

Memorandum of Agreement

BETWEEN

THE MINISTRY OF HEALTH AS PRINCIPAL-RECIPIENT

&

Name of Institution

.....

AS

National Program (NP) / Sub-Recipient (SR)

.....

FOR THE GLOBAL FUND PROGRAM GRANT

ROUND 4

MoA Number:

Phnom Penh, Cambodia

Date:.....

MEMORANDUM OF AGREEMENT

Section 1. PURPOSE OF AGREEMENT

- 1.1 This Memorandum of Agreement (hereinafter referred as to “MoA”) between the Ministry of Health in Cambodia as the Principal Recipient (hereinafter referred as to “PR”) and the **Name of Institution**. As the **NP/ SR** defines the terms and conditions under which the Principal Recipient will provide Global Fund allocated financial resources to the **NP/ SR** as applicable in the areas of financial, procurement and monitoring and evaluation following guidelines.
- 1.2 This MoA, made in Phnom Penh, Cambodia, is entered into in connection with the program entitled “*Forging Partnerships - Going to scale and pilot innovative interventions in the fight against HIV/AIDS, Tuberculosis (TB) and Malaria*” (hereinafter referred as to “the Program”). The Principal-Recipient is administering the Program in collaboration with the **Name of Institution** for the fight against HIV/AIDS, TB and Malaria (hereinafter referred as to **Name of Institution** and pursuant to an agreement with the Global Fund to Fight AIDS, Tuberculosis, and Malaria (GFATM), a non-profit foundation established under the laws of Switzerland (hereinafter referred as to “the Global Fund”). The Principal-Recipient of the Program is authorized to provide Global Fund allocated financial resources to the **NP/ SR** as applicable in the financial, procurement and monitoring and evaluation guidelines to other entities when necessary to carry out activities approved by the Country Coordinating Committee (CCC) in Cambodia and the Global Fund in Geneva, Switzerland.
- 1.3 The **NP/ SR** has agreed to carry out the activities described in the attached Intended Program Results and Budget (hereinafter referred as to “Annex A”), Monitoring and Evaluation Plan (hereinafter referred as to “Annex D Part 2”, detailed work plan (hereinafter referred as to “Annex E1”), detailed budget plan (hereinafter referred as to “Annex F”) and Procurement Plan for Year 1 (herein after referred as to “Annex G”). Annex A, Annex D Part 2, Annex E1, Annex F, and Annex G shall form an integral part of this Agreement. The detailed plans for Year 2 will be submitted by the **NP/ SR** for the approval by the PR within three months before ending of Year 1 and the approved detailed plans for Year 2 will be also part of this Agreement.

Section 2. RESPONSIBILITIES OF **NP/ SR**

- 2.1 The **NP/ SR** agrees to implement a program of work prescribed in Annex D Part 2 and Annex E1 leading to the intended results, as defined by indicators described in the Annex A. None of the funds and resources provided for under this Agreement can be used for any purpose other than for which there are expressly set forth in Annex A, Annex D Part 2, Annex E1, Annex F and Annex G.
- 2.2 The **NP/ SR** understands that the Principal-Recipient has the right to conduct an independent financial, administrative or technical evaluation of its activities under the Program. The **NP/ SR** agrees to cooperate fully in the execution of any such evaluation.
- 2.3 The **NP/ SR** needs to provide to the Principal-Recipient the name(s), title(s) and authenticated specimen signature of the designated official(s) of the **NP/ SR** no later than one week after this Agreement is signed. In addition, it is required that designated focal person of **NP/ SR** in the area of Monitoring and Evaluation, Procurement, Finance, and Administration shall be communicated officially also to the PR no later than one week after this Agreement is signed.
- 2.4 The **NP/ SR** agrees to operate and maintain a separate bank account for receipt and disbursement of funds under this Agreement with the reputable and reliable bank in

Cambodia. It is recommended to select National Bank of Cambodia for this purpose to ensure the reliability of banking system. However, if **NP/SR** chooses to operate with other bank than this recommended one, it is the **NP/SR**'s own responsibility to ensure the reliability of banking system for the entire operation of the Program. The following details will be submitted to the Principal-Recipient no later than 7 days after the signature of the Agreement:

Account in the Name(s) of:
Name of the Bank:
Type of Account:
Bank Account No.:
Bank Address:

All payments will be made in US dollars deposited in the above-mentioned **NP/SR**'s bank account.

2.5 The **NP/SR** agrees to maintain clear, accurate and complete records of the funds and resources received under this Agreement. The **NP/SR** agrees to maintain its books and records in such a manner that its receipts and expenditures are set forth separately within them, in an easily verifiable form. All supporting documentation shall be retained by the National Program, including original bills, receipts, invoices, and correspondence pertaining to its receipt and expenditure of all funds and/or resources under this Agreement a minimum of five years after the completion of the Program. **NP/SR** has to ensure that all electronic files related to the GFATM grant will be backed up regularly and maintain in a proper manner to avoid the lost of files.

2.6 The **NP/SR** shall provide financial and technical reports to the Principal-Recipient every six months detailing expenditures and receipts, if any, and details of its activities with respect to this Agreement. In addition, within fifteen days (15) after the termination of this Agreement or the completion of the Intended Program Results and Budget set forth in Annex A, whichever occurs first, the National Program shall provide the Principal-Recipient with a final report indicating all expenditures made from such funds (including salaries, travel and supplies) and the progress made toward the goals set forth in Annex A. Reporting requirement are as follows:

2.6.1 Periodic Reports (Semi-Annual Reports)

Not later than 15 days after the close of each semester of the fiscal year, the **NP/SR** shall submit to the Principal-Recipient, in the format set forth in Annex B, a periodic report on the programmatic achievements and expenditures of the Program. For purposes of this Article, a reporting period will be the same as the interval stated as the planned disbursement period in Annex A and Attachment 1 (reporting period) to this Agreement. The report shall reflect (i) financial activity during the semester in question and cumulatively from the beginning of the Program until the end of the reporting period, using the line items set forth in the Program budget in Annex A and budget lines as indicated in the Annex F and in the chart of accountant of the Financial Guidelines issued by the Office of the Principal Recipient; and (ii) a description of progress towards achieving the agreed-upon milestones set forth in Annex B. The **NP/SR** shall explain in the report any variance between planned and actual achievements and between planned and actual expenditures for the period in question.

2.6.2 Fiscal-Year Progress Reports (Annual Reports)

Not later than 45 days after the close of each fiscal year, the **NP/SR** shall submit to the Principal-Recipient, in form and substance satisfactory to the Principal-Recipient, an annual financial and programmatic monitoring report (in addition to the semi-annual reports) covering the preceding fiscal year in the format set forth in Annex C. Attachment 1 is formed as part of this Agreement.

2.6.3 The Principal-Recipient reserves the right to have the reports redrafted.

2.7 Annual External Independent Financial and Procurement Audit Report:

2.7.1 As part of the conditionality, the **NP/SR** is required to provide to the Principal-Recipient a yearly external independent financial and procurement audit report covering the Global Fund Program grant and to cooperate with the Principal-Recipient on audit related matters that may be required in the future. It is understood that this audit will be paid from the **NP/SR**'s overall allocated budget under the Program granted. **NP/SR** shall comply with the approved Procurement Guidelines (Version 7) and the approved Financial Guidelines (Version 3) for the scope of work for such audit.

2.7.2 The audit reports including internal control (two original copies: one for Principal Recipient and one to be sent by the Principal Recipient to the Global Fund) must be reached the Office of the Principal Recipient within three months after the end of the period under audit. It is agreed that if the annual audit report does not reach the Office of the PR within the period mentioned, the PR will not disburse funds to the **NP/SR** for the following semester and/or subsequent year until the audit report was received.

2.7.3 The audit shall be carried out in accordance with International Standards of Auditing (ISA) published by the International Auditing Practices Committee of the International Federation of Accountants and, will include such tests considered necessary in order to provide sufficient evidence that gives reasonable assurance that the financial statements are free from material misstatement whether caused by fraud or other irregularity or error. The following main points shall be included also in the audit:

- The auditor is expected to issue an opinion on the implementing agency's compliance with all the Conditions Precedents stated in the MoA,
- The auditor should not be an arbitrator in any disagreements between the **NP/SR** and the PR,
- The covenant(s) for which an opinion will be issued, by a very specific reference to the MoA section(s) and paragraph number(s),
- GF grant funds spent in accordance with the agreement and guidelines issued by the Office of the PR and the GF
- Financial Statement including Statements of Sources and Uses of Funds/Cash Flow Statement
- Special accounts opened and operated by the **NP/SR**
- Statements of expenditures
- Expenses against Category in accordance with the approved budget plan
- Procurement documents (quotation/bid invitations, evaluations and awards where appropriate)
- Purchase contracts and purchase orders and goods receipt reports
- Consistency of procurement of goods and services with the financial and procurement procedures and guidelines of the Program grant of the PR and MoA of **NP/SR**
- Suppliers' invoices and other evidence prior to payment
- Accuracy of accounting records and adequacy of supporting documents
- Evidence of payment, bank records and reconciliation
- Record of fixed assets purchased, including the physical inventory

2.7.4 In addition to the **NP/SR**'s audit reports, PR reserves the right to conduct financial and procurement audit at any time and **NP/SR** shall fully cooperate with such audit at the timeframe defined by the PR.

2.8 Monitoring and Evaluation plan

After this Agreement enters into force, a detailed plan for the monitoring and evaluation of the Program following format set forth in Annex D and Guidelines for Monitoring and Evaluation, for Procurement, and for Finance provided by the office of the Principal-Recipient will be part of this Agreement and the **NP/SR** agrees to undertake activities set forth in Clause 1.3 above. The Principal-Recipient may provide further guidance (or

inform) to [NP/ SR](#) regarding the plan if the Principal-Recipient received any instruction from the Global Fund on the plan.

2.9 Evaluation of the Program Grant

The Global Fund and/or the Principal-Recipient, in its discretion, may conduct an independent review or evaluation of the Program. If, so, the Principal-Recipient will inform the [NP/ SR](#) of such event and the [NP/ SR](#) shall cooperate fully with the Principal-Recipient in the execution of the review or evaluation.

2.10 Every six months, the [NP/ SR](#) shall submit to the Principal-Recipient requests for disbursements of funds from the Grant, in form and substance satisfactory to the Principal-Recipient duly signed by the authorized person(s) mentioned in Clause 2.3. Submission of the report mentioned in paragraph 2.6 and 2.7 will condition the disbursement of the next tranche.

2.11 The [NP/ SR](#) agrees to cooperate with the Principal-Recipient in monitoring its use of the funds and/or resources disbursed pursuant to this Agreement. The [NP/ SR](#) agrees to provide, compile and have available for the Principal-Recipient whatever additional record or information in writing, that the Principal-Recipient may reasonably request with respect to the funds and resources it has received.

2.12 The [NP/ SR](#) agrees to allow the Principal-Recipient to audit its expenditures under the Program, pursuant to the terms and conditions set forth by the Principal-Recipient.

2.13 The [NP/ SR](#) shall allow authorized representatives of the Principal-Recipient and of the National Program to visit its sites on an ad hoc basis, at the time and places designated by the Principal-Recipient. The purpose of such ad hoc site visits is to allow the Principal-Recipient to monitor and evaluate activities under the Program and to determine whether value for money has been obtained.

2.14 The [NP/ SR](#) shall inform the Principal-Recipient of any difficulties it may face in obtaining the agreed upon objectives, as soon as any such difficulties are encountered.

2.15 Sub-contract

2.15.1 Responsibility for [Sub-National Program \(SNP\) / Sub-Sub-Recipient \(SSR\)](#) and other fourth party

The [NP/ SR](#) will be fully responsible for the [SNP/ SSR](#) and other fourth party described in the integrated Proposal submitted to the Global Fund in Geneva for funding that may be sub-contracted for the implementation of the Program. No grant funds will be provided to the [SNP/ SSR](#) and other fourth party that was not included in the integrated proposal submitted to the Global Fund. The [NP/ SR](#) will be responsible for all resources it receives and for the results it and the [SNP/ SSR](#) and other fourth party (if any) are to accomplish. The [NP/ SR](#) shall ensure that all agreements with [SNP/ SSR](#) and other fourth party are in compliance with this Agreement. The [NP/ SR](#) should provide to the Principal-Recipient a copy of the form or forms of agreement or contract with the [NP/ SR](#) and any other fourth party, acceptable to the Principal-Recipient, which the [NP/ SR](#) will use with [SNP/ SSR](#) and other fourth party. In the event that the Principal-Recipient has any suggested amendment in line with overall Global Fund requirements on this form or forms of agreement or contract, the Principal-Recipient will communicate these to the [NP/ SR](#), who will be responsible for amending the contract with the [SNP/ SSR](#) and other fourth party to comply with the Principal-Recipient's request. The [NP/ SR](#) will have to ensure that the sub-contracts are in line with the management, financial and procurement approved guidelines.

2.15.2 The Principal-Recipient may, from time to time, monitor and evaluate the [SNP/ SSR](#) and other fourth party activities. The [NP/ SR](#) shall require all

.....**SNP/SSR**.....and other fourth party to cooperate fully in the execution of the monitoring and evaluation.

2.15.3 The **NP/SR**.....'s accountability and reporting shall encompass the funds disbursed to all**SNP/SSR**..... and other fourth parties and to the activities**SNP/SSR**.....and other fourth parties carry out using Program funds. The **NP/SR**..... shall have systems in place, acceptable to the Principal-Recipient and the Global Fund, to assess the capacity of **SNP/SSR**..... and other fourth parties, monitor their performance, and ensure regular reporting from them in accordance with this Agreement. The**NP/SR**..... shall comply with such systems to assess**SNP/SSR**.....and other fourth parties and supervise and monitor their activities and reporting under the Program.

2.15.4 With respect to **SNP/SSR**..... and other fourth parties that enter into agreements with the **NP/SR**....., the **NP/SR**..... shall remain solely responsible for the actions of such**SNP/SSR**..... or other fourth parties and shall not, under any circumstances, indemnify, hold and save harmless, engage the responsibility of the Principal-Recipient and the Global Fund.

2.16 The **NP/SR**..... may be allowed to modify the agreed activities to reach the objective of the Program during the course of the implementation by submitting a request in writing to the Principal-Recipient. Budget variation from one budget line to another above 10% would require prior acceptance from the Principal-Recipient (Ref: Financial Guidelines Version 3).

2.17 Conditions Precedent to Disbursement from Principal Recipient to **NP/SR**

2.17.1 Conditions Precedent to First Disbursement from Principal Recipient of Ministry of Health to **NP/SR..... (Terminal Date is**Date**..... as stated in the Program Grant Agreement between the Global Fund and the Principal-Recipient):**

Before disbursement of Grant funds from the Principal Recipient to the**NP/SR**....., the**NP/SR**..... will, except as the Principal Recipient and the **NP/SR**..... may otherwise agree in writing, furnish to the Principal Recipient, in form and substance satisfactory to the Principal Recipient,

- a) Evidence that the**NP/SR**..... has fulfilled the requirement as indicated in Clause 2.3 and 2.4 above.
- b) A letter signed by the Authorized Representative of the**NP/SR**..... setting forth the name, title and authenticated specimen signature of each person authorized to sign disbursement requests under the Terms and Conditions of this Agreement and, in the event a disbursement request may be signed by more than one person, the conditions under which each may sign;

2.17.2 Conditions Precedent to Second Disbursement from Principal Recipient toNP/SR**..... (Terminal Date is**Date**.....):**

Before the second disbursement of Grant funds from the Principal Recipient to the**NP/SR**....., the**NP/SR**..... shall, except as the Principal Recipient and the**NP/SR**..... may otherwise agree in writing, furnish to the Principal Recipient, in form and substance satisfactory to the Principal Recipient,

- a) Evidence that the**NP/SR**..... has obtained adequate insurance cover (including third party liability insurance) for vehicles purchased with Grant funds; and
- b) a revised procurement plan, consistent with Section 5 of this Agreement, for the procurement of health products (the "Revised PSM Plan"); and
- c) the written approval by the Principal Recipient of the Revised PSM Plan.

2.18 Conditions Precedent to Disbursement to **SNP/ SSR** or to other fourth party

Before disbursements of Grant funds from the .. **NP/ SR** .. to **SNP/ SSR** or to other fourth party to implement program, if any, the **NP/ SR** ... will, except as the Principal-Recipient and the **NP/ SR** may otherwise agree in writing, furnish to the Principal-Recipient, in form and substance satisfactory to the Principal-Recipient;

2.18.1 Evidence that the **NP/ SR** or other fourth party has enough capacity and financial and procurement management system in place by providing to the Principal-Recipient the assessment report of each **SNP/ SSR** ... or other means (e.g. official confirmation letter from the National Program to the Principal-Recipient) that describes in details and shows such evidence; and

2.18.2 Evidence that the **NP/ SR** has signed an agreement with each **SNP/ SSR** or each such entity that outlines the roles and responsibilities and reporting requirements of each party to the agreement.

2.19 Any interest or other earnings on funds disbursed by the Principal Recipient to **NP/ SR** and by **NP/ SR** to **SNP/ SSR** under this Agreement shall be used for Program purposes, unless the Principal Recipient agrees otherwise in writing (See Section 7: Special Terms and Conditions).

Section 3. RESPONSIBILITIES OF THE PRINCIPAL-RECIPIENT

3.1 All disbursements from the Principal-Recipient to the **NP/ SR** .. are **subject to availability of funds provided to the Principal-Recipient by the Global Fund**. On the basis of these conditions, the Principal-Recipient shall disburse funds to the .. **NP/ SR** ... as and when the Global Fund has disbursed funds to the Principal-Recipient as per the Principal-Recipient's submission of the Semi-Annual Reports that include the financial data provided by the **NP/ SR** in their Semi-Annual Reports approved by the Country Coordinating Committee (hereinafter referred as to CCC). Note that the Global Fund will commit funds for first two years of the implementation, therefore the originally approved total 5 year grant amount for National Center for HIV/AIDS, Dermatology and STD Control will be adjusted to the 2 year amount of **US dollars 4,509,024** [four million five hundred nine thousand and twenty four United States dollars]. The .. **NP/ SR** .. will be requested to submit its Phase 2 application for the remaining funds within the timeline identified by the PR from the start of Year 1 and Principal Recipient will orient National Program about this Phase 2 process when time comes.

3.2 The amount approved for disbursement will be based on achievement of Program milestones and the expected cash flow needs of the .. **NP/ SR** The Principal-Recipient, at any time, may approve for disbursement an amount less than the disbursement request if the Principal-Recipient concludes that the full disbursement request is not justified. Principal Recipient has full right and authority to decide whether the requested funds by **NP/ SR** can be further disbursed or retained or cut off, based on the **NP/ SR** 's performance and results shown in the semi-annual request of disbursement and progress report of **NP/ SR**, or if there is evidence that **NP/ SR** still has more than required cash in hand or balance in **NP/ SR** .. 's bank account at the time of request.

3.3 Disbursement from the Principal-Recipient to the **NP/ SR** is not subject to adjustment or revision owing to price or currency fluctuations, or changes in the real costs incurred by the **NP/ SR** in the implementation of activities under this Agreement.

Section 4. CONTRACTS FOR GOODS AND SERVICES

Unless the Principal-Recipient agrees otherwise in writing, the **NP/ SR** shall use the approved Financial, and Procurement Guidelines issued by the Office of the Principal-Recipient. At a minimum, such guidelines and practices shall conform to the requirements listed below.

- 4.1 Contracts shall be awarded, to the extent practical, on a competitive basis.
- 4.2 Solicitations for goods and services shall be based upon a clear and accurate description of the goods or services to be acquired.
- 4.3 Contracts shall be awarded only to responsible contractors that possess the potential ability to successfully perform the contracts.
- 4.4 No more than a reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to obtain goods and services.
- 4.5 The **NP/ SR** shall maintain records regarding the receipt and use of goods and services acquired under the Agreement by the National Program, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the National Program, and the basis of award of National Program contracts and orders.
- 4.6 Title to goods or other property financed by the Global Fund grant through the Principal-Recipient under this Agreement, shall be in the name of the Principal-Recipient and the ... **NP/ SR** or other entity approved by the Principal-Recipient.
- 4.7 Utilization of Goods and Services: All goods and services financed with Grant funds will, unless otherwise agreed in writing by the Principal-Recipient, be devoted to the Program until the completion or termination of this Agreement, and thereafter may only be used as the Principal-Recipient may direct in its Letter to the **NP/ SR** after receiving the instruction from the Global Fund on this matter. Unless the Principal-Recipient advises the **NP/ SR** otherwise in writing, all goods and equipments procured under the Grant funds shall be used within Cambodia territory and cannot be sold or transferred to other institutions/organizations to be used for other purposes that are not in compliance with the scope of this Agreement. If it is happened, the Principal-Recipient reserves the right to withdraw such goods and equipments to be kept at the Ministry of Health or the **NP/ SR** will be requested to reimburse to the Principal-Recipient the amount equivalent to the amount at the time of purchased materials, goods and equipments.
- 4.8 From time to time, the Principal-Recipient may issue Letters to further advise the **NP/ SR** regarding policies applicable to the contracts for goods (including pharmaceutical products) and services using Grant funds.
- 4.9 For purchases of imported goods, the National Programs will submit the pro-forma invoices and/or any other relevant documents (as indicated in the PR's Procurement and Financial Guidelines) to the Principal-Recipient in order to enable the Principal-Recipient issue a request of tax exemption to the Ministry of Economy and Finance. The Principal-Recipient will issue such tax exemption letter on a case-by-case under the granted Program only. The **NP/ SR** and/or suppliers will be responsible for the follow-up in obtaining the requested tax exemption.

Section 5. PHARMACEUTICAL AND OTHER HEALTH PRODUCTS

As used in this Article, the following terms shall have the meanings given to them below:

“WHO” means the World Health Organization

The terms “medicines,” “multisource pharmaceutical product,” and “pharmaceutical products” have the meanings used by the WHO in the “Glossary” of its “Marketing Authorization of Pharmaceutical Products with Special Reference to Multisource (Generic) Products: A Manual for Drug Regulatory Authorities.”

The term “health products” includes pharmaceutical products, diagnostic technologies and supplies, bed nets, insecticides, aerial sprays against mosquitoes, other products for prevention (e.g., condoms), or laboratory equipment and supportive products (e.g., microscopes and reagents).

The term “stringent regulatory authority” means the regulatory authority of (a) a member of the Pharmaceutical Inspection Convention or an entity participating in the Pharmaceutical Inspection Cooperation Scheme; or (b) a member of the International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use.

The term “WHO Prequalification Program” means the United Nations Pilot Procurement, Quality and Sourcing Project initiated by the WHO.

The term “GMP” means Good Manufacturing Practice as such term is used by the WHO in its “Marketing Authorization of Pharmaceutical Products with Special Reference to Multisource (Generic) Products: A Manual for Drug Regulatory Authorities.”

With respect to a Host Country, the term “National Drug Regulatory Authority” means the cognizant national drug regulatory authority in such Host Country.

With respect to sub-section g(c) of this Article, a product is “unavailable” when its manufacturer is unable to supply a sufficient quantity of the finished product within 90 days of the date of order.

When a~~NP/SR~~..... carries out procurement of a health product, it shall ensure that such procurement is carried out in compliance with this Article.

a. Procurement assessment and procurement plan

Due to the complexity and significant risks of the procurement of health products, no Grant funds may be used to finance such procurement until:

- (1) the~~NP/SR~~..... has provided evidence to the Principal Recipient that qualified and experience staff in the related field is in place to manage procurement of health products; and
- (2) the~~NP/SR~~..... has submitted to the Principal Recipient, in form and substance satisfactory a plan for the procurement and use of the health products that will be procured that is consistent with this Article, (the “Procurement Plan”). The Procurement Plan shall include a plan to procure and use diagnostic technologies and supplies and other major categories of supplies related to the provision of the medicines.

The Principal Recipient shall advise the~~NP/SR~~..... in writing when it has approved the procurement plan. The~~NP/SR~~..... shall ensure that procurement under the Program is carried out in accordance with the procurement plan.

b. List of medicines to be procured

The~~NP/SR~~..... shall ensure that Grant funds are not used to procure medicines that do not appear in current standard treatment guidelines or essential medicines lists of the World Health Organization, the Host Country government, or the Recipient. The procurement plan shall include a listing of the standard treatment guidelines and essential medicines lists that will apply to the Program.

c. Forecasting and inventory management

The~~NP/SR~~..... shall:

- (1) systematically and regularly update forecasts of the quantities of pharmaceutical and other health products needed for the Program. Initial forecasts for new activities shall be based on morbidity, adjusting the potential demand in light of realistic estimates of the

anticipated capacity to deliver services. Forecasts for ongoing activities shall be based on consumption;

- (2) monitor forecasts and regularly compare estimated needs for pharmaceutical and other health products under the Program with actual consumption of such products and report this information to the Principal Recipient;
- (3) develop a plan and information system to minimize the risk that products will be out of stock;
- (4) not less frequently than semi-annually, report to the Principal Recipient how often products are out of stock; and
- (5) establish (or ensure the establishment of) product-specific levels of local buffer stocks and closely monitor them.

d. Procurement responsibilities

In circumstances where the Principal Recipient has determined that the **NP/ SR** possesses the requisite procurement capacity, the **NP/ SR** shall be responsible for all procurement under the Agreement, and at its discretion, may use, or permit its **NP/ SR** to use, contracted local, regional or international procurement agents to conduct procurements. If the Principal Recipient has not determined that the .. **NP/ SR** possesses the requisite procurement capacity, the .. **NP/ SR** shall use established regional or international procurement agents or other mechanisms acceptable to the Principal Recipient, but shall remain responsible for compliance of all procurement with the terms of the Article.

In all cases, the **NP/ SR** is encouraged to use, capable regional and global procurement services wherever pooling of demand lowers prices for products of assured quality.

e. Procurement practices

The **NP/ SR** shall ensure that the procurement of pharmaceutical products under this Agreement adheres to the Interagency Operational Principles for Good Pharmaceutical Procurement, unless, in cases where actual practices differ from the Interagency Operational Principles for Good Pharmaceutical Procurement, the **NP/ SR** demonstrates, in form and substance satisfactory to the Principal Recipient, a comparable system of competitive procurement by a group of qualified suppliers, transparency and accountability to their practices, and the application of necessary quality assurance mechanisms.

f. Lowest possible price

The .. **NP/ SR** .. shall use good procurement practices, including competitive purchasing from qualified manufacturers and suppliers, as outlined in item e above, to attain the lowest price of products, consistent with quality assurance.

g. Compliance with quality standards

Pharmaceutical products may be financed by Grant funds under the Agreement only if the quality standards of such pharmaceutical products can be assured. For multisource, off-patent products with available dosage from published pharmacopoeial quality standards, the **NP/ SR** may verify compliance with applicable standards in accordance with existing national procedures of the Host Country.

Grant funds may be used to procure a single- or limited-source pharmaceutical product (that is, a pharmaceutical product for which there are not publicly available quality assurance standards, analytic methods, and reference standards) provided that such product meets one of the following standards:

- (1) such product is acceptable under the WHO Prequalification Program; or

- (2) such product has been authorized for use by a stringent regulatory authority; or
- (3) such product has been authorized for use by the National Drug Regulatory Authority; provided that this clause shall only apply until April 30, 2005.

After April 30, 2005, Grant funds may only be used to procure single- or limited-source pharmaceutical products that meet the requirements of either (1) or (2) of this sub-section (g), provided that:

- (a) Contracts entered into by the **NP/ SR** on or before April 30, 2005 with suppliers for products that qualified for purchase under clause (3) of this sub-section g may be honored until such contracts expire or otherwise terminate.
- (b) After April 30, 2005, the **NP/ SR** may not enter into any new contracts, nor extend any existing contracts, for the supply of products that would have qualified for purchase under clause (3) of this sub-section g prior to April 30, 2005.
- (c) If the **NP/ SR** determines that there is only one or no equivalent pharmaceutical product that meets the standards of either (1) or (2) of this sub-section g, or if the National Program determines that the products that meet these standards are unavailable and represents the same to the Principal Recipient, and the Principal Recipient does not object, then Grant funds may be used to procure another equivalent pharmaceutical product, provided that such product is selected in accordance with the following, in order of priority:
 - (i) the manufacturer has submitted an application for approval of such product to the WHO Prequalification Program or a stringent regulatory authority and such product is manufactured at a site that is compliant with the standards of GMP, as certified (after inspection) by the WHO or a stringent regulatory authority.
 - (ii) if the manufacturer of such product has not submitted an application for approval of such product to the WHO Prequalification Program or a stringent regulatory authority, such product is manufactured at a GMP compliant manufacturing site, as certified (after inspection) by the WHO or a stringent regulatory authority.

The **NP/ SR** shall promptly notify the Principal Recipient in writing if it procures any products pursuant to the criteria in clause (i) or (ii) above.

- (d) The Principal Recipient shall contract an independent third-party to conduct random quality analysis of products being procured pursuant to the criteria in clause (c)(i) or (ii) above to ensure the quality of such products. The **NP/ SR** shall permit such third party (and/or its agents) to access its storage sites and to remove samples of products procured pursuant to the criteria in clause (c)(i) or (ii) above for such analysis.
- (e) With respect to a product procured pursuant to the criteria in clause (c)(i) or (ii) above, in the event that: (i) the application submitted by a manufacturer to the WHO Prequalification Program or a stringent regulatory authority for approval of such product is no longer under consideration; or (ii) an independent third party contracted by the Principal Recipient determines that the quality of such product is unacceptable, then the **NP/ SR** shall promptly terminate the contract with the supplying manufacturer for such product.
- (f) Procurement of products according to criteria in clause (c)(i) or (ii) above should be time-limited and the **NP/ SR** should procure products meeting the criteria in clauses (1) or (2) of this sub-section (g) as soon as possible.

In all cases, pharmaceutical products financed by Principal Recipient under the Agreement shall satisfy quality standards prescribed from time to time by the Principal Recipient.

h. National drug registration

If pharmaceutical products intended for use under the Program require approval by the National Drug Regulatory Authority in the Host Country, such pharmaceutical products may be financed under this Agreement only if they have been granted such approval.

i. Monitoring supplier performance

The **NP/SR** shall monitor the performance of suppliers with respect to the quality of the goods and services they supply and shall submit the information gathered to the Principal Recipient electronically for publication over the Internet through a mechanism to be established or specified by the Principal Recipient.

j. Monitoring product quality

The **NP/SR** shall systematically ensure that random samples of pharmaceutical products financed under the Agreement are tested for compliance with applicable quality standards. The **NP/SR** shall have appropriate monitoring systems in place that are acceptable to the Principal Recipient or provide for the use of international procurement agencies acceptable to the Principal Recipient.

k. Supply chain

With regard to the supply chain for pharmaceutical and other health products financed under the Program, the **NP/SR** shall seek to ensure optimal reliability, efficiency and security.

l. Avoidance of diversion

The **NP/SR** shall implement and ensure that **NP/SR** implement procedures that will avoid the diversion of Program-financed health products from their intended and agreed-upon purpose. The procedures should include the establishment and maintenance of reliable inventory management, first-in first-out stock control systems, internal audit systems, and good governance structures to ensure the sound operation of these systems.

m. Adherence to treatment protocols, drug resistance and adverse effects

The **NP/SR** shall implement mechanisms to:

- (1) encourage patients to adhere to their prescribed treatments (which mechanisms shall include but not be limited to fixed-dose combinations, once-a-day formulations, blister packs, and peer education and support);
- (2) monitor and contain drug resistance; and
- (3) monitor adverse drug reactions according to existing international guidelines.

To help limit resistance to second-line tuberculosis drugs and to be consistent with the policies of other international funding sources, all procurement of medicines to treat multi-drug resistant tuberculosis financed under the Agreement must be conducted through the Green Light Committee of the Global Stop TB Partnership.

Section 6. ADDITIONALITY

In accordance with the criteria governing the selection and award of this Grant, the Global Fund and the Principal Recipient has awarded the Grant to the **NP/SR** on the condition that the Grant is in addition to the normal and expected resources that the Host Country usually receives or budget from external or domestic sources. This is an essential condition for the award of this Grant, and, therefore, the **NP/SR** must take all actions available to it to ensure that this condition continues to be met during the period of this Agreement.

Section 7. SPECIAL TERMS AND CONDITIONS

Breach of any of the following Special Terms and Conditions by one party is a material breach of this Agreement for which the other party may terminate or suspend this Agreement under Section 14.

- 7.1 The NP/SR shall be solely liable for the loss or theft of any and all items purchased under the Grant, or for damage to any and all of these items which could not be attributed to force majeure, and, immediately upon any such loss, theft or damage (as the case may be), shall replace such items at its own expenses under the procurement procedures set forth in and agreed pursuant to this Agreement. In addition, the NP/SR shall be solely liable for the loss or theft of any Grant funds held in cash by the NP/SR or by any of its agents and shall replenish any such lost or stolen Grant funds at its own expense from other resources available to the NP/SR. The NP/SR shall have no recourse to the Principal Recipient for any loss or theft of, or damage to, items purchased under the Grant nor for any loss or theft of Grant funds held in cash.
- 7.2 Any income realized by the NP/SR or by any SNP/SSR as a result of social marketing activities shall be accounted for by the NP/SR and by each such Sub-SNP/SSR and used solely for Program purposes.

Section 8. DURATION

- 8.1 This Agreement shall come into effect on Date [as set forth in the Program Grant Agreement signed between the Global Fund and the Principal Recipient on Date for the Program Starting Date] and shall expire on Date [as set forth in the Program Grant Agreement for the Program Ending Date]. The Proposal Completion Date of the Program is Date [as set forth in the Program Grant Agreement].

Section 9. FORCE MAJEURE

- 9.1 In the event of and as soon as possible after the occurrence of any cause constituting "Force Majeure", as defined below, the party affected by the Force Majeure shall give the other party notice and full particulars in writing of such occurrence if the affected party is thereby rendered unable, in whole or in part, to perform its obligations or meet its responsibilities under the Present Agreement. The parties shall consult on the appropriate action to be taken, which may include suspension or termination of the Present Agreement, with either party giving the other a minimum of seven days notice. In the event of any such suspension or termination, the NP/SR will promptly return to the Principal-Recipient any unused funds in accordance with Section 14.
- 9.2 "Force Majeure" shall mean acts of nature, war (declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

Section 10. CONFLICTS OF INTEREST: ANTI-CORRUPTION

- 10.1 The NP/SR shall maintain standards of conduct that shall govern the performance of persons affiliated with the Principal-Recipient (for example, directors, officer, employees, or agents) engaged in the award and administration of contracts, grants, or other benefits using Grant funds. No person affiliated with the National Program shall participate in the selection, award or administration of a contract, grant or other benefit or transaction funded by the Grant, in which the person, or organizations controlled by or substantially involving such person, has or have a financial interest. Nor shall any person affiliated with the NP/SR participate in such transactions involving organizations or entities with which or whom that person is negotiating or has any arrangement concerning prospective employment. Persons affiliated with the NP/SR shall not solicit gratuities, favors or gifts from contractors or potential contractors.

- 10.2 If the **NP/ SR** has knowledge or becomes aware of any actual, apparent or potential conflict between the financial interests of any person affiliated with the **NP/ SR**, the **NP/ SR** shall immediately disclose the actual, apparent or potential conflict of interest directly to the Principal-Recipient.
- 10.3 The Parties shall neither offer a third person nor seek, accept or be promised directly or indirectly for themselves or for another person or entity any gift or benefit that would or could be construed as an illegal or corrupt practice.

Section 11. COMMUNICATION: CORRESPONDENCE

- 11.1 All correspondence related to this Agreement should be directed sent to the following:

For the Principal-Recipient:

Name: **H.E Prof. Eng Huot**
 Title: Secretary of State for Health, responsible for GFATM

For the National Program:

Name:
 Title: Director of

- 11.2 All official communication should be done in writing in English by fax and/or letter. Electronic mail is not considered as an official communication.

Section 12. DISSEMINATION OF INFORMATION

Either party to this Agreement may make the information derived from the implementation of this Program available to the domestic and international community, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information. The Principal-Recipient reserves the right to freely publish or disseminate information derived from the implementation of this Program.

Section 13. ARBITRATION

- 13.1 Any dispute arising out of or relating to this Agreement that is not settled amicably will be submitted to arbitration at the request of either party. The arbitration shall be conducted in Cambodia in accordance with the law of the Royal Government of Cambodia as are presently in force. Where, in the course of such direct negotiation referred to above, the parties wish to seek an amicable settlement of such dispute, controversy, or claim by conciliation, the conciliation shall take place in Cambodia in accordance with the law of the Royal Government of Cambodia as are presently in force. The parties agree to be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such dispute, controversy, or claim.
- 13.2 For any dispute for which the amount at issue is 50,000 US Dollars or less, there shall be one arbitrator appointed by the Country Coordinating Committee (CCC). For any dispute for which the amount at issue is greater than 50,000 US Dollars, there shall be three arbitrators appointed as follows: The Principal-Recipient and the **NP/ SR** shall each appoint one arbitrator, and the two arbitrators so appointed shall jointly request the Country Coordinating Committee (CCC) to appoint a third arbitrator who shall be the chairperson.

Section 14. TERMINATION: SUSPENSION: REFUNDS

- 14.1 The Principal-Recipient may terminated this Agreement in whole or in part upon giving the **NP/ SR** thirty (30) days written notice. The Principal-Recipient may suspend this Agreement in whole or in part upon giving the **NP/ SR** written notice, in which case the National Program will promptly return to the Principal-Recipient any unused funds. Any

portion of this Agreement that is not terminated or suspended shall remain in full force and effect

- 14.2 In addition, upon full or partial termination or suspension of this Agreement, the Principal-Recipient may direct that title to goods financed under the Grant, be transferred to the Principal-Recipient if the goods are in a deliverable state.
- 14.3 In the case of any disbursement that is not made or used in accordance with this Agreement, or those financed goods or services that are not used in accordance with this Agreement, the Principal-Recipient, notwithstanding the availability or exercise of any other remedies under this Agreement, will require the NP/ SR to refund the amount of such disbursement within fifteen (15) days after the NP/ SR receives the Principal-Recipient's request for a refund.
- 14.4 The right to reimbursement set forth in the above article will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement. Prior approval of a disbursement by the Principal-Recipient does not limit the right to refund referred to in Clause 14.2 in the event that evidence shows that the original disbursement by the NP/ SR was not in compliance with the provisions of this Agreement.

Section 15. GENERAL PROVISIONS

- 15.1 This Agreement forms the complete agreement between the NP/ SR and the Principal-Recipient, and supercedes any prior negotiation or agreement, involving the same subject matter as this Agreement.
- 15.2 The Principal-Recipient will not assume any responsibility in connection with life, health, accident, travel or other insurance coverage for any person employed by the NP/ SR which may be necessary or desirable for the purpose of this Agreement or for any personnel undertaking activities under this Agreement. The .. NP/ SR will assume such responsibility.
- 15.3 The rights and responsibilities of the ... NP/ SR are limited to the terms and conditions set forth in this Agreement. In accordance with this, the NP/ SR and its personnel will perform their services in their own name and will have no right to any benefit, payment, compensation, or other allowance except for that which is expressly provided for in this Agreement.
- 15.4 The NP/ SR will be solely responsible for any complaints of third parties that arise out of its acts or omissions during the execution of this Agreement and under no circumstance will the Principal-Recipient be responsible for such complaints. The .. NP/ SR shall indemnify, hold and save harmless and defend at its own expense the Principal-Recipient and any of their officials, agents, servants, employees, subcontractors or independent contractors or other persons performing any services or work in connection with this Agreement. Without limiting the generality of the foregoing, this Article shall extend to suits, claims, demands and liability in the nature of workman's compensation, Products liability, and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the NP/ SR, its officers, agents, servants, employees, subcontractors or independent contractors and/or any others responsible to the NP/ SR, as well as by the Principal-Recipient. The obligations in this Article do not lapse upon termination of this Present Agreement.
- 15.5 Any and all funds that are not utilized at the conclusion of the activities set forth herein shall be promptly returned by the NP/ SR to the Principal-Recipient.
- 15.6 The NP/ SR recognizes that neither the Principal-Recipient nor its representatives have made financial promises, directly or implicitly, except for the quantities specified in this Agreement. In the event that funds are returned to the Principal-Recipient or this Agreement is rescinded, the .. NP/ SR recognizes that the Principal-Recipient has no further obligation to the NP/ SR as a result of the funds' return or the rescission of this Agreement.

- 15.7 No modification or change in this Agreement, renunciation of its provisions or additional contractual provisions will have validity or effect unless they have been previously approved in writing by both parties of this Agreement or their duly authorized representatives, in the form of an amendment to this Agreement duly signed by the aforementioned parties.
- 15.8 The Parties may make the information derived from the implementation of this Agreement available to the domestic or international community, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information. The Principal-Recipient reserves the right to freely publish or disseminate information derived from the implementation of this Agreement.
- 15.9 Nothing in this Agreement shall in any way be construed as creating a relationship of principal and agent, legal partnership, or joint venture between the NP/SR and the Principal-Recipient. The Principal-Recipient will assume **no** liability for any loss or damage to any person, property or entity arising out of or relating to the implementation of this Agreement.
- 15.10 Nothing in this Agreement or related to it should be considered the waiver of any privilege or immunity that belongs to the Principal-Recipient.

Agreed to and signed by duly authorized representatives of the Principal-Recipient and the NP/SR on Date
 on

For The Principal-Recipient		For The National Program	
Name:	H.E. Prof. Eng Huot	Name:	
Position:	Secretary of State for Health, responsible for GFATM	Position:	
Address:	Room 201, Office of PR, Ministry of Health, No. 151-153 Kampuchea Krom Street, Phnom Penh, Cambodia.	Address:	
Tel,	023-427-236 or 724-914	Tel,	
Fax,	023-427-236 or 723-832	Fax,	
Email	Adm_PR@online.com.kh	Email	
Signature		Signature	

Additional Representative:

Additional Representative:

For The Principal-Recipient		For The National Program	
Name:	Dr. Sok Touch	Name:	
Position:	Director, CDC Department Chairperson, PR-GFATM-MoH	Position:	
Address:	Room 201, Office of PR, Ministry of Health, No. 151-153 Kampuchea Krom Street, Phnom Penh, Cambodia.	Address:	
Tel:	023-427-236 or 724-914	Tel:	
Fax:	023-427-236 or 723-832	Fax:	
Email:	Adm_PR@online.com.kh	Email:	
Signature:		Signature:	

Acknowledge by the Chair or Vice-Chair of the Country Coordinating Committee:

Date: _____

Attachment 1

“Reporting Period”

According to the agreement between PR and GF, the starting date of program implementation is from 1st September 2005, therefore, reporting period for the phase 1 (for first 2 years) of Round 4 programs (HIV/AIDS and Malaria) are as follows:

Reporting Period	Due Date	Note
1st Semi-Annual Report: covering from 01 September 2005 to 31 December 2005	14 January 2006	Actual results for this period will be shown against intended targets of the first two quarters (Q1+Q2) of M&E plan. It should be noted that even though there is only 4 months for activities implementation, the GF recognized this and agreed to take this issue into consideration if the results will not reach 100% of their targets by end of December 2005. However, SRs shall take necessary measures to catch up the remaining intended results for the next quarter 3 and 4 and at least by the time of SR's submission for Phase 2 funding, all agreed targets shall be achieved as planned that the decision for Phase 2 funding will not be affected.
2nd Semi-Annual Report: covering from 01 January 2006 to end of June 2006.	14 July 2006	
3rd Semi-Annual Report: covering from 01 July 2006 to 31 December 2006.	15 January 2007	
4th Semi-Annual Report : * If Phase 2 funding is approved at this time of reporting, the report can be adjusted to cover from 01 January 2007 to end of June 2007. * If Phase 2 funding is not approved, the period of reporting will be only for the last 2 months covering from 01 July 2007 to end of August 2007	16 July 2007 14 September 2007	For the last 2 months period (July to August 2007), it will be adjusted after getting the phase 2 funding approved. If not SRs agree to report on this specific remaining 2 months of the Program with due date of 14 September 2007.
1st Annual Progress Report: covering 16 months from 01 September 2005 to 31 December 2006.	15 February 2007	SRs shall submit this report in addition to the SR's 3 rd Semi-Annual Report to PR. Format of Annual Report can be obtained from the Office of Principal Recipient of Ministry of Health.
2nd Annual Progress Report: * If Phase 2 funding is approved at this time of reporting, the report can be adjusted to cover from 01 January 2007 to end of December 2007. * If Phase 2 funding is not approved, the last period will cover the entire program period from 01 September 2005 to end of August 2007 and the report will be called “Final Progress Report” of the 2-year Program implementation.	15 February 2008 14 September 2007	
<i>Subsequent reports will be adjusted after the approval of Phase 2 funding</i>		

***Note: Beside of the 6 months reporting, the PR keeps regular quarterly meeting as usual like Round 1 and Round 2. However, the first quarterly meeting will be held in January 2006. NP will be informed about the date and venue of each PR quarterly meeting through the official invitation (by letter and/or email) from the PR.