**FACILITY MANAGEMENT AND MAINTENANCE SERVICE AGREEMENT**

This Facility Management and Maintenance Service Agreement (the “Agreement”) is made and executed on this 1st day of October**, 2020**, between **Bearys Anugraha Apartment Owners ASSOCIATION (BAAOA),** having its office at Bearys Anugraha, 18, Patel H. Ramaiah Main Road, Lingarajapuram, Bangalore – 560084 (hereinafter referred to as “**ASSOCIATION**” which the expression shall means and includes its members, representatives, authorized signatories and permitted assigns) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_company incorporated under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Bangalore – 560\_\_\_ (hereinafter referred to as “**CONTRACTOR**” which the expression shall means and includes its partners, authorized signatories, representatives, and permitted assigns)

The ASSOCIATION and the CONTRACTOR are hereinafter collectively referred to as “**Parties**” and individually as a “**Party**”.

**WHEREAS**

1. The CONTRACTOR is a reputed and renowned service provider who is into the business of facilitating services to various apartments, having their service quality certified by International Standards Organization, vide ISO41001, has agreed to provide facility maintenance and management services (“Services”) described in Annexure I to Annexure XIII of the Agreement;
2. The ASSOCIATION, being a registered ASSOCIATION under the Karnataka Apartment Ownership Act, 1972, wishes to hire the CONTRACTOR to procure the Services as defined in this Agreement and captured in the Annexures appended to this Agreement**.**
3. The CONTRACTOR has agreed to provide the Services to the ASSOCIATION subject to the terms and conditions of this Agreement.

**NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET FORTH HEREIN, AND INTENDING TO BE LEGALLY BOUND, THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. The following documents attached hereto shall be deemed to form an integral part of this Agreement:

Parties agree that the following ANNEXURES attached hereto shall form an integral part of this Agreement:

* Annexure – I: The General Terms and Conditions
* Annexure – II: Scope & Definition of Common Area
* Annexure – III: Main Jobs & Responsibilities of Deployed Manpower
* Annexure – IV: Standard Operating Procedures of Security Services
* Annexure – V: Services Not Part of Agreement or Excluded Services
* Annexure – VI: Service Fee for Services Provided
* Annexure – VII: Tools & Material for Operations
* Annexure – VIII: Escalations Matrix for Complaints
* Annexure – IX: Service Level Agreements for Various Services
* Annexure – X: Holiday List
* Annexure – XI: Existing Asset List
* Annexure – XII: Value Added Services
* Annexure – XIII: Deliverables by the CONTRACTOR

2. The mutual rights and obligations of the ASSOCIATION and the CONTRACTOR shall be as set forth in the Agreement, in particular:

(a) The CONTRACTOR shall carry out the Services in accordance with the provisions of the Agreement; and

(b) The ASSOCIATION shall make payments to the CONTRACTOR in accordance with the provisions of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

**For and on behalf of**

**Bearys Anugraha Apartment Owners ASSOCIATION \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(BAAOA)**

***\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***President Director – Operations***

***BAAOA \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

**ANNEXURE – I: GENERAL TERMS AND CONDITIONS**

1. **STANDARD OF PERFORMANCE:**
   1. The CONTRACTOR shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and use technology platforms of the ASSOCIATION’S choice and safe and effective equipment, machinery, materials and methods.
   2. The CONTRACTOR shall always act, in respect of any matter relating to this Agreement or to the Services, as faithful adviser to the “ASSOCIATION”, and shall at all times support and safeguard the ASSOCIATION’s legitimate interests in any dealings with Sub-CONTRACTORs or Third Parties.
2. **The CONTRACTOR OBLIGATIONS:**
   1. **Materials, Machinery & Equipment:**
3. The CONTRACTOR agrees to provide the Services as described in the Annexures, to the ASSOCIATION, under the specific terms set out in this Agreement.
4. The CONTRACTOR shall arrange and supply at their own cost all materials, machinery, equipment, tools, tackles and safety equipment used by the deployed team for fulfilment of the obligations under this agreement. Any such materials, machinery or equipment procured by the CONTRACTOR for the purposes of providing Services shall be the property of the CONTRACTOR. For the purpose clarification, in the event the CONTRACTOR procures such materials, machinery or equipment for the provision of Services at the cost of the ASSOCIATION, then the ASSOCIATION shall at its sole discretion either ask for reimbursement of all costs (at actual) related to such materials, machinery or equipment or retain the full ownership on such materials, machinery or equipment by notifying the CONTRACTOR.
5. The CONTRACTOR shall bear the cost of transportation, loading, unloading, stacking storage, safe custody against the damage due to sun, rain, dampness, fire, theft and replacement(s) if required etc.
6. All the material brought to the site shall be duly accounted for by the CONTRACTOR and insured (if applicable) against loss due to any reason whatsoever. Proof regarding this supported by the copies of the requisite document shall be regularly submitted to the representative appointed by the ASSOCIATION. At site, the material shall be accounted in a manner prescribed by the ASSOCIATION in writing.
7. The material procured by the CONTRACTOR shall be strictly according to the specification of that material conforming to ISI / BIS standard or any other approving authority as applicable.
8. Storage of the material procured either by the CONTRACTOR and / or the ASSOCIATION should be as per approved norm. No damaged or inferior material will be kept at site of work for more than seven (7) days (or such time period as agreed between the Parties) from the date of the ASSOCIATION issuing a notice to remove the material.
9. The CONTRACTOR shall provide at own cost the non-consumable wherewithal to fulfil the welfare needs of the staff deployed.
10. Furthermore, the CONTRACTOR shall comply with applicable procurement guidelines issued by the ASSOCIATION for goods and services procured by the ASSOCIATION. The CONTRACTOR shall be responsible for the storage as per the norms of the ASSOCIATION. The inventory and bookkeeping of such materials will be kept by the CONTRACTOR and reported to the ASSOCIATION as per the agreed norms.
    1. **Labour:**
11. The CONTRACTOR shall make their own arrangements for the engagement of all staff and labour, local or other, and for their payments (including but not limited to), housing, feeding and transport etc.
12. In the event of restricted movement of personnel as per any government guidelines or any other event, the CONTRACTOR shall arrange for the essential staff to be housed in Anugraha campus & provide for their food at their cost. Any cost incurred by the ASSOCIATION shall be reimbursed by the CONTRACTOR.
13. The CONTRACTOR shall, if required by the ASSOCIATION, deliver to the ASSOCIATION a return in detail, in such form and at such intervals as the authorised officer of the ASSOCIATION may prescribe, showing the staff and the number of the several classes of labour from time to time employed by the CONTRACTOR on the site and such other information as the ASSOCIATION’s representative may require.
14. The CONTRACTOR, as prescribed by the ASSOCIATION, shall provide proof of payment of the CONTRACTOR’S contribution of PF, ESI, Leave Wages and Statutory Bonus.
15. Statutory Bonus will be paid in the 1st month of financial year or as part of full & final settlement whichever is earlier.
16. Leave Wages will be paid in the 1st Month of the Calendar Year or as part of full & final settlement, whichever is earlier.
17. The CONTRACTOR will arrange deployment of trained, certified (wherever applicable) and uniformed staff with best endeavours to conduct the offered Services and assist in protection of legitimate interests and things at the ASSOCIATION.
18. The CONTRACTOR can engage the services of sub-CONTRACTORs / temporary labour to fulfil the obligations of the service contract. The CONTRACTOR will be responsible for such sub-CONTRACTORs / labour with respect to all applicable clauses in this agreement.
19. Staff deployed at the ASSOCIATION premises will be employees / vendors of the CONTRACTOR and the necessary statutory requirements such as Employee State Insurance, Provident Fund, Leave wages & Statutory Bonus as prescribed by the ASSOCIATION, etc. shall be the sole responsibility of the CONTRACTOR.
20. Staff deployed at the ASSOCIATION premises shall be provided with uniforms, shoes and / or safety shoes wherever applicable, protective equipment etc., by the CONTRACTOR as part of the agreed Service Fee.
    1. The CONTRACTOR shall perform the offered Services, acts and matters connected with the administration, superintendence, and conduct of Services on the basis of the terms defined herein and in accordance with such amended directions that the ASSOCIATION may from time-to-time desire.
    2. Subject to the terms of this Agreement, each Party may request reasonable adjustments and / or additions / or deductions to the Services by giving written notice thereof to the other Party and any such changes or deductions to the Services shall be subject to the mutual agreement of the Parties. Corresponding fee shall be added or reduced as per the mutual agreement between Parties by way of a written amendment to this Agreement by an authorized official of both the Parties.
    3. The CONTRACTOR shall be measured and held accountable for their performance based on the Service Level Agreement (“SLA”) agreed in Annexure IX of this Agreement. Any penalties for breach of SLAs shall be applied in the manner defined in Annexure IX of this Agreement on the monthly charges payable to the CONTRACTOR.
    4. THE CONTRACTOR shall initiate a Monthly Review on the 2nd Saturday of every month to facilitate review of preceding month’s activities and/or to discuss any agenda deemed necessary by the BoM.
    5. The CONTRACTOR shall be held responsible for any damage to the ASSOCIATION’s Assets / Building / Premises / Lawns due to negligence of the staff deployed. The CONTRACTOR shall make good the loss / damage of the same either through repair or replacement.
    6. The CONTRACTOR shall publish the declared government holidays before the 1st day of the applicable year.
    7. Any penalty levied by Karnataka State Pollution Control Board (“KSPCB”) for non-maintenance of parameters as per KSPCB norms, due to deficiency of service by the CONTRACTOR shall be the sole responsibility of the CONTRACTOR.
    8. Statutory Licence & Certification:
21. Fire compliance certification process shall be the responsibility of the CONTRACTOR & shall initiate the process & undertake all the necessary steps to ensure the certification is always current & up-to-date. The ASSOCIATION shall be responsible for approving the expenses for the certification & providing all the necessary documentation required of the ASSOCIATION.
22. The CONTRACTOR shall create a document of all the licences/certification required by BAAOA as per the mandate of law with all the relevant information including but not limited to the validity & renewal cycle. This should be prominently displayed in the campus for the benefit of residents.
23. The CONTRACTOR shall initiate the process & undertake all the necessary steps to ensure the certification/licences are always current & up-to-date as mandated by law & detailed as per 2.9(ii). The ASSOCIATION shall be responsible for approving the expenses for the certification & providing all the necessary documentation required of the ASSOCIATION.
24. The ASSOCIATION shall be responsible for expenses incurred to upgrade, replace or repair any part of Anugraha’s campus or its infrastructure to facilitate the certification/licensing process.
    1. The CONTRACTOR shall deliver the commitment made in the Annexure XIII with no additional cost to the ASSOCIATION.
    2. The CONTRACTOR shall provide all basic tools (such as for example Screwdrivers, Testers, Spanners, Wrenches, Torch, Multi-meters etc.) to its staff to help them take care of everyday regular work in the premises. Any other larger equipment (such as for example Ladders, Scaffolding, Vacuum Machines, Cleaning Machines etc.) may be provided by the CONTRACTOR to the ASSOCIATION if the service fee includes that or they can be brought by the CONTRACTOR on a rental basis (at mutually agreed terms and commercials) or provided by the ASSOCIATION.
    3. Subject to approval of the ASSOCIATION, the CONTRACTOR shall deploy tools such as but not limited to Garden, Electrical and Plumbing, Vacuum based sweeping machine on rental basis to the ASSOCIATION and shall be the asset of the CONTRACTOR. In the event the Parties agree to in writing that certain additional tools shall be at an additional cost, then the CONTRACTOR shall provide the best quotation options to the ASSOCIATION to select from and the ASSOCIATION at its sole discretion may agree to pay mutually agreed additional cost for such additional tools.
25. **STAFFING:**
    1. The CONTRACTOR shall provide the required staff to perform Services as detailed in Annexure III, on the Commencement Date of the Agreement.
    2. The CONTRACTOR shall not increase or decrease the number of persons without obtaining the ASSOCIATION’s prior written consent. However, the CONTRACTOR shall have right to change staff assigned for the Services at any time and the CONTRACTOR undertakes to replace such staff with equivalent or better skilled staff without disrupting the ongoing Services. If the ASSOCIATION’s representative asks the CONTRACTOR to replace or remove a person who is a member of the CONTRACTOR’s staff or its work force stating the reasons, the CONTRACTOR shall ensure that such person(s) leaves the premises within five (5) days and has no further connection with the Services in the Agreement.
    3. The ASSOCIATION may require more persons from time to time and the CONTRACTOR shall provide the same within Seven (7) calendar days at the rates agreed in ANNEXURE VI of this Agreement, as and when demanded.
    4. The ASSOCIATION may request to increase or decrease the manpower subject to mutual consent.
    5. In case the ASSOCIATION finds any staff of the CONTRACTOR not performing his / her duty or misbehaving, engaging in anti-social activities, in breach of the privacy of residents, lack of performance in the premise, the CONTRACTOR shall immediately remove such person from the premises.
    6. The CONTRACTOR shall submit the police verification details of deployed Campus / Facility Manager and background verification of other staff to the ASSOCIATION on the Commencement Date or within seven (7) calendar days from the Commencement Date. In case of new staff / staff change, the CONTRACTOR shall submit police verification details of the proposed staff before they are deployed at the ASSOCIATION premises.
    7. The ASSOCIATION can expand / change based on need, the duties of the staff considering the skills of the staff for short periods of time at no additional cost to the ASSOCIATION.
    8. The CONTRACTOR shall perform as per the directions and the wishes of the Management Committee of the ASSOCIATION.
26. **STAFF TIMINGS & AVAILABILITY**
    1. The CONTRACTOR staff shall be deployed and present at the ASSOCIATION premises as per the shift timings mentioned in Annexure III.
    2. The CONTRACTOR staff shall not be entitled to be paid for overtime (unless agreed in writing by the ASSOCIATION). In the event any the CONTRACTOR staff needs a paid sick leave or any other form of leave, the CONTRACTOR shall provide replacement for such staff going on leave with staff who are equally qualified to perform the Services. The CONTRACTOR remuneration shall be deemed to cover these items. Any taking of leave by any the CONTRACTOR staff for a period exceeding seven (7) days shall be subject to the prior approval of the ASSOCIATION, and the CONTRACTOR shall ensure that any absence on leave will not compromise the progress and quality of the Services.
27. **THE ASSOCIATION OBLIGATIONS**
    1. The ASSOCIATION will provide work area, rest area, pantry and toilets for the staff deployed by the CONTRACTOR. The ASSOCIATION will also provide basics consumables within reasonable limits on approval basis for the staff deployed.
    2. All consumables (Housekeeping / STP / WTP / Garden / Swimming Pool / Pest Control etc.) shall be provided by the ASSOCIATION unless mutually agreed to be provided by the CONTRACTOR at agreed rates & quantity.
    3. The current Board of Managers (BoM) shall provide the contact details of the new management committee in writing with seal and signature in future (if any).
    4. The ASSOCIATION nominates holder of the PRESIDENT’S post of the ASSOCIATION as the AUTHORISED REPRESENTATIVE for all matter of approval or amendment(s) with regards to the provisions of this agreement.
28. **SERVICE FEE:**
    1. The ASSOCIATION shall pay the Service Fee including Management Fee to the CONTRACTOR for the provision of Services as specified in ANNEXURE VI of this Agreement after applying applicable statutory deductions.
29. The CONTRACTOR shall comply with the agreed salary structure for the duration of this contract.
30. The Basic & DA component of the salary structure would be updated as per Karnataka Minimum Wages Notification for Shops & Commercial Establishment before the commencement of the new Financial Year & the revised salary calculation shall be shared with the ASSOCIATION on or before April 15th of the new financial year.
31. The CONTRACTOR shall provide the following documents to the ASSOCIATION on demand and/or as per the details below:
32. Proof of transfer of Salary on a monthly basis
33. Proof of payment of all Statutory dues including but not limited to PF, ESI, Statutory Bonus, Leave Wages, etc.
34. Proof of the adherence to the agreed salary structure (salary slip)
    1. Manpower shall be billed on actuals and Consumables & machineries as described in Annexure VI are billed on fixed price basis based on mutual agreement.
    2. Goods and Services Tax (GST) and / or other relevant taxes during the period of payment shall be payable by the ASSOCIATION in addition to the Service Fee.
    3. The Service Fee includes staff costs for working on National & Public Holidays. No other charges will be payable for working on National & Public Holidays. Attendance of staff on such days will be as per Annexure VI.
    4. The list of National & Public Holidays shall be mutually agreed before the 1st Day of the applicable year.
    5. It is the responsibility of the CONTRACTOR to obtain required licenses to operate according to the shift guidelines mentioned in clause 4 and Holidays. The ASSOCIATION will not be liable for any penalties levied by authorities in case of violation / non-compliance to rules & guidelines.
35. **PAYMENT:**
    1. The CONTRACTOR shall submit a monthly invoice by the 7th day of each calendar month for the Services provided by the CONTRACTOR in the preceding month, as per the ~~Service Fee set forth in Annexure VI and as per the attendance of the staff.~~  process detailed in 7.2.
    2. The process of submission of invoice shall be preceded by the following:
36. Submission of attendance of the invoicing month for approval by BoM
37. Salary Calculator Sheet as per the attendance & the Service Fee set forth in the Annexure \_\_
38. BoM approval of both the attendance & amount as per the Salary Calculator Sheet
39. Salary Slips of the preceding month’s payment
    1. Along with the monthly invoice, the CONTRACTOR shall also submit a detailed monthly operations report supporting the invoice amount that captures the attendance and services performed by the CONTRACTOR staff in the immediately preceding month.
    2. In the event of any discrepancy in the amount invoiced to the ASSOCIATION, the ASSOCIATION shall raise such discrepancy within a reasonable period to the CONTRACTOR and the Parties shall endeavour to resolve all such discrepancy within thirty (30) days from the date of receiving the discrepancy notice from the ASSOCIATION. The ASSOCIATION shall pay the undisputed invoice amount within thirty (30) days from the date of receipt of the invoice.
    3. Any dispute in relation to any amount payable shall be resolved by the Parties mutually at the senior management level before raising it for dispute resolution process under this Agreement.
    4. The payment to the CONTRACTOR would be subject to payment of all the statutory dues including but not limited to GST, PF, and ESI payables on a monthly basis. GST compliance would be checked in the GST portal.
40. **CONFLICT OF INTERESTS:**
    1. The CONTRACTOR shall hold the ASSOCIATION’s interest paramount, and strictly avoid conflict of interest with other assignments. If during the period of this Agreement, a conflict of interest arises for any reasons, the CONTRACTOR shall promptly disclose the same to the ASSOCIATION and seek its instructions.
    2. The CONTRACTOR not to benefit from commissions, discounts, etc.
41. The payment of the CONTRACTOR in accordance with this Agreement shall constitute the CONTRACTOR’s only payment in connection with this Agreement and, the CONTRACTOR shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or in the discharge of its obligations hereunder, and the CONTRACTOR shall use its best efforts to ensure that staff involved shall not receive any such additional payment.
42. Furthermore, the CONTRACTOR shall comply with the ASSOCIATION’s applicable procurement guidelines for procurement of goods, works or services as communicated from time to time.
43. If the ASSOCIATION brings to notice any potential misappropriation of funds, resources etc by the CONTRACTOR staff, the CONTRACTOR, will immediately investigate and report to the ASSOCIATION within mutually agreed timelines, the outcome and the actions taken.
    1. Prohibition of conflicting activities: The CONTRACTOR shall not engage, and shall cause their staff not to engage, either directly or indirectly, in any business or and their professional activities which would conflict with the activities assigned to them under this Agreement.
44. **SUB-CONTRACTING**
    1. The CONTRACTOR may sub-contact any portion of the Services, however any such sub-contracting of the Services shall be subject to prior written approval of the ASSOCIATION. The CONTRACTOR will provide at least ten (10) days prior written notice to the ASSOCIATION seeking the ASSOCIATION’s approval for the appointment of a sub-CONTRACTOR(s) and along with the details of the respective sub-CONTRACTOR’s scope of work.
    2. The ASSOCIATION reserves the right to disapprove any sub-CONTRACTOR without specifying the reason.
    3. Sub-contracting does not alter the CONTRACTOR’s obligations and responsibilities under the Agreement. The CONTRACTOR shall not engage the services of any Sub-CONTRACTOR for the purposes of discharging entire obligation under the Agreement without approval of the ASSOCIATION.
    4. The CONTRACTOR shall ensure that sub-CONTRACTOR possesses adequate experience in related services and has applicable licenses and registration and is not under any declaration of ineligibility by any authority and should not be blacklisted by any government organisation as on date of appointment and / or the preceding quarter.
45. **COMPLIANCE WITH APPLICABLE LAWS:**
    1. The CONTRACTOR represents and warrants to the ASSOCIATION that: (i) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (ii) the execution of this Agreement and the performance of its obligations and duties hereunder, do not and will not violate any agreement to which the CONTRACTOR is a party or by which it is otherwise bound; (iii) when executed and delivered this Agreement will constitute the legal, valid and binding obligation on the CONTRACTOR in accordance with its terms; (iv) it shall comply with Applicable Laws, including union, state and local laws, ordinances, regulations and codes in conducting its business and performing its obligations hereunder, including the procurement of licenses, permits and certificates and payment of taxes where required.
    2. During continuance of the Agreement, the CONTRACTOR shall abide at all times by the all existing labour enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority.
    3. The CONTRACTOR shall keep the ASSOCIATION indemnified in case any action is taken against the ASSOCIATION by the competent authority on account of contravention of any of the provisions of any act or rules made there under, regulations, or notifications including amendments. If the ASSOCIATION is caused to pay or reimburse, such amounts as may be necessary to cause or observe or for non-observance of the provisions stipulated in the notifications / bye laws / Acts / rules / regulations including amendments (if any) on the part of the CONTRACTOR, the ASSOCIATION shall have the right to deduct any money due to the CONTRACTOR. The ASSOCIATION shall also have right to recover from the CONTRACTOR any sum required or estimated to be required for making good the loss or damage suffered by the ASSOCIATION.
    4. The CONTRACTOR shall be solely held responsible for all acts and omission of its employees and the sub-CONTRACTOR (if applicable). The employees of the CONTRACTOR and the sub-CONTRACTORs appointed by the CONTRACTOR in no case shall be treated as the employees of the ASSOCIATION at any point of time.
46. **SAFETY:**
    1. The CONTRACTOR shall be responsible for maintaining the safety of all activities on the ASSOCIATION premises.
    2. In respect of all labour / manpower directly or indirectly employed by the CONTRACTOR during the performance of the Services, the CONTRACTOR shall at his own expense arrange for the safety provisions as per the applicable industry standard safety code from time to time and shall at his own expense provide for all facilities in connection therewith.
    3. The CONTRACTOR is responsible for coordination and management of delivery of Services from third party vendors / suppliers / CONTRACTORs as well as safety compliance by them, the CONTRACTOR is required to monitor the delivery of service.
47. **INDEMNIFY:**
    1. The CONTRACTOR shall fully indemnify the ASSOCIATION from any claims related to statutory non-compliance with respect to its employees, labour, staff and / or any other applicable law in-force mandated by the relevant State and / or Central Government.
    2. The CONTRACTOR shall fully indemnify the ASSOCIATION and its members against any mishaps to the residents (including but not limited misbehaviour, injury, death etc.), damages to the premises, loss, and theft of the ASSOCIATION’s property caused due to the proven negligence or Actions / Omissions of the CONTRACTOR’s Agents, staff or representative duly evaluated by law enforcing agencies / courts.
    3. The CONTRACTOR shall fully indemnify the ASSOCIATION against any accident or injury or death of the workers, employees, staff or labourers of the CONTRACTOR.
    4. The CONTRACTOR herewith indemnifies the ASSOCIATION from action by statutory authorities that may arise due to non-compliance and non-payment of statutory dues with respect to the services offered by the CONTRACTOR , and in case any such situation arises, the ASSOCIATION shall make such payments after deducting the amount from the bills of the CONTRACTOR.
    5. The CONTRACTOR hereby agrees to fully indemnify, hold harmless and defend the ASSOCIATION and its officers, representatives and directors from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable attorney’s fees and costs), whether or not involving a third-party claim, which arise out of or relate to (a) breach of any CONTRACTOR’s representation or warranty contained in the Agreement including but not limited to Applicable Laws; (b) the CONTRACTOR’s act or omissions having a detrimental impact on the ASSOCIATION or its residents; (c) as a result of the CONTRACTOR not obtaining or the non-renewal of any and all licenses / permissions / authorizations as required under all the Applicable Laws; (d) the CONTRACTOR’s misuse or breach of Intellectual Property Rights of the ASSOCIATION, properties and premises of the ASSOCIATION, personal data of the ASSOCIATION or its residents; and (e) breach of the confidentiality obligation under this Agreement.
48. **LIMITATIONS OF LIABILITIES:**
    1. In no event shall the either party be liable for any claim for any indirect, wilful, punitive, incidental, exemplary, special or consequential damages, or for loss of business profits, arising out of this agreement, whether based on contract, tort or any other legal theory, even if such party has been advised of the possibility of such damages.
    2. To the maximum extent permitted by Applicable Law, the CONTRACTOR’s aggregate liability for any and all losses and claims arising out of or in connection with this Agreement shall be limited to the total sum of Service Fees paid or payable to the CONTRACTOR for the last twelve (12) months prior to the event giving the liability. The limits specified in this Clause 13.2 shall not apply to the CONTRACTOR for claims against the CONTRACTOR resulting from:
49. Wilful misconduct and / or gross negligence of the CONTRACTOR, its employees, sub-CONTRACTORs;
50. Bodily injury, death or tangible property damages by the CONTRACTOR, its employees, sub-CONTRACTORs;
51. the CONTRACTOR’s (i) breach of Applicable Laws; (ii) data breach or cyber security breach; and (iii) breach of Confidentiality.
    1. Notwithstanding anything to the contrary, in no event will the ASSOCIATIONS’s aggregate maximum liability to the CONTRACTOR in contract, tort or otherwise howsoever arising out of or in connection with this Agreement will exceed the amount paid or payable by the ASSOCIATION to the CONTRACTOR for the last one (1) month prior to the event giving the liability.

1. **TERM OF THE AGREEMENT:**
   1. This Agreement shall be valid ~~for 18 months~~ till 31/3/2022 from the Commencement Date (“Term”) unless either party renews / extends the agreement in writing on mutually agreeable terms and conditions at least thirty (30) calendar days, prior to the expiry of the Term. This Agreement shall commence ~~on 1~~~~st~~ ~~October 2020~~ 1/7/2021 (“Commencement Date”).
   2. This agreement shall be deemed to be in force if the CONTRACTOR ~~shall within 15 days of~~ provides 7 days before the Commencement Date, to the satisfaction of the ASSOCIATION, documentary proof of adherence to statutory, licence obligations including but not limited to Applicable Registrations, GSTIN, PAN, TAN, GST, PF, ESI, Labour and other Licenses etc as well as proof of payments of GST, PF, ESI for the preceding month or quarter, whichever is applicable.
   3. Without prejudice to any other remedies available under this Agreement or under the Applicable Laws, the ASSOCIATION may terminate the Agreement without cause for convenience by giving a thirty (30) days prior written notice to the CONTRACTOR and the CONTRACTOR may terminate the Agreement without cause for convenience by giving a ninety (90) days prior written notice to the ASSOCIATION.
   4. In case the CONTRACTOR fails to perform its duties or is in breach of this Agreement, the ASSOCIATION reserves the right to terminate the service by providing thirty (30) days’ notice in writing to the CONTRACTOR. No compensation shall be paid by the ASSOCIATION to the CONTRACTOR on the breach of this Agreement by the CONTRACTOR.
   5. In case of the contract expiry or termination in accordance with Clause 14.2, the ASSOCIATION shall settle all the undisputed outstanding bills received from the CONTRACTOR for the Services satisfactorily performed by the CONTRACTOR till the effective date of termination or expiry without deductions (if the deliverables are met) within the timeline mentioned in Clause 7.2 of the Agreement.
2. **CONFIDENTIAL INFORMATION / PERSONALLY IDENTIFIABLE INFORMATION (PII) PROTECTION:**
   1. Confidential Information: Each Party shall keep it confidential and shall not disclose any confidential information of the other Party disclosed to it in connection with this Agreement except as required for the purpose of the delivery of Services and performance of any other duties under this Agreement.
   2. The CONTRACTOR shall maintain Confidentiality of personal information / personally identifiable information of residents including their mobile numbers, email ID’s, government issued ID’s, photographs and videos (CCTV or mobile) that are personal in nature. The CONTRACTOR commits that such information shall be treated with utmost confidence and the CONTRACTOR shall neither circulate nor sell such information to any third party. The CONTRACTOR will not share the personal information of the ASSOCIATION residents with any of its employees / sub-CONTRACTORs and at no point in time the CONTRACTOR or its employees or sub-CONTRACTORs will send or take the personal information of the residents outside the ASSOCIATION premises. Any information as defined above with the CONTRACTOR shall be deleted on expiry / termination of this Agreement.
   3. The ASSOCIATION shall maintain Confidentiality of personal information of staff including their mobile numbers, email ID’s, government issued ID’s, photographs and videos (CCTV or mobile) that are personal in nature. The ASSOCIATION commits that such information shall be treated with utmost confidence and the ASSOCIATION shall neither circulate nor sell such information to any third party unless required in relation to law enforcement or any legal authority’s request.
3. **FORCE MAJEURE:**
   1. Force Majeure Event: Force Majeure Event shall mean any event or circumstance or a combination occurring in India set out hereunder, which affect or prevent the Party claiming Force Majeure ("Affected Party") from performing its obligations:
4. Acts of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire or exceptionally adverse weather conditions affecting the implementation of the Services;
5. Radioactive contamination, ionizing radiation;
6. Epidemic, famine;
7. An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, military action, nuclear blast;
8. Strikes or boycotts or industrial action or any public agitation of any kind;
9. Any event or circumstances of a nature analogous to any of the foregoing;
   1. **No Breach of Contract**: The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.
   2. **Measures to be Taken:**

a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

c) Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the CONTRACTOR, upon instructions by the ASSOCIATION, shall either:

1. demobilize; or
2. continue with the Services to the extent possible (at least provide the critical services) in which case the CONTRACTOR shall continue to be paid proportionately and on pro rata basis, under the terms of this Agreement.

e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause 17 below.

1. **GOVERNING LAW AND DISPUTE RESOLUTION:**
   1. This Agreement shall be governed by and construed in accordance with the laws of India. Any dispute, any difference, any claim or any non-payment (any of which shall be treated as a dispute) whether present or future, whatsoever between the Parties under, arising out of, relating to or in connection with this Agreement shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 by a sole arbitrator mutually appointed by the Parties. If the Parties are unable to agree on a sole arbitrator, there shall be three (3) arbitrators, one nominated by the claimant(s), the second nominated by the respondent(s), and the third arbitrator, who shall act as presiding arbitrator, shall be nominated by the first two arbitrators. The claimant(s) and the respondent(s) shall nominate their respective arbitrator within a period of thirty (30) days of the receipt of the request for arbitration. The third arbitrator shall be nominated by the two arbitrators within a period of thirty (30) days of the nomination of the second arbitrator. The arbitrators' verdict shall be final and binding. The proceedings shall be conducted in English. The venue of the arbitration shall be Bangalore.
   2. Subject to the above, courts in Bangalore shall have jurisdiction over any matter arising out of this Agreement.
   3. Each Party shall bear its own cost including legal expenses for the Arbitration.
2. **MISCELLANEOUS:**
   1. **Severability:** If any provision of this Executed Agreement or part thereof is rendered void, illegal or un-enforceable in any respect under any Law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
   2. **Assignment:** Neither Party may assign or transfer this Agreement (or any of its rights or obligations under this Agreement) without the other Party’s prior written consent. Any attempted assignment or transfer without complying with this clause will be void. This Agreement inures to the benefit of and is binding upon the Parties and their respective legal representatives, successors, and permitted assigns.
   3. **Waiver:** Failure by a Party to enforce any of the terms of this Agreement shall not be construed as a waiver of any of Party’s right hereunder.
   4. **Entire Agreement:** The Parties hereto confirm and acknowledge that this Agreement shall constitute the entire agreement between them and shall supersede and override all previous communications, either oral or written, between the Parties with respect to the subject matter of this Agreement, and no agreement or understanding varying or extending the same shall be binding upon any Party hereto unless arising out of the specific provisions of this Agreement.
   5. **Survival:** Termination of the Agreement shall not relieve either Party of the obligations under Interpretation and Definitions, Representations and Warranties, Indemnity, Confidentiality, Limitation of Liability, Governing Law and Dispute Resolution, and Miscellaneous which shall survive the expiry or termination of this Agreement in accordance with its terms.
   6. **Relationship:** The Parties hereby expressly agree that neither Party shall be deemed, either directly or indirectly, to be the employer, franchiser, nor agent of the other Party and this Agreement has been executed expressly on a principal to principal arrangement.
   7. **Counterparts:** This Agreement may be executed in two counterparts one each to be retained by the respective Parties. Each counterpart shall be treated as an original and shall be capable of being enforced without reliance on the other counterparts as an original document.
   8. **Cost:** Each Party shall bear its own costs in connection with its obligations under this Agreement, including cost of connectivity, technical fees, additional software and hardware required for performance of its obligations. Further, all charges and expenses including stamp duty or otherwise of and in relation to these presents shall be borne and paid by respective Parties. Each Party shall bear and pay their own advocates’ fees.
   9. **Prevalence:** Each Party acknowledges that in the event of any dispute or disconnect between the terms in the main body of this Agreement and Annexure(s) the Agreement shall prevail over and above the terms in the Annexure(s).
   10. **Good Faith:** Each Party will act in good faith in the performance of its respective responsibilities under this Agreement and will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required by the other Party in order to perform its responsibilities.
   11. **Anti-Bribery:** the CONTRACTOR acknowledges and undertakes to comply with all applicable anti-bribery laws, rules, regulations, or legislations (including Indian Prevention of Corruption Act, 1988) (hereinafter referred to as “Anti-Bribery Laws”). The CONTRACTOR represents, warrants and covenants that: (i) it is aware of the Anti-Bribery Laws and will advise all persons and parties supervised by it of the requirements of the Anti-Bribery Laws; (ii) it has not and will not cause any party to be in violation of the Anti-Bribery Laws; and (iii) should it learn of, or have reasons to know of, any request for payment that is inconsistent with the Anti-Bribery Laws, it shall immediately notify the ASSOCIATION. The CONTRACTOR undertakes to indemnify, defend and hold harmless the ASSOCIATION and its representatives for any and all liability arising from any violation of the Anti-Bribery Laws caused or facilitated by the CONTRACTOR. In the event the ASSOCIATION deems that it has reasonable grounds to suspect the CONTRACTOR has violated the Anti-Bribery Laws, the ASSOCIATION and its representatives shall have the right to review and audit, at the CONTRACTOR’s expense, any and all books and financial records of the CONTRACTOR at any time, and the ASSOCIATION shall be entitled partially or totally to suspend its performance hereunder until such time it is proven to the ASSOCIATION’s reasonable satisfaction that the CONTRACTOR has not violated the Anti-Bribery Laws. In the event the ASSOCIATION determines, in its sole discretion (whether through an audit or otherwise), that the CONTRACTOR has violated the Anti-Bribery Laws, either in connection with this Agreement or otherwise, the ASSOCIATION may terminate this Agreement immediately upon written notice to the CONTRACTOR. Such suspension or termination of this Agreement shall not subject the ASSOCIATION to any liability, whether in contract or tort or otherwise, to the CONTRACTOR or any third party, and the ASSOCIATION’s rights to indemnification shall survive such suspension or termination of this Agreement.
   12. The letter and spirit of **Clause 18.11** also implies that there is no exchange of gifts or any consideration of value in cash or kind between the CONTRACTOR, the ASSOCIATION, Residents, Vendors. The CONTRACTOR / the CONTRACTOR staff are required refuse and report any such offer from the residents and / or vendors immediately to the ASSOCIATION.
3. **AMENDMENT:**
   1. No provision of this Agreement shall be amended, modified, waived, discharged or terminated, otherwise than by the express agreement in writing by both the Parties hereto.
   2. **Notices:** All notices in respect to this Agreement shall be in writing and shall be deemed to have been received on the date of delivery. And the same shall be sent through a nationally recognized commercial courier or by registered post / speed post or e-mail communication between the CONTRACTOR team to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the ASSOCIATION Team to the President \_\_\_\_\_\_\_\_\_\_\_ baaoa.president@gmail.com or current President at that point of time.

**Bearys Anugraha Apartment Owners ASSOCIATION \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(BAAOA)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**President \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

BAAOA \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lingarajapuram \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bangalore – 560084, India Bangalore – 5600, India

Executed as an agreement on the dates appearing **below:**

|  |  |
| --- | --- |
| **Signature** |  |
| Name |  |
| Title |  |
| Date |  |

Signed for and on behalf of the ASSOCIATION by: Signed for and on behalf of the CONTRACTOR by:

|  |  |
| --- | --- |
| **Signatures** |  |
| Sign 1 Title | President |
| Sign 2 Title | Secretary |
| Sign 3 Title | Member |
| Date |  |