

Netherlands.2020.TransparenciaBrasil.01



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SUBGRANT AGREEMENT – FIXED AMOUNT AWARD

Agreement #	Netherlands.2020.TransparenciaBrasil.01
Amendment #	N/A
Agreement Type	Fixed Amount Award
Name of Subrecipient	Transparência Brasil
Contact Information	Juliana Sakai
Country of Performance	Brazil
Total Price / Grant Ceiling	20000
Currency.	USD
ICNL Project Code	17000-0000.703
Effective Date	15 July 2020
Completion Date	15 January 2021

This Agreement is entered into between the International Center for Not-for-Profit Law, Inc. (ICNL) and Transparência Brasil (hereinafter the “Subrecipient”). This Agreement is made by ICNL with authority under the Social Development Department of the Dutch Ministry of Foreign Affairs (hereinafter referred to as the “MFA”). The subrecipient has no relationship with the MFA under the terms of this Agreement. ICNL will provide subrecipient with a subgrant on the following terms.

Subrecipient agrees to implement the Approved Deliverables in compliance with the following, each of which, together with all referenced matter and all Amendments, is incorporated in and forms an integral part of the Subagreement:

- Annex A1-3 (Subrecipient Work Plan i.e. Project proposal and COVID-19 related changes)
- Annex B (ICNL Procurement Policy)
- Annex C (Wire Transfer Form)



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- Annex D (Narrative Reporting Template)

SERVICES

1. Approved Deliverables. The purpose of this Subgrant Agreement (hereinafter "Grant") is to support the implementation of the activities and related deliverables included in the Subrecipient Work Plan (Annex A). The Grant Funds shall only be used for the activities and related deliverables in Annex A and subsequent work plans approved by ICNL (hereinafter referred to as "Approved Deliverables").
2. Subrecipient's Capabilities. Subrecipient represents and warrants that it has the capabilities to implement the Subrecipient Work Plan (Annex A). Subrecipient agrees to implement the Approved Deliverables on the terms and conditions set out in this agreement.
3. Program Responsibilities. Subrecipient is responsible for implementation of deliverables as set out in the Work Plan (Annex A). Subrecipient shall provide the necessary professional and administrative support, personnel services, and other resources required for the successful implementation of the Work Plan. Subrecipient shall immediately inform ICNL if there is a risk that Approved Deliverables will not be successfully completed, or if other circumstances arise that might obstruct the completion of the Approved Deliverables in any other respect. Subrecipient shall present a proposal to resolve the matter. Subrecipient shall inform ICNL about changes, deviations and incidents that may be relevant to ICNL's relation to Subrecipient.
4. Monitoring and Evaluation. ICNL must monitor and evaluate implementation of the Approved Deliverables. Subrecipient agrees to cooperate fully with all reasonable requests for assistance in this effort including facilitating site visits, attending meetings, aiding evaluators, closely tracking performance and impact, and maintaining and providing records or other information.
5. Schedule. Timing of completion of the Approved Deliverables will be specified in the Work Plan (Annex A) or subsequently determined by ICNL in consultation with Subrecipient. Time is of the essence. Any of the following may be deemed, if not corrected within a reasonable time (after written notice by ICNL), a material breach or repudiation: (1) failure to propose or comply with an acceptable detailed schedule or suggest reasonable amendment; (2) failure to conscientiously begin, continue or complete Approved Deliverables pursuant to such a schedule; (3) substantial or repeated delays in completing Approved Deliverables; or (4) failure to provide upon request reasonable assurance of intent and ability to perform in compliance with Grant requirements.
6. Conditions. Subrecipient shall notify ICNL in writing within 10 days of the date it learns or reasonably should have learned of conditions interfering with successful and timely implementation, including problems not previously foreseen, actual or threatened insolvency or bankruptcy, or other default or problem.

FINANCIAL PROVISIONS

7. Eligible Costs. The Grant Funds may only be used (subject to the Grant Ceiling) for Subrecipient's eligible costs necessary for the implementation of Approved Deliverables. Other costs are ineligible.

Eligible costs are costs actually incurred by Subrecipient which meet all the following criteria:

- a) they are incurred during the implementation period, whatever the time of actual disbursement by ICNL, Subrecipient and/or its partners;
- b) they must be necessary for the implementation of the Approved Deliverables;

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- c) they are identifiable and verifiable, in particular being recorded in the accounting records of Subrecipient and determined according to the applicable accounting standards of the country where the Subrecipient is established or according to International Financial Reporting Standards (IFRS) and according to the usual cost accounting practices of Subrecipient;
- d) salary costs and other personnel costs debited to the grant must be recorded by the Subrecipient throughout the duration of the implementation of Approved Deliverables in a systemized way and verified by supporting documentation; and
- e) all costs must be reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The following costs shall not be considered eligible for financing from this Agreement:

- a) debts and debt service charges (interest);
- b) provisions for losses or potential future liabilities;
- c) items already financed from another agreement with any funder;
- d) purchases of land or buildings;
- e) credits to third parties;
- f) travel costs for business or first class;
- g) extra allowances, such as sitting allowances, or equivalent in order to finance allowances for participating staff/invited speakers/participants of workshops;
- h) luxury hotel accommodations, without prior approval of ICNL. Luxury accommodations will be determined by using Expedia.com's Hotel Class rating system. Hotels rated 4.5 or 5 stars will be considered luxury;
- i) funds in support of projects/ programs that are not listed on the OEDC/DAC list of ODA recipient countries.

8. **Payment.** Subject to the requirements in this Article, the Subrecipient will receive a fixed amount to cover eligible costs that comply with the Grant and applicable cost principles.

- A. Payments will be in the currency specified on the Cover Sheet, unless otherwise approved, without risk or liability of ICNL due to fluctuations in value relative to any other currency.
- B. Payment will be to the bank account listed in Annex C. ICNL must rely on the information provided, and cannot accept risks or costs of receipt, non-receipt, loss, misuse or diversion of funds in or from such account by any person(s).
- C. Deliverables and Payment Schedule



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Deliverable Number	Deliverable	Completion Due Date	Payment Amount
1	Filing of two (2) Freedom of Information Law requests to federal bodies.	1 August 2020	\$ 5000
2	Risk Assessment Framework for analysis of the data about governments' use of AI that was collected from government websites and sorted by an algorithm based on tested methodology.	15 October 2020	\$ 5000
3	Civil society policy paper for government use of AI with policy recommendations and the civil society advocacy plan as developed through a series of virtual meetings with ngo's about the results of the risk assessment framework.	15 December 2020	\$ 4500
4	Evaluation report about the impact of the virtual campaign on awareness about transparency and accountability in government use of AI, including the results of the open webinar, support for the recommendations, press coverage, reports of meetings with policymakers and other activities.	15 January 2021	\$ 3500
5	Final report to ICNL on the work conducted under the subgrant, to include impact of the research based on the agreed indicators, according to the template provided in Annex D.	15 February 2021	\$ 2000

Subrecipient must request payment by submitting a properly prepared voucher, with a certification that the Approved Deliverable being billed has been completed and providing any other documentation required by ICNL specific to the completed Deliverable. Each voucher must identify:

- Subrecipient's name and address
- Voucher Number
- Subgrant Agreement Number
- Deliverable Number, Name and short description
- Amount associated with the Deliverable (as listed in the subgrant agreement)
- Documentation that the Deliverable being billed has been completed and certification of this documentation
- ICNL Project Code
- Signature of the authorized official and date

Payment will be made within 30 days after receipt of proper voucher or the verification by ICNL of Deliverable completion for which payment is requested, whichever is later. ICNL reserves the right to withhold payment subject to Deliverable completion verification.

REPORTING

9. Program Reporting. A final narrative report shall be completed according to the template provided in Annex D. The final narrative report shall describe achieved deliverables compared to planned deliverables and an analysis of the extent to which objectives have been achieved for the entire program. The report shall analyze any



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deviations and provide an explanation for those deviations. The final narrative report is due no later than 30 days after verification by ICNL of Grant Completion. ICNL may decide that the final narrative report shall be revised, in which case a date for the provision of the revised report shall be agreed. In some cases, no narrative report may be needed, such as when the result of the project itself serves as a report, e.g. a research product. This shall be determined by ICNL and communicated to the subrecipient at the time of funding approval.

10. **Ongoing Reporting.** The Parties shall cooperate and regularly communicate with each other on all matters relevant to the implementation of the Project and this Subagreement. Subrecipient shall promptly inform ICNL if the Approved Deliverables cannot be submitted as agreed. Subrecipient shall present a proposal to resolve the matter. The parties recognize that events may have significant impact upon implementation of the work to be performed by Subrecipient hereunder. The parties shall promptly inform each other if a situation arises that makes it likely that the program will not be carried out as previously agreed.
11. **Request for Information.** The MFA/ICNL may request additional information at any time and that information must be supplied within 10 days of the request. Subrecipient shall provide ICNL with documents, records, and any other information regarding the Subagreement that ICNL may reasonably request and shall enable ICNL or MFA representatives to visit program locations and inspect property, goods, records and documents. Subrecipient shall cooperate with and assist ICNL in the performance of audits and/or evaluations of the program.
12. **Independent Evaluation.** If ICNL or the MFA carries out or commissions an evaluation of the activities and related deliverables under this Subagreement, Subrecipient agrees to cooperate fully with all requests for assistance in this effort, including facilitating site visits, attending meetings, aiding evaluators, closely tracking performance and impact, and maintaining and providing records or other information.

PROCUREMENT POLICY

13. **Procurement of Goods and Services.** Procurement of goods, works and services by Subrecipient and any Third Parties shall be carried out in accordance with *ICNL Policies and Procedures, Procurement of Goods and Services, as amended* (Annex B). Procurement shall also be in accordance with the procurement principles on non-discrimination, equal treatment, transparency (openness and predictability), proportionality and mutual recognition. The MFA and ICNL may carry out checks on procurements. The check may take the form of a procurement audit. Subrecipient shall provide ICNL/the MFA with all the necessary documentation to comply with ICNL/MFA's checks or audit on procurement.
14. **Documentation.** Tender documentation, including all published procurement notices, shall, where possible, be prepared in English. An appropriate level of competition must be obtained and documented in all cases. Subrecipient shall be alert to conflicts of interest and noncompetitive practices. All purchase contracts shall contain appropriate provisions for termination and remedies for breach.

AUDIT PROVISIONS

15. **Inspection by the MFA.** The MFA shall be given the opportunity to visit Subrecipient and to inspect property, goods, accounts, other documents etc. Recipient shall cooperate with and assist the MFA in the process of monitoring, evaluation, review, audit or similar. The costs of inspection shall be borne by the MFA.

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- 16. Audits by ICNL and MFA. Recipient shall, on request, give ICNL and the officials appointed by the MFA, the opportunity to audit how the Grant Funds have been used by the recipient and thereby supply information necessary for such audit.
- 17. Ineligible Costs. Costs determined to be ineligible according to the annual audit shall be refunded to ICNL within 30 days of the date at which the Subrecipient presents the audit report to ICNL.

BRANDING AND MARKING

- 18. Published Works. Unless (and only to the extent) otherwise authorized by ICNL, publications or other information/media products (including any book, article, report, media interview, press release, public notice, lecture, or public appearance) pursuant to the Grant must be approved by ICNL.
- 19. Right to Copy and Distribute. The MFA and other departments of the Dutch administration abroad reserve the right to copy and distribute such materials if required.

ANTI-CORRUPTION

- 20. Prevention of Fraud and Corruption. ICNL and Subrecipient will cooperate to prevent fraud, a violation of contract award procedures and serious misconduct (including sexual misconduct and other serious forms of inappropriate behavior or harassment) during the implementation of the Approved Deliverables. Subrecipient shall work actively to prevent corruption, illegal or improper handling or other form of misuse of grant funds. When planning and implementing the Approved Deliverables, Subrecipient shall take the risk of corruption into account and identify key risks and risk mitigation measures. If a significant risk of corruption is identified, risk mitigating measures shall be adopted to reduce the identified risk. Subrecipient shall require its own staff, organizations to which grant funds have been forwarded and their staff, consultants, suppliers or others participating in activities funded by ICNL, to refrain from receiving, to be promised a bribe or any other improper enrichment or benefit. Subrecipient undertakes to investigate the presence of corruption, identify and take action, including legal actions, against persons who there is reason to suspect of corruption or other improper enrichment. Subrecipient shall immediately inform ICNL about suspected corrupt or fraudulent behavior or serious misconduct. Subrecipient shall continuously thereafter consult with ICNL on the further handling of the matter. Subrecipient shall immediately initiate action to stop the corrupt or fraudulent behavior or serious misconduct, investigate and if appropriate take action to prosecute and/or apply other sanctions in accordance with applicable law against any person suspected of misuse of resources, fraud or corruption or serious misconduct in connection with the Approved Deliverables. When the matter has been concluded, Subrecipient shall submit a final report regarding the suspected corruption to ICNL.

GENERAL PROVISIONS

- 21. Notices. Unless otherwise approved, all notices required or permitted by the Grant shall be in writing and made to the following persons:

<p>1. For ICNL: Lisa Vermeer Digital Policy Advisor lvermeer@icnlalliance.org</p>	<p>2. For Subrecipient: Juliana Sakai Chief Operation Officer jsakai@transparencia.org.br</p>
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22. Governing Law and Language. The Grant shall be interpreted in accordance (in order of precedence) with (1) the provisions of the Grant and (2) the laws in effect in Washington, DC, USA. Governing language of the Grant is English; Grant notices or other communications shall be in such language.
23. Compliance with Law. Subrecipient shall comply with all applicable laws including tax and employment, and is solely responsible for all costs, risks and delays resulting from doing so, or from failure to do so.
24. Child Labor Clause. Subrecipient shall abide by the local laws concerning child labor and by applicable international instruments, including the UN Convention on the Rights of the Child and International Labour Organization conventions.
25. Intellectual Property. Subrecipient shall retain the sole copyright for any material created or developed solely by the Subrecipient pursuant to or as a result of the Subagreement. Notwithstanding this, Subrecipient grants the MFA and ICNL the right to use free and at no charge and as the MFA and ICNL see fit all documents deriving from the Approved Deliverables, whatever their form, provided that the MFA or ICNL's use does not thereby breach existing industrial and intellectual property rights. For material jointly produced by Subrecipient and ICNL, all contributing partners shall hold a joint copyright to the material. Subrecipient shall promptly inform ICNL and provide a copy of any work created or developed pursuant to or as a result of the Subagreement. ICNL retains a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use such work for nonprofit purposes and to authorize others to do so.
26. Lobbying. Any costs for lobbying activities will be included in the budget as a separate line item.
27. Location of Work. Subrecipient agrees that no activities under this Agreement will take place in the United States of America.
28. Records. Subrecipient agrees to maintain all programmatic and financial records for activities and related deliverables implemented out under this grant agreement. Subrecipient will maintain records of all costs charged to the Grant in accordance with formally prescribed generally accepted accounting principles in effect in the Recipient Country to sufficiently demonstrate eligibility of all Grant costs, as well as receipt and use of goods and services and the overall progress of the Approved Deliverables. Original source documentation and other original records are required unless otherwise approved. When Subrecipient cannot provide original source documentation, Subrecipient will provide a sworn statement by a legal representative certifying that record documents are true copies of the originals and that expenses evidenced by the documents have not been and will not be billed to other funders. Records must be available for at least 7 years after the Completion Date (or, if applicable, the termination effective date) or as long as they are maintained, whichever is longer. If any litigation, claim or audit is commenced before the end of such period, Subrecipient shall continue to keep all records described in this Article until it is completed.
29. Disability Policy. Implementation of Approved Deliverables may not discriminate against men, women and children with disabilities, and shall demonstrate a comprehensive and consistent approach to including them.
30. Religion. In implementing the Approved Deliverables, Subrecipient agrees not to discriminate against current or prospective beneficiaries on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.
31. Prevention of Sexual Harassment. The Subrecipient agrees to ensure that the Approved Activities are implemented in an environment free from all forms of harassment, including sexual, of or by any of its employees. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of an improper sexual nature. By signing this Grant agreement, the Subrecipient confirms



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(1) that it has adequate policies and/or frameworks in place to prevent sexual harassment; (2) that all its employees have been informed about these policies and/or frameworks; and (3) that it has adequate reporting procedures and complaint mechanisms in place to report instances of sexual harassment and procedures in place to ensure immediate action if any instance of sexual harassment is observed, reported, or suspected. Failure to comply with this provision will be considered grounds for immediate termination of the Grant agreement.

32. Noncompliance. If Subrecipient materially fails to comply with the Grant terms and conditions, ICNL may take any one or more of the following remedial measures: (1) temporarily withhold payment(s) pending correction of the noncompliance or other appropriate remedial action(s); and/or (2) disallow all or part of the costs associated with the noncompliance. Such measure shall be in addition and without prejudice to other remedies available at law, in equity, or by contract as deemed appropriate in ICNL's discretion. Written notice and opportunity to correct will be provided before action is taken. If it disagrees with the handling of the apparent noncompliance by ICNL, Subrecipient may proceed according to Article 32.
33. Disagreements and Disputes. The Parties will consult to resolve all Grant issues amicably, equitably and in a mutually satisfactory manner. The contact persons identified in Article 21 may refer issues to each Party's senior management for review. Remaining issues may be resolved by any agreed non-judicial procedure, absent agreement on which the sole recourse of a dissatisfied Party shall be the courts in Washington, DC, USA. Subrecipient expressly relinquishes access to courts in the Recipient Country and if different its country of establishment or operation, and waives any objection to suit in Washington, DC, USA. Claims may not include losses, damages or other relief for harm that could have been avoided or mitigated by the claiming Party's reasonable actions or exemplary, consequential or punitive damages, however described.
34. Non-Waiver. Failure of either or both Parties to enforce any rights or Grant provision(s) shall not waive or amend the Grant or waive any prior or subsequent breach.
35. Third Parties Not to Benefit. The Grant is for the benefit of the Parties and does not create rights in or on behalf of, or responsibilities of the Parties to, any other person, unless otherwise expressly so stated.
36. Severability. Any Grant provision(s) determined by a court or other competent authority to contravene applicable law or mandatory public policy will be rendered invalid or unenforceable only to the extent of such contravention; remaining provisions shall continue in full force and effect and be construed to implement the Parties' intent to the maximum extent practicable.
37. Certifications. Subrecipient certifies that it [1] is not restricted by agreement or otherwise from entering into the Subagreement or implementing the Approved Deliverables; and [2] will furnish deliverables and work products that will not infringe any copyright, trade secret, contract or other intellectual property, proprietary or personal rights of any person.
38. Modification. The Grant may also be modified by a written amendment signed by both Parties.
39. Suspension; Termination. ICNL may suspend the Grant on its own direction, for up to 60 days or longer if necessary. The Grant may be terminated by mutual agreement. ICNL may also unilaterally terminate (1) for material breach, (2) where ICNL determines termination or modification is in the best interests of the award from the MFA to ICNL, (3) due to impossibility, or (4) due to Subrecipient's inability to implement Approved Deliverables. Suspension or termination may be in whole or in part. ICNL may unilaterally terminate this Grant if, after notifying the Subrecipient in a timely way in writing of any deficiencies or failures, Subrecipient fails to provide services to cure the deficiencies or perform obligations under this Subagreement. Unilateral notices of termination (except for material breach, in which case ICNL shall have no further liability) will generally request Subrecipient to submit a claim for eligible costs incurred before the termination effective date. ICNL



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will not pay termination or other costs that, added to Grant Funds already paid or would exceed the Grant Ceiling.

- 40. Non-Liability. Notwithstanding any other provision(s) of the Grant, ICNL assumes no liability for any third-party claims for damages arising out of the Grant or performance thereof.
- 41. Entire Understanding. This Subagreement contains the entire understanding between ICNL and Subrecipient, and there are no conditions or stipulations, oral or written, governing the relationship between the parties other than those contained in this Subagreement.

Signed:

INTERNATIONAL CENTER FOR
NOT-FOR-PROFIT LAW (ICNL)

Transparência Brasil

BY:

BY:

DocuSigned by:

David Moore

DD0423F92594452
David Moore

Manoel Galdino Pereira Neto

DATE: 09-Jul-2020

DATE: _____