

## Memorandum of Understanding

This agreement / MOU is made on 14/05/2020 by and between;

**Alva's Institute of Engineering and Technology**

Solapur - Mangalore Highway, Shobhavana Campus MIJAR, Moodbidri, Mangalore, Karnataka 574225.

And

www.techgig.com, a wholly owned website of Times Internet Limited having its registered office at Express Building Bahadur Shah Zafar Marg, New Delhi - 110002 and company office at Times Centre, Ground Floor, FC-6, Sector -16A, Noida, 201 301 (Hereinafter called "TechGig or TIL")

COLLEGE/INSTITUTE and **Techgig** or **TIL** hereinafter individually referred to as "Party" and collectively referred to as "Parties".

### **Purpose of this MOU**

Sharing Institute/College Techgig Assessment Platform ("CODE LEARN") with Institute/College for offering and operationalize short term and login term courses related to coding contest and coding skill.

Institute/College will use Institute/College Techgig Assessment Platform exclusively for operationalising their coding courses.

### **1. DEFINITIONS & INTERPRETATION**

#### **Definitions**

The following terms and expressions shall have the meanings assigned to them herein, unless repugnant or contrary to the context hereof or unless defined in the text of this Agreement and its Annexures:

- a) **"Affiliate"** in relation to a Party means any Person which, directly or indirectly, controls such Party or is controlled by such Party or is under common control with such Party; For the purposes of this Agreement, "Control" means power and ability to direct the management and policies of the controlled company through ownership of or control of more than 50 (fifty) percent of the voting shares of the controlled company, either by contract or otherwise;
- b) **"Techgig Assessment Platform"**- TechGig's proprietary assessment platform that lets other party setup assessments using MCQs ( Multiple Choice Questions ), coding questions, CTF ( Capture the flag) and many more type of questions which are auto evaluated once submitted by the test taker.
- c) **"Agreement"** means the terms and conditions as set out in this MOU together with all annexures and schedules, and further includes any amendments, additions, modifications as mutually agreed between Institute/College/
- d) **"Applicable Laws"** means any law, statute, ordinance, rule, regulation, guideline, policy or other pronouncement having the effect of law of any Governmental Authority, as interpreted and administered including any modifications or amendments thereto;
- e) **"BusinessDay"** means all weekdays excluding any public holidays in the Territory;
- f) **"Calendar Day"** means a day constituting twenty-four (24) hours as appearing in the calendar.

- g) **"Confidential Information"** means all information, data, know-how, whether it is technical in nature or not, which is disclosed by a Party, to the other Party, and which is related to research, technology, design, etc., and business activities or strategies of such Party, which is either marked or stated to be confidential, or is by its nature and/ or its name reasonably intended to be confidential;
- h) **"Data"** means all information, brochures, documents, publicity material, proprietary data and databases, User related data, marketing and sales support material of any kind and nature whatsoever that is in tangible or other electronic form or medium, all system and process specific information;
- i) **"Intellectual Property Rights"** shall mean (without limitation) present and future patents, trademarks, registered designs (including any applications for the foregoing), copyrights, design rights, database rights (including rights of extraction) and all similar enforceable property rights including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, semi-conductor topographies, confidential information, business names, goodwill and the style and presentation of goods or services and in applications for protection of any of the above rights;
- j) **"ThirdParty"** means any individual, sole proprietorship, unincorporated association, unincorporated organization, body corporate, corporation, company, partnership, unlimited or limited liability company, joint venture, Governmental Authority or trust or any other entity or organization except the Parties hereto.
- k) **"Taxes"** means any and all taxes, including but not limited to withholdings, tariffs, levies, duties, cess and imposts, or any similar tax-related charges or levies of whatsoever nature imposed, levied or assessed by any Governmental Authority within the Territory in accordance with present or future Applicable Laws in the Territory;
- l) **"Territory"** means the Republic of India;

## 2. OBLIGATIONS OF THE INSTITUTE/COLLEGE

- A. The Institute/College shall perform its obligations during the Term, in accordance with the terms and conditions of this Agreement.
- B. The Institute/College shall be responsible for arranging material and non-material resources as required for the successful implementation of the Services by the Institute/College.
- C. The Institute/College agrees not to engage itself or its employees/agents etc. directly or indirectly in any business or activities of TIL within the Territory.
- D. In its provision of the Services the Institute/College shall comply and ensure compliance by its personnel, sub-contractors with all Applicable Law relating health, safety and the environment.
- E. **Institute/College agrees to provide non-transferable and non-exclusive right to use the Institute/College's TechgigAssessment Platform and associated processes in accordance with clauses of this MOU.**
- F. **The clauses and provisions are valid during the event / and for a period of 12 months and same shall be extended further with mutual consent of parties.**
- G. The Institute/College agrees not to use Techgig Assessment Platform for any kind of commercial use or for any other company or for selling any part of this directly or indirectly. Breach of this clause shall attract liability as mentioned in clause -



### 3. REPRESENTATION AND WARRANTIES

- a) Each of the Parties hereby represents and warrant to the other Party as follows:
- it is duly organized and validly existing under the laws of India and has all requisite power and authority to carry on its business as it is now being conducted.
  - This MOU constitutes its valid, legally binding and enforceable obligation.
  - It shall take such further acts and generally do all such other things as may be reasonably necessary to accomplish the actions contemplated in this Agreement.
  - It has taken all necessary action, corporate or otherwise, as applicable to them to authorize or permit the execution, delivery and performance of this Agreement.
  - The execution, delivery or performance of this Agreement by it will not: (i) conflict with or constitute a default under or breach of performance of any of its obligation; or (ii) result in a violation of any law, regulation, administrative order or judicial order applicable to it or its business or assets.
- b) In addition, the INSTITUTE/COLLEGE represents and warrants to INSTITUTE/COLLEGE as follows:
- It has all requisite knowledge, skill, expertise, experience, technical know-how, resources, and intellectual property rights to perform the Service in accordance with the terms of this Agreement.
  - It shall not incur any liability on behalf of Institute/College or make any contract binding upon TIL.
  - It shall ensure that it shall not initiate, undertake or indulge into any action which is prejudicial to the interests of INSTITUTE/COLLEGE.
  - Without the prior written approval of Institute/College, the INSTITUTE/COLLEGE shall not publish or use any advertising, sales promotion or publicity matter relating to services and reports furnished by the Institute/College wherein the names of Institute/College and their subsidiaries, affiliates are mentioned or their identity implied.

### 4. AUDITS

- a) During the Term of this MOU, and for a period of 12 months thereafter, Techgig, at its sole expense reserves the right to audit, inspect, and make copies or extracts of relevant systems and processes and records ("Documents") associated with Institute/College's performance under this Agreement.
- b) Techgig or any Auditor appointed by Techgig, shall have unrestricted access to all Documents whether maintained electronically or otherwise including but not limited to the right to call for Documents and explanations from the employees of the Institute/College associated with Institute/College's performance under this Agreement, as it may think necessary for performance of its duties as an Auditor.
- c) The Institute/College shall always cooperate and assist with TIL and its Auditor and provide all Documents and other relevant data and information associated with Institute/College's performance under this Agreement, as and when required, for conducting audit including not limited to investigate any allegations/ instances of fraud.

### 5. INTELLECTUAL PROPERTY RIGHTS

- a) Each Party owns, and will continue to own all rights, title and interests in and to any inventions, know how, works in any media, software, information, trade secrets, materials, property or proprietary interest that it owned prior to this Agreement.

- b) Intellectual Property Right Infringement
- c) The Institute/College shall indemnify TIL in respect of all losses, damages, costs, and expenses and other liabilities (including, without limitation, reasonable legal and other professional fees) incurred by or awarded against TIL resulting from any claim or action against TIL by any Third Party that the receipt and use by TIL of IVR system or any Services (or any part of them) infringes the Intellectual Property Rights of that Third Party ("IPR Claim") within the time specified in that demand and shall take all steps necessary to defend the IPR Claim.
- d) Techgig agrees that:
  - (i) it shall notify the Institute/College in writing as soon as reasonably practicable of any IPR Claim of which TIL has notice;
  - (ii) TIL shall, at the Institute/College's request, cost and expense, give the Institute/College all reasonable assistance in connection with the conduct of the IPR Claim; and
- e) If any IPR Claim is made, or in the Institute/College's reasonable opinion is likely to be made, against TIL, the Institute/College shall promptly and at its cost and expense obtain for TIL the right to continue receiving and using the Services in the manner permitted under, or as a result of, this Agreement.

#### **6. DATA**

- a) The Institute/College acknowledges that any Data generated due to Services shall be the property of the TIL. All Intellectual Property Rights in or to the Data shall vest in TIL unconditionally and immediately upon their creation.
- b) The Institute/College shall only store, copy or use the Data to the extent necessary to perform its obligations under this Agreement and shall not disclose it to any Third Party without the prior consent of the TIL except if required to do so by Applicable Law. Without limiting the previous sentence, the Institute/College shall not use the Data to solicit any business for any of the Institute/College's products or services and shall not disclose it to any of Third Party.
- c) The Institute/College shall store the Data in a secure manner.

#### **7. SECURITY REQUIREMENTS**

- a) The Institute/College shall not carry out any act or make any omission, in accordance with Good Industry Practice, which has or could reasonably be expected to have an adverse impact on the security of any of the Services.
- b) In its provision of the Services, the Institute/College shall (and shall ensure that any of its Subcontractors shall) at all times have in place, and regularly and thoroughly test, security arrangements, each in accordance with Good Industry Practice, to:
  - (i) without prejudice to the Institute/College's obligations under Clause 10, protect the integrity and security of the Confidential Information of TIL and the Data which are disclosed to, or processed or otherwise handled by, the Institute/College in the course of the performance of the Institute/College's obligations under this Agreement; and
  - (ii) without prejudice to the Institute/College's obligations under this MOU ensure that such information as set out is not lost, destroyed, accessed, transferred, transmitted or (without appropriate authorization) disclosed while it is in the possession or under the control of the Institute/College or any Subcontractor.



## 8. INDEMNIFICATIONS

The Institute/College agrees that it shall defend, at its own expense, indemnify and hold TIL, its affiliates, or any of their officers, agents, directors, employees or third party harmless from and against all claims, demands, suits, proceedings, damages, costs, expenses, liabilities (including, without limitation, reasonable legal fees) or causes of action brought against or incurred by TIL, its affiliate, or any of their officers, agents, directors, employees or third party for:

- a. Using TechgigAssessment Platform other than purpose of conducting courses as offered and conducted by INSTITUTE/COLLEGE.
- b. loss or damage to real and tangible property, caused by (or relating to the strict liability of) the Institute/College, or its officers, employees, representatives or agents;
- c. violation of Applicable Laws by the Institute/College or its officers, employees, representatives or agents;
- d. breach of any representation or warranty by the Institute/College or any of its officers, employees, representatives or agents; or
- e. any other liability or loss that shall:
  - (i) have resulted from any fraud, wilful misconduct, negligent act or from the default of the Institute/College or its or their respective officers, employees, representatives or agents in the performance of their obligations under this Agreement; or
  - (ii) shall be a liability or loss for which the Institute/College is legally liable.

### Limitation of Liability

- a) Notwithstanding any other provision in this Agreement, no Party shall be liable to the other Party or their respective Affiliates, subcontractors, employees, officers, and directors, for any liability that is indirect, remote or consequential.
- b) Except for liability arising out of breach of Clause 2 and Clause 6,7, the maximum liability of INSTITUTE/COLLEGE under this agreement shall be limited to 2 crores in INR.

### GENERAL TERMS

- a) **Force Majeure:** Each Party's failure to perform its obligations hereunder, will be excused to the extent such performance is prevented by acts of God, explosion, casualty of war, labour dispute, failure of utilities, violence, governmental interference, or any other act or condition beyond the reasonable control of such Party. In such case, the Party so affected will give prompt, written notice to the other Party, and will resume performance promptly once the interfering condition has abated. Either party, upon written notification, may immediately terminate this agreement if the interfering condition is not abated within ninety- (90) days.
- b) **Assignment:** Neither party may assign its rights in this Agreement without the prior written consent of the other party, except that either party may assign this Agreement, upon written

notice, to a third party that acquires a controlling interest in the assignor's voting stock, or to an entity controlled by the same party that controls the assignor. Any attempt to assign this Agreement in violation of the foregoing will be void. This Agreement will inure to the benefit of and be binding upon successors and permitted assigns Content service(s) of the parties.

- c) **Amendment:** The Parties shall mutually agree to any amendments to this Agreement and any such modifications, amendment, shall be only through a document in writing signed by the authorized representatives of the Service Provider and TIL.
- d) **Notices:** Any notice given under this Agreement must be deemed properly given when delivered in writing, if delivered in person, or sent via facsimile (with confirmation of receipt), overnight courier, electronic mail (with confirmation of receipt), or certified or registered mail (postage prepaid) to the party at the address mentioned below. Each party must notify the other party of any changes to its address in accordance with this section.

**If to TIL**

Attention - BH- TimesJobs.com and Techgig.com

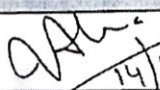
**If to INSITUTE/COLLEGE**

Attention - Director

- e) **Dispute Resolution:** All disputes or differences arising out of or in connection with the execution, interpretation and performance of this Agreement, unless settled amicably by the parties hereto, shall be referred to and exclusively settled by Arbitration in accordance with Indian Arbitration & Conciliation Act, 1996. The Arbitration panel shall comprise of sole arbitrator, appointed by the Parties. The venue of the arbitration shall be Delhi, India. The language of arbitration shall be English. The decision of the arbitrators shall be final and binding upon both the parties. The costs of arbitration including the fees and expenses of arbitration shall be borne equally by the parties hereto, provided, however, that each party shall bear the cost of preparing and presenting its own claims and/or defences.
- f) **Governing Law:** This Agreement shall be governed and construed by the laws of the Republic of India, the parties irrevocably consent to the jurisdiction and venue of courts of State of Delhi, India without regard to or application of choice of law rules.
- g) **Waiver:** All waivers hereunder must be in writing, and no failure by either party to enforce any rights hereunder will constitute a waiver of such right then or in the future.
- h) **Severability and Headings:** If for any reason any provision of this Agreement is unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the economic intent of the parties, and the remainder of this Agreement will continue in full force and effect. Headings used in this Agreement are provided for convenience only and will not in any way affect its meaning. The parties acknowledge that they have played equal parts in negotiating this Agreement and that its terms will be interpreted without any bias against one party as drafter. Words or phrases importing the singular shall be interpreted to include the plural and vice versa.
- i) **Counterparts:** This Agreement may be executed in counterparts, each of which will be considered an original, but all of which taken together will constitute one and the same instrument.
- j) **Independent Contractors:** The relationship of Service Provider and TIL established by this Agreement is that of independent contractors and nothing in this Agreement will be construed to constitute the parties as joint venture or partnership.



In witnesses whereof, the parties herein have signed on this document, on the date, month and year mentioned above.

Times Internet Limited	Alva's Institute of Engineering and Technology
By: _____	By:  14/5/2020
Name:	Name: VIVEK ALVA
Title:	Title: MANAGING TRUSTEE
Date:	Date: 14/05/2020

  
PRINCIPAL  
Alva's Institute of Engg. & Technology,  
Mijur. MOODBIDRI - 574 225, D.K