

RFP FOR PROCUREMENT OF  
SERVERS FOR SBI BANGLADESH  
OPERATIONS



## REQUEST FOR PROPOSAL

**Procurement of Servers for State Bank of India, Bangladesh Operations**

**Ref: SBI-BD/IT/SRVR/2024/01**

**Dated: 29/02/2024**

State Bank of India (SBI) with more than 200 years history is the largest commercial Bank in India and a Fortune 500 Company. It ranks in the top 50 Global Banks and has its operation in Bangladesh since 1975 by reopening our Dhaka Branch at Motijheel on 5th May 1975 after the independence of Bangladesh. State Bank of India (hereinafter referred to as SBI/BANK) Bangladesh Operations is a member of Bangladesh Automated Clearing House (BACH), the electronic Clearing House run by Bangladesh Bank.

### Invitation to BID:

State Bank of India, Bangladesh Operations (herein after referred to as 'SBI / The Bank' is having its Country Office, Navana Pristine Pavilion, 12th Floor, 128, Gulshan Avenue, Dhaka 1212. In order to meet the hardware requirements of the Bank, SBI proposes to invite tenders from established organizations (hereinafter referred to as "Bidder") to undertake supply, installation, testing, commissioning and maintenance of equipment as per details listed out in this document.

### SCHEDULE OF EVENTS

Bid Document Availability	Bidding document shall be available at <a href="https://bd.statebank/">https://bd.statebank/</a> website under the Notice Segment from <b>29/02/2024 to 10/03/2024</b>
Last date for requesting clarification (optional)	<b>Upto 5:00 PM on 06/03/2024</b> All communications regarding points / queries requiring clarifications shall be given in writing to <a href="mailto:it2.co.bd@statebank.com">it2.co.bd@statebank.com</a> , <a href="mailto:hoit.bd@statebank.com">hoit.bd@statebank.com</a> , <a href="mailto:it1.dhaka@statebank.com">it1.dhaka@statebank.com</a>
Clarifications to queries raised	<b>Within 5:00 PM 07/03/2024</b>
Last date of submission	<b>10/03/2024</b>
Opening of Technical Bids	<b>12:00 Noon on 11/03/2024</b> Authorised representatives of vendors may be present during opening of the Technical Bids. However Technical Bids would be

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	opened even in the absence of any or all of the vendor's representatives.
Opening of Commercial Bids	<b>3:00 PM on 11/03/2024</b> OR on a subsequent date which will be communicated to such bidders who qualify in the Technical Bid.
Finalization of TLI Vendor	<b>14/03/2024</b>

**1. RFP**

- ✓ RFP shall mean Request for Proposal
- ✓ Please note that all the information desired needs to be provided. Incomplete information may lead to non-consideration of the proposal.
- ✓ Bidder shall mean any entity (i.e. juristic person) who offers to do or provide the goods or services as mentioned in the RFP
- ✓ Bank reserves the right to change the dates mentioned in this RFP document, which will be communicated to the bidders.
- ✓ The information provided by the bidders in response to this RFP document will become the property of SBI and will not be returned. SBI reserves the right to amend, rescind or reissue this RFP and all amendments will be advised to the bidders and such amendments will be binding on them.
- ✓ SBI reserves the right to take any decision with regard to RFP process for addressing any situation which is not explicitly covered in the RFP document.
- ✓ The Bidder must disclose any actual or potential conflict of interest with SBI, Bangladesh Operations.

**2. Scope of Work:**

- Supply, installation, testing, commissioning and maintenance of Servers with 3 years' service and parts warranty.
- To provide all necessary hardware & software support under maintenance, that required to make the operation smooth as per required specifications of the Bank.
- The specifications given are minimum. Bidders can quote equivalent or higher specifications to meet the Bank's requirements. However, no weightage would be given for higher level of support.
- Complete documentation on best level of support to be submitted
- To provide all Necessary Parts Replacement, OS Patching, Regular Health Check-up and software required to make the operations work smoothly.

**3. Conditions:**

- a. Interested OEM authorised Vendors/Bidders have to show the **original** copy of OEM authorization letter/certificate.
- b. All the products will be procured with the name of State Bank of India, Bangladesh Operations and B2B only.

- c. Server or any attached equipment's manufacturing date should not be greater than 180 days (06 Months).
- d. Supplier must be Authorized Gold or above Partner of the brand quoted to ensure genuine product
- e. Supplier must be Authorized Service Delivery Partner of the brand quoted to ensure after sales Service
- f. Supplier must have at least 5 (Five) years proven experience to supply servers on Banks
- g. You shall be bound to rectify and arrange troubleshooting in case of problems related to any parts/accessories, Configuration of server/ servers Operating System, commonly used application software, providing up-to-date software, ensuring patch update etc. to the full satisfaction of the Bank in every month and on call basis if necessary. The date & duration of maintenance service will be recorded in the logbook.
- h. You shall undertake to provide support under this contract diligently, willingly, conscientiously and to the best of your professional skill and ability.
- i. You have to undertake that your company has skilled professionals who can do troubleshooting in case of any deficiency observed in the Servers.
- j. You have to troubleshoot all kinds of problems at our site only and not allowed to take the items outside without our prior approval.
- k. This agreement embodies the entire terms and conditions between you and the bank. The parties shall not be bound by any statement, representation, promise, inducement or understanding of any kind not set forth herein. Any change, amendment or modification of any of the terms herein shall be made in writing and to be executed by the parties.
- l. You undertake to remedy any defect(s) arising out of faulty troubleshooting, accessories or workmanship and/or non-compliance to the specification under the contract during the course of service period of 03 (three) years for service & labour. This Service Contract may be cancelled by the bank due to non-compliance of any of the terms & conditions mentioned herein.
- m. After completing the warranty, the Annual Maintenance Services (AMC) should be 4% for first year, 6% for second year and 8% for third year with respect of each devices actual purchase cost.

**4. In case of further clarification:**

Interested OEM authorised vendors/Bidders in Bangladesh may contact the following officials should they need any further information / clarification / information, on the date, place and time mentioned below.

**Joint AVP (IT),  
SBI, Bangladesh Operations.  
Venue: State Bank of India, Country Office,  
Navana Pristine Pavilion, 12th Floor,  
128, Gulshan Avenue, Dhaka 1212.**

**5. Eligibility:**

- Eligibility of the Bidders: All Bangladeshi citizen, / Firms (proprietorship / partnership / companies, etc.) formed and constituted by Bangladeshi Citizens in Bangladesh and authorised OEM Partners.
- They shall have minimum Five years' experience in similar line of activity. They have to submit documentary proof to that effect, if necessary.
- Up-to-date VAT Clearance Certificate, TIN & BIN No, Last Year Tax Acknowledgement, Valid Trade license and /or any other license / approval as may be necessary as per the law.

**6. Bid Price**

Prices quoted in the Bid should be inclusive of TAX & VAT and in **BDT** only. The Technical Proposal should NOT contain any price information Such proposal, if received, will be rejected.

**7. Period of Validity of Bids**

Bids shall remain valid for a period of **180 days** from the date of opening of the Bid. A Bid valid for a shorter period may be rejected by the Bank as non-responsive.

The Bank reserves the right to call for fresh quotes any time during the validity period, if considered necessary.

**8. Signing of Bid**

The Bid shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. All pages of the bid, except for printed instruction manuals and specification sheets shall be initialed by the person or persons signing the bid. The Bid shall contain no interlineations, erasures, or overwriting, except to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing The Bid.

The Bid shall be signed by a person or persons duly authorized to bind the Bidder to the contract. Such authority shall be either in the form of a written and duly stamped Power of Attorney or a Board Resolution duly certified by the company's competent authority, extract of which duly certified as true copy should accompany the Bid.

**9. Bid Language**

The Bid shall be in English Language.

**10. Rejection of Bid**

The Bid is liable to be rejected if:

- The document doesn't bear signature of authorized person.
- It is received through Telegram/Fax/E-mail.
- It is received after expiry of the due date and the time stipulated for Bid submission.

- Incomplete/incorrect Bids, including non – submission or non-furnishing of requisite documents / Conditional Bids / Bids not conforming to the terms and conditions stipulated in this Request for Proposal are liable for rejection by SBI.

**11. Extension of Deadline for submission of Bid**

SBI may, at its discretion, extend this deadline for submission of bids by amending the Bidding Documents which will be intimated through SBI website (<https://bd.statebank>), in which case all rights and obligations of SBI and Bidders will thereafter be subject to the deadline as extended.

**12. Intellectual Property and Copy right**

The L1 vendor shall pass on genuine and licensed copies of System software as per Intellectual Property and Copyright act, and SBI can't be in anyway held responsible for any act or omission of the vendor in this regard.

**13. Amendment of Bidding Documents**

At any time prior to the deadline for submission of bids, SBI, may, for any reason, whether at its own initiative or in response to a clarification requested by a Bidder, amend the Bidding Documents.

Amendments will be provided in the form of Addenda/corrigenda to the Bidding Documents, which will be posted in SBI's website. Addenda will be binding on Bidders. It will be assumed that the amendments contained in such Addenda / corrigenda had been taken into account by the Bidder in its Bid.

In order to afford Bidders reasonable time in which to take the amendment into account in preparing their bids, SBI may, at its discretion, extend the deadline for the submission of bids, in which case, the extended deadline will be posted in SBI's website.

From the date of issue, the Addenda to the tender shall be deemed to form an integral part of the RFP

**14. Late Bid**

Bids received after the scheduled time and date will not be accepted by the SBI under any circumstances. SBI will not be responsible for any delay due to postal service or any other means.

**15. Modifications and Withdrawal of Bids**

Bids once submitted will be treated, as final and no further correspondence will be entertained on this. No Bid will be modified after the deadline for submission of bids.

**16. Right to Reject, Accept/Cancel the bid**

SBI reserves the right to accept or reject, in full or in part, any or all the offers without assigning any reason whatsoever. SBI does not bind itself to accept the lowest or any tender and

reserves the right to reject all or any bid or cancel the Tender, any time during the tender process, without assigning any reason whatsoever. SBI also has the right to re-issue the Tender without the Vendors having the right to object to such re-issue.

**17. Specification & Quantity:**

SL	Item Name	Detail Required Specification
1	Brand	To be mentioned by Bidder. Must be in the top three OEM for the last quarter release in terms of revenue and shipment.
2	Quality	ISO 9001/9002 for manufacturer, FCC Class A/B, FCC Class A/B, Energy Star for quality assurance
3	Model	To be mentioned by the bidder
4	Country of origin	To be mentioned by the bidder
5	Manufacturing Country	To be mentioned by the bidder
6	Form Factor	2U Rack Mountable Server with Rail Kit, Cable Management, and Bezel Kit.
7	Processors	Should be provided with min. 2 x Intel / AMD (Latest Available for mentioned brand); Clock Speed $\geq$ 3.4 GHz & 16-core; Processor $\geq$ 135W Processor; Cache $\geq$ 24 M
8	Chipset	Intel (Latest Available for mentioned brand) or compatible with the offered processors.
9	Boot drive and Storage	Should provide Minimum 5 x 800GB SAS 24G Mixed Use SFF SSD. Should have 16 SFF Drive Bay from Day 1. upgradability up to 24 SFF Bay.
10	Storage array controller	Integrated SAS/SATA 12G Controller with minimum 8GB cache supporting RAID 0,1,10, 5, 6, 50, 60. Array backup batteries should be provided with the necessary cabling.
11	Memory	Should be proposed with minimum 64GB of 3200MT/s dual rank DDR4 Memory. Expandability up to 1TB Using RDIMM Memory, each module should have 32GB and Min: 8 DIMM Slot
		Memory protection: <ul style="list-style-type: none"> <li>• Fast Fault Tolerance</li> <li>• Online spare</li> </ul>

		<ul style="list-style-type: none"> <li>• Memory scrubbing</li> <li>• Advanced ECC and mirrored memory</li> </ul>
12	Remote management	<p>Integrated remote management capability from day 1 with a dedicated network connection supporting GUI.</p> <ul style="list-style-type: none"> <li>• Should support industry standard management protocols like IPMI v2 and SNMP v3</li> <li>• Single sign-on &amp; 2-factor authentication</li> <li>• Remote firmware update</li> <li>• Should have One 1-Gbps RJ-45 management port</li> <li>• Should have HTML5 based management GUI</li> <li>• Agentless management</li> <li>• FW supply chain attack detection</li> <li>• Remote system logs</li> <li>• Remote console</li> <li>• Automatic updates of all firmware, using a central repository to handle the upgrade</li> <li>• Should support server management devices where admins can configure, monitor and troubleshoot</li> <li>• Virtual media</li> </ul>
13	Power supply and Fan kit	<p>Supports hot plug redundant power supply minimum 800W with min. 05 (Five) nos hot plugs high performance fans with redundancy, Redundant power supply.</p> <p>A power consumption report should be generated.</p>
14	Network & FC Card	<p>The rack server should support a Converged Network Adapter or FCoE adapter, which aggregates both the Ethernet and FC connectivity on a single controller</p>
		<p>Shall be provided with at least 1x 4-port 1G NIC.</p> <p>Shall be provided with at least 2x 2-port 10G Ethernet</p>
		<p>Shall be offered with a min.of 6 (Six) PCIe slots (Prefer Latest Gen)</p>
15	Monitoring and analytic engine	<p>The offered server shall be provided with a cloud-enabled monitoring and analytics engine for proactive server management. All required licenses for the same shall be included in the offer.</p> <p>Cloud Enabled Monitoring and analytics engine shall have the capability to provide the following:</p>

		<p>a. Providing Firmware upgrade and patch upgrade recommendations proactively.</p> <p>b. Shall provide a history of support cases logged with the Support team under different columns like Critical, Normal, and low severity along with closed cases. Cloud monitoring tool shall be able to provide the complete month-wise breakup.</p> <p>c. Global Operational Dashboard - consolidated view of the status, performance, and health of the server infrastructure including system information, server warranty, and support status.</p> <p>Cloud-enabled Analytics engine shall have the capability to provide the following:</p> <p>a. Analytics engine shall have the capability of proactive recommendation for arresting the issues/problems noticed at other install bases of vendor after identifying the problematic signature.</p> <p>b. Data analytics for server security and Predictive data analytics for parts failure.</p>
16	Operating Systems	Should support latest Microsoft Windows Server, Latest Red Hat Enterprise Linux (RHEL)
17	Warranty & Support	<p>"NBD Support, Onsite Service and support from manufacturer for 03 years (36 Months). The vendor should have and submit the proof of OEM's local logistics centre in Dhaka.</p> <p>OEM should also have a local office for an emergency contact point."</p> <p>All the Products, support, warranty will be purchased by the name of State Bank of India only.</p>
18	Server Management	<p>Offered software shall support and provide a dashboard view to quickly scan the managed resources to assess the overall health of the data centre. It shall provide an at-a-glance visual health summary of the resource's user is authorized to view.</p> <p>Shall be from the same hardware OEM. Please provide the part number for this feature that is offered.</p>
19	Server OS	Enterprise Windows Server 2019 License



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20	DB	Microsoft SQL Server 2019
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- Quantity will be mentioned after price discovery.
- Interested OEM authorized Vendors/Bidders have to provide the copy of authorization letter/certificate into the RFP technical documents.

**18. How to submit the Bids:**

The interested bidders shall submit the hard copy of proposal to SBI Country Office. And can submit their quotes to tender Box at SBI Country Office. The RFP shall also be available under Notice Section of Bank's website (<https://bd.statebank>)

**19. Process of evaluation of Bids:**

- a) The Technical quotes will be opened first and evaluated, and the commercial quotes of those bidders will be opened who would qualify as per the technical specifications.
- b) The documentary evidence of the Bidder's qualifications to perform the Contract if its Bid is accepted shall establish to the Bank's satisfaction.
- c) In the case of a Bidder offering to supply products and/or Systems under the Contract which the Bidder did not produce, documentary evidence that the Bidder has been duly authorized as per authorization letter.
- d) Eligibility criteria response, Technical and Commercial Bids prepared in accordance with the RFP document.
- e) All the pages of the Bid documents, Technical Bid and Commercial Bid duly sealed and signed by the authorized signatory.
- f) that adequate, specialized expertise are available to ensure that the support services are responsive, and the Bidder will assume total responsibility for the fault-free operation of the solution proposed and maintenance during the warranty period and provide necessary maintenance services.
- g) Any deviations from specifications should be clearly brought out in the bid
- h) The Bidder should quote for the entire package on a single responsibility basis for hardware / software / services it proposes to supply

**20. RFP Abandonment**

SBI may at its discretion abandon this RFP process any time before Notification of Award or Work Order.

**21. Where and whom to submit the Bids:**

Interested parties who are eligible are requested to submit their quotations addressed to:

**VP (Operations),  
SBI, Bangladesh Operations.  
Venue: State Bank of India, Country Office,  
Navana Pristine Pavilion, 12th Floor,  
128, Gulshan Avenue, Dhaka 1212.**

The authorized representative(s) of the OEM or authorized/ licensed vendors of OEM in Bangladesh are requested to be present at the time of opening of the Technical and Commercial bids/ quotes. Maximum two representatives from a single bidder would be allowed to be present. After opening of the technical quote, evaluation would be made as per the specification of the bank. Those who disqualify as per their technical quotes, their commercial quotes would not be opened nor would be returned.

**22. Fate of earlier bids when revised bid submitted as per modification made by the Bank.**

Please note that for any amendments / or modification in the RFP document, no notification will be published in print media (Newspaper). The interested vendors should refer to our website for any amendment or modification till the last date of submission of the document. The vendor(s) who might have already submitted their bid at the time of amendment / modification, they can submit fresh revised bid, which will be considered by the bank (the old bid submitted earlier, would not be considered).

**23. Payment Terms**

- a. TAX & VAT will be deducted from the total bill amount and all payments to you will be made in Bangladesh Taka.
- b. The bank may demand damages/charges/penalty from you in case:
  - o You fail to, without justifiable reasons, to provide professional(s) to rectify the problem(s), which requires immediate action and the Service Engineer fails to reach Bank within 1 (one) hour after receiving call during working days except public holidays.
  - o The progress of the troubleshooting of the IT items is extremely unsatisfactory by your professionals and it is deemed unlikely that you will complete the troubleshooting within the time for completion or within a reasonable time thereafter.

**24. Signing of Contract:**

- ✓ In the absence of a formal contract, the Bid document, together with the Bank's notification of award and the vendor's acceptance thereof, would constitute a binding contract between the Bank and the successful Bidder A copy of the standard SLA is

enclosed and must be executed by the successful bidder. The stamp duty for the execution of SLA shall be borne by the successful bidder.

- ✓ The Bank reserves the right to cancel the Agreement if the Bidder fails to meet the terms of this RFP or contracts/SLA entered into with them
- ✓ The selected Bidder should carry out all installation tasks in coordination with the IT /Systems Department, depending on the Bank's requirement.
- ✓ The selected Bidder should undertake, during the period of contract, if required by the Bank, the relocation / shifting of the equipment without any cost to the Bank.
- ✓ The Selected bidder (Service Provider) has to get itself annually audited by external empanelled Auditors appointed by the Bank/inspecting official or any regulatory authority, covering the risk parameters finalized by the Bank/such auditors in the areas of products (IT hardware/ software) and services etc. provided to the Bank and the Service Provider are required to submit such certification by such Auditors to the Bank. The Service Provider and or his / their outsourced agents /sub – contractors (if allowed by the Bank) shall facilitate the same. The Bank can make its expert assessment on the efficiency and effectiveness of the security, control, risk management, governance system and process created by the Service Provider. The Service Provider shall, whenever required by the Auditors, furnish all relevant information, records/data to them. All costs for such audit shall be borne by the Bank.
- ✓ Where any deficiency has been observed during audit of the Service Provider on the risk parameters finalized by the Bank or in the certification submitted by the Auditors, the Service Provider shall correct/resolve the same at the earliest and shall provide all necessary documents related to resolution thereof and the auditor shall further certify in respect of resolution of the deficiencies. The resolution provided by the Service Provider shall require to be certified by the Auditors covering the respective risk parameters against which such deficiencies have been observed.
- ✓ Service Provider shall, whenever required by the Bank, furnish all relevant information, records/data to such auditors and/or inspecting officials of the Bank/Reserve Bank of India and or any regulatory authority. The Bank reserves the right to call and/or retain for any relevant material information /reports including audit or review reports undertaken by the service provider (e.g., financial, internal control and security reviews) and findings made on Selected bidder in conjunction with the services provided to the Bank.

**Note:** Notwithstanding anything said above, the Bank reserves the right to reject the contract or cancel the entire process without assigning reasons thereto.

**25. FORMAT FOR TECHNICAL QUOTE:**

SL	Particulars	To be filled up by the Bidder	Whether documentary evidence is mandatory (Y/N)	If documentary evidence attached write "YES"
1	Name of the Bidder		Y	
2	Constitution		Y	
3	Year of Establishment		Y	
4	Major activity		Y	
5	Who are the major customers		Y	
6	VAT Registration No		Y	
7	TIN		Y	
8	Lat Year Tax Return Acknowledgement		Y	
8	Office Address		Y	
9	Name of the owner, or major stake holder		Y	
10	Give detailed about the Trade License		Y	
11	Whether OEM / authorised/ licensed representative of OEM (Submission of Documentary evidence is mandatory)		Y	

I certify that the particulars mentioned above are true and correct to the best of my knowledge and believe. If it is found that any information is found to be false and or misleading, I shall be responsible for that and there would not be any liability on the Bank as a result of such misrepresentation on my part.

**Date:**

**SIGNATURE OF THE BIDDER**

**26. Format for Financial Quote:**

**ANNEXURE-C**

Sl. No.	Description	Amount (Unit Price)	Total VAT	Total Amount Including TAX & VAT
1.				
2.				
3.				
4.				
<b>Total Amount in BDT (Including TAX &amp; VAT)</b>				

**SIGNATURE OF THE BIDDER**

**FORMAT of SERVICE LEVEL AGREEMENT**

**AGREEMENT FOR NO.\_\_\_\_ SERVERS INSTALLED IN LOC: \_\_\_\_\_**

**AGREEMENT**

This agreement (“Agreement”) is made on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**Between**

**State Bank of India**, Bangladesh Operations constituted under the State Bank of India Act, 1955 having its Corporate Centre and Central Office at State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai-21 and its Global IT Centre at Sector-11, CBD Belapur, Navi Mumbai- 400614 through its Operations Department hereinafter referred to as “**the Bank**” which expression shall unless repugnant to the context or meaning thereof shall include its successors & assigns of the First Part

**And**

\_\_\_\_\_, a private/public limited company/LLP/Firm ~~<strike off whichever is not applicable>~~ incorporated under the provisions of the Companies Act, \_\_\_\_\_ ~~<strike off whichever is not applicable>~~ having its registered office at \_\_\_\_\_ hereinafter referred to as “**Service Provider**” which expression shall unless repugnant to the context or meaning thereof shall include its successor, executor & permitted assigns of the Second Part.

The Bank and Service Provider are sometimes individually referred to as a “**Party**” and collectively as “**Parties**” throughout this Agreement, and the words Party and Parties shall be construed accordingly.

**RECITALS**

WHEREAS

(i) The Bank is carrying on business in banking in Bangladesh and is desirous of procuring servers;

and

(ii) Service Provider is in the business of supply and installation for server/servers and has agreed to provide the services as may be required by the Bank mentioned in the Request of Proposal (RFP) No. \_\_\_\_\_ dated \_\_\_\_\_ issued by the Bank along with its clarifications/ corrigenda, referred hereinafter as a “RFP” and same shall be part of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, and for other valid consideration the acceptability and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1 DEFINITIONS & INTERPRETATIONS**

1.1 **Capitalised Terms:** The following capitalized terms, unless the context otherwise requires, shall have the meaning set forth below for all purposes of this Agreement<sup>1</sup>:

1.1.1 “**The Bank**” shall mean the State Bank of India, Bangladesh operations

1.1.2 “**Confidential Information**” shall have the meaning set forth in Clause 7.

- 1.1.3 “**Deficiencies**” shall mean defects arising from non-conformity with the mutually agreed specifications and/or failure or non-conformity in the Scope of the Services.
- 1.1.4 “**Intellectual Property Rights**” shall mean, on a worldwide basis, any and all: (a) rights associated with works of authorship, including copyrights & moral rights; (b) Trade Marks; (c) trade secret rights; (d) patents, designs, algorithms and other industrial property rights; (e) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (f) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
- 1.1.5 “**Project Cost**” means the price payable to Service Provider over the entire period of Agreement (*i.e. BDT. \_\_\_\_\_ <in words>*) for the full and proper performance of its contractual obligations.
- 1.1.6 “**Request for Proposal (RFP)**” shall mean RFP NO. \_\_\_\_\_ dated \_\_\_\_\_ along with its clarifications/ corrigenda issued by the Bank time to time.
- 1.1.7 “**Service**” means services to be provided as per the requirements specified in the Agreement and any other incidental services and other obligations of Service Provider covered under the Agreement.
- 1.2 **Interpretations:**
- 1.2.1 Reference to a person includes any individual, firm, body corporate, association (whether incorporated or not) and authority or agency (whether government, semi government or local).
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Reference to any gender includes each other gender.
- 1.2.4 The provisions of the contents table, headings, clause numbers, italics, bold print and underlining is for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.2.5 The Schedules, Annexures and Appendices to this Agreement shall form part of this Agreement.
- 1.2.6 A reference to any documents or agreements (and, where applicable, any of their respective provisions) means those documents or agreements as amended,

supplemented or replaced from time to time provided they are amended, supplemented or replaced in the manner envisaged in the relevant documents or agreements.

- 1.2.7 A reference to any statute, regulation, rule or other legislative provision includes any amendment to the statutory modification or re-enactment or, legislative provisions substituted for, and any statutory instrument issued under that statute, regulation, rule or other legislative provision.
- 1.2.8 Any agreement, notice, consent, approval, disclosure or communication under or pursuant to this Agreement is to be in writing.
- 1.2.9 The terms not defined in this Agreement shall be given the same meaning as given to them in the RFP. If no such meaning is given technical words shall be understood in technical sense in accordance with the industry practices.

## 2 COMMENCEMENT & TERM

- 2.1 This Agreement shall commence from its date of execution mentioned above/ be deemed to have commenced from \_\_\_\_\_ (**Effective Date**).
- 2.2 This Agreement shall be in force for a period of \_\_\_\_\_ year(s) from Effective Date, unless terminated by the Bank by notice in writing in accordance with the termination clauses of this Agreement.
- 2.3 The Bank shall have the right at its discretion to renew this Agreement in writing, for a further term of \_\_\_\_\_ years on the same terms and conditions.
- 2.4 Unless terminated earlier in accordance with this Agreement, the Agreement shall come to an end on completion of the term specified in the Agreement or on expiration of the renewed term.

## 3 SCOPE OF SERVICES

- 3.1 Supply, installation, testing, commissioning and maintenance of Servers with 3 years service and parts warranty.
- 3.1.1 To provide all necessary hardware & software support under maintenance, that required to make the operation smooth as per required specifications of the Bank.
- 3.1.2 The specifications given are minimum. Bidders can quote equivalent or higher specifications to meet the Bank's requirements. However, no weightage would be given for higher level of support.
- 3.1.3 Complete documentation on best level of support to be submitted
- 3.1.4 To provide all Necessary Parts Replacement, OS Patching, Regular Health Check-up and software required to make the operations work smoothly.



#### 4 REPRESENTATIONS AND WARRANTIES

4.1 Each of the Parties represents and warrants in relation to itself to the other that:

4.1.1 It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and has been fully authorized through applicable corporate process to do so.

4.1.2 The person(s) signing this agreement on behalf of the Parties have the necessary authority and approval for execution of this document and to bind his/their respective organization for due performance as set out in this Agreement. It has all necessary statutory and regulatory permissions, approvals and permits for the running and operation of its business.

4.1.3 It has full right, title and interest in and to all software, copyrights, trade names, trademarks, service marks, logos symbols and other proprietary marks (collectively 'IPR') (including appropriate limited right of use of those owned by any of its vendors, affiliates or subcontractors) which it provides to the other Party, for use related to the services to be provided under this Agreement.

4.1.4 It will provide such cooperation as the other Party reasonably requests in order to give full effect to the provisions of this Agreement.

4.1.5 The execution and performance of this Agreement by either of the Parties does not and shall not violate any provision of any of the existing Agreement with any of the party and any other third party.

#### 4.2 Additional Representation and Warranties by Service Provider

4.2.1 Service Provider shall perform the Services and carry out its obligations under the Agreement with due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used in the industry and with professional standards recognized by international professional bodies and shall observe sound management practices. It shall employ appropriate advanced technology and safe and effective equipment, machinery, material and methods.

4.2.2 Service Provider has the requisite technical and other competence, sufficient, suitable, qualified and experienced manpower/personnel and expertise in providing the Services to the Bank.

4.2.3 Service Provider shall duly intimate to the Bank immediately, the changes, if any in the constitution of Service Provider.

- 4.2.4 Service Provider warrants that to the best of its knowledge, as on the Effective Date of this Agreement, the products and services provided by Service Provider to the Bank do not violate or infringe any patent, copyright, trademarks, trade secrets or other Intellectual Property Rights of any third party.
- 4.2.5 Service provider shall ensure that all persons, employees, workers and other individuals engaged by or sub-contracted (if allowed) by Service Provider in rendering the Services under this Agreement have undergone proper background check, police verification and other necessary due diligence checks to examine their antecedence and ensure their suitability for such engagement. No person shall be engaged by Service provider unless such person is found to be suitable in such verification and Service Provider shall retain the records of such verification and shall produce the same to the Bank as when requested.
- 4.2.6 Service Provider warrants that it shall be solely liable and responsible for compliance of applicable Labour Laws in respect of its employee, agents, representatives and sub-contractors (if allowed) and in particular laws relating to terminal benefits such as pension, gratuity, provided fund, bonus or other benefits to which they may be entitled and the laws relating to contract labour, minimum wages, etc., and the Bank shall have no liability in this regard.

## 5 RESPONSIBILITIES OF THE BANK

- 5.1 Processing and authorising invoices
- 5.2 Approval of information

## 6 RESPONSIBILITIES OF SERVICE PROVIDER

- 6.1 Service Provider agrees and declares that it shall be the sole responsibility of Service Provider to comply with the provisions of all the applicable laws, concerning or in relation to rendering of Services by Service Provider as envisaged under this Agreement.
- 6.2 Service Provider shall procure and maintain all necessary licenses, permissions, approvals from the relevant authorities under the applicable laws throughout the currency of this Agreement, require for performing the Services under this Agreement.
- 6.3 Service Provider shall ensure that Service Provider's personnel and its sub-contractors (if allowed) will abide by all reasonable directives issued by the Bank, including those set forth in the Bank's then-current standards, policies and procedures (to the extent

applicable), all on-site rules of behaviour, work schedules, security procedures and other standards, policies and procedures as established by the Bank from time to time.

## 7 CONFIDENTIALITY

- 7.1 For the purpose of this Agreement, Confidential Information shall mean (i) information of all kinds, whether oral, written or otherwise recorded including, without limitation, any analyses, compilations, forecasts, data, studies or other documents, regarding the past, current or future affairs, business, plans or operations of a Party to which the other Party will have access, (ii) the existence of the contemplated terms and the fact that discussions or negotiations are taking place or have taken place between the Parties concerning the contemplated terms, (iii) any and all information regarding the contemplated terms and any agreements that may be entered into in relation thereto and (iv) any customer details or other data received by a Party from the other Party or its customer(s) or otherwise shared between the Parties in connection with the Service.
- 7.2 In consideration of each Party providing the other Party or its' representatives with the Confidential Information, the Parties agree as follows:
- 7.2.1 Each Party shall keep confidential and shall not, directly or indirectly, disclose, except as provided in sub-clauses below, in any manner whatsoever, in whole or in part, the Confidential Information without the other Party's prior written consent.
- 7.2.2 Each Party shall hold the Confidential Information in confidence and shall exercise all reasonable diligence in ensuring that the Confidential Information is not disclosed to third parties and will refrain from using the Confidential Information for any purpose whatsoever other than for the purposes of this Agreement or for the purpose for which such information is supplied.
- 7.2.3 Notwithstanding the above, each Party may reveal the Confidential Information to those of its representatives, those of its' holding company and those of its subsidiaries who are involved in the negotiation or evaluation of the project, and shall procure and ensure that each of them complies with the obligation to keep the Confidential Information secret, private and confidential and strictly observes the terms of this Agreement.
- 7.2.4 The confidentiality obligation shall not apply to such portions of the Confidential Information which one of the Parties can demonstrate (i) are or become generally available to the public other than as a result of any breach of this Agreement; (ii) were

in its possession on a non-confidential basis prior to the date hereof; (iii) have been rightfully received from a third party after the date hereof without restriction on disclosure and without breach of this Agreement, said third party being under no obligation of confidentiality to the other Party with respect to such Confidential Information; or (iv) Where Confidential Information is independently developed by receiving party without any reference to or use of disclosing party's Confidential Information.

- 7.2.5 In the event that a Party becomes legally compelled pursuant to any statutory or regulatory provision, court or arbitral decision, governmental order, or stock exchange requirements to disclose any of the Confidential Information, the compelled Party, as far as possible will provide the other Party with prompt written notice to the extent not prohibited by law. In any case, the compelled Party will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information.
- 7.2.6 In the event of termination or expiry of this Agreement, each Party shall either (i) promptly destroy all copies of the written (including information in electronic form) Confidential Information in its possession or that of its representatives; or (ii) promptly deliver to the other Party at its own expense all copies of the written Confidential Information in its possession or that of its representatives, provided, however, each Party shall be permitted to retain one copy of the Confidential Information for the purposes of dispute resolution, compliance with regulatory agency or authority and internal compliance procedures, provided such copies being held and kept confidential.
- 7.2.7 By furnishing the Confidential Information, no Party makes an express or implied representation or warranty as to the accuracy or completeness of the Confidential Information that it has disclosed and each Party expressly disclaims any liability that may be based on the Confidential Information, errors therein or omissions there from, save in the case of fraud or wilful default.
- 7.3 Receiving party undertakes to promptly notify disclosing party in writing any breach of obligation of the Agreement by its employees or representatives including confidentiality obligation. Receiving party acknowledges that monetary damages may not be the only and / or a sufficient remedy for unauthorized disclosure of Confidential Information and

that disclosing party shall be entitled, without waiving any other rights or remedies, to injunctive or equitable relief as may be deemed proper by a Court of competent jurisdiction.

- 7.4 Service Provider shall not, without the Bank's prior written consent, disclose the Agreement, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Bank in connection therewith, to any person other than a person employed by Service Provider in the Performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far, as may be necessary to purposes of such performance.
- 7.5 Service Provider shall not, without the Bank's prior written consent, make use of any document or information received from the Bank except for purposes of performing the services and obligations under this Agreement.
- 7.6 Any document received from the Bank shall remain the property of the Bank and subject to clause 7.2.6 shall be returned (in all copies) to the Bank on completion of Service Provider's performance under the Agreement.
- 7.7 The foregoing obligations (collectively referred to as "Confidentiality Obligations") set out in this Agreement shall survive the term of this Agreement and for a period of five (5) years thereafter provided Confidentiality Obligations with respect to individually identifiable information, customer's data of Parties or software in human-readable form (e.g., source code) shall survive in perpetuity.

## **8 RELATIONSHIP BETWEEN THE PARTIES**

- 8.1 It is specifically agreed that Service Provider shall act as independent service provider and shall not be deemed to be the Agent of the Bank except in respect of the transactions/services which give rise to Principal-Agent relationship by express agreement between the Parties.
- 8.2 Neither Service Provider nor its employees, agents, representatives, Sub-Contractors shall hold out or represent as agents of the Bank.
- 8.3 None of the employees, representatives or agents of Service Provider shall be entitled to claim permanent absorption or any other claim or benefit against the Bank.
- 8.4 This Agreement shall not be construed as joint venture. Each Party shall be responsible for all its obligations towards its respective employees. No employee of any of the two Parties shall claim to be employee of other Party.

- 8.5 All the obligations towards the employee(s) of a Party on account of personal accidents while working in the premises of the other Party shall remain with the respective employer and not on the Party in whose premises the accident occurred unless such accident occurred due to gross negligent act of the Party in whose premises accident occurred.
- 8.6 For redressal of complaints of sexual harassment at workplace, Parties agree to comply with the policy framed by the Bank (including any amendment thereto) in pursuant to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 including any amendment thereto.

## 9 SUB-CONTRACTING

As per the scope of this Agreement sub-contracting is not permitted.

## 10 LIQUIDATED DAMAGES

If Service Provider fails to deliver product and/or perform any or all the Services within the stipulated time, schedule as specified in this Agreement, the Bank may, without prejudice to its other remedies under the Agreement, and unless otherwise extension of time is agreed upon without the application of liquidated damages, deduct from the Project Cost, as liquidated damages a sum equivalent to 2% of total Project Cost for delay of each week or part thereof maximum up to 10% of total Project Cost. Once the maximum deduction is reached, the Bank may consider termination of the Agreement.

## 11 RETENTION MONEY & PENALTY

- 11.1 Service Provider shall furnish performance security in the form of RETENTION MONEY for an **10%** of total amount excluding TAX & VAT of BDT. \_\_\_\_\_ valid for a period of total warranty period.
- 11.2 The retention money is required to protect and after sale services during warranty period .Also, the supply/installation and/or the risk of non-performance of Service Provider in respect of successful implementation of the project; or performance of the material or services sold; or breach of any terms and conditions of the Agreement, which may warrant invoking of retention money.

- 11.3 Performance of the obligations under the Agreement shall be made by Service Provider in accordance with the time schedule<sup>2</sup> specified in this Agreement.
- 11.4 Subject to clause 17 of this Agreement, any unexcused delay by Service Provider in the performance of its Contract obligations shall render this Agreement to be terminated.
- 11.5 If at any time during performance of the Contract, Service Provider should encounter unexpected conditions impeding timely completion of the Services under the Agreement and performance of the services, Service Provider shall promptly notify the Bank in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable, after receipt of Service Provider's notice, the Bank shall evaluate the situation and may at its discretion extend Service Provider's time for performance, in which case the extension shall be ratified by the Parties by amendment of the Agreement.
- 11.6 Service Provider shall be liable to pay penalty at the rate mentioned below in Annexure 'A' in respect of any delay beyond the permitted period in providing the Services.
- 11.7 90% of the Total amount will be released on installation, commissioning and testing/SCD/VAPT. Payment will be released within 15 days on receipt of Invoice and Installation & Commissioning Certificate duly signed by the Bank. As already stated, for reasons of delays in installation and commissioning not attributable to the Bank the liquidated damages may be levied as stated.
- 11.8 Balance 10% after completion of Warranty.
- 11.9 Any penalty due during the Warranty period will be adjusted against the 10% retention money retained by the Bank. For purpose of calculating penalty, uptime is calculated as under:
- Uptime (%) =  $\frac{\text{Sum of total hours during month} - \text{Sum of downtime hours during month}}{\text{Sum of total hours during the month}} \times 100$**
- Sum of total hours during the month**
- Total hours during the month = No. of working days x 12 Hours**
- 11.10 No penalty shall be levied in case of delay(s) in deliverables or performance of the Contract for the reasons solely and directly attributable to the Bank. On reaching the maximum of penalties specified the Bank reserves the right to terminate the Agreement.

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<sup>2</sup> Please ensure that the time scheduled is suitably incorporated in the Agreement.

## 12 FORCE MAJEURE

- 12.1 Notwithstanding anything else contained in the Agreement, neither Party shall be liable for any delay in performing its obligations herein if and to the extent that such delay is the result of an event of Force Majeure.
- 12.2 For the purposes of this clause, 'Force Majeure' means and includes wars, insurrections, revolution, civil disturbance, riots, terrorist acts, public strikes, hartal, bundh, fires, floods, epidemic, quarantine restrictions, freight embargoes, declared general strikes in relevant industries, Vis Major, acts of Government in their sovereign capacity, impeding reasonable performance of the Contractor and /or Sub-Contractor but does not include any foreseeable events, commercial considerations or those involving fault or negligence on the part of the party claiming Force Majeure.
- 12.3 If a Force Majeure situation arises, Service Provider shall promptly notify the Bank in writing of such conditions, the cause thereof and the likely duration of the delay. Unless otherwise directed by the Bank in writing, Service Provider shall continue to perform its obligations under the Agreement as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 12.4 If the event of Force Majeure continues beyond 30 (thirty) days, either Party shall have the right to terminate this Agreement by giving a notice to the other Party. Neither party shall have any penal liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure. However, Service Provider shall be entitled to receive payments for all services actually rendered up to the date of the termination of this Agreement.

## 13 INSPECTION AND AUDIT

- 13.1 It is agreed by and between the Parties that Service Provider be subject to annual audit by internal/external Auditors appointed by the Bank/ inspecting official from the Reserve Bank of India or any regulatory authority, covering the risk parameters finalized by the Bank/ such auditors in the areas of products (IT hardware/ software) and services etc. provided to the Bank and Service Provider shall submit such certification by such Auditors to the Bank. Service Provider and or his / their outsourced agents / sub – contractors (if allowed by the Bank) shall facilitate the same. The Bank can make its expert assessment on the efficiency and effectiveness of the security, control, risk



management, governance system and process created by Service Provider. Service Provider shall, whenever required by such Auditors, furnish all relevant information, records/data to them. All costs for such audit shall be borne by the Bank. Except for the audit done by Reserve Bank of India or any statutory/regulatory authority, the Bank shall provide reasonable notice not less than 7 (seven) days to Service Provider before such audit and same shall be conducted during normal business hours.

- 13.2 Where any Deficiency has been observed during audit of Service Provider on the risk parameters finalized by the Bank or in the certification submitted by the Auditors, it is agreed upon by Service Provider that it shall correct/ resolve the same at the earliest and shall provide all necessary documents related to resolution thereof and the auditor shall further certify in respect of resolution of the Deficiencies. It is also agreed that Service Provider shall provide certification of the auditor to the Bank regarding compliance of the observations made by the auditors covering the respective risk parameters against which such Deficiencies observed.
- 13.3 Service Provider further agrees that whenever required by the Bank, it will furnish all relevant information, records/data to such auditors and/or inspecting officials of the Bank/ Reserve Bank of India and/or any regulatory authority (ies). The Bank reserves the right to call for and/or retain any relevant information/ audit reports on financial and security review with their findings undertaken by Service Provider. However, Service Provider shall not be obligated to provide records/data not related to Services under the Agreement (e.g. internal cost break-ups etc.).

#### **14 FEES, TAXES DUTIES & PAYMENTS**

- 14.1 Service Provider shall be paid fees and charges in the manner detailed in hereunder, the same shall be subject to deduction of income tax thereon wherever required under the provisions of the Income Tax Act by the Bank. The remittance of amounts so deducted and issuance of certificate for such deductions shall be made by the Bank as per the laws and regulations for the time being in force. Nothing in the Agreement shall relieve Service Provider from his responsibility to pay any tax that may be levied in Bangladesh on income and profits made by Service Provider in respect of this Agreement.
- 14.2 All duties and taxes, if any, which may be levied, shall be borne by Service Provider and Bank shall not be liable for the same. All expenses, stamp duty and other charges/

expenses in connection with execution of this Agreement shall be borne by Service Provider. Any other tax imposed by the Government in lieu of same shall be borne by the Bank on actual upon production of original receipt wherever required.

### 14.3 **Payments**

14.3.1 The Bank will pay properly submitted valid invoices within reasonable period but not exceeding 15 (Fifteen) days after its receipt thereof. All payments shall be made in Bangladesh Taka.

14.3.2 The Bank may withhold payment of any product/services that it disputes in good faith, and may set-off penalty amount or any other amount which Service provider owes to the Bank against amount payable to Service provider under this Agreement. However, before levying penalty or recovery of any damages, the Bank shall provide a written notice to Service Provider indicating the reasons for such penalty or recovery of damages. Service Provider shall have the liberty to present its case in writing together with documentary evidences, if any, within 21 (twenty one) days. Penalty or damages, if any, recoverable from Service Provider shall be recovered by the Bank through a credit note or revised invoices. In case Service Provider fails to issue credit note/ revised invoice, the Bank shall have right to withhold the payment or set-off penal amount from current invoices.

## 15 **GENERAL INDEMNITY**

15.1 Service Provider agrees and hereby keeps the Bank indemnified against all claims, actions, loss, damages, costs, expenses, charges, including legal expenses (Attorney, Advocates fees included) which the Bank may suffer or incur on account of (i) Services Provider's breach of its warranties, covenants, responsibilities or obligations; or (ii) breach of confidentiality obligations mentioned in this Agreement; or (iii) any wilful misconduct and gross negligent acts on the part of employees, agents, representatives or sub-contractors (if allowed) of Service Provider. Service Provider agrees to make good the loss suffered by the Bank.

15.2 Subject to clause 15.2.1 and 15.2.2 of this Agreement, Service Provider, at its own expenses without any limitation, indemnify and keep fully and effectively indemnified the Bank against all costs, claims, damages, demands, expenses and liabilities of whatsoever nature arising out of or in connection with all claims of infringement of

Intellectual Property Rights, including patent, trade mark, copyright, trade secrets or industrial design rights of any third party arising from the Services or use of software/product under this Agreement.

15.2.1 The Bank will give (a) notice to Service Provider of any such claim without delay/provide reasonable assistance to Service Provider in disposing of the claim; (b) sole authority to defend and settle such claim and; (c) will at no time admit to any liability for or express any intent to settle the claim provided that (i) Service Provider shall not partially settle any such claim without the written consent of the Bank, unless such settlement releases the Bank fully from such claim; (ii) Service Provider shall promptly provide the Bank with copies of all pleadings or similar documents relating to any such claim; (iii) Service Provider shall consult with the Bank with respect to the defence and settlement of any such claim; and (iv) in any litigation to which the Bank is also a party, the Bank shall be entitled to be separately represented at its own expenses by counsel of its own selection.

15.2.2 Service Provider shall have no obligations with respect to any infringement claims to the extent that the infringement claim arises or results from: (i) Service Provider's compliance with the Bank's specific technical designs or instructions (except where Service Provider knew or should have known that such compliance was likely to result in an Infringement Claim and Service Provider did not inform the Bank of the same); or (ii) any unauthorized modification or alteration of the product by the Bank.

## 16 TERMINATION

16.1 The Bank may, without prejudice to any other remedy for breach of Agreement, by written notice of not less than 30 (thirty) days, terminate the Agreement in whole or in part:

- (i) If Service Provider fails to deliver any or all the obligations within the time period specified in the Agreement, or any extension thereof granted by the Bank;
- (ii) If Service Provider fails to perform any other obligation(s) under the Agreement;
- (iii) Violations of any terms and conditions stipulated in the RFP;
- (iv) On happening of any termination event mentioned herein above in this Agreement.

Prior to providing a written notice of termination to Service Provider under clause 16.1

(i) to 16.1 (iii), the Bank shall provide Service Provider with a written notice of 30 (thirty)

days to cure such breach of the Agreement. If the breach continues or remains unrectified after expiry of cure period, the Bank shall have right to initiate action in accordance with above clause.

- 16.2 The Bank, by written notice of not less than 30 days, may terminate the Agreement, in whole or in part, for its convenience, provided same shall not be invoked by the Bank before completion of half of the total Contract period (including the notice period). In the event of termination of the Agreement for the Bank's convenience, Service Provider shall be entitled to receive payment for the Services rendered (delivered) up to the effective date of termination.
- 16.3 In the event the Bank terminates the Agreement in whole or in part for the breaches attributable to Service Provider, it may procure, upon such terms and in such manner as it deems appropriate, products and services similar to those undelivered, and subject to clause 17 Service Provider shall be liable to the Bank for any increase in cost for such similar products and/or services. However, Service Provider shall continue performance of the Agreement to the extent not terminated.
- 16.4 The Bank shall have a right to terminate the Agreement immediately by giving a notice in writing to Service Provider in the following eventualities:
- 16.4.1 If any Receiver/Liquidator is appointed in connection with the business of Service Provider or Service Provider transfers substantial assets in favour of its creditors or any orders / directions are issued by any Authority / Regulator which has the effect of suspension of the business of Service Provider.
- 16.4.2 If Service Provider applies to the Court or passes a resolution for voluntary winding up of Service Provider or any other creditor / person files a petition for winding up or dissolution of Service Provider.
- 16.4.3 If any acts of commission or omission on the part of Service Provider or its agents, employees, sub-contractors or representatives, in the reasonable opinion of the Bank tantamount to fraud or prejudicial to the interest of the Bank or its employee(s).
- 16.4.4 Any document, information, data or statement submitted by Service Provider in response to RFP, based on which Service Provider was considered eligible or successful, is found to be false, incorrect or misleading.
- 16.5 In the event of the termination of the Agreement, Service Provider shall be liable and responsible to return to the Bank all records, documents, data and information including Confidential Information pertains to or relating to the Bank in its possession.

- 16.6 In the event of termination of the Agreement for material breach, the Bank shall have the right to report such incident in accordance with the mandatory reporting obligations under the applicable law or regulations.
- 16.7 Upon termination or expiration of this Agreement, all rights and obligations of the Parties hereunder shall cease, except such rights and obligations as may have accrued on the date of termination or expiration; the obligation of confidentiality and indemnity; obligation of payment; Governing Law clause; Dispute resolution clause; and any right which a Party may have under the applicable Law.

## 17 LIMITATION OF LIABILITY

- 17.1 The maximum aggregate liability of Service Provider, subject to clause 17.3, in respect of any claims, losses, costs or damages arising out of or in connection with this Agreement shall not exceed the total Project Cost.
- 17.2 Under no circumstances shall either Party be liable for any indirect, consequential or incidental losses, damages or claims including loss of profit, loss of business or revenue.
- 17.3 The limitations set forth in clause 17.1 shall not apply with respect to:
- 17.3.1 claims that are the subject of indemnification pursuant to infringement of third-party Intellectual Property Right;
- 17.3.2 damage(s) occasioned by the Gross Negligence or Wilful Misconduct of Service Provider;
- 17.3.3 damage(s) occasioned by Service Provider for breach of Confidentiality Obligations;
- 17.3.4 Regulatory or statutory fines imposed by a government or Regulatory agency for non-compliance of statutory or regulatory guidelines applicable to the Bank, provided such guidelines were brought to the notice of Service Provider.

For the purpose of clause 17.3.2 “Gross Negligence” means any act or failure to act by a party which was in reckless disregard of or gross indifference to the obligation of the party under this Agreement and which causes injury, damage to life, personal safety, real property, harmful consequences to the other party, which such party knew, or would have known if it was acting as a reasonable person, would result from such act or failure to act for which such Party is legally liable. Notwithstanding the forgoing, Gross Negligence shall not include any action taken in good faith.

“Wilful Misconduct” means any act or failure to act with an intentional disregard of any provision of this Agreement, which a party knew or should have known if it was acting

as a reasonable person, which would result in injury, damage to life, personal safety, real property, harmful consequences to the other party, but shall not include any error of judgment or mistake made in good faith.

## 18 CONTINGENCY PLANS & CONTINUITY ARRANGEMENTS.

18.1 Service Provider shall arrange and ensure proper contingency plans to meet any unexpected obstruction to Service Provider or any employees or sub-contractors (if allowed) of Service Provider in rendering the Services or any part of the same under this Agreement to the Bank.

18.2 Service Provider agrees for the following continuity arrangements to ensure the business continuity of the Bank.

18.2.1 In the event of failure of Service Provider to render the Services or in the event of termination of Agreement or expiry of term or otherwise, without prejudice to any other right, the Bank at its sole discretion may make alternate arrangement for getting the Services contracted with another vendor. In such case, the Bank shall give prior notice to the existing Service Provider. The existing Service Provider shall continue to provide services as per the terms of the Agreement until a 'New Service Provider' completely takes over the work.

18.2.2 During the transition phase, the existing Service Provider shall render all reasonable assistances to the new Service Provider within such period prescribed by the Bank, at no extra cost to the Bank, for ensuring smooth switch over and continuity of Services, provided where transition services are required by the Bank or New Service Provider beyond the term of this Agreement, reasons for which are not attributable to Service Provider, payment shall be made to Service Provider for such additional period on the same rates and payment terms as specified in this Agreement. If existing vendor is found to be in breach of this obligation, they shall be liable for paying a penalty of BDT ..... on demand to the Bank, which may be settled from the payment of invoices or bank guarantee for the contracted period.

## 19 ARBITRATION

19.1 Any and all disputes, controversies and conflicts ("Disputes") arising out of this Agreement or in connection with this Agreement or the performance or non-performance of the rights and obligations set forth herein, or the breach, termination, invalidity or

interpretation thereof shall be referred for arbitration in terms of the Arbitration and Conciliation Act, 1996 (Arbitration Act) or any amendments thereof. Prior to submitting the Disputes to arbitration, the parties shall make all endeavours to settle the dispute/s through mutual negotiation and discussions. In the event that the said dispute/s are not settled within 30 days of the arising thereof as evidenced through the first written communication from any party notifying the other regarding the disputes, the same shall finally be settled and determined by arbitration as above.

- 19.2 The place of arbitration shall be at \_\_\_\_\_ and the language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a mutually appointed sole arbitrator. If the Parties are unable to agree upon a sole Arbitrator, each Party shall appoint one arbitrator and the two arbitrators so appointed by the Parties shall appoint the third arbitrator, who shall be the Chairman of the Arbitral Tribunal.
- 19.3 The arbitral award shall be in writing and subject to the provisions of the Arbitration and Conciliation Act, shall be enforceable in any court of competent jurisdiction.
- 19.4 Pending the submission to arbitration and thereafter, till the Arbitrator or the Arbitral Tribunal renders the award or decision, the Parties shall, except in the event of termination of this Agreement or in the event of any interim order/award is granted under the afore stated Act, continue to perform their obligations under this Agreement.

## 20 GOVERNING LAW & JURISDICTION

- 20.1 The Agreement shall be governed and construed in accordance with the Laws of Peoples Republic of Bangladesh.
- 20.2 The Parties agree to submit to the exclusive jurisdiction of the appropriate court in Bangladesh in connection with any dispute between the Parties under the Agreement.

## 21 SEVERABILITY

If any part or any provision of this Agreement is or becomes illegal, invalid or unenforceable, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the validity or enforceability of the remaining parts of said provision or the remaining provisions of this Agreement. The Parties hereby agree to attempt to substitute any invalid or unenforceable provision with a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

## 22 POWER TO VARY OR OMIT WORK

- 22.1 No alterations, amendments, omissions, additions, suspensions or variations of the work (hereinafter referred to as variation) under the Agreement shall be made by Service provider except as directed in writing by Bank. The Bank shall have full powers, subject to the provision herein after contained, from time to time during the execution of the Agreement, by notice in writing to instruct Service Provider to make any variation without prejudice to the Agreement. Service Provider shall carry out such variations and be bound by the same conditions, though the said variations occurred in the Agreement documents. If any suggested variations would, in the opinion of Service Provider, if carried out, prevent them from fulfilling any of their obligations under the Agreement, they shall notify the Bank, thereof, in writing with reasons for holding such opinion and Bank shall instruct Service Provider to make such other modified variation without prejudice to the Agreement. Service Provider shall carry out such variations and be bound by the same conditions, though the said variations occurred in the Agreement documents. If Bank confirms their instructions Service Provider's obligations will be modified to such an extent as may be mutually agreed. If such variation involves extra cost, any agreed difference in cost occasioned by such variation shall be mutually agreed between the parties. In any case in which Service Provider has received instructions from the Bank as to the requirement of carrying out the altered or additional substituted work, which either then or later on, will in the opinion of Service Provider, involve a claim for additional payments, such additional payments shall be mutually agreed in line with the terms and conditions of the order.
- 22.2 If any change in the work is likely to result in reduction in cost, the parties shall agree in writing so as to the extent of reduction in payment to be made to Service Provider, before Service provider proceeding with the change.

## 23 ENTIRE AGREEMENT

- 23.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior written agreements, undertakings, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of the Agreement, except which are expressly annexed or attached to this Agreement and saved by this Agreement. No representation, inducement,



promise, understanding, condition or warranty not set forth herein has been made or relied upon by any Party hereto.

23.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- 23.2.1 This Agreement;
- 23.2.2 Annexure of Agreement;
- 23.2.3 Purchase Order No. \_\_\_\_\_ dated \_\_\_\_\_; and
- 23.2.4 RFP

## 24 NOTICES

24.1 Any notice or any other communication required to be given under this Agreement shall be in writing and may be given by delivering the same by hand or sending the same by prepaid registered mail, postage prepaid, telegram or facsimile to the relevant address set forth below or such other address as each Party may notify in writing to the other Party from time to time. Any such notice given as aforesaid shall be deemed to be served or received at the time upon delivery (if delivered by hand) or upon actual receipt (if given by postage prepaid, telegram or facsimile).

24.2 A notice shall be effective when it is delivered or on the effective date of the notice, whichever is later.

24.3 Address for communication to the Parties are as under:

24.3.1 To the Bank

VP (Operations)  
State Bank of India, Bangladesh Operations,  
Country Office, Navana Pristine Pavilion, 12th Floor,  
128, Gulshan Avenue, Dhaka 1212.

24.3.2 To Service Provider

\_\_\_\_\_  
\_\_\_\_\_

24.4 In case there is any change in the address of one party, it shall be promptly communicated in writing to the other party.

## 25 MISCELLANEOUS

25.1 Any provision of this Agreement may be amended or waived, if, and only if such amendment or waiver is in writing and signed, in the case of an amendment by each party, or in this case of a waiver, by the Party against whom the waiver is to be effective.

25.2 No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

25.3 Neither this Agreement nor any provision hereof is intended to confer upon any person/s other than the Parties to this Agreement any rights or remedies hereunder.

25.4 If this Agreement is signed in counterparts, each counterpart shall be deemed to be an original.

25.5 Service Provider shall not assign or transfer all or any of its rights, benefits or obligations under this Agreement without the approval of the Bank. The Bank may, at any time, assign or transfer all or any of its rights, benefits and obligations under this Agreement.

25.6 Service Provider agrees that they shall not use the logo, trademark, copy rights or other proprietary rights of the Bank in any advertisement or publicity materials or any other written communication with any other party, without the prior written consent of the Bank.

25.7 The Parties agree that the Bank shall have the right, but without any obligation to monitor and assess the Services to enable the Bank to take necessary corrective measures, provided any such monitoring shall not amount to supervision of any of the jobs of Service Provider or the employees of Service Provider.

25.8 Service Provider agrees that the complaints/feedback, if any received from the customers of the Bank in respect of the Services by Service Providers shall be recorded and Bank/Reserve Bank of India shall have access to such records and redressal of customer complaints by Service Provider.

25.9 Service Provider agrees that the Bank shall have the right to disclose the details of this Agreement and the details of Services covered herein to the Reserve Bank of India and Indian Banks Association.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date and day first mentioned above.

**State Bank of India**

**Service Provider**

**By:**

**By:**

**Name:**

**Name:**

**Designation:**

**Designation:**

**Date:**

**Date:**

WITNESS:

1.

1.

2.

2.

**Appendix–A**

**NON-DISCLOSURE AGREEMENT**

THIS RECIPROCAL NON-DISCLOSURE AGREEMENT (the “Agreement”) is made at \_\_\_\_\_ between:

State Bank of India constituted under the State Bank of India Act, 1955 having its Country Office at State Bank of India, Bangladesh Operations, Country Office, Navana Pristine Pavilion, 12th Floor, 128, Gulshan Avenue, Dhaka 1212. Operations Department (hereinafter referred to as “Bank” which expression includes its successors and assigns) of the ONE PART;  
And

\_\_\_\_\_ a private/public limited company/LLP/Firm ~~<strike off whichever is not applicable>~~ incorporated under the provisions of the Companies Act, \_\_\_\_\_ ~~<strike off whichever is not applicable>~~, having its registered office at \_\_\_\_\_ (hereinafter referred to as “\_\_\_\_\_” which expression shall unless repugnant to the subject or context thereof, shall mean and include its successors and permitted assigns) of the OTHER PART;

And Whereas

1. \_\_\_\_\_ is carrying on business of providing \_\_\_\_\_, has agreed to \_\_\_\_\_ for the Bank and other related tasks.

2. For purposes of advancing their business relationship, the parties would need to disclose certain valuable confidential information to each other (the Party receiving the information being referred to as the “Receiving Party” and the Party disclosing the information being referred to as the “Disclosing Party. Therefore, in consideration of covenants and agreements contained herein for the mutual disclosure of confidential information to each other, and intending to be legally bound, the parties agree to terms and conditions as set out hereunder.

**NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER**

**1. Confidential Information and Confidential Materials:**

- (a) “Confidential Information” means non-public information that Disclosing Party designates as being confidential or which, under the circumstances surrounding disclosure ought to be treated as confidential. “Confidential Information” includes, without limitation, information relating to developed, installed or purchased Disclosing Party software or hardware products, the information relating to general architecture of Disclosing Party’s network, information relating to nature and content of data stored within network or in any other storage media, Disclosing Party’s business policies, practices, methodology, policy design delivery, and information received from others that Disclosing Party is obligated to treat as confidential. Confidential Information disclosed to Receiving Party by any Disclosing Party Subsidiary and/ or agents is covered by this agreement
- (b) Confidential Information shall not include any information that: (i) is or subsequently becomes publicly available without Receiving Party’s breach of any obligation owed to Disclosing party; (ii) becomes known to Receiving Party free from any confidentiality obligations prior to Disclosing Party’s disclosure of such information to Receiving Party; (iii) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party and without confidentiality restrictions on use and disclosure; or (iv) is independently developed by Receiving Party.
- (c) “Confidential Materials” shall mean all tangible materials containing Confidential Information, including without limitation written or printed documents and computer disks or tapes, whether machine or user readable.

**2. Restrictions**

- (a) Each party shall treat as confidential the Contract and any and all information (“confidential information”) obtained from the other pursuant to the Contract and shall not divulge such information to any person (except to such party’s “Covered Person” which term shall mean employees, contingent workers and professional advisers of a party who need to know the same) without the other party’s written consent provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause). Receiving Party will have executed or shall execute appropriate written agreements with Covered Person, sufficient to enable it to comply with all the provisions of this Agreement. If Service Provider appoints any Sub-Contractor (if allowed) then Service Provider may disclose confidential information to such Sub-Contractor subject to such Sub Contractor giving the Bank an undertaking in similar terms to the provisions of this clause. Any breach of this Agreement by Receiving Party’s Covered Person or Sub-Contractor shall also be constructed a breach of this Agreement by Receiving Party.
- (b) Receiving Party may disclose Confidential Information in accordance with judicial or other governmental order to the intended recipients (as detailed in this clause), provided Receiving Party shall give Disclosing Party reasonable notice (provided not restricted

by applicable laws) prior to such disclosure and shall comply with any applicable protective order or equivalent. The intended recipients for this purpose are:

- i. the statutory auditors of the either party and
  - ii. government or regulatory authorities regulating the affairs of the parties and inspectors and supervisory bodies thereof
- (c) Confidential Information and Confidential Material may be disclosed, reproduced, summarized or distributed only in pursuance of Receiving Party's business relationship with Disclosing Party, and only as otherwise provided hereunder. Receiving Party agrees to segregate all such Confidential Material from the confidential material of others in order to prevent mixing.

### 3. **Rights and Remedies**

- (a) Receiving Party shall notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information and/ or Confidential Materials, or any other breach of this Agreement by Receiving Party, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and/ or Confidential Materials and prevent its further unauthorized use.
- (b) Receiving Party shall return all originals, copies, reproductions and summaries of Confidential Information or Confidential Materials at Disclosing Party's request, or at Disclosing Party's option, certify destruction of the same.
- (c) Receiving Party acknowledges that monetary damages may not be the only and / or a sufficient remedy for unauthorized disclosure of Confidential Information and that disclosing party shall be entitled, without waiving any other rights or remedies (including but not limited to as listed below), to injunctive or equitable relief as may be deemed proper by a Court of competent jurisdiction.
  - i. Suspension of access privileges
  - ii. Change of personnel assigned to the job
  - iii. Termination of contract
- (d) Disclosing Party may visit Receiving Party's premises, with reasonable prior notice and during normal business hours, to review Receiving Party's compliance with the term of this Agreement.

### 4. **Miscellaneous**

- (a) All Confidential Information and Confidential Materials are and shall remain the sole and of Disclosing Party. By disclosing information to Receiving Party, Disclosing Party does not grant any expressed or implied right to Receiving Party to disclose information under the Disclosing Party's patents, copyrights, trademarks, or trade secret information.
- (b) Confidential Information made available is provided "As Is," and disclosing party disclaims all representations, conditions and warranties, express or implied, including, without limitation, representations, conditions or warranties of accuracy, completeness, performance, fitness for a particular purpose, satisfactory quality and merchantability

provided same shall not be construed to include fraud or willful default of disclosing party.

- (c) Neither party grants to the other party any license, by implication or otherwise, to use the Confidential Information, other than for the limited purpose of evaluating or advancing a business relationship between the parties, or any license rights whatsoever in any patent, copyright or other intellectual property rights pertaining to the Confidential Information.
- (d) The terms of Confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire product without use of the other party's Confidential Information. Further, either party shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form, which may be retained by person who has had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either party a license under the other party's copyrights or patents.
- (e) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequently to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, its agents, or employees, except by an instrument in writing signed by an authorized officer of Disclosing Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
- (f) In case of any dispute, both the parties agree for neutral third party arbitration. Such arbitrator will be jointly selected by the two parties and he/she may be an auditor, lawyer, consultant or any other person of trust. The said proceedings shall be conducted in English language at Mumbai and in accordance with the provisions of Indian Arbitration and Conciliation Act 1996 or any Amendments or Re-enactments thereto. Nothing in this clause prevents a party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or any other provisional judicial relief it considers necessary to avoid irreparable damage. This Agreement shall be governed by and construed in accordance with the laws of Republic of India. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of Mumbai.
- (g) Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and assigns.
- (h) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- (i) The Agreement shall be effective from \_\_\_\_\_ ("Effective Date") and shall be valid for a period of \_\_\_\_\_ year(s) thereafter (the "Agreement Term"). The foregoing

obligations as to confidentiality shall survive the term of this Agreement and for a period of five (5) years thereafter provided confidentiality obligations with respect to individually identifiable information, customer’s data of Parties or software in human-readable form (e.g., source code) shall survive in perpetuity.

5. **Suggestions and Feedback**

Either party from time to time may provide suggestions, comments or other feedback to the other party with respect to Confidential Information provided originally by the other party (hereinafter “feedback”). Both party agree that all Feedback is and shall be entirely voluntary and shall not in absence of separate agreement, create any confidentially obligation for the receiving party. However, the Receiving Party shall not disclose the source of any feedback without the providing party’s consent. Feedback shall be clearly designated as such and, except as otherwise provided herein, each party shall be free to disclose and use such Feedback as it sees fit, entirely without obligation of any kind to other party. The foregoing shall not, however, affect either party’s obligations hereunder with respect to Confidential Information of other party.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ (Month) 20\_\_ at \_\_\_\_\_ (place)

For and on behalf of \_\_\_\_\_

Name		
Designation		
Place		
Signature		

For and on behalf of \_\_\_\_\_

Name		
Designation		
Place		
Signature		



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**Appendix-B**

**Pre-Bid Query Format**  
**(To be provide strictly in Excel format)**

<b>Vendor Name</b>	<b>Sl. No</b>	<b>RFP Page No</b>	<b>RFP Clause No.</b>	<b>Existing Clause</b>	<b>Query/Suggestions</b>

**Appendix–C**

**Format for Submission of Client References**

**To whosoever it may concern**

<b>Particulars</b>	<b>Details</b>
<b>Client Information</b>	
Client Name	
Client address	
Name of the contact person and designation	
Phone number of the contact person	
E-mail address of the contact person	
<b>Project Details</b>	
Name of the Project	
Start Date	
End Date	
Current Status (In Progress / Completed)	
<b>Size of Project</b>	
Value of Work Order (In Lakh) (only single work order)	

**Name & Signature of Authorized signatory**

**Seal of Company**