

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 3rd 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

practice which should not, however, interfere with or be in conflict with the efficient discharge of his/ her duties as an empaneled Advocate of the MCGM.

6.2 The party of the Second Part shall not advise any party or accept any litigation against MCGM.

7. **Disabilities -**

Disablement on the part of the party of the Second Part shall mean and include any of the following:

- 7.1 Giving false information in the application for Empanelment;
- 7.2 Handing over the brief or matter to another Advocate/ Counsel without prior written permission of the MCGM;
- 7.3 Failing to attend the hearing of the case, without any sufficient reason and/ or prior intimation;
- 7.4 Not acting as per MCGM's instructions or going against specific instructions;
- 7.5 Not returning the brief when demanded or not allowing or evading to allow its inspection on demand;
- 7.6 Misappropriation of the MCGM's funds or earmarking, using the same towards his fee without MCGM's permission.
- 7.7 Threatening, intimidating or abusing any of the MCGM's employees, officers, or representatives;
- 7.8 Making any of his associates or juniors to appear on behalf of any of the opposite parties in cases/ appeal related to MCGM;
- 7.9 Committing an act that tantamount to contempt of court or professional misconduct;
- 7.10 As and when debarred by Bar Council;
- 7.11 Passing on information relating to MCGM's case on to the opposite parties or their Advocates or any third party which is likely to cause any damage to the MCGM's interests;
- 7.12 Giving false or misleading information to the MCGM relating to the proceedings of the case;
- 7.13 Seeking frequent adjournments or not objecting the adjournment moved by other party without sufficient reason.
- 7.14 If performance of the party of the Second Part is found unsatisfactory or the party of the Second Part is found to be guilty of charging or collecting or demanding any remuneration from an aided person in any form or he/ she contravenes the scheme of the act, rules and regulations he/ she can be removed from the panel and shall also be liable for action for professional misconduct.
- 7.15 The MCGM reserves its rights to enlarge the scope of duty of

empaneled Sr. Panel Advocate in order to achieve the aim and object of MCGM.

- 7.16 If an empaneled Sr. Panel Advocate withdraws himself/ herself from the matter at any stage without the consent of D.M.C. (Incharge of Legal Department) he/ she will be debarred.

Empanelment shall be liable to be canceled due to occurring of any of the above disablement on the part of the party of the Second Part.

8. **General Terms & Conditions -**

- 8.1 An empaneled Sr. Panel Advocate shall not necessarily be empaneled for any specific court and shall accept the work assigned to him/ her for the courts for which he/ she is basically designated on the basis of minimum eligibility conditions and shall not refuse to accept any work without any reasonable cause. Refusal by any Sr. Panel Advocate to accept any work without any reasonable cause (e.g. on grounds of conflict of interest) may entail removal of such Sr. Panel Advocate from the panel.
- 8.2 An empaneled Sr. Panel Advocate will not delegate cases and would himself/ herself deal with the same. The Sr. Panel Advocate has to co-ordinate and work with designated Senior Counsels, if any, engaged in the case as well as with the officers of the MCGM, if required.
- 8.3 An empaneled Sr. Panel Advocate under these guidelines shall not be employee of MCGM for any purpose and therefore, shall not be eligible for any benefits available to MCGM's employees.
- 8.4 An empaneled Sr. Panel Advocate shall maintain absolute secrecy and confidentiality about the cases of the MCGM as required under the Act and Rules/ Regulations framed there under Advocate Act, 1961.
- 8.5 The Sr. Panel Advocate shall accept the terms and conditions of the Empanelment as determined by the MCGM from time to time.
- 8.6 The Sr. Panel Advocate will have the right to private practice which should not, however interface with the efficient discharge of its duties as Sr. Panel Advocate for the MCGM.
- 8.7 The Sr. Panel Advocate shall not advise any party in or accept any case against the MCGM in which the Sr. Panel Advocate has appeared or is likely to be called upon to appear for or advise or which is likely to affect or lead to litigation against the MCGM.

- 8.8 The Sr. Panel Advocate will have to register himself/ herself as a vendor of MCGM at his/ her own cost for the purpose of payment of their services.
- 8.9 Matters will be allotted to the empaneled Sr. Panel Advocate as per roster system of MCGM.
- 8.10 If the Sr. Panel Advocate happens to be a partner of a firm of lawyers or solicitors, it will be incumbent on the firm not to take up any cases against MCGM.

9. **Indemnity**

The Party of the Second Part shall keep the MCGM, their Officers and Servants harmless and indemnified from and against all losses suit, damages, cost, charges, claims and demands whatsoever including claims under the Workmen's Compensation Act, 1923 their officers or servants may sustain, incur or become liable to pay for the reason or in consequence as Sr. Panel Advocate for MCGM. Such damage, injury or loss to life or property shall be made good and/ or as the case may be shall be paid immediately by the empaneled Sr. Panel Advocate to MCGM.

10. **Dispute Resolution**

MCGM and the party of the Second Part shall make every attempt to resolve dispute amicably, by direct information, negotiations of any disagreement or dispute arising between them under or in connection with this Agreement. All differences disputes arising under and out of these present, or in connection with this Agreement shall be referred to the Additional Municipal Commissioner (In charge of Legal Department) of MCGM, and the decision of Additional Municipal Commissioner (In charge of Legal Department) of MCGM shall be final and binding on both the parties.

11. **Personnel/ Employees**

The party of the Second Part hereby agrees that the party of the Second Part is not the employee of MCGM and therefore Municipal Service Regulations, Provident Fund and Pension Rules of the MCGM applicable to the regular Municipal employees shall not be applicable to the party of the Second Part in the matter of Empanelment of the party of the Second Part as Sr. Panel Advocate for MCGM.

12. **Termination of Agreement**

If the work of the Party of the Second Part is not satisfactory or the Party of

the Second Part fails to abide with terms and conditions of the Agreement to the satisfaction of MCGM and does not act accordingly, it is the right of MCGM to terminate the Agreement by giving 15 days notice.

Further more the MCGM reserves the right to terminate this Agreement after giving 15 days notice without assigning any reason and the Sr. Panel Advocate shall have no claims of whatsoever nature.

13. **Notices**

Any notice to be given hereunder shall be in writing and shall either be delivered personally within normal office **hours** and on working days or sent by registered post A.D. at the registered addresses mentioned in this Agreement within 15 days. A notice shall be deemed to have been served as follows :

- (a) if personally delivered, at the time of delivery **or**
- (b) if sent by registered post A.D., at the time of delivery or transmission thereof within normal office times and on working days.

14. **Applicable Laws**

The Agreement shall be governed by the laws and procedures prescribed by the Laws prevailing and in force in India, within the framework of applicable legislation and enactment made from time to time concerning such commercial dealings/ processing.

15. **Jurisdiction of Court**

In case of any claim, dispute or difference arising in respect of this Agreement, the cause of action thereof shall be deemed to have arisen in Mumbai and all legal proceedings in respect of any such claim, dispute or difference shall be instituted in Competent Court in the City of Mumbai.

16. **Legal charges**

The Stamp duty and legal charges of this Agreement shall be borne and paid by the party of the Second Part.

IN WITNESS, WHEREOF THE PARTIES HERETO HAVE PUT THEIR HANDS AND SEAL THE DAY AND YEAR FIRST HEREINABOVE WRITTEN

SIGNED, SEALED AND DELIVERED)
By the withinnamed)
Smt. Nidhi Choudhari)
Deputy Municipal Commissioner (Special))
representing)
Municipal Corporation of Greater Mumbai)

in the presence of)
)
1.)
)
2.)

SIGNED SEALED AND DELIVERED)
By the withinnamed)
Shri / Smt. _____)
the party of the Second Part)

in the presence of)
)
1.)
)
2.)

Annexure – I

Schedule of Fees for Sr. Panel (A / B / C / Supreme Court Standing Counsel)

Sr. No.	Particulas	Sr. Panel – A		Sr. Panel – B		Sr. Panel - C	
		For Supreme Court of India	For High Court	For Supreme Court of India	For High Court	For Supreme Court of India	For High Court
1	Hearing (WP, First Appeal, Civil Revision Application, Contempt, Appeal Order, Criminal Revision Application & Other Miscellaneous Applications)						
	A) Effective	Rs. 75,000/-	Rs. 50,000/-	Rs. 72,500/-	Rs. 47,500/-	Rs. 70,000/-	Rs. 45,000/-
	B) Non Effective	50% of Effective Hearing subject to maximum 2 Non-Effective Hearing.					
2	Hearing (Charges per effective hearing of NM, Civil Application, Chamber Summons & Other Miscellaneous Applications for opposing ad interim and final disposal)						
	A) Effective	Rs. 75,000/-	Rs. 50,000/-	Rs. 72,500/-	Rs. 47,500/-	Rs. 70,000/-	Rs. 45,000/-
	B) Non Effective	50% of Effective Hearing subject to maximum 2 Non-Effective Hearing.					
3	A) Hearing (Charges per effective date for final hearing till disposal of suits)	Rs. 75,000/-	Rs. 50,000/-	Rs. 72,500/-	Rs. 47,500/-	Rs. 70,000/-	Rs. 45,000/-
	B) Non Effective	50% of Effective Hearing subject to maximum 2 Non-Effective Hearing.					
4	Conference	Rs. 10,000/-	Rs. 7,500/-	Rs. 7,500/-	Rs. 5,000/-	Rs. 5,000/-	Rs. 2,500/-
		subject to maximum 2 Conference in a single matter.					
5	Drafting / Affidavit / Written Statement etc.	Rs. 20,000/-	Rs. 15,000/-	Rs. 15,000/-	Rs. 10,000/-	Rs. 10,000/-	Rs. 7,500/-
6	Opinion	Rs. 10,000/-	Rs. 7,500/-	Rs. 7,500/-	Rs. 5,000/-	Rs. 5,000/-	Rs. 2,500/-

- Note -
1. The rates mentioned above are inclusive of GST as applicable.
 2. Subject to approval by MCGM Standing Committee.
 3. May be revised by MCGM annually.

Annexure – II

Proforma of Invoice

Counsel Name Address & other contact details			
Panel: Sr Panel A/B/C Vendor No:		Invoice No: 001 Date: 01/01/2018	
Court Name with Side Matter No Party Vs Party			
To Law Officer, Legal Department, MCGM Room No. 311, 3rd Floor, Annexe Bldg, Municipal Head Office Mahapalika Marg, Mumbai – 400 001.			
Sr No	Particulars	Date	Amount (In Rs.)
1	Conference (1st Conference / 2nd Conference) (With whom, with Matter No. & Time in Hrs) *Fees admissible for only first 2 Conference.	1	
		2	
2	Effective Hearing (With Matter No.)	1	
		2	
3	Non-Effective Hearing (1st / 2nd) (Whether 1 st or 2 nd Hearing with Matter No.) *Fees admissible for only first 2 Noneffective Hearing	1	
		2	
4	Drafting (With Matter No. And necessary details)		
5	Opinion (With Matter No. And necessary details)		
Total Amount In words (Rs.....)		Total	Rs...../-
Pan No. _____		Counsel Name & Signature	
Enclosed: 1 Copy of Order 2 Copy of Roznama (If appearance is not reflected in order.) 3 4			

DATED THIS __ DAY OF ____ 2018

BETWEEN

Municipal Corporation of Greater Mumbai

AND

AGREEMENT

Mr. J. J. Xavier
Advocate & Law Officer
Legal Department, MCGM
Room No. 311, 3rd Floor,
Annexe Building, Municipal
Head Office, Mahapalika Marg,
Mumbai:- 400 001