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GRANT AGREEMENT

BETWEEN

|

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development
(AusAID)

ABN 62 921 558 838

and

{SECRETARIAT OF THE PACIFIC COMMUNITY (SPC) |

FOR

{Core Budget and Program Support 2012 |

AUSAID AGREEMENT NUMBER: {58833/9 |

[GRANT AGREEMENT made

17th

day of DECEMBER [2011]

BETWEEN:

COMMONWEALTH OF AUSTRALIA represented by the Australian Agency for International Development ("AusAID") ABN 62 921 558 838 of the Department of Foreign Affairs and Trade

AND

SECRETARIAT OF THE PACIFIC COMMUNITY, BP D5 98848 Noumea, NEW CALEDONIA ("SPC").

RECITALS:

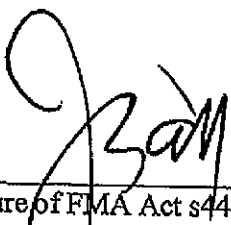
- A. AusAID wishes to provide SPC with Funds to undertake a Program.
- B. SPC wishes to accept the funds subject to the terms and conditions in this Agreement.

OPERATIVE:

AusAID and SPC promise to carry out and complete their respective obligations in accordance with this Grant Agreement and in accordance with Partnership Arrangement Number 58833 between AusAID and SPC.

IN WITNESS whereof this Agreement has been executed by the Commonwealth, by an authorised officer, and has been executed by the SPC by its authorised officer.

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



Signature of FMA Act s44 Delegate

James Batley

Name

Deputy Director General

Position

SIGNED for and on behalf of
Secretariat of the Pacific Community by:

DR JIMMIE ROLOME
DIRECTOR GENERAL

Name and Position
(Print)


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

in the presence of:

CAROLINE T. FUSIMALOHII

Name of witness
(Print)

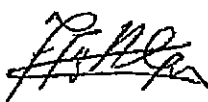
in the presence of:




Signature of witness

Shannon Rooney

Name of witness
(Print)



Signature



Signature of witness

AGREEMENT] CONDITIONS

1. INTERPRETATION

1.1 Definitions

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

"Program" means the Program Core Budget and Program Support 2012 described in the Proposal for which the Funds are provided.

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

"Agreement" means this Agreement including all Parts and any schedules and annexes as issued under the terms and conditions of the Partnership Agreement.

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

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

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

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

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

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

"Party" means AusAID or SPC.

"Personnel" means including Personnel, whether employed by the SPC or engaged by the SPC on a sub-contract basis or agents or volunteers of SPC, engaged in the provision of the Program

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

"Relevant List" means the lists of terrorist made under Division 102 of the *Criminal Code Act 1995* (Cth) and the *Charter of the United Nations Act 1945* (Cth) posted at: <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD?OpenDocument> and http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html#3

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

"World Bank List" means a list maintained by the World Bank in its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at:

<http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

1.2 Agreement prevails

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

2. **TERM OF THE AGREEMENT**

2.1 [The term of this Agreement commences upon execution by both Parties being the date indicated at the front of this Agreement and continues until **31 December 2012**.]

3. **NOTICES**

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

- (a) when delivered (if left at that Party's address);
- (b) on the third Business Day after posting (if sent by pre-paid mail); or
- (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

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

AusAID:

[To: Minister Counsellor – Suva
Australian Agency for International Development (AusAID)

Postal Address: PO Box 214
Suva, FIJI

Street Address: 37 Princes Rd
Tamavua, Suva
FIJI

Facsimile: +679 338 2695]

SPC:

[To: Director-General
Secretariat of the Pacific Community

Postal Address: BP D5
98848 Noumea
NEW CALEDONIA

Street Address: 95 Promenade Roger Laroque
Anse Vata, Noumea, New Caledonia

Facsimile: +687 263818]

4. GENERAL CONDITIONS

- 4.1 SPC must carry out the Program in accordance with the Program Proposals, where applicable, and the terms and conditions of this Agreement and Partnership Arrangement.
- 4.2 SPC must advise AusAID immediately of any difficulties or delays in implementation of the Program.
- 4.3 SPC shall acknowledge in writing to AusAID receipt of the Funds immediately on its receipt.
- 4.4 The Funds and any interest earned or exchange rate gains must be used diligently and for the sole purpose of the Program outlined in Schedule 1 of this Agreement. Any interest earned or exchange rate gains made on the Funds must only be expended on the Program.
- 4.5 SPC acknowledges that Funds provided by AusAID to SPC for this Program does not entitle SPC to any other or further funding.

- 4.6 SPC shall acknowledge AusAID funding assistance provided under this Agreement where appropriate and advise AusAID of matters relating to any publicity and media relations, prior to any publication or media release.
- 4.7 SPC must not represent itself and must ensure that its Personnel participating in the Program do not represent themselves as being employees, partners or agents of the Commonwealth of Australia.
- 4.8 SPC will use its best endeavours to ensure that in its performance of the Program all Personnel and their dependents, while in a recipient country, respect the laws and regulations in force in the recipient country.
- 4.9 SPC is responsible for the security of all of its Personnel and for taking-out and maintaining all appropriate insurances.
- 4.10 SPC must not assign its interest in this Agreement without first obtaining the consent in writing of AusAID.
- 4.11 No delay, neglect or forbearance by either Party in enforcing against the other any term or condition of this Agreement shall be deemed to be a waiver or in any way prejudice any right of that Party.

5. AGREEMENT AMENDMENTS

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

6. PROCUREMENT OF GOODS

- 6.1 Procurement under this Agreement will be in accordance with the Partnership Arrangement.

7. MONITORING AND EVALUATION

- 7.1 Monitoring and Evaluation of the Services provided under this Agreement will be in accordance with the Partnership Arrangement.

8. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

- 8.1 SPC and its Personnel must have regard to and comply with, relevant and applicable laws, guidelines, regulations and policies, including those in Australia and in the recipient country. A list, as amended from time to time, of Australian laws and guidelines that may apply to the delivery of developmental aid to foreign countries can be found on the AusAID website: <http://www.ausaid.gov.au/business/contracting.cfm>. This list is not exhaustive and is provided for information only. The provision of this list does not relieve SPC from complying with the obligations contained in this clause headed 'Compliance with Laws, Guidelines and Policies'.
- 8.2 SPC and its Personnel must comply with:

- (a) AusAID's *Child protection policy*, (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and particularly the child protection compliance standards at Attachment 1 to the policy, AusAID may audit SPC's compliance with AusAID's *Child protection policy* and child protection compliance standards. SPC must participate cooperatively in any reviews conducted by AusAID;
 - (b) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014' (http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf), and in particular the strategy's six guiding principles; and
 - (c) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>).
- 8.3 SPC must use its best endeavours to ensure:
- (a) that individuals involved in implementing the Program are in no way linked, directly or indirectly, to individuals associated with terrorism; and
 - (b) that Funds provided under this Agreement are not used in any way to provide direct or indirect support or resources to individuals associated with terrorism.
- 8.4 SPC must have regard to the Australian Government guidance "Safeguarding against terrorism financing: a guidance for non-profit organisations," available at <http://www.nationalsecurity.gov.au/npo>.
- 8.5 If, during the course of this Agreement, SPC discovers any link whatsoever with any Organisation or individual listed on a Relevant List it must inform AusAID immediately.
- 8.6 If, during the course of this Agreement, SPC is listed on a World Bank List or Similar List it must inform AusAID immediately.
- 8.7 SPC agrees that:
- (a) SPC and its employees, agents, representatives or its subcontractors must not engage in any Fraudulent Activity. SPC is responsible for preventing and detecting Fraud.
 - (b) SPC must report in writing within five (5) working days to AusAID any detected, suspected, or attempted Fraudulent Activity involving the Program. AusAID may direct SPC to investigate the alleged Fraud and SPC must undertake an investigation at SPC's cost and in accordance with Australian Government standards and directions as required by AusAID.
 - (c) Following the conclusion of any investigation which identifies acts of a Fraudulent nature, SPC shall:
 - (i) make every effort to recover any AusAID Funds, that are the subject of any Fraudulent Activity;
 - (ii) refer the matter to the relevant police or other authorities responsible for prosecution of Fraudulent Activity; and

- (iii) be liable for the repayment of any Funds amounts misappropriated by the SPC, its agents, representatives or subcontractors.
- (d) The obligations of SPC under Clauses 8.7(b) and 8.7(c) shall survive the termination or expiration of this Agreement.
- (e) SPC warrants that SPC shall not make or cause to be made, nor shall SPC 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, SPC shall not bribe public officials and shall ensure that its delivery contractors comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Agreement by notice from AusAID.

9. TERMINATION

- 9.1 This Agreement can be terminated by mutual agreement between both Parties subject to written notice given three (3) months in advance.
- 9.2 In the event of any termination, SPC must provide an Independently Audited statement of expenditure of the Funds within thirty (30) days of the date of the notice to terminate, signed by the SPC Director-General, and return any uncommitted Funds to AusAID.
- 9.3 In the event that a notice to terminate is given by either party AusAID shall not be liable to pay compensation in an amount which, in addition to any amounts paid or due or becoming due to SPC under this Agreement, together would exceed the amount of the total financial limitation of this Agreement.

10. ACCOUNTS AND RECORDS

- 10.1 Bank accounts used by SPC must be in the name of SPC and must not be personal bank accounts.
- 10.2 SPC must maintain a sound administrative and financial system capable of verifying all statements of acquittal. In addition, SPC must:
 - (a) keep proper and detailed accounts, records and assets registers along with adequate Program management records providing clear audit trails in relation to expenditure under this Agreement;
 - (b) afford adequate facilities for audit and inspection of the financial records referred to in this Agreement by AusAID and its authorised representatives at all reasonable times and allow copies and extracts to be taken;
 - (c) if requested by AusAID, provide an acquittal, certified by the senior financial officer or the head of the SPC, of Funds spent to date against the budget in the Program Proposal; and
 - (d) if reasonably requested by AusAID, provide an Independently Audited statement of Program expenditure by an auditor agreed to by AusAID and which may be payable from the Funds.

11. **AusAID USE OF AGREEMENT INFORMATION**

11.1 [AusAID may disclose matters relating to this Agreement, including this Agreement, and other relevant information, except where such information may breach the *Privacy Act 1988* (Cth), to Commonwealth governmental departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries. In addition, AusAID may publicly report information regarding this Agreement. This clause shall survive termination or expiration of this Agreement.

12. **REPORTS**

12.1 [SPC shall submit an annual overview of all Australian program funding in Australian dollars certified by the appropriate SPC Financial Manager, refer paragraph 8.5 of the Partnership Arrangement. The overview of Australian program funding shall be provided by 28 February 2013.

12.2 SPC shall submit reports to the 42nd Committee of Representatives of Governments and Administrations in November 2012, which:

- (a) review progress against strategic plan goals, objectives, and performance indicators; and
- (b) incorporate any lessons from the assessment of Program progress;
- (c) outline the outcomes, development impact and sustainability of the program of work; and
- (d) describe the inputs, work and outputs of both SPC and any other key stakeholders; and
- (e) detail the revised annual budget.

12.3 SPC shall provide a financial statement acquitting all of the Funds ('final Funds acquittal'). The statement must acquit the Funds against the budget referred to in the applicable program documents (Annexes A and B) and must be signed by the senior financial officer or the SPC Director-General, indicating that the Funds have been spent in accordance with the terms of this Agreement. Any unspent Funds, interest earned or exchange rate gains must be repaid to AusAID with the final report and final Funds acquittal, unless AusAID agrees for them to be used under a successor Agreement. The final Funds acquittal must include details of any interest earned or exchange rate gains on the Funds. The final Funds acquittal acquitting all Funds shall be subject to the internal and external auditing procedures laid down in the rules and regulations applicable to SPC and must also be Independently Audited and certified. The cost of an independent external audit required by this clause may be payable from the Funds.

12.4 SPC shall provide a final narrative and financial report on the 'AusAID National Action Plan Facility' (previously Agreement 45463) by 31 August 2012. The 'AusAID National Action Plan Facility' is managed by SPC's Applied Geoscience and Technology (SOPAC) Division. It supports Pacific island countries to mainstream disaster risk reduction and disaster management into planning and budgeting systems by developing and implementing Disaster Risk Management National Action Plans.