Agreement Providing for the Amendment and Restatement of the Project Agreement

(Urban Water Supply Project and Additional Financing for the Urban Water Supply Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

REGIDESO

Dated March 18th, 2016
ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

1.01. The General Conditions 2006 and the General Conditions 2010 (as defined in the Appendix to the Financing Agreement) constitute an integral part of this Agreement and shall apply respectively to the Original Project and to the Additional.

1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the Financing Agreement or the General Conditions.

ARTICLE II — PROJECT

2.01. The Project Implementing Entity declares its commitment to the objectives of the Project and the Program. To this end, the Project Implementing Entity shall carry out the Project in accordance with the provisions of Article IV of the General Conditions, and shall provide promptly as needed, the funds, facilities, services and other resources required for the Project.

2.02. Without limitation upon the provisions of Section 2.01 of this Agreement, and except as the Association and the Project Implementing Entity shall otherwise agree, the Project Implementing Entity shall carry out the Project in accordance with the provisions of the Schedule to this Agreement.
ARTICLE III — TERMINATION

3.01. For purposes of Section 8.05(c) of the General Conditions, the date on which the provisions of this Agreement shall terminate is twenty years after the date of this Agreement.

ARTICLE IV — REPRESENTATIVE; ADDRESSES

4.01. The Project Implementing Entity’s Representative is the Directeur Général.

4.02. The Association’s Address is:

International Development Association
1818 H Street, NW
Washington, DC 20433
United States of America

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

4.03. The Project Implementing Entity’s Address is:

REGIDESO
59-63 Boulevard du 30 juin
BP 12599
Kinshasa I – Gombe
Democratic Republic of Congo

Telephone: +243 99 70 30 001
AGREED at Kinshasa, Democratic Republic of Congo, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

[Signature]

Authorized Representative

Name: Ahmadou Nourou Dieynaba

Title: Country Director

REGIDESO

By

[Signature]

Authorized Representative

Name: Jacques Mukubayi Nkwanza

Title: Directeur Général
SCHEDULE

Execution of the Project

Section I. Implementation Arrangements

A. Institutional Arrangements

1. Except as the Association shall otherwise agree in writing, the Project Implementing Entity shall: (i) apply the criteria, policies, procedures and arrangements set out in the Project Manuals; and (ii) not amend or waive, or permit to be amended or waived, any of the Project Manuals, or any provision thereof.

2. The Project Implementing Entity shall perform its obligations contemplated in the Subsidiary Agreement in such manner as to accomplish the purposes of the Financing. Except as the Association shall otherwise agree, the Project Implementing Entity shall not assign, amend, abrogate or waive the Subsidiary Agreement of any of its provisions.

3. The Project Implementing Entity shall, at all times during the execution of the Project:

   (a) Maintain IU, in form and with functions satisfactory to the Association, in charge of: (i) coordinating the overall implementation of the Project; (ii) ensuring availability of funds in a timely manner, including the submission of withdrawal applications and supporting documents; (iii) managing all Project activities at the central level (preparation of terms of reference, bidding documents,...); (iv) maintaining the books and accounts of project activities and producing financial reports; (v) monitoring and evaluating implementation and impacts of the Project and of the Program; and (vi) reporting results to various stakeholders (administration, donors, civil society, Inter-Ministerial Steering Committee) as defined in the Project Manuals.

   (b) Maintain IU with staff in adequate numbers, including at least the following staff with qualifications, experience and terms of reference satisfactory to the Association: (i) one Project coordinator; (ii) one certified accountant; (iii) two procurement experts, one international and one local; (iv) one financial management manager; (v) one senior internal auditor; (vi) two water and sanitation engineers; (vii) two socio-environmental experts; and (vii) one monitoring and evaluation expert.

   (c) Cause IU to enter into an agreement satisfactory to the Association with COPIREP to entrust COPIREP with all procurement activities in connection with Part B.1 and B.3 of the Project.
(d) Review annually, jointly with the Association, the performance of IU, being understood that unsatisfactory performance may result in the replacement of the Project coordinator or any other staff of the IU, under conditions satisfactory to the Association.

B. Services Contract, Performance Contract and Settlement and Payment Agreement

1. The Project Implementing Entity shall collaborate with the Recipient and COPIREP in the preparation of the Services Contract and furnish, no later than two months from the Effective Date, the following information to be included in said Services Contract, namely:

(a) a detailed description of personnel to be provided by the Services Provider, together with the required qualifications and experience, and to include competent staff in adequate numbers; and

(b) a list of deliverables and report or strategies to be delivered by the Project Implementing Entity

2. Within two months from the date of signing of the Services Contract, the Project Implementing Entity shall have proceeded with any corporate nominations prescribed by the applicable laws, including, any representative from the Services Provider pursuant to the Services Contract.

3. The Project Implementing Entity shall no later than twelve months from the Effective Date sign the Performance Contract with the Recipient under terms and conditions satisfactory to the Association, and thereafter maintain at all times during the implementation of the Project said Performance Contract.

4. The Project Implementing Entity shall no later than three months from the Effective Date enter into a Settlement and Payment Agreement with the Recipient under terms and conditions satisfactory to the Association, and thereafter maintain at all times during the implementation of the Project said Settlement and Payment Agreement.

5. Unless otherwise agreed in writing with the Association, the Project Implementing Entity shall not, at any time during the implementation of the Project, amend, suspend, abrogate, repeal, waive or transfer the Performance Contract or the Settlement and Payment Agreement.
C. Information

1. The Project Implementing Entity and the Association shall cooperate fully to assure that the purposes of the Financing and the objectives of the Project will be accomplished. To that end, the Project Implementing Entity and the Association shall: (a) from time to time, at the request of either one of them, exchange views on the Project, the Financing, and the performance of their respective obligations under the Financing Agreement and this Agreement and furnish to the other party all such information related to such matters as it shall reasonably request; and (b) promptly inform each other of any condition which interferes with, or threatens to interfere with, such matters.

E. Coordination

1. The Project Implementing Entity shall ensure proper information of all stakeholders involved in the water sector reform supported under the Project and shall ensure and take all necessary actions for the due cooperation of all concerned parties at the central and at the local level to allow for the smooth and prompt implementation of the Project.

F. Anti-Corruption

1. The Project Implementing Entity shall carry out the Project in accordance with the provisions of the Anti-Corruption Guidelines 2006 (for the Original Project), Anti-Corruption Guidelines 2011 (for the Additional Financing) and of the Anti-Corruption Plan.

G. Safeguards

1. The Project Implementing Entity shall ensure that the Project is implemented in accordance with the provisions of the ESDs, and except as the Association shall otherwise agree in writing, shall not amend or waive, or permit to be amended or waived, any provision of any of the ESDs.

2. The Project Implementing Entity shall: (a) before commencing the implementation of any activity listed in Schedule I to the Financing Agreement with respect to which the completion of an EMP or a RAP is necessary in accordance with the ESMF or the RPF, prepare and furnish to the Association said EMP or RAP specific to such activity, in form and substance satisfactory to the Association, describing: (i) the potential adverse environmental and social impact of such activity; (ii) the measures for the offsetting, reducing, or mitigating of such impact; and (iii) the arrangement for monitoring and implementing such measures; (b) before the start of any works publicly disclose the EMP or RAP; as the case may be, and (c) carry out such activity in accordance with the provisions of the EMP or RAP, as the case may be.
3. The Project Implementing Entity shall: (a) maintain at all time during Project implementation an environmental and social unit with staff in adequate numbers and with experience satisfactory to the Association in charge of supervising the implementation of social and environmental safeguards under the Project, including, without limitation the provisions of the ESD; and (b) carry out, together with the Association, a semi-annual review of the implementation for safeguards under the Project.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Project Implementing Entity shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of indicators acceptable to the Association and set forth in the PIM. The Project Report shall include a review of the extent and quality of compliance with the implementation procedures, including the Anti-Corruption Plan. Each Project Report shall cover the period of one calendar quarter, and shall be furnished to the Association not later than forty-five days after the end of the period covered by such report.

2. The Project Implementing Entity shall provide to the Recipient not later than three months after the Closing Date, for incorporation in the report referred to in Section 4.08(c) of the General Conditions, all such information as the Recipient or the Association shall reasonably request for the purposes of such Section.

B. Financial Management, Financial Reports and Audits

1. The Project Implementing Entity shall maintain a financial management system and prepare its financial statements and the financial statements related to the Project in accordance with consistently applied accounting standards acceptable to the Association, both in a manner adequate to reflect the operations and financial condition of the Project Implementing Entity, including the operations, resources and expenditures related to the Project.

2. The Project Implementing Entity shall have its financial statements and the financial statements related to the Project referred to above audited by independent auditors acceptable to the Association, in accordance with consistently applied auditing standards acceptable to the Association. Each audit of these financial statements shall cover the period of one fiscal year of the Project Implementing Entity. The Project Implementing Entity shall ensure that the audited financial statements for each period shall be: (a) furnished to the Recipient and the Association not later than six months after the end of the period; and (b) made publicly available in a timely fashion and in a manner acceptable to the Association.
Section III. Procurement

A. General

1. Goods, Works and Non-consulting Services for the Original Project. All goods, works and non-consulting services required for the Project and to be financed out of the proceeds of the Original Grant shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines 2006, and with the provisions of this Section.

2. Goods, Works and Non-consulting Services for the Additional Financing. All goods, works and non-consulting services required for the Project and to be financed out of the proceeds of the Additional Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines 2014, and with the provisions of this Section.

3. Consultants' Services for the Original Project. All consultants' services required for the Project and to be financed out of the proceeds of the Original Grant shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines 2006, and with the provisions of this Section.

4. Consultants' Services for the Additional Financing. All consultants' services required for the Project and to be financed out of the proceeds of the Additional Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines 2014, and with the provisions of this Section.

5. Definitions. The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in Sections II and III of the Procurement Guidelines, or Sections II, III, IV and V of the Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods, Works and Non-consulting Services

1. International Competitive Bidding. Except as otherwise provided in paragraph 2 below, goods, works and non-consulting services shall be procured under contracts awarded on the basis of International Competitive Bidding.

2. Other Methods of Procurement of Goods, Works and Non-consulting Services. The following methods, other than International Competitive Bidding, may be used for procurement of goods, works and non-consulting services for those contracts specified in the Procurement Plan: (a) National Competitive Bidding, subject to the additional provisions referred to in subparagraph 3 below; (b) Shopping; (c) Direct Contracting; and (d) Force Account.
3. **Additional Provisions for National Competitive Bidding**

National Competitive Bidding may be used subject to using the open procedure ("appel d’offres ouvert") set forth in the Recipient’s Public Procurement Law No. 10/010 dated April 27, 2010 (the “PPL”) and the Manual of Procedures of the PPL, as per Recipient’s Decree No. 10/22 dated June 2, 2010 (the “Manual of Procedures”); provided, however, that such procedure shall be subject to the provisions of Section I and Paragraphs 3.3 and 3.4 of Section III of the Procurement Guidelines and the additional following modifications:

(a) **Standard Bidding Documents**: All standard bidding documents to be used for the Project under NCB shall be found acceptable to the Association before their use during the implementation of Project.

(b) **Eligibility**: Eligibility of bidders and acceptability of their goods and services shall not be based on their nationality and/or their origin; and association with a national firm shall not be a condition for participation in a bidding process.

(c) **Advertising and Bid Preparation Time**: Bidding opportunities shall be advertised at least in a national newspaper of wide circulation and on the website of the Recipient’s Procurement Regulator (Autorité de Régulation des Marchés Publics), and bidders should be given at least 30 days from the date of invitation to bid or the date of availability of the bidding documents, whichever is later.

(d) **Criteria for Qualification of Bidders**: Qualification criteria shall only concern the bidder’s capability and resources to perform the contract taking into account objective and measurable factors. Such criteria for qualification of bidders shall be clearly specified in the bidding documents.

(e) **Bid Evaluation and Contract Award**: A contract shall be awarded to the substantially responsive and lowest evaluated bidder provided that such bidder meets the qualification criteria specified in the bidding documents. No scoring system shall be allowed for the evaluation of bids, and no “blanket” limitation to the number of lots which can be awarded to a bidder shall apply. The criteria for bid evaluation and the contract award conditions shall be clearly specified in the bidding documents.

(f) **Preferences**: No preference shall be given to domestic/regional bidders; to domestically/regionally manufactured goods; and to bidders forming a joint venture with a national firm or proposing national sub-contractors or carrying out economic activities in the territory of the Recipient.

(g) **Publication of Contract Award**: Information on all contract awards shall be published in at least a national newspaper of wide circulation or in the Recipient’s Procurement Regulator (Autorité de Régulation des Marchés Publics) web-site.
(h) **Fraud and Corruption**: In accordance with the Procurement Guidelines, each bidding document and contract shall include provisions stating the Association's policy to sanction firms or individuals found to have engaged in fraud and corruption as set forth in the Procurement Guidelines.

(i) **Inspection and Audit Rights**: In accordance with the Procurement Guidelines, each bidding document and contract shall include provisions stating the Association’s policy with respect to inspection and audit of accounts, records and other documents relating to the bid submission and contract performance.

(j) **Requirement for administrative documents and/or tax clearance certificate**: The bidding documents shall not require foreign bidders to produce any administrative or tax related certificates prior to confirmation of awarding a contract.

(k) **Modifications of a Signed Contract**: Any change in the contract amount which, singly or combined with all previous changes, increases the original contract amount by 15% (fifteen percent) or more must be done through an amendment to the signed contract instead of signing a new contract.

C. **Particular Methods of Procurement of Consultants’ Services**

1. **Quality- and Cost-based Selection**: Except as otherwise provided in paragraph 2 below, consultants’ services shall be procured under contracts awarded on the basis of Quality and Cost-based Selection.

2. **Other Methods of Procurement of Consultants’ Services**. The following methods, other than Quality and Cost-based Selection, may be used for procurement of consultants’ services for those contracts which are specified in the Procurement Plan: (a) Selection under a Fixed Budget; (b) Least Cost Selection; (c) Selection based on Consultants’ Qualifications; (d) Selection of Individual Consultants; and (e) Single-source Selection.

D. **Review by the Association of Procurement Decisions**

1. The Procurement Plan shall set forth those contracts, which shall be subject to the Association’s Prior Review. All other contracts shall be subject to Post Review by the Association.

Section IV. **Other Undertakings**

1. By July 1, 2017, or such other date as the Association shall agree upon, the Project Implementing Entity shall: (i) carry out jointly with the Recipient and the Association, a mid-term review of the implementation of operations under the Project, which shall cover the progress achieved in the implementation of the Project; and (ii) following such mid-term review, act promptly and diligently to take any corrective action as shall be agreed by the Association.