

AGREEMENT FORM WITH THE DISTRIBUTOR

ARTICLES OF AGREEMENT MADE on this \_\_\_\_\_ day of May, 2013 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 And 541, Rabindra Sarani, Kolkata ..... of the ONE PART,

AND

M/S ....., having its office at ....., Carrying on business as Distributor duly authorized by the Manufacturer in writing.

(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, reagents & chemicals through e tender in the NIC portal vide its No *HST/4T-8-012/1617 Dated, Kolkata 21-01-2013* on specified terms and conditions and the selected Vendor(s) agreed to supply such items through authorized distributor 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. That the Distributor, on being duly authorized by the vendor i.e the manufacturer who has submitted the bid and declared L1 (hereinafter referred to as vendor) agrees to, according to and in compliance with the orders as may from time to time be placed by the DDHS (E&S), West Bengal/authority of other Health Units and Hospitals under Deptt. of Health, 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 Vendor 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 2013-14 as well as for such period for which the tender may be extended.
5. The Vendor agrees to deliver all supplies through the authorized Distributor 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, by the vendor by own arrangements made by the Vendor 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.
7. During the subsistence of this contract the Distributor 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 Distributor being authorized by the vendor to receive order and payment in his name on behalf of the vendor shall be served or sent. The Distributor also agrees to provide a email address and a fax number for contact to the DDHS (E&S) and other procuring authorities under H&FW Department.
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. The mailing address and e mail address of the distributor is given hereunder
  - a. Mailing address : Tele : ....., Fax no .....
  - b. E mail address : .....
9. The Distributor agrees to supply all Drugs, reagents & chemicals manufactured by the vendor as per the guidelines under Schedule M Drugs, all of them conforming to I.P., B.P., U.S.P., B.P.C., or I.S.I., A.R.C.P. or L.R. specifications as noted against the items in the Catalogue, as applicable including test report from GLP certified laboratory. The Distributor 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 60(sixty) days from the date of issue of the order on line which is accessible through vendor portal.

10. The Distributor to whom order are to be made on behalf of 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 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 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 distributor on being authorized by the vendor to receive order in his name on behalf of the vendor ) after the execution of the agreements, and such supply shall have to be made in such installments as may be fixed or spread over the period to be specified in the supply orders to be made in pursuance of the agreements by the authorized distributor. The vendor agrees to supply within the specified time schedule i.e within 60(sixty) days from the date of issue of the order. The selected vendor and/ or his authorized distributor would have access to the vendor portal from which, the procurement order, Goods Received notes and Bill status can be seen on line.
12. The distributor corroborates the clause that 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 except for the items for which specific G.O exists e.g for vaccines. No delivery will be taken of any drug if the date of manufacture and the date of expiry are not written on each and every unit supplied.
13. The distributor agree that in order to ensure sustained supply without any interruption for facilitating prompt patient care services, the DDHS (E&S), Central Medical Stores, Kolkata with the approval of the Tender Selection Committee reserves the right to split orders for supplying the requirements among more than one tenderers provided that, the rates and other conditions of supply are equal and with sufficient grounds. In case of non-supply/less supply of any item by any approved lowest quoted firm, the DDHS (E&S), Kolkata can ask for willingness to L2 / L3 / L4 etc firm to supply at L1 rate (lowest approved rate) and prepare the rate schedule with the same item in L1 rate sequentially till 120% of the estimated requirement are met.
14. LABELLING:  
The distributor agrees to ensure that all supplies of articles in drugs section 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.
  - a. Pharmacopoeia name.

- b. Manufacturing date.
- c. Expiry Date.
- d. Name & address of Registered Office of Manufacturers and place of manufacture.
- e. Manufacturing Licence Number.
- f. Batch Number
- g. All Drugs/ Chemicals quoted/supplied by tenderer MUST CONFORM TO B.P, U.S.P, I.P and N.F.I –III specification as noted against the item(s)in catalogue as applicable.
- h. In respect of IV fluid, the bottle should be manufactured and filled by the “Blow, Fill & Seal in polypropylene 500 ml bottle” and/or “Form Fill & Seal polyethylene 500 ml bottle ” and the bottle meet the pharmacopeial specification. Documentary evidence in support of the quality of the bottle should be furnished at the time of supply.
- i. Month and Year of supply.
- j. The bottle label & carton should invariably marked with For C.M.S Supply ..... “C.M.S. supply. Not for sale” For supplies to decentralized units ..... “W B. Govt supply. Not for sale”.
- k. Any information like Manufacturer’s Name & Address is strictly prohibited to be inscribed/ printed in any part of the wall of the bottle and cork.”

15. The Distributor agrees to ensure that MANUFACTURING AND PACKAGING norms as follows :
- a. Packing of medicine (tablets, capsules, solid & liquid preparation) and Lab Chemicals with standard packing materials.
  - b. The rigid PVC used in blister packing should be of not less than 250 micron
  - c. All glass bottles should be new neutral glass.
  - d. Ointments should be packed in liquidized Aluminium Tubes.
  - e. Small Tablets packed in blisters should be packed to facilitate easy removal of the tablet without breaking / crushing.
  - f. Tablets should have a score line as per the relevant pharmacopeial norms.
  - g. All plastic containers should be made of virgin grade plastics.
  - h. All plastic jars above 450Gms/ml should carry an inner plastic lid.
  - i. Injection in vials should have a snap off seal.
  - j. All tablets should be in aluminum strips or blisters with Aluminium foil back. Strips of Aluminium foils refer to gauge 04. Aluminium foils as back material for blisters refer to gauge 025.
  - k. Light sensitive drugs are to be in amber coloured bottles.
  - l. Liquids and Drops should be packed with plastic dispensers
  - m. Glass ampoules should be packed with cutters@ 1 cutter for each 5 ampoules in a separate polybag
  - n. ORS should be packed in sachets made of Aluminium Foil laminated with glassing or heat sealable plastic film (multiply laminations with aluminium foil

(polyethylene, Aluminium, polyester)), whose outer cover may contain label information (. 50 sachets may be packed in gray board boxes and 10 gray board boxes in a corrugated box

- o. Corrugated package box size limited to (12''Hx 24''L x 24''W).
- p. No corrugated box with contents should weigh more than 15 kgs (7 kgs in case of ointments and fragile materials)
- q. The inner lining shall be not less than 120 gsm and outer carton not less than 150 gsm.
- r. The non glass bottle containing cartons shall be of at least 5 ply with bursting strength not less than 9 kg/sq cm.
- s. Glass bottle containing cartons shall be of at least 7 ply with bursting strength not less than 12 kg/sq cm
- t. No box should contain mixed products or mixed batches of the same product.
- u. The product label on the cartoon should be large at least 15 cms x 10 cms dimension. It should carry the correct technical name, strength or the product, date of manufacturing, date of expiry, quantity packed and net weight of the box.

16. DRUG TESTING:

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 drugs, reagents & chemicals tested at Govt. selected/ empanelled laboratory, including NABL accredited laboratories, the identity of which shall not be divulged to the tenderer. Such testing will be in addition to tests that should be done by any authority exercising statutory powers of drug testing. The tenderer shall be bound to destroy the defective & non-standard batch(s) as per assay and other quality test report under pharmacopian norms. The Distributor who are authorized to receive order in his name on behalf of the vendor shall be bound to replace the defective batch or batches if found defective as per wrong packaging or labelling. The cost of procurement of such non-standard drugs or defective batch(es) will not be paid or be deducted from the security deposit and/or from the pending bills of that distributor or from the performance bank guarantee. Moreover, action under relevant Rules of the Drugs and Cosmetic Act will also be taken. In no circumstances request by the suppliers for replacement of non-standard drugs found defective or sub standard in the quality test will be entertained. A sum @ 2% of bills exclusive of Govt. tax & duties will be deducted from the bills of the Vendor by C.M.S/all D.R.S./other direct demanding units and deposited in the respective budget head to meet cost of handling and testing charges. In the event of the Vendor supplying vaccines and sera through distributor, the vaccines and sera shall be tested by the Vendor at CRI Kasauli and the satisfactory test report obtained. No deductions for testing shall be made from the bills of these items which have undergone prior testing at CRI Kasauli.

The Distributor agrees to ensure that each installment of supply of drugs /chemicals is accompanied with a batch test certificate from a laboratory following GLP norms certifying to the quality of the supplied conforming to the relevant Pharmacopeial norms. The full name and qualification and the attested signature of the certifying chemist will be submitted in a separate sheet alongwith the test report.

17. WITHDRAWAL /CANCELLATION & PURCHASE POLICY OF TENDERING AUTHORITY:  
The Distributor accepts that :
- a. withdrawal of tender or any revision after submission of tender by the Tenderer is not allowed.
  - b. 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.
  - c. 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.
  - d. 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.
18. NO- CONVICTION CERTIFICATE:  
The Distributor has submitted 'No conviction certificate' submitted from the concerned Drug Controlling Authority of the State where the distributor is registered for last three years. He has also submitted an affidavit in the prescribed preformed attached herewith from Notary/ first class Judicial Magistrate/Executive Magistrate stating no conviction from any Court of law.
19. 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 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 labelling, 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 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.

20. Debarment clause from participation in next tender processes of the Health & Family Welfare Department as follows :

- a. The tender selection committee reserves the right to declare a firm/ Company blacklisted for three (03) years due to the following reasons: If the vendor
  - i. Withdraws from agreement after being the “Lowest Quoted Tenderer”
  - ii. Failure in supply within stipulated period for three occasions during the tenure of the tender period or its extensions.
  - 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.
- viii. 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.
- ix. Financial Penalties for deficiencies in services/supplies during the period of the tender and its subsequent extensions:
  1. For delay in the supply of items ordered beyond the stipulated date. The procuring authority has to justify with proof of receipt of supply order alongwith receipt of way bill (wherever applicable for invoking this clause). Part supply will not be considered as supply in full unless specified in the supply order.

- a. If the supplies are not made in full within the specified period of placing the order, 0.5% of the basic cost of the materials not supplied will be deducted from the existing / pending bills of the supplier per day's delay.
  - b. In respect of all consignment, specified period will be 60 (sixty) days,
  - c. For further delays beyond 70 days, a deduction of 1% of the basic cost of the materials not supplied will be deducted from the existing/pending bills of the supplier or from the performance bank guarantee for per day's delay.
  - d. For delays beyond 90(ninety) days, the work order for the non- supplied portion will be considered as cancelled straightaway.
  - e. The Firm will be blacklisted after issuance of three Show cause letter(s) for such delay in three occasions.
  - f. For firms who fail to supply the full order on three occasions within the stipulated period 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.
  - g. Supply of items with short expiry dates in violation of Clause 15 (iii) 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.
  - h. The names of the defaulting suppliers will be put up in the Departmental website.
  - 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
21. PENALTY FOR FORMATION OF CARTEL OR FURNISHING OF FRADULENT/ MISLEADING DOCUMENTS:
- A. If during the tender process or at any state during the validity of the tender period, it is found that a Distributor who have submitted false/ misleading/ fraudulent documents or made incorrect declarations.
  - B. The penal measure will be
    - a. Forfeiture of Performance Bank Guarantee of the distributor.
    - b. Cancellation from the approved list of suppliers and debarment from further supply orders
    - c. Black listing to act as Distributor for a period of three years
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 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.

23. 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 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.14

24. VALIDITY PERIOD OF AGREEMENT:

The contract period will be for a period up to 31st March 2014 which may be extended up to six months with prior approval of the Department of Health & Family Welfare, Government of West Bengal, if necessary.

25. PERFORMANCE BANK GUARANTEE'

- (i) The Distributor has agrees to furnish the 'Performance Bank Guarantee' @ 1% of assessed base rate of requirement per item for which the Tenderer has been selected as supplier subject to a maximum of Rs 0.25 lakh (Rs twenty five thousand ) per item in the event that order and payment are to be made in his name on behalf of the vendor.
- (ii) Accordingly, the Distributor has submitted performance bank guarantee amounting to Rs ..... from ..... Bank ..... branch.
- (iii) The Distributor gives his assent to the forfeiture of the 'Performance Bank Guarantee' as enumerated in clause 22 (e)(i), (ii), (iii), (iv) of the Terms & Conditions of the Tender and Clause 13 of this Agreement.
- (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 necessary penal deductions from the 'Performance Bank Guarantee', if any.

26. PAYMENT TERMS:

Payment will be made in the name of the Distributor on being authorized 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 27 and subject to penalty clause in terms of Clauses 23
  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
  4. The status of orders, Goods received note and payments will be available on-line for the vendor in the vendor portal in the Departmental website www.wbhealth.gov.in : Vendor Portal.
  5. On being selected, the Distributor to whom payment are to be made, 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 a payment to the respective procuring authorities.
28. 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 :

1.

2.

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

1.

2.