HEAD AGREEMENT

BETWEEN

COMMONWEALTH OF AUSTRALIA
represented by the Department of Foreign Affairs and Trade
ABN 62 921 558 838 002

AND

(Organisation name)
ABN xxx

IN RELATION TO

NGO PERIODIC FUNDING

DFAT AGREEMENT NO. xxxx
THIS HEAD AGREEMENT is made on ................................................. 20

BETWEEN

COMMONWEALTH OF AUSTRALIA represented by the Department of Foreign Affairs and Trade  62 921 558 838 002 (“DFAT”)

AND

(Organisation name),xxxxxxx of (address) (the “Organisation”).

RECITALS:

A. The Australian Government recognises that professional Non-Government Development Organisations play a valuable role in delivering Australia’s overseas Aid Program. To this end DFAT wishes to enter into a Head Agreement under which it may provide grants to Australian accredited Non-Government Organisations.

B. The Organisation wishes to enter into such an arrangement.

C. The details of each specific grant agreement will be provided through separate Grant Orders that will establish a contract for the periodic funding of NGOs and the delivery of Initiatives, at the discretion of DFAT.

OPERATIVE:

DFAT and the Organisation promise to carry out and complete their respective obligations in accordance with the terms and conditions below and all Grant Orders as amended from time to time.

Executed as a Deed

SIGNED for and on behalf of

COMMONWEALTH OF AUSTRALIA

represented by the Department of Foreign Affairs and Trade in the presence of:

Signature of

........................................... ...........................................

Name of witness

Signature of witness

SIGNED for and on behalf of (organisation name) by:

........................................... ...........................................

Signature of director

Signature of director/secretary

........................................... ...........................................

Name of director

Name of director/secretary
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HEAD AGREEMENT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals, and in each Grant Order unless the context otherwise requires:

“ABN” has the same meaning as it has in section 40 of the *A New Tax System (Australian Business) Act 1999* (Cth);

“Accreditation” means the assessment process implemented, by DFAT on behalf of the Committee for Development Cooperation (CDC) that evaluates Australian NGOs against a set of criteria to determine whether an organisation is eligible for DFAT funding;

“Agreement” means this Head Agreement that establishes an arrangement with the Organisation;

“Agreement Material” means all material created as part of or for the purposes of implementing and accounting for the Initiatives. Agreement Material includes but is not limited to documents, reports, tables, equipment, information or Data stored by any means;

“Assets” means non-consumable items valued at $2,000 or more purchased using a Grant provided under a Grant Order issued under this Agreement;

“DFAT Confidential Information” means information that:

(a) is designated by DFAT as confidential; or

(b) is personal information under the *Privacy Act 1988* (Cth),

but does not include this Agreement or information which:

(c) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation; or

(d) has been independently developed or acquired by the Organisation, as established by written evidence.

“Commonwealth” means the Commonwealth of Australia or DFAT as appropriate;
“Committee for Development Cooperation (CDC)” means the joint DFAT/NGO advisory and consultative body;

“Cooperation Agreement” means an agreement entered into by way of a Grant Order, between DFAT and the Organisation to engage on policy and programming issues of relevance to an DFAT country or regional strategy;

“Data” includes any information provided to the Organisation under this Agreement from any source, or collected or created by the Organisation in connection with an Initiative, whether in magnetic, electronic, hardcopy or any other form;

“Delivery Organisation” means the Organisation's partner(s) responsible to the Organisation for implementation of all or part of the Initiatives;

“Financial Limitation” means the total amount of money set out in any Grant Order;

“Financial Records” means records consistent with obligations under accounting standards as that expression is used in the Corporations Act 2001 (Cth);

“Financial Year” means 1 July to 30 June;

“Force Majeure Event” means any act, event or cause outside the reasonable control of a party which materially impairs that party’s ability to perform its obligations under this Agreement, to the extent that the act, event or cause could not have reasonably been anticipated by the party affected or, in the case of reasonably anticipatable acts, events or causes, could not have been prevented or avoided or mitigated by the exercise of reasonable precautions.

“Grant” means the funds paid by DFAT to the Organisation under a Grant Order;

“Grant Agreement” means a Cooperation Agreement or a Periodic Grant Agreement;

“Grant Order” means each grant agreement formed by a signed Grant Order from DFAT and a signed letter of acceptance by the Organisation, containing the details of a particular Initiative, the Initiative Proposal, the Grant to be paid in respect of that Initiative and any specific variations to clauses in this Agreement for the purpose of the Initiative funded under that Grant Order;

“GST” means the Goods and Services Tax imposed by A New Tax System (Goods and Services Tax) Act 1999 (Cth);

“Initiative” or “Initiatives” means the Projects/Programs approved for funding by DFAT and implemented by the Organisation, and any amendment to the Initiative agreed in writing by DFAT;

“Initiative Proposal” means a proposal by the Organisation to DFAT for funding of an Initiative, including a detailed budget;
“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;

“Interest” means actual or estimated interest earned or accrued on a Grant;

“Loss” or “Losses” means any loss, damage, liability, cost or expense including legal expenses on a solicitor and own client basis;

“NAA” means National Archives of Australia;

“NGO” means an DFAT accredited Non-Government Organisation;

“Partner Country” means the country (other than Australia) in which an Initiative is to be delivered in whole or in part.

“Party” means DFAT or the Organisation;

“Periodic Grant Agreement” means an arrangement that is similar to a Cooperation Agreement in relation to policies and practices but utilised where there is no country or regional relationship.

“Personal Information” means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, as set out in section 6 of the Privacy Act 1988 (Cth);

“Privacy Commissioner” means the person appointed to the position of that name under the Australian Information Commissioner Act 2010 (Cth);

“Program” means complex development assistance schemes which include a number of individual Initiatives having common development goals or which promote development generally in a particular community or country;

“Project” means a defined set of aid delivery actions which have identifiable objectives, outputs, time frames and implementation plans detailed in an Initiative Proposal.

“Supplies” means goods provided by the Organisation during the course of the Initiatives as required by the Grant Order.
1.2 General

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

(a) The contractual obligations of the Parties must be interpreted and performed in accordance with the Agreement as a whole;

(b) Clause headings are for convenient reference only and shall not be taken into consideration in the interpretation or construction of the Agreement;

(c) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;

(d) A word denoting the singular number includes the plural number and vice versa:

(e) A word denoting an individual or person includes a corporation, firm, authority, body politic, government or government authority and vice versa;

(f) Words denoting a gender include all genders;

(g) A reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure of or to this Agreement;

(h) Where used in the Agreement the words ‘including’ or ‘includes’ will be read as ‘including, without limitation’ or ‘includes, without limitation’ (as the case may be);

(i) A reference to any Agreement or document is to that Agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

(j) ‘shall’ or ‘must’ denote an equivalent positive obligation;

(k) a reference to any Party in this Agreement, or any other document or arrangement, includes that Party’s executors, administrators, substitutes; successors and permitted assigns; and

(l) a reference to ‘dollars’ or ‘$’ is to an amount in Australian currency.

2. TERM OF THE AGREEMENT

2.1 This Agreement commences on insert date and continues in operation, unless terminated in accordance with the Head Agreement Conditions.

2.2 In accordance with clause 18.3(c) of this Agreement, this Agreement will be terminated if the Organisation’s Accreditation is cancelled. Should Accreditation be cancelled while the Organisation has active one or more current Grant Order(s) for a Grant Agreement, the Grant Order(s) may be terminated or maintained depending on DFAT’s assessment of each Initiative.
relevant to that Grant Order. Each assessment shall \textit{inter alia} consider the performance of the Organisation, the priority of the Initiative and any other factors deemed relevant by DFAT.

2.3 If this Agreement is terminated under \textit{clause 18.3 (c)} and DFAT agrees to maintain an Organisation’s Grant Order under \textit{clause 2.2}, the Organisation will continue to be bound by the terms and conditions of the Grant Order, which on the date of termination, shall be amended to incorporate the terms and conditions of this Agreement (as applicable) until completion of the Initiative.

2.4 DFAT support for each Initiative funded under this Agreement will be deemed to commence on the date on which the Organisation signs a letter of acceptance after receipt of a signed Grant Order received from DFAT, or as otherwise stated in the Grant Order, and will conclude on the date specified in the Grant Order.

2.5 Should the Organisation’s level of Accreditation change such that it would affect a Grant Order for a Grant Agreement, \textit{clause 2.2} will apply.

3. \textbf{FORMATION OF GRANT AGREEMENTS}

3.1 At any time during the term of the Agreement DFAT may issue a Grant Order, offering to fund an Initiative on the terms and conditions specified in the Grant Order.

3.2 The issue of a Grant Order by DFAT and acceptance by the Organisation shall immediately bring into existence a Grant Agreement for the undertaking of an Initiative.

3.3 The Grant Agreement formed by the issue of a Grant Order incorporates the terms and conditions described in this Agreement and any additional terms and conditions described in the Grant Order.

3.4 The Grant Order must contain at a minimum the following information:

(a) a description of the Initiative to be delivered;

(b) the date of commencement of the Initiative;

(c) if relevant, the term of the Grant Order, being the period in which the Initiative must be undertaken;

(d) if applicable, details of any reimbursable costs due and payable to the Organisation;

(e) the total amount of the Grant payable;

(f) any particular performance standards applicable to the Grant Order in addition to those prescribed in the terms and conditions of this Agreement; and

(g) any reports to be provided.
4. **VARIATIONS TO THE AGREEMENT**

4.1 Variations of this Agreement or any associated Grant Orders must be made in writing and signed for and on behalf of the parties to this Agreement. Any such variations must be formalised before the limitations specified in a Grant Order are exceeded.

5. **DFAT’S OBLIGATIONS**

5.1 DFAT shall make payments to the Organisation in the amount set out or provided for in the relevant Grant Orders, subject to:

   (a) the appropriation for each financial year of sufficient funds by the Commonwealth Parliament as part of Australia’s Overseas Aid Program; and

   (b) the terms and conditions of this Agreement.

5.2 DFAT will notify the Organisation of acceptance of reports and acquittals within 28 days of receipt. The Organisation may request reasons for non-acceptance.

5.3 DFAT will normally give the Organisation reasonable notice when Commonwealth officers visit the Initiative or Delivery Organisation.

5.4 DFAT will act in good faith and follow due process when dealing with the Organisation.

6. **OBLIGATIONS OF THE ORGANISATION**

6.1 The Organisation must undertake the Initiatives upon the terms and conditions and in the manner provided by this Agreement and by the Grant Order.

6.2 The Organisation is responsible to DFAT for all Initiative accounting, reporting including performance reporting, management, monitoring and effective delivery in respect of the Initiatives within the agreed budget.

6.3 The Organisation is responsible to DFAT for the Grants even though the Initiatives may be implemented in whole or in part by a Delivery Organisation. The Organisation must have documented arrangements with all Delivery Organisations for the management and accountability for the Grants. If Grant funds cannot be acquitted to the satisfaction of DFAT, the Organisation must refund to DFAT an amount equal to the Grant funds remaining unaquitted.

6.4 The Organisation must use its best endeavours to ensure that the Delivery Organisations for the approved Initiative have the appropriate capacity to undertake the task and are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism.

6.5 The Organisation must comply with all requirements of the Code of Conduct of the Australian Council for International Development, as revised from time to time.
6.6 In undertaking the Initiatives the Organisation must not act in ways which are contrary to the interests of the Commonwealth.

6.7 The Organisation will use its best endeavours to ensure that in its performance of an Initiative that all personnel and dependents while in the recipient country respect the laws and regulations in force in the recipient country.

6.8 The Organisation must notify DFAT in writing before making or agreeing to make any significant material change in the legal or organisational status of the Organisation, or the financial position of the Organisation, which might affect the ability of the Organisation to comply with its obligations under this Agreement.

6.9 The Organisation must advise the DFAT Child Protection Officer promptly in writing if any of the Organisation’s personnel is alleged to have committed, or been arrested for, or convicted of, criminal offences relating to child abuse or child pornography.

7. ORGANISATION STATUS

7.1 The Organisation must:

(a) not represent itself as being an employee, partner or agent of the Commonwealth; and

(b) ensure that its Delivery Organisations and the volunteers, employees, agents and subcontractors of the Organisation and of the Delivery Organisations participating in the Initiatives do not represent themselves as being employees or agents of the Commonwealth.

7.2 The Organisation and its Delivery Organisations will not by virtue of this Agreement be an employee, partner or agent of the Commonwealth.

8. PUBLICITY

8.1 Subject to the terms of this clause 8, the Organisation shall acknowledge DFAT support for the Initiatives in:

(a) public statements made by the Organisation to the media or otherwise; and

(b) documents published by the Organisation.

in relation to any Initiatives funded by DFAT pursuant to this Agreement.

8.2 The Organisation agrees to promote Australian identity and report on the recognition of Australian identity for each of its Australian Government funded NGO Initiatives.

8.3 The Organisation shall implement the promotion of Australian identity and the reporting on the recognition of Australian identity.
8.4 The Organisation agrees that formal statements prepared by the Organisation for the media or articles relating to each Initiative, to be released or published in any way and which expressly or impliedly comment adversely on DFAT’s role in the Initiative will be strictly subject to the prior written consent of DFAT.

8.5 The Organisation agrees that it:

(a) shall not associate the Commonwealth or DFAT in any way with any adverse comment it may make about governments in recipient countries; and

(b) shall ensure that its Delivery Organisations are aware that they must not associate the Commonwealth or DFAT in any way with any adverse comment they may make about governments in recipient countries in relation to the Initiatives.

8.6 The Organisation must only use the Australian Government/DFAT logo (in-line version) to denote association with Australia, the Australian Government or DFAT in any publicity or other related materials.

8.7 As far as practical the Organisation will keep DFAT and the relevant Australian diplomatic mission advised of matters relating to public and media relations associated with the Initiatives.

9. FINANCIAL MATTERS

9.1 The Organisation must undertake all financial matters in accordance with the requirements detailed in the relevant Grant Orders.

9.2 Subject to clause 9.3, DFAT will pay the Grants to the Organisation at the times specified in the Grant Orders.

9.3 DFAT may at its discretion withhold Grant funds from the Organisation if the Organisation is not in compliance with all the conditions of this Agreement or Grant Orders.

9.4 The Organisation must use the Grants, any Interest and any exchange rate gains for the sole purpose of the Initiatives defined in the Grant Orders.

9.5 The Organisation must advise DFAT of any significant proposed changes to an Initiative and seek DFAT’s written agreement to such changes prior to their implementation.

9.6 The Organisation must submit Initiative reports against the agreed Initiative objectives and budget, including Interest and exchange rate gains, annually or at the times specified in any Grant Orders.

9.7 DFAT shall not be liable for any expenditure in excess of the Financial Limitation set out in any Grant Orders or for any expenditure on Initiatives not approved in writing by DFAT before the expenditure is incurred.
9.8 Declarations of expenditure must be signed by an appropriate authorised officer as true and correct statements of expenditure.

9.9 Unless otherwise agreed by DFAT in writing the Organisation must refund to DFAT any Grant funds, Interest or exchange rate gains remaining unspent together with any outstanding reports.

9.10 Where Interest has to be estimated, the Organisation must state the method of estimation.

9.11 The Organisation and each Delivery Organisation must maintain sound financial and Initiative management systems and internal controls able to substantiate all declarations of expenditure, and must keep proper and detailed Financial Records.

9.12 The Organisation must preserve the Financial Records for a period of seven (7) years from the date of expiry or termination of the Grant Order.

10. TAXES, DUTIES AND GOVERNMENT CHARGES

10.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by the Organisation.

10.2 The provisions of this clause in respect of GST apply if the Organisation is registered or is required to be registered for GST.

10.3 DFAT is registered in accordance with the GST Act and will notify the Organisation of any change in DFAT’s GST registration status.

10.4 The Grants paid by DFAT under this Agreement include GST for supplies provided by the Organisation to DFAT in accordance with this Agreement and which are Taxable Supplies within the meaning of the GST Act.

10.5 The Organisation must give DFAT a tax invoice in accordance with the GST Act in relation to any Taxable Supply by the Organisation to DFAT in connection with this Agreement prior to payment of the Grant by DFAT.

10.6 The Grants payable by DFAT to the Organisation under this Agreement must not include any amount which represents GST paid by the Organisation on the Organisation’s own inputs and for which an input tax credit is available to the Organisation.

10.7 If a payment to satisfy a claim or a right to claim under or in connection with this Agreement (for example, a claim for damages for breach of the Agreement) gives rise to a liability to pay GST, the payer must also pay the amount of that GST (except any GST for which the payee is entitled to an input tax credit).

10.8 If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
10.9 Any refund under clause 18.5 (c) must be inclusive of GST and must be accompanied by an Adjustment Note under the GST Act relating to Taxable Supplies for which the Organisation previously issued to DFAT a tax invoice.

10.10 The Organisation should be aware that, generally:

(a) funding received by the Organisation is included in the Organisation’s assessable income if it is received in relation to the carrying on of a business, unless the Organisation is specifically exempt from income tax;

(b) any capital gain on disposal of an Asset is included in the Organisation’s assessable income, unless the Organisation is specifically exempt from income tax; and

(c) the Organisation may be required, in respect to an employee, to pay fringe benefits tax and make superannuation contributions to a complying superannuation fund or pay the superannuation guarantee charge to the Australian Taxation Office.

11. **AUDIT**

11.1 The Organisation shall provide to DFAT a copy of the audited Annual Report and Financial Statements of the Organisation within five months of the end of the Organisation's financial year.

11.2 The Organisation must, if requested by DFAT, provide an independently audited financial statement which certifies that the Grant provided by DFAT for an Initiative has been expended in accordance with the Grant Order and that acquittals provided by the Organisation are true and correct. The statement is to be lodged with DFAT within 60 days of the request. The statement must be provided at no cost to DFAT unless otherwise agreed.

11.3 DFAT may audit or spotcheck the Initiatives at any time at its own expense, both in Australia and overseas. DFAT would normally give the Organisation at least five working days notice of its intentions prior to commencing an audit or spotcheck. The Organisation must cooperate fully and request Delivery Organisation staff to cooperate fully with any request for assistance as part of any such audit or spotcheck. The Organisation and Delivery Organisation must afford adequate facilities for audit and inspection of the Financial Records and systems by DFAT and its authorised representative’s at all reasonable times and must allow copies and extracts to be taken.

11.4 At its discretion, DFAT may audit the Organisation’s compliance with the DFAT Aid Program Child Protection Policy and child protection compliance standards, accessible at [www.dfat.gov.au](http://www.dfat.gov.au), including sighting information regarding the performance of criminal record checks conducted for the purposes of complying with the child protection compliance standards.

12. **MONITORING, REVIEW AND EVALUATION**

12.1 At its discretion, DFAT may monitor, review and evaluate the Initiatives. DFAT must give the Organisation at least four weeks written notice of its intentions prior to commencing a
review or evaluation of an Initiative, unless otherwise agreed between the parties. The Organisation must cooperate fully and request Delivery Organisation staff to cooperate fully with any request for assistance as part of any such study.

13. PROCUREMENT

13.1 In procuring all Supplies, the Organisation must:
   (a) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the core principle of achieving value for money and the supporting principles;
   (b) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and
   (c) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.

13.1 The Organisation shall bear the loss or damage in respect of Supplies until handover of Supplies to the ultimate beneficiary of the Supplies.

13.2 The Organisation must use its best endeavours to ensure all Supplies are free from defects in design, material, manufacture or workmanship. The Organisation must replace defective Supplies under warranty provisions or at its own cost.

13.3 The Organisation shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at $2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.

13.4 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of DFAT at any time and from time to time.

13.5 The Organisation must use the Supplies for purposes permitted under this Agreement only and must ensure that the Supplies at all times remain free from any encumbrance.

14. AGREEMENT MATERIAL

14.1 The Organisation will own throughout the world:
   (a) the title to all Agreement Material; and
   (b) all Intellectual Property (including future copyright) in and derived from Agreement Material.

15. CONFIDENTIALITY

15.1 Subject to this clause, the Organisation must not, without the prior written approval of DFAT, make public or disclose to any person any DFAT Confidential Information. In giving written approval, DFAT may impose such terms and conditions as in DFAT's opinion are appropriate.
15.2 The Organisation must ensure that any of the Organisation’s personnel who will have access to DFAT Confidential Information complete a written undertaking in the form as provided by DFAT, relating to the non-disclosure of that information.

15.3 This clause shall survive expiration or termination of this Agreement.

16. PRIVACY

16.1 This clause applies only where the Organisation deals with Personal Information when, and for the purpose of, delivering an Initiative.

16.2 In this clause, the terms ‘agency’, ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the Privacy Act 1988 (the Privacy Act).

16.3 The Organisation acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the Privacy Act, and agrees in respect of the delivery of the Initiatives:

(a) to use or disclose Personal Information obtained during the course of delivering the Initiative, only for the purposes of this Agreement;

(b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;

(c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;

(d) to notify individuals whose Personal Information the Organisation holds, that complaints about acts or practices of the Organisation may be investigated by the Privacy Commissioner who has power to award compensation against the Organisation in appropriate circumstances;

(e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to10) where that section or NPP is applicable to the Organisation, unless:

   (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Agreement; or

   (ii) in the case of a NPP – where the Initiative or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the Initiative or practice which is authorized by this Agreement is inconsistent with the NPP;

(f) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with a NPP binding a party to this Agreement;
(g) to immediately notify DFAT if the Organisation becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Organisation or any subcontractor;

(h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of DFAT; and

(i) to ensure that any employee of the Organisation who is required to deal with Personal Information for the purposes of this Agreement is made aware of the obligations of the Organisation set out in this clause.

16.4 The Organisation agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Organisation has under this clause, including the requirement in relation to subcontracts.

16.5 The Organisation agrees to indemnify DFAT in respect of any loss, liability or expense suffered or incurred by DFAT which arises directly or indirectly from a breach of any of the obligations of the Organisation under this clause, or a subcontractor under the subcontract provisions referred to in clause 16.4 above.

16.6 This clause shall survive expiration or termination of this Agreement.

17. MAJOR CHANGES

17.1 Where major changes occur to an Initiative prior to its completion (e.g., the Delivery Organisation has major shortcomings or ceases to exist, the Initiative target group no longer exists, or the need or issue to be addressed is rectified), DFAT may terminate funding of the Initiative in accordance with clause 18.1(a).

17.2 Where any failure or delay by a party in the performance of this Agreement is caused, directly or indirectly, by a Force Majeure Event, the party:

(a) is not liable for that failure or delay; and

(b) its obligations under this Agreement are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.

17.3 Clause 17.2 does not apply to a Force Majeure Event affecting a party to the extent that:

(a) the failure or delay was caused by a breach of this Agreement by that party; or

(b) the obligation concerned is a payment obligation
18. **TERMINATION**

18.1 Either party may terminate this Agreement:

(a) or any Grant Order by giving to the other a Notice of Intention to Terminate in writing stating the reasons for termination; or

(b) by giving 30 days notice in writing to the other party if a Force Majeure Event continues for more than 30 consecutive days.

18.2 If the Organisation fails to fulfill, or is in significant breach of any of the Organisation’s obligations under this Agreement, and does not rectify the omission or breach after receiving 30 business days in writing from DFAT to do so then, DFAT may immediately terminate this Agreement by giving notice to the Organisation of the termination. The Organisation must comply with any requirements in DFAT’s notice of termination.

18.3 DFAT may terminate this Agreement immediately by notice in writing to the Organisation if:

(a) The Organisation comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth), or an order has been made for the purpose of placing the Organisation under external administration;

(b) DFAT is satisfied that any statement made in the Organisation’s application for a Grant is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Grant; or

(c) The Organisation’s Accreditation with DFAT is terminated or cancelled.

The Organisation must comply with any requirements in DFAT’s notice of termination.

18.4 Except where DFAT has agreed under clause 2.2, to the maintenance of a Grant Agreement, no later than 28 days after receipt of a notice of termination, the Parties must meet to fully cooperate in a joint determination of the following:

(a) the appropriate method and manner for effecting the necessary winding-up or completion of the Initiatives;

(b) the reporting and final acquittal for all Grants provided under Grant Orders;

(c) a reconciliation of the Assets and Grant funds including any Interest as at the date of termination;

(d) the extent of DFAT's financial responsibilities, if any, within the amount of the Grant funds provided up to the time of termination;

(e) any issues arising from the termination of concern to DFAT with regard to its relationship with any recipient government; and

(f) other matters which arise as a consequence of the termination.
18.5 In the event that a Notice of Termination is given by either Party the Organisation must:

(a) Do everything possible to prevent or limit all losses, costs and expenses arising;
(b) Terminate its role in the Initiatives in a prompt and orderly manner; and
(c) Refund any uncommitted part of any Grant already paid by DFAT, together with any uncommitted Interest, within 28 days of the date of the joint determination or within 28 days of any reconciliation completed as a result of clause 18.4(c).

18.6 DFAT will:

(a) if determined by any reconciliation completed as a result of clause 18.4(c), provide such monies as may be agreed with the Organisation to meet existing financial commitments and obligations; but
(b) 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 the relevant Grant Order(s) together would exceed the Financial Limitation.

19. INDEMNITY

19.1 The Organisation must at all times indemnify DFAT, its officers, 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 wilfully wrongful, unlawful or negligent act or omission of the Organisation, or any Organisation personnel in connection with this Agreement.

19.2 The Organisation agrees that DFAT may enforce the indemnity in favour of the persons specified in clause 19.1 above for the benefit of each of such persons in the name of DFAT or of such persons.

19.3 The indemnity in this clause is reduced to the extent that the Loss or liability is directly caused by DFAT, its employees or contractors (except the Organisation), as substantiated by the Organisation.

19.4 This indemnity shall survive termination or expiration of this Agreement.

20. INSURANCE

20.1 The Organisation must arrange and maintain for the duration of the Agreement unless otherwise specified:

(a) public liability insurance with a limit of at least $5 million for each and every claim which covers:
(i) loss of, or damage to, or loss of use of any real or personal property; or

(ii) personal injury to, illness (including mental illness) or death of any person arising from the delivery of the Initiatives;

20.2 The Organisation may take out and maintain insurance against claims by third parties resulting from acts performed in carrying out the Initiatives.

20.3 DFAT undertakes no responsibility in respect of any life, accident, travel or any other insurance coverage which may be necessary or desirable for the personnel or subcontractors of the Organisation or the Delivery Organisation, or for the dependants of any such persons as may travel for the purposes of the Initiatives.

21. **CONFLICT OF INTEREST**

21.1 The Organisation warrants that, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the delivery of the Initiatives.

21.2 The Organisation must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Organisation must not engage in any activity, subject to clause 21.3 below, that may result in a conflict of interest arising or continuing.

21.3 Where a conflict of interest arises in the performance of the Organisation obligations under this Agreement, the Organisation must notify DFAT immediately and may request permission from DFAT to undertake the work despite that conflict of interest.

22. **FRAUD**

22.1 For the purpose of this clause, ‘fraudulent activity’, ‘fraudulent’ or ‘fraud’ means: Dishonestly obtaining a benefit, or causing a loss, by deception or other means.

22.2 The Organisation, its Delivery Organisations and its subcontractors must not engage in any fraudulent activity. The Organisation is responsible for preventing and detecting fraud.

22.3 The Organisation must report in writing within 5 working days to DFAT any detected, suspected, or attempted fraudulent activity involving an Initiative.

22.4 In the event of detected, suspected or attempted fraud and in consultation with DFAT, the Organisation must develop and implement a strategy to investigate, based on the principles set out in the Australian Government Investigations Standards. The Organisation must undertake the investigation at the Organisation’s cost.

22.5 Following the conclusion of an investigation, where the investigation finds the Organisation, an employee or a subcontractor of the Organisation, the Delivery Organisation, an employee or a subcontractor of the Delivery Organisation has acted in a fraudulent manner, the Organisation shall:
(a) where money has been misappropriated, pay to DFAT or the Project the full value of the Grant funds that have been misappropriated; or

(b) where an item of property has been misappropriated, either return the item to DFAT or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality;

(c) refer the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity; and

(d) keep DFAT informed, in writing, on a monthly basis, of the progress of the recovery action.

22.6 Following the conclusion of an investigation, where the investigation finds that a party other than the Organisation, an employee or subcontractor of the Organisation, the Delivery Organisation, an employee or a subcontractor of the Delivery Organisation, have acted in a fraudulent manner, the Contractor shall, at the Organisation’s cost:

(a) make every effort to recover any Grant funds or funded property acquired or distributed through fraudulent activity, including without limitation, the following:

   (i) take recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country;

   (ii) refer the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity; and

   (iii) keep DFAT informed, in writing, on a monthly basis, of the progress of the recovery action.

22.7 If the Organisation considers that after all reasonable action has been taken to recover the Grant funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Organisation may seek approval from DFAT that no further recovery action be taken. The Organisation must provide to DFAT all information, records and documents required by DFAT to enable the DFAT delegate to make a decision on whether to approve non-recovery of Grant funds or funded property.

23. COMPLIANCE WITH LAWS AND POLICIES

23.1 The Organisation must when delivering any Initiative and procuring the Supplies have regard to and comply with, and use their best endeavours to ensure that all Delivery Organisations comply with, relevant and applicable laws, regulations and policies, both in Australia and in the Partner Country, including:

(a) those in relation to occupational health and safety;

(b) the Equal Opportunity for Women in the Workplace Act 1999 (Cth). In particular the Organisation must not enter into any sub-contracts, under this Agreement, with an
employer named by the Director of the Equal Opportunity for Women Agency as currently not complying with the Act;

(c) the *Archives Act 1983* (Cth) (“the Act”). In particular, the Organisation must:

(i) not arrange for, nor effect, a transfer of custody or ownership of any Data or Commonwealth record within the meaning of the Act without the prior written approval of DFAT and the NAA; and

(ii) comply with any reasonable direction given by DFAT for the purpose of transferring DFAT records to the NAA or providing the NAA with full and free access to those records at DFAT’s cost.

(d) the *Privacy Act 1988* (Cth);

(e) Part 111A of the *Crimes Act 1914* (Cth); and

(f) those in relation to corrupt practices, including the Commonwealth Criminal Code provisions:

(iii) Division 70 relating to the bribery of foreign public officials; and

(iv) section 141.1 relating to the bribery of Commonwealth public officials; and

(g) those in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Commonwealth Criminal Code Act 1995* (Cth) and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945* (Cth).

The Organisation must use their best endeavours to ensure that the Grants provided under this Agreement, do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Agreement, the Organisation discovers any link whatsoever with any organisation or individual associated with terrorism it must inform DFAT immediately.


23.2 The Organisation must when delivering any Initiative and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:

(h) Gender and Development;
(i) Child Protection, in particular the child protection compliance standards at Attachment 1 to Child Protection Policy for the DFAT – Australian Aid Program, accessible at www.dfat.gov.au;

(j) The DFAT Australian Aid Program family planning guidelines, accessible at www.dfat.gov.au;

(k) Environment. DFAT is bound by the Environment Protection and Biodiversity Conservation Act 1999 (Cth), which applies to all aid activities. The Organisation must:

(i) ensure that environmental requirements specified in the Grant Orders are implemented, monitored and reported;

(ii) comply with DFAT’s Environmental Management System outlined in the Environmental Management Guide for Australia’s Aid Program, including:

(A) assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;

(B) report regularly on any such impacts as required by the Grant Orders; and

(iii) comply with all relevant environmental laws and regulations of the Partner Country.

The Environmental Management Guide for Australia’s Aid Program can be found at: www.dfat.gov.au

24. RESOLUTION OF DISPUTES

24.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Agreement and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Agreement.

25. ARBITRATION

25.1 Any dispute or difference arising between the Organisation and DFAT which cannot be settled by executive negotiation or mediation between the parties must be arbitrated in accordance with the laws for the time being in force in the Australian Capital Territory.

26. NOTICES

26.1 For the purpose of this Agreement, the address of a Party is the address set out below or another address which that Party may from time to time give notice in writing to each other.
Party. A notice required or permitted to be given by one Party to another under this Agreement must be in writing and is 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).

DFAT

To: ADG Community Partnerships & Latin America Branch
Postal Address: Department of Foreign Affairs and Trade – Australian Aid Program  
GPO Box 887  
CANBERRA ACT 2601
Street Address: 255 London Circuit  
CANBERRA ACT 2601
Facsimile: 02 6206 4848
Email: ANCP@dfat.gov.au

For all correspondence relating to a particular Grant Order, contact the Initiative Manager responsible for arranging the Grant Order.

Organisation:
To:

Attention:

Postal Address:

Street Address:

Facsimile:

27. DISCLOSURE OF INFORMATION

27.1 DFAT may disclose matters relating to the Agreement, including the Agreement, except where such information may breach the *Privacy Act 1988*, 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.

27.2 This clause shall survive termination or expiration of the Agreement.

28. MISCELLANEOUS

28.1 Waiver

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by this Agreement does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Agreement.

28.2 Liability of Party

If any Party to this Agreement consists of more than one person then the liability of those persons in all respects under this Agreement is a joint liability of all those persons and a separate liability of each of those persons.

28.3 Entire agreement

This Agreement constitutes the sole and entire arrangement between the Parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement is of no force or effect.

28.4 Severance

If any provision of this Agreement is invalid and not enforceable in accordance with its terms, other provisions that are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

28.5 Assignment

No Party may assign or transfer any of its rights or obligations under this Agreement without the prior consent in writing of the other Party.

28.6 Governing Law and Jurisdiction

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 non-exclusive jurisdiction of the courts of the Australian Capital Territory and any court hearing appeals from those courts.

28.7 Contra Proferentum

No rule of construction shall apply in the interpretation of this Agreement to the disadvantage of one Party on the basis that such Party put forward or drafted this Agreement or drafted any provision of this Agreement.
28.8 **False and Misleading Information**

The Organisation acknowledges that it is aware that, in relation to section 137.1 of the Commonwealth Criminal Code, giving false or misleading information is a serious offence.

28.9 **Anti-Corruption**

The Organisation warrants that the Organisation shall not make or cause to be made, nor shall 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 reward in relation to the execution of this Agreement. In addition, the Organisation shall not bribe foreign public officials and use their best endeavours to ensure that all parties comply with this provision. Any such practice shall be grounds for immediate termination of this Agreement under **clause 18** by notice from DFAT.