**SOCIAL MEDIA MARKETING AGREEMENT**

This Social Media Marketing Agreement (the “**Agreement**”) is made and entered into on this day of ……………………………..(the “Effective Date”)

**BETWEEN:**

**<Name of the Company>,** a company organised and existing under the laws of India and having its registered office at …………………………….., India (hereinafter referred to as the “**Client**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns);

**AND**

**<Name of the Company>**, a company organised and existing under the laws of India and having its registered office at …………………………….., India (hereinafter referred to as the “**Agency**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns.

“Client” and “Agency” shall be individually referred to as Party and collectively as “Parties”.

WHEREAS:

1. Agency has expertise in creating social media marketing services and digital services.
2. Client seeks to utilize Agency’s services to provide digital marketing services for their business.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree to the terms and conditions, as follows:

1. GRANT OF WORK

Client grants to the Agency and Agency accepts the non-exclusive right to perform social media planning and brand building activities and for that purpose, follow the terms and conditions set out in this Agreement. The Client shall review and confirm the accuracy of the content, message or any marketing material created for promoting the Client.

1. SCOPE OF WORK
	1. Agency agrees to perform the following services in good faith:
2. OBLIGATIONS OF THE AGENCY
	1. Agency agrees to use its best efforts to market the Client, consistent with the terms of this Agreement.
	2. Agency shall protect copyright, trademarks, service marks, trade service marks and other confidential proprietary rights and information of the Client and report promptly any infringements or suspected infringements of which the Agency becomes aware and to cooperate fully with the Client in its efforts to protect its copyrights, trademarks, service marks and other confidential proprietary rights and information.
	3. Agency agrees not to remove or alter in any manner any copyright or trademark or other proprietary information of the Client.
	4. Agency agrees that the Client reserves the right to approve or reject any content posted in its sole and absolute discretion. Agency will have no legal recourse against the Client for the rejection of the program.
	5. Agency agrees that the Client has the right to review the performance of the Agency in regular intervals. The services shall be deemed delivered only when the service is rendered to the satisfaction of the Client.
	6. Any additional fee or charges incurred by the Agency shall require prior approval from the Client.
3. OBLIGATIONS OF THE CLIENT
	1. Client shall provide as much of the information as required by the Agency on the Effective Date including but not limited to:

……………………….

1. PAYMENT TERMS
	1. Client shall pay a total sum mentioned hereinunder for the services:
2. Professional fee of \_\_\_\_\_Tonly, plus applicable taxes per month.
3. Any digital asset creation will be taken up as a separate project and commercials discussed on a case-to-case basis.
4. INTELLECTUAL PROPERTY RIGHTS
	1. Intellectual Property Rights shall mean and include all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask works; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patents and industrial property rights; (e) other proprietary rights in Intellectual Property of every kind and nature; and (f) all registrations, renewals, extensions, continuations, divisions, or reissues of, and applications for, any of the rights referred to in clauses (a) through (e) above.
	2. Client shall always be the sole and exclusive owner of al the Intellectual Property included for all creative content created under this Agreement. All rights, title and interest therein including all IP rights shall be irrevocably assigned and transferred to the Client and the Agency shall waive off all enforcement of such rights.
	3. All materials developed or prepared by Agency or its employee or subcontractors for Client hereunder that are subject to any Intellectual Property shall become the property of Client and deemed “Work Product” provided that (i) the materials are produced in final form i.e., ready to be disseminated to the public by Agency for the Client, and (ii) that Client has paid to Agency all fees and cost associated with creating and, where applicable, producing the material. All title and interest to work shall vest with the Client.
	4. As between parties, all materials produced by Agency in compliance with Agreement , including but not limited to marketing and brand strategy plans and ideas, phrases, or words, scripts, website content, advertisement print and digital or other materials will be and remain the absolute and exclusive property of the Client.
	5. Agency acknowledges that it does not have, nor in the future will assert, directly or indirectly, any right, title or interest of any kind or nature in such materials or work product or in any or to any component part or element thereof.
	6. At no time during the term of the agreement or thereafter shall Agency have the right to use, to license, or to permit others to use an photos, films, video or other Materials or work products developed for the client under this Agreement. However, upon Agency’s request, second party shall cooperate if Agency seeks to access such materials.
	7. Agency may create or develop trademarks for Client, in the form of taglines, slogans, logos, designs, or product and brand names (collectively, the “**Marks**”). Client shall ultimately be responsible for confirming availability and registering such Marks. Usage of such Marks by Agency shall be subject to approval on its availability received from the Client.
5. CONFIDENTIAL INFORMATION
	1. Confidential Information will include all information related to the assignment which is obtained whether in writing, pictorially, in machine readable form or orally or by observation during the duration of the assignment, in connection with the assignment ( including but without limitation, financial information, know-how, processes, ideas, graphics, inventions (whether patentable or not), schematics, trade secrets, technology, customer lists, (potential or actual) and other customer related information, supplier information, sales statistics, market intelligence, marketing and other business strategies and other commercial information of a confidential nature).
	2. Neither Party shall (except in the proper course of their duties), either during the term of this Agreement or at any time after its termination, use or disclose to any third party (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information.
	3. The restriction in Clause 7.1 does not apply to:
6. Any use or disclosure authorised by the party to whom the disclosure relates;
7. Any use or disclosure required by law, by any government or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible;
8. Any information which is already in, or comes into, the public domain otherwise than through the disclosing party’s unauthorised disclosure; or
9. Any use by or disclosure made to legal advisors or any bona fide prospective purchaser or subscriber who is intending to acquire shares in the Company by way of purchase or subscription.
10. REPRESENTATIONS AND WARRANTIES
	1. Agency represents and warrants that:
11. The services provided hereunder will be performed in a professional manner, and
12. any software, hardware, websites, web-based or technology-related Services (collective “Electronic Services”) will be free of material bugs or defects for ………….. days after delivery. Such warranty does not extend to any modification of Services by anyone other than Agency or its subcontractors, any abuse or misuse of Services by Client, or use of service in an operating environment that differs materially from the specifications agreed by the parties.
13. TERM AND TERMINATION
	1. TThe term of this Agreement will be ………year from the Effective Date, unless terminated earlier as provided in Clause 9.2. The Agreement may be renewed by mutual written agreement
	2. Each Party may terminate this Agreement by giving 1(one) month’s prior written notice to the other Party. Client reserves the right to terminate the Agreement without further notice in case where Agency breaches any of its obligations under the Agreement in any material respect, which breach is not remedied within 15 (fifteen) days following written notice served by the Client.
	3. Upon termination, neither party shall have any further obligations under this Agreement, except for the obligations which survive this termination as noted herein.
	4. Agency shall within ………………… days upon termination of the Agreement hand over all its rights, title and interest in all Work Products and Materials developed under this Agreement, which includes but is not limited to original artwork, whether in draft, mock up, conceptual or in final form to the Client. All Work Products in editable format, master media files, etc. including complete access to Website content. Agency shall return to the Client all proprietary and confidential information and copies thereof in its possession.
	5. Agency shall on receipt of information and all Work Products and Materials developed by Client under this agreement including but not limited to those mentioned herein shall release all dues as per the terms of this Agreement.
14. INDMEMNITY
	1. Agency’s Indemnity:
15. Agency shall indemnify, defend, and hold harmless Client, and its affiliates, and their respective employees, members, managers, officers, directors, shareholders, and agents (each a “Client’s Indemnified Party” ) from and against any and all Loss incurred by a Client’s Indemnified Party based upon or arising out of any Claim made or brought against Client arising out of the production or dissemination of materials produced hereunder that involve (i) libel, slander, defamation, copyright infringement, right of publicity and /or invasion of right of privacy arising out of work created by Agency and in final form (i.e., ready to be disseminated to the public); or (ii) damage to or destruction of personal property, injury to or death of any person directly attributable to or arising out of Agency’s negligence or wilful misconduct in connection with the performance of the Services hereunder.
16. Agency shall indemnify, defend, and hold harmless Agency shall indemnify, defend, and hold harmless Client indemnitee from and against any and all Loss incurred by Client based upon or arising out of any third-party claim, allegation, demand, suit, or proceeding (each a “claim”) made or brought against any third party indemnitee with respect to any advertising, branding, research or other products or services which is prepared by Agency or performed for Client hereunder to the extent that such Claim relates, in whole or substantial part, to **(i)** the use of any marketing, branding, research, advertising, packaging, trademark, software, hardware or other materials, or components thereof, furnished by Agency or its agents to Client to be included in any Materials or media placements; **(ii)** the use of any material or data provided or created and used by Agency’s or its agents or used in a manner different from that agreed by the parties ; **(iii)** the unauthorized or improper use of Materials or the Marks by Agency, its designees , licensees, distributors, franchisees or its affiliates; **(iv)** claims brought by Agency’s employees for employment discrimination, other employment or labor disputes, breach of contract, personal injury or other civil law matters, or claims brought by those parties with whom Agency has a contractual or supplier relationship; **(v)** allegations of patent, trademark or trade mark infringement or any other violation of a patent, trademark or trademark right; (vi) any material breach of the terms of this Agreement by, or any act of omission of, Agency or its agents or employees relating to media commitments made by Client pursuant to Agency’s commitment for deliverables provided for herein; and (vii) the negligence, gross negligence, bad faith, or intentional or wilful misconduct of Agency or its employees, agents or Agency’s affiliates from and against any and all Loss incurred by Client based upon or arising out of any third-party claim, allegation, demand, suit, or proceeding (each a “claim”) made or brought against any third party indemnitee with respect to any advertising, branding, research or other products or services which is prepared by Agency or performed for Client hereunder to the extent that such Claim relates, in whole or substantial part, to **(i)** the use of any marketing, branding, research, advertising, packaging, trademark, software, hardware or other materials, or components thereof, furnished by Agency or its agents to Client to be included in any Materials or media placements; **(ii)** the use of any material or data provided or created and used by Agency or its agents or used in a manner different from that agreed by the parties ; **(iii)** the unauthorized or improper use of Materials or the Marks by Agency, its designees , licensees, distributors, franchisees or its affiliates; **(iv)** claims brought by Agency’s employees for employment discrimination, other employment or labor disputes, breach of contract, personal injury or other civil law matters, or claims brought by those parties with whom Agency has a contractual or supplier relationship; **(v)** allegations of patent, trademark or trade mark infringement or any other violation of a patent, trademark or trademark right; (vi) any material breach of the terms of this Agreement by, or any act of omission of, Agency or its agents or employees relating to media commitments made by Client pursuant to Agency’s commitment for deliverables provided for herein; and (vii) the negligence, gross negligence, bad faith, or intentional or wilful misconduct of Agency or its employees, agents or Agency affiliates.
	1. Client’s Indemnity:

Client shall indemnify, defend and hold harmless Agency, its parents, subsidiaries, and affiliated companies, and its and their respective employees, officers, directors, shareholders, and agents (each as “Agency’s indemnified Party”) from and against any and all Loss incurred by Agency’s Indemnified Party based upon or arising out of any third-party claim, allegation, demand, suit, or proceeding (each a “claim”) made or brought against any Agency’s Indemnified Party with respect to any advertising, branding, research or other products or services which Agency prepared or performed for Client hereunder to the extent that such Claim relates, in whole or substantial part, to; (i) the inaccuracy of any information supplied by Client or its agent to Agency including, without limitation, information concerning Client’s products and services; (ii) the use of any marketing, branding, research, advertising, packaging, trademark, software, hardware or other materials, or components thereof, furnished by Client or its agents to Agency to be included in any Materials or media placements; (iii) the use of any materials or data provided or created by Agency and changed by Client or its agents or used in a manner different from that agreed by the parties (iv) death, personal injury, or product liability (including health and safety) claims or actions arising from the use of Client’s product and services; (v) the unauthorized or improper use of Materials or the Marks by Agency, its designees, licensees, distributors, franchisee or Client’s affiliates.

1. SURVIVAL

Provisions of this Agreement, the performance of which by either or both parties, or by their sense and context, are intended to survive, will survive the completion, expiration, termination or cancellation of this Agreement and will not be limited to clauses pertaining to Intellectual Property Rights (Clause 6), Confidential Information (Clause 7) and Indemnity (Clause 10).

1. FORCE MAJEURE

A Party shall not be considered to be in default or breach of this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, arising out of or from any act, omission, or circumstance by or in consequence of any act of God, labour disturbance, sabotage, failure of suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, earthquake, explosion, epidemic, breakage or accident to machinery or equipment or any other cause or causes beyond such Party’s reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the Party or property or equipment of others which is deemed under the Operational Control of the Party. A [Force Majeure](https://www.lawinsider.com/clause/force-majeure) event does not include an act of negligence or Intentional Wrongdoing by a Party. Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder.

1. NOTICES

Any notice or other communication under or in connection with this agreement shall be in writing and shall be delivered personally, electronically or by commercial courier to the parties due to receive the notice or communication at its address set out above within 3 (three) days or at such other address as the relevant party may specify by notice in writing to the other parties.

Client:

Name:

Address:

Email id:

Agency:

Name:

Address:

Email id:

1. INDEPENDENT CONTRACTOR

The parties are independent contractors. Nothing herein will be construed as creating any agency, partnership, or other form of joint enterprise between the parties, and neither party may create any obligations or responsibilities on behalf of the other party.

1. GOVERNING LAW AND DISPUTE RESOLUTION
	1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed the laws of India.
	2. The parties irrevocably agree that the courts of …………….shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
	3. Any dispute, controversy or claim arising out of or in connection with the Agreement shall be attempted to be first resolved through discussions between the Parties. If the dispute is not resolved, it shall be resolved and finally resolved by arbitration in accordance with the substantive provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time). The arbitrator shall be appointed mutually by the Client and the Agency.
2. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but the counterparts together shall constitute one and the same instrument.

1. ASSIGNMENT

Neither party shall assign this Agreement in whole or in part without the prior written consent of the other party except that the Client reserves the right to freely assign this Agreement in its entirety to its parent company or any subsidiary in which it holds a majority voting interest.

1. ENTIRE AGREEMENT

This Agreement constitute the entire agreement between the parties relating to the subject matter hereof and supersedes any prior agreement or understandings between them. This Agreement may not be modified or amended unless such modification or amendment is agreed to by both the parties in writing.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their representatives duly hereinto authorised, intended to be legally bound hereby, as of the day and year first above written.

…………………………………

…………………………………N