

**AGREEMENT FOR LIFTING AND SUPPLY OF FOREIGN CURRENCY NOTES (FCNs)  
TO/FROM BRANCHES OF SBI**

**BETWEEN**

**STATE BANK OF INDIA, GLOBAL MARKETS UNIT - KOLKATA**

**AND**

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**Date of Commencement** : \_\_\_\_\_

**Date of Expiry** : \_\_\_\_\_

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This agreement (“Agreement”) is made at \_\_\_\_\_ (Place) on this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

BETWEEN

**State Bank of India**, constituted under the State Bank of India Act, 1955 having its Corporate Centre at State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai-21 and Global Markets Unit - Kolkata at Jeevan Sudha Building, 42/C, J L Nehru Road, Kolkata- 700 071 through its Profit & Loss Department, located at Jeevan Sudha Building (16<sup>th</sup> Floor), 42/C, J L Nehru Road, Kolkata- 700 071 hereinafter referred to as “**the Bank**” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in title and assigns of First Part:

AND

\_\_\_\_\_ <sup>1</sup> a private/public limited company/LLP/Firm ~~whichever is not applicable~~ incorporated under the provisions of the Companies Act, 1956/ Limited Liability Partnership Act 2008/ Indian Partnership Act 1932 ~~whichever is not applicable~~, having its registered office at \_\_\_\_\_ hereinafter referred to as “**Service Provider/ Vendor**”, which expression shall mean to include its successors in title and permitted assigns of the Second Part:

WHEREAS

(i) “The Bank” is carrying on business in banking in India and overseas and desirous to avail services for lifting and supply of Foreign Currency Notes (FCNs) to / from Branches of SBI all over India

and

(ii) Service Provider is in the business of providing \_\_\_\_\_ 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 to the following terms and conditions hereinafter contained:-

## **1. DEFINITIONS & INTERPRETATION**

### **1.1 Definition**

Certain terms used in this Agreement are defined hereunder. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are utilized in the information technology services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context, unless the context otherwise requires/mentions, the following definitions shall apply:

- 1.1.1 'The Bank' shall mean the State Bank of India (including domestic branches and foreign offices).
- 1.1.2 "Confidential Information" shall have the meaning set forth in Clause 13.
- 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 "Request for Proposal (RFP)" shall mean RFP NO. GMUK/01/2021-22 dated 03-03-2022 along with its clarifications/ corrigenda issued by the Bank time to time.
- 1.1.5 Root Cause Analysis Report" shall mean a report addressing a problem or non-conformance, in order to get to the 'root cause' of the problem, which thereby assists in correcting or eliminating the cause, and prevent the problem from recurring
- 1.1.6 'Services' shall mean and include the Services offered by Service Provider under this Agreement more particularly described in Clause 2 of this 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 industrial practices.

### 1.3 **Commencement, Term & Change in Terms**

- 1.3.1 This Agreement shall commence from its date of execution mentioned above/ be deemed to have commenced from \_\_\_\_\_ (Effective Date).
- 1.3.2 This Agreement shall be in force for a period of three (3) years from Effective Date, unless terminated by the Bank by notice in writing in accordance with the termination clauses of this Agreement.
- 1.3.3 The Bank shall have the right at its discretion to renew this Agreement in writing, for a further term of 1 year on the mutually agreed terms & conditions.

## 2. **SCOPE OF WORK**

- 2.1 The scope and nature of the work which Service Provider has to provide to the Bank (Services) is described in **Annexure-A**.

### 3. FEES /COMPENSATION

3.1 Wherever the laws and regulations require deduction of such taxes at the source of payment, the Bank shall effect such deductions from the payment due to Service Provider. 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 Contract shall relieve Service Provider from his responsibility to pay any tax that may be levied in India on income and profits made by Service Provider in respect of this Contract.

3.2 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.

#### 3.3 Bank Guarantee and Penalties

3.3.1 Service Provider shall furnish performance security in the form of Bank Guarantee for an amount of Rs. 10,00,000/- (Rs Ten Lakhs Only) valid for a period of three (3) years from a Scheduled Commercial Bank other than State Bank of India in a format provided/ approved by the Bank.

3.3.2 The Bank Guarantee is required to protect the interest of the Bank against the risk of non-performance of Service Provider in respect of successful implementation of the project and/or failing to perform / fulfil its commitments / obligations in respect of providing Services as mentioned in this Agreement; or breach of any terms and conditions of the Agreement, which may warrant invoking of Bank Guarantee.

3.3.3 If at any time during performance of the contract, Service Provider shall 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.

3.3.4 Performance of the obligations under the Agreement shall be made by Service Provider in accordance with the time schedule specified in this Agreement.

3.3.5 Service Provider shall be liable to pay penalty in case of delay in lifting / supply of FCNs to the branches across India at the rate mentioned in **Annexure-B**.

3.3.6 Service Provider shall be liable to pay penalty at the rate mentioned in **Annexure-B** in respect of any delay in settlement beyond the permitted period.

3.3.7 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 contract.

#### **4. LIABILITIES/OBLIGATION**

##### **4.1 Service Provider Duties**

(i) Service Delivery responsibilities

(a) To adhere to the service levels documented in this Agreement.

(b) 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.

(c) 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.

#### **5. REPRESENTATIONS & WARRANTIES**

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

5.1.1 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.

5.1.2 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.

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

5.1.4 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.

##### **5.2 Additional Representation and Warranties by Service Provider**

5.2.1 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.

5.2.2 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.

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

5.2.4 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 and when requested.

5.2.5 Service Provider represents and warrants that its personnel shall be present at the Bank premises or any other place as the bank may direct, only for the Services and follow all the instructions provided by the Bank; act diligently, professionally and shall maintain the decorum and environment of the Bank; comply with all occupational, health or safety policies of the Bank.

5.2.6 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, provident 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.

## **6. GENERAL INDEMNITY**

6.1 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 willful 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.

- 6.2 Service Provider hereby undertakes the responsibility to take all possible measures, at no additional cost, to avoid or rectify any issues which thereby results in non-performance of software/ hardware/ deliverables within reasonable time. The Bank shall report as far as possible all material defects to Service Provider without undue delay. Service Provider also undertakes to co-operate with other service providers thereby ensuring expected performance covered under scope of work.

## **7. CONTINGENCY PLANS**

Service Provider shall arrange and ensure proper data recovery mechanism, attrition plan and other 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. Service Provider at Banks discretion shall co-operate with the Bank in case on any contingency.

## **8. TRANSITION REQUIREMENT**

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.

## **9. LIQUIDATED DAMAGES**

If Service Provider fails to deliver and perform any or all the Services within the stipulated time, schedule as specified in this Agreement, the service provider agrees to pay interest for the delay in settlement beyond the stipulated period as per the FEDAI rule for the Inter Bank Contract (Ver10, Rule 8.2). Service Provider shall also be liable to pay penalty in case of delay in lifting / supply of FCNs to the branches across India at the rate mentioned in **Annexure-B**.

## **10. RELATIONSHIP BETWEEN THE PARTIES**

- 10.1 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.
- 10.2 Neither Service Provider nor its employees, agents, representatives, Sub-Contractors shall hold out or represent as agents of the Bank.
- 10.3 None of the employees, representatives or agents of Service Provider shall be entitled to claim any absorption or any other claim or benefit against the Bank.
- 10.4 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.
- 10.5 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 accidents occurred due to gross negligent act of the Party in whose premises the accident occurred.
- 10.6 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.

## **11. SUB CONTRACTING**

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

## **12. INSPECTION AND AUDIT**

- 12.1 It is agreed by and between the parties that Service Provider shall 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 services 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.

- 12.2 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.

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 reviews 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 breakup etc.).

### **13. CONFIDENTIALITY**

- 13.1 “Confidential Information” mean all information which is material to the business operations of either party or its affiliated companies, designated as being confidential or which, under the circumstances surrounding disclosure out to be treated as confidential, in any form including, but not limited to, proprietary information and trade secrets, whether or not protected under any patent, copy right or other intellectual property laws, in any oral, photographic or electronic form, whether contained on computer hard disks or floppy diskettes or otherwise without any limitation whatsoever. Without prejudice to the generality of the foregoing, the Confidential Information shall include all information about the party and its customers, costing and technical data, studies, consultants reports, financial information, computer models and programs, software Code, contracts, drawings, blue prints, specifications, operating techniques, processes, models, diagrams, data sheets, reports and other information with respect to any of the foregoing matters. All and every information received by the parties and marked confidential hereto shall be assumed to be confidential information unless otherwise proved. It is further agreed that the information

relating to the Bank and its customers is deemed confidential whether marked confidential or not.

- 13.2 All information relating to the accounts of the Bank's customers shall be confidential information, whether labeled as such or otherwise.
- 13.3 All information relating to the infrastructure and Applications (including designs and processes) shall be deemed to be Confidential Information whether labeled as such or not. Service Provider personnel/resources responsible for the project are expected to take care that their representatives, where necessary, have executed a Non-Disclosure Agreement similar to comply with the confidential obligations under this Agreement.
- 13.4 Each party agrees that it will not disclose any Confidential Information received from the other to any third parties under any circumstances without the prior written consent of the other party unless such disclosure of Confidential Information is required by law, legal process or any order of any government authority. Service Provider in this connection, agrees to abide by the laws especially applicable to confidentiality of information relating to customers of Banks and the banks per-se, even when the disclosure is required under the law. In such event, the Party must notify the other Party that such disclosure has been made in accordance with law; legal process or order of a government authority.
- 13.5 Each party, including its personnel, shall use the Confidential Information only for the purposes of achieving objectives set out in this Agreement. Use of the Confidential Information for any other purpose shall constitute breach of trust of the same.
- 13.6 Each party may disclose the Confidential Information to its personnel solely for the purpose of undertaking work directly related to the Agreement. The extent of Confidential Information disclosed shall be strictly limited to what is necessary for those particular personnel to perform his/her duties in connection with the Agreement. Further each Party shall ensure that each personnel representing the respective party agree to be bound by obligations of confidentiality no less restrictive than the terms of this Agreement.
- 13.7 The non-disclosure obligations herein contained shall not be applicable only under the following circumstances:
- (i) Where Confidential Information comes into the public domain during or after the date of this Agreement otherwise than by disclosure by a receiving party in breach of the terms hereof.
  - (ii) Where any Confidential Information was disclosed after receiving the written consent of the disclosing party.
  - (iii) Where receiving party is requested or required by law or by any Court or governmental agency or authority to disclose any of the Confidential Information, then receiving party

will provide the other Party with prompt notice of such request or requirement prior to such disclosure.

- (iv) Where any Confidential Information was received by the receiving party from a third party which does not have any obligations of confidentiality to the other Party.
- (v) Where Confidential Information is independently developed by receiving party without any reference to or use of disclosing party's Confidential Information.

13.8 Receiving party undertakes to promptly notify disclosing party in writing any breach of obligation of the Agreement by its employees or representatives including confidentiality obligations. 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.

13.9 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.

13.10 Any document received from the Bank shall remain the property of the Bank and shall be returned (in all copies) to the Bank on completion of Service Provider's performance under the Agreement.

13.11 Upon expiration or termination of the Agreement, all the Bank's proprietary documents, customized programs partially or wholly completed and associated documentation, or the Bank's materials which are directly related to any project under the Agreement shall be delivered to the Bank or at the Bank's written instruction destroyed, and no copies shall be retained by Service provider without the Bank's written consent.

13.12 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.

#### **14. TERMINATION**

14.1 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 14.1 (i) to 14.1 (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.

14.2 The Bank, by written notice of not less than 90 (ninety) 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 and make payment for the Services rendered (delivered) up to the effective date of termination.

14.3 In the event the Bank terminates the Agreement in whole or in part for the breaches attributable to Service Provider, the bank may procure, upon such terms and in such manner, as it deems appropriate, Services similar to those undelivered and subject to clause 18 Service Provider shall be liable to the Bank for any increase in costs for such similar Services. However, Service Provider, in case of part termination, shall continue the performance of the Agreement to the extent not terminated.

14.4 The Bank shall have a right to terminate the Agreement immediately by giving a notice in writing to Service Provider in the following eventualities:

- (i) 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.
- (ii) If Service Provider applies to the Court or passes a resolution for voluntary winding up or any other creditor / person files a petition for winding up or dissolution of Service Provider.
- (iii) 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 employees.
- (iv) 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.

- 14.5 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.
- 14.6 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.
- 14.7 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 indemnity; obligation of payment; confidentiality obligation; Governing Law clause; Dispute resolution clause; and any right which a Party may have under the applicable Law.

## **15. DISPUTE REDRESSAL MACHANISM & GOVERNING LAW**

All disputes or differences whatsoever arising between the parties out of or in connection with the Contract (including dispute concerning interpretation) or in discharge of any obligation arising out of the Contract (whether during the progress of work or after completion of such work and whether before or after the termination of the Contract, abandonment or breach of the Contract), shall be settled amicably. If however, the parties are not able to solve them amicably within 30 (thirty) days after dispute occurs as evidenced through the first written communication from any Party notifying the other regarding the disputes, either party (SBI or Service Provider), shall seek appropriate civil remedy with the competent civil courts located in Kolkata, India. The Civil Courts in Kolkata, India shall have exclusive jurisdiction in this regard. Service Provider shall continue work under the Contract during the civil court proceedings unless otherwise directed by the Bank or unless the matter is such that the work cannot possibly be continued until the decision of the arbitrator is obtained.

## **16. POWERS TO VARY OR OMIT WORK**

- 16.1 No alterations, amendments, omissions, additions, suspensions or variations of the service (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, as far as applicable as 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.

- 16.2 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.

## **17. WAIVER OF RIGHTS**

Each Party agrees that any delay or omission on the part of the other Party to exercise any right, power or remedy under this Agreement will not automatically operate as a waiver of such right, power or remedy or any other right, power or remedy and no waiver will be effective unless it is in writing and signed by the waiving Party. Further the waiver or the single or partial exercise of any right, power or remedy by either Party hereunder on one occasion will not be construed as a bar to a waiver of any successive or other right, power or remedy on any other occasion.

## **18. LIMITATION OF LIABILITY**

- i. The maximum aggregate liability of Service Provider, subject to clause 18 (iii), in respect of any claims, losses, costs or damages arising out of or in connection with this RFP/Agreement shall not exceed Rs. 10,00,000/- (Rupees Ten Lakhs only).
- ii. 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.
- iii. The limitations set forth herein shall not apply with respect to:
  - (a) damage(s) occasioned by the Gross Negligence or Willful Misconduct of Service Provider,
  - (b) damage(s) occasioned by Service Provider for breach of Confidentiality Obligations,
  - (c) 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 18(iii)(a) **“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.

**“Willful 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.

## **19. FORCE MAJEURE**

- 19.1 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.
- 19.2 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 Service Provider 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.
- 19.3 If Force Majeure situation arises, the non-performing Party shall promptly notify to the other Party in writing of such conditions and the cause(s) thereof. Unless otherwise agreed in writing, the non-performing Party shall continue to perform its obligations under the Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 19.4 If the Force Majeure situation continues beyond 30 (thirty) days, either Party shall have the right to terminate the 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 and make payments for all services actually rendered up to the date of the termination of this Agreement.

## **20. NOTICES**

- 20.1 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, 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, or facsimile).
- 20.2 A notice shall be effective when it is delivered or on the effective date of the notice, whichever is later.
- 20.3 The addresses for Communications to the Parties are as under.
- (a) In the case of the Bank:  
Assistant General Manager (P&L/S&P/Ops)  
State Bank of India  
Jeevan Sudha Building(16th Floor)  
42/C, J L Nehru Road,  
Kolkata - 700 071
- (b) In case of Service Provider  
\_\_\_\_\_  
\_\_\_\_\_
- 20.4 In case there is any change in the address of one Party, it shall be promptly communicated in writing to the other Party.

## **21. GENERAL TERMS & CONDITIONS**

- 21.1 **PUBLICITY:** Service Provider may make a reference of the services rendered to the Bank covered under this Agreement on Service provider's Web Site or in their sales presentations, promotional materials, business plans or news releases etc., only after prior written approval from the Bank.
- 21.2 **SUCCESSORS AND ASSIGNS:** This Agreement shall bind and inure to the benefit of the parties, and their respective successors and permitted assigns.
- 21.3 **NON-HIRE AND NON-SOLICITATION:** During the term of this Agreement and for a period of one year thereafter, neither party shall (either directly or indirectly through a third party) employ, solicit to employ, cause to be solicited for the purpose of employment or offer employment to any employee(s) of the other party, or aid any third person to do so,

without the specific written consent of the other party. However nothing in this clause shall affect the Bank's regular recruitments as per its recruitment policy and not targeted to the employees of Service provider.

21.4 SEVERABILITY: The invalidity or unenforceability of any provision of this Agreement shall not in any way effect, impair or render unenforceable this Agreement or any other provision contained herein, which shall remain in full force and effect.

21.5 MODIFICATION: This Agreement may not be modified or amended except in writing signed by duly authorized representatives of each party with express mention thereto of this Agreement.

21.6 ENTIRE AGREEMENT: 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:

- (i) This Agreement;
- (ii) Annexure of Agreement; and
- (iii) RFP

21.7 PRIVACY: 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.

21.8 DUE AUTHORISATION: Each of the undersigned hereby represents to the other that she/he is authorized to enter into this Agreement and bind the respective parties to this Agreement.

21.9 COUNTERPART: This Agreement is executed in duplicate and each copy is treated as original for all legal purposes.

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.

**DELIVERABLES/SCOPE OF WORK**

1. Whereas the Bank had invited tenders from various service providers for lifting and supply of Foreign Currency Notes from / to branches across the country and now SBI has appointed ..... as Service provider to supply and to lift Foreign Currency Notes to/ from its branches all over India.
2. **Terms and Conditions :**
  - 2.1 ..... (*Name of the Service Provider*) will lift and supply foreign currency notes (FCN) “ any amount” and “ across all denominations” as asked for in case of all the 24 currencies as indicated in the Annexure C to the branches of SBI across the country. SBI Branches will contact the personnel concerned of .....(*Name of the Service Provider*) located at the centre over email and fix up the date / time of lifting or supply of FCNs.
  - 2.2 The .....(*Name of the Service Provider*) should also provide necessary support in case of disposal of non-issuable /mutilated/ obsolete foreign currencies to the branches, if situation arises.
  - 2.3 .....(*Name of the Service Provider*) should ensure that the quality of methodologies for delivering the services, adhere to quality standards/timelines stipulated therefor
  - 2.4 Prompt support shall be made available as desired in this RFP during the support period at the locations as and when required by the Bank
  - 2.5 .....(*Name of the Service Provider*)’s support staff should be well trained to effectively handle queries raised by the customers/employees of the Bank.
  - 2.6 .....(*Name of the Service Provider*) to keep the Bank informed with the list of Branches / offices at various centres along with the registered address and contact details. In case of any changes , the same should be promptly intimated to the Bank.
  - 2.7 .....(*Name of the Service Provider*) to submit the Escalation Matrix and the Complaint Resolution Mechanism to be displayed in the Bank’s internal website for convenience of the Branches. The updated complaint escalation matrix shall be made available to the Bank once in each quarter and each time the matrix gets changed.
  - 2.8 No minimum level of business is guaranteed and such level of Business would depend upon the surplus available for lifting / demand existing for supply with the branches.

- 2.9 Any freight and insurance would be on .....( *Name of the Service Provider*) account.
- 2.10 The scope of this arrangement will not cover coins on account of problems associated with disposal / export. However the .....(*Name of the Service Provider*) will lift all the denominations in the 24 currencies as listed out in **Annexure - C** for which card rates are quoted by SBI. ....( *Name of the Service Provider*) may accept additional currencies based on mutual consent and mutual agreed rates.
- 2.11 .....(*Name of the Service Provider*) agree to pay penalty for delay in execution of the order placed with their representatives as mentioned in **Annexure - B** .
- 2.12 .....(*Name of the Service Provider*) are to pay interest for delay in crediting the Bank's account with the foreign currency or its equivalent after the currency is lifted from the branch (es) as per FEDAI rule for Interbank Contracts (Version 10, Rule 8.2), in case of delays beyond the time allowed as mentioned in **Annexure - B**
- 2.13 It shall be the responsibility of .....(*Name of the Service Provider*) to pick up the FCNs on the same working day, if the request is received via email by 12.00 noon. For requests received after 12.00 noon, FCNs will be lifted on the next working day. .... (*Name of the Service Provider*) will provide advance payment (in Rupee) to the branches against confirmed order bookings within one (1) hour at all .....(*Name of the Service Provider*) Centres and maximum within 3(hours) at all other centres through RTGS or direct funds transfer from its SBI Account irrespective of the timings of the actual pick-up of FCNs from the branches. The Nostro Credit will be provided within 1 International day, however, the copy of SWIFT message sent for credit to SBI Nostro Account will be provided in advance. The settlement of transactions will be as per terms (2.15) and (2.16).
- 2.14 .....(*Name of the Service Provider*) will arrange to pick FCNs against either Rupee Settlement or credit to SBI Nostro account (Nostro Settlement). It will be the sole discretion of the branch concerned to obtain either rupee settlement or Nostro settlement for the currency notes offloaded by them.
- 2.15 Rupee Settlement terms for lifting of FCNs - The premium per unit on various currencies against Rupee Settlement will be as under.
- a) USD - .... paise over SBI –USD card buying rate\* for FCN of the day.
  - b) GBP - .... paise over SBI –USD card buying rate\* for FCN of the day.

- c) EUR - .... paise over SBI –USD card buying rate\* for FCN of the day.
- d) Miscellaneous - ..... % over SBI respective card buying rate\* for FCN for the day.

\* The card buying rate applicable will be the card rate published for transaction between Rs.10 Lacs and Rs.20 Lacs.

The above rate for a currency will be applicable for all centers and credit would be affected by means of RTGS / Direct Funds Transfer from its SBI Account on the date of order of booking.

2.16 Nostro Settlement Terms - ..... (*Name of the Service Provider*) will arrange to settle the transactions in Foreign Currency / Nostro Credit within one International Working Day as under :

(a).....(*Name of the Service Provider*) will provide Nostro Credit at par to our Nostro Account in respect of three currencies i.e. USD, GBP and EURO in the same currency. However .....(*Name of the Service Provider*) may also provide Nostro Credit in respect of AUD, CAD, NZD, CHF, JPY and SGD currencies subject to availability and acceptance by Branches. This will be a value added service by the .....(*Name of the Service Provider*). For other currencies, it will provide credit in USD equivalent based on the ongoing International market rate (Singapore opening). Settlement will be affected within stipulated time as per (2.14) above on confirmed booking order, irrespective of the timings of the actual pick - up of FCNs.

(b) No handling charges will be paid.

2.17 For supply of FCNs, SBI Branches will contact the Branch/ Office concerned of .....(*Name of the Service Provider*) of the nearest centre over email. The delivery will be done at the bank branch on the date of indent at mutually accepted reasonable time.

2.18 The Branches will provide Rupee Equivalent amount for supply of FCN to ..... (*Name of the Service Provider*) on the date of supply of FCN through RTGS/Direct Credit in SBI Account as per the details given below,

- (a) USD -- ... paise below SBI card selling rate\* for FCN of the day.
- (b) GBP/ EUR -- ... paise below SBI card selling rate\* for FCN of the day.
- (c) Misc Currencies - ...% below SBI card selling rate\* for FCN of the day

\* The card selling rate applicable will be the card rate published for transaction between Rs.10 Lacs and Rs.20 Lacs.

2.19 .....(*Name of the Service Provider*) shall maintain records of receipt of request from the branches concerned, the pick-up / supply date, time, date of nostro credit, conversion rate, penalty amount, delayed interest amount if any etc. which shall be furnished to the Bank as and when demanded.

2.20 .....(*Name of the Service Provider*) will submit a quarterly report to AGM (PnL/SnP & Ops), Global Market Unit, Kolkata (GMUK) in respect of transaction particulars in individual currencies, pick up / supply dates, request received dated, date of nostro credit, conversion rate , penalty amount, delayed interest amount if any, etc, to enable them to monitor the arrangement.

### **3. Correction of Deficiencies in Services**

3.1 If Service provider is unable to correct all Deficiencies preventing acceptance of a deliverable or meet the performance requirements, for which Service provider is responsible within the timelines as mentioned in this Agreement, the Bank may at its discretion:

- a) Impose penalty on Service Provider as mentioned under **Annexure B**
- b) Terminate this Agreement for cause in accordance with Clause 14 (except that the Bank is under no obligation to provide Service provider any further opportunity to cure) and recover its damages as set forth in this Agreement.

### **4. Risk Management**

Service Provider shall identify and document the risk in delivering the Services. Service Provider shall identify the methodology to monitor and prevent the risk, and shall also document the steps taken to manage the impact of the risks.

**ANNEXURE-B**

**Other terms and Penalties**

1. .... (Name of the Service Provider) agrees to pay penalty for delay in execution of the order placed with the its representatives.
  - 1.1 For centres where the office / branch of the Bidders are present, the order needs to be confirmed / executed on the same day (if mail received before 12pm and on T+1 in case the mail is received after 12pm)
  - 1.2 For centres at a distance of more than 25 kms from the office / Branch of..... (Name of the Service Provider), the order needs to be confirmed / executed within 72 hours from the receipt of the order.
  - 1.3 For far flung centres like Branches in our North East Circle where the office / Branch of the .....(Name of the Service Provider) may not established , the order to be confirmed/executed within 7 working days from receipt of the order.
  - 1.4 In case of any delay observed, .....(Name of the Service Provider) will pay penal interest @ 1% on the difference between SBI Card Rate available on the order date and the execution date in case of increase / decrease in the SBI Card Rate. The Branches to calculate the penalty amount and intimate .....(Name of the Service Provider) for necessary credit to the Branch.
  
2. ....(Name of the Service Provider) is required to pay interest for delay in crediting the Bank's account with the foreign currency or its equivalent after the currency is lifted from the Branch (es) as per FEDAI rule of Interbank contracts (Version 10, Rule 8.2) in case of delays beyond the time allowed.



**ANNEXURE-C**

<b>LIST OF CURRENCIES</b>	
<b><u>SN</u></b>	<b><u>CURRENCY</u></b>
1	USD
2	GBP
3	Euro
<b>Miscellaneous Currencies</b>	
4	Saudi Riyal
5	Qatar Riyal
6	Bahrain Dinar
7	Omani Riyal
8	UAE Dirham
9	Canadian Dollar
10	Swiss Francs
11	Japanese Yen
12	Danish Kroner
13	Norwegian Kroner
14	Swedish Kroner
15	Australian Dollar
16	New Zealand Dollar
17	Singapore Dollar
18	Hongkong Dollar
19	South African Rand
20	Malaysian Ringit
21	Thai Baht
22	Pakistani Rupee
23	Kuwati Dinar
24	Bangladesh Taka

**XXXX**

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