

## SUBGRANT AGREEMENT

between

COOPERATIVE FOR ASSISTANCE AND RELIEF EVERYWHERE, INC.  
doing business as CARE International in Nepal

and

Himalayan Area Development Center (HADC)



for activities to be conducted under

### Community Support Program

This Subgrant Agreement (the "Agreement") is entered into as of 1 October 2012 by and between (a) Cooperative for Assistance and Relief Everywhere, Inc., a nonprofit corporation organized under the laws of the District of Columbia, United States of America ("CARE") doing business as CARE International in Nepal and (b) Himalayan Area Development Center (HADC) an NGO, ("Subrecipient") pursuant to accountable grant made by DFID ("Donor") to CARE to enable CARE to implement Community Support Program (the "Project") in Gorkha district.

In consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1) Purpose of Agreement. CARE subgrants to Subrecipient the work described in the Scope of Work Project Description attached as ATTACHMENT 1 (the "Project Description"). The Subgrant shall be used exclusively for the purposes specified in the Project Description and not for any other purposes.
- 2) Term of Agreement. This Agreement is effective 1 October 2012, and ends 28 February 2014 (the "Term"), unless the parties otherwise agree in writing.
- 3) Agreement Amount and Payment Terms
  - a) Agreement Estimated Amount. The total estimated funds required for the entire life of the Program is NRs. 7,445,965 as shown on the Budget attached as ATTACHMENT 2 (the "Budget").
  - b) Obligated Amount. Of the estimated funds, CARE hereby makes available to Subrecipient up to NRs. 7,445,965 for program expenditures during the Term. CARE is not obligated to reimburse the Subrecipient for costs in excess of the obligated amount. All funding hereunder, including any funding in addition to the obligated amount if later authorized in writing, is contingent upon:
    - i) Availability of Funds. Funding hereunder is contingent upon funding of the Grant by Donor. Obligation and funding in any program period is contingent upon Donor approval of any work plan for the relevant period.
    - ii) Satisfactory Progress. Funding under this Subaward is subject to Subrecipient's satisfactory progress of the Project pursuant to the terms hereof.
    - iii) Compliance with this Agreement and Laws. Funding under this Subaward is subject to Subrecipient's compliance with the terms of this Subaward, any Additional Donor Requirements and all applicable laws and regulations.


) Payment. Following will be payment installment breakdowns:

Installment (Gorkha)		
Installment	Amount	Remarks
1	1,489,193	After signing agreement
2	3,722,983	After liquidating 1st installment
3	1,861,491	After liquidating 2nd installment
4	372,298	After all previous installments settlement and project wrap up
Total	7,445,965	

- a) Advance. Payment under this Subaward shall be made from CARE to Subrecipient on an advance basis. CARE shall provide Subrecipient with an initial advance limited to the minimum amounts necessary to meet current disbursement needs of the first three months of the Term of this Subaward (the 'advance period'). Any and all advances thereafter shall be based on actual, immediate cash requirements of the Subrecipient in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements to be made by the Subrecipient during the advance period. Subrecipient shall hold cash advances in a separate bank account opened for this subaward only. CARE shall release each periodic advance within thirty (30) days of receipt, reconciliation and verification, if necessary, of the periodic financial reports required under this Agreement, less any unspent balance from previous advances.
- b) Cash Management and Close-Out. The Subrecipient shall notify CARE when 75% of the funds obligated under this Agreement has been expended in any given funding period. At the end of the Term of this Agreement, or upon its early termination, CARE will withhold final payment to Subrecipient until the final Cash and Expenditures Status Report is submitted to CARE, and CARE has verified that no disallowed costs are remaining. When any equipment or supplies are no longer needed, or at the end of the Term of this Agreement, whichever is earlier, Subrecipient shall request and comply with disposition instructions from CARE.
- c) Adjustments. In the event Subrecipient owes CARE certain amounts, CARE may set off outstanding amounts against payments to the Subrecipient hereunder.
- d) Refunds. If at any time during the life of the Agreement, or as a result of the audit, it is determined by CARE or the Donor that funds provided under this Agreement have been expended for the purpose not in accordance with the terms and conditions of this Agreement, then upon the written request for refund from CARE, Subrecipient shall promptly pay such required amount to CARE. In the event that a final audit has not been performed prior to the closeout of this grant, CARE retains the refund right until all claims which may result from the final audit have been resolved.
- e) Bank Account. All payments to Subrecipient under this Subaward will be made by check or by transfer to the following bank account:

Bank Name:	Rastriya Banijya Bank
Bank Address:	Gorkha
Account Number:	12921

f) Cost Share

This Agreement has been designated as a cost sharing/matching Subgrant. Pursuant to the Budget, Subrecipient shall contribute from its own funds or resources the equivalent of minimum 10% of total

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amounts disbursed by CARE hereunder toward the Project. All the cost share portion will be ensured by Subrecipient.

### Reporting and Evaluation

- a) Program Performance Periodic Reports. Subrecipient shall timely submit, preferably in electronic form, narrative progress reports to CARE, in a form and with content satisfactory to CARE, that succinctly presents the following information:
- Explanation of quantifiable output of the programs or projects compared against those described in the Project Description to be accomplished in any period specified, if appropriate and applicable,
  - Reasons why established results were not achieved, if appropriate; and,
  - Analysis and explanation of cost overruns or high unit costs.

Narrative progress report schedule:

Period: from October to December **Due:** 31 December of each year.

Period: from January to March **Due:** 31 March of each year.

Period: from April to June **Due:** 30 June of each year.

Period: from July to September **Due:** 30 September of each year.

- b) Special Reports. CARE must also be notified immediately of developments that may have a significant impact on activities hereunder, including without limitation as to security or reputation of Subrecipient, CARE or another partner organization. Further notification must be given in case of problems, delays or adverse conditions, which may materially impair the ability to meet the objectives hereunder. These notifications must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.
- c) Monitoring. CARE must assure that Subrecipient performs its activities hereunder pursuant to this Agreement, and in accordance with applicable laws and regulations. Subrecipient consents to any subrecipient monitoring that CARE may reasonably require, including site visits, periodic reviews, audits, and other monitoring activities or requirements.
- d) Financial Reports. Subrecipient shall timely submit to CARE, preferably in electronic form, a completed Cash and Expenditure Status Report in the form attached at ATTACHMENT 4 or some other format which may from time to time be approved by CARE, together with any other financial reports requested by CARE or required to comply with Donor requests. Each financial report should analyze spending for the preceding period as compared to the line-items established in the Budget. Each report must indicate:
- the amount budgeted for each line item, the amount expended against each line as of the date of the report, and the resulting balance remaining in each line; and
  - Grant funds received during the period of the report, the amount of expenditures against such funds, the purpose of expenditures of such funds, and the balance of funds remaining and unspent.

Financial report schedule:

Period: from October to December **Due:** 25 December of each year.

Period: from January to March **Due:** 25 March of each year.

Period: from April to June **Due:** 25 June of each year.

Period: from July to September **Due:** 25 September of each year.

- e) Final Reports. Within thirty (30) calendar days after the termination or expiration date of this Agreement, Subrecipient shall submit to CARE a final report describing the Project final financial status and a detailed summary of Subrecipient's portion of the Project. The report shall be in a form and contain the content acceptable to CARE, including without limitation a description of the Subrecipient's activities and results, an assessment of progress made towards accomplishing the results, the significance of these activities, any important research findings, and any comments and recommendations.

#### Termination and Suspension

- a) Termination by CARE. CARE may terminate or suspend this award at any time, in whole or in part if (1) Subrecipient materially fails to comply with the terms and conditions of this Agreement; (2) the Donor, for any reason, fails to fund, terminates or suspends the Grant or that portion of the Grant relating to Subrecipient's activities; (3) the Subrecipient is unable to carry out the purposes of this Agreement in a satisfactory or timely manner in the reasonable judgment of CARE; or (4) any act or omission of Subrecipient exposes CARE to liability for personal injury or property damage in the reasonable judgment of CARE. CARE will notify the Subrecipient in a letter that will indicate the reason for termination or suspension, effective date and in case of partial termination, the portion to be terminated or suspended.
- b) Termination by Subrecipient. This Agreement may be terminated, in whole or in part, by the Subrecipient if CARE materially fails to comply with the terms and conditions of this Agreement upon sending thirty (30) days written notification to CARE with the following information: the reasons for the termination, the effective date, and, in the case of a partial termination, the portion to be terminated. However, if CARE determines in the case of partial termination that the reduced or modified portion of this Agreement will not accomplish the purposes for which the award was made, CARE may terminate the award in its entirety.
- c) Minimization of Expenditures and Obligations. Upon receipt of and in accordance with such termination notice, the Subrecipient shall take immediate action to minimize all expenditures and obligations funded hereunder and cancel such obligations whenever possible. Except as explicitly authorized in writing, the Subrecipient shall not incur costs after the effective date of termination.
- d) Return of Funds. Within thirty (30) days after the effective date of termination, Subrecipient shall repay to CARE all unexpended program funds that are not otherwise obligated by a legally binding transaction applicable to this Agreement.
- e) Survival. Certain obligations hereunder intended by their terms to survive the expiration or termination of this Agreement shall so survive.
- 7) Line Item Flexibility. Subrecipient must obtain CARE's prior written approval before making shifts in Budget line items.
- 8) Confidential Information. Either party may receive confidential information of the other party in connection with the performance of this Agreement. During the Term hereof and for five years thereafter, neither party shall disclose the other party's confidential information to any person or other third-party or make use of such confidential information other than as necessary to perform the obligations hereunder without the owner's prior written consent; provided, however, that confidential information may be disclosed to government authorities if the disclosure is required by law and the disclosing party has provided the owner prior notice and, if practicable, a reasonable opportunity to defend against such disclosure. Confidential

information means any information (written, oral or observed) relating to: (a) donors and potential donors; (b) personal profiles of beneficiaries; (c) personal profiles of employees; (d) business and strategic plans; (e) finances; or (f) a relationship with any governmental entity. Confidential information also includes information specifically designated confidential by the owner or that the other party knows or reasonably should know is not generally known to the public. Upon the termination or expiration of this agreement, each party shall destroy or return such confidential information of the other party in its possession, including all copies and notes [electronic or otherwise], and in the case of destruction, at the owner's request shall certify to such destruction. Notwithstanding the foregoing, confidential information shall not include any information that is generally known to the public or readily ascertainable from publicly available sources.

Use of Name, Trademark or Logo. Subrecipient shall comply with Donor requirements as to the use of its logo, name or other marking in connection with this Program. Neither party shall use the name, trademark, or logo of the other in any advertisement, press release, publicity or other materials printed or published with reference to this Agreement without the express written consent of the other, or as required by law or any governmental agency. Neither party shall publicly disparage the other.

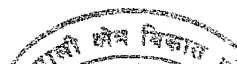
Conduct. Subrecipient represents and warrants in connection with its work and funds paid hereunder, that it:

- i) Shall not carry on propaganda or try to influence legislation of any government; or
- ii) Shall not participate or intervene in (including no publishing or distributing statements concerning) any political campaign for or against any candidate for public office.
- iii) Shall not discriminate on the basis of race, ethnicity, religion, national origin, gender, age, sexual orientation, marital status, citizenship status, disability, or military status;
- iv) Shall comply with the Statement of Commitment on Eliminating Sexual Exploitation and Abuse by UN and Non-UN personnel.
- v) Shall maintain and comply with a written code of conduct that prohibits giving anything of value, directly or indirectly, to any person or entity, including government officials, in the form of a bribe or kickback; establishes appropriate limitations on transactions with relatives or related businesses or ventures; and otherwise properly governs the performance of its employees engaged in soliciting, awarding or administering contracts, and receiving gifts. Subrecipient shall inform CARE in writing of any violations relating to its obligations hereunder.
- vi) Shall perform and complete its work hereunder in accordance with generally accepted industry standards, practices and principles applicable to similar work.
- vii) Understands that CARE supports activities that have a secular purpose and which do not have the primary effect of advancing or inhibiting religion. If Subrecipient is a faith-based organization, it understands and agrees that it may use its funds for religious or sectarian purposes, but these should be separated in time and place from the activities performed hereunder.

1) Assumption of Liability/Indemnification.

- a) The Subrecipient assumes all liability for all loss, damage, cost and expense arising out of or in any way connected with the operation or performance of, or the failure to perform, any duty, obligation, or activity on the part of the Subrecipient, its subcontractor(s), agent(s), or employee(s) in connection with this Agreement. The Subrecipient further shall defend, indemnify and hold harmless CARE and the officers, agents and employees of CARE and such entities from all loss, damage, cost and expense, including all reasonable attorneys' fees, arising from or in any way connected with the operation or performance of, or failure to perform, any duty, obligation, or activity on the part of the Subrecipient, its subcontractor(s), agent(s), or employee(s) in connection with this Agreement.
- b) Neither CARE nor Donor assumes liability for any third party claims for damages arising out of this Agreement.
- c) Subrecipient shall protect any program assets provided hereunder from theft, loss, damage or other injury, and shall ensure such assets are insured by a reputable insurance company, if practicable.

2) Subgrants and Subcontracts; Assignment. Subrecipient shall not subgrant or subcontract any portion of its performance hereunder without the prior written consent of CARE, except for subcontracting described in



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the Program Description. Notwithstanding the foregoing, Subrecipient may enter into contracts with vendors and service providers as required to conduct its normal operations and on customary business terms without the consent of CARE. Subrecipient shall not transfer or assign its interest in this Agreement in whole or in part without the prior written consent of CARE. All terms and conditions of this Agreement shall be binding upon the respective parties hereto, their personal representatives, successors and assigns.

Audit. Subrecipient shall retain financial records and any substantiating documentation therefore, such as bills, invoices, canceled checks, receipts, personnel time reports, and any other records pertinent to this Agreement for the Term hereof and three years after the submission of final reports required under this Agreement. During this period, CARE, Donor, or their agents, during normal working hours, shall have full and free access to inspect, audit and make extracts from such books and records.

Ownership of Work. Subrecipient represents and warrants that all work created hereunder shall be original work or that any third party rights in the work have been secured for use by CARE and Donor as set forth herein. Unless the Donor otherwise requires, Subrecipient may own its work product created hereunder, however, Subrecipient hereby provides each of CARE and the Donor a royalty-free, non-exclusive, assignable, and transferable license to use the work hereunder as it may deem appropriate.

Contact Persons. Reports and notices hereunder shall be submitted to the following contacts, as each party respectively may revise in writing from time to time:

<i>For CARE</i>	<i>For the Subrecipient</i>
Name : Lex Kassenberg	Name : Dhan Bahadur Gurung
Title : Country Director	Title : Chairperson
CARE International in Nepal	Himalayan Area Development Center
Address: Krishna Galli, Lalitpur.	(HADC)
Nepal	Address: Gorkha
Tel: 01 5522800	Nepal
Email: lex@np.care.org	Tel: 064-420825
	Email: hacdcgorkha@gmail.com

Conflicts. Any conflict in interpretation shall be resolved in the following priority:

- a) The Grant
- b) Donor Regulations
- c) This Agreement, including its attachments.

Governing Law; Dispute Resolution

This Agreement shall be governed by the laws of Nepal, without regard to its conflicts of law provisions, and principles of U.S. federal grants law. The parties hereby agree that they shall first try to resolve any controversy or claim arising out of or relating to this Agreement, or the breach or alleged breach thereof, by good faith negotiation among senior managers unrelated to the dispute, and failing that, by mediation. If there is any dispute concerning the performance of this Agreement that cannot be so settled within thirty (30) days after written notice, then, such dispute shall be settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in the English language.

If a judicial proceeding is brought by either part to resolve a dispute that is subject to arbitration hereunder, or to challenge an arbitral award rendered hereunder, the defendant in that proceeding, if it prevails, shall be awarded its costs and reasonable attorney fees, including costs and fees on any subsequent appeal. If a party fails to comply with an arbitral award duly rendered hereunder, and forces the other party to seek enforcement of the award in a court of law, the plaintiff in that proceeding, if it prevails, shall be awarded its costs and reasonable attorney fees, including costs and fees on any subsequent appeal. Notwithstanding any

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provision to the contrary, either party shall have the right to seek injunctive relief or other limited, provisional or equitable remedies in any court of competent jurisdiction.

18) Time of Essence. Time is of the essence in performing the work hereunder.

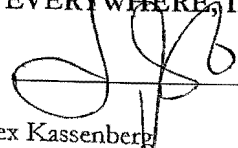
19) Relationship of the Parties. CARE and Subrecipient are independent contractors with respect to each other, and: (a) neither CARE nor Subrecipient is an agent of the other and the parties have no right or authority to enter into any contract or undertaking in the name of, or for the account of, the other party, or to create or assume any obligation of any kind, express or implied, on behalf of the other, except as specifically set forth herein; and (b) nothing in this Agreement shall be construed to create an employer/employee relationship, partnership or joint venture between the parties, or between a party and any employee of the other party.

20) Non-waiver. Failure by CARE to insist upon strict compliance with any of the terms of this Agreement shall not be deemed a waiver of such terms, nor shall any specific waiver or relinquishment be deemed a blanket waiver or relinquishment of such right or power. No waiver shall be binding unless in writing and signed by the party granting the waiver.

21) Entire Agreement. This Agreement, together with its attachments, contains the entire agreement of the parties related to the subject matter hereof, and no representation, inducements, promises or agreements, oral or otherwise, between the parties not included herein shall be of any force or effect. This Agreement may be supplemented, amended or modified only by a writing executed on behalf of both parties. Each attachment hereto is incorporated by reference herein and forms a part of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable by an authority empowered to provide a final and binding settlement hereunder, the remainder of the Agreement, other than those determined to be invalid or unenforceable, shall not be affected. Each valid provision hereof shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, each party's authorized signatory has set his or her hand as of the date set forth below.

COOPERATIVE FOR ASSISTANCE AND  
RELIEF EVERYWHERE, INC.

Signature: 

Name: Lex Kassenberg

Title: Country Director

Date: 1 October 2012

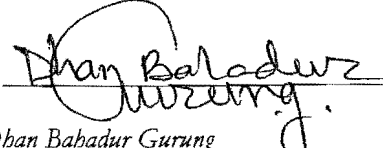


CARE

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Himalayan Area Development Center (HADC)

Signature: 

Name: Dhan Bahadur Gurung

Title: Chairperson

Date: 1 October 2012

#### ATTACHMENTS

- Attachment 1: Project Description (Scope of the work)
- Attachment 2: Budget
- Attachment 3: Donor Regulations
- Attachment 4: Financial Reporting Format

