
LOAN NUMBER 2551-NEP(SF)

GRANT NUMBER 0160-NEP(SF)

FINANCING AGREEMENT
(Special Operations)

(Education Sector Program Cluster – Subprogram III)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 27 NOVEMBER 2009

LPS:NEP 35174

**FINANCING AGREEMENT
(Special Operations)**

FINANCING AGREEMENT dated 27 November 2009 between NEPAL (hereinafter called the "Beneficiary") and ASIAN DEVELOPMENT BANK (hereinafter called "ADB").

WHEREAS

(A) ADB has received from the Beneficiary a development policy letter, dated 17 August 2009 (hereinafter called the "Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Financing Agreement, designed to develop the Beneficiary's education sectors (hereinafter called the "Program");

(B) the Beneficiary has applied to ADB for a loan and a grant from its Special Funds resources for the purposes of the Program; and

(C) ADB has, on the basis inter alia of the foregoing, agreed to provide financing by making a loan and a grant to the Beneficiary from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations and Grant Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (hereinafter called the "Loan Regulations"), are hereby made applicable to this Financing Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) The term "Loan Agreement", wherever it appears in the Loan Regulations, shall be substituted by the term "Financing Agreement";

(b) The term "Borrower", wherever it appears in the Loan Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Financing Agreement;

(c) Section 2.01(24) is deleted and the following is substituted therefor:

24. The term "Program" means the program for which ADB has agreed to make the Loan and the Grant, as described in the Financing Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Beneficiary.

(d) The term "Project" wherever it appears in the Loan Regulations shall be substituted by the term "Program";

(e) Section 2.01(26) is deleted and the following is substituted therefor:

26. The term "Program Executing Agency" means the entity or entities responsible for the carrying out of the Program as specified in the Financing Agreement.

(f) The term "Project Executing Agency" wherever it appears in the Loan Regulations shall be substituted by the term "Program Executing Agency";

(g) Section 5.01(a) is deleted and the following is substituted therefor:

(a) Subject to any conditions or restrictions specified in the Financing Agreement, the Beneficiary shall be entitled to withdraw from the Loan Account such amounts as shall be required to meet payments for expenditures required for the Program and to be financed under the Financing Agreement.

Section 1.02. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to the Grant made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein subject, however, to the following modifications:

(a) The term "Grant Agreement", wherever it appears in the Grant Regulations, shall be substituted by the term "Financing Agreement";

(b) The term "Recipient", wherever it appears in the Grant Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Financing Agreement;

(c) Section 2.01(15) is deleted and the following is substituted therefor:

15. The term "Program" means the program for which ADB has agreed to make the Loan and the Grant, as described in the Financing Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Beneficiary.

(d) The term "Project" wherever it appears in the Grant Regulations shall be substituted by the term "Program";

(e) Section 2.01(17) is deleted and the following is substituted therefor:

17. The term "Program Executing Agency" means the entity or entities responsible for the carrying out of the Program as specified in the Financing Agreement.

(f) The term "Project Executing Agency" wherever it appears in the Grant Regulations shall be substituted by the term "Program Executing Agency";

(g) Section 5.01(a) is deleted and the following is substituted therefor:

(a) Subject to any conditions or restrictions specified in the Financing Agreement, the Beneficiary shall be entitled to withdraw from the Grant Account such amounts as shall be required to meet payments for expenditures required for the Program and to be financed under the Financing Agreement.

Section 1.03. Wherever used in this Financing Agreement, in each case unless the context otherwise requires, the several terms defined in the Loan Regulations and the Grant Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "1-8 basic education" refers to an expansion of levels 1 to 5 primary education with levels 6 to 8 lower secondary education;

(b) "ASIP" means Annual Strategic Implementation Plan;

(c) "AWPB" means Annual Work Plan and Budget;

(d) "Cabinet" means the Council of Ministers of the Beneficiary;

(e) "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;

(f) "Counterpart Funds" means the Rupee proceeds accruing to the Beneficiary and generated from the proceeds of the Loan and Grant under the Program;

(g) "DOE" means the Beneficiary's Department of Education, and includes any legal successor thereto;

(h) "DP" means development partner;

(i) "ECED" means early childhood education and development;

(j) "Education Act" means the Beneficiary's Education Act of 1971, and any amendments thereto;

(k) "Education Regulations" means the Beneficiary's Education Regulations of 2002, and any amendments thereto;

(l) "EFA" means the Beneficiary's Education for All program;

(m) "EFA JFA" refers to the Education for All Joint Financing Arrangement between the Beneficiary and the pooling donors supporting the Beneficiary's EFA, initially established on 24 September 2004 and any amendment thereto;

(n) "Eligible Items" means the goods imported under the Program (except those specifically excluded pursuant to the Attachment 1 to Schedule 3 to this Financing Agreement), the foreign exchange costs of which are eligible for financing out of the proceeds of the Grant and Loan;

(o) "EMIS" means education management information system;

(p) "EPC" means Education Policy Committee;

(q) "FCA" means foreign currency account referred to in paragraph 4 of Schedule 3 to this Financing Agreement;

(r) "First Tranche" means the portion of the proceeds of the Grant in the amount not exceeding \$45,000,000;

(s) "Fiscal Year" or "FY" means the Beneficiary's fiscal year which starts on 16 July and ends on 15 July of the following year;

(t) "FMR" means financial monitoring report;

(u) "GAAP" means the Governance and Accountability Action Plan agreed between the Beneficiary and the Pooling DPs and attached to the SSR JFA;

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

(w) "Grant Deposit Account" means the FCA;

(x) "GVCAP" means the Gender and Vulnerable Communities Action Plan, as agreed between the Beneficiary and the ADB;

(y) "JAR" means the joint annual review to be carried in April of each year by the Beneficiary and the DPs;

(z) "JCM" means the joint consultative meeting to be held in December of each year by the Beneficiary and the DPs;

(aa) "Loan Deposit Account" means the FCA;

(bb) "MEC" means minimum enabling conditions;

(cc) "MLD" means the Beneficiary's Ministry of Local Development, and any successor thereto;

(dd) "MOE" means the Beneficiary's Ministry of Education, and any successor thereto;

(ee) "MOF" means the Ministry of Finance of the Beneficiary and any successor thereto;

(ff) "National Curriculum Framework" means the Beneficiary's National Curriculum Framework of 2006, and any amendments thereto;

(gg) "Nepal Rastra Bank" means the central bank of Nepal;

(hh) "OAG/N" means the Office of the Auditor General of Nepal, and any successor thereto;

(ii) "Policy Matrix" means the Policy Matrix attached to the Policy Letter;

(jj) "Pooling Donors" means DPs that are signatories to the SSR JFA;

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

(ll) "Program Executing Agency" means for the purposes and within the meaning of the Loan Regulations and Grant Regulations, MOE or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program;

(mm) "Rupees" refers to the Beneficiary's currency;

(nn) "Second Tranche" means the balance of the proceeds of the Loan and the Grant remaining in each of the Loan Account and Grant Account after the utilization of the First Tranche, to be withdrawn pursuant to and subject to the provisions of paragraph 5 of Schedule 3 to this Financing Agreement;

(oo) "SSR" means Beneficiary's School Sector Reform program;

(pp) "SSR Core Document" means the SSR Core Document approved by the Cabinet in June 2008, and any amendments thereto;

(qq) "SSR JFA" means the SSR Joint Financing Arrangement between the Beneficiary and the Pooling DPs in a form satisfactory to ADB supporting the Beneficiary's SSR, which is an amendment to the EFA JFA, and any amendment thereto;

(rr) "SSR Plan" means the Beneficiary's long term strategic plan to implement the SSR Core Document;

(ss) "Teacher Service Commission Regulation" means the Beneficiary's Teacher Service Commission Regulation of 2003, and any amendments thereto;

(tt) "TEVT" means technical education and vocational training;

(uu) "VCDF" means the Vulnerable Communities Development Framework, as agreed between the Beneficiary and the DPs; and

(vv) "Works" means construction or civil works to be financed out of the proceeds of the Grant and Loan, 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 Loan and the Grant

Section 2.01. ADB agrees to provide to the Beneficiary from ADB's Special Funds resources:

(a) a loan in various currencies equivalent to sixteen million ninety two thousand Special Drawing Rights (SDR16,092,000) (the "Loan"); and

(b) a grant in the amount of seventy million Dollars (\$70,000,000) (the "Grant").

Section 2.02. (a) The Beneficiary shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 2 to this Financing Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.04. The Beneficiary shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Financing Agreement.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of the interest charge for the purposes of Section 4.03 (a) and Section 4.04 of the Loan Regulations shall be Dollar.

ARTICLE III

Use of Proceeds of the Loan and the Grant

Section 3.01. The Beneficiary shall cause the proceeds of the Loan and the Grant to be applied to the financing of expenditures on the Program in accordance with the provisions of this Financing Agreement.

Section 3.02. The proceeds of the Loan and Grant may be withdrawn from the Loan Account and the Grant Account, respectively, only for the purposes of financing foreign currency expenditures incurred for Eligible Items under the Program in accordance with the provisions of Schedule 3 to this Financing Agreement, as such

Schedule 3 may be amended from time to time by agreement between the Beneficiary and ADB.

Section 3.03. Except as ADB may otherwise agree, all Eligible Items to be financed out of the proceeds of the Loan and the Grant shall be procured in accordance with the provisions of Schedule 4 to this Financing Agreement.

Section 3.04. Withdrawals from the Loan Account and the Grant Account shall be made only on account of expenditures relating to Eligible Items which:

- (a) are produced in, and 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) meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. Except as ADB may otherwise agree, no withdrawals shall be made from the Loan Account and the Grant Account in respect of expenditures for Eligible Items incurred more than one hundred eighty (180) days prior to the Effective Date.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations and the Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2012 or, in each case, such other date as may from time to time be agreed between the Beneficiary and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Program, the Beneficiary shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Financing Agreement.

Section 4.02. (a) The Beneficiary shall maintain, or cause to be maintained, records and documents adequate to identify the Eligible Items financed out of the proceeds of the Loan and the Grant and to record the progress of the Program.

(b) The Beneficiary shall enable ADB's representatives to inspect any relevant records and documents referred to in paragraph (a) of this Section.

Section 4.03. (a) As part of the reports and information referred to in Section 6.05 of the Loan Regulations and Section 6.04 of the Grant Regulations, the Beneficiary shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning (i) the Counterpart Funds and the use thereof; and (ii) the implementation of the Program, including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

(b) Without limiting the generality of the foregoing or Section 6.05 of the Loan Regulations and Section 6.04 of the Grant Regulations, the Beneficiary shall furnish, or cause to be furnished, to ADB reports on the carrying out of the Program and on the accomplishment of the targets and carrying out of the actions set out in the Policy Letter, as described in paragraph 13 of Schedule 5 to this Financing Agreement.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Beneficiary to make withdrawals from (a) the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations; and (b) the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations: disbursement under the SSR JFA shall have been suspended.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the event specified in Section 5.01 of this Financing Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Financing Agreement for the purposes of Section 9.01(f) of the Loan Regulations and Section 9.01(e) of the Grant Regulations, respectively: the Beneficiary shall have complied to the satisfaction of ADB all of the conditions for the release of the First Tranche as set out in Attachment 2 to Schedule 3 to this Financing Agreement.

Section 6.02. A date ninety (90) days after the date of this Financing Agreement is specified for the effectiveness of the Financing Agreement for the purposes of Section 9.04 of the Loan Regulations and Section 9.04 of the Grant Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Secretary of MOF is designated as representative of the Beneficiary for the purposes of Section 11.02 of the Loan Regulations and Section 11.02 of the Grant Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations and Section 11.01 of the Grant Regulations:

For the Beneficiary

Ministry of Finance
Singha Durbar
Kathmandu, Nepal

Facsimile Number:

(977-1) 4211164

For ADB

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

Facsimile Numbers:

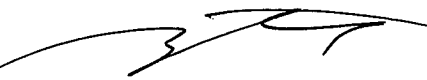
(632) 636-2444
(632) 636-2407.

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

NEPAL

By 
RAMESHORE PRASAD KHANAL
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
BARRY J. HITCHCOCK
Country Director
Nepal Resident Mission

SCHEDULE 1

Description of the Program

1. The principal objective of the Program is to increase access to and to improve quality of school education, particularly 1-8 basic education and for girls and children from marginalized groups. The Program is described in more detail in the Policy Letter. The Program will be implemented during the period from FY2010 to FY 2012.
2. In support of the Program:
 - (a) the proceeds of the Loan and Grant shall be used to finance the costs of Eligible Items; and
 - (b) the Counterpart Funds shall be used to finance the education sector reform and to supplement the cost associated with the implementation of the SSR, pursuant to the provisions of paragraph 6 of Schedule 5 to this Financing Agreement.
3. The proceeds of the Loan and the Grant are expected to be utilized by 30 June 2012.

SCHEDULE 2

Amortization Schedule (Education Sector Program Cluster – Subprogram III)

<u>Payment Due Date</u>	<u>Payment of Principal</u> * (expressed in SDR)
15 November 2017	502,875
15 May 2018	502,875
15 November 2018	502,875
15 May 2019	502,875
15 November 2019	502,875
15 May 2020	502,875
15 November 2020	502,875
15 May 2021	502,875
15 November 2021	502,875
15 May 2022	502,875
15 November 2022	502,875
15 May 2023	502,875
15 November 2023	502,875
15 May 2024	502,875
15 November 2024	502,875
15 May 2025	502,875
15 November 2025	502,875
15 May 2026	502,875
15 November 2026	502,875
15 May 2027	502,875
15 November 2027	502,875
15 May 2028	502,875
15 November 2028	502,875
15 May 2029	502,875
15 November 2029	502,875
15 May 2030	502,875
15 November 2030	502,875
15 May 2031	502,875
15 November 2031	502,875
15 May 2032	502,875
15 November 2032	502,875
15 May 2033	502,875
Total	16,092,000

* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the relevant provisions of the Special Operations Loan Regulations.

SCHEDULE 3**Allocation and Withdrawal of Loan and Grant Proceeds**

1. Except as ADB may otherwise agree, the following provisions of this Schedule shall apply to the withdrawal of Loan proceeds from the Loan Account and the Grant proceeds from the Grant Account.

2. (a) Withdrawals from the Loan Account and the Grant Account shall be made for the financing of the cost of Eligible Items.

(b) No withdrawals from the Loan Account and the Grant Account shall be made in respect of any expenditures which have been financed by credits from official international or bilateral aid agencies or any other loans made by ADB.

3. (a) Applications for withdrawal from the Loan Account and the Grant Account shall be submitted to ADB by the Beneficiary and shall be in a form satisfactory to ADB.

(b) Such withdrawal application shall be accompanied by a certificate of the Beneficiary confirming that (i) in case the proceeds of the Loan and the Grant will finance imports already made, the value of Eligible Imports in the period concerned exceeded the amount of the requested withdrawal; or (ii) in case the proceeds of the Loan and the Grant will finance items to be imported, the value of Eligible Imports in the immediately preceding one-year period was equal to or greater than the amount of the requested withdrawal plus all other amounts expected to be withdrawn from the Loan Account and the Grant Account during the succeeding one-year period.

(c) For the purposes of this paragraph, the term "Eligible Imports" means the total imports of the Beneficiary during the relevant period minus the following imports during the same period:

- (i) imports from countries which are not members of ADB;
- (ii) imports for ineligible items specified in Attachment 1 to this Schedule; and
- (iii) imports financed from credits from official international or bilateral aid agencies or any other loans made by ADB.

(d) The Beneficiary shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Beneficiary has certified the value of Eligible Imports in its withdrawal application.

4. (a) The FCA, established by the Beneficiary at the Nepal Rastra Bank, and established under the SSR JFA, shall function as the deposit account into which all withdrawals from the Loan Account and the Grant Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with terms and conditions satisfactory to ADB.

Schedule 3

(b) Separate accounts and records in respect of the Deposit Account shall be maintained in accordance with consistently maintained sound accounting principles. Upon ADB's request, the Beneficiary shall have the Deposit Account audited by independent auditors, whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with appropriate auditing standards. Promptly after their preparation but in any event not later than nine (9) months after the date of ADB's request, certified copies of such audited accounts and records shall be furnished to ADB, all in the English language.

(c) Throughout the Program implementation period, the Beneficiary shall submit trade statistics and any other information as ADB may require from time to time to assess the Beneficiary's compliance with the formula for determining Eligible Imports, as described in paragraph 3 of this Schedule 3.

5. Notwithstanding any other provisions of the Financing Agreement, the Loan Regulations and the Grant Regulations, no withdrawals shall be made for the First Tranche unless the SSR JFA has been signed by the Beneficiary, ADB and two other Pooling DPs, and shall have been effective.

6. Notwithstanding any other provisions of this Financing Agreement, except as ADB may otherwise agree, payment for the First Tranche shall be made from the Grant Account only.

7. Notwithstanding any other provisions of this Financing Agreement or the Loan Regulations and the Grant Regulations, and except as ADB may otherwise agree, no withdrawals shall be made from the Second Tranche unless ADB shall be satisfied, after consultation with the Beneficiary, that (a) sufficient progress has been achieved by the Beneficiary in the carrying out of the Program and, in particular (b) the Beneficiary has fulfilled the conditions for the release of the Second Tranche specified in Attachment 3 to this Schedule.

Negative List

1. Loan and Grant proceeds will finance the foreign currency expenditures for the reasonable cost of imported goods required during the Program.
2. No withdrawals will be made for the following:
 - (i) expenditures for goods included in the following groups or sub-groups of the United Nations Standard International Trade Classification, Revision 3 (SITC, Rev. 3) or any successor groups or sub-groups under future revisions to the SITC, as designated by ADB by notice to the Beneficiary:

Table A12: Ineligible Items

Chapter	Heading	Description of Items
112		Alcoholic beverages
121		Tobacco, unmanufactured; tobacco refuse
122		Tobacco, manufactured (whether or not containing tobacco substitute)
525		Radioactive and associated materials
667		Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), nonirradiated for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum-group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971		Gold, nonmonetary (excluding gold ore and concentrates)

Source: United Nations.

- (ii) expenditures in the currency of the Beneficiary or of goods supplied from the territory of the Beneficiary;
- (iii) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any loan or grant from the ADB;
- (iv) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (v) expenditures for narcotics;
- (vi) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Beneficiary or international agreements to which the Beneficiary is a party, and any other goods designated as environmentally hazardous by agreement between the Beneficiary and ADB; and

- (vii) expenditures on account of any payment prohibited by the Beneficiary in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

Conditions for Release of the First Tranche

A. General Conditions

1. The Cabinet shall have approved the SSR Core Document.
2. MOE shall have finalized the SSR Plan for FY2009 to FY2013.

B. Basic and Secondary Education

1. The Cabinet shall have approved the amendment to the Education Regulations to introduce basic education covering grades 1-8.
2. MOE shall have approved (i) school operational guidelines for grades 1-8, and (ii) guidelines for alternative schooling, modalities, and multi-grade schools.
3. MOE shall have approved a phased implementation plan for free and compulsory basic education. The plan shall include a list of the needed legislative changes and proposed timing for such changes.
4. MOE shall have issued a circular on the strict enforcement of the Beneficiary's policy of non-enrollment of under-aged children at grade 1, including the prohibition to provide textbooks and other facilities to such children.
5. MOE shall have approved a policy and implementation guidelines on the minimum enabling conditions for basic education.
6. MOE shall have approved a policy and implementing guidelines for continuous student assessment, which include no holdback of students of up to grade 3.
7. MOE shall have approved an action plan enabling private sector to be engaged in the printing of textbooks throughout Nepal.

C. Early Childhood Education Development

1. MOE shall have approved a policy and implementation guidelines on the minimum enabling conditions for ECED.

D. Teacher Professional Development

1. MOE shall have conducted a needs assessment and costing on upgrading teachers qualification and on improving head teachers provisions, including qualification, selection, recruitment and supervision and support.

E. Capacity Development

1. MOE shall have incorporated lessons learned from model building and recommendations from EFA evaluation in SSR development as appropriate.

Conditions for Release of the Second Tranche

A. **General Conditions**

1. The conditions for the release of the First Tranche continue to remain satisfied.
2. MLD shall have revised directives to adopt School Improvement Plans as the basis for education funding through grants to local bodies.

B. **Basic and Secondary Education**

1. MOE shall have drafted and tabled a bill to amend the Education Act to introduce basic education covering grades 1–8.
2. The Cabinet shall have approved a resolution to initiate the piloting of secondary education restructuring from grade 9–12 in selected districts.
3. The Cabinet shall have amended Teacher Service Commission Regulations and Education Regulations to reserve an appropriate number of vacant positions for licensed female teachers and licensed teachers from disadvantaged social groups.
4. MOE shall have issued a circular on conducting final examinations for basic education in grade 8.
5. MOE shall have commissioned a first learning achievement assessment at grades 3, 5 and 8 meeting international quality standards through a partnership approach.
6. MOE shall have implemented the recommendations made under the study on the constraints in implementing the local content curriculum.
7. MOE shall have approved a competency-based curriculum, based on the National Curriculum Framework, which shall include provisions on continuous assessment, local content and language and multi grade teaching.

C. **Technical Education and Vocational Training**

1. MOE shall have approved a phased implementation plan to pilot alternatives for the role of general school education in areas of skills development.

D. **Teacher Professional Development**

1. MOE shall have approved a time-bound action plan on upgrading the academic qualifications of teachers in basic education.
2. MOE shall have approved a time-bound action plan on upgrading teachers qualification and on improving head teachers provisions, including qualification, selection, recruitment and supervision and support.

3. MOE shall have revised the teacher education and development policy, in particular on the provisions regarding to teachers' qualification upgrading, career development and in-service professional support.

4. MOE shall have approved a policy on the transfer of teacher positions from overstaffed to understaffed schools, when a vacancy arises, with the School Management Committee recruiting the teacher.

E. Capacity Development

1. MOE shall have finalized an assessment of the options on establishing an independent school performance review mechanism.

2. MOE shall have finalized its broad-based and school-focused capacity development plan.

SCHEDULE 4

Procurement

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraph of this Schedule shall apply in the procurement of Eligible Items to be financed out of the proceeds of the Loan and the Grant.

2. (a) Except as provided in subparagraph (b) of this paragraph, each contract for Eligible Items shall be awarded on the basis of either the purchaser's normal commercial procurement practices, in the case of procurement by the private sector, or the Beneficiary's prescribed procurement procedures, in the case of procurement by the public sector, having due regard for the principles of economy and efficiency.

(b) Each supply contract for Eligible Items which are commonly traded commodities shall be awarded on the basis of procedures appropriate to the trade and acceptable to ADB.

SCHEDULE 5

Program Implementation and Other Matters

Program Management, Implementation, Coordination and Monitoring

1. MOE shall be the Program Executing Agency responsible for the overall and timely implementation of the Program. Within MOE, the DOE shall be the Implementing Agency. MOE and DOE shall implement, manage, coordinate and monitor the Program in accordance with the goals, responsibilities, funding mechanism, fiduciary requirements and other Program management and implementation arrangements as set forth in the SSR Core Document, SSR Plan and agreed in the SSR JFA.

Implementation of the Policy Letter

2. (a) The Beneficiary shall ensure the satisfactory implementation of the Program and shall fully comply with the actions set out in the policy matrix that need to be complied prior to Second Tranche to enable the release of the Second Tranche. The Beneficiary shall submit documents, in a form satisfactory to ADB, as evidence to demonstrate compliance with each of the actions set out in the policy matrix.

(b) The Beneficiary shall: (i) carry out the policies and actions in accordance with the schedule of policy reforms contained in the Policy Matrix and ensure sustainability of the reforms beyond the Program period; (ii) carry out all of its obligations as stipulated under the Financing Agreement in a timely manner; and (iii) ensure that the agreed actions are taken with respect to each policy achievement.

Policy Dialogue

3. The Beneficiary shall keep ADB informed of, and the Beneficiary and ADB shall from time to time exchange views on, sector issues, policy reforms and additional reforms during the Program Period that may be considered necessary or desirable, including the progress made in carrying out the Program.

4. The Beneficiary shall engage in policy dialogue with ADB, in a timely manner, on problems and constraints encountered during Program implementation and on desirable changes to overcome or mitigate such problems and constraints.

5. The Beneficiary shall keep ADB informed of policy discussions with other multilateral or bilateral agencies that have implications for implementation of the Program, and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Beneficiary shall take ADB's views into consideration before finalizing and implementing any such proposals.

Counterpart Funds

6. The Beneficiary shall ensure that the Counterpart Funds shall be used to support the education sector reform and to supplement the cost associated with the implementation of SSR.

Program Staff

7. The Beneficiary shall endeavor that (a) critical Program staff shall remain in their position on a full-time basis for a reasonable duration to ensure continuity in the implementation of the Program; and (b) all implementing agencies shall be adequately staffed and provided with the necessary financial, technical, and other resources to perform their functions under the Program.

VCDF and GVCAP

8. The Beneficiary shall implement, manage, coordinate and monitor the Program in accordance with the VCDF and the GVCAP, to enable the Program affected vulnerable groups, particularly girls, indigenous peoples and ethnic minorities, to benefit equally from the Program.

Resettlement and Environment

9. The Beneficiary shall ensure that all possible efforts shall be made to avoid land acquisition. In the event land acquisition becomes necessary for the implementation of the Program, the Beneficiary shall ensure that such land is acquired only on a voluntary basis in accordance with the procedures outlined in the approved Framework for Land Acquisition through Voluntary Donations or Willing Buyer - Willing Seller Processes, as agreed between the Beneficiary and ADB.

10. The Beneficiary shall ensure that all activities under the Program shall be in full compliance with the Beneficiary's current environmental laws and regulations and ADB's Environment Policy (2002). If any unexpected significant environmental impact of the Program is identified during the Program period, the MOE and DOE shall prepare satisfactory environment review documents, including the initial environmental examination/environmental impact assessment (IEE/EIA) and environmental management plan (EMP) and obtain ADB's endorsement on the documents. The Beneficiary shall consult ADB for the public disclosure of the documents.

GAAP

11. The Beneficiary shall carry out the actions agreed between the Beneficiary and the Pooling DPs, as set out in the GAAP and attached to the SSR JFA, to address governance and accountability issues relating to the management, financial management, procurement management and social accountability tools of the SSR.

Sector Financing

12. The Beneficiary shall ensure that throughout the Program period, the budget allocations for education shall remain, at least, at the level of Fiscal Year 2008, while all efforts shall be made to increase the budget allocation.

Program Report and Review

13. Consistent with the SSR JFA, the Beneficiary shall cause MOE and DOE to provide ADB with all relevant data and information in such detail as ADB may reasonably request to facilitate review by ADB and the Pooling DPs of the progress in the implementation of the Program. In particular, the Beneficiary shall provide the following key reports (i) financial statements on a trimester and annual basis; (ii) annual performance report; (iii) interim financial monitoring report for the first fiscal trimester; (iv) consolidated report of the previous FY year showing program outcomes; (v) flash reports on outcomes and processes twice during each academic year; (vi) annual audit report of the SSR Plan as certified by the OAG/N; and (vii) the ASIP and AWPB.

14. During JAR, which shall be held annually in April, assessment on the implementation progress with respect to outcomes and expenditures shall be conducted and MOE shall present the ASIP for the following year. A JCM shall be held in December of each year, during which the signatories to the SSR JFA shall review the preliminary consolidated financial statements for the previous FY as well as financial and output reports for the first trimester of the current year. The Beneficiary and the DPs have also agreed to hold quarterly meetings to address key issues that may arise during SSR implementation.

Program Performance Monitoring and Evaluation

15. The monitoring of SSR shall largely rely on information collected through the EMIS and supplemented by available data from nationally representative household surveys. MOE and/or DOE shall partner with other agencies and firms to carry out quantitative and qualitative studies on specific topics. In addition to regular reports SSR proposes to carry out sample-based nationally representative student tests, administered by an independent agency, at Grades 3, 5, and 8; in partnership with an international testing agency/firm and the national curriculum development center. The learning assessments shall be carried out early during the Program implementation, in 2010, and at the end of the Program implementation period, in 2013. SSR shall also further develop the system of decentralized monitoring, including social audit, and the provisioning of external evaluation of outcomes and impact of SSR. The impact of the Program shall be evaluated at mid-term and during the last year of the SSR program.

Local Content Curriculum

16. Within 1 month of the Effective Date, MOE shall have recruited consultant and commissioned a study to analyze constraints in implementing the local content curriculum. The study shall make recommendations measures to effectively implement the curriculum.