

AGREEMENT

BETWEEN

THE ROYAL GOVERNMENT OF CAMBODIA

AND

THE GOVERNMENT OF SWEDEN

ON

GENERAL TERMS AND CONDITIONS

FOR DEVELOPMENT CO-OPERATION

1 JANUARY 2002 – 31 DECEMBER 2006

AGREEMENT BETWEEN THE GOVERNMENT OF SWEDEN AND THE GOVERNMENT OF THE THE ROYAL GOVERNMENT OF CAMBODIA ON GENERAL TERMS AND CONDITIONS FOR DEVELOPMENT COOPERATION 1 JANUARY 2002—31 DECEMBER 2006.

The Government of Sweden (hereinafter referred to as Sweden) and the Royal Government of Cambodia (hereinafter referred to as Cambodia) have agreed as follows:

ARTICLE 1 SCOPE OF THE AGREEMENT

This Agreement sets out the general terms and conditions for development cooperation between Sweden and Cambodia.

These terms shall apply to projects/programmes of development cooperation agreed between Cambodia and Sweden provided that an explicit reference is made to this Agreement, in a Specific Agreement. Should there be any discrepancy between this Agreement and the Specific Agreement the latter shall prevail.

The conditions in this Agreement shall also otherwise apply to consultancy companies, institutions, or other legal or natural persons from countries other than Cambodia, if the assistance is financed by Swedish development cooperation funds and if Sweden or Cambodia is the contractor.

ARTICLE 2 DELEGATION OF POWERS

The Swedish International Development Cooperation Agency, Sida, and the Council for Development of Cambodia, CDC shall be empowered to represent their respective Governments in matters concerning the implementation of this Agreement.

ARTICLE 3 USE OF RESOURCES

The purpose and use of resources made available by Sweden shall be specified and agreed through specific agreements on projects and programmes.

Cambodia shall ensure the effective utilisation of the assistance made available under agreements on development cooperation and corresponding specific agreements.

Sweden and Cambodia agree to cooperate on preventing corruption within and through the projects/programmes. Sweden and Cambodia undertake to take rapid legal measures in their respective countries to stop, investigate and charge any party suspected on good grounds of corruption or other wilful misuse of resources.

Resources financed or contributed by Sweden shall be used exclusively for the purposes of and within the projects/programmes agreed upon. Such resources will only be released as specified in signed specific agreements covering the projects/programmes concerned.

The use of funds provided by Sweden for agreed purposes shall not be impeded or delayed by currency or foreign exchange controls or charges imposed by Cambodia. No such charges shall be paid from Swedish contributions.

No customs duties, sales taxes or related fees shall be charged to Sweden by Cambodia on goods or other resources provided or financed by Sweden. If such fees or costs are demanded, they shall be paid by Cambodia.

Necessary licenses for imports financed by Sweden shall be promptly granted by Cambodia.

Whenever it is necessary to determine the value in Swedish kronor of a disbursement effected in any other currency, such value shall be determined by Sweden on the basis of the current market selling rate in Stockholm on the day of disbursement or, if no such rate exists, on a rate that Sweden shall reasonably determine in consultation with Cambodia.

ARTICLE 4 INFORMATION

Cambodia shall provide Sweden with such audited financial reports and other reports as are stipulated and agreed upon in Specific Agreements.

Cambodia shall give Sweden any information on the use of resources provided by Sweden that Sweden may reasonably request and enable representatives of Sweden to visit and study activities and to inspect property, goods, records and documents.

Cambodia shall assist and cooperate with Sweden in performing any audits deemed necessary by Sweden. Inspection of records and documents as well as auditing may be carried out by any appropriate agency selected by Sweden.

Irrespective of agreed reporting routines, the Parties shall promptly inform each other of any situation that may affect the good implementation of the development co-operation programme between Sweden and Cambodia.

Sweden shall on a regular basis provide Cambodia with information on funds allocated and disbursed from grants kept available under agreements on development cooperation between Sweden and Cambodia.

ARTICLE 5 PROCUREMENT OF GOODS AND SERVICES

Procurement of goods, works and services shall be performed in accordance with generally accepted principles and good procurement practices. For public sector procurement, this is defined as the use of formal competitive bidding procedures whenever practicable for large value contracts and of acceptable procurement practices under the threshold for formal bidding.

For procurement carried out by private sector companies/institutions within financial support provided to the private sector, established commercial practices shall be applied up to an agreed threshold, above which Open Competitive Bidding (OCB) procedures shall be used.

Swedish suppliers of goods and services shall be given the same opportunities to participate in the bidding as other suppliers.

In each project or programme where goods, works or services are to be procured, the parties shall hold consultations with a view to determining the most effective and economical way of handling the procurement. In Specific Agreements, it shall be further stipulated and agreed whether Cambodia or Sweden shall procure the goods, works or services or cause them to be procured, thresholds for different procurement methods, and which specific procedures and rules are to be followed in the course of the procurement.

Cambodia shall take the necessary steps to enable its procurement authorities to conform to agreed procedures.

The party performing the procurement shall furnish the other party with all relevant information on its procurement practices and actions taken and provide access to related records and documents during all phases of the procurement process. Any information requested shall be treated with due observance of confidentiality.

Complete records and documentation pertaining to the procurement under this agreement shall be kept in an orderly manner for ease of access over a minimum period of ten (10) years after the expiry of each specific agreement period.

The parties shall further agree on the nature and extent of any technical assistance provided by Sweden for the Procurement.

Goods procured by Sweden under this Agreement shall become the property of Cambodia upon entry into Cambodia, unless otherwise agreed.

ARTICLE 6 CONDITIONS AND PROCEDURES FOR DISBURSEMENT

No disbursement will be made for any purpose until a corresponding Specific Agreement has entered into force and conditions for disbursement stipulated in that Agreement have been met.

Disbursement available funds shall be made as follows:

- a. Expenditure incurred by Cambodia in its own currency.

Disbursement shall be made to Cambodia's account with a bank designated by Cambodia.

Sweden may decide to make disbursements for this purpose in the currency of Cambodia to a bank designated by Cambodia.

- b. Expenditure incurred by Cambodia for payment outside Cambodia.

Payment shall be made by Sweden through a Swedish commercial bank. Sweden shall inform Cambodia of the procedure to be observed.

Payment may also be made through any commercial bank in or outside Cambodia, if the parties so agree.

c. Expenditure incurred by Sweden.

Payment shall be made by Sweden directly to suppliers, consultants and personnel contracted by Sweden.

d. Expenditure incurred by UN and other organisations.

When Cambodia and Sweden have agreed that activities within the cooperation programme shall be performed by a UN or other organisation, disbursements shall be made by Sweden directly to that organisation to cover the cost of such activities. Sweden may decide to disburse funds in the currency in which the original cost was made.

Costs incurred and payments made by Sweden according to the stipulations above will be deducted from the Swedish contribution stated in the respective Specific Agreements.

ARTICLE 7 CONDITIONS FOR EXPATRIATE PERSONNEL

a. Definitions

These conditions shall apply to personnel not permanently resident in Cambodia performing tasks in Cambodia within programmes of development cooperation financed by Sweden, if they are employed by Sida. or if their employer has undertaken to perform services or deliver goods according to a contract with Sida directly or as a subconsultant.

These conditions shall also apply to citizens of Cambodia, when they are covered by the above definition.

These conditions shall also apply to the spouses, co-habitants and dependants of the personnel.

The clauses below under d. Liability towards third party shall apply also to persons permanently resident in Cambodia when they are employed by anyone who falls under this Agreement.

Through this Agreement Cambodia does not undertake to apply these conditions to individuals employed by Cambodia or to consultancy firms, institutions etc, contracted by Cambodia, and their personnel, even if the services are financed by Swedish development cooperation funds. Cambodia may unilaterally decide to apply these conditions, wholly or partially, in specific cases and to undertake to do so in contracts with such individuals or firms.

b. Security

Cambodia shall inform the Embassy of Sweden in Cambodia of any extraordinary situation or state of emergency in the country. In the event of such developments being deemed by either of the parties as constituting force majeure or likely to endanger the implementation of projects or

programmes of cooperation, either party may request immediate consultations. In such consultations Cambodia shall provide information about any security regulations or other restrictions to be observed by non-citizens of Cambodia.

Sweden may, for reasons of security, give specific instructions to the personnel. These instructions may include orders to leave Cambodia. Personnel complying with the instructions or otherwise taking precautions that are warranted under the circumstances, shall not be considered to be in dereliction of duty under their contract.

Costs incurred by Sweden to ensure the security of personnel will be financed from the funds made available by Sweden to Cambodia for development cooperation.

c. Detention or arrest

In the event of detention or arrest, for any reason whatsoever, of any person covered by this Agreement, or in the event of criminal proceedings being instituted against such a person, the Embassy of Sweden in Cambodia shall be notified without delay and shall have the right to visit the detained or arrested person. The detained or arrested person shall have the right to contact his/her embassy or consulate and to have access to a lawyer assigned by his/her embassy or by the person him/herself. Cambodia shall provide reasonable living conditions to any person covered by this Agreement in detention or arrest.

d. Liability towards third party

Cambodia shall bear all risks arising from, or incurred through, the operations performed under this Agreement. Cambodia shall, in particular, be responsible for dealing with all claims that may be brought by third parties against Sweden, Swedish official institutions or Swedish officials, as well as companies, institutions or persons to which this Agreement applies arising from or directly attributable to the operations performed under this Agreement.

Cambodia shall, in respect of such claims, bear all costs and pay all damages a third party may be found entitled to. If Cambodia and Sweden agree that a particular claim or liability arose from an act of gross negligence or wilful misconduct, Sweden shall, on request by Cambodia, take action to compensate Cambodia.

Cambodia shall be entitled to exercise and enforce the benefit of any defence or right to set-off counterclaim, insurance, indemnity, contribution or guarantee to which the party concerned may be entitled. Sweden shall provide Cambodia with any assistance which Cambodia may reasonably require to be able to do this.

e. Recall

Cambodia may request the recall or replacement of any member of the personnel made available by Sweden whose work or conduct is deemed unsatisfactory.

Sweden may recall any member of the personnel. Before deciding on recall, Sweden shall, unless

security reasons or other exceptional circumstances dictate otherwise, consult with Cambodia on the issue as well as on arrangements for ensuring the early replacement of the personnel recalled.

f. In-country orientation and project/programme-related training

Cambodia shall cooperate with Sweden in providing the personnel with an orientation on conditions in Cambodia, in order to facilitate their adjustment and thereby increase their ability to carry out their work. Cambodia shall instruct its authorities and officers to respond favourably to requests for such cooperation.

In-country orientation and other pertinent areas of continuous training relevant to the specific tasks of the expatriate personnel shall be considered to be an integral part of their work, its aim being to contribute to the development of competence. Such training may be performed through on-the-job training, courses or seminars. It may be arranged by the Embassy of Sweden, the local authority or organisation involved, or by the consulting company or institutions involved. Assistance and advice from Sweden concerning training may be requested by Cambodia.

All costs for the implementation of the training according to this article shall be financed from the funds made available by Sweden to Cambodia for development cooperation.

g. Recruitment of individuals

If individual experts are to be recruited by Sweden for long-term or short-term services, the following procedures shall apply:

Sweden shall keep Cambodia informed about the progress of the recruitment and within six months of the request by Cambodia, provide Cambodia with the curriculum vitae on the candidate/s recommended to the post/s.

Cambodia shall forward to Sweden job descriptions for the post/s. The job description/s shall describe the position/s, duties to be performed as well as essential and desirable qualifications of the candidates.

After approval of the candidate/s by Cambodia, Sweden shall employ and train the expert/s adequately for their functions in Cambodia. Candidate approval shall be submitted to Sweden by Cambodia within two months of a candidate being recommended by Sweden.

Cambodia shall furthermore arrange for official travel and defray costs for such travel including hotel costs and allowances in accordance with Cambodians regulations for official travel.

The expert/s shall be granted leave in accordance with their terms of employment with Sida as well as leave for participation in country orientation courses and other project/programme related training. Cambodia shall inform Sweden of leave granted to the personnel.

Sweden may require, as a condition for recruitment, that Cambodia provides furnished accommodation, office space, a car for official use and other facilities. Sweden may specify

these requirements which shall not exceed normal practice in international development cooperation.

All costs for providing such facilities as are not provided by Cambodia shall be financed from the funds made available by Sweden to Cambodia for development cooperation.

Cambodia and Sweden may agree that experts will be transferred from one position or duty station to another during the contract period.

h. Rights of the personnel

The laws of Cambodia apply to the personnel, unless otherwise agreed in this or other agreements between the parties.

Cambodia shall guarantee the personnel the following:

1. Prompt clearance and issue, without cost, of multiple entry, re-entry and exit visas for the entire duration of their assignment.
2. Free movement within the country and the right to enter and leave the country to the extent necessary for the implementation of the project/programme.
3. Prompt issue of all required permits or licences such as residence permits, work permits and professional permits as well as exemption from immigration restrictions and alien registration during the periods they are covered by this Agreement.
4. Exemption from service in the military forces and any other obligatory service.
5. Exemption from personal income tax and any other direct tax in respect of emoluments paid to them by Sida, or by an employer who has undertaken to perform services or deliver goods in a contract with Sida directly or as a subconsultant.
6. Access to medical services and facilities of the highest quality available in the country, whether the services and facilities are public or private. Normal fees will be paid in arrears by Sweden. Costs shall be financed from the Swedish funds for the project/programme to which the person concerned is attached.
7. Equivalent repatriation facilities in times of national or international crisis as are provided for members of the diplomatic missions.
8. A right to import and re-export, free of customs duty and other charges, professional equipment and goods needed by the personnel to accomplish their assignment.

Personnel serving more than six months shall also be guaranteed the following by Cambodia:

9. The right to open and operate an external bank account in Cambodia for their personal

needs, such accounts to be free of any foreign exchange controls or charges imposed by Cambodia, and balances being freely transferable into Swedish kronor or any other convertible currency.

10. Service certificates issued by Cambodia on completion of their service.
11. The right to import or purchase ex-bonded warehouse, free of customs duty or any other similar charges, household goods and personal effects.

If any household goods become irreparably damaged, a replacement may be imported or purchased free of duty and charges.

The term “household goods and personal effects” shall include, for each household, food products and articles such as one motor vehicles, one washing machine, one drier, one dish washer, one stove, one microwave oven, air-conditioners, one refrigerator, one deepfreezer, minor electrical appliances and cameras, one set of photographic and cine equipment, one video recorder, one televisions set, radio, music and dataprocessing equipment.

If a motor vehicle is damaged by accident or lost by theft, or if the period of service in Cambodia should be extended for a period of at least twelve months beyond each three year service period, the person shall be entitled to import free of duty and charges a replacement car.

Articles thus imported may be sold to other persons who are themselves entitled to exemption from duty and charges, or re-exported without any customs duties or similar charges at the end of service. If articles thus imported are disposed of otherwise, appropriate duty and/or charges shall be paid on them.

ARTICLE 8 CONDITIONS FOR EXPATRIATE INSTITUTIONS AND CONSULTING COMPANIES

When institutions, consulting companies or other legal persons from countries other than Cambodia, engaged by Sweden to perform tasks in Cambodia within the framework of development cooperation between Sweden and Cambodia, the following shall apply:

1. As stipulated under Article 6 above, conditions for expatriate personnel shall apply to these companies'/institutions' personnel and their spouses, co-habitants and dependants.
2. They shall not be held responsible for failure to fulfil their undertakings if this is due to security instructions or recommendations issued by the Embassy of Sweden.
3. They are entitled to the same protection from claims by third party as stipulated in Article 6.d.
4. They shall have the right to import and re-export, free of customs duty and other similar

charges, professional equipment and goods that they need to accomplish their undertaking, or to sell such equipment within Cambodia against payment of customs and similar charges, when no longer needed to provide the services.

5. They shall be exempted from taxes and similar levies on company profits, turnover or any similar ground, and on fees and remuneration paid to them by Sweden for their services within the programme of development cooperation. This exemption does not apply to indirect taxes of a kind which are normally incorporated in the price of goods and services purchased in Cambodia.
6. They shall have the right to open external bank accounts and operate them for the fulfilment of their undertaking. The efficient handling of the accounts shall not be hampered by foreign exchange controls, and balances in these external accounts shall be freely transferable to any convertible currency.
7. They shall be exempted from all obligations to register themselves in Cambodia for professional authorisation, taxes or other reasons, and shall be under no obligation to present information to the tax authorities of Cambodia unless they conduct business activities in Cambodia that do not fall under this Agreement.

ARTICLE 9 STUDY VISITS ETC OUTSIDE CAMBODIA

For personnel from Cambodia participating in study visits, courses and similar professional activities outside Cambodia, organised by Sweden or any institution contracted by Sweden within the framework of the Swedish development cooperation, the following shall apply:

In the case of illness or accident during the stay abroad, Sweden shall arrange for such medical treatment as is necessary before return to Cambodia, according to the opinion of a physician consulted by Sweden.

All costs associated with the treatment, as well as insurance costs, shall be financed from the funds made available by Sweden to Cambodia for development cooperation if the necessity of this treatment could not have been foreseen at the time of departure of the visit.

Insurance coverage for death and disability shall be arranged by Cambodia.

ARTICLE 10 DISTRIBUTION OF THIS AGREEMENT

The parties undertake to distribute copies of this Agreement to all their respective ministries, authorities and other institutions involved in the cooperation or otherwise in need of information of its content.

ARTICLE 11 ENTER INTO FORCE AND TERMINATION

This Agreement shall enter into force on 1 January 2002 and remain valid until 31 December 2006 unless terminated earlier, by six months' written notice from either party.

Two originals of the text of this Agreement, written in the English language, have been signed today, the 4th of March 2002, in the city of Phnom Penh, Kingdom of Cambodia.

For the Government
of Sweden



Bo Göransson
Director General
Swedish International Development
Cooperation Agency (Sida)

For the Royal Government
of Cambodia



Keat Chhon
Senior Minister
Minister of Economy and Finance
First Vice Chairman of the
Council for the Development of
Cambodia