
GRANT NUMBER 0158-MON (SF)

GRANT AGREEMENT
(Special Operations)

(Education for the Poor - Financial Crisis Response Project)

between

MONGOLIA

and

ASIAN DEVELOPMENT BANK

DATED _____

GAS:MON 43127

**GRANT AGREEMENT
(Special Operations)**

GRANT AGREEMENT dated _____ between MONGOLIA (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement; and

(B) ADB has agreed to provide a grant (hereinafter called the Grant) to the Recipient from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

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

Section 1.02. The definitions set forth in the Grant Regulations are applicable to this Grant Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "aimag" means a province in the Recipient's territory;

(b) "Block Grant" means a designated amount of funds to be provided under the Project to selected schools including boarding schools to meet their O&M costs during the financial downturn;

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

(d) "Gender Action Plan" means the Gender Action Plan agreed between ADB and Recipient as set out in Appendix 12 of the RRP;

(e) "Goods" means equipment and materials to be financed out of the proceeds of the Grant; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

- (f) "M&E" means monitoring and evaluation;
- (g) "MECS" means Recipient's Ministry of Education, Culture and Science and any successor thereto;
- (h) "MOF" means Recipient's Ministry of Finance and any successor thereto;
- (i) "O&M" means operation and maintenance;
- (j) "PIU" means the Project Implementation Unit within MECS as staffed and structured for the purposes of the Project as described in paragraph 3 of Schedule 4 to this Grant Agreement;
- (k) "PMT" means proxy means testing;
- (l) "Procurement Guidelines" means ADB's Procurement Guidelines dated February 2007, as amended from time to time;
- (m) "Procurement Plan" means the procurement plan for the Project dated 13 August 2009 and agreed between the Recipient and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;
- (n) "Project Executing Agency" or "EA" for the purposes of, and within the meaning of, the Grant Regulations means MECS or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (o) "Project facilities" means school facilities rehabilitated under the Project, and facilities, Goods, Works, and services financed out of the proceeds of the Grant;
- (p) "PSC" means the Project Steering Committee to be established for the purposes of the Project as described in paragraph 2 of Schedule 4 to this Grant Agreement;
- (q) "RRP" means the Report and Recommendation of the President of ADB to the Board of Directors of ADB for the Grant;
- (r) "SY" means school year; and
- (s) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources on terms and conditions set forth in this Agreement an amount of seventeen million Dollars (\$17,000,000).

ARTICLE III

Use of Proceeds of the Grant

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

Section 3.02. The Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories of such Goods, Works and consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

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

Section 3.04. Withdrawals from the Grant Account in respect of Goods, Works and consulting services shall be made only on account of expenditures relating to

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

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 September 2012 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

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

Section 4.02. (a) The Recipient shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient pursuant to Section 4.02(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Recipient unless the Recipient shall otherwise agree.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Grant, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. A date ninety (90) days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VI

Miscellaneous

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

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

For the Recipient

The Ministry of Finance
Government Building - 2
Negdsen Undestnii gudamj – 5/1
Ulaanbaatar – 15160
Mongolia

Facsimile Number:
+976-11 262272

For ADB

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

Facsimile Numbers:
(632) 636-2444
(632) 636-2407.

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

MONGOLIA

By _____
BAYARTSOGT SANGAJAV
Minister of Finance

ASIAN DEVELOPMENT BANK

By _____
ADRIAN H. RUTHENBERG
Country Director
Mongolia Resident Mission

SCHEDULE 1

Description of the Project

A. Impact and Outcome

1. The impact of the Project will ensure that access to and quality of education will be maintained and system efficiency further enhanced during the time of the economic and financial crisis and thereafter. The outcome is adequate financing of textbooks, preschool meals, and school operation costs in school years (SY) 2009–2010 and 2010–2011, and improved efficiency of the education sector.

B. Outputs

2. The Project comprises the following four components.

Component I: Financing and Strengthening the Preschool Feeding Program

- (i) Provide financing for the nationwide preschool feeding program;
- (ii) Improve the existing delivery mechanisms of preschool meal provision to promote efficiency, transparency, and accountability at all levels; and
- (iii) Support improvements in the quality and nutrition of preschool meals.

Component II : Targeted Textbook Provision for Poor Students

- (i) Provide financing for the printing and production of free textbooks for 40% of all students (grades 7–12) in secondary schools and targeted to students from poor families;
- (ii) Provide teachers' guides in all subjects for secondary grades;
- (iii) Improve the existing textbook delivery mechanisms to promote efficiency, transparency, and accountability at all levels by strengthening monitoring of free textbook provision;
- (iv) Review the possibility of reducing the number of textbook titles to ease the burden on the Recipient and parents, as well improving the quality and durability of textbooks to save on costs that can support textbook loans and rental schemes; and
- (v) Support the Recipient in implementing PMT for the efficient targeting of the free textbook program.

Component III: Block Grants for Schools and Boarding Schools

Provide Block Grants to selected schools including boarding schools to meet O&M costs during the financial downturn aiming to ensure effective, quicker, and more transparent use of school resources and learning spaces with the priorities under

Block Grants being given to recurrent costs constituting a burden for schools and MECS, including the following categories: (i) heating; (ii) electricity; (iii) minor school maintenance; (iv) school materials (e.g., blackboards, whiteboards, chalk, markers); and (v) computer maintenance and Internet connection.

Component IV: Capacity Building

Strengthen the institutional capacity of MECS to enable it to carry out more efficient planning, management, and delivery of education services and implementation of policies under ADB supported Social Sectors Support Program, which will include the following subcomponents:

- (i) Strengthen budgeting, planning, and management information system; and
 - (ii) Train school principals and supervisors.
3. The Project is expected to be completed by 31 March 2012.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories or Subcategories listed in the Table shall be financed out of the proceeds of the Grant on the basis of the percentages set forth in the Table.

Reallocation

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

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant 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 Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds for financing Goods, Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account: Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Recipient shall establish immediately after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB. The currency of the imprest account shall be dollar. The initial amount to be deposited into the imprest account shall not exceed the lower of (i)

the estimated expenditure to be financed from the imprest account for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the Grant amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures for eligible expenses and to liquidate advances provided into the imprest account, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$50,000.

Retroactive Financing

6. Withdrawals from the Grant Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Grant Agreement in connection with eligible expenditures of the Project incurred in relation to purchase of textbooks and recruitment of consultants, subject to a maximum amount equivalent to \$1 million (equivalent to 5.8% of the Grant).

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Education for the Poor-Financial Crisis Response Project)				
CATEGORY				ADB FINANCING
Number	Item	Amount Allocated \$		Percentage and Basis for Withdrawal from the Grant Account
		Category	Subcategory	
1	Materials and Supplies	14,400,000		
1.1	Kindergarten Meals		7,000,000	45 percent of total expenditure*
1.2	Secondary School Textbooks		4,200,000	86 percent of total expenditure*
1.3	Block Grants		3,200,000	100 percent of total expenditure*
2	Training/Fellowships	349,000		
2.1	Training and Workshops		112,000	100 percent of total expenditure*
2.2	Materials Development and Public Awareness		237,000	100 percent of total expenditure*
3	Consulting Services	1,051,000		100 percent of total expenditure*
4	Project Management	350,000		100 percent of total expenditure*
5	Unallocated	850,000		100 percent of total expenditure*
	Total	17,000,000		

* Exclusive of taxes and duties imposed within the territory of the Recipient.

SCHEDULE 3

Provisions on Procurement and Consulting Services

A. General

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

B. Procurement for Goods

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

International Competitive Bidding
National Competitive Bidding
Shopping
Direct Contracting
Direct Purchase

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

4. Domestic Preference The Recipient may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

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

C. Selection of Consulting Services

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Recipient shall engage the consultants who shall be selected by ADB based on quality- and cost-selection procedure.

7. The Recipient shall recruit individual consultants for: (a) the delivery of Block Grants, (b) the process of procuring textbooks, and (c) M&E, in accordance with procedures acceptable to ADB for recruiting individual consultants.

D. Industrial or Intellectual Property Rights

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

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

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

10. The Recipient shall ensure that all titles selected for procurement and funding be accompanied by a statement from the copyright owners that they own the copyright or MECS owns the copyright, and that the Recipient and ADB be fully indemnified against all claims for breach of copyright that might arise from the supply of the textbooks and teachers guides to secondary schools in Mongolia.

E. ADB's Review of Procurement Decisions

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

SCHEDULE 4

Execution of Project and Operation of Project Facilities; Financial Matters

Executing Agency

1. MECS shall be the Project Executing Agency and responsible for overall implementation of the Project.

Project Steering Committee

2. The Recipient shall ensure that the PSC established under the ADB-financed Education Sector Reform Project shall assume the role of the PSC under this Project and provide overall guidance and coordination for Project implementation. The chair of the PSC with the concurrence of the existing PSC members may appoint, as required, representatives of other relevant agencies as new PSC members. The PSC shall meet quarterly and be responsible for (i) approving the annual Project budget and activity plan, and (ii) reviewing and advising on implementation progress.

Project Implementation Unit

3. The Recipient shall ensure that the Project implementation unit (PIU) responsible for the daily operation of the ADB-financed Third Education Development Project shall serve as the PIU for the Project. The PIU shall oversee and manage Project implementation, including but not limited to the procurement, recruitment of consulting services and disbursement activities. The Recipient shall also recruit through a competitive process five new staff into the PIU to assist the Project implementation, namely a deputy project manager, a procurement officer, a M&E specialist, an accountant, and an education specialist.

Counterpart Financing

4. The Recipient shall provide all necessary counterpart funds to ensure timely Project implementation. The Recipient shall make timely submission of annual budgetary appropriation requests and ensure prompt disbursement of appropriate funds;

Proxy Means Testing

5. The Recipient shall ensure proper and timely achievement, adoption, compliance, and implementation of PMT for the targeted provision of textbooks for secondary schools starting in SY 2010–2011.

Preschool Meals and Targeting of Secondary Textbooks

6. The Recipient shall ensure monitoring of the effectiveness of the preschool meals and targeting of secondary textbooks prior to the implementation of PMT.

Discussions with ADB on Project Implementation

7. The Recipient shall promptly discuss with ADB problems and constraints encountered during implementation of the Project and appropriate measures to overcome or mitigate such problems and constraints.

Time Bound Activities

8. The Recipient shall ensure that MECS
- (i) within nine (9) months of Grant Effective Date, shall (a) conduct a textbook cost reduction study, and (b) conduct a research study on the cost effective delivery of high quality feeding programs to preschools;
 - (ii) within eighteen (18) months of the Grant Effective Date, shall have approved a comprehensive policy on education budgeting, planning, EMIS development, and M&E and have prepared a time-bound action plan for the implementation of these policies;
 - (iii) within twenty four (24) months of Grant Effective Date, shall have approved policy for improving delivery, quality, and monitoring of preschool meals;
 - (iv) within twenty four (24) months of Grant Effective Date, shall have approved policy for improving delivery, quality, and monitoring of textbooks; and

Budget Provision during Crisis

9. The Recipient shall take necessary measures to ensure provision of adequate budget allocations to the education sector during the financial crisis.

Operation and Maintenance

10. The Recipient shall ensure that (a) within six (6) months of the Grant Effective Date, a policy and an action plan providing an adequate O&M budget for schools shall be developed through consultation with stakeholders and schools, (b) within six (6) months of Grant Effective Date, a training and capacity needs assessment and improvement plan for education planning and budgeting shall be prepared, (c) the M&E system at MECS shall be strengthened to include the preparation of quarterly reports on O&M spending in the education sector, (d) the O&M quarterly reports be submitted to ADB on a semi-annual basis throughout the duration of the Project, (e) an education expenditure review shall be conducted by midterm review, and (f) the planning and budgeting processes shall be strengthened through staff training at MECS under the capacity building component of the Project.

Block Grants

11. The Recipient shall ensure that Block Grants shall be administered on a pilot basis in the first year of the Project (SY 2009–2010). The pilot shall be evaluated at midterm review and based on the results of the pilot implementation of Block Grants, the pilot shall be scaled

up if successful; or revised for further pilot implementation; or if unsuccessful, alternative solutions may be considered.

12. The Recipient shall ensure that the Block Grants shall not exceed US\$10,000 per school. The Block Grants shall be disbursed from imprest account to the beneficiary schools accounts. The Block Grants shall be liquidated and monitored through statement of expenditures, based on the agreements with beneficiary schools.

Gender

13. The Recipient shall ensure that the Gender Action Plan agreed under the Project will be implemented in a timely manner.

Project Reviews and Mid-Term Review

14. The Recipient and ADB shall jointly undertake reviews of the Project once a year. The reviews will assess progress in each component, identify issues and constraints, and determine necessary remedial action and adjustments. A midterm review shall be conducted at the end of the second year of implementation. The midterm review shall (i) review the scope, design, and implementation arrangements and identify adjustments required; (ii) assess progress of the project implementation against performance indicators; and (iii) recommend changes in the design or implementation arrangements, if necessary.