

CONFORMED COPY

LOAN NUMBER 4780-UA

Loan Agreement

(Equal Access to Quality Education in Ukraine Project)

between

UKRAINE

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

Dated September 5, 2005



LOAN NUMBER 4780-UA

LOAN AGREEMENT

AGREEMENT, dated September 5, 2005, between UKRAINE (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) the Bank has received a letter from the Borrower, dated September 21, 2004, describing a program designed to support the Borrower's efforts to reform its education system and enhance resource management in the sector (the Program) and declaring the Borrower's commitment to the execution of such Program;

(B) the Borrower has requested that the Bank support the Borrower's execution of the Program through a series of loans over a period of approximately ten (10) years to be utilized by the Borrower in the implementation of the Program;

(C) the Borrower, having satisfied itself as to the feasibility and priority of the first phase (the Equal Access to Quality Education in Ukraine Project) of the Program as described in Schedule 2 to this Agreement (the Project), has requested the Bank to assist in the financing of the Project; and

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

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans" of the Bank, dated May 30, 1995 (as amended through May 1, 2004) with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) Section 5.08 of the General Conditions is amended to read as follows:

“Section 5.08. *Treatment of Taxes*

Except as otherwise provided in the Loan Agreement, the proceeds of the Loan may be withdrawn to pay for taxes levied by, or in the territory of, the Borrower or the Guarantor on the goods or services to be financed under the Loan, or on their importation, manufacture, procurement or supply. Financing of such taxes is subject to the Bank’s policy of requiring economy and efficiency in the use of the proceeds of its loans. To that end, if the Bank shall at any time determine that the amount of any taxes levied on or in respect of any item to be financed out of the proceeds of the Loan is excessive or otherwise unreasonable, the Bank may, by notice to the Borrower, adjust the percentage for withdrawal set forth or referred to in respect of such item in the Loan Agreement as required to be consistent with such policy of the Bank.”;

(b) Section 6.03 (c) of the General Conditions is amended by replacing the words “corrupt or fraudulent” with the words “corrupt, fraudulent, collusive or coercive”.

(c) Paragraph (c) of Section 9.07 is modified to read as follows:

“(c) Not later than six (6) months before the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, the Borrower shall prepare and furnish to the Bank a report, of such scope and in such detail as the Bank shall reasonably request, on the execution and initial operation of the Project, its cost and the benefits derived and to be derived from it, the performance by the Borrower and the Bank of their respective obligations under the Loan Agreement and the accomplishment of the purposes of the Loan.”

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) “Education Programs Development Directorate” or “Directorate” means a not-for-profit legal public entity to be established by the MES under the Borrower’s laws and regulations to coordinate the implementation of educational reforms by the MES (as defined hereinafter), referred to in paragraph 4 of Section A of Schedule 5 to this Agreement;

(b) “Eligible Categories” means Categories (1), (2) (3) and (4) set forth in the table in Part A.1 of Schedule 1 to this Agreement;

(c) “Eligible Expenditures” means the expenditures for goods, works and consultants’ services and training and incremental operating costs referred to in Section 2.02 of this Agreement;

(d) “Environmental Management Plan and Guiding Principles” and “EMP” means the Borrower’s environmental management plan dated June 23, 2004, describing the environmental, mitigation, monitoring and institutional measures to be undertaken under Parts C.3 and C.4 of the Project to ensure that all environmental concerns are adequately taken into account in the carrying out of the rehabilitation works thereunder;

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

(f) “Fiscal Year” means the twelve (12) month period corresponding to any of the Borrower’s fiscal years, which period commences on January 1 and ends on December 31 in each calendar year;

(g) “General secondary education” means the education dispensed in the Borrower’s schools from the first to the twelfth grades of schooling;

(h) “MES” means the Borrower’s Ministry of Education and Science, established and functioning in accordance with the provisions of the Borrower’s Presidential Decree No. 773/2000 dated June 7, 2000, or its legal successor;

(i) “MES-Directorate Implementation Agreement” means the agreement to be executed by the MES on behalf of the Borrower and the Directorate in accordance with the Borrower’s legislation and regulations, referred to in paragraph 2(a) of Section B of Schedule 5 to this Agreement;

(j) “MES-MOF-Directorate Financial Agreement” means the agreement to be executed by the MES and MOF on behalf of the Borrower and the Directorate in accordance with the Borrower’s legislation and regulations, referred to in paragraph 2(b) of Section B of Schedule 5 to this Agreement;

(k) “MOF” means the Borrower’s Ministry of Finance;

(l) “Monitoring and Evaluation Indicators” means the agreed performance indicators set forth in a letter 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;

(m) “*Oblast*” means an administrative-territorial division of the Borrower at the regional level, and for the purposes of this Project also includes the Autonomous Republic of Crimea, the City of Kyiv and the City of Sevastopol;

(n) “Operations Manual” means the manual to be developed and adopted by the MES and setting forth the detailed Project objectives and description and the institutional, implementation, administrative and monitoring arrangements thereunder, including those for the provision of financial and/or material support for the schools or *Rayons* (as defined hereinafter) under Part B.4 (i) and Parts B.4 (ii) of the Project, as the same may be updated and amended from time to time in accordance with the provisions of paragraph 1 of Section B.1 (b) of Schedule 5 to this Agreement;

(o) “Policy Planning Division” and “PPD” mean the unit referred to in paragraph 3 of Section A of Schedule 5 to this Agreement;

(p) “Procurement Plan” means the Borrower’s procurement plan, dated April 22, 2005 covering the initial eighteen (18) 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 (b) to this Agreement, to cover succeeding eighteen (18) month periods (or longer) of Project implementation;

(q) “Program Steering Committee” and (PSC) mean the Committee referred to in paragraph 2 of Section A of Schedule 5 to this Agreement;

(r) “*Rayon*” means a territorial division of the Borrower at the district level;

(s) “Report-based Disbursements” means the Borrower’s option for withdrawal of funds from the Loan Account referred to in Part A.5 of Schedule 1 to this Agreement; and

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

ARTICLE II

The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Loan Agreement, an amount equal to eighty six million five hundred eighty-seven thousand Dollars (\$86,587,000).

Section 2.02. The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement: for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods, works and consultants' services and training and incremental operating costs required for the Project and to be financed out of the proceeds of the Loan, and in respect of the fee referred to in Section 2.04 of this Agreement.

Section 2.03. The Closing Date shall be December 31, 2009 or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a front-end fee in an amount equal to one percent (1%) of the amount of the Loan, subject to any waiver of a portion of such fee as may be determined by the Bank from time to time. On or promptly after the Effective Date, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amount of such fee.

Section 2.05. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one percent ($3/4$ of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.06. (a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest Period equal to LIBOR Base Rate plus LIBOR Total Spread.

(b) For the purposes of this Section:

- (i) "Interest Period" means the initial period from and including the date of this Agreement to, but excluding, the first Interest Payment Date occurring thereafter, and after the initial period, each period from and including an Interest Payment Date to, but excluding the next following Interest Payment Date.
- (ii) "Interest Payment Date" means any date specified in Section 2.07 of this Agreement.

- (iii) “LIBOR Base Rate” means, for each Interest Period, the London interbank offered rate for six-month deposits in dollars for value the first day of such Interest Period (or, in the case of the initial Interest Period, for value the Interest Payment Date occurring on or next preceding the first day of such Interest Period), as reasonably determined by the Bank and expressed as a percentage per annum.
- (iv) “LIBOR Total Spread” means, for each Interest Period: (A) three-fourths of one percent (3/4 of 1%); (B) minus (or plus) the weighted average margin, for such Interest Period, below (or above) the London interbank offered rates, or other reference rates, for six-month deposits, in respect of the Bank’s outstanding borrowings or portions thereof allocated by the Bank to fund single currency loans or portions thereof made by it that include the Loan; as reasonably determined by the Bank and expressed as a percentage per annum.

(c) The Bank shall notify the Borrower of the LIBOR Base Rate and the LIBOR Total Spread for each Interest Period, promptly upon the determination thereof.

(d) Whenever, in light of changes in market practice affecting the determination of the interest rates referred to in this Section 2.06, the Bank determines that it is in the interest of its borrowers as a whole and of the Bank to apply a basis for determining the interest rates applicable to the Loan other than as provided in said Section, the Bank may modify the basis for determining the interest rates applicable to the Loan upon not less than six (6) months’ notice to the Borrower of the new basis. The new basis shall become effective on the expiry of the notice period unless the Borrower notifies the Bank during said period of its objection thereto, in which case said modification shall not apply to the Loan.

Section 2.07. Interest and other charges shall be payable semiannually in arrears on May 15 and November 15 in each year.

Section 2.08. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower, through the MES, declares its commitment to the objectives of the Project and, to this end, shall carry out the Project through the MES with due diligence and efficiency and in conformity with appropriate administrative, education, engineering, environmental, financial and technical 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 Bank shall otherwise agree, the Borrower, through the MES, shall carry out the Project in accordance with the Implementation Program set forth in Schedule 5 to this Agreement.

(c) Without limitations upon the provisions of paragraph (a) of this section and except as the Borrower and the Bank shall otherwise agree, the Borrower shall ensure that sufficient funds are identified and allocated in the Borrower's annual budget every year throughout the implementation of the Project, starting in Fiscal Year 2006, for the purposes of providing the counterpart funding obligations under the Project of up to an estimated ten percent (10%) of the total costs of the Project.

Section 3.02. (a) Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services and training required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 4 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

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

Section 3.03. For the purposes of Section 9.07 of the General Conditions and without limitation thereto, the Borrower, through the MES, shall:

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

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

ARTICLE IV

Financial Covenants

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

(b) The Borrower, through the MES, 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 Bank) audited, in accordance with consistently applied auditing standards acceptable to the Bank, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six (6) months after the end of each such year (or such other period agreed to by the Bank): (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 Bank), as so audited; and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Bank; and
- (iii) furnish to the Bank such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Bank may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Loan Account were made on the basis of the reports referred to in Part A.5 of Schedule 1 to this Agreement (Report-based Disbursements) or on the basis of statements of expenditure, the Borrower, through the MES, shall:

- (i) retain, until at least one (1) year after the Bank has received the audit report for, or covering, the Fiscal Year in which the last withdrawal from the Loan Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enable the Bank'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 Bank) referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in paragraph 1 of Section C of Schedule 5 to this Agreement, the Borrower, through the MES, shall prepare and furnish to the Bank a financial monitoring report, in form and substance satisfactory to the Bank, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Loan, 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 Bank not later than forty-five (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 Bank not later than forty-five (45) days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Remedies of the Bank

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

ARTICLE VI

Effectiveness and Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Loan Agreement within the meaning of Section 12.01 (c) of the General Conditions:

(a) the Borrower has provided satisfactory evidence to the Bank that the Directorate has been established in a manner satisfactory to the Bank; and

(b) the Borrower has provided satisfactory evidence to the Bank that the MES-Directorate Implementation Agreement and the MES-MOF-Directorate Financial Agreement have been executed by the respective parties thereto.

Section 6.02. The following are specified as additional matters, within the meaning of Sections 12.02 (c) of the General Conditions, to be included in the opinion or opinions furnished to the Bank that: (i) the MES-Directorate Implementation Agreement has been duly adopted by MES on behalf of the Borrower and the Directorate and is legally binding upon MES on behalf of the Borrower and the Directorate in accordance with its terms; and (ii) the MES-MOF-Directorate Financial Agreement has been duly adopted by MES and MOF on behalf of the Borrower and the Directorate and is legally binding upon MES and MOF on behalf of the Borrower and the Directorate in accordance with its terms.

Section 6.03. 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:

Minister of Finance
12/2 Hrushevsky St.
Kyiv, 01008
Ukraine

Telex:

131450

Facsimile:

(380-44) 201-56-85

(380-44) 201-56-84

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:	Telex:	Facsimile:
INTBAFRAD Washington, D.C.	248423 (MCI) or 64145 (MCI)	(1-202) 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 Kyiv, Ukraine, as of the day and year first above written.

UKRAINE

By: /s/ Stanislav Nikolayenko
Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By: /s/ Paul G. Bermingham
Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Loan

A. General

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

<u>Category</u>	<u>Amount of the Loan Allocated (Expressed in Dollars)</u>	<u>% of Expenditures to be financed</u>
(1) Works	41,335,000	100%
(2) Goods	17,739,000	100%
(3) Consultants' Services and training	19,441,000	100%
(4) Incremental Operating Costs	280,000	100%
(5) Front-end fee	433,000	Amount due under Section 2.04 of this Agreement
(6) Unallocated	<u>7,359,000</u>	
TOTAL	<u>86,587,000</u>	

2. For the purposes of this Schedule:

(a) the term "Training" means the expenditures incurred to finance in-country and overseas training to be undertaken under the Project by the Borrower's school directors, teachers and government education staff; and

(b) the term "Incremental Operating Costs" means expenditures incurred by the Borrower to finance reasonable and necessary operating expenses of the Directorate in respect of its operations and administration of activities under the Project, and which are payable on account cost of rent and utilities, office equipment and supplies,

maintenance, communication and transportation and salaries of selected non-governmental staff of the Directorate.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

4. The Bank may require withdrawals from the Loan Account to be made on the basis of statements of expenditure for expenditures under contracts for: (i) goods costing less than \$300,000 equivalent per contract; (ii) works costing less than \$3,000,000 equivalent per contract; (iii) services of consulting firms under contracts costing less than \$100,000 equivalent per contract; (iv) services of individual consultants costing less than \$50,000 equivalent per contract; and (v) Training and incremental operating costs, all under such terms and conditions as the Bank shall specify by notice to the Borrower.

5. The Borrower may request withdrawals from the Loan Account to be made on the basis of reports to be submitted to the Bank in form and substance satisfactory to the Bank, such reports to include the FMR and any other information as the Bank shall specify by notice to the Borrower (Report-based Disbursements). In the case of the first such request submitted to the Bank before any withdrawal has been made from the Loan Account, the Borrower shall submit to the Bank 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.

B. Special Account

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

2. After the Bank has received evidence satisfactory to it that the Special Account has been opened, withdrawals from the Loan Account of amounts to be deposited into the Special Account shall be made as follows:

(a) if the Borrower is not making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

(b) if the Borrower is making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex B 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 Bank shall reasonably request, furnish to the Bank 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 Bank shall not be required to make further deposits into the Special Account:

(a) if the Bank, at any time, is not satisfied that the reports referred to in Part A.5 of this Schedule 1 adequately provide the information required for Report-based Disbursements;

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

(c) if the Borrower shall have failed to furnish to the Bank, 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 Bank 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 Bank 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 Bank 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 Loan Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Bank 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 Bank 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 Bank, the Borrower shall, promptly upon notice from the Bank, provide such additional evidence as the Bank may request, or deposit into the Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment. Unless the Bank shall otherwise agree, no further deposit by the Bank 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 Bank 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 Bank, refund to the Bank such outstanding amount.

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

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

**Annex A
to
SCHEDULE 1**

**Operation of Special Account
When Withdrawals Are Not
Report-based Disbursements**

1. For the purposes of this Annex, the term “Authorized Allocation” means the amount of \$4,000,000 to be withdrawn from the Loan Account and deposited into the Special Account pursuant to paragraph 2 of this Annex.

2. Withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Bank a request or requests for deposit into the Special Account of an amount or amounts which in the aggregate do not exceed the Authorized Allocation. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount as the Borrower shall have requested.

(b) For replenishment of the Special Account, the Borrower shall furnish to the Bank requests for deposit into the Special Account at such intervals as the Bank shall specify. Prior to or at the time of each such request, the Borrower shall furnish to the Bank the documents and other evidence required pursuant to Part B.3 of Schedule 1 to this Agreement for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for Eligible Expenditures. Each such deposit into the Special Account shall be withdrawn by the Bank from the Loan Account under one or more of the Eligible Categories.

3. The Bank shall not be required to make further deposits into the Special Account, once the total unwithdrawn amount of the Loan minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall equal the equivalent of twice the amount of the Authorized Allocation. Thereafter, withdrawal from the Loan Account of the remaining unwithdrawn amount of the Loan shall follow such procedures as the Bank shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the Special

Account as of the date of such notice will be utilized in making payments for Eligible Expenditures.

**Annex B
to
SCHEDULE 1**

**Operation of Special Account
When Withdrawals Are
Report-based Disbursements**

1. Withdrawals from the Loan Account shall be deposited by the Bank 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 Bank from the Loan Account under one or more of the Eligible Categories.

2. Upon receipt of each application for withdrawal of an amount of the Loan, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account an amount equal to the lesser of: (i) the amount so requested; and (ii) the amount which the Bank has determined, based on the reports referred to in Part A.5 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 objective of the Project is to support the Borrower in its efforts to provide equal access to quality education and improve the efficiency of the education system to prepare Ukraine's graduates for the knowledge society.

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

Part A: Professional Development of Educators

Carrying out of a program aimed at raising the awareness, professional knowledge and competences of teachers and school directors in order to implement the reforms underway in teaching and learning in general education, entailing the following:

1. Training of Trainers: modernization of the system of continuing teacher professional development through the provision of a cadre of about one hundred twenty (120) educators who can model new approaches to the education of teachers, provide relevant in-service training, and become a force for renewal in their relevant institutions.
2. In-service Training for Teachers: (i) improvement of teachers awareness, knowledge and skills related to the national education reform in general and their subject-specific professional competences in particular, through the redesign of the current obligatory teacher in-service training system; (ii) modification of the current system of certification of competence, through the piloting of new training procedures as implemented under Part A.1 for the training of trainers; and (iii) support to the organization and delivery of short courses and workshops for about four thousand (4,000) teachers addressing the curriculum reform needs.
3. Leadership Training for School Directors: (i) improvement of the professional knowledge and leadership skills of all school directors so that they can better lead their school towards the targets of the national education reform; and (ii) establishment of a permanent and officially-approved professional development system of school principals, specifically through the development of a training system and its piloting at selected institutions, the training of about eight hundred (800) trainers who will implement the scheme prepared, and the training of about two thousand two hundred (2,200) school directors and about two hundred ten (210) heads and specialists of local education authorities.

4. Enrichment of Oblast In-service Training Centers: improvement of the quality of training facilities, resources and institutional culture in all twenty-seven (27) regional in-service teacher training centers (RITTCs) with a view to raise the productivity and client-centeredness thereof, consisting of delivery, on the basis of a institutional development plan, of: (i) training and staff development in order to improve their management, organizational culture, and productivity during the implementation of teacher training and other professional development activities; (ii) small rehabilitation of the training premises to make them more appropriate for modern training purposes; and (iii) basic improvement, upgrading and expansion of training equipment, training resources, such as books, journals and software, or any other relevant facilities that are required in organizing teacher training.

Part B: Improvement of the Learning Process

Carrying out of a program in support of the Borrower's ongoing efforts to improve the conditions of teaching and learning in the Borrower's secondary schools, including curriculum issues, evaluation of education outcomes, teaching and learning resources, and school improvement initiatives for classroom level education reform, and encompassing:

1. Modernization of Curriculum: carrying out of a program designed to rationalize the institutional structures, foster human capacities for the curriculum development and implementation process, increase the quality of the national curriculum and strengthen the policy, strategy development and implementation capacities at the MES, and at *Oblasts, Rayons* and schools for on-going curriculum development and revision, including: (i) the provision of support to the MES, including the Department of Development of Pre-school and General Secondary Education, and working groups designing and developing the national curriculum; (ii) the development of guidelines and requirements for new textbooks, teaching guides and teaching and learning materials; and (iii) the diffusion and dissemination of all curriculum documents, encompassing the development of a coherent national curriculum framework.

2. Teaching and Learning Tools: setting up of the foundations for a comprehensive national policy for the development, production and dissemination of teaching and learning resources to all schools in country, specifically targeting rural schools, with a view to: (i) rationalize the institutional structures and the mechanisms involved in textbook and teaching aids development, production and distribution; (ii) strengthen the policy, strategy development and implementation capacities in the MES in the domain of textbook and teaching aids development, production and distribution; and (iii) strengthen the quality of the teaching aids and textbooks developed in accordance with the national curriculum.

3. Quality Monitoring and Evaluation: establishment of a comprehensive national policy and institutional structure for system-wide evaluation of the education achievement and for quality assurance, through the setting up of a national center of

Education Evaluation and Quality Assurance, and encompassing: (i) the determination of the operational and institutional implications of the National System of Educational Evaluation and Quality Assurance; (ii) the carrying out of a national study of student achievement, involving two assessments therefor; (iii) the carrying out and pilot testing of external university entrance examinations; (iv) the carrying out of an analytical study on school- and classroom-based assessment and its implications for counseling and guidance services in secondary schools; (v) the provision of technical support to support the MES' participation in the Trends in International Mathematics and Science Study; and (vi) the production of training modules on education evaluation and student achievement.

4. School Improvement Initiatives: carrying out of a program to develop a renewed policy of school improvement and innovation with emphasis on the development processes of schools operating under difficult circumstances and the dissemination and full utilization of best practices through a bottom-up approach, specifically including: (i) providing support, on a pilot basis, to selected schools on the basis of their development plans and on more specific innovation or improvement plans having a direct impact on student achievement, with a priority on rural schools; (ii) providing support, on a pilot basis, to *Rayon* educational authorities; and (iii) networking of innovative schools and dissemination of resulting good practices, mainly through in-service teacher training activities.

Part C: Efficiency and Management of Resources

Carrying out of a program aimed at improving the efficiency of the general education system, strengthening the capacity for policy development of the MES and other institutions responsible for general secondary education, and supporting the Borrower's plans to optimize the schools' network and provide assistance for the rehabilitation of schools, consisting of:

1. Policy Planning and Management: strengthening of the policy development capacities of the MES through the establishment of the PPD in the MES's General Secondary Education Department, the development of a strategic public information campaign to raise public awareness on the proposed reforms under the Program and Project activities, and the management of the Program and Project implementation, specifically encompassing: (i) the improvement of the planning and management capacities of the central and regional education administration staff to formulate education policy, develop strategies to operationalize policies, manage resources, and monitor and evaluate programs; (ii) the carrying out of a mass media campaign aimed at creating a favorable information environment for conducting reforms in the education system and implementing the Project, as well as providing information support for individual activities anticipated by all Project components; and (iii) the establishment and maintenance of a MES's Project and Program coordination structure supported by a technical assistance team of consultants.

2. Education Management Information System (EMIS): introduction of a data-based policy analysis and decision making practice in the education sector across all of its levels, fully supported by the phased development and implementation of a comprehensive national EMIS for general secondary education administrative statistics' collection, processing and analysis, comprising the creation of a central database of administrative statistics allowing data input, processing and access by decision-makers and managers of central and regional levels of education administration bearing the following features: (i) educational data flow; (ii) data analysis; and (iii) supply/demand of data use - pre-conditions.

3. Optimization of schools network: carrying out of a pilot program aimed at the enhancing the schools network optimization plans and thereby improve the delivery of educational services in the secondary education school networks of *Rayons* in six (6) selected *Oblasts* on the basis of viable *Rayon* schools network optimization plans (ROP), and encompassing: (i) the implementation of a comprehensive set of investments and activities proposed in the pilot ROPs; and (b) the administrative costs of supervising the pilot ROPs, and comprising consultant services, training, preparation of an Optimization Guidebook and training materials, and the carrying out of a public information campaign as required to support the educational authorities and constituents improve their capacity to prepare/develop viable ROPs and implement the proposed interventions effectively and efficiently.

4. Rehabilitation of schools: rehabilitation and furnishing of selected general education schools up to standards appropriate for a complete learning environment, addressing the most urgent needs and with particular emphasis on achieving greater efficiency and economy in the maintenance and operation of the rehabilitated facilities, and including, *inter alia*: (i) roof repairs and correction of structural defects, improvement of heating facilities and insulation, provision of adequate water and sanitation, and improvement of electrical systems; (ii) consultant architectural/engineering services for the preparation of the detailed construction/school rehabilitation plans, specifications, bills of quantities and bidding documents for the selected schools; (iii) consultant engineering services to assist MES in the supervision of the implementation of the rehabilitation works and ensure that quality standards are met; and (iv) architectural consultants services to assist MES in upgrading and updating the existing school design and construction standards.

* * *

The Project is expected to be completed by June 30, 2009.

SCHEDULE 3

Amortization Schedule

<u>Date Payment Due</u>	<u>Payment of Principal (Expressed in Dollars)*</u>
On each May 15 and November 15 as follows:	
November 15, 2010	2,000,000
May 15, 2011	2,045,000
November 15, 2011	2,095,000
May 15, 2012	2,145,000
November 15, 2012	2,200,000
May 15, 2013	2,250,000
November 15, 2013	2,305,000
May 15, 2014	2,360,000
November 15, 2014	2,420,000
May 15, 2015	2,475,000
November 15, 2015	2,535,000
May 15, 2016	2,600,000
November 15, 2016	2,660,000
May 15, 2017	2,725,000
November 15, 2017	2,790,000
May 15, 2018	2,860,000
November 15, 2018	2,930,000
May 15, 2019	3,000,000
November 15, 2019	3,070,000
May 15, 2020	3,145,000
November 15, 2020	3,220,000
May 15, 2021	3,300,000
November 15, 2021	3,380,000
May 15, 2022	3,460,000
November 15, 2022	3,545,000
May 15, 2023	3,630,000
November 15, 2023	3,720,000
May 15, 2024	3,810,000
November 15, 2024	3,900,000
May 15, 2025	4,012,000

* The figures in this column represent the amount in dollars to be repaid, except as provided in Section 4.04 (d) of the General Conditions.

Total

86,587,000

SCHEDULE 4

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 for 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 Bank 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.

B. Other Procurement Procedures

1. National Competitive Bidding. (i) Goods consisting of school buses and furniture required under Part C.3 of the Project and teaching and learning aids estimated to cost less than \$300,000 equivalent per contract; and (ii) works estimated to cost less than \$3,000,000, may be procured under contracts awarded on the basis of National Competitive Bidding and the following additional provisions:

(a) Eligibility

Bidding shall not be restricted to domestic firms. Foreign firms shall not be excluded from the national competitive bidding process irrespective of the contract value.

(b) Procedures

- (i) “Open tender procedures” shall be followed in all cases.
- (ii) Invitations to bid shall be advertised in the Borrower’s Bulletin of State Procurement “*Visnyk Derzhavnykh Zakupivel*” and in at least one (1) widely circulated national daily newspaper allowing a minimum of thirty (30) days for the preparation and submission of bids.
- (iii) Bids shall not be invited on the basis of percentage premium or discount over the estimated cost.

(c) Pre-qualification

- (i) Prequalification, where used, shall be based on a “pass/fail” system.
- (ii) Minimum experience, technical, and financial requirements shall be explicitly stated in the pre-qualification documents.

(d) Participation by Government-owned Enterprises

- (i) Government-owned enterprises in the Borrower’s territory shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Government.
- (ii) Government-owned enterprises will be subject to the same bid and performance security requirements as other bidders.

(e) Bidding Documents

- (i) Procuring entities shall use the appropriate Bank’s sample bidding documents, including pre-qualification documents, for the procurement of goods, works, or technical services (other than consultants’ services), all acceptable to the Bank.

- (ii) Bidding documents shall be made available to all those companies that have paid the required fee.

(f) Bid Opening and Bid Evaluation

- (i) Bids shall be opened in public, immediately after the deadline for submission of bids.
- (ii) Evaluation of bids shall be made in strict adherence to the monetarily quantifiable criteria declared in the bidding documents.
- (iii) No domestic preference shall be allowed in evaluating bids.
- (iv) Contracts shall be awarded to qualified bidders having submitted the lowest evaluated substantially responsive bid and no negotiations shall be carried out prior to contract award.

(g) Rejection of Bids

- (i) No bid shall be rejected purely on the basis that the bid price is higher than the estimated budget for that procurement.
- (ii) All bids shall not be rejected and new bids solicited without the Bank's prior concurrence.

(h) Securities

Bid security shall not exceed two percent (2%) of the estimated cost of the contract. Performance security shall not exceed ten percent (10%) of the contract price. No advance payments shall be made to contractors without a suitable advance payment security. The format of all such securities shall be included into the bidding documents and shall be acceptable to the Bank.

3. Shopping. Goods and works estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded on the basis of Shopping.

4. Direct Contracting. Goods which the Bank agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.

5. Community Participation. Goods and services required under Parts B.4 (i) and B.4 (ii) of the Project may be procured on the basis of community participation in accordance with the procedures stipulated in the Operations Manual, and which shall

require, *inter alia*, the issuance of requests for price quotations from at least (3) local suppliers and use of standard contract forms specifically developed for community-based goods and services. Non-governmental organizations, local suppliers and other community-based organizations, registered according to the Borrower's legislation, shall be allowed to bid. The comparison and evaluation of the quotations received shall be done as prescribed in the Operations Manual. The Borrower, through the Directorate, shall maintain records and accounts adequate to enable it to register and monitor in accordance with the provisions of the Operations Manual the financial, technical and procurement aspects of these procedures.

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 \$100,000 equivalent per contract may comprise entirely national consultants.

B. Other Procedures

1. Least-cost Selection. Services for assignments which the Bank agrees meet the requirements of paragraph 3.6 of the Consultant 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.

2. Selection Based on Consultants' Qualifications. Services estimated to cost less than \$200,000 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 Consultant Guidelines.

3. Single Source Selection. Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant 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, subject to prior approval of the Bank.

Section IV. Review by the Bank of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Bank's Prior Review. All other contracts shall be subject to Post Review by the Bank.

SCHEDULE 5

Implementation Program

Section A. Institutional Arrangements

1. MES

The Borrower, through the MES, shall ensure that the appropriate departments in the MES and other organizations under the MES carry out the overall responsibility for Program and Project implementation with due diligence and efficiency. In doing so, the Borrower shall also decentralized specific responsibilities to the educational authorities at the regional (*Oblast*) and local (*Rayon*) level involved in Project implementation. For the purposes of the Project, MES shall among others, be responsible for conducting the procurement decision process.

2. Program Steering Committee

At the national level the Borrower shall establish, not later than three (3) months after the Effectiveness Date, and thereafter maintain throughout the Project, a Program Steering Committee which shall act as a body responsible for the strategic coordination and oversight of Project activities implemented by central and local authorities participating in the Project, all under terms of reference and with resources and a composition satisfactory to the Bank.

3. The Policy Planning Division

The MES shall set up within its structure and thereafter maintain throughout Project implementation, the PPD not later than six (6) months after the Effectiveness Date, with staff, functions and responsibilities appropriate to provide policy planning promoting equal access to quality education. For the purposes of the Project, the PPD shall be responsible for preparing documentation for the development of educational reform policies towards equal access education and providing guidance to MES and the Directorate

4. The Directorate

The Borrower shall establish and thereafter maintain throughout the implementation of the Project the Directorate under terms of reference and with resources and composition satisfactory to the Bank for the purposes, among others, of the day-to-day management of the Project, including financial and procurement management and

other Project-related tasks, all in accordance with the MES-Directorate Implementation Agreement and the Operational Manual.

Section B. Implementation Modalities

1. Operations Manual

(a) The Borrower, through the MES: (i) shall adopt the Operations Manual not later than one (1) month after the date of this Agreement; and (ii) shall take all action required to ensure that the Operations Manual is applied and followed at all times in the implementation, monitoring and evaluation of the Project.

(b) Except as the Bank shall otherwise agree or as the Bank may otherwise judge it necessary to update the Operations Manual to reflect and support a sustainable evolution of the Project, the Borrower shall ensure that the MES do not assign, amend, abrogate or waive the Operations Manual or any provision thereof.

2. MES-Directorate Implementation Agreement and MES-MOF-Directorate Financial Agreement

(a) The Borrower, through MES, shall enter into an agreement with the Directorate under terms and conditions which shall have been agreed upon with the Bank (the MES-Directorate Implementation Agreement) and which shall include, *inter alia*, provisions whereby the responsibilities and tasks of the Directorate for the day-to-day management of the Project are described in accordance with the Project Operations Manual.

(b) The Borrower, through MOF and MES, shall enter into an agreement with the Directorate under terms and conditions which shall have been agreed upon with the Bank (the MES-MOF-Directorate Financial Agreement) and which shall include, *inter alia*, provisions whereby the transfer and flow of funds from MOF, through the MES, to the Directorate for the Project are described.

(c) The Borrower, through MES, shall exercise its rights under the MES-Directorate Implementation Agreement and MES-MOF-Directorate Financial Agreement in such a manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Project, and, except as the Bank shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive, said agreements or any provisions thereof.

2. Part C.3 of the Project: Criteria for *Oblast* Selection

For the purposes of carrying out Part C.3 of the Project, six pilot *Oblasts* will be selected according to agreed criteria including economic level of the *Oblasts*, geographic location, and regional demographics. On the basis thereof, each *Rayon* in the six (6) pilot *Oblasts* will be invited to prepare a Rayon School Network Optimization Plan (ROP) proposal and submit it to MES for its approval. The Borrower shall take all actions required to ensure that the MES select and rank the most viable ROPs in accordance with agreed criteria, and that only the highest ranked ROPs (not less than five (5) and up to ten (10)) shall be selected for financing under the Loan.

3. Part C.4 of the Project: Criteria for School Selection

From the remaining viable ROPs determined under the ROP selection process stipulated in the precedent paragraph 3 of this Section, the schools to be rehabilitated under Part C.4 of the Project shall be identified and ranked according to agreed school selection and prioritization criteria including: (i) school location with preference given to rural schools; (ii) student enrollment in the school and the demographic trend in the school district or locality; (iii) severity of school rehabilitation needs; (iv) the economic status of the community in which the school is located; and (v) other criteria subsequently defined by MES in agreement with the Bank.

5. Parts C.3 and C.4 of the Project: Environmental Management Plan

The Borrower shall take all measures necessary to ensure that the MES carry out the measures identified under the Environmental Management Plan at all times in a timely manner, ensuring that adequate information on the implementation of said measures is suitably included in the Project progress reports to be prepared pursuant to the provisions of paragraph 1 of Section C of this Schedule.

Section C. Progress and Evaluation and Monitoring Reporting

1. Progress Reports

Without limitation upon the provisions of Section 9.07 of the General Conditions, the Borrower, through the MES, shall, commencing on December 31, 2005, and thereafter, not later than March 31, June 30, September 30 and December 31 in each calendar year and until Project completion, prepare and furnish to the Bank a progress report, of such scope and in such detail as the Bank shall reasonably request, describing, in accordance with the Monitoring and Evaluation Indicators, the progress achieved in the implementation of the Program and the Project during the preceding quarter of the calendar year.

2. Mid-Term Review

The Borrower, through the MES, shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the Monitoring and Evaluation Indicators, the carrying out of the Program and the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, on or about March 31, 2007, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Program and the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Program and the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Bank, by June 30, 2007, or such later date as the Bank shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Program and the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank's views on the matter.