

MEMORANDUM OF UNDERSTANDING (MOU)

Pacific Prevention of Domestic Violence Programme: Phase 2

between

Ministry of Foreign Affairs and Trade

195 Lambton Quay

Wellington 6011

New Zealand

(MFAT)

and

New Zealand Police

Police National Headquarters

180 Molesworth Street

Wellington 6011

New Zealand

(Partner Agency or NZ Police)

CT file: MOU/4/44

Koru record ID: 28881

Activity file reference: AID/SG/5

Activity code: A11133

O-WLN-6085360

The Memorandum of Understanding

Under this Memorandum of Understanding (**MOU**), MFAT¹, acting through the New Zealand Secretary of Foreign Affairs and Trade, engages the NZ Police to undertake the Pacific Prevention of Domestic Violence Programme (PPDVP): Phase 2 (**Assignment**) under the New Zealand Aid Programme. The NZ Police agrees to undertake the Assignment on the basis of the terms and conditions contained in this MOU.

¹ MFAT is responsible for managing the New Zealand Aid Programme, which is the New Zealand Government's international aid and development programme.

Partner Agency's Bank Account Details

Bank Account	Name of Account	New Zealand Police Department Account
	Currency	NZD
	Number	03 0049 0000802 00
Bank	Name	Westpac
Branch	Name of Branch	NZ Government Branch
	Address	318 Lambton Quay, Wellington
Code	Swift Code	N/A
Payment Reference		MFAT 70068

MOU Documents

This MOU consists of:

1. Pages 1 and 2;
2. The MOU Details and Description of Assignment at Schedule 1;
3. The Standard Terms and Conditions at Schedule 2; and
4. Any Costed Workplan agreed between the Parties in relation to this MOU, as amended from time to time in accordance with this MOU.

If there are any differences between the documents, Schedule 1 overrides Schedule 2 and the Costed Workplan.

Acceptance

For and on behalf of Secretary of Foreign Affairs and Trade

Signature

Richard Mann

Full name

Acting Director, Partnerships, Humanitarian and Disaster Management Division

Position

Date

For and on behalf of Partner Agency

Signature

Malcolm Burgess

Full name

Assistant Commissioner

Position

Date

Schedule 1: MOU Details and Description of Assignment

1. Term of MOU

Reference Schedule 2, clause 1

Start Date:	1 July 2012
End Date:	30 September 2016

2. Scope of Assignment

Description of the Assignment

Between 2005 and 2011, the Government of New Zealand invested approximately \$5 million in the PPDVP which provided support, assistance and advice to Pacific police services (PPS) to improve their capability to respond more effectively to domestic violence. Following an independent evaluation in 2011 which documented significant achievements in the first phase, MFAT, NZ Police and the Pacific Islands Chiefs of Police (PICP) have agreed to another phase of support to build on earlier gains and address remaining key needs.

The PPDVP will again focus on the five 'participating' Pacific Island countries (PIC) prioritised for assistance in Phase 1 (Cook Islands, Kiribati, Samoa, Tonga and Vanuatu). Modest support will be provided to a second tier of PICP member countries largely through regional initiatives. NZ Police staff, acting as in-country mentors, will deliver activities under this MoU.

The PPDVP will involve regional and national level components. The PPDVP Implementation Unit (in NZ Police's International Service Group) will coordinate closely with other development partners and national and regional organisations to ensure complementarity of programmes and to utilise specialist NGO knowledge in police training programmes.

The PPDVP Implementation Unit of three staff will manage the PPDVP, including support to the in-country mentors, delivering activities, and procuring assistance of specialist NZ Police staff.

Overarching goal and intended outcomes

The goal of the Assignment is 'A safer Pacific free from domestic violence'.

The intended medium term outcomes (MTO) and long-term outcomes (LTO) of the Assignment are:

- (MTO) Systematically collected domestic violence data (nationally and across the Pacific) and data quality aligns with the protocols and standards;
- (MTO) Domestic violence data used for reporting and decision-making;
- (MTO) Domestic violence prevention and response mainstreamed through Pacific police services;
- (MTO) Pacific police services provide strong leadership for domestic violence prevention and response;
- (LTO) Pacific police services effective at preventing and responding to domestic violence;

- (LTO) Community has confidence and trust in the Pacific police services to prevent and respond to domestic violence. See Annex 1 – Draft Results Framework.

Partner Agency proposal

The PPDVP design document describes the priority activities by participating country and across the region under the three broad outputs, anticipated over the life of the PPDVP. The possible risks, and how these risks are to be managed by the Partner Agency and MFAT, are described in the design document and are set out and described in Annex 2 – Risk Matrix.

Methodology

Sustainability

A key element of the second phase of the PPDVP is NZ Police's approach to promote sustainability and ownership through developing the capacity of PPS, particularly in the five participating countries. Capacity development includes on-the-job training, more formal training workshops, and on-going mentoring or 'accompaniment'. Mentors, identified from within NZ Police, will receive training in the role of a mentor, which supports internal reflection, monitoring of progress against plans, and evaluative thinking. Police-police relationships underpin this approach but will not seek to supplant capacity within police services. Accompaniment will include maintaining contact with key counterparts over the life of the PPDVP to support their efforts to realise the programme's objectives.

Regional approach

The PPDVP is governed by the Regional Advisory Committee which includes representatives from the Fiji Women's Crisis Centre (FWCC), the Regional Rights Resource Team (RRRT), UN Women, PIFS Law Enforcement Unit, NZ Police, Pacific Islands Chiefs of Police, and MFAT. Membership of the RAC encourages strong coordination and communication across the key regional bodies mandated to work in the area of domestic violence.

Increased and better quality data availability and use

This phase of the PPDVP recognises the need to build national capacity to systematically monitor, report and use reliable domestic violence data for decision-making and evidence-based planning and budgeting. It will also look to monitor and measure changes in knowledge, attitudes and practice of PPS and their key partners in the five participating countries. Data will be used to better understand and plan how PPS and their partners can better prevent domestic violence incidence and at the same time design appropriate interventions (e.g. victim and offender management programmes). The PPDVP anticipates that this will lead to more effective PPS and build partner and community confidence in the PPS to prevent and respond to domestic violence.

3. Costed Outputs for Term of MOU

No.	Output to be produced	Start date	End date	Total indicative cost of Outputs ('000's) NZD	Indicative budget by year ('000's) The figures below are indicative; the Costed Workplan will specify the funding per Output for each period.			
					Year 1 1/07/2012 – 30/06/2013	Year 2 1/07/2013– 30/06/2014	Year 3 1/07/2014 – 30/06/2015	Year 4 1/07/2015 – 30/06/2016
0	Non-output specific costs/Management costs	1/07/2012	30/06/2016	427	100.50	100.50	100.50	125.5
1	Standard reporting protocols established and tools developed	1/07/2012	30/06/2016	508	157	117	117	117
2	Domestic violence training and mentoring delivered	1/07/2012	30/06/2016	2,553	828	523	679	523
3	Engagement activities with community and partners delivered	1/07/2012	30/06/2016	532	133	133	133	133
MAXIMUM PRICE				4,020	1,218.50	873.50	1,029.50	898.5

4. Performance Standards for Term of MOU

Quality standards that apply (including key performance indicators)

State sector agencies are guided by the Standards of Integrity and Conduct issued by the State Services’ Commission under the State Sector Act 1988, section 57. This sets out the minimum standards of integrity and conduct that are to apply in the State Services.

There are no performance standards additional to those expressly stated elsewhere in this MOU.

5. Partner Agency’s Key Personnel

(Reference Schedule 2, clause 2.5)

Not applicable

6. Payment and Reporting

(Reference Schedule 2, clauses 2.2c,3 and 6)

Payment and Reporting Milestone	Due date	Maximum payment amount (NZD)

Payment and Reporting Milestone	Due date	Maximum payment amount (NZD)
<p>Milestone 1</p> <p>A finalised Results Framework, agreed by NZ Police and MFAT, and added to this MOU through a letter of variation.</p>	31/10/2012	Nil
<p>Milestone 2</p> <p>A succinct exit strategy that describes how the PPDVP plans to transition from MFAT funding at the conclusion of this funding period. The strategy will include a section on stakeholder communication and managing key relationship risks; how benefits achieved from the PPDVP will be sustained nationally and regionally, including the extent to which the five participating countries will manage (and plan to resource) their strategies for DV prevention and response, in the future; and how progress towards exit or transition will be monitored and refined, as necessary, during programme implementation.</p>	31/01/2013	Nil
<p>Milestone 3</p> <p>A revised PPDVP Activity Schedule/Workplan that reflects the country-specific results of the initial KAP survey.</p>	31/01/2013	Nil
<p>Milestone 4</p> <p>A revised Costed Workplan/Budget that includes:</p> <ul style="list-style-type: none"> • actual expenditure for the previous financial year (e.g. 1/07/2012 to 30/06/2013); and • an updated expenditure forecast for the new financial year (e.g. 1/07/2013 to 30/06/2014). <p>A corresponding narrative Progress Report (following the MFAT template) for the previous financial year delivered to the MFAT Contract Manager.</p> <p>At a minimum, the Progress Report must report on:</p> <ul style="list-style-type: none"> • the delivery of Outputs and progress towards outcomes (based on the Outputs in Schedule 1 and agreed Results Framework); • actual expenditure and income compared with that in any budget, including comment on significant variances; • where expenditure is less than forecast, the Partner Agency must provide an updated expenditure forecast confirming whether the savings are permanent or temporary; • risk management issues; and • any other relevant issues. 	<p>Each year by:</p> <p>31/07/2013</p> <p>31/07/2014</p> <p>31/07/2015</p> <p>31/07/2016</p>	Nil

Payment and Reporting Milestone	Due date	Maximum payment amount (NZD)
<p>Milestone 5</p> <p>A Completion Report (following the MFAT template) covering the Term of the Assignment delivered to the MFAT Contract Manager.</p> <p>The Completion Report must report on:</p> <ul style="list-style-type: none"> • summary of delivery of Outputs and outcomes over the Term of the Assignment (based on the Outputs in Schedule 1 and any Costed Workplan, and any Results Framework); • risks that emerged over the Term of the Assignment and how they were dealt with; • overall judgement of success of the Assignment, any critical issues and recommendations for future activities; and • final actual expenditure and income compared with that planned for the Term of the Assignment (including cessation costs and disposal of Assets, where relevant), explanation of significant variances. • an assessment of the quality of the Assignment against the five DAC criteria (relevance, efficiency, effectiveness, impact and sustainability); and • reflection on the quality of the Results Framework and its implementation. 	30/08/2016	Nil
<p>Maximum Price</p> <p>Unless otherwise stipulated, all figures are in NZD and exclusive of GST, but inclusive of any other taxes.</p>		\$4,020,556

A Tax Invoice for agreed costs incurred relating to the Assignment to be provided to MFAT quarterly. Payment will be made on the condition that the relevant Milestones and Outputs (stated in this Schedule) have been/are being achieved to MFAT's satisfaction.

7. Address for Tax Invoice

The Partner Agency's Tax Invoice(s) must be sent to MFAT for the attention of:

Payments Officer
 IDG Financial Support Team
 Attention: Elena Procuta, Partnerships and Funds Programme
 Ministry of Foreign Affairs and Trade
 Private Bag 18-901
 Wellington 6160
 New Zealand

8. Contract Managers

(Reference: Schedule 2, clause 5)

	MFAT's Contract Manager	Partner Agency's Contract Manager
Name and position:	Elena Procuta Development Manager – State Sector Partnerships	Cam Ronald PPDVP Programme Manager
Address:	Ministry of Foreign Affairs and Trade Private Bag 18-901 Wellington 6160	NZ Police Police National Headquarters PO Box 3017 SX11149 Wellington
Phone:	+64 4 439 8382	+64 4 470 7213
Fax:	+64 4 439 7166	+64 4 474 9540
Email:	elena.procuta@mfat.govt.nz	cam.ronald@police.govt.nz

9. Addresses for Notices

(Reference Schedule 2, clause 13)

	MFAT's address	Partner Agency's address
For the attention of:	Amanda Ellis Deputy Secretary, International Development	Malcolm Burgess Assistant Commissioner, NZ Police
c.c.	Elena Procuta	Cam Ronald
Delivery address:	Ministry of Foreign Affairs & Trade Level 10, HSBC Building 195 Lambton Quay Wellington 6011 New Zealand	New Zealand Police Police National Headquarters 180 Molesworth Street Wellington 6011 New Zealand
Postal address:	Ministry of Foreign Affairs & Trade Private Bag 18-901 Wellington 6160 New Zealand	New Zealand Police Police National Headquarters PO Box 3017 SX11149 Wellington
Fax:	+64 4 439 7166	+64 4 474 9540
Email:	amanda.ellis@mfat.govt.nz elena.procuta@mfat.govt.nz	isg@police.govt.nz cam.ronald@police.govt.nz

10. Changes to Schedule 2, Standard Terms & Conditions

None

11. Additional Clauses to Schedule 2 Standard Terms and Conditions

The following clauses are to be added as clause 18.4 and 18.5 of Schedule 2:

18.4 In the absence of justification to the contrary, if the effect of a Variation is to increase the Maximum Price of the MOU by less than the Contingency Value, that Variation will be considered minor and may be agreed by email as provided above in clause 18.2.

18.5 The Contingency Value is the lesser of up to \$150,000 or 5% of the Maximum Price.

None

12. Attachments

The following documents are attached to Schedule 1:

- Annex 1: Draft Results Framework
- Annex 2: Risk Matrix

Annex 1: Draft Results Framework

Annex 2: Risk Matrix

Schedule 2: Standard Terms and Conditions

1. Term of MOU

- 1.1 This MOU starts on the Start Date.
- 1.2 This MOU ends on the End Date unless terminated earlier.

2. The Assignment

Both Parties' obligations

- 2.1 Both Parties agree to:
 - a. act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other;
 - b. work together to achieve the agreed goal, outcomes and Outputs;
 - c. discuss matters affecting this MOU or the delivery of the Assignment, whenever necessary;
 - d. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the Assignment or the cost of the Assignment;
 - ii. receive media attention;
 - iii. be the subject of an Official Information Act 1982 (NZ) request or a complaint to the Ombudsman; and
 - e. comply with all applicable laws, regulations and codes of conduct.

MFAT's obligations

- 2.2 MFAT will:
 - a. provide the Partner Agency with any information reasonably requested to enable the delivery of the Assignment;
 - b. make decisions and give approvals reasonably required by the Partner Agency to enable completion of the Assignment. All decisions and approvals must be given within reasonable timeframes; and
 - c. pay the Partner Agency up to the Maximum Price for the Assignment, subject to clause 3.1.

Partner Agency's obligations

- 2.3 The Partner Agency must complete the Assignment, including each Output recorded in Schedule 1 and the Costed Workplan (if any):
 - a. on time and to the required standards or quality;
 - b. within the amount agreed as the Maximum Price; and
 - c. diligently, effectively and to a high professional standard.
- 2.4 In addition to clause 2.1(d), within five (5) Business Days of notifying MFAT of any significant actual or anticipated issue, the Partner Agency will advise MFAT of the steps

it plans to take to prevent or mitigate the impact of the issue on the delivery of the Outputs, and the Partner Agency will implement any such additional reasonable steps as MFAT requests.

- 2.5 The Partner Agency must use any Key Personnel identified in Schedule 1 to complete the Assignment. The Partner Agency must obtain MFAT's prior written approval if it wishes to change or replace any Key Personnel.
- 2.6 The Partner Agency shall ensure that any publicity given to this Assignment indicates that it is being undertaken as part of New Zealand's Official Development Assistance programme. All publicity releases must be discussed and agreed in advance with MFAT.

3. Payment

Payment

- 3.1 On the condition that the relevant Milestone and Outputs stated in Schedule 1 and the Costed Workplan have been achieved (or, in the case of Outputs not scheduled to be complete yet, are being achieved) to MFAT's satisfaction by the Partner Agency, MFAT will pay the Partner Agency within twenty Business Days of receipt of an accurate and valid Tax Invoice.

Per Diems and Allowances

- 3.2 The actual Allowance claimable by the Partner Agency may be adjusted to exclude any meals provided to the Partner Agency's Personnel during the Assignment or included as part of the actual accommodation cost. If Per Diems are payable these may also be adjusted if meals and/or accommodation are no longer required.
- 3.3 For the avoidance of doubt, if the Partner Agency negotiates an airfare and/or accommodation package representing an overall cost saving, MFAT will reimburse the Partner Agency for the full cost of the package. In accordance with clause 3.2, no Per Diem may be claimed, but a meal Allowance may be claimed at MFAT's Casual Meal and Incidental Allowance rate if and as specified in Schedule 1 or the Costed Workplan.
- 3.4 The Partner Agency agrees to pay its Personnel the full claimable Per Diem or Allowance rate applicable to their travel to that country or area, if and as provided for in Schedule 1 or the Costed Workplan.

4. Accounting for Funding

Audits

- 4.1 The Partner Agency will ensure that the Assignment and its related payments are covered by the Partner Agency's annual audit and that the audited accounts include explicit reference as to how the funding has been spent. A copy of the audit report and relevant extracts from the audit management letter will be provided to MFAT within five (5) months of the end of the Recipient's financial year.
- 4.2 In addition to clause 4.1, MFAT or its delegate may audit the Partner Agency's expenditure in relation to the payments MFAT provides and the Partner Agency's performance of the Assignment at any time. The Partner Agency will co-operate with any such audit.

5. MOU Management

- 5.1 If a Party changes its Contract Manager, it must tell the other Party, in writing, the name and contact details of the replacement Contract Manager within five (5) Business Days of the change.

6. Records and Reports

Keeping Records

- 6.1 Both Parties must keep and maintain full and accurate Records relating to this MOU and achievement of the Assignment. The Records must be easy to access and kept safe.
- 6.2 The Partner Agency must provide MFAT or an MFAT designated party any Records reasonably requested during the Term of the MOU and for a minimum of seven (7) years after the End Date.
- 6.3 All Records provided by the Partner Agency must be in a format that is usable by MFAT, and delivered within a reasonable time of the request.
- 6.4 The Partner Agency must co-operate with MFAT to provide Records immediately if the information is required by MFAT to comply with an enquiry, or any statutory obligations, or any parliamentary or other reporting obligations.

Reports

- 6.5 The Partner Agency must prepare and deliver to MFAT the reports stated in Schedule 1, by the due dates and in the format stated in Schedule 1, including any other information reasonably requested by MFAT.
- 6.6 The Partner Agency will ensure that the relevant New Zealand High Commission or Embassy is regularly briefed on the progress of the Assignment.
- 6.7 The Partner Agency is responsible for any extra costs occasioned by any discrepancies, errors or omissions in report(s) provided to MFAT, or other information supplied in writing by the Partner Agency, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Partner Agency by MFAT.

7. The Parties' Relationship

Permission to transfer, assign or subcontract rights or obligations

- 7.1 The Partner Agency may transfer, assign or subcontract any of its rights or obligations under this MOU only if it has MFAT's prior written approval (which shall not be unreasonably withheld).
- 7.2 The Partner Agency continues to be responsible for completing the Assignment and all of its obligations under this MOU even if any aspects of the Assignment are transferred, assigned or subcontracted.
- 7.3 The Partner Agency is responsible for the liability of its own, and its Personnel's, salaries, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Partner Agency's business or the engagement of its Personnel.

Neither Party can represent the other

- 7.4 Neither Party has authority to bind or represent the other Party in any way or for any purpose.
- 7.5 The Partner Agency will take steps to ensure that none of its Personnel involved in the Assignment make any commitments on behalf of the New Zealand Government relating to the expenditure of Vote Official Development Assistance.

Purchasing Goods or Services

- 7.6 Although the ultimate responsibility for the procurement of goods, works, or services under this MOU rests with the Partner Agency, MFAT, for its part, has the obligation to ensure that its funds are used with due attention to economy and efficiency. The Partner Agency may secure the supply of goods, works, or services for the Assignment so long as the procurement procedures and practice comply with the New Zealand Government Mandatory Rules for Procurement by Departments.

8. Insurance

Partner Agency to cover own risks

- 8.1 It is the Partner Agency's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise (except that insurance is specifically required under clause 17.6).
- 8.2 The Partner Agency will remain responsible for all public liability actions, claims, demands, liabilities, damages, costs and expenses brought by third parties arising from, or in respect of personal injury to, or the death of any person, or loss of or damage to property caused by the Partner Agency or its Personnel in carrying out the Assignment, or which arises from the performance of the Assignment.
- 8.3 The Partner Agency will remain responsible for all claims from its Personnel involved in carrying out this Assignment including loss of life or accident, however caused, loss or damage to, or theft of, personal effects, including tools and equipment.

9. Conflicts of Interest

Managing Conflicts of Interest

- 9.1 The Partner Agency warrants that as at the Start Date:
- a. it has no Conflict of Interest in undertaking the Assignment or entering into this MOU; or
 - b. a Conflict of Interest has been declared and the Parties have discussed, agreed and recorded in writing how it will be managed (provided the Conflict of Interest is one that can be managed).
- 9.2 The Parties must do their best to avoid situations that may lead to a Conflict of Interest arising.

Obligation to notify

- 9.3 Each Party must notify the other immediately, and in writing, if any Conflict of Interest

arises in relation to the Assignment. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing how it will be managed (provided the Conflict of Interest is one that can be managed). Each Party must pay their own costs in relation to managing a Conflict of Interest.

10. Resolving Disputes

Steps to resolving disputes

- 10.1 Both Parties shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with this MOU. In doing so the Parties will act in good faith, in a spirit of goodwill and cooperation. If they are unable to resolve their disagreement they will refer the dispute to their respective Chief Executives or equivalent position.

Obligations during a dispute

- 10.2 If there is a dispute, each Party will continue to perform its obligations under this MOU as far as practical given the nature of the dispute.

11. Ending this MOU

No fault termination

- 11.1 Either Party may terminate this MOU:
- a. at any time by giving 20 Business Days' Notice to the other Party (or earlier by mutual agreement);
 - b. immediately by giving Notice to the other Party if the termination is due to a change in government policy or a change in appropriation. However where possible, the Parties may vary the MOU to allow its continuation if such a change occurs or is anticipated to occur; or
 - c. immediately by giving Notice to the other Party if the termination is under clause 15.2 or 16.1.

Partner Agency's obligations in event of termination

- 11.2 In the event of termination the Partner Agency will:
- a. take immediate steps to bring its work related to the Assignment to a close in a prompt and orderly manner;
 - b. reduce expenditure to a minimum;
 - c. minimise any impact of termination on any partner government / agency; and
 - d. deliver to MFAT, or its nominees, all documents, equipment and materials belonging to or provided by MFAT.

Consequences of termination or expiry of this MOU

- 11.3 The termination or expiry of this MOU does not affect those rights of each Party which:
- a. accrued prior to the time of termination or End Date; or

- b. relate to any breach or failure to perform an obligation under this MOU that arose prior to the time of termination or End Date.
- 11.4 If this MOU is terminated MFAT will only be liable to pay for components of the Assignment delivered before the effective date of termination unless otherwise agreed in the Notice of termination.

12. Confidential Information

Permission to release Confidential Information

- 12.1 Each Party undertakes not to use or disclose the other Party's Confidential Information to any person or organisation other than:
- a. to the extent that use or disclosure is necessary for the purposes of completing the Assignment;
 - b. if the other Party gives prior written approval to the use or disclosure;
 - c. if the use or disclosure is required by law (including under the Official Information Act 1982 (NZ)) or parliamentary convention; or
 - d. if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.
- 12.2 As far as practicable, the Partner Agency and MFAT will consult and seek agreement in advance on the release to any third party of any document or information produced in connection with the Assignment, including any information required to be disclosed under the Official Information Act 1982 (NZ).

Obligation to inform Personnel

- 12.3 Each Party will ensure that their Personnel:
- a. are aware of the confidentiality obligations in this MOU; and
 - b. do not use or disclose any of the other Party's Confidential Information except as allowed by this MOU.

13. Notices

Delivery of Notices

- 13.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or e-mail to that Party's address for Notices stated in Schedule 1.
- 13.2 Notices must be signed by the appropriate manager or person having authority to do so.

Receipt of Notices

- 13.3 A Notice will be considered to be received:
- a. if it is delivered by hand, on the date it is delivered;
 - b. if it is sent by post within New Zealand, on the third (3rd) Business Day after the date it was sent;
 - c. if it is sent by post internationally, on the tenth (10th) Business Day after the date it was sent;

- d. if it is sent by courier, on the date it is delivered;
 - e. if it is sent by fax, on the sender receiving a fax machine report that it has been successfully sent; or
 - f. if it is sent by e-mail, at the time the e-mail enters the recipient's information system.
- 13.4 A notice received after 5pm on a Business Day, or on a day that is not a Business Day, will be considered to be received on the next Business Day.

14. Extraordinary Events

No fault if failure to deliver

- 14.1 Neither Party will be liable to the other for any failure to perform its obligations under this MOU where the failure is due to an Extraordinary Event.

Obligations of the affected Party

- 14.2 A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible after the Party first becomes aware of the cause and its supervening effects. The Notice must state:
- a. the nature of the circumstances giving rise to the Extraordinary Event;
 - b. the extent of that Party's inability to perform under this MOU;
 - c. the likely duration of that non-performance; and
 - d. what steps are being taken to remedy, or reduce the impact of the Extraordinary Event on the completion of the Assignment.

15. Anti-Corruption

- 15.1 Both Parties warrant that they shall not make, cause to be made, nor receive any offer, gift (over the value of NZ\$100), payment, consideration, inducement, reward or benefit of any kind, which would, or could be construed as an illegal, unethical, or Fraudulent practice. Any such conduct may be grounds for immediate termination of this MOU, or the taking of such corrective action as the other Party deems appropriate.
- 15.2 Where either Party, or a Party's Personnel, is investigated for Fraud, or where there is a finding of Fraud against either Party or a Party's Personnel, or where a Party's Personnel is convicted of a serious criminal offence that brings that Party, or MFAT into disrepute, or the nature of the conviction is incompatible with the objective(s) of the MOU and the Assignment, this event may be grounds for the other Party to immediately terminate this MOU by giving notice in writing to the other Party.
- 15.3 The Partner Agency undertakes to report to MFAT within five (5) Business Days all suspected or detected fraud and consult MFAT before the matter is referred to police. MFAT reserves the right to investigate cases of suspected or detected fraud.

16. Anti-Terrorism

- 16.1 The Partner Agency must use its best endeavours to ensure that payments made under this MOU do not provide direct or indirect support or resources to organisations and/or

individuals associated with terrorism. If the Partner Agency discovers any link whatsoever with any organisation or individual associated with terrorism it must inform MFAT immediately, and MFAT may immediately terminate this MOU by giving notice in writing to the Partner Agency.

17. Assets

Ownership and Disposal

- 17.1 Pre-existing assets remain the property of their current owner.
- 17.2 MFAT will not own any Assets under this MOU.
- 17.3 The Parties agree that the Assets will be gifted and transferred to the relevant in-country partner organisation at the end of the Assignment.
- 17.4 The Partner Agency acknowledges that MFAT has no responsibility for:
 - a. the condition of the Assets at the time of gifting and transfer; and
 - b. any costs that may be associated with the gifting or transfer of the Assets (such as any tax costs or gift duty).

Register of Assets

- 17.5 The Partner Agency will create and maintain an Asset Register for all Assets. The Asset Register will be updated on a regular basis and, where appropriate, will include financial information relating to the depreciation in financial value of applicable Assets.

Insurance and Maintenance

- 17.6 The Partner Agency will ensure there is sufficient insurance against loss or damage, for all Assets until the Assets are disposed of under clause 17.3.
- 17.7 The Partner Agency will undertake all necessary or appropriate maintenance of Assets to ensure all Assets are available for use during the term of the MOU. Unless otherwise agreed, the Partner Agency is solely responsible for the maintenance of all Assets.

18. Variations

- 18.1 Any change to this MOU must be made in accordance with clause 18, unless it is considered by MFAT in discussion with the Partner Agency to have no material effect on the cost or nature of the Assignment.
- 18.2 Where MFAT, in discussion with the Partner Agency, determines that the nature of the change is minor, the Variation may be completed through an exchange of emails between MFAT and the Partner Agency. The email exchange must be completed prior to the MOU expiring and before the change is intended to take effect. The email must clearly state:
 - a. what the Variation is and any other consequential amendments;
 - b. the reason for the Variation; and
 - c. any other information MFAT reasonably requires.The return email must clearly provide the Partner Agency's unconditional acceptance of the Variation.
- 18.3 Where MFAT, in discussion with the Partner Agency, determines that the nature of the change is significant, the Variation must be set out in a letter signed by both Parties.

Where practicable, the first Party to sign will scan the letter and email it to the other Party, who will print the letter, sign it, re-scan it and return it by email so that both Parties have a counter-signed copy for their records. Where it is not practicable to exchange the letter as a scanned image, the first Party will sign two originals and deliver them by courier, post, facsimile or by hand to the other Party for signature. The other Party will sign both copies and return one to the first Party so that both have one counter-signed original for their records.

19. General

Clauses that remain in force

- 19.1 The clauses that by their nature should remain in force on expiry or termination of this MOU do so, including clauses 4.2 (Audits), 6 (Records and Reports), 8 (Insurance), 10 (Resolving Disputes), 11 (Ending this MOU), 12 (Confidential Information), 16 (Anti-Terrorism), 19 (General), and 20 (Definitions).

Entire MOU

- 19.2 This MOU (including any Costed Workplan), including any Variation records everything agreed between the Parties. It replaces any previous communications and negotiations that the Parties had with each other before this MOU was signed.

20. Definitions

When used in this MOU the following words in bold have the meaning beside them.

Allowance An amount payable to the Partner Agency to cover living expenses for the Partner Agency's Personnel required to travel and stay overnight within their own country of residence, or within another country, if and as provided for in Schedule 1 or a Costed Workplan. No receipts are required for Allowances. An Allowance is similar to a Per Diem. A meal allowance is an Allowance to cover meals and incidentals where the Partner Agency is required to travel overnight within New Zealand, calculated using MFAT's Casual Meal and Incidental Allowance rate.

Assets All tangible property and capital items which are created or purchased in the pursuit of the Assignment with a value at purchase or creation of over NZ\$1,000.

Asset Register A record of all Assets which will include, but is not limited to:

- a. each individual Asset;
- b. purchase price;
- c. date of purchase; and
- d. location held.

Business Day A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday and public holidays. A Business Day starts at 8.30am and ends at 5pm.

Confidential Information Information that:

- a. is by its nature confidential;

- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- c. is provided by either Party, or a third party 'in confidence';
- d. either Party knows or ought to know is confidential; or
- e. is commercially sensitive to either Party.

Conflict of Interest A Conflict of Interest happens if a person's personal interests or obligations conflict with the responsibilities of their job or position. It means that their independence, objectivity or impartiality can be called into question. While Conflicts of Interest should be avoided wherever possible, conflicts often happen without anyone being at fault. It is not the emergence of a Conflict of Interest which is an issue, it is how it is managed that counts. A Conflict of Interest may be:

- a. actual: where the conflict currently exists
- b. potential: where the conflict is about to happen, or could happen, or
- c. perceived: where other people may reasonably think that a person is compromised.

Contract Manager The person named in Schedule 1 as the Contract Manager who is responsible for managing this MOU on behalf of one of the Parties. The Contract Managers are the day to day contacts for routine communications regarding this MOU and the Assignment. They are responsible for:

- a. managing the relationship between the Parties
- b. overseeing the effective implementation of this MOU; and
- c. acting as a first point of contact for any issues that arise.

Costed Workplan Any workplan costed by outputs relating to this MOU that is submitted by the Partner Agency to, and approved in writing by, MFAT. Following any iterations of a revised Costed Workplan due under this MOU, MFAT will email the final version to the Partner Agency confirming that it is the version for use.

End Date The date this MOU is due to end, being the date as stated in Schedule 1.

Expenses Any actual and reasonable out-of-pocket costs incurred by the Partner Agency in its delivery of the Outputs and agreed to in Schedule 1 and any Costed Workplan.

Extraordinary Event An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care.

Examples include:

- a. acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;
- b. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- c. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; and
- d. contamination by radio-activity from nuclear substances or germ warfare or any other such hazardous properties.

Fraud means a deliberate deceit by Personnel, undertaken in order to obtain a benefit for

themselves and/or someone else. This includes such acts as theft, conspiracy, bribery, corruption, misappropriation, falsification of documents, non-authorized release of information, collusion and influencing decisions that will result in a personal benefit.

Fraudulent practice has a corresponding meaning.

GST The goods and services tax payable in accordance with the Goods and Services Tax Act 1985 (NZ).

Key Personnel A person who is engaged by the Partner Agency to complete the Assignment and is named in Schedule 1.

Maximum Price The maximum price payable by MFAT, as stated in Schedule 1.

Milestone A phase or stage in the delivery of the Outputs that upon satisfaction may result in the Partner Agency receiving payment for the Expenses, Per Diems and Allowances incurred, as stated in Schedule 1 or the Costed Workplan.

Notice A formal or legal communication from one Party to the other. It must be in writing and meet the requirements of clause 13 (Notices).

Outputs All products (including reports) and tasks stated in Schedule 1 and any Costed Workplan that the Partner Agency must perform and deliver under this Assignment.

Party/Parties The Parties to this MOU are MFAT and the Partner Agency.

Per Diems An amount payable for each night's accommodation, meals and incidentals for the Partner Agency's Personnel whilst working overseas, if and as provided for in Schedule 1 or a Costed Workplan. No receipts are required for Per Diems. Per Diems are payable in accordance with the rates established quarterly by MFAT. The rate payable is the published rate on www.aid.govt.nz at the commencement of the trip.

Personnel All individuals engaged by either Party in relation to this MOU, or the completion of the Assignment. Examples include employees, Subcontractors and agents.

Records All information and data relating to the management of this MOU and the completion of the Assignment. It includes reports, invoices, letters, e-mails, notes of meetings, financial records, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

Start Date The date specified in Schedule 1, being the date this MOU starts. The Assignment should not be started before the Start Date.

Subcontractor A person, business, company or organisation contracted by the Partner Agency to deliver or perform part of the Partner Agency's obligations under this MOU.

Tax Invoice The Partner Agency must invoice MFAT for the Assignment. The invoice must be a valid Tax Invoice which means it must:

- a. clearly show all GST due and the Partner Agency's GST number (if it has one);
- b. be clearly marked 'Tax Invoice';
- c. include the Partner Agency's name;
- d. include MFAT's name and address and marked for the attention of the person stated in Schedule 1;

- e. state the date the invoice was issued;
- f. name this MOU; and
- g. include a summary of actual expenditure against Schedule 1 or the Costed Workplan, supported by relevant receipts (available if requested by MFAT).

The invoice must also:

- a. include MFAT's purchase order number if there is one; and
- b. correctly calculate the amount due.

Variation A written agreement between the Parties in accordance with clause 18 of Schedule 2 that changes any material aspect of this MOU. A change to a material aspect of this MOU is a change that creates an obligation of sufficient importance to the Assignment that failure to meet it would result in a dispute and which, if unable to be enforced, has the potential to prejudice the Assignment or the reputation of one or both of the Parties.