ANNEXTURE

**PRE CONTRACT INTEGRITY PACT FOR CONTRACTORS**

**General**

This pre –contract Agreement (hereinafter called the integrity Pact) is made on **1st** day of the month of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ between, on one hand, the Commissioner of KVS acting through **Shri**,**PRINCIPAL, KV------------------------**{Designation of the officer KV/RO/ZIET/KVS(HQ)} (hereinafter called the “BUYER”, which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Chief Executive Officer ( hereinafter called the “BIDDER/Seller” which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the BUYER proposes to procure (Name of the Stores/Equipment/ Item) and the BIDDER/Seller is willing to offer/has offered the stores and

WHEREAS the Bidder is a private company/public company/ Government undertaking/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the BUYER is a Ministry/ Department of the Government of India / PSU performing its functions on behalf of the President of India.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence / Prejudiced Dealing prior to, during and subsequent to the currency of the contract to be entered into with a view to :-

Enabling the BUYER to obtain the desired said stores / equipment at a commencing price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement and.

Enabling BIDDERs to abstain from bribing of indulging in any corrupt practice in order to secure the contract by providing assistance to them that their competitors will also abstain from bribing and other corrupt practices and the BUYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

**Commitments of the BUYER**

* 1. The BUYER undertakes that no official of the BUYER, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting of implementation process related to the contract.
  2. The BUYER will, during the pre- contract stage, treat all BIDDERs alike, and will provide to all such information to any particular BIDDER which could afford an advantage to the particular BIDDER in comparison to other BIDDERs.
  3. All the officials of the BUYER will report to the appropriate Govt. Officer any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

2. In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the BUYER with full and verifiable facts and the same is prima facie found to be correct by the BUYER, necessary disciplinary proceeding, or any other action as deemed fit, including criminal proceedings may be initiated by the BUYER and such a person shall be debarred from further dealing related to the contract process. In such a case while an enquiry is being conducted by the BUYER the proceeding under the contract would not be stalled.

**Commitments of BIDDERs**

3. The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post – contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-

3.1 The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage of inducement to any official of the BUYER, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

3.2 The BIDDER further undertake that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage commission, fees, brokerage or inducement to any official of the BUYER or otherwise in procuring the contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavor to any person in relation to the contract or any other contract with the Government.

3.3 BIDDER shall disclose the name and address of agents and representatives and Indian BIDDERs shall disclose their foreign principals or associates.

3.4 BIDDERs shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid/contract.

3.5 The BIDDER further confirms and declares to the BUYER that the BIDDER is the original manufacturer/ integrator/ authorized government sponsored export entity of the defense stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the BUYER or any its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

3.6 The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of theBUYER or their family members, agents, brokers, or any other intermediaries in connection with the contract and the details of service agreed upon for such payments.

3.7 The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

3.8 The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

3.9 The BIDDER shall not use improperly, for purposes of competition of personal gain, or pass on to others, any information provided by the BUYER as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.

3.10 The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

3.11 The BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the BUYER, or alternatively, if any relative of an officer of the BUYER has financial interest/ stake in the BIDDER’s firm the same shall be disclosed by the BIDDER at the time of filling of tender

3.12 The term ‘relative’ for this purpose would be as defined in section 6 of the Companies Act 1956.

3.13 The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the BUYER.

**4. Previous Transgression**

4.1 The BIDDER declares that no previous transgression occurs in the last three years immediately before singing of this integrity pact with any other company in any country in respect of any corrupt practices envisaged hereunder or with any public sector enterprises in India or any Govt. department in India that could justify BIDDER’s exclusion from the tender process.

4.2 The BIDDER agrees that if it makes incorrect statement this subject BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reasons.

**5. Earnest Money (Security deposit)**

5.1 While submitting commercial bid, the BIDDER shall deposit an amount of Rs. \_\_\_\_\_\_\_\_\_( to be specified in RFP ) as earnest money / security deposit, with the BUYER through any of the following instrument :-

(1) Bank draft or a pay order in favour of Principal, Kendriya Vidyalaya, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(2) A confirmed guarantee by an Indian nationalized bank promising payment of the guarantee some to the BUYER on demand within three days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the BUYER shall be treated as conclusive proof of payment.

(3) Any other mode or through any other instrument (to be specified in the RPF)

5.2 The earnest money / security deposit shall be valid up to a period of five years or the complete conclusion that the contractual obligations to the complete satisfaction of both the BIDDER and the BUYER, including warrantee period whichever, is later.

5.3 In case of the successful BIDDER a clause would also be incorporated in the article pertaining to performance bound in the purchase contract that the provisions of sanctions for violation shall be applicable for forfeiture of performance bound in case of a decision by BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this pact.

5.4 No interest shall be payable by the BUYER to the BIDDER or earnest money / security deposit for the period of its currency.

**6. Sanctions for violations**

6.1 Any breach of the aforesaid provisions by the BIDDER or anyone employed by it or acting on its behalf (Whether with or without the knowledge of the BIDDER) shall be entitled the BUYER to take all or anyone of the following action, wherever required:-

(1) To immediately call of the pre contract negotiation without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.

(2) The earnest money deposit ( in pre contract stage )and / or security deposit/performance bound(after the contract is signed) shall stand forfeited either fully or partially, as decided by the BUYER and the BUYER shall not be required to assigned any reason therefore.

(3) To immediately cancelled the contract, if already signed without giving any compensation to the BIDDER.

(4) To recover all some already paid by the BUYER, and in case of an Indian BIDDER with interest thereon at two(02) percent higher than the prevailing prime lending rate of state bank of India while in case of BIDDER from a country other than India with interest thereon at (02) two percent higher than the LIBOR. If any outstanding payment is due to the BIDDER from the BUYER in connection with any other contract for any other store, such outstanding payment could also be utilized to recover the aforesaid some and interest.

(5) To encash the advance bank guarantee and performance bond / warrantee bond, if furnished by the BIDDER, in order to recover the payments, already made by the BUYER, along with interest.

(6) To cancel all or any other Contracts with the BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to the BUYER resulting from such cancellation/ recession and the BUYER shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.

(7) To debar the BIDDER from participating in future bidding processes of the Govt of India for a minimum period of five year, which may be further extended at the discretion of the BUYER.

(8) To recover all sums paid in violation of the Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.

(9) In cases whereirrevocable letters of credit have been received in respect of any contract signed by the BUYER with the BIDDER, the same shall not be opened.

(10) Forfeiture of performance bond in case of a decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

6.2 The BUYER will be entitled to take all or any of the actions mentioned at para 6.1(1) to (10) of this Pact also on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in chapter 9 of the Indian Penal code, 1860 or Prevention of corruption Act, 1988 or any other statute enacted for prevention of corruption.

6.3 The decision of the BUYER to the effect that a breach of the provisions of this Pact has been committed by the BIDEER shall be final and conclusive on the BIDDER. However, this BIDDER can approach the independent Monitor(s) appointed for the purposes of this pact.

**7. Fall Clause**

7.1 The bidder undertakes that it has not supplied/ is not supplying similar product/ systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/ Department of the Government of India or PSU and if it is found at any stage that similar product/systems or sub systems was supplied by the BIDDER to any other Ministry/ Department of the Government of India or a PSU at a lower price, than that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the BUYER, if the contract has already been concluded.

**8. Independent Monitors**

8.1 The BUYER has appointed Independent Monitors (hereafter refers to as Monitors) for this Pact in construction with the Central Vigilance Commission (Names and Addresses of the Monitors to be given)

8.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.

8.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.

8.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/ procurement, including minutes of meetings.

8.5 As soon as the Monitor notices, or has reason to reason to believe, a violation of this Pact, he will so inform the Authority designated by the BUYER.

8.6 The BIDDER(s) accepts that the Monitor has the right to access without restriction to all project documentation of the BUYER including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/ Subcontractor(s) with confidentiality.

8.7 The BUYER will provide 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 parties. The parties will offer to the monitor the option to participate in such meetings.

8.8 The Monitor will submit a written report to the designated Authority of BUYER/Secretary in the Department/ within 8 to 10 weeks from the date of reference or intimation to him by the BUYER/BIDDER and should the occasion arise, submit proposals for problematic situations.

**9. Facilitation of Investigation**

In case of any allegation of violation of any provisions of this pact or payment of commission, the BUYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

**10. Law and place of Jurisdiction**

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the BUYER.

**11. Other Legal Actions**

The actions stipulated in this Integrity Pact 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.

**12. Validity**

12.1 The validity of this Integrity Pact shall be from date of its signing and extend up to 5 years or the complete execution of the contract to the satisfaction of both the BUYER and the BIDDER/Seller, including warranty period, whichever is later. In case BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

12.2 Should one or several provisions of this Pact turn out to be Invalid, the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

13. The parties hereby sign this Integrity Pact at Zirakpur on**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

BUYER BIDDER

Name of the Officer **Sh\_\_\_\_\_\_\_\_\_\_\_\_**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Designation**PRINCIPAL** CHIEF EXECUTIVE OFFICER

Deptt./ MINISTRY/PSU:- **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Witness Witness

1.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 1.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*Provisions of these clauses would need to be amended/deleted in line with the policy of the BUYER in regard to involvement of Indian agents of foreign suppliers.