



Global Infrastructure Anti-Corruption Centre

GIACC



**TRANSPARENCY
INTERNATIONAL
(UK)**

- PACS -

Project Anti-Corruption System

(Construction Projects)

Template 1

Independent Assessor Agreement

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- PACS -

TEMPLATE 1

INDEPENDENT ASSESSOR AGREEMENT

[Note (1): This agreement has been designed for large projects. A simplified version may be used for smaller projects

[Note (2): This agreement assumes that the Project Owner is appointing and paying the independent assessor. If this is not the case, then appropriate amendments should be made.]

THIS AGREEMENT is made on..... [insert date] between:

(1)
.....
[insert name and address] ("Project Owner")

(2)
.....
[insert name and address] ("Independent Assessor")

IT IS AGREED AS FOLLOWS:

Definitions

1. The definitions set out in Schedule E apply to this Agreement.

Appointment of the Independent Assessor

2. The Project Owner hereby appoints the Independent Assessor to monitor the Project in accordance with the terms of this Agreement.

General duties of the Independent Assessor

3. The Independent Assessor will use reasonable endeavours to monitor and assess the Project for Corruption, and will make reports where there is evidence of Corruption.

4. In carrying out his general duty in clause 3 above, the Independent Assessor will do as follows:

4.1 He will assess Project selection, planning approvals, and design;

4.2 He will assess the Project funding process and arrangements;

4.3 For each Major Contract, he will assess the procurement process as required in Schedule A, and Project Execution as required in Schedule B.

- 4.4 For each PACS Standard (PS) to be implemented on the Project:
 - (i) He will assess whether it is being properly implemented and complied with by all relevant parties;
 - (ii) For PS 2 (Transparency) and PS 4 (Pre-contract disclosure), he will also assess whether the information disclosed is accurate and whether it reveals any possible Corruption;
 - (iii) For PS 5 (Project commitments), PS 6 (Funding commitments) and PS 7 (Government commitments), he will also assess whether the parties are complying with their anti-corruption commitments.
 - (iv) He will, within 7 days of becoming aware of any breach of any obligation under the PACS Standard or of any anti-corruption commitment (in PS 5, PS 6 or PS 7), serve a notice of breach on the party which is in breach.
- 4.5 He will investigate matters of concern which may suggest corrupt activity.
- 4.6 He will receive and make reports in accordance with Schedule C.
5. In carrying out his duties under this Agreement:
 - 5.1 The Independent Assessor will act impartially.
 - 5.2 He will be required to do only what is reasonable taking into account the time available to him under his appointment.
 - 5.3 He will make assessments to the best of his knowledge and belief and on the basis of the facts available to him.
 - 5.4 He will keep confidential any information obtained by him as a result of carrying out his duties under this Agreement unless such information is already in the public domain, or disclosure to another person is necessary in order to comply with his duties under this Agreement.
 - 5.5 He will make and retain full written or other permanent records of his activities and findings, and will ensure that these are dated and either signed by him or marked to show that they were made or collected by him. He will store these records for at least 20 years following the completion of the Project.
 - 5.6 He may delegate any part of his function to one or more suitably qualified persons or organisations, provided that he will remain legally responsible for the actions of such persons or organisations, and for the payment of their fees and expenses. He will notify the person who has appointed him of the delegation.

Anti-Corruption declaration by the Independent Assessor

6. The Independent Assessor declares and undertakes that in connection with the Project:
 - 6.1 He has acted, and will continue to act, at all times honestly and fairly.
 - 6.2 He has not offered or given, and will not offer or give, directly or indirectly, any bribe or other improper benefit or advantage to any individual or organisation.
 - 6.3 He has not demanded or accepted, and will not demand or accept, directly or indirectly, any bribe or other improper benefit or advantage for himself or any individual or organisation.
 - 6.4 He has not made, and will not make, directly or indirectly, any payment except to the extent that such payment is legitimate compensation for legitimate services.
 - 6.5 He has not received, and will not receive, directly or indirectly, any payment except to the extent that such payment is legitimate compensation for legitimate services.
 - 6.6 He has not provided to any party, and will not provide to any party, any written or oral information which he knows to be false, inaccurate or misleading, or where he is wilfully blind or reckless as to whether the information is false, inaccurate or misleading.
 - 6.7 He has not dishonestly withheld from any party, and will not dishonestly withhold from any party, any written or oral information.
 - 6.8 He has not conspired, and will not conspire, with any party dishonestly to cause loss to any party or to deprive any party of its rights.

- 6.9 He has not authorised or acquiesced in or turned a blind eye to, and will not authorise or acquiesce in or turn a blind eye to, any Corruption.
- 6.10 He is aware that any involvement in Corruption by him may result in his incurring criminal liability and that the penalties for such liability may be severe and may include imprisonment.

Terms of appointment and liability of the Independent Assessor

7. The fees and reimbursable expenses of the Independent Assessor are specified in Schedule D to this Agreement. Such fees and expenses will be paid by the Project Owner to the Independent Assessor monthly within 14 days of receipt of invoice and proof of expenses from the Independent Assessor. The Independent Assessor will not receive any fees or other payment or reward in relation to the Project except as provided in Schedule D.
8. The appointment of the Independent Assessor will commence on the date of this Agreement.
9. The appointment of the Independent Assessor will automatically expire on the issue of his end of project report under clause C.2.8 of Schedule C.
10. The appointment of the Independent Assessor may be terminated early only as follows:
 - 10.1 by order of a court of law, having appropriate jurisdiction, in the event of any Corruption, gross negligence or wilful misconduct on the part of the Independent Assessor, application for such Court order being made by the Project Owner, a Funder or by any other party who is or who may be affected by such Corruption, gross negligence or wilful misconduct; or
 - 10.2 with immediate effect, upon service of written notice by the Independent Assessor on the Project Owner if the Independent Assessor's fees are more than 2 months overdue; or
 - 10.3 upon the expiry of 3 months' prior written notice from the Independent Assessor.
11. The Independent Assessor agrees that this Agreement and his name and contact details may be disclosed on the project website (provided that, if the Independent Assessor is an individual, these contact details do not include his home address).

Commitments of the Project Owner

12. The Project Owner will provide, as far as reasonably possible, all documents, information and assistance to enable the Independent Assessor to carry out his duties under this Agreement.
13. The Project Owner will not take, directly or indirectly, any steps which could obstruct or unduly influence the function of the Independent Assessor.
14. The Project Owner itself agrees, and will procure that each Major Contractor, Major Sub-contractor and each of their related companies and agents will contractually agree, as follows:
 - 15.1 To co-operate with the Independent Assessor;
 - 15.2 To give him advance notice of and permit him to attend project meetings and inspections (save for internal meetings and inspections);
 - 15.3 To allow him to have, without requiring advance notice, unrestricted access to any of the following which are under their control, or in their possession, or who are employed by them:
 - the project site;
 - project works, equipment and materials;
 - project and other office premises;
 - senior officers and managers;
 - employees connected with the project;
 - correspondence, records, documentation and accounts relating to the project;
 - any other information relating to the project.

15.4 The liability of the independent assessor to each of them will be limited to acts of gross negligence, wilful misconduct or criminal activity by the independent assessor.

15. The Project Owner will pass on to the Independent Assessor, within 7 days of becoming aware of it, any matter concerning suspected or actual Corruption in relation to the Project.

Governing Law and Dispute Resolution

16. This agreement will be governed by law *[insert governing law]*.

17. Any dispute between the parties in relation to or arising out of this Agreement will be submitted to arbitration. The arbitration will be held in *[insert location]* under a single arbitrator appointed by the President for the time being of *[insert name of institution]*. The arbitration will be governed by the Arbitration Rules of *[insert name of rules]*. The language of the arbitration will be *[insert language]*.

Signed by:

on behalf of
(Independent Assessor)

Date:

Signed by:

on behalf of
(Project Owner)

Date:

SCHEDULE A

**Independent Assessor's duties in respect of the
Pre-Qualification, Tender and Nomination Processes**

In respect of the Pre-Qualification, Tender and Nomination Processes for each Major Contract, and in addition to his general duties under this Agreement, the Independent Assessor will do as follows:

A.1 If PACS Standards 3 (Procurement) and 4 (Pre-contract disclosure) apply to the Project, the Independent Assessor will assess whether they have been complied with by the Project Owner and each Applicant, and whether there is any indication of Corruption in the information disclosed under PACS Standard 4.

A.2 He will assess whether there is any indication of Corruption in connection with any of the following matters:

Generally

- (1) the proposed terms of the Major Contract;
- (2) the proposed design and specification of the Major Contract.

In relation to the Pre-qualification Process (if any)

- (3) the pre-qualification procedures;
- (4) the operation of those procedures;
- (5) the identity of the pre-qualification applicants;
- (6) the content of the pre-qualification submissions;
- (7) the pre-qualification meetings;
- (8) the identity of the pre-qualification evaluators;
- (9) the evaluation criteria;
- (10) the evaluation reports;
- (11) any negotiation or competitive dialogue process;
- (12) the final pre-qualification decision and the reasons for that decision;
- (13) any other matter concerning the Pre-qualification Process.

In relation to the Tender Process

- (14) the tender procedures;
- (15) the operation of those procedures;
- (16) the identity of the tenderers;
- (17) the content of the tenders;
- (18) the tender price;
- (19) the tender meetings;
- (20) the identity of the tender evaluators;
- (21) the tender evaluation criteria;
- (22) the evaluation reports;
- (23) any negotiation or competitive dialogue process;
- (24) the final tender decision and the reasons for that decision;
- (25) any other matter concerning the Tender Process.

In relation to the Nomination Process (if any)

- (26) the reasons for not using a competitive tender;
- (27) the nomination negotiations;
- (28) the nomination meetings;
- (29) the identity of the nominated Applicant;
- (30) the identity of the nomination evaluators, if any;
- (31) the reasons for the selection of the Applicant;
- (32) any other matter concerning the Nomination Process.

A.3 He will receive and make reports in accordance with Schedule C.

A.4 For the purposes of carrying out his duties in clauses A.1 to A.3:

- (1) He will make inquiries of the Project Owner, the Applicants and any other persons involved in any of the Pre-Qualification, Tender and Nomination Processes.
- (2) He will review and investigate all reports made to him.
- (3) He will read all relevant documentation.

- (4) He will attend:
 - (a) the opening of the pre-qualification and tender submissions;
 - (b) all meetings held between any of the Applicants on the one hand and the Project Owner and/or any other party participating in the evaluation of the pre-qualification submissions, tenders or nominations on the other;
 - (c) all meetings during which the Project Owner and/or any other party evaluate the pre-qualification submissions, tenders or nominations.

SCHEDULE B

Independent Assessor's duties in respect of Project Execution

In respect of Project Execution of each Major Contract, and in addition to his general duties under this Agreement, the Independent Assessor will do as follows:

- B.1 **Pre-contract disclosure:** If PACS Standard 4 (Pre-contract disclosure) applies to the Project, then the Independent Assessor will assess whether it has been complied with by the Project Owner and the Major Contractor, and whether the information disclosed indicates that Corruption has occurred or could occur in connection with the Project. In assessing this information, he will do the following:
 - (1) He will interview the appropriate senior manager of each party who has disclosed information in order to assess the accuracy of the information disclosed by that party and obtain any further information, if appropriate.
 - (2) His inquiries will include whether:
 - (a) any details disclosed by a party are suspicious or indicate prior involvement in Corruption;
 - (b) any details disclosed by a party indicate that the party's internal procedures do not adequately deal with the risk of Corruption or may increase the risk of Corruption;
 - (c) the method of selection of a joint venture partner, agent or sub-contractor was not competitive, fair and transparent;
 - (d) the reasons for selection of a joint venture partner, agent or sub-contractor appear inadequate or suspicious;
 - (e) the ownership or identity of a party is not clear;
 - (f) a party has a conflict of interest or has an improper connection with some other person or organisation which could give rise to Corruption;
 - (g) a party does not have sufficient technical or financial ability or resources to undertake the stated function and work;
 - (h) the contract price is disproportionate to the value of the services which a party will undertake;
 - (i) the terms of payment are suspicious;
 - (j) the information disclosed is inaccurate;
 - (k) there are any other matters which suggest that there may be Corruption in relation to a party's appointment for, or participation in, the Project.

- B.2 **Major Contracts and Major Sub-contracts:** He will obtain a copy of the executed Major Contract and each executed Major Sub-contract document, and of the Major Contractor's and each Major Sub-contractor's price schedule, and in relation to each will assess whether:
 - (1) there is any indication of Corruption in the terms of the contract document;

- (2) there is any indication of Corruption in the design or specification of the Major Contract works or Major Sub-contract works, including any revisions thereto since completion of any Pre-qualification Process, Tender Process or Nomination Process;
- (3) the price is proportionate to the value of work or services to be provided;
- (4) there is anything suspicious in relation to any item or price or method of pricing in the price schedule.

B.3 Work, services, materials and equipment: He will carry out random inspections of the works, services, materials and equipment, in order to determine whether the following matters conform to contractual requirements and whether those matters have been accurately recorded by the person responsible for recording such matters:

Works

- (1) the method of construction;
- (2) the quality of the on-going works;
- (3) the quality of the completed works;
- (4) man-hours worked;

Services

- (5) the quality of the services;
- (6) man-hours worked;

Materials

- (7) quality of materials delivered to site;
- (8) quantity of materials delivered to site;

Equipment

- (9) quality of equipment provided;
- (10) quantity of equipment provided;
- (11) hours of equipment use.

During such inspections, he will, where appropriate or necessary, question members of staff of the Project Owner, the Major Contractor, the Major Sub-contractor, and any other Project participants with regard to any of the above matters.

B.4 Claims: He will assess the following Claims in order to determine whether there is any indication of Corruption in relation to those Claims:

- (1) every Claim submitted which is in excess of 5% of the relevant contract price;
- (2) on a random basis, any Claim submitted which is 5% or less of the relevant contract price;
- (3) the approval or rejection of the above.

In making such assessment, he will assess the cost of the Claim and the alleged underlying basis of the Claim, including, for example, the work which is alleged to constitute a variation, or the reasons for the delay for which an extension of time is claimed, or whether the work for which a payment is claimed has been carried out, or whether works which are claimed to be defective are defective.

B.5 Reports: He will receive and make reports in accordance with Schedule C.

- B.6 For the purposes of carrying out his duties in B.1 to B.5 above:
- (1) he will make inquiries of the Project Owner, Major Contractors, Major Sub-contractors, and any other relevant Project participants;
 - (2) he will review and investigate all reports made to him;
 - (3) he will read appropriate documents and records;
 - (4) he will carry out appropriate inspections;
 - (5) he will attend meetings between the Project Owner and any Major Contractor and/or Major Sub-contractor at which significant issues are to be discussed.

SCHEDULE C

Independent Assessor's reporting obligations

In addition to his general duties under this Agreement, the Independent Assessor will receive and make reports as follows:

- C.1 In making reports, the Independent Assessor may, if he wishes, take independent advice as to how to make those reports free from risk of liability for defamation or liability for disclosure of confidential information.
- C.2 The Independent Assessor will, as soon as reasonably possible, make the following written reports and serve the following written notices:
- C.2.1 Corruption. If he believes that there is evidence of Corruption, then he will make appropriate reports to:
- (a) the criminal authorities,
 - (b) the Project Owner,
 - (c) the Funders,
 - (d) the other project participants who may be affected,
 - (e) the relevant professional association, where the matter relates to the conduct of an individual who is a member of that professional association,
 - (f) the relevant government department, where the matter relates to the conduct of a government official.
- C.2.2 Disqualification, termination or withdrawal. If, for reasons related to Corruption, any party has been disqualified from or has withdrawn from any Pre-Qualification, Tender or Nomination Process for a Major Contract or Major Sub-contract, or a Major Contract or Major Sub-contract has been terminated, the Independent Assessor will report the matter to the Funders and to any other party who may be affected, and will copy his report to the Project Owner and to the party who has been disqualified or has withdrawn, or whose contract has been terminated.
- C.2.3 Breach of this Agreement. If the Project Owner is in breach of this Agreement and fails to remedy this breach within a reasonable period following a request by the Independent Assessor to remedy the breach, the Independent Assessor will report the matter to the Funders, the Project Owner and to all parties to whom this breach may be relevant.
- C.2.4 Breach of PACS Standards. If any PACS Standard, which applies to the project, is not being properly implemented or complied with, then the Independent Assessor will report the matter to the Project Owner, the Funders, and to the party which required the implementation of the PACS Standards.

- C.2.5 Breach of anti-corruption commitments. If PACS Standards 5, 6 and/or 7 apply to the project and if any party is not complying with its commitments, the Independent Assessor shall serve a notice of breach on that party, and will also notify the Project Owner and the Funders.
- C.2.6 End of procurement process. Within a month after the issue of the Project Owner's final procurement decision in relation to each Major Contract, the Independent Assessor will issue a report to the Funders, the Project Owner, and all relevant Applicants on that process. This report will provide details of:
- (a) Inquiries and assessments made by the Independent Assessor as required under Schedule A;
 - (b) reports made by him under Schedule C;
 - (c) any actions taken by the parties to whom the reports in (b) were made;
 - (d) his opinion as to whether the actions taken in (c) were adequate;
 - (e) any remedies obtained or penalties imposed by any party in relation to any Corruption.
- C.2.7 Execution of Major Contracts - Monthly reports [or other appropriate interval]. For the duration of the execution of a Major Contract, the Independent Assessor will issue monthly reports simultaneously to the Funders, the Project Owner, the Major Contractor, and relevant Major Sub-contractors. This report will provide details of:
- (a) inquiries and assessments made by the Independent Assessor as required in Schedule B;
 - (b) reports made by him under Schedule C;
 - (c) details of any actions taken by the parties to whom the reports in (b) were made;
 - (d) his opinion as to whether the actions taken in (c) were adequate;
 - (e) any remedies obtained or penalties imposed by any party in relation to any Corruption.
- C.2.8 End of project report. Within 3 months after completion of the Project, he will issue a report to the Funders, the Project Owner, the Major Contractor, and relevant Major Sub-contractors. This report will:
- (a) summarise his findings and all reports made in relation to the Project;
 - (b) summarise the actions taken by all parties in relation to each of his reports;
 - (c) raise any matters which may have come to light subsequent to the issue of any previous report.

Reports received by the Independent Assessor

- C.3 He will consider all reports made to him by anyone, including members of the public, regarding Corruption or suspicion of Corruption, and will make appropriate enquiries, and take appropriate action, as provided in Schedules A to C.
- C.4 He will not disclose to anyone the identity of any person who has reported Corruption or suspicion of Corruption to him unless the person who has made the report provides written consent to the disclosure of his identity, specifying the person to whom his identity may be disclosed.

SCHEDULE D

Independent Assessor's fees and reimbursable expenses

[This Schedule should be completed to record the agreement between the Project Owner and the Independent Assessor relating to fees and reimbursable expenses

SCHEDULE E

Definitions

“**Applicant**” means a party which is applying to pre-qualify for, or which is tendering for, or which is a nomination candidate for, a Project contract.

“**Claim**” means any claim, set-off or counterclaim in relation to the Project including, without limitation, any application or claim for payment, variation, extension of time, damages, delay and disruption, prolongation or defects. These may include claims under major contracts or major sub-contracts.

“**Corruption**” means bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering, or any similar activity in relation to the Project.

“**Funder**” means any individual, company or organisation providing financial aid, project financing, insurance, export credits or guarantees in relation to the Project.

“**Major Contract**” means:

- (a) A contract between the Project Owner and another party in relation to the Project where that party is to perform works or supply materials or equipment and where it is anticipated that the contract value will be in excess of [US\$250,000]; or
- (b) A contract between the Project Owner and another party in relation to the Project where that party is to supply services and where it is anticipated that the contract value will be in excess of [US\$100,000].

[The above are recommended contract values. The Project Owner should determine the values it wishes to apply.]

“**Major Contractor**” means a party who has entered into a Major Contract.

“**Major Sub-contract**” means:

- (a) A contract between a Major Contractor and another party in relation to the Project where that party is to perform works or supply materials or equipment and where it is anticipated that the contract value will be in excess of [US\$250,000]; or
- (b) A contract between a Major Contractor and another party in relation to the Project where that party is to supply services and where it is anticipated that the contract value will be in excess of [US\$100,000].

[The above are recommended contract values. The Project Owner should determine the values it wishes to apply.]

“**Major Sub-contractor**” means a party who has entered into a Major Sub-contract.

“**Nomination Process**” means a process whereby a party is selected for a Project contract without any competitive process.

“**Pre-qualification Process**” means the process whereby candidates are selected or short-listed as eligible to take part in the Tender Process for a Project contract. This process includes the preparation and issuing of the invitation to pre-qualify, the making of the pre-qualification submissions, the consideration of those submissions, any negotiation or dialogue with the candidate whether before or after the pre-qualification submission, the selection of candidates eligible to tender, and the publication of that selection.

“**Project**” means *[enter name of project]*.

“**Project Execution**” means the carrying out of the relevant works under a Project contract, from the time the contract is signed until the works are completed.

“**Tender Process**” means the competitive process whereby a party is selected to carry out a Project contract. This process includes the preparation and issuing of the invitation to tender, the submission of tender, the consideration of the tender, any negotiation or dialogue with the tenderer, whether before or after the submission of tender, the selection of the successful tenderer, and the publication of that selection.
