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GRANT NUMBER 0374-AFG (SF)

GRANT AGREEMENT  
(Special Operations)

(North-South Power Transmission Enhancement Project)

between

ISLAMIC REPUBLIC OF AFGHANISTAN

and

ASIAN DEVELOPMENT BANK

DATED 14 Dec 2013

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AFG 46392

**GRANT AGREEMENT  
(Special Operations)**

GRANT AGREEMENT dated 14 December 2013 between ISLAMIC REPUBLIC OF AFGHANISTAN ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for two grants for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(B) ADB has established a multi-donor trust fund, the Afghanistan Infrastructure Trust Fund ("AITF"), to provide co-financing support to infrastructure projects in the Recipient, to be administered by ADB;

(C) by an agreement between the Recipient and ADB ("AITF Grant Agreement"), ADB has agreed to make to the Recipient a grant of one hundred seventeen million Dollars (\$117,000,000) from the AITF ("AITF Grant");

(D) the Project will be carried out by Da Afghanistan Breshna Sherkat ("DABS"), and for this purpose the Recipient will make available to DABS the proceeds of the grants provided for herein and in the AITF Grant Agreement upon terms and conditions satisfactory to ADB; and

(E) ADB has agreed to make a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein and the Project Agreement between ADB and DABS;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Grant Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Grant Agreement, the several terms defined in the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Grant Agreement have the following meanings:

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Recipients (2013, as amended from time to time);

(b) “Consulting Services” means the services to be financed out of the proceeds of the Grant as described in subparagraph 2(c) of Schedule 1 to this Grant Agreement;

(c) “Environmental Management Plan” or “EMP” means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

(d) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(e) “Goods” means equipment and materials to be financed out of the proceeds of the Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(f) “Initial Environmental Examination” or “IEE” means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;

(g) “Involuntary Resettlement Safeguards” means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(h) “Land Acquisition and Resettlement Plan” or “LARP” means the land acquisition and resettlement plan for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;

(i) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(j) “PAM” means the project administration manual for the Project dated 18 September 2013 and agreed between the Recipient and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;

(k) “Procurement Guidelines” means ADB’s Procurement Guidelines (2013, as amended from time to time);

(l) “Procurement Plan” means the procurement plan for the Project dated 18 September 2013 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(m) “Project 5” means Project 5 of the Energy Sector Development Investment Program (Grant No. 0377 (SF));

(n) “Project 5 Grant Agreement” means the grant agreement for Project 5 of the Energy Sector Development Investment Program (Grant No. 0377 (SF));

(o) “Project Executing Agency” for the purposes of, and within the meaning of, the Grant Regulations means Da Afghanistan Breshna Sherkat or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(p) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(q) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient to ADB that describes progress with implementation of and compliance with the EMP and the LARP, including any corrective and preventative actions;

(r) "Subsidiary Loan Agreement" means the agreement to be entered into between the Recipient and DABS for purposes of lending the proceeds of the Grant (together with the proceeds of the AITF Grant) as specified in Section 3.01(a) of this Grant Agreement; and

(s) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

## **ARTICLE II**

### **The Grant**

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources an amount of ninety-nine million Dollars (\$99,000,000).

## **ARTICLE III**

### **Use of Proceeds of the Grant**

Section 3.01. (a) The Recipient shall lend the proceeds of the Grant (together with the proceeds of the AITF Grant) to DABS under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB shall otherwise agree, the terms for lending the proceeds of the Grants shall include a repayment period of 32 years with a grace period of 8 years, and interest at the rate of 1% per annum during the grace period and 1.5% per annum thereafter, with the foreign exchange risk being borne by DABS.

(b) The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project Agreement.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Except as ADB may otherwise agree, the Recipient shall cause all items of expenditure financed out of the proceeds of the Grant to be used exclusively in the carrying out of the Project.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2017 or such other date as may from time to time be agreed between the Recipient and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement and the Project Agreement.

Section 4.02. The Recipient shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

Section 4.04. The Recipient shall take all actions which shall be necessary on its part to enable DABS to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Recipient shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

**ARTICLE V****Suspension**

Section 5.01. The following are specified as additional events for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations:

- (a) the AITF Grant shall have become liable for suspension or cancellation;
- (b) the Recipient or DABS shall have failed to perform any of their respective obligations under the Subsidiary Loan Agreement; and
- (c) DABS's organizational structure shall have been significantly altered in such a manner that in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of Project facilities.

**ARTICLE VI****Effectiveness**

Section 6.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations:

- (a) the AITF Grant Agreement has been duly authorized, executed and delivered on behalf of the Recipient and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement, the Project 5 Grant Agreement and the Subsidiary Loan Agreement) have been fulfilled;
- (b) the Subsidiary Loan Agreement has been duly authorized, executed and delivered on behalf of the Recipient and DABS and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement and the AITF Grant Agreement) have been fulfilled; and
- (c) the Project 5 Grant Agreement has been duly authorized, executed and delivered on behalf of the Recipient and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement and the ADB Grant Agreement) have been fulfilled.

Section 6.02. The following are specified as additional matters, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB:

- (a) the AITF Grant Agreement has been duly authorized, executed and delivered on behalf of the Recipient, and is legally binding on the Recipient in accordance with its terms;
- (b) the Subsidiary Loan Agreement has been duly authorized, executed and delivered on behalf of the Recipient and DABS, and is legally binding on the parties in accordance with its terms; and
- (c) the Project 5 Grant Agreement has been duly authorized, executed and delivered on behalf of the Recipient, and is legally binding on the Recipient in accordance with its terms.

Section 6.03. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## **ARTICLE VII**

### **Miscellaneous**

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

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

For the Recipient

Ministry of Finance  
Pashtonistan Watt  
Kabul, Afghanistan

Facsimile Number:

93-20-210-2838.

For ADB

Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

Facsimile Numbers:

(632) 636-2444

(632) 636-2301.


IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

ISLAMIC REPUBLIC OF AFGHANISTAN

By  \_\_\_\_\_

DR. OMAR ZAKHILWAL  
Minister of Finance

ASIAN DEVELOPMENT BANK

By  \_\_\_\_\_

JOJI TOKESHI  
Country Director  
Afghanistan Resident Mission



## **SCHEDULE 1**

### **Description of the Project**

1. The objective of the Project is to increase electricity supply from the north to the south and east of the territory of the Recipient.
2. The Project shall comprise:
  - (a) construction of a 500 kV transmission line from Dashte Alwan to Kabul;
  - (b) construction of a 500/220 kV substation in Arghundy, Kabul; and
  - (c) project management and implementation support for DABS.
3. The Project is expected to be completed by 31 December 2016.

## SCHEDULE 2

### Allocation and Withdrawal of Grant Proceeds

#### General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Grant and the allocation of the Grant proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table.)

#### Basis for Withdrawal from the Grant Account

2. Except as ADB may otherwise agree, the proceeds of the Grant shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

#### Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

#### Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (North-South Power Transmission Enhancement Project)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$)  Category</b>	<b>Basis for Withdrawal from the Grant Account</b>
1	Turnkey Contract	67,000,000	100 percent of total expenditure claimed*
2	Consulting Services	3,000,000	100 percent of total expenditure claimed*
3	Security and Demining	6,000,000	100 percent of total expenditure claimed
4	Unallocated	23,000,000	
	<b>Total</b>	<b>99,000,000</b>	

\* Financing allocated to this item under the AITF Grant Agreement will be utilized first at 100% of every claim until it has been disbursed in full. Thereafter, financing allocated to this item under this Grant Agreement will be utilized at 100% of every claim.

### SCHEDULE 3

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

##### General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

##### Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of International Competitive Bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

##### Conditions for Award of Contract

5. The Recipient shall ensure that DABS does not award any Works contract which involves environmental impacts until DABS has incorporated the relevant provisions from the EMP into the Works contract.
6. Subject to paragraph 7 below, the Recipient shall ensure that DABS does not award any Works contract which involves involuntary resettlement impacts until the Recipient has prepared and submitted to ADB the final LARP based on the Project's detailed design, and obtained ADB's clearance of such LARP.
7. DABS may award a contract for Works involving involuntary resettlement impacts prior to the final LARP having been submitted and cleared by ADB provided that the contract:
  - (a) is of a "design and build" or "turnkey" type under which the design must be completed for the Project before the LARP is finalized; and
  - (b) expressly provides that the installation and construction phase (and commencement thereof) is strictly conditional upon: (i) the final LARP based on the Project's detailed design having been submitted to, and cleared by, ADB; and (ii) DABS having notified the contractor and ADB in writing that due consultation, compensation payments and other entitlements have been provided to affected people in accordance with the LARP.

Consulting Services

8. Except as ADB may otherwise agree, the Recipient shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

Eligible Sources for Procurement

9. For the avoidance of doubt, withdrawals from the Grant Account (as well as the "Grant Account" established for purposes of the AITF Grant) may be made on account of expenditures relating to Works and Consulting Services which are supplied from countries that are not developed member countries of ADB that have contributed to ADF resources or developing member countries of ADB.

Industrial or Intellectual Property Rights

10. (a) The Recipient shall cause DABS to ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Recipient shall cause DABS to ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

11. The Recipient shall cause DABS to ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

12. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

13. In the case of a contract of Goods or Works, which is subject to ADB's prior review, the Recipient shall seek ADB's prior approval of any modification or waiver of the terms and conditions of the contract, including:

- (a) granting an extension of the stipulated time for completion of a contract for a period of 1 month or more, or which is likely to require an extension of the Grant Closing Date; and
- (b) increases in aggregate of the original price by more than 5% (for the avoidance of doubt, such increase shall take into account any previous change under such contract).

14. In the case of a contract for Goods or Works, which is subject to ADB's post review, ADB shall review the required contract modification or waiver and respond to the Recipient as soon as practicable, but not later than 1 month after the receipt of the required document.

15. The Recipient shall provide to ADB copies of all time extensions, modifications or waivers to the contracts (including charge orders) within 1 month following amendment of the contract.

## SCHEDULE 4

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. The Recipient and DABS shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement and the Project Agreement, the provisions of this Grant Agreement and the Project Agreement shall prevail.

#### Environment

2. The Recipient shall ensure and cause DABS to ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project comply with (a) all applicable laws and regulations of the Recipient relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

#### Land Acquisition and Involuntary Resettlement

3. The Recipient shall ensure and cause DABS to ensure that all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Recipient relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the LARP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

4. Without limiting the application of the Involuntary Resettlement Safeguards or the LARP, the Recipient shall ensure and cause DABS to ensure that no physical or economic displacement takes place in connection with the Project until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the LARP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the LARP.

#### Indigenous Peoples

5. The Recipient shall ensure that the Project does not have any indigenous peoples impacts within the meaning of the SPS. In the event that the Project does have any such impacts, the Recipient shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and the SPS.

Human and Financial Resources to Implement Safeguards Requirements

6. The Recipient shall make available or cause DABS to make available necessary budgetary and human resources to fully implement the EMP and the LARP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

7. The Recipient shall ensure and cause DABS to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP and the LARP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Recipient with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP and the LARP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

8. The Recipient shall cause DABS to do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP and the LARP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP and the LARP promptly after becoming aware of the breach.



Prohibited List of Investments

9. The Recipient shall ensure and cause DABS to ensure that no proceeds of the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Security Plan

10. The Recipient shall cause DABS to ensure that (a) Works contracts under the Project include a security plan to ensure safety of Project contractors' personnel and consultants to facilitate smooth and uninterrupted implementation of the relevant Project activities; (b) such security plan measures allocate sufficient budget under the relevant Works contracts or through Recipient's counterpart funding; and (c) all relevant permits are issued, and access and other requirements needed are provided, so that each of these security plans will be successfully implemented.

Change of Control

11. The Recipient shall ensure that ADB's consent is obtained at least 6 months prior to the implementation of any of the following: (a) any change in ownership of any asset, facility or structure financed under the Project; (b) any sale, transfer, or assignment of interest or control in any asset, facility or structure financed under the Project; or (c) any lease or other contract or modification of the functions and authority of DABS over operation and maintenance of any such asset, facility or structure financed under the Project. The Recipient shall ensure that any such changes are carried out in a legal and transparent manner.

Health and Labor Standards

12. The Recipient shall cause DABS to ensure that contractors engaged under the Project (a) comply with all applicable labor laws; (b) use their best efforts to employ women and local people, including disadvantaged people, living in the vicinity of the Project; (c) provide equal pay to men and women for work of equal type; (d) provide and adequately equip first-aid, health and sanitation, and personal hygiene facilities for male and female workers at the Project site; (e) maximize female training and employment; (f) conduct an information and education campaign on sexually transmitted diseases and HIV/AIDS for construction workers as part of the health and safety program at campsites and adjacent communities during Project implementation; and (g) abstain from the use of child labor or forced labor. Relevant contracts financed under the Project must include specific clauses on these undertakings.

Gender and Development

13. The Recipient shall ensure that DABS conforms to the principles of ADB's Policy on Gender and Development (1998) during implementation of the Project, including (a) provision of enabling working conditions for female workers; and (b) taking all necessary actions to encourage women living in the Project area to participate in planning and implementing Project activities. The Recipient shall ensure that DABS, in coordination with

the appropriate agencies, ensures effective implementation of measures aimed at increasing Project benefits and impacts on women in and around the Project area.

Governance and Anticorruption

14. The Recipient and DABS shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

15. The Recipient and DABS shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.