

TRANSPARENCY INTERNATIONAL
MODEL CONSTRUCTION INTEGRITY PACT
PROJECT - EXECUTION

THIS AGREEMENT is entered into between the following Parties:

[name and address] (“Client”)

[name and address] (“Certifier”) *[Note 1]*

[name and address] (“Contractor”)

IT IS AGREED AS FOLLOWS:

1. **Definitions**

- 1.1 **“Contract”** means the contract to be entered into between the Client and the Contractor for the construction of the Project.
- 1.2 **“Independent Assessor”** means the independent assessor appointed to verify compliance with this agreement in accordance with clause 7 below.
- 1.3 **“Party”** means a signatory to this agreement.
- 1.4 **“Project”** means **[name and description of Project]**

2. **Undertakings by all Parties**

Each Party undertakes to the other Parties as follows:

- a) It has not offered or given, nor will it offer or give, directly or indirectly, any bribe, gift, favour or other improper advantage to any other Party or to any third party, in connection with the Project.
- b) It has not demanded or accepted, nor will it demand or accept, directly or indirectly, any bribe, gift, favour or other improper advantage for itself or any third party, in connection with the Project.
- c) It has not made, nor will it make, directly or indirectly, any payment in relation to the Project except to the extent that such payment is appropriate compensation for legitimate services.
- d) It has not taken, nor will it take, directly or indirectly, any steps which could unduly influence the function of the Independent Assessor.

3. **Certifier's Undertakings [Note 1]**

The Certifier undertakes to the Client and Contractor as follows:

- a) It will use fair, objective and arms-length criteria in making recommendations or decisions in relation to the following matters under the Contract:
 - i) variations;
 - ii) extensions of time;
 - iii) defects;
 - iv) certification;
 - v) payment;
 - vi) the performance of the Contractor under the Contract;
 - vii) any other matters requiring the recommendation or decision of the Certifier.
- b) It will issue all recommendations or decisions referred to in clause 3 a) above within a reasonable time.

4. **Contractor's Undertakings**

The Contractor undertakes to the Client as follows:

- a) Every six months for the duration of the Project, and one month after completion of the final account for the Project, the Contractor will provide the Client with a schedule which shows:
 - i) the name and address of any agent to which the Contractor, or the Contractor's parent, associated or subsidiary company, consortium or joint venture partner, or sub-contractor, has made any payment, directly or indirectly, in relation to the Project;
 - ii) the amount paid to each agent, and the currency of such payment;
 - iii) a summary of the services which each agent has provided.
- b) The schedules referred to in clause 4 a) above shall be accompanied by a statement that "all payments shown in the schedule are appropriate compensation for legitimate services provided". The schedules and statements shall be signed by the head of the Contractor's head office finance function.
- c) The Contractor will, if requested by the Client, provide such further details in relation to the above agents and payments as the Client shall require.

5. **Obligation to Ensure Compliance**

- 5.1 Each Party will take all reasonable steps to ensure that the provisions of this agreement which are binding on it are complied with by all of its staff, consultants, parent and associated and subsidiary companies, agents, consortium and joint venture partners, sub-contractors and suppliers.
- 5.2 Each Party will maintain and enforce a written anti-bribery policy applicable to its business.
- 5.3 Each Party will appoint an appropriate senior manager with responsibility for ensuring that the provisions of this agreement are complied with.

6. **Contract claims**

- 6.1 The Parties will deal with all claims between them in accordance with the following procedures. “Claims” includes claims or disputes in relation to or arising out of the Contract or this agreement, including payment, extension of time, variations, the issuing of certificates, defects, non-performance, or any other claim or dispute between the Parties.
- 6.2 The claimant will take all reasonable steps to ensure that:
- a) the claimant only submits a claim to the opponent or to the dispute resolution tribunal which it honestly believes to be true, and which can be reasonably substantiated by accurate written or oral evidence;
 - b) the claimant has a bona fide legal or contractual entitlement to the matters claimed by it;
 - c) the quantum of the claim has been accurately calculated in accordance with the contract requirements, or, in the absence of contract requirements, on a reasonable price basis;
 - d) the amount claimed has not been artificially marked up to include a “negotiating margin” or other illicit gain;
 - e) evidence contrary to the claim is disclosed to the opponent or dispute resolution tribunal alongside evidence in favour of the claim.
- 6.3 The recipient of the claim will take all reasonable steps to ensure that:
- a) it reviews the claim diligently, objectively and in good faith;
 - b) it promptly pays any sums, awards any extensions of time, and issues any certificates which it believes are due in relation to the claim;
 - c) it promptly provides full reasons in relation to any items of the claim which it refuses to accept;
 - d) it complies with the obligations imposed on the claimant referred to above in relation to any allegation which it raises as a reason to reject the claim, or by way of set-off or counterclaim.
- 6.4 Nothing in clause 6 is intended to limit the conscientious and vigorous pursuit of legitimate claims. The aim is to eliminate false or inflated claims.

7. **Independent Assessor**

- 7.1 The Client has appointed a suitably qualified and experienced Independent Assessor for the duration of the Project. The Independent Assessor was nominated by an appropriate independent institution.
- 7.2 The duty of the Independent Assessor is to assess on an independent and objective basis the extent to which the Parties comply with their obligations under this agreement.
- 7.3 The Parties will allow the Independent Assessor unrestricted access to their Project books, records and staff, and will procure that the Independent Assessor has unrestricted access to the Project books, records and staff of their consultants, parent and associated and subsidiary companies, agents, consortium and joint venture partners, sub-contractors and suppliers.

- 7.4 The Parties will give the Independent Assessor reasonable advance notice of all meetings between or involving any of the Parties, and at which will be discussed any material matters in relation to the Project. They will permit the Independent Assessor to attend such meetings.
- 7.5 For the duration of the Project, the Independent Assessor will issue written monthly reports simultaneously to each of the following:
- a) the Client;
 - b) the Certifier;
 - c) the Contractor;
 - d) any body providing financial aid in relation to the Project;
 - e) any bank providing project financing in relation to the Project;
 - f) any export credit agency providing export credit guarantees or other assurance in relation to the Project.
- 7.6 Within three months after completion of the Project, the Independent Assessor will issue a written final report simultaneously to each of the organisations referred to in clause 7.5 above.
- 7.7 The reports referred to in clauses 7.5 and 7.6 above will provide details of:
- a) all suspected or actual breaches of the provisions of this agreement;
 - b) actions taken by the Independent Assessor and the Parties in relation to such breaches;
 - c) any reports made by the Independent Assessor to criminal authorities, professional associations or other bodies.
- 7.8 The final report referred to in clause 7.6 above will be published by the Independent Assessor on the internet at the same time as it is issued to the organisations referred to in clause 7.5 above.
- 7.9 In the event that the Independent Assessor believes that there is prima facie evidence that there has been a failure by a Party to comply with any provision of this agreement, the Independent Assessor will take the following actions:
- a) He will include full details of such suspected non-compliance in his report.
 - b) If any such non-compliance has been carried out or assisted by an individual who is a member of a professional association, and such non-compliance may constitute a breach of any disciplinary code of such professional association, the Independent Assessor will report such matter to the professional association.
 - c) If such non-compliance may constitute a criminal offence, either in the country in which the Project is being carried out, or in the home country of the organisation or individual which carried out or assisted such non-compliance, the Independent Assessor will report such matter to the criminal authorities in those territories.
- 7.10 The Independent Assessor has no power to require any of the Parties to undertake any actions. No statement by the Independent Assessor, whether oral or in writing, is binding on any of the Parties. All reports and other documentation issued by the Independent Assessor can be used by any Party in legal or dispute resolution proceedings. The Independent Assessor can be called as a witness in legal or dispute resolution proceedings.
- 7.11 The fees of the Independent Assessor will be shared equally between the Parties.
- 7.12 The Independent Assessor can only be removed from his appointment if:
- a) all of the Parties agree in writing to remove him; or

- b) he resigns; or
- c) he is removed from his office by order of a Court having appropriate jurisdiction.

7.13 If the Independent Assessor is removed from his appointment, the Client will immediately request an appropriate independent institution to nominate a suitably qualified and experienced replacement Independent Assessor. Upon receipt of the nomination for the replacement, the Client will immediately appoint the nominated person as Independent Assessor for the remaining duration of the Project.

7.14 The appointment of the Independent Assessor will terminate upon publication of his final report as provided in clause 7.6 above.

8. **Breaches of the Integrity Agreement**

8.1 In the event that the Contractor breaches any provision of this agreement, the Client will not permit the Contractor to bid for any other work for the Client, or for any of the Client's parent, subsidiary or associated companies, for **[3 years]** from the date of the breach.

8.2 In the event that any Party believes that there is prima facie evidence that there has been a failure by a Party to comply with any provision of this agreement, such Party will take the following actions:

- a) It will report full details of such suspected non-compliance to the Independent Assessor.
- b) If any such non-compliance has been carried out, or assisted by an individual who is a member of a professional association, and such non-compliance may constitute a breach of any disciplinary code of such professional association, such Party may report such matter to the professional association.
- c) If such non-compliance may constitute a criminal offence, either in the country in which the Project is being carried out, or in the home country of the organisation or individual which carried out or assisted such non-compliance, such Party may report such matter to the criminal authorities in those territories.

8.3 In the event that any Party breaches any provision of this agreement, the other Parties may, in addition to the rights under clauses 8.1 and 8.2 above, claim damages against the defaulting Party, and exercise any other rights they may have against the defaulting Party.

8.4 The Parties will take appropriate disciplinary or enforcement action against any of their staff, consultants, parent and associated and subsidiary companies, agents, consortium and joint venture partners, sub-contractors and suppliers who cause or assist in any breach of any provision of this agreement.

9. **Duration of Agreement**

This agreement comes into force as soon as it has been signed by all the Parties. It cannot be terminated or varied except by the written agreement of all the Parties.

10. **Governing Law and Dispute Resolution**

10.1 This agreement shall be governed by [] law.

- 10.2 Any dispute between the Parties in relation to or arising out of this agreement shall be submitted to arbitration. The arbitration shall be held in [] under a single arbitrator appointed by the President for the time being of []. The arbitration shall be governed by the Arbitration Rules of []. The language of the arbitration shall be [].
- 10.3 Where any Party is a consortium or joint venture, each constituent member of such consortium or joint venture must sign this agreement, and each will be jointly and severally liable for the actions of such consortium or joint venture.

Signed by:

.....
on behalf of **[name of organisation]**

Date:

[REPLICATE SIGNATURE CLAUSE BY NUMBER OF SIGNATORIES]

NOTES:

1. The certifier will normally be an independent firm of architects or engineers appointed to exercise the role of certifier under the contract (e.g. the issuing of payment certificates, extensions of time etc.). It will often be the same firm which acted as designer during tender phase. Whereas the role of the designer is normally to design the project on behalf of the client, the role of the certifier is normally to act independently in providing certification functions during project execution. In the event that the contract makes no provision for a certification function, this provision, and all references to “Certifier” can be deleted.
2. The “Construction Integrity Pact - Project - Execution” should be signed by the client, certifier and the selected contractor at the time of contract award to the contractor.
3. The documentation sent by the client to all potential bidders prior to tender submission must include a copy of the “Construction Integrity Pact – Project - Execution”, and must require the successful bidder to sign such pact at the time of contract award.
4. For an analysis of the use of integrity pacts in the construction and engineering industry see TI’s report **“Preventing Corruption on Construction Projects – Construction Integrity Pacts”** (www.transparency.org).
5. Three separate model integrity pacts have been designed by TI specifically for the construction and engineering industry. They are intended for use in both the public and private sectors.
 - a) **Construction Integrity Pact - Sector:** An agreement between companies working in the same sector to act with integrity when they compete against each other in tendering for any project anywhere in the world.
 - b) **Construction Integrity Pact - Project - Pre-qualification and Tender:** An agreement between the client, designer (if applicable) and all bidding contractors to act with integrity in relation to the pre-qualification and tender process for a specific project.

- c) **Construction Integrity Pact - Project - Execution:** An agreement between the client, certifier (if applicable) and the selected contractor to act with integrity in relation to the execution of a specific project.

These integrity pacts can be freely downloaded from TI's web-site ("**Preventing Corruption on Construction Projects**" - www.transparency.org).

6. Every situation is different. Therefore, while these integrity pacts have been designed to apply as widely as possible, they will need to be modified to take account of specific circumstances. It is important that anyone using these integrity pacts takes their own independent legal advice to ensure that they are suitable for their purposes, and comply with applicable laws. Neither TI nor the author can accept responsibility for the consequences of any action claimed to be taken in reliance on these draft integrity pacts.
7. TI welcomes comments which would lead to the improvement of these construction integrity pacts. Comments should be sent to neill.stansbury@transparency.org.uk.