

Agreement No. HOMCO/T/AGSL- .../25-26

AGREEMENT

This AGREEMENT is executed this the day of2023 between M/s.....
..... (Herein after referred to as the “Contractor”)
which expression shall include its executors, administrators, legal representatives and assigns of the first part and M/s. THE KERALA STATE HOMOEOPATHIC CO-OPERATIVE PHARMACY Ltd. (HOMCO), Pathirapally P.O, Alappuzha, Kerala – 688 521 (Herein after referred to as the “HOMCO”) of the second part.

WHEREAS Contractor has quoted for the supply of articles for the use of the HOMCO as per tender Notification No dated which tender notification shall form part of this Agreement as if incorporated herein.

AND WHEREAS the HOMCO/ Purchasing Officer have/ has been pleased to accept offer subject to the conditions stipulated in the Supply Orders (which shall form part of this agreement as if incorporated herein)in respect of the articles mentioned therein”.

AND WHEREAS Contractor has as security for the due fulfillment of his obligations this deed deposited Rs being 5 per cent of the estimated value of the contract as per demand draft onBank duly approved by the Government / in the form of a letter of guarantee for such amount from Bank approved by Government. Sum of this deposit and EMD constitute 5% of the accepted PAC and treated as Security Deposit.

NOW THESE PRESENTS WITNESS AS FOLLOWS

1. A) The **Contractor/s** covenant/s and agree/s with the **HOMCO** that the **Contractor/s** within the time of **Three months** from the date of purchase order shall supply, execute and fully complete all the works specified described or referred to in and by the said tender or as amended according to the true intent and meaning of the said tender or as amended and as per the technical specifications & performance criteria with fittings, tools and accessories, more particularly described in the tender, particular specifications, ISI specifications, cGMP standards, drawings & instructions special conditions of the contract, scope & general conditions of the contract, issued from time to time.

B) The **Contractor** hereby declares that the goods sold to the buyer under this contract shall be of the best quality and workmanship and shall be strictly in accordance with the specifications and particulars contained in the copy of the order attached herewith and the **Contractor** hereby guarantees that the said goods would continue to conform to the description and quality aforesaid for the period stipulated in the tender conditions from the date of delivery of the said goods to the **HOMCO** and that notwithstanding the fact that **HOMCO** may, have inspected and/ or approved the said goods, if during the aforesaid period the said goods be discovered not to conform to the description and quality aforesaid or have deteriorated (and the decision of the **HOMCO** in that behalf will be final and conclusive) the **HOMCO** will be entitled to reject the said goods or such portion thereof as may be discovered not to conform to the said description and quality . On such rejection the goods will be at the **Contractor's** risk and all the provisions herein contained relating to rejection of goods, etc., shall apply. The Contractor shall if so called upon to do, replace the goods, etc., or such portion thereof as is rejected by the **HOMCO**. Otherwise the **Contractor** shall pay to the **HOMCO** such damages as may arise by reason of the breach of the condition herein contained. Nothing herein contained shall prejudice any other right of the **HOMCO** in that behalf under this contract or otherwise.

2. Request for enhancement of rates once accepted will not be considered except where **HOMCO** have prior to the actual supplies, expressly agreed in writing for any price variation under specified circumstances, conditions of sale or other special terms and conditions, if any, printed on the quotation sheets of the **Contractor** or attached with the **Contractor's** tender or any other letter or paper from the contractor will not govern this contract not bind the **HOMCO** in any manner whatsoever unless such terms have been expressly accepted by the **HOMCO** in writing.
3. The articles and quantities to be supplied are shown in the copy of the Purchase Order No.:..... dated The **Contractor** agrees to supply the quantities of the articles shown in the order at the rate tendered by him for each article within the time fixed.
4. In the case of goods delivered by shipment, the **Contractor**, shall where the expected tonnage of goods is more than 200 tons, deliver the goods through the Cochi Port if so required by the **HOMCO**.
5. The **Contractor** agrees that time is the essence of this contract.

6. (A) If the **Contractor** defaults in the supply of all or any of the articles correctly and promptly as above the **HOMCO** are at liberty to procure the same from elsewhere without cancelling the contract as a whole. If **HOMCO** incur, in thus procuring such materials a higher cost than the agreed rate, such excess cost may be deducted by the **HOMCO** from the **Contractor's** bill or adjusted or otherwise realized from his security deposit or recovered from him by other means. The **Contractor** agrees that he shall not be entitled to claim the excess, if any, of the tendered rate over such cost to **HOMCO**.

(B) If the **Contractor** fails to deliver all or any of the stores or perform the service within the time/period (s) specified in the contract, the **HOMCO** shall without prejudice to its other remedies under the contract, deduct from the contract price as liquidated damages, a sum equivalent to 0.5 % or 1 % of the delivered price of the delayed stores or unperformed services for each week of delay until actual delivery or performance, up to a maximum deduction of 10% of the contract price of the delayed stores or services. Once the maximum is reached, the **HOMCO** may consider termination of the contract at the risk and cost of the **Contractor**.

7. (A) All payments to the **Contractor** for supplies effected satisfactorily will be made after scrutiny of his bill-

(i) Either by departmental cheques payable at the Government Treasuries;

(ii) Or by cheques or drafts on, the Reserve Bank of India and State bank of India / UCO Bank / PNB, at any of their principal branches in India.

(iii) Or in the case of supplies from abroad by drafts or otherwise as may be agreed to pay.

(B) The firms will produce stamped pre-receipted invoices in all cases where payments (advance/ final) for release of railway receipts/ shipping documents are made through Bank. In exceptional case where the stamped receipts of the firms are not received for the payments (in advance) the unstamped receipt of the Bank (i.e; counterfoils of pay-in slips issued by the Bank) alone may be accepted as a valid proof for the payment made.

(C) Terms of Payment

i. The payment of the first installment, 30% of the price agreed will be made along with work/purchase order against an irrevocable Bank Guarantee equivalent for an amount, from nationalized /scheduled bank. (Relaxation applicable in the case of Govt. firms / PSU's)

ii. The second installment of 60% against supply at site along with submission of original invoice, packing list, certificate of country of origin of the stores, certificate of pre-dispatch

inspection with photograph, manufacturer's test certificate, certificate of insurance, Bill of lading/Airway bill, Rail receipt.

- iii. The balance 10% will be released after one month of commissioning and validation of the equipment. Foreign principals can also submit security deposit and performance security directly on the prescribed through any foreign or Indian Bank having office in Kerala or in the form of letter of credit.
 - iv. Security (5%) deposited along with the agreement will be released only after the liability period of one year - after successful installation & commissioning of equipment OR against bank guarantee after successful commissioning and satisfactory performance for a period of 3 months. In case of any complaint decision on refund will be taken after considering and rectifying complaints.
8. All incidental expenses incurred by the **HOMCO** for making payments outside the district in which the claim arises shall be borne by the **Contractor**.
9. The **Contractor** shall not assign or make over in part or wholly the contract or the benefit or burdens thereof. The **Contractor** shall not underlet or sublet the execution of the contract or any part thereof without the consent in writing of the **HOMCO**. The **HOMCO** shall have absolute power to refuse such consent or rescind such consent (if given) at any time. The **Contractor** shall not be relieved from his obligation, duty or responsibility under this contract even if consent to let or sublet is given by **HOMCO**.
10. NOT WITHSTANDING the provisions contained in clause 5, the **HOMCO** shall have the right to cancel the contract for any default on the part of the **Contractor** in due performance thereof.
11. It shall be lawful for the **HOMCO** from and out of any money for the time being payable or due to the **Contractor** from the **HOMCO** under this contract or otherwise to set off any loss or expense, cost or damages sustained or incurred by the **HOMCO** by reason of the cancellation of the contract.
12. The **Contractor** shall supply the **HOMCO**, free of charge, with the documentation relating to the machinery. Said documentation shall be supplied to the **HOMCO**.
13. In case the supply of articles involves erection of machinery the **Contractor** agrees that the machinery will be erected within the time and at the place specified by the **HOMCO**/Purchasing Officer in that behalf. It shall also be the duty and responsibility of the **Contractor** to see that the machinery thus erected is in good working condition to the satisfaction of the person duly authorized by the **HOMCO**/Purchasing Officer in that

behalf and to ensure the proper functioning of the machinery till the guarantee period is over. Note: In the event of the failure of the **Contractor** to erect the machinery within the time and at the place specified by the **HOMCO**/ Purchasing Officer or in the event of the machinery failing to function properly during the guarantee period the amount spent by the **HOMCO** and the loss sustained by the **HOMCO** on this account by making alternative arrangements shall be recoverable from the **Contractor** in the manner provided in Clause 16 hereunder

14. "The **Contractor** agrees that all sums found due to the **HOMCO** under or by virtue of these presents shall be recoverable from him and his properties, movable and immovable, under the provisions of the Revenue Recovery Act, for the time being in force as though they are arrears of land revenue or in any other manner and within such time as the **HOMCO** may deem fit. In deciding what sum of money is due to **HOMCO** under or by virtue of this agreement, the **Contractor** agrees that the decision of the **HOMCO** shall be final and conclusive and shall be binding on the **Contractor**."
15. The **Contractor** agrees that any sum of money due and payable to him from **HOMCO** shall be adjusted against any sum of money due to **HOMCO** from him under any other contracts.
16. The agreement further witnesseth that the **Contractor**/s is /are responsible for any accident or other compensations payable to the workmen employed by and working under the control of **Contractor**/s, that the **HOMCO** has no liability in the matter and that if any payment would have to be made by the **HOMCO**, the same shall be reimbursed by the **Contractor**/s on demand and or recovered from the dues of the **Contractor**/s. In witnesses whereof the said parties here to have unto set their hands.
17. Taxes other than GST by whatever name and in whatever form it may be in all cases shall be the **Contractor**'s/supplier's responsibility. Income tax, work contract tax & taxes in pursuance of U.T. sales tax amendment and validation ordinances and / or the Act thereof and / or other amendments as may be made from time to time or taxes as results of subsequent orders/ordinance/acts as issued by the state or central govt. from time to time shall be borne by the **Contractor**.
18. The Factory Acceptance Test (F.A.T) shall be run at the **Contractor**'s premises, before the machinery is delivered to the **HOMCO**. The **Contractor** shall provide the **HOMCO** with notice in writing at least 15 (fifteen) days prior to the date on which the machinery shall be ready for the F.A.T. If the F.A.T reveals that the machinery does not meet the performance criteria or otherwise does not comply with this URS, Agreement, the **Contractor** will promptly begin to correct any such non-compliance at the **Contractor**'s expense and again notify the **HOMCO** in compliance. Only after the machinery has passed the F.A.T. and certified by the **HOMCO**, the **Contractor** shall deliver the machinery to **HOMCO**'s site.

19. During the delivery of the machinery, the **Contractor** shall send its authorized personnel during the supply of the machinery at site. The activity of assembling, installation, commissioning and validation shall be performed by the **Contractor** under the presence of **HOMCO/Consultants'** authorized personnel. The **Contractor** shall provide any materials, labours, services and facilities that are necessary for the assembly of the machinery. After installation, the **Contractor** shall provide a proper training to the technician's appointed by the **HOMCO**.
20. The **Contractor** shall provide Warranty and After-sale Warranty to the **HOMCO** from the date of commissioning.
21. The **Contractor** shall abide by all statutory provisions of the law such as labour laws & safety regulations etc.
22. In the event of any dispute arising out of or in connection with arbitration proceedings, or any proceedings being taken subsequent to the arbitration proceedings, it is further agreed that only the courts in Alappuzha shall have the sole jurisdiction in the matter.

IN WITNESS WHERE OF THE Contractor and Shri (H.E. name and designation) for and on behalf of The Kerala State Homoeopathic Co-operative Pharmacy Ltd. No.T-432, Pathirappally P.O, Alappuzha, kerala have hereunto set their hands

Signed, sealed and delivered by

(Contractor)

In the presence of witnesses (1)

(2)

Signed, sealed and delivered by Sri

(Name & Designation) for and on behalf of The Kerala State Homoeopathic Co-operative Pharmacy Ltd. No. T-432)

In the presence of witness (1)

(2)