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GRANT NUMBER 0674-TUV(SF)

GRANT AGREEMENT  
(Special Operations)  
(Increasing Access to Renewable Energy Project)

between

TUVALU

and

ASIAN DEVELOPMENT BANK

DATED 6 NOVEMBER 2019

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TUV 49450

**GRANT AGREEMENT  
(Special Operations)**

GRANT AGREEMENT dated 6 November 2019 between TUVALU ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

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

(B) the Project will be carried out by the Recipient's Ministry of Finance and the Tuvalu Electricity Corporation ("TEC"), through and with oversight from the Recipient's Ministry of Transport, Energy and Tourism, and for this purpose the Recipient will make available to TEC the proceeds of the grant provided for herein upon terms and conditions satisfactory to ADB; and

(C) 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 in the Project Agreement of even date herewith between ADB and TEC;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Grant Regulations; Definitions**

Section 1.01. All the provisions of ADB's Special Operations Grant Regulations, dated 1 January 2017 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 2.01(m) is deleted and the following is substituted therefor:

"Project Agreement" means the project agreement of even date herewith between ADB and TEC, as such agreement may be amended from time to time; and such project agreement includes all schedules to the Project Agreement;

(b) The term "Project Executing Agency" appearing in Sections 6.01(a), 8.01(c), 8.01(e), 8.01(i), 9.01(b) and 9.02(b) of the Grant Regulations shall be substituted by the term "TEC".

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 Borrowers (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 paragraph 2(c) of Schedule 1 to this Grant Agreement;
- (c) "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;
- (d) "Environmental assessment report" means the document submitted to Department of Environment comply with the Environment Protection Act and regulations and includes the preliminary assessment report or environmental impact assessment.
- (e) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (f) "GAP" means the gender action plan prepared for the Project, including any update thereto, and agreed to between the Recipient and ADB;
- (g) "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;
- (h) "IEE" means the initial environmental examination 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 (2017, as amended from time to time);
- (j) "MOF" means the Recipient's Ministry of Finance;
- (k) "PAM" means the project administration manual for the Project dated 4 October 2019 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;
- (l) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (m) "Procurement Plan" means the procurement plan for the Project dated 4 October 2019 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;

- (n) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means MOF or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (o) "Project Implementing Agency" means TEC, through and with the oversight of the Recipient's Ministry of Transport, Energy and Tourism;
- (p) "SPS" means ADB's Safeguard Policy Statement (2009);
- (q) "Subsidiary Grant Agreement" means the subsidiary grant agreement referred to in Section 3.01 herein; and
- (r) "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 six million Dollars (\$6,000,000).

## **ARTICLE III**

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

Section 3.01. The Recipient shall make available to TEC the proceeds of the Grant and other funds necessary for the Project available to TEC under a Subsidiary Grant Agreement upon terms and conditions satisfactory to ADB and shall cause TEC to apply such proceeds 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. Withdrawals from the Grant Account in respect of Goods, Works, and Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods, Works, and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2022 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 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 14 days of the date of ADB's confirmation of their acceptability 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 TEC 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 Grant 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 Grant Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **Suspension**

Section 5.01. The following is specified as an additional event 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: the Recipient or TEC shall have failed to perform any of its obligations under the Subsidiary Grant Agreement.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## **ARTICLE VII**

### **Termination**

Section 7.01. The Grant Agreement and all obligations of the parties thereunder shall terminate on a date 15 years after the date of this Agreement.

## **ARTICLE VIII**

### **Miscellaneous**

Section 8.01. 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 8.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

#### For the Recipient

Ministry of Finance  
Private Mail Bag  
Vaiaku, Funafuti  
Tuvalu

For ADB


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

Facsimile Numbers:


(632) 8-636-2444  
(632) 8-636-2446.

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.

TUVALU

By   
ANTHONY KENNETH MCDONALD  
Authorized Representative

ASIAN DEVELOPMENT BANK

By   
MA. CARMELA D. LOCSIN  
Director General  
Pacific Department



**SCHEDULE 1****Description of the Project**

1. The objective of the Project is to increase the generation and utilization of reliable and clean energy from renewable energy in the territory of the Recipient.
2. The Project shall comprise:
  - (a) installation of solar photovoltaic (PV) systems on the islands of Nukulaelae, Nukufetau, and Nui;
  - (b) installation of a solar PV system and battery energy storage system on Funafuti; and
  - (c) institutional capacity and project management support to TEC.
3. The Project is expected to be completed by 30 June 2022.

**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 amounts of the Grant 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 allocated to items of expenditure, and disbursed on the basis of the withdrawal percentage for each item of expenditure, as 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.

Condition for Withdrawals from Grant Account

5. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account until the Subsidiary Grant Agreement shall have been duly executed and delivered and all conditions to its effectiveness (other than a condition requiring the effectiveness of this Grant Agreement) shall have been fulfilled.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$)</b>	<b>Basis for Withdrawal from the Grant Account</b>
1	Turnkey (solar PV and BESS), Consulting Services, project management, and capacity development**	6,000,000	100% of total expenditure claimed*
	<b>TOTAL</b>	<b>6,000,000</b>	

\* Exclusive of taxes and duties imposed within the territory of the Recipient.

\*\* Subject to the condition for withdrawal as described in paragraph 5 of Schedule 2.

**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. Except as ADB may otherwise agree, Goods and Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement method and the selection method set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the procurement method and the selection method or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. 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

4. Goods and Works shall be procured on the basis of International Competitive Bidding.

Conditions for Award of Contract or Commencement of Works

5. The Recipient shall not award any Works contract which involves environmental impacts until:
  - (a) all necessary environmental clearances (development approval) have been obtained, and if necessary, the final approval of the environmental assessment report (and IEE as required) from the Recipient's Department of Environment has been granted; and
  - (b) the Recipient has incorporated to relevant provisions of the EMP from the updated environmental assessment report into the Works contract.
6. The Recipient shall not award any Works contract until (i) in relation to the Project component described in para. 2(b) of Schedule 1 of this Grant Agreement, the Funafuti Kaupule (town council) has authorized the Recipient's use of the relevant properties for rooftop solar installations pursuant to a memorandum of understanding, or other written understanding, entered into between the Recipient and the Kaupule on terms and conditions satisfactory to ADB, and (ii) the Due Diligence Report on Land Acquisition and Resettlement for the Project has been updated with the required due diligence supporting documentation to the satisfaction of ADB.

Consulting Services

7. Except as set forth in the paragraph below, the Recipient shall apply Quality- and Cost-Based Selection for Consulting Services.

8. The Recipient shall recruit the individual consultants for the project management unit (PMU) manager, PMU social safeguards and gender specialist, PMU environmental safeguards specialist, and PMU project accountant, in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

9. (a) The Recipient shall 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 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.

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

ADB's Review of Procurement Decisions

11. 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.

## SCHEDULE 4

### Execution of Project

#### Implementation Arrangements

1. The Recipient, the Project Executing Agency and the Project Implementing Agency 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, the provisions of this Grant Agreement shall prevail.

#### Environment

2. The Recipient shall, through the Project Executing Agency and the Project Implementing Agency, ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities 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, environmental assessment report and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

#### Involuntary Resettlement; Indigenous Peoples

3. The Recipient shall, through the Project Executing Agency and the Project Implementing Agency, ensure that the Project does not have any involuntary resettlement or indigenous peoples impacts, all within the meaning of SPS. In the event that the Project does have any such impact, the Recipient shall, through the Project Executing Agency and the Project Implementing Agency, take all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and with SPS.

#### Human and Financial Resources to Implement Safeguards Requirements

4. The Recipient shall make available necessary budgetary and human resources to fully implement the IEE, environmental assessment report, EMP, updated as necessary.

#### Safeguards – Related Provisions in Bidding Documents and Works Contracts

5. The Recipient shall, through the Project Executing Agency and the Project Implementing Agency, 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 and the EMP, environmental assessment report (updated as necessary) and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget and appropriate resourcing for all such environmental and social measures;

- (c) provide the Recipient with a written notice of any unanticipated environmental risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE and the EMP;
- (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

6. The Recipient shall, through the Project Executing Agency and the Project Implementing Agency, 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 or environmental assessment report and the EMP, 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 approved construction EMP (CEMP) promptly after becoming aware of the breach.

#### Prohibited List of Investments

7. The Recipient shall, through the Project Executing Agency and the Project Implementing Agency, 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.

#### Labor Standards, Health and Safety

8. The Recipient shall, through the Project Executing Agency and the Project Implementing Agency, ensure that the core labor standards and the Recipient's applicable laws and regulations are complied with during Project implementation. The Recipient shall, through the Project Executing Agency and the Project Implementing Agency, include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Recipient's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to

disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women. The Recipient shall strictly monitor compliance with the requirements set forth above and provide ADB with regular reports.

#### Gender and Development

9. The Recipient shall, through the Project Executing Agency and the Project Implementing Agency, ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

#### Counterpart Support

10. The Recipient shall make available through budgetary allocations or other means all counterpart funds required for timely and effective implementation of the Project, including funds to mitigate unforeseen environmental, climate-change and social impacts, to insure assets against disasters, and to meet additional costs arising from design changes, price escalation in construction or installation costs or other unforeseen circumstances. The expenditures financed by the Grant shall be exclusive of taxes and duties within the territory of the Recipient. In addition to the foregoing, the Recipient shall ensure that the Project Implementing Agency has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Consulting Services contract.

#### Tariff Adjustments

11. The Recipient will, and will cause TEC to, (a) make continuous efforts to increase tariffs progressively to achieve full cost recovery and in accordance with national tariff policies and regulations; (b) undertake a periodic gender-sensitive review of tariffs and fees including an assessment of their impact on the low-income households; and (c) initiate an implementation plan to achieve inclusive, gender-responsive cost-recovery tariffs.

12. During the process of adjusting tariffs, the Recipient will cause TEC to take into consideration (a) the minimum tariff level to cover basic operating costs, debt service and capital replacement; and (b) users' affordability and willingness to pay data from available surveys; and (c) recent tariff escalations. The Recipient will cause TEC to include public consultation in their tariff setting processes.

#### Financial Covenants

13. The Recipient shall cause TEC to achieve, and thereafter maintain, the following financial ratios by 31 December 2021:

- (a) a current ratio of at least 1. For the purpose of the foregoing, the term "current ratio" means the ratio of TEC's current assets to its current liabilities as of its balance sheet date; and



- (b) a cost recovery ratio of at least 1. For purposes of the foregoing, the term "cost recovery ratio" means TEC's total revenue including subsidy divided by TEC's total operating costs including depreciation.

14. The Recipient shall cause TEC to bring down its accounts receivables to a level of no more than 60 days by 31 December 2021.

#### Operation and Maintenance

15. The Recipient shall, through the Project Executing Agency and the Project Implementing Agency, develop and implement a program for regular and periodic maintenance of the facilities to be financed by the Project in accordance with international best practices acceptable to ADB, and shall make adequate resources available, through budgetary allocations or otherwise, for this purpose.

#### Governance and Anticorruption

16. The Recipient, the Project Executing Agency and the Project Implementing Agency shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and Integrity Principles and Guidelines (2015, as amended from time to time); (b) 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 (c) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

17. The Recipient, the Project Executing Agency and the Project Implementing Agency 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.