

**Hivos standard purchase conditions**

**Introduction** - These purchase conditions of Hivos apply to the purchase by Hivos of goods and services, including consultancy, research and ICT services, for the hiring of staff on temporary or contract basis (“*op uitzend- of detachingsbasis*”) and for the purchase of content such as from advertising agencies, creative agencies or photo stock agencies. Hivos has prepared these purchase conditions very carefully.

We have tried to do justice to as many situations and circumstances that can occur in the purchase process of a diversity of products and services. Although general purchase conditions may not always perfectly match the way you provide services or products, Hivos maintains as a strict policy that it does not deviate from the purchase conditions. As a non-governmental organization, Hivos must take into account a certain reality. We have tight budgets and are compelled to devote as much of our resources to our primary goals as possible. We operate in various parts of the world and in very diverse socio-economic environments. Hivos simply cannot permit itself to lose focus and we must therefore maintain a strict and uniform procurement policy. We must be sure that we can freely use the products and services supplied to us and that our planning is not at risk. Also, many different suppliers are involved in our work. Hivos must be sure that we make the same arrangements with all our suppliers in order to ensure successful operations.

To keep things simple, we have divided the conditions into 4 chapters. Not all provisions are applicable to each situation. If any of the provisions in one of the chapters conflict with any of the provisions in another chapter, the provision in the chapter with the highest number prevails (4 goes before 3, 3 goes before 2, 2 goes before 1). Where provisions govern the same topic but do not conflict, they shall be understood to apply simultaneously and jointly.

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1.3 In these Conditions, "in writing" shall include communications by e-mail, fax or other forms of electronic communication. In these Conditions, a "signed document" means a document that has been signed by duly authorized representatives of each party, either on paper or by means of a digital signature.

#### **Clause 2 Applicability**

2.1 These Conditions apply to all offers and quotations by Supplier, requests for quotations by Hivos, Orders, and Agreements or other legal relationships between parties. If these Conditions apply or were applicable to any legal relationship between the parties, they shall automatically apply to all legal relationships of later date.

2.2 The applicability of any conditions of Supplier or any third party is expressly excluded. Deviations from these Conditions are only possible by a signed document or, if required by these Conditions, by means of a signed document. If parties agree that other or different conditions apply, these only apply to that specific assignment.

#### **Clause 3 Orders**

3.1 Hivos is at all times entitled to withdraw Orders. If Supplier demonstrably executed activities or incurred expenses, Hivos will reimburse these to the extent they are in accordance with the Agreement.

3.2 Requests for quotations made by Hivos are to be considered invitations to make an offer. Quotations from Supplier are unconditional, binding and irrevocable for the term contained therein or, if no term is included, for sixty days. Supplier will not charge for quotations unless agreed otherwise in writing.

3.3 The entering into an Agreement or Framework Agreement, or the placement of any Orders, does not give any warranty or indication of the placement of any (additional) Orders, unless agreed otherwise in a signed document.

#### **Clause 4 Concluding and Amending Agreements**

4.1 Framework Agreements can only be concluded by means of a signed document. Other Agreements can only be concluded by a signed document or in writing.

4.2 If Supplier initiates performance of activities before an Agreement has been concluded in accordance with this clause, such is for Supplier's own risk and account.

4.3 Hivos may propose to alter the nature and/or extent of the Deliverables, which shall not unreasonably be refused by Supplier.

#### **Clause 5 Performance of the Agreement**

5.1 Delivery of the Deliverables shall occur in accordance with the specifications and instructions as agreed in the Agreement. As far as the Agreement does not contain any specifications or instructions, the Deliverables will be delivered in accordance with the highest possible standards and practices that may be expected of a good contractor in this situation.

5.2 Hivos may at any time propose to change the scope of the Agreement, the Services and Deliverables. Supplier shall not refuse such proposals in reasonableness.

5.3 Supplier will inform Hivos immediately in writing regarding any circumstances that may cause untimely, incorrect or incomplete Delivery, including proposals for measures for timely and correct compliance. Hivos must approve such measures. Approval leaves any other rights of Hivos unaffected. In the Agreement, any delivery dates, times or terms are to be considered strict deadlines ("*fatale termijnen*").

5.4 Only with prior written consent of Hivos, Supplier may engage third parties for the performance of the Agreement. Supplier remains responsible for the correct and timely delivery of the Deliverables at all times and remains point of contact for Hivos.

5.5 Supplier guarantees that in performing the Agreement, it shall act in compliance with all applicable laws and regulations.

#### **Clause 6 Goods**

6.1 Delivery of Goods takes place Delivered Duty Paid (DDP, carriage paid, including rights), in accordance with the Incoterms (most recent version), unless agreed otherwise in a signed document.

6.2 Supplier is responsible for proper packaging and transport of Goods. Supplier shall take back any packaging free of charge, unless agreed otherwise in writing. Packing, transportation and insurance during transportation take place for risk and account of Supplier. Transport shall also be understood to mean transmission of data by means of a data communication network.

6.3 Goods shall be delivered in one go as much as possible, with bills of lading, manuals, spare parts, auxiliary materials and related documents and materials.

6.4 If first inspection shows that the Goods are damaged and/or do not comply with the Agreement, Hivos is not obliged to accept Delivery and Delivery will not be deemed to have taken place. Refusing Delivery does not affect the obligation of the Supplier to deliver in time.

6.5 Ownership and risk of damage or loss of Goods shall pass to Hivos at the moment of Delivery. If Hivos returns Goods to Supplier, the risk shall pass to Supplier the moment the Good is placed in the hands of the carrier.

#### **Clause 7 Inspection and Acceptance**

7.1 Hivos is entitled to inspect or have inspected Deliverables before Delivery. Supplier will allow Hivos to do so at first request.

7.2 If Hivos has not notified the Supplier in writing within the agreed period after Delivery whether the Deliverables are accepted or not, Supplier must request Hivos in writing to accept the Deliverables, after which Hivos has a second period agreed in writing to accept or not accept the Deliverables. If no periods are agreed, the periods shall be ten working days.

7.3 If Hivos communicates that it does not accept the Deliverables, it will inform Supplier why the Deliverables do not meet the requirements. Supplier shall replace or adapt the Deliverables and redeliver them at its own costs, taking into consideration the comments of Hivos, within five working days of the notification or within a period communicated by Hivos. As from Delivery of the adapted Deliverables, a new period as stated in Clause 7.2 shall commence. If Hivos once again does not accept the Deliverables, it has the choice to go through acceptance procedure again or to terminate the Agreement with immediate effect.

7.4 The foregoing does not affect any rights of Hivos if Supplier fails to comply with any (Delivery) term.

7.5 Deliverables will be considered accepted by Hivos if (i) Hivos accepts the Deliverables expressly in writing or (ii) Hivos has not communicated whether it accepts the Deliverables within the second period after the Supplier has made a request as mentioned in Clause 7.2. Signing of bills of lading or other delivery notes or payment of Deliverables will not constitute acceptance.

#### **Clause 8 Guarantees**

8.1 A warranty period of at least two years after acceptance applies to the Deliverables, unless agreed otherwise in writing. An agreed warranty period recommences after acceptance of repairs, replacements or additions. This warranty leaves the liability of Supplier unaffected.

8.2 Supplier warrants that during the warranty period the Deliverables are free of imperfections, including in the used materials and constructions. All faults and imperfections which occur during a warranty period, with the exception of those resulting from normal wear and tear or abnormal use, will, without prejudice to any rights of Hivos entitle Hivos to reimbursement of costs, damages and interest, be repaired free of charge by Supplier completely and at the earliest possible date after first notification of Hivos. If Supplier within a reasonable period of time following such notification has not started the repair, Hivos is authorized to perform or have performed the repair

itself, or replace the Deliverables for the account and risk of Supplier. This does not affect the warranty obligations of Supplier.

8.3 After the warranty period expires, Supplier remains liable for repair against payment by Hivos of reasonable compensation, to be agreed between parties in advance. The provisions of this clause shall apply equally to the results of such repair.

8.4 Supplier guarantees that for a period of at least five years, or a term that has been agreed in writing, after acceptance of the Goods by Hivos, parts for the Goods can be delivered.

8.5 Furthermore, Supplier warrants that at Delivery:

8.5.1 Deliverables are of good quality;

8.5.2 Deliverables shall be fit for the agreed or reasonably implied purpose and shall not be libellous or defamatory, shall not otherwise infringe upon any third-party rights, including privacy rights, and shall not be unlawful in any other way.

8.5.3 Deliverables meet the agreed and other applicable specifications and applicable laws and regulations;

8.5.4 No further cooperation of Hivos is needed for execution of the Agreement other than as agreed;

8.5.5 Deliverables include detailed user manuals and functional, management and documentation, which enables Hivos to use and maintain and have used and have maintained, the Deliverables at the same level to which Supplier is able;

8.5.6 Deliverables are not subject to any right or claim of a third party, at the time of delivery the Deliverables belong to Supplier in full ownership, no reservation of title, limited right or garnishment rests on any Deliverables and they are free of any charges and restrictions and;

8.5.7 Regarding electronic content: Deliverables are appropriately protected against all possible threats including unauthorized access, viruses, malicious or harmful software and attacks such as DDOS attacks.

#### **Clause 9 Personnel, Materials and Buildings**

9.1 Personnel engaged by Supplier shall meet the requirements determined by Hivos, if any, and/or general requirements of professional competence and expertise.

9.2 Hivos has the right to request identification of any personnel involved in the performance of the Agreement.

9.3 Supplier is responsible and liable for fulfilment of any tax and/or social security related obligations arising from the Agreement and for the provision of any necessary working permits. Supplier shall indemnify, defend and hold harmless Hivos against any claims in this regard. At first request of Hivos, Supplier will provide proof that it has paid any sales tax, payroll tax, national insurance contributions and/or employee insurance premiums that may be due. Hivos is entitled to terminate the Agreement in writing with immediate effect if the Supplier is overdue, without thereby becoming liable to pay any damages or compensation.

9.4 Hivos is authorized at all times to withhold any amounts paid for sales tax, payroll tax, national insurance contributions, employee insurance premiums and/or any interest and penalties thereon, on the payments to Supplier and pay them directly to the tax office and/or other relevant organization on behalf of Supplier. Hivos is thereby discharged towards Supplier.

9.5 Supplier shall provide all materials and equipment to be used at its own risk and expense, unless agreed otherwise in writing.

9.6 In case of access to buildings or areas of Hivos or buildings or areas in use by Hivos, Supplier, its personnel and any third parties engaged by Supplier shall comply with the house rules and any instructions by or on behalf of Hivos. Supplier must inform itself of the circumstances on the site and in the buildings where activities will be carried out. Costs of delay in the implementation of the Agreement caused by circumstances as those referred to above will be for Supplier's risk and expense.

#### **Clause 10 Corporate Social Responsibility**

10.1 Supplier guarantees that it acts in full compliance with the Hivos Corporate Social Responsibility policy (to be found at [www.hivos.org](http://www.hivos.org)) in the manufacturing and creation of Deliverables, in the Delivery of Deliverables and in any of its further (business) operations.

10.2 Supplier will actively pursue reducing the pollution of the environment due to business operations, housing, travel, products and packaging. Supplier shall have a CSR policy as well as a CSR action plan, where appropriate. Supplier respects the universal standards with regard to labour as established by the U.N. International Labour Organization (ILO). Supplier shall have a zero tolerance approach towards discrimination, sexual harassment, fraud, corruption, bribery, theft and terrorist financing. Supplier will fully co-operate with any investigation into such events, whether led by Hivos or a third party assigned by Hivos.

10.3 If Supplier does not comply or has not complied with clause 10.2 at any time, Hivos has the right to completely or partially terminate any and all Agreements by way of rescission ("*ontbinden*") with immediate effect. Supplier shall be fully liable for any and all damages as a consequence thereof or in relation thereto and shall bear and reimburse Hivos for all related costs.

#### **Clause 11 Prices and Additional work**

11.1 Supplier will deliver the Deliverables for the fees agreed upon in the Agreement or individual Orders. Unless agreed otherwise in writing, travel time and costs are not reimbursed, all amounts are in euros and are inclusive of all expenses including transport, insurance and packing costs, costs of printing, typesetting or other tests – and tax and social security obligations.

11.2 Agreed remunerations are fixed, unless the Agreement describes how and under what circumstances adjustment takes place.

11.3 If activities are needed that are not reasonably included in the Agreement, Supplier shall reasonably execute these free of charge. Only if additional work is attributable to Hivos, is it eligible for compensation. Supplier shall only carry out additional work if content and costs are agreed by means of a signed document. Additional work is carried out at the rates as agreed. As far as no rates for additional work are agreed, Supplier will apply market-based rates.

11.4 If Supplier implements a price increase authorized on the basis on any legal provision, Hivos is authorized to terminate the Agreement from the date on which the price increase takes effect, without thereby becoming liable to pay any damages or compensation.

11.5 Hivos can never be held liable to pay any advances, to make any other advance payments or to furnish any security.

#### **Clause 12 Invoicing and Payment**

12.1 Supplier will send invoices for the Delivery in a way and with indication of the information and data, including the name of the Hivos contact, budget line number and other details as specified by Hivos. If it is agreed that payment takes place according to post-calculation, Supplier will add to the invoice a written and detailed specification as well as a time sheet with the number of hours and the dates of the actual and necessary spent days or hours, a description of the work performed and any expenses. Approval of hours does not imply approval of the Deliverables.

12.2 Parties may agree that invoicing and payment will be carried out by means of a payroll service provider.

12.3 Hivos will pay the amounts due on the basis of the Agreement within thirty days after receipt of the correct invoice and after acceptance of the Deliverables, unless Hivos reasonably disputes the accuracy, amount or chargeability of the invoice. Payment terms are not strict deadlines.

12.4 If Hivos has already made payments prior to acceptance, these are made under resolute condition of non-acceptance of the Deliverables.

12.5 Hivos will only owe interest after it has received proper notice of default and in spite of such has not fulfilled its payment obligations within a reasonable term. In that case Supplier is entitled to late payment interest at a rate of 4% of the undisputed invoiced amounts on a yearly basis or the rate allowed by relevant legislation, whichever rate is lower as from the payment due date.

12.6 Payment does not restrict or prejudice Hivos' (statutory) rights in any way.

12.7 Hivos is entitled to offset amounts receivable from Supplier with amounts payable by Hivos to Supplier at any time.

### **Clause 13 Intellectual Property**

13.1 All IP Rights on any materials provided by Hivos to Supplier rest with Hivos or its licensors. Supplier is not entitled to use or refer to Hivos' name, logo, trademarks and/or publications or products, directly or indirectly, without prior written consent of Hivos.

13.2 Supplier hereby transfers all IP Rights on all Deliverables and on all results of the Services entirely to Hivos, to the extent necessary by delivery in advance ("*levering bij voorbaat*") of all copyrights and copyright privileges on future works and with respect to future forms and modes of exploitation, regardless whether these forms of exploitation, ways of exploitation and/or media used were already known at the time of contracting and regardless the techniques used. As far as delivery in advance is not possible, or as far as transfer has not been validly established for another reason, Supplier hereby commits itself to do (including to refrain) everything to establish a transfer of IP Rights, including the signing of a further deed of transfer. In addition, Supplier authorizes Hivos irrevocably to sign on its behalf all necessary documents, including a deed of transfer and to register IP Rights in Hivos' name.

13.3 The transfer of rights includes the right to make (or have made) publicly available and to reproduce (or have reproduced) in publications or communication channels of Hivos and in third party publications or communication channels, the right to edit, to save, and to store or have edited, saved and stored, to exploit or have exploited, for example by inclusion in external databases or by granting sub-licenses to third parties and to use for advertising and/or promotional purposes. Transfer of rights does not imply any limitation with regard to frequency, size or appearance.

13.4 Supplier warrants that it is entitled to transfer IP Rights on (all parts of) the Content and the results of the Services, and did not delegate any powers to third parties in this respect and that the Deliverables and the use that Hivos will make of them will not infringe IP Rights or other rights of third parties and will not otherwise be unlawful towards third parties. Supplier shall not use any residual materials in a way that may harm (the interests of) Hivos.

13.5 Supplier warrants that neither it nor any third party will have any claims on the IP Rights after the transfer.

13.6 Supplier shall refrain from using, operating and exploiting, either itself or through others, or in any other way make public or reproduce the Content or the results of the Services other than as strictly necessary for the execution of the Agreement and will also refrain from actions which can otherwise be harmful to the IP Rights and or exploitation of the Content or the results of the Services.

13.7 Supplier waives all rights referred to in article 25 of the Dutch Copyright Act, to the extent permitted under that clause, and of any similar rights under foreign law.

13.8 Supplier guarantees that its employees and any third parties engaged are obligated to transfer their IP Rights to Supplier so that Supplier can meet its obligations under this Clause towards Hivos and that they will sign a deed of transfer if necessary.

13.9 In the event of a claim by a third party relating to IP Rights on the Deliverables, whether such claim is against Hivos or against Supplier, it is for Hivos to determine whether, and if so in what way, Hivos and/or the Supplier will respond to this claim. Supplier hereby irrevocably and unconditionally authorizes Hivos to conduct any judicial and extra-judicial proceedings in the event of any infringement

by third parties of the IP Rights in the Content. Hivos has no obligation to initiate legal proceedings.

13.10 Upon first request of Hivos Supplier shall grant any and all reasonable cooperation to take actions against third parties in order to defend and enforce the IP Rights as well as to obtain new rights.

### **Clause 14 Confidential Information**

14.1 If and to the extent that information of a party comes to the attention of the other party, and this information is marked as confidential orally or in writing, or of which the receiving party reasonably should understand that it should be considered confidential, the receiving party will keep this information strictly confidential, use it only for the performance of the Agreement and limit access to that information to persons who have a need to know. The receiving party guarantees that these persons are required to maintain confidentiality by means of an employment and/or non-disclosure agreement.

14.2 Notwithstanding clause 14.1 any information regarding methods of Hivos, know-how, campaigns and projects including information regarding partners, participants, employees and any other involved third parties, technical, financial and business information, reports, any information regarding the results or planning thereof and all documents and records containing such information, shall be deemed confidential.

14.3 Each Party agrees to protect the confidential information of the other Party in the same manner that it protects its own Confidential Information, but in no event using less than a reasonable standard of care.

14.4 A disclosure by one Party of confidential information of the other Party to the extent required by law shall not be considered a breach of this Agreement, provided that the Party so compelled promptly provides the other Party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other Party's cost, if the other Party wishes to contest the disclosure.

14.5 The Parties acknowledge and agree that due to the unique nature of each Party's confidential information, damages alone would not be an adequate remedy for breach of any disclosure or use (or threatened disclosure or use) of a Party's confidential information. Accordingly, without prejudice to any other rights and remedies it may have, either Party shall be entitled to seek equitable relief in any competent court or jurisdiction (including without limitation injunctive relief) concerning any threatened or actual disclosure or use of that Party's confidential information in breach of the terms of this Agreement.

14.6 Confidential information does not include information that was already public when it came to the attention of the receiving Party or subsequently became public outside the control of the receiving party.

14.7 Supplier shall not make any statements towards third parties in a way that might cause damage to Hivos in any way.

14.8 Notwithstanding any other rights of Hivos, including the right to claim actual damages, Supplier forfeits an immediately payable penalty of € 20.000,- (in words: twenty thousand euros) for each (total or partial) breach of this Clause, which penalty or penalties are not susceptible to (judicial) mitigation.

### **Clause 15 Personal Data**

15.1 If Supplier processes personal data for the purpose of Delivery, this Clause 15 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 Supplier is the processor. Notwithstanding the foregoing, at first request of Hivos, Supplier will conclude with Hivos a separate processing agreement appropriate for the situation concerned.



15.2 Supplier 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, Supplier will provide Hivos insight in the measures taken.

15.3 Supplier shall only process personal data it has obtained from Hivos in the context of the Agreement, as commissioned by Hivos and for the benefit of Delivery. Without the express consent of Hivos in a signed document, Supplier will not use the personal data for its own purposes or for purposes of third parties.

15.4 Supplier will not transfer or make personal data accessible in or from a country outside the European Economic Area, except when consent has been given by Hivos in a signed document and a valid legal regime applies, ensuring a proper level of protection.

15.5 Supplier 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:

15.5.1 Physical security and protection of equipment;

15.5.2 Developing and maintaining an information security policy;

15.5.3 Assigning persons responsible for security;

15.5.4 Applying access control (procedures to provide access to authorized employees to the information systems and -services);

15.5.5 Treating personal data as confidential information in accordance with 13.1 and obliging workers in employment contracts or confidentiality agreements to maintain the confidentiality of confidential information, including personal data.

15.6 To the extent Supplier engages third parties in the execution of the Agreement these third parties are bound by the same guidelines as the employees of Supplier.

15.7 Supplier will notify Hivos of any third parties involved in the processing of personal data in accordance with this Clause 15 and will ensure that these third parties will be subject to a written agreement requiring them to comply with the same data protection obligations as set out in this Clause and/or required by Applicable Data Protection Legislation.

15.8 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, Supplier 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.

#### **Clause 16 Audits**

16.1 Hivos has the right to perform and have performed announced and unannounced audits at Supplier, including financial, operational and compliance audits regarding accuracy of invoices and compliance with the provisions of the Agreement, with respect to fees, security, insurances and compliance with the Hivos Supplier Code. Supplier guarantees that it shall maintain proper books and records at all times.

16.2 At first request of Hivos, Supplier will grant Hivos and/or third parties engaged by Hivos access to buildings, systems and records of Supplier for the purpose of auditing and will provide all support to the audits performed by or on behalf of Hivos. Hivos endeavours to have audits only take place during regular working hours and to ensure that audits will restrict the normal course of business of Supplier as little as possible. Supplier will not charge any costs for its cooperation to audits. Hivos shall carry its own costs and the costs of third parties engaged by Hivos, unless the audit reveals irregularities. In that case, these costs are borne by Supplier, without prejudice to any other rights of Hivos.

16.3 Hivos will treat information that it obtains as a result of audits in accordance with 13.1.

16.4 Supplier warrants that Hivos has the right and opportunity to perform audits at third parties engaged by the Supplier under the same conditions as described above.

#### **Clause 17 Liability**

17.1 Supplier is liable towards Hivos for and indemnifies, defends and holds harmless Hivos, its directors, management, employees, representatives and legal successors entirely against, all damages and costs, including damages and costs as a result of defects in the Deliverables, (alleged) violations of IP Rights in the Deliverables, claims of third parties, collection costs, legal commercial interest, loss of profit, forfeited fines and costs of legal assistance, which Hivos suffers or incurs as a result of (i) an attributable failure to (properly) perform the Agreement by Supplier, its staff or third parties engaged by Supplier, (ii) any act or failure to act of Supplier, its staff or third parties engaged by Supplier in the execution of the Agreement or (iii) tort by Supplier, its staff or third parties engaged by Supplier.

17.2 Supplier shall report any damages arising from the performance of the Agreement to Hivos immediately but no later than 24 hours after the event giving rise to the (possible) damages has occurred.

17.3 Supplier indemnifies, defends and holds harmless Hivos, its directors, management, employees, representatives and legal successors against all possible claims of the tax office and/or the social security administration agency, including any applicable interests and any administrative fines, associated with the delivery of the Deliverables.

17.4 Supplier indemnifies, defends and holds harmless Hivos against all claims of third parties, including administrative fines, in relation to violations of applicable export regulations that are attributable to Supplier. If export provisions are applicable that Hivos should adhere to, Supplier will timely notify Hivos thereof.

17.5 Hivos is not liable towards Supplier for any damages or costs that Supplier suffers or incurs. If Hivos is considered liable nevertheless, its liability is limited as determined in the following paragraphs.

17.6 Liability of Hivos for an attributable failure to perform any of its obligations will only arise if Hivos has received a proper notice of default and has been given a reasonable period of time of at least thirty days to repair the shortcoming, and continues to fail to comply with its obligations after that period has expired.

17.7 Hivos is only liable towards Supplier for the following damages, if and insofar such damages are due to a failure and/or tort attributable to Hivos: material damages to properties, reasonable costs incurred to prevent or minimize such damages and reasonable costs made to determine the cause of the damages, the liability, the damages and the method of recovery of such damages.

17.8 The total liability of Hivos will in all cases be limited to the amount that will actually be paid for the specific event under its insurance policy.

17.9 Any further liability of Hivos, including liability for consequential damages is excluded. In this paragraph, consequential damages are meant to at least include lost profits, lost savings, delay damages, damages due to business stagnation and reduced goodwill in the company or the profession of the Supplier.

17.10 This Clause will not in any way limit the liability of Hivos for damages resulting from gross negligence or wilful misconduct of Hivos itself ("own actions") and/or its management.

#### **Clause 18 Insurance**

18.1 Supplier guarantees to be adequately insured during the term of the Agreement with a reputable insurance company, for the performance of its obligations under the Agreement and for damages resulting from its liability to Hivos, including, if applicable, with proper product, professional and commercial liability insurances, including for damages caused by death or personal injury.

18.2 Supplier shall inform Hivos without delay regarding any (expected) changes in its insurance coverage or insurance policy that

may be relevant to Hivos. At first request of Hivos, Supplier shall provide Hivos with copies of its insurance policies as well as proof of premium payments.

18.3 If Supplier commissions any third party in the execution of the Agreement, Supplier guarantees that this third party is insured under the same conditions.

18.4 In the event Supplier is able to file an insurance claim related to a possible future liability to Hivos, Supplier shall ensure that payment will take place directly to Hivos or its insurance company. Hivos may require that Supplier will take out the insurance on behalf of Hivos or that Supplier transfers the claim to Hivos or its insurance company.

18.5 Any payment to Hivos on the basis of the insurance policy of Supplier shall be without prejudice to any right to compensation of Hivos, insofar damages exceed the amount paid out under the insurance policy.

18.6 In case Supplier is required to travel, Supplier 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, Supplier shall be insured under the Hivos travel insurance. In such case, Supplier shall sign any documents deemed necessary by Hivos.

#### **Clause 19 Freelancers**

19.1 In deviation of Clause 17, the maximum liability for Freelancers is equal to twice the total amount invoiced to Hivos or to the amount that is actually paid out under the insurance policy of the Freelancer for the specific occurrence, whichever amount is higher. Violations of IP Rights of third parties by Freelancers, are excluded from this clause, as well as liability for damages resulting from gross negligence or willful misconduct by Freelancer.

19.2 Parties expressly confirm that it is not their intention to enter into an employment contract (within the meaning of articles 7:610 - 7:687 of the Dutch Civil Code or any other applicable local legislation) and wish to enter into an Agreement for the provision of the Deliverables agreed upon. Freelancer does not have any relationship of authority with Hivos, under employment law or otherwise.

19.3 In the context of the previous paragraph of this clause parties will, upon first request of Hivos, conclude a model agreement that was formulated by virtue of the Dutch Wet DBA and was approved by the Dutch Tax Administration ("*Belastingdienst*") and/or cooperate to meet the demands of local Tax Administrations. Freelancer indemnifies Hivos against all liability claims regarding tax or social insurance contributions as well as any resulting costs, interests and fines.

#### **Clause 20 Force Majeure**

20.1 If Supplier is prevented from performing its obligations towards Hivos as a result of a force majeure situation, Hivos will only be required to pay for Deliverables which have already been completely delivered up to that moment, unless Hivos cannot reasonably benefit therefrom due of the partial performance of the Agreement, in which case Hivos is not obliged to make any payment at all. Force majeure shall only entail external, unforeseen circumstances insofar as the effects cannot reasonably be avoided by Supplier. The following situations are not considered as force majeure: lack of staff, economic conditions, illness of staff, strikes, late delivery or unsuitable materials, transport problems and/or shortcomings on the side of third parties or suppliers of Supplier. Supplier shall immediately inform Hivos in writing if a force majeure situation occurs or is likely to occur.

20.2 If the force majeure situation continues for a period of twenty consecutive days, or if it can reasonably be expected that this will be the case, Hivos is entitled to terminate the Agreement by rescission with immediate effect ("*ontbinden*"), without notice of default being required and without thereby becoming liable to pay any fees or compensations.

#### **Clause 21 Shortcomings**

21.1 If Supplier (if required: after a written notice of default in which a reasonable period of time is given to repair its shortcomings, whereby a period of twenty days is considered as reasonable in any case) continues to remain in default to correctly and/or timely perform one or more of its obligations, Hivos is entitled, without prejudice to other rights and at its own discretion (i) to suspend (further) execution of the Agreement until Supplier fully complies with its obligations, (ii) to take actions itself including the procurement of replacement Deliverables from third parties at the expense and cost of Supplier or (iii) to completely or partially terminate the Agreement by way of rescission ("*ontbinden*") with immediate effect.

21.2 If, to the judgment of Hivos, there is a valid reason to fear that Supplier will not properly or timely perform any of its obligations towards Hivos, Supplier is obliged to provide adequate security for the complete performance of all its obligations in the manner required by Hivos and at first request of Hivos.

21.3 All extrajudicial and judicial costs of Hivos as a result of a failure to comply by Supplier, including costs for legal assistance, shall be borne by Supplier and Supplier shall indemnify, defend and hold harmless Hivos for such costs.

21.4 Supplier is not entitled to partially terminate the Agreement by way of rescission ("*ontbinden*"). Supplier does not have the right to set off any debts nor has Supplier the right of retention of title or reclamation. Supplier may suspend its Services only in case Hivos is at least three months behind in payment of undisputed invoices due and after giving Hivos one month written notice of suspension. Suspension of Services must at all times be proportional. All other rights of suspension of Supplier are excluded.

#### **Clause 22 Term and (early) Termination**

22.1 The term of the Agreement is agreed in the Agreement. If no specific term is agreed, the Agreement ends automatically after delivery of the Deliverables or by termination in accordance with the Conditions.

22.2 Hivos is entitled to terminate the Agreement with immediate effect as long as Supplier has not yet started to perform the Agreement, provided that Hivos will reimburse the reasonable costs of any preparations made by Supplier, insofar as such have been made in accordance with the Agreement.

22.3 Hivos may terminate ("*opzeggen*") the Agreement without cause at any time subject to a notice period of one month, without thereby becoming liable to pay any damages or compensation to Supplier, unless agreed otherwise.

22.4 Supplier is not entitled to terminate ("*opzeggen*") the Agreement without cause unless it concerns an Agreement for an indefinite period, in which case Supplier may terminate the Agreement subject to a reasonable notice period.

22.5 Upon termination of a Framework Agreement Supplier will deliver all outstanding Orders completely in accordance with the provisions of the Framework Agreement, unless Hivos instructs Supplier otherwise within fourteen days after termination.

22.6 Without prejudice to any statutory rights of Hivos, Hivos is entitled, without a written notice or intervention of a court being required and without Hivos becoming liable to pay any damages or compensation to the Supplier, to terminate the Agreement, in whole or in part, with immediate effect in writing, if (i) Supplier requests suspension of payments or is declared bankrupt or other liquidity problems occur, (ii) if Hivos has reasonable grounds to suspect that the situations mentioned under (i) will occur or that circumstances have arisen which could lead to the situations referred to, (iii) a creditor of Supplier takes possession or takes some other comparable measure with respect of the assets of Supplier or a substantial part thereof, (iv) a court order prohibits Hivos to give effect to the Agreement, (v) the business of Supplier is transferred in whole or in part to, or merged with, a third party or (vi) the Deliverables are delivered on behalf of a client of Hivos and the Agreement with this client ends

in whole or in part or this client requests suspension of payments or is declared bankrupt.

### **Clause 23 Effects of Termination**

23.1 Upon termination of the Agreement for any reason whatsoever, Supplier shall, without delay, provide all Goods and other materials which Supplier holds for Hivos to Hivos or to a third party designated by Hivos, in accordance with the instructions provided by Hivos.

23.2 Upon termination of the Agreement by giving notice or by way of rescission for any reason whatsoever, Supplier shall provide all necessary cooperation to Hivos to ensure the continuity of its business and to ensure a quick and careful transfer of Supplier's services to a third party. If, in the opinion of Hivos, a careful and complete transfer of services is only possible if the Supplier continues its services for a certain period of time, it will continue its services at the request of Hivos for a maximum of three months after termination. Hivos will pay the associated costs on the basis of the applicable rates for the Agreement.

23.3 Termination of the Agreement for any reason whatsoever does not affect Hivos' IP Rights or any rights granted to Hivos on the basis of 0.

23.4 In case of termination by rescission, at sole discretion of Hivos, Delivery may be partially reversed and/or undone and Deliverables and payments made for the Deliverables shall be returned.

23.5 Supplier is obliged to repay any pre-paid amounts upon termination.

23.6 Provisions that by their nature, are intended to survive termination of the Agreement will remain in force between parties.

### **Clause 24 Miscellaneous**

24.1 Dutch law applies to the Agreement and to these Conditions.

24.2 All disputes arising out of or in connection with the Agreement shall be exclusively submitted to the competent court in the District of The Hague, unless parties by a signed document agree to arbitration or binding advice procedures or the competence of a different court.

24.3 In case one or more provisions of the Agreement are null or declared void, the other provisions will continue in full force and effect. Parties will enter into discussions to substitute a null or void provision by a provision that meets as much as possible the goal and intent of the null or void provision.

24.4 Waiver of rights is only possible by means of express written declaration.

24.5 Supplier is not entitled to transfer any rights and obligations under the Agreement to a third party without prior consent of Hivos by means of a signed document. Hivos is entitled to attach conditions to this consent.

24.6 Hivos is entitled to transfer its rights and obligations under the Agreement in whole or in part (i) to companies affiliated with Hivos in a group, (ii) to third parties together with the business of Hivos and (iii) in the case of a merger.

24.7 Hivos and Supplier are independent parties who are not authorized to represent each other, to perform legal acts for each other, to mediate or enter into agreements on behalf of each other or to provide warranties or make commitments on behalf of each other. There is no relationship of authority between Hivos and Supplier other than as between a principal and supplier within the meaning of Section 1 of Title 7 of Book 7 of the Dutch Civil Code.

24.8 The applicability of the Vienna Sales Convention (CISG) is expressly excluded.

## **Chapter 2 Secondment**

### **Clause 25 General**

25.1 Without limiting the applicability of the general provisions of Chapter 1, the provisions of this Chapter 2 apply if the Services and or Deliverables to be provided by Supplier consist of (pre-) selection,

placement of and/or assignment of suitable candidates in a temporary employment or posting form whether by direct or indirect temporary placement, secondment, pay rolling or otherwise.

25.2 If Supplier is a temporary employment agency, it is NEN 4400 certified and listed in the Labor Standards Register. At first request of Hivos, Supplier will submit a NEN 4400 Certificate. If Supplier is not NEN 4400 is certified, it shall submit at first request and at its own expense, a statement regarding payment behaviour vicarious tax liability ("*verklaring betalingsgedrag keten- en inlenersaansprakelijkheid*") of the Dutch Tax Authorities of up to three months old. As long as the works continue, it will submit a new statement every three months.

25.3 At Hivos' first request Supplier will, at its own expense, provide a statement, drawn up and signed by an accountant, which declares that over the preceding period all obligations ensuing from tax and social security legislation and regulations are met by Supplier.

### **Clause 26 Selection, Direction and Supervision**

26.1 Hivos provides a description of the job, job requirements, working hours, working time, tasks, workplace and planned duration of the posting.

26.2 Supplier shall, within a reasonable time after receipt of a request of Hivos propose one or more candidates who meet the profile. There is no obligation for Hivos to hire any proposed candidate.

26.3 At first request of Hivos, Supplier will provide copies of the employer's certificate, diplomas, certificates and / or references of the proposed candidates to Hivos.

26.4 Posted staff will be working under guidance and supervision of Hivos, while the employment relationship between staff and Supplier will be maintained in full. Posted staff will follow all reasonable instructions and directions of Hivos. For avoidance of doubt, Hivos requires that there be a provision in the employment contract between suppliers and the posted staff that Hivos shall at no point assume the obligations or liabilities of the employer under the said employment contract, save as otherwise provided or agreed.

26.5 Unless previously agreed otherwise by means of a signed document, Supplier will only post staff directly employed by Supplier. At first request of Hivos, Supplier will provide proof thereof.

### **Clause 27 Identity, Posting, CGC and "Waadi"**

27.1 Supplier guarantees that all posted staff meet all legal requirements and permits to be legally authorized to work in the country where the staff will be positioned. For the Netherlands supplier expressly declares that its obligations ensuing from the Identification Requirement Act ("*Wet op de identificatieplicht*"), the Posting of Workers Act ("*Wet Allocatie Arbeidskrachten Door Intermediairs*") and the Aliens Employment Act ("*Wet arbeid vreemdelingen*") are met. Always before a staff member of non-Dutch origin starts any activities, Supplier will administrate a copy of a valid document as referred to in article 1 of the WID and – if and to the extent required by law – a copy of a valid work permit to Hivos. Upon first request Supplier will disclose all relevant documents to Hivos to verify that posted staff is legally authorized to work.

27.2 If Supplier fails to fulfil the obligations of this Clause 27 Hivos may deny access to the concerned staff members and/or terminate the posting with immediate effect, without obligation to pay any compensation to Supplier.

27.3 Supplier shall indemnify Hivos, its directors, management, employees, agents and legal successors completely against all damages and costs, including damages and costs resulting from claims by third parties, collection fees, loss of profit, forfeited fines and costs of legal assistance, which Hivos suffers or makes as a result of illegal work and/or nonfulfillment of the obligations under the said legislation by Supplier.

27.4 At first request of Hivos Supplier will submit a Certificate of Good Conduct (VOG) regarding candidates or posted staff to Hivos.



27.5 Supplier will conclude a model agreement that was formulated in accordance with the requirements of the Dutch *Wet Deregulering Beoordeling Arbeidsrelatie* (DBA) and approved by the Dutch Tax Administration (*Belastingdienst*) with all staff not working on the basis of an employment agreement.

**Clause 28 Labour, Substitution and Illness**

28.1 The number of hours to be worked and working hours of the staff will be recorded in the Order. Work will be performed during normal office hours of Hivos, unless agreed otherwise in writing. Work to be carried out by the staff in overtime should be approved in writing in advance by Hivos.

28.2 Only the hours agreed upon and actually worked will be paid for. Hours not worked because of public holidays, leave, absence, travel time to and from work and hours that staff due to illness or for other reasons isn't able to perform labour, will not be paid by Hivos, unless agreed otherwise in writing.

28.3 The days when the posted staff may take leave of absence will be determined in consultation.

28.4 Supplier will only permanently or temporarily replace staff after prior written consent of Hivos.

28.5 In case of replacement staff will be posted that is of at least equal level with respect to expertise, educational level and experience. The original rates remain the same and working-in costs shall be borne by Supplier.

28.6 In case of illness of a Supplier deployed staff member of which can be assumed that it might take longer than ten working days and in the event of absence for any other reason by which the staff member will not be available for more than ten days, he or she will be substituted at first request of Hivos. If the staff member cannot be replaced within five working days, Hivos is entitled to terminate the posting with immediate effect, without obligation to pay any compensation to the Supplier.

**Clause 29 End of Posting**

29.1 A posting of staff terminates by operation of law as soon as Supplier cannot make the staff available anymore because the (employment or temporary employment) agreement between the Supplier and the staff has terminated, by the expiry of the agreed period, by completion of the project (at the discretion of Hivos) or by written notice by Hivos.

29.2 Upon completion of the work the staff will at the option of Hivos return or destroy all Deliverables, data, information and equipment which are provided by Hivos or produced by the staff in the context of the work.

**Chapter 3 Research and Consultancy**

**Clause 30 General**

30.1 Without limiting the applicability of the general provisions of Chapter and the possible applicability of the provisions of other Chapters, the provisions of this Chapter 3 apply if Supplier delivers Research and/or Consultancy Services to Hivos, as stated in the Agreement.

**Clause 31 Hivos' information**

31.1 Hivos shall provide Supplier with all documentation and other information reasonably necessary to perform the Services and deliver the Deliverables, as specified in the Agreement. Supplier is obligated to investigate whether the documentation and information provided by Hivos is correct, complete and up-to-date and is responsible and liable for the use of the documentation and information.

**Clause 32 Use and Publication of Deliverables**

32.1 Unless explicitly agreed otherwise in writing, Hivos is allowed to use and publish the Deliverables for the purposes described in the Agreement and for any other purpose reasonably to be understood by Supplier, immediately upon delivery of the Deliverables to Hivos.

32.2 Hivos shall mention Supplier as the creator of the Deliverables at all times unless such is not possible without unreasonable effort. Hivos may also refer to itself and any possible partners as the commissioners of the Supplier and the Deliverables.

32.3 After publication of the Deliverables, they may become subject to close scrutiny. At first request of Hivos and in line with Hivos' reasonable instructions, Supplier will provide Hivos with a written and specified statement in which content and performance of the Deliverables and any sources used are explained and/or substantiated. Hivos is allowed to publish (parts of) such statement, provide it to third parties and/or use it in legal proceedings. Supplier shall provide any assistance in order for Hivos to protect its own or any third-party rights in connection with the Services or the Deliverables. Hivos shall reimburse any reasonable, pre-approved costs made by Supplier associated with the aforementioned statement and assistance, unless such is needed due to a shortcoming of Supplier.

**Clause 33 Non-competition**

33.1 Without prior written consent by Hivos, Supplier 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 may conflict or compete with the project for which the Deliverables are intended to be used, its goals, purposes or communication efforts. The Agreement does not restrict Hivos from acquiring similar, equal or like Deliverables and/or Services from other entities or sources.

**Chapter 4 ICT Services**

**Clause 34 General and additional definitions**

34.1 Without prejudice to the application of the general provisions of Chapter 1 and the possible applicability of the provisions of other Chapters, the provisions of this Chapter 4 apply if Supplier delivers ICT Services and/or Deliverables to Hivos.

34.2 In this Chapter, the following terms are defined as follows:

Acceptance: written acceptance by Hivos that the Equipment and/or Software both separately and in conjunction meets the agreed specifications and is fit for the intended purpose.

Acceptance test: the test (procedure) with which can be tested if the Equipment and/or Software both separately and in conjunction meets the agreed specifications and is fit for the intended purpose.

Fault: any failure or other defect and any defect or non-conformity in the Software and/or Equipment.

Custom Software: software that is specifically developed and/or modified for Hivos, including changes and/or additions to Standard Software including associated documentation, materials, object codes and source codes, as described in the Agreement.

Software: the under the Agreement by Supplier provided or to be provided Standard and / or Custom Software including new and/or improved versions.

Standard Software: software as described in the Agreement with associated documentation and materials which are not specifically developed for Hivos.

**Clause 35 Research and Consultancy**

35.1 To determine the intended use of the Software by Hivos, the Supplier has informed itself properly of the purposes with which Hivos enters into the Agreement and of the organization, location and IT environment of Hivos.

35.2 Supplier declares that it has requested and obtained all required information from Hivos for the Deliverables to be delivered.

35.3 The Supplier is only permitted to gain (remote) access to the network of Hivos with his own equipment if Hivos has granted prior written consent. This consent may be subject to certain conditions. Supplier guarantees that the equipment used is safe and does not contain any viruses or other malicious or harmful software.



35.4 If Supplier wants to make use of open source software or third-party software Supplier will inform Hivos prior to the conclusion of the Agreement.

35.5 If for the development and/or delivery of the Software will be made use of (web) applications, (web) services and/or infrastructure of Supplier, Hivos has the right to perform reasonable and usual security tests on beforehand. Supplier will provide all reasonable cooperation to this at first request.

#### **Clause 36 Standard Software**

36.1 Prior to the conclusion of an Agreement for use of Standard Software, Supplier will provide information to Hivos on discrepancies in the functioning of the Standard Software in relation to the by Hivos desired specifications, insofar these are known or reasonably should be known to Supplier.

36.2 Hivos is entitled to make back-up copies of the Standard Software (including the associated documentation) and repair errors or have them repaired.

36.3 If the equipment on which the Standard Software is installed will be replaced, in whole or in part, Hivos is entitled to install and use the Standard Software on replacement equipment without therefore to be obliged to pay any extra fees, no matter where this equipment has been set up. Hivos is entitled to install and test Standard Software before use on replacement equipment.

36.4 Without prejudice to the powers attributed to Hivos, the IP Rights with respect of the Standard Software rest with Supplier or its licensor. With regard to Standard Software, Supplier grants to Hivos the irrevocable, non-exclusive right to use the Standard Software for an indefinite period of time. Any third-party license terms and the extent of the right of use are mentioned in the Agreement. Supplier sells the information carrier (s) on which the Standard Software is recorded to Hivos.

36.5 If Standard Software or Custom Software on top of already existing Standard Software is dependent upon third party licenses, Supplier will contract directly with that third party and ensures availability of all necessary licenses for the use of the Standard Software and Custom Software by Hivos.

#### **Clause 37 Custom Software**

37.1 Hivos and Supplier specify in the Agreement the Custom Software that will be developed. Supplier manufactures an as detailed as possible elaboration of the technical specifications of the Custom Software, based on the desired functional specifications as laid down in the Agreement. For the development and implementation of Custom Software Supplier will provide a plan of action that must be approved by Hivos, in which parties at least agree: the (interim) delivery date (s), the installation and implementation date (s), development and / or implementation phases and (interim) system and acceptance tests.

37.2 Supplier will transfer the information carriers with source and object codes as well as the documentation and other materials belonging to the developed Custom Software on Delivery and before performing the Acceptance test completely to Hivos or will make it available via download.

37.3 All IP Rights on the Custom Software, including source and object codes, including documentation and other materials will be transferred by the Supplier to Hivos in accordance with Clause 13 of the Conditions.

37.4 As far as Parties in the Agreement didn't agree on a transfer of IP Rights, Supplier will grant Hivos a perpetual, irrevocable, sublicenseable transferable right to make use of the Custom Software, including new and improved versions in the broadest sense of the word. This includes at least the right to use all applicable features of the Custom Software, to make copies of the Custom Software, to provide sublicenses, to apply (or have applied) modifications in the Custom Software to bring and to give access to third parties to the Custom Software.

#### **Clause 38 Delivery, Installation and Documentation**

38.1 Delivery of Equipment and/or Software by Supplier includes installation and implementation of the Equipment and/or Software, including conversion of existing data files. If Supplier on the basis of its expertise, the Agreement and/or the Order might or should have known that for the installation and implementation adjustments to the Equipment, to the equipment of Hivos or to other software are necessary, Supplier shall provide those on its own account, in close consultation with Hivos.

38.2 Supplier, when working on (computer) systems of Hivos, always ensures the security of data and information stored on those systems to prevent loss and/or damage thereof.

38.3 If at any time it appears that delivered documentation contains incorrect, incomplete, unclear or obsolete information Supplier shall ensure that at first request of Hivos it is replaced or adjusted as soon as possible and at the expense of Supplier.

38.4 Unless agreed otherwise in writing, the documentation associated to the Software and/or Equipment is always in the Dutch or English language.

#### **Clause 39 Acceptance**

39.1 Hivos and Supplier will include the Acceptance tests in the Agreement, including the agreed properties to be tested. Every (part) delivery of Deliverables is subject to an Acceptance test as described in the Agreement.

39.2 If the Deliverables are accepted separately during several Acceptance tests by Hivos, the last Acceptance test will be followed by an integral acceptance test to test the coherence of the Deliverables.

39.3 The results of the Acceptance test will be recorded in a report that will be signed by Hivos. That report states whether there is unconditional Acceptance or not. If (part of) the Deliverables are not accepted the report states which (part of the) Deliverables are not accepted and what the defects are. If the Deliverables have been approved, the date of signature of the report of approval counts as date of Acceptance. Approval of part of the Deliverables will not affect the possibility to reject the whole on the basis of the integral Acceptance test.

39.4 If the Acceptance test reveals defects, Supplier is bound to fix these as soon as possible, at the latest within the time limit set by Hivos and offer the whole again for Acceptance, after which the Acceptance test will be repeated. In that case, the costs of the Acceptance test shall be borne by Supplier.

39.5 If Supplier doesn't fix the identified defects within the time limit set by Hivos, Hivos is entitled to repair or have the defects repaired. In that case, Supplier provides all the cooperation necessary for the correction of the defects. Supplier remains responsible for the Deliverables if they are repaired by Hivos or a third party.

39.6 During the Acceptance test Hivos is entitled to make operational use of the Deliverables, if necessary for its business operations.

39.7 Acceptance does not affect the obligation of Supplier to repair defects in Deliverables, on the basis of the maintenance obligations.

#### **Clause 40 Guarantees**

40.1 In addition to Clause 8 of these Conditions Supplier guarantees that:

40.1.1 the Software and Equipment during one year after Acceptance (also at peak loads) meet and continue to meet the specifications, functions and properties agreed in the Agreement and to what Hivos reasonably could expect of it;

40.1.2 the Software is compatible with the software, equipment, systems and networks of Hivos;

40.1.3 the Software is and will be properly protected through the provision of updates and patches;

40.1.4 the Software and Equipment are manufactured efficiently, properly and are coherent with each other and;

40.1.5 the source code (s) and object code (s) are of such a quality that they enable Hivos to (have) maintain(ed) the delivered Software.

40.2 Supplier will maintain Hivos informed in writing of all applied changes to any systems of Hivos of any kind whatsoever.

#### **Clause 41 Maintenance and Support**

41.1 At the request of Hivos, Supplier will enter in maintenance agreements for at least three years after acceptance for the Software, for preventive, corrective, adaptive and / or innovative maintenance, as well as support agreements for telephone and online support. These agreements are to be regarded as Agreements within the meaning of the Conditions. During the guarantee period, no maintenance fee is chargeable.

41.2 As part of the preventive maintenance, Supplier will test the Software regularly but at least once a year on proper operation. If preventative maintenance can cause that Hivos cannot (entirely) use the Software, Supplier will timely notify Hivos hereof. Hivos is entitled to refuse the date of preventive maintenance, in which case parties will agree on a new date.

41.3 As part of innovative maintenance, Supplier will adjust, improve and/or complement the functionality of the Deliverables, in relation to new (legal) requirements and/or technological developments and insights. If innovative maintenance leads to functional changes, prior written consent of Hivos is required. If the Suppliers discontinues the support of the Software or parts thereof, but brings out other software that is similar to the Software or the relevant parts thereof, Hivos is entitled, at its option, to require full compliance with the maintenance, to claim a right to use the new software, or to terminate the Agreement by rescission ("*ontbinden*") with immediate effect.

41.4 As part of corrective maintenance, parties will set deadlines in the Agreement within which defects in the Software and/or Equipment should be fixed. If no term has been determined, Supplier will in any case start the corrective maintenance within four hours of notification of a defect by Hivos whereby Supplier will do everything possible to fix the defect as soon as possible. The in the Agreement or further to conclude maintenance agreements committed response and resolution times are considered deadlines.

41.5 Temporary solutions or software workarounds may only be applied with approval of Hivos. If such case, Supplier will implement a final solution as soon as possible.

41.6 If Software and/or Equipment and/or parts thereof are replaced, this is only done by new, functionally and technically at least equivalent components.

41.7 If Hivos performs maintenance itself, at request Supplier will provide support against the agreed prices, or, if no prices have been agreed, market-based prices.

#### **Clause 42 Escrow**

42.1 At the first request of Hivos, Supplier will immediately give the Software in escrow at an independent third party. Parties can make further arrangements regarding the implementation of the escrow agreement. The escrow shall in any case contain all information which Hivos needs to be able to independently recover errors, execute maintenance and management of the Software so that Hivos is able to use the Software entirely, including a copy of the source codes of the most recent version, as well as all associated development and technical documentation. Supplier gives periodically and at least the most recent version(s) in escrow at the third party.

42.2 Software that is given in escrow will be made available with immediate effect and without further conditions by the third party to Hivos at the first request of Hivos in the situation that:

42.2.1 Supplier ceases its activities with regard to the software;

42.2.2 with regard to Supplier a bankruptcy request or request for suspension of payments is filed or, or Supplier is declared bankrupt or to Supplier is granted a suspension of payments;

42.2.3 Supplier is liquidated; or

Initials:

42.2.4 Supplier does not comply with an obligation with regard to the Software.

42.3 The source codes made available on the basis of the previous paragraph of this Clause can only be used by Hivos for the intended use of the Agreement.

#### **Clause 43 SaaS**

43.1 Without prejudice to the applicability of the provisions of Chapter 1 and the other provisions of this Chapter 5, the provisions in this Clause shall apply if the Supplier makes the Software available remotely, as Software as a Service ("SaaS").

43.2 Delivery of SaaS includes a non-exclusive license and right to use the interface that Supplier provides.

43.3 Supplier shall ensure the availability and usability of SaaS in accordance with Service levels to be agreed by parties.

43.4 Supplier will enable Hivos to save and make backups of all data of Hivos used in the SaaS in a (digital) format to be determined by Hivos. In addition, Supplier will make back-ups of all data of Hivos with an interval to be agreed between the parties. If no interval has been agreed Supplier will be make a backup of all data at least once a day. Supplier will store the backups carefully at a different location and at another hosting party than where the operational data from Hivos are stored.

43.5 Supplier may, if agreed, temporarily take the Software partially or entirely out of use for preventive, corrective and/or adaptive maintenance insofar necessary. The Software can be taken out of use exclusively during the period from 10 p.m. to 6 a.m. and only after a prior written notification to Hivos of at least twenty days.

43.6 Supplier shall ensure a separation between the Software and the data server.