

**CONFORMED COPY
TF054001**

Participation Agreement

(Afghanistan Investment Guarantee Facility)

among

**PARTICIPANTS TO THE AFGHANISTAN
INVESTMENT GUARANTEE FACILITY**

and

**THE MULTILATERAL INVESTMENT GUARANTEE AGENCY
(as administrator of the Afghanistan Investment Guarantee Facility (TF054001))**

Dated December 13, 2004

PARTICIPATION AGREEMENT

This AGREEMENT is dated December 13, 2004, and entered into by and among the International Development Association (the "Association"), the Asian Development Bank ("ADB"), the Multilateral Investment Guarantee Facility ("MIGA"), and each entity, institution, agency, or government that subsequently accepts, subscribes to, and undertakes this Agreement's terms, conditions, and obligations in accordance with Article VIII of this Agreement.

Background

(A) The Islamic Republic of Afghanistan ("Afghanistan") and the Association entered into a Development Credit Agreement (the "IDA Development Credit Agreement") on August 4, 2004. Under that agreement, the Association agreed to make available to Afghanistan an amount in various currencies equivalent to 3,500,000 Special Drawing Rights as financial assistance for the Afghanistan Investment Guarantee Facility (the "Facility") to backstop guarantees to be issued by MIGA on behalf of the Facility.

(B) ADB and Afghanistan entered into a Loan Agreement (the "ADB Loan Agreement") on _____, _____. Under that agreement, ADB has agreed to make available to Afghanistan an amount in various currencies equivalent to 3,430,000 Special Drawing Rights as financial assistance to backstop guarantees to be issued by MIGA on behalf of the Facility.

(C) The Department for International and Development of the United Kingdom of Great Britain and Northern Ireland ("DFID") and MIGA entered into a memorandum of understanding (the "DFID Memorandum of Understanding") on _____, _____. Under that memorandum, DFID has agreed to make available to MIGA an amount equivalent to 1,000,000 Pounds Sterling as financial assistance to backstop guarantees to be issued by MIGA on behalf of the Facility.

(D) Afghanistan intends to enter into financing arrangements with various other entities and institutions to provide additional financial assistance for the Facility to issue guarantees. These entities and institutions may be subsequently admitted to this Agreement in accordance with Article VIII of this Agreement.

(E) MIGA and Afghanistan entered into a Framework Agreement dated August 4, 2004 (the "Framework Agreement"), under which MIGA has agreed to operate the Facility as its administrator.

(F) The parties to this Agreement desire to enter into it to evidence certain arrangements and understandings regarding the Facility's financial arrangements and operations.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the following terms have the following meanings:

(a) “Additional Participant” means each entity, institution, agency, or department that accepts, subscribes to, and undertakes this Agreement’s terms, conditions, and obligations under this Agreement, and is accepted as a Participant in accordance with Article VIII of this Agreement;

(b) “Additional Participant Acceptance” means a letter executed by each Additional Participant in substantially the same form of Exhibit A annexed to this Agreement;

(c) “Claim” means the amount claimed by or paid to an eligible investor under a Facility Guarantee Contract issued by MIGA on behalf of the Facility;

(d) “Contribution” means a Participant’s aggregate financial commitment to provide funds to the Facility, as expressed in the applicable Financing Agreement, to backstop Facility Guarantee Contracts to be issued by MIGA on behalf of the Facility;

(e) “Drawdown” means the amount that a Participant is required to deposit in the Facility Account under Section 3.01 of this Agreement to backstop Facility Guarantee Contracts to be issued by MIGA on behalf of the Facility;

(f) “Drawdown Statement” means the statement prepared by MIGA under this Agreement reflecting, among other things, each Participant’s individual and aggregate Drawdowns in the Facility determined in accordance with Article V of this Agreement;

(g) “Facility Account” means the International Bank for Reconstruction and Development’s United-States-dollar-denominated Cash Account “T” (Account Name: IBRD “T”; Account Number: 2000192003489; Swift Code: IBRDUS33; and Federal ABA Number: 026005092), maintained with Wachovia Bank NA, 11 Penn Plaza, Floor 4, New York 10038 (Swift Bic Code PNBUS3NNYC), or such other account as MIGA may notify the Participants;

(h) “Facility Guarantee Contract” means a contract of guarantee expressed in United States dollars or other currencies between MIGA and an eligible investor by which MIGA will provide political risk insurance for covered risks associated with an eligible investment on behalf of the Facility;

(i) “Financing Agreements” means the IDA Development Credit Agreement, the ADB Loan Agreement, and every legal agreement entered into between an Additional Participant and Afghanistan regarding that Additional Participant’s Contributions and Drawdowns for the Facility to issue Facility Guarantee Contracts;

(j) “Host Country Approval” means the approval sought from and received by MIGA from Afghanistan before MIGA issues a Facility Guarantee Contract on behalf of the Facility;

(k) “Initial Advance” means each Initial Participant’s first Drawdown to the Facility in an amount indicated in the IDA Development Credit Agreement and the ADB Loan Agreement, respectively, to be deposited in the Facility Account in accordance with Section 3.01 of this Agreement;

- (l) “Initial Participants” means ADB and the Association;
- (m) “Participants” means the Initial Participants and the Additional Participants that provide financing for the Facility;
- (n) “Pro-Rata Formula” means the percentage formula used to calculate each Participant’s Drawdown to the Facility (other than the Initial Advance of an Initial Participant) determined in accordance with Section 4.03 of this Agreement; and
- (o) “Remaining Contribution” means the un-disbursed amount of each Participant’s Contribution that is equal to: (i) the amount of that Participant’s Contribution (including the Initial Advance in the case of an Initial Participant) set forth in the applicable Financing Agreement less (ii) the aggregate amount of Drawdowns deposited by that Participant in the Facility Account.

ARTICLE II

CONTRIBUTIONS AND DRAWDOWNS

Section 2.01. **Participant Contributions to Facility.** Each Participant severally agrees to make Drawdowns to the Facility in the aggregate amount of its Contribution set forth in the applicable Financing Agreement.

Section 2.02. **Drawdowns.** Subject to Section 3.01, below, each Participant’s Drawdown will be made in separate deposits in accordance with Section 4.01, below, of this Agreement.

ARTICLE III

INITIAL ADVANCES

Section 3.01. **Drawdown of Initial Advances.** Notwithstanding anything to the contrary in Section 4.01, below, the Initial Participants will deposit in the Facility Account their Initial Advances in accordance with Schedule 4 to the IDA Development Credit Agreement and Schedule 3 to the ADB Loan Agreement.

Section 3.02. **Subsequent Drawdowns of Initial Participants.** (a) MIGA will not furnish a withdrawal notice to the Initial Participants under Section 4.01, below, unless their respective Initial Advances have been entirely committed to backstop Facility Guarantee Contracts, which have been already issued, or are shown to be inadequate to backstop a proposed Facility Guarantee Contract.

(b) Prior to, or at the time of making a withdrawal request for Drawdowns exceeding the Initial Advance from an Initial Participant under Section 4.01, below, MIGA will furnish to that Initial Participant relevant documents, including Host Country Approvals for Facility Guarantee Contracts, showing that the Initial Participant’s Initial Advance has been entirely utilized for issuing a Facility Guarantee Contract or is inadequate to cover issuing a Facility Guarantee Contract with respect to which the request for withdrawal is made.

ARTICLE IV

WITHDRAWAL OF REGULAR DRAWDOWNS

Section 4.01. **Withdrawal Notice.** (a) Subject to Article III, above, MIGA will provide each Participant with a written withdrawal notice, executed in the form and manner as required under the applicable Financing Agreement, requesting that Participant's Drawdown to backstop a Facility Guarantee Contract to be issued by MIGA on behalf of the Facility. Every withdrawal notice must be furnished to a Participant, together with the supporting documents referred to in Section 4.01 (c), below, at least five business days prior to the date on which that Participant's Drawdown is expected to be made.

(b) **Drawdown Amount.** MIGA will indicate, to the best of its knowledge, in each withdrawal notice to a Participant the precise amount of that Participant's Drawdown. If this amount changes before a Participant deposits its Drawdown in the Facility Account, MIGA will promptly notify that Participant of the change and the revised amount of the Drawdown to be deposited.

(c) **Supporting Documents.** When issuing a withdrawal notice under sub-section (a), above, MIGA will also provide each Participant with any relevant documents and other satisfactory evidence, including Host Country Approvals, for Facility Guarantee Contracts with respect to which a Drawdown is requested.

Section 4.02. (a) **Drawdown Mechanics.** Each Participant must deposit in the Facility Account the amount of its Drawdown that MIGA requests in its withdrawal notice by the date specified in the notice. This Drawdown must be equal to the lesser of (i) the Participant's Remaining Contribution; or (ii) the Participant's allocable share of the aggregate amount required to backstop a Facility Guarantee Contract by applying the Pro-Rata Formula.

(b) Each Participant will, when making a deposit of its Drawdown in the Facility Account, notify Wachovia Bank, NA that the funds are for the Afghanistan Investment Guarantee Facility (Project No. TF054001). In addition, the Participant will arrange to send a copy of its deposit instructions to: (i) the International Bank for Reconstruction and Development's Trust Funds Division by an e-mail addressed to "tfremitadvice@worldbank.org" or by fax to (1)-202-614-1315; and (ii) MIGA's _____. MIGA may notify the Participants regarding any changes or modifications to these deposit instructions and arrangements.

(c) In order to make a Participant's Drawdown deposit effective, MIGA will use its best efforts to purchase any currency necessary, including United States dollars. Solely for the purpose of purchasing any currencies required to make a transfer under this Section 4.02 (c), MIGA will act as the authorized representative of a Participant, and whenever it is necessary for this purpose to determine the value of one currency in terms of another, this value will be reasonably determined by MIGA.

Section 4.03. **Pro-Rata Formula.** A Participant's Pro-Rata Formula is a percentage obtained by dividing (i) the aggregate amount of the Participant's Remaining Contribution expressed in the applicable Financing Agreement by by (ii) the sum of the aggregate amounts of all Participants' Remaining Contributions expressed in the applicable Financing Agreements, each of these amounts to be determined according to exchange rates prevailing at the time MIGA issues a withdrawal notice under Section 4.01, above. A Participant's Pro-Rata Formula will be adjusted, from time to time, to reflect any changes in the composition of Participants, including the admission of Additional Participants under Article VIII of this Agreement.

Section 4.04. **Return of Drawdowns.** If a Facility Guarantee Contract with respect to which a Drawdown is deposited under Section 4.01, above, is not executed or if the amount of funds deposited by Participants through their respective Drawdowns for a Facility Guarantee Contract exceeds the amount necessary to backstop that Facility Guarantee Contract, MIGA must return, the relevant Drawdown, or the excess amount that remains uncommitted from a Drawdown, to every Participant in the same proportion that these funds were deposited by the Participants, unless a Participant elects in writing not to receive a return and instructs MIGA on how this amount should be utilized.

ARTICLE V

INCOME, DRAWDOWN STATEMENTS, AND UTILIZATION OF BALANCE FUNDS IN FACILITY

Section 5.01. **Income from Drawdowns.** MIGA may invest the amounts received from Drawdowns made by Participants pending their commitment to backstop Facility Guarantee Contracts in accordance with its policies for the investment of trust funds. The investment income earned on these funds will be allocated to the Facility and will be used for such purposes as may be expressly agreed among MIGA and the Participants.

Section 5.02. **Drawdown Statements and Adjustments.** MIGA will establish a system to generate a Drawdown Statement for each Participant. From time to time, the balance in a Participant's Drawdown Statement will be adjusted by (i) increasing this balance by that Participant's: (A) actual Drawdowns to the Facility Account, and (B) allocable share of any recoveries or payments from MIGA's exercise of subrogation rights on behalf of the Facility in relation to a Facility Guarantee Contract, and (ii) decreasing this balance by (A) any return or refund of Drawdowns made to the Participant under Section 4.04, and (B) the Participant's allocable share of losses sustained by the Facility on account of a Claim.

Section 5.03. **Utilization of Balances.** After the Facility has been fully implemented or terminated in accordance with Section 9.03 of this Agreement in accordance with the Framework Agreement and all outstanding Facility Guarantee Contracts expire, each Participant's Drawdown Statement will be finally adjusted in accordance with Section 5.02. Following this final adjustment, the balance amount of funds in each Participant's Drawdown Statement will be disbursed or returned in accordance with the terms and conditions of the applicable Financing Agreement.

ARTICLE VI

COORDINATION AND CONSULTATION AMONG AND BETWEEN PARTICIPANTS; MARKETING

Section 6.01. **Exchange of Information.** Each Participant will use all reasonable endeavors, at the request of another Participant, to exchange views and provide relevant information, in accordance with its respective policies and practices governing disclosure of information. This information, which may also be shared with MIGA, may include details regarding:

- (a) Afghanistan's economy;

(b) the progress achieved by Afghanistan and MIGA in implementing the Facility;
and

(c) financial management, disbursement, and other implementation arrangements under the applicable Financing Agreements.

Section 6.02. **Duty to Inform.** Each Participant must promptly inform the other Participants and MIGA of any of the following events:

(a) any event of which a Participant becomes aware which, in the opinion of that Participant, is likely to materially interfere with, or seriously hinder or impair, the implementation of the Facility, or to adversely and materially interfere with the performance by Afghanistan of its obligations under the Financing Agreement to which that Participant is a party;

(b) any actual or threatened failure by Afghanistan to make any payments with respect to principal, interest, or other charges under the applicable Financing Agreement; or

(c) any notice given by Afghanistan to prepay the whole or any part of any financing (such as a loan, credit, or grant) under the applicable Financing Agreement.

Section 6.03. **Details of Missions and Reviews.** Each Participant will use reasonable efforts consistent with its policies and procedures to inform the other Participants of any supervision mission or review undertaken by its staff or consultants and provide the other Participants with a report summarizing the principal conclusions of this mission or review.

Section 6.04. **Consultation Regarding Certain Actions.** Without prejudice to a Participant's rights and obligations under its applicable Financing Agreement, each Participant shall provide notice to, and make reasonable efforts to consult with, the other Participants and MIGA regarding:

(a) suspending, terminating, canceling, accelerating, in whole or in part, its financing arrangements for the Facility;

(b) any substantial amendments to be made to the applicable Financing Agreement that may result in any material adverse change in the Facility's financing or implementation arrangements; or

(c) extending the closing date or the final date for making withdrawals under the applicable Financing Agreement.

Section 6.05. **Acting in Good Faith.** In carrying out their obligations under this Agreement and the applicable Financing Agreements, the Participants will, at all times, act in good faith and will not take any actions which will delay or undermine MIGA's ability to carry-out its responsibilities as administrator on behalf of the Facility.

Section 6.06. **Marketing and Processing Activities.** (a) MIGA will use reasonable endeavors to market and promote the Facility, including liaising with appropriate local agencies marketing and promotion to new investors, recruiting a consultant for a two-year period (such recruitment being subject to receipt of sufficient funds to pay for such consultant's services) to market the Facility, train local staff to process guarantee applications received from potential

investors, assist in underwriting processes, and coordinate with the Participants and other providers of political insurance, including ADB).

(b) MIGA will take the lead in terms of the processing of requests for guarantee cover, underwriting analysis, due diligence, administration, and claims management and coordinate and keep fully apprised the Participants of its activities in these areas. On all brochures, pamphlets and other marketing materials relating to the Facility, the logos of MIGA, IDA, ADB and DFID shall appear.

ARTICLE VII

INDEPENDENT NATURE OF PARTICIPANTS' RIGHTS; NO THIRD PARTY RIGHTS; PRIOR AGREEMENTS

Section 7.01. **No Joint Venture.** The obligations and Contributions of Participants under this Agreement are several, and a Participant shall not be responsible for the Contribution or Drawdown obligations of any other Participant. Nothing contained in this Agreement or in the Financing Agreements, and no action taken by Participants under those documents, shall be deemed to constitute the Participants as a partnership, association, joint-venture, or any other kind of legal or contractual entity.

Section 7.02. **Independent Nature of Participants' Rights.** The amounts payable at any time to each Participant by Afghanistan under any applicable Financing Agreement constitute separate and independent debt obligations. Each Participant is entitled to protect and enforce its rights arising out of this Agreement or under the applicable Financing Agreement, and it is not necessary for that Participant to involve or associate any other Participants in any action or proceeding under its applicable Financing Agreement.

Section 7.03. **No Third Party Rights.** Subject to the applicable Financing Agreements, the Participants do not intend the rights, privileges, and benefits of this Agreement to inure to Afghanistan or any other person. However, this Agreement binds all successors and permitted assigns of the Participants and inures to their benefit. Nothing contained in this Agreement operates to release Afghanistan from (i) its obligation to keep and perform all of the terms, conditions, obligations, covenants, and agreements contained in the Financing Agreements; or (ii) any potential or actual liability under the Financing Agreements.

Section 7.04. **No Rights to Facility's Creditors.** The provisions of this Agreement are solely for the benefit of, and to promote coordination among, the Participants. Subject to the applicable Financing Agreements, this Agreement must not be construed as conferring any benefit upon any creditor of the Facility (and no creditor is to be construed as a third-party beneficiary of this Agreement). No Participant is under a duty or obligation to any creditor of the Facility to make any Drawdowns to the Facility or to cause MIGA to deliver to any Participant a withdrawal notice.

Section 7.05. **Acknowledgement.** Without prejudice to their rights and obligations under this Agreement or under the applicable Financing Agreements, the Participants acknowledge the understandings between MIGA and ADB relating to certain co-insurance arrangements to supplement Facility Guarantee Contracts which are included in an Agreement on Co-operation on Co-insurance Arrangements in relation to the Afghanistan Investment Guarantee Facility between MIGA and ADB.

ARTICLE VIII

ADDITIONAL PARTICIPANTS

Section 8.01. **Determination of Eligibility.** In order for an institution or an entity that is not a Participant on the date of this Agreement to accept, subscribe to, or undertake this Agreement's terms, conditions, and obligations, that institution or entity shall make a written request to MIGA. MIGA will, after obtaining all relevant information and undertaking necessary consultations with the Initial Participants and Afghanistan, inform the institution or entity in writing whether it is eligible to be admitted to this Agreement.

Section 8.02. **Additional Participant Acceptance.** Upon receiving MIGA's approval under Section 8.01, above, the institution or entity must execute an Additional Participant Acceptance, in substantially the form of Exhibit A annexed to this Agreement. The entity, institution, agency, or department will be entitled to participate in this Agreement as an Additional Participant only after the executed Additional Participant Acceptance is delivered to MIGA.

ARTICLE IX

EFFECTIVENESS, MODIFICATION, AND TERMINATION

Section 9.01. **Effectiveness.** (a) This Agreement shall come into force and effect on the date of its signature by the Initial Participants and MIGA.

(b) This Agreement will become effective for an Additional Participant after that Additional Participant has: (i) received MIGA's approval to participate in the Facility under Article VIII, above, and (ii) furnished MIGA with an executed Additional Participant Acceptance.

Section 9.02. **Modifications.** This Agreement may be modified from time to time by agreement in writing among the Participants.

Section 9.03. **Termination.** The obligations and Contribution of each Participants under this Agreement shall terminate on the earlier of (i) the dates on which their respective Financing Agreements terminate in accordance with each of their own terms; or (ii) the date on which the Facility terminates in accordance with the Framework Agreement.

ARTICLE X

MISCELLANEOUS

Section 10.01. **Notices.** Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement must be in writing. A notice or a request is duly given or made when it shall be delivered by hand or by mail, telex or facsimile to the party to which it is required or permitted to be given or made at that party's address specified in the signature page of this Agreement and in the applicable Additional Participant's Acceptance or at such other address as such party shall have designated by notice to the party giving such notice or making such request. Deliveries made by facsimile transmission shall also be confirmed by mail.

Section 10.02. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

Section 10.03 **Amicable Settlement of Issues.** Any issues or disputes arising out of, in relation to, the application or interpretation of this Agreement should be resolved amicably through consultations between and among the Participants and MIGA.

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

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Alastair McKechnie

[Authorized Representative]

Address for Notices and Requests:

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

ASIAN DEVELOPMENT BANK

By /s/ Philip Erquiaga

[Authorized Representative]

Address for Notices and Requests:

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

Cable address:

ASIAN BANK
MANILA

Telex:

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

Facsimile:

(632) 636-2444

MULTILATERAL INVESTMENT GUARANTEE AGENCY

By /s/ Luis Dodero

[Authorized Representative]

Address for Notices and Requests:

Multilateral Investment Guarantee Agency
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

Facsimile:

ADDITIONAL PARTICIPANTS ACCEPTANCE

Date: _____

Multilateral Investment Guarantee Facility
181 H Street NW,
Washington, DC 20433
United States of America

***Re: Afghanistan Investment Guarantee Facility:
Additional Participant Acceptance***

Ladies and Gentlemen,

We refer to the Participation Agreement dated _____ (the “Participation Agreement”) by and among the International Development Association (the “Association”), the Asian Development Bank (“ADB”), Department for International Development, United Kingdom of Great Britain and Northern Ireland (“DFID”), the Multilateral Investment Guarantee Agency (“MIGA”)[, and certain existing Additional Participants (as defined in the Participation Agreement)] that contains certain understandings regarding financial assistance for, and the operations of, the Afghanistan Investment Guarantee Facility (the “Facility”).

On behalf of [_____], I am pleased to confirm our intention to accept, subscribe to, and undertake the terms, conditions, and obligations of the Participation Agreement. Therefore, in accordance with Article VIII of the Participation Agreement, [_____] hereby accepts, subscribes to, and undertakes all the terms, conditions, and obligations under the Participation Agreement and confirms that the execution and delivery of this Additional Participants Acceptance has been duly authorized or ratified by all necessary legal and corporate action on its part.

I am also attaching details, including the applicable legal agreements, relating to our financial assistance for the Facility.

Please confirm your agreement to this Additional Participant Acceptance by causing an authorized representative to counter-sign this document. This Additional Participant Acceptance will become effective upon counter-signature by each party below.

[_____]

Authorized Representative

CONFIRMED

MULTILATERAL INVESTMENT GUARANTEE FACILITY

By

Authorized Representative

cc:

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

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