

**BRAND SOUTH AFRICA (“BSA”) // AVATAR DIGITAL AGENCY (PTY) LIMITED
 (“AVATAR”)**

OTHER RELEVANT ASPECTS

144. Attached hereto and marked as **Annexures Y and Z** respectively are two letters dd. 30 August 2017 and 28 September respectively wherein BSA requests an extension of the contract, first for a period of one month and on the second occasion, for a period of four months.
145. It is peculiar that BSA would request not one, but two extensions if they were not satisfied with the service they received from Avatar.
146. It must be noted that BSA admitted that their CEO signed the Agreement presented to him without first satisfying himself that it mirrored the terms of the SBD.

CONCLUSION

147. Based on the discussions with Zibu and a perusal of the documents made available by Avatar, the following conclusions can be drawn:

Whether Avatar unilaterally changed the terms and conditions as claimed by BSA

148. Based on the evidence, it appears that there were constant communications between the parties, especially with regards to the scope of work and changes to the contract.
149. Based on the evidence, it appears that both parties (BSA and Avatar) were part and parcel of the communications relevant to proposed changes, or at least aware of same.
150. It is note that the BSA admitted that their then CEO of BSA “did not satisfy himself” as to the contents of the agreement, before he signed same.

Whether the price/s submitted was inclusive or exclusive of VAT

151. The relevant agreement was drawn up by BSA and appears to be their “standard contract”
152. There appears to be a contradiction between the bid documents that required process to be inclusive of VAT and the signed Service level agreement that clearly stipulated that prices / rates are exclusive of VAT.

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Whether the inclusion of reference to a 10% annual escalation was done
openly and transparently

- 153. The inclusion of the escalation clause was clearly communicated to BSA through the service level agreement that contained the tracked changes.
- 154. BSA accepted the proposed changes in this regard on at least two different places in the final written service level agreement, namely clause 5.2 and the Schedule relating to rates, where reference to the escalation clause is found twice.
- 155. The SBD 3.3 does not make mention of an escalation clause however it does state that the price is not firm for the duration of the contract.
- 156. There can thus be little doubt that the BSA was aware of the escalation clause, and accepted it as such.

Whether Avatar had overcharged BSA for hosting services

- 157. Zibu provided plausible explanations as to why Avatar’s fees were significantly higher than that of Hertzner.
- 158. Avatar provided additional hosting services and for additional websites which both Hetzner and Private label did not provide for BSA.

Whether Avatar’s tax affairs are in order

- 159. Based on the available Tax clearance certificates, it appears that Avatars tax affairs were in order during the bidding process and for the duration of the contract with BSA.

It must be noted that the factual findings in this report are based on documentation and information provided to us by Avatar and Mr Zibu in his capacity as CEO. BSA was not consulted or afforded the opportunity to present their version of events.

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We do not accept any responsibility to any third parties for any breach of our obligation or for any opinion expressed, or information included, within this report. The report and findings contained therein is subject to change, should new information and supporting documentation be provided or made available post the date of this report.

We would be pleased to provide you with any further assistance and request that you do not hesitate to contact us.

Yours faithfully



B Jhetam

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