

LOAN AGREEMENT
(Special Operations)
(Education Sector Program I)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 28 DECEMBER 2006

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 28 December 2006 between NEPAL (“the Borrower”) and ASIAN DEVELOPMENT BANK (“ADB”).

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 16 October 2006 (hereinafter called the Policy Letter), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to develop the Borrower's education sector (hereinafter called the Program Cluster or ESP) of which the Program (hereinafter called the Program or ESPI) comprises the first subprogram as described in Schedule 1 to this Loan Agreement;

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

(C) the Borrower has likewise applied to ADB for a grant for capacity development for the Ministry of Education and Sports (MOES) to support effective implementation of the Program, assist in the preparation for transition to a 1-12 school sector approach, and support and strengthen policy formulation and follow-up, and by a Grant Agreement of even date herewith (hereinafter called the Grant Agreement), ADB has agreed to give the Borrower a grant of two million United States Dollars (\$2,000,000); and

(D) ADB has, on the basis inter alia of the foregoing, agreed to make a loan to the Borrower 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; Definitions

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

(a) 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, as described in the Loan Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Borrower.

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

(c) 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 Loan Agreement.

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

(e) Section 6.05 (c) is deleted and the following is substituted therefor:

(c) Promptly after the closing date for withdrawals from the Loan Account, but in any event not later than three (3) months thereafter or such later date as may be agreed for this purpose between the Borrower and ADB, the Borrower shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution of the Program, including its cost, the performance by the Borrower of its obligations under this Loan Agreement and the accomplishment of the purposes of the Loan.

Section 1.02. The terms defined in the Loan Regulations are incorporated into this Loan Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Counterpart Funds" means the Rupees proceeds generated from the proceeds of the Loan;

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

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

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

(e) "First Tranche" means the portion of the proceeds of the Loan in an amount not exceeding ten million two hundred and sixteen thousand Special Drawing Rights (SDR10,216,000) to be initially withdrawn and utilized;

(f) "FY" or "Fiscal Year" means the fiscal year of the Borrower which runs from 16 July to 15 July;

(g) "MOES" means the Borrower's Ministry of Education and Sports, and includes any legal successor thereto;

(h) "MOF" means the Borrower's Ministry of Finance, and includes any legal successor thereto;

(i) "Policy Letter" means the development policy letter dated 16 October 2006 addressed by the Borrower to ADB and referred to in Recital (A) of this Loan Agreement;

(j) "Policy Matrix" means the policy matrix agreed between the Borrower and ADB and included in Appendix 6 of the Report and Recommendation of the President to the Board of Directors for the Program;

(k) "Program Executing Agency" means, for the purposes and within the meaning of the Loan Regulations, MOES, which is responsible for the carrying out of the Program;

(l) "Rupees" refers to the Borrower's currency; and

(m) "Second Tranche" means the balance of the proceeds of the Loan remaining in the Loan account after the utilization of the first tranche, to be withdrawn pursuant to and subject to the provisions of Attachment 2 of Schedule 3 to this Loan Agreement.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to twenty million four hundred and thirty two thousand Special Drawing Rights (SDR 20,432,000).

Section 2.02. (a) The Borrower 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 Loan 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 Borrower 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 Loan Agreement.

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

ARTICLE III

Use of Proceeds of the Loan

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

Section 3.02. The proceeds of the Loan may be withdrawn from the Loan Account 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 Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

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

Section 3.04. Withdrawals from the Loan 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. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 January 2010 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

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

Section 4.02. (a) The Borrower 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 to record the progress of the Program.

(b) The Borrower 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, the Borrower 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, the Borrower shall furnish, or cause to be furnished, to ADB semi-annual 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.

ARTICLE V

Effectiveness

Section 5.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the Grant Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring effectiveness of this Loan Agreement) shall have been fulfilled.

Section 5.02. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Secretary of MOF of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

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

For the Borrower

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:

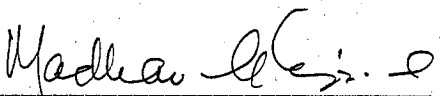
29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

Facsimile Numbers:


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

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan 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 
MADHAV P. GHIMIRE
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
PAOLO SPANTIGATI
Officer-in-Charge
Nepal Resident Mission

SCHEDULE 1
Description of the Program

1. The principal objective of ESP is to support the Borrower's medium to long-term education sector reform and restructuring in a phased manner, leading to a more equitable, inclusive, effective, and holistic school education.
2. The Program is the first subprogram of ESP. Its objective is to contribute to poverty reduction in Nepal by increasing the level of education attainment, particularly for girls and disadvantaged groups. ESPI aims to achieve: (i) improved policy interventions in primary and basic education and performance targets under EFA; and (ii) a broadly accepted and financed 1-12 school sector reform and restructuring framework, for implementation by FY2010. ESP and the Program are described in more detail in the Policy Letter. The Program will be implemented during the period till December 2009.
3. ESP includes a second and a third subprogram, the design of which will depend on the outcome of the Program. ESPII will support early implementation of the extension of basic education to grade 1-8 in selected districts. ESPIII will support full implementation of 1-12 school sector reform and restructuring.
4. In support of the Program:
 - (a) the proceeds of the Loan shall be used to finance the foreign exchange costs of Eligible Items; and
 - (b) the Counterpart Funds shall be used to finance the local currency costs relating to the implementation of certain programs and other activities consistent with the objectives of the Program, pursuant to the provisions of paragraph 6 of Schedule 5 to this Loan Agreement.
5. The proceeds of the Loan are expected to be utilized by 31 July 2009.

SCHEDULE 2
Amortization Schedule
(Education Sector Program I)

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15-May-2015	638,500
15-Nov-2015	638,500
15-May-2016	638,500
15-Nov-2016	638,500
15-May-2017	638,500
15-Nov-2017	638,500
15-May-2018	638,500
15-Nov-2018	638,500
15-May-2019	638,500
15-Nov-2019	638,500
15-May-2020	638,500
15-Nov-2020	638,500
15-May-2021	638,500
15-Nov-2021	638,500
15-May-2022	638,500
15-Nov-2022	638,500
15-May-2023	638,500
15-Nov-2023	638,500
15-May-2024	638,500
15-Nov-2024	638,500
15-May-2025	638,500
15-Nov-2025	638,500
15-May-2026	638,500
15-Nov-2026	638,500
15-May-2027	638,500
15-Nov-2027	638,500
15-May-2028	638,500
15-Nov-2028	638,500
15-May-2029	638,500
15-Nov-2029	638,500
15-May-2030	638,500
15-Nov-2030	638,500
TOTAL	20,432,000

*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 provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3**Withdrawal of Loan 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.

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

(b) No withdrawals from the Loan 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) An application for withdrawal from the Loan Account shall be submitted to ADB by the Borrower and shall be in a form satisfactory to ADB.

(b) Such withdrawal applications shall be accompanied by a certificate of the Borrower confirming that with respect to each year during which the proceeds of the Loan are expected to be disbursed, the value of the Eligible Imports is expected to be equal to or greater than the amount of the Loan expected to be disbursed during such year.

(c) For the purposes of this paragraph, the term "Eligible Imports" means the total imports of the Borrower 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 Borrower shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Borrower has certified the value of Eligible Imports in its withdrawal application.

4. (a) The pooled Foreign Exchange Account jointly held by MOF and MOES shall function as the Deposit Account into which all withdrawals from the Loan Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with terms and conditions satisfactory to ADB.

(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 Borrower 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 six (6) 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 Borrower shall submit trade statistics and any other information as ADB may require from time to time to assess the Borrower's compliance with the formula for determining Eligible Imports.

5. Notwithstanding any other provisions of this Loan Agreement or the Loan 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 Borrower, that (a) sufficient progress has been achieved by the Borrower in the carrying out of the Program; and, in particular, (b) the Borrower has fulfilled the conditions for the release of the Second Tranche specified in Attachment 2 to this Schedule.

Attachment 1 to Schedule 3**List of ineligible items**

1. Loan proceeds will finance the foreign currency expenditures for the reasonable cost of imported goods required during the Education Sector Program.
2. No withdrawals will be made for the following:
 - (i) expenditures for goods (included in the following Standard International Trading Commodity chapters or headings):

Table: 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
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)
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), nonirradiated for nuclear reactors

Source: United Nations.

- (ii) expenditures in the currency of the Borrower or of goods supplied from the territory of the Borrower;
- (iii) payments made for expenditures incurred more than 180 days before the effectiveness date of the loan;
- (iv) 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 loans from the Asian Development Bank;
- (v) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (vi) expenditures for narcotics; and
- (vii) expenditures for pesticides categorized as extremely hazardous or highly hazardous in classes I-a and I-b, Classification of Pesticides by Hazard and Guidelines to Classification.

Conditions for Release of the Second Tranche

The conditions for the release of the Second Tranche are as follows:

- (i) MOES shall have prepared the EFA Annual Strategic Implementation Plan FY2009 in accordance with EFA policy objectives and performance target, and have it endorsed by pooling partners, including ADB;
- (ii) MOES shall have achieved, in a manner acceptable to ADB, the performance targets set in the ASIP for FY2007; and
- (iii) MOES shall have prepared a timebound action plan with resource allocation on the implementation of the recommendations of the EFA mid-term review.

SCHEDULE 4
Procurement

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

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 Borrower'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 Implementation, Management, Coordination and Monitoring

1. MOES shall be the Program Executing Agency responsible for the overall and timely implementation of the Program. Within MOES, the Department of Education (DOE) shall be the implementing Agency. MOES and DOE shall implement, manage, coordinate and monitor the Program in accordance with the goals, responsibilities, funding mechanism, fiduciary requirements and other Program management arrangements as set out in the EFA Core Document and agreed in the EFA JFA.

Implementation of the Policy Letter

2. The Borrower shall: (a) ensure that the objectives achieved, policies adopted, and actions taken prior to the date of this Loan Agreement, as set forth in the Policy Letter, shall continue to be in full force and effect for the duration of the Program period and subsequently; (b) 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; and (c) carry out all of its obligations as stipulated under this Schedule and the Loan Agreement, in a timely manner.

Policy Dialogue

3. The Borrower shall keep ADB informed of, and the Borrower 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 Borrower 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 Borrower 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 Borrower shall take ADB's views into consideration before finalizing and implementing any such proposals.

Counterpart Funds

6. The Borrower shall ensure that the Counterpart Funds shall be used to support the costs associated with the implementation of EFA.

Vulnerable Communities Development Framework

7. The Borrower shall ensure that the implementation and management of the Program shall be done in accordance with the Vulnerable Communities Development Framework agreed upon between MOES and ADB.

Resettlement

8. No activities under the Program shall entail land acquisitions or other resettlement activities under ADB's Resettlement Policy.

Sector Financing

9. The Borrower shall ensure that throughout the Program period, the budget allocations for education shall at least remain at the level of FY2006/07, while all efforts will be made to increase the budget allocation.