

**CONFORMED COPY**

**CREDIT NUMBER 3746 KH  
GRANT NUMBER H034 KH**

# **Development Financing Agreement**

**(Provincial and Peri-Urban Water and Sanitation Project)**

**between**

**KINGDOM OF CAMBODIA**

**and**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Dated June 18, 2003**

**CREDIT NUMBER 3746 KH**  
**GRANT NUMBER H034 KH**

## **DEVELOPMENT FINANCING AGREEMENT**

AGREEMENT, dated June 18, 2003, between KINGDOM OF CAMBODIA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) Part B of the Project will be carried out by the Phnom Penh Water Supply Authority (“PPWSA”) with the Borrower's assistance and, as part of such assistance, the Borrower will make the proceeds of the Credit and of the Grant provided for in this Agreement available to PPWSA, as set forth in this Agreement;

(C) the Borrower and the Association intend, to the extent practicable, that the proceeds of the Grant be disbursed on account of expenditures in respect of the Project before disbursements of the proceeds of the Credit are made; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit and the Grant to the Borrower upon the terms and conditions set forth in this Agreement and in the agreement of even date herewith between the Association and PPWSA (the Project Agreement);

NOW THEREFORE the parties hereto hereby agree as follows:

### **ARTICLE I**

#### **General Conditions; Definitions**

Section 1.01. The “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through October 6, 1999), and further amended pursuant to Schedule 7 to this Agreement (the General Conditions), constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “Affected Persons” means persons who, on account of the execution of the Project, had or would have their: (i) standard of living adversely affected; or (ii) right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, temporarily or permanently; (iii) access to productive assets adversely affected, temporarily or permanently; or (iv) business, occupation, work or place of residence or habitat adversely affected; and “Affected Person” means any of the Affected Persons;

(b) “Contract Administration Unit” means the unit referred to in paragraph 9 of Schedule 4 to this Agreement;

(c) “Coordinating Committee” means the committee for the Borrower’s water and sanitation sector, established pursuant to the Borrower’s Council of Ministers Decision No. 60 dated September 18, 2000, and referred to in paragraph 1(a) of Schedule 4 to this Agreement;

(d) “Design, Build and Lease” and the acronym “DBL” mean a contractual leasing arrangement for detailed design, installation, construction, commissioning and operation of water supply facilities by a private operator under Part A(1) of the Project;

(e) “EAs” means collectively the 19 Environmental Assessments under Part A of the Project plus the 5 Environmental Assessments under Part B of the Project adopted by the Borrower on April 10, 2003, that set forth, inter alia, the assessment of anticipated environmental impacts under the Project incorporating measures and actions to mitigate the adverse impacts, as said Environmental Assessments may be amended from time to time with the prior agreement of the Association;

(f) “Ethnic Minorities Development Strategy” means the strategy adopted by the Borrower on March 19, 2003 and referred to in paragraph 2(a)(v) of Schedule 4 to this Agreement, which sets forth policies and procedures for full consultation with and informed participation of ethnic minorities and for mitigation of any adverse impacts on ethnic minorities as a result of the Project and ensuring that they benefit from the Project, as said strategy may be amended from time to time with the prior agreement of the Association;

(g) “Financial Monitoring Report” means each report prepared in accordance with Section 4.02 of this Agreement and Section 4.02 of the Project Agreement;

(h) "Fiscal Year" means the twelve (12) month period corresponding to any of the Borrower's or PPWSA's Fiscal Years, which period commences on January 1 and ends on December 31 in each calendar year, and the term "Fiscal Years" means, collectively, more than one Fiscal Year;

(i) "Guidelines on Resettlement and Compensation of Land and Other Assets" means the policy framework for compensation, resettlement and rehabilitation of Affected Persons, dated March 2003, adopted by the Borrower on April 10, 2003 and referred to in paragraph 2(a)(v) of Schedule 4 to this Agreement, as said policy framework may be amended from time to time with the prior agreement of the Association;

(j) "Lease Agreement" means the agreement referred to in paragraph 7 of Schedule 4 to this Agreement;

(k) "Low-income Household" means a household with an average income of less than one Dollar equivalent per day, taking into account the household overall income generated by fixed or movable assets and employment, if any, or other income thresholds as agreed to between the Borrower and the Association, and the term "Low-income Households" means more than one Low-income Household;

(l) "MIME" means the Borrower's Ministry of Industry, Mines and Energy, and such term includes any successor thereto;

(m) "MIME PMO" means MIME's project management office referred to in paragraph 1(b) of Schedule 4 to this Agreement;

(n) "MIME Special Account" means the account referred to in Section 2.02 (b)(i) of this Agreement;

(o) "NBC" means the National Bank of Cambodia, the Borrower's central bank, and such term includes any successor thereto;

(p) "Operation & Maintenance Agreement" and the acronym "O & M Agreement" mean the agreement referred to in paragraph 7 of Schedule 4 to this Agreement;

(q) "Output-based Aid" and the acronym "OBA" mean the financial assistance to cover the total connection costs of potable water supply made by a private operator to pre-identified Low-income Households under Part A (1) of the Project;

(r) "Project Agreement" means the agreement between the Association and PPWSA, of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;

(s) "Project Implementation Plans" means, collectively, the MIME Project Implementation Plan and the PPWSA Project Implementation Plan, satisfactory to the Association, adopted by MIME and PPWSA respectively for carrying out the Project, as the same may be amended from time to time with the prior agreement of the Association;

(t) "Phnom Penh Water Supply Authority" and the acronym "PPWSA" mean a State-owned enterprise possessing financial and operational autonomy, established and operating pursuant to the Borrower's Sub-Decree No. 52 dated December 19, 1996, responsible for the production and distribution of potable water within the Borrower's capital city of Phnom Penh;

(u) "PPWSA PMO" means the project management office referred to in paragraph 1 of Schedule 2 to the Project Agreement;

(v) "PPWSA Special Account" means the account referred to in Section 2.02 (b)(ii) of this Agreement;

(w) "Project Provinces" means those provinces and municipalities of the Borrower listed in the Annex to Schedule 2 to this Agreement, as said Annex may be amended from time to time by agreement between the Borrower and the Association, and a "Project Province" means any of said Project Provinces;

(x) "Provincial Project Management Unit" and the acronym "Provincial PMU" mean the unit at each Project Province referred to in paragraph 1(c) of Schedule 4 to this Agreement;

(y) "Riel" means the unit of currency of the Borrower;

(z) "Special Accounts" mean, collectively, the MIME Special Account and the PPWSA Special Account;

(aa) "Sub-Decree" means the Borrower's Sub-Decree No. 52 dated December 19, 1996, on the Creation of the Phnom Penh Water Supply Authority as an autonomous public enterprise of the Borrower, responsible for the production and distribution of potable water within the Borrower's capital city of Phnom Penh; and

(bb) “Subsidiary Financing Agreement” means the agreement to be entered into between the Borrower and PPWSA pursuant to Section 3.02 of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Financing Agreement.

## **ARTICLE II**

### **The Financing**

Section 2.01. The Association agrees to make available to the Borrower, on the terms and conditions set forth or referred to in this Agreement:

(a) an amount in various currencies equivalent to twelve million four hundred thousand Special Drawing Rights (SDR 12,400,000) (the Credit); and

(b) an amount in various currencies equivalent to two million three hundred thousand Special Drawing Rights (SDR 2,300,000) (the Grant).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account and the amount of the Grant may be withdrawn from the Grant Account, in each case in accordance with the provisions of Schedule 1 to this Agreement, for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Financing.

(b) The Borrower may, for the purposes of the Project, open and maintain in Dollars, two special deposit accounts, each in the National Bank of Cambodia, or a commercial bank on terms and conditions satisfactory to the Association, including in the case of a commercial bank, appropriate protection against set-off, seizure or attachment: (i) MIME Special Account for Part A of the Project; and (ii) PPWSA Special Account for Part B of the Project. Deposits into, and payments out of, each respective Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

Section 2.03. The Closing Date shall be June 30, 2008 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association: (i) a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to

be set by the Association as of June 30 of each year, such rate not to exceed the rate of one-half of one percent (1/2 of 1%) per annum; and (ii) a commitment charge on the principal amount of the Grant not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, such rate not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) Each commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or the Grant Account (as the case may be), or canceled; and (ii) at the respective rate set as of June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The respective rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) Each commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on February 1 and August 1 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each February 1 and August 1 commencing August 1, 2013 and ending February 1, 2043. Each installment to and including the installment payable on February 1, 2023 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the

development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment of the Credit to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

### **ARTICLE III**

#### **Execution of the Project**

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end:

- (i) shall, through MIME, carry out Part A of the Project with due diligence and efficiency and in conformity with appropriate administrative,



financial, engineering, technical and public water supply utilities practices and sound social and environmental standards acceptable to the Association, and shall provide, promptly as needed, the funds, facilities, services and other resources required for said Part of the Project; and

- (ii) without any limitation or restriction upon any of its other obligations under this Agreement, the Borrower, shall cause PPWSA to carry out Part B of the Project in accordance with the provisions of the Project Agreement all of its obligations therein set forth, all with due diligence and efficiency and in conformity with appropriate administrative, economic, financial, engineering, technical and public water supply utilities practices and sound environmental and social standards acceptable to the Association; and shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, and the adjustment of water tariffs, necessary or appropriate to enable PPWSA to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower through MIME shall carry out Part (A) of the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

Section 3.02. For purposes of carrying out Part B of the Project, the Borrower shall enter into a Subsidiary Financing Agreement with PPWSA under terms and conditions which shall have been approved by the Association and which shall include the following:

- (a) make available to PPWSA the proceeds of the Credit, allocated from time to time to Categories (1)(c), (2)(b) and (3)(b) set out in the table in Paragraph 1 of Schedule 1 to this Agreement, pursuant to the terms and conditions set forth in Schedule 6 to this Agreement; and
- (b) make available to PPWSA on a non- reimbursable basis the proceeds of the Grant allocated from time to time to Category (4)(b) set out in the table in Paragraph 1 of Schedule 1 to this Agreement, without cost of any kind to PPWSA either directly or through deduction from the proceeds of the Grant so made available to PPWSA, including charges, commissions or fees.

(c) The Borrower shall exercise its rights under the Subsidiary Financing Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit and the Grant, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Financing Agreement or any provision thereof.

Section 3.03. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for: (a) Part A of the Project and to be financed out of the proceeds of the Financing shall be governed by the provisions of Schedule 3 to this Agreement; and (b) Part B of the Project and to be financed out of the proceeds of the Financing shall be governed by the provisions of Schedule 1 to the Project Agreement.

Section 3.04. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of Part B of the Project shall be carried out by PPWSA pursuant to Section 2.03 of the Project Agreement.

## **ARTICLE IV**

### **Financial Covenants**

Section 4.01. (a) The Borrower shall maintain a financial management system, including records and accounts, and prepare financial statements in a format acceptable to the Association, adequate to reflect the operations, resources and expenditures related to Part A of the Project.

- (b) The Borrower shall:
- (i) have the records, accounts and financial statements referred to in paragraph (a) of this Section and the records and accounts for the Special Accounts for each fiscal year audited, in accordance with auditing standards acceptable to the Association, consistently applied, by independent auditors acceptable to the Association;
  - (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year as so audited, and (B) an opinion on such statements, records and accounts, and the

report of such audit, by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

- (iii) furnish to the Association such other information concerning such records, accounts and financial statements, and the audit thereof, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Financing Accounts were made on the basis of statements of expenditure, the Borrower shall:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and separate accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Financing Accounts was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in paragraph 10 of Schedule 4 to this Agreement, the Borrower shall through MIME prepare and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Financing, and explains variances between the actual and planned uses of such funds;

- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first Financial Monitoring Report shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each Financial Monitoring Report shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

## **ARTICLE V**

### **Remedies of the Association**

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional events are specified, namely:

(a) PPWSA shall have failed to perform any of its obligations under the Project Agreement;

(b) As a result of events which have occurred after the date of the Development Financing Agreement, an extraordinary situation shall have arisen which shall make it improbable that PPWSA will be able to perform its obligations under the Project Agreement;

(c) The Sub-Decree shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of PPWSA to perform any of its obligations under the Project Agreement; and

(d) The Borrower, or any other authority having jurisdiction, shall have taken any action for the dissolution or disestablishment of PPWSA, or for the suspension of any of its operations.

Section 5.02. Pursuant to Section 7.01(h) of the General Conditions, the following additional events are specified:

(a) any events specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Association to the Borrower; and

(b) The events specified in paragraphs (c) and (d) of Section 5.01 of this Agreement shall occur.

## ARTICLE VI

### Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Subsidiary Financing Agreement has been executed on behalf of the Borrower and PPWSA, in accordance with the provisions of Section 3.02 of this Agreement;

(b) the Borrower and PPWSA have adopted their respective Project Implementation Plans, including a financial management manual, satisfactory to the Association, in accordance with paragraph 2 of Schedule 4 to this Agreement and paragraph 2 of Schedule 2 to the Project Agreement; and

(c) the Borrower and PPWSA each has: (i) designed chart of accounts and installed a specialized financial management software at the respective PMO of MIME and PPWSA, (ii) appointed a project accountant and an assistant accountant with terms of reference satisfactory to the Association at the respective PMO of MIME and PPWSA, and (iii) provided accounting and disbursement training to the staff of the respective PMO of MIME and PPWSA; all in a manner and substance satisfactory to the Association.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

(a) that the Project Agreement has been duly authorized or ratified by PPWSA, and is legally binding upon PPWSA in accordance with its terms;

(b) that the Subsidiary Financing Agreement has been duly authorized or ratified by the Borrower and PPWSA and is legally binding upon the Borrower and PPWSA in accordance with its terms; and

(c) that the Environmental Assessments, the Ethnic Minorities Development Strategy and the Guidelines on Resettlement and Compensation of Land and Other Assets have been duly authorized by the Borrower and are legally binding and enforceable in accordance with Cambodian law.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.04. The obligations of the Borrower under the provisions of Section 5.02 of this Agreement shall cease on the date on which the Development Financing Agreement shall terminate or on the date twenty (20) years after the date of this Agreement, whichever shall be the earlier.

## **ARTICLE VII**

### **Representative of the Borrower; Addresses**

Section 7.01. The Minister of Economy and Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Economy and Finance  
92<sup>nd</sup> Street, Sangkat Wat Phnom  
Phnom Penh  
Kingdom of Cambodia

Facsimile:

(855-23) 427 - 798  
(855-23) 725 - 341

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI) or 64145 (MCI)	(1- 202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

KINGDOM OF CAMBODIA

By /s/ Roland Eng

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Jemal-Ud-Din Kassum

Authorized Representative

**SCHEDULE 1**

**Withdrawal of the Proceeds of the Financing**

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Financing, the allocation of the amounts of the Credit and the amounts of the Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>Amount of the Grant Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Works			
(a) under Part A(1) of the Project	6,750,000		90%
(b) under Part A (2) of the Project		500,000	75%
(c) under Part B (1) of the Project	1,100,000		100% of foreign expenditures and 50% of local expenditures
(2) Goods			100% of foreign expenditures, 100% of local expenditures (ex-factory cost) and 85% of local expenditures for other items procured locally
(a) under Part A (1) of the Project	80,000		



<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in (SDR Equivalent)</u>	<u>Amount of the Grant Allocated (Expressed in (SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(b) under Part B(1) of the Project	2,120,000		
(3) Consultants' services			95%
(a) under Part A(3) of the Project	2,050,000		
(b) under Part B(2) of the Project	220,000		
(4) Household Water Supply Connections			100%
(a) under Part A (1) of the Project		1,600,000	
(b) under Part B (1) of the Project		200,000	
(5) Operating Costs	80,000		85%
	<u>12,400,000</u>	<u>2,300,000</u>	
TOTAL		<u>14,700,000</u>	

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;

(c) the term “operating costs” means reasonable expenditures incurred by the Borrower on account of the Project management and monitoring, including costs for communications, operation and maintenance of the Project vehicles, bank charges, and travel expenses for the Project staff (which expenditures would not have been incurred absent the Project), but excluding salaries or salary supplements; and

(d) the term “Household Water Supply Connections” means the expenses incurred for connecting pre-identified Low-income Households with public potable water supply networks under the Project.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

4. The Association may require withdrawals from the Credit Account and the Grant Account to be made on the basis of statements of expenditure for: (a) works under contracts costing less than \$100,000 equivalent each; (b) goods; (c) consultants’ services under contracts awarded consulting firms costing less than \$100,000 equivalent each; (d) household water supply connections, and (e) operating costs, under such terms and conditions as the Association shall specify by notice to the Borrower.

## SCHEDULE 2

### Description of the Project

The objective of the Project is to assist the Borrower to achieve its Millennium Development Goals through implementation of its Socio-economic Development Plans with respect to public potable water supply and sanitation.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

#### Part A: Provincial Water Supply and Sanitation

1. Undertaking construction of water supply infrastructure and connecting to Low-income Households in about twenty (20) communities in the Project Provinces;
2. Improving sanitation conditions in Low-income Households, selected schools, hospitals and public markets through construction and installation of sanitation facilities at said locations in about twenty (20) communities in the Project Provinces; and
3. Supporting project management in the carrying out of Part A of the Project, through provision of technical assistance for procurement, auditing, and accounting activities; construction management and supervision; preparation for additional water supply facilities; and provision of office equipment and vehicles.

#### Part B: Peri-urban Water Supply

1. Expanding water supply infrastructure and connecting to Low-income Households in about five (5) communities in the peri-urban areas of Phnom Penh municipality; and
2. Supporting project management through provision of technical assistance for construction supervision of works under Part B(1) of the Project.

\* \* \*

The Project is expected to be completed by December 31, 2007.

**Annex to Schedule 2**

**Project Provinces**

Svay Rieng

Prey Veng

Odor Meanchey

Bantey Meachey

Kampong Chhnang

Kampong Thom

Takeo

Krong Kep

Krong Pailin

Kampong Cham

### **SCHEDULE 3**

#### **Procurement**

Section I.      Procurement of Goods and Works

Part A:        General

Goods and works shall be procured in accordance with the provisions of Section I of the “Guidelines for Procurement under IBRD Loans and IDA Credits” published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the following provisions of this Section.

Part B:        International Competitive Bidding

1.        Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2.        The following provisions shall apply to goods and works to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a)      Prequalification

Bidders for Design, Build and Lease Contracts with an aggregate amount exceeding \$2,000,000 shall be prequalified in accordance with the provisions of paragraphs 2.9 and 2.10 of the Guidelines.

(b)      Grouping of contracts

To the extent practicable, contracts for goods and works shall be grouped in bid packages estimated to cost \$100,000 equivalent or more each.

(c)      Notification and Advertising

The invitation to prequalify or bid for each contract estimated to cost \$600,000 equivalent or more shall be advertised in accordance with the procedures applicable to specialized contracts under paragraph 2.8 of the Guidelines.

Part C: Other Procurement Procedures

1. International Shopping

Goods estimated to cost less than \$10,000 equivalent per contract, up to an aggregate amount not to exceed \$50,000 equivalent, may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

2. Procurement from UN Agencies

Vehicles up to an aggregate amount \$70,000 equivalent may be procured from the Inter-Agency Procurement Office of the United Nations in accordance with the provisions of paragraph 3.9 of the Guidelines.

3. Procurement under Private Sector Arrangements

The water supply facilities to be constructed under the Design-Build-Lease and Output-based Aid arrangements shall be constructed, and operated, or subsequently transferred under a contract awarded to an entrepreneur on the basis of international competitive bidding procedures in accordance with the provisions of Section II of the Guidelines, subject to the provisions of paragraph 3.13(a) thereof. The goods, works or services required for the construction of said facilities shall then be procured in accordance with the applicable procedures of said entrepreneur.

4. Community Participation

Works required for improving sanitation under Part A(2) of the Project shall be procured in accordance with procedures acceptable to the Association.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

The procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply with respect to: (i) each contract for works estimated to cost the equivalent of \$100,000 or more, and (ii) every contract for goods procured in accordance with the procedures set forth in Part B above.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 and revised in September 1997, January 1999 and May 2002 (the Consultant Guidelines), paragraph 1 of Appendix 1 thereto, Appendix 2 thereto and the following provisions of Section II of this Section.

Part B: Quality- and Cost-based Selection

Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

Part C: Other Procedures for the Selection of Consultants

1. Least-cost Selection

Services for audits under Part A(3) of the Project estimated to cost less than \$15,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

2. Individual Consultants

Services of individual consultants for tasks that meet the requirements set forth in paragraph 5.1 of the Consultant Guidelines shall be procured under contracts awarded in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines.

Part D: Review by the Association of the Selection of Consultants

1. Selection Planning

A plan for the selection of consultants, which shall include contract cost estimates, contract packaging, and applicable selection criteria and procedures, shall be furnished to the Association for its review and approval prior to the issuance to consultants of any requests for proposals. Such plan shall be updated every twelve (12) months during the execution of the Project, and each such updating shall be furnished to the Association for its review and approval. Selection of all consultants' services shall be undertaken in accordance with such selection plan (as updated from time to time) as shall have been approved by the Association.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants, the report on the comparison of the qualifications and experience of candidates, terms of reference and terms of employment of the consultants shall be furnished to the Association for its prior review and approval. The contract shall be awarded only after the said approval shall have been given. The provisions of paragraph 3 of Appendix 1 to the Consultant Guidelines shall also apply to such contracts.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.



## **SCHEDULE 4**

### **Implementation Program**

1. The Borrower shall:

(a) maintain, until completion of the Project, the Coordinating Committee, chaired by the Minister of MIME, consisting of representatives of, inter alia, the Borrower's Ministry of Public Works and Transport, Ministry of Economy and Finance, Ministry of Environment, Ministry of Planning, the Office of Council of Ministers, Ministry of Rural Development, Ministry of Water Resources and Meteorology, Ministry of Health, Council for the Development of Cambodia, the Phnom Penh Municipality and PPWSA, assigned with such functions and responsibilities, all satisfactory to the association, for the overall coordination and oversight of implementation of the Project;

(b) maintain, until completion of the Project, the MIME PMO, headed by a qualified and experienced officer, with such functions, responsibilities and funds, satisfactory to the Association, and with competent staff in adequate numbers, for the implementation of Part A of the Project, inter alia: (i) coordination, support and supervision of the operations of Provincial PMUs; (ii) approval of contracts including OBA and DBL contracts and review and monitoring of performance of private or public water utilities under the Project; (iii) engaging the services of contractors and consultants to carry out the implementation of the Project; (iv) approval of payments from the MIME Special Account to contractors and consultants for expenditures incurred for carrying out the Project; (v) monitoring and evaluation of impacts of the Project in each Project Province, including its environmental and social impacts; and (vi) provision of documentation of lessons learned from private sector participation in existing urban piped water supply system by the Project mid-term review; and

(c) cause each Project Province to maintain until completion of the Project, its respective Provincial Project Management Unit, each headed by an officer with qualifications and experience satisfactory to the Association, with such functions, responsibilities, funds and competent staff in adequate numbers, satisfactory to the Association, for assisting MIME in carrying out the Project in each Project Province.

2. The Borrower:

(a) shall carry out Part A of the Project in accordance with the MIME Project Implementation Plan, satisfactory to the Association, which shall include, inter alia: (i) implementation arrangements; (ii) the procurement procedures set forth in

Schedule 3 to this Agreement and standard procurement documentation; (iii) reporting requirements, financial management procedures and audit procedures as set forth in Article 4 of this Agreement; (iv) the project performance indicators set forth in a supplemental letter of even date herewith; (v) measures required under the Guidelines on Resettlement and Compensation of Land and Other Assets, the Ethnic Minorities Development Strategy, and the Environmental Assessments; and (vi) procedures for monitoring and reporting of the progress of the Project; and

(b) shall not amend, waive or abrogate the provisions of the MIME Project Implementation Plan without the prior concurrence of the Association.

3. The Borrower shall carry out Part A(1) of the Project through a DBL or an OBA contractual arrangement; provided, however, that in the Project Provinces in which DBL or OBA contractual arrangements are not feasible, Part A(1) of the Project shall be carried out through a State-owned water utilities possessing financial and operational autonomy established with functions, responsibilities, funds and competent staff in sufficient numbers, all satisfactory to the Association.

4. Without limitation to the provisions of Section 3.01(a)(ii) of this Agreement, the Borrower shall take all necessary actions, including adjustment of water tariffs, to enable PPWSA to comply with its obligations set forth in the Project Agreement.

5. The Borrower shall take all necessary actions to ensure that a draft Water Supply and Sanitation Regulatory Law of the Kingdom of Cambodia, satisfactory to the Association, be submitted to the National Assembly for approval by December 31, 2003.

6. Six month prior to the end of each Fiscal Year, the Borrower shall in consultation with the Association, review or update each of the EAs to incorporate lessons learned from the previous Fiscal Year. To evaluate implementation of the mitigation measures included in the EAs, the Borrower shall conduct annual compliance monitoring for the constructed facilities under the Project, satisfactory to the Association.

7. The Borrower shall enter into an Operation and Maintenance Agreement with each private operator for awarding OBA contracts under the Project; and a Lease Agreement with each private operator for awarding DBL contracts under the Project. Each Operation and Maintenance Agreement and Lease Agreement shall include the following terms:

(a) The Borrower shall, through MIME, open an escrow account in the NBC in the name of the Contract Administration Unit to receive the monthly supervision fee paid by each private operator; and

(b) The supervision fee paid by each private operator shall be used by MIME to defray expenses incurred by the Contract Administration Unit for administering the Operation and Maintenance Agreements and the Lease Agreements.

8. The Borrower shall open and maintain a separate account in the NBC for receiving the proceeds of lease fees to be paid by private operators awarded DBL contracts. The Borrower may use the proceeds of the lease fees as equity for public water supply and sanitation investment projects or for other purposes with prior agreement of the Association.

9. The Borrower shall, through MIME, establish a Contract Administration Unit, with terms of reference satisfactory to the Association, to administer the Operation and Maintenance Agreements and the Lease Agreements on behalf of MIME by December 31, 2003.

10. The Borrower shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about December 31, 2005, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by February 28, 2006, or such later date as the Association shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.

## **SCHEDULE 5**

### **Special Accounts**

1. For the purposes of this Schedule:
  - (a) the term “eligible Categories” means Categories (1), (2), (3), (4) and (5) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;
  - (b) the term “eligible expenditures” means: expenditures in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Financing allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and
  - (c) the term “Authorized Allocation” means (i) an amount equivalent to \$700,000 to be withdrawn from the Credit Account or the Grant Account and deposited into the MIME Special Account pursuant to paragraph 3(a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation for the MIME Special Account shall be limited to an amount equivalent to \$400,000 for Part A of the Project until the aggregate amount of withdrawals from the Credit Account and the Grant Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR1,500,000; and (ii) an amount equivalent to \$200,000 to be withdrawn from the Credit Account or the Grant Account and deposited into the PPWSA Special Account pursuant to paragraph 3(a) of this Schedule.
2. Payments out of the respective Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.
3. After the Association has received evidence satisfactory to it that the respective Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the respective Special Account shall be made as follows:
  - (a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the respective Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account or the Grant Account and deposit into the respective Special Account such amount or amounts as the Borrower shall have requested.

- (b) (i) For replenishment of the respective Special Account, the Borrower shall furnish to the Association requests for deposits into the respective Special Account at such intervals as the Association shall specify.
- (ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account or the Grant Account and deposit into the respective Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the respective Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Credit Account or the Grant Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the respective Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into any Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account or Grant Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b)(ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Accounts;

(c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals

from the Credit Account and the Grant Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit and the Grant allocated to the eligible Categories, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account and the Grant Account of the remaining unwithdrawn amount of the Credit and the Grant allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the respective Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of any Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the respective Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into any Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in any Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Accounts.

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account or the Grant Account, as the case may be, for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

## **SCHEDULE 6**

### **Terms and Conditions of the Subsidiary Financing Agreement**

The Subsidiary Financing Agreement to be entered into between the Borrower and PPWSA, pursuant to the provisions of Section 3.02 of this Agreement and Section 2.04 of the Project Agreement, shall include, inter alia, the following principal terms and conditions:

1. PPWSA shall repay to the Borrower the aggregate amount of the proceeds of the Credit withdrawn from time to time from the Credit Account allocated to Categories (1)(c), (2)(b) and (3)(b) set out in the table in Paragraph 1 of Schedule 1 to this Agreement and available to finance the carrying out of Part B of the Project (the "Subsidiary Loan") over a period not to exceed seventeen (17) years, including a grace period not to exceed five (5) years.

2. The Subsidiary Loan shall be denominated in United States dollars and repaid by PPWSA to the Borrower in Riels, at least semi-annually at the official rate of exchange as determined by NBC on the respective dates on which the proceeds of the Subsidiary Loan are withdrawn from the Credit Account.

3. PPWSA shall pay interest on the principal amount of the Subsidiary Loan, withdrawn and outstanding from time to time, at a fixed rate per annum equal to eight and one half percent (8 1/2%).

4. PPWSA shall pay to the Borrower the commitment charges payable under Section 2.06 of this Agreement, allocable to the part of the proceeds of the Credit lent but not withdrawn by PPWSA.

## SCHEDULE 7

### Modifications to the General Conditions

For the purpose of this Agreement, the provisions of the General Conditions are modified as follows:

1. Section 1.01 is amended to read:

“These General Conditions set forth certain terms and conditions generally applicable to development financing granted by the Association as a development credit and development grant to its members. They apply to any development financing agreement providing for any such development finance to the extent and subject to any modifications set forth in such agreement.”

2. Paragraph 8 of Section 2.01 is amended to read as follows:

8. “Development Financing Agreement” means the particular Development Financing Agreement to which these General Conditions apply, as such agreement may be amended from time to time. Development Financing Agreement includes these General Conditions as applied thereto, and all schedules and agreements supplemental to the Development Financing Agreement.

3. The following new paragraphs are added to Section 2.01:

15. “Grant” means the development grant provided for in the Development Financing Agreement.”;

16. “Grant Account” means the account opened by the Association on its books in the name of the Borrower to which the amount of the Grant is credited.”;

17. “Financing” means, collectively, the Credit and the Grant.

18. “Financing Accounts” means, collectively, the Credit Account and the Grant Account (or, where the context so requires, either of the Credit Account or the Grant Account).

4. The term “Credit”, wherever used in the following Articles and Sections of the General Conditions, is amended to read “Financing”: Sections 2.01(3), 2.01(12), 4.01, Article V, Article VI (excluding Section 6.05), Section 7.01(d), Article VIII, and Article IX.



5. The term “Credit Account”, wherever used in the following Articles and Sections of the General Conditions, is amended to read “Financing Accounts”: Section 2.01(6), 4.01, Article V, Article VI, and Section 12.03.

6. The term “Development Credit Agreement”, wherever used in the General Conditions, is amended to read the Development Financing Agreement.

7. Section 3.01 is modified to read as follows:

“Section 3.01. *Financing Accounts.* The amount of the Credit shall be credited to the Credit Account and may be withdrawn from the Credit Account by the Borrower as provided in the Development Financing Agreement and in these General Conditions. The amount of the Grant shall be credited to the Grant Account and may be withdrawn from the Grant Account by the Borrower as provided in the Development Financing Agreement and in these General Conditions.”

8. The phrase “(including any development financing agreement or development grant agreement)” is added to Section 6.02(a)(ii) after the words “any development credit agreement” and before the words “between the Borrower and the Association”, to Section 6.02(c)(i) after the words “any development credit agreement” and before the words “with the Association”, and to Section 7.01(b)(i) after the words “any other development credit agreement” and before the words “between the Borrower and the Association”:

9. Section 6.05 is amended to read as follows:

“Except as the Borrower and the Association shall otherwise agree, any cancellation of any amount of the Credit shall be applied *pro rata* to the several installments of the principal amount of the Credit maturing after the date of such cancellation.”