



UNOFFICIAL TRANSLATION

MONITORING AGREEMENT

Monitoring Agreement

between

The Union of Municipalities of the Madonie (Unione dei Comuni “Madonie”) and its single central purchasing body, in the capacity as **Contracting Authority** for the development strategy *Madonie Resilienti: Laboratorio di Futuro*” within the framework of the Italian National Strategy for Inner Areas (*Strategia Nazionale Aree Interne* or *SNAI*)

and

Amapola – Progetti per la sicurezza delle persone e delle comunità, hereinafter Amapola, in its capacity as **Independent Monitor** selected by the European Commission and Transparency International through a competition within the scope of the European Pilot Project “*Integrity Pacts: Civil Control Mechanisms for Safeguarding EU funds*”.

Hereinafter named “the parties”

Given that:

Integrity Pacts (hereinafter “IPs”) are agreements signed by the Contracting Authority, the bidders, and an Independent Monitor, who are bound to conduct themselves according to the principles of transparency and legality during the various stages of the public tendering procedure and performance of the contract;

The Independent Monitor performs its duties of monitoring body respecting this monitoring agreements signed with the Contracting Authority;

This Monitoring Agreement prepared within the scope of the European Pilot Project “*Integrity Pacts: Civil Control Mechanisms for Safeguarding EU funds*”, promoted and financed by the European Commission - Directorate-General for Regional and Urban Policy and such financing covers in full the spending for the activities of the Independent Monitor;

This Monitoring Agreement is linked to the implementation of the “*Madonie Resilienti: Laboratorio di Futuro*” (“Resilient Madonie: Laboratory for the Future”) development strategy financed within the scope of the 2014-2020 EU Structural Funds implemented through Integrated Territorial Investment (ITI) and co-financed by the 2015 “Stability Law” within the framework of the Italian National Strategy for Inner Areas (*Strategia Nazionale Aree Interne* or *SNAI*);

On 30 October 2015 a Memorandum of Understanding was signed between the mayor of Gangi, on behalf of the Coalition of municipalities “Città a rete Madonie-Termini” and the President of Amapola Association to officially declare the commitment for the implementation of the IP;

On 12 August 2016 an Addendum to the Memorandum of Understanding mentioned in the previous point was signed between the same parties, to specify and renew the mutual commitments within the Project “*Integrity Pacts: Civil Control Mechanisms for Safeguarding EU funds*”;

On 27 January 2017, the final version of the Area Strategy “Madonie Resilienti: Laboratorio di Futuro” has been approved in accordance with the provisions of the Inner Areas Technical Committee;

On 18 March 2017, the memorandum of association of the Union of Municipalities of the Madonie (Unione dei Comuni Madonie) was signed by the 16 municipalities members of the Union;

The tender procedures selected to implement the IP are related to the following five actions:

- “Madonie School Network. Innovative spaces for innovative education: Smart Schools, Digital Fabrication Laboratories (FabLabs), and Audiovisual and Multimedia/Web TV Laboratories”, Action Statement no. 3: within the scope of implementing the “Resilient Madonie: Laboratory for the Future” Development Strategy;
- “Healthy Madonie: Local network of healthcare services for the elderly with wellness packages”, Action Statement no. 7 within the scope of implementing the “Resilient Madonie: Laboratory for the Future” Development Strategy;
- “Execution of energy efficiency measures in public buildings and public lighting”, Action Statement no. 17 within the scope of implementing the “Resilient Madonie: Laboratory for the Future” Development Strategy;
- “Coordinated action on energy efficiency at the Petralia Sottana hospital/sports facilities complex”, Action Statement no. 18 within the scope of implementing the “Resilient Madonie: Laboratory for the Future” Development Strategy;
- “Creation of a network of platforms for short supply chain ligno-cellulosic and agricultural biomass treatment”, Action Statement no. 19 within the scope of implementing the “Resilient Madonie: Laboratory for the Future” Development Strategy;

The IP represents an essential part of the documents prepared within the procurement procedures relating to works and activities for the implementation of the Project, and its signature is a precondition of admission to the public tendering procedure, in accordance with Article 1, paragraph 17 of Law No. 190 of 6 November 2012;

By accepting the IP, the signatories undertake to respect the rules of conduct and maintain behaviour in part already required, in violation of which both the law and the IP provide for financial penalties and other expressly indicated consequences;

This Monitoring Agreement represents an essential part for the implementation of the IP;

This Monitoring Agreement is signed for acknowledgment by the bidders;

This Monitoring Agreement is effective for the Contracting Authority from the moment of the pre-bidding phase until the complete performance of the awarded contracts but no later than 30th September 2019;

For the purposes of this IP the following definitions are adopted:

- **Monitored tender procedure:** the procedure relating to one of the following five actions:
 1. “Madonie School Network. Innovative spaces for innovative education: Smart Schools, Digital Fabrication Laboratories (FabLabs), and Audiovisual and Multimedia/Web TV Laboratories”, Action Statement no. 3: within the scope of implementing the “Resilient Madonie: Laboratory for the Future” Development Strategy;
 2. “Healthy Madonie: Local network of healthcare services for the elderly with wellness packages”, Action Statement no. 7 within the scope of implementing the “Resilient Madonie: Laboratory for the Future” Development Strategy;

3. "Execution of energy efficiency measures in public buildings and public lighting", Action Statement no. 17 within the scope of implementing the "Resilient Madonie: Laboratory for the Future" Development Strategy;
 4. "Coordinated action on energy efficiency at the Petralia Sottana hospital/sports facilities complex", Action Statement no. 18 within the scope of implementing the "Resilient Madonie: Laboratory for the Future" Development Strategy;
 5. "Creation of a network of platforms for short supply chain ligno-cellulosic and agricultural biomass treatment", Action Statement no. 19 within the scope of implementing the "Resilient Madonie: Laboratory for the Future" Development Strategy;
- **Monitored tender procedure:** the procedure relating to the following action: "Execution of energy efficiency measures in public buildings and public lighting", Action Statement no. 17 within the scope of implementing the "Resilient Madonie: Laboratory for the Future" Development Strategy;
 - **Contracting Authority:** Union of Municipalities of the Madonie as single central purchasing body;
 - **Independent Monitor:** Amapola – projects for the security of persons and communities
 - **Bidder:** each economic operator participating, individually or collectively, in procurement or selection procedures;
 - **Successful Bidder:** each party awarded contracts or engagements by the Contracting Authority for the provision of works and services;
 - **Subcontractor:** the assign of the Successful Bidder with whom a subcontract is entered into, for any amount, relating to or in any way connected with the execution of the contract associated to the monitored tender procedure;
 - **Subcontract:** any subcontract in general, for any amount, entered into by the Bidder or Subcontractor, relating to works and/or services connected to the execution of the contract associated to the monitored tender procedure;
 - **The enterprise chain:** the set of operators involved in any capacity (including with business relations other than those pertaining to contracts and subcontracts, independently of their position within the scope of the business organisation) in the cycle of implementing the works and activities of the contracted associated to the monitored tender procedure. This includes all operators that have entered into subcontracts linked to the main contract by a functional dependence, although concerning instrumental and/or ancillary activities; this includes, by way of example, the sub-contractual situations pertaining to freight, supplies of concrete, aggregates and similar, as well as provisions of intellectual services;
 - **Conflict of interest:** concerns, for example, cases in which: 1) personnel from the Contracting Authority or from service providers acting on behalf of the Contracting Authority during the procedures or the contract execution phase; 2) members of the governing bodies of the Contracting Authority, who can influence the result of the procedure, despite not formally participating in it; 3) the bidders participating in the call for tenders; 4) the Successful Bidder and 5) the Independent Monitor may have, directly or indirectly, a financial/economic interest or other personal interest that could compromise the impartial and objective performance of their functions in the context of the monitored tender procedure and the execution of the contracts associated.

The above constitutes an **integral and substantive part of the Monitoring Agreement.**

GIVEN THE ABOVE,

the Parties intend to regulate the implementing rules of the monitoring activity carried out by Amapola as follows:

Art. 1 Scope and duration

1. The Independent Monitor undertakes its duties regarding the preparation of tender documents, the implementation of the public tendering procedure and the execution of the contract until September 30th 2019, termination date of the project "*Integrity Pacts: Civil Control Mechanisms for Safeguarding EU funds*", unless extensions are agreed.

Art. 2 Role of the Independent Monitor

1. The task of the Independent Monitor is to verify to what extent the Contracting Authority, the Bidders and the Successful Bidder comply with their obligations under the Integrity Pact. The aim is to ensure legality, integrity and transparency during the various stages of the tendering process, from the pre-bid stage and the award decision until the completion of the contract for work, goods and services.
2. In order to perform its task properly, the Independent Monitor carries out various activities. An illustrative yet incomplete example of these activities may include:
 - a) To make recommendations on the needs assessment and on the extent to which scheduled actions meet those needs;
 - b) To select the tender procedures to be monitored with the Integrity Pact;
 - c) To examine and make recommendations on the tender documents prior their publication, with specific regard to provisions that may lead to distortion of competition and to actions to fight corruption and criminal infiltrations;
 - d) To collect information from the Contracting Authority regarding the tender procedure;
 - e) To examine the replies to bidders' questions (so called FAQ-Frequently Asked Questions) provided by the Contracting Authority;
 - f) To receive copies of the minutes of the Selection Committee and any relevant documents regarding the tender, including the bids, at the end of the procurement procedure;
 - g) To be invited to all meetings between the Contracting Authority and the Successful Bidder regarding the execution of the contract and receive a copy of the minutes of the meetings, even if not in attendance;
 - h) To organise inspections to the worksites;
 - i) To examine all the documents on the progress of the execution of the contract submitted by the successful bidder and subcontractors;
 - j) To verify the content and procedure of any change may occur during the execution of the contract;
 - k) To organize and facilitate meetings and training sessions with the public and schools as well as information campaigns (on line and off line media) on the Integrity Pact;
 - l) To make available, in collaboration with the Contracting Authority and the Successful Bidder, without additional burdens, a digital tool to securely share and quickly exchange information, data and documents required by the IP or necessary to perform its duties;
 - m) To implement, in collaboration with the Contracting Authority and the Successful Bidder without any additional burdens, a system to gather and publish in an open format data relating to the contracts entered into with and the payments made by the

Successful Bidder to any of the entities belonging to the enterprise chain. The system must include at least the following elements: contractor company name, contractor VAT identification number, contract value, purpose of the performance, date the contract was signed and payment date;

- n) To involve the local communities, also those organised in associations, in monitoring the on-site implementation of the contract, giving them the possibility to send to the Independent Monitor relevant reports and comments. The information submitted by the public will contribute to increasing knowledge of the IP and to improving its effectiveness as a social accountability mechanism to prevent corruption, improve the quality of the actions taken and increase the public's trust towards government entities;
- o) To cooperate with the Contracting Authority, the Successful Bidder and the enterprise chain, without any additional burdens, for organising training sessions and inspections of the worksites to ensure the direct involvement of the public, especially of students, in monitoring the execution of the works;
- p) To organise, in collaboration with the Contracting Authority, the Successful Bidder and the enterprise chain, without any additional burdens, periodic events to meet and consult with the public. During such events, the results of the monitoring activities conducted by the Independent Monitor will be discussed;
- q) To make available a system for collecting anonymous reports of illegal conducts that will work in combination with the instruments provided by the Contracting Authority, providing specific training for its use, if needed;
- r) To receive from the Contracting Authority, the Successful Bidder, the enterprise chain, the public and all stakeholders, even anonymously, reports of illegal request, claim or attempt to influence, disrupt or distort the conduct of the procurement procedures and/or the execution of the contracts associated with the Project, and/or any violation or attempted violation of the Integrity Pact of which it becomes aware;
- s) To share regularly with the Contracting Authority the results of the monitoring activity reports by publishing periodic reports based on an agreed timeline;
- t) To gather and provide a reply to any requests of information on the IP and on the European Project within which the IP is coming from the public, enterprise, Italian and foreign media;
- u) To create in cooperation with the other partners involved in the Projects "Integrity Pacts: Civil Control Mechanisms for Safeguarding EU funds", a website for the pilot experience of the IP within the strategy "Madonie Resilienti: Laboratorio di Futuro" ("Resilient Madonie: Laboratory for the Future");
- v) To submit proposals to the Contracting Authority, both written and through bilateral meetings, aiming at overcoming and/or preventing any potential difficulties that may occur during the monitoring activity, taking advantages of the good practises present in Italy and worldwide and, if needed, make the diffusion in the press of such proposals;
- w) To submit proposals to competent National and International institutions, both written and through bilateral meetings, to improve the law on public procurement with the aim of overcoming and/or preventing any potential difficulties that may occur during the monitoring activity, and, if needed, make a diffusion in the press of such proposals;

3. The Independent Monitor suggests to the Contracting Authority the adoption of measures and instruments to fight corruption.

Art. 3 Role of the Contracting Authority

1. The Contracting Authority commits itself to cooperate with the Independent Monitor in order to allow it to perform its duties.
2. Since the publication of the tender notice, the Contracting Authority shall transmit with no delay to the Independent Monitor useful information, measures and documents relating the Project. An illustrative yet incomplete example, taking into account the provisions of the new Code of Public Procurement as set out in the Legislative Decree n. 50/2016, may include information and documents relating:
 - a. the implementation of the procurement procedure and the execution of the contracts, particularly in terms of compliance to the obligations provided by law;
 - b. the adoption of any amendments to the original contract;
 - c. the request of change in the scheduled timeline, delays in the execution, stipulation of news costs or modification of the original contract costs;
 - d. contract suspensions;
 - e. the adoption of steps to seek an amicable settlement of a dispute or a settlement agreement;
 - f. alleged and/or reported violations of the IP;
 - g. the failure to comply and delays attributable to the responsibility of the Successful Bidder and subcontractors;
 - h. delays in transmitting periodic reports on the progress of the work and in doing payments that may affect the enterprise's financial capabilities;
 - i. the adoption of measures to fight corruption.
3. The Contracting Authority shall transmit to the Independent Monitor the following lists:
 - List of the management staff and holders of positions (assigned for any reason whatsoever) involved in the tendering procedure and in the execution of the Project, including all mandatory information according to the Legislative Decree 14 March 2013, n. 33. The list should indicate roles, functions and payments in accordance with existing legislation and referring to the specific procedures;
 - List of the members of the Evaluation Committee, including their CVs.
4. The Contracting Authority shall inform the Independent Monitor of any amendments of the lists set out in the paragraph no.3.

Art. 4 Access to information from the Independent Supervisor

1. The Contracting Authority shall provide to the Independent Monitor in real time, without the need for access request to documents and before the publication deadlines established by law any information and document related to the monitored tender procedure.
2. In compliance with the confidentiality obligations and any express legal prohibitions, during all the stages of the IP realization it is guaranteed to the Independent Monitor the full access to all acts and documents held by the Contracting Authority (or by the State-owned enterprise involved in the procurement process and execution).
3. The access to the official acts and documentation shall be guaranteed regardless of the any other control instruments provided by relevant law.
4. The Contracting Authority, the bidders and the Successful Bidder shall copy the Independent Monitor in any communication concerning the IP (pattointegrita@amapolaprogetti.org).
5. The Independent Monitor shall be invited to all meetings between the Contracting Authority and the Successful Bidder regarding the execution of the contract and receive a copy of the

minutes, even if not in attendance. At the end of the tender procedure, the Independent Monitor shall receive copies of the minutes of the Selection Committee's meetings and of any relevant documents regarding the tender (e.g. the documentation acquired through the preliminary investigation, the eventual documentary integrations, etc.).

Art. 5 Non-disclosure agreement

1. The Independent Monitor has the confidentially obligation on sensitive data and on any information that could infringe intellectual property rights. In order to guarantee this obligation, at the beginning of the Project the Independent Monitor will sign a Non-Disclosure Agreement (NDA).
2. This provision applies to all Independent Monitor's employee and to external collaborators or any third person which works on behalf of the Independent Monitor with whom it will sign confidentially agreements. The Independent Monitor is directly responsible to the Contracting Authority about the treatment of personal data.
3. The Independent Monitor is committed to inform immediately and in writing the Contracting Authority about any circumstances that could represent a conflict of interest towards the obligations undertaken with this agreement. A conflict of interest is generated when the impartial and objective performance of the Independent Monitor is comprised by different elements such as familiar or personal relationships, political or national affinities, economic interests. A conflict of interest is generated each time the Independent Monitor's performance is compromised by financial/economic interest or other heritage interest.

Art. 6 Access to information

1. All information provided to the Independent Monitor in the framework of the Project and not covered by the Non-Disclosure Agreement referred to in Article no. 4, shall be understood as accessible, publishable and re-usable data by anyone. The Creative Commons Licence Attribution Non-Commercial and Share Alike will be used.

Art. 7 Contact persons of the Contracting Authority and of the Independent monitor

The contact persons for the project activities are:

- For the Contracting Authority: the sole project manager
- For the Independent Monitor: Marco Sorrentino (marco.sorrentino@amapolaprogetti.org; mobile +393355315738) Gioacchino di Garbo (giocchino.digarbo@gmail.com; mobile +393932514928)

Art. 8 Measures in case of alleged or violations of the IP

1. In the event of reports of potential offences or violations of the obligations and commitments undertaken by signing the IP, the Independent Monitor will inform promptly the Contracting Authority which will notify to the Independent Monitor within a short space of time what response mechanisms it intends to employ in accordance with the law and the content of the signed IP.
2. The Contracting Authority, which is responsible for overseeing the specific fulfilment of the obligations imposed by the IP, shall apply penalties following the violation of the IP ensuring there is adequate adversarial procedure and respecting the principle of proportionality regarding the seriousness of the violation committed.
3. If, following the reporting of a violation, as mentioned in paragraph 1, the Contracting Authority does not inform within a schedule agreed with the Independent Monitor what response

mechanisms it intends to employ, or if the Independent Monitor deems those response mechanisms insufficient, the Independent Monitor will be free to inform the relevant judicial authority.

4. Without prejudice to the rules on the protection of intellectual property and personal data, as well as the need to not jeopardise any on going investigations by the judicial authority, the Independent Monitor may inform the media and public about:
 - a. the results of its monitoring activities;
 - b. the response mechanisms used by the Contracting Authority following reports of potential offences or violations of the obligations and commitments undertaken by signing the IP and the Contracting Authority's response timescales;
 - c. any reports to the relevant judicial authority;
 - d. any withdrawal from the Monitoring Agreement as set out in article 9.
5. All parties commit themselves to agree an operating procedure for the external communication which will be adopted when any events falling under this Monitoring Agreement that may result in a reputational risk.

Art. 9 Possibility of unilateral withdrawal from the monitoring obligation

1. In case the Independent Monitor and the Contracting Authority disagree as to the way to give execution to the Monitoring Agreement, they commit themselves to settle the dispute through negotiation and dialogue; if necessary, they shall refer to the extra-judiciary mediation as the dispute resolution mechanism.
2. The Independent Monitor in any case is free to withdrawal from the Monitoring Agreement related to the present IP in all the following situations:
 - a. when the Contracting Authority does not provide the Independent Monitor with all the information required for the monitoring, or in any cases in which it prevents the Independent Monitor from performing its monitoring duties;
 - b. when, following the reporting of illicit, the Contracting Authority does not inform the Independent Monitor within 10 days what response mechanisms it intends to employ, or if the Independent Monitor deems those response mechanisms insufficient as regard to the circumstances and the kind of violation;
 - c. in any other circumstance that if not taken into duly consideration may prevent the Independent Monitor from performing its duties or cause unnecessary risks.

Art 10 Modification of the Agreement

1. Modifications and amendments to the Monitoring Agreement can be done only subsequently the signature of the Agreement. They will be valid only if they are in writing and are signed by all parties, otherwise they are null.
2. By signing the present Agreement parties give their consent (also for their personnel and collaborators involved in the implementation of the Agreement) to the processing, communication and diffusion of the data provided that refers to the organization, in compliance with the legislation in force.
3. The Contracting Authority declares to be adequately informed of the purposes of the data processing and of the rights as set out in the Italian Legislative Decree n. 196/2003 and all of its successive modifications (Law on the protection of personal data).

For the Contracting Authority

Date _____

Stamp and signature of the Legal Representative _____

For the Independent Monitor

Date _____

Stamp and signature of the Legal Representative _____