



Australian Government

Department of Foreign Affairs and Trade

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF VANUATU
ON
DEVELOPMENT COOPERATION**

MEMORANDUM OF UNDERSTANDING

between the Australian Government and the Vanuatu Government on Development Cooperation

GENERAL

1. This Memorandum expresses the understandings of the Australian Government (GOA) and the Vanuatu Government (GOV) (“the Partners”) concerning the respective roles and contributions of the Partners in regard to development cooperation.

PURPOSE

2. The Partners will cooperate in a Program to ensure development cooperation contributes as effectively and efficiently as possible to sustained and inclusive economic growth and reduced poverty in Vanuatu.

COORDINATING AUTHORITIES

3. The coordinating authorities for this Memorandum will be:

For GOA: The Department of Foreign Affairs and Trade (DFAT).

For GOV: The Ministry of Foreign Affairs or such other authority the GOV may choose to nominate.

4. DFAT or other GOA agencies may engage Implementers to fulfil the GOA’s functions under this Memorandum.

DEFINITIONS

5. For the purposes of this Memorandum:

- a. “**Activity**” or “**Activities**” means any aspect of development cooperation undertaken pursuant to this Memorandum, including activities referred to in paragraphs 6 and 8;
- b. “**Activity Personnel**” means any persons working in Vanuatu on an Activity and whose salaries and/or other costs are funded or partly funded from GOA contributions to the Activity either directly or indirectly through an Implementer;
- c. “**Activity Supplies**” means equipment, material and other goods and services supplied for the implementation of the Activities, the cost of which is funded from GOA contributions to the Activities either directly to GOV or indirectly through an Implementer;
- d. “**Dependant(s)**” means the spouse and/or dependant minor children of Activity Personnel or any other person recognised by the Partners as a dependant of Activity Personnel;
- e. “**Implementer(s)**” means an organisation, company, individual or other entity engaged by the GOA or on behalf of the GOA through a contract, sub-contract, grant or other arrangement;

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- f. **“Intellectual Property”** has the meaning provided for in Article 2 of the Convention Establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967, as amended on 28 September 1979;
- g. **“Personal and Household Effects”** means any goods imported into Vanuatu by Activity Personnel for their personal use or use by their Dependant(s);
- h. **“Program”** means all Australian Official Development Assistance (ODA) to Vanuatu including the Australian bilateral development cooperation program in Vanuatu and that provided through Australia’s regional and global programs and other GOA agencies; and
- i. **“Subsidiary Arrangement”** means an arrangement in writing pursuant to this Memorandum between GOA and GOV regarding the conduct of an Activity.

PROGRAM ACTIVITIES

- 6. The Program will be directed to assisting those sectors which GOV accords greatest priority, including those set out in the Australia-Vanuatu Aid Partnership Arrangement 2016-2019 or any successor arrangements as mutually determined by the Partners.

SUBSIDIARY ARRANGEMENTS

- 7. In order to give effect to the Program, GOA and GOV may enter into Subsidiary Arrangements for the purpose of carrying out specific Activities.
- 8. The Subsidiary Arrangements will refer as appropriate to this Memorandum, and the terms of this Memorandum will, unless otherwise stated, apply to the Activities. Wherever possible, a Subsidiary Arrangement will set out:
 - a. the name and duration of the Activity;
 - b. description and statement of objectives of the Activity;
 - c. the Partners’ nominated implementing agencies;
 - d. details of the Partners’ contributions to the Activity including:
 - i. indicative financial contributions;
 - ii. the supply of materials, services and equipment;
 - iii. the numbers and areas of expertise of Activity Personnel and other personnel to be engaged; and
 - e. timetable(s) for implementation;
 - f. the treatment of Activity Supplies during and at the end of the Activity; and
 - g. monitoring, review and evaluation arrangements.

GOVERNMENT OF AUSTRALIA CONTRIBUTIONS

- 9. The GOA’s contributions to the Program and individual Activities depends on annual Australian Parliamentary approval of appropriations for the Program or Activities.

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10. Any Program or Activity financial contribution estimates provided by GOA to the GOV will be indicative planning figures only and not binding financial commitments.
11. GOA may:
 - a. meet costs related to equipment, materials, other goods, services, office running costs and training (as appropriate for each Activity);
 - b. pay salaries, allowances, Activity-related travel, accommodation costs and living expenses of Activity Personnel and scholarship recipients; and
 - c. meet costs related to transport of Activity Supplies to Activity sites.
12. Another donor or donors may also meet costs referred to in paragraph 11, subject to the consent of both Partners.
13. GOA may, at its discretion, consent to meet costs in addition to those referred to in paragraph 11, if requested to do so by GOV.
14. GOA contributions to the Program may be made either directly to GOV or indirectly through Implementers.

GOVERNMENT OF VANUATU CONTRIBUTIONS

15. GOV will meet all costs incurred by it in Vanuatu in support of the Program and each Activity, other than those costs that the Partners have mutually determined will be met by GOA or any other donor in accordance with paragraphs 11 to 13.
16. The costs to be met by GOV will normally include:
 - a. equipment, materials, other goods, services, office running costs and training for the Activity, as mutually determined between the Partners;
 - b. salaries, allowances and Activity-related travel of personnel other than that funded by GOA;
 - c. furnished office premises and office services on the sites of Activities where such premises and services are needed by Activity Personnel to carry out their duties; and
 - d. other measures within the jurisdiction of GOV (such as the provision of land with secure tenure) which may facilitate the implementation of the Activities.

REVIEW, MONITORING AND EVALUATION

17. The Partners may review the progress of each Activity at times arranged between and mutually convenient to the Partners. The reviews will be carried out by a joint review team appointed by the Partners who may or may not be independent of Activity Personnel or individuals involved in the Activities. The Partners may mutually arrange for joint evaluation of Activities to assess the effectiveness and impact of those Activities.
18. In addition, the Partners may mutually arrange for joint evaluation and review of the overall Program, to inform future Activities.

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JOINT COORDINATION

19. Officials of the Partners will regularly meet to consider:
- a. the direction, composition and contribution of the Program to the development of Vanuatu;
 - b. the effectiveness of the administration and impact of the Program; and
 - c. future Activities.
20. Representatives of the Coordinating Authorities and other relevant GOA and GOV agencies may attend the consultations.

ACTIVITY PERSONNEL

21. For the purposes of the Program, GOV will facilitate the deployment of Activity Personnel who are not permanent residents or nationals of Vanuatu by:
- a. granting exemption from income taxes on salaries and allowances;
 - b. granting exemption from import duties on Personal and Household Effects;
 - c. granting exemption from import duties on one motor vehicle for the personal use of each Activity Personnel provided that the vehicle is re-exported on departure of the Activity Personnel or duty is paid on its assessed value at time of sale or disposal within Vanuatu;
 - d. assisting in clearance through customs of Personal and Household Effects and the motor vehicle referred to in paragraph c;
 - e. granting all entitlements accorded to non-accredited aid personnel of any other donor country or organisation; and
 - f. expediting the issue of all documentation required for the entry and exit of Activity Personnel and their Dependant(s) to and from Vanuatu, and for the performance of work by Activity Personnel, including the granting of Special Category Visas or an exemption from visa fees. Activity Personnel and their Dependant(s) will meet other visa requirements including the provision of character references, police records and medical certificates (if required), unless GOV provides a written exemption on a case by case basis.

ACTIVITY SUPPLIES

22. GOV will, in accordance with Vanuatu law:
- a. grant exemptions for Activity Supplies from value added tax (VAT), import duties and any other taxes, or pay those taxes and duties; and
 - b. facilitate movement of the Activity Supplies by providing appropriate customs and transport facilities including:
 - i. payment of any necessary storage costs at the first port of discharge of the Activity Supplies in Vanuatu; and

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- ii. taking responsibility for all formalities of clearance including payment of or exemption from import duties, value added tax (VAT), service tax and port tax and other taxes, or charges of a similar nature.
23. Activity Supplies will only be available for Activity use. Activity Personnel will control the Activity Supplies for the duration of the Activity or until such other time as mutually arranged between the Partners.
24. The Activity Supplies identified by GOA for return to Australia will not be subject to duties, taxes or levies upon export.
25. At completion of each Activity and subject to paragraphs 28 to 31, all Activity Supplies will either be transferred to another Activity under this MOU, or alternatively if there is no such Activity, be dealt with as described in the Subsidiary Arrangement or as mutually determined between the Partners.

WARRANTIES

26. Following testing of any Activity Supplies supplied to GOV pursuant to this Memorandum, GOV will bear all risks associated with the installation and maintenance of the Activity Supplies once handed over, subject to any express warranties given to GOA by the suppliers of the Activity Supplies.
27. With respect to any Activity Supplies that are the subject to express warranties given to GOA, GOA will exercise any right under such warranties it may have against the suppliers on behalf of GOV on request from GOV.

INTELLECTUAL PROPERTY

28. Notwithstanding paragraph 25 above, GOA will retain its ownership of all Intellectual Property rights attached to the Activity Supplies and vested in GOA.
29. In accordance with the cooperative nature of the Program, ownership of any Intellectual Property rights in materials developed through Activities will be equitably apportioned between the Partners.
30. If Intellectual Property developed through an Activity is likely to be of substantial commercial value, the Partners will enter into a further arrangement providing for the equitable apportionment of profits, royalties or licence fees relating to the Intellectual Property. The apportionment will be made taking into account the following factors:
- a. the intellectual contributions of the Partners;
 - b. the contribution of Intellectual Property, materials, research effort and preparatory work of the Partners;
 - c. the facilities provided by the Partners; and
 - d. such other relevant considerations as the Partners may mutually determine.
31. Neither Partner will, without the written approval of the other Partner:
- a. make any use of any Intellectual Property contributed to, or arising from, the Program or Activities; or

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- b. do anything prejudicial to the Intellectual Property rights of that other Partner or any national of the country of that other Partner.

SECURITY

- 32. GOV will arrange, as far as may be necessary in the circumstances, protective services required to ensure the safety and security of:
 - a. the person and property of the Activity Personnel and their Dependant(s);
 - b. other personnel engaged in an Activity; and
 - c. Activity Supplies.

EQUALITY OF TREATMENT

- 33. GOV will ensure that Implementers, Activity Personnel and their Dependant(s) are accorded no lesser benefits, privileges and exemptions than those accorded to other non-Vanuatu organisations (including governments) or nationals under any other bilateral arrangement for development cooperation assistance.

CLAIMS RELATING TO PROGRAM ACTIVITIES

- 34. GOV releases GOA, Activity Personnel and their Dependents from all actions, suits, proceedings, claims and demands which GOV may have now or in the future against them in relation to loss or damage resulting from, or consequent upon, the Activities.
- 35. GOV will indemnify and at all times hereafter will keep indemnified GOA and the Activity Personnel and their Dependents against:
 - a. all actions, suits, proceedings, claims and demands which any other partner may have now or in the future against them in relation to loss or damage resulting from, or consequent upon, the Activities; and
 - b. any claim for contributions which any partner may have now or in the future against any of them in respect of any such actions, suits, proceedings, claims and demands.
- 36. The release and indemnity in paragraphs 34 and 35 will not apply if the Partners have mutually decided that an action, suit, proceeding, claim or demand arises from a criminal act, gross negligence or wilful misconduct of GOA, Activity Personnel or their Dependents.

UNDERTAKING TO PREVENT FINANCING OF TERRORISM

- 37. Both Partners are firmly committed to the international fight against terrorism and, in particular, the financing of terrorism consistent with United Nations Security Council (UNSC) regulations relating to terrorism, including UNSC Resolution 2178 (2014), 2179 (2014), 1373 (2001), 1267 (1999) and related resolutions.
- 38. Both Partners reaffirm their commitment to the principles of the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999).
- 39. The Partners will cooperate to ensure that any funding provided pursuant to this Memorandum is not used, directly or indirectly, to provide support to individuals or entities associated with terrorism.

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40. If, during the term of this Memorandum, either Partner discovers an organisation or individual subject to this Memorandum is associated with terrorism, it will immediately inform the other Partner.

ANTI-CORRUPTION

41. Consistent with both Partners' commitment to good governance, accountability and transparency, each Partner may investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to any Activity.

CHILD PROTECTION

42. Both Partners are firmly committed to the importance of international cooperation for improving the living conditions of children in every country, in particular in developing countries consistent with the Geneva Declaration of the Rights of the Child of 1942 and the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959.
43. Both Partners reaffirm their commitment to the principles of the International Convention on the Rights of the Child (New York, 20 November 1989) and to the Optional Protocols to the Convention on the involvement of children in armed conflict (New York, 25 May 2000) and on the sale of children, child prostitution and child pornography (New York, 25 May 2000).
44. The Partners will cooperate to ensure that no personnel involved with any Activity are directly or indirectly associated with child abuse and exploitation contrary to the provisions of the Convention on the Rights of the Child and the Optional Protocols signed and ratified by the Partners. Both Partners will cooperate to protect children from abuse and exploitation of all kinds in the delivery of all Activities.
45. If, during the term of this Memorandum, either Partner discovers an organisation or individual involved in any Activity is associated with child abuse and/or exploitation, it will immediately inform the other Partner.

SETTLEMENT OF DIFFERENCES

46. The Partners will consult together at any time upon request of either Partner regarding any matter relating to the terms of this Memorandum and will endeavour jointly in a spirit of cooperation, good faith and mutual trust to resolve expeditiously any difficulties or misunderstandings that may arise.

STATUS OF ARRANGEMENT

47. This Memorandum and Subsidiary Arrangements pursuant to this Memorandum serve as records of the Partners' intentions. They do not constitute or create (and is not intended to create) obligations under domestic or international law and will not give rise to any legal process and will not be deemed to constitute or create any legally binding obligations (express or implied).

AMENDMENTS

48. This Memorandum may be amended at any time by mutual decision in writing in the form of an Exchange of Letters between the Partners.

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ENTRY INTO EFFECT AND DURATION

- 49. This Memorandum will take effect on signature by the Partners and will remain in effect until terminated.
- 50. This Memorandum supersedes the previous Memorandum of Understanding between the Government of Australia and the Government of Vanuatu on Development Cooperation, signed by both Partners on 15 December 2005.
- 51. Either Partner may terminate this Memorandum by giving the other Partner at least three months' written notice of its intention to terminate.
- 52. The termination of this Memorandum will not affect any Subsidiary Arrangements existing on the date of termination, unless stated otherwise in such Subsidiary Arrangements or the Partners otherwise mutually arrange.

Signed at PORT VILA this 8th day of JANUARY 2018

For the Australian Government

For the Vanuatu Government



Signature of representative



Signature of representative

JDA RIN

Printed name of representative

RALPH REGENVANU

Printed name of representative



VICE COMMISSIONER

Official Title of representative

MINISTER OF FOREIGN AFFAIRS

Official Title of representative

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