

CONFORMED COPY
CREDIT NUMBER 4242-KE

Development Credit Agreement

(Education Sector Support Project)

between

THE REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated December 4, 2006

CREDIT NUMBER 4242-KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated December 4, 2006, between the REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Association has received from the Borrower, letters dated August 2, 2005, July 21, 2005 and October 2, 2006, the former describing a program of actions, objectives and policies designed to reform and strengthen the Borrower's education sector, and the latter two outlining the additional measures in the Borrower's governance, transparency and accountability arrangements in the education sector; a policy paper entitled Kenya Education Sector Support Programme (KESSP) 2005-2010 dated July 2005; a Sessional Paper on A Policy Framework for Education, Training and Research, No. 1 of 2005; (the Program), and declaring the Borrower's commitment to the execution of such Program;

(B) the Borrower intends to obtain from various Development Partners grants or loans to assist in the financing of the Program;

(C) the Borrower and some of the Pooling Development Partners (as hereinafter defined) have entered into a Joint Financing Agreement (as hereinafter defined);

(D) the Borrower, the Pooling Development Partners and Non-Pooling Development Partners (as hereinafter defined), have entered into the Partnership Principles (as hereinafter defined) which inter alia provides for exchange of information, reporting and coordination required for the effective implementation of the Program;

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through May 1, 2004), (the General Conditions), constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions, the Preamble and the following additional terms have the following meanings:

“Beneficiary School” means a registered public primary school and any such other non-formal institution providing primary education as may be approved by the Association, within the Borrower’s territory to which a School Grant (as hereinafter defined) under the Project is made or proposed to be made;

“Board of Governors” means the body established and operating pursuant to the Education Act, Cap 211 of the Laws of Kenya for the purpose of managing post primary education institutions or any legal successor thereto;

“Community Support Grants” means the grants provided, or to be provided, by MOE (as hereinafter defined) to local communities managing an early childhood center for the purpose of improving the center and promoting access to early childhood programs;

“Consultative Government of Kenya and Development Partners Committee” means the Committee referred to in Section 1 (1) (c) of Schedule 4 to this Agreement;

“District Education Board” means a body established and operating pursuant to the Education Act, Cap 211 of the Laws of Kenya, for the purpose of overseeing and coordinating education at the district level or any legal successor thereto;

“Early Childhood Development Education Committee” means a committee established by the community comprising parents and other community members for the purpose of managing an early childhood center;

“Eligible Categories” means Categories (1)(a), 1(b), 1(c), and 1(d) set forth in the table in Part A.1 of Schedule 1 to this Agreement;

“Eligible Expenditures” means the expenditures for goods, works consultants’ services and School Grants referred to in Section 2.02 of this Agreement;

“Environmental and Social Management Plan” means a plan dated September 19, 2005 prepared and adopted by the Borrower, describing the environmental issues and appropriate mitigatory measures, the procedures governing land acquisition, resettlement and compensation to be applied in the implementation of the Project, as said plan may be amended from time to time with prior agreement of the Association;

“Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of this Agreement;

“Fiscal Year” or “FY” means the Borrower’s fiscal year commencing on July1 and ending on June 30 of the following year;

“Financial Management Handbook for Kenya Education Sector Support” means a handbook of procedures for ensuring that available program resources are used for intended purposes, enhancing capacity for financial management and unified donor accounting requirements in the implementation of the KESSP;

“HIV/AIDS” means the Human Immuno-Deficiency Virus Acquired Immuno-Deficiency Syndrome;

“Independent Procurement Monitoring Agent” means an independent contractor to assist the Government to monitor performance in the procurement of goods, works and services;

“Integrated Financial Management Information System” or “IFMIS” means an integrated information system for MOE covering both financial as well as procurement management procedures;

“Joint Financing Agreement” or “JFA” means the agreement dated 16 December, 2005 signed by the Borrower, the Association, and any other development partner including international organizations contributing to the Program through a pooled funding arrangement, outlining the institutional arrangements, procedures on procurement, disbursement, accounting, monitoring, reporting, auditing and, coordination and exchange of information required for the Program as the same may be amended from time to time;

“Kenya Shilling” or “KES” means the currency of the Borrower;

“KESSP Reform Secretariat” means the secretariat referred to in paragraph 1 (f) of Section 1 of Schedule 4 to this Agreement;

“KESSP Steering Committee” means the committee referred to in Section I (1) (e) of Schedule 4 to this Agreement;

“KESSP Work Plans” means plans satisfactory to the Association referred to in Section III (1) (d) of Schedule 4 to this Agreement, setting forth details of all procedures, guidelines, timetables for all work under the program and criteria (including the eligibility criteria for the School Grants) required for the Program, as such plan may be amended from time to time with prior agreement of the Association;

“MOE” means the Borrower’s Ministry of Education;

“MOST” means the Borrower’s Ministry of Science and Technology;

“Monitoring and Evaluation Indicators” means the agreed performance indicators set forth in Schedule 5 to the Development Credit Agreement of even date herewith to be utilized by the Borrower under the Project to measure the progress in the implementation of the Project and the degree to which the objectives thereof are being achieved;

“Non-Pooling Development Partners” means the Development Partners who will support the Program through bilateral arrangements with the Borrower or channel their support through multilateral development partners;

“Open and Distance Learning” or “ODL” means education provided outside the normal classrooms using any other media to allow flexibility in teaching and learning;

“Other Implementing Ministries” means the following Ministries of the Borrower; (i) the Ministry of Planning and National Development, (ii) the External Resource Department within the Ministry of Finance, (iii) the Ministry of Youth Affairs, (iv) the Ministry of Health, (v) the Ministry of Gender, Sports and Culture; ;(vi) the Ministry of Science and Technology; and any other Ministries agreed with the Association and the development partners;

“Parent Teachers’ Association” means an association of parents who participate in the provisions of resources and management of schools attended by their children and referred to in Section 1 (3) of Schedule 4 to this Agreement;

“Partnership Principles” means the agreement entered into by the Borrower, the Non-Pooling Development Partners and the Pooling Development Partners dated November 7, 2005 providing for the modalities of implementing the Program including exchange of information, reporting and coordination required for effective implementation of the Program;

“Pooled Account” means the account referred to in Article 3.03 (a) of this Agreement;

“Pooling Development Partners” means, any international agencies or organizations pooling or who will pool part or all their funds for the Program into the Pooled Account;

“Primary School Infrastructure Improvement Management Manual” means a handbook of procedures for managing the school infrastructure development program at the local level;

“Procurement Manuals” means the following manuals to be adopted by the Borrower (i) Procurement Procedures Manual for Secondary Schools, Colleges and Polytechnics, (ii) Procurement Procedures Manual for Semi-Autonomous Government Agencies (SAGAs), (iii) Procurement Procedures Manual for MOE Headquarters, Provincial and District Offices and, (iv) Procurement Manual for Primary Schools;

“Procurement Plan” means the Borrower’s procurement plan, dated August 26, 2005 covering the initial 12 month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.02 to this Agreement, to cover succeeding 18 month periods (or longer) of Project implementation;

“Report-based Disbursements” means the Borrower’s option for withdrawal of funds from the Credit Account referred to in Part A.3 of Schedule 1 to this Agreement;

“Risk-Based Internal Audit Strategy” means an internal audit approach that takes account of institutional risk management;

“School Grant” means a grant made, or to be made, by MOE (as hereinafter defined) to a beneficiary public school or non-formal school for the purpose of purchasing school instructional materials, or improving the infrastructure and/or undertaking more substantial expansion of refurbishment works;

“School Infrastructure Committee” means a committee established by a primary school to oversee the school infrastructure program and referred to in Section II (2) A (i) of Schedule 4 to this Agreement;

“School Instructional Materials Selection Committee” means a committee established by a school for the purpose of managing and overseeing the utilization of funds for school instructional materials and referred to in Section II (2) (D) (ii);

“School Management Committee” means a committee established pursuant to the Education Act, Cap 211 of the Laws of Kenya to manage a primary school, or any legal successor thereto.

“Special Account” means the account referred to in Part B (1) of Schedule 1 of this Agreement;

“Special Needs Education Grants” means the grants given, or to be given, to schools to finance equipment and materials to meet special needs of children with various disabilities and referred to in Section II (2) A (i) of Schedule 4 to this Agreement;

“Subprogram” means a program of activities in the areas set out in Schedule 2 to this Agreement and included in the annual work plan and budget to be carried out in each Fiscal Year, as agreed between the Borrower, the Association and any other development partners contributing to the Program;

“TIVET” means the Technical Industrial Vocational and Entrepreneurship Training program within the Ministry of Science and Technology; and

“Teachers Service Commission” or “TSC” means a semi-autonomous corporate body established and operating pursuant to Teachers Service Commission Act, Cap 212 of the Laws of Kenya for the purpose of registering, recruiting, deploying and managing teachers, or any legal successor thereto.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount in various currencies equivalent to fifty four million Special Drawing Rights (SDR 54,000,000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods, works, services, and School Grants required for a Subprogram and to be financed out of the proceeds of the Credit.

Section 2.03. The Closing Date shall be December 31, 2010 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on May 1 and November 1 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each May 1 and November 1 commencing May 1, 2017 and ending November 1, 2046. Each installment to and including the installment payable on November 1, 2026 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further

modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate financial, administrative and educational practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

Section 3.02. (a) Except as the Association shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Borrower shall update the Procurement Plan in accordance with guidelines acceptable to the Association, and furnish such update to the Association not later than 12 months after the date of the preceding Procurement Plan, for the Association's approval.

Section 3.03. (a) The Borrower shall open and maintain an account (the Pooled Account) in Kenya Shillings in a commercial bank acceptable to the Association on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment wherein it shall deposit development partners' financial contribution to the Project. Deposits into, and payments out of, this Pooled Account shall be made in accordance with the provisions of Part B of Schedule 1 to this Agreement and the relevant provisions of the JFA where applicable.

(b) All funds deposited into the Special Account in accordance with Part B of Schedule 1 of this Agreement shall be promptly deposited into the Pooled Account.

(c) The funds from the Pooled Account may be withdrawn in accordance with the provisions of Part B of Schedule 1 to this Agreement and the relevant provisions of the JFA, where applicable for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Credit, loans and grants from the Pooled Account.

Section 3.04. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan for the future operation of the Project; and

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower shall:

- (i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Association), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
- (iii) furnish to the Association such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of reports referred to in Part A.3 of Schedule 1 to this Agreement (Report-based Disbursements) or on the basis of statements of expenditure, the Borrower shall:

- (i) retain, until at least one year after the Association has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;

- (ii) enable the Association's representatives to examine such records; and
- (iii) ensure that such reports and statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in Section III of Schedule 4 to this Agreement, the Borrower shall prepare and furnish to the Association a financial monitoring report (FMR), in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing funds provided under the Credit, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation ; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (1) of the General Conditions, the following additional event is specified; namely; a situation has arisen which shall make it improbable that the Program or a significant part thereof, will be carried out.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions, namely the Borrower has:

(a) converted to an Integrated Financial Management Information System the operation of the general ledger module within the MOE in a manner satisfactory to the Association;

(b) recruited an Independent Procurement Monitoring Agent under terms of reference satisfactory to the Association;

(c) recruited within the procurement unit of the MOE, two additional staff under terms of reference satisfactory to the Association; and

(d) finalized and adopted the Procurement Manuals in accordance with the Public Procurement Disposal Act 2005 and its implementing regulations, in a manner satisfactory to the Association.

Section 6.02. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
Treasury Building
P O Box 30007-00100
Nairobi, Kenya

Cable address:	Telex:	Facsimile:
FINANCE NAIROBI	22921 Minifinanceke	254 20 240045

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI) or 64145 (MCI)	202- 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Nairobi, Republic of Kenya, as of the day and year first above written.

REPUBLIC OF KENYA

By:

/s/ Amos Kimunya
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By:

/s/ Colin Bruce
Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

Part A. General

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category.

	<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1)	Subprograms		
(a)	Secondary Education & In Service Training of Secondary School teachers	4,900,000	Such percentage of Eligible Expenditures as the Association may determine for each Fiscal Year
(b)	TIVET	700,000	”
(c)	University Education	700,000	”
(d)	Other Subprograms	<u>47,700,000</u>	”
Total		54,000,000 =====	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) payments made for expenditures prior to the date of this Agreement except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR 5,400,000 may be made on account of payments made for expenditures before that date but after July 1, 2006;

(b) Subprograms under category 1(a), unless the Borrower has prepared a strategy for the development of secondary education and a reform plan for the staffing norms and for the deployment of secondary teachers satisfactory to the Association;

(c) Subprogram under category 1(b), unless the Borrower has prepared a strategy for the development of TIVET satisfactory to the Association;

(d) Subprogram under category 1 (c) unless the Borrower has prepared a strategy for the development of university education satisfactory to the Association; and

(e) payments made for expenditures for goods, works or consultants' services supplied under a contract which the Association or any international financing institution or agency shall have financed or agreed to finance under any other loan or grant.

(f) category 1 in excess of the following aggregates, namely SDR13,500,000 for FY '07; SDR13,500,000 for FY '08; SDR13,500,000 for FY '09, and thereafter the balance of the remaining IDA Credit.

3. The Borrower may request withdrawals from the Credit Account to be made on the basis of reports to be submitted to the Association in form and substance satisfactory to the Association, such reports to include the FMR and any other information as the Association shall specify by notice to the Borrower (Report-based Disbursements). In the case of the first such request submitted to the Association before any withdrawal has been made from the Credit Account, the Borrower shall submit to the Association only a statement with the projected sources and applications of funds for the Project for the six-month period following the date of such request.

Part B. Special Account

1. The Borrower shall open and maintain in Dollars a special deposit account in a commercial bank acceptable to the Association, on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure and attachment.

2. After the Association has received evidence satisfactory to it that the Special Account has been opened, withdrawals from the Credit Account of amounts to be deposited into the Special Account shall be made in accordance with the provisions of Annex A to this Schedule 1.

3. Payments out of the Special Account shall be made exclusively for Eligible Expenditures. For each payment made by the Borrower out of the Special Account, the

Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for Eligible Expenditures.

4. Notwithstanding the provisions of Part B.2 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if the Association, at any time, is not satisfied that the reports referred to in Part A.3 of this Schedule 1 adequately provide the information required for Report-based Disbursements;

(b) if the Association determines at any time that all further withdrawals for payment of Eligible Expenditures should be made by the Borrower directly from the Credit Account; or

(c) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of: (A) the records and accounts for the Special Account; or (B) the records and accounts reflecting expenditures with respect to which withdrawals were Report-based Disbursements or were made on the basis of statements of expenditure, as the case may be.

5. The Association shall not be required to make further deposits into the Special Account in accordance with the provisions of Part B.2 of this Schedule if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Association shall determine, in its sole discretion, whether further deposits into the Special Account may be made and what procedures should be followed for making such deposits, and shall notify the Borrower of its determination.

6. (a) If the Association determines at any time that any payment out of the Special Account was made for an expenditure which is not an Eligible Expenditure, or was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association, provide such additional evidence as the Association may request, or deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association determines at any time that any amount outstanding in the Special Account will not be required to cover payments for Eligible Expenditures during the six-month period following such determination, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Association made pursuant to subparagraph (a), (b) or (c) of this paragraph 6 shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the provisions of the Credit Agreement.

**Annex A
to
SCHEDULE 1**

**Operation of Special Account
When Withdrawals Are**

Report-based Disbursements

1. Withdrawals from the Credit Account shall be deposited by the Association into the Special Account in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the Special Account shall be withdrawn by the Association from the Credit Account under one or more of the Eligible Categories.

2. Upon receipt of each application for withdrawal of an amount of the Credit, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Association has determined, based on the reports referred to in Part A.3 of this Schedule 1 applicable to such withdrawal application, is required to be deposited in order to finance Eligible Expenditures during the six-month period following the date of such reports.

SCHEDULE 2

Description of the Project

The objectives of the Project are to support the Borrower's Program to provide basic education and improve the quality of education to all children by 2010 through: (i) promoting equitable access to basic education; (ii) enhancing quality and learning achievement; (iii) providing opportunities for further education and training; and, (iv) strengthening education sector management.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives: The carrying out of subprograms for:

1. Primary School Infrastructure

Provision of grants for the purpose of: (a) rehabilitating dilapidated schools and constructing additional facilities in existing schools in poorest areas; and, (b) constructing new primary schools in areas where there is overcrowding in existing schools and/or where there are no primary schools.

2. Non-Formal Schools

Strengthening the capacity of non-formal schools through: (a) developing a curriculum on non-formal education; (b) provision of grants for instructional materials and rehabilitation or construction of infrastructure; (c) introducing non-formal education management information systems; (d) building management capacity; and, (e) mainstreaming and coordinating non-formal schools and centers.

3. Special Needs Education

Improving special needs education through: (a) conducting of a national survey on special needs education; (b) provision of equipment and the relevant instructional materials; (c) teacher training; (d) provision of grants for special needs education; (e) promoting advocacy and awareness creation; and, (f) financing of operating costs.

4. Adult Basic Education

Improving the quality of adult basic education through establishing of the following programs; namely, quality assurance, accreditation, partnership and collaboration support program and monitoring and evaluation.

5. Education Opportunities in Arid & Semi-Arid Lands (ASAL)

Expanding educational opportunities in arid and semi-arid lands through the establishment of mobile schools and other outreach activities.

6. Early Childhood and Development

Improving the program on early childhood and development through: (a) developing of national policy guidelines and service standards on early childhood development; (b) reviewing and updating the curriculum on early childhood development; (c) mobilizing and building the capacity of communities on early childhood development through awareness creation; and (d) provision of community support grants to promote early childhood access, health, nutrition and primary school readiness.

7. School Health, Nutrition and Feeding

Strengthening the capacity of schools to monitor school health and improve their feeding programs through provision of training on parasite prevention and providing nutritious feeding.

8. Primary School Instructional Materials Investment

Improving teaching and learning in school through the provision of grants for the purpose of purchasing and re-printing instructional materials, and purchasing of stationary and other relevant equipment.

9. Pre-Service Teacher Education

Strengthening primary teacher training through: (a) establishing learning resource centers and equipping them with the relevant materials and equipment; (b) providing funds in the form of bursaries to needy students; (c) providing transport to primary teacher training colleges; (d) monitoring of the pre-service teacher program; and (e) providing ICT equipment and materials.

10. In-Service Primary Teacher Education

Updating the existing in-service training courses for the school-based teacher development program and developing of new programs of training.

11. Quality Assurance and Standards

Assuring quality in education through: (a) developing and upgrading of content based pedagogical materials for teachers, (b) establishing a national learning achievement assessment system; (c) establishing a national accreditation system; and (d) monitoring and evaluating teaching and learning approaches.

12. In-service Training of Teachers in Mathematics & Science

Improving the teaching skills of secondary school teachers in mathematics and science.

13. Information and Communication Technology (ICT) in Education

Introducing the use of ICT in education through: (i) developing an Education Sector ICT strategy; (ii) setting up of E-Learning delivery systems; (iii) developing of ICT infrastructure; and (iv) building capacity of MOE staff and teachers through ICT training.

14. Guidance and Counseling

Strengthening and institutionalizing guidance and counseling in educational institutions through: (i) developing of a strategy on guidance and counseling; (ii) disseminating of relevant information and materials; (iii) establishing counseling services in schools and MOE headquarter offices; and (iv) monitoring the relevant training programs for teachers and learners.

15. Secondary Education

Increasing access to and improving the quality of secondary education through: (a) provision of bursaries/scholarships especially to the poor and disadvantaged students; (b) constructing of classrooms in ASALs and urban slums including providing the schools with basic equipment and facilities; (c) supplying of science equipment in targeted schools; (d) recruiting of teachers and providing them with in-service training;

(e) provision of ICT in secondary schools; and (f) introducing Open and Distance Learning (ODL) strategies.

16. Technical, Industrial, Vocation and Entrepreneurship Training (TIVET)

Strengthening TIVET's programs through:(a) establishing centers of excellence in TIVET; (b) developing relevant national skills training strategies; (c) establishing bursary award programs; and (d) establishing production centers in TIVET institutions for teaching and producing goods and services for commercial purposes.

17. University Education

Improving access and equity in university education through: (a) developing a strategy for university education (b) introducing governance and efficiency in the management of university education; and (c) enhancing the use of information technology in public universities through provision of ICT equipment and training.

18. HIV/AIDS

Supporting the education infrastructure in preventing and mitigating the impacts of HIV/AIDS through: (a) provision of relevant teaching and learning materials to primary and secondary schools; (b) promoting peer support initiatives in teacher training schools and technical institutions; (c) providing care and financial support to orphans and apprenticeship schemes for child heads of families, (d) addressing HIV/AIDS in the workplace through inter alia: (i) increasing the establishment of teachers living with HIV/AIDS networks; (ii) disseminating a video and materials on implementing the education sector policy on HIV/AIDS; (iii) developing and disseminating the pertinent guidelines; and (d) strengthening the capacity of AIDs Control Units and university AIDs coordinating units in HIV/AIDS and drug dependency initiatives through training and provision of relevant equipment.

19. Capacity Building

(a) Strengthening the capacity of KESSP Reform Secretariat, the KESSP Steering Committee, management units, and the National Education Advisory Council through training, provision of ICT equipment and establishment of Education Management Information System (EMIS) in their institutions.

(b) Building the capacity of district and school-based institutions such as District Education Boards, district education officers, post-primary institutions board of governors; primary school management committees and Parent Teacher Associations in

the effective management of education resources, record keeping, reporting and accountability.

20. Education Management Information System

Improving MOE's data collection, analysis and dissemination capacity through: (a) harmonizing of education data; (b) provision of ICT equipment for data processing and management; (c) establishing Local Area Networks (LANS) for information sharing; and, (d) training of education staff at all levels in the utilization of an education management information system for policy and planning.

21. Teacher Management

Improving the capacity of the Teachers Service Commission (TSC) and its agencies at the district and school levels in teacher management through: (a) analyzing of TSC functions and recommending improvements; (b) reviewing and amending existing legislation on teacher management; (c) implementing the new staffing norms based on recent studies on teacher utilization; and, (d) strengthening monitoring and evaluation in teacher management.

22. Gender and Education Investment Program

Increasing enrollment and retention of girls in schools through: (a) awareness creation and creating a conducive learning environment through provision of water, environmental health and sanitation in schools; and, (b) developing a strategy on gender and education

23. Monitoring and Evaluation

Strengthening MOE's capacity to monitor and evaluate education programs through: (a) compiling a comprehensive and accurate baseline data; and, (b) developing a coordinated monitoring and impact evaluation system.

The Project is expected to be completed by June 30, 2010.

SCHEDULE 3

Procurement

Section I General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines: Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

B. Other Procurement Procedures

1. National Competitive Bidding. Goods estimated to cost less than \$250,000 equivalent per contract and works estimated to cost less than \$1,000,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding procedures acceptable to the Association.

2. Shopping. Goods estimated to cost less than \$15,000 equivalent per contract and works estimated to cost less than \$15,000 equivalent per contract, may be procured under contracts awarded on the basis of Shopping.

3. Direct Contracting. Goods and works which the Association agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than \$200,000 equivalent per contract may comprise entirely national consultants.

B. Other Procedures

1. Quality-based Selection. Services for assignments which the Association agrees meet the requirements set forth in paragraph 3.2 of the Consultant Guidelines may be procured under contracts awarded on the basis of Quality-based Selection in accordance with the provisions of paragraphs 3.1 through 3.4 of the Consultant Guidelines.

2. Least-cost Selection. Services for assignments which the Association agrees meet the requirements of paragraph 3.6 of the Consultants Guidelines may be procured under contracts awarded on the basis of Least-cost Selection in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

3. Selection Based on Consultants' Qualifications. Services estimated to cost less than \$50,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultants Guidelines.

4. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis.

Section IV. Review by the Association of Procurement Decisions

Except as the Association shall otherwise determine by notice to the Borrower, the following contracts shall be subject to Prior Review by the Association: (a) each contract for goods and services (other than consultants' services) estimated to cost the

equivalent of \$150,000 or more procured on the basis of International Competitive Bidding or National Competitive Bidding; (b) each contract for works estimated to cost the equivalent of \$250,000 or more; (c) each contract for consultants' services provided by a firm estimated to cost the equivalent of \$100,000 or more; and (d) with respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the report on the qualifications and experience of all evaluated candidates, the terms of reference and the terms of employment of the consultants shall be subject to prior approval by the Association. All other contracts shall be subject to Post Review by the Association.

SCHEDULE 4

Implementation Program

Section 1. Institutional and Implementation Arrangements

1. Except as the Association shall otherwise agree, the Borrower shall carry out the Project in accordance with the JFA, the Partnership Principles and the Procurement Manuals, and shall not amend or waive any provisions thereof which, in the opinion of the Association, may materially and adversely affect the implementation of the Project.

2. The Borrower shall:

(a) delegate the responsibility for the overall implementation of the Program to MOE;

(b) ensure that MOST shall have the overall responsibility for coordination of the TIVET program and that the Other Implementing Ministries assume their respective responsibilities in implementing the relevant sub-programs;

(c) maintain a Consultative Government of Kenya and Development Partners Committee comprising of Senior Managers from MOE, representatives of the Ministry of Finance, and representative of development partners organization with the responsibility for consulting on education and training, reviewing project implementation, program progress and providing input on resource mobilization and utilization;

(d) maintain an inter-Ministerial Committee on Education and Training with representatives from a number of selected ministries with the responsibility for coordinating different government agencies and departments involved in education and training services;

(e) maintain the membership of the KESSP Steering Committee with representatives from selected government agencies with the responsibility for overseeing and monitoring Program implementation, making key decisions, and providing advice on resource allocation and utilization under the Program;

(f) maintain the KESSP Reform Secretariat with staff acceptable to the Association with the overall responsibility for Program coordination; and

(g) maintain the Risk-Based Internal Audit Strategy within the MOE satisfactory to the Association.

3. At the district level, the Borrower shall ensure that the Program is managed by the District Education Boards and at the school level by the Boards of Governors, School Management Committees and Parent Teachers' Associations.

Section II. School Grants

1. Procedures and Guidelines

Without limitation upon the provisions of Section I of this Schedule, the Borrower shall:

(a) in implementing Subprograms 1, 2 (b), 3(d) and 8 in Schedule 2 to this Agreement, administer the School Grants, in accordance with the provisions and procedures set forth in this Section III and in more detail in the Procurement Manual for Primary Schools, the Primary School Infrastructure Improvement Management Handbook, Handbook of Financial Management Instructions for Education Institutions, and the Primary Schools Instructional Materials Handbook.

(b) in implementing Subprogram 6(d), the Borrower shall administer the community support grant in accordance with the provisions and procedures of a community support grant handbook to be developed no later than March 31, 2007 or any other date to be agreed with the Association.

2. Eligibility Criteria

A. Infrastructure Improvement Grants

No public schools shall be eligible to receive either of the two infrastructure improvement grants, for improving the infrastructure and/or undertaking more substantial expansion of refurbishment works unless the Borrower has determined that the selected Beneficiary School has:

- (i) set up a School Infrastructure Committee with membership under terms of reference satisfactory to the Association; and
- (ii) a school infrastructure improvement plan approved by the Infrastructure Committee.

B. Grants for Construction of New Schools

No district or local authority shall be eligible to receive grants for the construction of new primary schools or non-formal schools unless:

- (a) the grant is administered by the District Education Board (DEB) or a designated local authority;
- (b) a local community committee has been set up to work in collaboration with the DEB or local authority in promoting community participation and ownership of the new schools; and,
- (c) it has an approved architectural plan for the new school.

C. Community Support Grants

In providing community support grants to local communities, the Borrower shall ensure that:

- (i) an Early Childhood Center Committee has been set up; and
- (ii) the recipient has an approved Early Childhood Center community development plan.

D. Grants for School Instructional Materials

No public schools shall be eligible to receive a grant for school instructional materials unless the Borrower has determined that the Beneficiary School has: (i) an approved list of primary school text books, (ii) set up a School Instructional Materials Selection Committee, (iii) possesses a Primary School Instructional Materials Handbook, and, (iv) opened a Bank account.

E. Grants for Special Needs Education

No schools shall be eligible to receive a grant for special needs education unless the Borrower has determined that:

- (a) a school management committee has been set up to administer the grant; and,

- (b) the recipient has an approved proposal on the use of the grant.

F. Terms and Conditions for all Grants

1. In implementing all the grants the Beneficiaries shall ensure that:

- (a) all the proceeds of the grants shall be used exclusively in the carrying out of the Subprograms;

- (b) MOE has access and can inspect by itself, or jointly with any of the development partners, if any of the development partners shall so request, the goods, works, sites, plants and construction included in the Subprogram, the operations thereof and any relevant records and documents;

- (c) obtain all information as it, or any of the development partners, shall reasonably request regarding the administration, operation and financial conditions of Subprograms; and

- (d) they carry out their operations within the guidelines issued by MOE.

2. The Borrower shall suspend or terminate the right of any Beneficiary School to use the proceeds of the School Grant upon failure by the Beneficiary School to perform any of its obligations relating to the grant.

Section III. Monitoring and Reporting Arrangements

1. The Borrower shall:

- (a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators set forth in Schedule 5 to this Agreement, the carrying out of the Project and the achievement of the objectives thereof;

- (b) implement the Project in accordance with the requirements of the Environmental and Social Impact Plan dated 19 September, 2005 and any other relevant national legal and policy requirements related to environmental protection, land acquisition and compensation;

- (c) no later than March 31, 2007 or any other date to be agreed with the Association prepare a strategy on harmonizing national learning achievement assessment;

(d) carry out the Project in accordance with the “KESSP Work Plans” and relevant procurement and financial management manuals, except as the Association shall otherwise agree, the Borrower shall not amend or waive any provision of the “KESSP Work Plans” or any of the relevant procurement and financial management manuals if, in the opinion of the Association, such amendment or waiver may materially and adversely affect the carrying out of the Program or the achievement of the objectives thereof;

(e) issue an annual procurement plan as part of its annual budgeting process and conduct annual audits; and (f) ensure that the Independent Procurement Agent regularly reviews the Project activities to ensure that the agreed procurement procedures are followed.

2. Annual Joint Reviews

(a) The Borrower shall conduct a technical and financial performance progress for the previous year to inform the annual joint review.

(b) The Borrower shall cause MOE to carry out jointly with the Association and other development partners, on or about October 31, or such later date as the Association and the development partners may agree, a comprehensive review (annual review) aimed at: (i) reviewing the technical and financial performance progress report on the program; (ii) documenting progress towards Program objectives; (iii) identifying and resolving obstacles to Program implementation; and (iv) adjusting, in agreement with the Association, targets and corresponding subprograms to reflect progress achieved in the implementation of the Program as of the date of the review.

(c) Promptly after completing the annual review, the Borrower shall cause MOE to take all measures required to fulfill the recommendations arising out of said reviews, with due diligence and efficiency and in accordance with appropriate practices, taking into account the Association and other development partners’ comments thereon.

3. Joint Meeting on Annual Work Plans & Budget Planning

Following the Annual Joint Review, the Borrower shall not later than April 30, of each year or such other date as the Association may agree, jointly with the Association and other development partners, to conduct a budget planning meeting to discuss the draft annual work plans including annual procurement plans and draft budget for the coming financial year.

The Borrower shall not later than June 30, of each Fiscal Year during the implementation of the Project or such later date as the Association may agree in consultation with the other development partners, prepare and furnish to the Association

for its approval a final Annual Work Plan and Budget containing each proposed Subprogram to be carried out in the following Fiscal Year, modified in a manner satisfactory to the Association, taking into account the Association's and other development partners'; comments and views on the subject.

SCHEDULE 5

Monitoring Indicators

Increased the net enrollment rate for primary education to close to at least 96% by the completion of the Project.

Increased the primary school completion rate to close to at least 92% by the completion of the Project.

Improved scores of learning achievements based on the benchmarks of the 2006 baseline survey.

Increased the proportion of students transiting from primary education to post-primary education to 70%.