

DRAFT FOR CONSORTIUM
AGREEMENT FOR RFE-22

This Consortium Agreement (“**Agreement**”) is entered into at (Place) on this day of 2020

BY AND BETWEEN

M/s. _____, an entity constituted in accordance with the laws of [Name of the Country] and having its Office at _____, acting through its duly authorized representative, Mr. / Ms. _____ [Please insert name and designation] (hereinafter referred to as the ‘First Participant Member’ which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors-in-interest, authorized representatives, administrators, and permitted assigns) of the First Part;

AND

M/s. _____, an entity constituted in accordance with the laws of [Name of the Country] and having its Office at _____, acting through its duly authorized representative, Mr. / Ms. _____ [Please insert name and designation] (hereinafter referred to as the ‘Second Participant Member’ which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors-in-interest, authorized representatives, administrators, and permitted assigns) of the Other Part.

WHEREAS Uttar Pradesh Skill Development Mission(UPSDM), having its Registered Office at ITI Campus, Aliganj, Lucknow, Uttar Pradesh 226024 has invited bids for ----- (hereinafter called the “Project”) and the bid conditions require that the applicants bidding for the same may form a Consortium for bidding as well as executing the Project.

AND WHEREAS the Parties of the First and Second Parts jointly satisfy the eligibility criteria laid down by UPSDM for participating in the bidding process by forming a Consortium between themselves.

The Parties hereby form such a Consortium subject to the following terms and conditions and this Agreement shall form a part and parcel of the Agreement for _____ for execution of the Project by UPSDM, if and when awarded to the Parties hereto:

1. **Objective:**

The objective of this agreement is for the parties herein to arrive at a strategic understanding with each other to pool their resources, cooperate with each other and jointly prepare and implement the scope of work which has been described in the Agreement entered in to with UPSDM for providing training under different skilling programs against the target and as per the terms and conditions given by the UPSDM.

2. **Exclusivity:**

21 The Lead Member shall not walkout after the project is approved. All the commitments as per the sanction order for project delivery have to be met by the Lead Member in case the Consortium Jointly fails to do so.

22 The Parties herein also have represented and assured each other that they will abide by and be bound by the terms and conditions stipulated by UPSDM for awarding the Agreement for including signing the contract with all stake holders in the execution of this Agreement for carrying out the ha.....corresponding to the RFE-22

3. **Project Coordination:**

31 The targets would be allocated by the UPSDM in favour of the consortium. However the lead member representing the consortium as authorized signatory would be obligated to distribute the targets between itself and the other associate partner to the consortium as per their mutual understanding including allocation of districts and job role. The lead member would be required to submit the target distribution sheet to the UPSDM. However, the lead partner would have the leverage to modify the target distribution to its associate partner anytime during the agreement but the same would require a prior information to the UPSDM.

32 The batch wise invoices would be raised by the lead partner only but the same would clearly specify as to which partner of the consortium has trained it and to whom the payment of the batch is consequently due. The lead member would indicate the bank account details of the associate member and would authorize the UPSDM to credit the due amount against a particular batch in the account of associate partner.

The Parties hereby agree that the Party of the First Part shall act as the Lead Partner for self and on behalf of the other parties and execute the Agreement for itself and on behalf of the other parties. The parties herein further declare and confirm that they are jointly and severally bound to UPSDM for execution of the Agreement for training against RFE-22 in accordance with its terms and shall jointly and severally be liable to UPSDM to perform all contractual obligations, including technical guarantees mentioned therein and in this Agreement. The Lead Partner is authorized to incur liabilities and receive instructions for and on behalf of any or all Partners of the Consortium.

4. **Responsibility and Obligations of the Parties:**

The responsibilities and obligations of the consortium are delineated in Para-5 of this Agreement which may be shared between the consortium partners according to their experience, capabilities and expertise. **It is agreed that the Lead member shall bear entire financial responsibility for the project, including fulfillment of demand/recovery by the Government in case of any default or deviation in the project or for which work has not been completed as per the sanction.** It is further agreed that the above-mentioned sharing of responsibilities and obligations shall not in any way be a limitation to the joint and several responsibilities of the Parties herein to UPSDM under the project or the Agreement for ____

The consortia or its members hereby agrees that:

- The Lead Member undertakes to develop the capabilities of the other member also.
- The Lead Member shall also fulfill all financial eligibility criteria in terms of the RFE.
- The applicant PTP shall be responsible for delivery of the project as per sanction.
- Both the partners in the consortium shall collectively fulfill all non-financial eligibility criteria i.e. Technical eligibility stated in the RFE.
- The project shall be sanctioned in the name of the applicant PTP, and it shall be clearly mentioned that the project is being undertaken as a consortium.
- The oversight mechanism of the Lead Member is explicit and adequate.
- Both the members of consortium may claim credit for the work done in proportion of targets accomplished by each of them under consortium for categorization in future projects.

- The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to their financial and technical obligations;
- An individual Bidder cannot at the same time be member of a Consortium. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium;
- Except as provided under this RFE and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.
- **Waiver** – No waiver of any provision of this Agreement shall be binding upon a party unless such waiver is set forth in a written instrument which is executed and delivered on behalf of such party by its authorized signatories. Such waiver shall be effective only to the extent specifically set forth in such written instrument.
- **Amendments, Modifications and Consents** – Except as otherwise contemplated herein no addition to, and no cancellation, renewal, extension, modification or amendment of, this Agreement shall be binding upon a party unless such addition, cancellation, renewal, extension, modification or amendment is set forth in a written instrument executed and delivered on behalf of each party by its authorized signatories.

5. Logistics and Operational Management:

- 51 **Manpower Management-** The party/parties of the consortium either exclusively or jointly shall be liable to maintain all the manpower and ensure their timely delivery of the work as per the requirement and standard of Sponsoring Agency including trained & certified trainers.
- 52 **Training of Trainers** – The party/parties of the consortium either exclusively or jointly shall carry out the job of training and choosing the trainers who shall execute the training program and all shall be certified trainers through concerned SSC.
- 53 **Delivery of Training**– The party/parties of the consortium either exclusively or jointly has an obligation to carry out the training program timely as per the standard and requirement given by the UPSDM. The training program shall be carried out with utmost sincerity which shall help the candidates to pass the assessment and qualify as a trained candidate.
- 54 **Mobilization-** The party/parties of the consortium either exclusively or jointly will arrange mobilization camp, primary screening, and collection of documents and finalization of candidates as per the norms of the UPSDM.

- 55 **Attendance of Trainees-** The party/parties of the consortium either exclusively or jointly has/have to maintain the attendance of the trainees and shall maintain the daily records of attendance as per the desired norms.
- 56 **Infrastructure arrangement & Establishment of Lab -** The party/parties of the consortium either exclusively or jointly has to set up all the equipment's which are required in carrying out training program as per Sponsoring Agency's standards and common norms.
- 57 **MIS-** The party/parties of the consortium either exclusively or jointly shall maintain and keep a track of all the enrolled students, drop out students and their attendance and share it with first party on regular basis or whenever required.
- 58 **Assessment –** The party/parties of the consortium either exclusively or jointly has to oversee the entire assessment process at the end of the training. Cost pertaining to assessment and assessment fees will be borne by the Second party.
- 59 **Placement –** The party/parties of the consortium either exclusively or jointly would be responsible to ensure placement of the trained and successfully assessed candidates within 3 months after their clearing the third party assessment. The candidates would be deemed placed as per the definition and provision of the common norms issued by the Ministry of Skill Development and Entrepreneurship, Govt. of India.
- 5.10 **Tracking, Backward and Upward Linkages –** The party/parties of the consortium either exclusively or jointly will maintain the tracking of the candidates from commencement of training till the placement of 12 months or as per the standard norms of sponsoring agency. That Second party will be maintaining the MIS and will carry out all the work of tracking the data of enrolled candidates, delivery of sessions, attendance of the candidates, assessment of the candidates, certification of candidates, placements and tracking of candidates after placements
- 5.11 **Release of payment from UPSDM-** The party/parties of the consortium either exclusively or jointly shall carry out all such activity of complying the records of training activity which the UPSDM sets out to receive payment from the latter.
- 5.12 **Earnest Money deposit-** EMD will be borne by First/Second party of the consortium (as mutually decided) and the amount/instrument of the EMD shall be retained by the UPSDM till the stipulated time.

5.13 Operational Area- The consortium would prefer to be allocated targets between its partners in the allocated districts. The division of districts and responsibilities of both the members of consortium either individually or jointly is appended with the agreement at **Annexure-1**.

6. Cooperation:

61 The Lead Partner undertakes to cooperate with the other Parties in order to ensure smooth performance and execution of the Project. The Lead Partner undertakes to provide UPSDM with all information at its disposal for due performance of the Agreement for

_____. The Parties herein also undertake to inform in time each other and UPSDM regarding any financial problems or other impediments which may have an impact on the timely execution of the Project or performance of the Agreement for

_____ and shall take all remedial measures to ensure successful performance of all the obligations of the consortium hereunder and under the Agreement for _____.

62 Notwithstanding the Lead Partner's liability in terms of this Agreement, each Party shall be fully responsible, liable and accountable for all financial transactions under this Agreement and the Agreement for _____ and each Party shall pay its own taxes and make other statutory and mandatory payments / taxes / duties. The Parties herein further undertake to ensure that all applicable legal regulations are observed, appropriate records are kept of all financial transactions and appropriate documentation, including, but not limited to contracts, orders and confirmations, receipts and invoices, time sheets of staff and payroll calculations are retained for all matters pertaining to this Agreement and the Agreement for

_____.

63 The Lead Partner shall be responsible to maintain contact with UPSDM and request clarification, guidance or advice whenever needed. The other Parties herein shall route all their requests with regard to clarification and guidance through the Lead Partner.

7. Conflict of Interest:

The Parties herein undertake to take all necessary measures in order to avoid any conflict of interest during the performance of the Agreement or the project.

8. **Confidentiality:**

That all the parties entering into this consortium agreement aver to keep in confidence and not disclose to any other all knowledge, information and data furnished to either by the other party.

Limitations shall not be applicable and shall impose no obligation on a party with respect to any portion of confidential information which:

- i. Was at the time received or which thereafter becomes, through no act or failure on the part of such party, generally known or available to the public. is known to such party at the time of receiving such information as evidenced by documentation then rightfully in the possession of either party;
- ii. Is furnished to others by the other party without restriction of disclosure;
- iii. Both the parties would be responsible to maintain confidentiality of information and cannot use the confidential internal information's of similar importance for any legal purposes.
- iv. Has been disclosed pursuant to the requirements of law or court order without restrictions or other protection against public disclosure; provided, however, that the other party shall have been given a reasonable opportunity to resist disclosure and/or to obtain a suitable protective order.

9. **Post Contract Liabilities:**

For any loss or damage on account of any breach of this Agreement or the Agreement for _____ or any shortfall in the execution of the Project, meeting the guaranteed performance / parameters as per scope of work / documents relating to the Tender or the Agreement for _____ the Lead Partner as well as the other Parties undertake to promptly make good such loss or damage on UPSDM's demand without any demur. UPSDM shall have the right to proceed against any one of the Parties herein in this regard and it shall neither be necessary nor obligatory on the part of UPSDM to proceed against the Lead Partner before proceeding against the other Parties herein.

10. **Assignment:**

The rights and obligations of First and Second Participant Member under this Agreement shall not be assigned to any third party without the prior written consent of UPSDM.

11. Applicable Law:

This Consortium Agreement shall be governed, construed and interpreted in accordance with the laws of India.

12. Term of the Agreement - This agreement shall remain valid till the time work order issued in the favour of consortium does not gets complete in accordance with the guidelines of the UPSDM.

13. Part of Contract:

It is further agreed by the Parties herein that this Consortium Agreement shall be irrevocable and shall form an integral part of the Agreement

_____ and shall continue to be enforceable against the Parties herein by UPSDM till the terms of the Agreement for _____ are fulfilled. It shall be effective on the date first mentioned above for all purposes and intends.

IN WITNESS WHEREOF, the Parties herein have through their respective authorized representatives have executed these presents and affixed their hands and common seal of the respective companies on the day, month and year aforementioned.

For M/s. _____

Managing Director

For and on behalf of the party of the First Part and the First and Lead Member

(Authorized Representative)

WITNESS

Name:

Designation:

For M/s. _____

(_____)

For and on behalf of the party of the Second Part and second participant member

(Authorized Representative)

WITNESS

Name:

Designation:

For M/s. _____