

CAMBODIA

LOAN NO. 1447-CAM(SF)

CONTRACT AGREEMENT

between

**MINISTRY OF HEALTH
(The Client)**

and

**Enfants et Developpement
(The Contractor)**

Date: December 11, 1998

CONTRACT NO: BHSP/SP/004

This Contract Agreement (which includes Appendices 1-5 hereinafter called the Contract) is made on the 11 day of

CONTRACT: Kirivong (Enfants et Developpement)

December 1998, between the Ministry of Health (MOH) on the one part (hereinafter called the Client), and Enfants et Developpement (hereinafter called the Contractor).

The documents forming the Contract are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Client's Representative shall issue any necessary clarifications or instructions to the Contractor, and the priority of the documents shall be as follows:

1. The Contract Agreement
2. Appendices C1-C5
3. Forms C1-C4
4. The Letter of Acceptance
5. Final Approved Technical Proposal with Implementation Plan

A SPECIFIC PROVISIONS

I Source of Funds

- 1.1 The Royal Government of Cambodia has received a loan from the Asian Development Bank (ADB) toward the cost of the Basic Health Services Project. The foreign exchange cost of the Project will be financed under Loan No. 1447-CAM(SF) of the ADB. The MOH, of the Government of Cambodia is the Executing Agency for the Project. Part of the proceeds of this loan will be applied to eligible payment for a four-year contract to ensure that specified health services are provided to the population of Kirivong Operational District, Takeo Province, as defined in the Ministry of Health Guidelines for Operational Districts.
- 1.2 The terms and conditions of the contract and payments therefore by the ADB will be subject in all respects to the terms and conditions of the Loan Agreement, including the "Guidelines for Procurement Under Asian Development Bank Loans".
- 1.3 Except as the Bank may specifically otherwise agree, no party other than the Government of Cambodia shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.

CONTRACT: Kirivong (Enfants et Developpement)

II SERVICES

- 2.1 The Contractor shall ensure the delivery of District Health Services for the Operational District Kirivong, Takeo Province, meeting the levels of achievement specified in the Terms of Reference and Scope of Work, set forth in Appendix C1.
- 2.2 The Contractor will, in addition, be responsible for ensuring that special National Program activities which are planned by the MOH or the Provincial Health Department are conducted in the district. These may include National Immunization Days, national campaigns to address specific health issues, or may be district specific, enacted as a result of emergency situations.
- 2.3 The Contractor shall generally follow the implementation plan as stated in the Approved Technical Proposal. It is understood that the implementation plan will undergo revision and changes throughout the course of implementation of the Pilot Project, as deemed necessary to achieve the Scope of Work. Major variations in the plan, however, will be discussed with the Provincial Health Director and reported in the quarterly report, so that monitoring of the progress of the project implementation can be adapted as necessary.

III Personnel

- 3.1 The Services shall be carried out by the personnel specified in Appendix C2.
- 3.2 The Contractor shall maintain the stipulated Technical/Consultant Personnel during the period of this Contract and shall be liable to the Client for providing replacement, with a person with qualifications and experience acceptable to the Client, at the Contractor's sole expense, if any of the Personnel in the opinion of the Client is incompetent, not in good health, guilty of misbehavior, or not acceptable to the Client for any reason, which opinion of the Client shall not be exercised unreasonably.

3.3 The Contractor shall ensure that at all times during the project implementation, a resident Project Manager, acceptable to the Client shall take charge of the operations of the Personnel and implementation of the project. The Project Manager shall be responsible for liaison between the Contractor and the Client.

IV Payments to the Contractor

4.1 Except as may otherwise be agreed under paragraph 4.4 through paragraph 4.7 payments under this Contract shall not exceed US \$ 1,158,300 in US Dollars.

4.2 The amount prescribed in paragraph 4.1 has been fixed on the understanding that there may be shortages in Ministry of Health provided funds for running costs of health services, Central Supply medicines and expendable supplies, and it can be anticipated that annual flooding will occur. Program adjustments in view of these constraints, which the Contractor anticipates will affect the cost to the Contractor have been included in the amount prescribed in paragraph 4.1. There will be no additional funding from the Loan Agreement for running costs of health services (except for the Budget Supplement as described in paragraph 4.8) to cover these situations.

4.3 The amount prescribed in paragraph 4.1 has been fixed on the understanding that all costs for the construction of Health Facilities, and all costs related to the initial purchase and supply of basic equipment and furnishings, as specified in the Guidelines for Operational Districts will be the sole responsibility of the MOH.

4.4 The amount prescribed in paragraph 4.1 has been fixed on the understanding that all government taxes and duties which are applicable have been considered in that cost. Section 10 provides the specific tax exclusions which are applicable to this Contract. If there are changes in government taxes and duties which become applicable during the time the Contract is in effect, appropriate adjustments will be negotiated to cover both increases and decreases.

4.5 The amount prescribed in paragraph 4.1 has been fixed based on the Terms of Reference and Scope of Work

described in Appendix C1. If, in the opinion of the Client, additional work is required for the purposes of the Project, such additional work may be carried out with the prior concurrence of the ADB. The payment for the additional work will be based on a price negotiated between the Contractor and the Client, which, however, will be based on costs similar to those in the Contract, unless a rationale for adjusting these rates can be made by the Contractor, to the satisfaction of the Client.

- 4.6 The amount prescribed in paragraph 4.1 has been fixed to include estimates of annual inflation for the four years of the Contract. If events occur which result in drastic price changes, the Contractor may request the Project Coordination Unit of the Ministry of Health (PCU/MOH) to review the situation to evaluate if the budget requires adjustment to carry out the Scope of Work. The need or lack of need for adjustment will be determined by the PCU/MOH in agreement with the ADB.
- 4.7 If any of the assistance, services and facilities which are to be provided by the MOH which are specified in the Terms of Reference (Appendix C1) and which are not identified as anticipated constraints in paragraph 4.3, are not supplied, the parties shall consult if additional funds (if any) should be made available to the Contractor as a result thereof to cover necessary additional costs not envisaged in the cost specified in paragraph 4.1, to achieve the Scope of Work.

4.8 Budget Supplement

4.8.1 In addition to the amount prescribed in paragraph 4.1, the Contractor will receive payments of a Budget Supplement, paid from the Loan Agreement by the PCU, for running costs of the District Health Services. These funds are to supplement anticipated shortfalls in government disbursement. If Government funds in the amount of 80% of the officially approved budget for the district is received, by the Contractor, for a period of time, the Budget Supplement for an equal amount of time will not be provided (e.g. to prevent double funding).

4.8.2 Budget Supplement funds will be disbursed at the

discretion of the Contractor, following the guidelines stipulated in Appendix C3, and subject to audit verification of compliance with the guidelines. The Contractor should submit a plan for expenditure if it is anticipated that the Budget Supplement will not be evenly disbursed throughout the year. Unless otherwise justified by a plan for expenditure, the Budget Supplement reimbursement following the initial six-month payment, will be based on expenditures, documented using generally approved accounting practices.

- 4.8.3 The Budget Supplement will be (USD 0.25 x district population) per annum, in US Dollars. The district population will be determined using the 1998 Census data. The population figure utilized for the first payment will be the 1995 population figures from the Health Coverage Plan. Upon availability of 1998 Census population figures, the Budget Supplement will be adjusted.

V Currency of Payment

- 5.1 Except as otherwise agreed between the Client and the Contractor, all payments for services will be made in US Dollars.

VI Conditions of Payment to Contractor

- 6.1 Within 30 days after giving notice to proceed, the Client shall submit to the PCU/MOH a Request for Payment application (Form C1), together with a copy of the signed Contract, which includes the agreed Schedule of Payments, requesting that the mobilization payment agreed to in Appendix C4 be credited to

_____ Bank.

- 6.2 The initial payment shall be the amount required for the first six months of the Contract.
- 6.3 Subsequent payment installments will be made upon the

submission of a Request for Payment along with the required Quarterly Report (see Section VII, and Form C3) by the Contractor. The request for payment and the Quarterly Report must go through the Provincial Health Director (certified by stamp), and then be submitted to the PCU/MOH, following the schedule in Appendix C4. This schedule of payments may be revised with agreement by both the Client and the Contractor.

- 6.4 The Client will inform the Contractor within two weeks of the date of the Request for Payment of any objection to payment, providing a copy of the notification to the Ministry of Economy and Finance (MEF) and ADB. Objection to payment may be made should the Contractor not fulfill the General Standards of Performance, as described in Section VII. These standards will be monitored by the MOH through the Provincial Health Department using the Quarterly Monitoring Report (Form C4).
- 6.5 The PCU/MOH will forward the Request for Payment to the MEF who will forward the request to the ADB. The total time from submission of Request for Payment to the PCU/MOH to the request being forwarded to ADB shall not exceed one month. The ADB will effect direct payment based on the MEF's request within one month of receipt of such request, and will provide the MEF and the PCU/MOH with a copy of the notice of payment. Payments will be credited to the bank account indicated in paragraph 6.1. If the bank account is changed during the course of this contract, an official addendum to this Contract will be made, stipulating the new account.
- 6.6 The first quarterly report and Request for Payment, which follows the Mobilization Payment shall be made three months after the commencement of the work, and subsequently every three months. Thus, the Contractor will maintain a running advance of up to two months payment.
- 6.7 There will be an initial six-month advance of the Budget Supplement. Subsequent payment of the Budget Supplement will be reimbursed every two months, based on expenditure and verification of appropriate utilization. The Contractor will submit statements with appropriate documentation (following generally accepted accounting practices) to the PCU for verification of appropriate

expenditures.

VII Standards of Performance Required for Progress Payments

- 7.1 The Provincial Health Department will be responsible for monitoring the implementation of the Contract. An example of the information being collected for the purposes of monitoring the Contract is shown in Forms C2-C4. The following General Standards of Performance will be considered as a part of the monitoring process to authorize payment.
- 7.1.1 The Contractor shall carry out the Services with due diligence and efficiency, and shall exercise such skill and care in the performance of the Services as is consistent with generally recognized professional standards. This includes adhering to MOH Treatment Standards and Protocols.
- 7.1.2 The Contractor shall act at all times so as to protect the interest of the Client and will take all reasonable steps to keep expenses to a minimum, while ensuring that activities are consistent with sound public health system and development practices.
- 7.1.3 The Contractor is obligated to ensure that the District Governor (or his designated representative) is informed of activities carried out in the District. This may be through informal or formal meetings depending on the normal practices followed in the District.
- 7.1.4 Records and Reports
- a. The Contractor will maintain financial records, following generally accepted accounting practices, maintaining separate records for funds received and expenditures made from the Contractor payment, the Budget Supplement, and the Government of Cambodia provided budget for the Operational District. The Contractor shall permit the duly authorized representative of the Client and, if so requested, the duly authorized representative of the ADB, from time to time to

inspect its records and accounts and to make copies thereof and shall permit the Client or any person authorized by the Client, from time to time, to audit such records and accounts during and after the Services.

- b. The Contractor will submit an annual financial report to the PCU/MOH, following Form C2. This report will be received by the PCU/MOH by the 15th day of the month following the end of the calendar year.
- c. The Contractor will remain in compliance with MOH Financial Reporting requirements for the budget for the Operational District provided by the Government of Cambodia, and for funds received through user charges.
- d. The Contractor will remain in compliance with MOH Health Information System reporting requirements.
- e. The Contractor will submit the quarterly report outlined in Form C3 to the Provincial Health Director, with a copy to the PCU/MOH Phnom Penh.
- f. The Contractor shall furnish the Client any other information relating to the Services and the Project as the Client may from time to time reasonably request.

VIII Evaluation of Contract Works

8.1 The initial status of the district has been defined using data from the baseline survey conducted by the MOH in 1997. The Baseline Survey data was collected from household interviews, and from MOH Health Facility records and MOH health staff responses. The Baseline Score for the district is indicated in Appendix C1.

8.2 A mid-project survey following the same methodology as the baseline survey will be conducted under the auspices of the MOH to assess progress. This will occur near the end

of year two, or beginning of year three.

- 8.3 The Final Evaluation will be conducted at the end of the four-year contract, under the auspices of the MOH. This evaluation will follow the same methodology as that of the Baseline Survey, and will be the basis from which the Final Score for the district is based.

IX Contract Variations

- 9.1 The Contract may be revised by agreement between the parties, should implementation conditions seriously change, or the needs of the Client change. All such variations shall be in writing, signed by the duly authorized representatives of the parties.

B UNDERTAKINGS OF THE CLIENT

X Freedom from Taxation and Duties

10.1 The Client warrants that the Government of Cambodia shall exempt the Contractor and the Personnel from any taxes, duties, fees, levies and other impositions imposed under the laws and regulations in effect in Cambodia on the Contractor and the Personnel in respect of:

- (a) any payments made to the Contractor or the Personnel other than Cambodian nationals, in connection with the carrying out of the Services;
- (b) Taxation on turnover of funds supplied from the Loan Agreement.
- (c) any equipment, materials and supplies brought into Cambodia for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn therefrom;
- (d) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client;

- (e) any property brought into Cambodia by the Contractor, the Personnel, or the eligible dependents of the Personnel for their personal use or consumption and which will be consumed in Cambodia or will subsequently be withdrawn therefrom upon the departure of the Contractor and the Personnel from Cambodia.

Provided that -

- (1) the Contractor and the Personnel and their eligible dependents shall follow the usual Customs procedures of the Government in importing property into Cambodia; and
- (2) if the Contractor or any of the Personnel or his eligible dependents do not withdraw, but dispose of any property in Cambodia upon which Customs duties and taxes have been exempted, the Contractor shall bear such Customs duties and taxes in conformity with the regulations of the Government.

XI Other Privileges and Exemptions

The Client warrants that the Government shall

- (a) provide the Contractor and each of the Personnel with work permits and such other documents as shall be necessary to enable them to perform the services;
- (b) facilitate the issuing of necessary entry and exit visas, residence permits, exchange permits and travel documents required for their stay in Cambodia through issuing a letter to the Ministry of Foreign Affairs in favor of the Contractor and their staff and dependents;
- (c) issuing supporting letters for Customs Officials for import of any property required for the Services and for the personal effects of the Personnel and their eligible dependents;
- (d) issue to officials, agents and representatives of the Government all such instructions as may be necessary

or appropriate for the prompt and effective implementation of the Services;

- (e) exempt the Contractor and the Personnel and any independent Contractors or sub-contractors employed by the Contractor for the Services from any requirement to establish himself either individually or as a corporate entity according to the laws of Cambodia.

XII Services, Facilities and Equipment

12.1 The Client shall make available to the Contractor and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference, Appendix C1.

C UNDERTAKINGS OF THE CONTRACTOR

XIII Sub-Contractors

13.1 Except with the prior written approval of the Client the Contractor shall not assign or transfer the Contract or any part thereof nor engage any independent Contractor or sub-contractor to perform any part of the Services.

13.2 The approval by the Client to the assignment of any part of the Contract or to the engagement by the Contractor of independent Contractors or sub-contractors to perform any part of the Services shall not relieve the Contractor of any of its obligations under the Contract.

13.3 In the event that any such independent Contractor or sub-contractor is found by the Client to be incompetent in discharging his assigned duties, the Client may request the Contractor forthwith either to provide as a replacement, a Contractor or sub-contractor with qualifications and experience acceptable to the Client or to resume the performance of the Services itself. This replacement will be done at the sole expense of the Contractor.

CONTRACT: Kirivong (Enfants et Developpement)

XIV Confidentiality

14.1 Except with the prior written consent of the Client, the Contractor and the Personnel shall not at any time communicate to any person or entity any confidential information disclosed to them for the purpose of the Services, or discovered by them in the course of the Services nor shall the Contractor or the Personnel make public any information as to the research instruments, findings or data formulated in the course of or as a result of the Services unless agreed to in writing by the Client.

XV Independent Contractor

15.1 Nothing contained herein shall be construed as establishing or creating between the Client and the Contractor the relationship of master and servant or principal and agent, it being understood that the position of the Contractor and of anyone else performing the Services is that of an independent contractor.

XVI Indemnifications

16.1 The Contractor shall indemnify, protect and defend at Contractor's own expense, the Client and its agents and employees, from and against any and all actions, claims, losses or damages arising out of any violation by the Contractor or in the course of the services of any legal provisions, or any rights of third parties, in respect of literary property rights, copyrights, or patents.

16.2 The Contractor shall indemnify, protect and defend, at Contractor's own expense, the Client, its agents and employees, from and against any and all actions, claims, losses or damages arising out of Contractor's failure to exercise the skill and care following generally recognized professional standards required under paragraphs 7.1.1 and 7.1.2, provided, however:

- a. that Contractor is notified of such actions, claims, losses or damages not later than 6 months after

conclusion of the Services.

- b. that Contractor's liability under paragraphs 7.1.1 and 7.1.2 shall be limited to actions, claims, losses or damages directly caused by such failure to exercise the said skill and care following generally recognized professional standards.

16.3 Anything in paragraphs 7.1.1 or 7.1.2 to the contrary notwithstanding, the Contractor shall have no liability whatsoever for actions, claims, losses or damages occasioned by (i) Client's overriding a decision or recommendation of Contractor or requiring Contractor to implement a decision or recommendation with which Contractor does not agree, or (ii) the improper execution of Contractor's instructions by agents, employees or independent contractors of Client.

16.4 The Contractor will retain full responsibility for health, life, and accident insurance and/or property insurance for the Personnel hired by the Contractor. The Client undertakes no responsibility in respect of any life, health, accident, travel and other insurance which may be necessary or desirable for the Personnel of or sub-contractors and specialists associated with the Contractors for the purposes of the Services, nor for any members of any family of any such person.

16.5 The Contractor will not hold the Client liable for any injury or death of the Contractor's personnel or any subcontractor's personnel.

16.6 The Contractor shall take out and maintain adequate professional liability insurance as well as adequate insurance against third party liability and loss of or damage to equipment purchased in whole or in part with funds provided by the Client.

XVIII Laws and Regulations of Cambodia

17.1 The Contractor shall respect and abide by all applicable laws and regulations in Cambodia and shall use its best efforts to ensure that the Personnel while in

Cambodia and local employees of the Contractor shall respect and abide by all laws and regulations in Cambodia.

17.2 The Contractor will ensure that Civil Service and MOH personnel policies are followed in the course of implementing the management and administrative duties as outlined in the Terms of Reference (Appendix C1).

XVIII Proprietary Right of the Client in Equipment

18.1 Any goods or equipment, including software, office equipment, and supplies, **purchased by the contractor with its own funds**, whether brought into Cambodia or not, shall remain the property of the Contractor.

18.2 Any goods or equipment, purchased by the Contractor using Project funds shall remain, at all times, the property of the Client.

18.3 The Contractor will conduct an initial inventory, signed by both the Provincial Health Director and the Contractor. An inventory will be conducted after the first six months of implementation, and subsequent annual update of inventory will be conducted and maintained which lists all facilities, and non-expendable equipment and supplies, and their condition upon receipt by the Contractor.

18.4 These facilities, equipment, and supplies will be used solely for the provision of health services as indicated in the Terms of Reference and Scope of Work, unless there is express written permission from the MOH.

18.5 The Contractor is responsible for normal maintenance and repair of facilities, equipment and supplies. It is the responsibility of the Contractor to repair or replace facilities, furnishings, or equipment which are lost, stolen, or damaged due to negligence or misuse.

18.6 The Contractor is responsible for taking reasonable precautions for protecting facilities, furnishings,

equipment and supplies from theft or from damage due to situations out of the control of the Contractor (fire, flooding).

18.7 Theft or damage which could not reasonably be prevented (this would include theft of locked and secured items, theft from guarded premises, theft where weapons were used, fire or flooding) a report by the Contractor, along with an official report by the Commune Chief certifying conditions of the damage and/or loss must be submitted. The PCU will then bear responsibility for replacement and/or repair of items or facilities. Project activities affected by these events, beyond the control of the Contractor, will fall under the Force Majeure conditions of this contract (Section XXVI).

XIX Proprietary Rights of the Client in Reports and Records

19.1 All reports, survey instruments and relevant data compiled or prepared in the course of the Services shall be confidential and shall be the absolute property of the Client. The Contractor agrees to deliver all these materials to the Client upon completion of this Contract. The Contractor may retain a copy of such data but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.

D GENERAL PROVISIONS

XX Implementation of Contract

20.1 The Contractor will commence the Services as soon as possible but not later than 30 days after the Client has given to the Consultant notice to proceed with the Services. It is presently anticipated that the Contractor will establish a District presence by February 1, 1999.

20.2 All reports and recommendations and general correspondence from the Contractor to the Client and all tender documents prepared by the Contractor under

this Contract shall be in English.

XXI Settlement of Dispute

21.1 Disputes which may arise during the Project Implementation will follow the Procedures for Resolving Project Implementation Issues, as described in Appendix C5.

21.2 Disputes which may arise during the Project Implementation relating to financial payments to the Contractor will be referred to the PCU/MOH, where the appropriate point of reference (e.g. PCU, MOH, MEF) for amicable resolution of financial issues will be determined.

21.3 Any dispute or difference arising out of the Contract which cannot be amicably settled between the parties shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed thereunder. The arbitration shall take place in Bangkok. The resulting award shall be final and binding on the parties and shall be in lieu of any other remedy.

XXII Suspension

22.1 If any of the following events shall have happened and be continuing, the Client may, by ten (10) working days prior written notice to the Contractor, suspend in whole or in part payments due thereafter to the Contractor under the Contract:

- (a) the Bank shall have suspended disbursements from the Loan;
- (b) a default shall have occurred on the part of the Contractor in the execution of the Contract; (The procedure for assessment of default and steps required for resumption of payment to the Contractor shall follow guidelines as specified in Appendix V).
- (c) any other condition which has arisen which, in the

reasonable opinion of the Client, interferes, or threatens to interfere, with the successful carrying out of the Project or the accomplishment of the purposes of the Contract.

XXIII Termination of the Contract by the Client

23.1 If any of the following events shall have happened and be continuing, the Client may, by written notice to the Contractor, terminate the Contract:

- (a) Any of the conditions referred to in paragraph 22.1 shall continue for a period of fourteen (14) days after the Client shall have given written notice to the Contractor of suspension of payments to the Contractor under the Contract.
- (b) The Loan Agreement shall have terminated in accordance with its terms.

23.2 In any event, the Client may terminate the Contract at anytime by giving not less than thirty (30) days' prior written notice to the Contractor.

XXIV Termination of the Contract by the Contractor

24.1 The Contractor shall promptly notify the Client in writing of any situation or of the occurrence of any event beyond the reasonable control of the Contractor which makes it impossible for the Contractor to carry out its obligations hereunder. Upon confirmation in writing by the Client of the existence of any such situation or event, or upon failure of the Client to respond to such notice within fifteen (15) days of receipt thereof, the Contractor shall be relieved from all liability from the date of such receipt for failure to carry out such obligations, and the Contractor may thereupon terminate the Contract by giving not less than thirty (30) days prior written notice thereof.

XXV Termination Procedure

25.1 Upon termination of the Contract under paragraph 23.1, receipt of notice of termination under paragraph 23.2 or the giving of notice of termination under paragraph 24.1, the Contractor shall take immediate steps to terminate the Services in a prompt and orderly manner and reduce losses and to keep further expenditures to a minimum.

25.2 Upon termination of the Contract (unless such termination shall have been occasioned by the default of the Contractor), the Contractor shall be entitled to be reimbursed in full for such costs as shall have been duly incurred prior to the date of such termination and for reasonable costs incident to the orderly termination of the Services, the return travel of the Personnel and the reshipment of the personal effects and equipment of the Contractor, but shall be entitled to receive no other or further payment.

XXVI Force Majeure

26.1 In this Clause, "force majeure" means an event beyond the control of the Employer and the Contractor, which makes it impossible or illegal for a party to perform, including but not limited to

- a) act of God;
- b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- c) rebellion, revolution, insurrection, or military or usurped power, or civil war;
- d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- e) riot, commotion or disorder, unless solely restricted to employees of the Contractor.

26.2 Neither the Client nor the Contractor shall be considered in default or in contractual breach to the extent that performance of obligations is prevented by a force majeure event which arises after the Effective Date.

26.3 Upon occurrence of an event considered by the Contractor to constitute force majeure and which may affect performance of its obligations the Contractor shall promptly notify the Client's Representative, and shall endeavor to continue to perform its obligations as far as reasonably practicable. The Contractor shall also notify the Client's Representative of any proposals, including any reasonable alternative means for performance, but shall not effect such proposals without the consent of the Client's Representative .

26.4 Upon occurrence of an event considered by the Client to constitute force majeure and which may affect performance of its obligations, the Client shall promptly notify the Contractor and the Client's representative shall endeavor to continue to perform its obligations as far as reasonably practicable. The Client shall also notify Client's Representative and the contractor of any proposals, with the objectives of completing the Works and mitigating any increased costs to the Client and the Contractor.

26.5 If, in consequence of force majeure, the Works shall suffer loss or damage, the Contractor shall be entitled to have included, in an Interim Payment Certificate, the Cost of work executed in accordance with the Contract, prior to the event of force majeure. If the Contractor incurs additional Cost in complying with Sub-Clause 26.3, such Cost shall be determined by the Client's Representative. When the Client's Representative is required to determine value, Cost or extension of time, he shall consult with the Contractor in an endeavor to reach agreement. If agreement is not achieved, the Employer's Representative shall determine the matter fairly, reasonably and in accordance with the Contract.

26.6 Irrespective of any extension of time, if a force majeure event occurs and its effect continues for a period of 182 days, either the Client or the Contractor may give to the other a notice of termination, which shall take effect 28 days after the giving of the notice. If, at the end of the 28-day period, the effect of the force majeure continues, the Contract

shall terminate. If the Contract is terminated under this Sub-Clause, the Client's Representative shall determine the value of the work done based on

- a) receipts and inventory accountability for purchase of capital equipment and expendable items which are described in the project proposal.
- b) a reasonable assessment of personnel costs, substantiated by prior receipts.
- c) a reasonable overhead expenditure, assessed from accounting records prior to the event.
- d) the reasonable cost of removal of Temporary Works and Contractor's Equipment from the site, and the return of such items to the Contractor's works in his country (or to any other destination at no greater cost); and
- e) the reasonable cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of such termination;

and issue an Interim Payment Certificate in accordance with Clause 6.

26.7 If under the law of the Contract the Employer and the Contractor are released from further performance, the sum payable by the Client to the Contractor shall be the same as would have been payable under Sub-Clause 26.6 if the Contract had been terminated under that Sub-Clause.

E MISCELLANEOUS

XXVII Effectiveness

27.1 The Contract shall become effective upon the date notice is given to proceed with the Services under Appendix C1 and shall be in full force until the Services and all payments therefor have been completed and at such time the parties hereto shall be mutually released from all obligations hereunder.

XXVIII Authorized Representative

28.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract, may be taken or executed on behalf of the Contractor by the Project Manager or their designated representative and on behalf of the Client by the PCU/MOH.

XXIX Notice or Requests

29.1 Any notice or request required or permitted to be given or made under this Contract shall be in writing in the English language. Such notice or request shall be deemed to be duly given or made when it shall have been delivered by hand, mail or cable to the party to which it is required to be given or made at such party's address specified below, or at such other address as either party may specify in writing.

For the Client:

Name: Dr. Mam Bun Heng, Project Director
Basic Health Services Project, Ministry
of Health
151-153 Kampuchea Krom Road, PO Box 1406
Phnom Penh
Cambodia

Phone/Fax: (855-23)-880262 or 722873

email: admin.pcu@bigpond.com.kh
For the Contractor:

Name: Ms. Catherine Vasseur

Address: Enfants et Developpement
Rue 322, 322 Norodom Boulevard
Tonle Bassac
Phnom Penh, Kingdom of Cambodia

Fax: (855-23) 360-040

Email: edc@forum.org.kh

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

Dr. Mam Bun Heng
Project Director
Basic Health Services Project
Ministry of Health
Kingdom of Cambodia

Ms. Catherine Vasseur
Enfants et Developpement