

COOPERATION MEMORANDUM

on the Integrity Pact within the project "Increase of the degree of geographical coverage and registration of the properties in the rural areas in the Integrated System of Real Estate Register and Land Register"

The **NATIONAL AGENCY FOR CADASTRE AND LAND REGISTRATION (ANCP)**, 202 A, Splaiul Independenței, 1st floor, district 6, Bucharest, 060022, legally represented by Mr. **Radu Codruț ȘTEFĂNESCU**, General Director, hereinafter referred to as **CONTRACTING AUTHORITY**,

AND

The consortium made up of the **ROMANIAN ASSOCIATION FOR TRANSPARENCY | TRANSPARENCY INTERNATIONAL ROMANIA**, head quartered in Bucharest, 28-30 Ghe. Magheru Bd., 3rd floor, sector 1, legally represented by Mr. Victor Alistar, as Executive Director and of the **INSTITUTE FOR PUBLIC POLICIES ASSOCIATION**, head quartered in Bucharest, 19, Alexandrina Street, sector 1, legally represented by Mr. Adrian Moraru, as director, hereinafter referred to as **INDEPENDENT MONITOR**,

In view of:

- The appeal for the public authorities to express their interest in piloting integrity pacts within projects co-financed by structural and cohesion funds published by the European Commission DG REGIO;
- The application submitted by the National Agency for Cadastre and Land Registration within the appeal for expressing interest;
- The letter of DG REGIO ref. Ares(2015)4257971 of 13.10.2015 communicating that the submitted application was accepted and requesting collaboration with Transparency International Romania and the Institute for Public Policies Association in view of starting the necessary preparations for developing and implementing an Integrity Pact;
- The principles of the Treaty on the functioning of the European Union (TFUE) related to the free circulation of goods, the freedom of establishment and the freedom to provide services, as well as the principles of equality in treatment, non-discrimination, mutual acknowledgment, proportionality and transparency provided by the Directive 2014/24/EU of the European Parliament and Council on public procurement;
- The provisions of the Directive 2014/24/EU on public procurement and the repealing of the Directive 2004/18/EC, especially of art. 83 par. (2) of the directive;
- The provisions of the Government Decision no. 583/2016 on approving the National anti-corruption strategy for 2016-2020, especially of the provisions of action no. 3 – "Testing, in two public institutions, the institution of the integrity pact regarding public procurement" – corresponding to the specific objective 3.6 - Increase of integrity, reduction of vulnerabilities and of corruption risks in the public procurement field;
- The provisions of Law no. 98/2016 on public procurement:

- **Decision no. 395/2016 on approving Methodological norms for applying the provisions related to awarding the public procurement contract/framework agreement in Law no. 98/2016 on public procurement;**
- The provisions of international laws and regulations on preventing and fighting corruption, being aware of the impact of corrupted practices which undermine institutions, the justice system, the values of democracy, free initiative and an honest competition environment;
- The provisions of the Regional Operational Program (POR) 2014-2020, Priority Axis 11: Geographical extension of the system for registering the properties in the real estate register and in the land register;
- The interest of promoting certain mechanisms for civic consultation and involvement in public procurement processes in order to increase the quality of the results obtained;
- The interest of protecting public funds against possible fraud and corruption, increasing transparency and control of the spending of these funds;
- The interest of increasing the trust in the contracting authorities and in contractors, in order to strengthen their reputation;
- The interest of increasing the efficiency of spending EU funds and of improving public procurement processes by increasing competition.

PART ONE

RULES AND CONDITIONS FOR IMPLEMENTING THE MEMORANDUM

CHAPTER I: RIGHTS AND OBLIGATIONS OF THE PARTIES

Art. 1

(1) Within this MEMORANDUM, the terms and phrases below have the following meanings:

Contracting authority: in this case, the contracting authority is the National Agency for Cadastre and Land Registration;

Business operator: any natural person or legal entity, of public or private law or group or associations of such persons or entities, legally proposing execution of works and/or of a construction, supplying products or providing services, including any temporary association set up among two or more of these entities. (according to Law no. 98/2016, art. 3);

Tenderer: any business operator having submitted a tender within the awarding procedures subject to this MEMORANDUM (according to Law no. 98/2016, art. 3);

Contractor: any business operator, a party in public procurement contracts subject to this MEMORANDUM (according to Law no. 98/2016, art. 3);

Independent monitor: a non-governmental organization or association of non-governmental organizations coordinating the implementation of the *Integrity Pact* and ensuring that the parties involved observe the commitments undertaken therein, contributing to establishing the transparency and ensuring the integrity of the awarding procedures and of the implementation of contracts subject to this MEMORANDUM, until the moment when the services and products are handed over. In this case, the independent monitor is the Consortium made up

of the Romanian Association for Transparency|Transparency International Romania and the Institute for Public Policies (TI-Ro and IPP).

Disciplinary offense: work-related act that consists in an action or inaction, carried out with guilt by the employee, infringing legal norms, internal regulation, applicable individual employment contract or collective employment contract, if applicable, orders and legal decisions of the hierarchical managers (according to Labor Code).

Professional offense: any culpable behavior affecting the professional credibility of the business operator in question, such as infringements of intellectual property rights, carried out with intent or of serious fault, including infringements of the ethics norms in the strict meaning of the profession of the operator in question (according to Law no. 98/2016, art. 3. par (1), letter a), including any offense of the provisions of this MEMORANDUM.

Integrity pact: agreement among the CONTRACTING AUTHORITY, TENDERERS or CONTRACTOR participating in a public procurement process/implementation of a public procurement contract, as well as an INDEPENDENT MONITOR on behalf of the civil society. The parties acknowledge and actively support the legal provisions related to integrity in public procurement, anti-corruption efforts, procedural transparency and contractual responsibilities. As such, the INTEGRITY PACT ensures continuous monitoring, in real time, without representing a means of control, but a means of assistance in developing best practices for both the CONTRACTING AUTHORITY, as well as the TENDERERS and CONTRACTOR. The INTEGRITY PACT is used during the period of preparation and the implementation of the public procurement processes, which will be the object of the present Memorandum, as well as during the period of execution of the public procurement contract, with the observance of the legal provisions in force. The legal form of the integrity pact for this MEMORANDUM implies an agreement between the CONTRACTING AUTHORITY and the INDEPENDENT MONITOR (agreement represented by this MEMORANDUM) and the adherence of the tenderers and contractors to the same standards and integrity principles by means of a statement accepting the INTEGRITY PACT and assuming the contractual obligations herein.

Art. 2

The implementation of this MEMORANDUM serves the following objectives:

1. Furthering ethical behavior, transparency and integrity throughout the duration of the preparation and implementation of the awarding procedures and implementation of the contracts within the project *"Increase of the degree of geographical coverage and registration of the properties in the rural areas in the Integrated System of Real Estate Register and Land Register"* financed within the Regional Operational Program (POR). The public procurement procedures and contracts, within the project, subject to the Integrity Pact are:
 - a. The first procurement procedure for services regarding the systematic registration of buildings, as part of the project, which will end with the conclusion of a framework agreement;
 - b. The subsequent contracts for services concerning the systematic registration of buildings, selected in agreement with the CONTRACTING AUTHORITY and the INDEPENDENT MONITOR, following the closing of the monitored procurement procedure . The agreement will come into existence following an exchange of official addresses between the CONTRACTING AUTHORITY and the INDEPENDENT MONITOR.
2. Creating a climate of good collaboration and mutual trust among the signatories of the MEMORANDUM.

Art. 3

(1) The present memorandum is concluded for a period which begins on the date of its signing and ends on 30 September 2019, with automatic extension if the INDEPENDENT MONITOR identifies a source of funding to continue the monitorization until the monitored contracts are finalized.

(2) In order for the automatic extension to operate, the INDEPENDENT MONITOR shall send to the CONTRACTING AUTHORITY a certified copy of the letter of the funding organization.

(3) If a source of funding to continue monitoring is not identified by September 2019, then the INDEPENDENT MONITOR will prepare a final report which will include lessons learned and recommendations for all the phases of the procurement and the implementation of the monitored contracts until that said date, by 30 September 2019 and present it to the CONTRACTING AUTHORITY.

Art. 4

The PARTIES declare that neither them, nor their employees, shall accept or take advantage of tangible or intangible benefits for them or for a third party, from the tenderers and contractors, benefits that could influence their behavior during the procedures for awarding and executing the awarded contracts.

Art. 5

The PARTIES and their employees, including those who do not have direct responsibilities related to the preparation and implementation of the public procurement procedure or the implementation of the public procurement contract in question and the overseeing of the execution of the awarded contract (for the contracting authority), including those who are not members of the project team for testing the Integrity Pacts in Romania, but have access to the documents of the procurement shall refrain from any offense.

Rights and obligations of the CONTRACTING AUTHORITY

Art. 6

(1) In order to ensure that the obligations mentioned at Art. 2 - 4 are fulfilled, the CONTRACTING AUTHORITY agrees to grant the INDEPENDENT MONITOR access to the procurement file and to any documents related to the organization of the selected awarding procedure and the execution of the subsequent contracts provided at art. 2, as soon as they become public documents, with no special request being necessary from the INDEPENDENT MONITOR for each of these documents.

(2) The obligation of the CONTRACTING AUTHORITY at par. 1 refers both to the documents issued in accordance with Law no. 98/2016 (Annex 1) as to the documents issued in accordance with the internal regulations adopted by the CONTRACTING AUTHORITY concerning the preparation of the public procurement procedures.

(3) In case of changes to the national legislation allowing the INDEPENDENT MONITOR access to the documents submitted by the TENDERERS, to the meetings and to the documents issued by the evaluation commission, the CONTRACTING AUTHORITY commits through this MEMORANDUM to ensure the access of the INDEPENDENT MONITOR to all these documents and to the meetings of the evaluation commission, as soon as a legislative change

allowing these actions comes into force, without requiring the amendment of this MEMORANDUM.

(4) In order to ensure that the obligations mentioned at Art. 2 - 4 are fulfilled, the CONTRACTING AUTHORITY agrees to grant the INDEPENDENT MONITOR access to the documents related to the preparation of the project *"Increase of the degree of geographical coverage and registration of the properties in the rural areas in the Integrated System of Real Estate Register and Land Register"*, in order to allow the MONITOR to also observe the general planning of the procurement and how these are scheduled to meet the identified needs.

(5) In view of the same objectives and in continuation of the obligations at art. (4), the CONTRACTING AUTHORITY shall notify the INDEPENDENT MONITOR of all meetings to take place with third parties in order to plan in detail the project *"Increase of the degree of geographical coverage and registration of the properties in the rural areas in the Integrated System of Real Estate Register and Land Register"* and will allow the INDEPENDENT MONITOR access to these meetings as observer.

(6) In view of the same objectives and in continuation of the obligations at art. (4), the CONTRACTING AUTHORITY shall allow the independent monitor access to the documents and meetings of the inter-ministry commission that will select the administrative and territorial units where the *"Increase of the degree of geographical coverage and registration of the properties in the rural areas in the Integrated System of Real Estate Register and Land Register"* project will be implemented.

(7) In order to fulfill the obligations included in this article, the CONTRACTING AUTHORITY undertakes to send the INDEPENDENT MONITOR the documents to which they have access, as soon as they are available, but not later than 2 business days of this date.

(8) The CONTRACTING AUTHORITY undertakes to send to the INDEPENDENT MONITOR information about the meetings to which they have access, meetings of impact on the organization of the public procurement within the project, at least 3 business days before these are scheduled. If this is done within less than 3 days of their scheduling, the CONTRACTING AUTHORITY shall immediately also communicate the information to the INDEPENDENT MONITOR.

Art. 7

(1) The CONTRACTING AUTHORITY guarantees that it will include information related to the application of the INTEGRITY PACT and to this MEMORANDUM in the awarding documentation for the above-mentioned procurement within the project *"Increase of the degree for geographical coverage and registration of the properties in the rural areas in the Integrated System of Real Estate Register and Land Register"* financed within POR.

(2) The CONTRACTING AUTHORITY guarantees that it will request in the awarding documentation that the business operators who submit tenders with a view to awarding the above-mentioned contracts, adhere to the provisions of this MEMORANDUM.

(3) The CONTRACTING AUTHORITY guarantees that it will include a clause about observing the Integrity Pact and the obligations of the contractors described in this MEMORANDUM in the model for the public procurement contract and in the contracts they are to sign.

Rights and obligations of the INDEPENDENT MONITOR

Art. 8

(1) The INDEPENDENT MONITOR undertakes:

- a. to monitor the entire procedure for public procurement mentioned at art. 2 and the implementation of the subsequent contracts, until signing the handover minutes, for the contracts which will be determined according to the provisions of art. 2 par. (1), awarded by the CONTRACTING AUTHORITY within the scope of the project *"Increase of the degree for geographical coverage and registration of the properties in the rural areas in the Integrated System of Real Estate Register and Land Register"*, from 2017 until 2019;
- b. to evaluate the compliance with the regulations of the legislation in force and with the regulations of this MEMORANDUM of the procedure for awarding and implementing of subsequent contracts, awarded based on the framework agreement;
- c. to evaluate the observance of the following principles: nondiscrimination, equal treatment, mutual acknowledgment, transparency, proportionality, assuming responsibility and integrity with regard to planning and implementing the contract awarding procedures as well as during their execution;
- d. to give recommendations of a discretionary nature for preventing and eliminating potential offenses throughout the public procurement process;
- e. to give recommendations of a discretionary nature for preventing and eliminating potential risks for the CONTRACTING AUTHORITY throughout the public procurement process;
- f. to prepare periodic monitoring reports (in connection with the stages of the contract awarding and execution procedure); The reports will include: (i) an initial report, which will analyze the planning of the procurement and the awarding documentation, the evaluation of the tenders and the awarding of the contract, once this stage is finalized and the INDEPENDENT MONITOR gains access to the respective documents; (ii) intermediary reports every 6 months at the most concerning the execution of the public procurement contract with regard to the regulation, contract and principles put forth; (iii) a final report;
- g. to send the monitoring reports to the CONTRACTING AUTHORITY, for consultation, before publishing them;
- h. to take into account the comments of the CONTRACTING AUTHORITY related to the monitoring reports, to integrate these comments or, if they do not integrate them, to mention the comments and the reason for which they were not integrated;
- i. the INDEPENDENT MONITOR shall not be subordinate to or be influenced by the CONTRACTING AUTHORITY, TENDERERS or CONTRACTOR and shall fulfill its tasks in good faith, objectively and independently;
- j. to present to the CONTRACTING AUTHORITY its list of representatives who will participate in implementing the MEMORANDUM, more specifically in performing the monitoring of the above-mentioned awarding procedure and the execution of the subsequent contracts selected, together with the proof for experience/expertise in the field in which each person will perform their activity/monitoring;
- k. to ensure strict confidentiality of all documents received from the CONTRACTING AUTHORITY or contractors executing this MEMORANDUM;
- l. to ensure that a confidentiality statement is signed by all persons they designate for executing this MEMORANDUM and who receive access to the documents of the contracting authority. The persons designated by the INDEPENDENT MONITOR will receive documents not having public character only if the contracting authority considers necessary and only if disclosing information does not represent a disciplinary

offense or infringement of the legal provisions in force; In accordance with the law in force at the date of signing the present cooperation memorandum, the INDEPENDENT MONITOR will not receive documents regarding the tenders submitted or documents produced by the tender evaluation committee during the evaluation period;

- m. to make proposals regarding the content of all documents that the CONTRACTING AUTHORITY and the CONTRACTORS must prepare and publish pursuant to this MEMORANDUM (for example: the presentation of the Integrity Pact to be published by the CONTRACTING AUTHORITY or a policy of zero tolerance to corruption that needs to be prepared by the contractor).

(2) The INDEPENDENT MONITOR shall use the information to which they will have access only in order to prepare the mandatory monitoring reports. The data obtained from studies carried out shall be kept and processed for statistical purposes, under confidentiality conditions, and shall be presented in summarized analytical reports.

Art. 9

In order to fulfill the commitments mentioned in art. 8, the INDEPENDENT MONITOR shall have the following rights:

- a. to participate as an observer in all stages of the procedure for public procurement and contract implementation (including in the stage of signing the handover minutes), in accordance with this MEMORANDUM, observing the legal provisions, through their employees and/or experts;
- b. to ask for and to analyze relevant documents (Annex 1) of the procedure for contract awarding and execution stage in the possession of the CONTRACTING AUTHORITY and to send written questions regarding these documents;
- c. to alert the CONTRACTING AUTHORITY if potential offenses or risks are uncovered;
- d. to make recommendations of a discretionary nature to the CONTRACTING AUTHORITY regarding promoting the public procurement principles: nondiscrimination, equal treatment, mutual acknowledgment, transparency, proportionality, assuming responsibility.

Art. 10

(1) The INDEPENDENT MONITOR has the obligation to observe the confidential nature of the information and documents obtained pursuant to this COOPERATION MEMORANDUM to be included in its reports. The INDEPENDENT MONITOR shall perform its analysis and shall prepare the monitoring reports so as to prevent the disclosure of certain points of view or opinions of the members in the Evaluation Commission.

(3) The INDEPENDENT MONITOR shall prepare, send to the CONTRACTING AUTHORITY to be completed and subsequently keep all minutes of the working meetings and of the monitoring sessions.

(4) The INDEPENDENT MONITOR has the obligation to submit, in writing, its requests for information addressed to the CONTRACTING AUTHORITY.

Art. 11

(1) The INDEPENDENT MONITOR shall prepare at least an initial report (after finalizing the procedure for awarding each contract subject to monitoring), an intermediary report (during implementation of each contract) and a final

report (after each subsequent contract ceases) on the monitoring activity for the process of public procurement and contract implementation, until signing the handover minutes or until the expiry of the contractual period of the INDEPENDENT MONITOR, according to the provisions of art. 3 of the present MEMORANDUM. In case the public procurement contracts monitored have a contractual period of over 1 year, then the INDEPENDENT MONITOR will prepare intermediary reports, at least one report for each semester.

(2) If a situation of interest occurs during monitoring, the INDEPENDENT MONITOR shall notify the CONTRACTING AUTHORITY regarding the development of additional intermediary monitoring reports, at least 10 business days before sending these reports to the CONTRACTING AUTHORITY for consultation.

(3) If a situation of interest occurs during monitoring, the CONTRACTING AUTHORITY can request the INDEPENDENT MONITOR to prepare certain additional intermediary monitoring reports. The final decision regarding the prospect of preparing the additional intermediary monitoring reports is with the INDEPENDENT MONITOR, who however must motivate its decision and to present the request and its reply in the first report prepared after receiving the request.

(4) The final report of the INDEPENDENT MONITOR shall include a summary of the other periodical reports and the final evaluation regarding the compliance of the procedure for public procurement and contract implementation, until the signing of the handover minutes, with the requirements of the legislation in force and with the rules mentioned in this MEMORANDUM.

(5) The INDEPENDENT MONITOR shall publish the reports on its Internet page, after completing them in accordance with Law no. 677/2001 concerning the protection of natural persons regarding the processing and free circulation of the personal data. Furthermore, the reports shall not contain confidential data or documents not having a public character and to which the monitor had access in accordance with the provisions of this Memorandum.

(6) The INDEPENDENT MONITOR shall have the obligation to ensure reporting according to the calendar agreed with the Secretariat of Transparency International (Berlin) – the coordinator of the project *Integrity pacts – Civic instrument for monitoring public procurement, stage II – monitoring, evaluation and learning* and shall benefit from the support of the CONTRACTING AUTHORITY in providing relevant information in due time, meaning, in general, within 10 days of having received the request or withing a maximum of 30 days for requests regarding particularly complex information.

(7) Before publishing them, the INDEPENDENT MONITOR shall consult the CONTRACTING AUTHORITY on the content of the reports, according to the provisions at art. 7, par. (1), letters (f)-(h) in this MEMORANDUM.

Art. 12

(1) The INDEPENDENT MONITOR shall have the right to participate in the meetings between the CONTRACTING AUTHORITY and the CONTRACTOR as well as to monitor the execution of any activities concerning the implementation of the awarded contract.

(2) The CONTRACTING AUTHORITY shall provide the INDEPENDENT MONITOR with the schedule for the activities for implementing the awarded contract and shall notify him/her about the working meetings that will be organized. Any amendment made to the schedule of activities shall be announced in a reasonable time frame, in order to allow the INDEPENDENT MONITOR to adapt.

(3) The INDEPENDENT MONITOR has the obligation to answer in writing to any problems signaled by the CONTRACTING AUTHORITY throughout the duration of executing the MEMORANDUM and the public procurement contract.

CHAPTER II: ADHERENCE OF TENDERERS AND CONTRACTORS TO THE INTEGRITY PACT

Art. 13

The tenderers wishing to adhere to the INTEGRITY PACT shall sign Annex 2 to this MEMORANDUM, which shall be included in the awarding documentation.

Art. 14

The tenderers adhering to the Integrity Pact:

- a. Sign the "Statement on accepting the Integrity Pact and the obligations deriving therefrom"
- b. Commit not to offer bribe and not to participate in any other corruption offenses or offenses assimilated to corruption related to public procurement;
- c. Commit not to form any alliance with other tenderers and not to use privileged information to which they have no access right and which could affect the competition;
- d. Commit to take all necessary measures in order to avoid conflicts of interest;
- e. Commit to publish information related to all payments made during the process of procurement and execution of the public procurement contract;
- f. Observe and take all necessary measures so that the provisions of the INTEGRITY PACT are applied by all employees or by their empowered persons, by establishing a code of conduct for them;
- g. Unequivocally express their agreement as to the monitoring of the procedure for contract procurement and execution by an INDEPENDENT MONITOR.
- h. Observe and take all necessary measures so that the provisions of the integrity pact are applied by all employees or by their empowered persons¹;
- i. Explicitly express their agreement that the INDEPENDENT MONITOR have access to all documents of the procedure for awarding the public procurement contract, observing the public-procurement-related legislation in force as well as those resulting from its execution, the obligation to ensure confidentiality being in this case opposable to the INDEPENDENT MONITOR;
- j. Take all necessary measures so that all their employees refrain from any action or lack of action, during the procurement planning as well as subsequently, during tendering and contract execution, actions that can represent, according to legal provisions in force:
 - Disloyal competition offenses;
 - Corruption offenses;
 - Conflicts of interest;

¹ **Art. 144²./L31/1990 - (2)** The administrators are liable to the company for the prejudices caused by the acts made by the directors or by the employed personnel when the damage would not have taken place if they had exercised the surveillance imposed by the duties of their position.

- Use of privileged information;
 - Illegal influence of the decision-making process of the contracting authority or obtaining confidential information that could offer them unjustified advantages during the procedure.²
- k. If being declared the winner, commits not to employ or to conclude any other agreements on providing services, directly or indirectly, in order to fulfill the public procurement contract, with natural persons or with legal entities that were involved in the process for verifying/evaluating tenders submitted within an awarding procedure or employees/former employees of the contracting authority or of the provider of procurement services involved in the awarding procedure with which the contracting authority/the provider of procurement services involved in the awarding procedure ceased the contractual relationships subsequently to public procurement contract awarding, over a time period of at least 12 months after the contract conclusion, under the sanction of dissolving or terminating the respective contract³;
- l. If declared the winner, commits to present during contracting, if available, a code of conduct for its employees stipulating that offering bribe or unethical behavior are not accepted or a policy document of zero tolerance to corruption and of avoiding conflicts of interest or a policy document for gifts and protocol expenses or if the above mentioned documents do not exist, to present during contracting a commitment on preparing them within maximum 3 months and on adopting the necessary measures for implementation within 6 months;
- m. If declared the winner, commits to publish on its own website information related to all payments made during the process of procurement and execution of the public procurement contract

Art. 15

The contractors signing and adhering to the Integrity pact commit to observe all obligations assumed related to adhering to the INTEGRITY PACT as tenderers and to apply rules regarding transparency and integrity for subcontractors, providers and collaborators.

CHAPTER III: MEASURES IN CASE OF OFFENSES OR CONTRACT INFRINGEMENT

Art. 16

(1) The INDEPENDENT MONITOR has the right to give recommendations of a discretionary nature for preventing and/or eliminating offenses or infringements of law, irregularities or risks in the awarding procedure or during contract execution, within the scope of this MEMORANDUM.

(2) The INDEPENDENT MONITOR shall fully evaluate any offense, irregularity or risk, for each case, based on the existing legislation, on the professional experience and on the available data, in line with the objectives of this MEMORANDUM.

(3) The INDEPENDENT MONITOR is entitled to receive notifications from third parties regarding observing or not observing the legal obligations on transparency and integrity of the public procurement procedures as well as of the obligations assumed under the Integrity Pact.

(4) The INDEPENDENT MONITOR has the obligation to send the notifications received, after anonymizing them, to the contracting authority, in order to be competently settled, within 5 days following receipt³, subsequently monitoring the manner of settling the issues notified.

(5) In those cases when the INDEPENDENT MONITOR considers that the offenses represent disciplinary offenses, they shall notify the CONTRACTING AUTHORITY, in accordance with the provisions of chapter III of Government Decision no. 1344/2007 on organization and operation norms of the disciplinary committees.

Art. 17

The CONTRACTING AUTHORITY and the INDEPENDENT MONITOR shall report in due time to the competent institutions and shall provide support in order for these to exercise their responsibilities of supervising and sanctioning when the infringement or the disciplinary offense having been notified represents a potential infraction.

Art. 18

If one of the PARTIES identifies any infringement of the provisions of this COOPERATION MEMORANDUM, they shall proceed with the following steps:

- (a) They shall document any suspected or ascertained infringement in a written report, immediately after having identified it and shall send the report to the other party within maximum 5 business days of identifying the above mentioned infringement;
- (b) The other party shall communicate their point of view within maximum 5 business days of having received the report;
- (c) In case of divergent opinions concerning the notified deed or any misunderstanding, a working meeting shall be organized in order to identify common solutions;
- (d) The INDEPENDENT MONITOR shall prepare a report proposing a solution for the situation notified. The report shall be sent to the CONTRACTING AUTHORITY within maximum three business days from the date of the working meeting.

Art. 19

If the PARTIES fail to agree upon an approach or a solution for the matter within the working meeting mentioned at Art. 18, letter (c), the INDEPENDENT MONITOR – after internal deliberations within the international consortium – or the CONTRACTING AUTHORITY can decide to retire from the MEMORANDUM related to the INTEGRITY PACT.

³ Art. 6¹/GO27/2002 - The petitions incorrectly addressed shall be sent within 5 days after registration by the department provided at art. 6 par. (1) to the authorities or to the public institutions charged with settling the notified issues, the petitioner being subsequently informed of this.

The PARTY having unilaterally denounced the MEMORANDUM on the INTEGRITY PACT shall send the other party a justification in writing within maximum 3 business days of the date of the working meeting.

Art. 20

(1) In case the provisions of the MEMORANDUM and of the INTEGRITY PACT are not observed and if, after completing the steps described at art. 17, a solution is not found, the PARTIES can disclose to the public that the MEMORANDUM/INTEGRITY PACT has been infringed, presenting the report mentioned at art. 17, letter (a), the answer mentioned at art. 17, letter (b) and a description of the case circumstances.

(2) By signing the MEMORANDUM of the INTEGRITY PACT, the PARTIES expressly agree to the publication of the information mentioned at par. 1.

(3) If the report mentioned at Art. 18, letter (a) is sent to the relevant control and supervising authorities (for example the Prosecutor's Office, the National Integrity Agency, the Anti-Fraud Office), the PARTIES shall refrain from making statements in public unless the decision of the control and supervising authorities notified has been sent.

Art. 21

(1) If a tenderer or a contractor becomes aware of situations in which the other signatory parties of the Integrity pact - either the contracting authority, the independent monitor or the other tenderers - fail to observe the Integrity pact and the obligations deriving therefrom, the tenderer or the contractor has the right to notify these aspects to the contracting authority, the independent monitor or other institutions certified according to the law, depending on the situations of nonobservance of the pact identified.

(2) A tenderer or contractor notifying such situations provided at par. (1) will not be subject to sanctioning as a result of the notification sent.

THIRD PART

FINAL PROVISIONS

Art. 22

The CONTRACTING AUTHORITY accepts that the correspondence exchange with the TENDERERS and subsequently the CONTRACTOR, throughout the duration of the MEMORANDUM on the INTEGRITY PACT, can be accessed by the INDEPENDENT MONITOR, provided that the legal provisions in force are observed.

Art. 23

(1) The parties to the present MEMORANDUM have the right to agree on modifying or completing the MEMORANDUM clauses, during its validity period, stated in art. 3 The modifications and completions will be made following an agreement of the will of the parties expressed as an addendum.

(2) No addendum can be entered into retroactively. Any modification to the contract that does not take the form of an additional act or that does not observe the provisions of the present contract, will not be enforced.

Art. 24

(1) The communication between the parties for the implementation of the MEMORANDUM will be made by email, directly in person or by telephone. Any verbal communication will subsequently be confirmed in writing. In all cases, the party receiving the communication will confirm by email having received it.

(2) The parties will communicate through an official address, in no more than 10 days from the signing, the names, the email addresses and telephone numbers of the persons designated for the implementation of the MEMORANDUM. Any modification regarding the name or contact details of the persons designated by either of the parties will be communicated through an official address to the other party in no more than 10 days from its occurrence.

(3) The CONTRACTING AUTHORITY will send the INDEPENDENT MONITOR the documents mentioned in the present MEMORANDUM and Annex 1, through email, scanned or, in the case of unfinalized documents, in an editable format as soon as possible.

(4) The documents published on SEAP/SICAP and which are not available to the public will not be sent automatically to the INDEPENDENT MONITOR.

(5) In case the documents and files mentioned in Annex 1 cannot be scanned and sent by email by the CONTRACTING AUTHORITY, it will communicate the situation to the INDEPENDENT MONITOR, who will delegate a person to retrieve the copies of the requested documents from the headquarters of the CONTRACTING AUTHORITY.

Art. 25

The final, unsigned, version of the MEMORANDUM shall be published on the Internet page of the CONTRACTING AUTHORITY no later than the time of publishing the awarding documentation, together with information on the professional capacity and experience of the INDEPENDENT MONITOR, in order to be available to any stakeholder.

Art. 26

The PARTIES shall make all efforts, to amiably resolve, through direct negotiations, any misunderstanding or dispute that may occur between them within the framework of or related to the implementation of the MEMORANDUM on the INTEGRITY PACT. The representatives of the Transparency International Secretariat (the direct beneficiary of the contract with DG REGIO on financing the project *Integrity pacts – Civic instrument for monitoring public procurement, stage II – monitoring, evaluation and learning*) and the representatives of DG REGIO (financing party for the project for testing Integrity pacts) may also attend the meetings for an amicable settlement.

Art. 27

This MEMORANDUM shall be interpreted in line with the principles, objectives and spirit of the European and national regulations mentioned in the preamble.

Art. 28

This COOPERATION MEMORANDUM contains 2 annexes titled:

Annex 1: "Documents requested for the awarding procedure".

Annex 2: "Statement of acceptance the INTEGRITY PACT and undertaking of the contractual obligations deriving therefrom"

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This MEMORANDUM, together with its annexes has 20 pages.

This MEMORANDUM was drafted in 3 copies, 1 for the CONTRACTING AUTHORITY, 2 for the INDEPENDENT MONITOR.

For the CONTRACTING AUTHORITY
NATIONAL AGENCY FOR CADASTRE AND LAND REGISTRATION
Radu Codruț ȘTEFĂNESCU, General Director
Signature:

.....

Date:

For the Consortium ROMANIAN ASSOCIATION FOR TRANSPARENCY|TRANSPARENCY INTERNATIONAL ROMANIA - INSTITUTE FOR PUBLIC POLICIES

Legal representative of the ROMANIAN ASSOCIATION
FOR TRANSPARENCY:
Victor ALISTAR
Signature:

.....

Date:

Legal representative of the INSTITUTE FOR PUBLIC
POLICIES:
Adrian MORARU
Signature:

.....

Date:

ANNEX 1

The documents issued by the CONTRACTING AUTHORITY to which the INDEPENDENT MONITOR may have access are presented in the list below.

The INDEPENDENT MONITOR can also request access to other documents issued or received by the CONTRACTING AUTHORITY within the process for awarding and executing the public procurement contract. If these documents cannot be disclosed to the INDEPENDENT MONITOR, even given the confidentiality statements from the INDEPENDENT MONITOR, its employees and experts, THE CONTRACTING AUTHORITY shall motivate the refusal to grant access.

<i>Planning the project stage</i>
<ul style="list-style-type: none">• Financing request• Feasibility study• Communication between the Contracting authority and Jaspers, IQR Jaspers, the Management Authority regarding the financing request• Documents based on which the administrative territorial units are selected to implement the project
<i>Public procurement preparation stage</i>
<ul style="list-style-type: none">• Project-related public procurement program (according to Art. 13 of GD 395/2016);• Contracting strategy;• Participation announcement;• Awarding documentation (according to Art. 20 of GD 395/2016) containing:<ul style="list-style-type: none">a) data sheet for the procurement;b) task book;c) draft contract;d) forms and document templates.• For the framework agreement, the data sheet containing the minimum set of specific information (according to Art. 20, par. 8 of GD 395/2016);• Own-account statement of the legal representative regarding the identification data of the persons holding decision-making positions within the contracting authority;• Designating the person responsible for completing the Integrity form according to Law 184/2016;• Informing ANAP of the acceptance or rejection of the awarding documentation (according to Art. 23, par. 6 of GD 395/2016);• If applicable, the requests for clarification sent by the business operators regarding the awarding documentation and the answers to them (according to art. 92, par. 7 and art. 160 of Law 98/2016);
<i>Opening the tenders and tender evaluation stage</i>
<ul style="list-style-type: none">• The minutes signed by the members of the evaluation commission and by the legal representatives/empowered persons of the business operators present in the tender opening meeting, if applicable (according to art. 64, par. 4 of GD 395/2016);• The tenders, the requests for clarifications and the answers to such requests, as soon as the procurement file becomes a public document;• If applicable, the decision to exclude from the contract awarding procedure of one or several business operators (according to art. 164 of Law 98/2016), after the procurement file becomes a public document;• The awarding procedure report and its annexes, if applicable (according to art. 216 of Law 98/2016), after the procurement file becomes a public document;• Proof of communicating the procedure result, after the procurement file becomes a public document;

- If applicable, the appeals formulated by one or several business operators and the justified decision pronounced by the National Council for Solving Appeals, after the procurement file becomes a public document.

Access to documents considered confidential by the tenderers, classified or protected by an intellectual property right is allowed only if the tenderers have adhered to and signed the Integrity Pact and have stated therein that they grant the independent monitor access to the documents declared confidential, classified or protected by an intellectual property right.

If case of changes to the national legislation allowing the INDEPENDENT MONITOR access to the documents submitted by the TENDERERS, to the meetings and to the documents issued by the evaluation commission, the CONTRACTING AUTHORITY commits through this MEMORANDUM to ensure the access of the INDEPENDENT MONITOR to all these documents and to the meetings of the evaluation commission, as soon as a legislative change allowing these actions comes into force, without requiring the amendment of this MEMORANDUM.

Completion of awarding procedure (contract awarding) stage

- If applicable, the decision to cancel the awarding procedure, after the procurement file becomes a public document;
- The awarding announcement and proof that it was sent to be published;
- The public procurement contract/framework agreement together with its annexes (according to art. 147 of GD 395/2016) containing:
 - a) The task book, including the clarifications and/or the remedial measures;
 - b) The tender (technical and financial proposal);
 - c) Good performance guarantee, if applicable;
 - d) The firm commitment of support from a third party, if applicable;
 - e) Contracts with subcontractors, if applicable;
 - f) The partnership agreement, if applicable.

Proof of communicating the procedure result, after the procurement file becomes a public document;

Contract implementation

- If applicable, the contracts concluded between both the contractor and subcontractors (according to art. 152 of GD 395/2016 and art. 220 of Law 98/2016);
- If applicable, the necessary documents to verify the clarifications, resources/capabilities of subcontractors (according to art. 155 of GD 395/2016);
- If applicable, the documents regarding new specialized personnel initially requested by the awarding documentation (according to art. 162 of GD 395/2016);
- If applicable, the content of the proposed addenda that shall change the public procurement contract, together with their justification from the contractor;
- All payment requests received by the contractor and the invoices it sent.

Contract completion

- The ascertaining document related to the fulfillment of the contractual obligations by the contractor before being published in SEAP (according to art. 166, par. 1 and par. 5 of GD 395/2016);
- If applicable, the ascertaining document related to the fulfillment of the contractual obligations requested by a subcontractor (according to art. 166, par. 7 of GD 395/2016);
- If applicable, the document by which the contracting authority unilaterally denounces the contract during its validity period (according to art. 223 of Law no. 98/2016).
- The public procurement file containing the documents listed in art. 148 of GD 395/2016.

These documents shall be sent to the INDEPENDENT MONITOR if the contract completion occurs during the validity period of the Cooperation Memorandum regarding the Integrity Pact

ANNEX 2

Statement of acceptance of the INTEGRITY PACT and undertaking of the contractual obligations deriving from therefrom

The undersigned, _____ (*name and surname*), authorized legal representative of _____ (*name and office/address of the tenderer*), as tenderer/associated tenderer/subcontractor/supporting third party, to the awarding procedure for the public procurement contract with the object on (day/month/year), organized by _____ (*contracting authority*),

I) **I declare on my own responsibility that after analyzing the awarding documentation for this procedure, I accept the use of the Integration pact as part of it, as an instrument for preventing/diminishing integrity risks in public procurement, that I am aware of its clauses and that I commit to observe all clauses and obligations I have according to the Pact, as follows:**

- (1) I agree that _____ (*official name and office of the independent monitor*) participate with regards to the procedure as independent monitor and to monitor the procedure for awarding and executing the public procurement contract, if the submitted tender is declared as the winning tender. I declare that I have been informed about its identity and that until the time of this statement I have not become aware of any reason for which to contest its participation in this procedure as an independent monitor.
- (2) I agree that the independent monitor _____ (*official name and office*) should have access, under confidentiality statement, to all documents related to the awarding procedure for the public procurement contract, including to those contained in this tender and to those resulting from its execution, as soon as they can be disclosed to a person outside the evaluation commission. In this case, I declare that I have not excessively made use of the right provided by art. 57 of Law no. 98/2016 to consider information in the tender as being confidential. Additionally, I declare that I understand that both the contracting authority and the independent monitor assumed a correlative obligation to observe the confidentiality of the data I considered as such.
- (3) I commit to not offer bribe and to not participate in any other corruption offenses or in offenses that can be assimilated with them related to public procurement;
- (4) I commit to not form any alliance with other tenderers and to not use privileged information to which they do not have access rights and which could affect the competition;
- (5) I commit to take all necessary measures in order to avoid conflicts of interest;

- (6) I commit to observe and to take all necessary measures so that the provisions of the integrity pact be applied by all employees of the undersigned, _____ (*name of the tenderer*).
- (7) If declared winner, I commit to not employ or conclude any other agreements on providing services, directly or indirectly, in order to fulfill the public procurement contract, with natural persons or with legal entities involved in the process of checking/evaluating tenders submitted within an awarding procedure or employees/former employees of the contracting authority or of the provider of procurement services involved in the awarding procedure with which the contracting authority/the provider of procurement services involved in the awarding procedure ceased the contractual relationships subsequently to awarding the public procurement contract, over a time period of at least 12 months after the contract conclusion, under the sanction of dissolving or terminating the respective contract⁴.

I commit to present, during contracting, if available, a code of conduct for my employees stipulating that offering bribe or unethical behavior are not accepted or if the above mentioned document does not exist, to present during contracting a commitment on preparing or updating it, as applicable, within maximum 3 months, as well as the proof of adopting the necessary measures for implementation within 6 months after contracting.

- (8) I declare I took the necessary diligence measures so that during the time of planning the procurement none of the employees of the undersigned participate and I commit to also take the necessary diligence measures in the future so that during tendering and during contract execution, if the submitted tender is declared the winning tender, all employees of the undersigned refrain from any action or lack of action that may represent, according to the legal provisions in force:
- a) Disloyal competition offenses
 - b) Corruption offenses
 - c) Conflicts of interest
 - d) Use of privileged information
 - e) Illegal influence of the decision-making process of the contracting authority or obtaining confidential information that could offer them unjustified advantages during the procedure⁵.

⁴ Art. 61./L98/2016 - The tenderer declared as winner with whom the contracting authority concluded the public procurement contract has no right to employ or to conclude any other agreements on providing services, directly or indirectly, in order to fulfill the public procurement contract, with natural persons or with legal entities involved in the process for verifying/evaluating the participation requests/tenders submitted within an awarding procedure or employees/former employees of the contracting authority or of the provider of procurement services involved in the awarding procedure with which the contracting authority/the provider of procurement services involved in the awarding procedure ceased the contractual relationships subsequently to public procurement contract awarding, over a time period of at least 12 months after contract conclusion, under the sanction of dissolving or terminating the respective contract.

Specific objective 2.2/HG583/2016 - Increasing the efficiency of the preventive anti-corruption measures by remedying gaps and legislative inconsistencies related to the ethics advisor, protection of the notifying party in public interest and the post-commitment interdictions (pantouflage)

⁵ **Art. 167./L98/2016 par. (1) letter i)**

(9) I declare that within this procedure I participate with the subcontractors declared in annex ____/ Statement _____ and I commit to communicate to the contracting authority the list of all subcontractors to be subsequently involved in the contract execution and following the request of the contracting authority, to communicate the list of the providers involved in the public procurement contract, in accordance with the provisions of art. 220 of Law no. 98/2016.

OR

I declare that within this procedure I do not participate with subcontractors and I commit to communicate to the contracting authority the list of all subcontractors to be subsequently involved in contract execution and following the request of the contracting authority, to communicate the list of the providers involved in the public procurement contract, in accordance with the provisions of art. 220 of Law no. 98/2016.

(10) I commit to publish information on own website information related to all payments made to third parties (subcontractors, suppliers, service providers) during the process of procurement and execution of the public procurement contract

Business operator:

Legal representative:

Name:

Signature:

Date: