

Consultancy Agreement

This Consultancy Agreement ("Agreement") is hereby made and entered into on this [____] day of [____] 2016 ("Effective Date") by and between:

[____], son of [____], aged [____] years and residing at [____] (hereinafter referred to as "Consultant" which term shall include his successors and heirs) of the First Part;

And

[____], a company incorporated under the laws of India with its registered office at [____], (hereinafter referred to as the "Company") of the Second Part;

The Consultant and the Company are each hereinafter referred to as a "Party" and collectively, as the "Parties".

BACKGROUND

1. The Company, which is in the business of [____], desires to procure and the Consultant has agreed to provide certain consultancy and advisory services.
2. This Agreement sets forth the terms and conditions applicable to the provision of the consultancy services by the Consultant.

NOW THEREFORE, in consideration of the mutual agreements and covenants hereafter set forth, the Parties hereto agree as follows:

1. Services

The Consultant agrees to provide certain consultancy and advisory services ("Services") to the Company in accordance with the terms set out in this Agreement and the consideration for the same shall be as set forth under Clause 3. The Services shall include advisory, mentorship and strategic advice for the growth of the Company and to assist the Company in developing its business strategy and [____].

2. Term

This Agreement shall come into force on the Effective Date and shall continue to be valid for [____] months ("Term") unless terminated earlier in accordance with this Agreement.

3. Payment Terms

In consideration for the Services provided, the Consultant shall be issued and allotted [____] equity shares of the Company of a face value of Rs. [____] each ("Advisory Equity"). The Consultant hereby acknowledges that: (a) the Advisory Equity constitutes sufficient consideration for the Services provided by him hereunder; and (b) there shall be no monetary consideration payable by the Company for the Services provided hereunder. The consideration is exclusive of all taxes under applicable law. The Consultant shall be responsible for payment of all applicable taxes for the Services rendered by him hereunder.

The Parties shall enter into a separate agreement to agree upon the terms and conditions attached to the Advisory Equity and in respect of all other actions or deeds required to be done by either Party to give effect to this Clause 3.

4. Intellectual Property Rights

The Deliverables shall be deemed to be 'work for hire' and all Intellectual Property Rights therein shall vest solely with the Company upon creation. To the extent that any right, title or interest in the Deliverables is not vested with the Company by operation of law or by contract, each Consultant hereby irrevocably and perpetually assigns, transfers and conveys, to the Company any and all of such Consultant's worldwide, right, title and interest, and to

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the Intellectual Property Rights, in such Deliverables. Each Consultant shall provide such further assurances, take such action, and execute such further documents and instruments as the Company may reasonably request in order to carry out the purposes of this Clause 4.

To the extent that any Deliverable is based on or uses or embodies any material of a Consultant that was created outside or prior to this Agreement (“**Pre-existing Material**”) then, in consideration for the fees payable under this Agreement, such Consultant hereby grants the Company, a limited, worldwide right to use the Pre-existing Material as long as such use is required for the use of the Deliverables by the Company. The Parties agree and acknowledge that all rights in and to the Pre-existing Material shall continue to be with the Consultant except for the limited rights expressly granted to the Company under this Clause 4.

“**Deliverable**” for the purposes of this Agreement shall mean any report, document, paper, drawing, design, presentation, photo, graphic, logo, typographical arrangement, software or any other material not including the Pre-existing Material that is provided by the Consultants and represented to be the final deliverable in performing the Services under this Agreement.

“**Intellectual Property Rights**” for the purposes of this Agreement shall mean patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

5. Confidentiality

Each Party understands and acknowledges that it may receive Confidential Information (“**Receiving Party**”) of the other Party (“**Disclosing Party**”) during the term of this Agreement. The Receiving Party shall not disclose the Disclosing Party’s Confidential Information to a third party without the Disclosing Party’s prior written consent. Further, the Receiving Party shall only share Confidential Information with such of its employees and representatives who have a need to know the Confidential Information in relation to the Receiving Party’s obligations under this Agreement and who are subject to confidentiality obligations which are no less onerous than contained in this Agreement.

“**Confidential Information**” shall mean any confidential or proprietary information, of a Party, in any form, including but not limited to the information relating to the such Party’s past, present or future products, services, research and development or business activities (and the terms of this Agreement), that is not in public domain which when disclosed is (a) marked as confidential (b) is identified as confidential at the time of disclosure; or (c) that is manifestly of a confidential nature.

Confidential Information shall not include information that is:

- a. publicly available prior to this Agreement or is made publicly available by the Disclosing Party without restriction;
- b. rightfully received by the Receiving Party from third parties without accompanying confidentiality obligations;
- c. already in the Receiving Party’s possession and was lawfully received from sources other than the Disclosing Party;
- d. independently developed by the Receiving Party.

The confidentiality obligations under this Agreement shall continue for a period of three (3) years following disclosure thereof irrespective of whether this Agreement is terminated or not.

Each Party acknowledges that any breach of its obligations under this Clause 5 shall be construed to be a material breach of this Agreement. Each Party further acknowledges and agrees that, in the event of a breach or threatened breach of any provision of this section, the Disclosing Party may have no adequate remedy in damages and, accordingly, is entitled, without waiving any other rights or remedies, to seek such injunctive or equitable relief against the Receiving Party as may be deemed proper by a court of competent jurisdiction.

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6. Warranty and Disclaimers

- (a) The Consultant warrants to the Company that he: (i) has all necessary rights and authority to enter into and perform this Agreement; (ii) has no conflict of interest in respect of any third party obligations that he is bound by, in performance of this Agreement.
- (b) The Consultant hereby disclaims, and the Company expressly waives all other conditions, representations and guarantees, whether express or implied, arising by law, custom, oral or written statements of the Consultant or third parties including, but not limited to, any warranty of merchantability or fitness for particular purpose or of error-free and uninterrupted use or of non-infringement except to the extent expressly provided in this agreement.

7. Termination

Either Party may terminate this Agreement by issuing a written notice of termination to the other Party [____] days in advance of such intended termination. The Consultant shall not be liable to refund any amount in respect of the Advisory Equity or part thereof, or transfer any part of the Advisory Equity to the Company upon earlier termination of this Agreement, provided that such termination was not for reasons of breach or default on part of the Consultant.

8. Nature of Relationship

The Consultant is engaged by the Company in the capacity of an independent contractor to render the Services in accordance with the terms of this Agreement. Nothing in this Agreement shall be construed to mean that the Consultant is an employee, worker, agent or partner of the Company. Nothing in this Agreement shall be construed to have created a joint venture between the Parties.

9. Limitation of Liability

In no event shall the Consultant be liable to the Company, its employees or any person acting on its behalf, whether in contract, tort (including negligence) or otherwise for any loss of goodwill, any loss of business, profits or revenue, loss of operation time, increased costs or wasted expenditure, damages of any kind including special, indirect, incidental, consequential, punitive, exemplary, or tort damages arising out of or relating to this Agreement.

The maximum aggregate amount that the Company or any Party claiming through it can recover from the Consultant for all claims arising from, under or relating to this Agreement (whether in contract, tort including negligence or otherwise) will in no event exceed the value of the services performed under this Agreement till the date on which such claim arose.

10. Force Majeure

Neither Party shall be responsible for delays or failures in performance resulting from acts of god, acts of civil or military authority, fire, flood, strikes, war, epidemics, shortage of power, or other acts or causes reasonably beyond the control of such Party. The Party experiencing the force majeure event agrees to give the other Party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

11. Non-exclusivity

The Services provided by the Consultant under this Agreement is not exclusive to the Company and the Consultant shall have the right to enter into similar arrangements with any third party without the knowledge or consent of the Company. Nothing in this Agreement shall prevent the Consultant from being engaged, concerned or having any financial or other interest in any capacity in any other business or entity during the term of this Agreement as long as such activity does not cause a breach of the obligations of the Consultant under this Agreement.

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12. Delivery by Electronic Means

This Agreement, to the extent signed and delivered by electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

13. Entire agreement

This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior oral and written agreements, understandings, representations, conditions and all other communications relating thereto.

14. Severability

If any provision of this Agreement is held to be unenforceable or invalid, the other provisions shall continue in full force and effect.

15. Governing Law and Dispute Resolution

This Agreement shall be interpreted in accordance with the substantive laws of the Republic of India, exclusive of any choice of law provisions. Any dispute arising under this Agreement shall be within the sole and exclusive jurisdiction of competent courts in [__].

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date:

Consultant

Name:

Address:

Date:

For the Company [■]

Name:

Title:

Date:

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