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LOAN NUMBER 4222-PAK(COL)

PROGRAM AGREEMENT

(Khyber Pakhtunkhwa Health Systems Strengthening Program)

between

ASIAN DEVELOPMENT BANK

and

KHYBER PAKHTUNKHWA PROVINCE

DATED 4 November 2022

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PAK 54297

## **PROGRAM AGREEMENT**

PROGRAM AGREEMENT dated 4 November 2022 between ASIAN DEVELOPMENT BANK ("ADB") and KHYBER PAKHTUNKHWA PROVINCE ("Khyber Pakhtunkhwa").

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between Islamic Republic of Pakistan ("Borrower") and ADB, ADB has agreed to make to the Borrower a concessional loan of one hundred million Dollars (\$100,000,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to DOH, through Khyber Pakhtunkhwa and that Khyber Pakhtunkhwa acting through DOH agrees to undertake certain obligations towards ADB set forth herein; and

(B) Khyber Pakhtunkhwa, acting through DOH, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Program Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) Khyber Pakhtunkhwa, through DOH, shall carry out the Program with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices and in accordance with this Program Agreement.

(b) In the carrying out of the Program, Khyber Pakhtunkhwa, through DOH, shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to the Program Executing Agency, and all obligations set forth in the Schedule to this Program Agreement.

Section 2.02. Khyber Pakhtunkhwa shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, land and

other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Program.

Section 2.03. (a) ADB and Khyber Pakhtunkhwa shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) Khyber Pakhtunkhwa, through DOH, shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Program, the performance of its obligations under this Program Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and Khyber Pakhtunkhwa, through DOH, shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Program, Khyber Pakhtunkhwa, DOH and the Loan.

Section 2.04. Khyber Pakhtunkhwa, through DOH, shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan; (ii) the implementation of the Program, including the accomplishment of the DLIs and implementation of the actions specified in the PID; and (iii) any other matters relating to the purposes of the Loan.

Section 2.05. (a) Khyber Pakhtunkhwa, through DOH, shall (i) maintain separate accounts and records for the Program; (ii) prepare annual financial statements for the Program 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 Program that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, 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 Program 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) Khyber Pakhtunkhwa shall enable ADB, upon ADB's request, to discuss the financial statements for the Program and the financial affairs of Khyber Pakhtunkhwa and DOH where they relate to the Program with the auditors appointed by 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 DOH, unless DOH shall otherwise agree.

Section 2.06. Khyber Pakhtunkhwa shall enable ADB's representatives to inspect the Program and any relevant records and documents.

Section 2.07. (a) Khyber Pakhtunkhwa shall, promptly as required, take all action within its powers to maintain its constitutional 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 Program or in the conduct of its operations.

(b) Khyber Pakhtunkhwa shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) Khyber Pakhtunkhwa shall at all times operate and maintain its equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.08. Except as ADB may otherwise agree, during the course of the Program, Khyber Pakhtunkhwa, through DOH, shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Program Agreement.

Section 2.09. Except as ADB may otherwise agree, Khyber Pakhtunkhwa through DOH, shall apply the proceeds of the Loan to the financing of expenditures on the Program in accordance with the provisions of the Loan Agreement and this Program Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Program.

Section 2.10. Khyber Pakhtunkhwa shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Program. Khyber Pakhtunkhwa shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Program Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify Khyber Pakhtunkhwa, through DOH, of such date.

Section 3.02. This Program Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Program Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

## ARTICLE IV

### Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Program Agreement and any agreement between the parties contemplated by this Program Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

#### For ADB

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

#### Facsimile Numbers:

(632) 8636-2444  
(632) 8636-2428

#### For DOH

Secretary, Health Department  
Government of Khyber Pakhtunkhwa  
Civil Secretariat, Peshawar  
Pakistan

#### Facsimile Number:

+92 91 9210419.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Program Agreement by or on behalf of Khyber Pakhtunkhwa may be taken or executed by Secretary, DOH or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) Khyber Pakhtunkhwa shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Program Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence

in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

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

ASIAN DEVELOPMENT BANK

By



YONG YE

Country Director  
Pakistan Resident Mission

KHYBER PAKHTUNKHWA PROVINCE

By



AMER SULTAN TAREEN  
Secretary  
Health Department

## SCHEDULE

### Execution of Program

#### Implementation Arrangements

1. Khyber Pakhtunkhwa, through DOH, shall ensure that the Program is implemented in accordance with the detailed arrangements set forth in the PID. Any subsequent change to the PID shall become effective only after approval of such change by DOH and ADB. In the event of any discrepancy between the PID and this Program Agreement, the provisions of this Program Agreement shall prevail.
2. Khyber Pakhtunkhwa, through DOH, shall ensure that the aggregate amount of Eligible Expenditures under the Program is equal to or exceeds the Loan proceeds withdrawn by the Borrower for the Program. Such Eligible Expenditures are part of the expenditures incurred under the RSHC Program, but they exclude any expenditures for (a) procurement of works, goods and services from countries which are not members of ADB; (b) procurement of works, goods and services from persons or entities debarred or suspended by ADB; (c) procurement involving High-Value Contracts; (d) any activities which are classified as category A for environmental impact under the SPS; (e) any activities assessed as likely to have significant adverse impacts that are sensitive, diverse, or unprecedented on environment and/or affected people; and (f) any activities which are prohibited investment activities provided in Appendix 5 of the SPS.

#### DLI Compliance and Program Dialogue

3. Khyber Pakhtunkhwa, through DOH, shall ensure that all DLIs achieved under the Program continue to be complied with for the duration of the RHSC Program.
4. Khyber Pakhtunkhwa, through DOH, shall keep ADB informed of discussions with other multilateral or bilateral aid agencies that may have implications for the implementation of the RHSC Program and the Program and shall provide ADB with an opportunity to comment on any resulting proposals. Khyber Pakhtunkhwa, through DOH, shall give due consideration to ADB's views before finalizing and implementing any such proposal.

#### Counterpart Support

5. Khyber Pakhtunkhwa, through DOH, shall ensure that adequate budgetary allocation for each financial year (each such financial year commencing on 1 July in a calendar year and ending on 30 June in the immediately following calendar year) is provided and made available for the purposes of the timely and effective implementation of the Program.

#### Operational, Monitoring and Evaluation, Financial Management, Fiduciary and Human Resources Management Requirements

6. Khyber Pakhtunkhwa, through DOH, shall ensure that all Program Actions in the areas of operational, monitoring and evaluation, financial management, fiduciary and human resources management requirements are implemented in a timely and efficient manner.



### Procurement

7. Khyber Pakhtunkhwa, through DOH, shall ensure that each contract under the Program is awarded on the basis of the Program's procurement system, having due regard for principles of competition, economy and efficiency, transparency, and fairness and equal opportunity.

8. Khyber Pakhtunkhwa, through DOH, shall ensure that all Program Actions in the area of procurement are implemented in a timely and efficient manner.

### Environmental and Social Safeguards

9. Khyber Pakhtunkhwa, through DOH, shall ensure that all Program Actions in the area of environmental and social safeguards are implemented in a timely and efficient manner.

10. (a) Khyber Pakhtunkhwa, through DOH, shall ensure that no construction or rehabilitation works under the Program involve significant adverse environmental impacts that may be classified as category A under the SPS. Prior to commencing any construction or rehabilitation works under the Program, Khyber Pakhtunkhwa, through DOH, shall conduct a screening to ensure that any works that may be classified as category A for environment impacts within the meaning of SPS are excluded from the Program.

(b) Khyber Pakhtunkhwa, through DOH, shall ensure that the preparation, design, construction, implementation, operation and decommissioning of all activities under the Program comply with: (i) all applicable laws, regulations and guidelines of the Borrower relating to environment, health and safety; (ii) the Environmental Safeguards; and (iii) all measures and requirements, including monitoring requirements set forth in the PAP.

11. Khyber Pakhtunkhwa, through DOH, shall ensure that the preparation, design, construction, implementation, operation and decommissioning of all activities under the Program comply with (a) all applicable laws and regulations of the Borrower relating to resettlement; (b) Involuntary Resettlement Safeguards; and (c) all measures and requirements, including monitoring requirements set forth in the PAP.

12. Khyber Pakhtunkhwa, through DOH, shall ensure that the Program does not involve any indigenous people risks or impacts within the meaning of the SPS. If due to unforeseen circumstances, the Program involves any such impacts, the Borrower shall ensure that the Program complies with (a) all applicable laws and regulations of the Borrower relating to indigenous peoples; (b) Indigenous Peoples Safeguards; and (c) all measures and requirements, including monitoring requirements set forth in the PAP.

### Gender and Social Equality

13. Khyber Pakhtunkhwa, through DOH, shall ensure that all Program Actions in the area of gender and social equality are implemented in a timely and efficient manner.

### Governance and Anticorruption

14. Khyber Pakhtunkhwa, through DOH, shall ensure that the Program complies with the Anticorruption Guidelines and that all appropriate and timely measures are taken to prevent,



detect and respond to allegations of fraud, corruption or any other prohibited activities relating to the Program in accordance with the Anticorruption Guidelines.

15. Khyber Pakhtunkhwa, through DOH, shall (a) promptly inform ADB of any allegations of fraud, corruption or any other prohibited activities relating to the Program; and (b) cooperate fully with any investigation by ADB on such allegations and extend all necessary assistance, including providing access to all relevant records, for satisfactory completion of such investigation.

16. Within 90 days of the Effective Date, Khyber Pakhtunkhwa shall ensure DOH updates its public website to (a) provide information on bidding procedures, bidders, contract awards and physical progress of the Program; (b) post the audited annual financial statements for the Program, as such financial statements become available; and (c) disseminate other relevant information on Program implementation.