

## **AGREEMENT**

This Agreement is made and entered into at Mumbai, and effective on this \_\_\_\_\_ day of \_\_\_\_\_ of Two Thousand Eighteen.

## **BETWEEN**

The Municipal Corporation of Greater Mumbai a body corporate having perpetual succession and a common seal constituted by the Mumbai Municipal Corporation Act 1888, hereinafter referred to “MCGM”

## **REPRESENTED BY**

Smt. Nidhi Choudhari, Deputy Municipal Commissioner (Special), having office at 3<sup>rd</sup> Floor, Annexe Building, Municipal Head Office, Mahapalika Marg, Mumbai- 400001, hereinafter referred to as “**DMC(Special)**” (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include the successor or successors for the time being holding the office of the Deputy Municipal Commissioner (Special)) of the First Part;

## **AND**

Shri/ Smt. \_\_\_\_\_, an Indian Inhabitant of Mumbai, residing at \_\_\_\_\_, having Sanad Registration No. \_\_\_\_\_ of \_\_\_\_\_ and being the Member of \_\_\_\_\_ Bar Association of the \_\_\_\_\_ Court; hereinafter referred to as “**Sr. Panel Advocate**” (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his

heirs, executors, administrators and assigns) of the Second Part;

**WHEREAS** the Municipal Commissioner for Greater Mumbai has interalia deputed under Section 56 of the Mumbai Municipal Corporation Act, 1888 his powers, functions and duties to the Deputy Municipal Commissioner (Special), for purpose of this Agreement.

**AND WHEREAS** the Municipal Commissioner vide its order under no. MGC/A/4503 dated 10.10.2017 had accorded sanction for Empanelment of Advocates for Sr. Panel (A, B and C) of MCGM, who have experience in handling court matters in the Hon'ble Supreme Court of India and in the Hon'ble High Courts, on behalf of MCGM.

**AND WHEREAS** accordingly the MCGM had invited Expression of Interests (EOIs) in the prescribed format through E-mail from eligible candidates for Empanelment of Advocates for Sr. Panel 'A', 'B' & 'C' of MCGM for handling court matters in the Hon'ble Supreme Court of India and in the Hon'ble High Courts on behalf of MCGM.

**AND WHEREAS** the party of the Second Part has shown willingness to represent the MCGM as an Advocate of Sr. Panel (A / B / C / Supreme Court Standing Counsel / Advocate on Record) for the MCGM, and has submitted Declaration to that effect, whereby agreeing to have read and understood the terms and conditions of the empanelment as displayed on MCGM portal and to abide by the same and to maintain absolute secrecy about the cases of MCGM as required under the Act, Rules and Regulations there under.

**AND WHEREAS** it is felt prudent to utilize, the expertise and experience of the party of the Second Part by empanelment as an Advocate of Sr. Panel (A / B / C / Supreme Court Standing Counsel / Advocate on Record) for the MCGM

**AND WHEREAS** the Municipal Commissioner vide its order under no. MGC/F/6674 dtd. 25.06.2018 has granted sanction for lists of empaneled Advocates of Sr. Panel (A, B, C, Supreme Court Standing Counsel, Advocate on Record) for MCGM wherein the party of the Second Part is listed in Sr. Panel (A / B / C / Supreme Court Standing Counsel / Advocate on Record) for the initial period for three years, however subject to the satisfaction of MCGM.

**AND WHEREAS** the party of the Second Part has agreed to accept the Empanelment of Advocates for Sr. Panel (A / B / C / Supreme Court Standing Counsel / Advocate on Record) for MCGM subject to the terms and conditions hereinafter appearing.

**AND WHEREAS** the party of the Second Part has agreed to comply with the terms and conditions hereinafter appearing and is desirous of recording the same subject to compliance of which the Empanelment as aforesaid has been approved by the MCGM in favour of the party of the Second Part.

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

1. The parties hereto agree that the recitals enumerated herein above shall be deemed to form an integral and operative part of this Agreement as if the same were specifically set out and incorporated herein.
2. **Definations-**
  - 2.1 'Advocate' means an advocate, entered in roll of advocates under the provisions of The Advocates Act, 1961. (The Act)
  - 2.2 'Sr. Counsel' means an advocate designated as Senior Advocate under section 16(2) of The Advocates Act, 1961
  - 2.3 'Competent Authority' shall be the Municipal Commissioner, MCGM or any other officer so designated by the Municipal Commissioner, MCGM.
  - 2.4 'Court' shall mean all courts of law including District Courts at Mumbai, any High Court, Supreme Court, Tribunals, Judicial Forums and Arbitrators etc.
  - 2.5 'Effective Hearing' shall mean a hearing in which either one or both parties involved in a case are heard by the Courts / arguments were advance by the Counsel of any of the parties, Examination-in-chief, cross examination is conducted, issues/charges has been framed and statement under section 313 of P.C. is recorded. And in addition to the above, effective hearings are according to the High Court Rules.
  - 2.6 'Non-effective Hearing' shall mean all hearings which are not covered in the above definition of effective hearing.
  - 2.7 A hearing in which either one or both the parties involved in a case are heard by the court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the court, it would not constitute as Effective Hearing, but will be termed as Non-Effective Hearing.
  - 2.8 'Similar Cases' or 'Identical Cases' shall mean two or more cases in which substantially identical question of law or facts

are involved and where the main difference is in the names, addresses of the parties concerned, amount of money involved, etc. Where the common or identical judgement are delivered irrespective of the facts whether all the cases are heard together or not.

2.9 Documented Cases -

All suits and appeals are deemed to be 'uncontested', if these are withdrawn by the plaintiff/ appellant or are dismissed in limine or otherwise decided by the court ex-parte before final hearing. No writ petition/ revision petition/ second appeal (including any interlocutory application connected therewith) will be considered as 'uncontested'. If it is decided by the court on preliminary legal objection or is withdrawn by the petitioner/ appellant at or during any stage of the final hearing in the presence of the MCGM or is withdrawn by the MCGM at the time of its admission.

3. **Scope of work for Empaneled Sr. Panel Advocate-**

As per requirement of MCGM the party of the Second Part has to undertake various functions from time to time including drafting (Original plaints, miscellaneous petitions, affidavits, counter affidavits etc.), legal vetting, act as leading or Assisting Advocate to Sr. Advocates, attending conference/ meeting, written submissions, hearing, arguments, sending brief/ record of proceedings to MCGM and all documents received in the court, orders and any other legal functions as desired by the MCGM, to represent the MCGM before Hon'ble High Courts & Hon'ble Supreme Court of India.

The party of the Second Part hereby agrees to attend the conference, meetings held in the MCGM office, with Senior Officers of MCGM for briefing the Court assigned matters as when called for.

4. **Payment of Professional Fees payable to the party of the Second Part and Other Conditions-**

- 4.1 Schedule of Fees is enclosed at Annexure-I
- 4.2 Rates mentioned therein are inclusive of GST as applicable.
- 4.3 The fee payable to the party of the Second Part shall be governed by the Schedule of Fees of MCGM as specified and the same are inclusive of GST.
- 4.4 No retainer fees shall be paid to the party of the Second Part merely because of Empanelment.
- 4.5 In case, the party of the Second part appears in the Court on

the dates fixed for hearing of a case, but the case adjourned for whatever reasons and there being no effective hearing on that day, then the party of the Second Part shall be entitled to claim 50% of the fees prescribed. However the same will not be more than 2 occasions in the matter, thereafter no fees will be paid for further non effective hearings in the matter.

- 4.6 Similarly, the Party of the Second Part is entitled for conference not more than two conference in a single matter.
- 4.7 No fees will be payable to the Party of the Second Part if an advance notice about the adjournment has been issued or the case has been adjourned at his/ her request due to the reasons personal to him/ her.
- 4.8 Soft copies of the orders may be furnished in lieu of the paper copy of the order in such manner as may be prescribed in support of showing presence on the particular date of effective/ non-effective hearing, a hard copy of the Order/ Roznama obtained from web site of the Hon'ble High Court or Hon'ble Supreme Court of India shall be submitted for verification of the bill and necessary approval.
- 4.9 While claiming fees, self attested computerized copies of the said order be submitted for verification and necessary approval. The copies of Order/ Roznama shall be submitted with fees bill in given proforma in triplicate. (Annexure-II)
- 4.10 If any dispute arises in respect of fees to be paid to the party of the Second Part, the decision of the Additional Municipal Commissioner (in charge of Legal Department) shall be final and shall not be questioned in any way.

5. **Tenure of Empanelment :**

The initial Empanelment will be for three years or until further order whichever is earlier. Performance of empaneled Advocate shall be reviewed on annual basis. However, on completion of the term and satisfactory performance of the party of the Second Part, the Empanelment may be renewed accordingly for a period not more than two years by the MCGM. MCGM reserves the right to terminate the Empanelment of the party of the Second Part at any time without assigning any reason and/ or otherwise. Empaneled Sr. Panel Advocate can terminate the Agreement by giving 1 month notice.

6. **Private Practice and Restrictions -**

- 6.1 The party of the Second Part shall have the right to private