

LOAN AGREEMENT  
(Special Operations)  
(Education Sector Project II)

between

INDEPENDENT STATE OF SAMOA

and

ASIAN DEVELOPMENT BANK

DATED 5 JUNE 2006

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 5 June 2006 between INDEPENDENT STATE OF SAMOA (the "Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement; and

(B) the Borrower has also applied to ADB for a technical assistance grant in the amount of \$350,000 for the purpose of developing a national teacher development framework (the "TA"), and ADB has agreed to provide the technical assistance to the Borrower for such purpose; and

(C) ADB has 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 provisions of the Special Operations Loan Regulations of ADB, dated 1 May 2004 (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.

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

- (a) "ACEO(s)" means the assistant chief executive officer(s) within MESC;
- (b) "AusAID" means the Australian Agency for International Development who has given in-principle grant support to finance 32% of the total Project costs (excluding taxes and duties) estimated to be approximately the equivalent of \$8,600,000;
- (c) "CEO" means the chief executive officer of MESC;
- (d) "Cofinanciers" means, collectively NZAID and AusAID;

(e) "Cofinancing Agreement" means the tripartite agreement to be entered into between the Borrower and each of the Cofinanciers providing for grants in the amount of approximately \$8,600,000 from each of AusAID and NZAID for purposes of the Project;

(f) "ESC" means the education steering committee as referred to in paragraph 3 of Schedule 6 to this Loan Agreement;

(g) "ESPI" means the Education Sector Project I financed by ADB;

(h) "ICT" means information and communication technology;

(i) "MESC" means the Ministry of Education Sport and Culture of the Borrower, or any successor thereto;

(j) "MOF" means the Ministry of Finance of the Borrower, or any successor thereto;

(k) "NZAID" means the New Zealand Agency for International Development who who has given in-principle grant support to financing 32% of total Project costs estimated to be approximately the equivalent of \$8,600,000;

(l) "OCEO" means the office of the CEO;

(m) "PMT" means the Project management team;

(n) "Project Executing Agency" means, for the purposes and within the meaning of the Loan Regulations, MOF, which is responsible for the carrying out of the Project;

(o) "Project facilities" means the facilities and equipment to be provided under the Project;

(p) "Samoan tala" means the lawful currency of the Borrower; and

(q) "TA" means the technical assistance associated with this Project as more particularly referred to in Recital (B) of 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 five million six hundred fifty five thousand Special Drawing Rights (SDR 5,655,000).

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.

### **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 Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The goods and services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such goods and services and other items of expenditure shall be 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 goods and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 and Schedule 5 to this Loan Agreement.

Section 3.04. Withdrawals from the Loan Account in respect of goods and services shall be made only on account of expenditures relating to

- (a) goods which are produced in and supplied from and 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 and services which 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 30 June 2013 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 Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 6 to this Loan Agreement.

Section 4.02. (a) The Borrower 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 Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest account and 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 Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower 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 Borrower unless the Borrower shall otherwise agree.

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

## **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 Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations: the Borrower shall have failed to perform any of its obligations under the Cofinancing Agreement.

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 Cofinancing Agreement or any provision thereof shall have been repealed, suspended or amended in any manner which in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of the Project facilities.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the Cofinancing Agreement satisfactory to ADB, shall have been duly executed and delivered on behalf of each of the Borrower, AusAID and NZAID and shall have become effective on each such party in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the Cofinancing Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, each of the Borrower, AusAID and NZAID, and is effective upon each such party in accordance with its term, subject only to the effectiveness of this Loan Agreement.

Section 6.03. 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 VII**

### **Miscellaneous**

Section 7.01. The MOF of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

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

For the Borrower

Ministry of Finance  
Private Bag  
Apia, Samoa

Facsimile Numbers:

(685) 21312  
(685) 24779

For ADB

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

Cable Address:

ASIANBANK  
MANILA

Telex Numbers:

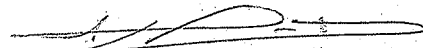
29066 ADB PH (RCA)  
42205 ADB PM (ITT)  
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444  
(632) 636-2445

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.

INDEPENDENT STATE OF SAMOA



By \_\_\_\_\_  
AGUS HARYANTO  
Authorized Representative

ASIAN DEVELOPMENT BANK

By \_\_\_\_\_  
LIQUN JIN  
Vice President  
(Operations 1)

## SCHEDULE 1

### DESCRIPTION OF THE PROJECT

1. The objective of the Project is to establish an equitable and effective education system that will enhance learning outcomes of young people for further study, work and adult life.

2. The scope of the Project comprises five components:

#### Component 1: Curriculum reforms and Assessment System.

This component will ensure that all students will have the opportunity to learn and acquire the knowledge, skills and attitudes specified in the national curriculum. It comprises:

- (i) The development of a New Curriculum for Years 1 to 8 consistent with the bilingual education policy MESC, April 29 2005, the National Curriculum Policy Framework, and the National Special Needs Policy;
- (ii) The development of MESC's capacity for producing audio-visual learning materials in Samoan and English;
- (iii) Adequate supply of learning materials and manuals in all subjects;
- (iv) Teachers' material in all subjects;
- (v) The development of a Multi-Media Methods and provision of related multi media materials for Science and Agricultural Sciences Education at the secondary level and provision of related training;
- (vi) The development of a national assessment policy framework to reflect current curriculum reforms and the development of a national assessment system, and training support; and
- (vii) The establishment of two pilot projects for a home-school literacy partnership, including the development of the Fagaloa Community Learning Center program.

#### Component 2: Teacher Development

The objective of this component is to ensure that teachers implement the national curriculum using effective instructional strategies. This will require:

- (i) activities recommended under the TA;
- (ii) The award of ten agricultural science fellowships for a two-year fast-track training program;

- (iii) The pre and in service training to all teachers based on a detailed plan for the new curriculum;
- (iv) The training to trainers with specially designed course; and
- (v) The continuous training of an average 10 days a year to all teachers to improve general teaching skills.

Component 3: Improving access to quality education

This component will comprise the following activities:

- (i) The upgrading of nine secondary schools and three fully Government funded colleges and the refurbishment of classrooms of the Fagoloa secondary School(s) to turn it into a pilot Community Learning Center.
- (ii) The construction of houses for teachers in four rural areas within existing school compounds to serve as a pilot project to attract teachers in rural areas;
- (iii) The construction of MESC Headquarters at Government's Malifa Compound; and
- (iv) The maintenance of the school facilities, teacher houses and MESC headquarters upgraded or built under the Project and the development of a new policy and procedures for the maintenance of schools facilities.

Component 4: Strengthening capacity to undertake research, evaluation, policy analysis, and planning.

This component will strengthen the national capacity for research and evaluation, policy analysis, and planning by providing training, field studies and researches. It includes also an analysis on the causes of the low achievement and the development of an action plan.

Component 5: Strengthening capacity to implement and manage development projects

This component will support the implementation monitoring and reporting of this Project. In addition, this component is designed to assist MESC to build and institutionalize capacity to manage development projects and external support and ensure more effective and efficient implementation. It includes the development and integration of the project management into the Borrower's GOFAR System.

3. The Project will include the provision of consulting services as described in Schedule 5 to this Agreement.
4. The Project is expected to be completed by 31 December 2012.

**SCHEDULE 2****Amortization Schedule  
(Education Sector Project II)**

<b><u>Date Payment Due</u></b>			<b><u>Payment of Principal</u></b> (expressed in SDR)
15	May	2014	117,813
15	November	2014	117,813
15	May	2015	117,813
15	November	2015	117,813
15	May	2016	117,813
15	November	2016	117,813
15	May	2017	117,813
15	November	2017	117,813
15	May	2018	117,813
15	November	2018	117,813
15	May	2019	117,813
15	November	2019	117,813
15	May	2020	117,813
15	November	2020	117,813
15	May	2021	117,813
15	November	2021	117,813
15	May	2022	117,813
15	November	2022	117,813
15	May	2023	117,813
15	November	2023	117,813
15	May	2024	117,813
15	November	2024	117,813
15	May	2025	117,813
15	November	2025	117,813
15	May	2026	117,813
15	November	2026	117,813
15	May	2027	117,813
15	November	2027	117,813
15	May	2028	117,813
15	November	2028	117,813
15	May	2029	117,813
15	November	2029	117,813
15	May	2030	117,813
15	November	2030	117,813
15	May	2031	117,813
15	November	2031	117,813

<u>Date Payment Due</u>			<u>Payment of Principal</u> (expressed in SDR)
15	May	2032	117,813
15	November	2032	117,813
15	May	2033	117,813
15	November	2033	117,813
15	May	2034	117,813
15	November	2034	117,813
15	May	2035	117,813
15	November	2035	117,813
15	May	2036	117,813
15	November	2036	117,813
15	May	2037	117,813
15	November	2037	117,789
	Total		<u>5,655,000</u>

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\* 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**  
**Allocation and Withdrawal of Loan Proceeds**

General

1. The table attached to this Schedule sets forth the Categories of goods, services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan 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.)

Taxes

2. No withdrawals from the Loan Account shall be made in respect of any local taxes.

Percentages of Bank Financing

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

Interest Charge

4. The amount allocated to Category 7 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

5. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

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

Imprest Account; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower ~~shall~~may establish ~~immediately~~ after the Effective Date, an imprest account at a bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Borrower and ADB. The initial amount to be deposited into the imprest account shall not exceed the equivalent of \$300,000.

(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" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$50,000.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Samoa Education Sector Project II)				
CATEGORY				ADB FINANCING
Number	Item	Amount Allocated SDR		Percentage and Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Civil Works	2,848,000		26 percent of total expenditure
2	Equipment	625,000		
2A	Vehicles		63,000	<del>25</del> 26 percent of total expenditure
2B	Other Equipment		562,000	26 percent of total expenditure
3	Materials (learning materials)	330,000		26 percent of total expenditure
4	Consulting Services	526,000		26 percent of total expenditure
5	Training	316,000		26 percent of total expenditure
6	Operations and Maintenance	49,000		
6A	Implementation Management		21,000	<del>23</del> 26 percent of total expenditure
6B	Recurrent Costs		28,000	<del>25</del> 26 percent of total expenditure
7	Interest Charges During Implementation	203,000		100 percent of amount due
8	Unallocated	758,000		
	Total	5,655,000		

**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 goods and services to be financed out of the proceeds of the Loan. In this Schedule and the Attachment hereto, the term "goods" includes equipment and materials; the term "services" does not include consulting services.

2. Procurement of goods and services shall be subject to the provisions of the "Guidelines for Procurement under Asian Development Bank Loans" dated November 2004 (hereinafter called the Guidelines for Procurement), as amended from time to time, which have been furnished to the Borrower and MOF.

3. Procurement of goods and services shall be made without any restriction against, or preference for, any particular supplier or contractor or any particular class of suppliers or contractors, except as otherwise provided in paragraph 5 below.

4. (a) Each civil works contract estimated to cost the equivalent of more than \$1,000,000 shall be awarded on the basis of international competitive bidding as described in Chapter II of the Guidelines for Procurement.

(b) For contracts to be awarded on the basis of international competitive bidding, there shall be submitted to ADB, as soon as possible, and in any event not later than 90 days before the issuance of the first invitation to bid for the Project, a General Procurement Notice (which ADB will arrange to publish separately) in such form and detail and containing such information as ADB shall reasonably request. ADB shall be provided the necessary information to update such General Procurement Notice annually as long as any goods and works remain to be procured on the basis of international competitive bidding.

(c) For contracts to be awarded on the basis of international competitive bidding, procurement actions shall be subject to review by ADB in accordance with the procedures set forth in Chapter IV of the Guidelines for Procurement. Each draft invitation to bid, to be submitted to ADB for approval under such procedures, shall reach ADB at least 21 days before it is issued and shall contain such information as ADB shall reasonably request to enable ADB to arrange for the separate publication of such invitation.

5. In comparing bids under international competitive bidding, a margin of preference may be provided, at the option of the Borrower and in accordance with the provisions of the Attachment to this Schedule, for civil works to be carried out by eligible domestic contractors, as defined by ADB.

6. Civil works contracts estimated to cost the equivalent of less than \$1,000,000 and each supply contract for equipment or materials estimated to cost the equivalent of less than \$1,000,000 may be awarded on the basis of local competitive bidding among contractors in accordance with the standard procurement procedures of the Borrower and acceptable to ADB. Promptly after each contract is awarded, ADB shall be furnished with three copies of the contract and the bids evaluation report for a post facto review by ADB, provided that if the award or the terms of the contract are not approved by ADB, the

Borrower, through MOF shall not use the proceeds of the Loan to finance such contract and the Borrower shall provide financing from its own resources or other sources. In the event that any payment is made from the loan proceeds to finance any such contract, the Borrower shall refund such payment(s) to ADB.

7. (a) The Borrower shall ensure that all ADB-financed goods and services 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 Borrower shall ensure that all ADB-financed contracts for the procurement of goods and services 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.

Preference for Domestic Contractors

1. In the selection of civil-works contractors, single-responsibility turnkey (including design-build) contractors or supply-and-installation contractors where the CIF cost of goods to be used for or in the permanent works under such contracts is less than 60 percent of the total cost of such works, eligible domestic contractors, as defined below, through international competitive bidding may be granted a margin of preference in accordance with the following provisions.

- (a) For application of domestic preference, all responsive bids shall first be classified into the following two categories:

Category I -- bids offered by domestic contractors and joint ventures eligible for the preference in accordance with the applicable criteria as set forth in paragraph 2 below; and

Category II -- bids offered by other contractors.

- (b) The lowest evaluated bid of each category shall then be determined by comparing all evaluated bids in each category among themselves.
- (c) Such lowest evaluated bids shall next be compared with each other and if, as a result of this comparison, a bid from Category I is found to be the lowest, it shall be selected for the award of contract.
- (d) If, however, as a result of the comparison under subparagraph (c) above, the lowest bid is found to be from Category II, it shall be further compared with the lowest evaluated bid from Category I. For the purpose of this further comparison only, an upward adjustment shall be made to the lowest evaluated bid price of Category II by adding an amount equal to seven-and-one-half percent of the bid price. If, after such comparison, the Category I bid is determined to be the lowest, it shall be selected for the award of contract; if not, the lowest evaluated bid from Category II shall be selected.

2. (a) To be eligible for the preference set forth in paragraph 1 above, domestic contractors must meet the following criteria:

- (i) firms are registered in the territory of the Borrower;
- (ii) firms have majority ownership by nationals of the Borrower; and
- (iii) firms will not subcontract more than 50 percent of the total value of their work to foreign contractors.

(b) A joint venture between a domestic contractor and its foreign partner shall be eligible for the preference only if it meets the following criteria:

- (i) the domestic partner(s) is individually eligible for the preference according to the criteria stated above;
- (ii) the domestic partner(s) would not qualify for the contract works on technical or financial grounds without the foreign participation; and
- (iii) the domestic partner(s) will, under the arrangements proposed, carry out at least 50 percent of the contract works measured in terms of value.

(c) Contractors applying for the preference shall be required to provide, as part of the data for qualification, necessary information, including details of ownership, for determining whether, according to the applicable criteria, a particular firm or group of firms qualifies for the preference.

3. The bidding documents shall clearly indicate the preference to be granted, the information required to establish the eligibility of firms for the preference claimed, and the procedures to be followed in the comparison of bids, all as set forth above. Bidders applying for the preference shall provide such additional information in support of such eligibility as may be requested by the Borrower and ADB.

**SCHEDULE 5**  
**Consultants**

1. The services of domestic and international consultants shall be utilized in the carrying out of the Project, particularly with regard to:

- (a) Primary Curriculum development;
- (b) Assessment system;
- (c) Subject matter specialist in Science/Agricultural Science Materials ;
- (d) Information and Communication Technology;
- (e) Primary subject area specialist;
- (f) Public opinion assessment;
- (g) Pre and in-service teacher development;
- (h) Education research methods;
- (i) Education sector expenditure review;
- (j) Civil works;
- (k) Procurement in education sector;
- (l) Education sector planning;
- (m) Project management, monitoring and evaluation;
- (n) Bilingual specialist; and
- (o) Audio visual specialist.

The terms of reference of the domestic and international consultants shall be as determined by agreement between ADB and MOF, in consultation with MESC.

2. The selection, engagement and services of the consultants shall be subject to the provisions of this Schedule and the provisions of the "Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers" dated January 2005 (hereinafter called the Guidelines on the Use of Consultants), as amended from time to time, which have been furnished to MOF.

3. MOF will determine which international consulting services described in paragraph 1 above will be performed by a firm and which one will be performed by individual.

4. The firm(s) shall be selected and engaged by MOF, in consultation with MESOC, using the quality-and-cost-based selection (QCBS) method in accordance with the following procedures.

(a) Invitation for technical and financial proposals. The invitation to submit technical and financial proposals (hereinafter called the Request for Proposals or RFP) and all related documents shall be approved by ADB before they are issued. For this purpose, three copies of the draft RFP, the names of consultants to be short-listed, the proposed criteria for evaluation of both proposals, a draft consultancy contract, and other related documents shall be submitted to ADB. A period of at least 35 days shall be allowed for submission of both proposals. A copy of the final RFP as issued, together with all related documents, shall be furnished to ADB for information promptly after issuance. The validity period for the technical and financial proposals as provided in the RFP shall usually not exceed three months from the date specified for submission of the technical and financial proposals. The approval of ADB shall be obtained for any request to extend such validity period. Except as ADB may otherwise agree, the validity period, including any extensions, shall not exceed a maximum total period of six months. If the contract is not signed within the validity period in accordance with the Guidelines on the Use of Consultants, the selection shall be invalid and the selection and engagement process as provided in this paragraph shall be followed again.

(b) Evaluation and scoring of technical proposals. Immediately after the technical proposals have been evaluated and scored, approval of ADB shall be obtained to the evaluation and scoring of the technical proposals. For this purpose, ADB shall be furnished with three copies of the technical proposals.

(c) Public opening of financial proposals. The financial proposals of the firms whose technical proposals meet the minimum qualifying technical score shall be opened publicly after adequate notice is given to such firms or their representatives to attend the opening of the financial proposals.

(d) Evaluation and scoring of financial proposals and ranking of technical and financial proposals. After the financial proposals have been evaluated and scored, the ranking of the technical and financial proposals shall be made. Before negotiations are started with the first-ranked consultants, approval of ADB shall be obtained to the evaluation and scoring of the financial proposals and the ranking of the technical and financial proposals. For this purpose, ADB shall be provided with three copies of (i) the evaluation and scoring of the financial proposals and (ii) the ranking of the technical and financial proposals.

(e) Execution of contract. After the conclusion of negotiations but before the signing of the contract, ADB shall be furnished with the contract as negotiated for approval. Promptly after the contract is signed, ADB shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

5. The individual consultants shall be selected and engaged by MOF, in consultation with MESOC, in accordance with the following procedures:

(a) A list of the candidates together with their qualifications and their ranking and a draft contract shall be furnished to ADB for approval before the selection of consultants.

(b) Promptly after the contract is signed, ADB shall be furnished with the evaluation of the candidates and a brief justification for the selection, together with three copies of the signed contract.

(c) If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

6. The domestic consultants for the services referred in paragraph 1 (except for the services referred in (m)) shall be selected and engaged in accordance with procedures acceptable to ADB, and the selection and engagement of the domestic consultants shall be subject to the approval of ADB with regard to their competence and experience for carrying out the assignment. As soon as the proposals received have been evaluated but before negotiations are started with the consultants selected for negotiations, ADB shall be furnished with three copies of (i) a list of consultants invited; (ii) an evaluation of the proposals (together with one set of the first-ranked proposal); and (iii) justification for the selection. After the conclusion of negotiations but before the signing of the contract, the contract as negotiated shall be furnished to ADB for approval. Promptly after the contract is signed, ADB shall be furnished with three copies of the signed contract. If any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.

7. The Borrower 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.

## **SCHEDULE 6**

### **Execution of Project and Other Matters**

#### Project Executing Agency

1. MOF will be the Project Executing Agency.

#### Implementing Agency

2. MESC will be the Implementing Agency. MESC will have the overall responsibility for the day-to-day management of project implementation, monitoring and evaluation and reporting of progress. The Project will be managed, through the existing MESC organizational structure, by the MESC Core Executive, comprised by the CEO, ACEOs and supported by OCEO. The responsibility for each component will rest with the appropriate ACEO and be implemented by the staff of the relevant division. The Curriculum, Material and Assessment Division (CMAD) will have responsibility for the implementation of Component 1 while the School Operation Division (SOD) will have the responsibility for the implementation of Component 2 with a sub-committee consisting of ACEOs for SOD and CMAD, an OCEO representative, and Principal Education Officers. PMT (to be eventually part of MESC's organizational structure) will be responsible for the procurement of all equipment and of the implementation of Component 3, together with an infrastructure sub-committee of MESC composed of an OCEO representative, the Head PMT, all ACEOs, representatives from Ministry of Works, and MOF. The Planning, Policy and Research Division (PPRD) will implement Component 4. OCEOs/MESC Core Executive will be responsible for implementing Component 5. Each division will prepare the reviews and program of activities and liaise on project implementation matters with ADB and the Cofinanciers.

#### Education Steering Committee

3. ESC is composed of a Chair, the Government Ombudsman and representatives from MESC, MOF, Ministry of Foreign Affairs, National University of Samoa, Samoa Polytechnic, the Post-Primary Principals Association, the National Council of Churches, the National Council of Early Childhood Education of Samoa Inc., the Advisory Committee for Special Needs Education. The CEO is, ex officio, a member of the ESC, while the OCEO provides support and secretariat services. The ESC will meet whenever necessary, but not less than once every quarter. ESC will (i) approve Project progress reports and endorse the proposed operational plans, and support the development of Project budgets; (ii) provide overall policy and strategic guidance in implementing the Project and decide on corrective action, if needed; (iii) ensure that Project implementation is in accordance with the Government educational sector policies and plans, and (iv) resolve issues and conflicts.

#### Procurement methods and contracts packaging

4. The Borrower shall (i) commission an external review of the efficiency of the procurement methods and contracts packaging for equipments and materials procured under ESP I, (ii) discuss the findings of the review with ADB and the Cofinanciers during the Project's inception, and (iii) agree with ADB and the Cofinanciers on the remedial measures to be taken based on such review prior to engaging in procurement under this Project.

#### Education Policy and Strategic Plan

5. Within 12 months after the Effective Date, the Borrower shall (i) develop an evidence based Education, Sports and Culture Policy and Strategic Plan (2006-2014) for the education sector, including impact studies on poverty alleviation and targeted support to the economically disadvantaged, (ii) provide a copy of such strategic plan to ADB, the Cofinanciers, and other relevant development partners for review and comments prior to tabling such policy and plan for cabinet approval, (iii) consider comments from ADB and the Cofinanciers prior to tabling such policy and plan for cabinet approval, and (iv) table it for cabinet approval.

#### Teacher Supply and Demand

6. Within 3 years after the Effective Date, the Borrower shall (i) develop a policy and strategy on teacher supply and demand and conditions of their service based on, inter alia, (a) the findings and recommendations of the supply and demand study supported under ESP I, (b) the analyses and recommendations that will emerge from the TA, (c) the findings of the pilot projects as described in Component 3(ii) in Schedule 1 to this Agreement, (ii) provide such policy and strategy to ADB and the Cofinanciers for review and comments, (iii) consider comments from ADB and the Cofinanciers prior to tabling such policy and strategy for approval and (iv) table it for cabinet approval, and (v) implement it in accordance with its terms.

#### Learning Outcomes

7. Within 3 years after the Effective Date, the Borrower shall ensure that a system to assess student learning outcomes and the impact of the Project investments is in place. This system shall develop a sample based standardized system for the assessment of student learning that will be used as a baseline for reporting of progress towards key performance indicators.

#### Maintenance Plan

8. The Borrower shall cause the submission of a satisfactory maintenance plan by the respective communities as a condition precedent to their schools being upgraded under the Project.

#### Counterpart Funding

9. The Borrower shall take, and shall cause MOF and MESC to take, all necessary measures, including the provision of additional funds, to ensure that sufficient counterpart funds are made available and provided for the Project in a timely manner.

### Rationalization of School

10. By 31 December 2013, the Government shall develop and implement a plan for the rationalization of schools to ensure resources are used cost effectively.

### Employment

11. The Borrower shall cause the contractors to maximize the employment of local persons, in particular those who suffer hardship who meet the job and efficiency requirements for the construction, rehabilitation or maintenance of the Project facilities and shall cause the contractors to give due consideration to the contribution of local women for the construction, rehabilitation and maintenance of the Project facilities.

### Resettlement

12. The Borrower shall ensure that the Project will not entail any involuntary resettlement.

### ICT in Secondary Education

13. Within 3 years after the Effective Date, the Borrower shall (a) develop comprehensive action plans satisfactory to ADB to mainstream information and communication technology education in secondary schools and (b) take appropriate measures based on the lessons learnt from the ADB-supported SchoolNet pilot project component financed by ADB under the TA 4305-SAM to expand outreach to rural areas.

### Plan for complete set of textbooks

14. Within 3 years after the Effective Date, the Borrower shall (i) develop and implement a plan for every child to have a complete set of textbooks that will address issues of finance, procurement, storage, distribution, and school based policies aimed at extending the life of textbooks and (ii) allocate in a timely manner adequate funding in the education budget for financing the development and implementation of this plan.

### Anticorruption Measures

15. During Project implementation, the Borrower shall follow, through MOF, ADB's *Anticorruption Policy*, it being understood that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project. The Borrower shall ensure, through MOF, that (a) periodic inspections of the contractors' activities related to fund withdrawals and settlements are carried out, (b) relevant provisions of ADB's *Anticorruption Policy* are included in all bidding documents for the Project, and (c) all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of MOF and all contractors, suppliers, consultants and other service providers as they relate to the Project.

Review

16. The Borrower shall undertake with ADB and the Cofinanciers two reviews in the first year of Project implementation, and a review each subsequent year. Such reviews shall focus on budgetary allocations, maintenance, staffing and other incremental recurrent costs, implementation arrangement, and achievement under the Project. In addition, the Borrower shall undertake with ADB and the Cofinanciers a midterm review at the end of the third year of Project Implementation that will cover: (i) the scope, design and project implementation arrangements; (ii) evaluate pilot programs; (iii) assess performance against targets and benchmarks; (iv) review lessons and experiences with implementation of each component; (v) review compliance with the loan agreement and bilateral funding agreement(s); and (vi) recommend any changes in project implementation, if required.