

INTEGRITY PACT

ROAD INFRASTRUCTURE AGENCY, having its seat and address 1606 Sofia, 3 “Macedonia” bul., BULSTAT: 000695089, represented by Eng. Lazar Lazarov – Chairman of the Management Board, hereinafter referred to as the **CONTRACTING AUTHORITY**,

AND

“TRANSPARENCY INTERNATIONAL – BULGARIA”, UIC 121752288, having its seat and address of management in Sofia 1000, “Triaditza” district, 3 “Bistritza” Str., fl. 4, represented by the Executive Director Kalin Slavov, hereinafter referred to as the **INDEPENDENT OBSERVER** of this **INTEGRITY PACT**

On the basis of a Cooperation Agreement concluded by and between the Ministry of Regional Development and Public Works and Transparency International Bulgaria,

OPEN FOR ACCESSION

in the period between signing the present **INTEGRITY PACT** and the awarding of the Contract this **INTEGRITY PACT** to all tenderers in the restricted procedure for public procurement with subject “Selection of contractor for design and construction of site: “Struma Motorway Lot 2, section Dupnitsa – Blagoevgrad from km 322+000 to km 359+000”, opened by Decision No. 25 of 24.02.2012 of the Chairman of the Management Board of Road Infrastructure Agency.

Accession should be carried out by submitting a standard application form (Appendix No.1) addressed to the **CONTRACTING AUTHORITY** and the **INDEPENDENT OBSERVER**.

By its accession each of the **TENDERES** in the restricted procedure for public procurement with subject “Selection of contractor for design and construction of site: “Struma Motorway Lot 2, section Dupnitsa – Blagoevgrad from km 322+000 to km 359+000” irrevocably undertakes to fulfill with perseverance and in good faith the obligations determined by the **INTEGRITY PACT** and shall be entitled to take benefit from the opportunities granted by it entirely and only in the spirit of the principles supported by it.

PREAMBLE

GUIDED BY THE UNDERSTANDING of the supremacy of public interest, taking into account the necessity for transparency and for enhancement of the confidence in the award procedures related to public works, public supply and public services, as well as realizing the threat that corruption poses to the foundations of the contemporary state organization by undermining institutions, democratic and ethical values and justice, and by jeopardizing sustainable development and legal order;

MAKING THEIR AIM the observance of the principles stated in the Constitution, and mostly the freedom

of economic initiative and equal legal opportunities for conduct of businesses, as well as the principles for publicity and transparency, free and fair competition, equality and intolerance to discrimination provided for in the Public Procurement Act;

IN ACCORDANCE WITH THE ACHIEVEMENTS of the international and European law, incorporated in the Civil Law Convention on Corruption, the Criminal Law Convention on Corruption, the United Nations Convention against Corruption, and the Convention on Combating Corruption, in which the European Communities public servants and European Union member-states employees are involved, and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and their leading principles and values of good governance of public affairs and public property, justice, responsibility and legal equality, as well as necessity to encourage the culture for rejection of corruption;

CREATING CONDITIONS for achieving the objectives of the Public Procurement Act and the respective legal acts of the international and European law and ensuring efficient anti-corruption behavior, good governance of the public sector and enhancement of the confidence in public funds expenditure.

THE PARTIES AGREE UPON:

PART ONE RULES AND CONDITIONS FOR IMPLEMENTATION OF THIS PACT

I. RIGHTS AND OBLIGATIONS OF THE PARTIES

Art. 1 (1) THE PARTIES accept to observe strictly the law at all stages of the public procurement procedure with subject: "Selection of contractor for design and construction of site: "Struma Motorway Lot 2, section Dupnitsa – Blagoevgrad from km 322+000 to km 359+000", as well as to exert all efforts to achieve its goals and the goals of this INTEGRITY PACT.

(2) THE PARTIES accept to render active assistance to the supervisory, law protection and judicial authorities, as they realize the particular value of the protected public relations.

Art. 2 (1) THE PARTIES and their employees, including those who have not been assigned direct duties related to the preparation and implementation of the public procurement and the supervision of the execution of the awarded contract shall be bound to refrain from any misconduct.

(2) THE PARTIES commit to recommend to all parties, with whom they are in official, employment or contractual relations in connection with the award process and execution of the awarded contract that they should refrain from any misconduct. As a guarantee for fulfilling this obligation, THE PARTIES are entitled to introduce contractual terms governing liability into the contracts they conclude.

Art. 3 (1) THE PARTIES shall be bound neither to initiate, nor to participate in practices of coordinated action with the other tenderers that violate the competition rules, with the purpose of gaining for themselves or a third party a contract awarded against the rules and principles of law and in contradiction to its objectives.

(2) THE PARTIES declare that during the award procedure and the execution of the awarded contract neither they, nor any of their employees shall take advantage of or accept for themselves or third party any tangible or intangible benefit, which may influence their behavior during the award process, either from the other tenderers in the award procedure and the contractors, or from their related parties.

Art. 4 (1) In order to assess whether the obligations under Art. 1 – 3 have been fulfilled THE PARTIES agree to provide the INDEPENDENT OBSERVER with access to such documents related to their participation in the award procedure as the INDEPENDENT OBSERVER considers necessary for the fulfillment of its obligations under the PACT, as well as to give response to the INDEPENDENT OBSERVER'S written questions under the conditions of confidentiality.

(2) The obligation of the CONTRACTING AUTHORITY under Paragraph 1 refers to the documents, composed in pursuance of the Public Procurement Act, as well as the documents composed according to the internal regulations adopted by the CONTRACTING AUTHORITY with respect to the preparation and execution of public procurement. The obligation does not concern the documents, which the CONTRACTING AUTHORITY has made publicly available.

Art. 5 (1) THE CONTRACTING AUTHORITY shall be bound to prepare and submit to the INDEPENDENT OBSERVER a list of the natural persons and legal entities (and of their directly involved employees), who take part in the preparation of the public procurement and execution of the awarded contract. Within three days counted from any change in this list, THE CONTRACTING AUTHORITY shall notify in writing THE INDEPENDENT OBSERVER about the resulting changes.

(2) THE INDEPENDENT OBSERVER shall keep the information and this information can be included in THE INDEPENDENT OBSERVER'S reports in a form that prevents the identification of any particular individual. Any information about a specific individual can only be announced once the consent of the person concerned has been obtained.

Art. 6 (1) THE CONTRACTING AUTHORITY shall be bound to present to THE INDEPENDENT OBSERVER the planned and actual expenditures concerning the external staff (both natural persons and legal entities) regarding the preparation, and implementation of the public procurement.

(2) The information under Paragraph 1 shall be provided upon request by THE INDEPENDENT OBSERVER in accordance with the need for reporting.

Art. 7 (1) THE CONTRACTING AUTHORITY shall be bound to inform THE INDEPENDENT OBSERVER about the members of the Awarding Commission appointed by THE CONTRACTING AUTHORITY.

(2) In the notice THE CONTRACTING AUTHORITY shall state the professional biography of the people appointed by it.

(3) The Conflict of Interest Declarations of the Commission members shall be enclosed to the notice.

Art. 8 THE CONTRACTING AUTHORITY shall be bound to provide THE INDEPENDENT OBSERVER with the report, and the Minutes from the Awarding Commission proceedings respectively, including dissenting opinions. THE INDEPENDENT OBSERVER shall proceed with its analysis and prepare the reports in a way that prevents the disclosure of specific standpoints and opinions of particular members of the Commission.

Art. 9 THE TENDERER hereby agrees to provide THE INDEPENDENT OBSERVER with access to the documentation prepared in relation to its participation in the public procurement procedure once the work of the Awarding Commission has been finished and upon request from THE INDEPENDENT OBSERVER.

Art. 10 (1) Upon request of THE INDEPENDENT OBSERVER, THE TENDERER shall be bound to submit a full, detailed and reliable list of the external staff (both natural persons and legal entities) and outsourced services that it used in the course of preparation, and participation in the public procurement procedure and during the execution of the awarded contract.

(2) In case that contracting parties of THE TENDERER are legal entities, they shall exhaustively list name by name the people they will directly engage for accomplishing their obligations towards the tenderer.

(3) Upon request of THE INDEPENDENT OBSERVER, THE TENDERER shall be bound to submit a statement of its expenditure for the activities under para.1.

(4) THE TENDERER hereby accepts that the regularity of reporting shall be in conformity with the regularity of reporting of THE INDEPENDENT OBSERVER.

Art. 11. THE TENDERER agrees that when Art. 70 of the Public Procurement Act applies the detailed written

reasoning of its offer shall be submitted to THE INDEPENDENT OBSERVER for the purpose of its analytic activity and preparation of reports.

Art. 12 (1) THE TENDERER agrees that in case the Contract is awarded to it, THE CONTRACTING AUTHORITY shall provide THE INDEPENDENT OBSERVER with access to the awarded contract together with all enclosures and documents it refers to.

(2) The rules of Paragraph 1 shall also apply to all amendments of and supplementations to the contract under Paragraph 1.

(3) Only information protected by the law shall not be submitted under para.1.

(4) For the purposes of Paragraph 1, THE CONTRACTING AUTHORITY and THE TENDERERS shall maintain record keeping, in which they shall keep the written documents, including those exchanged electronically.

Art. 13 (1) THE PARTIES accept that the exchange of correspondence for the entire duration of the PACT, including at the implementation stage and within the warranty period, shall be accessible by THE INDEPENDENT OBSERVER. This obligation includes also statements, which the CONTRACTING AUTHORITY and the Contractor created and exchanged during the execution of the awarded contract.

(2) THE INDEPENDENT OBSERVER shall keep minutes of the conducted workshops and inspections.



II. ENCOURAGEMENT FOR ACCESSION TO THE INTEGRITY PACT

Art. 14 (1) THE CONTRACTING AUTHORITY shall keep a WHITE LIST of the TENDERERS in the PACT.

(2) THE CONTRACTING AUTHORITY shall write down the following in the WHITE LIST:

1. The tenderers in the public procurement procedure;
2. The tenderers, who have accessed the INTEGRITY PACT;
3. The tenderer to whom the Contract has been awarded;
4. The deletions made in the WHITE LIST and the reasons for them.

(3) THE CONTRACTING AUTHORITY shall lead an active policy to promote the WHITE LIST and the principles of the integrity policy.

(4) THE CONTRACTING AUTHORITY shall maintain public the access to the WHITE LIST through its website and shall inform upon request contracting authorities within the European Union having a business profile similar to its own about the information registered by it in the WHITE LIST.

(5) THE CONTRACTING AUTHORITY shall delete the registration of the particular TENDERER when THE INDEPENDENT OBSERVER has found a violation of the INTEGRITY PACT regulations.

III. SUPERVISION OF THE IMPLEMENTATION OF THE INTEGRITY PACT

Art. 15 (1) THE PARTIES agree that if a contract is awarded to a TENDERER , THE INDEPENDENT OBSERVER shall be entitled to attend the meetings between THE CONTRACTING AUTHORITY and the Contractor, as well as the performance of actual activities related to the execution of the awarded contract.

(2) THE CONTRACTING AUTHORITY shall provide THE INDEPENDENT OBSERVER with a schedule of the activities related to the execution of the awarded contract, as well as with a schedule of the appointed meetings. Any amendments to the schedules shall be announced on the day of their occurrence.

(3) THE CONTRACTING AUTHORITY shall also provide THE INDEPENDENT OBSERVER and THE TENDERERS in the PACT with information about the operation of the subject of the PUBLIC PROCUREMENT.

(4) The tenderers in the INTEGRITY PACT are entitled to send reasoned opinions of their own to THE INDEPENDENT OBSERVER.

Art. 16 (1) In order to achieve the objectives of the PACT immediately after its signing THE TENDERER shall designate a person in a managing position, who shall be responsible for the application of the provisions of the PACT.

(2) The person referred to in Paragraph 1 shall carry out an internal monitoring with respect to a violation of the INTEGRITY PACT, as well as to the internal statements related to the anti-corruption policy upon:

1. its own initiative;
2. initiative of THE CONTRACTING AUTHORITY;
3. initiative of THE INDEPENDENT OBSERVER.

(3) The person shall notify the legal representative under Paragraph 1 of the results from the monitoring under Paragraph 2.

IV. MEASURES IN CASE OF MISCONDUCT

Art. 17 (1) THE INDEPENDENT OBSERVER shall recommend the parties measures for prevention and elimination of violations in the award procedure or acts of misconduct within the meaning of this PACT.

(2) The presence of misconduct for each particular case shall be assessed by THE INDEPENDENT OBSERVER on the grounds of its professional experience and all data at its disposal, taken into account in its entirety and mutual interaction and assessed on the basis of positive law as well as according to the morale and objective of this PACT and the legal framework it is based on.

(3) In the cases where a violation or misconduct or preconditions for it have been established, THE INDEPENDENT OBSERVER shall inform THE CONTRACTING AUTHORITY and/or THE TENDERER.

Art. 18 (1) In the cases where misconduct represents a disciplinary breach THE CONTRACTING AUTHORITY and THE TENDERER shall be unconditionally bound to immediately initiate appropriate internal proceedings for clarifying the actions of their employees.

(2) THE CONTRACTING AUTHORITY and THE TENDERER shall report in due time to the competent institutions and assist them in exercising their supervisory and sanctioning powers when the breach or occurrence of misconduct constitute an administrative or a criminal offence.

PART THREE STATUS OF THE INDEPENDENT OBSERVER

I. GENERAL PROVISIONS

Art. 19 THE CONTRACTING AUTHORITY and EACH TENDERER, who has acceded this PACT, hereby agree that "TRANSPARENCY INTERNATIONAL – BULGARIA" can exercise its functions as THE INDEPENDENT OBSERVER.

II. RIGHTS AND OBLIGATIONS OF THE INDEPENDENT OBSERVER

Art. 20 (1) THE INDEPENDENT OBSERVER shall:

1. observe the award procedure;
2. assess the conformity of the award procedure with the requirements of the current legislation and with the regulations of this PACT;

3. make recommendations for prevention and elimination of established violations within the award procedure;
4. make public the results from its work.

(2) The information available to THE INDEPENDENT OBSERVER shall be used entirely and only for the purposes of the reports prepared by it. The information shall be kept and processed in statistical form under the conditions of confidentiality and shall be presented in summarized analytical reports.

Art. 21 (1) In order to fulfill its obligations referred to in Art. 23 THE INDEPENDENT OBSERVER shall have the following rights:

1. To attend the performance of the particular activities in the cases, provided for in this PACT through its employees and/or experts;
2. To demand and inspect documents relevant to the preparation of the award procedure, which are in the possession of THE CONTRACTING AUTHORITY, THE TENDERER or third parties, when they have assumed such an obligation.
3. To address written enquiries to THE CONTRACTING AUTHORITY and THE TENDERERS regarding specific issues of interest for it;
4. To request from THE CONTRACTING AUTHORITY or THE TENDERER to hold internal procedures for establishing possible violations made;
5. to conduct anonymous surveys among the employees of THE CONTRACTING AUTHORITY, of THE TENDERERS IN THE PACT or any of their contracting parties;
6. To make recommendations for discontinuation of activities contradicting to the rules of acceptable behaviour and of unfair competition;
7. To approach the competent institutions in the cases where the probability of a committed crime is high.

(2) All the information, which has become known to THE INDEPENDENT OBSERVER in the course of exercising of its powers referred to in Paragraph 1 shall be treated by it as confidential and THE INDEPENDENT OBSERVER shall exert the due diligence to protect it and not to provide third parties with access to it.

(3) The information referred to in Paragraph 2 shall be kept by THE INDEPENDENT OBSERVER no longer than 2 months after the final report under this PACT has been prepared.

Art. 22 For the duration of this PACT, including during the performance of the awarded contract, THE CONTRACTING AUTHORITY and THE TENDERER agree to fully support THE INDEPENDENT OBSERVER within the limits, provided for in accordance with its status and its specific rights and obligations under this PACT, and shall undertake actions in accordance with its recommendations.

III. REPORTING OF THE INDEPENDENT OBSERVER

Art. 23 (1) THE INDEPENDENT OBSERVER shall prepare at least an introductory, intermediate and final report on its activities.

(2) The final report of THE INDEPENDENT OBSERVER shall include summarized information from its periodic reports and its assessment of the compliance of the public procurement procedure with the requirements of the current legislation and the rules of this INTEGRITY PACT.

(3) THE INDEPENDENT OBSERVER shall publish the reports it has drawn up on its website after their preparation in accordance with the Personal Data Act.

PART FOUR MISCELLANEOUS

Art. 24 For the purposes of this PACT:

1. MISCONDUCT shall be:

- a) Any behavior, which can negatively influence the judgment and motivation of THE CONTRACTING AUTHORITY,

of its employees, of THE TENDERER or of third parties including behavior permitted by law, but incompatible with the good practices, morale and the purposes and spirit of this PACT;

b) Sharing with the TENDERER, THE CONTRACTING AUTHORITY or third parties of information that became known in the course of performance of this PACT or within the award procedure or during the performance of the awarded contract by a TENDERER, THE CONTRACTING AUTHORITY, their employees, contracting parties or subcontractors.

2. TENDERER in the INTEGRITY PACT shall be a participant in the award procedure or a contractor of the awarded contract, which has joined this INTEGRITY PACT.

3. PARTIES to the INTEGRITY PACT shall be: THE CONTRACTING AUTHORITY, which has adopted the decision for opening of the public procurement procedure and the TENDERERS in the PACT.

4. The communication between the PARTIES shall be made in writing or via e-mail. A register shall be maintained for all communications, including the ones exchanged electronically. For the purposes of this PACT a register shall also include the register of documents normally maintained by the parties.

Art. 25 (1) This PACT shall become effective in the presence of a statement of will of its acceptance made under a form (Appendix No. 1 to this PACT) by at least one of the tenderers in the public procurement procedure.

(2) The statement of will under Paragraph 1 must contain an unconditional and irrevocable will to accede the INTEGRITY PACT with no arrangements or reservations made regarding the form and content announced by THE CONTRACTING AUTHORITY and THE INDEPENDENT OBSERVER.

(3) The statement of will under Paragraph 1 shall be made in writing by the person authorized to represent the tenderer in the award procedure and shall be submitted to THE CONTRACTING AUTHORITY and THE INDEPENDENT OBSERVER in two identical copies. The statements of will made by the TENDERERS and the PACT shall be kept for at least the same period as the period for keeping the documentation regarding the implementation of the public procurement and the execution of the awarded contract.

Art. 26 The Pact shall expire on 31.12.2013 at the latest.

Art. 27 After expiration of the term for accession, THE CONTRACTING AUTHORITY shall be bound to send an original of this PACT signed by it and THE INDEPENDENT OBSERVER to each of the acceded parties to the correspondence addresses stated by them in the course of implementation of the award procedure together with a certified list of the acceded parties.

Art. 28 By the opening of this PACT for signing THE CONTRACTING AUTHORITY shall publish on its webpage the text of this PACT and shall provide a copy thereof to each person who is willing to buy or has already bought the documentation. Along with the text of the pact there shall be submitted information for THE INDEPENDENT OBSERVER, on the basis of which the conclusion regarding the professional qualifications, reputation and impartiality of THE INDEPENDENT OBSERVER were made.

Art. 29 Disputes regarding the interpretation and fulfillment of this PACT shall be resolved by the PARTIES by negotiations.

Art. 30 The governing substantive law shall be the Bulgarian law as well the European and international legal acts referred to in the Preamble of this PACT, when they contain directly applicable provisions. The interpretation of this PACT shall be made in accordance with their founding principles, objectives and morale.

IN PURSUANCE OF THE OBJECTIVES AND PRINCIPLES laid down in Part One of this INTEGRITY PACT and under the terms agreed upon in Part Two and Part Three, in accordance with the governing law, today, 27.11.2012, the CONTRACTING AUTHORITY and the INDEPENDENT OBSERVER declare their intent to apply the INTEGRITY PACT in its entirety regarding all actions in the course of selection, awarding and execution of the public procurement with subject "Selection of contractor for design and construction of site: "Struma Motorway Lot 2, section Dupnitsa – Blagoevgrad from km 322+000 to km 359+000", opened

by Decision No. 25 of 24.02.2012 of the Chairman of the Management Board of Road Infrastructure Agency.

FOR THE CONTRACTING AUTHORITY:

Signature: /illegible signature/
ENG. LAZAR LAZAROV
CHAIRMAN OF THE MANAGEMENT BOARD OF
ROAD INFRASTRUCTURE AGENCY
/Name, surname/

Round seal of Road Infrastructure Agency

FOR "TRANSPARENCY INTERNATIONAL – BULGARIA":

Signature: /illegible signature/
KALIN SLAVOV
EXECUTIVE DIRECTOR
TRANSPARENCY INTERNATIONAL BULGARIA
/Name, surname/, /position/

Round seal of Transparency International Bulgaria

Appendix No. 1
Application form for accession to the Integrity Pact

TO THE ATTENTION OF:
ROAD INFRASTRUCTURE AGENCY

"TRANSPARENCY INTERNATIONAL – BULGARIA"

APPLICATION FORM

Submitted by

.....

(name of the Tenderer, seat and address of management, UIC, legal representative)

DEAR LADIES AND GENTLEMEN,

By submitting the present application I wish and give the irrevocable consent on behalf of „.....
.....“ represented by me to accede to the Integrity Pact signed on2012 between the
“Contracting Authority” and “TRANSPARENCY INTERNATIONAL – BULGARIA” acknowledging the obligation
to fulfill with perseverance and in good faith all obligations set forth in the INTEGRITY PACT.

I declare that „.....“ shall benefit from the opportunities given by the INTEGRITY PACT
entirely and only in the spirit of the principles supported by it.

Date:.....

Sincerely:.....

(representing the Tenderer ”“)