

#5607

FIPROTUR

Promoting of the tourism in the State of Querétaro Trust

SERVICES AGREEMENT TO CARRY OUT A COOPERATIVE ADVERTISING CAMPAIGN ENTERED INTO BY AND BETWEEN, ON THE ONE HAND BBVA-BANCOMER SERVICIOS, S.A., INSTITUCIÓN DE BANCA MULTIPLE, GRUPO FINANCIERO BBVA BANCOMER, DIRECCIÓN FIDUCIARIA, REPRESENTED BY ITS FIDUCIARY DELEGATE **JOSÉ FRANCISCO FUENTES BERNAL**, AS TRUSTEE IN THE TRUST F/32366-7, DENOMINATED TRUST FOR THE TOURIST PROMOTION OF THE STATE OF QUERETARO, BY INSTRUCTIONS OF THE TECHNICAL COMITEE, HEREINAFTER REFERRED TO AS THE "**TRUST**" AND, ON THE OTHER **YOUNG & RUBICAM, S. DE R.L. DE C.V.**, REPRESENTED BY ITS LEGAL REPRESENTATIVE **MANUEL ARELLANOS RIOS**, HEREINAFTER REFERRED TO AS "Y&R", IN ACCORDANCE WITH THE FOLLOWING STATEMENTS AND CLAUSES:

STATEMENTS

1. - The Trust states, under protest to say the truth:

1.1 **Incorporation.-** On March seventeenth, two thousand and one, a trust agreement denominated "**Promoting of the tourism in the State of Querétaro**" ("**FIPROTUR**") was incorporated through public deed number 10,142, granted before Mr. Jorge Lois Rodríguez, notary public number 9 of the judicial district of Querétaro, State of Querétaro, being the founder of the trust the Government of the State of Querétaro, through the Ministry of Planning and Finances, as fiduciary Bancomer, S.A. Institución de Banca Múltiple, Dirección Fiduciaria, actually BBVA Bancomer Services, S.A., Institución de Banca Múltiple, Dirección Fiduciaria, and as trustee the State of Querétaro.

1.2. - **Amendment Agreement.-** On February first, two thousand and one, an amendment agreement to the Trust agreement above mentioned was executed in which the parties of the Trust agreed to modify clauses fourth, sixth and seventh of said Trust agreement.

1.3. - That with the purpose to impulse the tourist infrastructure that allows to spread the State of Querétaro in a solid and attractive way either for the national and foreign tourism, causing with it an economic spill that benefits the region, it has been authorized through a settlement issued by the local executive branch dated January twenty fourth, two thousand, published in the official gazette "the shadow of Arteaga" on January twenty eight, of same year, the incorporation of the Trust above mentioned.

1.4. – That the main purpose of such trust is to execute those acts to administer the 90% of the income obtained from the lodging services tax contained in the Finance Law of the State of Querétaro which purpose will be destined to promote, to spread and to project the image and the tourist products of the State of Querétaro.

1.5.- **Federal Taxpayer Registry.**- That such Trust is registered in the Taxpayers Registry of the Ministry of Finance under the number BFT-000317-489.

1.6. – **Conventional Domicile.**- That for all the effects of this agreement, appoints as its domicile the offices located in Pasteur Norte No. 4, Colonia Centro Histórico, Zip Code 76000, of the City of Santiago de Querétaro, Querétaro.

1.7.- **Instructions.**- That in the settlements one and two of the work meeting of the Technical Committee of FIPROTUR with employees of the Fiduciary BBVA Bancomer Servicios, S.A., dated February first, two thousand one, the Technical Committee authorized the General Manager to instruct to the Fiduciary the basis and characteristics of the agreements to be entered with the several suppliers and, in such virtue Mr. José Luis Martínez Díez gave the corresponding instruction on July thirteen, two thousand and four, for the subscription of this agreement to carry out a cooperative advertising campaign, in fulfillment of the purposes of the Trust agreement above mentioned in the statement 1.4 and in the settlements taken in the fortieth extraordinary meeting of the Technical Committee dated June twenty nine, two thousand and four, in which its fourth settlement the execution of this agreement was approved.

1.8.- That in accordance with the requirements authorized by the Technical Committee, in the **eight** meeting of the Committee of acquisitions, sales, leases and hiring of services of the FIPROTUR, carried out on July thirteen, two thousand and four, in connection with the request of hiring a person whether individual or collective, to carry out the media plan of the promotional campaign for the 2004 market of North America of the destination of Querétaro, it has been agreed to hire under the modality of direct awarding, the Company **Young & Rubicam, S. de R.L. de C.V.**, based on article 41, fraction III of the Acquisitions, Leases and Services of the Public Sector Law, without any responsibility for the Fiduciary.

1.9.- **Personality.**- José Francisco Fuentes Bernal in its character of fiduciary delegate, states that he is duly authorized to enter into this agreement in connection with the rights and obligations derived of the Trust agreement described in the number 1.1 of this agreement, registered with the number F/32366-7 and in fulfillment of the instructions received from the Technical Committee and with the purposes agreed in the same, which faculties has not been revoked or limited in any manner as evidenced in public deed number 75,203 granted in Mexico City on February sixth, two thousand and three, before Mr. Carlos de Pablo Serna, Notary Public number 137 of the Federal District, duly registered in the Public Registry of Commerce of the Federal District under the mercantile folio number 63,300.

1.10.- That he understands that this Agreement is executed in the context of the CPTM Agreement and that it is its intention to assume all the obligations contained herein.

II. Y&R declares, under protest to say the truth:

II.1 It is a limited liability company duly incorporated and validly existing under the Mexican laws, as evidenced in public deed number 16,314 dated December fourteenth,

1996, granted before Mr. Jorge Sotelo Regil, Notary Public number 108 of the Federal District, duly registered in the Public Registry of Commerce of the Federal District, under number 154, page 120, volume 650, third book.

II.2 Its main purpose is to perform directly or indirectly all kind of activities related with the advertisement and all type of advertisement campaigns for individuals or entities whether public or private through the means it considers appropriate.

II.3 **Manuel Arellano Rios** identifies himself with passport of the Mexican United States, issued on July eight, two thousand and two, under number 02320018584, and with expiration date July eight, two thousand and seven; he certifies his personality and faculties as legal representative through public deed number 49,722 dated April twenty eight, two thousand and three, granted before Mr. Roberto Nuñez y Bandera, Notary Public number 01 of the Federal District, duly registered in the Public Registry of Commerce of the Federal District, hereby stating that, his authority has not been revoked or limited in any manner;

II.4 Its Taxpayers Registration Number is YRU-661214-8GA.

II.5 On September twelfth, two thousand and three, it entered with the Consejo de Promocion Turistica de México, S.A. de C.V. (hereinafter the "CPTM") into a Services Agreement No. 062/2003 (hereinafter the "CPTM Agreement") by which Y&R undertook the provision of advertising services to promote Mexico's attractions and tourist services within the markets of the United States and Canada.

II.6 Pursuant to the CPTM Agreement and the bid documents from which it derived, Y&R is authorized to follow a cooperative advertising program with different participants in the tourism sector.

II.7 To guarantee the fulfillment of its obligations pursuant to the terms of the CPTM Agreement, Y&R hired a bond, granted by a duly authorized Mexican Institution, same that was presented and accepted by the CPTM.

II.8 For the legal effects of this agreement appoints as its domicile the one located in Bosques de Duraznos, number 61, fourth floor, Colonia Bosques de las Lomas, Zip Code number 11700, Mexico City.

III. The parties, through their legal representatives state:

III.1 That they mutually recognize their capacity and legal personality by which they execute this agreement, declaring that in the execution of the same, does not exists error, fraud, bad faith nor any other vice that affects their consent.

III.2. That they know the reaches and content of the **Exhibit One** of this agreement, that they have considered all of the factors involved in its execution and that they have all the necessary authorizations, and material and human elements for the compliance of each and everyone of the obligations contained herein.

CLAUSES

FIRST. Purpose. By virtue of this agreement, and as a result of the CPTM Agreement, the parties hereby agree to carry out a cooperative advertising campaign (the "Campaign") consisting in the purchase of media and placement of advertisement, to promote the tourist attractions of Mexico, in the United States of America and Canada, pursuant to the specifications and timeline provided in the media plan attached hereto as **Exhibit One**.

Said **Exhibit One** may be modified at any time, prior consent of the parties; such consent may be granted in writing, via fax or e-mail.

The parties agree that the Campaign will comply with the terms and conditions provided for in the cooperative advertising program contained in the CPTM Agreement.

The total cost of the Campaign agreed to by the parties is US\$1,793,720.00 (one million seven hundred and ninety three thousand seven hundred and twenty dollars of the United States of America) amount that will be contributed by the parties according with the established in the third clause that follows.

SECOND. Participation Mechanism. The parties agree that Y&R will be responsible of the purchase of media and placement of advertisement, needed for the campaign.

THIRD. Financial Resources, consideration and payment.

a) Financial resources to carry out the Campaign.

The investment that **Y&R** will contribute to the Campaign is the amount of \$896,860.00 (eight hundred ninety six thousand eight hundred and sixty pesos 00/100).

The investment that the Trust will contribute to the Campaign is the amount of \$896,860.00 (eight hundred ninety six thousand eight hundred and sixty pesos 00/100) (the "Trust Amount").

b) Consideration.

The Trust shall pay to Y&R, in consideration (the "consideration") for the purchase of media and placement of advertisement, the amount of \$89,686.00 (eighty nine thousand six hundred and eighty six pesos 00/100), plus the corresponding Value Added Tax.

c) Payment.

The Trust Amount and the consideration shall be delivered by the Trust to Y&R within the thirteen calendar days that follows to the signature of this agreement.

d) Suspension of the services.

Y&R may suspend, without any responsibility, the purchase of media and placement matter of this agreement, in the event that the Trust incurs in a delay or in breach of any of the payments referred in subsection a), b) and c) above mentioned. Also, the Trust shall have to pay to Y&R any penalty or interest generated against Y&R derived from the delay or breach of the Trust.

FOURTH. Tax Obligations.

A) Invoices for the purchase and placement of media:

Y&R shall give to the Trust copies of the invoices issued by the agencies or media with which Y&R has hired to carry out the campaign, exclusively for those purchases that Y&R has made with the amount of the Trust.

These invoices shall have to be delivered to the Trust within the five working days that follows to the date in which the CPTM accepted the invoices.

B) Invoices for the consideration

Y&R shall deliver to the Trust an invoice that covers the payment of the consideration, against the delivery that the Trust makes to Y&R of such consideration.

Such invoice shall have to reunite the fiscal requirements that are indicated in the effective laws of the matter.

FIFTH. Tax Obligations. Each of the parties undertakes to comply with its corresponding individual tax obligations, releasing the other party of any liability in this matter.

SIXTH. Evidence. Y&R commits itself to prove to the Trust the purchase and placement of advertisement made pursuant with this agreement with the amount of the Trust.

SEVENTH. Guarantee. To guarantee the fulfillment of the obligations derived of this agreement, Y&R has hired a bond in favor of the CPTM, as specified in the statement II.8 of Y&R.

EIGHTH. Labor Obligations. Due to the nature of this Agreement, the parties agree that there are no condition of subordination or labor relationship between the Trust and Y&R or any of its employees.

NINETH. Nature of the Agreement. The parties agree that the terms and conditions hereof do not have the purpose or effect of creating a joint venture, merger, corporation or corporate association between Y&R and the Trust.

In virtue of the above, the parties agree that Y&R will be authorized to contract or execute any kind of operation, business or association with any commercial partner,

“tour operator”, travel agency or any other person for similar purposes of this agreement, and to improve or extend the purposes of this agreement.

Notwithstanding the above mentioned, the parties agree not to assume in the name and/or on behalf of the other, any obligation or engagement, unless it has the express written authorization of the other party for that purpose.

TENTH. Intellectual Property. The parties agree that the use they may make of the trademark “MEXICO” in the articles, messages, communications and any other materials that may become a part of the Campaign will be in compliance with the guidelines set forth in the CPTM Agreement. Likewise, Y&R will include the image and presence of the trademarks, slogans, logos, or other information agreed in writing with the Trust pursuant to the terms agreed, and that it receives from the Promoting of Tourism Direction of the Tourism Secretariat of the Government of the State of Querétaro with the necessary anticipation and pursuant with the Technical Committee of the Trust F/32366-7. It has been agreed that the execution of the present agreement does not constitute any license or authorization for the use or exploitation of the trademark or legend “MEXICO” in terms other than as expressly provided for this agreement.

The Trust by itself or through the Promoting of Tourism Direction of the Tourism Secretariat of the Government of the State of Querétaro, shall be responsible for obtaining the authorization for the use of any materials such as photographs, logos, trademarks, or any other items protected under the applicable industrial property laws, other than the trademark “MEXICO”, that may be delivered to the Y&R to be used in the Campaign. The Trust shall also indemnify and keep Y&R safe and harmless from any complaint or judicial proceeding initiated by a third party in connection with this matter.

The Trust obliges itself to release Y&R of any liability related with the use of the trademarks of the Querétaro destination or of any other cause imputable to the Querétaro destination.

ELEVENTH. The parties agree that all the advertisement developed and used in the execution of the campaign shall have to subject to the purpose of promoting the attractive and tourist services of Mexico and specially of the **State of Querétaro**, reason why the breach of this disposition by any of the parties shall be cause of responsibility and consequently of termination of this agreement.

TWELFTH. Assignment of Rights. The parties undertake not to assign to third parties the rights and obligations conferred to them hereof; without the prior written authorization of the other party.

ELEVENTH. Advanced Termination. In the event that one of the parties decides to cancel this agreement for any cause unrelated to the other party, it will so notify to the other party at least five working days in advance to the date of the effective termination of the agreement. As from the date of notification, the party that is not terminating the agreement will be authorized to suspend immediately the fulfillment of its obligations without any responsibility.

In the event that the termination is requested by the Trust, the Trust shall reimburse Y&R, on the date the termination notice is delivered, any and all contributions made by Y&R to the Campaign in connection with this Agreement, as well as any expenses incurred and to be incurred in connection hereof, including the payment of any damages, losses, penalties, fines, losses, costs or charges that Y&R may be required to pay under the CPTM Agreement and all those derived of any agreement, operation, business or association executed under clause seventh above. In the event that the Trust does not comply with the corresponding payment in the above mentioned terms the Trust shall pay to Y&R, in addition to the amounts herein described, a penalty fee consisting in the equivalent to 10% (ten percent) of the unpaid balance on a monthly basis until payment in full.

Also, in the event the termination is requested by the Trust, Y&R is not obliged to reimburse, total or partially, the Amount of the Trust nor the Consideration.

TWELFTH. Conventional Penalties. The parties agree that they will have the faculty to verify the fulfillment of the obligations derived from this agreement and, if it is determined that exists a breach to the agreement by causes directly imputable to anyone of them, the affected party will be able to impose to the other party a conventional penalty equal to the 10% ten percent of the total amount of the Trust Amount.

THIRTEENTH. Confidentiality. The parties agree that all non-public information created and/or exchanged between them as a result of this agreement, shall be considered as strictly confidential, and the parties agree not to disclose it to third parties.

FOURTEENTH. Contact. The parties designate as their contacts for the follow up, evaluation and fulfillment of the commitments and obligations derived from this agreement the following people:

- a) **Y&R** appoints as its contact and as responsible for the following up, evaluation and fulfillment to **Alejandra Zavala García**, account manager of the Company Young & Rubicam S. de R.L. de C.V.
- b) The **Trust** appoints as its contact and as responsible for the following up, evaluation and fulfillment to **Marco Antonio del Prete Tercero**, manager of Tourist Promotion of the Tourism Secretariat of the Government of the State of Querétaro.

FIFTEENTH. Dispute Resolution. All disputes arising in connecting with the present Agreement shall be finally settled under the Rules of Arbitration of the Arbitration Center of Mexico (CAM) by one arbitrator appointed in accordance with the said Rules.

The parties agree that the applicable law for any dispute resolution shall be the law of Mexico. The language of the arbitration shall be Spanish and the place of the arbitration shall be Mexico City.

SIXTEENTH. Term. This Agreement will be in force from the date of its signature and until the total of the services has been fulfilled, without exceeding the thirty one of December of the year 2004 two thousand and four.

SEVENTEENTH. Amendment Agreements. The parties agree that they may modify the terms of this agreement, including those related with creativity and media plan and its exhibits. These amendments may be formalized through an amendment agreement, or through a work act when the parties considers it urgent and justified, having to be granted in writing and signed by at least one representative of each the parties.

The amendments formalized in accordance with this clause will be part of this agreement.

EIGHTEENTH. Limitations and Responsibilities. The parties know and agree that for issues related with this agreement, the patrimony of "BBVA Bancomer Servicios", Sociedad Anónima, institución de banca múltiple, nor of any of its subsidiaries and/or companies will not be committed.

Derived from the above mentioned, all execution decreed against "BBVA Bancomer Servicios", Sociedad Anónima, institución de banca múltiple, grupo financiero BBVA-Bancomer, will operate only and exclusively on the goods, rights and other assets of the Trust.

Also, neither the fiduciary delegates nor the employees of the Trust will personally respond of the obligations derived of this Agreement.

Having been read this agreement, it is signed in conformity by the parties which participated in it, by triplicate, in the city of Santiago de Querétaro, Qro. on July 22, 2004 two thousand and four.

Y&R
Young & Rubicam s. de r.l. de c.v.

Manuel Arellano Ríos
Legal representative

The Trust
BBVA-Bancomer Servicios, S.A.
Institución de banca múltiple, división fiduciaria
Grupo financiero BBVA Bancomer

José Francisco Fuentes Bernal
Fiduciary Delegate

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