
LOAN NUMBER 2515-PHI

LOAN AGREEMENT
(Ordinary Operations)
(Credit for Better Health Care Project)

between

ASIAN DEVELOPMENT BANK

and

DEVELOPMENT BANK OF THE PHILIPPINES

DATED 27 APRIL 2009

LAL: PHI 41664

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 27 April 2009 between ASIAN DEVELOPMENT BANK (hereinafter called "ADB") and DEVELOPMENT BANK OF THE PHILIPPINES (hereinafter called the "Borrower").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Section 3.01 of this Loan Agreement;

(B) the Loan is to be guaranteed by Republic of the Philippines (hereinafter called the "Guarantor") under the terms of a Guarantee Agreement of even date herewith;

(C) the Borrower has also applied to the Gender and Development Cooperation Fund, through ADB, for a grant equivalent to four hundred thousand dollars (\$400,000) for the purposes of financing a portion of the Project;

(D) The Borrower has also applied to ADB for technical assistance (TA) grant equivalent to one million dollars (\$1,000,000) for Public-Private Partnership (PPP) in Health to support the Subborrowers, in enhancing modalities for PPP; and

(E) ADB, on the basis inter alia of the foregoing, has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit. (aa) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(bb) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(d) Section 6.03 is deleted and the following is substituted therefor:

Application for Withdrawal. When the Borrower shall desire to withdraw any amount from the Loan Account or to request ADB to issue commitment letters pursuant to Section 6.02, the Borrower shall deliver to ADB an application in such form and containing such statements and agreements, as ADB shall reasonably request. Except as ADB and the Borrower shall otherwise agree, applications for withdrawal, with the necessary documentation as hereinafter in this Article provided, shall be made promptly in relation to expenditures for the Qualified Subprojects.

(e) Section 7.07(c) is deleted.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "Charter" means the revised charter of the Borrower pursuant to Executive Order 81, dated 3 December 1986, as amended by Republic Act 8523, dated 14 February 1998;

(b) "Committee" means the Health Sector Investment Advisory Committee established by the Borrower, in accordance with paragraph 1 of Schedule 2 to this Loan Agreement;

(c) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers, dated February 2007, as amended from time to time;

(d) "DILG" means the Guarantor's Department of Interior and Local Government, and any successor thereto;

- (e) "Disbursed Amount" means, in respect of each Interest Period, the aggregate principal amount of the Loan withdrawn from the Loan Account in said Interest Period;
- (f) "DOF" means the Guarantor's Department of Finance, and any successor thereto;
- (g) "DOH" means the Guarantor's Department of Health, and any successor thereto;
- (h) "EMS" means the environment management system;
- (i) "F-1 for health" means the Fourmula 1 for health, the health sector reform's implementation framework, as initiated by DOH in 2005;
- (j) "fiscal year" means the financial year of the Borrower, commencing on the first day of January and ending on the last day of December of each year, or as may be amended from time to time;
- (k) "FPIC" means free and prior informed consent;
- (l) "Goods" means equipment and materials to be financed out of the proceeds of the Loan; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;
- (m) "IPDF" means indigenous peoples development framework;
- (n) "LGU" means a local government unit of the Guarantor at provincial, city or municipal level;
- (o) "Maturity Fixing Date" means, for each Disbursed Amount, the date on which the amortization schedule for said Disbursed Amount is established, such date being the Interest Payment Date immediately succeeding the disbursement;
- (p) "MDFO" means the Guarantor's Municipal Development Fund Office, and any successor thereto;
- (q) "MDG" means the Millennium Development Goals;
- (r) "MFI" means micro finance institutions;
- (s) "NEDA" means the Guarantor's National Economic and Development Authority, and any successor thereto;
- (t) "PHIC" means the Guarantor's Philippine Health Insurance Corporation, any successor thereto;
- (u) "PITC" means the Philippine International Trading Corporation;

(v) "PMO" means the Project Management Office established by the Borrower to implement the Project, in accordance with paragraph 2 of Schedule 2 to this Loan Agreement;

(w) "Procurement Guidelines" means ADB's Procurement Guidelines, dated February 2007, as amended from time to time;

(x) "Procurement Plan" means the procurement plan for the Project dated 17 February 2009, and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(y) "Project Area" refers to the entire territory of the Republic of the Philippines, excluding Metro Manila;

(z) "Project Executing Agency" for the purpose, and within the meaning, of the Loan Regulations means the Borrower, which is responsible for carrying out the Project;

(aa) "Qualified Enterprise" means (i) for retail relending under outputs 1 and 2 of the Project, private ventures, including health providers, foundations and health maintenance organizations approved by the Borrower; and (ii) for wholesale on-lending under output 3 of the Project, accredited financial intermediaries, including microfinance institutions, thrift banks and cooperatives;

(bb) "Qualified LGU" means an LGU that meets the eligibility criteria set out in paragraph 3 of Schedule 2 to this Loan Agreement and to which the Borrower proposes to make, or has made, a Subloan;

(cc) "Qualified Subproject" means a subproject that meets the eligibility criteria set out in paragraph 4 of Schedule 2 to the Loan Agreement and included or to be included under Outputs 1, 2 and 3 of the Project;

(dd) "SOE" means Statement of Expenditures;

(ee) "Subborrowers" means Qualified Enterprise and Qualified LGU;

(ff) "Subloan" means a loan made or proposed to be made by the Borrower out of the proceeds of the Loan to a Qualified LGU or Qualified Enterprise for a Qualified Subproject;

(gg) "Subloan Agreement" means an agreement between the Borrower and a Qualified LGU or Qualified Enterprise in respect of a Subloan; and

(hh) "Works" means construction or civil works to be financed out of the proceeds of the Loan, and including services such as mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of four billion five hundred twenty million seven hundred eighty thousand two hundred Yen (¥4,520,780,200), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 19 years, and a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) of this Section means the period prior to the first Principal Payment Date in accordance with Section 2.05 of this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 September and 15 March in each year.

Section 2.05. (a) Subject to the provisions of paragraph (b) of this Section, the Borrower shall repay each Disbursed Amount of the Loan in semiannual installments payable on each 15 September and 15 March, the first such installment to be payable on the thirteenth (13th) Interest Payment Date following the Maturity Fixing Date for said Disbursed Amount and the last such installment to be payable on the fiftieth (50th) Interest Payment Date following the Maturity Fixing Date for said Disbursed Amount. Each installment except for the last one shall be equal to one-thirty eight (1/38) of said Disbursed Amount. The last installment shall be equal to the remaining outstanding amount of said Disbursed Amount.

(b) If any installment of principal of any Disbursed Amount would, pursuant to the provisions of paragraph (a) of this Section, be payable after 15 September 2040, the Borrower shall also pay on such date the aggregate amount of all such installments.

(c) ADB shall notify the Borrower and the Guarantor of the amortization schedule for each Disbursed Amount promptly after the Maturity Fixing Date for said Disbursed Amount.

(d) Except as ADB may otherwise agree, the amortization schedule applicable to each Subloan (i) shall not extend beyond fifteen (15) years, including a grace period of not exceeding three (3) years, from the date when such Subloan is approved or authorized for withdrawals from the Loan Account pursuant to Section 3.03(a) or (b) of this Loan Agreement, and (ii) shall provide for approximately equal semiannual aggregate payments of principal plus interest.

(e) Notwithstanding the provisions of paragraphs (a) through (c) of this Section, in the event of a Currency Conversion of all or any portion of a Disbursed Amount to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

ARTICLE III

Description of Project; Use of Proceeds of the Loan

Section 3.01. The Project for which the Loan is made is the financing by the Borrower of specific development projects, by making loans for productive purposes to Qualified Enterprises and Qualified LGUs in the Project Area and by providing or facilitating

the provision of other financial assistance to such enterprises, all in accordance with this Loan Agreement.

Section 3.02. (a) The amount of the Loan may be withdrawn from the Loan Account to finance (i) the reasonable foreign-currency cost of Goods, Works and consulting services and other items of expenditures required for the Qualified Subproject; (ii) the foreign-currency cost of interest during construction on Subloans; and (iii) the local-currency cost of Goods, Works and consulting services required for the Qualified Subproject.

(b) Except as ADB may otherwise agree, the proceeds of each part of the Loan shall be used only for making a Subloan to the Qualified Enterprise and Qualified LGUs in respect of which such part of the Loan was withdrawn from the Loan Account and shall be applied exclusively to the cost of Goods, works and consulting services and other items of expenditure required to carry out the Qualified Subproject in respect of which such part of the Loan was withdrawn.

(c) Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 1 to this Loan Agreement.

Section 3.03. (a) Whenever the Borrower proposes to make a Subloan in an amount exceeding the amount of \$2,000,000 equivalent or such other sum as shall from time to time be agreed between ADB and the Borrower, the Borrower shall, before requesting a withdrawal, submit to ADB an application for approval of such Subloan. Such application shall be in a form satisfactory to ADB, and shall contain a description and appraisal of the Qualified Subproject, the terms and conditions of the proposed Subloan, and such other information as ADB shall reasonably request. A Subloan shall be deemed to exceed the equivalent of the amount specified in or agreed pursuant to this paragraph if the amount of such Subloan, when added to the amount of any other Subloan or Subloans previously made or authorized for the same Qualified Subproject, exceeds the equivalent of the amount so specified or agreed.

(b) Whenever the Borrower has made, or proposes to make, a Subloan in an amount not exceeding the equivalent of the amount specified in or agreed pursuant to paragraph (a) of this Section, the Borrower shall, promptly and before requesting a withdrawal, furnish to ADB a statement, in a form satisfactory to ADB, describing the Qualified Subproject and the terms and conditions of the Subloan. No withdrawal shall be made in respect of a Subloan falling within the provisions of this paragraph unless ADB shall have authorized withdrawals from the Loan Account.

(c) Except as ADB may otherwise agree, the applications and information required by paragraphs (a) and (b) of this Section shall be submitted to ADB not later than a date five (5) years after the Effective Date.

Section 3.04. With respect to the amount included in the Loan for financing interest and commitment charge on the Loan during the implementation of the Project under Section 3.02(a) of this Loan Agreement, ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

Section 3.05. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for amounts expended for the cost of a Qualified Subproject more than ninety (90) days prior to receipt by ADB either of the application for approval of such Qualified Subproject pursuant to Section 3.03(a) of this Loan Agreement, or of the information required by Section 3.03(b) of this Loan Agreement.

Section 3.06. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be a date six (6) years after the Effective Date or such other date as may from time to time be agreed between ADB and the Borrower.

ARTICLE IV

Subloans

Section 4.01. Each Subloan shall carry interest at an appropriate rate and shall be made on terms whereby the Borrower shall obtain, by a written agreement with the Qualified Enterprise and Qualified LGUs in form acceptable to ADB, rights adequate to protect the interests of ADB and the Borrower.

Section 4.02. Without limiting the generality of the foregoing provisions of Section 4.01 of this Loan Agreement and in addition to any other provisions which a prudent lender would request, each Subloan agreement shall include provisions to the effect that:

- (a) the Qualified Enterprise and Qualified LGUs shall carry out and operate the Qualified Subproject with due diligence and efficiency and in accordance with sound administrative, financial, engineering, environmental and business practices, including maintenance of adequate accounts and records;
- (b) the proceeds of the Loan shall be used only for procurement in member countries of ADB, in accordance with procedures acceptable to ADB, of Goods produced in, and consulting services supplied from, such countries;
- (c) the Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be used exclusively in the carrying out of the Qualified Subproject;
- (d) ADB and the Borrower shall each have the right to inspect such Goods and Works, the Qualified Enterprises, the Qualified LGUs, the Qualified Subprojects, and any relevant records and documents;
- (e) the Qualified Enterprises and Qualified LGUs shall take out and maintain with responsible insurers insurance against such risks and in such amounts as shall be consistent with sound business practices, and, without any limitation upon the foregoing, such insurance shall cover hazards incident to the acquisition, transportation and delivery of Goods financed out of the proceeds of the Loan to the place of use or

installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods;

- (f) ADB and the Borrower shall each be entitled to obtain all such information as each shall reasonably request relating to the Subloan, the Goods, Works and consulting services financed out of the proceeds of the Loan, the Qualified Subproject, the Qualified Enterprise and Qualified LGU and other related matters; and
- (g) the Borrower shall be entitled to suspend or terminate further access by the Qualified Enterprise and Qualified LGU to the use of the proceeds of the Loan upon failure by the Qualified Enterprise and Qualified LGU to perform its obligations under its agreement with the Borrower.

Section 4.03. The Borrower shall promptly and effectively exercise its rights in relation to each Qualified Subproject in accordance with the standards of a prudent lender and in such manner as to protect the interests of ADB and the Borrower.

ARTICLE V

Particular Covenants

Section 5.01. (a) The Borrower shall carry out the Project with due diligence and efficiency and in conformity with sound banking, administrative, financial, engineering, environmental and business practices.

(b) In the carrying out of the Project and in the conduct of its business, the Borrower shall perform all the obligations set forth in Schedule 2 to this Loan Agreement.

(c) Except as ADB may otherwise agree, the Borrower shall not substantially amend its Charter in any manner, which in the reasonable opinion of ADB will materially and adversely affect the ability of the Borrower to perform its obligation under this Loan Agreement.

Section 5.02. The Borrower shall at all times make adequate provision to protect itself against any loss resulting from changes in the rate of exchange between pesos and the currency or currencies in which the Borrower's outstanding money obligations will have to be met.

Section 5.03. The Borrower shall ensure that all local currency funds and other resources which are required by Qualified Enterprises and Qualified LGUs for the carrying out of their respective Qualified Subprojects shall be available to such Qualified Enterprises and Qualified LGUs promptly as needed.

Section 5.04. The Borrower shall maintain records and accounts adequate to record the progress of each Qualified Subproject (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, the

operations and financial condition of the Borrower, as part of the records and accounts referred to in Section 7.03 of the Loan Regulations.

Section 5.05. (a) The Borrower shall furnish to ADB all such reports and information as ADB shall reasonably request concerning the Qualified Enterprises, the Qualified Subprojects and the Subloans as part of the reports and information referred to in Section 7.04(a) of the Loan Regulations.

(b) The Borrower shall include information on the execution of the Qualified Subprojects and their costs as part of the report referred to in Section 7.04(d) of the Loan Regulations.

Section 5.06. (a) The Borrower shall have its accounts and financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and shall, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, furnish to ADB (i) certified copies of such audited accounts and financial statements and (ii) the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds, imprest account, SOE procedures and compliance with the financial covenants of this Loan Agreement), all in the English language. The Borrower shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements and its financial affairs from time to time with the auditors appointed by the Borrower pursuant to Section 5.06(a) hereabove, and shall make necessary arrangements for any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Borrower unless the Borrower shall otherwise agree.

Section 5.07. The Borrower shall enable ADB's representatives to inspect any Qualified Enterprise, Qualified LGU, Qualified Subproject, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents maintained by the Borrower.

Section 5.08. (a) The Borrower shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) The Borrower shall at all times conduct its business in accordance with sound administrative, financial, environmental and business practices, and under the supervision of competent and experienced management and personnel.

(c) Except as ADB may otherwise agree, the Borrower shall not (i) sell, lease or otherwise dispose of any of its assets, except in the ordinary course of its business; or (ii) establish or acquire any subsidiary.

Section 5.09. Except as ADB may otherwise agree, the Borrower shall maintain a ratio of the Consolidated Debt of the Borrower to the Consolidated Equity of the Borrower not higher than 8:1. For the purposes of the foregoing provisions:

(a) "Debt" refers to any debt incurred, assumed or guaranteed by the Borrower which matures more than one year after the date on which it is originally incurred (including that portion of any such debt payable within one year from the date of any debt-equity ratio calculation), provided that debt shall be counted only to the extent it is drawn down and outstanding. The incurring of debt includes any modification of the terms of payment of such debt.

(b) "Consolidated Debt of the Borrower" means the total amount of debt of the Borrower.

(c) "Consolidated Equity of the Borrower" means the aggregate of the total unimpaired paid-in capital, surplus and free reserves of the Borrower.

Section 5.10. The Borrower shall cause each of its subsidiaries (if any) to observe and perform the obligations of the Borrower under this Loan Agreement to the extent to which such obligations may be applicable thereto, as though such obligations were binding upon each of such subsidiaries.

Section 5.11. The Borrower shall apply the provisions of Section 7.07(a) of the Loan Regulations, mutatis mutandis, to any of its subsidiaries if it shall create any lien on any of its assets as security for any debt.

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations:

- (a) the Borrower shall submit to ADB an acceptable draft of the subsidiary loan agreement; and
- (b) the guarantee agreement between ADB and the Guarantor shall have been executed and delivered, and all conditions precedent to its effectiveness, other than a condition requiring the effectiveness of the Loan Agreement, shall have been fulfilled.

Section 6.02. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The President and Chief Executive Officer of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2228

For the Borrower

Development Bank of the Philippines
DBP Building
Sen. Gil Puyat Avenue corner Makati Avenue
Makati City, Philippines

Facsimile Numbers:

(632) 815-1611
(632) 818-5528.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan 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.

ASIAN DEVELOPMENT BANK



By _____

NEERAJ K. JAIN
Country Director
Philippines Country Office

DEVELOPMENT BANK OF THE PHILIPPINES



By _____

REYNALDO G. DAVID
Authorized Representative

SCHEDULE 1

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. National Competitive Bidding. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Borrower and ADB.

C. Selection of Consulting Services

5. Quality- and Cost-Based Selection. The Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services for the implementation of the gender related activities.

D. Industrial or Intellectual Property Rights

6. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

7. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

E. ADB's Review of Procurement Decisions

8. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 2

Execution of Project; Financial Matters

Project Management

Health Sector Investment Advisory Committee

1. The Borrower has established the Committee, which consists of representatives from the Borrower, DOH, PHIC, MDFO, DILG and the private sector. The Committee shall (i) ensure compliance with Guarantor and ADB policies and regulations, (ii) provide Project oversight and guidance, (iii) oversee completion of the Borrower's health investment policy framework for lending in health, (iv) review and provide decision upon lending of Qualified Subprojects that deviate from meeting Qualified Subproject eligibility, (v) coordinate inter-sectorally and inter-departmentally, (vi) respond to challenges faced in project implementation, and (vii) monitor and report project performance. The Borrower has entered into an agreement with DILG, DOH, PHIC and MDFO which outlines the objectives, procedures and areas for cooperation, eligibility criteria for Subborrowers, eligible investment costs, preparation of feasibility and capacity building by DOH, flow of funds, and monitoring and evaluation. The Committee shall be chaired by a Senior Vice President of the Borrower.

Project Management Office

2. The Borrower has established a PMO under its Sustainable Health Care Investment Program in the Program Development Department. The PMO shall function as the planning, coordinating, administering, and monitoring unit for project implementation. The PMO shall also review subproject proposals, monitor their progress, and provide recommendations and progress updates. It shall have a project director, a project manager, an assistant project manager and two project associates appointed from among the Borrower's staff. The project director shall be the officer responsible for overall project execution, finance, monitoring, and reporting to the Committee and ADB. The project manager shall be responsible for project implementation. The assistant project manager, assisted by the project associates, shall run PMO operations on a day-to-day basis. The PMO shall also recruit experts in health systems, hospital civil works, hospital environmental and waste management, monitoring and evaluation, financial management, and legal matters. Other divisions of the Borrower at the central and regional levels shall provide necessary support for the effective implementation of the Project.

Eligibility Criteria

3. The Borrower shall ensure that the Loan proceeds shall be relent only to Qualified Enterprises and Qualified LGUs for the purpose of Qualified Subprojects. Qualified Enterprises and Qualified LGUs are those meeting the following criteria:

- (i) For LGU: the LGU has to show that (i) it supports the F-1 for health and is committed to meeting MDGs, (ii) it is responsible for public clinics and public hospitals in its municipalities and the provinces, (iii) it has inadequate resources and cannot easily attain central government grant support, and (iv) it is creditworthy but unable to tap private capital markets, and is seeking access to credit to attain PHIC accreditation or upgrades, PPP, and/or health system efficiencies.
- (ii) For private enterprises: Qualified Enterprises shall include foundations, health maintenance organizations, and small-scale health providers who lack access to credit, and/or do not have appropriate collaterals. Service providers, include diagnostics, laboratories, referral networks, midwifery and physician care, who need to attain PHIC accreditation or upgrades; generic drug retailers who need PITC accreditation; and rural drugs distributors willing to expand their network in municipalities.

4. The Borrower shall ensure that the following criteria for subprojects are followed:
- (i) the Qualified Subproject has to be included in the province-wide investment plan for health or DOH's certificate of needs for new health facilities and permit to construct;
 - (ii) for hospitals, a hospital diagnostic center or hospital development plan, including feasibility, financial sustainability, and utilization forecasts is required;
 - (iii) located in an underserved area;
 - (iv) licensed or accredited by either, DOH and/or Bureau of Food and Drugs and/or PITC and/or PHIC;
 - (v) for LGU subprojects, have the commitment of the LGU for funding operations and maintenance cost; and
 - (vi) comply with the Guarantor's and ADB's environmental and social safeguard policies.

Counterpart Funds

5. The Borrower shall ensure that all necessary counterpart funds for project implementation shall be provided on time. The Borrower shall prepare annual plans for sub-project investment and for loan disbursement. Every year, the Borrower shall submit the annual plan to ADB for endorsement not later than the first quarter of the year.

Financial Covenants

6. The Borrower shall ensure that it maintains (a) capital adequacy ratio of 10% or above, (b) a minimum return on average total assets of 0.5%, and (c) a minimum liquid assets ratio of 25%.

Gender and Development Cooperation Fund

7. The Borrower shall ensure that the activities included to be funded under the Gender Development Cooperation Fund, which is the *Enhancing Midwives' Entrepreneurial and Financial Literacy* component shall be carried out during the first two years of Project implementation. The Borrower shall closely monitor, and the progress shall be reported in the quarterly reports to ADB.

Due Diligence and Subprojects Implementation

8. The Borrower shall conduct financial due diligence on the Qualified Enterprise and Qualified LGU prior to Subloan approval, monitoring during Qualified Subproject implementation and evaluation after the Qualified Subproject is completed.

Free Limit

9. Without prejudice to Section 3.03 of the Loan Agreement, the Borrower shall ensure that the first three Subloans financed under the loan and any Subloans costing more than \$2,000,000 equivalent shall be submitted to ADB for review and approval before the Borrower approves the Subloan. For Subloans below or equal to \$2,000,000, the Borrower shall submit to ADB a Statement of Subloans describing the Subproject, amount applied, purpose of the Subloan, eligibility criteria, including terms and conditions.

Retail relending terms

10. Retail relending shall be for collateralized subprojects between \$100,000 and \$5,000,000, and shall be for LGUs and larger private ventures, including health providers, foundations and health maintenance organizations. Small-scale Subborrowers may also qualify under this relending modality. The relending terms shall be at market interest rates and the repayment shall be based on projected cash flows of subproject, with a repayment period of up to 15 years for civil works, up to 10 years for equipment, up to 5 years for working capital, and a grace period of up to 3 years. Amortization of principal and interest is on a quarterly-basis.

Wholesale relending terms

11. Wholesale relending is for accredited financial intermediaries (including MFIs, rural and thrift banks, cooperatives and NGOs). The amount shall range between \$100,000 and \$500,000. Onlending rates for financial intermediaries (rural banks, coop banks, MFI banks, and NGOs) shall be determined based on cost of funds, loan administration cost, and the credit risk, and that too determines the onlending rate from the financial intermediaries to the Subborrower. The Subborrowers are small-scale health providers such as midwives, physicians, municipal drug stores and municipal drug distribution companies. Each borrowing shall be for an amount ranging between \$1,000 and less than \$100,000. The term of onlending by financial intermediaries depends on the amount and whether the end borrowers are collateralized or uncollateralized. The expected repayment period is up to 10 years, with a grace period of 6 months to 2 years

Project Website

12. Within 12 months of the Effective Date, the Borrower shall establish a project website to disclose project-related information. To the extent permitted under the prevailing banking regulations relevant to banking confidentiality, the Borrower shall disclose all relevant information with regard to the Project activities, including the Subprojects and the stakeholders.

Grievance Redress Mechanism

13. Within 6 months of the Effective Date, the Borrower shall design and approve a grievance redress mechanism, acceptable to ADB, and establish a task force at the PMO. The task force shall receive and resolve complaints/grievances or act upon reports from stakeholders on misuse of funds and other irregularities, including grievances caused by resettlement and environmental issues. The task force shall (a) make public the existence of this grievance redress mechanism through a public awareness campaign in every area where there is a Subproject; (b) review and address grievances of stakeholders in relation to the Project, any of the service providers, or any person responsible for carrying out any aspect of the Project; and (c) proactively and constructively respond to them.

Indigenous People

14. The Borrower shall ensure that Subloan proposals requiring a FPIC is monitored to ensure compliance with the project IPDF, Republic Act No. 8371 on Indigenous Peoples Rights 1997, and the National Commission for Indigenous Peoples Administrative Order 1/2006 on the FPIC Guidelines of 2006. The Borrower shall not approve any Subloan or Subproject until the National Commission for Indigenous Peoples issues a Certificate of Precondition attesting that all FPIC guideline requirements have been met. Information on geographic location of existing and proposed Indigenous Peoples Ancestral Domains/Lands used for FPIC compliance requirements will be updated regularly and periodic monitoring of sub-loan implementation to ensure FPIC agreements are met.

Involuntary Resettlement

15. The Borrower shall ensure that it shall not approve any subproject that involves involuntary resettlement according to ADB's *Policy on Involuntary Resettlement* (1995). The Borrower shall further ensure and certify compliance with the Involuntary Resettlement Framework that no Subloan credit application shall be approved. Due diligence shall be carried out on each proposed Subloan site and approval shall be granted to only those Subloan proposals with clear property title without encumbrances, and without eviction of informal settlers.

Environment

16. The Borrower and the Guarantor, through DOJ, shall comply with the EMS, the Government's environmental laws and regulations and ADB's *Environment Policy* (2002). If there is any discrepancy between the Borrower's EMS, the Guarantor's laws and regulations and ADB's *Environment Policy*, ADB's *Environment Policy* requirements will apply. Construction and operation of all health facilities to be financed under the Subloans shall comply with the Borrower's EMS, the Guarantor's environmental laws and regulations and ADB's Environment Policy. The Borrower shall ensure that only Category B and C

subprojects shall be eligible for financing. The Borrower shall not finance category A subprojects. The Borrower shall further ensure that impacts from category B subprojects shall be mitigated by implementing the measures provided under the EMS. The Borrower shall submit to ADB a report on the environmental status of the project every 6 months, in the form and substance acceptable by ADB.

17. The Borrower shall ensure that the Project is carried out in accordance with ADB's *Policy on Gender and Development (1998)* and the gender strategy contained in the Summary Poverty Reduction and Social Strategy that has been prepared for and agreed between the Borrower and ADB. The Borrower shall ensure that gender specific actions and targets shall be included in the annual implementation plan and in the project monitoring system.

Imprest Account

18. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date an Imprest Account. The Imprest Account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook dated January 2007, as amended from time to time.

(b) The initial and the ceiling amount to be deposited into the Imprest Account shall be estimate of 6 months expenditures to be funded from the imprest account or 10% of the loan amount, whichever is lower.

(c) The SOE procedure may be used to liquidate advances provided into the Imprest Account in accordance with ADB's Loan Disbursement Handbook dated January 2007, as amended from time to time. Any individual payment that may be liquidated under the SOE procedure shall not be more than the equivalent of \$100,000.

Project Performance Monitoring and Evaluation

19. The Borrower shall oversee project performance and submit quarterly reports to the Committee and ADB. To assess impact and outcome, the Borrower shall collect information on the use of health facilities including for indigent, women and children. All Qualified Subprojects shall require baseline and end-of-project health services surveys to assess services improvement in terms of use, quality, affordability, and patient satisfaction. Surveys shall be conducted jointly with subproject feasibility studies prior to investment. In addition, the Borrower, as guided by the Committee and ADB, shall conduct selective qualitative studies to obtain the views of stakeholders on the services and related matters.

20. The Borrower shall ensure a baseline study as part of the feasibility study of each Qualified Subproject. The indicators shall include those from the design and monitoring framework and address issues of equity. The study shall be conducted during and no later than the first 3 months of the Qualified Subproject approval. The Borrower shall also conduct an exit study for each subproject and report the same to ADB within 6 months of the Subproject's completion. The Borrower shall conduct a beneficiaries' impact assessment study. Further, the Borrower shall ensure that (a) the appropriate budget shall be allocated to support the studies; (b) the studies shall be conducted in accordance with the terms of reference developed for such purpose; and (c) the results and findings of the studies shall be provided to ADB.

Reporting Requirements

21. The Borrower shall prepare and submit to ADB (i) a quarterly report on the operational and financial performance of the Project's implementation within 2 months after end of each quarter; (ii) a projected annual disbursement schedule, broken down quarterly by 15 December each year; (iii) an updated 3 year financial projections of the Borrower by 31 March each year; and (iv) a project completion report within 3 months of project completion detailing implementation, costs, loan recoveries, financial conditions of MFIs, an evaluation of the Project's impact on the beneficiaries and other details that ADB may consider necessary.

Midterm Review

22. The Borrower and ADB shall conduct a midterm review during the third year of Project implementation. The midterm review shall (i) review the scope, design, implementation arrangements, and other relevant issues in light of F-1 for health and development objectives and the health policy framework of the project; (ii) identify changes since the time of appraisal relating to sector issues and resource management and allocation, and reassess their impact on future subproject implementation and sustainability; (iii) review implementation performance of all outputs; (iv) review progress in achieving the measurable objectives of the Project; (v) identify problems and constraints; and (vi) formulate appropriate recommendations for corrective action. The midterm review shall also assess the status of procurement, construction/renovation and equipment under each category of the eligible subprojects.

Accounts and Audit

23. The Borrower shall ensure that the participating Qualified LGUs and the participating Qualified Enterprises shall maintain separate Project accounts and records, in accordance with sound accounting principles. The records and accounts must be sufficiently detailed to identify Subloans and Subprojects financed by the Loan and to disclose the sources and expenditures of funds, including counterpart contributions provided in cash or in kind.