

**DATED**

**2010**

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**CONSULTANCY AGREEMENT VIA A SERVICE COMPANY**

between

**BRAINSPARK PLC**

and

**SICI SAS DI FRANCESCO GARDIN & C**

**IN RESPECT OF THE SERVICES OF**

**FRANCESCO GARDIN**

GORDONS PARTNERSHIP LLP  
22 GREAT JAMES STREET  
LONDON WC1N 3ES  
TEL 020 7421 9421  
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**THIS AGREEMENT** is dated

June 2010

**PARTIES**

- (1) BRAINSPARK PLC incorporated and registered in England and Wales with company number 396 6192 whose registered office is at 12-14 Laystall Street, London EC1R 4PR (**Company**).
- (2) SICI SAS DI FRANCESCO GARDIN & C incorporated and registered in the Republic of Italy with a registered office at Via Feltre 71, 20132 Milan, Italy (**Consultant Company**).

**AGREED TERMS**

**1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

**Board:** the board of directors of the Company (including any committee of the board duly appointed by it).

**Business Opportunities:** any opportunities which the Consultant Company or the Individual becomes aware of during the Engagement which relate to the business of any Group Company or which the Board reasonably considers might be of benefit to any Group Company.

**Capacity:** as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

**Commencement Date:** the date of this Agreement.

**Confidential Information:** information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to the business, products, affairs and finances of any Group Company for the time being confidential to any Group Company and trade secrets including, without limitation, technical data and know-how relating to the business of any Group Company or any of their business contacts.

**Engagement:** the engagement of the Consultant Company by the Company on the terms of this agreement.

**Group Company:** the Company, any company of which it is a Subsidiary (its holding company) and any other Subsidiaries of the Company or any such holding company.

**Individual:** Professor Francesco Gardin

**Insurance Policies:** commercial general liability insurance cover, employer's liability insurance cover and public liability insurance cover.

**Intellectual Property Rights:** patents, rights to Inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, 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.

**Invention:** any invention, idea, discovery, development, improvement or innovation made by the Consultant Company or by the Individual in connection with the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

**Pre-Contractual Statement:** any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement or any documents referred to in it.

**Quarter:** any period of three consecutive calendar months which shall commence on the Commencement Date or any date which is the day after the end of the previous quarter.

**Services:** the services described in the Schedule.

**Subsidiary:** in relation to a company (a holding company) means a subsidiary (as defined in section 1159 of the Companies Act 2006) and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company.

**Substitute:** a substitute for the Individual appointed under the terms of clause 3.3.

**Termination Date:** the date of termination of this agreement howsoever arising.

**Works:** all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant Company or the Individual in connection with the provision of the Services.

- 1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 The schedules to this agreement form part of (and are incorporated into) this agreement.

## **2. TERM OF ENGAGEMENT**

- 2.1 The Company shall engage the Consultant Company and the Consultant Company shall make available to the Company the Individual to provide the Services on the terms of this agreement.
- 2.2 The Engagement shall commence on the Commencement Date and shall continue unless and until terminated:
  - (a) as provided by the terms of this agreement; or
  - (b) by either party giving to the other not less than twelve months' prior written notice.

PROVIDED THAT such notice shall not be capable of being given by either party to this Agreement until the second anniversary of the date upon which this Agreement is approved by the members of the Company.

**3. DUTIES**

3.1 During the Engagement the Consultant Company shall, and (where appropriate) shall procure that the Individual shall:

- (a) provide the Services with all due care, skill and ability and use its or his best endeavours to promote the interests of any Group Company;
- (b) unless the Individual is prevented by ill health or accident, devote at least 240 days in each calendar year to the carrying out of the Services together with such additional time if any as may be necessary for their proper performance;
- (c) promptly give to the Board all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the business of any Group Company.

3.2 If the Individual is unable to provide the Services due to illness or injury the Consultant Company shall advise the Company of that fact as soon as reasonably practicable and shall provide such evidence of the Individual's illness or injury as the Company may reasonably require. For the avoidance of doubt, no fee shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided.

3.3 The Consultant Company may, with the prior written approval of the Company subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services instead of the Individual, provided that the substitute shall be required to enter into direct undertakings with the Company, including with regard to confidentiality. If the Company accepts the Substitute, the Consultant Company shall continue to invoice the Company in accordance with clause 4 and shall be responsible for the remuneration of the Substitute.

3.4 The Consultant Company shall procure that the Individual is available at all times on reasonable notice to provide such assistance or information as the Company may require.

3.5 Unless it or he has been specifically authorised to do so by the Company in writing:

- (a) neither the Consultant Company nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the Company;  
or
- (b) the Consultant Company shall not hold itself (and shall procure that the Individual shall not hold himself) out as having authority to bind the Company.

3.6 The Consultant Company shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with the Company's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Company any unsafe working conditions or practices.

- 3.7 The Consultant Company undertakes to the Company that during the Engagement it shall, and shall procure that the Individual shall, take all reasonable steps to offer (or cause to be offered) to the Company any Business Opportunities as soon as practicable after the same shall have come to its or his knowledge and in any event before the same shall have been offered by the Consultant Company or the Individual (or caused by the Consultant Company or the Individual to be offered to) any other party.
- 3.8 The Consultant Company may use another person, firm, company or organisation to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that the Company will not be liable to bear the cost of such functions.

#### **4. FEES**

- 4.1 In consideration of the provision of the Services, the Company shall within, pay to the Consultant Company:-
- (a) a base fee of £63,000 per year, such fee to be payable by bank transfer monthly in arrears;
- (e) such additional bonus fees as may be agreed between the Company and the Consultant Company by way of reward for exceptional performance and achievement or outperformance of targets, the basis of such fees to be agreed annually between the parties in or around December in each year in respect of a financial year beginning on 1 January and ending on the following 31 December.
- 4.2 The Company shall be entitled to deduct from the fees (and any other sums) due to the Consultant Company any sums that the Consultant Company or the Individual may owe to any Group Company at any time.

#### **5. EXPENSES**

- 5.1 The Company shall reimburse (or procure the reimbursement of) all reasonable expenses properly and necessarily incurred by the Consultant Company or the Individual in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.
- 5.2 If the Individual is required to travel abroad in connection with the provision of the Services, the Consultant Company shall be responsible for any necessary insurances, inoculations and immigration requirements.

#### **6. OTHER ACTIVITIES**

Nothing in this agreement shall prevent the Consultant Company or the Individual from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

- (a) such activity does not cause a breach of any of the Consultant Company's obligations under this agreement; and

- (b) the Consultant Company shall not, and shall procure that the Individual shall not, engage in any such activity if it relates to a business which is similar to or in any way competitive with the business of any Group Company without the prior written consent of the Company.

**7. CONFIDENTIAL INFORMATION AND COMPANY PROPERTY**

7.1 The Consultant Company acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Consultant Company has therefore agreed to accept the restrictions in this clause 7.

7.2 The Consultant Company shall not, and shall procure that the Individual shall not (except in the proper course of its or his duties) either during the Engagement or at any time after the Termination Date, use or disclose to any firm, person or company (and shall use its best endeavours and procure that the Individual shall use its best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by the Company or required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant Company's or the Individual's unauthorised disclosure.

7.3 All documents, manuals, hardware and software provided for the Individual's use by the Company, and any data or documents (including copies) produced, maintained or stored on the Company's computer systems or other electronic equipment (including mobile phones if provided by the Company), remain the property of the Company.

**8. DATA PROTECTION**

8.1 The Consultant Company shall procure that the Individual consents to the Company holding and processing data relating to him for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Individual including, as appropriate:

- (a) information about the Individual's physical or mental health or condition in order to monitor sick leave and take decisions as to the Individual's fitness for work; or
- (b) the Individual's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with equal opportunities legislation;
- (c) information relating to any criminal proceedings in which the Individual has been involved for insurance purposes and in order to comply with legal requirements and obligations to third parties; and
- (d) any other information that may be agreed between the Company and the Consultant Company.

8.2 The Consultant Company consents (and shall procure that the Individual consents) to the Company making such information available to any Group Company, those who provide products or services to the Company and any Group Company (such as

advisers), regulatory authorities, governmental or quasi governmental organisations and potential purchasers of the Company or any part of its business.

- 8.3 The Consultant Company consents (and shall procure that the Individual consents) to the transfer of such information to the Company's and any Group Company's business contacts outside the European Economic Area in order to further their business interests.

## **9. INTELLECTUAL PROPERTY**

- 9.1 The Consultant Company warrants to the Company that it has obtained from the Individual a written and valid assignment of all existing and future Intellectual Property Rights in the Works and of all materials embodying such rights and a written irrevocable waiver of all the Individual's statutory moral rights in the Works, to the fullest extent permissible by law, and that the Individual has agreed to hold on trust for the Consultant Company any such rights in which the legal title has not passed (or will not pass) to the Consultant Company. The Consultant Company agrees to provide to the Company a copy of this assignment on or before the date of this agreement.

- 9.2 The Consultant Company hereby assigns to the Company all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying such rights to the fullest extent permitted by law. Insofar as they do not so vest automatically by operation of law or under this agreement, the Consultant Company holds legal title in such rights and inventions on trust for the Company.

- 9.3 The Consultant Company undertakes to the Company:
- (a) to notify to the Company in writing full details of all Works and Inventions promptly on their creation;
  - (b) to keep confidential the details of all Inventions;
  - (c) whenever requested to do so by the Company and in any event on the termination of the Engagement, promptly to deliver to the Company all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in his possession, custody or power;
  - (d) not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Company; and
  - (e) to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Company,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

- 9.4 The Consultant Company warrants that:
- (a) it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;



- (b) it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- (c) the use of the Works or the Intellectual Property Rights in the Works by the Company will not infringe the rights of any third party,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

- 9.5 The Consultant Company acknowledges that no further remuneration or compensation other than that provided for in this agreement is or may become due to the Consultant Company in respect of the performance of its obligations under this clause 9.
- 9.6 The Consultant Company undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the Company and at any time either during or after the Engagement, as may, in the opinion of the Company, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of the Company and otherwise to protect and maintain the Intellectual Property Rights in the Works. The Consultant Company confirms that the Individual has given written undertakings in the same terms to the Consultant Company.
- 9.7 The Consultant Company hereby irrevocably appoints the Company to be its attorney to execute and do any such instrument or thing and generally to use its name for the purpose of giving the Company or its nominee the benefit of this clause 9 and acknowledges in favour of a third party that a certificate in writing signed by any director or the secretary of the Company that any instrument or act falls within the authority conferred by this clause 9 shall be conclusive evidence that such is the case.

## **10. INSURANCE AND LIABILITY**

- 10.1 The Consultant Company shall have liability for any loss, liability or costs (including reasonable legal costs) incurred by the Company in connection with the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies in respect of the provision of the Services.
- 10.2 The Consultant Company shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Company and that the level of cover and other terms of insurance are acceptable to and agreed by the Company.
- 10.3 The Consultant Company shall (on request) supply to the Company on request copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 10.4 The Consultant Company shall notify the insurers of the Company's interest and shall cause such interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is brought or made by the Company against the Consultant Company in respect of which the Consultant Company would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the Company directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Company, the Consultant Company shall use all insurance monies received by it to

indemnify the Company in respect of any claim and shall make good any deficiency from its own resources.

- 10.5 The Consultant Company shall comply (and shall procure that the Individual complies) with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant Company is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant Company shall notify the Company without delay.

## **11. TERMINATION**

- 11.1 Notwithstanding the provisions of clause 2.2, the Company may terminate the Engagement with immediate effect without notice and without any liability to pay any remuneration, compensation or damages if at any time:

- (a) the Consultant Company or the Individual is guilty of gross misconduct affecting the business of any Group Company; or
- (b) the Consultant Company or the Individual commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Company; or
- (c) the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or
- (d) the Consultant Company or the Individual is in the reasonable opinion of the Board negligent and incompetent in the performance of the Services; or
- (e) the Individual is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984; or
- (f) the Consultant Company makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultant Company; or
- (g) the Individual is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of 25 working days in any 52 week consecutive period; or
- (h) the Individual does not own all of the issued share capital (from time to time) of the Consultant Company; or
- (i) the Consultant Company or the Individual is guilty of any fraud or dishonesty or acts in any manner which in the opinion of the Company brings or is likely to bring the Individual, the Consultant Company, or any Group Company into disrepute or is materially adverse to the interests of any Group Company.

- 11.2 The rights of the Company under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant Company as having brought the agreement to

an end. Any delay by the Company in exercising its rights to terminate shall not constitute a waiver thereof.

## **12. OBLIGATIONS UPON TERMINATION**

On the Termination Date the Consultant Company shall, and shall procure that the Individual shall:

- (a) immediately deliver to the Company all documents, books, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of any Group Company or their business contacts, any keys, and any other property of any Group Company, which is in its or his possession or under its or his control;
- (b) irretrievably delete any information relating to the business of any Group Company stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its or his possession or under its or his control outside the premises of the Company; and
- (c) provide a signed statement that it or he has complied fully with its or his obligations under this clause 12.

## **13. STATUS**

13.1 The relationship of the Consultant Company (and the Individual) to the Company will be that of independent contractor and nothing in this agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Company and the Consultant Company shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.

13.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant Company shall be fully responsible for and shall indemnify any Group Company for and in respect of payment of the following within the prescribed time limits:

- (a) any income tax, National Insurance and Social Security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the individual (or their associates) in respect of the Services, where such recovery is not prohibited by law. The Consultant Company shall further indemnify the Company against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Company in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Company's negligence or wilful default;
- (b) any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the Company arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the Company.

13.3 The Company may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant Company or the Individual.

- 13.4 The Consultant Company warrants that it is not nor will it prior to the cessation of this Agreement, become a Managed Service Company, within the meaning of section 61B, Income Tax (Earnings and Pensions) Act 2003.

#### **14. NOTICES**

- 14.1 Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being or by sending it by fax to the fax number notified by the relevant party to the other party. Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting;
- (c) in the case of fax, at the time of transmission.

- 14.2 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number of the relevant party).

#### **15. ENTIRE AGREEMENT AND PREVIOUS CONTRACTS**

Each party on behalf of itself and (in the case of the Company, as agent for any Group Companies) acknowledges and agrees with the other party (the Company acting on behalf of itself and as agent for each Group Company) that:

- (a) this agreement together with any documents referred to in it constitutes the entire agreement and understanding between the Consultant Company and any Group Company and supersedes any previous agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);
- (b) in entering into this agreement neither party nor any Group Company has relied on any Pre-Contractual Statement; and
- (c) the only remedy available to it for breach of this agreement shall be for breach of contract under the terms of this agreement and each party shall have no right of action against any other party in respect of any Pre-Contractual Statement. Nothing in this agreement shall, however, operate to limit or exclude any liability for fraud.

#### **16. VARIATION**

No variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**17. COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

**18. THIRD PARTY RIGHTS**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and no person other than the Consultant Company and the Company shall have any rights under it. The terms of this agreement or any of them may be varied, amended or modified or this agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this agreement may be rescinded (in each case), without the consent of any third party.

**19. GOVERNING LAW AND JURISDICTION**

19.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

19.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Schedule      Services**

Acting as Executive Chairman of the Company

Travelling extensively worldwide in leading sales drives and initiatives for the Company

Executed as a deed by  
BRAINS PARK PLC  
acting by Alfredo Villa  
a director

.....  
Alfredo Villa  
Director

In the presence of

Executed as a deed by  
SICI SAS DI FRANCESCO GARDIN  
& C  
acting by Francesco Gardin  
a director

.....  
Director

In the presence of