

## CONSULTANCY AGREEMENT

THIS CONSULTANCY AGREEMENT (the "Agreement") is entered into on this ..... day of ....., 20.....

BETWEEN

ABC....., a Company organised and existing under the laws of .....(a Foreign country) and having its registered office at ..... , through its Chief Executive Officer Mr. .... (hereinafter called " Alpha" which expression shall, unless repugnant to the meaning or context hereof, be deemed to include its successors and permitted assigns), of the FIRST PART;

AND

XYZ, a company duly incorporated under the Companies Act, 1956 and having its registered office at ....., India, through its authorised signatory Mr. ....(hereinafter referred to as "CONSULTANT" which expression shall, unless repugnant to the meaning or context hereof, be deemed to include its successors and permitted assigns), of the SECOND PART.

( ABC and Consultant are collectively referred to as "Parties" and individually as a "Party").

A. WHEREAS, (A) a registered society set up by the Government of India (B) in furtherance of its plan to enter into the field of Mobile Telephony Services along with Department of Telecommunication, ("DOT"), has floated a global tender ("Tender") inviting vendors for undertaking survey, planning, design, supply of equipment, installation, testing, commissioning and handing over the systems on a turnkey basis;

B. WHEREAS, .....(name) Limited, a company duly incorporated under the Companies Act, 1956, having its registered office at ....., India, (" XYZ"), is engaged in the manufacture and marketing of the telecommunication equipment including GSM Cellular equipment (BSS) and has a Technical Collaboration Agreement with ABC;

C. WHEREAS, XYZ has submitted its bid in respect of the Tender at the behest of ABC and in doing so has availed the assistance and services of the Consultant which has requisite expertise and knowledge of the telecommunication sector in India;

D. WHEREAS, the Parties understand that the Tender is only a pilot program and that there would be more orders in respect of Mobile Telephony Services in India in future, either by way of repeat orders from or in the form of fresh tenders to be floated by, either A or B , in association with each other or in association with a third party or individually ("Subsequent Tender").

E. WHEREAS, Alpha desires that the Consultant provide further assistance to Beta in respect of the Tender and Subsequent Tender and whereas the Consultant has agreed to extend its assistance for the same, the Parties have mutually agreed to record their entire understanding by way of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties and on the terms and conditions as hereinafter set forth, the Parties agree as follows:

### 1. Consultant's Obligations

A. The Consultant agrees to assist and advice Alpha on the various aspects of the Tender and Subsequent Tenders, if any. The Consultant shall assist in the preparation and submission of bids in respect of the aforesaid tenders.

B. The Consultant shall carry out surveys and conduct market studies to provide necessary inputs to Alpha to make the quotations/bids of XYZ competitive. The Consultant shall endeavour to obtain any clarifications which would be required from (A)/(B) / other Government Departments in respect of the Tender or any Subsequent Tenders, as the case may be.

C. The Consultant shall also undertake necessary liaison work as may be required from time to time with the officials of the concerned departments. The Consultant shall, at all times, work diligently to promote the interests of ABC.

D. Save and except the representations and warranties stated in this Agreement, the Consultant makes no representations or warranties of any kind or nature with regard to the business, financial viability of the project.

E. The Consultant represents and warrants that it shall comply with all applicable laws, rules and regulations and shall not indulge in any act, which constitutes an offence or a corrupt practice under the Indian laws and/or the .....(country) laws.

## **2. ABC's Obligation**

A. Upon award of the Tender to XYZ, ABC a undertakes to make payment of five (5) per cent of the "Tender Amount" ("Commission") to the Consultant in the manner given below:

- 1/3<sup>rd</sup> of the Commission on the date of award of the Tender ("Tender Date");
- (—) of the Commission within (.....) months of the Tender Date;
- (—) of the Commission within (.....) months of the Tender Date; and

B. Upon award of any Subsequent Tender(s) to XYZ, ABC shall make payment of five (5) per cent of the aggregate value of such Subsequent Tender(s) ("Subsequent Commission") to the Consultant in the manner given below:

- 1/3<sup>rd</sup> of the Subsequent Commission on the date of award of the Subsequent Tender ("Subsequent Tender Date");
- (—) of the Subsequent Commission within (.....) months of the Subsequent Tender Date; and
- (—) of the Subsequent Commission within (.....) months of the Subsequent Tender Date.

C. It is understood that the payment to be made by ABC in terms of this section in lieu of the services and the assistance rendered by the Consultant shall be inclusive of any out of pocket expenses incurred by the Consultant in carrying out its obligation under this section. All payments to be made under this clause shall be net of taxes and shall be made by ( mode of payment).

D. It is clarified that upon the award of the Tender or any Subsequent Tender(s), Alpha would be bound to make all payments to the Consultant in the manner and within the time stated above, notwithstanding any allegations, accusations, contentions raised by ABC regarding the role played by the Consultant.

E. ABC agrees not to appoint any other person to act as a Consultant in addition to/substitution of the Consultant without a written consent of the Consultant.

## **3. Damages**

ABC shall indemnify and keep indemnified the Consultant from and against all claims, proceedings, cost and damages suffered by the Consultant resulting from any breach of this Agreement by ABC including any default of payment in terms of section 2 of the Agreement. Without prejudice to any other remedy that the Consultant may have under law, ABC shall pay (.....) as liquidated damage for any fundamental breach.

#### **4. Secrecy**

The Parties shall not at any time during or after the term of this Agreement, divulge, or allow to be divulged, to any person, any Confidential Information (including, but not limited to, any information relating to the accounts, finance, contractual arrangement, products, business or affairs of the Parties) unless the said information comes in public domain without breach by either Party. Notwithstanding anything contained in this section, no Party shall be precluded from disclosing any information to the extent required in the legal proceedings.

#### **5. Termination**

This Agreement shall terminate on the occurrence of any of the following events:

A. Expiry of Term: This Agreement shall terminate upon the expiry of ..... years<sup>1</sup> from the date of this Agreement.

B. Fundamental Breach: On the occurrence of any of the following events which are fundamental breaches of this Agreement: (a) failure to comply with the terms of any "Default Notice" (as hereinafter defined) within the time stipulated, or (b) (Other events to be specified).

#### **6. Termination Consequences**

Default Notice: In the event of a breach by either Party of any of the provisions of this Agreement other than a Fundamental Breach, the non-breaching Party may serve notice requiring the breach to be remedied within the time stipulated in that notice (a 'Default Notice').

Existing Rights: The expiry or termination of this Agreement shall be without prejudice to any rights, which have already accrued, to either of the parties under this Agreement.

#### **7. Governing Law/Dispute Resolution/Arbitration**

Governing Law: This Agreement shall be governed by and construed in accordance with the Indian law.

Arbitration: Any dispute, controversy or claim arising out of or relating to or in connection with this Agreement, or the breach, termination or validity hereof shall be finally settled by an arbitral tribunal (the "Tribunal") in accordance with the Indian Arbitration and Conciliation Act, 1996, as in force at the time such arbitration is commenced (the "Arbitration Act"). Each Party will appoint an arbitrator within thirty (30) days of the receipt by a Party at the other Party's request to initiate arbitration. The two arbitrators so appointed will then jointly appoint a third arbitrator within thirty (30) days of the date of appointment of the second arbitrator, where third Arbitrator will act as Chairman of the Tribunal. Arbitrators not appointed within the time limit set forth in the preceding provision shall be appointed in accordance with the Arbitration Act. The place of the arbitration shall be .....(place), India. The language of the arbitration and award shall be English.

#### **8. Miscellaneous**

Compliance: Both Parties agree not to do anything contrary to law or which would be treated as a corrupt practice under Indian or Foreign law.

Waiver: There shall be no waiver of any term, provision or condition of this Agreement unless such waiver is evidenced in writing and signed by the waiving Party. No omission or delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or of any other right, power or privilege. The rights and remedies

herein provided are cumulative with, and not exclusive of, any rights or remedies provided by law.

Modifications: Modifications of and amendments to this Agreement shall be effective only if made in writing and signed by duly authorised representatives of the Parties.

Notices: Any notice required or permitted to be given hereunder shall be in writing and sent by registered mail, postage prepaid or facsimile transmission and shall be addressed to the Parties at the address mentioned below:

if addressed to Alpha,

Facsimile #

if addressed to the Consultant,

Facsimile #

or such other addresses and numbers as any of the Parties may from time to time designate by notice in writing to the other. The notice shall be deemed to be served when first received.

Assignment: Save as otherwise expressly provided under this Agreement, all rights and obligations hereunder are personal to the Parties hereto and may not be assigned at law or in equity without the prior written consent of the other Party.

Entire Agreement: This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior Agreements between them relating thereto.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first above written.

WITNESSES:

1.....

2.....

By:.....

Chief Executive Officer

Consultant

By:.....