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GRANT NUMBER 0172-LAO(SF)

PROGRAM GRANT AGREEMENT  
(Special Operations)  
(Health Sector Development Program)

between

LAO PEOPLE'S DEMOCRATIC REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 23 NOVEMBER 2009

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LPS:LAO 41376

## **GRANT AGREEMENT (Special Operations)**

GRANT AGREEMENT dated 23 November 2009 between LAO PEOPLE'S DEMOCRATIC REPUBLIC ("the Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

### WHEREAS

(A) ADB has received from the Recipient a development policy letter dated 9 October 2009 (the "Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Grant Agreement, designed to develop the Recipient's health sector (the "HSDP");

(B) the Recipient has applied to ADB for a Program Grant from its Special Funds resources for the purposes of the Program part of the HSDP;

(C) by a Project Grant Agreement of the same date as this Grant Agreement between the Recipient and ADB (the "Project Grant Agreement"), ADB has agreed to provide a Project Grant to the Recipient from ADB's Special Funds resources of ten million Dollars (\$10,000,000) for the purposes of the Project part of the HSDP; and

(D) ADB has, on the basis inter alia of the foregoing, agreed to provide a Grant to the Recipient from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

**NOW THEREFORE the parties agree as follows:**

### **ARTICLE I**

#### **Grant Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 2.01(15) is deleted and the following is substituted therefor:

15. The term "Program" means the program for which ADB has agreed to make the Grant, as described in the Grant Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Recipient.

(b) The term "Project" wherever it appears in the Grant Regulations shall be substituted by the term "Program".

- (c) Section 2.01(17) is deleted and the following is substituted therefor:

17. The term "Program Executing Agency" means the entity or entities responsible for the carrying out of the Program as specified in the Grant Agreement.

- (d) The term "Project Executing Agency" wherever it appears in the Grant Regulations shall be substituted by the term "Program Executing Agency".

- (e) Section 5.01(a) is deleted and the following is substituted therefor:

(a) Subject to any conditions or restrictions specified in the Grant Agreement, the Recipient shall be entitled to withdraw from the Grant Account such amounts as shall be required to meet payments for expenditures required for the Program and to be financed under the Grant Agreement.

Section 1.02. The terms defined in the Grant Regulations are incorporated into this Grant Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Counterpart Funds" means the local currency proceeds generated from the proceeds of the Grant and referred to in paragraph 10 of Schedule 4 to this Grant Agreement;

(b) "DPF" means the Department of Planning and Finance of MOH or any successor thereto;

(c) "Eligible Items" means the goods imported under the Program (except those specifically excluded pursuant to the Attachment 1 to Schedule 2 to this Grant Agreement), the foreign exchange costs of which are eligible for financing out of the proceeds of the Grant;

(d) "First Tranche" means the portion of the proceeds of the Grant in an amount not exceeding the equivalent of five million Dollars (\$5,000,000) to be initially withdrawn and utilized;

(e) "MNCH" means maternal, newborn, and child health care;

(f) "Model healthy village" means a village that maintains basic conditions needed to lead a healthy life;

(g) "MOF" means the Ministry of Finance of the Recipient or any successor thereto;

(h) "MOH" means the Ministry of Health of the Recipient or any successor thereto;

(i) "NIA" means any or all national implementing agencies established in accordance with paragraph 4 of Schedule 4 to this Grant Agreement or any successor thereto acceptable to ADB;

(j) "Participating Provinces" means any or all of the following 17 provinces of the Recipient where the HSDP shall be implemented: (i) Phongsaly; (ii) Luangnamtha; (iii) Oudomxay; (iv) Bokeo; (v) Luangprabang; (vi) Houaphanh; (vii) Xayabouly; (viii) Xiengkhouang; (ix) Savannakhet; (x) Salavan; (xi) Sekong; (xii) Champasack; (xiii) Attapeu; (xiv) Vientiane Capital; (xv) Vientiane; (xvi) Khammouane; and (xvii) Bolikhamxay.

(k) "PCU" means the Project coordination unit as described in paragraph 3 of Schedule 4 to this Grant Agreement;

(l) "PHOs" means Provincial Health Offices of MOH or any successor thereto;

(m) "Policy Letter" means the development policy letter dated 9 October 2009 addressed by the Recipient to ADB and referred to in Recital (A) of this Grant Agreement;

(n) "Policy Matrix" means the policy reform matrix agreed between the Recipient and ADB which sets forth actions to be taken by the Recipient under the HSDP and which is attached to the Policy Letter;

(o) "Program Executing Agency" means, for the purposes of, and within the meaning of, this Grant Agreement, MOH, through DPF, or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program;

(p) "Provincial Authority" means the government of a Participating Province headed by the elected Governor;

(q) "Second Tranche" means the balance of the proceeds of the Grant remaining in the Grant Account after the utilization of the First Tranche, to be withdrawn pursuant to and subject to the provisions of paragraph 5 of Schedule 2 to this Grant Agreement; and

(r) "Special Account" means the account referred to in paragraph 4 (a) of Schedule 2 to this Grant Agreement.

## **ARTICLE II**

### **The Grant**

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources on terms and conditions set forth in this Grant Agreement an amount of ten million Dollars (\$10,000,000).

## ARTICLE III

### Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Program in accordance with the provisions of this Grant Agreement.

Section 3.02. The proceeds of the Grant may be withdrawn from the Grant Account only for the purposes of financing expenditures incurred for Eligible Items under the Program in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, all Eligible Items to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account shall be made only on account of expenditures relating to Eligible Items which:

- (a) are produced in, and are supplied from, such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. Except as ADB may otherwise agree, no withdrawals shall be made from the Grant Account in respect of expenditures for Eligible Items prior to the Effective Date.

Section 3.06. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2012 or such other date as may from time to time be agreed between the Recipient and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. In the carrying out of the Program and operation of the Program facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. (a) The Recipient shall maintain, or cause to be maintained, records and documents adequate to identify the Eligible Items financed out of the proceeds of the Grant and to record the progress of the Program.

(b) The Recipient shall enable ADB's representatives to inspect any relevant records and documents referred to in paragraph (a) of this Section.

Section 4.03. (a) As part of the reports and information referred to in Section 6.04 of the Grant Regulations, the Recipient shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning (i) the Counterpart Funds and the use thereof; and (ii) the implementation of the Program, including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

(b) Without limiting the generality of the foregoing or Section 6.04 of the Grant Regulations, the Recipient shall furnish, or cause to be furnished, to ADB quarterly reports on the carrying out of the Program and on the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations:

(a) the Project Grant Agreement shall have been duly executed and delivered on behalf of the Recipient and all conditions precedent (other than the effectiveness of this Grant Agreement) shall have been fulfilled; and

(b) all policy reform actions listed in the Policy Matrix, for the release of the First Tranche, shall have been met by the Recipient to the satisfaction of ADB.

Section 5.02. A date ninety (90) days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance  
PO Box 46  
23 Singha Road  
Vientiane, Lao PDR

Facsimile Number:

+856 21 412142.

For ADB

Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

Facsimile Numbers:

+632 636 2444  
+632 636 2228.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

LAO PEOPLE'S DEMOCRATIC REPUBLIC

By  \_\_\_\_\_  
H.E. MRS. VIENGTHONG SIPHANDONE  
Vice Minister  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By  \_\_\_\_\_  
GIL-HONG KIM  
Country Director  
LAO Resident Mission

## SCHEDULE 1

### Description of the Program

1. The principal objective of the Program is to support Recipient's 7<sup>th</sup> health sector development plan (2011-2015) by: (i) strengthened provincial planning and financing, including an increase in non-salary recurrent budget, standards and guidelines for hospitals, a national health information system, and rolling out health equity funds; (ii) increased access to MNCH care through the national MNCH strategy, and rolling out mother and child friendly health services and the model healthy village; and (iii) improved quality of personnel through national human resource for health policy, a plan for skilled birth attendance, and initiatives to improve pre-service education, and regulation of staff and training institutions. The expected impact of the Program is reduced maternal and child mortality and malnutrition by 2015.
2. The scope of the Program includes: (i) strengthened planning and financing; (ii) increased access to MNCH; and (iii) improved quality of human resources for health. The Program is described in more detail in the Policy Letter. The Program will be implemented during the period 1 January 2010 to 31 December 2011.
3. In support of the Program:
  - (a) the proceeds of the Grant shall be used to finance the costs of Eligible Items; and
  - (b) the Counterpart Funds shall be used to finance the local currency costs relating to the implementation of certain programs and other activities consistent with the objectives of the Program, pursuant to the provisions of paragraph 10 of Schedule 4 to this Grant Agreement.
4. The proceeds of the Grant are expected to be utilized by 30 June 2012.

## SCHEDULE 2

### Allocation and Withdrawal of Grant Proceeds

1. Except as ADB may otherwise agree, the following provisions of this Schedule shall apply to the withdrawal of the Grant proceeds from the Grant Account.

2. (a) Withdrawals from the Grant Account shall be made for the financing of the cost of Eligible Items.

(b) No withdrawals from the Grant Account shall be made in respect of any expenditures which have been financed by credits from official international or bilateral aid agencies or any other grants or loans made by ADB.

3. (a) An application for withdrawal from the Grant Account shall be submitted to ADB by the Recipient and shall be in a form satisfactory to ADB.

(b) Such withdrawal applications shall be accompanied by a certificate of the Recipient confirming that with respect to each year during which the proceeds of the Grant are expected to be disbursed, the value of the Eligible Imports is expected to be equal to or greater than the amount of the Grant expected to be disbursed during such year.

(c) For the purposes of this paragraph, the term "Eligible Imports" means the total imports of the Recipient during the relevant period minus the following imports during the same period:

- (i) imports from countries which are not members of ADB;
- (ii) imports for ineligible items specified in the Attachment 1 to this Schedule; and
- (iii) imports financed from credits from official international or bilateral aid agencies or any other loans or grants made by ADB.

(d) The Recipient shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Recipient has certified the value of Eligible Imports in its withdrawal application.

4. (a) Prior to submitting the first application to ADB for withdrawal from the Grant Account, the Recipient shall open an account (the "Special Account") at the Bank of Lao PDR into which all withdrawals from the Grant Account shall be deposited. The Special Account shall be established, managed and liquidated in accordance with terms and conditions satisfactory to ADB.

(b) Separate accounts and records in respect of the Special Account shall be maintained in accordance with consistently maintained sound accounting principles. Upon ADB's request, the Recipient shall have the Special Account audited by independent auditors, whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with appropriate auditing standards. Promptly after their preparation but in any

event not later than six (6) months after the date of ADB's request, certified copies of such audited accounts and records shall be furnished to ADB, all in the English language.

(c) Throughout the Program implementation period, the Recipient shall submit trade statistics and any other information as ADB may require from time to time to assess the Recipient's compliance with the formula for determining Eligible Imports.

5. Notwithstanding any other provisions of this Grant Agreement or the Grant Regulations and except as ADB may otherwise agree, no withdrawals shall be made from the First or Second Tranche unless ADB shall be satisfied, after consultation with the Recipient, that (a) sufficient progress has been achieved by the Recipient in the carrying out of the Program; and, in particular, (b) the Recipient has fulfilled the conditions for the release of the respective Tranche specified in Attachments 2 and 3 to this Schedule.

**List of Ineligible Items**

1. Grant proceeds shall finance the foreign currency expenditures for the reasonable cost of imported goods required during the implementation of the HSDP.
2. No withdrawals shall be made in respect of:
  - (i) expenditures for goods included in the following groups or sub-groups of the United Nations Standard International Trade Classification, Revision 3 (SITC, Rev. 3) or any successor groups or sub-groups under future revisions to the SITC, as designated by ADB by notice to the Recipient:

<b>Ineligible Items</b>		
<b>Chapter</b>	<b>Heading</b>	<b>Description of Items</b>
112		Alcoholic beverages
121		Tobacco, unmanufactured tobacco refuse
122		Tobacco, manufactured (whether or not containing tobacco substitute
525		Radioactive and associated materials
667		Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), non-irradiated for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum-group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971		Gold, non-monetary (excluding gold ore and concentrates)

Source: United Nations.

- (ii) expenditures in the currency of the Recipient or of goods supplied from the territory of the Recipient;
- (iii) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any loan or grant from the ADB;
- (iv) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (v) expenditures for narcotics;
- (vi) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Recipient or international agreements to which the Recipient is a party; and
- (vii) expenditures on account of any payment prohibited by the Recipient in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

**Conditions for Release of the First Tranche****Strengthened Planning and Financing**

1. MOF shall have signed the Memorandum of Understanding with MOH agreeing upon the Program funds flow mechanism for supplementary recurrent budget support and copies of such Memorandum of Understanding and fund flow mechanism shall have been provided to ADB.
2. MOH shall have approved the National Health Information System Strategic Plan (2009-2015) and the approved copy thereof shall have been provided to ADB.
3. MOF shall have provided a commitment to ADB, under the Policy Letter to increase domestic non-wage recurrent budget for health by at least ten percent (10%) annually from 2009/2010 to 2013/2014.

**Increased Access to MNCH**

4. MOH shall have approved the National Strategy for MNCH and the approved copy thereof shall have been provided to ADB.
5. MOH shall have provided a copy of the Decision 381 to ADB establishing the directives for piloting at least two (2) model healthy villages per district in each of the Participating Provinces (totaling about 300 villages) together with a copy of the supplementary guidelines on piloting of model healthy villages.

**Improved Quality of Human Resources for Health**

6. MOH shall have approved the national implementation plan for skilled birth attendance and a copy thereof shall have been provided to ADB.

**Conditions for Release of the Second Tranche****Strengthened Planning and Financing**

1. Provincial Authorities shall have approved the results-based annual operational plans and budgets and copies thereof shall have been provided to ADB.
2. MOH shall have issued a Decision approving standards, guidelines and terms of reference for district hospitals and the copies of such Decision and standards, guidelines and terms of reference for district hospitals shall have been provided to ADB.
3. MOF shall have submitted a letter to ADB confirming the increased domestic non-wage recurrent spending by at least ten percent (10%) compared to 2009/2010 level.

**Increased Access to MNCH**

4. MOH shall have issued a Decision approving the roll out of the MNCH friendly health facilities, providing a minimum package of MNCH services and a copy thereof shall have been provided to ADB.
5. MOH shall have issued a Decision approving the standard guidelines and strategic plan for roll-out of the model healthy villages in at least 300 remote villages in the Participating Provinces by the end of 2015 and a copy thereof shall have been provided to ADB.
6. MOH shall have provided to ADB a copy of the Policy for Human Resources in Health approved by the Prime Minister.

### **SCHEDULE 3**

#### **Provisions on Procurement and Consulting Services**

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraph of this Schedule shall apply in the procurement of Eligible Items to be financed out of the proceeds of the Grant.

2. (a) Except as provided in subparagraph (b) of this paragraph, each contract for Eligible Items shall be awarded on the basis of either the purchaser's normal commercial procurement practices, in the case of procurement by the private sector, or the Recipient's prescribed procurement procedures, in the case of procurement by the public sector, having due regard for the principles of economy and efficiency.

(b) Each supply contract for Eligible Items which are commonly traded commodities shall be awarded on the basis of procedures appropriate to the trade and acceptable to ADB.

## SCHEDULE 4

### Program Implementation and Other Matters

#### Program Management

1. Executing Agency. MOH, acting through DPF shall be the Program Executing Agency responsible for coordinating all policy, legal and regulatory actions. MOH shall ensure that (i) the policy reforms set out in the Policy Letter are duly carried out in a timely manner; and (ii) provisions for reporting, monitoring and auditing and other administrative requirements are strictly complied with.
  
2. Steering Committee. The MOH Steering Committee chaired by the Minister of Health and comprising the vice ministers of MOH and representatives of various departments of MOH shall provide overall guidance in Program implementation. MOF, the Ministry of Planning and Investment, and other ministries shall join the Committee as required. MOH's sector coordination working group and technical working groups for human resource development, MNCH and health shall meet regularly to develop the health sector plans and coordinate the Program management.
  
3. PCU. Within DPF, the already established project PCU headed by the Deputy Director General of DPF as Program Director shall serve as Program PCU. The PCU shall comprise three (3) deputy directors, two (2) administration officers, and one (1) private firm for accounting services and shall be responsible for (i) Program coordination; and (ii) timely submission of policy measures.
  
4. National Implementing Agencies (NIAs). Within MOH, NIAs shall be established under the Departments of Organization and Personnel, Curative, Food and Drugs, and MNCH hospital. NIAs shall be responsible for planning, implementing and reviewing delegated Program activities within their responsibilities.

#### Implementation of the Policy Letter and Policy Matrix

5. The Recipient shall: (i) ensure that the objectives achieved, policies adopted, and actions taken prior to the date of this Grant Agreement, as set forth in the Policy Letter, shall continue to be in full force and effect for the duration of the Program period and subsequently; (ii) carry out the policies and actions in accordance with the schedule of policy reforms contained in the Policy Matrix and ensure sustainability of the reforms beyond the Program period; and (iii) carry out all of its obligations as stipulated under this Schedule and the Grant Agreement, in a timely manner.
  
6. The Recipient shall ensure that all action plans developed as a result of the Policy Matrix shall be fully implemented by the end of the Program period.

#### Policy Dialogue

7. The Recipient shall keep ADB informed of, and the Recipient and ADB shall from time to time exchange views on, sector issues, policy reforms and additional reforms during the Program period that may be considered necessary or desirable, including the progress made in carrying out the Program.

8. The Recipient shall engage in policy dialogue with ADB, in a timely manner, on problems and constraints encountered during Program implementation and on desirable changes to overcome or mitigate such problems and constraints.

9. The Recipient shall keep ADB informed of policy discussions with other multilateral or bilateral agencies that have implications for the implementation of the Program, and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Recipient shall take ADB's views into consideration before finalizing and implementing any such proposals.

#### Counterpart Funds

10. The Recipient shall ensure that (i) counterpart funds in an amount equivalent to the Program funds are made available to the Participating Provinces for non-salary recurrent budget support in the health sector, and shall not be used to pay for any costs accruing prior to the Effective Date or for payment of electricity bills; and (ii) the counterpart funds equivalent to the Program funds are completely additional to the non-salary recurrent expenditures accrued in financial year 2008-2009, in real terms.

#### Program Review

11. The Recipient shall, and shall cause MOH to ensure, that quarterly and annual reports are submitted to ADB on the progress of the Program and related policy issues, including the progress milestones vis-à-vis the achievement of indicators, identification of issues and proposed adjustments, as needed. The Program reviews shall be carried out in conjunction with the Project reviews, as detailed in the Project Grant Agreement.

#### Program Performance Monitoring System

12. MOF, through DPF shall (i) monitor the implementation of policy actions set out in the Policy Matrix and its impact on inclusive development, good governance and improved service delivery, in line with the Program impact and outcome indicators agreed upon between ADB and the Recipient; and (ii) submit to ADB quarterly reports, until the completion of the Program, on the status of the formation and implementation of the Recipient's policy actions.