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GRANT NUMBER \_\_\_\_-NEP (SF)

GRANT AGREEMENT  
(Special Operations)  
(Capacity Development Project)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED \_\_\_\_\_

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GAS:NEP 35174

**GRANT AGREEMENT  
(Special Operations)**

GRANT AGREEMENT dated \_\_\_\_\_ between NEPAL (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 (the Grant);

(B) the Recipient has likewise applied to ADB for a Program Loan to develop the Recipient's education sector, and by a Loan Agreement of even date herewith (hereinafter called the Loan Agreement), ADB has agreed to make to the Recipient a Loan of twenty million four hundred thirty two thousand Special Drawing Rights (SDR 20,432,000); and

(C) ADB has agreed to provide a 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) "Consulting Guidelines" means ADB's "Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers" dated April 2006, as amended from time to time;

(b) "EFA" refers to the Recipient's Education for All program;

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

(d) "MOES" means the Recipient's Ministry of Education and Sports;

(e) "Procurement Guidelines" means ADB's "Procurement Guidelines" dated April 2006, as amended from time to time;

(f) "Procurement Plan" means the procurement plan for the Project dated 17 October 2006 and agreed between Nepal and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(g) "Project Executing Agency" for the purposes of, and within the meaning of the Grant Regulations, means MOES and includes any legal successor thereto acceptable to ADB, which is responsible for the carrying out of the Project; and

(h) "Works" means the civil works to be financed out of the grant proceeds, 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 two million United States Dollars (\$2,000,000).

## **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 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 June 2010 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**

### **Suspension and Cancellation**

Section 5.01. The following is specified as an additional event for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations or cancellation of the Grant pursuant to Section 8.02 of the Grant Regulations: the Recipient has, in the opinion of ADB, failed to perform any of its obligations under the Loan Agreement.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the Loan Agreement shall have been duly executed and delivered on behalf of the Recipient, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement) shall have been fulfilled.

Section 6.02. 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 VII**

### **Miscellaneous**

Section 7.01. The Secretary, Ministry of Finance, of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

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

#### For the Recipient

Ministry of Finance  
Singha Durbar  
Kathmandu

Facsimile Number:

977-1-4257110.

For ADB

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

Cable Address:

ASIANBANK  
MANILA

Telex Numbers:

29066 ADB PH (RCA)  
42205 ADB PM (ITT)  
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444  
(632) 636-2391.

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.

NEPAL

By \_\_\_\_\_  
Authorized Representative

ASIAN DEVELOPMENT BANK

By \_\_\_\_\_

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to develop the capacity of MOES and other key stakeholders at central, regional and district level to prepare the 1-12 school sector reform and restructuring. The expected outcomes are (a) institutionalized policy review, formulation, coordination, and follow-up functions; (b) a broadly accepted and financed 1-12 school sector reform and restructuring program; (c) a realigned legislative, governance, management and finance structure appropriate for 1-12 school sector; and (d) improved implementation of policy interventions under EFA.

2. The Project shall comprise the following Components:

#### **Component 1: Capacity development in policy functions**

- (i) Provide technical assistance to the Education Policy Committee and develop capacity of the Technical Secretariat of MOES to hold consultations at central, regional and district level and to participate in a regional peer review program and in-country training programs;
- (ii) Upgrade the physical and human resources of the Policy Analysis and Programming Section (PAPS) of MOES, including (a) the refurbishment of a policy room with modern equipment and materials; (b) the establishment of a policy resource room; (c) capacity building of PAPS staff including through regional visits and attachment programs; and (d) provision of long term policy advisors and experts in thematic areas; and
- (iii) Support policy research and analytical studies.

#### **Component 2: Preparation of core document for 1-12 School Sector**

- (i) Provide technical assistance to prepare the Core Document of 1-12 School Sector, including through (a) stakeholder consultations at regional, district, and school cluster level; (b) in-country training; and (c) peer reviews in the Asian region;
- (ii) Preparation of background papers on themes such as governance, management, quality assurance, gender and social inclusion, school restructuring, school financing, minimum service standards, examination reform, and development of local curriculum content;
- (iii) Assist MOES in needs assessment and capacity building workshops and seminars on district level management of school reforms and restructuring in at least 3 districts; and
- (iv) Support school and teacher mapping in at least 30 districts.

#### **Component 3: Capacity Development in EFA implementation**

Provide technical assistance to and build capacity of the Department of Education of MOES to (a) improve scholarship targeting and monitoring strategies; (b) to ensure timely submission of accurate financial reports; and (c) to prepare and follow-up for the EFA mid-term review.

3. The Project is expected to be completed by 31 December 2009.

## SCHEDULE 2

### Allocation and Withdrawal of Grant Proceeds

#### General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting services and other items 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)

#### Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories 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, allocate such excess amount to any other Category.

#### Disbursement Procedures

4. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the Grant proceeds shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2001 (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 Nepal Rastra Bank. 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 United States Dollars. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure 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 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 \$10,000.

**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Capacity Building Project)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated \$ Category</b>	<b>Percentage and Basis for Withdrawal from the Grant Account</b>
1	Training Packages	125,000	100 percent of total expenditure*
2	Stakeholders meetings/workshops	76,000	100 percent of total expenditure*
3	Consulting Services	1,747,000	100 percent of total expenditure*
4	Operating Expenses	30,000	100 percent of total expenditure*
5	Contingencies	22,000	100 percent of total expenditure*
	Total	2,000,000	

\* Excluding local taxes and duties

### SCHEDULE 3

#### Procurement of Goods and Works, and Consulting Services

##### A. General

1. All Goods and 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 and Works

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

Limited International Bidding
Shopping method

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. Procurement to be done by the consultants as part of the consulting packages, shall follow the method set forth in the Procurement Plan, and be done in accordance with the Procurement Guidelines.

##### D. Selection of Consulting Services

5. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Recipient shall apply quality- and cost-based selection for selecting and engaging consulting services.

6. The Recipient shall apply the following methods for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Single source selection for policy advisors and for school and teacher mapping
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7. The Recipient shall recruit the two individual domestic consultants in accordance with ADB's procedures for recruiting individual consultants.

**E. 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.

**F. ADB's Review of Procurement Decisions**

10. All 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

### Project Implementation and Other Matters

#### A. Executing Agency

1. MOES shall be the Executing Agency for the Project, with the Technical Secretariat (TS) of the Education Policy Committee as focal point.

#### B. Arrangements and Responsibilities for Project Management, Implementation and Coordination

2. Within one month of the Effective Date, a Project Steering Committee (PSC) chaired by the Secretary, MOES, shall be established. The PSC will comprise the following members: Joint Secretary, Planning Division, MOES; Joint Secretary, School Administration Division, MOES; the heads of the Department of Education, of the Curriculum Development Center, the Non-formal Education Center, the Office of the Controller of Examinations, and of the National Center for Educational Development; and the Under Secretary of the Foreign Aid Coordination Section of MOES. The Under Secretary of the Policy Analysis and Program Section of MOES shall act as the member-secretary. Other members, including the donor contact point, can be invited as observers.

3. The PSC shall meet whenever necessary, but not less than once every four months. It shall be responsible for (a) approving the Annual Work Plan and Budget; (b) conducting Project reviews on a trimester basis; (c) preparing Project performance reports; (d) providing guidance to the TS on Project implementation; and (e) coordinating inputs, in particular consulting services, with other donors. The Joint Secretary, Planning Division, MOES will be the Project Director, in charge of the day-to-day management and implementation of the Project. (S)he will report to the PSC. (S)he will be assisted by the TS and consultants.

#### C. Project Implementation

##### Counterpart Staff and Financing

4. The Recipient shall ensure that sufficient counterpart staff and financing, needed to implement the Project, shall be provided. More specifically, the Recipient shall provide sufficient office space for the consultants.

##### Finding and Recommendations of the Project

5. The Recipient shall ensure that in carrying out the policy measures and activities included in the Policy Matrix of the Loan Agreement, due consideration shall be given to the findings and recommendations provided under the Project.

##### Staffing Issues

6. All necessary and appropriate measures, in accordance with the Recipient's rules and regulations, shall be taken to ensure that all staff that have received training under

the Project shall stay in their position throughout the duration of the Project and work fulltime on policy formulation, coordination and follow-up functions.

7. Within one month of the Effective Date, MOES shall have identified the staff to be assigned for the implementation of the Project. All such staff shall be assigned within three months of the Effective Date and remain in place throughout the duration of the Project, in accordance with the Recipient's rules and regulations. The full-time policy officer position and the documentation officer position shall be retained at the end of the Project.

#### Project Reviews

8. MOES and ADB shall jointly conduct Project reviews every four months. The reviews shall include (a) evaluation of the progress in the preparation of the Core Document for 1-12 School Sector; (b) implementation arrangements; (c) progress in legislative, executive and financial actions; and (d) capacity development measures. Within 18 months of the Effective Date, MOES and ADB shall jointly conduct a mid-term review, and a Project completion review 12 months after Project completion.