

Construction of 100 Seated (G+1) Boys Hostel for Gandhmardan ITI Titlagarh in the district of Balangir, Odisha

ANNEXURE- III

INTEGRITY PACT

BETWEEN

NBCC (INDIA) LIMITED (NBCC) hereinafter referred to as **"The Principal/ Employer"** (which expression, unless repugnant to the context thereof, shall mean and include its legal representatives, heirs and assigns)

AND

.....hereinafter referred to as **"The Bidder/Contractor"** (which expression, unless repugnant to the context thereof, shall mean and include its legal representatives, heirs and assigns) *(The principal and the bidder(s)/ Contractor(s) are collectively referred to as "the Parties")*

Preamble

The Principal intends to award, under laid down organizational procedures, contract(s) for **"Construction of 100 Seated (G+1) Boys Hostel for Gandhmardan ITI Titlagarh in the district of Balangir, Odisha"** (hereinafter referred to as the 'Project'). The principal necessarily requires full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and/or Contractor(s).

In order to achieve these goals, the Principal will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the Integrity Pact by all the parties concerned, for all works covered in the Project.

To meet the purpose aforesaid both the parties have agreed to comply this Integrity Agreement (hereinafter referred to as "Integrity Pact" or "Pact"), the terms and conditions of which shall also be read as integral part and parcel of the Tender/Bid documents and Contract between the parties.

NOW, THEREFORE, in consideration of mutual covenants contained in this Pact, the parties hereby agree as follows and this Pact witnesses as under:

Section 1 – Commitments of the Principal

Obligations on Principal

The Employer is committed to follow the principle of Transparency, Equity and Competitiveness in Public Procurement.

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - a) No employee of the Principal, personally or through family members or through any other channel, will in connection with the tender for or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit, which the person is not legally entitled to.



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- b) The Principal will, during the tender process treat all Contractor(s)/Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Contractor(s)/Bidder(s) the same information and will not provide to any Contractor(s)/Bidder(s), confidential/additional information through which the Contractor(s)/Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - c) The Principal will exclude from the process all known prejudiced persons. The Principal shall obtain bids from only those bidders who have been short-listed or pre-qualified or through a process of open advertisement/web publishing or any combination thereof.
- (2) If the Principal obtains information on the conduct of any of its employees, Contractor(s) and/or Bidder(s), which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer or the principal will take remedial actions as per department/conduct rules and subject to its discretion, can additionally initiate disciplinary actions.
- (3) The Principal will enter into agreements with identical conditions with all Contractor(s)/Bidder(s) for the different Work Packages in the aforesaid Project.
- (4) The Principal will disqualify from the tender process all Contractor(s)/Bidder(s) with estimated cost of work put to tender of Rs 5.0 crores and above, who do not sign this Pact or violate its provisions.

Section 2 – Commitments of the Bidder(s) / Contractor(s)

Obligations on Bidder/Contractor

To accept and comply with the Integrity Agreement in letter and spirit and further agree that execution of the said Integrity Agreement shall be separate and distinct from the main contract, which will come into existence when tender/bid is finally accepted by Employer. Duration of the Integrity Agreement shall be in the line with section 8 of the Integrity Agreement.

Bidder/Contractor acknowledge that in the event of breach of the Integrity Agreement Employer shall have unqualified, absolute and unfettered right to take action under section 3.

- (1) It is required that each Bidder/Contractor (including their respective officers, employees and sub-contractors) adhere to the highest ethical standards, and report to the Government / Department all suspected acts of fraud or corruption or Coercion or Collusion of which it has knowledge or becomes aware, during the tendering process and throughout the negotiation or award of a contract.
- (2) The Bidder(s) / Contractor(s) commit(s) himself/themselves to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during



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the contract execution.

- (a) The Bidder(s) / Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage, of any kind whatsoever, during the tender process or during the execution of the contract.
- (b) The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
- (c) The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act. Further the Bidder(s)/Contractor(s) will not use improperly, for purpose of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- (d) The Bidder(s) / Contractor(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Bidder(s)/ Contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals/ associates, if any. Either the Indian agent on behalf of the foreign principal or the foreign principal directly could bid in a tender but not both. Further, in cases where an agent participates in a tender on behalf of one manufacturer, he shall not be allowed to quote on behalf of another manufacturer along with the first manufacturer in a subsequent/ parallel tender for the same item. It shall be incumbent on the Indian agent and the foreign principal to Adhere to the relevant guidelines of Government of India, issued from Time to time regarding availing services of Indian Agents for foreign Suppliers.

Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s) / Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only.

- (e) The Bidder(s) / Contractor(s) will, when submitting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (f) The Bidder(s) / Contractor(s) to disclose any transgression with any other company/ govt. organisation/ department that may impinge on the anti-corruption principle. The date of such transgression, for the purpose of disclosure by the bidders in this regard, would be the date on which



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cognizance of the said transgression was taken by the competent authority. The period for which such transgression(s) is/are to be reported by the bidders shall be the last three years to be reckoned from date of bid submission. The transgression(s), for which cognizance was taken even before the said period of three years, but are pending conclusion, shall also be reported by the bidders.

- (3) The Bidder(s) / Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- (4) The Bidder(s)/Contractor(s) will not, directly or through any other person or firm indulge in fraudulent practice means a wilful misrepresentation or omission of facts or submission of fake/forged documents in order to induce public official to act in reliance thereof, with the purpose of obtaining unjust advantage by or causing damage to justified interest of others and/or to influence the procurement process to the detriment of the Government interests.
- (5) The Bidder(s)/Contractor(s) will not, directly or through any other person or firm use Coercive Practices (means the act of obtaining something, compelling an action or influencing a decision through intimidation, threat or the use of force directly or indirectly, where potential or actual injury may befall upon a person, his/ her reputation or property) to influence their participation in the tendering process.
- (6) The Bidder(s)/Contractor(s) signing IP shall not approach the Courts while representing the matters to IEM and he/she will await their decision in the matter.
- (7) In case of sub-contracting, the Bidder(s)/Contractor(s) shall be solely responsible for the adherence to the provisions of IP by the sub-contractor(s).

Section 3: Disqualification from tender process and/or exclusion from future contracts.

Without prejudice to any rights that may be available to the Employer under law or the Contract or its established policies and laid down procedures, the Employer shall have the following rights in case of breach of this Integrity Pact by the Bidder(s)/Contractor(s) and the Bidder/ Contractor accepts and undertakes to respect and uphold the Employer absolute right:

- (1) If the Bidder(s) / Contractor(s), before awarding the Project or during execution has committed a transgression by violating Section 2 above or in any other form so as to put his reliability or credibility in question, the Principal, at its sole discretion, after giving proper opportunity to the bidder is entitled to disqualify the Bidder(s) / Contractor(s) from the tender process or terminate the contract, if already awarded or exclude the Bidder/Contractor from future contract award processes, for that reason, without prejudice to any other legal rights or remedies available to the Principal under the relevant clauses of GCC/SCC of the tender/contract. The imposition and duration of the exclusion will be determined by the severity of transgression and determined by the Principal. The severity will be determined by the circumstances of the



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case, in particular, the number of transgressions, the position of transgressors within the company hierarchy of the bidder and the amount of the damage.

- (2) If it is observed after payment of final bill but before the expiry of validity of Integrity Pact that the contractor has committed a transgression, through a violation of any of the terms under Section 2 above or any other term(s) of this Pact, during the execution of contract, the Principal will be entitled to exclude the contractor from further tender/contract award processes.
- (3) The exclusion will be imposed for a minimum period of six (6) months and a maximum period of three (3) years.
- (4) If the Contractor(s)/Bidder(s) can prove that he has restored/recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may, at its sole discretion, revoke or reduce the exclusion period before the expiry of the period of such exclusion.

Section 4: Compensation for Damages

- (1) If the Principal has disqualified the Bidder(s)/Contractor(s) from the tender process prior to the awarding of the Project according to Section 3, the Earnest Money Deposit (EMD)/ Bid Security furnished, if any, along with the offer, as per terms of the Invitation of Tender, shall also be forfeited.
- (2) If, at any time after the awarding of the Project, the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Security Deposit/Performance Guarantee furnished by the contractor, if any, as per the terms of the NIT/Contract shall be forfeited without prejudice to any other legal rights and remedies available to the Principal under the relevant clauses of General/Special Conditions of Contract.

Note: The Contractor(s)/Bidder(s) understands and agrees that the stipulations under this section will be in addition to the disqualification and exclusion of the Bidder(s)/Contractor(s), as may be imposed by the Principal in terms of Section 3 above.

Section 5: Previous transgression

- (1) The Bidder(s)/Contractor(s) herein declares that it has committed no transgressions in the last **3** years with any other Company in any country conforming to the anti-corruption approach as detailed herein or with government/ Central Government or State Government or any other Public Sector Enterprise in India that could justify its exclusion from the tender process.
- (2) If at any point of time during the tender process or after the awarding of the Contract, it is found that the Bidder(s)/Contractor(s) has made an incorrect statement on this subject, he can be disqualified from the tender process or if, as the case may be, that the Contract, is already awarded, it will be terminated for such reason and the Bidder(s)/Contractor(s) can be black listed in terms of Section 3 above.



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Section 6: Independent External Monitor / Monitors

- (1) The Principal shall, in case where the Project Value is Rs 5.0 crore and above, appoint competent and credible Independent External Monitor(s) as nominated and approved by the Central Vigilance Commission. The Monitor shall review independently and objectively, the cases referred to them to assess whether and to what extent the parties concerned comply with the obligations under this Integrity Pact.
- (2) In case of non-compliance of the provisions of the Integrity Pact, the complaint/ non-compliance is to be lodged by the aggrieved party with the Nodal Officer only, as shall be appointed by the CMD, NBCC. The Nodal Officer shall refer the complaint/ non-compliance so received by him to the aforesaid Monitor.
- (3) The Monitor will not be subject to any instructions by the representatives of the parties and will perform its functions neutrally and independently. The Monitor shall report to the Chairman-cum-Managing Director, NBCC.
- (4) The Bidder(s) / Contractor(s) accepts that the Monitor shall have the right to access, without restriction, all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his/her request and demonstration of a valid interest, unrestricted and unconditional access to their project documentation. The same is applicable to sub-contractor(s).
- (5) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s) / Contractor(s) with confidentiality. The IEM has also signed 'Non-Disclosure of Confidential Information' and 'Absence of Conflict of Interest'. In case if any conflict of Interest arising at a later date, the IEM shall inform the Chairman-cum-Managing Director, NBCC and recuse himself/ herself from that case.
- (6) The Principal will provide to the Monitor, sufficient information about all meetings among the parties related to the Project, provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties will offer to the IEM the option to participate in such meetings.
- (7) As soon as the Monitor notes, or believes to note, a violation of this Pact, he will so inform the Principal and request the Principal to discontinue and/or take corrective action, or to take other relevant action(s). The Monitor can in this regard submit non-binding recommendations. However, beyond this, the Monitor has no right to demand from the parties that they act in a specific manner and/or refrain from action and/or tolerate action.
- (8) The Monitor will submit a written report to the CMD, NBCC within 4 to 6 weeks from the date of reference or intimation to it and, should the occasion arise, submit proposals for corrective actions for the violation or the breaches of the provisions of the agreement noticed by the Monitor.



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- (9) If the Monitor has reported to the CMD, NBCC, of a substantiated suspicion of an offence under relevant IPC/PC Act, and the CMD, NBCC, has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Govt. of India.
- (10) The word 'Monitor' means Independent External Monitor and includes both singular and plural forms.
- (11) For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs jointly as far as possible, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management. In case the full panel is not available due to some unavoidable reasons, the available IEM(s) will conduct examination of the complaints. Consent of the IEM(s), who may not be available, shall be taken on record.
- (12) IEM should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging malafide on the part of any officer of the organisation should be looked into by the CVO of the concerned organisation.
- (13) The role of IEM is advisory, would not be legally binding and it is restricted to resolving issues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organisations.
- (14) Issues like warranty / guarantee etc. should be outside the purview of IEMs.
- (15) The role of the CVO of the organization shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, If a complaint is received by him/her or directed to him/her by the commission. CVO and/or the officials of the Vigilance wing should not be associated by IEMs during the examination of the complaints in any manner.
- (16) In the event of any dispute between the principal and the contractor relating to the project and in case both the parties agree, the dispute may be settled through mediation before the panel of IEMs in a time bound manner. If required, the principal may adopt any mediation rules for this purpose. However, not more than five meetings shall be held for a particular dispute resolution. The fees/ expenses on dispute resolution shall be equally shared by both the parties. In case the dispute remains unresolved even after mediation by the panel of IEMs, the principal may take further action as per the terms & conditions of the contract.

Section 7 – Criminal charges against violating Bidder(s)/Contractor(s) / Subcontractor(s)

If the Principal obtains knowledge of conduct of a Bidder/Contractor or any



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employee or a representative or an associate of a Bidder/Contractor, which constitutes corruption within the meaning of PC Act, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the law enforcing agencies for further investigation.

Section 8 – Duration of the Integrity Pact

This Pact shall come into force when both parties have legally signed it. It expires for the contractor 12 months after the completion of work under the contract or expiry of defect liability period or last payment made under the contract, whichever is later and for all other bidders, 6 months after the contract has been awarded.

If any claims is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by CMD of NBCC.

The Bidder(s)/Contractor(s), however, understands and agrees that even upon the completion of the Project and/or the last payment under the Contract having been made, if any transgression/violation of the terms of this Pact comes/is brought to the notice of the Principal, it may, subject to its discretion, blacklist and/or exclude such Bidder(s)/Contractor(s) as provided for in Section 3, without prejudice to any other legal right or remedy so available to the Principal.

Section 9 – Other provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.
- (2) Changes and supplements as well as termination notices need to be made in writing.
- (3) In case the bidder is a Company, Partnership Firm, Consortium, or Joint Venture (JV), the Integrity Pact shall be signed as under:
 - i). **Company:** The Integrity pact shall be signed by a representative duly authorised by Board resolution/ Power of Attorney.
 - ii). **Proprietorship:**
The Integrity Pact shall be signed by the sole proprietor or a representative duly authorised through a Power of Attorney executed by the sole proprietor.
 - iii). **Partnership Firm:** The Integrity Pact shall be signed by all the partners of the firm. Alternatively, it may be signed by one or more partners duly authorized through a Power of Attorney executed by all the partners.
 - iv). **Consortium (if permitted in the NIT):** The Integrity Pact shall be signed by all the members of the consortium. Alternatively, it may be signed by one or more members duly authorized through a Power of Attorney duly executed by all consortium members.
 - v). **Joint Venture (JV) (if permitted in the NIT):** The Integrity Pact shall



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be signed by all the constituent partners of the Joint Venture.

- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement shall remain valid and binding. In such a case, the parties will strive to come to an agreement in accordance to their original intentions.
- (5) Wherever he or his is indicated in the above sections, the same may be read as he/she or his/her, as the case may be.
- (6) It is agreed term and condition that any dispute or difference arising between the parties with regard to the terms of this Integrity Agreement / Pact, any action taken by the Principal in accordance with this Integrity Agreement/ Pact or interpretation thereof shall not be subject to arbitration.
- (7) In view of the nature of Integrity Pact, the Integrity Pact is irrevocable and shall remain valid even if the main tender/ contract is terminated till the currency of the Integrity Pact.

Section 10- Legal and Prior Rights

All rights and remedies of the parties hereto shall be in addition to all the other legal rights and remedies belonging to such parties under the Contract and/or law and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid. For the sake of brevity both the Parties agree that this Integrity Pact will have precedence over the Tender/Contract documents with regard to any of the provisions covered under this Integrity Pact.

IN WITNESS WHEREOF the parties have signed and executed this Integrity Pact at the place and date mentioned below in the presence of following witnesses:


(For & On behalf of the Principal)
(Office Seal)

(For & On behalf of Bidder/Contractor)
(Office Seal)

Place _____

Date _____

WITNESSES 1:
(Name & Address) _____

WITNESSES 1:
(Name & Address) _____

WITNESSES 2:
(Name & Address) _____

WITNESSES 2:
(Name & Address) _____
