

GRANT AGREEMENT DEED

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development
(AusAID)

ABN 62 921 558 838

and

SAVE THE CHILDREN AUSTRALIA

ABN 99 008 610 035

FOR

**Reintegration of Children/Youth formerly Associated with Armed Forces and Armed Groups
and Children Affected by Armed Conflict in Nepal – Phase IV**

AUSAID AGREEMENT 58767

DEED made 21st day of April 2011.]

BETWEEN:

COMMONWEALTH OF AUSTRALIA represented by the Australian Agency for International Development ("AusAID") ABN 62 921 558 838

AND

SAVE THE CHILDREN AUSTRALIA, Level 6, 250 Victoria Parade, East Melbourne, Victoria (the "Organisation").

RECITALS:

- A. AusAID wishes to provide the Organisation with a Grant to undertake an Activity
- B. The Organisation wishes to accept the Grant subject to the terms and conditions in this Deed.

OPERATIVE:

AusAID and the Organisation promise to carry out and complete their respective obligations in accordance with this Deed including the Deed conditions, schedules and any annexes contained herein.

EXECUTED AS A DEED by the Commonwealth, by an authorised officer, and by the Organisation, by its authorised officer.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by the Australian Agency
for International Development by:

Signature of FMA Act s44 Delegate

Alan March

Name

ADG, Humanitarian and Peacebuilding Branch

SIGNED for and on behalf of
SAVE THE CHILDREN AUSTRALIA by:

Suzanne Dvorak, CEO

Signature

By executing this Deed the signatory warrants that he/she is duly authorised to execute this Grant Agreement Deed on behalf of the Organisation.

in the presence of:

Name of witness
(Print)

VALERIE SCATTERY

Signature of witness

P. J. Scattery

AGREEMENT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals, unless the context otherwise requires:

"Acquittal Statement" means a statement acquitting the Grant against the budget in the Activity Proposal.

"Activity" means the activity **Reintegration of Children/Youth formerly Associated with Armed Forces and Armed Groups and Children Affected by Armed Conflict in Nepal – Phase IV** described in the Activity Proposal for which the Grant is provided.

"Activity Proposal" means the specific tasks and budget associated with the Activity included as **Schedule 1** to this Agreement.

"Agreement" means this Deed and includes the Agreement Conditions and any schedules and annexes.

"Agreement Material" means all material created or required to be developed or created as part of, or for the purpose of undertaking the Activity, including documents, equipment, information data, sounds and images stored by any means.

"Business Day" means a day on which AusAID is open for business.

"Commonwealth" means Commonwealth of Australia or AusAID, as appropriate.

"Fraudulent Activity", "Fraud" or "Fraudulent" means dishonestly obtaining a benefit by deception or other means.

"Grant" means the amount of money as specified in the clause titled 'Grants and Payment' of this Agreement that has been approved by AusAID and paid to the Organisation subject to the conditions outlined in this Agreement for the Activity.

"Independently Audited" means financial records audited by a certified financial professional that is in no way linked or associated with the Activity or the Parties.

"Intellectual Property" means all copyright and all rights in relation to inventions (including patent rights), trade marks, designs and confidential information, and any other rights resulting from intellectual activity in the industrial, scientific, literary, and artistic fields recognised in domestic law anywhere in the world.

"Partner Government" means the Government of the Partner Country.

"Partner Country" means the country or countries in which the Activity is to be undertaken in whole or in part.

"Party" means AusAID or the Organisation.

"Personnel" means the personnel of the Organisation who are engaged in the performance of the Activity, including the Organisation's employees, subcontractors, agents and volunteers.

"Prior Material" means all material developed by the Organisation or a third party independently from the Activity whether before or after commencement of the Activity.

"Relevant List" means the lists of terrorist organisations made under Division 102 of the *Criminal Code Act 1995* (Cth) and the *Charter of the United Nations Act 1945* (Cth) posted at: <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DEC30CA256FAB001F7FBD?OpenDocument> and http://www.dfat.gov.au/ica/UNSC_financial_sanctions.html#3

"Similar List" means any similar list to the World Bank List maintained by any other donor of development funding.

"World Bank List" means a list of organisations maintained by the World Bank in its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at: <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

1.2

Agreement prevails

If there is any inconsistency (whether expressly referred to or to be implied from this Agreement or otherwise) between the provisions of this Agreement ("Agreement Conditions") and those in the schedules and any annexes, the schedules and any annexes are to be read subject to the Agreement Conditions and the Agreement Conditions prevail to the extent of the inconsistency.

2.

TERM OF THE AGREEMENT

2.1

The term of this Agreement commences upon execution by both parties being the date indicated at the front of this Agreement and continues until all obligations have been fulfilled under this Agreement, unless terminated earlier in accordance with this Agreement.

2.2

The Organisation will commence activities once this Agreement has been signed and must complete the Activity by 30 January 2014.

3.

NOTICES

3.1

For the purpose of serving notices to either Party, a notice must be in writing and will be treated as having been duly given and received:

(a) when delivered (if left at that Party's address);

(b) on the third Business Day after posting (if sent by pre-paid mail); or

(c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

- 3.2 For the purposes of this Agreement, the address of a Party is the address set out below or another address of which that Party may give notice in writing to the other Party:

AusAID:

To: Tara D Gurung
Country Manager, AusAID

Postal Address: Australian Agency for International Development
GPO Box 879
Australian Embassy, Bansbari, Kathmandu
NEPAL

Street Address: Bansbari, Kathmandu
NEPAL

Facsimile: +977 1 4371533

Organisation

To: Peter Walton
Director, Programs

Postal Address: Locked Bag 5000, Fitzroy, VIC, 3065

Street Address: Level 6, 250 Victoria Parade, East Melbourne, VIC, 3002

Facsimile: +61 3 9938 2099

4. GENERAL CONDITIONS

- 4.1 The Organisation must carry out the Activity in accordance with the Activity Proposal and the terms and conditions of this Agreement.
- 4.2 The Organisation must advise AusAID immediately of any difficulties or delays in implementation of the Activity.
- 4.3 The Organisation must acknowledge in writing to AusAID receipt of the Grant immediately on its receipt.
- 4.4 The Grant and any interest earned or exchange rate gains must be used diligently and for the sole purpose of the Activity outlined in **Schedule 1** of this Agreement. Any interest earned or exchange rate gains made on the Grant must only be expended on the Activity.
- 4.5 The Organisation acknowledges that the Grant provided by AusAID to the Organisation for this Activity does not entitle the Organisation to any other or further grants.
- 4.6 The Organisation must acknowledge AusAID Grant funding assistance provided under this Agreement where appropriate and advise AusAID of matters relating to any publicity and media relations, prior to any publication or media release.

- 4.7 The Organisation must obtain written approval from AusAID prior to any substantive changes in the activities or expenditure of the Organisation for which the Funds are to be utilised. AusAID does not authorise adjustment of line item amounts in excess of 10% by the Organisation without prior written approval. The adjustment will only be within and not between the broader headings submitted by the Organisation under Annex 4 in Activity Proposal attached.
- 4.8 The Organisation must not represent itself and must ensure that its Personnel participating in the Activity do not represent themselves as being employees, partners or agents of the Commonwealth of Australia.
- 4.9 The Organisation must use its best endeavours to ensure that in its performance of the Activity all Personnel and their dependents, while in the Partner Country, respect the laws and regulations in force in the Partner Country.
- 4.10 The Organisation is responsible for the security of all of its Personnel and for taking-out and maintaining all appropriate insurances.
- 4.11 The Organisation must not assign its interest in this Agreement without first obtaining the consent in writing of AusAID.
- 4.12 No delay, neglect or forbearance by either Party in enforcing against the other any term or condition of this Agreement will be deemed to be a waiver or in any way prejudice any right of that Party.
- 4.13 This Agreement is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and the Parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and any court hearing appeals from those courts.

5. AGREEMENT AMENDMENTS

- 5.1 AusAID or the Organisation may propose amendments to this Agreement at any time for the purpose of improving the delivery of the Activity, the efficiency, cost-effectiveness and development impact of the Activity.
- 5.2 Changes to this Agreement (including to **Schedule 1** and any annexes) will only be effected if agreed in writing and signed by both Parties in the form of a Deed of Amendment.

6. PROCUREMENT

- 6.1 The Organisation must not use the Grant to acquire any asset, apart from those detailed in the Activity Proposal without obtaining AusAID's prior written approval. Subject to the requirements of this clause, the Organisation will own the assets acquired with the Grant unless specified otherwise in the Activity Proposal.
- 6.2 If the Grant is being used to procure goods or services, the Organisation must implement procedures so that procurement is undertaken in a manner consistent with the Australian Commonwealth Procurement Guidelines (<http://www.finance.gov.au/publications/fmg-series/procurement-guidelines/index.html>), in particular the core principle of achieving value for money and the supporting principles of:

(a) encouraging competition by ensuring non-discrimination in procurement and using competitive procurement methods;

(b) promoting use of resources in an efficient, effective and ethical manner; and

(c) making decisions in an accountable and transparent manner.

6.3 If the Grant is being used to procure goods, the Organisation must also ensure in its procurement of goods that:

(a) the goods to be procured are of a satisfactory quality; and

(b) the goods are delivered in good order and condition and in accordance with the Activity timetable.

6.4 If the Grant is being used to procure goods, the Organisation must maintain a Register of Activity Assets ("Register"). The Register must:

(a) record non-consumable items purchased with the Grant or supplied by AusAID for the Activity which have a value of AUD1,000 (or equivalent) or more;

(b) record non-consumable items of a portable and attractive nature with a value of less than AUD1,000 (or equivalent); and

(c) record the date of receipt of the asset at the Activity site, the cost, the purchase/payment document date and reference number, a description and identification number, and the location of the asset.

6.5 The Organisation must not dispose of or write-off AusAID funded or provided assets except as agreed in writing by AusAID. The Register and other relevant documents such as import papers and manufacturers' warranties relating to the assets must be available for audit as required by AusAID. The Register must be reconciled with Activity assets at least every twelve months and the results of that reconciliation included in the Annual Reports required in clause titled "Reports".

7. MONITORING AND EVALUATION

7.1 The Organisation must, if required by AusAID, permit AusAID to monitor and/or evaluate the Activity and/or use of the Grant. AusAID will give the Organisation at least two (2) weeks notice of its intentions prior to commencing such a review. In that event, the Organisation must cooperate fully with any request for assistance pursuant to any such study.

8. INDEMNITY

8.1 The Organisation must at all times indemnify AusAID, its employees, agents and contractors (except the Organisation) ("those indemnified") from and against any loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused or contributed to in any way by any willfully wrongful, unlawful or negligent act or omission of the Organisation, or any of the Organisation's Personnel in connection with this Agreement.

- 8.2 The Organisation agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 8.1** above for the benefit of each of such persons in the name of AusAID or of such persons.
- 8.3 The indemnity in this **Clause 8** is reduced to the extent that the loss or liability is directly caused by AusAID, its employees, agents or contractors (except the Organisation), as substantiated by the Organisation.
- 8.4 This indemnity survives the termination or expiration of this Agreement.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Intellectual Property in or in relation to Agreement Material vests in AusAID upon its creation. AusAID grants to the Organisation a revocable, non-exclusive, world-wide, royalty-free licence to use the Agreement Material.
- 9.2 **Clause 9.1** does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Agreement Material, but the Organisation grants to AusAID a permanent, irrevocable, non-exclusive, world-wide, royalty-free licence to use, reproduce, adapt and otherwise exploit such Prior Material in conjunction with the Agreement Material. The licence granted under this **Clause 9.2** includes the right of AusAID to sub-license any of its employees, agents or contractors to use, communicate, reproduce, adapt and otherwise exploit the Prior Material incorporated into the Agreement Material for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, AusAID.

10. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

- 10.1 The Organisation and its Personnel must have regard to and comply with, relevant and applicable laws, guidelines, regulations and policies, including those in Australia and in the Partner Country. A list, as amended from time to time, of Australian laws and guidelines that may apply to the delivery of developmental aid to foreign countries can be found on the AusAID website: <http://www.ausaid.gov.au/business/contracting.cfm>. This list is not exhaustive and is provided for information only. The provision of this list does not relieve the Organisation from complying with the obligations contained in this clause titled "Compliance with Laws, Guidelines and Policies".
- 10.2 The Organisation must have regard to and comply with the Statement of International Development Practice Principles located at **Schedule 2** to this Agreement.
- 10.3 The Organisation and its Personnel must comply with:

- (a) AusAID's *Child protection policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and particularly the child protection compliance standards at Attachment 1 to the policy. AusAID may audit the Organisation's compliance with AusAID's *Child protection policy* and child protection compliance standards. The Organisation must participate cooperatively in any reviews conducted by AusAID;
- (b) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014' (<http://www.ausaid.gov.au/publications/pdfs/FINAL%20AusAID%20Disability%20for%20All.pdf>), and in particular the strategy's six guiding principles; and

- (c) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>).
- 10.4 The Organisation must use its best endeavours to ensure:
 - (a) that individuals or organisations involved in implementing the Activity are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism; and
 - (b) that the Grant is not used in any way to provide direct or indirect support or resources to organisations and individuals associated with terrorism.
- 10.5 The Organisation must have regard to the Australian Government guidance "Safeguarding your organisation against terrorism financing: a guidance for non-profit organisations," available at <http://www.nationalsecurity.gov.au/npo>.
- 10.6 If, during the course of this Agreement, the Organisation discovers any link whatsoever with any organisation or individual listed on a Relevant List it must inform AusAID immediately.
- 10.7 If, during the course of this Agreement, the Organisation is listed on a World Bank List or Similar List it must inform AusAID immediately.
- 10.8 The Organisation agrees that:
 - (a) The Organisation and its employees, agents, representatives or its subcontractors must not engage in any Fraudulent Activity. The Organisation is responsible for preventing and detecting Fraud.
 - (b) The Organisation must report in writing within five (5) working days to AusAID any detected, suspected, or attempted Fraudulent Activity involving the Activity. AusAID may direct the Organisation to investigate the alleged Fraud and the Organisation must undertake an investigation at the Organisation's cost and in accordance with any directions or standards required by AusAID.
 - (c) Following the conclusion of any investigation which identifies Fraudulent Activity, the Organisation must:
 - (i) make every effort to recover any AusAID Grant funds, the subject of Fraudulent Activity;
 - (ii) refer the matter to the relevant police or other authorities responsible for prosecution of Fraudulent Activity; and
 - (iii) be liable for the repayment of any Grant funds misappropriated by the Organisation, its agents, representatives or subcontractors.
 - (d) The obligations of the Organisation under paragraphs 10.8(b) and 10.8(c) above survive the termination or expiration of this Agreement.
 - (e) The Organisation warrants that the Organisation will not make or cause to be made, nor will the Organisation receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or

11. TERMINATION

11.1 If the Organisation:

reward in relation to the execution of this Agreement. In addition, the Organisation will not bribe public officials and will ensure that its delivery organisations comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Agreement by notice from AusAID.

- (a) becomes, or AusAID considers there is a reasonable prospect of the Organisation becoming bankrupt, insolvent, deregistered or no longer able to undertake the Activity to a standard acceptable to AusAID;
- (b) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;
- (c) fails to commence, or in the opinion of AusAID, fails to make satisfactory progress in carrying out the Activity and such failure has not been remedied within the time specified in a written request from AusAID to remedy the failure;
- (d) assigns its interest in this Agreement without the consent in writing of AusAID;
- (e) is, during the term of this Agreement, listed on a World Bank List, Relevant List or Similar List;
- (f) breaches any of its obligations under the clause titled "Compliance with Laws, Policies and Guidelines"; or
- (g) breaches any other term of this Agreement and such breach has not been remedied within the time stipulated in a written request notice from AusAID to remedy the breach;

then in every such case AusAID may immediately terminate this Agreement by giving the Organisation notice in writing, without prejudice to any of AusAID's other rights.

11.2 In addition, either Party may terminate this Agreement by giving to the other a notice to terminate in writing stating the reasons for termination.

11.3 In the event of any termination, the Organisation must provide an Independently Audited statement of expenditure of the Grant within thirty (30) days of the date of the notice to terminate, signed by the head of the Organisation, and return any uncommitted Grant funds to AusAID.

11.4 In the event that a notice to terminate is given by either Party, the Organisation must:

- (a) immediately do everything possible to prevent and mitigate all losses, costs and expenses arising in consequence of the termination of this Agreement;
- (b) in a prompt and orderly manner cease expenditure of any uncommitted Grant funds ; and
- (c) refund any uncommitted part of the Grant already paid by AusAID, together with any uncommitted or unspent interest, within thirty (30) days of the date of the notice to terminate.

11.5 In the event that a notice to terminate is given by either Party, AusAID will not be liable to pay compensation in an amount which, in addition to any amounts paid or due or becoming due to the Organisation under this Agreement, together would exceed the amount of the total financial limitation of this Agreement, as specified in clause titled 'Grants and Payment'.

12. ACCOUNTS AND RECORDS

12.1 The bank account used by the Organisation must be in the name of the Organisation and must not be a personal bank account.

12.2 The Organisation must:

- (a) maintain a sound administrative and financial system capable of verifying all Acquittal Statements;
- (b) keep proper and detailed accounts, records and assets registers along with adequate Activity management records providing clear audit trails in relation to expenditure under this Agreement;
- (c) afford adequate facilities for audit and inspection of the financial records referred to in this Agreement by AusAID and its authorised representatives at all reasonable times and allow copies and extracts to be taken;
- (d) ensure that its accounts and records are held by the Organisation for the term of this Agreement and for a period of seven (7) years from the date of expiry or termination of this Agreement;
- (e) if requested by AusAID, provide an Acquittal Statement, certified by the senior financial officer or the head of the Organisation; and
- (f) in addition to its obligation under the clause titled "Reports", if reasonably requested by AusAID in order to verify the expenditure of the Grant, provide an Acquittal Statement Independently Audited by an auditor nominated by AusAID at no cost to AusAID.

13. AusAID USE OF AGREEMENT INFORMATION

13.1 AusAID may disclose matters relating to this Agreement, including this Agreement, and other relevant information, except where such information may breach the *Privacy Act 1988* (Cth), to Commonwealth governmental departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament, including

responding to requests for information from Parliamentary committees or inquiries. In addition, AusAID may publicly report information regarding this Agreement. This clause survives the termination or expiration of this Agreement.

14. REPORTS

14.1 The Organisation must submit an annual report, on the anniversary of the Activity Start Date, which should not exceed five (5) pages and which has two basic parts:

- (a) A review of implementation progress to date; and
- (b) An implementation strategy and work program for the coming period that:
 - (i) incorporates any lessons from the assessment of Activity progress;
 - (ii) outlines the expected outputs and development results of the proposed program of work; and
 - (iii) describes the inputs, work and outputs of both the Organisation and any other key stakeholders.
 - (iv) outline the expenditure detail against the planned budget (also see clause 15.3a)

14.2 In addition to the Annual reporting requirements set out in this Agreement, the Organisation will share informal reports (a narrative which should not exceed two pages and a completed matrix of data based on type of services, ethnicity and gender) with AusAID every month and keep AusAID informed of progress, challenges and key issues for the Activity as they arise.

14.3 Within sixty (60) days of completion of the Activity, the Organisation must submit to AusAID:

- (a) a final report which provides a brief outline of the Activity and in more detail covers key outcomes compared with objectives (as outlined in the Performance Monitoring Plan included in Activity Proposal), development impact, sustainability and lessons learned; and
- (b) a final Acquitral Statement.

14.4 The final Acquitral Statement must:

- (a) include details of any interest earned on the Grant;
- (b) be prepared in accordance with the internal and external auditing procedures laid down in the rules and regulations applicable to the Organisation;
- (c) be Independently Audited and certified (The cost of this audit may be payable from the Grant); and
- (d) be signed by the senior financial officer or the head of the Organisation, indicating that the Grant has been spent in accordance with the terms of this Agreement.

14.5 The Organisation must repay to AusAID any unspent Grant funds or interest with the final report and Acquittal Statement.

14.6 The annual report, final report and Acquittal Statement must be sent to:

Tara D Gurung
Country Manager, AusAID, Nepal Australian Agency for International Development
GPO Box 879
Australian Embassy, Bansbari, Kathmandu, NEPAL
Email: ausaid.kathmandu@dfat.gov.au

in the following format:

- (a) one bound hard copy; and
- (b) one electronic version in PDF (Portable Document Format).

15. GRANTS AND PAYMENT

15.1 AusAID will pay the Organisation an acquittable Grant up to a maximum of **AUD1,154, 226** in tranches divided as follows:

Indicative Date	Tranche Number	Amount of Grant Funds
Refer to Clause 15.2 below	1	AUD403,618
1 January 2012 (Refer to Clause 15.3 below)	2	AUD428, 214
1 January 2013 (Refer to Clause 15.3 below)	3	AUD322, 394

15.2 AusAID will pay Tranche 1 within thirty (30) days of the date of this Agreement and subject to receipt of a valid invoice.

15.3 AusAID will pay subsequent tranches at the date indicated above subject to the Organisation:

- (a) providing an Acquittal Statement of 75% of the previous tranche, signed by the senior financial officer or the head of the Organisation indicating that the Grant funds being acquitted have been expended in accordance with the terms of this Agreement;

- (b) submitting a valid invoice; and
- (c) making satisfactory progress with the Activity as determined by AusAID.

16. CLAIMS FOR PAYMENT

- 16.1 Invoices must be submitted when due in accordance with this Agreement, in a form identifying this Agreement title and Agreement number 58767. Invoices must also contain the Payment Event number(s) notified by AusAID.

- 16.2 All invoices must be made to:

Chief Finance Officer

Australian Agency for International Development

GPO Box 887

CANBERRA ACT 2601 AUSTRALIA

- 16.3 Invoices should be sent to the above address. Alternatively AusAID will accept electronic invoices. These can be sent to accountsprocessing@ausaid.gov.au

- 16.4 Where Australian GST applies to this Agreement all invoices must be in the form of a valid tax invoice. Invalid tax invoices will be returned to organisations. Information on what constitutes a valid tax invoice can be found at <http://www.ato.gov.au/businesses/content.asp?doc=/content/50913.htm>

**SCHEDULE 1 – ACTIVITY PROPOSAL
TO GRANT AGREEMENT DEED NUMBER 58069**

See Attachment A for Proposal