

June 6, 2006

FROM: The President

### **Carbon Finance: The World Bank/EIB Carbon Fund for Europe and Amendments to the Instrument Establishing the BioCarbon Fund**

1. The purpose of this Memorandum is to request approval of the Executive Directors of (i) a partnership between the World Bank and the European Investment Bank (EIB) for the establishment of the World Bank/EIB Carbon Fund for Europe and (ii) certain amendments to the Instrument for the BioCarbon Fund (the “BioCF”).

#### **The World Bank/EIB Carbon Fund for Europe**

2. In accordance with previous communications to the Executive Directors, and Management’s commitment to continue to provide updates regarding the activities of the Carbon Finance Unit of the World Bank, the purpose of this Note is to seek approval from the Executive Directors on the proposed creation of a new carbon fund: the World Bank/EIB Carbon Fund for Europe (the Fund). As with the other carbon funds for which the World Bank acts as trustee,<sup>1</sup> this Fund would support the development of projects in developing countries and countries with economies in transition through the purchase from such projects of greenhouse gas emission reductions under the Clean Development Mechanism (CDM), the Joint Implementation Mechanism (JI) and International Emission Trading (EIT)<sup>2</sup> established by the Kyoto Protocol to the United Nations Framework Convention on Climate Change.
3. In December 2004, the European Investment Bank (EIB) and the International Bank for Reconstruction and Development signed a “Memorandum of Understanding” proposing that the two banks explore establishing a new carbon fund. The EIB Board approved the Fund for further development in July 2005. The World Bank’s Executive Directors endorsed “The Role of the World Bank in Carbon Finance: An Approach for Further Engagement” (Approach Paper) on December 6, 2005, in which the Fund was mentioned as a potential way to meet the objective of expanding the capacity of other financial and development institutions to support developing countries in carbon finance through providing carbon finance to projects prepared and appraised by other international financial institutions and exploring common funds for carbon finance. The Approach Paper also notes that such agreement with the EIB would allow the Bank to reduce transaction costs by consolidating future resources of European origin for carbon purchases into a single fund. In addition

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<sup>1</sup> Prototype Carbon Fund (PCF), Community Development Carbon Fund (CDCF), the BioCarbon Fund (BioCF), the Italian Carbon Fund (ICF), the Spanish Carbon Fund (SCF), the Danish Carbon Fund (DCF), the Netherlands Clean Development Mechanism Facility (NCDF), the Netherlands European Carbon Facility (NECF) and the Umbrella Carbon Facility (UCF).

<sup>2</sup> Emission reductions through EIT would be acquired in the context of so called “Green Investment Schemes” whereby the revenues from “greened assigned amount units” would be reinvested in a programmatic fashion to emission reducing activities through a fund structure established by the host country or other verifiable environmental benefits acceptable to Fund Participants.

to these strategic benefits, the Fund would furthermore benefit from access to projects in the EIB lending portfolio, a €50 million special financing and a €10 million technical assistance instrument of the EIB for CDM and JI project activities.

4. The proposed Fund is driven by several realities in the carbon finance market and aligns with the role of the World Bank in the market:
  - a) The Kyoto Protocol and the emerging carbon emissions reduction market are at a critical juncture. The demand for emission reductions is conservatively estimated at 3.5 billion tons by 2012. Only a small amount of that demand has been met and time is running out. Although the first commitment period under the Kyoto Protocol continues until 2012, viable projects that can generate large volumes of emissions to meet the demand have not been developed at the scale needed. At the same time, geographic and technological diversity of greenhouse gas emission reduction projects is important to many countries both on the buyer and seller side of the carbon market. This Fund would enhance the capacity of Central and Eastern European countries with economies in transition to benefit from the carbon market through JI and EIT and, as with the existing carbon funds, the proposed Fund would help developing countries access the CDM market.
  - b) The Bank has an important role to play as an experienced developer of CDM and JI projects having been engaged in carbon finance for over six years. Combined with the Bank's operational experience and its capacity to work with diverse partners, the Bank's expanded engagement in carbon finance is critical for addressing the longer-term threat of climate change. With the proposed Fund and the existing funds the Bank has a diverse package of instruments.
  - c) At the same time, the CF-Assist Program supported by donor contributions provides funding for specific institutional and capacity building in countries so that the supply of CDM assets can be increased. The potential of partnerships with the EIB and other multilateral development banks can further spread the knowledge and experience of the Bank in carbon finance.
  - d) The potential benefits to developing countries in terms of capital transfers for environmentally sound projects and technological transfer from carbon finance are substantial. But there are many hurdles to overcome in building the international regulatory framework. Much more substantial flows of emission reductions and then their linkage into the European Trading Scheme (ETS) and other markets are needed. The proposed Fund would contribute to the effectiveness of the ETS through the implementation of the CDM and JI mechanisms.
  - e) The months ahead in carbon finance are important in fulfilling the obligations and expectations of many countries that have ratified the Kyoto Protocol. The Bank has been engaged in carbon finance at an early stage and has much to offer based on this experience. With the implementation of the strategic approach to the Bank's activities in carbon finance and the prudent management of the associated risks, the Bank can improve the environment and energy efficiency in client countries while contributing to the meeting of the obligations of the ratifiers of the Kyoto Protocol.
  - f) To meet these objectives, the Bank approach for further engagement in carbon finance is based on three inter-related objectives: (i) To ensure that carbon finance contributes substantially to sustainable development, beyond its contribution to global environmental efforts; (ii) To assist in building, sustaining, and expanding the international market for carbon emission reductions and its institutional and administrative structure; and (iii) To further strengthen the capacity of developing countries to benefit from the emerging market for emission reduction credits.

5. A basic summary of the mechanics of the Fund is as follows
- a) Similar to the other carbon funds for which the World Bank acts as trustee, the Fund would be established as a trust fund administered by the Bank, with its principal activity being to purchase greenhouse gas emission reductions from projects that benefit the global environment, which are likely to be recognized under the JI, CDM, IET as well as other emerging greenhouse gas market mechanisms including ETS.
  - b) The Fund would be managed by the IBRD, and the EIB would work with IBRD to meet the objectives of the Fund. The Fund activities would be coordinated through a Fund Management Committee (FMC), which would consist of three IBRD and two EIB representatives. Every matter submitted to the FMC shall be decided by consensus of the members of the FMC. In case that consensus cannot be reached, the matter shall be decided by the majority of the votes cast by the members of the FMC.
  - c) As trustee of the Fund, the Bank would provide carbon finance to projects appraised by either the Bank or the EIB, directly or through the contracting of private sector entities, as mentioned below. An agreement will be executed between the IBRD and the EIB setting out the specific relationship between the two organizations. The agreement would complement the instrument establishing the Fund and would set out the respective roles and responsibilities of the two organizations in relation to the application of safeguard policies and the projects' due diligence, as well as define the fees for carbon asset creation tasks undertaken by IBRD on behalf of EIB. The agreement would also establish the specific tasks of the IBRD and EIB with respect to projects appraised by them. Each institution would appraise the projects that are originated from its pipeline. Nevertheless, IBRD as trustee of the Fund would be a party to the emission reduction purchase agreements (ERPAs) for all projects supported by the Fund, including those projects coming through the portfolio of the EIB, and the same procedures and practices applicable to the ERPAs signed on behalf of the other carbon funds for which the World Bank acts as trustee would apply.
  - d) The Fund would support projects that are consistent with all international rules and procedures established under the Kyoto Protocol's CDM and JI mechanisms, and which comply with the operational policies and procedures of the World Bank and EIB, as the case may be. Projects incoming through IBRD's portfolio will comply with the World Bank's policies and procedures and Country Assistance Strategies. Projects incoming through EIB's portfolio will comply with the relevant policies of EIB. The IBRD can decide to also apply the operational policies and procedures of the World Bank to any project coming to the Fund through the EIB's portfolio. The World Bank review concluded that in most areas pertaining to environmental assessment there is a rough parity between EIB's and World Bank's policies. However, there are differences between the public consultation and disclosure policies of the EIB and World Bank that could require the World Bank's public disclosure policy to be applied to particular projects coming through EIB's portfolio. Moreover, projects that would trigger World Bank policies other than environmental assessment, such as resettlement issues or indigenous people policies, shall in all cases need to comply with such policies and procedures of the World Bank. The World Bank and the EIB are in the process of defining the administrative practice that would set out the steps to be followed in the application of the safeguard policies, including the environmental assessment categorization of projects. Whether application of World Bank safeguard policies is needed shall be determined by the relevant World Bank regional department, and shall be documented in the form of an initial Integrated Safeguard Data Sheet (ISDS). The ISDS shall be updated at a later

stage to ensure any safeguard issues that may have been identified in the preparation of the project are captured.

- e) A major difference to other carbon funds of the World Bank is that the Fund also sets an explicit objective of inviting private sector entities to act as implementing entities for project sourcing and development for up to 30% of the value of the carbon assets acquired by the first tranche of the Fund. Working together with private sector implementing entities will directly contribute to the stated objectives of both the World Bank and the EIB of developing and opening the market for private sector entity participation in various roles, thereby “crowding in” the private sector into the carbon market. Implementing entities would be selected at the commencement of the Fund, and possibly at a later stage, using a procurement process acceptable to the IBRD. Such implementing entities would be responsible for identifying and submitting, and preparing projects that meet the project selection and portfolio criteria set by the FMC.
- f) The Fund would be structured in tranches, each tranche having a specific set of project portfolio criteria. The target size of the first tranche would be €50 million, but the Fund would start operations at €40 million. The Fund could decide to participate in a tranche of the Umbrella Carbon Facility.
- g) After its establishment, the Fund would be open to the participation of European private and public sector entities, with a minimum contribution from public sector entities of €10 million and from private sector entities of €2.5 million.
- h) The Carbon Finance Unit currently assuming responsibility for the management of the other carbon funds for which the World Bank acts as trustee would be responsible for providing support and management to this Fund, including appointing the Fund manager who will be responsible for the day to day management of the Fund.
- i) The Fund would have a life of twelve years from the operational date of the first tranche of the Fund. Unless otherwise agreed by the Participants, with the exception of activities necessary to wind up the business of the Fund, the Fund would terminate all operations by December 31, 2017. The World Bank, as trustee of this Fund, may make a decision to terminate the Fund at any given time.

The Fund is described in Attachment A to this Memorandum.

- 6. The agreement establishing the Fund would ensure that the World Bank and EIB would both fully recover their costs in administration of the Fund, in creating Kyoto-compliant emissions reductions, in the supervision of the underlying projects and in maintaining the associated emissions reductions assets in accordance with the Kyoto Protocol over the 10-14 year periods of most emissions reductions purchase agreements.

### **Proposed Amendments to the Instrument Establishing the BioCarbon Fund**

- 7. The BioCF is one of nine carbon funds managed by the IBRD as Trustee. The BioCF involves the purchase, on behalf of fund participants, of emission reductions of carbon dioxide that result from projects that involve Land Use, Land-Use Change, and Forestry (“LULUCF”). These emission reductions generate credits that can be used for compliance under the Kyoto Protocol to the United Nations Framework Convention on Climate change. Participants in the BioCF include nine private

companies, and five sovereign nations/public entities. The purposes of the Instrument amendments are to:

(i) ***Formalize the fund's tranche and window structure.*** Under the BioCF structure as revised in Attachment A hereto, fund participants can make monetary contributions to different tranches of the fund. The first tranche of the BioCF closed to participation on August 31, 2005. A second tranche is currently under development. Under the first tranche, participants could contribute to one of two windows. The first window involves the purchase of emission reductions that are intended to be compliant with the Kyoto Protocol, and is currently limited to afforestation and reforestation activities. The second window purchases emissions reductions from LULUCF activities that are not limited to afforestation and reforestation activities, and could include activities like forest conservation, forest management, sustainable agriculture, and land management. The second tranche of the BioCF is expected to contain two comparable windows. Participants have contributed \$53.8 million to the first tranche, and the total size of the BioCF across all tranches is not expected to exceed US\$200 million, consistent with the Board memorandum dated August 11, 2003 regarding the BioCF's formation. The Bank generally has identified sufficient projects to utilize the first tranche's capital, so new projects typically would be allocated to the second (or subsequent) tranches.

(ii) ***Clarify certain definitions, provisions and protocols.*** These revisions address several definitions that merit minor clarification. Additionally, some additional definitions and substantive provisions are modified to accommodate the tranche/window structure, such as the provisions regarding participant meetings. Other minor revisions include allowing the Trustee to provide documentation to fund participants as required for the BioCF annual meeting no later than 14 days, rather than 30 days, in advance of that meeting.

(iii) ***Revise the Instrument to eliminate the requirement that Instrument amendments require approval by the Executive Directors of the Bank.*** The process for approving amendments within the Bank is an internal matter that does not need to be specified in the Instrument. Executive Directors' approval would be sought only for material amendments. This revision would conform the BioCF instrument to the instruments for other carbon funds that the Bank manages.

(iv) ***Authorize the BioCF to purchase "replacement" credits.*** Under decisions adopted pursuant to the Kyoto Protocol, LULUCF emission reduction credits are temporary and must be "replaced" by other emission reduction credits when the LULUCF credits expire. The Kyoto protocol involves specific registry accounts for identifying when LULUCF credits are replaced with non-LULUCF credits. BioCF participants want to obtain replacement credits, and the Bank acting as Trustee has identified sellers who are willing to sell such credits to the BioCF. The BioCF generally would purchase these replacement credits from projects where other Bank carbon funds are already purchasing emission credits, such as projects involving renewable energy, landfill gas control or other projects that reduce greenhouse gas emissions from activities other than land use or forestry. The BioCF would purchase these credits on a forward basis, paying in advance for emission reductions that are delivered after other Bank carbon funds receive their credits. The BioCF generally would receive delivery of these replacement credits in the 2013-2019 timeframe, which is consistent with the BioCarbon Fund's scheduled termination, and wind-up of operations, at the end of 2020.

The proposed changes are set forth in Attachment B to this Memorandum.

8. The Bank has obtained all necessary consents from the BioCF participants for the above changes. Further, the changes described herein are consistent with changes that were recently approved by the

Executive Directors regarding other carbon funds that the Bank manages (with the exception of the replacement credits provisions that are unique to LULUCF projects and thus especially relevant to the BioCF)<sup>3</sup>.

**Recommendation**

9. I, therefore, recommend that the Executive Directors approve the establishment of the World Bank/EIB Carbon Fund for Europe on the terms described in Attachment A and the amendments to the BioCarbon Fund Instrument described in paragraph 7 above.

Paul Wolfowitz  
President

by Graeme Wheeler  
Managing Director

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<sup>3</sup> “Proposed Amendments to the Instruments Establishing Carbon Funds,” R2005-0230/2, December 12, 2005.

### WORLD BANK /EIB CARBON FUND FOR EUROPE (“CFE”)

#### TERM SHEET

##### The Fund

The World Bank/EIB Carbon Fund for Europe (“**Fund**”) is designed to be a trust fund established and held by the International Bank for Reconstruction and Development (“**IBRD**” or, in its capacity as trustee for the Fund, the “**Trustee**”) on behalf of European public and private financial contributors (“**Participants**”). The Fund would be managed by the IBRD. The European Investment Bank (“**EIB**”) would work with the IBRD to meet the objectives of the Fund.

##### Purpose and Strategy

The purposes of the Fund would include:

- Purchasing, on behalf of the Participants, project-based greenhouse gas emission reductions (“**ERs**”) which are, or which are likely to be recognized under Joint Implementation (“**JI**”) under Article 6 of the Kyoto Protocol, the Clean Development Mechanism (“**CDM**”) under Article 12 of the Kyoto Protocol, or International Emissions Trading (“**IET**”) under Article 17 of the Kyoto Protocol, as well as other emerging greenhouse gas market mechanisms including the EU Emission Trading Scheme (“**EU ETS**”);
- Stimulating private capital flows for sustainable development in accordance with the Plan of Implementation concluded at the Johannesburg World Summit for Sustainable Development, and in so doing, continuing to expand the reach of carbon finance and the Kyoto Mechanisms to countries and communities which would otherwise be potentially excluded from the benefits of the emerging carbon market;
- Based on the knowledge already gained by the IBRD in the implementation of projects and the creation and management of carbon assets in accordance with the Marrakech Accords of the Kyoto Protocol, building European private and public sector capacity to efficiently meet European governments’ obligations arising from the Kyoto Protocol and those of corporations in the EU ETS;
- Supporting the involvement and participation of the private sector in the emerging carbon market, by outsourcing a portion of the carbon asset creation tasks to private sector implementing entities (“**Implementing Entities**”).

##### Structure and Size of the Fund

The Fund would be established as a trust fund with a series of tranches, each administered by the IBRD acting as trustee, and funded by European private and public sector Participants such that:

- Participants in the Fund would each contribute to a particular tranche of the Fund;

- Each tranche would purchase certified ERs (“**CERs**”), ER units (“**ERUs**”), assigned amount units (“**AAUs**”), removal units (“**RMUs**”) or verified ERs (“**VERs**”) from different projects;
- The Fund could participate in a tranche of the Umbrella Carbon Facility;
- On the basis of demonstrated demand, new tranches could be opened for contributions, using the same process as for the first tranche – that is, the Fund Manager would nominate an opening date, a closing date and the necessary level of minimum contribution for participation;
- Each Participant in the Fund would have voting rights in relation to matters affecting the tranche to which it contributed in proportion to its contribution;
- The Fund will receive contributions in Euro (“**€**”) and payments due for emission reductions under the Fund will also be denominated in €;
- The indicative target size of the initial tranche of the Fund is €50 million with the goal of commencing operations with €40 million in contributions; and
- The project selection and portfolio development criteria for each tranche would be determined and notified to potential Participants in advance of the opening date for that Tranche.

**Participants**

Participation in the Fund would be limited to European public and private sector entities approved by the Fund Management Committee (“**FMCC**”).

**Term**

The operation of the Fund would extend to December 31, 2017.

**Project Selection Criteria**

To be included in the first tranche of the Fund, a project must:

- Be consistent with all international rules and procedures governing and associated with JI, or the CDM established under Articles 6 and 12 of the Kyoto Protocol, respectively, or achieve verified Emission Reductions or other verified environmental benefits acceptable to the Fund Participants to be linked to a transfer of Assigned Amount Units in accordance with Article 17 of the Kyoto Protocol;
- Be consistent with Host Countries criteria, including the relevant criteria regarding sustainable development; and
- Projects incoming through IBRD’s portfolio will comply with the World Bank’s policies and procedures and Country Assistance Strategies. Projects incoming through EIB’s portfolio will comply with the relevant policies of EIB. The IBRD may also decide to apply the operational policies and procedures of the World Bank to any project coming to the Fund through the EIB’s portfolio.

**Emission Reductions Purchase Agreement**

**(“**ERPA**”)**

Under the emission reduction purchase agreement (“**ERPA**”) a project entity would sell to the Trustee on behalf of the Fund, all rights, title and interests in a portion of the ERs generated by the project, whether it comes from the IBRD’s or the EIB’s portfolio or whether it has been developed by private Implementing Entities.

Payments would generally be made on delivery, although advance payments could be made in accordance with IBRD's practice on advance payment and agreed with the Participants. In some cases, the ERPA may provide for the purchase of a call option on ERs.

Prices for ERs would be set in a fair and transparent manner and would be adjusted to risk in accordance with the IBRD's practice on pricing for ERs.

#### **Role of the Trustee**

The IBRD in its role as trustee, would be solely responsible for administering the Fund, including procuring audits, providing financial reports, managing drawdowns and receiving and administering the participations in the Fund. In addition, the Trustee would be responsible for concluding the ERPAs for Fund projects and any related agreements with Host Countries and collecting, recording and monitoring the transfer of ERs from the Fund projects or program to the relevant Participants.

#### **Role of the Implementing Entities**

The Fund may invite private sector entities to act as Implementing Entities for project sourcing and development for up to 30% of the value of the carbon assets acquired by the Fund. Implementing Entities would be selected at the commencement of the Fund, and possibly at a later stage, using a procurement process acceptable to the IBRD. Such Implementing Entities would be responsible for identifying and submitting, and preparing projects that meet the project selection and portfolio criteria requirements of the Fund.

#### **Role of the Fund Management Committee ("FMC")**

The Fund would have a Fund Management Committee to oversee the operations. The FMC would comprise two members appointed by the IBRD, two members appointed by the EIB and the Fund Manager. The IBRD shall designate the chairman.

Except as otherwise provided in the legal instrument establishing the Fund, every matter submitted to the FMC shall be decided by consensus of the members of the FMC. In case that consensus cannot be reached, the matter shall be decided by the majority of the votes cast by the members of the FMC.

The role of the FMC would be to:

- Provide guidance to the Fund Manager on the operation of the Fund, including the project portfolio;
- Review and approve proposed annual business plans and budgets for the forthcoming fiscal year for the Fund and the tranches, prior to submission to the Participants;
- Independently review and approve projects proposed for support by the Fund prior to the review of that project by the relevant Participants' Committee;
- Review and approve Participants that have expressed an interest in becoming Participants in a tranche of the Fund;
- Approve guidelines for the process by which third parties can qualify as Implementing Entities for the purposes of identifying, developing and supervising projects and approve the Implementing Entities;

- Approve guidelines to ensure that all agreements comply with the requirements of the international rules; and
- Approve the project selection criteria and the project portfolio criteria for each tranche.

### **Role of the Fund Manager**

The Fund Manager for the Fund would be a Bank staff member from the IBRD's Carbon Finance Unit appointed by the IBRD.

The Fund Manager would use the services of the IBRD's Carbon Finance Unit, which provides services for the management of other IBRD-managed carbon funds, and would be responsible for the day to day management of the operations of the Fund. In addition, the Fund Manager would be responsible for the day-to-day management of the Fund, including for overseeing the operation of projects, managing the annual business cycle for the Fund and reporting to Fund Participants.

### **Participants' Committee**

The Trustee would cause to be established a Participants' Committee for each tranche, with 5 members elected by the Participants bi-annually at the Annual Participants' Meeting. The constitution of the Participants' Committee as between public and private sector representatives for a tranche would be based on a pro rata distribution of participation between the private and public sector Participants. The Participants' Committee would elect its own chairperson at its first meeting after each annual meeting of Participants. The Participants' Committee would meet immediately before the annual meeting of Participants in that tranche, and at any other time, as required. The Participants' Committee for each tranche will be responsible for:

- Providing general advice to the Fund Manager on issues regarding the operation of the tranche,
- Authorizing expenditures which exceed the total annual budget previously approved by the Participants for that fiscal year by more than 10%;
- Clearing projects on a no objection at the Carbon Finance Document (CFD) stage for its inclusion in the portfolio;
- Determining whether to participate in a tranche of the Umbrella Carbon Facility and the amount of such participation; and
- Authorizing the Trustee to distribute ERs from a project or from the Umbrella Carbon Facility to multiple tranches.

### **Project cycle and approval process**

The FMC would clear Projects, at the Project Idea Note (PIN) stage, for further development and, at the CFD stage, for submission to the Participants' Committee. The Participants' Committee would provide its no-objection clearance for inclusion of the project in the pipeline of the Fund after a 10-business day review period.

### **Contributions and Drawdowns**

Contributions to the Fund by a Participant would be expected upon signing a Participation Agreement. Contributions would take the form of an unconditional promissory note or a prepayment. The Trustee would hold any prepayments on trust in a multidonor trust fund managed by the IBRD which would generate interest. Such interest generated would be applied to support

the implementation of CF Assist, a technical assistance program established by the World Bank. The drawdowns for the Fund would be calculated by the Trustee based on the requirements for payments under ERPAs and any other administrative requirements.

The Trustee would notify potential Participants in advance of the opening date of each tranche of the minimum initial contribution and the minimum additional contributions. For the first tranche, the minimum contribution for participation by private sector entities would be €2.5 million (two and a half million euros), and for public sector entities, €10 million (ten million euros).

**Rights to  
Emission Reductions**

All ERs generated by the projects and acquired under ERPAs would be purchased on behalf of, and transferred to the Participants.

**Costs**

Costs incurred by the Trustee, the IBRD and the EIB in developing the Fund, and each subsequent tranche of the Fund, would be reimbursed from Fund property after the operational date of the tranche. Costs incurred in operating the Fund on an ongoing basis would be deducted on a cost recovery basis following the submission of annual business plans and budgets.

In addition, Fund property would also be used to reimburse the Trustee, the IBRD, or any other parties, including the EIB, for costs incurred in project identification and preparation activities.

**Plans and Reports**

Participants would receive an annual progress report on the projects included in their tranche of the Fund, prepared by the Fund Manager.

**Fund Documentation**

The Fund would be established pursuant to a Fund Instrument. Each Participant would enter into a Participation Agreement with the Trustee, setting out the terms and conditions of its participation in the Fund. There would be an agreement between the IBRD and the EIB, as well as agreements between IBRD or EIB, as the case may be, and each Implementing Entity setting out the terms and conditions of the relationship between the various parties, including rules of procedure.

**Limits on Liability;  
Indemnification**

The Trustee, the Bank, the EIB, and any person who is, or has been, an officer, employee or agent of the Trustee, the Bank, the EIB or the Fund (each an “**Indemnified Party**”) shall be indemnified out of Fund Property against any loss, liability, cost, claim, action, demand or expense (including, but not limited to, all reasonable costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) which any Indemnified Party may incur or which may be made against any of them arising out of or in connection with the Fund’s activities (including, without limitation, any such claims arising from Participants’ actions or failure to act pursuant to this Instrument), except as may result from the Indemnified Party’s gross negligence or willful misconduct.

**Termination**

Either the Trustee or the Participants by a unanimous vote may decide to terminate the Fund upon written notice to the other party. In the event of such a termination, the assets of the Fund would be distributed pro rata amongst the Participants, unless otherwise instructed in writing by the Participants to assign those assets and/or management rights and obligations to a third party.

In the event that the EIB wishes to withdraw from the Fund, the EIB shall give written notice to the Trustee, and the Participants of its desire to withdraw from the Fund; and the IBRD will become the sole manager of the Fund and shall assume all the responsibilities set out in the Instrument.

**Trustee withdrawal from  
Dispute or Claim**

In order to avoid any potential conflict of interest between the IBRD and the Trustee, or the IBRD and the EIB, and notwithstanding any other provision of this Instrument, neither the Trustee, nor the IBRD nor the EIB shall have any obligation to prosecute, defend, compromise, negotiate, abandon or adjust, by arbitration, or otherwise, any action, suit, proceeding, dispute, claim or demand or any default or potential default by a host country or project entity under any agreement.

**International Bank for  
Reconstruction and  
Development**

**Instrument Establishing**

**The BioCarbon Fund**

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# INSTRUMENT ESTABLISHING THE BIOCARBON FUND

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**WHEREAS:**

- (A) The International Bank for Reconstruction and Development (the “**Bank**”) desires to promote Projects which demonstrate how land use, land-use change and forestry activities can generate Emission Reductions as well as measurable long term environmental and social benefits.
- (B) In furtherance of that objective, the Bank desires to establish the BioCarbon Fund (the “**Fund**”):
- (i) To provide resources to Projects which are designed to generate Emission Reductions through the sequestration or conservation of carbon in agriculture ~~and~~, forests and other ecosystems, and which are, or which might be recognized under the Clean Development Mechanism established under Article 12 of the Kyoto Protocol or the Joint Implementation Mechanism established under Article 6 of the Kyoto Protocol or other emerging mandatory and voluntary greenhouse gas market mechanisms;
  - (ii) To stimulate private capital flows for sustainable development in accordance with the Plan of Implementation concluded at the Johannesburg World Summit for Sustainable Development, and in doing so, to expand the reach of carbon finance and the Kyoto Mechanisms to countries and communities which might otherwise be excluded from the benefits of the emerging carbon market;
  - (iii) To improve rural livelihoods and promote the objectives of the Convention on Biological Diversity and United Nations Convention to Combat Desertification; and
  - (iv) To disseminate broadly the knowledge gained by the Trustee in the development of the Fund and the implementation of Projects including sharing that knowledge and experience with the Parties to the United Nations Framework Convention on Climate Change and other interested parties.
- (C) The Bank is prepared to establish and administer the BioCarbon Fund on the terms and conditions set out below.

**NOW THEREFORE it is hereby resolved that:**

## ARTICLE I -

**DEFINITIONS****Section 1.1. Definitions.**

Unless the context otherwise requires, the following terms shall be defined as:

- 1) **“Accredited Independent Entity”** means an independent entity accredited by the JI Supervisory Committee;
- 2) **“Additional Benefits”** means one or more independently certified quantifiable improvements in biodiversity and/or local livelihoods and which includes, but is not limited to, biodiversity conservation and social benefits;
- 3) **“Additional Contributions”** means contributions elected to be made by a Participant pursuant to Section 5.1(c);
- 4) **“Additional Participant”** means a Participant who signs a Participation Agreement to participate in a Window after the Operational Date of that Window;
- 5) **“Afforestation and Reforestation Activities”** means the direct human-induced conversion of land that has not been forested for a period of 50 years to forested land through planting, seeding and/or the human-induced promotion of natural seed sources (Afforestation), or the direct human-induced conversion of non-forested land to forested land through planting, seeding and/or the human-induced promotion of natural seed sources, on land that ~~was has not been~~ but that has been converted since December 31, 1989 or the relevant date(s) to non-forested land be set by the Parties to the UNFCCC (Reforestation);
- 6) **“Allocation Phase”** means the period of operation of the Fund during which the Trustee is allocating the Contributions through ERPAs entered into by the Fund;
- 7) **“Annex I”** means Annex I of the UNFCCC;
- 8) **“Annex I Countries”** means the countries listed in Annex I of the UNFCCC and, when appropriate, in Annex B of the Kyoto Protocol;
- 9) **“Annual Meeting”** means a meeting of Participants held pursuant to Section 6.1;
- 10) **“Annual Progress Report”** means a written report issued by the Trustee to the Participants pursuant to Section 11.1;
- 11) **“Article 6 Supervisory Committee”** means the committee established by the COP/MOP to supervise inter alia the verification of ERUs generated by Projects approved under Article 6 of the Kyoto Protocol and the International UNFCCC/Kyoto Protocol Rules;

- 12) **“Assigned Amount”** means the quantity of Greenhouse Gases that a Host Country can release in accordance with the Kyoto Protocol, during the first quantified emission limitation and reduction commitment period of that protocol;
- 13) **“Assigned Amount Unit”** or **“AAU”** means a unit issued pursuant to the relevant provisions of the annex to the decision of the COP/MOP on modalities for the accounting on Assigned Amounts and is equal to one metric tonne of carbon dioxide equivalent calculated using global warming potentials, defined by Decision 2/CP.3 of the COP/MOP or as subsequently revised in accordance with Article 5 of the Kyoto Protocol;
- 14) **“Association”** or **“IDA”** means the International Development Association;
- 15) **“Baseline”** means the scenario that reasonably presents the anthropogenic emissions by sources or anthropogenic removals by sinks of Greenhouse Gases that would occur in the absence of the proposed Project;
- 16) **“Board of Executive Directors”** means the Board of Executive Directors of the Bank;
- 17) **“Borrowing Member Countries”** means the countries eligible for borrowing from the Bank or IDA;
- 18) **“Carbon Finance Unit”** means the unit of that name established by the Bank for the purposes of managing the Fund and other similar funds, such as the PCF, NCDMF and CDCF, or its successor;
- 19) **“Catch-Up Payment”** means an amount payable under Section 5.3;
- 20) **“CDM Executive Board”** means the Clean Development Mechanism Executive Board established pursuant to Article 12 of the Kyoto Protocol to the UNFCCC to supervise and monitor the implementation of the Protocol, or its successor;
- 21) **“CDM Project”** means a Project developed in compliance with the International UNFCCC/Kyoto Protocol Rules, regulations and procedures governing the Clean Development Mechanism under Article 12 of the Kyoto Protocol;
- 22) — **“Certified Emission Reductions”** or **“CERs”** means a unit issued pursuant to Article 12 of the Kyoto Protocol and all other relevant International UNFCCC/Kyoto Protocol Rules and is equal to one metric tonne of carbon dioxide equivalent, calculated in accordance with the International UNFCCC/Kyoto Protocol Rules;
- 23) **“Certification”** means, in relation to:
  - (i)(a) Emission Reductions - the written assurance by an Independent Third Party, Operational Entity or Accredited Independent Entity that, during a specific time period, a Project achieved the anthropogenic reductions in emissions by sources or the anthropogenic removals of Greenhouse Gases by sinks as certified; and

(ii)(b) Additional Benefits - the written assurance by an Independent Third Party or Operational Entity that the Additional Benefits identified in the Project Agreement were achieved in accordance with the terms of that agreement;

- 24) **“Clean Development Mechanism”** or **“CDM”** means the mechanism defined in Article 12 of the Kyoto Protocol that provides for the transfer of Certified Emission Reductions from non-Annex I Countries to Annex I Countries;
- 25) **“Closing Date”** of a Window means the date declared by the Trustee to be the last date on which it will receive Participation Agreements for that Window;
- 26) **“Contribution”** for any Participant means the Minimum Contribution plus any Additional Contributions;
- 27) **“COP/MOP”** means the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol;
- 28) **“Countries with Economies in Transition”** means those Borrowing Member Countries not listed in Annex I of the UNFCCC;
- 29) **“Developing Countries”** means those Borrowing Member Countries not listed in Annex I of the UNFCCC;
- 30) **“Eligible Private Sector Participant”** means any person, other than an Eligible Public Sector Participant, organized in a Party to the UNFCCC and whose participation in the Fund has been approved by the Trustee;
- 31) **“Eligible Public Sector Participant”** means any government, agency, ministry or other official government entity of a Party to the UNFCCC and whose participation in the Fund has been approved by the Trustee;
- 32) **“Emission Reduction(s)”** means all rights, title and interest in the GHG Reductions which are verified by an Independent Third Party, Operational Entity or an Accredited Independent Entity in accordance with the procedures contained in the regulatory framework of the UNFCCC and/or the Kyoto Protocol and:
- (a) for ~~the~~ First Window:
- (i) are likely to be eligible for the issuance of CERs, ERUs or RMUs; and
- (ii) are achieved from:
- CDM Projects involving Afforestation and Reforestation Activities relevant to that Tranche; ~~or~~
  - JI Projects involving any of the LULUCF Activities listed in Schedule 2 which are relevant to that Tranche; ~~and or~~
  - Any other JI or CDM Project, which are acquired for the purpose of replacing Emission Reductions from LULUCF

activities that may expire under the International UNFCCC/Kyoto Protocol Rules; and

- (b) for ~~the~~ Second Window:
- (i) are unlikely to be eligible for the issuance of CERs, ERUs or RMUs; and
  - (ii) are achieved from Projects involving any type of LULUCF Activity relevant to that Tranche, or any other activity approved by the Trustee provided that the Emission Reductions are to be acquired for the purpose of replacing Emission Reductions from LULUCF Activities that may expire under the International UNFCCC/Kyoto Protocol Rules;
- 33) **“Emission Reduction Unit”** or **“ERU”** means a unit issued pursuant to the relevant provisions in the annex to Decision -/CMP/1 (*Modalities for the accounting of assigned amounts*) and is equal to one metric tonne of carbon dioxide equivalent, calculated using global warming potentials, defined by Decision 2/CP.3 or as subsequently revised in accordance with Article 5 of the Kyoto Protocol;
- 34) **“Emission Reductions Purchase Agreement”** or **“ERPA”** means an agreement between the Bank as Trustee of the Fund, and a Project Entity governing the purchase and sale of Emission Reductions;
- 35) **“First Window”** in any Tranche means the window ~~of the Fund~~ intended to provide resources to Projects which are selected in accordance with, at a minimum, the Project Selection Criteria listed for ~~that window~~ the First Window in Schedule 1A;
- 36) **“Fiscal Year”** means the fiscal year of the Bank;
- 37) **“Fund Development Costs”** means the costs associated with developing the Fund pursuant to Section 12.2;
- 38) **“Fund Manager”** means the Bank staff member appointed to manage the Fund;
- 39) **“Fund Property”** means all of the property contributed to the Fund and all other assets, receipts and interests of the Fund, including Window Property;
- 40) **“Global Environment Facility”** or **“GEF”** means the Global Environment Facility of the World Bank;
- 41) **“GHG Reductions”** means the reductions of anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks which are additional to the Baseline determined for a Project;
- 42) **“Greenhouse Gases”** or **“GHG”** means the gases listed in Annex A of the Kyoto Protocol;
- 43) **“Host Country”** means a Borrowing Member Country in which a Project is located;

- 44) **“Host Country Agreement”** means an agreement entered into between the Trustee and a Host Country regarding the issuance and transfer of RMUs, ERUs, CERs and, as the case may be, AAUs;
- 45) **“Host Country Committee”** means the committee known as the Carbon Finance Host Country Committee established by the Bank for the purposes of facilitating interaction between the Host Countries and the Bank in relation to the development and operation of CDM and JI Projects, or its successor;
- 46) **“Host Country Observer”** means a member of the Host Country Committee who is nominated by the Host Country Committee to serve as a non-voting observer at a Participants’ Meeting or a Participants’ Committee Meeting;
- 47) **“IFC”** means the International Finance Corporation;
- 48) **“Independent Third Party”** means a properly qualified entity, such as an environmental auditing company, approved by the Trustee, which is independent from the Trustee, the Host Country, and the Project Entity, and was not previously employed on Project related activities;
- 49) **“Instrument”** means this Instrument establishing the Fund;
- 50) **“International UNFCCC/Kyoto Protocol Rules”** means the UNFCCC, Kyoto Protocol, the Marrakesh Accords, any relevant decisions, guidelines, modalities and procedures made pursuant to them and of successor international agreements as amended from time to time and which include those rules specifically required to be met for the issuing and forwarding of CERs by the CDM Executive Board and any other rules agreed to between the Parties;
- 51) ~~—~~ **“Joint Implementation”** or **“JI”** means the mechanism defined in Article 6 of the Kyoto Protocol that provides for the transfer of ERUs between Annex 1 Countries;
- 1) ~~“**JI Supervisory Committee**” means the committee established by the COP/MOP to supervise inter alia the verification of ERUs generated by Projects approved under Article 6 of the Kyoto Protocol and the International UNFCCC/Kyoto Protocol Rules;~~
- 52) **“Johannesburg Plan of Implementation”** means the plan adopted at the World Summit for Sustainable Development in Johannesburg South Africa on September 4, 2002;
- 53) **“Kyoto Mechanisms”** means the Joint Implementation Mechanism, the Clean Development Mechanism, Mechanism, emissions trading and the creation of RMUs under Articles 7, 3.3 and 3.4 of the Kyoto Protocol;
- 54) **“Kyoto Protocol”** or **“Protocol”** means the Protocol to the United Nations Framework Convention on Climate Change adopted at the Third Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change in Kyoto, Japan on December 11, 1997;

- 55) **“Land Use, Land-Use Change and Forestry”** or **“LULUCF”** means the activities defined as such in the Kyoto Protocol and Marrakesh Accords;
- 56) **“LULUCF Activity”** means the Activities listed in Schedule 2;
- 57) **“MIGA”** means the Multilateral Investment Guarantee Association;
- 58) **“Minimum Contribution”** means the minimum amount specified by the Trustee on the opening of a Window to be payable by a Participant wishing to participate in that Window;
- 59) **“Monitoring”** means activities pursuant to which the Project Entity or another person collects and records data which assess the GHG Reductions resulting from a Project pursuant to the terms of the Monitoring Plan for that Project;
- 60) **“Monitoring Plan”** means a set of requirements for Monitoring and Verification of the GHG Reductions achieved by a Project, in accordance with the International UNFCCC/Kyoto Protocol Rules;
- 61) **“Opening Date”** of a Window means the date declared by the Trustee to be the first date on which Participants may submit Participation Agreements for that Window;
- 62) **“Operational Date”** of a Window means the date declared by the Trustee to be the date on which that Window commences operation;
- 63) **“Operational Entity”** means an organization accredited as such by the CDM Executive Board;
- 64) **“Organizational Meeting”** for any Window means a meeting of the Participants in that Window held pursuant to Section 6.2;
- 65) **“Participant”** means any Eligible Private Sector Participant or Eligible Public Sector Participant that has signed a Participation Agreement, or any assignee thereof pursuant to the terms of this Instrument;
- 2) ~~**“Participant Observer”** means a Participant elected pursuant to Section 6.2(d) or 6.1(b)(iv)(B);~~
- 66) **“Participants’ Committee”** means a committee described in Article VII of this Instrument;
- 67) **“Participants’ Meeting”** means any one or more of the meetings convened pursuant to Article VI;
- 68) **“Participation Agreement”** means an agreement between a Participant and the Trustee with respect to the Participant’s Contribution to, and participation in, the Fund;
- 69) **“Party”** means a country Party to the UNFCCC;

- 70) **“person”** means and includes individuals, corporations, partnerships, trusts, unincorporated associations, unincorporated organizations, joint ventures and other entities, and governments and agencies and political subdivisions thereof;
- 71) **“Private Sector”** means any business, company or organization in a Party, other than those categorized as Public Sector;
- 72) **“Private Sector Participant”** means a Participant in a Party, that is a person, other than a Public Sector Participant;
- 73) **“Project”** means an activity for which the Trustee has agreed to or intends to agree to provide resources, in the form of the purchase of Emission Reductions, to Recipients under an ERPA;
- 74) **“Project Agreement(s)”** means a Host Country Agreement, and/or an ERPA;
- 75) **“Project Category”** means one or more of the categories of Projects listed in Schedule Two, or such other category nominated by the Trustee in its sole discretion;
- 76) **“Project Concept Note”** means the document prepared by the Trustee and a Project sponsor including information on the Baseline of the Project, the expected Emission Reductions to be purchased, pricing details and carbon finance to be provided;
- 77) **“Project Design Document”** means a description of the Project to be submitted for Validation in accordance with the International UNFCCC/Kyoto Protocol Rules;
- 78) **“Project Entity”** means one or more persons with which the Trustee has entered into or intends to enter into an ERPA;
- 79) **“Project Portfolio”** for a Window means the series of Projects to which that Window is purchasing Emission Reductions under an ERPA;
- 80) **“Project Portfolio Criteria”** for a Window of any Tranche, means the criteria ~~set out in Schedule 1~~ specified by the Trustee as the basis for the overall allocation of resources of that Window, including at a minimum, for:
- (a) The First Window of any Tranche, the criteria set out in Schedule 1A; and
  - (b) The Second Window of any Tranche, the criteria set out in Schedule 1B;
- 81) **“Project Selection Criteria”** for a Window in any Tranche means the criteria ~~set out in Schedule 1~~ specified by the Trustee as the basis for selecting Projects for the possible allocation of resources from that Window, including at a minimum, for:
- (a) The First Window of any Tranche, the criteria set out in Schedule 1A; and
  - (b) The Second Window of any Tranche, the criteria set out in Schedule 1B;

- 82) **“Public Sector”** means any government, agency, ministry or other official entity of a country Party to the UNFCCC;
- 83) **“Public Sector Participant”** means a Participant that is a government, agency, ministry or other official entity of a Party;
- 84) **“Recipient(s)”** means a Host Country, and/or a Project Entity;
- 85) **“Removal Unit”** or **“RMU”** means a unit issued pursuant to the relevant provisions in the annex to Decision –CMP/1 (*Modalities for the accounting of assigned amounts*) and is equal to one metric tonne of carbon dioxide equivalent, calculated using global warming potentials, defined by Decision 2/CP.3 or as subsequently revised in accordance with Article 5 of the Kyoto Protocol.
- 86) **“Resolution Date”** means the date of the resolution of the Board of Executive Directors approving the establishment of the Fund;
- 87) **“Second Window”** means the window of any Tranche of the Fund which is intended to provide resources to Projects which are selected in accordance with, at a minimum, the Project Selection Criteria listed for ~~that window~~ the Second Window in Schedule 1B;
- 88) **“Semi-Annual Progress Report”** means a report of that name issued by the Trustee to the Participants pursuant to Section 11.2(a);
- 89) **“Special Meeting”** means a meeting convened pursuant to Section 6.43;
- 90) **“Technical Assistance Fund”** means a fund or funds established in parallel to the Fund and which provides technical and other support to the Fund;
- 91) **“Tranche”** means one or more Project Categories nominated by the Trustee pursuant to Section 4.1;
- 92) **“Tranche Opening Date”** means the Opening Date of the first Window of that Tranche;
- 93) **“Tranche Operational Date”** means the Operational Date of the first Window of that Tranche;
- 94) **“Trustee”** means the Bank acting not in its individual or personal capacity but solely in its capacity as trustee of the Fund;
- 95) **“UNCITRAL”** means the United Nations Commission on International Trade Law;
- 96) **“United Nations Framework Convention on Climate Change”** or **“UNFCCC”** means the United Nations Framework Convention on Climate Change adopted in New York on May 9 1992;
- 97) **“Validation”** means the assessment by an Independent Third Party, an Operational Entity or an Accredited Independent Third Party of a Project design, including its Baseline, before the Project’s implementation;

- 98) **“Verification”** means the periodic independent review and ex post determination by an Independent Third Party, an Operational Entity or an Accredited Independent Third Party of:
- (a) the monitored Emission Reductions arising from a Project during the verification period; and/or
  - (b) the Additional Benefits that have occurred during the relevant verification period;
- 99) **“Window”** means a portion of the Fund established pursuant to Article IV into which Participants pay their contributions;
- 100) **“Window Observer”** means an observer from one Window of a Tranche to a Participants Committee of the other Window of that Tranche;
- 101) **“Window Property”** means any property contributed to a Window of the Fund and all other assets, receipts and interests of that Window of the Fund;
- 102) **“World Bank”** means the Bank and IDA;
- 103) **“World Bank Group”** means the World Bank, the IFC, and MIGA;
- 104) **“World Bank Operational Policies and Procedures”** means the environmental and social operational polices and procedures of the World Bank Group institution that conducts the environmental and social review of the Project and which are in effect at the time of such review and the operational policies and procedures of the World Bank in all other areas.

**ARTICLE II -****ESTABLISHMENT****Section 2.1. Establishment.**

- a) The BioCarbon Fund is hereby established as a trust fund of the Bank, comprising funds that shall from time to time be contributed by Participants in accordance with the provisions of this Instrument, and any other Fund Property.
- b) The Bank shall be the Trustee of the Fund and in this capacity shall, as legal owner:
  - (i) Hold in trust the Fund Property which constitutes the Fund;
  - (ii) Manage and use the Fund Property only for the purposes of and in accordance with the provisions of this Instrument; and
  - (iii) Keep the Fund Property separate and apart from all other accounts and assets of, or administered by, the Bank, except as otherwise provided in this Instrument.

**Section 2.2. Trust Only.**

It is the intention of the parties to this Instrument to create only the relationship of trustee and beneficiary between the Trustee and each Participant and nothing in this Instrument shall be construed as to create a general partnership, limited partnership, joint stock association, corporation, bailment or any form of legal relationship other than a trust.

**Section 2.3. Authority to Enter into Participation Agreements.**

From the Resolution Date, the Trustee may do all things it is empowered by this Instrument to do which are necessary to enable the Fund to commence operations in accordance with the terms of this Instrument.

**ARTICLE III –****OPERATIONAL PRINCIPLES  
AND OPERATIONS OF THE FUND****Section 3.1.— Objectives:**

The objectives of the Fund are:

- a) To provide resources for Projects which are intended to:
  - (i) Generate Emission Reductions; and
  - (ii) Demonstrate how LULUCF activities can create Additional Benefits which can be measured, monitored and certified and contribute to the sustainable development of the Borrowing Member Countries;
- b) To endeavor to effect an equitable sharing between the Participants and the Host Countries of any benefits, including any Emission Reductions, arising from the Projects; and
- c) To disseminate broadly the knowledge gained by the Trustee in the development of the Fund and the implementation of Projects.

**Section 3.2. Operations of the Fund:**

- a) The Fund shall provide resources to Projects designed to achieve Emission Reductions in return for the right to have transferred to Participants an agreed amount of any Emission Reductions generated by such Projects.
- b) The operations of the Fund may include the provision of Fund Property to enable:
  - (i) The purchase of Emission Reductions, either directly or through intermediaries; and
  - (ii) The support of activities generating Additional Benefits.

**Section 3.3. Compliance with World Bank Operational Policies and Procedures:**

The operations of the Fund shall comply with the World Bank Operational Policies and Procedures, except to the extent that such operational policies and procedures may be inconsistent with the International UNFCCC/Kyoto Protocol Rules, in which case the latter shall prevail.

## ARTICLE IV –

**ORGANIZATION AND PORTFOLIOS**Section 4.1. — Windows.  
Tranches

- a) The Fund ~~shall have two Windows, each~~ may be organized in a series of Tranches with:
- a)(i) The First Tranche commencing on a date to be determined by the Trustee, but not before the Resolution Date; and
  - (ii) Subsequent Tranches to be opened at the sole discretion of the Trustee.
- b) Project Selection and Portfolio Criteria for each Tranche will be:
- (i) Determined and notified by the Trustee in advance of the Tranche Opening Date; and
  - (ii) Specific to a class of Projects.
- c) Each Tranche may contain a First Window, a Second Window, or a First Window and a Second Window, provided that the First Tranche must contain at least a First Window.
- d) Participants in a Tranche of the Fund must elect to contribute to either one or both of the Windows of that Tranche.

**Section 4.2. Windows**

- a) Each Window shall operate on the basis set out in this Instrument, and shall have:
- (i) ~~an~~An Opening Date determined by the Trustee to be the date on which the Trustee may commence entering into Participation Agreements with the Participants in that Window of the Fund;
  - (ii) ~~an~~An Operational Date determined by the Trustee as the date on which that Window of the Fund has received sufficient Contributions to commence operations; and
  - (iii) ~~a~~A Closing Date determined by the Trustee as being the last date on which the Trustee will enter into Participation Agreements for that Window of the Fund.
- b) If at any time, the total Contributions to the Fund meet or exceed US\$200 Million, the Fund Manager must seek approval of the Board of Executive Directors prior to accepting any additional Contributions from new or existing Participants.

### **Section 4.2.3. Project Portfolio Criteria:**

- a) For each Window of the Fund, the Trustee shall select Projects in accordance with the Project Selection Criteria for that Window, with the intent, over the term of the Fund, of meeting the Project Portfolio Criteria specified for each Window of the Fund.
- b) ~~Material After the Organizational Meeting for a Window, material~~ changes to that Window's Project Selection Criteria or Project Portfolio Criteria ~~for either Window~~ may be made only if:
  - (i) ~~there~~There is prior consent at a Participants' Meeting of Participants holding not less than two-thirds of the votes of that Window; and
  - (ii) ~~in~~In the opinion of the Trustee the proposed changes are consistent with the provisions of Section 3.3 and are otherwise acceptable to the Trustee.

### **Section 4.3.4. Accounting for each Window and each Tranche**

- a) All Fund Property must be allocated to a Window of a Tranche and each Window of a Tranche separately accounted for in accordance with Section 11.3.
- b) Each Window of a Tranche must maintain:
  - (i) Separate accounts of:
    - ~~A.~~A. Project income and expenditure; and
    - ~~B.~~B. The Emission Reductions accruing to the Participants in that Window of a Tranche as a whole;
  - (ii) Details of Additional Benefits; and
  - (iii) Separate budgets for the operation of that Window of a Tranche.

### **Section 4.4.5. Global Environment Facility.**

The Trustee is responsible for:

- a) Ensuring that all Projects to be undertaken by the Fund are complementary to the GEF and do not compete with the GEF's long-term operational program, nor with its short-term response measures and
- ~~b) Ensuring that all Projects have been reviewed by the secretariat of the GEF to determine whether they are eligible for GEF financing prior to their submission to the Fund; and~~

- (i) Co-ordinating with the Secretariat of the GEF on any Projects which are funded through the GEF and are also eligible to receive resources from the Fund.

## ARTICLE V -

**CONTRIBUTIONS FROM PARTICIPANTS****Section 5.1. Contributions.**

- a) Each Participant in the Fund will be required to make a Minimum Contribution to the Fund.
- b) The Minimum Contribution will be determined at the sole discretion of the Trustee, and notified in writing to potential participants in each Tranche of U.S.\$2.5Million to the Fund- on or before the Tranche Opening Date for that Tranche, provided that:
  - (i) For the First Tranche, the Minimum Contribution will be U.S.\$ 2.5Million; and
  - (ii) For any subsequent Tranche, the Minimum Contribution will be not less than the U.S.\$ 1Million.
- c) Any Participant may elect to increase its Minimum Contribution payable under Section 5.1(a) by making additional commitments to contribute in increments determined in writing by the Trustee.
- d) Participants may elect to contribute to more than one Window, and more than one Tranche.
- e) A Participant may elect to divide its Minimum Contribution between Tranches and Windows of Tranches provided that:
  - (i) At the time of issuance of a Promissory Note pursuant to Section 5.2, the Participant provides written notice to the Trustee of its intention to divide the allocation of its Minimum Contribution between ~~the two~~ or more Windows and/or Tranches, including the quantity of allocation to each Window; of each Tranche; and
  - (ii) The minimum amount of the Minimum Contribution which may be allocated to ~~either any one~~ any one Window is U.S.\$ 1Million; ~~and.~~
- f) ~~If the Trustee does not declare the Operational Date for the Second Window~~ of a Tranche within 18 months of the declaration of the Operational Date for the First Window of that Tranche, the Trustee will, with the consent of the Participants in the Second Window, transfer the Contributions allocated to ~~that~~ that Second Window to the First Window of the same Tranche.
- g) For a period of time to be determined by the Trustee from the declaration of an Operational Date, a Participant in that Window may elect to transfer a portion of its Contribution to another Tranche or Window of the Fund, provided that:

- (i) The Minimum Contribution requirements set out in Section 5.1(e)(ii) continue to be met; and
- (ii) The Window to which the Participant elects to transfer a portion of the Contribution is in its Allocation Phase at the time of a notification pursuant to Section 5.1(g).

**Section 5.2. Payment of Contributions.**

- a) Each Participant in the Fund will be required to pay its Contribution in full in cash upon signature of the Participation Agreement-, or through the issuance and delivery of an unconditional promissory note made payable to the Trustee on demand, or a combination of both.
- b) Participants electing to pay their Contribution through the issuance and delivery of a promissory note may be requested to provide, at the Trustees absolute discretion, a guarantee for the payment of the Contribution in a form acceptable to the Trustee.
- c) The first demand for payment pursuant to a promissory note will be made ~~at~~after the First Closing Operational Date of the relevant Window of a Tranche, with Participants in that Window given 30 days notice to deliver the payment to the Trustee. Following this payment, demands for payment will be made on a pro-rata basis at the sole discretion of the Trustee having regard to the financial requirements of the relevant Window of the Fund, including the anticipated requirements for disbursements to Recipients under Project Agreements.
- d) Participants will be given 30 days notice of any payment demands.
- e) Participants will be entitled to prepay up to the entire amount of their Contribution.
- f) No interest will be payable by Participants on any portion of the Contribution not yet demanded by the Trustee or by the Fund on any prepaid portion of the Contribution.
- g) The failure of any Participant to make any payment when due under this clause 5.2 shall not relieve any other Participant of its obligation to make its respective payment.

**Section 5.3. Catch-Up Payment.**

- a) Any Additional Participants in a Window shall be required to make a Catch-Up Payment in addition to their Contribution.
- b) Catch-up Payments shall not be treated as part of the Additional Participant's Contribution and will be:
  - (i) Calculated by the Trustee based upon:
    - The costs and expenses associated with seeking any additional contributions for that Window ~~of the Fund~~ after the Window's Operational Date; and

- Any fees associated with late entry into the Window determined by the Trustee in consultation with the Participants' Committee for that Window;
- (ii) Payable on the same terms as the Contribution; and
- (iii) Excluded from calculations of the relevant Participant's interests in the Fund ~~of~~ the Window, or the size of the Fund or Window.

## ARTICLE VI -

**PARTICIPANTS' MEETINGS****Section 6.1.—Role of the Participants' Meetings.**

- a) An Annual Meeting of the Participants for the Window in which they are participating shall be held each year the Window is operational, at such date and time and in such place as shall be determined by the Trustee.
- b) The role of the Participants at each Annual Meeting will include:
  - (i) Reviewing the operations of the Window of the Tranche in which they are participating, and providing the Trustee with general policy and strategic guidance on the overall operation and management of that Window;
  - (ii) Reviewing the business plan and annual budget for the next Fiscal Year for the Window of the Tranche in which they are participating, and approving the business plan and annual budget for the next Fiscal Year for ~~the~~that Window ~~in which they are participating~~;
  - (iii) Providing general guidance to the Trustee on the selection of Projects for the Window of the Tranche in which they are participating, including, ~~where~~where appropriate, proposing changes to that ~~Windows~~Window's Project Selection and Portfolio Criteria, provided that any changes to the Project Selection and Portfolio Criteria must be approved pursuant to Section 4.3(b);
  - (iv) Commencing with the second Annual Meeting for each Window of each Tranche, subject to Section 7.1(c), electing the members of the Participants' Committee for that Window to serve until that Window's next Annual Meeting;
  - (v) At the first Annual Meeting following the Closing Date for their Window, reviewing and authorizing the payment to the Bank of any development costs not presented at the Organizational Meeting of that Window and which relate to the development of their Window of the Fund; and
  - (vi) Taking any other action that may be taken by the Participants under this Instrument.

**Section 6.2. Organizational Meeting.**

- a) Subject to Section 6.2(d), within 30 days of the Operational Date of each Window of each Tranche, the Trustee shall convene an Organizational Meeting of the Participants in that Window.
- b) The date, time and place of the Organizational Meeting shall be determined by the Trustee.

- c) At the Organizational Meeting for each Window of each Tranche, the Participants in that Window shall have the following powers and duties:
- (i) Reviewing and approving the business plan and budget for that Window -for the period from the Operational Date to the last day of the Fiscal Year in which that Window's Organizational Meeting is held;
  - (ii) ~~Electing~~Subject to Section 7.1(c), electing, to serve for a term running from the date of that Window's Organizational Meeting until the second Annual Participants' Meeting following the Window's Organizational Meeting, the members of that Window's Participants' Committee; and
  - (iii) Reviewing and authorizing the payment to the Bank of the development costs related to the establishment of that Window.
- d) ~~If the Operational Dates for each of the Windows are more than 30 days apart, the~~The Trustee may combine the first Annual Meeting and the Organizational Meeting of ~~the~~ Window ~~with the later Operational Date~~ by declaring that the first Annual Meeting shall also serve as the Organizational Meeting for that Window.

### **Section 6.3. Special Meetings-**

- a) The Trustee may call Special Meetings of Participants in one or ~~both~~more Windows ~~of the Fund in one or more Tranches~~ at any time -for any purpose consistent with this Instrument.
- b) Participants may, if all of the other Participants eligible to vote at the Special Meeting consent, participate in Special Meetings either:
- (i) By telephone or other communications facilities which permit all Participants participating in the Special Meeting to hear each other; or
  - (ii) By other electronic means,

and a Participant participating in a Special Meeting by such means is deemed for the purposes of this Instrument to be present at that meeting.

- c) Participants in a Special Meeting may only vote:
- (i) On matters affecting the management or operation of the Window of the Tranche in which they are a Participant; or
  - (ii) On issues relating to any one or more of the Projects to which their Window provides resources.

### **Section 6.4. Notice-**

- a) Unless otherwise waived by the intended recipient, at least 30 days prior to the date of each Participants' Meeting, the Trustee will provide each Participant and each Host Country Observer eligible to attend that Participants' Meeting with written notice

of the forthcoming Participants' Meeting stating the place, date and time of the meeting and, in the case of a Special Meeting, the purpose or purposes for which the Special Meeting is called.

- b) Notwithstanding this Section 6:
- (i) Written notice of the Organizational Participants' Meeting for a particular Window of a Tranche shall be given to the Participants in that Window and the Host Country Observers on the Operational Date; and
  - (ii) Written notice of a Special Meeting affecting ~~only one~~ or more of the Windows of one or more Tranches shall only be given to the Participants in ~~that the affected~~ Window or Windows.
- c) For the purposes of this Section 6.54, references to written notices include electronic notices such as email, facsimile and other forms of electronic notification which are commonly in use.

#### **Section 6.5. Voting.**

- a) Each Participant shall be entitled to one vote for every U.S.\$100,000 of its Contribution to a Window (exclusive of any Catch-Up Payment) on each matter submitted to a vote at a Participants' Meeting for their Window of a Tranche.
- b) Except as otherwise provided, every matter submitted to a Participants' Meeting shall be decided by the majority of the votes cast by the Participants represented at that meeting.
- c) The Host Country Committee Observer nominated by the Host Country Committee is entitled to attend Participants' Meetings but is not entitled to vote.

#### **Section 6.6. Quorum.**

a) Participants represented:

a)(i) at At a Participants' Meeting for a Window of a Tranche holding a majority of all the votes of that Window shall constitute a quorum for the transaction of business at a Participants' Meeting for that Window;

b)(ii) at At a Special Meeting for a Window of a Tranche holding a majority of all the votes of ~~the that~~ Window ~~or Windows~~ for which the meeting was called, shall constitute a quorum for the transaction of business at that meeting.

- b) In the event that the Participants' Meetings for two Windows are held simultaneously pursuant to Section 6.9:
  - (i) The quorum requirements for each Window of a Tranche pursuant to Section 6.6(a) must be separately met; and

- (ii) The failure of one Window to meet the quorum requirements pursuant to this Section 6, will not prevent the other Window from continuing with the Participants' Meeting of that Window.

**Section 6.7. Action Without Meeting:**

Action required or permitted to be taken at a Participants' Meeting may be taken without a meeting if:

- a) ~~a~~A consent in writing, setting out the action intended to be taken, has been circulated to all of the Participants for which the meeting was called; and
- b) ~~the~~The consent under Section 6.87(a) has been signed in one or more counterparts by all Participants in the Window or Windows for which the meeting was called.

**Section 6.8. Proxies:**

Any Participant entitled to vote at a Participants' Meeting may vote by proxy if a duly executed proxy has been received in writing by the Trustee for verification prior to the meeting.

**Section 6.9. Simultaneous Participants' Meetings:**

For convenience, ~~both~~one or more Windows ~~of one or more Tranches~~ may hold their Participants' Meetings simultaneously provided that:

- a) The Participants may only ~~the Participants in a Window may~~ vote on issues relating to the management and operation of their Window;  
; and
- b) Notwithstanding Section 6.9(a), only Participants in a Window may vote to approve the budget of their Window.

## ARTICLE VII -

**PARTICIPANTS' COMMITTEES****Section 7.1. Role of Participants' Committees.**

- a) Subject to Section 7.1(c), the ~~The~~ Trustee will facilitate the Participants' establishment of a Participants' Committee for each Window of the Fund ~~each Tranche~~.
- b) Each Participants' Committee will be responsible for:
- (i) Providing general advice to the Trustee on issues regarding the operation of theits ~~the~~ Window ~~of the Fund;~~;
  - (ii) Reviewing the operations of its Window of the Fund and providing feedback to the Trustee on that Window's Projects proposed to be pursued;
  - (iii) Reviewing Project Concept Notes for each Project proposed Project for inclusion in the portfolio of its Window in order to determine whether to object to the inclusion of such Project ~~in the Window's portfolio~~; and
  - (iv) Reviewing the proposed annual budget and business plan for its Window for the forthcoming fiscal year prior to its Annual Meeting.

**Section 7.2. Membership of the Participants' Committees.**

- c) If the number of Participants in:
- (i) The First Window of any Tranche of the Fund is less than seven; or
  - (ii) The Second Window of any Tranche of the Fund is less than five;

the role and responsibilities of that Windows Participants Committee shall be allocated to the Participants in that Window and shall be performed through Special Meetings of the Participants in that Window called by the Trustee pursuant to Section 6.3.

**Section 7.2. Membership of the Participants' Committees**

- a) Subject to Section 7.1(c), the ~~The~~ Participants' Committee of each Window of a Tranche shall, unless determined otherwise by a unanimous vote of the Participants in that Window:
- (i) For the First Window comprise five members drawn from the Participants in that Window as follows:
    - Four from the Private Sector Participants; and

- One from the Public Sector Participants.
  - (ii) For the Second Window comprise three members, with a minimum of one Public Sector Participant.
- b) The members of each [Tranche](#) Window's Participant's Committee will be elected:
- (i) For the first Participants' Committee of that Window, at their Organizational Meeting; and
  - (ii) Subsequently, commencing at the second Annual Participants' Meeting following that Window's Organizational Meeting, at each Annual Meeting thereafter.
- c) Elected members of the Participants' Committee shall be officers, directors, employees or officials of Participants in the relevant Window [of the relevant Tranche](#), provided, that not more than one member shall be a representative of the same Participant. Elected members of the Participants' Committee who cease to be officers, directors, employees or officials of the Participant which nominated them will no longer be eligible for membership of the Participants' Committee and will be replaced in accordance with Section 7.2(e).
- d) With the exception of the first members of each Participants' Committee elected at the Organizational Meeting whose term will expire at the second Annual Meeting following the Organizational Meeting, membership of each Participants' Committee will run from the date of the Annual Meeting at which they were elected, until the following Annual Meeting, unless the member otherwise retires, resigns or is removed in accordance with Section 7.2(c).
- e) Following the retirement, resignation or removal of a member of a Participants' Committee, the Participant which nominated that member may appoint another of its officers, directors, employees or officials to fill that vacancy in the relevant Participants' Committee. Should that Participant fail to make an alternative nomination within 30 days of the notice of vacancy, the vacancy on that Participants' Committee shall be filled by an affirmative vote of a majority of the remaining members of the Participants' Committee, provided that the membership requirements set out in Section 7.2(a) continue to be met. A member appointed or elected to fill a vacancy on a Participants' Committee shall be appointed or elected for the unexpired term of the member's predecessor in office.
- f) At any time, any member of a Participants' Committee may be removed by the Participant for which such member is a representative and replaced with another representative of that Participant for the unexpired term of the member's predecessor in office.
- g) Each Participants' Committee shall elect one of its members to serve as chairperson until the next Annual Meeting or until such time as that member has ceased to be a member of that Participants' Committee or until that member's successor as chairperson has been elected.

- h) The Participants in a Window may, by unanimous decision at a Special Participants' Meeting called for that purpose, change the size and composition of the Participants' Committee set out in Section 7.2(a).
- i) The Participants' Committee of each Window of a Tranche may nominate an observer to the Participants' Committee of the other Window of the Tranche.

### **Section 7.3. Meetings of the Participants' Committees-**

- a) Meetings of each Participants' Committee shall be called by the chairperson of that committee or the Trustee, provided at least 14 days' written notice is given to each member of that Participants' Committee, each Host Country Observer, Window Observer and the Trustee stating the matters to be considered and the place, date and time of the meeting.
- b) During the Allocation Phase of a Window of a Tranche, the Participants' Committee for that Window will meet, at a minimum, prior to the Annual Meeting of that Window in order to review the proposed business plan and budget for that Window in accordance with Section 7.1.
- c) With the consent of all members present at the meeting, one or more members of a Participants' Committee may participate in that Participants' Committee meeting either:
  - (i) byBy telephone or other communications facilities as permit all members participating in the meeting to hear each other; or
  - (ii) byBy other electronic means;

and a member of a Participants' Committee participating by such means is deemed for the purposes of this Instrument to be present at that meeting.
- d) No member of any of the Participants' Committees shall receive any compensation from the Fund for its services as such, nor shall any member of any of the Participants' Committees be entitled to payment or reimbursement from the Fund or Trustee for travel or other costs incurred in attending Participants' Committee meetings.

### **Section 7.4. Voting-**

Every matter submitted to a Participants' Committee shall be decided by the majority of the votes cast at the meeting where each member of that Participants' Committee (with the exception of the Host Country Observer, and the Window Observer who shall be non-voting) shall be entitled to cast one vote.

### **Section 7.5. Quorum-**

A majority of the voting members of the relevant Participants' Committee present at a meeting shall constitute a quorum for the transaction of business.

**Section 7.6. Simultaneous Participants' Committee Meetings**

For convenience, Windows of one or more Tranches may hold their Participants' Committee Meetings simultaneously provided that the Participants may only vote on issues relating to the management and operation of their Window.

## ARTICLE VIII –

**FUND MANAGEMENT COMMITTEE**

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**Section 8.1. ~~Role of the Fund Management Committee.~~**

The Fund Management Committee appointed pursuant to Section 8.2 will:

- a) Provide advice to the Trustee on:
  - (i) The implementation of the Fund;
  - (ii) Proposed budgets and business plans for the forthcoming Fiscal Year for ~~both~~ the Fund and the individual Windows of each Tranche, prior to submission to the Participants at their Annual Meeting;
  - (iii) Existing and proposed Project Selection and Portfolio Criteria, including suggesting methods to enhance the effectiveness of the Fund, the Tranches or the Windows of the Tranches in meeting their relevant objectives; and
  - (iv) The knowledge sharing activities of the Fund undertaken pursuant to Section 3.1(c) of this Instrument.
- b) Independently review and advise on Projects proposed for support by the Fund, including:
  - ~~(v)~~(i) Advising on whether to approve each Project proposal prior to the review by the relevant Participants' Committee of that Project;
  - ~~(vi)~~(ii) If the relevant Participants' Committee approves the Project, approving each Project Agreement following its negotiation by the Trustee with the Host Country and the Project Entity, but prior to its execution.

**Section 8.2. Membership of the Fund Management Committee.**

- a) The Fund Management Committee will comprise:
  - (i) The Fund Manager; and
  - (ii) Four Bank staff members appointed by the President of the Bank and who are formally holding positions as Bank Managers.
- b) The Fund Manager will chair and co-ordinate the business of the Fund Management Committee, including its meetings and decision-making schedules.

**Section 8.3. Meetings of the Fund Management Committee.**

- a) Meetings of the Fund Management Committee shall be held at least twice per year, at such dates and times and in such places as shall be determined by the Trustee; ~~with at least one of these meetings to occur immediately prior to the Annual Participants' Meeting.~~
- b) The Trustee may consult informally with the Fund Management Committee as required outside the meetings provided for under Section 8.3(a).

**Section 8.4. Notice.**

The Trustee shall provide each member of the Fund Management Committee with written notice of a Fund Management Committee meeting not less than 10 working days before the date of the meeting unless such notice has been waived by the intended recipient. Such notice shall state the place, date and time of the meeting.

**Section 8.5. Reporting.**

The Fund Management Committee will provide either verbal or written reports and input to the Trustee on request.

**ARTICLE IX -****ADMINISTRATION**

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**Section 9.1. Obligations of the Trustee.**

- a) The Trustee shall supervise and monitor the operations of the Fund.
- b) The Trustee shall manage Fund Property in accordance with the terms of this Instrument.
- c) The Trustee shall facilitate the interaction between the Participants, the Participants' Committees, and the Host Country Committee.
- d) The Trustee shall select and manage the Projects of each Window of the Fund in accordance with Section 4.23 and with the relevant Project Portfolio Criteria and Project Selection Criteria.
- e) The Trustee shall provide semi-annual and annual reports on the activities of the Fund to the Board of Executive Directors of the Bank and to the Participants.
- f) The Trustee shall monitor the provision of Validation, Certification and Verification services for both the GHG Reductions and Additional Benefits generated by a Project.
- g) The Trustee shall monitor the delivery of an agreed amount of any Emission Reductions achieved by each Project from the Recipient to the Participants in the relevant Window of the relevant Tranche, on a *pro rata* basis in accordance with the provisions of this Instrument.
- h) The Trustee shall monitor the provision and certification of any Additional Benefits achieved by a Project, including the transfer of any of those benefits from the Recipient to the Participants in accordance with the terms of this Instrument.
- i) The Trustee shall hold all Fund Property in trust in accordance with this Instrument for the benefit of the Participants in the Window of the Tranche to which the Fund Property is allocated.
- j) The Trustee shall manage and use Fund Property only for the purposes of, and in accordance with, the provisions of this Instrument.
- k) The Trustee shall undertake any other obligations which the Trustee considers is required for the purposes of its role as Trustee of the Fund.

- l) The Trustee and the Bank shall be responsible only for performing those functions specifically set forth in this Instrument and shall not be subject to any other duties or responsibilities to the Participants, including, without limitation, any duties or obligations that might otherwise apply to a fiduciary or trustee under general principles of trust or fiduciary law. Nothing in this Instrument shall be considered a waiver of any privileges or immunities of the Bank under its Articles of Agreement or any applicable law, all of which are expressly reserved.

**Section 9.2. Rights of the Trustee.**

- a) The Trustee is authorized to enter into Participation Agreements and accept Contributions in the required amount from Participants at any time after a date to be determined by the Trustee, but not earlier than the Resolution Date.
- b) The Trustee is authorized to perform all acts and enter into all contracts and arrangements as it shall deem necessary or desirable to accomplish the purposes of the Fund, including, without limitation, Project Agreements, agreements with intermediaries and agreements with third party purchasers.
- c) Provided that all of the income from its investments is credited to, and used exclusively for the purposes of the Fund, the Trustee is authorized to invest the Fund Property and any other funds held by the Fund pending disbursement in such manner as it may decide, including:
- (i) Investing in such securities, instruments and other obligations as are authorized investments for other trust fund assets maintained by the Bank;
  - (ii) Retaining Fund assets in cash;
  - (iii) Co-mingling the Fund Property and other funds held by the Fund prior to disbursement, with other trust fund assets maintained by the IBRD, the IFC, MIGA or the Association; and
  - (iv) Exchanging any funds received from a Participant or any other Fund Property for one or more other currencies in order to facilitate the administration of the Fund.
- d) The Trustee is authorized to exercise any and all rights, powers and privileges of ownership or interest in respect of any and all investments made in accordance with Section 9.2(c), including the right to consent and otherwise act in relation to those investments, and to designate one or more individuals, firms, associations or corporations to exercise any of the Trustee's rights, powers and privileges in respect of the relevant instruments. The Trustee shall not be limited to investing in obligations maturing before the possible termination of the Fund, nor shall the Trustee be limited by any law limiting the investments which may be made by fiduciaries.
- e) To ensure the efficient operation of the Fund's cash management and investment transactions, the Trustee shall have the power to borrow from commercial banks and

other financial institutions, for periods of up to thirty days, in any currency or currency unit.

- f) The Trustee is authorized to incur and pay any costs or expenses which in its opinion are necessary or desirable to carry out any of the purposes of the Fund, including to make payments from the Fund Property to itself as Trustee for the purpose of performing its duties as outlined in this Instrument.
- g) The Trustee shall have the power to collect all property due to the Fund and to pay all claims against Fund Property.
- h) The Trustee shall have the power to:
  - (i) Engage in and to prosecute, defend, compromise, abandon, or adjust, by arbitration, or otherwise, any actions, suits, proceedings, disputes, claims, and demands relating to the Fund, including without limitation those relating to Project Agreements; and
  - (ii) Out of the Fund Property to pay or to satisfy any debts, claims or expenses incurred in connection with the Project Agreements, including those of litigation.

The power granted to the Trustee under this Section 9.2(h) shall include the power to dismiss any action, suit, proceeding, dispute, claim, or demand, derivative or otherwise, brought by any person, including a Participant in its own name or in the name of the Fund, whether or not the Fund or the Trustee is named individually or the subject matter arises by reason of business for or on behalf of the Fund.

- i) The Trustee shall have the power to:
  - (i) Employ or contract with such individuals or persons as it may deem desirable to conduct the business of the Fund;
  - (ii) Enter into joint ventures, partnerships and any other combinations or associations;
  - (iii) Subject to the terms of this Instrument, elect and remove such officers and appoint and terminate such agents or employees of the Fund as it considers appropriate;
  - (iv) Purchase and pay for out of Fund Property, to the extent available on commercially reasonable terms, such insurance as the Trustee deems desirable to protect it, the Bank, the Participants and any other individual or person entitled to indemnification by the Fund; and
  - (v) Make amendments to the Project Selection Criteria or Project Portfolio Criteria that in its opinion are merely technical in nature and for which notice is given to Participants in the next Semi-Annual Progress Report.

- j) The Trustee may from time to time appoint or otherwise engage one or more banks or trust companies or other financial institutions to serve as escrow agent(s) on behalf of the Fund in respect of Fund Property that may be deposited into an escrow account pending disbursement.
- k) Except as otherwise provided in this Instrument, the Trustee shall have the exclusive power to conduct the business of the Fund and carry on its operations wheresoever the Trustee deems necessary, proper or desirable in order to promote the interests of the Fund. Any determination made by the Trustee in good faith as to what is in the interests of the Fund shall be conclusive.
- l) In construing the provisions of this Instrument, the presumption shall be in favor of a grant of power to the Trustee.
- m) The enumeration of any specific power in this Instrument shall not be construed as limiting that power. Such powers of the Trustee may be exercised without order of or resort to any court or other authority.
- n) Nothing in this Instrument shall preclude the Bank from acting for its own account and from entering into or being interested in any contract or transaction with any person, including, but not limited to, any Participant, Host Country or Project Entity, with the same rights as it would have had if it were not acting as the Trustee, and the Bank need not account for any profit therefrom.
- o) Any power, duty or discretion to be exercised by the Trustee pursuant to the terms of this Instrument, unless otherwise provided:
  - (i) Shall be exercised by the Trustee in its sole discretion; and
  - (ii) May be delegated by instrument in writing to a third party or entity, providing that such delegation does not remove or affect the duty owed by the Trustee to the Participants under this Instrument.

**Section 9.3. Validation, Verification and Certification.**

- a) The Trustee will report to the Fund Management Committee on the Validation of each Project, and the Verification and Certification of GHG Reductions and Additional Benefits achieved by such Project.
- b) For the purposes of Section 9.3(a), the Trustee may from time to time enter, or supervise the entry into one or more contracts with persons for such services, and on such terms and conditions, as the Trustee shall consider appropriate with respect to Project Validation, as well as for Verification and Certification of GHG Reductions and Additional Benefits.
- c) The services referred to in Section 9.3(b) may include:
  - (i) Validation of Project design on the basis of relevant documentation prepared during Project development;
  - (ii) Verification of:

- GHG Reductions and Additional Benefits arising from a Project; and
  - Project compliance with relevant requirements agreed with a Project Entity; and
- (iii) Certification of GHG Reductions and Additional Benefits.

#### **Section 9.4. Parties to Contract.**

- a) Any payment, transaction or contract which is authorized under this Instrument may be made or entered into, as the case may be, with any person.
- b) The validity of any payment, transaction or contract made under Section 9.4(a) shall not be affected by the existence of any relationship between the Trustee and the person with whom that payment, transaction or contract is made.
- c) No person entering into a relationship pursuant to Section 9.4(a) shall be:
- (i) ~~liable~~Liable solely because of that relationship for any loss or expense to the Fund relating to that payment, transaction or contract; or
  - (ii) ~~accountable~~Accountable for any profit realized directly or indirectly from that relationship.

#### **Section 9.5. Fund Manager.**

The Fund Manager will have overall responsibility for the day-to-day operations of the Fund, including:

- a) The selection and management of staff;
- b) Representing the Fund's interests at international fora and maintaining contact with Participants and Recipients;
- c) Overseeing the selection of Projects, reviewing Projects during their appraisal, implementation and operation, and negotiating Project Agreements;
- d) Ensuring compliance with Project Selection Criteria and Project Portfolio Criteria;
- e) Seeking to ensure consistency, to the extent possible, of the Fund's operations with the UNFCCC and Kyoto Protocol Rules and Section 3.3; and
- f) Collecting, organizing, managing and disseminating the knowledge and information obtained by the Trustee in the course of its operation of the Fund.

## ARTICLE X -

## DEFAULT AND REMOVAL OF PARTICIPANTS

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### Section 10.1. ~~Default in Paying Installment:~~

If, after demand by the Trustee, a Participant (the "Defaulting Participant"):

- a) Fails to pay the whole or any part of an installment of its Contribution when due; and
- b) Such failure continues for 15 days,

the Trustee shall notify the Defaulting Participant and the other Participants of such default.

### Section 10.2. Notice of Default.

If the Defaulting Participant fails to pay the amount requested within 30 days of the issue of a notice under Section 10.1, the Trustee will so notify the other Participants in the Window of the Tranche in which the Defaulting Participant was participating.

### Section 10.3. Notice of Purchase.

Between 15 and 30 days following a notice issued under Section 10.2 any of the other Participants in the Defaulting Participant's Tranche Window may notify the Trustee that it intends to purchase the Defaulting Participant's interest in ~~the Fund~~such Window.

### Section 10.4. Purchase of Interest.

If, following a notice issued under Section 10.3:

- a) ~~only~~Only one Participant notifies the Trustee, the Trustee shall notify that Participant that it may purchase the Defaulting Participant's interest in ~~the Fund~~relevant Window:
  - (i) ~~for~~For an amount equal to 50% of the fair market value (as determined by an independent third party selected by the Trustee) of the Defaulting Participant's pro rata interest in the ~~relevant~~Window of the Fund (the "Purchase Price"), less any expenses incurred by the Trustee or the Fund in connection with the sale; and
  - (ii) ~~by~~By assuming the obligation to pay the amount of any unpaid installment due to the Fund in respect of that Window from the Defaulting Participant;
- b) ~~more~~More than one Participant notifies the Trustee, then:

- (i) ~~the~~The Trustee shall notify each such Participant that elects to purchase a portion of the Defaulting Participant's interest in the relevant Window; and
- (ii) ~~each~~Each such Participant may purchase that portion of the Defaulting Participant's interest that corresponds to the electing Participant's proportion of the interest of all the electing Participants' interests in the Window (such proportion being the "Relevant Interest") where each purchasing Participant must:
- ~~A. — pay~~Pay its Relevant Interest of the amount equal to 50% of the fair market value (as determined by an independent third party selected by the Trustee) of the Defaulting Participant's pro rata interest in the relevant Window (the "Purchase Price"), less any expenses incurred by the Trustee or the Fund in connection with the sale; and
  - ~~B. —~~by assuming the obligation to pay its Relevant Interest of the amount of any unpaid installment due to the Fund in respect of that Window from the Defaulting Participant.
- c) ~~no~~No Participants notify the Trustee, the Trustee shall ~~notify~~ issue a Notice of Default to all of the Participants in the ~~Fund~~ relevant Tranche in accordance with Section 10.2, and proceed to dispose of the Defaulting Participant's interest in that:
- (i) ~~there was no Participant willing~~ Window to ~~acquire~~ the ~~Defaulting Participant's interest; and~~
- (ii) ~~unless notice is received from one of the other~~ Participants within 30 days in that Tranche in accordance with the procedures set out in Sections 10.3 and 10.4;
- d) Notwithstanding a second Notice of receipt of the notice ~~Default~~ issued ~~under~~pursuant to Section 10.4(c), no Participants notify the Trustee, the Trustee shall issue a Notice of Default to all of the Participants in the Fund in accordance with Section 10.2, and proceed to dispose of the Defaulting Participant's interest in the Fund to the other Participants in accordance with the procedures set out in Sections 10.3 and 10.4; and
- e) If no Participant expresses interest in purchasing the Defaulting Participant's interest in the Fund following the procedures set out in Section 10.4(c) and (d), the Trustee may arrange for a private sale of that interest to a person acceptable to the Trustee.

#### **Section 10.5. Proceeds of Sale.**

- a) The Defaulting Participant shall receive from the proceeds of the sale an amount equal to the lesser of the sale proceeds or the Purchase Price, less any expenses incurred by the Trustee or the Fund in connection with the sale.

- b) Upon disposition of the Defaulting Participant's interest under Section 10.5(a), the Defaulting Participant shall be deemed to have transferred to the purchaser(s) all of its rights and interest in the Fund, including without limitation, any further distributions of Fund Property which it is entitled to receive, and the Trustee shall consent to such transfer.

**Section 10.6. No Sale.**

If there is no sale of a Defaulting Participant's interest in the Fund within 90 days following the default of such Defaulting Participant, such Defaulting Participant shall thereupon, without any further notice or action by the Trustee, be deemed to have forfeited all of its rights and interest in the Fund, including, without limitation, the right to further distributions of Fund Property which it is, or would otherwise be, entitled to receive, and such rights and interest shall thereupon, without any further notice or action by the Trustee, be cancelled.

## ARTICLE XI -

**RECORDS AND PROGRESS REPORTS**

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**Section 11.1. ~~Annual Progress Reports to Participants.~~**

Not later than 30-14 days prior to each Annual Meeting of Participants, the Trustee will provide the Participants in each Window of a Tranche with an Annual Progress Report for that Window including:

- a) A summary of the activities of that Window for the previous Fiscal Year;
- b) A summary of Project-related activities for that Window ~~of the Fund~~ for the previous Fiscal Year;
- c) The business plan for that Window ~~of the Fund~~ for the forthcoming Fiscal Year;
- d) A proposed budget for the operation of the Fund and for that Window ~~of the Fund~~, for the forthcoming Fiscal Year;
- e) A copy of that Window's audited financial statements; and
- f) A copy of the most recent Semi-Annual Progress Report for that Window.

**Section 11.2. Semi-Annual Progress Reports to Participants.**

- a) Except as provided in Section 11.2(b), within 90 days of each June 30 and December 31, the Trustee shall send to each Participant a Semi-Annual Progress Report for the preceding six-month period including:
  - (i) A Project status report for the Window of the FundTranche in which that Participant had Contributions;
  - (ii) A cash flow, cost analysis and disbursement schedule for each of the Projects in that ~~Participants'~~ Window;
  - (iii) Information on any changes to the structure or operations of the Fund resulting from decisions of the Participants at the preceding ~~annual~~ Participants' Annual Meeting; and
  - (iv) A statement of account for each Participant evidencing that Participant's share of Fund Property.
- b) A Semi-Annual Progress Report is not required for Windows with an Operational Date less than 6 months prior to the date on which the report is due to be issued pursuant to Section 11.2(a).

**Section 11.3. Financial Statements.**

The Trustee shall maintain separate record and ledger accounts in respect of each Window of ~~the Fund~~each Tranche.

**Section 11.4. Other Documentation.**

Subject to compliance with the Bank's or a third party Project Entity's disclosure of information policies, the Trustee shall provide the Participants with:

- a) Copies of all final documents (including any Project Concept Notes, Project Design Documents, project appraisal documents, Validation reports and Verification reports) prepared or received by the Trustee with respect to each Project to which the Window of a Tranche in which they are participating is contributing resources; and
- b) Information on good practices and lessons of experience learned by the Trustee from the development and operation of the Fund, including methodological research and procedures for Validation and Verification.

## ARTICLE XII -

# EXPENSES AND FEES

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### Section 12.1. ~~Expenses.~~

The Trustee may use Window Property to pay or reimburse it or any other person, including the Bank, for all costs and expenses incurred in the administration of that Window, including:

- a) All costs incurred in connection with the appraisal, selection and supervision of Projects for that Window;
- b) Costs of office space and facilities, equipment and supplies and services, including, without limitation, the cost of utility services;
- c) Communication expenses, including, without limitation, mailing, telephone and facsimile expenses;
- d) Salaries, benefits, travel, accommodation and subsistence expenses of all personnel performing services in respect of that Window, including, without limitation, those incidental to the appraisal, selection and supervision of Projects;
- e) Expenses for documentary and other relevant requirements, including fees relating to the UNFCCC and/or the Kyoto Protocol, Project approval and Validation, Verification and Certification processes;
- f) Any payments required by the UNFCCC and/or the Kyoto Protocol in connection with undertaking Article 6 and 12 Projects;
- g) Any compensation and expenses of any consultant, agent, adviser, intermediary, contractor or subcontractor engaged by the Trustee for that Window;
- h) Costs of any insurance policies obtained in connection with, or on behalf of, the Window, Participants or other persons;
- i) Costs of legal, accounting and auditing services provided in respect of ~~the~~that Window; and
- j) Public relations and representation costs.

### Section 12.2. Fund Development Costs.

- a) Upon presentation of an itemized statement to the Participants in the relevant Window of a Tranche at the Organizational Meeting for ~~the first~~that Window ~~to become operational~~, or at a subsequent Annual Meeting or Special Meeting of the Participants in that Window, the Trustee may use Fund Property to:

- (i) Reimburse the Bank for all costs and expenses incurred by the Bank prior to the Closing Date of ~~the Fund~~that Window in relation to the development of ~~the Fund~~that Window, including:
    - The salaries and benefits of personnel of the Bank;
    - The travel, accommodation and subsistence expenses of personnel of the Bank;
    - Compensation and expenses of any consultant, adviser, contractor, subcontractor, or auditor retained by the Bank, including, without limitation, legal advisers, and
    - Costs and expenses associated with the preparation of all legal documentation in respect to the formation and operation of ~~the Fund~~that Window.
  - (ii) Reimburse the Bank for all costs and expenses incurred by the Bank prior to the Closing Date of ~~the Fund~~that Window in relation to the development of ~~the Fund~~that Window, including all of the items listed under Section 12.2(a)(i).
  - (iii) Reimburse the Bank for all costs and expenses incurred by the Bank prior to the Closing Date of the ~~Fund~~Window in relation to the identification, preparation and appraisal of proposed Projects.
  - (iv) Reimburse a portion of the costs incurred by a prior Window in reimbursing the Bank all costs and expenses incurred pursuant to Section 12.2(a)(i), (ii) and (iii), such portion to be determined by the Trustee based upon the size of the Window relative to the total size of the Fund.
- b) Any costs and expenses reimbursed pursuant to Section 12.2(a) will be recovered by the Trustee as follows:
- (i) Up to \$2 Million in the first payment demand following the meeting at which the payment of those expenses was approved pursuant to Section 12.2(a); and
  - (ii) Any balance remaining equally distributed in the two payment demands following the demand issued under Section 12.2(b)(i).

**ARTICLE XIII –****INDEMNIFICATION**

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**Section 13.1. – Indemnification of Trustee and Bank.**

- a) The privileges and immunities accorded to the Bank shall apply to the Fund Property, archives, operations and transactions of the Fund. Nothing in this Instrument shall be considered to be a waiver of any privileges and immunities of the Trustee, the Bank, or where applicable, the Participants or their respective officers, employees or agents, under the Articles of Agreement of the Bank or any applicable law, all of which are expressly reserved.
- b) The Trustee, the Bank, and any person who is, or has been, an officer, employee or agent of the Trustee, the Bank or the Fund (each an “Indemnified Party”) shall be indemnified out of WindowFund Property against any loss, liability, cost, claim, action, demand or expense (including, but not limited to, all reasonable costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) which any Indemnified Party may incur or which may be made against any of them (or in respect of any act or omission of a delegate or agent of the Trustee, the Bank or the Fund) arising out of or in connection with the relevant Window’sFund’s activities (including, without limitation, any such claims arising from Participants’ actions or failure to act pursuant to this Instrument or to realize the value of or provide to the Participants Emission Reductions), except as may result from the Trustee’s gross negligence or willful misconduct.
- c) This indemnity is in addition to any indemnity permitted by law.

**Section 13.2. No Personal Liability.**

- a) The liability of the Trustee, the Bank and the Participants and any of their officers, employees or agents to any person other than a Participant including any contracts entered into as Trustee or in relation to any FundWindow Property is limited to the Trustee’s ability to be indemnified from the TrustWindow Property of that Window.
- b) The liability of a Participant is limited to the amount, if any, which remains unpaid in relation to the Participant’s Participation Agreement.

**Section 13.3. No Duty of Investigation.**

No individual or person dealing with the Trustee or any officer, employee or agent of the Trustee or the Fund shall be bound to make any inquiry concerning the validity of any transaction purported to be made by the Trustee or by said officer, employee or agent or be liable for the application of money or property paid, loaned to or delivered to or on the order of the Trustee or of said officer, employee or agent. Every obligation, contract, instrument, certificate or undertaking, and every other act or thing whatsoever executed in connection with the Fund, shall be conclusively presumed to have been executed or

done by the executors thereof only in their capacity as officers, employees or agents of the Trustee or the Fund.

**Section 13.4. Reliance on Experts.**

The Trustee and each officer and employee of the Trustee or the Fund shall, in the performance of its duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of the Fund, upon an opinion of counsel, or upon reports made to the Trustee or the Fund by any of its officers or employees or by any accountant, auditor, appraiser or other expert or consultant selected with reasonable care by the Trustee or by any officer, employee or agent of the Trustee or the Fund.

**ARTICLE XIV -****DISTRIBUTIONS TO PARTICIPANTS**

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**Section 14.1. – Adaptability to the Requirements of the UNFCCC.**

In recognition that the International UNFCCC/Kyoto Protocol Rules relating to the ownership, holding and issuance of Emission Reductions are still being finalized, and to maximize the likelihood that the Fund may achieve its stated objectives, the Trustee will endeavor to ensure that the contractual arrangements entered into among the Trustee, Participants, Host Countries, Project Entities and other parties will be structured in such a way so as to enable them to conform with the International UNFCCC/Kyoto Protocol Rules as they are developed.

**Section 14.2. Statements of Accounts.**

- a) At the request of a Participant, the Trustee will produce a statement of accounts confirming the equivalent tonnes of Emission Reductions to which a Participant is entitled.
- b) Any statement provided under Section 14.2(a) will reflect the Trustee's records indicating the total equivalent tonnes of Emission Reductions to which the Participants are entitled and the Participant's *pro rata* share thereof.
- c) The Trustee may send statements of account to Participants from time to time in the absence of requests.

**Section 14.3. Distributions Subject to UNFCCC Requirements.**

- a) Subject to the International UNFCCC/Kyoto Protocol Rules as developed, it is the intent of the parties to this Instrument that Project Agreements shall provide for part or all of the Emission Reductions generated by Projects to be delivered by the Recipients to or to the order of the Participants.
- b) Subject to such procedures as may be determined by the parties to the UNFCCC and/or the Kyoto Protocol, the Trustee shall, at the request of Participants, make all reasonable efforts to ensure that the Emission Reductions generated by the Projects will comply with the International UNFCCC/Kyoto Protocol Rules.
- c) Notwithstanding any other provision of this Instrument, none of the Bank, the Trustee or the Fund assumes any responsibility for the right of Participants to receive Emission Reductions under the International UNFCCC/Kyoto Protocol Rules or any other applicable law or otherwise or for the right of Participants to use Emission Reductions to fulfill any obligation to which the Participant may be subject under the International UNFCCC/Kyoto Protocol Rules, any other applicable law or otherwise.

**Section 14.4. Distributions from Windows.**

Participants in each Window will only be entitled to receive distributions of Emission Reductions purchased using the Contributions allocated to that Window.

**Section 14.5. Withdrawal.**

No Participant shall have the right to withdraw any part of its Contribution to the Fund or to receive any distributions from the Fund except as provided in this Instrument.

**ARTICLE XV -****ASSIGNMENT OF PARTICIPANTS'  
INTERESTS****Section 15.1. ~~Assignment of Participants' Interests.~~**

A Participant may assign all, but not part, of its interest in the Fund or any of its rights under the Participation Agreement or this Instrument to an Eligible Private Sector Participant or an Eligible Public Sector Participant with the prior written consent of the Trustee, such consent not to be unreasonably withheld, provided that such assignee agrees, in form and substance acceptable to the Trustee, to be bound by:

- a) The terms of this Instrument; and
- b) The Participation Agreement entered into between the Trustee and the assignor Participant.

## ARTICLE XVI -

**DURATION; TERMINATION; AMENDMENT****Section 16.1. - Extension of Term:**

On or before termination of the Fund under Section 16.2, by unanimous vote either:

- a) The Participants may decide to continue the business of the Fund; or
- b) The Participants in a Window of a Tranche may decide to continue the business of that Window ~~of the Fund~~;

Provided that the Trustee will continue to serve as trustee only if the Board of Executive Directors have expressly agreed to the extension and to the terms of such extension.

**Section 16.2. Termination.**

- a) Subject to a vote by the Participants to extend the period of operation of the Fund, the Fund will be terminated on December 31, 2020, or the occurrence of one or more of the following, whichever shall be the earliest:
  - (i) Failure within ~~1218~~ months of the Opening Resolution Date ~~of the Fund~~ to have signed Participation Agreements for participation in ~~either Window the Fund~~ representing a sum deemed viable for the operation of the Fund by the Trustee in its absolute discretion;
  - (ii) By resolution at a meeting specially called for that purpose, of a 2/3 majority vote of Participants in all Windows of the First Window and Participants in the Second Window Fund;
  - (iii) The unanimous written consent of all Participants; or
  - (iv) Resignation of the Bank as Trustee for the Fund.
- b) Notwithstanding anything in this Article 16, ~~the Participants in~~ a Window may, by of a Tranche may be terminated by:
  - (i) A unanimous vote, decide of the Participants in that Window; or
  - (ii) Subject to terminate their Window of the Fund, in which case:
    - ~~(i) The termination of one Window will not affect the operation of the other Window;~~
    - ~~(ii) Section 16.a 2/3 applies to the winding up and management of the Window Property of the Window being terminated; and~~

If the Fund is not terminated, provided the other Window is still in majority vote of Participants in that Window to the contrary, failure within 24 months of an Opening Date to have signed Participation Agreements for participation in that Window representing a sum deemed viable for the operation of that Window by the Trustee in its absolute discretion.

- c) In the event of termination of a Window of a Tranche pursuant to Section 16.2(b):
- (i) The termination of that Window will not affect the operation of the other Window of that Tranche;
  - (ii) Section 16.3 will apply to the winding up and management of the Window Property of the Window being terminated; and

Provided the Fund is not terminated, and one or more other Windows of the Fund are still in their Allocation Phase, the Participants in the Window being terminated may elect to transfer any part of their Contribution not otherwise allocated to Projects in the terminating Window, to ~~the~~another Window or Windows in the Fund.

### **Section 16.3. Post Termination.**

- a) Following the termination of the Fund under Section 16.2:
- (i) ~~the~~The Trustee shall carry on no business for the Fund except for the purpose of winding up its affairs;
  - (ii) ~~the~~The Trustee shall proceed to wind up the affairs of the Fund, and all of the powers of the Trustee under this Instrument shall continue until the affairs of the Fund shall have been wound up;
  - (iii) ~~after~~After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements as it may deem necessary for its own protection, the Trustee shall distribute the remaining ~~Window and~~ Fund Property in cash or in kind, or a combination of both, among the Participants according to their respective rights; and
  - (iv) ~~notwithstanding~~Notwithstanding Section 16.2(a)(iii), in the event the remaining Fund Property includes the right to purchase Emission Reductions to be generated after the termination date of the Fund, the Trustee shall, subject to any applicable restrictions under international law, national law or otherwise, including regulations under the UNFCCC and/or the Kyoto Protocol, endeavor to make such arrangements as are necessary to effect a transfer of those rights to or to the order of the Participants in the relevant Window entitled to them, but shall not have any liability to the Participants if it is unable to do so.
- b) Any rights, interests or entitlements to be transferred under Section 16.3(a) may be assigned in writing by the Participant entitled to receive them to a third party, in which case the Trustee will endeavor to transfer those interests, rights or

entitlements to that third party at the cost of the Participant entitled to them, but will not be liable to the Participant if it is unable to do so.

**Section 16.4. Amendment Procedures.**

- a) Subject to Section 16.4(b), this Instrument may only be amended by the ~~Executive Directors of the~~ Bank with the prior unanimous consent of Participants.
- b) Notwithstanding Section 16.4(a), the Trustee may amend this instrument without prior notice to or consent from any Participant if such amendment is:
  - (i) To supply any omission, or cure, correct or supplement any manifest error or ambiguous, defective or inconsistent provision hereof;
  - (ii) For any other purpose which does not adversely affect the rights of any Participant; or
  - (iii) for the purpose set out in Section ~~94.3(i)(v)~~,  
provided in any case that all Participants are notified of any such amendment within 15 days after the effective date of such amendment.

**Section 16.5. Further Assurances.**

Upon the request of the Trustee, each of the Participants shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, instruments, assignments, transfers, conveyances, powers of attorney and assurances as may be necessary or desirable to effect the purpose of this Instrument and carry out its provisions.

**ARTICLE XVII -****APPROVAL AND AUTHORIZATION****Section 17.1. ~~Approval.~~**

By entering into a Participation Agreement, a Participant shall be deemed to have approved the Projects for the purposes of Article 6 or Article 12 of the Kyoto Protocol, whichever is applicable.

**Section 17.2. Authorization.**

By entering into a Participation Agreement, a Participant that is entitled to authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition of Emission Reductions shall be deemed to have expressly authorized the Trustee to act on its behalf in this respect.

**ARTICLE XVIII –****DISPUTES AND CLAIMS****Section 18.1. – Trustee Withdrawal from Dispute or Claim.**

- a) In order to avoid any potential conflict of interest between the Bank and the Trustee, and notwithstanding any other provision of this Instrument, the Trustee shall not have any obligation to prosecute, defend, compromise, negotiate, abandon or adjust, by arbitration, or otherwise, any action, suit, proceeding, dispute, claim or demand or any default or potential default by a Host Country or Project Entity under a Project Agreement (collectively a “dispute”) in any way relating to any Project Agreement.
- b) If the Trustee determines that it will refrain from taking any such action, the Trustee shall so notify the Participants of the Window which contributed to the Project, and the Trustee and those Participants shall use their best efforts to endeavor to agree to satisfactory arrangements for dealing with such dispute including the assignment and transfer of all or part of the Trustee’s rights and obligations under the relevant Project Agreement to the Participants in that Window, or to a third party acting on their behalf.
- c) The Trustee shall have no liability to the Participants as a result of the Trustee’s determination to refrain from taking any such action in respect of a dispute or as a result of the failure of the Trustee and the Participants to reach such satisfactory arrangements in a timely manner or otherwise.

**ARTICLE XIX -****ARBITRATION; EXERCISE OF REMEDIES**

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**Section 19.1. Validity.**

- a) The rights and obligations of the Trustee and the Participants with respect to the Fund shall be valid and enforceable in accordance with the terms of this Instrument and any agreement between the Trustee and the Participants.
- b) Neither the Trustee nor any Participant shall be entitled in any proceeding to assert any claim that any provision of this Instrument or such agreement is invalid or unenforceable because of any provision of the charter or constitutive documents of the Participant or the Articles of Agreement of the Bank.

**Section 19.2. Arbitration.**

- a) Any dispute between the Trustee and a Participant arising out of or relating to this Instrument or such Participant's Participation Agreement shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.
- b) The number of arbitrators shall be three.
- c) The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration at The Hague.
- d) In the event of a conflict between the UNCITRAL Arbitration Rules and the terms of this Instrument or of the Participation Agreement, the terms of the Instrument and Participation Agreement shall prevail.
- e) The language of the Arbitration shall be English.

**Section 19.3. Delays.**

- a) No delay in exercising, or failure to exercise, any right, power or remedy accruing to any party under this Instrument or any agreement between the Trustee and a Participant, whether or not upon any default, shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default.
- b) No action of such party in respect of any default, or any acquiescence by it in any default, shall affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

**Section 19.4. Disclosure:**

- a) The Trustee may disclose this Instrument, any Participation Agreement, any other agreements entered into by the Bank as Trustee and information with respect to this Fund in accordance with the Bank's policy on the disclosure of information.

SCHEDULE 1A TO INSTRUMENT

**FIRST WINDOW PROJECT SELECTION  
CRITERIA  
and  
PROJECT PORTFOLIO CRITERIA**

First Window Project Selection Criteria

The Project Selection Criteria for the First Window of any Tranche of the Fund are as follows:

A. First Window

- a) Be consistent with all International UNFCCC/Kyoto Protocol Rules and procedures governing and associated with JI or the CDM established under Articles 6 and 12 of the Kyoto Protocol, respectively;
- b) Be consistent with all relevant national criteria concerning JI or the CDM;
- c) Comply with the Bank's Operational Policies and Procedures;
- d) Be consistent with the Bank's Country Assistance Strategy;
- e) Be consistent with any applicable National Sustainable Development Programs and Poverty Reduction Strategy Papers; and
- f) Comply with the Fund's Strategic Objectives and Operating Principles, including any strategic direction and advice provided by the Participants.

B. SecondFirst Window Project Portfolio Criteria

Projects supported by

The Trustee will develop a Project Portfolio for the Fund under the SecondFirst Window, will comply with criteria 2-6 listed under section A above. In other words, CDM Projects under the Second Window are not limited to Afforestation and Reforestation Activities.

~~————~~ *Project Portfolio Criteria*

~~The Trustee will develop a Project Portfolio of the First Tranche~~ with the intention that during the term of the Fund:

- a) Projects will be located exclusively in countries that are Parties to the UNFCCC and are either not included in Annex I of the UNFCCC (non-Annex I Parties) or are countries undergoing the process of transition to a market economy and included in Annex B of the Kyoto Protocol. The Fund will not support Projects in other Annex I Parties; and
- b) No more than 2030 percent of ~~the Fund's~~ that Window's assets will be committed to Projects located in the same country. No more than ~~15% of the Fund's~~ 20 percent of that Window's assets will be committed to one Project.

~~Schedule 2~~ The Trustee will develop a Project Portfolio Criteria for the First Window of any subsequent Tranche with the intention that during the term of the Fund, Projects will be located exclusively in countries that are Parties to Instrument the UNFCCC and are either not included in Annex I of the UNFCCC (non-Annex I Parties) or are countries undergoing the process of transition to a market economy and included in Annex B of the Kyoto Protocol. The Fund will not support Projects in other Annex I Parties.

SCHEDULE 1B TO INSTRUMENT**SECOND WINDOW PROJECT SELECTION  
CRITERIA and PROJECT PORTFOLIO  
CRITERIA**

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**Second Window Project Selection Criteria**

The Project Selection Criteria for the Second Window of each Tranche of the Fund are as follows:

Projects supported by the Fund under the Second Window, will comply with the Project Selection Criteria for the First Window listed under points 2-6 of Schedule 1A. In other words, CDM Projects under the Second Window are not limited to Afforestation and Reforestation Activities.

**Project Portfolio Criteria**

The Trustee will develop a Project Portfolio for the Second Window of each Tranche of the Fund with the intention that during the term of the Fund, Projects will be located exclusively in countries that are Parties to the UNFCCC and are either not included in Annex I of the UNFCCC (non-Annex I Parties) or are countries undergoing the process of transition to a market economy and included in Annex B of the Kyoto Protocol. The Fund will not support Projects in other Annex I Parties.

SCHEDULE 2 TO INSTRUMENT

## DESCRIPTION OF ELIGIBLE LULUCF PROJECT ACTIVITIES

Category	Description
<b>Community <u>reforestation</u> <u>Reforestation</u></b>	Community <del>reforestation</del> <b>Reforestation</b> (or <del>afforestation</del> <b>Afforestation</b> ) is the establishment of trees on lands that were previously not forested carried out either by local communities or with the participation of local communities. The trees can have productive value (timber, fuel wood, fruits and other forest products) or they can primarily be for conservation or environmental uses such as habitat corridors, water catchments and soil stabilization. Community reforestation (and agroforestry below) gives maximum opportunities for local participation and local benefits. These Projects are expected to meet the Marrakesh Accords' restriction of eligibility to Afforestation and Reforestation Activities and demonstrated to be additional. Community forestry and conservation Projects have high permanence value as they will continue to deliver a stream of benefits to the community over many decades.
<b>Agroforestry</b>	Agroforestry is a mixed farming system that includes an overstorey of trees that provide protection to the understorey crops and sometimes addition products such as fruit or nitrogen input to the soil. Agroforestry Projects might be expected to change with time as local incomes increase etc, but the replacement activities are likely to maintain the carbon stores. Permanence is likely to be high, but greater monitoring effort will be required.
<b>Biofuels</b>	The BioCarbon Fund will include biofuel Projects where they include the establishment of significant new carbon sinks or the protection of existing fuel sources. Biofuels provide a core of assets with full permanence.
<b>Forest restoration and forest management</b>	These activities cover the planting or the encouragement of natural vegetation in existing, degraded forests. They have conservation value with high potential permanence. These activities are not eligible as CDM Projects.
<b>Forest conservation</b>	This activity includes the protection of remnant forest patches within a series of other activities (such as improved agricultural practices, community reforestation etc) across an entire landscape. These activities are not eligible as CDM Projects.
<b>Sustainable agriculture</b>	Activities include better soil management (e.g. by planting nitrogen fixing <del>croppings</del> and reduced tillage to minimize carbon losses from the soil). Sustainable agriculture that does not qualify as agroforestry is not eligible under the CDM.
<b>Revegetation</b>	This is equivalent to community reforestation but uses vegetation other than trees. It is most commonly carried out in dryland areas and it is the only prospect in many parts of the world. It usually has high environmental and social benefits and will be additional. Permanence will be high while management practices are maintained.
<b><u>Arid and semi- arid land management</u></b>	<u>Project activities that sequester carbon in semi-arid or arid lands while achieving additional soil protection benefits, such as, for example, Afforestation and Reforestation, revegetation, and grazing land management.</u>
<b><u>Marine, coastal and aquatic ecosystem management</u></b>	<u>Project activity which sequesters or conserves carbon in marine, coastal and freshwater ecosystems, including but not limited to, mangrove Afforestation and Reforestation, salt water forest restoration, salt water agriculture, the restoration of coral reef systems, the creation of artificial reefs or the equivalent in freshwater ecosystems.</u>