

AGREEMENT FORM FOR AUTHORIZED DISTRIBUTOR FOR SUPPLY OF GENERAL DRUGS  
FOR THE YEAR 2014-15

ARTICLES of Agreement made on this \_\_\_\_\_ day of July, 2014 between the Governor 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 & 541, Rabindra Sarani, Kolkata 700 003 of the ONE PART,

AND

M/S \_\_\_\_\_, having its office at \_\_\_\_\_, Carrying on business as Authorized Distributor on behalf of the \_\_\_\_\_  
.....Manufacturer/direct Importer (hereinafter referred to as the 'DISTRIBUTOR (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) of the OTHER PART.

WHEREAS,

1. The Dy. Director of Health Services (E&S), having indicated intention of preparing rate schedule for procuring drugs through e-tender in the NIC portal vide No HST/1P-02-003/GD/2014-15/003 dated 20.01.2014 with corrigendum thereof on specified terms and conditions and the Distributor having 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), Director of Health Services, the heads of the direct demanding units or the Department of Health & Family Welfare, Government of West Bengal, unless otherwise specified.
3. The Distributor agrees to, according to and in compliance with the orders as may be placed by the DDHS (E&S), West Bengal /authority of other Health Units and Hospitals 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 drugs at the rates and within the time limit fixed therefore and in accordance with the order or orders for the same.
4. The Distributor agrees that the accepted rates as provided in the accompanying schedule, shall hold good unless otherwise revised by Govt. of West Bengal, throughout the tender period 2014-15 as well as for such period for which the tender may be extended.

5. The Distributor 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./Medical College & hospitals, Speciality hospitals, District Reserved Stores under the office of the Chief Medical Officer of Health, District Hospitals, State General Hospitals, Sub Divisional Hospitals and heads of other direct demanding units under Department of Health, Govt. of West Bengal may direct, by the Distributor by own arrangements made by the Distributor 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 Distributor agrees not to assign, transfer or sublet the rights and benefits under this contract either in part or in whole to any other party or parties.
7. During the subsistence of this contract, the Distributor agrees to maintain an office/ liaison office or a place of business in Kolkata in addition to the offices outside Kolkata, where all notices and other papers required to be served or sent to the Distributor shall be served or sent. The Distributor also agrees to provide email address and a fax number for contact by the DDHS (E&S) & procuring authorities under H&FW Dept.
8. The Distributor 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 Distributor and the copies are displayed on the Notice Board of the Central Medical Stores/ Web Site of the Department ([www.wbhealth.gov.in](http://www.wbhealth.gov.in)) for at least 3 working days.
9. The Distributor agrees to supply all Drugs on behalf of the approved manufacturer, as per the guidelines of the Drug Rules as well as the agreement with the parent Vendor.
10. The Distributor agrees not to make any representation for deviation from the quoted rates and /or terms and conditions which may cause any delay in procuring the stores by the D.D.H.S. (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 majeure* wherein in conditions like strikes, war like situation, severe natural calamities, major fires, Acts of God the Distributor 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 to the authorized distributor after the execution of the AGREEMENTS & submission of necessary PERFORMANCE BANK GUARANTEE by the Manufacturer & the Authorised Distributor and, such supply shall have to be made in full to be specified in the supply orders to be made in pursuance of the agreements by the authorized distributor. The Distributor agrees to supply within the specified time schedule i.e within 45(forty five ) days from the date of issue of the order. The selected authorized distributor would have access to the Distributor portal from which, the procurement order, Goods Received notes and Bill status can be seen on line.

12. The Distributor agrees to maintain supply as per guidelines of the terms condition mentioned in the original Tender in respect of MANUFACTURING AND PACKAGING ,LABELLING, DRUG TESTING.
13. WITHDRAWAL /CANCELLATION & PURCHASE POLICY OF TENDERING AUTHORITY:  
The Distributor accepts that :
  - a. 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.
  - b. 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.
  - c. 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.
14. The Distributor 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 Distributor for replacement but will be destroyed and the payment of the defective batches will not be made to the Distributor or if paid in the meantime, is to be deducted from the pending bills of the Distributor 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 Distributor 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 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.
15. The Distributor agrees that Tender Selection Committee reserves the right to take Financial Penalties for deficiencies in services/supplies during the period of the tender and its subsequent extensions as follows :
  - a. For delay in the supply of items ordered beyond the stipulated date. In respect of all consignment, specified period will be 45 (forty five) days from the date of order generated in the SMIS. The system generated order will have the same status that of signed order.
  - b. Part supply will not be accepted.
  - c. If the supplies are not made within the specified period of placing the order, 0.5% of the basic cost of the materials of that particular, will be

deducted from the existing / pending bills of the supplier per day's delay.

- d. For delays beyond 60 (sixty) days, the work order for the non-supplied portion will be considered as cancelled straightaway.
- e. However, if the stipulated period ends up in Saturday, Sunday or State Govt holidays, supply should be made on the next working day and in that case, no penalty would be chargeable for supply beyond 45(forty five) days upto the said date of delivery.
- f. The provision of penalty is system generated and cannot be waived except the force majeure clause.
- g. There will be system generated blockage of the Firm for the entire state for failure in supply beyond 60(sixty) days for five occasions for a particular item through out the state .
- h. For firms who fail to supply the full order on five occasions within the stipulated period within the tender period and its extensions- the Performance Bank Guarantee, deposited for the failed products will be forfeited
- i. 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.

16. Rate :

- i. The manufacturer/direct importer confirms that the rate or rates quoted for item or items in the BOQ is/are as per the list of the Catalogue as provided in Table I of the NIT.
- ii. The manufacturer/direct importer agrees the rate or rates quoted for item or items is as per the list of the Catalogue of the tender inclusive of all incidental charges including FREE DOOR DELIVERY to the Central Medical Stores, 141, Acharya Jagadish Chandra Bose Road, Kolkata – 700 014 or 243, Rabindra Sarani, Kolkata- 700 003 and other purchasing health Institutions under the Deptt of health & family Welfare, Govt of West Bengal, situated anywhere in the State. Sterile items are to be transported in such packaging so that there is no damage to the primary packaging during the transportation process.
- iii. The Manufacturer/Direct Importer confirms that the rates quoted in respect of item or items shall not exceed the controlled price and/or M.R.P (maximum retail price) fixed by GOI, wherever is applicable.
- iv. The Manufacturer/Direct Importer & Distributor agrees that the rates shall be valid throughout the period to be covered by the contract being executed along with any extensions as may be made by the competent authority from time to time.
- v. The Manufacturer/Direct Importer and Distributor confirms that the basic rate of drug per Accounting unit has been furnished inclusive of Entry Tax, Customs duty(if applicable), Transportation cost, Insurance, Freight, testing charges and other incidental charges but excluding

VAT/CST, Excise Duty & Cess etc which has been quoted separately in the template for Bill of Quantities(BOQ).

- vi. The Manufacturer/Direct Importer confirms that the percentage of Excise Duty, CESS etc, Percentage of VAT/CST has been mentioned in the appropriate column of the template for Bill of Quantities. Manufacturing capacity per month has also been mentioned in the appropriate column of the BOQ.
17. THE DISTRIBUTOR AGREES TO ACCEPT THE PENALTY FOR FORMATION OF CARTEL OR FURNISHING OF FRADULENT/ MISLEADING DOCUMENTS:  
If the Principal Firm is blocked &, or, cancelled for any item/ items due to any reasons , the respective Distributor will automatically be cancelled.
  18. 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. Deptt 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 21, 22 and 23 the concerned supplier may appeal to the authority citing the proper reasons for non- imposing the penalty as stated.
  19. AGREEMENT:  
On a tender being accepted, intimation of acceptance will be forwarded through departmental website by the Dy. Director of Health Services (E&S) W.B. After communication of the same, the Tenderer and the selected distributor (in the event of distributor to receive order and payment in his name) will have to execute agreement in the prescribed form with the Dy. Director of Health Services (E&S) W.B. In case any direct purchasing unit wishes to go for a separate agreement the head of the purchasing unit must get written permission to that effect from his controlling authority. This present document and the tender forms filled in by the Tenderer or copies thereof in so far as they are not inconsistent with these terms & Conditions will be incorporated as part of the agreement. Such agreement will be binding on the Tenderer and distributor.
  20. VALIDITY PERIOD OF AGREEMENT:  
The contract period will be for the period from 01.07.2014 to 31.03.2015 which may be extended up to six months with prior approval of the Department of Health & Family Welfare, Government of West Bengal, if necessary.
  21. PERFORMANCE BANKGUARANTEE:

i) 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 and maximum of Rs. 1.00 lakh per item for the distributors.

(ii) Accordingly, the Distributor has submitted item-wise Performance Bank Guarantee as follows :

Sl. No.	Name of the item	Catalogue no	Amount of performance bank guarantee	Bank branch	Memo no date

(iii) The Distributor gives his assent to the forfeiture of the 'Performance Bank Guarantee' as enumerated in clause 23 of the Terms & Conditions of the Tender.

(iv) The DDHS (E&S) gives his assent to release the 'Performance Bank Guarantee' of Distributor, after satisfactory completion of all the supply orders and not less than six months after the expiry of the period of the current contract and its extensions subject to the fulfillment of all the terms of the contract after making necessary penal deductions from the 'Performance Bank Guarantee', if any.

**22. INSPECTION:**

The competent authority may visit any Factory/Store at any day at any time in a regular basis for inspection.

**23. PAYMENT TERMS:**

Payment will be made through e payment system through ECS/RECS/RTGS after execution of due supply as ordered subject to :

1. Submission of Performance Bank Guarantee in terms of Clause 25 and subject to penalty clause in terms of Clauses 23 of the NIT.
2. Supply of the materials as per specification as provided in the tender documents and the catalogue,
3. Supply of the materials within the supplied period as specified in the work orders. The status of orders, Goods received note and payments will be available on-line for the Distributor in the Distributor portal in the Departmental website [www.wbhealth.gov.in](http://www.wbhealth.gov.in) : Distributor Portal.
4. On being selected, the successful Distributor will have to submit application stating the name of the payee, recipient, Bank account no with MICR code, IFSC of the payee/recipient for making e payment by the respective procuring authorities.

24. In the event of any question or dispute arising under this Agreement or the conditions of any special conditions or anything otherwise relating to this Agreement or any clause thereof, the decision of the Director of Health Services, West Bengal in consultation with the Health & Family Welfare Department, Govt. of West Bengal, will be considered final and binding on both the Parties.

This contract will be valid for the period from \_\_\_\_\_ to \_\_\_\_\_ subject to extensions and the option of cancellation as provided above .

THE SCHEDULE ABOVE REFERRED TO

( Schedule of rates and approximate quantities )

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 Distributor

by presence of.

1.

2.

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

by presence of.

1.

2.

Full Address, Contact No, E Mail ID of the Distributor/ authorized Distributor along with the Name of the Local Authorised Representative & Mobile No. are to be clearly mentioned in the Agreement Form.