

TRANSPARENCY INTERNATIONAL

PREVENTING CORRUPTION ON CONSTRUCTION PROJECTS

MODEL CLAIMS MANAGEMENT CODE

1. TI has published a series of reports under the title **“Preventing Corruption on Construction Projects”**. These reports can be freely downloaded from TI’s web-site at *www.transparency.org*. These reports provide information on the problem of corruption on construction projects, and propose actions which could be taken by the various participants in the industry to eliminate corruption. One aspect examined in these reports is the use of fraudulent or deceptive practices in relation to contract claims.
2. The following “claims management code” has been designed by TI as a model contract clause to be used by companies to assist them in preventing the use of fraudulent or deceptive practices in relation to contract claims. The clause can be incorporated into contracts between a company and its clients, agents, joint venture or consortium partners, contractors, major sub-contractors, and other business associates. It can also be used in integrity pacts.
3. Every situation is different. Therefore, while this model claims management code has been designed to apply as widely as possible, it will need to be modified to take account of specific circumstances. It is important that anyone using this code takes their own independent legal advice to ensure that it is suitable for their purposes, and complies with applicable laws. Neither TI nor the author can accept responsibility for the consequences of any action claimed to be taken in reliance on this code.
4. TI welcomes comments which would lead to the improvement of this code. These should be sent to *neill.stansbury@transparency.org.uk*

MODEL CONTRACT CLAUSE

[]. Claims management code

- [].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, including payment, extension of time, variations, the issuing of certificates, defects, non-performance, or any other claim or dispute between the Parties.*
- [].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.*

[].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.*

[].4 Nothing in this clause is intended to limit the conscientious and vigorous pursuit of legitimate claims. The aim is to eliminate false or inflated claims.

[].5 Each Party will take all reasonable steps to ensure that these provisions 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.

[].6 If the recipient of a claim has prima facie evidence that the claim is incorrect due to the deliberate or reckless act of anyone associated with its submission, the recipient may report the matter to the authorities, and to any applicable trade or professional association.”