

SUBSIDIARY ARRANGEMENT

BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF PAPUA NEW GUINEA

RELATING TO

**THE PROVINCIAL AND LOCAL-LEVEL
GOVERNMENTS PROGRAM**

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1. GENERAL

- 1.1. This Subsidiary Arrangement expresses the understanding of the Government of Papua New Guinea (GoPNG) and the Government of Australia (GoA) (the “Parties”) and is made pursuant to the terms of Article 17 of the Annex to the Treaty on Development Cooperation that came into force on 31 July 2000 (the “Treaty”). The terms of the Treaty apply to this Subsidiary Arrangement.
- 1.2. The name of the activity is the Provincial and Local-level Governments Program (“the Activity”).
- 1.3. The Activity aims to build the capacity of Papua New Guinea’s decentralised service delivery system, and follows on from the Sub-National Strategy that operates under the Subsidiary Arrangement of 20 February 2007.

2. EXECUTING AUTHORITIES

- 2.1. The Executing Authorities for this Activity will be:

For GoPNG: Department of National Planning and Monitoring (DNPM)

For GOA: The Australian Agency for International Development (AusAID)

3. PARTICIPATING AGENCIES

- 3.1. **For GoPNG:** It is anticipated that the national and provincial government agencies will participate in the Activity. The agencies include, but are not limited to:

- (a) Department of Provincial and Local Government Affairs (DPLGA), as chair of the Provincial and Local-level Services Monitoring Authority (PLLSMA);
- (b) Department of Implementation and Rural Development;
- (c) National Economic and Fiscal Commission;
- (d) National Research Institute;
- (e) PNG central agencies; (Department of National Planning and Monitoring, Department of Prime Minister & NEC, Department of Treasury,

Department of Personnel Management, Department of Justice and Attorney General and Department of Finance)

- (f) Provincial and local-level governments and their administrations (including district administrations); and
- (g) The Autonomous Bougainville Government.

3.2. **For GoA:** GoA will be represented by AusAID, located in Port Moresby, the provinces and Autonomous Region of Bougainville. AusAID may engage suitably qualified Service Providers to carry out any of its functions under this Subsidiary Arrangement.

4. **DURATION OF THE ACTIVITY**

4.1. The Parties anticipate that the Activity will be implemented over five years (from 1 July 2012 to 30 June 2017). This Subsidiary Arrangement is deemed to have taken effect from the date of signing. Subject to this paragraph, it will remain in effect until the end of the fifth year of the Activity, or the date that the Activity ends (whichever is the later). This Subsidiary Arrangement may be extended by an Exchange of Letters between GoA and GoPNG.

4.2. Either Party may advise the other Party of their withdrawal of participation in, or discontinuation of support for, the Activity in accordance with the provisions of this Subsidiary Arrangement.

5. **ACTIVITY LOCATION**

5.1. The Activity will be delivered in Port Moresby, the provinces of Papua New Guinea and in Bougainville. An Activity Office will be located in Port Moresby. GoA will locate some officers in selected provinces and in Bougainville to provide oversight of the assistance provided under this Activity and to help streamline the broader aid program in those locations.

6. **ACTIVITY – KEY PRINCIPLES**

6.1. The Australian support for this Activity is guided by the PNG-Australia Partnership for Development and the objectives and targets covered in the annexes to the Partnership Schedules. The Partnership Schedules explicitly support the PNG Vision 2050, Development Strategic Plan 2010-30 and Medium-Term Development Plan 2011-15.

6.2. The Activity recognises and supports GoPNG's efforts to improve service delivery in Papua New Guinea, and uses an incentives-based approach that rewards improved performance of provincial governments.

6.3. The Activity recognises the national and intergovernmental issues impinging on service delivery and supports a whole of government focus on improving intergovernmental financing and management systems.

6.4. The Activity also recognises the special case of the Autonomous Region of Bougainville and support agreed under the Second Joint Understanding (2010-2015) for sustainable development over the Kokoda Track Region and offers

flexible and innovative models of support for improved service delivery in these regions.

6.5. The Activity is a long-term commitment of the GoA, recognising the complexity of the issues affecting service delivery and the importance of improvements in this area. There will be opportunities for regular Activity review and revision by GoPNG and GoA.

7. ACTIVITY DESCRIPTION

7.1. The Activity is an evolution of the Sub-National Strategy and aims to support a performing and accountable decentralised service delivery system, through the following three intervention strategies:

- (a) Building the capacity of provinces (and selected district and local administration) to deliver services;
- (b) Enhancing the demand for, and use of, performance information by key national, provincial and district stakeholders to manage and account for service delivery; and
- (c) Promoting a coordinated whole-of-government approach to decentralised service delivery.

7.2. The Activity may include the following proposed components:

- (a) The **Provincial Performance Improvement Initiative (PPII)** is a GoPNG performance-based incentive program that encourages good governance and improved outcomes by provincial governments. The PPII provides incentive funds, technical assistance and capacity building support to those provinces that display good leadership and motivation to reform. Through the PPII, GoA will support provinces to strengthen their core public administration systems including planning, budgeting, human resource management, information technology and financial management. Behind PPII, the Activity will aim to extend support to provinces facing acute governance challenges. This may include a focus on Western Province, as well as new provinces Hela and Jiwaka following the 2012 national election.
- (b) The Activity will provide a tailored package of support for the **Autonomous Region of Bougainville**, to consolidate the peace process and strengthen government systems to facilitate a draw down of powers in advance of the referendum on independence.
- (c) The Activity will provide ongoing service delivery activities under the **Kokoda Development Program**. As well as continuing the delivery of services for on-track and off-track communities, the Activity will aim to institutionalise the delivery of services within the appropriate provincial and local government structures, thereby supporting a more sustainable long-term approach.

- (d) The Activity will **strengthen the overall architecture of the decentralised system**, by working closely at the national level to clarify the division of powers between levels of government, promote funding flows for service delivery and strengthen reporting and accountability mechanisms.
- (e) The Activity will also help to **inform and realign the broader AusAID PNG Program**, particularly the sectoral investments in health and education, by assisting them to work appropriately in a decentralised context. The Activity will fund AusAID officers to work in provincial administrations, where they will build relationships and monitor and report on the effectiveness of Australian aid.
- (f) Funding will also be provided for **program and administrative support**, including: ad hoc AusAID reviews; independent appraisals; in-house monitoring and evaluation; meetings; workshops and other program-related expenditure. A governance adviser will support program implementation and help to build the cohesion of the program with other AusAID governance programs.

8. COORDINATION AND MANAGEMENT ARRANGEMENTS

- 8.1. It is anticipated that PLLSMA will provide the high-level coordination and oversight of the Activity and that a PLLSMA Sub-Committee, with membership from GoPNG and GoA, will provide day-to-day management.
- 8.2. Final responsibility for the implementation of the largest program supported under the Activity, PPII, will rest with GoPNG. GoPNG will provide overall leadership in planning, administration, implementation, monitoring and review of the PPII. GoPNG will engage in and lead discussions with GoA on further articulation of policies and priorities under PPII and performance of the institutions in implementing these policies and priorities.

9. MATERIALS, SERVICES AND EQUIPMENT TO BE SUPPLIED

- 9.1. The GOA will provide funding, supplies, assets and specialised personnel for the implementation of the Activity.
- 9.2. Further to and without limiting Clause 10 of the Annex to the Treaty, the GoPNG will ensure that GoA funded supplies are available for the unrestricted use of the relevant activity and will not be withdrawn from such use without the consent of the GoA. Through its Service Provider, the GoA will exercise administrative control over such supplies for the duration of the activity in question or such other time as mutually arranged between both Parties.
- 9.3. The Service Provider will advise both Parties on a regular basis as to which assets have been purchased for use by the Activity, which assets are the property of the GoPNG, and which assets are the properties of the Service Provider.

9.4. Where GoPNG has possession and administrative control over assets purchased using GoA funds under the Activity, GoPNG will be responsible for insurance and/or replacement of such assets.

9.5. On cessation of GoA commitments under the Activity, including completion of the Activity, or expiry or termination of this Subsidiary Arrangement, the following will apply:

- (a) For assets used under the Activity: all GoA funded supplies together with other equipment, vehicles and building used for the Activity that are not already under GoPNG possession and administrative control, will become the property of GoPNG. However, should GoA continue to require these assets for the effective delivery of the aid program, GoA may retain ownership of them, following negotiations with GoPNG.
- (b) For Service Provider assets: all assets owned by the Service Provider will remain the property of the relevant Service Provider.

9.6. Further to and without limiting Clause 10 of the Annex to the Treaty, GoPNG will provide the following materials, services and equipment for the Activity:

- (a) Provision of personnel and facilities necessary to enable GoA funded organisations and personnel to efficiently and economically carry out activities under the Activity, including access to all relevant agencies and relevant office facilities, documentation and personnel and provision of appropriate offices and work facilities within the nominated agencies;
- (b) Provision of any benefits not specifically provided for in the Treaty or this Subsidiary Arrangement, which are granted by the GoPNG to aid or development cooperation organisations and personnel from countries other than Australia;
- (c) Provision of all other necessary approvals and authorities for carrying out activities under the Activity; and
- (d) Incidental costs associated with Activity related overseas activities, including passport formalities, provision of exit permits etc.

10. FINANCIAL CONTRIBUTIONS

- 10.1. The total GoA contributions to the Activity will be up to AUD135 million for the period 1 July 2012 to 30 June 2017.
- 10.2. The provision and disbursement of GoA contributions to the Activity will be subject to the normal Australian annual parliamentary approval of appropriations. In determining GoA's contribution to the Activity each year, consideration will be given to the total resources available and performance in the context of the Activity's performance monitoring and review framework.
- 10.3. The GoA may increase its contributions to the Activity above the amount specified in clause 11.1, provided that such increase is recorded in an Exchange of Letters between the two Governments.

- 10.4. The GoA will discuss with GoPNG on an annual basis its contributions to the Activity and do so at a time and in a manner that will inform GoPNG annual planning and budget processes. GoA annual contributions will be agreed through the PLLSMA Sub-committee referred to in the coordination and management arrangements above, prior to endorsement by PLLSMA.
- 10.5. GoPNG will contribute funds through national, provincial and local governments. At the national level, GoPNG will reinstate core development funding for PPII (K1 million per annum) and PLLSMA (K1.2 million per annum) and also incrementally take over payment of PPII incentive payments for Phase 1 and Phase 2 provinces in the 2013 and 2014 financial years.

11. **FINANCIAL MANAGEMENT**

- 11.1. GoA's financial contribution for the Activity will be via a range of mechanisms that balance the use of GoPNG public financial management systems with risk mitigating measures. Expenditure through PNG national and provincial-level trust accounts will encourage compliance with existing financial control measures under the PNG Public Financial Management Act.

12. **MONITORING, REVIEW, EVALUATION AND REPORTING ARRANGEMENTS**

- 12.1. GoA and GoPNG will undertake Activity monitoring and evaluation of the Activity on a regular basis, using multiple GoPNG data sources as well as independent review. Regular reporting on Activity progress will facilitate dialogue between the Parties and inform program management.
- 12.2. GoPNG reporting relevant to the Activity include:
 - (a) Quarterly provincial reporting on PPII implementation;
 - (b) Annual provincial reporting on financial accounts, governance and service delivery under sections 114 and 119 of the Organic Law on Provincial Governments and Local-level Governments;
 - (c) Periodic reporting on Minimum Priority Activity expenditure;
 - (d) National Economic and Fiscal Commission reports;
 - (e) Periodic reporting on education and health through the Education Management Information System and Health Information Management System; and
 - (f) Periodic reporting on expenditure under the District Services Improvement Program (DSIP).
- 12.3. At provincial and district level, the following additional reporting is relevant to the Activity, where available:
 - (a) Quarterly provincial financial reporting linked to facility and sector plans through integrated planning and budgeting; and

- (b) Provincial reporting on DSIP spending.

12.4. The Activity will also support a select number of provinces to

- (a) pilot annual service delivery performance reporting that will provide an overview of service delivery in the province; and
- (b) conduct periodic public financial management assessments to track change in the performance of systems at the provincial and local level.

12.5. From the GoA, Activity reporting requirements will include:

- (a) Six monthly and other ad hoc Service Provider reports;
- (b) Annual performance and quality reporting; and
- (c) Independent evaluation and completion reports.

13. INTELLECTUAL PROPERTY

13.1. The Intellectual Property rights with respect to all documents, files and software written or funded by GoA under the Activity will vest in the GoA.

13.2. GoA may make available to the public documents, files and software in which it holds Intellectual Property rights.

13.3. Despite any other paragraph in this Subsidiary Arrangement, all Intellectual Property rights with respect to the Activity that are vested in the GoA will be retained by the GoA.

13.4. GoA grants a license to GoPNG to use its Intellectual Property created in the course of the Activity.

14. SETTLEMENT OF DISPUTES

14.1. This Subsidiary Arrangement serves only as a record of the Parties' intentions and does not constitute or create (and is not intended to create) rights or 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 or enforceable rights or obligations (expressed or implied). This Subsidiary Arrangement is neither a treaty nor an instrument of treaty status. Consequently, any dispute, controversy, or claim, which arises out of the interpretation or application of this Subsidiary Arrangement will not be subject to adjudication or arbitration, but will instead be dealt with through amicable consultations and negotiations as the only method of achieving the peaceful settlement of that dispute, controversy, or claim.

15. AMENDMENTS

15.1. This Subsidiary Arrangement may be amended at any time through an Exchange of Letters signed by the Parties.

16. ANTI-CORRUPTION

- 16.1. Consistent with both Parties' commitment to good governance, accountability, and transparency, each Party reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices relating to the Activity.
- 16.2. The activity will take into account 'The Joint Statement on Zero Tolerance on Fraud in Australia's aid Program to PNG', signed jointly by the National Planning Minister and AusAID's Director General, on 21 February 2012.

17. UNDERTAKING TO PREVENT FINANCING OF TERRORISM

- 17.1. Both Parties 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 1373 (2001), 1267 (1999) and related resolutions.
- 17.2. Both Parties reaffirm their commitment to the principles of the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999).
- 17.3. The Parties will cooperate to ensure that no Activity funds are used, directly or indirectly, to provide support to individuals or entities associated with terrorism.
- 17.4. If, during the term of this Subsidiary Arrangement, either Party discovers an organisation or individual involved in the Activity is associated with terrorism, it will immediately inform the other Party.

18. COMMENCEMENT AND TERMINATION

18.1. This Subsidiary Arrangement will take effect on signature by both Parties.

18.2. Either Party may terminate this Subsidiary Arrangement by giving written notice of its intention to terminate to the other Party. In the event that written notice of termination is given, this Subsidiary Arrangement will terminate three months after the date that the other party receives that notice of the intention to terminate.

Signed at Port Moresby -
18 May 2012 this 15th day of May 2012

For the Government of Australia

Stuart Schaefer

Signature of representative

Stuart Schaefer

Printed name of representative

Minister Port Moresby

Official title of representative

For the Government of Papua New Guinea

John Lom

Signature of representative

DR Peter G Kora

Printed name of representative

SECRETARY

Official title of representative