

Omnibus Integrity Pact

Tender Ref. No. & Date:.....

Integrity Pact (Omnibus)

Whereas Hindustan Aeronautics Ltd. (“HAL”) having its registered office at 15/1, Cubbon Road, Bangalore – 560 001, India represented by General Manager / Executive Director hereinafter referred to as the Buyer and the first party, proposes to procure (indicate name or category of the Equipment, like Aircraft Parts/ Avionic Items/ Accessories etc), hereinafter referred to as Goods and/ or Services and / or Works.

And

M/s....., represented by....., Chief Executive Officer (which term, unless expressly indicated by the contract, shall be deemed to include its successors and its assignee), hereinafter referred to as the Bidder(s)/Seller(s) and the second party, is willing to offer/ has offered the Goods and/ or Services and / or Works.

2. Whereas the Bidder(s)/Seller(s) is a private company/public company /partnership/ registered export agency, constituted in accordance with the relevant law in the matter and the Buyer is a Public Sector Undertaking and registered under Companies Act 1956. Buyer and Bidder(s)/Seller(s) shall hereinafter be individually referred to as “Party” or collectively as the “Parties”, as the context may require.

3. **Preamble**

3.1 Buyer proposes to procure herein referred Goods/ or Services and / or Work sand the Bidder(s)/Seller(s) is willing to offer / has offered / will offer the Goods/ or Services and / or Works under laid down organizational procedures intending to enter into contract/s for supply of/ Goods / etc of all such items/products/Goods and / or Services and / or Works includingand the Bidder(s)/Seller(s) is one amongst several Bidders/Proprietary Vendor/Customer Nominated Source/Licenser who has indicated a desire to bid/supply in such tendering process.

3.2 Buyer has decided that an Omnibus Integrity Pact (Omnibus IP) can be signed with Bidder(s)/Seller(s), which will avoid taking multiple approvals, from both sides for signing IP for individual tender / contract. Bidder(s)/Seller(s) and Buyer are entering into this Omnibus IP for covering all tenders / contract / agreements / Purchase Order etc., between the Bidder(s)/Seller(s) and Buyer within its ambit.

3.3 The Buyer values and takes primary responsibility for 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 Seller(s).

3.4 In order to achieve these goals, the Buyer has appointed Independent External Monitor(s) (IEM) in consultation with Central Vigilance Commission, who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

4. Commitments of the Buyer.

4.1 The Buyer commits itself to take all measures necessary to prevent corruption and fraudulent practices and to observe the following principles:-

- i) No employee of the Buyer, personally or through family members, will in connection with the tender, 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.
- ii) The Buyer will during the tender process treat all Bidder(s)/Seller(s) with equity and reason. The Buyer will in particular, before and during the tender process, provide to all Bidder(s)/Seller(s) the same information and will not provide to any Bidder(s)/Seller(s) confidential / additional information through which the Bidder(s)/Seller(s) could obtain an advantage in relation to the process or the contract execution.
- iii) The Buyer will exclude from the process all known prejudiced persons.

4.2 If the Buyer obtains information on the conduct of any of its employees which is a criminal offence under the Indian legislation, Prevention of Corruption Act 1988 as amended from time to time or if there be a substantive suspicion in this regard, the Buyer will inform to its Chief Vigilance Officer and in addition can initiate disciplinary action.

5. Commitments of the Bidder(s) / Seller(s).

5.1 The Bidder(s)/Seller(s) commit himself to take necessary measures to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

- i) The Bidder(s)/Seller(s) will not, directly or through any other persons or firm, offer promise or give to any of the Buyer'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 during the tendering or qualification process or during the execution of the contract.

- ii) The Bidder(s)/Seller(s) will not enter with other Bidder(s)/Seller(s) 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.
- iii) The Bidder(s)/Seller(s) will not commit any offence under the Indian legislation, Prevention of Corruption Act 1988 as amended from time to time. Further, the Bidder(s)/Seller(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Buyer as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

5.2 Adoption of IP by Joint Ventures/Sub-Contractors:

- i) In case the Bidder(s)/ Seller(s) is a Joint Venture, then all the Partners of the Joint Venture should sign this Integrity Pact. The Bidder(s) / Seller(s) shall ensure the compliance of the provisions of this Integrity Pact by all its Joint Venture Partners. Further, the Bidder(s)/Seller(s) shall be held responsible for any violation/breach of the provisions of IP by any one or more of its Partners.
- ii) The Bidder(s)/Seller(s) shall ensure compliance of the provisions of this Omnibus IP by its sub-contractor(s), if any. In this regard Bidder(s)/Seller(s) shall ensure for entering into a similar Integrity pact arrangement with their respective sub-contractor(s) before entering into any specific sub contractual arrangement, in connection with execution of main contract with HAL. The Integrity Pact shall be generally executed in all such cases where the value of sub contract works is Rs.2 Crores (equivalent to MUSD 0.25) and above, the content of IP can be decided by Bidder(s)/Seller(s), which shall be in similar lines of this main Integrity Pact. The signed Integrity Pact needs to be retained by the Bidder(s)/Seller(s) and shall be submitted to HAL, upon seeking such information. Further, the Bidder(s)/Seller(s) shall be held responsible for any violation/breach of the provisions by its sub-contractor(s).

5.3 The Bidder(s)/Seller(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

5.4 Agents / Agency Commission:

The Seller(s)/Bidder(s) confirms and declares to the Buyer that the Seller(s)/Bidder(s) is the original manufacturer or authorized distributor / stockiest of original manufacturer or Govt. Sponsored / Designated Export Agencies (applicable in case of countries where domestic laws do not permit direct export by OEMs) of the Goods and / or Services and / or Works referred to in tender / offer / contract / Purchase order to which this Omnibus IP applies and has not engaged any individual or firm, whether Indian or Foreign whatsoever, to intercede, facilitate or in any way to recommend to Buyer or any of its functionaries, whether officially or unofficially, to the award of the tender /contract / purchase order to the Seller(s)/Bidder(s); nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller(s)/Bidder(s) agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller(s)/Bidder(s) has engaged any such individual / firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of the respective contract / purchase order, the Seller(s)/Bidder(s) will be liable to refund that amount to the Buyer. The Seller will also be debarred from participating in any RFQ / Tender for new projects / program with Buyer for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract / Purchase order either wholly or in part, without any entitlement or compensation to the Seller(s)/Bidder(s) who shall in such event be liable to refund to the buyer, all Agency Commission payments made by the Seller(s)/Bidder(s) along with interest at the rate of 2% per annum above LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and Base Rate of SBI (State Bank of India) plus 2% (for Indian vendors). The Buyer will also have the right to recover any such amount from any contracts / Purchase order concluded earlier or later with Buyer.

6. Previous Transgression

- 6.1 The Bidder(s)/Seller(s) declares that no previous transgressions have occurred in the last three years from the signing of the Omnibus IP with any other company in any country conforming to the anticorruption approach or with any other Public Sector Enterprise in India that could justify Bidder's/ Sellers' exclusion from the tender process.
- 6.2 If the Bidder(s)/Seller(s) makes incorrect statement on this subject, Bidder(s)/Seller(s) can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason without any liability whatsoever on the Buyer.

7. Company Code of Conduct

Bidder(s)/Seller(s) are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for the implementation of the code of conduct throughout the company.

8. Sanctions for Violation

8.1 If the Bidder(s)/ Seller(s), before award or during execution has committed a transgression through a violation of Clause 5 & Clause 6, above or in any other form such as to put his reliability or credibility in question, the Buyer is entitled to disqualify the Bidder(s)/ Seller(s) from the tender process or take action as per the procedure mentioned herein below:

- i) To disqualify the Bidder(s)/Seller(s) in the tender process & exclusion from future contracts.
- ii) To debar the Bidder(s)/Seller(s) from entering into any bid from Buyer for a period of two years.
- iii) To immediately cancel the contract, if already signed / awarded without any liability on the Buyer to compensate the Bidder(s)/Seller(s) for damages, if any. Subject to Clause 5.4, any lawful payment due to the Bidder(s)/Seller(s) for supplies effected till date of termination would be made in normal course.
- iv) To encash EMD / Advance Bank Guarantees / Performance Bonds/Warranty Bonds, etc. which may have been furnished by the Bidder(s)/Seller(s) to the extent of the undelivered Goods and/ or Services and / or Works.

8.2 If the Buyer obtains knowledge of conduct of a Bidder(s)/Seller(s) or of an employee or a representative or an associate of a Bidder(s)/Seller(s) which constitutes corruption, or if the Buyer has substantive suspicion in this regard, the Buyer will inform to its Chief Vigilance Officer.

9. Compensation for Damages

9.1 If the Buyer has disqualified the Bidder(s)/Seller(s) from the tender process prior to the award according to Clause 8, the Buyer is entitled to demand and recover the damages equivalent to Earnest Money Deposit in case of open tendering.

- 9.2 If the Buyer has terminated the contract according to Clause 8, or if the Buyer is entitled to terminate the contract according to Clause 8, the Buyer shall be entitled to encash the advance bank guarantee and performance bond/ warranty bond, if furnished by the Bidder(s)/Seller(s), in order to recover the payments, already made by the Buyer for undelivered Goods and/ or Services and / or Works.
- 9.3 The Bidder(s)/Seller(s) shall also be liable to refund to the Buyer, the Agency Commission / payments made by the Seller(s) / Bidder(s) along with interest at the rate of 2% per annum above LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and Base Rate of SBI (State Bank of India) plus 2% (for Indian vendors).
- 9.4 In case of occurrence of violation of any clause of this Omnibus IP then the amount due under this Omnibus IP can be recovered by the Buyer from any Contract/Agreement signed with the Bidder(s)/Seller(s) to which this Omnibus IP is applicable.

10. Independent External Monitor(s)

- 10.1 The Buyer has appointed Independent External Monitor(s) for this Omnibus IP in consultation with the Central Vigilance Commission.
- 10.2 As soon as the Omnibus Integrity Pact is signed, the Buyer shall furnish a brief background of the case to the Independent External Monitor(s).
- 10.3 The Bidder(s)/Seller(s), if they deem it necessary, may furnish any information as relevant to their bid to the Independent External Monitor(s). Further, after the award of work, as also, during execution of the contract, any issue specifically raised before the IEMs shall be looked into by the panel of IEMs.
- 10.4 If any complaint with regard to violation of the Omnibus IP is received by the Buyer in a procurement case, the Buyer shall refer the complaint to the Independent External Monitor(s) for their comments / enquiry.
- 10.5 If the Independent External Monitor(s) need to peruse the records of the buyer in connection with the complaint sent to them by the buyer, the buyer shall make arrangement for such perusal of records by the Independent External Monitor(s), in accordance with the CVC guidelines.
- 10.6 The report of enquiry, if any, made by the Independent External Monitor(s) shall be submitted to CMD, HAL as far as possible within 2 weeks, but not more than 30 days for a final and appropriate decision in the matter keeping in view the provision of this Omnibus IP.

11. Law and Place of Jurisdiction

This Omnibus IP is subject to Indian Laws and exclusive Jurisdiction of Courts at Bangalore, India.

12. Other Legal Actions

The actions stipulated in this Omnibus IP are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force, relating to any civil or criminal proceedings.

13. Omnibus IP Duration

13.1 This Omnibus IP shall come into force from the date when both parties have legally signed it and the validity of this Omnibus IP shall be for ----- (upto 5 years) with applicability to all tenders /orders /contracts /agreements which are executed by the respective Bidder/tender issued/executed during the existence of this Omnibus IP.

13.2 In addition to above, the validity of the Omnibus IP for respective Tender/order/contract/agreement shall remain valid upto six months from declaration of unsuccessful Bidder. Further, for successful Bidder, validity of this IP shall survive upto 12 months from making last payment w.r.t the respective Tender/order/contract/agreement.

13.3 Further, if the Contract/Agreement covered under this Omnibus IP is extended/renewed for any period then this Omnibus IP shall also be deemed extended/renewed for such period of extension/renewal.

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

13.5 Should one or several provisions of this Omnibus IP turn out to be invalid, the remainder of this Omnibus IP remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

14. Other Provisions

14.1 Changes and supplements need to be made in writing. Side agreements have not been made.

14.2 The Bidder(s)/Seller(s) signing this Omnibus IP shall not initiate any Legal action or approach any court of law during the examination of any allegations/complaint by IEM and until the IEM delivers the report.

14.3 In view of the nature of this Omnibus IP, this Omnibus IP shall not be terminated by any party and will subsist throughout its stated period.

14.4 Nothing contained in this Omnibus IP shall be deemed to assure the Bidder(s)/Seller(s) of any success or otherwise in the tendering process.

15. This Omnibus IP is signed with HAL exclusively and hence shall not be treated as precedence for signing of Integrity Pact / Omnibus IP with MoD or any other Organization.

16. The Parties hereby sign this Omnibus IP
at _____ on _____ {Bidder(s)/Seller(s)} and at
_____ on _____ (Buyer)

BUYER

BIDDER / SELLER

Signature:

Signature:

Executive Director/General Manager

Authorized Signatory (*) (β)

Hindustan Aeronautics Ltd.,
.....Division

Date:

Date:

Stamp:

Stamp:

Witness

Witness

1. _____

1. _____

2. _____

2. _____

(*) – Authorized signatory of the company / authorized person who has signed the offer.

(β) – In case the Bidder(s)/Seller(s) is a Joint Venture, all the Partners of Joint Venture should sign this Integrity Pact (Indicating Name, Designation of the respective persons)