

HIVOS CONSULTANT CONTRACT

Contract Reference: 1017089

Hivos Foundation is an international development organization guided by humanist values. Together with local civil society organizations in developing countries, Hivos wants to contribute to a free, fair and sustainable world. Hivos is currently conducting the following project:

Open Up Contracting Program

For the purposes of the project, Hivos hereby retains the Services of:

Institute for Development of Freedom of Information (IDFI), a non-entrepreneurial (Non-commercial) Legal Entity incorporated under the laws of Georgia, having its registered offices at (0108) Tbilisi, Georgia at 3, A. Griboedov Street, hereafter referred to as the "Consultant"

For conducting Services related to:

Identifying local consultants or CSO in target countries to conduct the assessment, coordinating the assessment of identified partner CSOs in target countries and elaborating on recommendations for the public procurement legal framework in each country.

Hivos hereby instructs Consultant to render the Services and deliver the Deliverables as described in this Agreement, Annex 1 and any further Annexes. This Contract forms an integral part of the Agreement as defined in the Hivos Consultancy Terms and Conditions, which fully apply to this Agreement, together with any other Annexes. The contract will start on the 1st of September 2018.

For Hivos

Name: Daniel Dietrich
 Function: Program Manager Open Contracting
 Place: The Hague
 Date: 17-08-2018

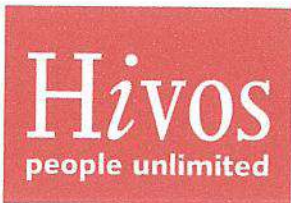
Signature:

For Consultant

Name: *Giorgi Kldiashvili*
 Function: *Executive Director*
 Place: *Tbilisi, Georgia*
 Date: *17-08-2018*

Signature:





DETAILS OF BANK ACCOUNT

*notice mandatory fields

Organisation: *INSTITUTE FOR DEVELOPMENT OF FREEDOM OF INFORMATION (IDFI)*
Code: *204569617*

Name of bank : *Bank of Georgia*
Address of bank : *29a Gagarin street*
Place : *Tbilisi*
Country : *Georgia*
Swiftcode : *BAGAGE22*
Account number : *GE88BG0000000155193600*

*For European accounts an IBAN number (an extended bank account number) is required
IBAN :

*For accounts in the USA also a ABA (or routing) number is required.
ABA :

Name of payee* : *INSTITUTE FOR DEVELOPMENT OF FREEDOM OF INFORMATION (IDFI)*
Address of payee: *Mtatsminda district, B. Kravtshvili str., № 4, Apt. 8*
Place : *Tbilisi*
Country* : *Georgia*

* in principle, Hivos requires the account to be held in the name of the organisation with which the contract has been concluded. With mutual consent, an exception may be made and a different payee agreed upon.

For :
Name : *Giorgi Kldiashvili*
Function : *Executive Director*
Place : *Tbilisi, Georgia*
Date : *17.08.2018*
Signature : *[Handwritten Signature]*



Please return this completed and signed form to Hivos.

ANNEX 1. DELIVERABLES AND SPECIFICATIONS

Contract Reference: 1017089

1 Introduction

As part of the Strategic Partnerships of the Ministry of Foreign Affairs, Hivos initiated the Open Up Contracting Program to make public contracting more efficient, transparent and accountable: to save money and time, improve public service delivery, boost integrity, and create a fairer business environment. The program aims to support infomediaries in civil society, media and the private sector to help translate complex contracting data into actionable information for evidence-based advocacy with the goal to change norms and practices for increased disclosure and participation in the entire public contracting cycle, from planning to contracting and awarding to implementation. Among others, the program has selected Indonesia and the Philippines as focus countries. Hivos' Open Up Contracting Program is seeking support from a Consultant, to coordinate the research to assess Public Procurement Legislations (PPL) and their implementation in Tanzania, Kenya, Malawi, Indonesia, Philippines, Guatemala, Bolivia and Costa Rica using the Transparent Public Procurement Rating (TPPR) Methodology .

The parties agree that circumstances arising during this contract may require changes to the service described above. The parties agree to negotiate any such changes and Consultant's remuneration for them in good faith, set them in writing, and incorporate them into this contract as an attachment. Changes in scope must be agreed upon by both parties in writing, with explicit acknowledgement of a 'change in contract scope'.

2 Deliverables, Services and Milestones

- 2.1 Consultant shall perform the following Services and deliver the following Deliverables:
- A. Identifying local consultants or CSO in target countries to conduct the assessment,
 - Briefing the consultants on the assessment methodology
 - B. Coordinate the assessment of Identifying partner CSOs in target countries;
 - Gathering and analysis of existing published procurement, and coordination and support the local consultants to ensure quality control by per reviewing the initial assessment findings and the final assessment country reports
 - C. Elaborate recommendations for the public procurement legal framework in each country
 - A written policy recommendations brief for each country will be shared with Hivos
- 2.2 Consultant shall deliver the Deliverables at the following milestones:
- September 2018 (start of contract): Identification and briefing of local consultants
 - September to December 2018: Coordination of local assessment and peer review

Initials Hivos:

JD

Initials Consultant:

f.K.

- December 2018: final peer-reviewed country assessment and policy recommendations brief for each country
- Integration of all seven country assessments into the Transparent Public Procurement Rating (TPPR) at <https://www.tpp-rating.org/>

Consultant will submit to Hivos progress reports according to the following schedule

- Mid-term progress report on the 1st of October 2018, including a short description of the services provided and the amount of days worked
- Final narrative report on the 31st of December 2018
- Financial report on the 31st of December 2018

2.3 Final delivery date is 31st of December 2018

3 Input by Hivos

3.1 Hivos shall Provide Consultant with the following:

- Relevant documentation of the Open Contracting Data Program
- Regular updated with the Open Contracting Data Program Manager
- Regular updates with the Open Contracting Data Program regional teams in all seven countries

4 Prices and payment scheme

4.1

Project / Grant Title :	Assessing Public Procurement Legislations and Practice in 8 countries			
Grant Requestor :	Institute for Development of Freedom of Information (IDFI)			
Project Team				
Position	Monthly Salary Rate (Including 20% Income TAX)	€1	Months	Total USD Cost
Project Director	\$750	€1	4	€2,587
Project Supervisor	\$875	€1	4	€3,018
Project Assistant	\$500	€1	4	€1,725
TOTAL SALARIES :		€1		€7,330
Consultants				
Type of Expense	Unit Cost (GROSS)	€1	Quantity	Total USD Cost
Local Expert per country Honorarium	\$2,000	€1	8	€13,797
Translation and editing expenses	\$2,000	€1	1	€1,725
TOTAL CONSULTANTS:				€15,521
TOTAL:				€22,851
OVERHEAD EXPENSES (7%)				€1,600
TOTAL PROJECT BUDGET				€24,450

Initials Hivos:



Initials Consultant:



The first payment of €10,000 will be done after signing the contract. A second payment of €14,450 will be carried out after delivery and approval of the final narrative report and financial report. Payment will be done based on invoices, based on time spent. Payment conditioned upon satisfactory completion of aforementioned services.

- 4.2 Daily expenses for travels, such as boarding/lodging, local travelling, telephone, fax and administrative expenses will be paid on declaration/reimbursement basis.

Initials Hivos:

JD

Initials Consultant:

S.K.

ANNEX 2. HIVOS CONSULTANCY TERMS AND CONDITIONS

1. Definitions

1.1 In this Agreement the following terms, indicated by a capital letter, will have the following meaning, both singular and plural:

<i>Agreement:</i>	the consultancy agreement between Hivos and Consultant, signed by both parties, including all Annexes;
<i>Annex:</i>	any annex to the Agreement. Annexes form an integral part of the Agreement and will be attached to the Agreement as exhibits. Any reference to the Agreement includes the Annexes;
<i>Consultant Materials:</i>	all general know-how, materials and tools proprietary to and developed by Consultant prior to the effective date of the Agreement;
<i>Deliverables:</i>	the results of the Services as described in the Agreement;
<i>Hivos Materials:</i>	all property, data, information, equipment, supplies and any other materials or information provided to Consultant by Hivos;
<i>IP Rights:</i>	all present and future intellectual property rights, including but not limited to copyrights, database rights, (un)registered design rights, neighboring rights, patent rights, trademark rights, trade name rights and any other intellectual property rights or related rights, such as domain names and knowhow, in any part of the world;
<i>Services:</i>	the services agreed to be performed by Consultant as described in the Agreement.

2. General

- 2.1 The Agreement is subject to these Terms and Conditions. Any (general) terms and conditions of Consultant or third parties are not applicable to the Agreement, any other agreements between the Parties, offers or to any other juristic act associated with or arising from the Agreement.
- 2.2 In case of divergence between the Agreement and the Terms and Conditions, the clauses in the Agreement take preference.
- 2.3 Any requests for offer made by Hivos are not binding for Hivos.
- 2.4 Hivos is only bound by changes or additions to the Agreement if they are confirmed on behalf of Hivos in writing, or by email followed by written confirmation by a person who is officially authorized to represent Hivos.
- 2.5 If Parties agree to make changes or additions to the Agreement during the term of the Agreement, these will not influence delivery terms, price or quality of the Services and Deliverables, unless otherwise agreed upon in writing.
- 2.6 In the event the Terms and Conditions have applied to an agreement between Hivos and Consultant, Consultant is considered to have agreed beforehand with the applicability of the Terms and Conditions to agreements concluded thereafter.
- 2.7 Without prior written consent by Hivos, Consultant may not during the performance of the Agreement and for six (6) months thereafter accept commissions that may harm the

interests of Hivos because they conflict or compete with the Services and/or the activities of Hivos. The Agreement does not restrict Hivos from acquiring similar, equal or like goods and/or services from other entities or sources.

- 2.8 The relationship of the Parties is that of independent contractors and nothing in this Agreement will be construed as to constitute the Parties as partners, joint ventures or co-owners or empower either Party to act for, bind or otherwise create or assume any obligation on behalf of the other and neither Party will hold itself out as entitled to do the same, unless expressly provided for in writing in the Agreement.

3. Provision of Services

- 3.1 The specifications of the Services and Deliverables as well as the applicable timeframe will be described in the Agreement and the separate Annexes. Consultant guarantees to provide the Services and deliver the Deliverables in accordance with these specifications and with all reasonable directions of Hivos, strictly observing any agreed delivery periods and delivery dates.
- 3.2 Consultant shall provide the Services in line with the highest possible consultancy practices and guarantees that in rendering the Services it shall act with due care and in compliance with all applicable laws and regulations.
- 3.3 Hivos may at any time make a proposal to change the scope of the Services and Deliverables. Consultant will not refuse such proposals in all reasonableness, taking into account Clause 2.5.
- 3.4 When the Agreement includes a term for delivery, this term will be considered a firm date (*fatale termijn*). If Consultant expects the term for providing the Services and delivering the Deliverables may be exceeded, Consultant will inform Hivos immediately. Consultant will be in default as from the moment any term has been exceeded, without a warning or notice of default being required.
- 3.5 Hivos shall provide Consultant with all documentation and other information reasonably necessary to perform the Services and deliver the Deliverables, as specified in the Agreement. Consultant will handle any Hivos Materials and/or any other information shared with Consultant such as, without limitation, its contacts and relations, with due care and in accordance with clause 9.
- 3.6 If Hivos provides the information agreed upon later than specified in the Agreement, the term for providing the Services and Deliverables will only be extended by the duration of this delay.
- 3.7 Consultant and/or any of its specific employees agreed upon will perform the Services personally. Consultant may only subcontract or otherwise outsource the provision of the Services (in part or in whole) after prior written consent of Hivos. In all events Consultant will remain fully responsible and liable towards Hivos for providing the Services and delivering the Deliverables.
- 3.8 Hivos has the right to inspect the performance of the Services and the Deliverables prior to delivery or to have a third party inspect the Services and Deliverables. Consultant will provide Hivos the opportunity for such inspection at Hivos' first request. If Hivos concludes that the Services and/or Deliverables are not in accordance with Article 3.1, Consultant is obligated to take all necessary measures to ensure that the Services and/or Deliverables will be in compliance with Article 3.1.
- 3.9 Consultant and its employees as well as third parties commissioned by Consultant shall comply with the applicable rules and regulations regarding employment, welfare, safety,

health and environment as well as with the Corporate Social Responsibility policy of Hivos in relation to the performance of the Agreement. This policy may be found at www.hivos.org and will be provided to Consultant free of charge without delay at Consultant's request. Consultant will actively pursue reducing the pollution of the environment due to business operations, housing, travel, products and packaging.

3.10 Consultant will not use any residual material in a manner that may be harmful to Hivos.

4. Freelancers

- 4.1 Insofar as Consultant performs the Services as self-employed person without employees ("Freelancer") and the Consultant is based in The Netherlands, or uses a bank account in The Netherlands, Freelancer is obliged to request a Declaration of Independent Contractor Status (*Verklaring Arbeidsrelatie "VAR"*). At the moment the VAR has been provided, Freelancer will provide Hivos with a copy. Freelancer will also provide Hivos with a copy of his/her passport before the start of the Agreement.
- 4.2 Freelancer will inform Hivos as soon as the facts and circumstances on the basis of which the VAR has been provided, change. Freelancer will in that event request a new VAR based on the changed facts or circumstances. As soon as this new VAR is provided, Freelancer will provide Hivos with a copy.
- 4.3 Freelancer guarantees that he/she complies with his/her legal obligations in respect of deduction and payment of owed taxes and social insurance contributions. As long as Hivos has not been provided with a VAR showing that Hivos is not obliged to deduct payroll taxes, Hivos has the right to deduct those amounts to the payments to Freelancer.
- 4.4 Freelancer guarantees that he/she shall have at least two other commissioners while providing Services to Hivos.
- 4.5 Freelancer will at Hivos' first request provide evidence in writing that he/she has complied with the obligations of this Clause 4.
- 4.6 Parties agree that this is an agreement of assignment (*overeenkomst van opdracht*) and that they do not wish to establish an employment contract or employment relationship. Freelancer guarantees to never take the view that there is an employment relationship within the meaning of the Extraordinary Labor Relations Decree 1945.

5. Insurance

- 5.1 Consultant guarantees that it has and shall maintain, in its own name and at its own expense, adequate insurance with a reliable insurer which covers its statutory liability for damage caused to third parties in the context of the Agreement, including damage caused by death or personal injury, and its liability under this Agreement.
- 5.2 Upon first request of Hivos, Consultant shall provide Hivos with proof of insurance, the relevant policies and proof of payment of insurance premiums.
- 5.3 Consultant is not entitled to recover any claims it may have against Hivos on damages collected under the insurance policy.
- 5.4 If Consultant commissions any third party in the execution of this Agreement, Consultant guarantees that this third party is insured under the same conditions.
- 5.5 In case Consultant is required to travel, Consultant guarantees that it has and shall maintain, in its own name and at its own expense, adequate travel insurance with a reliable insurer. At the choice of Hivos however, Consultant shall be insured under the Hivos travel insurance. In such case, Consultant shall sign any documents deemed necessary by Hivos.

6. IP Rights and License

- 6.1 Consultant acknowledges that all IP Rights regarding the Deliverables and the Hivos Materials belong exclusively to Hivos.
- 6.2 Insofar as Consultant obtains IP Rights by performing the Agreement, including, but not limited to, (joint) copyrights in the Deliverables developed specifically in the context of the Agreement or in any Hivos Materials, Consultant herewith transfers these IP Rights to Hivos in advance. Insofar as transfer of rights in advance is not possible, Consultant will do everything possible to achieve a transfer of all IP Rights, including signing a further deed. Consultant authorizes Hivos irrevocably to sign all necessary documents, including a deed of transfer, on behalf of Consultant without prejudice to Consultant's obligation to comply with the above at Hivos' first request.
- 6.3 Consultant guarantees that Consultant is completely authorized to the transfer of IP Rights incorporated in the Agreement and that Consultant has not transferred these rights to any third party and that the rights are unencumbered and not limited or restricted by or infringe upon any third party rights, including IP Rights. Consultant fully indemnifies and holds Hivos harmless against any claim by a third party directly or indirectly arising out of Consultant not meeting (any of) the guarantee(s) laid down in this Clause 6.
- 6.4 Insofar as any IP Rights are not susceptible for transfer to Hivos by Consultant and/or insofar as the law does not permit transfer, Consultant grants Hivos an irrevocable, exclusive, unlimited, worldwide, royalty free, sub-licensable right to publish, make available, communicate to the public, copy, distribute and otherwise use the Deliverables in broadest sense possible.
- 6.5 Insofar as possible, Consultant herewith explicitly relinquishes, also on behalf of its employees, any possible moral rights it obtains by performing this Agreement.
- 6.6 Insofar as Consultant uses Consultant Materials, Consultant grants Hivos an irrevocable, non-exclusive, unlimited, worldwide, royalty free, sub-licensable right to use these materials in any way necessary for or supportive of the agreed use by Hivos of the Deliverables.
- 6.7 Consultant acknowledges that the remuneration received pursuant to the Agreement is an equitable remuneration for the absence of IP Rights, including the transfer of IP Rights.
- 6.8 Consultant guarantees that its employees and possible subcontracted third parties are obligated to transfer their IP Rights to Consultant in order for Consultant to be able to meet its obligations pursuant to this Clause 6. Consultant also guarantees that the persons in question, if required by Hivos, will sign a deed of transfer regarding their IP Rights.
- 6.9 If a third party takes legal action against Hivos or Consultant in connection with IP Rights, Hivos may in reasonableness determine in what manner Hivos and/or Consultant will respond to such action, taking into account the reasonable interests of Consultant.

7. Data Protection

- 7.1 Hivos and Consultant acknowledge that for the purposes of the Dutch Personal Data Protection Act, Hivos is the data controller and Consultant is the data processor in respect of any personal data received from Hivos and processed by Consultant. In this context, this agreement shall be qualified as data processing agreement in the meaning of Article 14(2) of the Dutch Personal Data Protection Act.
- 7.2 Consultant shall process personal data in accordance with the applicable laws and regulations as well as with guidelines possibly provided by Hivos. Consultant is not allowed to use personal data for any other purpose than for performing Consultant's obligations

under this agreement. Consultant is furthermore not allowed to transfer and/or store or have stored personal data in countries outside the European Union, unless the Dutch Personal Data Protection Act allows such conduct for instance because of the fact that the country in question guarantees an adequate level of protection or a unaltered model contract designed for that purpose and approved by the European Commission is used.

- 7.3 Consultant guarantees that Consultant has implemented appropriate technical and organizational measures to secure personal data against loss or against any form of unlawful processing. These measures shall guarantee an appropriate level of security, taking into account the state of the art and the costs of implementation, and having regard to the risks associated with the processing and the nature of the data to be protected. In case of a breach of security and/or any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed on behalf of Hivos Consultant or third parties engaged by Consultant ("Data Breach"), Consultant shall without undue delay notify Hivos. Consultant indemnifies and holds harmless Hivos against any and all damage and costs arising from and/or related to a Data Breach and/or any claims of third parties relating to or following from a Data Breach.
- 7.4 Consultant will record in writing the implemented technical and organizational measures and provide these to Hivos.
- 7.5 Consultant will give any assistance necessary for Hivos to be able to comply with requests of data subjects whose personal data are being processed as referred to in Article 35 and 36 of the Dutch Personal Data Protection Act.
- 7.6 Hivos maintains a database of consultants for internal use. Consultant agrees that the following data will be registered in this database: company name and address, name researcher/consultant, professional background and expertise and an assessment of the quality of the Deliverables and activities performed. In order to keep the database up to date, Consultant shall inform Hivos of major changes in its CV.

8. Prices and payment

- 8.1 Consultant will provide the Services described in the Agreement for the price agreed in Agreement. All amounts are in euros and include VAT (*BTW*) and all costs and other obligations. If Parties agree that costs for more work may be billed by Consultant, Consultant may only do so after prior written approval by Hivos.
- 8.2 Consultant will bill Hivos in accordance with the specifications in the Agreement. If no specifications have been agreed, Consultant will bill Hivos the full amount after the Deliverables have been accepted by Hivos.
- 8.3 Hivos will pay Consultant within thirty days according to the agreed date(s) and after having received a correct invoice, unless Hivos has not yet accepted the Deliverables related to that payment or invoice. In that event Hivos will pay the amounts due after accepting the Deliverables.
- 8.4 Hivos is at any time allowed to set off any amount Consultant owes Hivos against amounts Hivos owes Consultant.
- 8.5 Consultant does not have a right to any form of suspension, setoff, retention, retention of title or right of recovery.

9. Confidential information

- 9.1 The existence and contents of this Agreement, all Hivos Materials and any information Consultant receives from Hivos with regard to the Services, the Deliverables of the operation of Hivos' business, will be presumed confidential information and will be so regarded by Consultant unless Consultant can prove that the materials or information are not confidential because they are: (i) already known to Consultant at the time that they are disclosed by Hivos; or (ii) publicly known at the time of the disclosure to Consultant. Additionally, the confidentiality obligations herein will cease as to particular information that: (i) has become publicly known through no fault of the receiving Party, (ii) is received by Consultant properly and lawfully from a third party without restriction on disclosure and without knowledge or reasonable suspicion that the third party's disclosure is in breach of any obligations to Hivos, (iii) has been developed by Consultant completely independent of the delivery of confidential information hereunder or (iv) has been approved for public release by written authorization of Hivos.
- 9.2 Parties acknowledge that any confidential information disclosed by Hivos to Consultant is subject to its use for the limited and sole purpose of the execution of this Agreement.
- 9.3 Consultant agrees that it will maintain and preserve the confidentiality of all confidential information disclosed to it by Hivos, including, but without limitation, taking such steps to protect and preserve the confidentiality of the confidential information as it takes to preserve and protect the confidentiality of its own confidential information, but in any event taking no less than a reasonable degree of care. Consultant furthermore agrees that it will not disclose such confidential information to any third party (including subcontractors and consultants) without the express written consent of Hivos.

10. Anti-corruption

- 10.1 Consultant will comply with the applicable laws and regulations prohibiting corruption, including, but not limited to laws and regulations of countries where researcher and/or Hivos employ activities and will not engage in any activities, practices or behavior that may conflict with such laws and regulations.
- 10.2 Consultant will apply its own guidelines and procedures during the Agreement, in particular in the United Kingdom as defined in the Bribery Act 2010, to guarantee that Consultant, its employees, agents, suppliers and third parties rendering services in relation to the Agreement will comply with the applicable laws and regulations prohibiting corruption, and, to the extent necessary, will enforce such compliance.
- 10.3 At first request of Hivos, Consultant will demonstrate that it has complied with the provisions of this Clause 10, inter alia, by providing documentation and information requested by Hivos as well as in any other manner requested by Hivos.
- 10.4 Consultant will inform Hivos of any infringement or non-compliance with the provisions of this Clause 10 immediately after obtaining knowledge thereof.
- 10.5 Hivos may immediately terminate the Agreement if Consultant does not comply with the provisions of this Clause 10.

11. Term and termination

- 11.1 The Agreement takes effect on the date specified in the Agreement or, in the absence of such specified date, upon the signing by both parties of this Agreement or, whichever is first, upon the date that the Consultant starts providing Services with the approval of Hivos.

- 11.2 The Agreement automatically ends at the moment all Services have been provided and all Deliverables have been delivered.
- 11.3 Hivos may terminate the Agreement in writing at any time, subject to a reasonable notice period with a maximum of one (1) month, without being obliged to pay any damages or compensation to Consultant. Hivos will pay for the costs made until the date of termination.
- 11.4 In the event Consultant fails to comply with its obligations under the Agreement and such non-compliance has not been remedied within a reasonable period of time with a maximum of thirty (30) days after the date of a written default notice by Hivos, which notice shall stipulate the duration of such reasonable term, Hivos may, without prejudice to its other rights, at its option (i) suspend the performance of the Agreement until Consultant completely complies with its obligations under the Agreement, (ii) take any necessary measures at the cost and expense of Consultant such as acquiring alternative services from a third party or (iii) terminate the Agreement by rescission (*ontbinding*) with immediate effect.
- 11.5 Either party may immediately terminate the Agreement upon written notice if the other Party becomes insolvent, files a petition of bankruptcy, makes an assignment for the benefit of creditors, sells all or substantially all its assets to a third party, or becomes the subject of proceedings under any law relating to bankruptcy or relief of debtors.
- 11.6 Termination of the Agreement in whatever way shall not have any effect on the rights granted to Hivos in the Agreement.
- 11.7 If Hivos has at the moment of rescission of this Agreement already received Services and/or Deliverables, these Services and/or Deliverables and the prices paid for these Services and/or Deliverables will not be subject to undoing, unless the rescission is due to a breach by the Consultant in relation to these Services and/or Deliverables.
- 11.8 Clauses that are from their nature intended to continue after the end of the Agreement, such as provisions in respect of liability, IP Rights, confidentiality, indemnification, payment and choice of forum, will continue to apply in full.
- 11.9 On termination of the Agreement in whatever way, Consultant will render Hivos any necessary assistance to safeguard the continuity of the Services and to effect a swift and careful transmission to a third party appointed by Hivos, including providing Hivos with all information that may be relevant in this respect, without charging any additional costs.

12. **Liability**

- 12.1 Consultant is liable for all damages Hivos suffers as a result of Consultant's non-compliance with the obligations in the Agreement.
- 12.2 Consultant fully indemnifies and holds Hivos harmless against any losses, damages and costs suffered or encumbered by Hivos as a result of any claim by a third party for any (alleged) damages caused by a violation of any guarantee in this Agreement, based on the (alleged) unlawfulness of the Services or the Deliverables or as a result of any use by Hivos of the Deliverables in accordance with this Agreement.
- 12.3 Any and all liability of Hivos, whether based upon attributable failure, tort or otherwise, is fully excluded, insofar as such exclusion is allowed.

13. **Force majeure**

- 13.1 Parties shall not be liable for any delay or failure in performance of any obligations under the Agreement due to events outside that Party's reasonable control, including without

limitation, terrorism, earthquake, governmental acts, labour disputes, utility failures, shortage of supplies, riots, war, fire, epidemics, or delays of common carriers.

14. Miscellaneous

- 14.1 This Agreement is construed in accordance with and shall be governed by and interpreted in accordance with the laws of The Netherlands.
- 14.2 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.
- 14.3 If any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

* * *

The Hague, 17 December 2014