

**GOVERNMENT OF ODISHA
FINANCE DEPARTMENT**

OFFICE MEMORANDUM

No.36401/F.,
FIN-COD-MISC-0002-2018

Dated.**22.11.2018**

Sub: Opening and Operation of GeM Pool Accounts (GPAs) by PSUs/ Autonomous bodies/Societies/ULBs for ensuring timely payment to GeM suppliers/ vendors.

Finance Department have allowed for voluntary procurement of common use goods and services from Government e Marketplace (GeM) by Administrative Departments /Government Offices /PSUs and laid down the payment procedures for direct online purchases on GeM vide Finance Department letter no. 35243/F dated 30.11.2017. It has now been decided that all Non-Government Entities i.e. Statutory & Autonomous Bodies, Societies, Local Bodies, Boards, Development Authorities, Improvement Trusts shall be covered under the aforesaid instruction. Accordingly, these entities may now procure goods and services through GeM voluntarily.

2. As per the arrangements made by the State Government with GeM, the State Government offices procuring through GeM are required to make payment to the suppliers through IFMS. As the PSUs and other Non-Government entities are not drawing their claims through Treasury portal and are not linked to IFMS, it has now been decided that all Non-Government entities, who will procure on GeM, shall open & operate a special purpose account namely GeM Pool Account to ensure prompt payment to suppliers/vendors of GeM. The GeM Pool Account shall be opened, operated and controlled exclusively and completely by the buyer entity subject to certain restrictions on withdrawals of funds as enumerated in the Annexure A to this OM. The Account shall carry interest applicable to savings bank account. GeM pool account can be opened in any scheduled bank integrated with GeM (i.e. State Bank of India, ICICI Bank, HDFC Bank, Kotak, Axis Bank).

3. While procuring goods & services through GeM, the Non-Government Entities should credit 100% of the projected value of the goods/ services in their **GeM Pool Account** before placing supply order/award of contract and it will not be withdrawn for any other purpose other than the one for which the amount is credited into GeM Pool Account.

4. On successful supply & acceptance of Goods & Services, the Non-Government Entity shall issue an advice without delay to the bank to release actual amount payable to vendors/suppliers as per terms of contract from the GeM Pool Account.

5. A detailed Standard operating procedure (SOP) on opening and operation of GeM Pool Account and a model MoU for signing between Bank and Non-Government Entity are attached in **Annexure-A** and **B**.

Sd/-

Additional Chief Secretary to Government

The Standard operating procedure (SOP) for ensuring timely payments to the GeM suppliers/vendors through GeM Pool Account

GeM Pool Account is a special purpose bank account (interest bearing savings Account) opened, operated and controlled exclusively by each Non-Government Entity for the purpose of crediting 100% projected value of the contracts / supply orders in to the account and for subsequently making timely payments to the vendors / suppliers on successful supply and acceptance of goods & services ordered on GeM against supply orders placed by the Non-Government Entity on GeM.

The following are the core elements of GPA that should be incorporated during its opening and operations.

1. The Non-Government Entity will open the GPA (as a savings account) which will be utilized by buyer through the online integration of Bank with the platform owned and maintained by GeM SPV, as per Service Level Agreement (SLA), and solely for procurement of goods and services on GeM.
2. The terms and conditions of procurement on GeM will be part of the operations agreement between the bank and the Non-Government Entity
3. The role of the bank will be limited to ensuring operations of the account on the instruction of the Non-Government Entity through its authorized nodal officer for GeM / buyer.
4. Real time details of all operations of the account will be shared by the bank, in a mutually accepted format (to be amended from time to time) with the Non-Government Entity only through the GeM Platform.
5. Once a sub-account / transaction specific account is credited with an amount, the Non-Government Entity cannot withdraw this amount, apart from transfer to the designated supplier, till such a time that the transaction is live.
6. Any withdrawal / transfer by the Non-Government Entity from this account, except for payment to the supplier, would be permitted in the following conditions
 - a. Order cancellation
 - b. Order rejection
 - c. Refund

All the above situations would first be required to be enabled / flagged on the GeM Platform for the Non-Government Entity to be able to act accordingly.

7. On authorization of a payment to the supplier by the Non-Government Entity Nodal officer for GeM buyer, the bank should transfer the prescribed amount to the supplier mapped in the transaction.
8. In case of Service level agreement (SLA) breach on the part of the Non-Government Entity in terms of payments to the supplier, GeM will intimate the buyer and bank of the same. Post such intimation, and non-action on the part of the Non-Government Entity, with respect to payment transfer, bank will release 100% of the amount (or as notified in the terms and conditions of procurement on GeM) to the supplier mapped in the transaction. Such a provision is required to be incorporated in GPA and should be considered as a standing instruction from the Non-Government Entity to the bank. The residual amount cannot be withdrawn / transferred by the Non-Government Entity in such cases. The process to be followed in case of SLA breach under various scenarios is provided below:
 - a. In case, even after 10 days of issue of Consignee receipt and acceptance certificate (CRAC), the buyer has not initiated the payment process through the GeM platform, a payment trigger will be automatically generated for payment equivalent to 80% of the consignment value deduced by the system as per CRAC. Simultaneously, intimation will be sent to the HoD, buyer and Non-Government Entity Nodal officer for GeM, regarding the release of payment, at their risk and cost in line with the Terms and condition (T&C) and SLA of procurement on GeM. The residual payment of 20% is to be processed by the buyer within 35 days after adjusting for any statutory deduction and damages, failing which after 35 days, the same will be released to the supplier automatically through an alert to the bank by the GeM Platform, after statutory deductions and any system-based deductions.
 - b. If the consignee does not issue Provisional receipt certificate (PRC) within 48 hours of actual receipt of consignment, the supplier can upload the consignee receipt for the transaction on the GeM Portal. For such cases the system will generate alert to the consignee to issue PRC & CRAC within stipulated time line set in T&C and SLA of procurement on GeM.
 - c. In case the consignee does not respond to the system generated alerts and action requirements, after the GeM specified time period, alerts and auto escalation will be mitigated as per escalation matrix specified below:

Level 1	:	Up to 3 days	:	Consignee
Level 2	:	4 th and 5 th day	:	Consignee and Buyer
Level 3	:	6 th to 10 th day	:	Consignee, Buyer, Payment/ Paying Authority and Non- Government Entity Nodal Officer for GeM

- d. Post generation of CRAC, the buyer has 10 days to authorize the payment to the supplier through the GeM Platform, failing which, GeM Portal will auto initiate payment process as elaborated in point (a) above will be triggered.
- e. Unutilized funds after closure of the Contract and interest accrued on the credited amount will be at the disposal of nominated Non-Government Entity Nodal officer, who may advise banker for further action as deemed fit.

Note: All days mentioned are calendar days

MEMORANDUM OF UNDERSTANDING

THIS **MEMORANDUM OF UNDERSTANDING** (MoU) is made on [] Effective Date between << Name of Non-Government entity>> represented by < Officer Concerned>, <Entity Name> duly authorized to enter into this MoU, (hereinafter referred to as “ Non-Government Entity name” which expression shall unless it be repugnant to the subject or context thereof, include its successors and assigns), being the party of the **First PART**:

AND

_____ (Name of the Scheduled Bank) licensed as a bank under the Banking Regulation Act, 1949, having its registered office at _____ and represented through its Nodal Branch located at {Address of the Branch} (hereinafter referred to as the (“**Bank**”) which expression unless repugnant to the context, shall always mean and include its successors, transferees, and assigns) being the party of the **Second PART**.

[Non-Government Entity] and (Bank name) shall hereinafter collectively referred to as the “**Parties**” and individually as “**Party**”

WHEREAS [Non-Government Entity Name] has agreed to open the GeM Pool Account with (Bank name) for the purpose of affecting its e-procurements (s) through www.gem.gov.in in terms of OM No. F.13/4/2017-PPD(Pt.) dated 14th August, 2018, issued by Department of Expenditure, Ministry of Finance, Government of India, and as per the agreed terms/ modalities between the State Government and Govt. e Marketplace and any such further terms/ modalities that may be mutually agreed upon from time to time between [Non-Government Entity Name] and (Bank name) as an official bank of GeM (by virtue of MoU already executed between (Bank name) and GeM dated [] has agreed to provide e-payment services with respect to the aforesaid e-procurements to the [Non-Government Entity Name], at www.gem.gov.in.

Now, therefore, in consideration of the MoU between GeM& (Bank Name) dated 05.02.2018 and Office Memorandum/ SOP of Procurement Policy Division, Department of Expenditure, Ministry of Finance, Government of India bearing O.M.No.F.13/4/2017-PPD(Pt.) Dated 14th August, 2018, and covenants and conditions herein contained, it is hereby agreed by and between the parties hereto as follows:

The Bank will be establishing (an interest bearing Saving Account, as applicable) for the [Non-Government Entity Name] for the purpose of enabling

their e-procurement/purchases using services provided by Government e-Marketplace in online mode.

1.0) DEFINITIONS:-

‘E-payment Services’ shall mean and include enabling and providing online payment services.

‘Effective Date’ means the date of execution of this MoU by the Parties which will be the date of signing of MoU except in specific clause(s) where indicated otherwise.

‘GeM Pool Account’ shall mean an interest bearing saving account maintained with State Bank of India by the entity for using Government e-Marketplace platform.

‘Nodal Branch’- the Branch of State Bank of India, where the GeM Pool Account of the {Non-Government Entity Name} will be maintained.

2.0) TERM: NON-EXCLUSIVE

- a) This MoU shall become effective on the date as defined above and shall remain in full force and effect for a period of 3 years from the effective date, which may be extended thereafter by mutual consent among the Parties.
- b) Each Party shall have the right to terminate the MoU by giving 3(Three) months’ written notice in writing to the other Party at any time. If the MoU is terminated by either Party, steps shall be taken to ensure that the termination does not affect any prior obligation, project or activity already in progress.

3.0) GENERAL PROVISIONS

- a) **Entire MOU:** This constitutes in entirety all the terms and conditions, between parties as stated in this MoU pertaining to the subject matter hereof and supersedes in their entirety all prior written or oral MoUs between the Parties, if any. Each party acknowledges that it has not relied on or been induced to enter into this MoU by a representation or warranty other than those expressly set out in this MoU. To the extent permitted by Applicable Law, a party is not liable to another party in contract or tort or in any other way for a representation or warranty that is not set out in this MoU.
- b) **Relationship between Parties:** The Parties to this MoU are independent parties and nothing in this MoU shall make them joint ventures, partners, employees, agents or other representatives of the

other Party hereto. Neither party shall make any representation that suggests otherwise.

- c) Severability:** If any provision of this MoU is determined to be unenforceable for any reason, then the remaining provisions hereof shall remain unaffected and in full force and effect.
- d) Modifications/ amendments:** The Parties may on mutual consent make modification/ amendment/addition to this MoU, by executing an amendment/ supplemental MoU.
- e) Right and Remedies Waiver:** All rights and remedies hereunder shall be cumulative and may be exercised singularly or concurrently. If any legal action is brought to enforce any obligations hereunder, the Party enforcing its obligations shall be entitled to receive its attorney's, fees, court costs and other collection expenses, in addition to any other relief it may receive. If either party fails to perform its obligations under any provision of this MoU or the other Party does not enforce such provision, failure to enforce on that occasion shall not prevent enforcement on later occasions.
- f) Survival of Provisions:** Notwithstanding any other provision to the contrary herein, terms, which by their nature survive termination or expiration of this MoU, shall bind the parties following any expiration or termination of this MoU.
- g) Liability upon Expiration:** Neither Party shall be obligated to extend or renew this MoU.
- h) Jurisdiction and governing law:** This MoU shall be governed by the laws of India only and no other nation. The Parties agree to submit to the exclusive jurisdiction of the Courts located in {State Name, where the GeM Pool Account opened}, India as regards any claims or matters or matters arising under or in relation to these terms and conditions.
- i) Headings and sub-headings:** The headings and sub headings in this MoU are for convenience only and do not affect the meaning of the relative section/ clause.
- j) Notices:** Any notice, direction or instruction given under this MoU or other documents, which may be given by either Party under this MoU, shall be in writing and delivered in person or registered post or by facsimile transmission. The notice shall be addressed to the other Party's office address as mentioned first herein above. Notice and instructions will be deemed served 7 days after posting or upon receipt in the case of hand delivery, cable or facsimile.

4.0) The Parties represent and warrant to each other that they have all corporate, statutory and other authorizations, licenses and consents necessary to legally execute and perform its obligations under the Memorandum of Understanding and shall continue to have all such authorizations, licenses and consents at the time it carries out its respective rights and obligations hereunder or seeks to exercise and / or enforce any of its rights under this Memorandum of Understanding.

5.0) The Parties shall agree to all terms and conditions of this Memorandum of Understanding, including but not limited to the below mentioned terms and conditions:

- a)** The (Non-Government Entity name) will complete the account opening formalities viz. submission of KYC documents and completely fill account opening form. The Account shall carry interest applicable to savings bank account. The transaction in the account will be for the specific purpose of procurement of Goods & Services through GeM Portal and placing fund for supply payment for the same. The placement of fund and subsequent transactions/ settlement will be done only through mandate of GeM portal. No other transaction will be permitted in this account.
- b)** The concerned Department/ Organization/Buyer will have no rights over the fund placed in the account. For any issue regarding change of order for procurement, returning of goods received under contract, adjustment of amount for damage of goods, short delivery of goods under contract, delay in delivery of goods under contract etc., the Buyer will approach GeM for resolution of the matter. The Bank will have no responsibility or accountability towards the placement of order for procurement of goods, delivery of goods, movement of goods and any issue related to the contract and its process.
- c)** Transaction and settlement of fund in the account, will be done by the Bank as per the prior mandate/instructions of GeM portal online or offline through its official channel.
- d)** The un-utilized funds after closure of contract will be transferred to the purchaser's account subject to mandate/instructions of GeM portal online. Unutilized funds after closure of the Contract will be at disposal of nominated nodal officer of Non-Government Entity, who may advise banker for further action as deemed fit.
- e)** The Bank shall onboard (Non-Government Entity Name) on GeM portal through User Interface provided by GeM in accordance with the process flow documented by GeM on its portal. The (Non-Government Entity name) shall provide the information on format stipulated by GeM.

- f) The parties of this MoU to act in accordance with GeM SOP for Non-Government Entity regarding on boarding and operations through GPA as uploaded on GeM portal (<https://gem.gov.in>) at present and subsequent versions. The said SOP & Govt of India, Ministry of Finance, Department of Expenditure, Procurement Policy Division memorandum/ SOP bearing O.M. No. F.13/4/2017-PPD (Pt.) Dated 14thAugust, 2018 (which is the basis for MoU between the {Non-Government Entity Name} and the Bank name) along with its annexure shall form integral part of this MoU.

In **WITNESS** whereof the parties herein through their authorized representatives have signed this Memorandum of Understanding on the ____ day of ____,2018 at {Name of the Place} in the presence of the under-mentioned witnesses.

Signed, sealed and delivered in presence of:

<p>On behalf of the [Non-Government Entity name]</p> <p>Signature _____</p>	<p>On behalf of the (Bank name)</p> <p>Signature _____</p> <p>Name:</p> <p>Address:</p> <p>Witness</p> <p>Signature _____</p> <p>Name:</p> <p>Designation:</p> <p>Address:</p>
---	---