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LOAN NUMBER 4163-PHI

LOAN AGREEMENT  
(Ordinary Operations)

(Second Health System Enhancement to Address and Limit COVID-19 under the Asia Pacific  
Vaccine Access Facility (HEAL 2) – Additional Financing)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED 14 DECEMBER 2021

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PHI 54171

**LOAN AGREEMENT**  
**(Ordinary Operations)**

LOAN AGREEMENT dated 14 December 2021 between REPUBLIC OF THE PHILIPPINES ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

**WHEREAS**

(A) ADB has received from the Borrower a governor's letter dated 22 October 2021 ("Governor's Letter"), confirming the Borrower's continued commitment to implement its Vaccination Allocation Plan (as defined hereinafter) and setting forth certain objectives, policies and actions of the Borrower designed to provide access within its territory to additional vaccines for the coronavirus disease ("COVID-19");

(B) By a loan agreement between the Borrower and ADB dated 8 September 2020, as amended ("HEAL Loan Agreement"), for Health System Enhancement to Address and Limit COVID-19 ("HEAL"), ADB provided a loan from ADB's ordinary capital resources in the amount of one hundred twenty-five million (\$125,000,000) for the purpose of the project described in Schedule 1 to the HEAL Loan Agreement, a portion of which will be used for financing the Eligible Vaccines (as defined later in this Loan Agreement);

(C) By a loan agreement between the Borrower and ADB dated 19 March 2021 ("HEAL 2 Loan Agreement"), for Second Health System Enhancement to Address and Limit COVID-19 under the Asia Pacific Vaccine Access Facility ("HEAL 2"), ADB provided a loan from ADB's ordinary capital resources in the amount of four hundred million Dollars (\$400,000,000) for the purpose of the project described in Schedule 1 to the HEAL 2 Loan Agreement ("Initial Project");

(D) the Borrower had also applied to the Asian Infrastructure Investment Bank ("AIIB") for a loan in an amount of three hundred million Dollars (\$300,000,000) to assist in financing a part of the Initial Project, upon the terms and conditions set forth in a loan agreement between the Borrower and AIIB;

(E) the Borrower has applied to ADB for an additional loan for the purposes of supporting the additional activities to the Initial Project described in Schedule 1 to this Loan Agreement ("Project");

(F) the Borrower has also applied to AIIB for a loan ("AIIB Loan") in an amount of two hundred fifty million Dollars (\$250,000,000) to assist in financing a part of the Project, upon the terms and conditions set forth in a loan agreement between the Borrower and AIIB ("AIIB Loan Agreement"); and

(G) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties hereto agree as follows:



## ARTICLE I

### Loan Regulations; Definitions

Section 1.01. All the provisions of ADB's Ordinary Operations Loan Regulations, dated 1 January 2017 ("Loan Regulations"), 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:

- (a) Section 2.01 (Definitions) subsection (xx) shall be deleted and replaced in its entirety as follows:

- (xx) "Reference Rate" means, (i) except as ADB has otherwise made a determination in accordance with Section 3.02(c), in respect of any Loan Currency other than Euro, LIBOR, and in respect of Euro, Euribor; and (ii) if a determination is made in accordance with Section 3.02(c), such other reference rate and any spread for the Loan Currency as ADB shall reasonably determine and promptly notify the Borrower and the Guarantor.

- (b) A new subsection 3.02(c) shall be inserted after subsection 3.02(b) as follows:

Section 3.02(c). If interest on any amount of the Loan is calculated based on LIBOR or Euribor, and ADB determines that (i) such Reference Rate has permanently ceased to be quoted for the relevant Loan Currency or a public statement or publication of information by the regulatory supervisor for the administrator of the Reference Rate announcing such Reference Rate is no longer representative has been made or (ii) ADB is no longer able, or it is no longer commercially acceptable for ADB, to continue to use such Reference Rate for purposes of its asset and liability management, ADB shall apply such other Reference Rate for the relevant Loan Currency, including any applicable spread, as it may reasonably determine. ADB shall promptly notify the Borrower and the Guarantor of such other reference rate and any spread, and of related amendments to the provisions of the Loan Agreement necessary to give effect to its application, which shall become effective as of the date of such notice.

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

- (a) "COVAX" means COVID-19 Vaccines Global Access, one of three pillars of the Access to COVID-19 Tools Accelerator, which was launched in April 2020 by the World Health Organization, the European Commission and France in response COVID-19;
- (b) "COVID-19" means coronavirus disease;





- (c) "Eligibility Criteria" means criteria, as described in paragraph 29 (including footnotes 28, 29 and 30) of ADB's policy on Support to Enhance COVID-19 Vaccine Access;
- (d) "Eligible Expenditures" means categories of expenditures agreed between ADB and the Borrower, to be financed out of the proceeds of the Loan, as further detailed in the PAM;
- (e) "Eligible Vaccine" means a COVID-19 vaccine which, at all times during the Project implementation period, (i) satisfies the Eligibility Criteria, and (ii) has received all necessary authorizations of the Borrower (including from the FDA) for its distribution and administration within the territory of the Borrower, including authorization for use, and any other necessary authorizations for its manufacture, marketing or importation;
- (f) "DOH" means the Borrower's Department of Health, or any successor thereto;
- (g) "FDA" means the Borrower's Food and Drug Administration or any successor thereto;
- (h) "GAP" means the gender action plan prepared for the Project, including any update thereto, containing gender measures to be undertaken during Project implementation, and agreed to between the Borrower, through the Project Executing Agency, and ADB;
- (i) "Goods" means equipment and materials as set out in the Procurement Plan and to be financed out of the proceeds of the Loan, including Eligible Vaccines and any related Nonconsulting Services such as transportation, insurance and training;
- (j) "HCWM Manual" means the Health Care Waste Management Manual, the fourth edition, including any updates thereto, a comprehensive set of guidelines on the safe management of waste generated from health care activities in the territory of the Borrower, which incorporates the relevant requirements of all the Borrower's laws and regulations governing health care waste management and is aligned with international good practice as recommended by the World Health Organization;
- (k) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (l) "Nonconsulting Services" means nonconsulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Loan;
- (m) "PAM" means the project administration manual for the Project dated 15 November 2021 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;



- (n) "Procurement Plan" means the procurement plan for the Project dated 15 December 2021 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Policy, the Procurement Regulations, and other arrangements agreed with ADB;
- (o) "Procurement Policy" means ADB's Procurement Policy – Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (p) "Procurement Regulations" means ADB's Procurement Regulations for ADB Borrowers - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (q) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means DOH or any successor thereto, which is responsible for the carrying out of the Project;
- (r) "Services" means Nonconsulting Services;
- (s) "SPS" means ADB's Safeguard Policy Statement (2009);
- (t) "SRA" means entity designated by the World Health Organization as a stringent regulatory authority for purposes of assessment and approval of COVID-19 vaccines; and
- (u) "Vaccination Allocation Plan" means the Borrower's vaccine allocation plan which is included in the National Deployment and Vaccination Plan for COVID19 vaccines, based on the National COVID-19 Vaccine Roadmap dated 10 December 2020 and approved by the Inter-Agency Task Force for the Management of Emerging Infectious Diseases on 21 January 2021, including updates to either of the Vaccine Allocation Plan or the National COVID-19 Vaccine Roadmap, both attached to and endorsed in the Governor's Letter, which, amongst others, indicate prioritization of COVID-19 vaccine access consistent with international norms and safeguards against exclusion of marginalized and vulnerable groups and set out the national policy in relation to vaccine selection, acquisition, procurement, distribution, deployment and administration in the territory of the Borrower.

## ARTICLE II

### The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of two hundred fifty million Dollars (\$250,000,000), 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 20.5 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to 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:

- (a) LIBOR;
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations; and
- (c) a maturity premium of 0.20% 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 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 1 June and 1 December in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

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) a 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 subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(f) 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

#### Use of Proceeds of the Loan

Section 3.01. The Borrower, through the Project Executing Agency, shall cause the proceeds of the Loan to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower, through the Project Executing Agency, shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 30 September 2024 or such other date as may from time to time be agreed between the Borrower and ADB.

### ARTICLE IV

#### Particular Covenants

Section 4.01. In the carrying out of the Project, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Loan Agreement.

Section 4.02. (a) The Borrower, through the Project Executing Agency, shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.





(c) The Borrower, through the Project Executing Agency, shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Borrower, unless the Borrower shall otherwise agree.

Section 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods, Works and Services, and any relevant records and documents.

## **ARTICLE V**

### **Suspension; Acceleration of Maturity**

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(m) of the Loan Regulations: the AIB Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: any events specified in Section 5.01 of this Loan Agreement shall have occurred.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

## **ARTICLE VII**

### **Miscellaneous**

Section 7.01. The Secretary of Finance 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 the Borrower

Department of Finance  
DOF Building  
Roxas Boulevard  
Manila, Philippines

## Facsimile Numbers:

(632) 8523-9216  
(632) 8521-9495

For ADB

Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines


## Facsimile Numbers:

(632) 8636-2444  
(632) 8636-2015.



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 as of the day and year first above written and to be delivered at the principal office of ADB.

## REPUBLIC OF THE PHILIPPINES

By   
CARLOS G. DOMINGUEZ  
Secretary  
Department of Finance



## ASIAN DEVELOPMENT BANK

By   
KELLY BIRD  
Country Director  
Philippines Country Office



## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to vaccinate priority populations against COVID-19. The Project is described in more detail in the Governor's Letter
2. The Project shall have the following output.

**Output: COVID-19 vaccines efficiently and effectively delivered;** supporting, together with AIIB Loan financing, the procurement and deployment of additional doses of the Eligible Vaccines through either the COVAX facility or bilateral arrangements with vaccine manufacturers or distributors.
3. The Project is expected to be completed by 31 March 2024.

## SCHEDULE 2

### Amortization Schedule

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
1 December 2030	2.439024
1 June 2031	2.439024
1 December 2031	2.439024
1 June 2032	2.439024
1 December 2032	2.439024
1 June 2033	2.439024
1 December 2033	2.439024
1 June 2034	2.439024
1 December 2034	2.439024
1 June 2035	2.439024
1 December 2035	2.439024
1 June 2036	2.439024
1 December 2036	2.439024
1 June 2037	2.439024
1 December 2037	2.439024
1 June 2038	2.439024
1 December 2038	2.439024
1 June 2039	2.439024
1 December 2039	2.439024
1 June 2040	2.439024
1 December 2040	2.439024
1 June 2041	2.439024
1 December 2041	2.439024
1 June 2042	2.439024
1 December 2042	2.439024
1 June 2043	2.439024
1 December 2043	2.439024
1 June 2044	2.439024
1 December 2044	2.439024
1 June 2045	2.439024



1 December 2045	2.439024
1 June 2046	2.439024
1 December 2046	2.439024
1 June 2047	2.439024
1 December 2047	2.439024
1 June 2048	2.439024
1 December 2048	2.439024
1 June 2049	2.439024
1 December 2049	2.439024
1 June 2050	2.439024
1 December 2050	2.439040
Total	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

- (a) to the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule; and
- (b) any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within 2 calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan 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 (a) 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

(b) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.



### SCHEDULE 3

#### Allocation and Withdrawal of Loan Proceeds

##### General

1. The table attached to this Schedule sets forth the Categories of items of Eligible Expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table.)

##### Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be allocated to items of Eligible Expenditures, and disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

##### Reallocation

3. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

- (a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and
- (b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

##### Disbursement Procedures

4. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

##### Retroactive Financing

5. Withdrawals from the Loan Account may be made for Eligible Expenditures incurred under the Project before the Effective Date in connection with the Goods and Services subject to a maximum amount equivalent to 30% of the Loan amount, provided that the expenditures have been incurred after the declaration of the COVID-19 emergency, but not earlier than 12 months before the date of this Loan Agreement.

Condition for Withdrawals from Loan Account

6. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for;

- (a) Category 1 until ADB has received a letter from the Borrower confirming:
  - (i) which COVID-19 vaccine have been selected to be procured using the proceeds of the Loan; and
  - (ii) which of the eligibility criteria in the definition of Eligible Vaccine has been satisfied in respect of the COVID-19 vaccine to be procured,

and based on the information provided in the aforementioned letter, ADB has notified the Borrower that the COVID-19 vaccine proposed to be procured meets the Eligibility Criteria.

- (b) Category 2 until ADB has received a letter from the Borrower confirming that in addition to meeting the condition under paragraph 8(a) above, the proposed vaccine has received all necessary authorizations of the Borrower, and have been authorized by the FDA and any other relevant regulatory authorities for distribution and administration within the territory of the Borrower, and based on the information provided in the aforementioned letter, ADB has notified the Borrower that such vaccine is designated as an Eligible Vaccine.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Loan Account
		Category	
1	Advance payment to supply contract for Eligible Vaccines**	70,000,000	100% of total expenditure claimed*
2	Supply and delivery contract for Eligible Vaccines**	180,000,000	100% of total expenditure claimed*
	<b>TOTAL</b>	250,000,000	

\* Exclusive of taxes and duties imposed within the territory of the Borrower.

\*\* Subject to the condition for withdrawal described in paragraph 6 of Schedule 3.



## SCHEDULE 4

### Execution of Project; Environmental, Social Financial and Other Matters

#### Implementation Arrangements

1. The Borrower, through the Project Executing Agency, shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower, through the Project Executing Agency, and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

#### Procurement

2. The Borrower, through the Project Executing Agency, shall ensure that:
- (a) unless otherwise approved by ADB, the procurement of Goods and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations;
  - (b) Goods and Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The Borrower, through the Project Executing Agency, may modify the detailed arrangements set forth in the Procurement Plan only with the prior agreement of ADB, and such modifications must be set out in the updates to the Procurement Plan;
  - (c) Goods and Services may also be procured under the Project from non-member countries of ADB; and
  - (d) (i) all Goods procured and Services obtained (including 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; and (ii) all contracts for the procurement of Goods and Services contain appropriate representations, warranties, and, if appropriate, indemnities from the contractor supplier, consultant or service provider with respect to the matters referred to in this subparagraph.

3. The Borrower, through the Project Executing Agency, may appoint a procurement agent to carry out procurement of Goods in accordance with the terms and conditions set forth in the Procurement Plan. The Borrower, through the Project Executing Agency, shall ensure that such procurement agent follows all the requirements of the Loan Agreement and the Procurement Plan.

#### Safeguards

4. The Borrower, through the Project Executing Agency, shall ensure that the Project does not have any environmental, involuntary resettlement or indigenous peoples impacts, all

within the meaning of the SPS. In the event the Project does have any such impact, the Borrower, through the Project Executing Agency, shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

#### Prohibited List of Investments

5. The Borrower shall ensure, or cause the Project Executing Agency to ensure, that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

#### Gender and Development

6. The Borrower, through the Project Executing Agency, shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

#### Vaccine Selection, Vaccination Allocation Plan

7. The Borrower:

- (a) represents that it has conducted its own due diligence, and made its own independent determination of, the quality, safety, and efficacy of the Eligible Vaccines to be procured under the Project;
- (b) shall ensure that Loan proceeds allocated for financing of vaccines shall only be used for the procurement, distribution or administration of a vaccine which has been confirmed by ADB to be an Eligible Vaccine;
- (c) assumes sole responsibility for the selection, importation, procurement, distribution, marketing or administration, of any Eligible Vaccine under the Project, and agrees that ADB shall have no responsibility or liability in respect thereof;
- (d) shall ensure that the deployment, distribution and administration of the Eligible Vaccines are implemented in accordance with the Vaccination Allocation Plan; and
- (d) shall (i) inform and exchange views with ADB on, any changes to the Vaccination Allocation Plan, and any sector, legal, regulatory or policy reform discussions that may be held with other bilateral or multilateral agencies that may have implications on the implementation of the deployment, distribution and administration of the Eligible Vaccines, and (ii) provide ADB a reasonable opportunity to comment on any resulting policy proposal.

8. In instances where any COVID-19 vaccine which ADB has not confirmed as an Eligible Vaccine is proposed for procurement under the Project subsequent to the initial



withdrawal from the Loan Account for any Eligible Vaccine, the Borrower shall ensure that no withdrawal request is made from the Loan Account in relation to;

- (a) Category 1 in Table in Attachment to Schedule 3 to this Loan Agreement until ADB has received a letter from the Borrower confirming:
  - (i) which COVID-19 vaccine have been selected to be procured using the proceeds of the Loan; and
  - (ii) which of the Eligibility Criteria in the definition of Eligible Vaccine has been satisfied in respect of such vaccine, and based on the information provided in the aforementioned letter, ADB has notified the Borrower that the COVID-19 vaccine proposed to be procured meets the Eligibility Criteria; and
- (b) Category 2 in Table in Attachment to Schedule 3 to this Loan Agreement until ADB has received a letter from the Borrower confirming that in addition to meet the condition under paragraph 8(a) above, the proposed vaccine has received all necessary authorizations of the Borrower, and have been authorized by the FDA and any other relevant regulatory authorities for distribution and administration within the territory of the Borrower, and based on the information provided in the aforementioned letter, ADB has notified the Borrower that such vaccine is designated as an Eligible Vaccine.

#### Compliance with Local Laws

9. The Borrower shall ensure that the selection, importation, procurement, deployment, distribution, marketing, administration and disposal of any Eligible Vaccine are conducted in accordance with the applicable laws and regulations of the Borrower.

10. The Borrower, through the FDA and any other relevant regulatory authorities, shall promptly take all such steps as may be necessary to facilitate the continuing authorization of Eligible Vaccines for distribution and administration within the territory of the Borrower, including through the prompt issuance or renewal of all the necessary authorizations, provided that the requisite quality, safety efficacy and other legal requirements for authorization continue to be met. The Borrower shall promptly inform ADB of any event or circumstance which may arise that may prevent, hinder, delay or place conditions on such continuing authorization.

#### Vaccine Storage, Transportation and Waste Management

11. The Borrower, through the Project Executing Agency, shall ensure that:

- (a) Eligible Vaccines are properly stored, handled and transported within the territory of the Borrower to preserve their quality, efficacy and safety in accordance with, the relevant vaccine manufacturer's requirements, applicable laws and regulations of the Borrower and international good



practice, including the effective vaccine management framework of the World Health Organization and the United Nations Children's Fund; and

- (b) any medical or other waste generated in connection with the storage, transportation, distribution or administration of Eligible Vaccines and associated medical equipment, is properly treated, disposed of and managed in accordance with the HCWM Manual.

#### ADB's Limitation of Liability

12. The Borrower agrees and acknowledges that:

- (a) the confirmation by ADB of any vaccine as an Eligible Vaccine does not constitute an endorsement, or warranty of the fitness, by ADB of such vaccine for any particular purpose, including with regard to its quality, safety or efficacy, and the Borrower is exclusively responsible for authorizing the use of any Eligible Vaccines, for distribution and administration within the territory of the Borrower, including but not limited to quality monitoring throughout the supply chain, compliance with applicable treatment guidelines and application of measures to monitor and address adverse reactions; and
- (b) ADB disclaims any and all financial or other liability and responsibility for any injury, death, loss, damage or other prejudice of any kind whatsoever that may arise as a result of or in connection with the selection, procurement, importation, manufacturing, fill and finish, distribution, marketing, administration or use of any vaccine under the Project or the treatment, disposal, or management of any medical or other waste generated in connection with the storage, handling, transportation, distribution or administration of any such vaccine.

#### Counterpart Support

13. The Borrower, through the Project Executing Agency, shall ensure that the counterpart funding required for successful Project implementation is allocated and provided on a timely basis. In addition to the foregoing, the Borrower shall ensure that the Project Executing Agency has sufficient funds to satisfy its liabilities arising from any Goods contract.

#### AIIB Cofinancing

14. Within 3 months of the Effective Date, the Borrower shall have duly executed and delivered the AIIB Loan Agreement, and shall have fulfilled all conditions precedent to its effectiveness.

#### Governance and Anticorruption

15. The Borrower and the Project Executing Agency shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right

to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices, or other integrity violations relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

16. The Borrower and the Project Executing Agency shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing Agency, implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project. Firms or individuals who are debarred or temporarily suspended by ADB are ineligible to participate in ADB financed, administered or supported activities.