

Hivos General Terms and Conditions

1. General

- 1.1 These General Terms and Conditions apply to all agreements and the entire legal relationship between Hivos Foundation (Stichting Hivos) (hereinafter: "Hivos") and the organisation responsible for the implementation of the activities as described in the Application (hereinafter: the "Implementing Organisation")
- 1.2 Hivos and the Implementing Organisation are hereinafter jointly referred to as the "Parties".
- 1.3 The Implementing Organisation is obligated to share these General Terms and Conditions with their external auditors to ensure that auditors check compliance and report on any exceptions.

2. Contract

- 2.1 An agreement between Hivos and the Implementing Organisation with respect to the funding of activities of the Implementing Organisation is hereinafter called: the "Contract".
- 2.2 The Contract enters into force after signing by both Parties. The Contract should be signed by lawful representatives of the Parties.
- 2.3 The Parties undertake to comply with their obligations arising from the Contract and the General Terms and Conditions.

3. Payments

- 3.1 Hivos' contribution shall be paid in the currency as stated in the Contract to the bank account indicated by the Implementing Organisation. The account must be held in the name of the Implementing Organisation. Only in exceptional cases and after written consent of Hivos may a different payee be agreed upon.
Dependent on the nature of the contract, outcome of the Hivos intake assessments and back-donor requirements, Hivos may require its project funding to be maintained in a separate bank account. This requirement will be stated in the contract.
- 3.2 Changes regarding the bank account, as stipulated in the Bank Detail Form, shall be brought immediately to Hivos' attention in writing by means of a letter or a new bank detail form, signed by the competent authorities within the Implementing Organisation. Only in the event Hivos has confirmed the changes in writing, or in the event Hivos does not reply within 8 weeks after receiving the letter, the Implementing Organisation is entitled to hold Hivos liable for incorrect bank orders.
- 3.3 The planned dates, period and amounts related to the disbursements of the funds provided by Hivos, will be stated in the Contract under the heading "Payment details". Hivos reserves the right to vary the scheduled amount, deduct the fund balance held by the Implementing Organisation or to defer the next payments if 70% (or other set percentage) of the previous disbursement is not yet spent.

- 3.4 The Implementing Organisation may propose to Hivos that payments should be postponed or brought forward in relation to the dates of payment stated in the remittance schedule, if justified by the reports mentioned under article 5 and 6.
- 3.5 Hivos has the right to suspend payments if the Implementing Organisation fails to comply with the terms of the Contract and/or the General Terms and Conditions. More specifically Hivos has the right to suspend payments in the event:
- the Implementing Organisation fails to use Hivos' funding in accordance with the Application;
 - the progress reports and financial reports as referred to in 5. and 6. below have not been submitted to Hivos according to the submission dates;
 - Hivos does not approve the progress and/or financial reports that have been submitted. However, if Hivos fails to assess the reports within two months after the receipt and inform the Implementing Organisation about its reservations, payments will not be suspended.
 - The Implementing Organisation has failed to meet other conditions stipulated by the fund provider
- 3.6 Payments are dependent on the actual receipt of the money of the fund provider. This means that Hivos has the right to suspend (part of the) payments in the case:
- the fund provider uses a result based funding mechanism and the Implementing Organisation fails to deliver (part of) the results;
 - the report to the fund provider is delayed due to late submission of a report by another grantee in the same program;
 - the report is rejected by the fund provider.
- 3.7 If reports are submitted later than four months after the submission date, Hivos will cut the next payment, if any, with 30%.
In addition the final payment on the contract will be subject to the following options:
- submission and approval of a Financial forecast which includes details of actual spending (to date), budget and forecast expenses for the remainder of the period
 - submission of a narrative report detailing the project`s cumulative results compared to the planned Monitoring and Evaluation results and expenditures to date
 - final costs to be prefinanced by the Implementing Organisation and reimbursed by Hivos after approval of an audited financial report or unaudited financial report with supportive proof of expenditure
 - the final tranche to the Implementing Organisation is transferred upon receipt and approval of the audit of the project.
- 3.8 Hivos reserves the right to reclaim its payments, partly or in full, if the Implementing Organisation does not comply with its obligations vis-a-vis Hivos in general, and in particular as stipulated under the articles 3, 4, 5 and 6. The right of Hivos to reclaim its payments does not affect its rights to terminate the Contract in accordance with article 17.4.

4. Implementation of the activities

- 4.1 The Implementing Organisation is responsible for ensuring that the activities as described in the Application are carried out in accordance with the Application and the General Terms and Conditions, and that they are carried out efficiently, effectively and with the utmost care.

- 4.2 The Implementing Organisation must use the contribution in accordance with the Application.
- 4.3 The budget as stipulated in the Contract cannot be exceeded and transfers between the categories "capital investments" and "running costs" cannot be made unless prior consent is explicitly given by Hivos.
- 4.4 Over-expenditures within the budget categories "capital investments" and "running costs" are allowed, provided that (i) they do not exceed 10% of the original figures and (ii) as long as the total expenditures stay within the original budget, as defined in the Contract. This means any over-expenditures above 10% must be brought to Hivos attention and approval sought before they are committed by the grantee. If permission is required for changes below 10%, this will be explicitly stated in the contract.
- 4.5 In case of under-expenditure of the project financed by Hivos, the balance of the Hivos contribution (after conclusion of the project) cannot be applied without previous agreement of Hivos. The implementing organisation is obliged to refund any unutilised balances and any portion of the grant that has not been acquitted or deemed ineligible by Hivos. In exceptional cases, Hivos may allow the balance to be applied for continuation of certain activities pre-approved by Hivos. Any interest or exchange gains realized on Hivos grants forms part of the grant to be used for activities and accounted for. Hivos will reduce its financial contribution by the amount of interest or exchange gain earned on the Hivos contribution.
- 4.6 If, at any time during the contract period, it becomes obvious that it will take longer to implement the activities than already agreed upon, the Implementing Organisation must inform Hivos accordingly, in time and seek its written approval. In these cases, Hivos has the right to reject the proposed extension or adapt the payment schedule subject to the approval of the fund provider.
- 4.7 If the Implementing Organisation deems it necessary to modify the nature of the activities and/or the use of the budget referred to in the Contract, the Implementing Organisation must inform Hivos accordingly within due time and seek its written approval. In these cases, Hivos has the right to adapt the payment schedule.
- 4.8 If the Implementing Organisation has the need for additional budget, it should submit such a request to Hivos. Requests for both monetary and time extensions of the contract should be received by Hivos no later than six months prior to the expiry date of the contract.

5. Narrative reports and obligation to provide information

- 5.1 Unless otherwise agreed in the Contract, the Implementing Organisation must submit to Hivos a narrative report per calendar year. The report must comply with the guidelines sent along with the Contract. Submission dates are included in the Contract.
- 5.2 Hivos also requires the Implementing Organisation to submit narrative reports describing the activities implemented during the first six months of the project period (or other shorter intervals when required by the fund provider). The periods and submission dates are included in the Contract. The reports must comply with the guidelines sent along with the Contract.
- 5.3 The narrative report needs to have a relation with the financial report for the period under review. A financial and monitoring and evaluation linkage should be demonstrated by the

narrative report connecting the expended funds to the results of the program.

- 5.4 All reports shall be written in the language of the Contract, unless otherwise agreed.
- 5.5 More in general the Implementing Organisation shall ensure that Hivos shall receive all information, which Hivos requires, requests or which the Implementing Organisation can reasonably understand that this information is necessary for the activities of Hivos and additional requirements of fund providers. More specifically the Implementing Organisation shall ensure that Hivos shall receive all information that could have a substantial effect on the funding of activities of the Implementing Organisation by Hivos.

6. Financial management and Financial reports

- 6.1 In utilising the resources, the Implementing Organisation will exercise the same care in the discharge of its functions under this Arrangement as it exercises with respect to the administration and management of its own resources and affairs. The Implementing Organisation will co-operate fully with any due diligence assessment by Hivos or its agents, of the Implementing Organisation's own internal controls and system prior to or during the implementation of this Arrangement and take appropriate action on any recommendations arising. Due diligence assessments may be conducted every 3 years or earlier if there is a significant change to the Implementing Organisation's procedures and controls or operating environment. A range of tools may be used to conduct the assessment and continuation of this Arrangement will be dependent on Hivos being satisfied that the Implementing Organisation has sufficient capacity and capability to deliver the project and manage Hivos funds.
- 6.2 The Implementing Organisation must keep financial records, in such a way that it will be clear and transparent to third parties how the funds provided by Hivos, the Implementing Organisation and third parties have been used. The financial records shall be retained for at least eight years following the expiry or termination of their contract, retain and maintain all information:
- In accordance with the exercise of the degree of care that would be expected from a leading organisation within the relevant industry and/or sector;
 - In chronological order;
 - In a form that is capable of audit;
 - At its own expense; and
 - Wherever practical original information shall be retained and maintained in hard copy form.
- 6.3 Financial management shall be undertaken in accordance with the Hivos minimum standards for Financial management (Annex 1).
- In addition, the organisation shall implement the Implementing Organisation obligations to prevent and detect fraud and corruption which shall include maintaining an internal whistle blower procedure and publicising the Hivos whistle blower facility. Hivos should be immediately notified of any fraud or other act of impropriety involving Hivos funds;
 - All procurements should be based on competitive bidding based on an objective comparison of quotations or tenders. Hivos reserves the right to apply different purchasing procedures or limits in accordance with the requirements of the specific fund provider.

6.4 The Implementing Organisation must submit to Hivos a copy of the organisation's annual accounts per calendar year, (Financial audited statement) covering the overall financial management of the organisation, signed by the competent authority within the organisation and, if stipulated in the Contract, approved by an external auditor. Submission dates are included in the Contract. The annual audited accounts must comply with the guidelines sent along with the Contract and should be drawn in accordance with the applicable or appropriate accounting and reporting framework.

Dependent on the donor requirements and the nature of the project (funded by Hivos), Hivos may stipulate the requirement for a project Financial audited report which includes Income and expenditure statement of the programme or activities supported by Hivos (and related Balance Sheet or balances). This will be specified in the contract. The project Financial audited report must comply with the guidelines sent along with the Contract and should be drawn in accordance with the applicable and appropriate accounting and reporting framework.

In exceptional cases Hivos provides the terms of reference for the project audit and appoints the Auditor. This will be stated in the contract.

Also dependent on donor requirements, Hivos may also stipulate the requirement for "Agreed upon procedures" which will be applied by the Auditor based on the audit requirements of the fund provider. This will be clearly stated in the contract.

6.5 For monitoring purposes Hivos also requires all Implementing Organisations to submit interim financial reports showing how the funds provided by Hivos have been used during the first six months of the Implementing Organisation's financial year, or another specified project period. Submission dates are included in the Contract. The report must comply with the guidelines sent along with the Contract.

In certain cases Hivos may stipulate quarterly reports (or other regular frequency) for improved monitoring or due to back donor reporting requirements this will be stated in the contract.

Hivos requires all interim reports to be supported by detailed ledgers (and bank statements if applicable). The financial reports should be appropriately linked to the detailed ledgers submitted alongside the financial and compare actual expenses with the approved budget. Hivos will assess the interim reports through 2 methods:

- Some reports are assessed through desktop expenditure verification process, in such cases Hivos will select a sample of expenses for which the Implementing Organisation is requested to submit scanned proof of expenditure.
- Other report are assessed through Hivos Compliance visits, in such cases Hivos undertakes an onsite visit to the counterpart organisation for compliance checks. A compliance check reviews the internal control environment of the project and validates expenses included in the interim report.

The Implementing Organisation is obliged to refund Hivos for any expenses deemed ineligible or they will be deducted from outstanding contractual remittances due to the Implementing Organisation. Hivos shall include details of any ineligible expenses identified in the expenditure verification checks in the external auditors confirmation letter, This is to ensure that such costs are not included in the audited financial reports.

6.6 All reports shall be written in the language of the Contract, unless otherwise agreed.

7. Finance of Terrorism

- 7.1 The Implementing Organisation is committed to taking appropriate steps to ensure that funds provided under this Contract are not used to aid, or otherwise support, terrorists or terrorist organisations.
- 7.2 The Implementing Organisation agrees that it shall use all reasonable efforts to ensure that funds received under this Contract are not used to engage in, support or promote violence, terrorist activity or related training of any kind and will take all appropriate precautions and institute all procedures necessary to prevent any portion of the funds from being so used.
- 7.3 The Implementing Organisation shall screen its Implementing Partners to ensure that no such funds, other financial assets and economic resources will be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity associated with terrorism consistent with the OFAC Sanctions List or the European Union's Consolidated list of persons, groups and entities subject to EU financial sanctions.
- 7.4 If, during the course of this Contract, the Implementing Organisation discovers any link whatsoever with any organisation or individual associated with terrorism, it must inform Hivos immediately. The Implementing Organisation shall provide Hivos with an account of all the known facts, and shall continuously thereafter consult with Hivos on the further handling of the matter.

8. Audits

- 8.1 Hivos (and/or fund provider) is authorized to conduct an audit of the Implementing Organisation covering the overall financial management of the organisation or ascertain additional information at any point during implementation of the grant that Hivos (and/or fund provider) may deem necessary up to eight years after the end of this agreement. The organisation must cooperate in such an audit in every way necessary and grants access to Hivos (and/or fund provider) or its agents, as required, to all project sites and relevant records.
- 8.2 An enquiry as referred to in 8.1 shall only be undertaken after the Implementing Organisation has been informed in writing that it is to take place. The findings shall be discussed with the Implementing Organisation before being finally recorded in a report.
- 8.3 Hivos will also initiate random Compliance checks which form part of its control and monitoring framework. Fund providers may also carry out financial audit or reviews of Implementing Organisation financial management.

9. Evaluation

- 9.1 The Implementing Organisation may be evaluated by Hivos and/or by another agency appointed by Hivos. An evaluation of the financial administrative organisation and the financial management of the Implementing Organisation may be part of this evaluation or may be implemented separately. Terms of Reference will be decided upon by Hivos, after consultation with the Implementing Organisation.
- 9.2 The stipulations under 8.2 are here equally applicable.

10. Co-operation with educational, fundraising and/or advocacy activities

- 10.1 Hivos shall be entitled to make use of the experiences of materials or information related to the activities carried out by the Implementing Organisation that are available with Hivos or the Implementing Organisation, for Hivos' educational, fundraising and/or advocacy activities in the Netherlands and/or Europe, without prior consent of the Implementing Organisation.
- 10.2 If reasonably requested by Hivos, the Implementing Organisation is required to render specific assistance to Hivos' educational, fundraising and/or advocacy activities in the Netherlands and/or Europe. The Implementing Organisation will be informed beforehand and in writing on the type of assistance required. If, as a result of these activities, funds are raised with the public in the Netherlands and/or Europe, these funds are not considered to be additional to the originally agreed Contractual contribution.
- 10.3 Hivos will publish a short description of the Implementing Organisation and its activities on its website, unless the Implementing Organisation objects to it for reasons of security and confidentiality. Such an objection should be communicated to Hivos in writing at the time the signed Contract is returned by the Implementing Organisation to Hivos.

11. Copyright for projects within the Knowledge Programme

- 11.1 Hivos and the Implementing Organisation are allowed and encouraged to create and circulate Knowledge Programme outputs and to do so with a clear reference to the joint Knowledge Programme as a source.
- 11.2 Hivos and the Implementing Organisation jointly, and contracted authors and organisations if applicable, own the outputs of the Knowledge Programme and agree to make them available under an Open license for free dissemination and distribution whenever possible.
- 11.3 Hivos and the Implementing Organisation have the right to use the results of the Knowledge Programme for further research and publication also beyond the Contract period with the same reference as in 10.1.
- 11.4 In addition to 10.1 and 10.2 Hivos and the Implementing Organisation remain owner of their existing know-how and products already obtained before the start of the cooperation under this agreement.

12. Enquiries and/or evaluations by the fund provider

- 12.1 Hivos and the Implementing Organisation are obliged to render assistance to any enquiry and/or evaluation according to conditions as stipulated in agreements with the specific fund provider, performed by persons or institutions indicated by the fund provider.

13. Risk Management

- 13.1 The Implementing Organisation will be accountable for the appropriate use of Hivos funds, management of risk and delivery of project outputs and outcomes, including any adverse effects of project expenditure that have an undesired or unexpected result upon recipients including any adverse gender related impacts.

- 13.2 The Implementing Organisation will develop and maintain an up to date risk register that, as a minimum, enables individual risks to be clearly identified, an assessment of their likelihood and impact, how they will be dealt with and escalated and who is responsible for monitoring and reporting on them.
- 13.3 The Implementing Organisation will manage all risks in relation to this project unless otherwise agreed as part of the risk register and in writing with Hivos. Where the Implementing Organisation transfers risk to any other party, the Implementing Organisation will remain accountable to Hivos for the effective management of that risk.
- 13.4 The Implementing Organisation is responsible for all security arrangements in relation to this Arrangement including the health, safety and security of any person employed or otherwise engaged as part of this Arrangement, including those employed or engaged by any other implementing parties contracted by the Implementing Organisation.

14. Personal Data Protection

Hivos works according to the EU General Data Protection Regulation. This legislation regulates for instance the technical and organisational protection of privacy sensitive data by the responsible organisation and third parties who get access to these data (processors), the use of the data only for specific purposes, the rights of the data subjects (i.e. to get insight, to adapt and to remove data) and the obligation to notify the responsible party in case of a data leak.

- 14.1 If Implementing organisation processes personal data for the purpose this Contract, this clause applies and should be deemed a processing agreement, where it is assumed that Hivos is the controller within the meaning of applicable privacy legislation (the Dutch Personal Data Protection Act or any subsequent legislation such as the EU General Data Protection Regulation, hereinafter “Applicable Data Protection Legislation”) and Implementing Partner is the processor. Notwithstanding the foregoing, at first request of Hivos, the Implementing Partner will conclude with Hivos a separate processing agreement appropriate for the situation concerned.
- 14.2 The Implementing Organisation guarantees to act in accordance with the Applicable Data Protection Legislation and to adequately protect the personal data provided to it. At first request of Hivos, Implementing Organisation will provide Hivos insight in the measures taken.
- 14.3 The Implementing Organisation shall only process personal data in the context of the Contract. Without the express consent of Hivos in a signed document, Implementing Organisation will not use the personal data for its own purposes or for purposes of third parties.
- 14.4 The Implementing Organisation shall take appropriate technical and organizational measures to protect personal data against loss and any form of unlawful processing. These measures ensure, taking into account the state of the art and the cost of implementation, an appropriate level of security, given the risks involved with the processing and the nature of the data to be protected. These measures shall at least include:
- 1.1.1 Physical security and protection of equipment;
 - 1.1.2 Developing and maintaining an information security policy;
 - 1.1.3 Assigning persons responsible for security;
 - 1.1.4 Applying access control (procedures to provide access to authorized employees to the information systems and -services);
 - 1.1.5 Treating personal data as confidential information and obliging workers in employment contracts or confidentiality agreements to maintain the confidentiality of confidential information, including personal data.

- 14.5 To the extent the Implementing Organisation engages third parties in the execution of the Agreement these third parties are bound by the same Applicable Data Protection Legislation as the Implementing Organisation.
- 14.6 If a security breach occurs where personal data have been accessed by unauthorized persons, have been lost or have been processed unlawfully, or it is suspected that this has been the case, the Implementing Organisation will report to Hivos immediately and in any case within twenty-four (24) hours after discovery. Hivos will be the first party to be informed.

15. Safeguarding and Integrity

By signing the contract, the Implementing Organisation commits towards upholding the following safeguarding principles:

- 15.1 The Implementing Partner promotes and protects people's health, well-being and human rights, and enables them to live free from harm, exploitation and abuse.
- 15.2 The Implementing Organisation has a policy to safeguard anybody related to the organization, like protection against inappropriate behaviour such as bullying, (sexual) harassment and to financial violations and has an active approach in preventing fraud and Corruption (Annex 2).
- 15.3 The Implementing Organisation especially identifies and minimizes the risk of harm to children and (vulnerable) adults - such as disabled or LGTB+ people.
- 15.4 The Implementing Partner has clear rules on what type of behaviour (by your staff or by the people they come in contact with related to Hivos projects (Hivos staff, suppliers, target groups, stakeholders, etc) is regarded as unacceptable, and discusses these rules actively with its staff (see Annex 3).
- 15.5 The Implementing Partner reports any type misconduct to Hivos by means of the complaints procedure (see Annex 4).

16. Liability

- 16.1 Under no circumstances shall Hivos, be liable to the Implementing Organisation, its subsidiaries, sub-contractors or any other third party for any indirect, incidental, special or consequential damages arising out of or relating to the Contract, whether under a theory of contract, tort (including negligence), liability derived for the provision of services or otherwise, regardless of whether Hivos has been advised of the possibility of such damages and even if the damages were foreseeable.
- 16.2 The Implementing Organisation shall indemnify, defend and hold harmless Hivos, from and against all claims (including any claims based on product liability, that are in any way related to or ensuing from the work performed by Hivos for the Implementing Organisation and/or the Implementing Organisation's use of services supplied or made available by Hivos), demands, actions and proceedings asserted and/or instituted against Hivos for any occurrence, loss, costs, penalties or damages, arising out of or relating to the Contract.
- 16.3 The limitations of liability stated in this article do not apply if and insofar as the damages are a result of wilful misconduct or gross negligence on the part of Hivos.

17. Termination

17.1 The Contract shall terminate on the date that the Implementing Organisation ends its activities financed by Hivos. Termination of the Contract does not affect the obligations of the Implementing Organisation pursuant to article 5 and 6 of the General Terms and Conditions. The aforementioned obligations will end after (tacit) approval of all mandatory reports by Hivos. Tacit approval will be deemed to have been given if Hivos does not inform the Implementing Organisation with respect to the approval within 6 months after receipt of the final reports.

17.2 Termination of the Contract does furthermore not affect the obligations of the Implementing Organisation pursuant to article 8, 9 and 12 of the General Terms and Conditions.

17.3 Requests for extension of the Contract period should reach Hivos not later than six months prior to the expiry date of the Contract.

17.4 Hivos has the right to terminate the contract without giving notice and without paying compensation of any kind if the Implementing Organisation does not comply with its obligations vis-a-vis Hivos. More in particular Hivos has the right to terminate the Contract if:

- i. Hivos has evidence on the Implementing Organisation, or any related entity or person, about grave professional misconduct or other actions that contradict Hivos safeguarding and integrity stipulations; this also applies to agents of the Implementing Organisation;
- ii. Hivos has evidence on the Implementing Organisation, or any related entity or person, about fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to Hivos' financial interests;
- iii. the Implementing Organisation makes false or incomplete statements to obtain the grant provided for in the Contract or provides financial and narrative reports that do not reflect reality.
- iv. the Implementing Organisation is engaged in child labour according to the definitions of the International Labour Organisation;
- v. the Implementing Organisation violates prevailing labour laws;
- vi. the Implementing Organisation violates prevailing environmental laws;
- vii. the Implementing Organisation tolerates discrimination or sexual harassment within the organisation;
- viii. the Implementing Organisation actively supports discrimination in general, for instance on the basis of race, religion, national origin, caste, colour, sex, age, veteran status, sexual orientation or disability;
- ix. the Implementing Organisation is no longer able or willing to implement the Contract in accordance with the Application;
- x. the Implementing Organisation does not submit mandatory reports within eight months;
- xi. the Implementing Organisation transfers the implementation of the activities to another agency without the prior consent of Hivos.

Termination of the Contract by Hivos does not affect its right to reclaim payments in accordance with article 3.8.

17.5 The funds for this Contract are provided to Hivos by a third party. In case this party amends or terminates its contract or agreement with Hivos, and this change is not due to malperformance of Hivos, Hivos has the right to amend or terminate the Contract and pending payments with the Implementing Organisation accordingly.

17.6 In case Hivos is forced to accept that any public or private body takes the place of the Implementing Organisation or assumes a power of decision (with regard either to the Implementing Organisation or to the activities as described in the Application) such that the original Implementing Organisation can no longer be regarded as being responsible for implementation of the activities as described in the Application, Hivos has the right to terminate the contract. Unless consultation is no longer possible or worthwhile, the Contract shall not be terminated in such cases before consultation has taken place between Hivos and the Implementing Organisation. If Hivos terminates the Contract, it may also stipulate whether and, if so, to what extent the Implementing Organisation must repay the amounts it has received.

18. Miscellaneous

18.1 Hivos shall have the right to amend these General Terms and Conditions. The amended General Terms and Conditions shall apply to all new Contracts and to all current agreements.

18.2 Parties agree that all actions and/or proceedings arising under or in connection to this Agreement shall be brought before the competent court in the district of The Hague, The Netherlands, unless the Parties mutually agree to a different court in writing.

18.3 The Contract shall be governed by Netherlands law.

18.4 Authorized Representatives - Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by Hivos or Implementing Organisation may be taken or executed by the officials specified in the signed Contract.

18.5 Communications - Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing.

18.6 Taxes and Duties - In no event shall Hivos be responsible for the payment or reimbursement of any Taxes and Duties. In the event that any Taxes and Duties are imposed on the Implementing Organisation, or their respective Personnel, the Contract Amount shall not be adjusted to account for such Taxes.

18.7 Equipment, Vehicles and Materials Furnished by Hivos fund - Equipment, vehicles and materials made available to the Implementing Organisation by Hivos, or purchased by the Implementing Organisation wholly or partly with funds provided by Hivos, shall be the property of the fund provider and shall be marked accordingly. The Implementing Organisation will ensure that such items will continue to be used for the purpose set out within this Arrangement. In the event of such goods or services being used for other purposes, the Implementing Organisation must notify Hivos immediately and in writing. Upon termination or expiration of this Contract, Implementing Organisation shall make available to Hivos an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with Hivos' consent.

18.8 Conflict of Interest - The Implementing Organisation undertakes to take all necessary precautions to avoid conflicts of interests and shall inform Hivos without delay of any situation constituting or likely to lead to any such conflict. Neither the Implementing Organisation nor any individual employed or contracted by the Implementing Organisation shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this agreement. There is a conflict of interests where the impartial and objective



exercise of the functions of any person under this Contract is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another person.

ANNEX 1. HIVOS MINIMUM STANDARDS FOR FINANCIAL MANAGEMENT

- All Implementing Organisations should have written Finance policies and procedures which are approved by the Board or other Governance arm and form the basis for financial management processes and controls
- All bank accounts to be maintained in the name of the Implementing Organisation. There should be clear separation between the Implementing Organisation and individuals that founded or run its operations (i.e. the affairs of the Implementing Organisation should not be personalized)
- Dependent on the nature of the contract, outcome of the Hivos intake assessments and back-donor requirements, Hivos may require its project funding to be maintained in a separate bank account. This requirement will be stated in the contract. In such cases the Implementing Organisation must maintain a bank account in Contract currency and a bank account in local currency for each Hivos funded project for easier accountability and audit trail.
- All received funds in the Contract currency bank account will be exchanged and transferred to the local currency bank account at the best possible exchange rate and evidence of this best exchange rate needs to be maintained as an accountable document.
- All currency exchanges should be facilitated through approved exchange dealers. Documentation related to foreign exchange transactions shall be maintained by the Implementing Organisation as part of accountable documents.
- An Implementing Organisation that liquidates Hivos funding into local currency shall convert all expenses to reporting currency at the rate at which the Hivos remittance was liquidated to local currency (based on first in first out basis). An Implementing Organisation that retains Hivos funds in foreign currency shall convert transactions in currencies other than reporting currency at the spot rate (rate of exchange on the day of the transaction) based on a credible source of spot rates (preferably an identifiable Financial institution or other credible source of spot rates and proof should be attached).
- All payments of the project must be linked to a bank statement for a complete cycle of the payment's accounting process.
- The Implementing Organisation should make use of an appropriate accounting package or other software for recording financial transactions. Use of spreadsheets for accounting is not encouraged but accepted (for smaller emerging Implementing Organisations) subject to requisite controls for safeguarding the integrity of the accounting data
- All financial reports provided by the Implementing Organisation should have a direct link to the accounting package general accounting ledger
- Hivos funds will be applied exclusively on the approved project and budget, any funds that are not used or acquitted will be returned to Hivos.
- Bank transactions should be reconciled to the bank statements monthly and financial statements regularly compiled comparing actuals to the approved budgets and reasons for significant variances documented.

- Use of cash should be minimized for transacting. In unavoidable situations use of cash should be subject to the requisite control for ensuring that funds are used for the intended purpose and credible proof of expenditure is available.
- There should be segregation of functions within the Implementing Organisation to guarantee the integrity of financial transactions
- There should be adequate (preventive and detective) checks and balances in all (financial and non-financial) processes which serve to guarantee sound internal control practices
- All transactions should be adequately documented .All payments to be supported by a requisition voucher which includes authorizations and related original supporting documents bearing proof of delivery, value to the Implementing Organisation and proof of competitive bids (if applicable). Only costs that are actually expended should be reported (i.e. goods or services delivered). Commitments should not be included project expenses.
- Financial transactions should be approved/authorized by the appropriate managers, and segregation of the roles between those initiating payments and those responsible for approving payments should be visible on the supporting documents;
- All staff costs should be supported by approved payrolls and/or pay slips as well as approved monthly time sheets (as applicable) and related contracts of employment. Each employee should have valid signed employment contracts specifying terms of service.
- Hivos funding cannot be used for loans or other advances which are not related to the project.
- Hivos funds can be maintained in an interest bearing account but should not be invested in speculative activities. Any interest or exchange gains realized on Hivos grants should be included in the project budget and Hivos reserves the right to reduce its financial contribution by the amount of interest or exchange gain realized. . In the event of realizing an exchange loss, the Implementing Organisation shall propose an adjustment of the approved budget.
- All procurements should be based on competitive bidding involving comparison of quotations (for firms in the same class) or tendering (for higher level purchases). Tenders should be evaluated through procurement committees with formally documented minutes. All exceptions should be adequately documented and approved by the relevant authority.
Hivos reserves the right to apply stricter purchasing procedures or limits in line with the requirements of a specific Fund provider.
- Related party transactions should be minimized and subject to declaration of interests, requisite approvals and competitive bidding to guarantee value for money. Where related party transactions do occur, there should be evidence of fair valuation of purchases/sales.
- There should be clear mechanisms for preventing corruption, bribery and fraud. The Implementing Organisation should implement measures for internal whistleblowing, with additional safeguards to encourage anonymous disclosure to the Board and donors. Hivos should be immediately notified of any fraud or other act of impropriety involving Hivos funds
- Indirect overhead should be allocated to projects on an objective basis and an adequate audit trail maintained of the costs, basis of allocation and supporting documentation. All apportioned office costs (costs shared between different projects) should be supported by a valid 'cost share' policy guideline applied by the Implementing Organisation.

- Expenses incurred before the start date of the contract are not eligible without explicit consent of Hivos. Expenses incurred (but paid) after the contract end date should be recognized on the accrual basis. Provisions can be included for expenses related to the project but incurred after the contract end date (example audit fees).
- Sub-granting of Hivos funds is prohibited and therefore should not be undertaken without the consent of Hivos
- Travel and subsistence costs should be based on proof of expenses incurred and adequately documented. Costs should relate to bona-fide activities of the project. Use of per-diem is permitted provided it is approved by Hivos and based on an accurate reflection of real costs (equivalence).
- Travel and subsistence costs should be subject to adequate control to avoid wasteful expenditure and any unspent balances returned and appropriately banked in the Implementing Organisation's bank accounts. Hivos reserves the right to apply travel and subsistence costs based on actuals or defined maximum rates based on its evaluation of the procedures and internal controls applied by the Implementing Organisation.
- The Board and management should exercise adequate financial oversight and should facilitate regular audits and compliance with funding and regulatory conditions and obligations. Any fines or penalties accrued as a result of non – compliance with statutory requirements cannot be paid by Hivos funds.
- The following expenditure are not considered eligible: Fraudulent/Falsified claims, Recoverable Value Added Tax and any other taxes, expenditure commitments included in reported expenditure, Unsupported costs, HR costs not supported by approved contracts (and time sheets if applicable), expenditure sub-granted without prior Hivos approval, expenses incurred before the start date of the contract or after the end date without explicit consent of Hivos, unsupported related party transactions, fines and penalties accrued as a result of non-compliance, bribes and facilitation payments, provision for losses and any bad debts, costs already financed by any other donor, costs of staff/positions not involved in the implementation of the project and/or staff/positions not included in the approved budget, wasteful expenditure and any loans or credits to third parties or Implementing Organisation staff.
- As standard practice, Hivos does not fund capital expenditure. In exceptional and negotiated cases where it does, Implementing Organisations should implement appropriate controls (including an asset register) for retaining capital assets acquired with grant funds and ensuring that they are used for the Implementing Organisation's benefit. The Implementing Organisation will ensure that all goods and services financed either fully or in part from Hivos funds will continue to be used for the purpose set out within this Arrangement. In the event of such goods or services being used for other purposes, the Implementing Organisation must notify Hivos immediately and in writing. Capital assets should be clearly tagged, fully disclosed or listed in the project financial reports in accordance with the Implementing Organisation accounting policy. Hivos reserves the right to claim capital assets purchased through a Hivos project at the end of a contract relationship. The transfer of ownership of such assets and/or the disposal of such assets is not allowed without Hivos' explicit consent.

ANNEX 2. IMPLEMENTING ORGANISATION OBLIGATIONS TO PREVENT AND DETECT FRAUD AND CORRUPTION

Fraud is defined as conduct that results in someone obtaining an advantage, avoiding an obligation or causing a loss to another party dishonestly.

Corruption is defined as dishonest behaviour by those in positions of power or an act done with intent to give some advantage which is not consistent with official duty and the rights of others. It includes giving or accepting bribes or inappropriate gifts.

Hivos seeks to attain the highest levels of financial management and accountability and therefore has zero tolerance for any form of corruption, theft, fraud and dishonesty. Hivos therefore expects all Implementing Organisations to take proactive measures to prevent, deter and detect any acts of corruption or fraud that may occur within its Staff, Implementing Organisations, beneficiaries and service providers.

Implementing Organisations should implement adequate measures to prevent the occurrence of fraud and corruption, such measures include installation of sound internal controls, establishment of an anti-fraud culture, implementing and supporting the whistle blowing facility, and measures for preventing conflict of interests and regular disclosure and declarations of interests.

Additionally, Implementing Organisations should implement measures to detect and identify acts of fraud and corruption which include regular compliance checks, monitoring of fraud warning signals and implementation and support of the whistle blower facility (with additional safeguards to encourage anonymous disclosure to the Board and donors).

No employee, Implementing Organisations (and their employees), beneficiaries and service providers may falsify or otherwise provide false information. Any Implementing Organisation who engages in such illegal actions shall be subject to contract termination as provided in section 14.4 of the general conditions to the grant contracts.

The following will be considered ineligible expenses as regards fraud, corruption and bribery

- Falsified claims
- Facilitation payments (bribes) for services
- Expenses charged to another donor/grant
- Excessive or reckless expenditure

The Implementing Organisation should implement measures for internal whistleblowing, Hivos should be immediately notified of any fraud or other act of impropriety involving Hivos funds, by reporting to your Hivos contact person. Hivos expects Implementing Organisations to take timely and appropriate steps (civic or criminal) to recover any losses resulting from fraud, corruption and other acts of impropriety.

The Hivos Whistle-blower procedure applies to all Implementing Organisations funded by Hivos (see annex 3). Individuals can make use of the whistle-blowers procedure to report or protest the occurrence of irregularities and malpractices which undermine the Hivos funded programme or project objectives. Hivos commits to protect all individuals who make such reports in accordance with the Hivos Whistle blower procedure.

ANNEX 3. HIVOS INTEGRITY POLICY STIPULATIONS

From the Hivos' standpoint, inappropriate behaviour cannot be accepted in the organisation, its Implementing Organisations, suppliers, clients. There is no place for systematic bullying, sexual harassment, aggression and discrimination.

Apart from the contents of the Hivos Safeguarding Policy, Hivos employees are obliged to comply with legal requirements and abide by common social norms and values. The Hivos integrity policy includes a number of sections (listed below) which are relevant for Hivos Staff interactions with Implementing Organisations

Article 1.4 Conflict of Interest states "No employee shall, while in the employment of Hivos, engage in any business or activity that would undermine his/her performance or conflict with the interests of the organisation. Hivos shall generally not enter into agreements with or procure goods or services from employees, directors or their relatives (within the local context), except for exceptional circumstances where it is demonstrated to be in the best interest of Hivos and no viable alternatives are possible."

No employee or Director may be involved in any decision-making process, or seek in any way to influence it, where he/she may be in a position to gain privately from the decision or his/her relatives are involved. All employees shall disclose forthwith any or potential conflict of interest and seek approval before proceeding and act with respect to the [Hivos Conflict of interest procedure](#).

Article 1.6 Accepting gifts and benefits stipulates "Employees are not permitted to accept or demand direct or indirect gifts, remunerations, attendance fees or commissions, or to accept inheritances or testamentary gifts from persons with whom the employee only comes into contact by virtue of the employee's position. This applies to gifts of a value of EUR 50.00 or more, or any other amount formally registered in accordance with the local context. Any gifts made are to be accepted on behalf of the employer and handed in. This usually concerns gifts that may obligate (or appear to obligate) the recipient."

Article 1.7 Bribes and other illegal charges stipulates "As a basic principle Hivos does not condone the payment of bribes. These include, but are not limited to, illegal charges imposed for the release of goods from customs, "taxes" levied by local authorities in addition or beyond to the legal maximum, or illegal charges imposed by local authorities in exchange for mission registration, programme approval, visa or work permits. No employee will accept a bribe of any kind".

Hivos commits to protect individuals who wish to report or protest the occurrence of irregularities and malpractices which undermine the corporate objectives. These individuals can make use of the whistle-blowers procedure that is part of this policy.

Article 1.12 Mutual respect, non-discrimination and child protection stipulates "Hivos signatories are judged on their performance and proven competencies. Discrimination on the grounds of ethnicity, religion or personal beliefs, political opinion, age, gender, disability, sexual orientation or otherwise is prohibited. Every signatory shall conduct his/herself with courtesy, respect and integrity towards all persons in the course of doing his/her work. No signatory may discriminate against any other person. No signatory may abuse or deliberately intimidate any other person. No signatory may make sexual advances where he/she knows or ought to know that the solicitation is unwelcome or in any other way sexually harass another person. Aggression and violence are not tolerated. Hivos staff must avoid actions or behavior with children which may constitute poor practice or potentially abusive behavior. See the Hivos Corporate Social Responsibility policy for definitions and details."

Article 2.2 Abuse of position states 'Signatories will not abuse their position in the organisation in any way. Abuse of power includes but is not limited to: favoritism, nepotism, corruption, all forms of exploitation, including sexual exploitation. Some specific instances are highlighted in the articles below:

- No signatory is permitted to have any form of sexual relation or any relation with a minor beneficiary.
- No form of sexual harassment is tolerated.
- No signatory will extract or attempt to extract money or other benefits of any kind in return for employment and/or project participation.
- No signatory will extract or attempt to extract money or benefits of any kind in return for funding a specific (partner) organisation.
- It is not recommended that the signatory favors or supports any minor beneficiary privately. In an exceptional case this is only possible with the consent of a Regional Director or the Executive Director.

By signing the contract the Implementing Organisation declares to maintain and actively promote the same standards in its own organization, and commits to report any incidents to Hivos.



ANNEX 4. HIVOS COMPLAINTS PROCEDURE AND WHISTLE-BLOWER FACILITY

Our standards

Hivos aims to be a transparent organization, providing *high-quality service* to implementing organizations, consultants and other clients. Our procedures are designed to be reliable, transparent and accountable.

Besides that, *we never accept inappropriate behavior in or by our organization*. A work climate characterized by openness, commitment and trust is essential for Hivos employees and the entire organization. There is likewise no place for bullying, sexual harassment, aggression or discrimination. That is why all Hivos employees, implementing organizations and service providers are obliged to comply with the legal requirements and abide by the common social norms and values as set out in our Code of Conduct, signed by everyone who works for Hivos, even through partnerships.

Hivos also seeks to maintain the highest standards of financial management and accountability. We therefore have *zero tolerance for any form of corruption, theft, fraud or dishonesty*. The Hivos Safeguarding Policy covers all these issues.

Complaints

The Hivos Complaints procedure is the first entree point for all complaints with direct involvement (on quality, fraud, corruption, discrimination, sexual harassment, et cetera). Complaints can be reported by **staff, partners, suppliers, and target groups**. The person making the complaint normally has a vested interest in the outcome of the complaint and, for this reason, is expected to be able to prove their case. If the complainant wants to stay anonymous, or if he or she is not involved personally, the whistle-blower facility can be used.

Reporting will help us solve the problem, learn from our mistakes and continue to improve our performance. Any suggestions for improvement are also welcome.

[Go to our Complaints procedure to find out how to report.](#)

Whistle-blower Facility

Hivos set up the Hivos Whistle-blower Facility to deal with (anonymous) reports of fraud, corruption and other integrity issues (see table below) regarding Hivos, Hivos employees, our implementing organizations and related service providers (and their employees). These are cases of misconduct you have witnessed or have certain knowledge of, but which may not personally affect you. You may also use the Hivos Whistle-blower Facility if you are personally affected but wish to stay anonymous.

As a whistle-blower, you will not always be expected to provide proof of the misconduct. The concern you raise will be investigated by the appropriate persons.

[Go to our Whistle-blower Facility to see what can be reported, how to report and the follow up procedure.](#)