

**CONSULTANCY AGREEMENT**

This **AGREEMENT OF CONSULTANCY** is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2012.

**BY AND BETWEEN**

\_\_\_\_\_, a Company duly incorporated under the Companies Act 1956, having its registered office at \_\_\_\_\_, through its authorized signatory \_\_\_\_\_, **(designation)** \_\_\_\_\_, hereinafter called "**the Company**", which expression shall always mean and include unless repugnant to the context and meaning thereof, the Company, it's Board of Directors, administrators, executors, assigns, etc; of the **FIRST PART**

**AND**

M/s \_\_\_\_\_, a firm registered under the \_\_\_\_\_ Act, having its office at \_\_\_\_\_, hereinafter referred to as the "**Consultant**", which expression shall always mean and include unless repugnant to the context and meaning thereof, Consultant, his administrators, executors, assigns, etc;) of the **SECOND PART**

**WHEREAS** the Company wishes to hire the services of a consultant for such matters and on such Terms and Conditions as laid down in this Agreement;

**AND WHEREAS** the Consultant has agreed to provide services on the Terms and Conditions laid down herein;

**NOW THIS AGREEMENT WITNESSETH AND IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER:**

1. **Scope of Work.** Refer to **Annexure "A, B and C"** attached herewith.

2. **Duration.** This Agreement is valid for the period: \_\_\_\_\_ **20** to \_\_\_\_\_ **20**.

3. **Compensation:**

a. The Company and Consultant have agreed to work together and Company agrees to compensate the Consultant for the services rendered by the consultant on the following terms and conditions:-

2. The Consultancy Charges payable shall be at **INR** \_\_\_\_\_ **/-**  
(Rupees \_\_\_\_\_) per month.

3. The Consultant shall raise Tax Invoice citing the Service Tax Registration Number as well as the Income Tax PAN No to the Company for services rendered during the preceding month by the 5<sup>th</sup> day of every subsequent month. The Consultant shall deliver all such invoices to the Company at the following address:

\_\_\_\_\_

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- b. The Company shall pay the amount of each Invoice no later than 15 (fifteen) days following the date of the Invoice. The Consultant acknowledges that it is an Independent Contractor and that it is not entitled to any benefits provided by the Company to its employees. Unless the parties mutually agree, the Consultant shall be responsible at its own expense for all of its own office overheads and all secretarial and clerical support services.

**4. Conflict of Interest.**

By entering into this Agreement, the Consultant is deemed to have represented, confirmed and agreed that it has not in any way entered into any previous or contemporaneous agreement or understanding or arrangement, with any other person or persons or Firm or Company or Corporation, or Statutory or other Authority or body, which may be in conflict with the terms and conditions of this Agreement, or which could preclude it from taking up this Consultancy or performing its responsibilities under this Agreement, nor has it been restrained in any manner by any court of competent jurisdiction from entering into this Agreement. In addition to the foregoing, the Consultant agrees not to make improper use of any information that comes to himself or his agents or representatives in the performance of services under this Agreement.

**5. Termination.**

Either party may terminate this Agreement prior to the expiration date set forth in paragraph 2 above by giving the other thirty (30) days notice in writing, which notice shall specify the date upon which such termination becomes effective. In the event either party gives such notice, this Agreement shall terminate upon the date specified, and the parties hereto shall be released from any and all liability hereunder except such liability as, by the terms hereof, may be accrued prior to, or may extend beyond, such termination.

**6. Confidentiality.**

Either party to this Agreement may, in the course of fulfilling its terms, need to disclose information to the other party that is proprietary or confidential. When such disclosure is undertaken, the following provisions apply:

- a. The term "Disclosing Party," as used in this Agreement, means the party providing Confidential Information. The "Receiving Party" is the party receiving the information.
- b. The term "Confidential Information," as used in this Agreement, means any oral, written, or documentary information or information that is stored by electronic means which (i) relates to this Agreement, (ii) is received by one of the parties from the other, and, in the case of written information, (iii) is marked "Confidential," "Proprietary" or bears a marking of like import or which the Disclosing Party states in writing at the time of

transmittal to, or receipt by, the Receiving Party is to be considered confidential. Orally disclosed information shall be considered confidential if identified as such at the time of disclosure and if followed up in writing within ten (ten) calendar days, with the information identified and marked as confidential.

- c. The term "Trade Secret", as used in this Agreement, means any oral, written, or documentary information or information that is stored by electronic means that: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- d. The "Confidential Information" and "Trade Secrets" do not include information that: (i) is already known to the Receiving Party as evidenced by prior documentation thereof; or (ii) is or becomes publicly known through no wrongful act of the Receiving Party; or (iii) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement or any other Agreement; or (iv) is approved for release by written authorization of the Disclosing Party.
- e. The Receiving Party shall not disclose to others, or use for any purpose of its own, any Confidential Information, financial or business data, technical data, or other confidential or proprietary information obtained from the

Disclosing Party, or from an affiliated entity of the Disclosing Party, as a result of work done pursuant to this Agreement, or generated or developed in the performance of work under this Agreement. With respect to Trade Secrets, the Receiving Party agrees not to use for any purpose whatsoever or to disclose Trade Secrets at any time during or after the term of this Agreement or until such Trade Secrets lose their status as such by becoming generally available to the public by independent discovery, development, or publication. Furthermore, the Receiving Party will not display for any purpose any drawing, letter, report, other document, or any copy or reproduction thereof belonging to or pertaining to the Disclosing Party, or to an affiliated entity of the Disclosing Party, unless such drawing, letter, report, or other document has been previously published by the Disclosing Party. Publication shall not include publication to an affiliated entity of the Disclosing Party. Upon termination of this Agreement, the Receiving Party agrees to return all Confidential Information to the Disclosing Party.

- f. The covenants regarding Confidential Information and Trade Secrets will apply to any Confidential Information or Trade Secrets disclosed to the Receiving Party by the Disclosing Party before or after the date of this Agreement.

## **7. Provision of Offices, Equipment and Materials**

The Consultant will undertake the Services substantially at his own

premises and using his own equipment and materials, the costs of which shall be deemed to have been included within the fee indicated herein. Any space, equipment or materials provided by the Company will be minor in scale and nature relative to this Agreement, and the Company will be entitled to be re-imbursed its reasonable costs of providing them.

#### **8. Delegation and assignment**

- a. The Consultant shall be free to undertake the work entirely himself, or to delegate any or all of it to others, provided that he shall at all times be responsible for ensuring that the work is performed to the standard required.
- b. Where any part of the work is delegated, the Consultant shall be solely responsible for meeting any fees, remuneration or expenses due to the delegatee out of his fee for the work (as specified below), and the Company shall not be responsible for making any such payments itself. Further, upon such delegation, the Consultant shall be solely responsible for ensuring that the terms of this Agreement, especially those relating to Confidential Information and Intellectual Property Rights, are not contravened by the delegate in any manner whatsoever.
- c. The Consultant shall not be permitted to delegate any part of the work to anyone who is an employee of the Company.
- d. The Consultant shall not be permitted to assign the entire benefit of and obligations under this Agreement without the Company's prior written consent.

## **9. Relationship of the parties**

Nothing in this Agreement shall be deemed to constitute a relationship of Employer and Employee. The Consultant shall not be entitled to any rights or protections afforded by employment law. Nor shall this Agreement be deemed to establish a business partnership between the parties.

## **10. Intellectual Property Rights.**

- a. The term "Protected Works", as used in this Agreement, includes any and all works of authorship, inventions, discoveries, processes, machines, manufactures, compositions of matter, formulas, techniques, computer programs, systems, software, source code, firmware, object code, hardware systems, mask works, trade secrets, proprietary information, schematics, flow charts, databases, customer lists, marketing plans, product plans, business strategies, financial information, forecasts, trademarks, service marks, brand names, trade names, compilations, documents, data, notes, reports, findings, recommendations, designs, drawings, sketches, notebooks, ideas, concepts, technical data and/or training materials, and improvements to or derivatives from any of the above, whether or not patentable, or subject to copyright or trademark or trade secret protection, delivered by the Consultant to the Company under this Agreement before or after the date of this Agreement, or conceived, developed or produced by the Consultant, whether alone or jointly with others, in connection with



or pursuant to the Consultant's performance under this Agreement, except as detailed in paragraph 7.b.

- b. The term "Intellectual Property Rights", as used in this Agreement, includes all rights of inventorship and authorship, all rights in patents and patent applications, all copyrights, all trademark and service mark rights, all rights in trade secret and proprietary information, all rights of attribution and integrity and other moral rights, and all other intellectual property rights of any type.
- c. The Consultant agrees that all Protected Works shall be deemed "work for hire" under the Indian Copyright Act and owned exclusively by the Company. To the extent any Protected Work cannot be deemed work for hire, the Consultant agrees to assign and hereby does assign to the Company all right, title, and interest in and to all Protected Works and all Intellectual Property Rights in and to the Protected Works. The Consultant agrees to execute any documents reasonably required by the Company to evidence the Company's exclusive ownership of the Protected Works, and all Intellectual Property rights therein, as contemplated by this Agreement.
- d. The parties (and all individuals representing either party in a technical capacity under this Agreement) agree(s) to execute the [Company's] standard Non-disclosure agreement (if any) and to fully abide by all the terms of that agreement.

## 11. Disputes and arbitration

- a. If the Company believes that the Services are deficient, the Company shall formally notify the Consultant in writing, inviting him at the earliest possible opportunity to discuss the matter and giving him clear indications as to how the Services have not been satisfactory. After such discussions, the Consultant shall remedy any agreed faults within an agreed, reasonable timescale, not generally to exceed three working weeks. Once the Company has formally notified the Consultant of any such deficiencies, it shall be entitled to withhold payment of any invoices which the Consultant has submitted (or may submit) for the Services, or part-pay any such invoices as it sees fit.
- b. If the Consultant is unable or unwilling to remedy the above faults, the Company may terminate this Agreement forthwith; if the Consultant feels that his services are not at fault or that the Company is unfair in its judgment of the quality of his services, and the parties are unable to agree the matter amicably between them, the matter may be resolved by reference to an independent Arbitrator who is acceptable to both parties, and whose decision both parties agree shall be final; such an Arbitrator may also determine what amounts the Consultant may be paid for his services to date, if appropriate.
- c. The provisions of the Arbitration & Reconciliation Act, 1996, and any statutory modification or re-enactment thereof shall apply to such

arbitration. All disputes and differences between the parties hereto whether during the subsistence of this Agreement or thereafter and relating to the interpretation of any of the Terms and Conditions contained herein, or any claim or liability of any Party hereto, or as to the construction of these presents, or as to any matter or things arising hereunder shall be referred to a sole Arbitrator appointed by the company. The Parties hereto mutually agree to appoint the aforesaid gentleman as the sole Arbitrator. This clause shall be deemed to be an Arbitration Agreement under the provisions of the Indian Arbitration & Conciliation Act, 1996 or any modifications or re-enactment thereof. The Arbitration shall be held at Pune and the language of Arbitration shall be English and the courts at Pune alone shall have exclusive jurisdiction to the exclusion of all other courts in respect of such Arbitration. The cost of Arbitration shall be borne equally by both the Parties. The Arbitrator shall pass an Award within six months of reference of the dispute and the same shall be binding on both the Parties.

## **12. Entire agreement and amendments**

This Agreement constitutes the entire agreement between the Parties, and any representation made by either Party prior to the signing hereof shall be disregarded. Any amendments to this Agreement shall be agreed in writing by the Consultant and the Company and the same shall be part and parcel to the parent agreement.

## **13. Applicable Law and Jurisdiction**

This Agreement is made and shall be interpreted in accordance with Indian Law and subject to the jurisdiction of the Courts of \_\_\_\_\_.

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals on the date, month and year first above written, in presence of witnesses hereto present

**Signed sealed and Delivered by**

The Company herein under

\_\_\_\_\_

Through its Authorized Signatory

\_\_\_\_\_  
\_\_\_\_\_

**Signed sealed and Delivered by**

M/s \_\_\_\_\_ Consultants

The Consultant herein under

Proprietor

**Date:**

**Pune**

**Enclosure: Annexure "A, B and C"****Annexure "A"****SCOPE OF WORK**

<b>SR. NO.</b>	<b>Scope of work/Consultancy</b>
1	Provident Fund and Family Pension declaration forms.(Form No. 2 etc.,)
2	Individual members annual return for currency period (Form No. 3 A & 6 A etc.,)