

CONSULTANCY AGREEMENT

This Consultancy Agreement (“**Agreement**”) is entered into on this ___ day of _____, 2021 (“**Effective Date**”), by and between:

[_____], a [company] incorporated and existing within the laws of [of Netherlands] having its registered office at represented by Mr. _____ hereinafter referred to as “**Company**” (which term or expression shall include its successors or successors-in-office, successors-in-interest and/or assigns) of the **ONE PART**:

AND

_____ having PAN: _____ and Aadhar No.: _____ and permanently residing at _____ hereinafter referred to as the “**Consultant**” (which term or expression shall include its successors or successors-in-office, successors-in-interest and/or permitted assigns) of the **OTHER PART**;

(The Company and the Consultant are hereinafter collectively referred to as “**Parties**” and individual as a “**Party**”)

WHEREAS

- A. The Company is *inter alia* engaged in the business of _____ (“**Business**”).
- B. The Consultant has represented to the Company that he or she has the necessary expertise to provide services in relation to the Business.
- C. The Company and the Consultant now wish to record the terms and conditions that will govern the Consultant’s engagement by the Company.

NOW THEREFORE, in consideration of the terms and conditions contained herein, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

1.1 “**Cause**” shall mean any 1 (One) or more of the following:

- (a) dishonest statements, gross negligence, misconduct or insubordination or other similar acts of the Consultant;
- (b) the Consultant being charged for any offence involving moral turpitude, deceit, dishonesty or fraud;
- (c) a breach by the Consultant of any terms of this Arrangement or the Company’s policies or other documents or directions of the Company; or
- (d) the Consultant conducting himself in a manner which is reasonably regarded by the Company as prejudicial to the Company’s own interests or to the interests of its clients.

1.2 “**Confidential Information**” shall mean:

- (a) any and all information of whatever nature used by, or otherwise made available by the Company to the Consultant including (a) information which is disclosed in any digital form, tangible form, intangible form and/or physical form or (b) all information concerning or provided by the Company that is not known or generally available to the public at large, or (c) is nevertheless disclosed as a result of discussions held between

the Company and the Consultant (and shall include without limitation, software and documentation, existing systems and computer software, future projects, business development or planning, commercial relationships and negotiations, database, client information, financial statements and other financial information, marketing and sales information, information sensitive to the nature of services rendered (including customer names and lists, sales targets, statistics) information related to processes and technology, trade secrets, intellectual property and know-how, Consultants lists, salaries and benefits and all other data shared by the Company, whether written, oral or on magnetic or other media on or after the date hereof; and

(b) any and all other information, including any copies, notes or extracts thereof, disclosed by the Company orally, electronically, visually, or in a document or other tangible form and is identified as confidential and/or proprietary.

1.3 “**Governmental Authority**” shall mean any statutory authority, government department, agency, commission, board, tribunal, court or other entity in India authorized to make Laws;

1.4 “**IP Rights**” or “**Intellectual Property**” shall mean all rights in and in relation to all intellectual property rights subsisting in the products, services, etc., developed, being developed or proposed to be developed by the Company including all patents, patent applications, moral rights, trademarks, trade names, service marks, service names, brand names, internet domain names and sub-domains, inventions, processes, formulae, copyrights, business and product names, logos, slogans, trade secrets, industrial models, formulations, processes, designs, database rights, methodologies, computer programs (including all source codes), technical information, know-how, all pending applications for and registrations of patents, entity models, trademarks, service marks, copyrights, designs and internet domain names and sub-domains and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration) in each case anywhere in the world;

1.5 “**Law**” shall mean and include all applicable statutes, enactments, acts of legislature or Parliament, laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental Authority, or recognised stock exchanges of India; and

1.6 “**Person**” shall mean any natural person, limited or unlimited liability company, corporation, partnership (whether limited or unlimited) proprietorship, Hindu undivided family, trust, union, association, government or any agency or political subdivision thereof or any other entity that may be treated as a person under applicable Law.

2. TERMS

2.1 The Consultant’s employment by the Company shall commence, subject to the terms and conditions of this Agreement and the internal policies of the Company, from the Effective Date.

2.2 The Consultant shall perform all assignments, jobs, works and/or other deliverables as may be required by the Company from time to time.

2.3 All prior employment agreements, if any, between the Consultant and any other Person shall, on the execution of this Agreement, be deemed to have been terminated and the terms and conditions of this Agreement shall supersede all such agreements.

2.4 Working hours: The Consultant agrees to devote proper time, resources, attention and skill needed to perform the services in a professional and workmanlike manner. It is understood that the Consultant will be available from ____ am to ____ pm from Mondays to [Fridays/Saturdays] (both days inclusive) to render services to the Company.

2.5 Reporting: The Consultant shall report to Mr./Ms. _____ for all deliverables and other connected matters. Initially, this present arrangement shall be on a remote working model. However, the

Company may require the Consultant to travel to the Company's office at _____ or to such offices of the Company's clients, subject to improvement in the situation caused due to the COVID-19 pandemic.

2.6 The Company may change/modify the Consultant's role or scope of work without the Consultant's consent.

2.7 **Probation:** The Consultant shall initially be on a probation period of [___] days from the date hereof during which period the Company will review and assess the quality of the Consultant's services.

2.8 The Consultant agrees to remain bound by any code of conduct, handbook and/or other internal human resource guidelines of the Company, as may be issued and amended by the Company from time to time.

3. REMUNERATION

3.1 Subject to the terms hereof, the Consultant shall be entitled to receive remuneration of Rs. _____/- (Rupees _____ only) per month ("**Remuneration**") as per the following break up:

- Basic Salary: INR _____/- per month
- Provident Fund: As per applicable Law
- Gratuity: As per applicable Law
- Reimbursement of Expenses: As per company policies
- Other Perquisites: [_____]

3.2 The Remuneration shall be subject to review and amended as determined by the Company from time to time based on the internal policies and appraisal process of the Company.

3.3 Any tax liability arising in respect of payments made pursuant to this Agreement or income earned by the Consultant shall be borne solely by the Consultant. The Company shall only be responsible for withholding taxes from the payments made to the Consultant and payment thereof to the credit of the Central Government of India in accordance with the provisions of the Income Tax Act, 1961 and applicable Law. The Company shall be entitled to deduct from the Remuneration, the following amounts:

- (a) Tax at source, at applicable rates;
- (b) All employment/professional taxes; and
- (c) All dues payable by the Consultant to the Company such as, loans and advances given to the Consultant, any loan taken but not repaid by the Consultant from banks on the strength of the Company's guarantee etc.

4. CONFIDENTIAL INFORMATION

4.1 The Consultant shall treat all Confidential Information as confidential and shall not use, copy or disclose any Confidential Information to any Person except as permitted in this Clause 4.

4.2 The Consultant agrees to hold in strictest confidence, and not to use, except for the benefit of the Company in accordance with the terms hereof, or to disclose to any Person, without prior written authorization of the Company, any Confidential Information.

4.3 The Consultant shall take all necessary precautions to ensure the security of all Confidential Information and shall comply with the Company's directions and policies in relation to all Confidential Information, from time to time.

4.4 The Consultant shall ensure that his or her relatives keep all Confidential Information strictly confidential.

4.5 The Consultant shall promptly notify the Company if it or he or she becomes aware of any unauthorised disclosure or use of any of the Confidential Information by his or her relatives.

4.6 The Consultant shall not, without the prior written consent of the Company, make any announcement or otherwise provide any information to any third Person (including in respect of any Confidential Information) or disclose the existence, terms hereof and/or any dispute or disagreement relating to it, in each case either directly or indirectly.

4.7 The Consultant agrees that subject to any regulations issued by the Company from time to time, which may apply to the Consultant, he or she shall not receive or obtain directly or indirectly any discount, rebate, commission or other inducement in respect of any sale or purchase of any services or other business transacted (whether or not by the Consultant) by or on behalf of the Company or an associated company.

5. CONFLICTING EMPLOYMENT, NON-COMPETE AND NON-SOLICIT

5.1 Non-compete: Except with the prior written consent of the Company, the Consultant shall not (and shall ensure that his or her relatives do not), as long as the Consultant is in employment of the Company, and for [18 (eighteen) months/ 24 (twenty four) months] thereafter, either directly or indirectly or together with any other Person:

(a) incorporate, promote, join, engage, enter into or associate himself in a managerial capacity or be interested in or concerned in any manner with a competing business, in whatever form and wherever organized, to that of the Business as carried on at the relevant point in time; or

(b) invest in any manner in the capital or become a shareholder of any entity that is engaged in a competing business with the Business of the Company as carried on at the relevant point in time.

5.2 Non-solicit: Except with the prior written consent of the Company, the Consultant shall not (and shall ensure that his or her relatives do not), as long as the Consultant is in employment of the Company, and for [18 (eighteen) months/ 24 (twenty four) months] thereafter, either directly or indirectly or together with any other Person:

(a) attempt, except on behalf of the Company, in any manner to solicit from any client / customer or partner whether by accessing the Company's IP Rights or otherwise, business of the type carried on by the Company at any time or to persuade any person, firm or entity which is a client / customer or partner of the Company to cease doing business or to reduce the amount of business which any such client / customer or partner has customarily done or might propose doing with the Company whether or not the relationship between the Company and such client / customer or partner was originally established in whole or in part through their efforts; or

(b) employ or attempt to employ or assist anyone else to employ any person who is in the employment of the Company at the time of the alleged prohibited conduct, or was in the employment of the Company at any time during the preceding 12 (twelve) months.

5.3 Business Exclusivity: The Consultant shall, as long as he or she is in employment of the Company, devote all of his or her reasonable time, energy and efforts to the activities of the Company and the promotion of the Company's business only. In case the Consultant assists, advises or earns compensation from other activities within the same industry/business, the same shall be billed in the name of the Company for which the Company shall maintain separate financial records.

5.4 Protective Covenants. The Consultant acknowledges that (a) the type and periods of restriction imposed in the provisions of Clauses 5.1, 5.2 and 5.3 are fair and reasonable and are reasonably required in order to protect and maintain the legitimate business interests and the goodwill associated with the Company's Business; and (b) the time and scope of Clauses 5.1, 5.2 and 5.3 have been specifically negotiated by commercial parties.

(Note: We have assumed that the Consultant will be engaged on an exclusive basis. Please confirm. If the role is not on an exclusive basis, these restrictive covenants may be removed.)

6. INTELLECTUAL PROPERTY

6.1 The Consultant confirms and agree that to the extent that he or she has create any Intellectual Property relating to the Business of the Company in any manner whatsoever, the Consultant hereby assigns unencumbered legal and beneficial title, rights and interests in such Intellectual Property to the Company. The Consultant further agrees to execute all documents and instruments as may be required by the Company from time to time, in order to facilitate a formal assignment of all such Intellectual Property in favour of the Company, if required.

6.2 The Consultant acknowledges that, by reason of being employed by Company at the relevant times, to the extent permitted by Law, all of the works performed by the Consultant consisting of copyrightable subject matter is “work made for hire” as defined in the Copyright Act, 1957, and such copyrights are therefore owned by Company. To the extent that the foregoing does not apply the Consultant hereby irrevocably assigns to Company, for no additional consideration, the Consultant’s entire right, title and interest in and to all such works and Intellectual Property therein, including the right to sue, counterclaim, and recover for all past, present and future infringement, misappropriation, or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit Company’s rights, title or interest in any such works or Intellectual Property so as to be less in any respect than that Company would have had in the absence of this Agreement.

6.3 The Consultant agrees to cooperate fully with the Company, both during and after Consultant’s employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights, patents and other intellectual property rights (both in India and foreign countries) relating to the Consultant’s works performed during his or her employment and the Intellectual Property in such works. The Consultant will sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests. The Consultant further agrees that if the Company is unable, after reasonable effort, to secure the signature of the Consultant on any such papers, then upon unanimous approval of, and at the specific direction of the Company, any executive officer of the Company will be entitled to execute any such papers as the agent and the attorney of the Consultant, and the Consultant hereby irrevocably designates and appoints each executive officer of the Company as Consultant’s agent and attorney to execute any such papers on Consultant’s behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests.

6.4 The Consultant represents and warrants that he or she will keep all Intellectual Property created by him or her within the scope of employment, in strict confidence and shall use the same only for the purpose of the business and benefit of the Company and for no other purpose, except with the prior written consent of the Company.

7. CONFLICT OF INTEREST GUIDELINES

7.1 The Company has certain conflict of interest guidelines contained herein below. The Consultant agrees to diligently adhere to these guidelines of the Company.

7.2 It is the policy of the Company to conduct its affairs in strict compliance with the letter and spirit of the Law and adhere to the highest principles of business ethics. Accordingly, all officers, Consultants and independent contractors must avoid activities, which are in conflict, or appear to be in conflict, with these principles and with the interests of the Company. The following are potentially compromising situations, which must be avoided. Any exceptions must be reported to the Company and written approval for continuation of the same must be obtained:

- (a) Revealing Confidential Information to outsiders or misusing Confidential Information. Unauthorized divulging of information is a violation of this policy whether or not for personal gain and whether or not harm to the Company is intended.
- (b) Accepting or offering substantial gifts, excessive entertainment, favours or payments, which may be deemed to constitute undue influence or otherwise be improper or embarrassing to the Company.
- (c) Participating in civic or professional organizations that might involve divulging Confidential Information of the Company.
- (d) Initiating or approving any form of personal or social harassment of Consultants.
- (e) Investing or holding outside directorship or managerial posts in suppliers, customers, or competing companies, including financial speculations, where such investment or directorship might influence in any manner the decision or course of action of the Company.
- (f) Improperly using or disclosing to the Company any proprietary information or trade secrets of any former or concurrent employer or other Person with whom obligations of confidentiality exist.
- (g) Unlawfully discussing prices, costs, clients or markets with competing companies or their Consultants.
- (h) Making any unlawful agreement with customers/clients with respect to prices.

7.3 The Consultant agrees to take every necessary action to ensure compliance with these guidelines and to bring problem areas to the attention of the Company for review. Violations of this conflict of interest policy may result in termination for Cause.

8. REPRESENTATIONS

The Consultant hereby warrants, undertakes and confirms to the Company that he or she is not bound by the terms and conditions of any non-compete agreement or any other similar document, deed or writing by whatever name called executed prior to execution of this Agreement and is fully competent to execute this Agreement.

9. TERMINATION

9.1 Either Party may terminate this Agreement by giving at least [insert] months' prior written notice to the other. The Company may, at its sole discretion, make payment of [insert] months' salary to the Consultant in lieu of the notice required under this Clause (less any appropriate tax and other deductions as per applicable Laws).

9.2 Termination for Cause: Notwithstanding anything stated herein, the Company may terminate this Agreement for Cause, with immediate effect and without any payments in lieu of notice, in the event of commission of Cause by the Consultant.

9.3 Termination for Disability: If the Consultant suffers illness or disability and is prevented from properly performing his or her duties for a period of [insert] months in any one year, the Company may terminate this Agreement by giving at least [insert] months' prior written notice to the Consultant.

9.4 Effect of termination/resignation

(a) Upon termination, the obligations of the Company under this Agreement shall terminate except for the obligations to pay to the Consultant any Remuneration, earned and accrued till the date of termination, to the extent unpaid as on the date of termination; any payment under Consultant benefit plans/schemes required to be provided by the Company to the Consultant pursuant to applicable Law; provided that the Consultant shall

not be entitled to any other salary, compensation, benefit or service payments from the Company thereafter, and provided further the Company is entitled to set-off or deduct any amounts due from the Consultant to the Company prior to making such payments.

(b) The Consultant shall, at the time of leaving the employment of the Company, immediately deliver to the Company (and will not keep in his or her possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondences, specifications, drawings, blueprints, sketches, materials, equipment, other documents, property or any Confidential Information, or reproduction of any aforementioned items developed by the Consultant pursuant to his or her employment with the Company or otherwise belonging to the Company, its successors or assigns.

10. SPECIFIC PERFORMANCE

The Consultant agrees that the obligations imposed on him or her in this Agreement are special, unique and of extraordinary character, and that, in the event of breach by the Consultant, damages may not be an adequate remedy to the Company and, therefore, the Company shall be entitled to enforce specific performance of this Agreement against the Consultant, and also be entitled to injunctive and other equitable relief in addition to any other remedy to which it may be entitled, under Law or in equity.

11. GENERAL PROVISIONS

11.1 **Notices:** Any notice given under this Agreement shall be deemed to have been duly given if dispatched by either Party hereto by email or registered post addressed to the other Party, as in the case of the Company, registered office for the time being, and in the Consultant's case to his or her registered email or physical address as per Company's human resource records, and such notice shall be deemed to have been given on the day on which in the ordinary course of post would be delivered or at the time the email was sent.

11.2 **Governing Law: Consent to Jurisdiction:** This Agreement will be governed by the Laws of the Republic of India. The Consultant hereby expressly consents to the exclusive jurisdiction of the courts located in [REDACTED] for any lawsuit filed by either Party arising from or relating to this Agreement.

11.3 **Entire Agreement:** This Agreement sets forth the entire agreement and understanding between the Company and the Consultant relating to the subject of the Consultant's employment and this Agreement prevails over any oral discussions or prior agreements entered into between the Company and the Consultant (including any past offer letters issued by the Company to the Consultant). No modification of or amendment to this Agreement or any waiver of any rights under this Agreement will be effective unless made in writing and signed by both the Parties.

11.4 **Severability:** If one or more of the provisions in this Agreement is declared void by Law, then the remaining provisions will continue to be in full force and effect.

11.5 **Survival:** Clauses 4 (*Confidential Information*), 5 (*Conflicting Employment, Non-Compete and Non-Solicit*), 6 (*Intellectual Property*), 11.1 (*Notices*), 11.2 (*Governing Law: Consent to Jurisdiction*), 11.4 (*Severability*) and 11.5 (*Survival*) shall survive and continue in full force and effect in accordance with their respective terms, notwithstanding any termination of this Agreement.

11.6 **Waiver:** No failure or delay by either of the Parties in exercising any right, power or privilege under this Agreement will operate as a waiver thereof. The waiver by either of the Parties of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other or subsequent breach.

IN WITNESS WHEREOF, the Parties have entered into this Agreement the day and year first above.

For the Company

By the Consultant

Name :
Designation:

Name :