PREVENTION OF SEXUAL EXPLOITATION, ABUSE AND HARASSMENT POLICY

I. Purpose of Policy

This policy sets out TBC's approach to preventing sexual exploitation, abuse, and harassment. It sets out:

- the principles upon which we will base our decision making and actions;
- our expectations for TBC staff, all who represent TBC and partner organisations, and
- our commitments to ensure effective action is taken when problems occur.

All staff must be familiar with this policy. This policy will also accompany TBC's Staff Policy, TBC's Code of Conduct (Section 1 and Section 3), and TBC's Beneficiary Complaints and Response Mechanism to strengthen our approach to safeguarding.

This policy will be reviewed annually to determine update and/or improvement.

II. Scope of Policy

The policy is applicable to all TBC personnel, including employees at all levels, volunteers, interns, contractors, consultants, suppliers, vendors and representatives of partner organisations.

III. Background and Zero Tolerance Statement *(Updated 18th November 2020)*

TBC is committed to promoting respect for the human dignity of every individual. TBC staff and partners are expected to promote and protect the rights of all children, women and men equally.

TBC believes all people have a right to live their lives free from sexual harassment, sexual abuse, sexual violence, bullying, exploitation and any abuse of power, regardless of age, gender, sexuality, disability, religion, or ethnic origin. TBC will not tolerate its employees, volunteers, consultants, partners, or any other representative associated with the delivery of its work carrying out any form of sexual harassment, sexual exploitation, or sexual abuse. TBC commits to supporting victims, improving safeguarding capacity, reporting, investigating, responding to, and preventing sexual harassment and sexual exploitation and abuse.

TBC's personnel are obliged to adhere to local and international criminal laws related to sexual exploitation, abuse and harassment (SEAH).

Sexual exploitation, sexual abuse and sexual harassment can take various forms and can happen to anybody at any time during their lives but are more likely when one person is in a position of power over another. TBC recognises that there are unequal power dynamics in the work it conducts, creating an inherent risk of TBC staff and personnel of partner organisatons exploiting a position of power for personal gain. While women and children are particularly at risk of SEAH, all vulnerable populations, including men, are at risk.

If a person does not object to inappropriate behaviour at the time it happens, it does not mean that they are consenting to the behaviour. It may be difficult for the offended person to object, especially if the harasser is in a position of authority.

IV. Definitions and Examples

For the purposes of this policy, the following definitions[1] apply:

Sexual Exploitation – any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, threatening or profiting monetarily, socially or politically from the sexual exploitation of another.

Sexual Abuse – the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

Sexual Harassment – sexually related behaviour that is unwelcomed, unsolicited and unreciprocated and would cause a reasonable person in the circumstances to be offended, humiliated or intimidated. It does not refer to occasional compliments or other mutually acceptable behaviour.

Examples of acts of sexual exploitation and abuse include, but are not limited to:

- Sexual assault (any unwanted or forced sexual act committed without consent) or threat thereof. Sexual assault can occur either against a person's will, by force or coercion, or when a person is incapable of giving consent, such as when they are under duress, under the influence of drugs or alcohol. Forces include:
    - Actual physical aggression, including but not limited to: rape, forcible sodomy, forcible oral copulation, sexual assault with an object, sexual battery, and forcible fonding (unwanted kissing or touching)
    - Threats of physical or emotional coercion for sex
    - Psychological blackmailing for sex
- Forcing someone to have sex with anyone.

[1] Source: *UN Glossary on Sexual Exploitation and Abuse (2nd Edition)*

- Forcing a person to engage in prostitution or pornography or videotaping or photographing sexual acts and posting it without permission.
- Refusing to use safe sex practices.
- Alleging or threatening to allege that anyone already has a history of prostitution on legal papers.
- Name-calling with sexual epithets.
- Insisting on anything sexual, including jokes that may be uncomfortable, frightening or hurtful.
- Sexual favours in exchange for access to rations, money or other goods.
- Offering or providing assistance due to a beneficiary, if used as a means to coerce sexual activities.

Examples of behaviour that could be considered sexual harassment include, but are not limited to:

- Unwanted physical contact, sexual suggestions, or demands
- Making obscene or sexually suggestive remarks, insults or jokes that may cause offense.
- Sending explicit or sexually suggestive emails.
- Intrusive enquiries into others' private life.

V. Conduct Standard

Sexual exploitation, sexual abuse and sexual harassment constitute acts of serious misconduct, and any violation of these Standards may be grounds for disciplinary action up to and including immediate termination. Any TBC staff members, volunteers, interns, contractors, consultants, suppliers, vendors and representatives of partner organisations who commit acts of sexual exploitation, sexual abuse, or sexual harassment may also be subject to criminal prosecution or other legal action under applicable laws.

Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defense.

In context of national laws, offering or providing money, employment, goods, or services in exchange for sexual activity, or offering or arranging the sexual activity of another person as part of such an exchange, is strictly prohibited, including outside working hours.

TBC staff members are strongly discouraged from engaging in sexual relationships with beneficiaries. Should a relationship develop between a member of staff and a beneficiary, the TBC staff member is obliged to report this to management at the earliest opportunity.

In some countries, homosexuality is illegal and LGBTIQ people face significant discrimination. At TBC, we do not discriminate on the basis of sexuality or gender, and recognise our duty of care

to provide support to manage the risks which can be associated with being openly non-heterosexual in some parts of the world.

TBC does not have a dress code and is clear that what somebody is wearing will never be considered justification for carrying out sexually exploitative or abusive acts towards them.

VI. Reporting and Investigation

Reporting:

All concerns regarding actual or possible sexual misconduct or breaches of this policy must be reported immediately. TBC will respond to any complaint or suspicion of sexual exploitation, abuse or harassment. It is not necessary to have proof to support a concern in order to make a report. If an individual feels uncomfortable with something seen or heard that may indicate a breach of the policy, this is sufficient cause to submit a complaint. Complainants must feel they are safe to report, that they are listened to, and that action is taken.

Staff can report an issue anonymously if they do not wish to come forward personally. Complaints and concerns may be submitted in any one or more of the following ways:

- Contact Thailand Programme Director or Myanmar Programme Director who are appointed as TBC's PSEAH focal points.
- Contact complaints@theborderconsortium.org.
- May speak directly to TBC's HR & Admin Specialist who will then summarize the complaints in writing with strict confidence and report it to TBC's Executive Director

Where the subject of a complaint is a TBC senior management team member, focal points, coordinator or HR staff member, the complaints should be sent to Complaints@theborderconsortium.org to ensure the fairness in investigation. TBC's Board of Directors will appoint the investigation hearing committee which consists of personnel from Board of Directors and member organisations to avoid the appearance of conflict of interest.

Every TBC staff member has a responsibility to report suspected cases of sexual exploitation, abuse or harassment by TBC staff members or partner organisations.

Anyone who deliberately makes a malicious report (e.g. falsifies a concern) will be subject to disciplinary action, to the extent permitted by applicable law.

Investigation:

All allegations of misconduct or inappropriate behaviour will be investigated fairly and in accordance with TBC's policies and processes (as in Section 6 of TBC's Staff Policy). TBC will do everything we can to prevent sexual exploitation, abuse and harassment and to protect victims/survivors when concerns arise.

To fulfill this commitment, TBC has taken the following steps:

- Assigning oversight of PSEAH efforts, policies and protocols to Thailand Programme Director and Myanmar Programme Director as the Senior Focal Points in order to monitor effectiveness, report progress, manage investigations, report to TBC's Executive Director, Senior Management Team, and improve efforts to prevent and respond to sexual exploitation, abuse, and harassment.
- Assigning HR & Admin Specialist as the Coordinator for PSEAH-related activities and report progress to Thailand Programme Director and Myanmar Programme Director as appropriate.
- In compliance with applicable laws and to the best of TBC's abilities, preventing perpetrators of sexual exploitation, abuse and harassment from being hired or rehired by TBC or other humanitarian and development agencies. This may include use of background and criminal records checks.
- Investigating allegations of sexual exploitation, abuse and harassment involving TBC staff in a timely and professional manner, and ensuring due process to the best of TBC's ability. Investigators shall act impartially with respect for the rights and dignity of complainants, victims, and subjects of complaints. This includes the use of appropriate interviewing practices with complainants and witnesses, particularly with children and the engagement of professional investigators or securing investigative expertise as appropriate. TBC will act on the findings of investigations and ensure lessons learned are used to improve policy and practice as appropriate.
- Providing consistent refresh and communication on topics related to the PSEAH for all TBC staff.
- Including PSEAH policy information in partnership, subgrant or subrecipient agreements and requiring partner organisations to report to TBC immediately any behavior believed to violate this policy.
- Reviewing and updating this policy periodically.
- Ensuring emergency assistance and psychological support are provided as appropriate and feasible to victims and others affected by sexual exploitation, abuse, and harassment.

VII. No Retaliation

TBC will not tolerate any form of harassment, retaliation, victimization, or adverse employment consequence against any TBC staff member who expresses concerns or lodges a good faith complaint under this policy, TBC's Code of Conduct, TBC's Child Protection Policy or otherwise. Concerns can be raised in good faith, even if mistaken. Any TBC staff member who harasses, retaliates, victimizes, or takes adverse action against someone who has raised a concern in good faith will be subject to disciplinary action, to the extent permitted by applicable law, up to and including termination of employment.

VIII. Confidentiality

According to the statement in Section 6.2 of TBC's Staff Policy, every effort will be made to protect the privacy of all complainants, reporters and subjects of complaint. While TBC cannot guarantee complete confidentiality, information about complaints and investigations shall be limited to individuals with a need to know.

During and after an investigation, any person who has knowledge of a report or complaint must respect the sensitivity of the matter and the need to protect the identities, privacy and reputation of the alleged subject of the complaint, the complainant, reporter, alleged victim and any witnesses. TBC will not reveal a complainant's name or personal details to anyone outside the organisation without the complainant's permission, unless required by law.

Individuals who do not cooperate with an investigation or who breach confidentiality strictures will be subject to disciplinary action, to the extent permitted by applicable law. TBC's Management and/or Investigation Hearing Team shall take all reasonable actions to protect the complainant, alleged victim, alleged subject of the complaint, reporter and any witnesses from retaliation, and to maintain their safety throughout the investigation procedures.

If in doubt about anything in this policy, please seek further advice from TBC's PSEAH Focal Points (at tim@theborderconsortium.org; duncan@theborderconsortium.org).

I, _____ have read and understood TBC's PSEAH Policy. I recognise that I may face substantial adverse consequences for breach of this code of conduct. I am aware that allegations of abuse will be reviewed and, as determined necessary by TBC, investigated. I recognise that, if I violate this policy, I may be subject to applicable local laws and to organisational disciplinary measures.

I acknowledge that this Pledge of Commitment to this policy states TBC's expectations of me in my service with TBC. With my signature affixed herein, I agree to abide by this policy.

NAME: _____

JOB TITLE/POSITION: _____

SIGNATURE: _____

DATE: _____