

**Terms and Conditions Grants  
Aidsfonds**

**Table of content**

1.	Definitions.....	2
2.	General Conditions awarding Grants.....	4
3.	Obligations Aidsfonds .....	5
4.	Obligations Partner.....	5
5.	Financial conditions .....	7
6.	Reporting conditions .....	8
7.	Procedure for awarding the Final Payment of the Grant .....	10
8.	Monitoring.....	11
9.	Duty to notify.....	11
10.	Warranties .....	12
11.	Liability and Insurance .....	12
12.	Termination, suspension and revocation.....	13
13.	Complaints procedure .....	14
14.	External communications.....	15
15.	Confidentiality.....	15
16.	Publications, “open access” and “open source” .....	16
17.	Intellectual property .....	16
18.	Governing Law and competent court .....	17
19.	Miscellaneous .....	17

## Terms and Conditions Grants Aidsfonds

This document contains the terms and conditions that apply to Grants awarded by **Aidsfonds** (Stichting Aidsfonds – Soa Aids Nederland) to its Partners. Aidsfonds receives the funds for these Grants from fundraising activities and from third parties. Aidsfonds needs to comply with the communications and conditions attached to these funds. In addition, Aidsfonds wishes to be an involved partner and financier and wishes to establish a strong and professional relationship with its Partners. Aidsfonds also wants to be transparent about the conditions attached to the Grants. For this reason, Aidsfonds enters into a Project Agreement with its Partners. These Terms and Conditions apply to the Project Agreement and contain important information about the rights and obligations of Aidsfonds and its Partners. Aidsfonds therefore advises Partners to carefully read these Terms and Conditions.

### 1. Definitions

1.1 All capitalized terms have the meaning included below:

- (a) **“Aidsfonds”** means the Stichting Aidsfonds – Soa Aids Nederland having its principal place of business at Condensatorweg 54 (1014 AX) Amsterdam, The Netherlands;
- (b) **“Corruption”** means the abuse of entrusted power for private gain based on financial and/or non-financial actions. Corruption includes inter alia offering, seeking and/or accepting services, resources or any other advantage against carrying out, directly or indirectly, any unlawful acts, bribery, theft, embezzlement, extortion, exploitation of conflict of interests, fraud, granting or receiving unlawful compensation, money laundering, sexual abuse, sexual intimidation and any similar actions or inactions;
- (c) **“Executive Director”** means the executive director of Aidsfonds;
- (d) **“Final Financial Report”** means the final report the Partner must submit after completion of the Project providing an overview of the spending of the Grant in relation to the budget of the Project for the full duration of the Project and Grant;
- (e) **“Final Narrative Report”** means the final report the Partner must submit after completion of the Project providing an overview of the achievements of the objectives of the Project for the full duration of the Project and Grant;
- (f) **“Final Report”** means the final report that consists of the Final Financial Report and the Final Narrative Report;
- (g) **“Final Payment”** means the last payment by Aidsfonds after the Final Report is received and approved;

- (h) **“Fraud”** means the acquisition and/or misuse of funds or property by deception, which consists of but is not limited to any intentional act or omission relating to: (i) failure to disclose an interest in order to enjoy financial or other benefits or gains, or to cause a loss to a person, program or organisation in the process of distribution of funds, (ii) misapplication of funds for purposes other than those agreed between Aidsfonds and the Partner, (iii) use or presentation of false, incorrect or incomplete statements or documents, which has the effect of misapplying, misappropriating and/or wrongfully retaining funds and (iv) non-disclosure of information in violation of a specific obligation with the aforementioned effect;
- (i) **“Funds” or “Funding”** means the funding Aidsfonds receives from its back donors or other benefactors that form the basis for the Grant;
- (j) **“Grant”** means the total amount of funding Aidsfonds wishes to allocate to the Partner for its Project;
- (k) **“Intellectual Property Rights”** means all rights of intellectual property (including applications for any such rights), including but not limited to copyrights, patents, trade names, trademarks, designs, databases and trade secrets, whether or not registered and all rights or forms of protection of a similar nature or having an equivalent or similar effect to any of them, which may subsists anywhere in the world;
- (l) **“Interim Financial Report”** means an interim report providing an overview of the spending of the Grant in relation to the budget of the Project;
- (m) **“Interim Narrative Report”** means an interim report providing an overview of the achievements of the objectives of the Project;
- (n) **“Interim Progress Report”** means the interim progress report that consists of an Interim Financial Report and an Interim Narrative Report;
- (o) **“Liquidity Forecast”** means the periodic report to be provided by the Partner to Aidsfonds on the Partner’s liquidity position and cash flow forecast;
- (p) **“Mismanagement”** means the failure to manage or control a Project, in accordance with these Terms and Conditions. Mismanagement exists when a Partner cannot account for received funds;
- (q) **“Partner”** means a legal entity under private law with full legal capacity, or a legal entity established according to public law, working in the field of HIV and AIDS, that has applied for or receives a Grant from Aidsfonds;
- (r) **“Project”** means the project of the Partner for which a Grant is awarded;

- (s) **“Project Agreement”** means the project agreement between Aidsfonds and the Partner to which these Terms and Conditions apply;
- (t) **“Project Plan”** means the description of the Partner’s Project, including the budget for the Project and including the commitments of the Partner for the full duration of the Project;
- (u) **“Publication”** means any document/publication/website or other communication relating or referring to the Project;
- (v) **“Report”** means a report the Partner is obliged to provide to Aidsfonds as defined in these Terms and Conditions Grants;
- (w) **“Results”** mean the results of the activities performed by the Partner with and in relation to the Grant that directly or indirectly results in Intellectual Property Rights, know how (including information, data and knowledge) and materials (including designs, plans, and texts);
- (x) **“Subrecipient”** means the legal entity or, if the entity is not a legal entity, the operating entity, to which a Subgrant is made available;
- (y) **“Subgrant”** means a grant of financial assistance in the form of money, made available by the Partner to an eligible Subrecipient, or by such Subrecipient to a lower tier eligible Subrecipient;
- (a) **“Terms and Conditions”** mean these “Terms and Conditions Grants”;
- (b) **“Work Plan”** means an annual plan describing the commitments of the Partner to meet the objectives of the Project during the particular year to which the plan applies, including an annual budget for the Project.

## 2. **General Conditions awarding Grants**

- 2.1. The awarding of the Grant to the Partner and any (advance) payments under the Grant, are at all times subject to Aidsfonds actually receiving the corresponding Funds.
- 2.2. In the event the back donor(s) or other benefactors of Aidsfonds amend the terms attached to the Funds, or in the event of changes to the laws and regulations applicable to Aidsfonds, or in other exceptional circumstances that are not in Aidsfonds’ control, Aidsfonds shall have the right to attach additional conditions to the awarding of the Grant or the Grant itself, or change the scope or amount of the Grant.

### **3. Obligations Aidsfonds**

- 3.1. Aidsfonds shall timely inform the Partner of any amendments it will make to the Grant or these Terms and Conditions. The amended Terms and Conditions shall apply to the Project Agreement 30 days after they are sent to the Partner.
- 3.2. Aidsfonds shall timely inform the Partner in the event it receives early warning signals that there may be a case of Corruption, Fraud or Mismanagement at the Partner.
- 3.3. Aidsfonds will pro-actively keep the Partner informed and updated as to its activities that relate to or may affect the performance of the Partner or the Project.
- 3.4. Aidsfonds aims to support the Partner through project management, organizational development and governance support.
- 3.5. The Partner is encouraged to make comments and provide feedback to Aidsfonds on all matters arising under the Project Agreement and Terms and Conditions in general. Acting in good faith at all times, Aidsfonds shall take this feedback from the Partner seriously and shall inform the Partner to what extent and how this feedback has been dealt with.

### **4. Obligations Partner**

#### Compliance

- 4.1. The Partner warrants and undertakes that it possesses all permits and permissions required to execute the Project, and shall when requested, provide Aidsfonds with official signed copies of the permit(s) and/or other permission(s) required for the Project.
- 4.2. The Partner shall ensure that all of its employees that bear any responsibility for meeting the obligations as set out in these Terms and Conditions are familiar with these Terms and Conditions.
- 4.3. The Partner shall ensure it has a policy similar to, and having the same effect as, the Anti Fraud/Corruption/ Mismanagement Policy of Aidsfonds to be found at Aidsfonds' website and the Partner shall comply with its policy for the duration of the Project.
- 4.4. The Partner shall ensure it has a policy aimed at combating discrimination against any person or group on the basis of age, political affiliation, race, national origin, ethnicity, gender, disability, sexual orientation or religious belief or for whatever reason and shall make a reasonable effort to meaningfully involve people from marginalised groups in the Project, and the Partner shall comply with this policy for the duration of the Project.
- 4.5. The Partner shall ensure it has a policy aimed at safeguarding physical and mental integrity of its directors, officers, employees or third parties it involves and the Partner shall comply with this policy for the duration of the Project.

- 4.6. The Partner shall ensure it has procedures to safeguard sound corporate governance and the Partner shall comply with this policy for the duration of the Project.
- 4.7. The Partner shall guarantee full compliance with the policies referred to in this Article by itself, its directors, officers, employees and third parties engaged by it, for at least the duration of the Project.
- 4.8. The Partner shall at all times remain fully responsible and liable for the conduct of its directors, officers, employees or third parties it involves during the Project.
- 4.9. The Partner undertakes to pay its employees reasonable, market conformable salaries.
- 4.10. The Partner is responsible for the social insurance schemes and other insurances, benefits and taxes relating to the personnel employed by the Partner and relating to the capital goods procured by the organisation, in accordance with national law and practices.

#### Subcontracting

- 4.11. The Partner may contract with Subrecipients for the implementation of the Project. The Partner shall remain responsible for the Project and shall procure that such Subrecipient is engaged on the basis of a written contract to which these Terms and Conditions shall apply. The Partner shall ensure that the Subrecipient shall comply with these Terms and Conditions.

#### Information about Projects

- 4.12. Immediately upon Aidsfonds' request, the Partner will provide the requested information about its Project(s) to the Aidsfonds.

#### Use of the Grant

- 4.13. The Partner warrants and undertakes to use the Grant solely in accordance with the purpose of the Project and for meeting the objectives of the Project as set out in the Project Plan.
- 4.14. The Partner shall only use the Grant to acquire fixed assets if that is in accordance with the purpose of the Project and necessary for meeting the objectives of the Project as set out in the Project Plan.
- 4.15. Fixed assets that are procured by the Partner pursuant to the above Article shall be the property of the Partner. If such fixed assets are procured for management and support, these shall be property of the Partner provided that they were included in the approved budget and used for the implementation of the Project, unless otherwise agreed in writing with Aidsfonds.

## **5. Financial conditions**

### General financial conditions

- 5.1. The amount of the Grant that has not yet been used for the purpose of the Project as set out in the Project Plan can only be saved on a savings or current account.
- 5.2. Interest gains arising from the Grant shall solely be used for the achievement of the objectives of the Project and shall be subject to the provisions of these Terms and Conditions. These gains must be visible in the audited statement of income and expenditure of the Partner.
- 5.3. At Aidsfonds' discretion the awarding, payment and reporting of Grants and disbursements shall be done in EUR or USD.
- 5.4. The Partner is responsible for its own currency management. Gains or losses resulting from currency variations must be visible in the audited statement of income and expenditure of the Partner. Deviations of more than 10% of the budget as a result of currency fluctuations need to be reported by the Partner to Aidsfonds.
- 5.5. Aidsfonds shall not compensate the Partner for currency losses.
- 5.6. Currency gains may only be used by the Partner for meeting the objectives of the Project.
- 5.7. Reserves and provisions may only be included in the operational budget of the Partner after approval of Aidsfonds and provided they are based on a balanced policy and the reserves and provisions are restricted.
- 5.8. In the event of a change in the bank account details of the Partner, the Partner shall inform Aidsfonds in writing signed by two authorised representatives of the Partner. The bank account has to be in the Partner's name. The Partner is at all times responsible for the correctness of the bank account details that are provided to Aidsfonds.

### Administration

- 5.9. The Partner shall ensure that its accounts are kept transparent and properly, and that the accounts clearly specify all items of income and expenditure relating to the Project.
- 5.10. The accounts must also specify how the Grant and the activities relate to the rest of the Partner's budget and activities.
- 5.11. Proper documentary evidence must be provided at all items of income and expenditure, clearly showing the nature and value of the goods or services supplied.
- 5.12. The accounts must in any case show: income (with sources), expenditures, assets and liabilities, payments received and payments made.
- 5.13. Aidsfonds may always request the Partner to provide its annual accounts to Aidsfonds.

- 5.14. The accounts and the underlying documentary evidence must be kept for a period of at least seven years.

Liquidity Forecasts and advance payments

- 5.15. As of the effective date of the Project Agreement, Aidsfonds can provide the Partner with advance payments of up to 90% of the maximum amount of the Grant.
- 5.16. The determination of any advance payment by Aidsfonds to the Partner shall be based on approval by Aidsfonds of the Work Plan and budget and the Liquidity Forecasts of the Partner.
- 5.17. The Partner shall acknowledge receipt of each advance payment from Aidsfonds as soon as possible, but no later than 30 days after receipt of the payment. Receipt must be acknowledged by sending a (digital) copy of the relevant original bank statement issued by the Partner's bank to Aidsfonds, complemented with a reference to the project number.

**6. Reporting conditions**

Work Plan

- 6.1. The Partner warrants and undertakes to submit annually a Work Plan with notes to Aidsfonds according to the dates as set out in the reporting schedule included in the Project Agreement, which Work Plan needs to be approved by Aidsfonds.

Interim Progress Reports

- 6.2. The Partner is obliged to file Interim Progress Reports on all Projects. Interim Progress Reports must be produced on the dates as set out in the reporting schedule in the Project Agreement.
- 6.3. Interim Progress Reports must be consistent with the approved Work Plan. The Partner must explain in writing any significant discrepancy between the Interim Progress Reports and the approved Work Plan, immediately upon discovery. Deviations in the Interim Progress Reports of 10% or more in output, activities and/or budget of the Project in comparison to the Work Plan shall in any event be deemed significant discrepancies.
- 6.4. Interim Progress Reports must reconcile with the approved budget contained in the Work Plan and the approved Liquidity Forecasts. The Partner must explain in writing significant discrepancies between the budget as set out in the Work Plan and the Liquidity Forecast, immediately upon discovery.

Final Report

- 6.5. The Partner must submit a Final Report to Aidsfonds within four months of completing a Project.



- 6.6. The Final Report must state that the Project has been carried out with the aid of a Grant from Aidsfonds.

#### Final Narrative Report

- 6.7. The Final Narrative Report must provide clear information on the nature, duration and scope of the Project. The Final Narrative Report must:
- (a) compare the activities actually performed with the activities envisaged in the Project Plan and Work Plan(s);
  - (b) indicate how the achievement of the Project's objectives were evaluated, including the result of this evaluation;
  - (c) if applicable, demonstrate that additional conditions have been fulfilled.

#### Final Financial Report

- 6.8. The Final Financial Report on how the Grant has been spent must clearly state the items of income and expenditure pertaining to the Project.
- 6.9. The Final Financial Report must be consistent with the approved budgets in the Project Plan and Work Plan(s). Significant discrepancies between the approved budget and the actual expenditures must be explained. Such a significant discrepancy, for example, would be a deviation of more than 10% from the budget.
- 6.10. Any items of income and expenditure that have been allocated under a system of internal charges must be based on generally accepted business principles. If such items of expenditure include tangible fixed assets, the value of the items in question must be based on their purchase price.

#### IATI

- 6.11. Aidsfonds uses the IATI standards for its Publications. The most recent version of the IATI standards can be found at the following website: <http://iatistandard.org>.
- 6.12. Due to the IATI standards the reporting conditions may be adjusted by Aidsfonds during the Project in order to comply with these.

#### Audit

- 6.13. With the Final Financial Report the following audit opinion is required: If the amount of the Grant is less than EUR/USD 50,000 an audited annual account of the organisation will be required. When the amount of the Grant is equal to or exceeds EUR/USD 50,000 a project audit will be required. Amounts are to be read in the currency of the grant (EUR/USD).
- 6.14. With the annual Interim Financial Reports the following audit opinions are required: if the average Annual Budget for the Project is less than EUR/USD 50,000 an audited annual

account of the organisation will be required. When the amount of the average Annual Budget is equal to or exceeds EUR/USD 50,000 a project audit will be required. Amounts are to be read in the currency of the grant (EUR/USD).

- 6.15. The consolidated financial statements have to be drawn up in accordance with the International Financial Reporting Standards (IFRS). If required by law, the Partner may use the national accounting standards or the Generally Accepted Accounting Principles (GAAP) of the country. The consolidated financial statements have to be based on the following accounting principles: the matching, prudence, simplicity and continuity principles.
- 6.16. The financial statements shall be audited by a certified auditor and such auditor shall provide a statement with respect to the financial statements that complies with the International Standard of Auditing (ISA) 700. The certified auditor has to be registered with a recognised institute of registered public auditors.
- 6.17. The Partner shall ensure that the auditor cooperates with any reviews – instigated by or on behalf of Aidsfonds – of the auditor’s activities.
- 6.18. The costs relating to the audit shall be considered as included in the Grant.
- 6.19. Aidsfonds is entitled to ask the Partner to submit the management letter issued by the auditor.
- 6.20. If and to the extent the Partner uses one or more Subrecipients for the implementation of (part of) the Project:
  - (a) the Subgrant needs to be part of the financial statements and audit opinion as referred to in this Article 6; and
  - (b) the Partner is and shall remain responsible and accountable for all Subrecipients, Subgrants and the use thereof for the implementation of (part of) the Project.

## **7. Procedure for awarding the Final Payment of the Grant**

- 7.1. After receiving the Final Report, including the audit opinion as stated in Article 6.13-6.20, Aidsfonds shall assess this Final Report within eight weeks. Aidsfonds will render a decision on the total amount of the Grant as soon as possible after completing this assessment.
- 7.2. After the Final Report is approved, the Final Payment up to a maximum of the difference between the total advances and the total amount of the Grant, will be paid by Aidsfonds to the Partner.
- 7.3. The Grant will only become payable after Aidsfonds has approved the Final Report.

7.4. The Partner will immediately refund any advances that have been paid surplus to the total amount of the Grant unless Aidsfonds decides that these payments must be set off against other payments.

## **8. Monitoring**

8.1. At Aidsfonds' request, the Partner will provide the duly accredited Aidsfonds' representative with all of the documentation and other written information necessary for the proper fulfilment of its duties (such as monitoring progress, investigating Fraud and collecting data for communication).

8.2. The Partner will provide the duly accredited Aidsfonds' representative with access to the offices and other location(s) where the activities are being performed and shall ensure that the duly accredited Aidsfonds' representative can fulfil their duties.

8.3. An investigation or audit can be conducted by a third party or by Aidsfonds' staff.

8.4. In case the implementation of (part of) the Project is not done by the Partner but by a Subrecipient, the Partner ensures that Aidsfonds gets full access to Subrecipient's information, documentation and systems related to the implementation of the Project.

## **9. Duty to notify**

9.1. The Partner will immediately notify Aidsfonds, in writing, as soon as it has a reasonable suspicion that the Partner, its directors, officers, employees or any third parties engaged by it in relation to the Project, have not, will not, not timely or not properly fulfil its obligations under the Project Agreement and/or these Terms and Conditions. The Partner's notification must include a high-level summary of the facts and circumstances leading to such suspicion.

9.2. The Partner will provide immediate notification of any circumstances necessitating changes to the Project Plan, scheduling and/or budget. If the Partner wishes to make changes to the Project Plan, scheduling and/or budget, the Partner's proposal in this respect must be submitted in writing and provide sufficient reasons for the proposed changes. Only after the Partner receives written consent from Aidsfonds, the changes and related budgetary amounts are applicable.

9.3. Aidsfonds will inform the Partner within six weeks whether it approves the proposed changes.

9.4. The Parties are obliged to inform and to consult each other in the event that will seriously jeopardize or delay the implementation of the Project Agreement.

## **10. Warranties**

10.1. The Partner warrants and undertakes:

- (a) that the performance of the Project is in compliance with the applicable laws and regulations;
- (b) that the Project shall be rendered in a professional manner in accordance with such a degree of skill, diligence, prudence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced person in the same type of undertaking in the same or similar circumstances;
- (c) that the Project performed and any materials and documentation in any form whatsoever, that are part of, used or generated in connection to the Project, do not infringe any third party Intellectual Property Rights, are not subject to any dispute with respect to any third party rights in any country and the use thereof is not wrongful as to any third parties in any country. The Partner shall indemnify and hold Aidsfonds harmless against any third party claims in this respect;
- (d) that if Aidsfonds requires during the term of the Project that certain regulations are applicable (such as codes, permits, declarations of agreements, etc.), the Partner must comply with said regulations. If such regulations become applicable during the term of an agreement, Aidsfonds shall inform the Partner of that fact. Aidsfonds shall publish such regulations on its website;
- (e) where these Terms and Conditions refer to the signing of documents, such documents will only be signed by one or more duly authorised representatives of the Partner.

## **11. Liability and Insurance**

- 11.1. The Partner shall indemnify Aidsfonds against any third party claims resulting from loss or harm sustained by any third parties.
- 11.2. Aidsfonds shall in no way be liable to the Partner for any harm or loss the Partner incurs in connection with or as a result of the Grant, the full or partial withdrawal of the Grant, the Grant having been set at a lower amount or any suspension of payments.
- 11.3. The Partner is responsible for the well-being of its employees during all Projects. The Partner shall indemnify Aidsfonds and hold harmless against any third party claims in this respect, including claims from the Partner's employees.
- 11.4. Aidsfonds will not be liable for any loss or damages, or loss of profits, whether direct, indirect, consequential or incidental.
- 11.5. During the term of the Project and/or Grant, the Partner shall strive to obtain and maintain an adequate liability insurance to cover its liabilities under these Terms and

Conditions and the Partner shall upon reasonable request of Aidsfonds provide Aidsfonds with the evidence of the insurances maintained by it.

## **12. Termination, suspension and revocation**

### Right of termination Aidsfonds

- 12.1. Aidsfonds shall be entitled to suspend, fully or partially revoke or lower the amount of the Grant and/or terminate the Project Agreement in the event the Partner fails to perform timely or properly any obligation under the Project Agreement and/or these Terms and Conditions, provided that if such breach is capable of remedy, the Partner has not cured such breach within a period of thirty (30) days after it has been notified.
- 12.2. Termination or expiry of the Grant for any reason whatsoever does not release the Parties from the obligations as set forth in the Project Agreement and/or these Terms and Conditions which, by their nature, are intended to remain in effect, including but not limited to the provisions with respect to confidentiality, intellectual property, liability and applicable law and dispute resolution.
- 12.3. Aidsfonds may immediately terminate the Grant and the Project Agreement, without further notice being required if the Partner:
  - (a) ceases to conduct its business;
  - (b) makes any assignment for the benefit of creditors or otherwise enters into arrangements with its creditors;
  - (c) becomes insolvent or any insolvency proceedings are commenced against it;
  - (d) files a voluntary bankruptcy proceedings or is adjudicated bankrupt;
  - (e) disposes of all, or substantially all, of its assets;
  - (f) is dissolved;
  - (g) its directors, officers or employees having been involved in acts or practices that constitute or can reasonably be interpreted as an act or practice of Corruption or Fraud, or any association, or any legal and/or natural person closely associated with the Partner having been involved in acts or practices that constitute or can reasonably be interpreted as an act or practice of Corruption or Fraud, of which the Partner had or could have or should have had knowledge.

### Suspension of an advance payment

- 12.4. Aidsfonds may fully or partially suspend advance payments if, to be reasonably determined at Aidsfonds' discretion, – and as long as;
  - (a) the information that Aidsfonds has requested pursuant to these Terms and Conditions has not been provided or has not been provided timely by the Partner;

- (b) there are circumstances entailing that the planned advances will not be needed in full or until a later date;
- (c) there is a reasonable suspicion that there is Corruption, Fraud or Mismanagement occurring within the Partner;
- (d) the Partner has requested a suspension of payments or filed for bankruptcy or the Partner loses control over all or a substantial part of its assets;
- (e) Aidsfonds has reasonably established that the Partner has, at some point, failed – or will likely fail – to fulfil one or more of its obligations to Aidsfonds or has otherwise acted in breach of the Project Agreement and/or these Terms and Conditions.

12.5. Should any of the above events occur, the Partner shall immediately be considered to be in breach, without any further notice of default being required.

#### Revocation of a Grant

12.6. Aidsfonds may change, fully or partially revoke a Grant or lower the amount of the Grant, if, to be reasonably determined at Aidsfonds' discretion:

- (a) the Funds are lowered or revoked;
- (b) incorrect or incomplete information has been provided by or on behalf of the Partner;
- (c) if the Partner's Liquidity Forecasts are not approved by Aidsfonds and/or these do not match the Work Plan and budget for one or more consecutive periods;
- (d) the Partner is found guilty of Corruption or Fraud;
- (e) Aidsfonds has reasonably established that the Partner has, at some point, failed – or will likely fail – to fulfil one or more of its obligations to Aidsfonds or has otherwise acted in breach of the Project Agreement and/or these Terms and Conditions.
- (f) Aidsfonds has established that, despite its warning to the Partner in this regard, Mismanagement continues to occur within the Partner.

12.7. Should any of the above events occur, the Partner shall immediately be considered to be in breach, without any further notice of default being required.

### **13. Complaints procedure**

13.1. Aidsfonds has a complaints procedure relating to any conduct that Aidsfonds and/or its individual employees engage in that is the responsibility of the Executive Director, which can be found on the website of Aidsfonds.

#### **14. External communications**

- 14.1. Both Parties acknowledge the importance of communications in creating awareness, soliciting support and strengthening stakeholder relations. This Article is intended to establish common expectations and provide a clear understanding of a working relationship for external communications: public, media, politicians, etcetera.
- 14.2. The Partner will identify the Aidsfonds as one of its funders and will acknowledge the Aidsfonds in its public communications material including: website, annual corporate report, press releases, articles, videos and public presentations.
- 14.3. Aidsfonds and the Partner agree that each Party is authorized to use the name and logo of the other Party in public communications material in as far as relevant and proportionate.
- 14.4. Aidsfonds and the Partner agree that each Party will refer relevant media enquiries to the other Party and will refrain from making statements or representations on behalf of the other Party.
- 14.5. Any press release regarding Aidsfonds, the Grant or a Project which is distributed to the public by the Partner, shall be sent to Aidsfonds simultaneously.
- 14.6. The applicable codes of conduct regarding privacy and dealing with the media must be complied with. The relevant codes of conduct can be viewed on the website of Aidsfonds.

#### **15. Confidentiality**

- 15.1. Each Party shall keep as confidential and not disclose to any person, other than Related Persons as defined below, any information of which the Parties have jointly decided that it is considered confidential.
- 15.2. The provisions of Article 15.1 shall not prohibit disclosure or use of any information if and to the extent that disclosure is:
  - (a) required by law,
  - (b) required by the Project Agreement and/or these Terms and Conditions;
  - (c) required by a governmental authority;
  - (d) required for purposes of asserting, defending or adjudicating any claim arising from the Project Agreement and/or these Terms and Conditions;
  - (e) publicly available on the date hereof or thereafter becomes publicly available (other than by breach of the Project Agreement and/or these Terms and Conditions); or
  - (f) permitted by the other Party as evidenced by prior written consent.
- 15.3. Aidsfonds and the Partner agree that, prior to disclosure or use of any information pursuant to Article 15.2, the Party wishing to make such disclosure shall promptly notify

the other Party thereof with a view toward allowing the latter Party to contest such disclosure and/or take measures to limit the scope thereof.

15.4. “Related Persons” in relation to any Party means such Party’s affiliates and the personnel, contractors, advisors and sub-contractors of such Party and such Party’s affiliates.

## **16. Publications, “open access” and “open source”**

16.1. Aidsfonds endeavors to ensure that Publications are freely accessible. Therefore, those Publications must be made accessible to the public through an “open access” as quickly as possible, apart from other methods of publication. Copyrights may not impede the possibility to publish by means of “open access”.

16.2. Aidsfonds endeavors to ensure that the Results are made available through “open source” as quickly as possible. The Partner shall comply with any reasonable request thereto.

16.3. At Aidsfonds’ reasonable request, the Partner shall:

- (a) make available the (intermediary) and non-confidential Results of the Project to the society at large or to other projects in the same field;
- (b) use reasonable and diligent efforts to get published relevant Results of the Project and projects that are terminated prematurely or that do not lead to the desired result; and,
- (c) make accessible all the Results for further research and/or exploitation as quickly as possible, unless there are weighty interests (such as privacy or an application for a patent) that make it necessary to (temporarily) keep the Results confidential.

## **17. Intellectual property**

17.1. Partner may perform activities with and in relation to the Grant that directly or indirectly result in Intellectual Property Rights, know how (including information, data and knowledge) and materials (including designs, plans, and texts), together in the context of this article referred to as the ‘Results’.

17.2. Aidsfonds must be notified as soon as possible if the Grant has helped produce findings that could lead to an application for or the granting of a patent to and/or to the generation of income by the Partner.

17.3. The Partner undertakes that the generation of income and/or the exploitation of a right for which a patent has been obtained or applied for, will be consistent with the goals of Aidsfonds.

17.4. The Partner agrees to undertake any activities related to or beneficial to the Project, including the application of a patent or the use of an awarded patent in a manner which serves the general welfare, which includes timely access to affordable medicines. The



Partner agrees to include this obligation in any agreements it enters into with third parties related to the Results of the Project in the form of a perpetual clause (*kettingbeding*).

- 17.5. In all of its communications with third parties regarding the results and/or the right for which a patent has been obtained or applied for, the Partner will include a statement that they were made possible thanks to funding from Aidsfonds.

## **18. Governing Law and competent court**

- 18.1. These Terms and Conditions are construed in accordance with and shall be subject to the laws of The Netherlands.
- 18.2. In case of a dispute between Aidsfonds and the Partner in connection to the Project Agreement, these Terms and Conditions or the Grant, the Parties shall first use all reasonable endeavours to amicably solve the matter. Any dispute shall be exclusively submitted to the competent court in Amsterdam.

## **19. Miscellaneous**

- 19.1. If any provisions of these Terms and Conditions should prove to be void or unenforceable, the other provisions of these Terms and Conditions shall not be affected and shall continue in full force and effect. The Parties shall replace such void and unenforceable provision with a valid and enforceable provision, and such provision shall be as consistent as possible with the intent of the Parties as initially expressed.
- 19.2. In these Terms and Conditions, “in writing” or “written” shall mean any message transferred by a common form of communication, including a message which is transferred electronically and can be read and reproduced, from or directed to such address which has been included in the Project Agreement.
- 19.3. Any delay or failure on the part of Aidsfonds to require performance of any obligation under or in connection to these Terms and Conditions, shall not constitute a waiver or forfeiture by Aidsfonds of its rights in that respect.
- 19.4. Aidsfonds has the right to change the content of these Terms and Conditions and Aidsfonds shall not unreasonably make use of this right.