

**AGREEMENT FORM FOR APPROVED VENDOR
FOR NIT NO. HST/1P-442/95/2014/029 dated 18-11-2015**

ARTICLES of Agreement made on this ____day of 2016 between the Governor of the State of West Bengal (hereinafter referred to as the 'Governor' which expression shall unless excluded by or repugnant to context be deemed to include the successor in office and assigns) represented by the Deputy Director of Health Services (Equipment & Stores) hereinafter called the DDHS(E&S) having its office(s) at 141, A J C Bose Road, Kolkata 700 014 ON ONE PART,

AND

M/S , having its office at , Carrying on business at..... as
Manufacturer/Importer/Distributor

(Hereinafter referred to as the 'VENDOR (S) which terms shall unless excluded or repugnant to the context be deemed to include the Partners and Principals of the said firm and their respective heirs, executors, administrators representative and assigns/ and assigns) on the OTHER PART.

1. WHEREAS, the Dy. Director of Health Services (E&S), having indicated intention of preparing rate schedule for procurement of items by the health facilities across the State for the year 2015-17 with provision for extension there of upto a period of 6(months) invited e tender vide NIT No. HST/1P-442/95/2014/029 dated 18-11-2015, read with corrigendum notice, vide, Memo no HST/1P-442/95/2014/029/896 dated 30-11-15 in the NIC portal on specified terms and conditions and the Vendor has been selected as approved vendor and agreed to supply such items on such terms and conditions, the present agreement is drawn up and executed, incorporating inter-alia the said terms and conditions in the Schedule to the Agreement.
2. In this Agreement whenever rights, privileges, discretions and powers have been said to be exercisable by the "Government of West Bengal", such rights, privileges, discretions and powers will be actually exercisable by the Dy Director of Health Services (E&S), the heads of the direct demanding units or the Department of Health & Family Welfare, Government of West Bengal upto the level of Sub Divisional hospital, unless otherwise specified.
3. The Vendor agrees to, according to and in compliance with the orders as may be placed by the Deputy Director of Health Services (E&S), West Bengal /Medical College & Hospitals/ District Reserved Stores/Speciality Hospital and other Hospital Authority upto the level of the Sub Divisional Hospital under Deptt. of Health & FW, Government of West Bengal (also referred to as the heads of direct demanding units), supply to the said officer or such officers as may be authorized by him, to receive the same items at the rates and within the time limit fixed therefore and in accordance with the order or orders for the same.
4. The Vendor agrees that the accepted rates as provided in the accompanying schedule shall hold good throughout the tender period upto 31.03.2017 as well as for such period for which the tender may be extended unless otherwise revised by Govt. of West Bengal.
5. The Vendor agrees to deliver all supplies to the stores/Godown at 141, Acharya J.C. Bose Road and 541, Rabindra Sarani, Kolkata of the Central Medical Stores or at such other place/s as the DDHS (E&S), W.B./heads of other direct demanding units under Department of Health, Govt. of West Bengal may direct upto the level of Sub Divisional Hospital, by the vendors by own arrangements made by the Vendors and they shall not be entitled to charge any cost for the

transport of the said goods to the said premises for such delivery thereof. All temperature sensitive materials will be transported in cold chain.

6. The Vendor agrees not to assign, transfer or sublet the rights and benefits under this contract either in part or in whole to any other party.
7. During the subsistence of this contract, the Vendors agrees to maintain an office/ liaison office or a place of business in Kolkata where all notices and other papers required to be served or sent to the Vendors shall be served or sent. The Vendors also agrees to provide a email address and a fax number for contact by the DDHS (E&S) & procuring authorities under H&FW Dept.
8. The Vendor agrees that all notices intended to be served on him shall be deemed to have been duly served if sent under Certificate of Posting/ Registered Post/ Speed Post/ by email/ by fax at the addresses/ email id/ fax No. provided by the Vendor and or, the copies are displayed on the Notice Board of the Central Medical Stores/ Web site of the Department (www.wbhealth.gov.in) for at least 3 working days.
9. The Vendor agrees to import/manufacture and supply all surgical items as per the guidelines under BIS/IS/CE/US FDA norms, as applicable. For Pacemaker, the vendor agrees to manufacturer/import and supply alongwith the quality certificate of CE & US FDA. The Vendor also agrees to ensure that all the supplied materials are reached to the Ordering Officer in a physical condition without any deterioration in its quality and quantity within 45(forty five) days from the date of issue of the order on line which is accessible on line through vendors portal under Store Management Information System (SMIS).
10. The Vendor agrees not to make any representation for deviation from their quoted rates and /or terms and conditions which may cause any delay in procuring the stores by the DDHS (E&S) or the direct procuring units as it will be counted as bad performance and will invoke the Penal provisions of this agreement except in conditions of force major wherein in conditions like strikes, war like situation, severe natural calamities, major fires, acts of God the Vendor is unable to carry out his commitment of meeting the terms of this contract.
11. Orders for the supply of the approved products will be placed with the successful tenderers after the execution of the agreements as and when required by the procuring authorities across the State upto the Sub Divisional hospital level depending upon their tentative annual consumption which may vary as per exigency of the situation. The successful vendor will have to supply within the specified time schedule that had been assured as prescribed.
12. All supplies will have to be completed by door delivery within maximum 45(forty five) days from the date of order in the SMIS System from the procuring units. NO RELAXATION ON ANY ACCOUNT WILL BE ALLOWED FOR CONDONING DELAYED SUPPLIES EXCEPT IN FORCE MAJEURE CLAUSE. The selected vendors would have access to the Vendor Portal from which, the procurement order, Goods Received Notes (GRN) and Bill Status can be seen online & downloaded. The procurement order generated out of Vendor Portal will have the same meaning and strength that of physical order.
13. The permissible time period between the date of manufacture and the date of supply of the items should not be more than 1/6 the of the whole life period where it is mentioned except for the items for which specific G.O exists. No delivery will be taken of any items if the date of manufacture and the date of expiry (where applicable) are not written on each and every unit supplied.

14. LABELLING:

The distributor, on behalf of the selected vendor agrees that all supplies of articles should invariably contain the following information on its label and the carton. One information should not be overlapped by any other information needed to be furnished. The label should contain :

- a. Name of the item as approved
- b. CMS Cat. No.
- c. Manufacturing date/Import date for the imported items.
- d. Expiry Date. (where applicable)
- e. Name & address of Registered Office of Manufacturers and place of manufacture.
- f. Manufacturing License Number. (where applicable for Manufactures)
- g. Batch Number (where applicable)
- h. Month and Year of supply.
- i. The label & Carton must invariably marked **“W B. GOVT SUPPLY : NOT FOR SALE”**.
- j. All Surgical items quoted/supplied by the tenderer must conform to IS /BIS /CE/USFDA. Pacemaker must conform to CE & US FDA norms. In case of Drugs items quoted /supplied by tenderer MUST CONFORM TO IP, BP, or USP norms and N.F.I. –III specification as noted against the item(s) in catalogue as applicable.
- k. The **MRP and Trade Name will not be allowed to be printed in any pack**. This will lead to cancellation of candidature straightaway. However, for excisable products, insertion of writing of Govt MRP is allowed as per provision laid down in the order of the Central Excise dept. However, for imported item(s), MRP and Trade name may be allowed in addition to Generic name.

15. MANUFACTURING AND PACKAGING:

The vendors agrees to :

- a) The Vendor agrees to supply the approved products, manufactured/imported under the same Manufacturing/Import License, as provided in the technical documents submitted online in respect of the aforesaid tender. Deviation from that will lead to execution of penal action against the Vendors.
- b) Packing of drug items should be done as per provision laid down in Drug & Cosmetic Act, 1940, and Rules framed thereunder
 - i) The primary packing should strictly be made as per accounting unit prescribed.
 - ii) The secondary packing should also be as per pack size prescribed. The idea of prescribing the norms of secondary packing is to issue the item to the periphery units in a sealed condition. However, the appropriate secondary packing can be determined in consultation with the selected vendor.
 - iii) Sterile items are to be transported in such packaging so that there is no damage to the primary packaging during the transportation process.
 - iv) All glass bottles should be new neutral glass.
 - v) All plastic containers should be made of virgin grade plastics.
 - vi) All plastic Jars above 450 Gms / ml should carry an inner plastic lid.
 - vii) Packing of all supplied materials should be done with standard packing materials so as to ensure the material supplied remains undamaged during transportation and 4 storage. This specially applies to items which are required to be sterile at the time of usage.

viii) Corrugated package box size should be limited to : (12" H x 24"L x 24"W). No corrugated box with contents should generally weigh more than 15 kgs (7 kgs in case of packages containing glassware and fragile materials). Items weighing more shall be packed so that safety of the material and handlers remains ensured. The inner lining shall be not less than 120 gsm and outer lining of the carton shall not be less than 150 gsm. Thenon glass ware containing cartons shall be of at least 5 ply with bursting strength not less than 9 kg/sqcm Glass ware containing cartons shall be of at least 7 ply with bursting strength not less than 12 kg/sqcm.No box should contain mixed products or mixed batches of the same product. The product label on the cartoon should be large at least 15cms x 10cms dimension. It should carry the correct technical name, date of manufacturing, date of expiry, quantity packed, storage & handling requirements, Hospital Supply - Not For Sale logo and net weight of the box

16. The vendor agrees to implement Bar Coding on the Secondary pack & tertiary pack of the item or items. The secondary & tertiary pack should contain 2D Data-Matrix Bar Code and it should not exceed size of 18 mil & 50 character having the following items in the given format below-

Vendor Code* CMS Cat No* Batch Number* Manufacturing Date* Expiry Date

- a. Vendor Code (means the Code No., mentioned against the concerned Bidder in the approval Notice)
- b. CMS Cat No (means the Item No, mentioned against the concerned item in the approval Notice)
- c. Batch Number (means the Batch manufacturing No. of the item, having maximum of 15 character)
- d. Manufacturing Date (to be in the YYYYMM format)
- e. Expiry Date (to be in the YYYYMM format) (where applicable)

NOTE: All above 5 (five) items to be separated by * mark without having no space in between the items.

17. Batch Testing :

- i. Dy. Director of Health Services (E&S), West Bengal and the heads of the direct demanding units and decentralized stores will be at liberty to get the items supplied tested at appropriate laboratory to verify the quality of the product. Such testing will be in addition to tests that may be done by any authority exercising statutory powers of surgical items/medical device testing. The Tenderer shall be bound to replace the defective batch(s) as per test report of either the non-statutory lab or the statutory lab with maintaining all provisions of Pollution Control Board. **The cost of procurement of non-standard items will be deducted from the security deposit, Performance Bank Guarantee and/or from the pending bills of that supplier. Moreover, action will be taken under the relevant provision of Drugs and Cosmetics Act, 1940 and Rules made there under. In no circumstances request for replacement of non-standard medical devices or equipment by the suppliers will be entertained.**
- ii. **A sum@ 2% of bills exclusive of Govt. tax & duties will be deducted from the bills of the supplies of items included in this tender by Central Medical Store/ all District Reserved**

Stores / other direct demanding units and deposited in the respective budget head to meet cost of handling and testing charges.

- iii. Each installment of supply of items for which BIS/ IS/ISO or other standard has been prescribed must be accompanied the certificate.

18. WITH DRAWAL /CANCELLATION & PURCHASE POLICY OF TENDERING AUTHORITY:

- i. The tendering authority reserves the right to withdraw any item from the tender at any stage. The selection of such item, if already made in favour of any Tenderer, shall be treated as cancelled.
- ii. The tendering authority reserves the right to reject or accept any tender or part thereof at any stage or to split any tender without assigning any reason. Withdrawal of tender or any revision after submission of tender by the Tenderer will not be allowed.
- iii. The tendering authority reserves the right to accept or reject any tender, in part or in full, without assigning any reason.
- iv. Purchase will, however be made following the existing purchase policy of the Govt of West Bengal and its amendment(s) made from time to time. The purchase policy of the State Government as provided in the West Bengal Financial Rules, the policy of price preference in particular incorporated under Notification No. 10500-F dated 19.11.04 should be observed in considering the tenders.
- v. The tendering authority reserves the right to purchase any item of the Catalogue at the approved rate from any outsider (Non- Tenderer) during the tender period in case of emergency, if the tenderer fails to supply such items on short notice.
- vi. The tendering authority reserves the right to procure any item, of the tender directly from a state/ Central Govt. undertaking even if a tender for the same has been offered/ accepted.

19. NO- CONVICTION CERTIFICATE:

The vendor has submitted 'No conviction certificate' submitted from the concerned Drug Controlling Authority of the State where the manufacturer is registered for last three years(in case of drug surgical item/items) He has also to submit an affidavit in the prescribed proforma from Notary/ first class Judicial Magistrate/Executive Magistrate. The vendor agrees that he would inform any incident of blacklisting or debarment by any of the Govt/Semi Govt Statutory/Autonomus/Govt. aided and /or funded Institution during the tender period or extension thereof to the Central Medical Stores, in writing.

20. The vendor agrees to the PENALTY CLAUSES as follows:

- a. In case of supply of the sub-standard items found in the quality test as per quality assurance norms, the defective batch /batches determined by the appropriate authority will not be returned to the vendor for replacement but will be destroyed and the payment of the defective batches will not be made to the vendor or if paid in the meantime, is to be deducted from the pending bills of the tenderer or from the security deposit or from performance bank guarantee.
- b. In case of supply of defective item found in respect of packaging or labeling, the tenderer will be asked to replace the same.

- c. In addition to rejection of the supply, the Dy Director of Health Services (E&S) W.B and the heads of direct demanding units will have the right to cancel the supply order wholly or in part, to forfeit security deposit and to recover the loss, if any, of the Govt. by making deductions from any pending claim of the supplier/ Security Deposit or Performance Bank Guarantee, as may be deemed fit. Such Penalty for supply of a drug items falling within the meaning of adulterated/ spurious/ misbranded under Section 17 (A), 17 (B) and 17 (C) of the Drugs and Cosmetic Act will be in addition to action which may be taken by police, the Drug Control Authority or by tendering authority of the State Govt or the Govt of India or by any individual under the law of the land.
- d. The vendor agrees to the debarment clause from participation in next tender processes of the Health & Family Welfare Department stands as follows:
The Tender Selection Committee reserves the right to declare a firm/ Company blacklisted for three 3(three) years due to the following reasons: If the vendor
- i. Withdraws from agreement after being selected as the Lowest Quoted Tenderer (L₁). In that case, Earnest Money will also be forfeited and the firm will be blacklisted for that particular items for a period of three years.
 - ii. Failure in supply within stipulated period for 5(five) occasions for a particular item or items throughout the State during the tenure of the tender period or its extensions. There will be system generated blockage of the vendor for the entire State for failure in supply for five occasions for a particular item throughout the State.
 - iii. In case of supply of spurious drugs (as applicable)/, along with proceedings under the provisions Drugs and Cosmetic Act, 1940 and Rules framed there under.
 - iv. For supply of Non–standard items as per quality test within tender period as determined by the testing of the item as per discretion of Tender Selection Committee.
 - v. In consequence of submission of false or fabricated documents by any firm/ company for participating in the tender, if proved later on.
 - vi. Submission of tender for the product /products for which the concerned company /its Principals/ or sister concern (where its Principals or Promoter have more than 10% shares) has been blacklisted either by the State Government/ other State / Central Government Organization for any reason whatsoever.
 - vii. Submission of tender during the period of blacklisting of Concern/Company/its Principals/ or sister concern (where its Principals or Promoters have more than 10% shares) either by Tender Inviting Authority or by any State Government or by other State/Central Government The H&FW Department will have the right to inspect the manufacturing units of the tenderers before accepting the rates quoted by them or at any point of time during continuance of the tender and the Department will also have the right to reject tender or terminate/ cancel the purchase order(s) and/ or not to re- order based on the adverse reports brought during those inspections.
 - viii. Financial Penalties for deficiencies in services/supplies during the period of the tender and its subsequent extensions:

21. **THE VENDOR AGREES TO ACCEPT THE PENALTY FOR FORMATION OF CARTEL OR FURNISHING OF FRAUDULENT/ MISLEADING DOCUMENTS:**

A. If during the tender process or at any state during the validity of the tender period, it is found that a Tenderer(s) has formed a cartel in what so ever form or name to fix up the rates or suppliers to the detriment of the fairness of the tender process, penal measures shall be initiated. Similar penal measures shall also be initiated against those tenderers who have submitted false/ misleading/ fraudulent documents or made incorrect declarations

B. The penal measure(s) will be as follows :-

I. Forfeiture of Earnest Money

II. Forfeiture of Performance Bank Guarantee if enlisted as a supplier.

III. Cancellation from the approved list of suppliers and debarment from further supply orders.

iv. Black listing from all Deptt. Tenders (Called by the CMS or others) of the tenderer, the Principals of the firm(s) for a period of 3 (three) years as a whole or for any item/items.

C. Penalty Clauses:

i. Black listing from all Departmental tenders (called by the CMS or others) of the Tenderer, the Principals of the firm(s) and the In case of supply of the sub-standard items found in the quality test as per quality assurance norms, the defective batch /batches determined by the appropriate authority will be returned to the tenderers for replacement. The payment of the defective batches will not be made to the supplier till replacement or if paid in the meantime, is to be deducted from the pending bills of the tenderer or from performance bank guarantee.

ii. In case of supply of defective item found in respect of packaging or labelling, tenderer will also be asked to replace the same. In addition to rejection of the supply, the Dy Director of Health Services (E&S) W.B and the heads of direct demanding units will have the right to cancel the supply order wholly or in part, to forfeit security deposit and to recover the loss, if any, of the Govt. by making deductions from any pending claim of the supplier/ Security Deposit or Performance Bank Guarantee, as may be deemed fit. Such Penalty for supply of surgical items falling within the meaning of adulterated/ spurious/ misbranded under Section 17 (A), 17 (B) and 17 (C) of the Drugs and Cosmetic Act will be in addition to action which may be taken by police, Drugs Control Authority or by tendering authority of the State Govt or the Govt of India or by any appropriate authority /institute and /or individual under the law of the land.

D. Debarment from participation in next tender processes of the Health & Family Welfare Department: The tender selection committee reserves the right to declare a firm/ Company blacklisted for three (03) years due to the following reasons:

If the supplier

i) Withdraws from agreement after achieving the "Lowest Quoted Tenderer" in any of the item or items.

ii) Fails to supply within stipulated period for five occasions during the tenure of the tender period or its extensions. There will be system generated blockage for the entire State for failure in supply for five occasions for a particular item.

- iii.) For supply of Non – standard items as per quality test within tender period as determined by the testing of the item as per discretion of Tender Selection Committee in respect of particulars items only. In consequence of submission of false or fabricated documents by any firm/ company for participating in the tender, if proved later on.
- iv) Quotes absurdly high or low rate in the opinion of Tender selection Committee, with the intention to vitiate the tender process. The assessment of too low or too high will be made by a team of Health officials in the context of market norms or any other norms under Govt.
- v) Fails to supply as per specification submitted.
- vi) Supply of items with short expiry dates in violation of Clause 15 on more than three occasions.
- vii) Submits tender for the product /products for which the concerned company / its Principals/ or sister concern (where its Principals or Promoters have more than 10% shares) has been blacklisted either by the state Government/ other State / Central Government Organization for any reason whatsoever.
- viii). Submits tender during the period of blacklisting of Concerned Company / its Principals/ or sister concern (where its Principals or Promoters have more than 10% shares) made either by Tender Inviting Authority or by any State Government or by other State/Central Government
- viii)(a) The H&FW Department will have the right to inspect and /or cause an inspection at the manufacturing units of the tenderers before accepting the rates quoted by them or at any point of time during continuance of the tender. The Department will also have the right to reject tender or terminate/ cancel the purchase order(s) and/ or not to re- order based on the adverse reports so submitted / brought during those inspections.

E. Financial Penalties for deficiencies in services/supplies during the period of the tender and its subsequent extensions:

- i) The vendor should supply full quantity of any material of any order in one . After supplying one consignment the order for the material will be closed in SMIS automatically. In respect of all consignment, stipulated period will be 45 (forty five) days from the date of order generated in SMIS . The order generated out of SMIS will carry the same status that of signed order
- ii) At least 50 % of the total order quantity of any material may be supplied in consignment with penalty as follows :(After supplying one consignment the order will be closed in SMIS automatically.)
- iii). If the vendor supply full quantity of any material of any order in one consignment within stipulated period i.e. 45 days then there will be no penalty.
- iv) If the vendor supplies partial quantity of any material of any order in one consignment within stipulated period i.e. 45 days, then 2% of the basic cost of the material non-supplied **will be deducted from the existing/ pending bill of the supplier.**

F. In case of supply is made after 45 days to 60 days :

- I. If the vendor supply full quantity of any material of any order in one consignment after stipulated period of placing order (i.e. 45 days) then 0.5 % of the basic cost of the materials **will be deducted from the existing /pending bills of the supplier per day's delay up to 60 days .**
- II. If supply partial quantity of any material of any order in one consignment after stipulated period of placing order i.e.45 days then 0.5 % of basic cost of the supplied material per day's delay upto 60 days and 2% of the total basic cost of the material non-supplied **will be deducted from the pending bills.**

- iii.) However, if the stipulated period ends on Saturday, Sunday or Govt holidays, supply should be made on the next working day and in that case, no penalty would be chargeable.
- iv.) The provision of penalty is system-generated and cannot be waived in any case.
- v.) There will be system-generated-blockage for failure in supply beyond 60 days for five occasions for a particular item & the firm quoting L2 will be selected without any reference to the L1.
- vi.) The Firm will be blacklisted after issuance of a show- cause-letter and after consideration of its reply, to be given by the firm within 10 clear days after receiving such show cause notice for such delay beyond 60 days in five occasions.
- vii.) For firms who fail to supply the full order on five occasions within the stipulated time within the tender period and its extensions- the whole Performance Bank Guarantee will be forfeited and the firm and its principals will be debarred from participation in the CMS, DoHFW or WBMSC tenders for the next three years.
- viii.) Supply of items with short expiry dates in violation of Clause 15 on more than two occasions- 5% of the cost of the items or Rs 50,000, whichever is higher will be deducted from the bills.
- ix.) The names of the defaulting suppliers will be put up in the Departmental website
- x.) Enhancement of rates of raw materials etc or the fact that the tender period has been extended will not be acceptable as a plea for not supplying the materials within the stipulated period as provided in the work order

22. APPEAL:

Appeal against the decision of the Dy. Director of Health Services (E&S), West Bengal and the head of the direct demanding units or system generated action to impose such a penalty will lie with Tender Selection Committee.

Review against the decision of the T.S.C. will lie with Health & F.W. Dept of the H&FW. The Special Secretary/Secretary/Principal Secretary will be the appellate authority within the Department of Health & Family Welfare, Government of West Bengal. Before imposing any penalty as per clauses, 19, 20, 21 & 23 in the NIT the concerned supplier may appeal to the authority citing the proper reasons for non- imposing the penalty as stated.

23. VALIDITY PERIOD OF AGREEMENT:

The contract period will be for a period up to 31st March 2017 which may be extended up to six months with prior approval of the Department of Health & Family Welfare, Government of West Bengal, if necessary.

24. PERFORMANCE BANK GUARANTEE:

- A. The vendor has agreed to furnish the 'Performance Bank Guarantee' @2% of assessed base rate of requirement for the item with minimum of Rs 10,000 per group of item and maximum of Rs 5.00 lakh for which the Tenderer has been selected as supplier.
- B. If out of State manufacturer proposes that order & payment are to be made in the name of an authorized distributor, the distributor then, should have to submit "Performance Bank Guarantee" @ 1% of assessed base rate of requirement with minimum of Rs. 10,000 per

group of item and maximum of Rs 3.00 lakh for the distributors in addition to clause A. above.

25. AMOUNT OF PERFORMANCE BANK GUARANTEE REFERRED TO :

Sn	Cat No	Name of the item	Approved Rate per Acc. Unit	Tentative annual requirement	Amount of Performance Bank guarantee	Name of the bank	Name of the branch with IFSC
1							
2							
3 etc							

NOTE: The validity of Performance Bank Guarantee will be upto 31.03.2018

B. RATE WITH TAX STRUCTURE OF THE ITEM, REFERRED TO

Sl. No.	Cat. No. Name of the item	Accounting Unit	Approved Rate per Acc. Unit	Percentage (%) of VAT	Percentage (%) of Excise Duty	Percentage (%) of CESS, if any
1						
2						
3 etc						

IN WITNESS THEREOF the parties to these presents have hereunto set and subscribed their respective hands and seals the _____ day/month and year first above written.

SIGNED AND DELIVERED BY THE :

Signed for and on behalf of the Vendor
by presence of.

1.

2.

Signed for and on behalf of the Governor
Of the State of West Bengal
by presence of.

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