

Agreement
between
the Government of Australia
and
the Mekong River Commission
on
the Australian support to the MRC Integrated Capacity Building
Programme

This **Funding Agreement** (the “**Agreement**”) is entered into this 5 June 2009 between:

The **Government of Australia**, represented by Australian Agency for International Development (AusAID), (the “**Development Partner**”)

and

the **Mekong River Commission**, represented by the Mekong River Commission Secretariat (the “**MRC**”),

Each of the above may be referred to individually as “**Party**” and may be collectively referred to as “**Parties**”.

The Development Partner has approved funding to the MRC, to enable MRC to implement its Integrated Capacity Building Programme.

Therefore:

A considering the willingness of the Development Partner to enhance its cooperation with the MRC; and

B considering the preparedness of MRC to take responsibility for the implementation of the Integrated Capacity Building Programme,

both Parties have agreed as follows:

Article 1. Scope and Objective of Agreement

1.1 This Agreement aims at supporting the Integrated Capacity Building Programme (the “**ICBP**”) as described in the ICBP Document as Annex 1 to this Agreement.

1.2 The activities to be carried out under this Agreement are referred to as the “**Technical Cooperation**” with a budget of AUD 6,000,000.

Article 2. Contribution of the Development Partner

2.1 The Development Partner shall place at the disposal of MRC an amount not exceeding six million Australian dollars - AUD 6,000,000 - (the “**Funds**”) in order to contribute to the ICBP, as depicted in Annex 1.

2.2 The Development Partner will disburse funds only when an ICBP Coordinator has been selected and has started his/her role. The Technical Cooperation can start, however, using the balance from the previous ICBP Agreements (MK 2007/14 - Aidworks No. 43600, and MK 2008/09 – Aidworks No.46235).

Article 3. Transfer of Funds

3.1 In accordance with the contribution budget, the Funds shall be paid in advance as the Technical Cooperation activity progresses as requested by the MRC through a transfer request (“**Transfer Request**”).

3.2 A transfer request shall be in a form chosen by the MRC but must clearly indicate that it is a Transfer Request under this Agreement. The Transfer Request must include:

- (a) the name and date of the Agreement to which it refers;
- (b) the amount that is requested;
- (c) the details of the bank account to which the transfer should be sent; and

(d) enclose an up-to-date fund status report showing expenditures, funds received, budget balance and cash balance.

3.3 The Development Partner will deposit AUD 1,700,000 as the first of four yearly instalments upon signature of this Agreement and receipt of a Transfer Request. The MRC will hold these funds in trust and agrees to not use these funds until the appointment of the following ICBP staff is confirmed:

- (a) ICBP Program Coordinator; and
- (b) ICBP Chief Technical Advisor.

3.4 . The yearly allocation will in principle follow the following schedule:

June 2009: AUD 1,700,000

July 2010: AUD 1,300,000

July 2011: AUD 1,500,000

July 2012: AUD 1,500,000

3.4 The Development Partner's advances shall be deposited in a special bank account where only transfers from the Development Partner can be deposited. This special bank account will be advised by the MRC in the initial Transfer Request.

3.5 Any bank fees for the transfer of the Funds into the bank account nominated by the MRC in the Transfer Request that are deducted by the banks in making the transfer are considered part of the Funds. The Development Partner does not need to reimburse the MRC for such fees.

3.6 The transfer shall be made not later than 30 calendar days after receipt by the Development Partner of the Transfer Request.

Article 4. Administration of Funds

4.1 The Funds will be administered according to MRC procedures including but not limited to Programme Management, Procurement, Administration and Finance Management.

4.2 Interests accrued on the Funds shall be accounted as receipt from the Development Partner and shall be used to supplement the Development Partner contribution to the Technical Cooperation. Unspent advances shall be carried over to the next period.

4.3 Upon completion of the Technical Cooperation, the remaining funds can be assigned to other MRC purposes, programmes or projects as may be mutually agreed in writing by the Parties. If the Parties cannot come to such agreement within 120 days of the completion of the Technical Cooperation, or such longer time as may be agreed by the Parties, the funds shall be returned to the Development Partner.

4.4 The MRC must maintain a sound administrative and financial system capable of verifying all statements of acquittal. In addition, the MRC must:

- a) keep proper and detailed accounts, records and assets registers along with adequate Activity Management records providing clear audit trails in relation to expenditure under this Agreement;
- b) afford adequate facilities for audit and inspection of the financial records referred to above by the Development Partner and its authorised representatives at all reasonable times and allow copies and extracts to be taken;
- c) preserve the financial records referred to above for a period of five years from the date of completion of the Activity;
- d) audit Annual accounts by external auditors, in accordance with International Standards on Auditing and the MRC internal rules and regulations; and
- e) if requested by the Development Partner, provide an independently audited statement of Activity expenditure by an auditor nominated by the Development Partner. The cost of this audit should be borne by the Funds.

Article 5. Periodical Progress and Financial Reports / Final Report

5.1 The MRC shall also submit sixth monthly progress and financial reports (including acquittal of the previous tranche) for the Technical Cooperation outlining

the work that has already been done and the cost. Within four months, or such longer period as may be agreed by the Parties in writing, after the termination of the Technical Cooperation (as notified by the MRC to the Development Partner), the MRC shall provide the Development Partner with a final narrative and financial report (including acquittal of the final tranche) detailing the work accomplished, the Programme results and any policy recommendations.

5.2 The reports need not be Australian-specific and may therefore include ICBP related activities funded by other sources.

5.3 The financial reports shall be certified by the Chief Executive Officer or the Officer-in-Charge of the MRC Secretariat. Such statements will be in US dollars.

5.4 The schedule for submission of progress and financial reports discussed in this article is set out in Annex 2.

Article 6. Joint donor review

6.1 Joint donor reviews will be encouraged. A joint review will aim at assessing the overall progress of the ICBP with regard to activities and outputs; and assess and analyse the major concerns, risks and assumptions for the success of the programme.

Article 7. Representatives and Communication

7.1 For all notices and communications under this Agreement, the Parties shall be represented as follows:

For the Development Partner:

Mr. Simon Buckley

First Secretary

Manager Mekong Water Resource Unit

Development Cooperation Section

Australian Embassy

P.O. Box 292

Vientiane

For MRC:

Mr. Jeremy Bird

Chief Executive Officer

Mekong River Commission Secretariat

184 Fa Ngoum Road, Unit 18

Ban Sithane Neua, Sikhottabong

Vientiane 01000, Lao PDR

7.2 All notices between the Parties under this Agreement shall be sent via personal delivery, registered mail or facsimile.

7.3 All correspondence and notifications between the Parties shall be in English and in writing, and shall be sent through the above addresses or another address as notified by the relevant Party in writing.

7.4 All correspondence and notifications shall be deemed to be given or received on the posting day unless such day is a Saturday, Sunday or public holiday, in which case the correspondence or notice shall be considered given or received on the next day that is not a Saturday, Sunday or public holiday.

Article 8. Exchange of views

8.1 The Parties may, at the request of either Party, exchange views through their representatives with regard to the progress of the implementation of the Technical Cooperation.

Article 9. Anti-corruption Clause

9.1 MRC shall require that its staff and consultants under projects or programmes financed by the Development Partner refrain from offering third parties, or seeking, accepting or being promised from or by third parties, for themselves or for any other party, any gift, remuneration, compensation or benefit of any kind whatsoever, which could be interpreted as an illegal or corrupt practice.

9.2 MRC shall immediately inform the Development Partner of any illegal or corrupt practice or any other misuse of funds in any activity financed under the Agreement that MRC is aware of or that has been brought to its attention, whether or

not under MRC's responsibility. MRC shall provide a report to the Development Partner on the findings and any actions or measures taken by the MRC. Upon receipt of any such notification, the Parties shall promptly consult with each other to determine the further actions to be taken to resolve the matter. MRC shall keep the Development Partner informed of the progress of any formal investigation concerning the matter and provide a final report to the Development Partner on the finding of such investigation upon its conclusion.

Article 10. Confidentiality

10.1 Each Party undertakes to the other Party that it and all persons affiliated with it will maintain as secret and confidential all information annotated as secret or confidential received from the other Party and shall make no use of such information save for the purpose of performing the terms of this Agreement, provided that the Development Partner shall be able to disclose information as required by law or to fulfil the Development Partner's obligations to Parliament, Ministers and other parts of the Australian Government.

Article 11. Intellectual Property

11.1 For the avoidance of doubt, the MRC shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products, or documents and other materials, which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Technical Cooperation. To the extent that the copyright or other intellectual property vests in the Development Partner as a result of the provision of the Funds, the Development Partner hereby assigns such copyright or other intellectual property to the MRC and agrees to execute all other such documents as may be necessary to give effect to this assignment.

11.2 The Development Partner shall request MRC's permission to use any documents or parts thereof produced under this Agreement, or pursuant to the Technical Cooperation, other than for the purposes of reporting on the utilisation of the Funds.

Article 12. Counter Terrorism

12.1 The MRC acknowledges that the Australian Government has adopted a policy and laws consistent with relevant international counter-terrorism treaties and UN Security Council Resolutions 1267 (1999), 1373 (2001) and successor resolutions of not providing direct or indirect support or resources to organisations and individuals associated with terrorism.

12.2 The MRC must use its best endeavours to ensure that funding provided under this Agreement is expended in a manner consistent with international counter-terrorism treaties, UN Security Council Resolutions on terrorism and related Australian laws. If, during the course of this Agreement, the MRC discovers any link whatsoever with any organisation or individual listed by the United Nations 1267 Committee or the Australian Government as associated with terrorism it must inform AusAID immediately.

Article 13. Amendment

13.1 This Agreement or any of its annexes may be amended or supplemented by written agreement between Parties.

Article 14. Settlement of disputes

14.1 The Parties shall try to settle amicably through direct negotiations, any dispute, controversy or claim arising out of or relating to the present Agreement, including breach and termination of the Agreement. If a Party feels that following initial discussion between the Parties, such dispute cannot be resolved by negotiation, it may serve a notice under this article on the other Party requiring that the dispute be settled by arbitration.

Article 15. Termination

15.1 This Agreement may be terminated by written agreement of the Parties.

15.2 Either Party may terminate this Agreement immediately on written notice to the other Party if the other Party breaches this Agreement (other than a breach caused by an event of force majeure as defined below), provided that the Terminating Party has first given the other Party at least 60 days written notice of the breach, and the

other Party has failed to rectify the breach to the satisfaction of the terminating Party within that period.

15.3 For the avoidance of doubt, if the breach of the Agreement is a failure by the MRC to provide a financial report or other report required by Article 5 on time, this breach will be deemed rectified if the MRC provides such report within 60 days of being given written notice of that failure by the Development Partner.

15.4 If an event of force majeure prevents the fulfilment of this Agreement, either Party may terminate the Agreement by written notice to the other Party.

15.5 For the purposes of this article, an event of force majeure means any event or act occasioned by a cause beyond the reasonable control of a Party that has a material effect on the Technical Cooperation, or any other causes that threaten public safety generally or that create a substantial disruption in the Technical Cooperation activities.

15.6 The Development Partner shall provide for Funds to be used for obligations entered into in accordance with the relevant work plan prior to termination.

15.7 In case of termination of the Agreement prior to expiry of its term, the MRC shall produce a final report and a final financial statement. In case of termination caused by force majeure, the MRC shall be relieved of this reporting obligation if conditions and resources do not permit producing such final report and final financial statement.

Article 16. Entry into Force and Closing Date

16.1 The present Agreement shall come into force from the 1 July 2009 and will end on. 31 December 2014.

EXECUTED AS AN AGREEMENT BY THE PARTIES:

Location:

Location:

Date:

Date:

For the Government of the Australia

For the Mekong River Commission

By its authorized representative

By its authorized representative

.....
Mr Richard Moore

AusAID Deputy Director General
ASIA Division

.....
Mr. Jeremy Bird

Chief Executive Officer
MRC Secretariat

List of annexes of
the Agreement between
the Government of Australia
and
the Mekong River Commission
on the Australian support to the MRC Integrated Capacity Building Programme

Annex 1. Document quoted under article 1 of this Agreement

Integrated Capacity Development Programme Document, dated 15 May 2009

Annex 2. Document quoted under Article 5 of the Agreement

Schedule for submission of annual indicative work plans, progress and financial reports

ANNEX 1. DOCUMENT QUOTED UNDER ARTICLE 1 OF THIS AGREEMENT

Integrated Capacity Development Programme Document, dated 15 May 2009

ANNEX 2. DOCUMENT QUOTED UNDER ARTICLE 5 OF THIS AGREEMENT

Schedule for submission of annual indicative work plans, progress and financial reports

Progress and Financial reports	Period	Due Date
Six-monthly Progress and Financial Report	1 July 2009 – 31 December 2009	By 1 March 2010
	1 January 2010 – 30 June 2010	By 1 November 2010
	1 July 2010 – 31 December 2010	By 1 March 2011
	1 January 2011 – 30 June 2011	By 1 November 2011
	1 July 2011 – 31 December 2011	By 1 March 2012
	1 January 2012 – 30 June 2012	By 1 November 2012
	1 July 2012 – 31 December 2012	By 1 March 2013
	1 January 2013 – 30 June 2013	Included in final report
Final narrative and financial report		April 2014