**AGREEMENT FOR [Name of the Project]t**

This AGREEMENT FOR [Name of the Solution/Product/Project/Service] (hereinafter referred to as the “**Agreement**”) is made on the <----date--> Day of < ------Month ----- >, < ---Year----- > of the English calendar at Dhaka, Bangladesh.

# **BETWEEN**

**BRAC Bank PLC.**, a private commercial bank incorporated in Bangladesh under the Companies Act, 1994 and governed by the Banking Companies Act, 1991, having its head office at Anik Tower, 220/B, Tejgaon Gulshan Link Road, Tejgaon I/A, Dhaka 1208, Bangladesh, hereinafter called as “**BRAC BANK**” (which expression unless otherwise repugnant to the context hereof, shall mean and include its successors-in-interest and assigns, nominees, administrator, officer and legal representatives) of the **FIRST** **PART**.

**AND**

**[Name of the Company]** a company incorporated in [Bangladesh] under the [Companies Act, 1994], having its Registered Office at [Address of Supplier], hereinafter referred to as the “**Supplier”** (which expression unless otherwise repugnant to the context hereof, shall mean and include its successors-in-interest and permitted assigns, and legal representatives) of the **SECOND PART**

(Both BRAC BANK and the Supplier hereinafter collectively referred to as ‘Parties’ and individually as ‘Party’)

**WHEREAS**, BRAC BANK being licensed by the Central Bank of Bangladesh is engaged in the business of providing banking and related services in Bangladesh.

**AND WHEREAS**, the Supplier is involved in the business of providing Services for [Name of the Solution/Product/Project/Service].

**AND WHEREAS**, BRAC BANK is desirous of obtaining certain Solution (described in details under Clause 2 and Annexure 1 of this Agreement) from the Supplier, and the Supplier represents that it has the necessary expertise, skills, experience, competence and personnel required to deliver the Services desired and required by BRAC BANK and is willing to enter into this Agreement with BRAC BANK to provide the Services in accordance with the terms and conditions specified herein below.

NOW, THEREFORE, THE PARTIES HERETO agree by and between themselves as follows:

1. **Definitions:** 
   * 1. In this Agreement, the following expressions shall unless the context otherwise requires have the meanings respectively assigned to them:

**a. “Agreement”** shall mean this Agreement for **[Name of the Project/ Service]** including all Annexures, Schedules, Appendices attached herewith and all amendments, supplemental or addendum to this Agreement to be made from time to time.

* 1. **Effective Date”** shall mean the coming into force of this Agreement as mentioned in Clause 9 of this Agreement.
  2. “**Agreement Period**” shall mean the period specified in Clause 9 of the Agreement whereby the Agreement is enforceable from the Effective Date of the Agreement till the date on which the Agreement expires.
  3. “**Confidential Information**” shall means any information that has been exchanged between the Parties whether the information is related or not to the subject matter of this Agreement, either directly or indirectly, tangible or intangible, in writing, orally, or by inspection of tangible objects (including without limitation, any binders, documents, policies, procedures products, product development, financial information, technical data, design, pattern, formula, computer program, schematics, object code, manual, software source documents, product specification, plan for new, revised or existing products, business and marketing plan and strategy, prices and costs, order, lists and information in relation to the Party disclosing the said information, trade secrets, know how, Invention techniques, processes, research and development plans and activities, methods and systems and improvements developed, and documents, prototypes, samples, plant and equipment), whether or not designated as “Confidential”, “Proprietary” or some similar designation, including without limitation, the existence of this Agreement and the fact of discussions about the business relationship between the Parties.
  4. “**Intellectual Property Rights**” or “**IPR**” shall include, without limitation, copyrights, trade secrets, trademarks, trade names, domain names, patents, know-how, formulation, designs, inventions, discoveries and all other intellectual or industrial property and like rights whether or not registered.
  5. **“Day”** shall mean an English calendar day.
  6. **“Month”** shall mean an English calendar month.
  7. **“Year”** shall mean an English calendar Year.

ii. Words importing the singular shall also include the plural and vice versa where in context requires.

iii. The Title of these conditions are of convenience of reference only and shall not be deemed to be part of Agreement or in any way affect the interpretation or construction thereof.

1. **SCOPE OF THE AGREEMENT**
   1. The Supplier shall provide the Solution and the Implementation Services as per the specifications detailed under Annexure 1 Technical Specification and also provide Maintenance Services within the warranty and after warranty period as describe in Annexure 2 (Service Level Agreement) of this Agreement.
   2. This Agreement contains a frame agreement that does not bind BRAC BANK unless any written and signed Purchase Order (PO) is issued to the Supplier with reference to this Agreement. Any obligation of BRAC BANK agreed under the Agreement shall not be enforceable unless and until such PO is issued. The Solution, Implementation Services and Maintenance Services shall be supplied in accordance with the PO issued by BRAC BANK under this Agreement and subsequent acceptance given by the Supplier to BRAC BANK’s respective PO.
2. **LICENSES OF SOFTWARE**

* 1. BRAC BANK is hereby granted a non-exclusive and restricted license to use the Software for BRAC BANK’s own operation and maintenance of the Hardware or part thereof in accordance with this Agreement.
  2. BRAC BANK and any successor to BRAC BANK’s title of the Hardware or parts of the Hardware shall have the right without further consent of the Supplier to transfer this License to a third party which acquires the Hardware or part thereof, provided that any such third party agrees in writing to abide by all the terms and conditions of this license.
  3. For backup purposes, BRAC BANK shall be allowed to make multiple copies of the Software for back-ups and maintenance, depending on operations procedures as back-up.

1. **METHOD OF ORDERING & DELIVERY PERIOD**

A. The Solution or any part thereof required by BRAC BANK and to be supplied by the Supplier and shall be indicated by issuance of Purchase Order(s) in accordance with the terms of this Agreement and Annexures.

b. The Supplier shall complete its obligations relating to the Solution as mentioned in the PO and as detailed under this Agreement

1. **PRICE & PAYMENT TERMS**

The price of the Solution, Implementation Services, and Maintenance Services and other terms and conditions are Annexure 3

1. **RESPONSIBILITIES & OBLIGATIONS OF THE SUPPLIER**

The Supplier shall-

1. ensure and be solely responsible for the supply and delivery of the solution Items in accordance with the terms of this Agreement and the Purchase Order(s).
2. ensure that the solution supplied hereunder shall be of satisfactory quality, with agreed upon effectiveness and longevity and be fit for its intended purpose as per the agreed specifications.
3. furnish to BRAC BANK such information relating to the Solution as BRAC BANK may require from time to time.
4. ensure that the Solution delivered by the Supplier shall be genuine and confirmed with the quantity, quality and specification approved by BRAC BANK.
5. provide all necessary labor, technical know-how and related works, activities, etc., for the proper carrying out of its obligations under this Agreement.
6. provide the desired Solution at its sole risk and expense, in a timely, diligent, skillful and workmanlike manner and in strict compliance with all applicable laws, rules, and regulations, including, without limitation, taking such steps that may be necessary and reasonable to prevent any accidents and to preserve the safety of all persons involved or are in the vicinity of the Supplier including, without limitation, all of BRAC BANK’s Personnel.
7. not employ or hire any minors below the age of eighteen (18) years to perform any operation of the company. The Supplier shall impose and ensure compliance at all times with this requirement.
8. warrant that the Solution supplied under this Agreement are within and shall remain within documented specifications and that the Solution provided during the term of the Agreement shall comply with all the requirements of Bangladesh Laws, rules and regulations, all applicable manufacturer’s specifications, BRAC BANK’s specifications and any other applicable government and industry standards that may be valid time to time.
9. keep accurate, systematic and up-to-date records and accounts in respect of the provision of the laptop or desktop, or other digital/ tabular device in such form and detail as is customary in the profession and as may be required by BRAC BANK from time to time, to establish accurately the cost and expenditure that have been duly paid by BRAC BANK.
10. not allow any unauthorized person to carrying out any part of its obligations under this Agreement.
11. be responsible to give compensation as determined by BRAC BANK as per this Agreement if any damage or loss happens during service performance due to the negligence, acts, omissions and/or default of the Supplier.
12. comply with all applicable laws and regulations with respect to the provision of the Solution under this Agreement.
13. **REPRESENTATIONS AND WARRANTIES** 
    * 1. The Supplier shall indemnify BRAC BANK for any loss, demands, expenses, claims, or cause of action arising out of the breach of any of the warranties or terms of this Agreement, omission or negligence by the Supplier.
      2. The Supplier represents and warrants that it has obtained all necessary valid licenses, permits and consents from government and/or regulatory authorities necessary and required to carry out its business in Bangladesh and more specifically its obligations as specified under this Agreement and for remitting any revenue sharing with its parents or subsidiary company abroad (if applicable). Furthermore, the Supplier ensures that it shall keep all such licenses, permits and consents, updated and renewed (as and when required) during the Agreement Period and during any future extension of this Agreement.
      3. The Supplier represents and warrants that it shall abide by and comply with all relevant laws, rules and regulations which are applicable on the performance of this Agreement.
      4. The Supplier warrants that all equipment, materials or items supply and install are new and never used or utilized for any other purpose and are free from all kinds of defects.
      5. The Supplier warrants that Supplier is fully experienced in providing the Solution, Implementation Services and Maintenance Services as detailed under this Agreement and/or PO and that it possesses a high level of skill and expertise and experience which it will make available to BRAC BANK in carrying out its obligations under this Agreement. In so doing, the Supplier recognizes and acknowledges that BRAC BANK is relying on the provision by the Supplier of such skill and expertise in and about the Solution, Implementation Services and Maintenance Services to be performed by the Supplier pursuant to the Agreement and/or PO.
      6. The Supplier shall be fully responsible for the successful supply and delivery of the Solution, Implementation Services and Maintenance Services within the time frame specified and in accordance with the agreed functional, technical and performance specifications of the Agreement.
      7. The Supplier shall furnish to BRAC BANK such information relating to the Solution, Implementation Services and Maintenance Services as BRAC BANK may from time to time require.
      8. The Supplier warrants and undertakes to abide with BRAC BANK that:
14. it has all the necessary power and authority to carry on its business as presently conducted;
15. it has all the necessary power and authority to execute, deliver and perform its obligations under this Agreement and each of the execution, delivery and performance by it of this Agreement has been duly authorized by all necessary action on its part and this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with it terms.
16. possesses the necessary capabilities, item and suitable place of business to perform its obligations under this Agreement and
17. utilizes its capabilities, item and suitable place of business to perform its obligations under this Agreement;
    * 1. The Supplier warrants and represents for the benefit of BRAC BANK that at the date of this Agreement and throughout the Agreement Period:
18. Any and all information, data, statistics, evaluation, assessment, framework and templates provided in relation to the Solutions do not and will not:
    1. Infringe any third-party intellectual property rights;
    2. Infringe confidentiality obligations owed to any third party; or
    3. Contain materially false or misleading statements.
19. It has the right and authority to disclose any such information and materials and also possesses the necessary rights and authorities to license the abovementioned (where applicable) to BRAC BANK;
    * 1. The Supplier shall be responsible for any fines and penalties imposed on it arising from any noncompliance of the Product and Services with the laws and regulations of Bangladesh and BRAC BANK shall not be held responsible to this end.
      2. The Supplier hereby acknowledges and understands that the warranties and representations stated within this Agreement are to be strictly adhered to and therefore further acknowledges that in order to ensure the high standards of performance and conduct of this Agreement, BRAC BANK reserves the right to request for, or on its own accord, inspect, examine (including but not limited to) all documents, correspondence, records, paperwork, computer software or accounts of the Supplier that relates to this Agreement at any time BRAC BANK so wishes throughout the duration of this Agreement. In the event such measures are adopted, the Supplier shall offer its full cooperation and assistance to BRAC BANK to facilitate such situations.
20. **WARRANTY**
21. The Supplier shall provide ……………. **Year** full warranty from the date of installation for the Solution (covering all Hardware, OS and all non-application layer Software) at Free of Cost (FoC). During this  **Year** Warranty Period, the Supplier shall provide the annual maintenance support for the Solution at FoC as per the detailed SLA as mentioned in Annexure 2. After the expiration of [Year] **Year** FoC warranty and the annual maintenance support period, the Supplier shall provide the annual maintenance support for the Solution for another[Year] **Year** under the Maintenance and Support Service. The Warranty shall cover but not limited to:
22. Any manufacturing faults or damage/ fault during the installation phase.
23. Fault of any part or parts or the Solution in terms of operation and sustainability i.e., if the mentioned part or parts or system does not operate in good condition or does not perform good operation continuously/consistently but fails repeatedly after operation of a certain period or there is a good chance of such failure that can be easily deemed / understood by BRAC BANK.
24. Any unsatisfactory performance resulting from the supplied Solution.
25. If the Supplier is not the manufacturer of the Solution, the Supplier shall be required to obtain the warranty from the manufacturer granted in favor of BRAC BANK on the terms and conditions as required by BRAC BANK.
26. The Supplier shall unconditionally warranty that the Solution supplied to BRAC BANK shall be free from all defects including but not limited to defects arising out of faulty design, faulty and inferior material or inferior workmanship, and the Solution shall be of the highest quality and fit for the purpose which they are intended in accordance with the Agreement and any subsequent amendments and additions which BRAC BANK deem fit and necessary and shall strictly comply with each and every requirement of the specifications for a period of at least Year from the date of delivery and this period shall hereinafter be called the “**Warranty Period**”.
27. If the Solution or any part thereof and associated services fail to comply with the technical Specifications and requirements of BRAC BANK during the Warranty Period, the Supplier shall, without any charge to BRAC BANK, repair or replace the same to the satisfaction of BRAC BANK within seven (7) working days or any other extended period at BRAC BANK’s sole discretion. The Supplier shall bear all costs including freight charges, cost of testing, examining, and replacing the defective Items. This Sub-Clause shall not prejudice BRAC BANK’s right to impose penalty as referred to in Clause 11 herein.
28. If any part or whole of the Solution becomes faulty during the Warranty Period which may hamper the operation, the Supplier shall ensure that it is replaced or rectified temporarily or permanently within 12 (twelve) hours with the Supplier’s own spares. If any part or whole of the Solution is replaced or rectified temporarily, it shall be replaced or rectified permanently within one (01) Month. The repair or replacement will be accepted by BRAC BANK upon satisfactory performance. In the event that the Solution and any part thereof remains unsatisfactory to BRAC BANK after such repair or replacement or in the event of a failure on the part of the Supplier to effect repair or replacement within the stipulated time, BRAC BANK reserves the right to purchase the same from other source or to make good any damage or defect in any manner it deems fit and all costs thereby incurred shall be recoverable from the Supplier by deduction from any money due or to become due to the Supplier. This Sub-Clause shall not prejudice BRAC BANK’s right to impose liquidated damages as referred to in Clause 11 herein. The Warranty Period for the replaced item shall be co-terminus with the existing systems.
29. If during the Warranty Period certain part or parts of the Solution are found or observed to breakdown repeatedly despite repairs, such part or parts shall be replaced by the Supplier at no cost to BRAC BANK.
30. Any defective part repaired/replaced during the Warranty Period shall be guaranteed inclusive of the repaired/replacement lead time. The Supplier shall remedy defects immediately after receiving the notice of defect. Remedies shall be carried out without incurring any extra cost to the BRAC BANK. If the Supplier does not solve defects as necessary within the stipulated and reasonable period of time, the BRAC BANK is entitled to do itself at the cost and risk of the Supplier and subsequently the BRAC BANK shall be compensated at actual in the price for the cost incurred by the BRAC BANK.
31. The Supplier shall bear all costs for rectifying defects arising from faulty design of the Solution during the entire Warranty Period of the Solution. The Supplier shall also indemnify BRAC BANK from and against losses, costs, damages, and expenses which BRAC BANK may suffer, incur or sustain by reason of faulty or defective design, modification, works, technical assistance, fundamental and/or inherent faults of the Solution.
32. The Supplier warrants that the Supplier is the legal owner or copyright holder or has the legal right to supply the Solution to BRAC BANK.
33. The Supplier shall abide by the security policy, process and guidelines to comply regulatory requirement and standards of the BRAC BANK.
34. **TERM OF THE AGREEMENT**
35. This Agreement shall be [retrospectively] effective from (“Effective Date”) and shall remain valid for …..……..from the Effective Date unless terminated earlier under clause 14. The tenure may be renewed for a further period as mutually agreed in writing between the Parties hereto and if not extended for further period this agreement shall be automatically dissolved.
36. **REJECTION**
37. The Solution, Implementation Services and Maintenance Services or any part thereof being found to be not in compliance with the specifications in this Agreement may be rejected in part or in whole at the sole discretion of BRAC BANK, provided always that Solution, Implementation Services and Maintenance Services or any part thereof with minor defects and shortcomings, in the opinion of BRAC BANK, which do not affect the operational use of the Solution, Implementation Services and Maintenance Services, will not give rise to rejection of the Solution, Implementation Services and Maintenance Services concerned if such defect and shortcoming is rectified by the Supplier within seven (07) working days or any other extended period at BRAC BANK’s sole discretion.
38. The Solution, Implementation Services and Maintenance Services or any part thereof rejected due to non-compliance with the specifications or nonperformance as per specifications provided hereunder shall be removed by the Supplier from BRAC BANK’s premises at the Supplier’s own expense upon providing the replacement.
39. The Solution, Implementation Services and Maintenance Services or any part thereof will be rejected if the Supplier does not abide by specifications in the PO, the security policy, process and guidelines to comply regulatory requirement and standards of BRAC BANK.
40. The Supplier shall not claim any payment for the Solution, Implementation Services and Maintenance Services or any part thereof which has been rejected.
41. **DAMAGES**

* 1. When Maintenance Services are provided on a FOC basis, penalty or liquidated damages shall be calculated based on the Maintenance Services charge annually payable to the Supplier after the end of the warranty period.
  2. Alternatively, BRAC BANK may resolve any problem/defect related to the Solution by itself or through any third party if the Supplier fails to resolve the problem/defect as per schedule stipulated in the SLA of Annexure 2 and any associated expenditure shall be charged to the Supplier. If the Supplier fails to make the payment of Liquidated Damages applied under the terms of this clause, BRAC BANK shall have the right to obtain compensation by making deductions from any payments due or to become due to the Suppliers and/ or by recovering such sums as a debt.
  3. BRAC BANK shall also be entitled to claim damages for any losses which results from breach of Agreement by Supplier unless the Supplier can prove that the breach or the cause of breach was not due to the Supplier or the breach results from force majeure. BRAC BANK shall have the right to make adjustment of the claims with any payments due to the Supplier under this Agreement and/or any other agreements with the Supplier.
  4. If the Supplier defaults in the payment of penalty applied under the terms of this clause, BRAC BANK shall have the right to obtain compensation by making deductions from any payments due or to become due to the Suppliers and/ or by recovering such sums as a debt, as well as through encashment of Performance Bond.

1. **INTELLECTUAL PROPERTY RIGHTS**
2. That all Intellectual Property Rights (IPR) vested in BRAC BANK shall remain within BRAC BANK’s exclusive rights and shall be BRAC BANK’s property. The Supplier hereby undertakes, warrants and guarantees that it shall not infringe the Intellectual Property Rights of BRAC BANK or of any third party so far as related with the service or product to be provided under this Agreement and shall not make any unauthorised use of BRAC BANK’s IPR and shall indemnify and hold BRAC BANK harmless against any claim or any costs or consequences for any IPR infringement so far it may relate to this Agreement and shall defend BRAC BANK at its own expense from any claim, suit or court proceedings which BRAC BANK may face.
3. No IPR vested in the BRAC BANK shall be regarded as being transferred to the Supplier, in whole or in part, under this Agreement the Supplier shall refrain from all sorts of unauthorised use of the BRAC BANK’s IPR. In violation of this provision, the BRAC BANK reserves the right to take available legal action against the Supplier.
4. **INSURANCE** 
   * 1. The Supplier shall arrange for necessary insurance coverage of the Solution. The Supplier shall ensure that such policy benefits BRAC BANK and material/equipment installed in BRAC BANK’s premises. Any loss or any damage whatsoever during transit shall be borne by the Supplier.
     2. BRAC BANK shall not be liable for or in respect of any damage or compensation payable at law in respect or in consequence of any accident or injury to any workmen or other person in the employment of the Supplier save and except an accident or injury resulting from any act or default of BRAC BANK, its agents or servants and the Supplier shall indemnified and keep BRAC BANK indemnified against all such damages and compensation (save and except as aforesaid) and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. The Supplier shall insure against such liability with an insurer registered in accordance with the laws of Bangladesh.
5. **TERMINATION OF THE AGREEMENT**
6. BRAC BANK may terminate the Agreement, at any time, with immediate effect, subject to serving a written notice to the Supplier, in case of occurance of events specified below:
   * 1. Upon the Supplier’s failure to perform its obligations as detailed under this Agreement in a timely, diligent, or satisfactory manner, in BRAC BANK’s reasonable opinion; or
     2. In the event the Supplier becomes bankrupt or insolvent, or order for appointment of receiver has been made against it or compounds its creditors, or carries on business under a receiver, trustee, or manager for the benefit of its creditors or goes into liquidation, or makes an assignment for the benefit of its creditors or becomes subject to any reorganization or bankruptcy proceeding; or
     3. For any breach of terms/conditions/warranties by the Supplier as detailed under this Agreement;
     4. For a Force Majeure event if it is preventing the Supplier from fulfilling its obligations
7. This Agreement is not terminable by the Supplier before expiry of the Agreement period unless there is a material breach on the part of BRAC BANK in complying any of the terms of this Agreement. If the Supplier is of the view that BRAC BANK has committed a material breach of this Agreement, the Supplier shall provide BRAC BANK with a written notice of such alleged material breach and shall provide BRAC BANK with 30 (thirty) Days’ time period to resolve or remedy such material breach. If BRAC BANK fails to resolve or mitigate the issue within the 30 (thirty) Days’ time, the Supplier shall have the right to terminate this Agreement by providing 30 (thirty) day written notification to BRAC BANK.
8. Notwithstanding the above, BRAC BANK may terminate this Agreement for any reason whatsoever, at any time by providing 30 (thirty) Days prior written notice to the Supplier without showing any cause.
9. **CONSEQUENCES OF TERMINATION OR EXPIRY OF AGREEMENT PERIOD**

Where this Agreement is terminated pursuant to the Clause 13, upon termination or expiry of Agreement Period: -

1. all documents containing Confidential Information and copies shall be returned to the respective Parties as soon as practicable; and
2. neither Party shall in any way exhibit any links or display any information that would lead any person to believe that BRAC BANK and the Supplier are linked or related in any manner.
3. The termination of this Agreement shall not prejudice the rights of BRAC BANK to sue for damages or to obtain any other relief in respect of any antecedent breach of the terms of this Agreement prior to such termination.
4. Upon termination of this Agreement, no Party shall be relieved from any rights or obligations already accrued prior to the date of such termination, nor from any liability for a breach of this Agreement occurring prior to the date of such termination, and for any confidentiality or IPR breach occured post termination of this agreement.
5. The party in default shall hold the terminating party harmless in respect of all costs, loss and damage suffered by the terminating Party on account of such termination.
6. **NOTICE**
   * 1. All notices, requests or communications between the Parties under this Agreement shall be in the English language by letter signed by an authorized representative of the sending Party, or by email or fax immediately confirmed in writing. All notices shall be deeming as validity served if mailed in the form of pre-paid registered letter, return receipt requested, to the following addresses;

**For the Supplier:**

Name:Name of the Supplier’s Company

Designation

Address:

Email :

Or such other address the Supplier shall notify to BRAC BANK pursuant hereto

**For BRAC BANK:**

Name:

Designation

BRAC Bank PLC.

Anik Tower, 220/B,, Tejgaon-Gulshan

Link Road, Tejgaon I/A, Dhaka-1208

Email :

* + 1. Either Party shall inform by written notice to the other Party of any change of address or recipient, to whom it desires to be used for service of notice following the same procedure as described hereinabove.

1. **FORCE MAJEURE**
2. If the performance of either Party's obligations under the Agreement is materially and adversely affected as a result of riots, wars, declared or undeclared, insurrections, rebellions, terrorism, or civil commotion; or fires, floods, storms, or other acts of God (except as set forth in Article 15.ii) or because of any other cause or event reasonably beyond the control of such Party (such events collectively referred to herein as "*Force Majeure*", then, upon the occurrence of an event of *Force Majeure*, such Party shall be excused from performing its obligations hereunder during the existence of such *Force Majeure* and for such period of time as such event of *Force Majeure* continues, however the Party so as contracted shall use its best efforts to remove the cause or to reasonably mitigate with the situation of such non-performance, and the Party shall resume performance hereunder with the utmost sincerity whenever cause of nonperformance or is removed or does not exist anymore.
3. Notwithstanding the foregoing, the following events shall not constitute *Force Majeure* under the Agreement:
   * 1. Late performance of the Work for any reason related to a shortage of equipment, supervisors or labor, inefficiencies, or similar such occurrences;
     2. Seasonal rains in Bangladesh;
     3. Labor disturbances, labor shortages, or work stoppages.
     4. “Hartals”(i.e. political strikes), “Oborodhs” (i.e. blockades) and any other political activities of a similar nature.
4. Any Party relying on *Force Majeure* for suspending performance hereunder shall give to the other Party immediate notice thereof and, as soon thereafter as possible, shall give formal written notice specifying in detail the event of *Force Majeure* relied upon and the effective date of suspension.
5. Upon the occurrence of any circumstances of *Force Majeure*, Supplier shall endeavor to continue to perform its obligations under the Agreement so far as reasonably practicable. Supplier shall notify BRAC BANK's Representative of the steps it proposes to take, including any mitigation measures and reasonable alternative means for remedy and/or performance which is not prevented by *Force Majeure.*
6. If such condition of *Force Majeure* continues for a period of fifteen (15) days, or more, BRAC BANK may, at its option, terminate the Agreement without any further obligations or liabilities hereunder, except payment for Work already provided to Supplier under the Agreement.
7. **GOVERNING LAW**

This Agreement shall be governed, construed, interpreted, implemented and performed in accordance with the laws of Bangladesh.

1. **SETTLEMENT OF DISPUTE**

If any dispute or claim arises out of or in connection with this Agreement, including breach, interpretation, termination or invalidity hereof, the Parties shall first try to resolve the issue amicably by mutual understanding upon receipt of written notice of such dispute or claim by the affected Party to the other Party requesting for an amicable settlement. If there is no amicable settlement within a period of 15 (fifteen) days of receipt of written notice by the affected Party and the Parties did not agree in writing to extend the time for the settlement, the issue shall be finally resolved by arbitration in accordance with the Arbitration Act, 2001 prevailing in Bangladesh. For the purpose of such arbitration, there shall be 1 (One) arbitrator, jointly appointed by the Parties within 15 (fifteen) days of the arbitration notice, failing which, within the next 15 (fifteen) days, each of the Parties shall appoint 1 (One) arbitrator each and the 2 (Two) arbitrators so appointed shall then, jointly appoint a third (3rd) arbitrator, who shall serve as the presiding arbitrator. All arbitration proceedings shall be conducted in the English language and the place of arbitration shall be Dhaka, Bangladesh. The decision of the Tribunal shall be regarded as final and binding on both the Parties to this Agreement. Each Party shall bear its own costs, charges and fees of such arbitration.

1. **CONFIDENTIALITY**
2. Each Party shall keep confidential (a) the terms of this Agreement; and (b) any and all confidential information that it may acquire in relation to the business or affairs of the other Party. Neither Party shall use the other Party’s Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party shall ensure that its officers, employees, sub-contractors etc., complies with the provisions of this clause. No Party hereto shall disclose confidential information of the other, except for as provided in clause 19(v) herein below, to any third party. The Parties may however, allow access to confidential information to their own employees on a need to know basis., for internal use and solely for the purpose of the contractual obligations only
3. All Confidential Information of either Party shall be considered to be the trade secrets of either Party and they shall be entitled to all protections given by applicable law.
4. This Agreement and related contents are confidential and either Party shall not disclose the contents either in full or in part to any third party either in hard or soft format without the prior written approval from the other Party.
5. The Parties shall not use or disclose to any person, firm, corporation or other business entity any Confidential Information, and shall not in any other way publicly or privately disseminate any Confidential Information pertaining to the Parties, and shall not help anyone else to do any of these mentioned above.
6. Confidential information means for the purpose of this Agreement, any and all information which may be technical, commercial or of any other kind whether documented or not, furnished by either Party to the other, with the exception of
7. information, which the Parties expressly have agreed not to be confidential;
8. information, which is publicly known or which will be brought to the public knowledge without any fault made by the Party receiving the information;
9. information, shown to be known to a Party before receipt thereof from the other Party; and
10. information, received from a third party or which will be received from a third party without restraints as to the use thereof.

vi.. The provisions of this clause shall survive even after the termination of this Agreement.

1. **INDEMNITY**
2. Nothing in this Agreement excludes or limits the liability of either Party in respect of:
3. dishonesty, or the tort of deceit or willful neglect by either Party and/or its employees, agents or contractors;
4. fraudulent misrepresentation;
5. liability which may not otherwise be limited or excluded under applicable law.
6. any breach or non-performance of the Agreement due to any willful acts, omissions, defaults and gross negligence/incompetence.
7. If BRAC BANK suffers any loss, damage, fine, penalties, costs, expenses and charges etc., due to non-conformity by the Supplier to any applicable laws, regulations, guidelines, etc., while providing the Services, the Supplier shall indemnify BRAC BANK in full (including any legal costs) in the event that any action(s), any claims, demands or legal proceedings is brought against BRAC BANK.
8. The Supplier hereby agree to indemnify and shall keep BRAC BANK indemnified in respect of its employees, officers and servants from and against all suits, actions, demands, damages, losses, liabilities (whether criminal or civil), expenses and cost whatsoever arising under any laws of Bangladesh which results from any breach of this Agreement by the Supplier, including, any negligent act or default committed by the Supplier or its agents, employees, licensees or Users, the Supplier will be solely responsible for that breach.
9. The Supplier shall fully indemnify and hold harmless BRAC BANK against all losses, damages, costs and expenses sustained or incurred by BRAC BANK as a result of, arising from, in connection with or based on allegations of, any of the following:
10. any damage to property (including third party property) cause by an act or omission of the Supplier and/ or its personnel in the course of providing the Service or in connection with this Agreement;
11. any claims, actions, proceedings or demand arising from a negligent act or omission, misconduct and/ or misbehavior, violence or any other unauthorized activities of the Supplier, its employees and/ or its personnel in connection with this Agreement;
12. **ASSIGNMENT AND TRANSFER OF RIGHTS & OBLIGATIONS**
13. The Supplier shall not assign any of its rights, obligations, interests in whole or part to any other Party without prior written consent of BRAC BANK, which BRAC BANK may provide at its sole discretion. In all cases, the Supplier will remain liable for the acts of third party if the Supplier engages any third party to conclude the mentioned work/services.
14. Notwithstanding anything stated in this Agreement, the Parties agree that BRAC BANK shall have the right to assign all of BRAC BANK’s rights, liabilities and obligations and any payment receivable by BRAC BANK as provided under this Agreement, to any of BRAC BANK’s subsidiaries, affiliates, etc., upon providing the Supplier with 7 (Seven) Days’ written notification. The Parties further agree that any such assignment shall not require any amendment of this Agreement and/or Purchase Order.
15. An assignment of this Agreement requested by either Party shall in no case entail increased costs to the other Party to fulfill its obligations under this Agreement. The assigning Party shall reimburse the other Party any documented cost suffered by the other Party due to the assignment.
16. **RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall constitute or be deemed to constitute a joint-venture, partnership between the Parties or the appointment of one Party as agent to the other Party or employer-employee relationship Accordingly, except as expressly authorized under this Agreement neither party has authority to pledge the credit of or make any representation or give any authority to contract on behalf of another party.

1. **TIME IS OF THE ESSENCE**

Time wherever mentioned shall be of the essence of this Agreement.

1. **COSTS**

Each Party shall bear its own costs for, and incidental to, the execution of this Agreement including legal costs.

1. **SURVIVAL OF AGREEMENT**
   * + 1. Subject to any provision to the contrary, this Agreement shall endure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers.
       2. The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration or early termination of the Agreement shall remain in full force and effect following the expiration or early termination of the Agreement.
       3. The obligations of the Supplier under Clause **[insert clause number (warranty, damages, indemnity, confidentiality, IPR, Dispute Resolution, Audit/Inspection clause) after final numbering]** of this Agreement shall survive the termination of this Agreement.
2. **AUDIT**
3. **Maintaining** **Records**
4. Each Party must keep accurate and complete records within necessary and related scope along with supporting documentation, both in hard copy and soft copy to:

#### demonstrate that it is in compliance with this Agreement; and

#### enable the other party to verify the accuracy of the information contained in Reports provided.

1. Subject to any applicable Laws, each Party must preserve the records and supporting documentation referred to preceding clauses in this Agreement for a period of 06 (six) years from the date of transaction.
2. **Audit Inspection**
3. Upon BRAC BANK’s written request, Supplier shall allow BRAC BANK (or its nominee) to inspect and audit the records and supporting documentation maintaining necessary confidentiality and guidelines referred in this Agreement for the purpose of verifying whether that party is complying with this Agreement or is otherwise complying with all applicable Laws.
4. BRAC BANK’s rights shall continue for the entire period of the Agreement. The Supplier shall preserve all documents for the same period. BRAC BANK’s Internal Audit or its authorized representatives shall have unrestricted access at all reasonable times to all records, documents, systems and the like (whether stored in writing or in any other way) of Supplier which were issued or made in connection with the Agreement.
5. BRAC BANK can ask to Ramp up involved in providing Service, or Ramp down staff involved in providing Service by giving 01 (one) month notice to the Supplier. And the Supplier undertakes to oblige to any such request made by BRAC BANK.
6. Audited Party must, at its own cost, provide the Auditing Party (or its nominee) all reasonable assistance requested by a party (or its nominee) in connection an inspection or audit under including but not limited to resources, equipment and soft and hard data.
7. **SEVERABILITY**

If any part of this Agreement is determined to be illegal, invalid, frustrated or unenforceable, for any reason, then, insofar as is practical and feasible, the remaining portions of the Agreement shall be deemed to be in full force and effect as if such invalid portions were not contained herein.

1. **AMENDMENT**

This Agreement may be amended or modified at any time if mutually agreed by the Parties in writing and signed by duly authorized representatives of the Parties and such amendments or modifications shall become integral part of this Agreement.

1. **WAIVER**

Any delay, neglect or forbearance on the part of a Party in enforcing the Agreement against the Supplier shall not be deemed to be a waiver and shall not prejudice the right of such Party to enforce the Agreement.

1. **LANGUAGE**

This Agreement has been executed in English language, which shall be binding and controlling language for all matters relating to the meaning or interpretation of this Agreement. All correspondence concerning the content of this Agreement shall be in English language.

1. **NON-EXCLUSIVITY**

The Supplier shall perform its obligations under this Agreement on a non-exclusive basis. BRAC BANK may enter into similar agreements with any other party at its sole discretion.

1. **ENTIRE AGREEMENT**

This Agreement including the Annexures attached herewith embodies the entire understanding between the Parties and there are no promises, terms, conditions or obligation, oral or written expressed or implied orally or in writing other than those contained herein. The Agreement can be amended only by a subsequent agreement in writing signed by the Parties.

IN WITNESSES WHEREOF THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED AS OF THE DAY AND THE YEAR FIRST ABOVE WRITTEN.

|  |  |
| --- | --- |
| **Signed for and On behalf of**  **BRAC Bank PLC** | **Signed for and On behalf of**  **Name of the Supplier** |
| Signature: | Signature: |
| Name: | Name: |
| Title: | Title: |
|  |  |
| Witness 01 | Witness 01 |
| Signature: | Signature: |
| Name: | Name: |
| Title: | Title: |
|  |  |
| Witness 02 | Witness 02 |
| Signature: | Signature: |
| Name: | Name: |
| Title: | Title: |

**ANNEXURE 1**

**Technical Specification** **and Scope**

**ANNEXURE 2**

**SERVICE LEVEL AGREEMENT**

**ANNEXURE 3**

**PRICE SCHEDULE & PAYMENT TERMS**