 The Client appoints the Consultancy to carry out and the Consultancy agrees to provide the Services for the Client in the Territory in accordance with the terms and conditions of this Agreement, including any Proposal(s) prepared by the Consultancy and Approved by the Client in accordance with Clause 2.2.

2.2 Details of any specific Campaigns proposed by the Consultancy from time to time shall be set out in a Proposal which once agreed between and signed by both parties, shall be incorporated into and form part of this Agreement. Each Proposal shall set out details of the Services to be provided by the Consultancy in relation to the relevant Campaign.

2.3 This Agreement shall commence on _____ (the "Commencement Date") and continue till _____ for _____ (the "Initial Period"), unless terminated sooner by either party in accordance with Clause 16. After that Initial Period the Agreement shall continue in full force and effect (subject to Clause 16) unless and until terminated by either party giving not less than 2 months' notice in writing to the other party. Notice to terminate cannot expire until the Initial Period has elapsed.

3. EXCLUSIVITY

3.1 The Client shall not engage any third party to provide services in the Territory during the Term that compete with or are similar to the Services.

3.2 Without prejudice to the requirements of the PR Contract, the Consultancy agrees that it shall not represent any company or organisation whose interests conflict or compete with those of the Client without the Client's express prior written consent.

4. RESPONSIBILITIES OF THE CONSULTANCY

4.1 The Consultancy shall perform the Services with reasonable skill and care, to a standard to be reasonably expected from a competent and professional supplier of public relations services.

4.2 The Consultancy agrees with the Client:

4.2.1 to work diligently to protect and promote the interests of the Client at all times;

4.2.2 to act loyally and faithfully towards the Client in all matters;

4.2.3 to advise the Client of all its key meetings, discussions and correspondence with representatives of the media concerning the Client; and

4.2.4 to co-operate where appropriate with any advertising and/or marketing services agencies engaged by the Client during the Term.

4.3 Contact reports providing each party with a written record of all matters of substance discussed at meetings or in telephone conversations between the parties will be supplied by the Consultancy to the Client within 5 Working Days following the meeting or conversation. If the subject matter of a contact report is not questioned by the Client within 5 Working Days of its receipt, it will be taken to be an accurate record of the meeting or telephone conversation to which it refers.

4.4 The Consultancy may appoint sub-contractors to perform any of the Services. The Consultancy acknowledges that such sub-contracting shall not release the Consultancy from any of its contractual obligations under this Agreement and the Consultancy shall remain fully responsible for the performance of such Services.

4.5 The Consultancy shall use reasonable care and skill in the selection and appointment of suppliers and the agreement of the terms and conditions of such appointment.

5. RESPONSIBILITIES OF THE CLIENT

5.1 The Client undertakes promptly to provide the Consultancy with all information, assistance and materials that the Consultancy requests from time to time to facilitate the proper and timely performance of the Services. In particular (but without limitation) the Client agrees to:

5.1.1 notify the Consultancy of any inquiries related to the Campaign(s) from any of the media;

5.1.2 advise the Consultancy well in advance of any major events in the Client's business such as the launch of a new product or service and/or the opening of any new premises;

5.1.3 to permit the Consultancy (by its representatives) to attend meetings, when reasonably necessary, with any advertising and/or marketing services agencies and other advisers engaged by the Client.

5.2 The Client warrants that:

5.2.1 to the best of its knowledge and belief, all information provided by it to the Consultancy is accurate and complete; and

5.2.2 that the Client is entitled to provide such information, and any photography, artwork, literature or other materials provided by or on behalf of the Client for use by the Consultancy without recourse to any third party.

5.3 The Client agrees not to discuss the Campaign(s) to any reasonably significant extent with any representative of the media other than through or with the knowledge of the Consultancy.

6. FEES

Where the Fees are agreed on a project-by-project basis:

6.1 The Consultancy's Fees for the Services shall be agreed on a per Campaign basis and set out in the Cover note Proposal(s).

6.2 If it is agreed that work shall be undertaken outside the Territory, or that the Consultancy shall provide services that are outside the scope of the Services, or that the scope of an agreed Campaign shall be extended, the Consultancy reserves the right to charge a further fee for any such additional work. Any such additional fee shall be subject to the Client's prior written Approval, such Approval not to be unreasonably withheld, conditioned or delayed.

7. OPERATING EXPENSES AND PROGRAMME COSTS

7.1 In addition to the Fees, the Consultancy shall charge the Client for the items not set out thus far.

7.2 Programme Costs: Costs for goods and services brought from third party suppliers on behalf of the Client, (other than House/Office Costs and Expenses) including photography, reproduction, artwork, design, printing, advertising, market research, exhibition and display materials, press distribution and major mailings, artiste/celebrity fees, evaluation, venues, legal advice and any other third party costs approved by the Client in advance ("Programme Costs") shall be charged to the Client subject to a 33% handling charge.

7.3 The Client shall receive the benefit of all commissions, discounts and rebates derived from the handling by the Consultancy of the Services under this Agreement.

8. PAYMENT TERMS

8.1 Fees and Operating Expenses shall be invoiced in accordance with the schedule set out in the Proposal.

8.2 Programme Costs shall be invoiced monthly in arrears.

8.3 Subject to Clause 8.4, all invoices rendered by the Consultancy shall be due and payable within 3 business days of the invoice date

The references to the 'invoice date' and the 'date of receipt etc.' are mutually exclusive, clarified earlier

8.4 The Client reserves the right to withhold payment of any invoice or part of an invoice which is not in accordance with this Agreement. On receipt of any such invoice the Client shall immediately notify the Consultancy in writing of the reason for such withholding and pay the undisputed part of such invoice in accordance with Clause

8.5 Subject to Clause 8.4, all sums referred to in this Agreement shall be payable in full without deduction, withholding or set-off and are exclusive of VAT and any other duty or tax which shall (if and to the extent applicable) be payable by the Client.

8.6 The Client shall be liable to pay interest on any overdue amount at an annual rate of 12% above the prevailing base rate of Bank of Maharashtra, Sector 62 NOIDA, which interest shall accrue on a daily basis from the date payment becomes due until the date that the Consultancy has received payment of the overdue amount together with all accrued interest. This right extends to any part of an invoice of which payment is withheld pursuant to Clause 8.4 should it subsequently be established that the amount in question was invoiced in accordance with this Agreement.

8.7 The Consultancy, and/or persons or companies acting on its behalf, or as agents, reserve the right to charge and recover all costs incurred in connection with the pursuance and/or recovery of outstanding monies and property from the Client.

8.9 The cost to the Consultancy of materials or services purchased overseas for the Services may be more or less than the cost anticipated at the date when the Consultancy ordered the relevant materials or services (or obtained the Client's approval for such costs) as a result of fluctuations in the rate of currency exchange. If so, the Consultancy shall charge the Client at the rate of currency exchange in operation on the date the Consultancy pays for the relevant materials or services, which shall be deemed to be the closing mid-point rate in NOIDA for that day as subsequently quoted in the next published edition of The Financial Times.

9. APPROVALS AND AUTHORITY

9.1 Any reference in this Agreement to the Client's "Written Approval" shall mean Written Approval by directors or employees of the Client authorised to approve the Consultancy's work and/or expenditure (the "Authorised Person(s)"). The Client shall notify the Consultancy in writing of any change to the Authorised Persons during the term of this Agreement. The Consultancy shall not be responsible for any delay in the performance of the Services resulting from the unavailability of an Authorised Person to provide Written Approval.

9.2 For the purposes of this Agreement, Written Approval shall mean approval signified by:

9.2.1 any fax, letter or purchase order from the Client bearing the signature of an Authorised Person; or

9.2.2 oral approval given by an Authorised Person or e-mail emanating from the individual business e-mail address of an Authorised Person provided such oral or e-mail approval is confirmed in writing within two Working Day(s) by way of a written report from the Consultancy to the Client; or

9.2.3 the signature of an Authorised Person on the Consultancy's documentation.

9.3 After obtaining general Written Approval of Campaign plans, the Consultancy shall submit to the Client for specific approval:

9.3.1 draft press releases, articles, photographs and captions; and

9.3.2 copy, layouts, artwork and/or scripts; and

9.3.3 estimates of the cost of the various items of the Campaign.

9.4 Written Approval by the Client of drafts and proofs shall be taken by the Consultancy as authorisation to proceed to publication and Written Approval of estimates provided by suppliers shall be the Client's authorisation for the Consultancy to enter into contracts with such suppliers on the basis of such estimates.

9.5 The Consultancy shall take all reasonable steps to comply with any requests from the Client to amend or halt any plans or to cancel any schedules or work in progress, insofar as this is possible within the scope of its contractual obligations to its suppliers. Any amendments or cancellation shall be implemented by the Consultancy provided that the Client shall be responsible for any costs or expenses incurred or to which the Consultancy is committed prior to, or as a result of, the cancellation or amendment. The Client shall also pay the Consultancy's Fees covering the cancelled or amended Services, as well as any charges imposed on the Consultancy by third parties arising from the cancellation or amendment.

9.6 The Client undertakes to notify the Consultancy forthwith if the Client considers that any statement made in any document submitted by the Consultancy to the Client for approval is incorrect or misleading in any way, or is likely to give rise to any claim or action against Consultancy, whether for defamation or otherwise.

9.7 The Client shall keep the Consultancy fully indemnified against any costs, claims, proceedings, demands and funds raised out of or in connection with any press releases, publications or other material prepared for the Client by the Consultancy and approved by the Client prior to publication or transmission.

10. USE OF WORK

10.1 Work carried out as part of the Services shall not be used by the Client for any purpose other than that for which it was commissioned. Draft or incomplete work shall not be used or published as finished work without the Consultancy's prior written approval.

11. MODIFICATIONS

11.1 No modifications or alterations to any work created for the Client may be made without the Consultancy's prior written consent. Any agreed modifications or alterations shall only be carried out by the Consultancy or under its supervision and shall be paid for at a rate agreed between the parties in writing in advance. Reprints obtained by the Client shall not differ in any way from the originals supplied without the Consultancy's prior written consent.

12. RELATIONSHIP EVALUATION

12.1 The parties will conduct a full two-way evaluation and review of their relationship every month, including (without limitation) the performance of staff from both parties. Any resulting changes agreed to the Services, the remuneration or any other aspect of this Agreement shall be agreed in writing, failing which the arrangements in place at the time of the evaluation, including (without limitation) those concerning the Consultancy's remuneration, will continue to apply.

13. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

13.1 It is the intention of the parties that the Client should own the Rights in any Consultancy Materials. To that end, the Consultancy shall forthwith on the Client's written request from time-to-time sign an unconditional assignment with full title guarantee of all Rights in the Consultancy Materials as are owned by the Consultancy and capable of assignment, together with the right to sue for damages for past infringement, provided that at the time of any such request the Client has fulfilled all its obligations to the Consultancy under this Agreement including, without limitation, those relating to notice and payment. The Consultancy shall also waive any Moral Rights it may have in the Consultancy Materials.

13.2 It is the intention of the parties that the Client should hold a licence in the Consultancy Materials. Upon the Client's request and provided the Client has complied with all of its obligations under this Agreement (including, without limitation, those relating to payment and period of notice), the Consultancy shall grant to the Client a licence for the use of the Consultancy Materials throughout Delhi NCR Region. The term of such licence shall be the duration of the Campaign for which such Consultancy Materials were created i.e. _____ (the "Licence Period"). The Consultancy shall also waive any Moral Rights in Consultancy Material for the Licence Period.

13.3 The Consultancy shall inform the Client as soon as possible if it intends to incorporate any Third Party Material in the Campaign(s). The Consultancy will use its reasonable endeavours to obtain an unconditional written assignment to the Client of all Rights in any such Third Party Materials at pre-agreed cost to the Client. The Consultancy shall notify the Client in writing if no such assignment of the Rights in such Third Party Materials can be obtained on reasonable terms. The Client shall then decide whether it still wishes the relevant Third Party Materials to be used in the Campaign(s), and if so, the Consultancy shall negotiate with the owner of such Rights to obtain such usage rights as the Consultancy reasonably believes will be required at the time of such negotiations. The Consultancy shall grant to the Client (at the Client's expense) only such Rights in any Third Party Materials as the Consultancy is permitted by the relevant Third Party to grant to the Client.

13.4 The Consultancy shall ensure that all Moral Rights in the Consultancy Material and Third Party Material are waived, but if this is not possible in respect of any Third Party Material, the Consultancy will discuss this with the Client in advance of concluding the relevant commissioning contract and proceed as agreed.

13.5 Notwithstanding Clause 13.1 above, the Consultancy may use any of the Materials for the purposes of internal training or, with the Client's prior consent (such consent not to be unreasonably withheld or delayed), in the promotion of the Consultancy.

14. CONFIDENTIAL INFORMATION

14.1 The parties acknowledge a duty not to disclose during or after the Term, without the other's prior written permission any confidential information either concerning the other's business, its business plans, customers or associated companies or resulting from studies or surveys commissioned and paid for by the Client. The parties also acknowledge that the terms and conditions of this Agreement including (without limitation) those relating to the Consultancy's remuneration are confidential information and cannot be disclosed without the prior written approval of the other part.

14.2 During and after the Term, the Consultancy acknowledges its responsibility to treat in complete confidence all the marketing and sales information and statistics relating to the Client's business with which the Client may supply the Consultancy in the course of any work for the Client.

14.3 From now on in this Clause 14 "Information" shall be used to describe the categories of information referred to in sub-Clauses 14.1 and 14.2.

14.4 The Consultancy shall, where so requested by the Client, impose obligations in terms equivalent to those in sub-Clauses 14.1 and 14.2 on its own personnel and obtain written assurances from any third parties to whom Information has to be disclosed in order to enable the Consultancy to carry out its obligations under this Agreement.

14.5 For the avoidance of doubt, the restrictions in this Clause 14 shall not prevent:

14.5.1 the disclosure or use of Information in the proper performance of the Consultancy's duties;

14.5.2 the disclosure of Information if required by law; or

14.5.3 the disclosure of Information which has come into the public domain otherwise than through unauthorised disclosure.

14.6 The Client acknowledges that nothing in this Agreement shall affect the Consultancy's right to use as it sees fit any general intelligence gained by the Consultancy in the course of its appointment.

14.7 Following consultation with the Client, the Consultancy may advertise or publicly announce that it is undertaking work for the Client pursuant to this Agreement, subject to obtaining the Client's prior approval, such approval not to be unreasonably withheld or delayed.

15. LIABILITY

15.1 If there is an error in the Consultancy Materials or the Third Party Materials as published, or publication is delayed or does not occur as planned, the Consultancy will not be liable unless this is caused by its default or neglect.

15.2 Should either party or its employees sustain any loss or liability, costs (including legal costs) or damages as a result of the other's breach of this Agreement, the party in breach shall indemnify the other subject to the provisions of Clause 15.5.

15.3 The Consultancy warrants that to the best of its knowledge and belief the publication of the Consultancy Materials and/or the Third Party Materials shall not infringe any third party rights or be in any other way contrary to law in India other than as contained in any legal or other advice provided to the Consultancy and communicated to the Client.

15.4 The Consultancy warrants that its personnel working on the Services are and shall be competent and suitable in every respect, whether as to qualifications, experience or otherwise, to perform the Services.

15.5 Nothing in this Agreement shall exclude or in any way limit the Consultancy's liability for fraud or for death or personal injury caused by its negligence, or any other liability to the extent such liability may not be excluded or limited as a matter of law.

Subject to this:

15.5.1 the Consultancy shall not be liable for: (i) any loss or damage suffered by the Client arising out of or in connection with any act, omission, misrepresentation or error made by or on behalf of the Client or arising from any cause beyond the Consultancy's reasonable control; or (ii) any delay in or omission of publication or transmission or for any error in any press or other publication unless such delay, omission or error is due to its own default or neglect;

15.5.2 the Consultancy shall not be liable for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence) breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known; and

15.5.3 the Consultancy's maximum aggregate liability to the Client under or in connection with this Agreement whether such claim arises in contract or in tort (including negligence), or otherwise shall in no circumstances exceed EITHER INR _____ that is less than the project fee but which does not exceed the Professional Indemnity cover of the Consultancy INR _____.

15.6 This Agreement states the full extent of the Consultancy's obligations and liabilities in respect of the Materials and the performance of the Services. The parties agree that any condition, warranty, representation or other term concerning the Materials and/or the performance of the Services which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

15.7 The Client shall effect insurance as is suitable having regard to its particular circumstances and the terms of this Clause 15.

15.8 Warranty and Indemnity: The Client warrants that to the best of its knowledge, information and belief, all information supplied to the Consultancy before, during and after the Term shall be accurate and not in any way contrary to Indian law. The Client shall indemnify and keep indemnified the Consultancy from and against any and all proceedings, claims, damages, losses, costs, expenses (including legal costs and expenses) and liabilities which the Consultancy may incur or sustain as a direct or indirect result of or in connection with any information, representation, reports, data or material supplied or prepared by the Client. Such material shall include but not be limited to press releases, articles, copy, scripts, advertisements, designs, artwork and detailed plans or programmes.

15.9 Client's Property: The Consultancy shall take reasonable care of any property belonging to the Client and made available to the Consultancy for the purpose of this Agreement and shall mark or otherwise identify the Property as being the property of the Client. Subject to the foregoing, such property shall be at all times at the sole and entire risk of the Client, and the Consultancy shall not be subject to any other liability for it.

15.10 With regard to materials created in the course of providing the Services:

15.10.1 such materials retained by the Consultancy shall, at all times, whilst in the Consultancy's possession, be insured by the Consultancy against loss or damage; and

15.10.2 the Client shall insure such materials against loss or damage when in transit between the Consultancy and the Client or any third parties for the purposes of production or publication and when in the possession of those third parties.

16. TERMINATION

16.1 Either party may terminate this Agreement by service of notice in accordance with Clause 2.

16.2 If payment is not made by the Client to the Consultancy in accordance with Clause 8 above and the Client shall not have remedied the breach within 3 days of written notice to do so, the Consultancy shall have the right to terminate this Agreement immediately by service of notice in writing.

16.3 In addition to the Consultancy's rights under Clause 16.2, either party may terminate this Agreement forthwith upon written notice to the other in the event of:

16.3.1 any material breach of this Agreement by the other party, which breach is not remedied (if capable of remedy) within 30 days after the service of a written notice specifying the nature of the breach and the steps required for its remedy;

16.3.2 the other party becoming insolvent, entering into liquidation, whether voluntary or compulsory, passing a resolution for its winding up, having a receiver or administrator appointed over the whole or any part of its assets, making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of debt; or ceases or threatens to cease to carry on business.

16.4 The termination of this Agreement shall be without prejudice to the accrued rights of either party in respect of any prior breach of this Agreement, including (without limitation) the liability of the Client to the Consultancy for all Fees, Operating Expenses and Programme Costs due in respect of Services performed up to the effective date of termination.

17. FORCE MAJEURE

17.1 Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control (hereinafter, an “event of force majeure”) provided the same arises without the fault or negligence of such party. Each party shall use its reasonable endeavours to minimise the effects of any event of force majeure.

17.2 Immediately upon becoming aware of any event of force majeure, the affected party shall notify the other party of the manner and extent to which its obligations are likely to be prevented or delayed and the date(s) for performance of the obligation(s) affected shall be postponed for so long as is made necessary by the event of force majeure.

17.3 If any event of force majeure continues for a period of or exceeding two months, either party may terminate this Agreement with immediate effect on giving written notice to the other party and neither shall be liable to the other for such termination.

18. DISPUTE RESOLUTION

18.1 If any claim or dispute arises under or in connection with this Agreement, the parties shall attempt to settle such claim or dispute by negotiation prior to commencing legal proceedings.

18.2 If any claim or dispute cannot be settled by negotiation within 21 days after either party has made a written offer to the other party to negotiate a settlement to such claim or dispute, the parties may attempt to resolve the claim or dispute, if appropriate, in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. If the parties have not settled any claim or dispute by mediation within 42 days from the initiation of the mediation, the dispute shall be referred to and finally resolved by the courts.

18.3 Nothing in this Agreement shall restrict or exclude the right of either party to seek injunctive relief against the other party or to resolve any dispute without prior negotiation or mediation.

19. GENERAL

19.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act to enforce any term of this Agreement.

19.2 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

19.3 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

19.4 Any valid alteration to or variation of this Agreement must be in writing and signed on behalf of each of the parties by a duly authorised officer.

19.5 Neither party shall assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it without the prior written consent of the other party, such consent not to be unreasonably conditioned, withheld or delayed.

19.6 This Agreement and the documents referred to in it (the 'Contractual Documentation') constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement, whether oral or in writing. The parties agree that neither of them have been induced to enter into any Contractual Documentation in reliance upon any warranty, representation, statement, agreement or undertaking of any kind (whether negligently or innocently made) of any person other than as expressly set out in this Agreement. The only remedy available to the parties in connection with any statements, representations, warranties and understandings expressly set out in this Agreement shall be for breach of contract as provided in this Agreement. Nothing in this Clause shall, however, operate to limit or exclude any liability for fraud.

19.7 This Agreement shall be governed by and construed in accordance with the law of India and each party hereby irrevocably agrees to submit to the exclusive jurisdiction of the Courts of India over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.

Signed on behalf of

Signed on behalf of

gearBoB Consultants

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Director

Date:

.....

Gaurav Bajpai

Founder & Creative Head

Date :