

October 4, 2011

International Bank for Reconstruction and Development

Instrument Establishing

The Carbon Partnership Facility

Table of Contents

	Page
Chapter I	
Definitions.....	2
Article 1	
Definitions.....	2
Section 1.1	
Definitions.....	2
Section 1.2	
Interpretation.....	10
Chapter II	
Establishment, Objectives and Operating Principles	12
Article 2	
Establishment.....	12
Section 2.1	
Funds under the Facility.....	12
Section 2.2	
Trust Only	12
Section 2.3	
Tranches	12
Section 2.4	
Program Allocation.....	13
Section 2.5	
Opening of a Subsequent Tranche	13
Article 3	
Objectives and Operating Principles.....	14
Section 3.1	
Objectives	14
Section 3.2	
Operating Principles.....	14
Section 3.3	
Program Eligibility Criteria	14
Section 3.4	
Portfolio and Program Selection Criteria...15	
Chapter III	
Organization.....	16
Article 4	
Opening, Operating and Closing Dates in the Facility	16
Section 4.1	
Carbon Asset Development Fund	16
Section 4.2	
Carbon Fund.....	16
Chapter IV	
Participation and Partnership	18
Article 5	
Participants, Donors and Partners	18
Section 5.1	
Types of Participants, Donors	
and Partners.....	18
Section 5.2	
Buyer and Seller Participants.....	18
Section 5.3	
Buyer and Donor.....	18
Article 6	
Seller Participants	18
Section 6.1	
Eligible Seller Participant	18

	Section 6.2	Process for becoming a Seller Participant..18	
	Section 6.3	Development of Programs and Emission Reductions Purchase Agreement19	
	Section 6.4	Seller Contribution to the Facility.....19	
Article 7		Buyer Participants19	
	Section 7.1	Eligible Buyer Participant.....19	
	Section 7.2	Process for becoming a Buyer Participant19	
	Section 7.3	Payment of Contribution to the Carbon Fund.....20	
	Section 7.4	Prepayment22	
	Section 7.5	Contribution to CADF22	
Article 8		Donors23	
	Section 8.1	Contribution23	
	Section 8.2	Payment of Contribution.....23	
Article 9		Partners23	
	Section 9.1	Host Country Governments23	
	Section 9.2	Other Entities24	
Chapter V	Governance Structure	25	
Article 10		Governance Structure.....25	
	Section 10.1	Organizational Meeting25	
	Section 10.2	Frequency of Annual Meetings and Participation25	
	Section 10.3	Role of the Annual Meeting.....25	
	Section 10.4	Special Meetings.....26	
	Section 10.5	Notice.....26	
	Section 10.6	Voting27	
	Section 10.7	Quorum27	
	Section 10.8	Action Without Meeting27	
	Section 10.9	Proxies.....27	
	Section 10.10	Buyer Participants in a Tranche28	
Article 11		Partnership Committee.....28	
	Section 11.1	Role of the Partnership Committee.....28	
	Section 11.2	Membership of the Partnership Committee.....29	

	Section 11.3	Meetings of the Partnership Committee.....	31
	Section 11.4	Voting	31
	Section 11.5	Quorum	32
	Section 11.6	Observers to the Partnership Committee.....	32
Chapter VI	Administration		33
	Article 12	Administration	33
		Section 12.1	Facility Coordinator
			33
	Article 13	Trustee of the Carbon Asset Development Fund And Trustee of the Carbon Fund	34
		Section 13.1	Powers and Duties.....
			34
		Section 13.2	Program Validation, Verification and Certification and Similar Acts under Different Legal Frameworks.....
			37
		Section 13.3	Administrative Services
			37
		Section 13.4	Transfer of Emission Reductions.....
			37
		Section 13.5	Parties to Contract.....
			37
Chapter VII	Default, Withdrawal and Conflict of Interest		39
	Article 14	Default	39
		Section 14.1	Default in Implementation by Seller Participants
			39
		Section 14.2	Default in Making Payments by Buyer Participants.....
			39
		Section 14.3	Default by Donors.....
			41
	Article 15	Withdrawal	41
		Section 15.1	Withdrawal by Seller Participants
			41
		Section 15.2	Withdrawal by Buyers
			41
		Section 15.3	Withdrawal by Donors
			42
	Article 16	Conflicts of Interest.....	43
		Section 16.1	Conflicts of Interest.....
			43
		Section 16.2	Non-Competition by Participants, Donors, and Partners.....
			43

Chapter VIII Reporting and Evaluation	45
Article 17 Reporting.....	45
Section 17.1 Annual Progress Reports.....	45
Section 17.2 Other Documentation.....	45
Chapter IX Financial Matters	46
Article 18 Currency, Financial Statements and Costs and Expenses	46
Section 18.1 Currency.....	46
Section 18.2 Financial Statements	46
Section 18.3 Costs and Expenses.....	46
Chapter X Indemnification	48
Article 19 Indemnification	48
Section 19.1 Indemnification of Facility Coordinator, Trustees and Bank.....	48
Section 19.2 No Personal Liability	48
Section 19.3 No Duty of Investigation	49
Section 19.4 Reliance on Experts	49
Chapter XI Distribution and Approval	50
Article 20 Distribution, Approval and Authorization	50
Section 20.1 Adaptability to the Requirements of the International Rules.....	50
Section 20.2 Statements of Accounts.....	50
Section 20.3 Distribution from Tranches.....	50
Chapter XII Amendment, Duration and Termination.....	51
Article 21 Amendment	51
Section 21.1 Amendment Procedure.....	51
Article 22 Termination.....	51
Section 22.1 Dates of Termination of the Tranches of the Carbon Fund, the Funds and the Facility	51
Section 22.2 Early Termination of the Facility.....	51

	Section 22.3	Early Termination of the Carbon Asset Development Fund.....	52
	Section 22.4	Early Termination of the Carbon Fund.....	52
	Section 22.5	Effect of Early Termination of a Fund.....	52
Article 23		Extension of Term.....	52
	Section 23.1	Extension of Term for the Facility.....	52
	Section 23.2	Extension of Term for the Carbon Asset Development Fund or Carbon Fund	52
Article 24		Post-Termination.....	53
Article 25		Novation and Resignation by the Trustee.....	54
	Section 25.1	Novation.....	54
	Section 25.2	Resignation by the Trustee.....	54
Chapter XIII Disputes, Delays and Disclosure.....			55
Article 26		Disputes and Claims	55
	Section 26.1	Trustee Withdrawal from Dispute or Claim.....	55
Article 27		Arbitration	55
	Section 27.1	Arbitration.....	55
	Section 27.2	Delays	56
Article 28		Disclosure	56
	Section 28.1	Disclosure of Agreements.....	56
Schedule 1			57

International Bank for Reconstruction and Development

Carbon Partnership Facility Instrument

WHEREAS:

- (A) The International Bank for Reconstruction and Development (the “**Bank**” or “the **IBRD**”) wishes to assist developing countries and countries with economies in transition in their efforts to transition towards a lower carbon economy and to help global climate change mitigation efforts by establishing a partnership to generate, sell and purchase emission reductions from long-term programs; and
- (B) in furtherance of that objective, the Bank desires to establish the Carbon Partnership Facility (the “**CPF**” or the “**Facility**”) to support greenhouse gas emissions mitigation programs that are strategic and entail transformational interventions in various sectors in developing countries and countries with economies in transition.
- (C) The Bank is prepared to establish and administer the Facility on the terms and conditions set out below.

NOW THEREFORE it is hereby determined that:

CHAPTER I

DEFINITIONS

Article 1 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 for the purpose of determining whether a Program and the ensuing GHG Reductions meet the relevant requirements of Article 6 of the Kyoto Protocol;
2. “**Administration Agreement**” means the agreement between the Bank as the Trustee of the Carbon Asset Development Fund and each Donor relating to the Donor’s Contribution to the Carbon Asset Development Fund;
3. “**Annex I Countries**” means the countries listed in Annex I of the UNFCCC.
4. “**Annual Meeting**” means the periodic meeting of all the Participants, Partners and Donors of the Facility pursuant to Section 10.2;
5. “**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 of Assigned Amounts and is equal to one metric ton of carbon dioxide equivalent calculated using global warming potentials, as defined by Decision 2/CP.3 of the COP/MOP or as subsequently revised in accordance with Article 5 of the Kyoto Protocol;
6. “**Bank**” means the International Bank for Reconstruction and Development;
7. “**Baseline**” means the scenario that reasonably presents the anthropogenic emissions by sources or anthropogenic removals by sinks of GHG that would occur in the absence of the proposed Program;
8. “**Board of Executive Directors**” means the Board of Executive Directors of the Bank;
9. “**Borrowing Member Countries**” means the countries eligible to borrow from the Bank or from the International Development Association;
10. “**Business Day**” means a day on which the Bank and banks are open for business in New York City of the United States of America;

11. **“Buyer Participant”** or **“Buyer”** means an Eligible Participant that has signed a Buyer Participation Agreement;
12. **“Buyer Participation Agreement”** means the agreement between a Buyer Participant the Trustee of the Carbon Fund and the Trustee of the CADF with respect to the Buyer Participant’s Contribution to, and participation, in a Tranche of the Carbon Fund;
13. **“Carbon Asset Development Fund”** or **“CADF”** means the fund established under the Facility for the purpose of, inter alia, providing grants and otherwise supporting technical assistance and capacity building to Seller Participants, to Host Country governments or to entities authorized by the Host Countries for the development of Programs and creation of an enabling environment for the generation of Emission Reductions and for funding the administrative costs incurred by the Bank with respect to the establishment and operation of the Facility;
14. **“CADF Charge”** has the meaning assigned to it in Section 7.5;
15. **“Carbon Finance Unit”** means the unit of that name established by the Bank for the purposes of managing the Facility and other similar funds;
16. **“Carbon Finance Document”** or **“CFD”** means the document prepared by the Program Entity including, inter alia, technical information on the Program, information on the Baseline of the Program, an indication on the expected application of the Pricing Approach to the Program, and the expected Emission Reductions to be generated by the Program;
17. **“Carbon Fund”** or **“CPF Carbon Fund”** means the trust fund established under the Facility to receive Contributions from the Buyer Participants to purchase Emission Reductions generated by Programs;
18. **“CDM Executive Board”** means the committee of that name established pursuant to the Kyoto Protocol to supervise and monitor the implementation of Article 12 of the Kyoto Protocol;
19. **“Certified Emission Reduction”** or **“CER”** means a unit issued pursuant to Article 12 of the Kyoto Protocol and all other relevant International Rules which is equal to one metric ton of carbon dioxide equivalent, calculated in accordance with the International Rules;
20. **“Certification”** means the written assurance by an Independent Third Party, a Designated Operational Entity or Accredited Independent Entity that, during a specific time period, a Program achieved the anthropogenic reductions in emissions by sources or the anthropogenic removals of GHG by sinks as certified;

21. **“Clean Development Mechanism”** or **“CDM”** means the mechanism defined in Article 12 of the Kyoto Protocol and the International Rules;
22. **“Closing Date”** of each Tranche of the Carbon Fund means the date described in Section 4.2(a)(iii);
23. **“Contribution”** means the contribution from a Donor or a Buyer Participant to the Carbon Asset Development Fund or the Carbon Fund, respectively;
24. **“COP/MOP”** means the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol;
25. **“Countries with Economies in Transition”** means those Borrowing Member Countries, and those non Borrowing Member Countries as may be approved by the Trustee in consultation with Buyer Participants in a Tranche from time to time, listed as such in Annex I of the UNFCCC;
26. **“Country Assistance Strategy”** or **“CAS”** means the strategy, including the Country Partnership Strategy or CPS, prepared by the Bank to identify the key areas in which Bank support can best assist a Borrowing Member Country in achieving sustainable development and poverty reduction;
27. **“Demand for Payment”** means a demand for payment issued periodically by the Trustee of the Carbon Fund to Buyer Participants requesting payment of part or all of the Contribution;
28. **“Designated Operational Entity”** or **“DOE”** means an entity designated by the COP/MOP as qualified to validate proposed CDM Program activities in the same sector as the Program or to verify and certify GHG Reductions from CDM Program activities in the same sector as the Program activity, or, for the purposes of Verification, an organization which, in the reasonable opinion of the Trustee, has the requisite capacity to perform Verification of the Program activity.
29. **“Developing Countries”** means those Borrowing Member Countries not listed in Annex I or Annex II of the UNFCCC, or Annex B of the Kyoto Protocol;
30. **“Donor”** means an international organization, government, public or private entity that has signed an Administration Agreement to contribute to the Carbon Asset Development Fund;
31. **“Eligible Buyer Participant”** means an international organization, government, public or private entity that has expressed an interest to purchase Emission Reductions in one or more Tranches and whose eligibility for participation in the Facility has been reviewed and approved by the Bank;
32. **“Eligible Participants”** means the Eligible Buyer Participants and the Eligible Seller Participants;

33. **“Eligible Seller Participant”** means a public or private entity from a Developing Country or from a Country with an Economy in Transition that has expressed an interest to commit to sell Emission Reductions from one or more Programs to the Trustee of the Carbon Fund over a given period of time and whose eligibility for participation in the Facility has been reviewed and approved by the Bank;
34. **“Emissions”** means emissions in carbon dioxide or carbon dioxide equivalent;
35. **“Emission Reductions”** or **“ERs”** means all rights, titles and interests associated with the ERs; including CERs, ERUs and AAUs which are recognized under Article 12, 6 and 17 of the Kyoto Protocol, respectively, and VERs;
36. **“Emission Reduction Unit”** or **“ERU”** means a unit issued by the Host Country on the basis of Verification of a JI project pursuant to Article 6 of the Kyoto Protocol and all other relevant International Rules;
37. **“Emission Reductions Purchase Agreement”** or **“ERPA”** means an agreement governing the purchase and sale of Emission Reductions from one or more Programs entered into between the Trustee of the Carbon Fund and a Program Entity;
38. **“Euro”** or **“€”** means the lawful currency of the participating Member States that have adopted the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on the European Union;
39. **“Facility”** means the Carbon Partnership Facility established pursuant to Section 2.1;
40. **“Facility Coordinator”** means the Bank staff member appointed to coordinate the Facility;
41. **“First Tranche”** means the first Tranche of the Carbon Fund pursuant to Section 4.2(b);
42. **“Fiscal Year”** means the fiscal year of the Bank, which starts on July 1 and ends on June 30;
43. **“Fund”** means the Carbon Asset Development Fund or the Carbon Fund, as the case may be;
44. **“Funds”** means both the Carbon Asset Development Fund and the Carbon Fund;

45. **“Fund or Funds Property”** means all of the property contributed to all of the Tranches of the Carbon Fund or to the CADF and all other assets, receipts and interests of the Fund, including all Tranche Property;
46. **“General Conditions”** means a set of standard conditions applicable to all Emission Reductions Purchase Agreements, which sets out general rights and obligations of the parties to the ERPA;
47. **“GHG Reduction”** means the reduction or removal of GHG emissions which are additional to the Baseline determined for a Program;
48. **“Grant Agreement”** means a grant agreement between the Trustee of the Carbon Asset Development Fund and a Seller Participant or a Host Country government or other entities in Host Countries that have become Partners in relation to a grant provided by the Carbon Asset Development Fund;
49. **“Greenhouse Gases”** or **“GHG”** means the gases listed in Annex A of the Kyoto Protocol;
50. **“Host Country”** means a Developing Country or a Country with an Economy in Transition in which a Program is or is expected to be located;
51. **“IBRD”** means the International Bank for Reconstruction and Development;
52. **“Independent Third Party”** means a properly qualified entity, satisfactory to the Trustee for the purpose of undertaking Verification, Validation or fair market value determination, and which is independent from the Trustee, the relevant Host Country, and the relevant Seller Participant;
53. **“Instrument”** means the Instrument establishing the Carbon Partnership Facility, as amended from time to time;
54. **“International Agreement”** means the adoption by the parties to the UNFCCC of an amendment, extension or successor international agreement to the Kyoto Protocol or any other international agreement implementing the UNFCCC, up to and beyond 2012;
55. **“International Emissions Trading”** means the transfer or acquisition of any form of Emission Reductions which occurs pursuant to Article 17 of the Kyoto Protocol;
56. **“International Rules”** means the UNFCCC, the Kyoto Protocol, the International Agreement, if any, and any relevant decisions, guidelines, modalities and procedures adopted under these agreements as amended from time to time;

57. **“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;
58. **“JI Supervisory Committee”** means the committee established by the COP/MOP under the guidelines adopted by the COP/MOP on Joint Implementation to supervise, inter alia, the Verification procedures for Joint Implementation projects;
59. **“Kyoto Protocol”** or **“Protocol”** means the Protocol to the United Nations Framework Convention on Climate Change adopted at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change in Kyoto, Japan on December 11, 1997;
60. **“Members of the Facility”** means the Participants, the Donors and the Partners;
61. **“Minimum Contribution”** means the minimum amount specified in Sections 7.2(b) or 8.1(b) payable by a Buyer Participant or a Donor wishing to participate in the Carbon Fund or Carbon Asset Development Fund, respectively;
62. **“Modified Cash Basis of Accounting”** means a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America or International Financial Reporting Standards, wherein Contributions will be recorded when received and expenditures will be recorded as disbursements when paid rather than when committed;
63. **“Opening Date of a Tranche”** means the Opening Date described in Section 4.2(a)(i);
64. **“Opening Date of the Carbon Asset Development Fund”** means the date described in Section 4.1 (a);
65. **“Operational Date of a Tranche”** means the date established by the Trustee in accordance with Section 4.2(a)(ii);
66. **“Operational Date of the Carbon Asset Development Fund”** has the meaning assigned to it in Section 4.1(b);
67. **“Operational Date of the First Tranche”** means the date established by the Trustee in accordance with Section 4.2(a)(ii);
68. **“Organizational Meeting”** means the first organizational meeting of the Participants, the Partners and the Donors held pursuant to Section 10.1;
69. **“Participants”** or **“Participants in the Facility”** means collectively Seller Participants and Buyer Participants;

70. **“Participation Agreements”** means the Buyer Participation Agreements and the Seller Participation Agreements;
71. **“Partners”** means the partners in the Facility including Host Country governments or their authorized representatives that have entered into a Partnership Memorandum of Understanding and any other entities as may be invited from time to time by the Trustee in consultation with the Partnership Committee;
72. **“Partnership Committee”** means the committee described in Article 11;
73. **“Partnership Memorandum of Understanding”** means the memorandum of understanding between the Bank as Trustee of the Carbon Asset Development Fund and, as the case may be, the Bank as the Trustee of the Carbon Fund and each Partner relating to the Partner’s role in facilitating the development of Programs in the Host Country;
74. **“Portfolio and Program Selection Criteria”** means
 - (i) for the First Tranche, the criteria specified in Section 3.4(b)(i); and
 - (ii) for the other Tranches, the criteria specified in Section 3.4(b)(ii);
75. **“Prepaid Contribution”** has the meaning assigned to it in Section 7.4;
76. **“Prepaid Contribution Fund”** has the meaning assigned to it in Section 7.3;
77. **“Pricing Approach”** means the guidelines proposed by the Trustee of the Carbon Fund and endorsed by the Partnership Committee, that establish the approach for pricing of Emission Reductions resulting from Programs;
78. **“Program”** means the series of investment programs or projects capable of generating GHG Reductions;
79. **“Program Eligibility Criteria”** has the meaning set out in Section 3.3;
80. **“Program Entity”** means a Seller Participant or any entity authorized by the Seller Participant with which the Trustee of the Carbon Fund has entered into or intends to enter into an ERPA;
81. **“Program Idea Note”** or **“PIN”** means a Program Idea Note to be submitted by a Seller Participant in respect of a potential Program for review and approval by the Trustee of the Carbon Fund;
82. **“Promissory Note”** means a note delivered to the Trustee of the Carbon Fund pursuant to Section 7.2 and issued by a Buyer Participant, in form and substance acceptable to the Trustee of the Carbon Fund, for the amount, whether alone or

- together with other Promissory Notes, of the Contribution of that Buyer Participant;
83. **“Seller Contribution Credit”** or **“SCC”** has the meaning assigned to it in Section 6.4;
 84. **“Seller Participant”** or **“Seller”** means an Eligible Seller Participant that has signed a Seller Participation Agreement;
 85. **“Seller Participation Agreement”** means an agreement between a Seller Participant, the Trustee of the Carbon Fund and the Trustee of the Carbon Asset Development Fund with respect to the Seller’s participation in the Facility;
 86. **“Special Meeting”** means a meeting of the Participants in a Tranche convened pursuant to Section 10.4;
 87. **“Tranche”** means a tranche of the Carbon Fund pursuant to Section 2.3 into which Buyer Participants pay their Contributions;
 88. **“Tranche Property”** means any property contributed to a Tranche of the Carbon Fund and all other assets, receipts and interests of such Tranche;
 89. **“Trustees”** means collectively, the Trustee of the Carbon Asset Development Fund and the Trustee of the Carbon Fund;
 90. **“Trustee of the Carbon Asset Development Fund”** means the Bank acting not in its individual or personal capacity but solely in its capacity as trustee of the Carbon Asset Development Fund;
 91. **“Trustee of the Carbon Fund”** means the Bank acting not in its individual or personal capacity but solely in its capacity as trustee of the Carbon Fund;
 92. **“UNCITRAL”** means the United Nations Commission on International Trade Law;
 93. **“UNFCCC”** means the United Nations Framework Convention on Climate Change adopted in New York on May 9, 1992;
 94. **“United States Dollars”** or **“US\$”** means the lawful currency of the United States of America;
 95. **“Validation”** means the assessment by an Independent Third Party, a Designated Operational Entity or an Accredited Independent Entity of a Program, including its Baseline, before the Program’s implementation;
 96. **“Verification”** means the periodic independent review and ex post determination by an Independent Third Party, a Designated Operational Entity or an Accredited

Independent Entity of the monitored Emission Reductions arising from a Program during the verification period;

97. **“Verified Emission Reductions”** or **“VERs”** means Emission Reductions verified by an Independent Third Party or a Designated Operational Entity as meeting a set of standards, including but not limited to, those contained in the International Rules;
98. **“Withdrawing Buyer Participant”** has the meaning assigned to it in Section 15.2;
99. **“World Bank”** means the International Bank for Reconstruction and Development and the International Development Association;
100. **“World Bank Group”** means the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association and the Multilateral Investment Guarantee Agency;
101. **“World Bank’s Operational Policies and Procedures”** means the operational policies and procedures of the World Bank that are applicable to the operation of the Facility, in areas such as environmental and social safeguards, as may be modified from time to time;
102. **“World Bank Policy on Disclosure of Information”** means the policy of the World Bank on public availability of information held by it, effective January 1, 2002, as may be amended from time to time;
103. **“World Bank Standard Conditions for Grants Made by the World Bank Out of Various Funds”** means the terms and conditions that are applicable to grant agreements from various funds entered into by the Bank dated July 20, 2006, as may be amended from time to time;

Section 1.2 Interpretation

- (a) In this Instrument, unless the context requires another meaning, a reference:
 - (i) to the singular includes the plural and vice versa, and to a gender includes all genders;
 - (ii) to a law includes any legislation, judgment or rule of law and is a reference to that law as amended, consolidated, supplemented or replaced, and includes a reference to any regulation, by-law or other subordinate legislation; and
 - (iii) to a party means a party to this Instrument, and to an item, clause, schedule, section or annexure is to an item, clause, schedule, section or annexure of this Instrument (unless specified otherwise).

- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) Headings are for convenience only and do not affect the interpretation of this Instrument.
- (d) Any schedule attached hereto forms part of this Instrument.

CHAPTER II

ESTABLISHMENT, OBJECTIVES AND OPERATING PRINCIPLES

Article 2. Establishment

Section 2.1 Funds under the Facility

- a) The Carbon Partnership Facility is hereby established in accordance with the terms and conditions of this Instrument. The Facility shall consist of the following two components:
 - (i) a technical assistance and Facility administration mechanism supported by the Carbon Asset Development Fund; and
 - (ii) a mechanism to purchase ERs supported by the Carbon Fund.
- b) The IBRD shall be the Trustee of the Funds and in this capacity shall, as legal owner:
 - (i) hold in trust the Funds Property which constitutes the CADF and the Carbon Fund;
 - (ii) manage and use the Funds Property only for the purposes of and in accordance with the provisions of this Instrument; and
 - (iii) keep the Funds Property separate and apart from all other accounts and assets of, or administered by, the IBRD, except as otherwise provided in this Instrument.

Section 2.2. Trust Only

It is the intention of this Instrument to create only the relationship of trustee and beneficiary between the Trustee and each Buyer Participant and the Trustee and each Donor and not to create a general partnership, limited partnership, joint stock association, corporation, bailment or any form of legal relationship other than a trust. Nothing in this Instrument shall be construed so as to make the Participants, either by themselves or with the Trustee, partners or members of a joint stock association.

Section 2.3 Tranches

- a) The Carbon Fund shall consist of a series of Tranches with each Tranche constituting a separate trust fund and operating on the basis set out in this Instrument.

- b) Eligible Buyer Participants may elect to participate in more than one Tranche provided Eligible Buyer Participants meet the eligibility criteria for each Tranche in which they wish to participate.
- c) The Trustee of the Carbon Fund shall:
 - (i) allocate all Tranche Property to the relevant Tranche, and account separately for Contributions to, and disbursements from, each Tranche; and
 - (ii) maintain separate accounts of income and disbursements for each Tranche and of the Emission Reductions accruing to the Participants in that Tranche;

Section 2.4 Program Allocation

- a) Subject to Section 2.4 (b), the Trustee of the Carbon Fund shall allocate a Program to one or more Tranches if the Program meets the Portfolio and Program Selection Criteria of those Tranches, with the consent of the Buyer Participants in those Tranches in accordance with Section 10.10.
- b) When a Program meets the Portfolio and Program Selection Criteria of more than one Tranche in its allocation phase, the Trustee of the Carbon Fund, with the consent of the Buyer Participants in the earliest such Tranche or Tranches and subject to the consent of the Buyer Participants in the subsequent Tranche, may allocate the Program to each of such Tranches and utilize the capital of each of such Tranches on a pro rata basis to purchase Emission Reductions from the Program.
- c) When a Program is rejected by the Buyer Participants in a Tranche in accordance with Section 10.10, the Trustee of the Carbon Fund may seek interest from the Buyer Participants in other Tranches in which the Program meets the Portfolio and Program Selection Criteria to allocate the Program to such other Tranches. In case the Seller Contribution Credit is higher in the Tranche or Tranches where the Trustee proposes that a Program be reallocated, the Trustee shall only allocate the Program to such Tranche or Tranches with the consent of the Seller Participant.

Section 2.5. Opening of a Subsequent Tranche

- a) Buyer Participants in a preceding Tranche shall have a priority right to participate in any subsequent Tranche once the Trustee of the Carbon Fund declares the subsequent Tranche open for participation.
- b) The Trustee of the Carbon Fund shall inform the Buyer Participants in a preceding Tranche on the criteria for opening a subsequent Tranche prior to opening the new Tranche.

Article 3. Objectives and Operating Principles

Section 3.1 Objectives

The objectives of the Facility are:

- (a) To assist Developing Countries and Countries with Economies in Transition in the transition towards a lower carbon economy and to help global climate change mitigation efforts by establishing a partnership to generate, sell and purchase Emission Reductions from long-term Programs; and
- (b) To support greenhouse gas emissions mitigation Programs that are strategic and have a demonstration or scaling-up impact and contribute to transformational interventions in various sectors in Developing Countries or in Countries with Economies in Transition.

Section 3.2 Operating Principles

The operation of the Facility, including implementation of activities funded under Grant Agreements and Programs, shall:

- (a) Recognize the pilot nature of the Facility and follow a “learning by doing” approach;
- (b) Seek to ensure consistency and compliance with the UNFCCC, any International Agreement and/or any other regime as deemed appropriate by the Trustee in consultation with existing Participants and prospective participants; and
- (c) Comply with the World Bank’s Operational Policies and Procedures.

Section 3.3 Program Eligibility Criteria

To be included in the Facility, a Program must:

- a) Be consistent with the sustainable development objectives, relevant sector policy and climate change strategy, if any, of the Host Country;
- b) Be expected to have a demonstration or scaling-up impact and to make a contribution to lowering greenhouse gas emissions or limiting their growth in the relevant geographic region or sector;
- c) For the First Tranche: comply with the Portfolio and Program Selection Criteria contained in Schedule 1; and for the other Tranches, comply with the Portfolio and Program Selection Criteria of the relevant Tranche or other requirements as they may be determined from time to time by the Trustee of the Carbon Fund in

consultation with Buyer Participants and Eligible Participants for that Tranche;
and

- d) Comply with the World Bank Operational Policies and Procedures and support the Bank's Country Assistance Strategy in Borrowing Member Countries.

Section 3.4. Portfolio and Program Selection Criteria

- a) For each Tranche, the Trustee of the Carbon Fund shall select Programs in accordance with the Portfolio and Program Selection Criteria for that Tranche.
- b) Portfolio and Program Selection Criteria for each Tranche shall be:
 - (i) for the First Tranche: the Portfolio and Program Selection Criteria contained in Schedule 1; and
 - (ii) for the other Tranches: the Portfolio and Program Selection Criteria determined by the Trustee of the Carbon Fund in consultation with Buyer Participants and Eligible Participants for that Tranche.
- c) Material changes to the Portfolio and Program Selection Criteria for a Tranche may be made if in the opinion of the Trustee of the Carbon Fund, the proposed changes are consistent with World Bank Operational Policies and Procedures and are otherwise acceptable to the Trustee of the Carbon Fund and with the consent of the Buyer Participants in that Tranche.
- d) Any changes to the Portfolio and Program Selection Criteria shall apply only to Programs for which the Trustee of the Carbon Fund has not yet entered into any Seller Participation Agreement.

CHAPTER III

ORGANIZATION

Article 4 Opening, Operational and Closing Dates in the Facility

Section 4.1 Carbon Asset Development Fund

The Trustee of the Carbon Asset Development Fund shall determine:

- (a) An Opening Date of the Carbon Asset Development Fund being the date on which the Trustee of the Carbon Asset Development Fund begins to accept Contributions for the Carbon Asset Development Fund; and
- (b) An Operational Date for the Carbon Asset Development Fund being the earlier of:
 - (i) the date on which at least five million Euro (€5,000,000) of Contributions from Donors are committed to the Carbon Asset Development Fund; or
 - (ii) the Operational Date of the First Tranche.
- (c) Notwithstanding the foregoing, until the Operational Date of the First Tranche, the Trustee of the CADF shall not commit the CADF assets in an amount higher than the Contributions from Donors prior to the Operational Date of the First Tranche.
- (d) Notwithstanding anything in this Instrument to the contrary, if the Facility Coordinator deems the First Tranche of the Carbon Fund not to have received sufficient Contributions to declare an Operational Date of the First Tranche on, or prior to, the date twelve (12) months following the Operational Date of the CADF, the Trustee of the Carbon Asset Development Fund may terminate the CADF and the provisions of Article 24 will apply.

Section 4.2 Carbon Fund

- (a) The Trustee of the Carbon Fund shall determine:
 - (i) an Opening Date for each Tranche of the Carbon Fund being the date on which the Trustee commences entering into Buyer Participation Agreements for that Tranche;
 - (ii) an Operational Date for each Tranche of the Carbon Fund being the date on which a level of Contributions for participation, defined by the Trustee of the Carbon Fund in advance of the Opening Date of such Tranche, is achieved from Buyer Participants; the Operational Date for the First Tranche shall be May 15, 2010;

- (iii) a Closing Date for each Tranche of the Carbon Fund being the last date on which the Trustee of the Carbon Fund enters into Buyer Participation Agreements for that Tranche; and
 - (iv) a final date for full disbursement of the Tranche Property, which for the First Tranche shall be June 30, 2024, unless otherwise decided by the Trustee and the Buyer Participants in the First Tranche.
- (b) The Trustee of the Carbon Fund shall close the First Tranche of the Carbon Fund to further Buyer Contributions on December 31, 2010 or such earlier date as the Trustee shall determine when Contributions from Buyer Participants to the First Tranche of the Facility reach a level deemed appropriate by the Trustee.
- (c) The Trustee of the Carbon Fund shall determine the necessary level of minimum contribution for Buyer participation in each subsequent Tranche, the level of the CADF Charge and Seller Contribution Credit for that Tranche, the holding currency, the level of Contributions at which that Tranche would be closed and, if deemed appropriate by the Trustees, the minimum number of Seller Participation Agreements required to be effective in order for such subsequent Tranche to become operational.
- (d) Notwithstanding anything in this Instrument to the contrary, if the Facility Coordinator deems any of the Tranches not to have received sufficient Contributions to declare an Operational Date for the relevant Tranche on, or prior to, the date twelve (12) months following the Opening Date for that Tranche, the Trustee of the Carbon Fund may terminate that Tranche and the provisions of Article 24 shall apply.

CHAPTER IV

PARTICIPATION AND PARTNERSHIP

Article 5 Participants, Donors and Partners

Section 5.1 Types of Participants, Donors and Partners

- (a) The Facility shall include Seller Participants, Buyer Participants, Donors and Partners.
- (b) All the Members of the Facility shall be included in the governance structure for the Facility, which shall include an Annual Meeting and a Partnership Committee.

5.2 Buyer and Seller Participants

The Facility may include Eligible Participants approved by the Bank both in their capacity as Buyers in a Tranche and as Sellers in the Facility.

5.3 Buyer and Donor

A Donor to the CADF could also become a Buyer Participant by signing a Buyer Participation Agreement.

Article 6 Seller Participants

Section 6.1 Eligible Seller Participant

An Eligible Seller Participant may participate in the Facility through the process set out in Section 6.2 below.

Section 6.2 Process for becoming a Seller Participant

- (a) An Eligible Seller Participant may apply for participation by submitting a Program Idea Note for consideration by the Trustees, describing one or more potential Programs for the review and approval by the Bank and expressing whether it has an interest in obtaining resources from the CADF.
- (b) The Trustees shall decide whether or not to accept the participation of the prospective Seller Participant in the Facility, based on the approval of the Program Idea Note.
- (c) Upon approval of the Program Idea Note, the Trustee may enter into a Seller Participation Agreement with the Seller Participant. By entering into a Seller Participation Agreement, Seller Participants shall make commitments to develop

one or more Programs and to negotiate exclusively with the Trustee of the Carbon Fund the sale of a portion of the Emission Reductions resulting from the Programs during a given period of time.

- (d) Subject to availability of funds in the CADF and compliance with the World Bank Operational Policies and Procedures, the Trustee of the Carbon Asset Development Fund may extend, at its own discretion, to the Seller Participant a grant for assisting it to prepare the Program under a Grant Agreement with the Seller Participant.

Section 6.3 Development of Programs and Emission Reductions Purchase Agreement

- (a) After the approval of the Program Idea Note by the Trustee of the Carbon Fund, the Seller Participant shall develop the Carbon Finance Document in accordance with the Seller Participation Agreement. The Trustee of the Carbon Fund shall then submit the Carbon Finance Document, in form and substance satisfactory to the Trustee, to the Buyer Participants in the relevant Tranche or Tranches, in accordance with Section 10.10.
- (b) Further to the consent of the Buyer Participants in a Tranche, in accordance with Section 10.10, the Trustee of the Carbon Fund shall allocate the Program to a Tranche or Tranches, in accordance with Section 2.4 and shall endeavor, on behalf of the Buyer Participants in that Tranche, to enter into an Emission Reductions Purchase Agreement with the Seller Participant.

Section 6.4 Seller Contribution to the CADF

The Seller Contribution Credit is the contribution to the CADF by the Seller Participants in accordance with the Seller Participation Agreement. The percentage amount of the Seller Contribution Credit shall be determined by the Trustee of the Carbon Fund before the opening of each Tranche.

Article 7 Buyer Participants

Section 7.1 Eligible Buyer Participant

An Eligible Buyer may participate in the Facility through the process set out in Section 7.2 below.

Section 7.2 Process for becoming a Buyer Participant

- (a) An Eligible Buyer Participant shall participate in the Facility by entering into a Buyer Participation Agreement with the Trustees of the Funds to make contributions to a Tranche in the Carbon Fund and to the CADF. Prior to the Closing Date for that Tranche, each Buyer Participant will be required to make a

Contribution to a Tranche of the Carbon Fund by submitting to the Trustee of the Carbon Fund a form of Participation Agreement signed by it for the Minimum Contribution for the Tranche or for such higher Contribution amount as may be agreed with the Trustee and by issuing and delivering one or more Promissory Notes for the amount of the Contribution in accordance with Section 7.3(a).

- (b) The Minimum Contribution for each Tranche of the Carbon Fund will be determined by the Trustee of the Carbon Fund, and notified in writing to potential Buyer Participants in that Tranche on or before the Opening Date for that Tranche. The Minimum Contribution for the First Tranche shall be twenty million Euro (€20,000,000) for each Buyer Participant which is a non-Annex I Country and thirty-five million Euro (€35,000,000) for each other Buyer Participant.
- (c) Subject to the agreement of the Trustee of the Carbon Fund, any Buyer Participant may elect to participate in a Tranche in an amount higher than the Minimum Contribution or to increase its Contribution in a Tranche by making additional Contributions in increments defined by the Trustee of the Carbon Fund or otherwise as determined by the Trustee of the Carbon Fund; for the First Tranche of the Carbon Fund the increment shall be one million Euro (€1,000,000).

Section 7.3 Payment of Contribution to the Carbon Fund

- a) Each Buyer Participant will be required to pay its Contribution, including the CADF Charge, through the issuance and delivery of one or more Promissory Notes made payable to the Trustee of the Carbon Fund on demand.
- b) The Trustee of the Carbon Fund shall provide Buyer Participants with Demands for Payment for its Contribution.
- c) Notwithstanding Section 7.3(b), the Trustee shall not provide the Buyer Participant with any Demand for Payment for any CADF Charge, except for the notices in paragraphs (ii) and (iii) below, which shall be deemed a Demand for Payment for the CADF Charge. The CADF Charge shall be paid in three equal installments in three consecutive years, as follows:
 - (i) the first installment shall be paid on the later of either:
 - i. fifteen (15) days after the execution of the Buyers Participation Agreement;
 - ii. or thirty (30) days after receipt by the Buyer Participant of written notice from the Trustee of the Carbon Fund of the Operational Date of the First Tranche;
 - (ii) the second installment shall be paid thirty (30) days after the anniversary of Operational Date of the First Tranche; and

- (iii) the third installment shall be paid thirty (30) days after the second anniversary of the Operational Date of the First Tranche.

- d) A Demand for Payment issued by the Trustee of the Carbon Fund shall state:
 - (i) the total amount of the payment required from that Buyer Participant;
 - (ii) if that Buyer Participant has made an irrevocable prepaid Contribution (“**Prepaid Contribution**”), the amount which the Trustee will withdraw from the Prepaid Contribution fund (“**Prepaid Contribution Fund**”) to meet the payment required; and
 - (iii) if that Buyer Participant has made a Prepaid Contribution and there are insufficient funds available in the Prepaid Contribution Fund to fund the total amount of the payment required from the Buyer Participant, the outstanding amount for which payment is required to be made by the Buyer Participant from other sources.

- e) Except as otherwise provided in Section 7.3(c), Buyer Participants shall be given thirty (30) days notice to deliver any payment to the Trustee of the Carbon Fund; provided that any payment to be made from a Prepaid Contribution shall be made on such date as the Trustee of the Carbon Fund decides in its sole discretion.

- f) No interest will be payable by Buyer Participants on any portion of the Contribution not yet demanded by the Trustee. Investment income generated by the Carbon Fund will be applied to support the implementation of the CADF.

- g) The amount available to be drawn under the Promissory Note shall be reduced by the amount of any previous draw made pursuant to a Demand for Payment and by the amount of the CADF Charge paid by the Buyer Participant, whether funded from the relevant Buyer Participant’s Prepaid Contribution or by the Buyer Participant from other sources.

- h) Demands for Payment for the First Tranche of the Carbon Fund will be denominated in Euro (€).

- i) Except as provided in this Instrument, failure of any Buyer Participant to make any payment when due under this Section 7.3 shall not relieve any other Buyer Participant of its obligation to make its respective payment.

- j) In the event that at the time the Trustee intends to enter into any ERPA, the Buyer Participant has no rating or does not have a rating of Baa or higher by Moody’s Investor Services Limited, a rating of BBB or higher by Standard and Poor’s Rating Services, or a rating of BBB or higher by Fitch’s Ratings, the Trustee may, prior to entering into such ERPA, demand that such Buyer Participant (i) prepay that portion of the amount of its Contribution that corresponds to such Buyer

Participant's pro rata share of the amount payable by the Trustee under such ERPA or (ii) provide an irrevocable standby letter of credit, in form and substance satisfactory to the Trustee, issued from a financial institution acceptable to the Trustee for such amount of its Contribution drawable over the term of the ERPA or such other form of security for such amount as is acceptable to the Trustee. If the Buyer Participant fails to make any such prepayment or provide such letter of credit or other form of security within thirty (30) days following such demand from the Trustee, then Section 14.2 shall apply. Any such prepayment shall be considered a Prepaid Contribution and Section 7.4 shall apply to such prepayment.

Section 7.4. Prepayment

- a) Buyer Participants shall be entitled to pay a part or the entire amount of their Contribution in advance of any Demand for Payment by the Trustee of the Carbon Fund, in which case:
 - (i) the Prepaid Contribution shall be held in the Prepaid Contribution Fund;
 - (ii) no investment income shall be payable by the Trustees to the respective Buyer Participant on any Prepaid Contribution. Investment income generated by the Prepaid Contribution Fund shall be applied to support the implementation of CADF; and
 - (iii) should any Buyer Participant prepay the whole or any portion of its Contribution pursuant to Section 7.4(a) above, the amount of any Promissory Note issued and delivered pursuant to Section 7.3(a) will be reduced by the amount of the prepayment at the time of transfer of the Prepaid Contribution to the Carbon Fund.
- b) The Trustee of the Carbon Fund shall determine the holding currency of Prepaid Contributions prior to the Opening Date of a Tranche. Prepaid Contributions in the First Tranche will be held in Euro (€).

Section 7.5 Contribution to CADF

- a) Each Buyer Participant shall be required to pay a percentage of its Contribution to fund the CADF, in accordance with Section 7.3(c) (“**CADF Charge**”).
- b) The CADF Charge for each Tranche of the Carbon Fund will be determined by the Trustee of the Carbon Fund and notified to potential Buyer Participants in each Tranche of the Carbon Fund on or before the Opening Date for that Tranche.
- c) No investment income shall be payable by the Trustee or the IBRD to the respective Buyer Participant on any CADF Charge. Investment income generated by the CADF shall be applied to support the implementation of the CADF.

Article 8 Donors

Section 8.1 Contribution

- (a) A prospective donor may participate in the Carbon Asset Development Fund through entering into an Administration Agreement with the Trustee of the Carbon Asset Development Fund.
- (b) Each Donor will be required to make a Minimum Contribution in an amount equivalent to two million Euro (€2,000,000) to the Carbon Asset Development Fund.
- (c) Subject to the agreement of the Trustee of the Carbon Asset Development Fund, a Donor may elect to increase its Contribution payable under Section 8.1(b) by making one or more additional Contributions to the Carbon Asset Development Fund at any time during the operation of the Carbon Asset Development Fund, provided that the additional Contributions are made in increments of five hundred thousand Euro (€500,000).

Section 8.2 Payment of Contribution

Each Donor shall pay its Contribution to the Carbon Asset Development Fund in accordance with the terms of the Administration Agreement.

Section 9 Partners

Section 9.1 Host Country Governments

- a) A Host Country government may participate in the Facility by entering into a Partnership Memorandum of Understanding with the Trustees to become a Partner.
- b) As a Partner, the Host Country government would work in partnership with the Trustees to identify and develop Programs and participate in the governance of the Facility in an advisory role.
- c) Subject to availability of funds in the CADF and compliance with the World Bank Operational Policies and Procedures, the Trustee of the Carbon Asset Development Fund may, at its own discretion, extend to the Partner a grant for assisting it to identify and prepare one or more Programs located in the Host Country under a Grant Agreement with the Partner.

- d) The Partner may later become a Seller Participant by submitting a Program Idea Note and upon Program Idea Note approval signing a Seller Participation Agreement with the Trustees in accordance with Sections 6.2 and 6.3.

Section 9.2 Other entities

Other entities may be invited to become Partners of the Facility by the Trustees in consultation with the Partnership Committee.

CHAPTER V

GOVERNANCE STRUCTURE

Article 10 Governance structure

- a) The governance structure for the Facility shall include an Annual Meeting and a Partnership Committee. In addition, Buyer Participants in a Tranche shall take decisions regarding their consent to the inclusion of a Program in the portfolio of the relevant Tranche and, when deemed necessary by the Trustee of the Carbon Fund, all other decisions specific to the Portfolio and Program Selection Criteria of that Tranche and the Programs in the portfolio of that Tranche.
- b) Furthermore, the Trustees may, when deemed necessary, establish separate consultative groups or other bodies for the purposes of advising the Trustees and the Members of the Facility on, inter alia, specific types of Programs or asset classes.

Section 10.1 Organizational Meeting

- a) Within ninety (90) days of the Operational Date of the First Tranche, the Facility Coordinator shall convene an Organizational Meeting which shall also be the first Annual Meeting of the Facility.
- b) The date, time and place of the Organizational Meeting shall be determined by the Facility Coordinator.
- c) Provided there are three (3) or more Buyer Participants in the First Tranche at the time of the Organizational Meeting, the Participants, Partners and Donors shall elect the members of the Partnership Committee, to serve for a term running from the date of the Organizational Meeting until the second Annual Meeting following the Organizational Meeting. Where there are less than three (3) Buyer Participants, Annual Meetings will perform the duties of the Partnership Committee.

Section 10.2 Frequency of Annual Meetings and Participation

An Annual Meeting of all the Participants, Partners and Donors shall be held each year at a time and place as shall be determined by the Facility Coordinator.

Section 10.3 Role of the Annual Meeting

- (a) The Annual Meeting:
 - (i) shall serve as a forum for exchange of information and sharing knowledge and experience among Participants, Partners and Donors. The Annual

Meeting shall provide broad guidance to the Trustee on how to further develop the Facility;

- (ii) elect the members of the Partnership Committee representing the interests of their respective constituency; and
 - (iii) may review specific decisions made by the Partnership Committee with respect to the Pricing Approach in the Facility, upon request by two or more Participants. In the event there is a decision at the Annual Meeting to overturn the Partnership's Committee decision, the Partnership Committee shall reconsider its decisions at a Special Meeting.
- (b) The Participants of the Facility shall at every meeting elect one of its members to serve as a chairperson of that meeting.

Section 10.4 Special Meetings

- a) The Facility Coordinator may call Special Meetings of all or some of the Participants, Donors and Partners, including meetings affecting only a specific Tranche or 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.

Section 10.5 Notice

- a) Unless otherwise waived by the intended recipient, at least thirty (30) days prior to the date of each Annual Meeting and Special Meeting, the Facility Coordinator will provide each Participant, Donor and Partner with written notice of the forthcoming Annual 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) For the purposes of this Section 10.5, references to written notices include electronic notices such as email, facsimile and other forms of electronic notification which are commonly in use.

Section 10.6 Voting

- a) Except as otherwise provided in this Instrument, every matter submitted to an Annual Meeting shall be decided by consensus whenever possible.
- b) The overturn of decisions under Section 10.3(a)(iii) above shall be decided by at least simple majority of the Buyer Participants and a simple majority of the Seller Participants, present and voting at the meeting.
- c) Each participant at the Annual Meeting shall have one vote, except when electing their constituency's representatives of the Partnership Committee, where the Buyer Participants' and the Donors' votes would be proportional to the level of their financial Contributions in the Facility.
- d) Except when electing its representatives in the Partnership Committee, the Partners and the Donors shall act as observers with no voting rights.

Section 10.7 Quorum

Participants holding a majority of all of the votes of the Buyer Participants in all Tranches of the Carbon Fund and a majority of all of the votes of the Seller Participants shall constitute a quorum for the transaction of business at an Annual Meeting or at a Special Meeting.

Section 10.8 Action Without Meeting

Action required or permitted to be taken at an Annual Meeting or at a Special Meeting may be taken without a meeting if:

- a) A form of consent in writing, setting out the action intended to be taken, has been circulated to all of the Participants; and
- b) The consent under Section 10.8(a) has been signed and delivered to the Trustees in one or more counterparts by Participants holding in aggregate not less than two thirds of the votes or, in the case of an action requiring unanimous approval, by all of the Participants.

Section 10.9 Proxies

Any member entitled to vote at an Annual Meeting or at a Special Meeting may vote by proxy if a duly executed proxy has been received in writing by the Trustees for verification prior to the meeting.

Section 10.10 Buyer Participants in a Tranche

- a) Buyer Participants in a Tranche shall review the CFD for each proposed Program submitted by the Trustee of the Carbon Fund in order to determine whether or not to consent to the inclusion of such Program in the Tranche's portfolio, provided that:
 - (i) the Buyer Participants shall have a minimum of fifteen (15) Business Days to review the relevant CFD and provide written notification of any objections to the inclusion of the Programs in the portfolio, including the reasons for such objection; and
 - (ii) if a three-fifths majority of the Buyer Participants in the Tranche objects to the inclusion of a Program and these objections cannot be resolved within thirty (30) days, the Program shall not be included in the Tranche's portfolio.
- b) The Trustee of the Carbon Fund shall call Special Meetings for Buyer Participants in a Tranche to consider any other decision related to specific Programs in the portfolio of the Tranche, as deemed necessary by the Trustee of the Carbon Fund, including but not limited to Programs being developed in non Borrowing Member Countries, any material changes in the Portfolio and Program Selection Criteria in the relevant Tranche, in accordance with Section 3.4(c) or any material changes in the CFD before the signing of the Emission Reductions Purchase Agreement.
- c) In making any of the decisions described in this Section, each Buyer Participant would cast one vote.

Article 11 Partnership Committee

Section 11.1 Role of the Partnership Committee

- (a) The Partnership Committee shall:
 - (i) provide views to the Trustees for the purpose of setting priorities for carbon asset creation, e.g., in terms of technology, balance of regions/countries, etc;
 - (ii) provide operational guidance, including on the Portfolio and Program Selection Criteria which have already been established;
 - (iii) endorse the acceptance of those entities, other than Host Country governments and their authorized representatives, proposed by the Trustees to become a Partner in the Facility;
 - (iv) endorse the Pricing Approach;

- (v) endorse the General Conditions to be used; and
 - (vi) in the absence of International Rules on an applicable regime, advise on the selection of the Independent Third Party auditors to review rules and methodologies to vet the environmental integrity and credibility of the carbon assets.
- (b) The Pricing Approach described in Section 11.1(a)(iv) above and the General Conditions described in Section 11.1(a)(v) above shall be submitted annually by the Trustees for the Partnership Committee's endorsement. Any changes to the Pricing Approach or to the General Conditions shall apply only to Programs included in a Seller Participation Agreement for which the Trustee of the Carbon Fund has not yet entered into an ERPA.

Section 11.2 Membership of the Partnership Committee

- (a) Buyer Participants and Seller Participants shall always have an equal representation in the Partnership Committee. Where there are at least three (3) Buyer Participants and three (3) Seller Participants, the Facility Coordinator shall establish a Partnership Committee.
- (b) Where there are more than three (3) and less than six (6) Buyer Participants or more than three (3) and less than six (6) Seller Participants, the number of members in the Partnership Committee representing the Buyer Participants and the number of members representing the Seller Participants shall be equal to the number of Buyer Participants or Seller Participants, whichever is lower.
- (c) The Partnership Committee shall consist of up to fifteen (15) members, among which:
 - (i) three (3) to six (6) members shall represent the interests of the Seller Participants;
 - (ii) three (3) to six (6) members shall represent the interests of the Buyer Participants;
 - (iii) one (1) member shall represent from the Donors as a non-voting member; and
 - (iv) two (2) members shall represent other Partners as non-voting members.
- (d) The participation of the public and private sector Buyer Participants in the Partnership Committee shall be based on a pro rata distribution of their aggregate Contributions to all the Tranches of the Carbon Fund.

- (e) The members of the Partnership Committee shall each be elected by their respective constituency:
 - (i) for the first Partnership Committee, at the Organizational Meeting in accordance with Section 10.1; and
 - (ii) subsequently, at each Annual Meeting in accordance with Section 10.3(b).
- (f) The Trustees may revise the composition and functions of the Partnership Committee upon the opening of subsequent Tranches, subject to the consent of existing Participants.
- (g) Members of the Partnership Committee shall regularly consult with their constituencies to ensure that the views of the relevant Participants are represented at the meetings of the Partnership Committee.
- (h) Members of the Partnership Committee shall be officers, directors, employees or officials of Participants, Donors and Partners, provided that not more than one member shall be a representative of the same Participant, Donor or Partner. Members of the Partnership Committee who cease to be officers, directors, employees or officials of the relevant Participant, Donor or Partner shall no longer be eligible for membership on the Partnership Committee and shall be replaced in accordance with subparagraph (i) below.
- (i) With the exception of the members of the first Partnership Committee in accordance with Section 10.1(c), membership of each Partnership Committee shall run from the first date after the end 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 subparagraph (f) above.
- (j) Following the retirement, resignation or removal of a member of a Partnership Committee, the relevant Participant may appoint another of its officers, directors, employees or officials to fill that vacancy in the relevant Partnership Committee. A member appointed to fill a vacancy on a Partnership Committee shall be appointed for the unexpired term of the member's predecessor in office.
- (k) At any time, any member of a Partnership Committee may be removed by the Participant of which that member is an officer, director, employee or official and replaced by another officer, director, employee or official of that Participant for the unexpired term of the member's predecessor in office.
- (l) The members of the Partnership Committee representing the Buyer Participants and the Seller Participants, respectively, shall each elect one of its members to serve as a co-chairperson every year.

- (m) A Participant shall not represent the constituency of the Buyer Participants and the Seller Participants in the Partnership Committee at the same time. For the purposes of this Section, an entity that is related to another entity by shareholding or other means of control shall be deemed to be the same Participant.

Section 11.3 Meetings of the Partnership Committee

- (a) The Partnership Committee shall meet twice a year, or at such other frequency as may be deemed necessary by the Trustees, provided at least fourteen (14) days' written notice by the co-chairpersons of the Partnership Committee or the Facility Coordinator is given to each member of the Partnership Committee and the observers to the Partnership Committee, stating matters to be considered and the place, date and time of the meeting.
- (b) Members of the Partnership Committee may participate in the Partnership Committee meeting:
 - (i) in person;
 - (ii) by telephone or other communications facilities as permit all members participating in the meeting to hear each other; or
 - (iii) by other electronic means;and a member of the Partnership Committee participating by such means set out in subparagraphs (ii) and (iii) above shall be deemed for the purposes of this Instrument to be present at that meeting.
- (c) No member of the Partnership Committee shall receive any compensation from the Facility for its services as such, nor shall any member of any of the Partnership Committees be entitled to payment or reimbursement from the Facility or the Facility Coordinator for travel or other costs incurred in attending Partnership Committee meetings.

Section 11.4 Voting

- (a) Each voting member of the Partnership Committee shall be entitled to cast one vote.
- (b) Except as otherwise provided in this Instrument, every matter submitted to the Partnership Committee shall be decided by consensus whenever possible. If consensus cannot be reached, then decisions shall be taken by a two-thirds majority.

Section 11.5 Quorum

A majority of the Sellers and the Buyers which are members of the Partnership Committee shall constitute a quorum for the meetings of the Partnership Committee.

Section 11.6 Observers to the Partnership Committee

Participants, Partners and Donors that are not members of the Partnership Committee shall be entitled to attend the meetings of the Partnership Committee as observers with no voting rights.

CHAPTER VI

ADMINISTRATION

Article 12 Administration

Section 12.1 Facility Coordinator

A Facility Coordinator shall be responsible for the day-to-day operation of the Facility, including:

- (a) Conducting the initial review of Program Idea Notes submitted by Eligible Seller Participants. Such initial review will be focused on completeness and accuracy of the information;
- (b) Providing secretariat service to the meetings held under the Facility;
- (c) Monitoring the provision of Validation and Verification services for Programs;
- (d) Coordinating with relevant international bodies to ensure effective operation of the Facility;
- (e) Seeking to ensure the Facility's operations comply with the relevant World Bank's Operational Policies and Procedures;
- (f) Providing reports on the activities of the Facility to the Board of Executive Directors of the Bank and to the Participants, Partners and Donors;
- (g) Collecting, organizing, managing and disseminating the knowledge and information gained through operation of the Facility;
- (h) Recording the Emission Reductions contracted under the ERPAs, generated by the Programs and delivered and reporting such information to the Participants;
- (i) Preparing the annual plan and financial statements for the Carbon Fund and annual financial statements for the Carbon Asset Development Fund, including Grants made and disbursed; and
- (j) Determining the allocation of resources and managing them over the lifetime of the Facility; and
- (k) Any other function that may be deemed necessary for facilitating operation of the Facility.

Article 13 Trustee of the Carbon Asset Development Fund and Trustee of the Carbon Fund

Section 13.1 Powers and Duties

- (a) The Bank shall be the Trustee of the Carbon Asset Development Fund and the Trustee of the Carbon Fund, respectively.
- (b) The Trustee of the Carbon Asset Development Fund and the Trustee of the Carbon Fund shall have the following powers and duties.
 - (i) the Trustees shall hold all Fund Property in trust and manage and use the Fund Property for the purpose of, and in accordance with this Instrument;
 - (ii) the Trustees shall be responsible solely for performing those functions set out in this Instrument and shall not be subject to any other duties or obligations that might otherwise apply to a fiduciary or trustee under general principles of trust or fiduciary law;
 - (iii) the Trustees shall keep the Fund Property separate and apart from the assets of the World Bank Group but may commingle it for investment purposes with other trust fund assets maintained by the World Bank Group. At its discretion, the Trustee may at any time exchange 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;
 - (iv) the Trustees shall exercise the same care in the discharge of their functions under the Instrument as the Bank exercises with respect to its own affairs and shall not have any additional obligation in respect hereof;
 - (v) the Trustees are authorized to enter into relevant legal agreements, which in the case of the Carbon Asset Development Fund, refers to the Administration Agreements, Participation Agreements with each Seller and Buyer Participant and Grant Agreements, and in the case of the Carbon Fund, refers to Participation Agreements between the Trustee and each Seller and Buyer Participant and ERPAs with Seller Participants.
 - (vi) the Trustees are authorized to accept Contributions in the required amount from Donors in the case of the Carbon Asset Development Fund and Buyer Participants in the case of the Carbon Fund and the CADF. The Trustees shall use the Contributions and income earned from the investment of such Contributions pending disbursement solely for the purposes set out in this Instrument;

- (vii) the Trustees are authorized to perform all acts and enter into all contracts as they shall deem necessary or desirable to accomplish the purposes of the relevant Fund;
- (viii) the Trustees are authorized to invest Fund Property pending disbursement in such manner as they may decide and to use commonly accepted financial instruments to mitigate any foreign exchange risk. All the income from such investments shall be credited to, and used exclusively for the purposes of, the CADF. Any investment loss shall be debited to the Fund Property of the CADF. Without limiting the foregoing, the Trustees shall have the power to invest Fund Property in such securities, instruments and other obligations as are authorized investments for other trust fund assets maintained by the World Bank Group or retain Fund assets in cash; from time to time to change the investments of the assets of the Fund; and to exercise any and all rights, powers and privileges of ownership or interest in respect of any and all such investments of any kind and description, including, without limitation, the right to consent and otherwise act with respect thereto, with power to designate one or more individuals, firms, associations or corporations to exercise any of said rights, powers and privileges in respect of any of said instruments. The Trustees shall not be limited to investing in obligations maturing before the possible termination of the Facility, nor shall the Trustees be limited by any law limiting the investments which may be made by fiduciaries;
- (ix) to ensure the efficient operation of the Fund's cash management and investment transactions, the Trustees 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;
- (x) the Trustees shall have the power to incur and pay any costs or expenses which in their opinion are necessary or desirable to carry out any of the purposes of the Fund, and to make payments from Fund Property to themselves as Trustees to the extent provided in this Instrument;
- (xi) the Trustees shall have the power to collect all property due to the Fund and to pay all claims against Fund Property. The Trustees shall have the power to 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, and out of the Fund Property to pay or to satisfy any debts, claims or expenses incurred in connection therewith, including those of litigation, and such power shall include without limitation the power of the Trustees 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 the name of the Fund, whether or not the Facility or either Trustee may be

named individually therein or the subject matter arises by reason of business for or on behalf of the Fund;

- (xii) the Trustees shall have the power to: (A) employ or contract with such individuals or persons as they may deem desirable to conduct the business of the Funds; (B) enter into joint ventures, partnerships and any other combinations or associations; (C) subject to the terms of this Instrument, elect and remove such officers and appoint and terminate such agents or employees of the Facility as they consider appropriate; (D) purchase and pay for out of Fund Property, to the extent available on commercially reasonable terms, such insurance or similar mechanism as the Trustees deem desirable to protect them, the Bank, the Participants and any other individual or person entitled to indemnification by the Funds;
- (xiii) in addition, the Trustees shall be responsible for managing Buyers' Contributions, concluding ERPAs and any related agreements with the Partners of the Facility or the Donors, making advance payments, draw-downs and payments under ERPAs, monitoring ERPA implementation and maintaining an Emission Reduction reporting system;
- (xiv) the Trustees 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;
- (xv) the Trustees shall have the power to appoint the Facility Coordinator for the Facility and, if needed, a manager for one or more Tranches;
- (xvi) except as otherwise provided in this Instrument, the Trustees shall have the exclusive power to conduct the business of the Funds and carry on its operations wheresoever the Trustees deems necessary, proper or desirable in order to promote the interests of the Fund. Any determination made by either Trustee in good faith as to what is in the interests of the Fund shall be conclusive. In construing the provisions of this Instrument, the presumption shall be in favor of a grant of power to the Trustees. The enumeration of any specific power herein shall not be construed as limiting the aforesaid power. Such powers of the Trustees may be exercised without order of or resort to any court or other authority;
- (xvii) 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, 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;

- (xviii) any power, duty or discretion to be exercised by either Trustee pursuant to the terms of this Instrument shall, unless otherwise provided, be exercised by such Trustee in its sole discretion.

Section 13.2 Program Validation, Verification and Certification and Similar Acts under Different Legal Frameworks

- a) The Trustees shall communicate directly or indirectly by instructing the focal point with the CDM Executive Board, JI Supervisory Committee, or the Host Country regarding the issuance and/or transfer of any CERs, ERUs or AAUs and with any other relevant regulatory body in a different legal framework.
- b) The Trustees are 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, agreements for Validation, Verification, and Certification or any such act similar in a different legal framework.

Section 13.3 Administrative Services

The Trustees may from time to time contract with one or more persons (including with related persons such as the IBRD) for goods, services and personnel whereby such persons will provide to the Trustees or to the Fund, goods, services or administrative personnel on such terms and conditions as the Trustees may determine.

Section 13.4 Transfer of Emission Reductions

The Trustee of the Carbon Fund shall cause the transfer of Emissions Reductions to the Buyer Participants. The Trustee may from time to time:

- a) Engage one or more persons to act as registrar, transfer agent and/or custodian on behalf of the Fund in respect of Fund Property, instruments evidencing entitlement to Emission Reductions or other interests of the Participants, on such terms and conditions as the Trustee may determine; and
- b) 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.

Section 13.5 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 13.5(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 13.5(a) shall be:
 - (i) liable solely because of that relationship for any loss or expense to the Fund relating to that payment, transaction or contract; or
 - (ii) accountable for any profit realized directly or indirectly from that relationship.

CHAPTER VII

DEFAULT, WITHDRAWAL AND CONFLICT OF INTEREST

Article 14 Default

Section 14.1 Default in Implementation by Seller Participants

- (a) In addition to anything provided for in the World Bank's Standard Conditions for Grants Made by the World Bank Out of Various Funds, which are applicable to the Grant Agreement, if a Seller Participant ("**Defaulting Seller Participant**") fails to fulfill the obligations set out in the Seller Participation Agreement, Grant Agreement or the Emission Reductions Purchase Agreement, the Defaulting Seller Participant shall lose all of its rights and privileges set forth in this Instrument and its Seller Participation Agreement, including its eligibility to be a member of the Partnership Committee, until such time as the default has been remedied to the satisfaction of the Trustees. In the case that a Seller Participant is removed as a member of the Partnership Committee, it shall be replaced by another Seller Participant. In addition, in the case of any event of default by the Defaulting Seller Participant under subparagraph (a) above, the Trustee of the Carbon Asset Development Fund shall retain the right to seek recovery of the amount established by the Trustee as Program preparation costs for that Program.
- (b) If the Defaulting Seller Participant does not remedy the default to the satisfaction of the Trustee in accordance with the Seller Participation Agreement, it shall forthwith cease to be a Seller Participant in the Facility.

14.2 Default in Making Payments by Buyer Participants

- (a) If, after Demand of Payment or after a demand further to Section 7.3 (j) issued by the Trustee of the Carbon Fund, a Buyer Participant ("**Defaulting Buyer Participant**")
 - (i) fails to pay the whole or any part of an installment of its Contribution when due or fails to comply with the requirements for securing a payment in accordance with Section 7.3(j); and
 - (ii) such failure continues for ten (10) Business Days,

the Trustee of the Carbon Fund shall send a notice in writing to the Defaulting Buyer Participant, requiring such Defaulting Buyer Participant to remedy the default by making payment to the Trustee of the Carbon Fund within fifteen (15) Business Days of the date of the notice of the amount of such installment that the Defaulting Buyer Participant has failed to pay or by making a prepayment of the amount corresponding to the amount demanded by the Trustee of the Carbon Fund pursuant to Section 7.3(j).

- (b) If the Defaulting Buyer Participant fails to pay such amount in full:
 - (i) the Defaulting Buyer Participant shall forthwith cease to be a Buyer Participant in the Carbon Fund and the CADF;
 - (ii) subject to subparagraph (f) below, the rights of the Defaulting Buyer Participant in relation to the Facility shall be limited to those Emission Reductions for which it has made payment but has not received before occurrence of the default; and
 - (iii) the Trustee of the Carbon Fund shall so notify the other Buyer Participants in the Tranche in which the Defaulting Buyer Participant has failed to pay such amount.
- (c) Between thirty (30) and forty-five (45) Business Days following the notice issued under 14.2(a)(ii) any of the other Buyer Participants may notify the Trustee of the Carbon Fund that it intends to purchase the Defaulting Buyer Participant's interest in the Carbon Fund, for which it shall make payment to the Trustee of the Carbon Fund of the amount of the unpaid amount due to the Trustee of the Carbon Fund from the Defaulting Buyer Participant and increase its Contribution to the Carbon Fund to cover the remaining amount of the Contribution of the Defaulting Buyer Participant, for which the Trustee of the Carbon Fund has not drawn against the Promissory Note in accordance with Section 7.3, minus the CADF Charge of the Defaulting Buyer Participant.
- (d) If more than one Buyer Participant notifies the Trustee of the Carbon Fund of the intention to purchase the Defaulting Buyer Participant's interest in the Carbon Fund, the Trustee of the Carbon Fund shall allocate the Defaulting Buyer Participant's interest to those Buyer Participants pro rata to their Contribution to the Carbon Fund, or any other arrangement that may be agreed between and among the Trustee of the Carbon Fund and those interested Buyer Participants. Those Buyer Participants shall then make payments pursuant to subparagraph (a) above.
- (e) If no Buyer Participant notifies the Trustee of the Carbon Fund of such purchase, the Trustee of the Carbon Fund may arrange for a private sale of that interest to a person acceptable to the Trustee of the Carbon Fund. Any costs incurred by the Trustee of the Carbon Fund associated with arranging the sale or transfer of the Defaulting Buyer Participant's share shall be born by the Defaulting Buyer Participant.
- (f) If there is no sale of a Defaulting Buyer Participant's interest in the Carbon Fund within three (3) months of the date of the notice, the Defaulting Buyer Participant shall thereupon, without any further notice or action by the Trustee of the Carbon Fund, be deemed to have forfeited all of its rights and interest in the Carbon Fund

and the Facility, including, without limitation the right to receive Emission Reductions for which it has made payment but has not received before occurrence of the default, the CADF Charge that have not been committed by the Trustees or by the Bank, and the distribution of Tranche Property which it is, or would otherwise be, entitled to received.

Section 14.3 Default by Donors

Any event of default by a Donor shall be governed by the relevant Administration Agreement.

Article 15 Withdrawal

Section 15.1 Withdrawal by Seller Participants

- (a) A Seller Participant may, at any time, withdraw its participation in the Facility, provided at least three (3) months prior written notice is given to the Trustees.
- (b) Upon the withdrawal referred to in subparagraph (a) above, the Seller Participation Agreement and the right of the Seller Participant under the relevant Grant Agreement to receive the grant that has not been disbursed shall be terminated.
- (c) For the avoidance of doubt, the withdrawal shall not, in any manner, affect effectiveness, implementation and enforcement of the Emission Reductions Purchase Agreement already entered into between the Seller Participant and the Trustee of the Carbon Fund.

Section 15.2 Withdrawal by Buyers

- (a) A Buyer Participant may withdraw its participation in the Facility, provided at least three (3) months prior written notice is given to the Trustee of the Fund (“**Withdrawing Buyer Participant**”). Such withdrawal shall only be possible if no International Agreement is reached by June 30, 2011 and it shall not, in any manner, affect effectiveness, implementation and enforcement of the Programs already approved in accordance with Section 10.10 and of the Emission Reductions Purchase Agreement already entered into between the Program Entity and the Trustee of the Carbon Fund.
- (b) The Trustee of the Carbon Fund shall notify other Buyer Participants of the withdrawal within five (5) Business Days upon receipt of the notice. Between thirty (30) and forty-five (45) Business Days following such notice issued by the Trustee of the Carbon Fund, any of the other Buyer Participants may notify the Trustee that it intends to purchase the Withdrawing Buyer Participant’s interest in

the Carbon Fund, for which it shall increase its Contribution to the Carbon Fund to cover the remaining amount of the Contribution of the Withdrawing Buyer Participant, which the Trustee has not drawn against the promissory note in accordance with Section 7.3, including the CADF Charge returned to the Withdrawing Participant pursuant to sub-paragraph (d).

- (c) If more than one Buyer Participant notifies the Trustee of the Carbon Fund of the intention to purchase the Withdrawing Buyer Participant's interest in the Carbon Fund, the Trustee shall allocate the Withdrawing Buyer Participant's interest to those Buyer Participants pro rata to their Contributions to the Carbon Fund, or in such other way as is agreed between and among the Trustee of the Carbon Fund and those interested Buyer Participants. Those Buyer Participants shall then make payments in accordance with subparagraph (b) above. If there is a sale of a Withdrawing Buyer Participant's interest, Article 25 shall apply.
- (d) In the case of the Carbon Asset Development Fund, the Trustee of the Carbon Asset Development Fund shall return to the Withdrawing Buyer Participant on a pro rata basis any remaining balance of the CADF Charge that is not committed by the Trustee, including without limitation, with respect to approved Programs, executed Emission Reduction Purchase Agreements, Grant Agreements, incurred, committed and estimated costs and expenses in accordance with Section 18.3 and/or any agreement with any consultant or other third parties.
- (e) In case of the Carbon Fund, the Trustee of the Carbon Fund shall cancel any portion of the Withdrawing Buyer Participant's Contribution that has not been committed by the Trustee or the Bank, including without limitation, under Programs that have been included in the Tranche's portfolio further to consultation of the Buyer Participants in accordance with Section 10.10 and/or ERPA's.
- (f) In the event the Contribution committed by the Trustee of the Carbon Fund or the Bank includes the right to purchase Emission Reductions to be generated, the Trustee of the Carbon Fund shall, subject to any applicable restrictions under international law, national law or otherwise, including the International Rules, endeavor to make such arrangements as are necessary to effect a transfer of those rights to or to the order of the Withdrawing Buyer Participants entitled to them, but shall not have any liability to the Withdrawing Buyer Participants if it is unable to do so.

Section 15.3. Withdrawal by Donors

- (a) A Donor may, at any time, withdraw its participation in the Facility provided at least three (3) months prior written notice is given to the Trustee of the Carbon Asset Development Fund.

- (b) Upon such withdrawal referred to in subparagraph (a) above, the Administration Agreement shall terminate on the conditions set forth in the Administration Agreement.

Article 16 Conflicts of Interest

Section 16.1 Conflicts of Interest

- (a) If a Donor, a Partner or a Participant or that member's affiliate or employee, (i) is directly involved in the implementation of a CADF Grant, (ii) is a Seller Participant whose Programs are being discussed by the Facility or (iii) is a Buyer Participant involved in the preparation or implementation of a specific Program, that Member of the Facility shall fully disclose such involvement or interest to the Facility Coordinator. Furthermore, a Participant, Partner or Donor that participates, or that has affiliates or employees which participate individually and/or collectively, in funds or other investment vehicles having objectives and policies similar to those of the CPF which, as a result, may compete with the CPF for investment opportunities, supplies of raw materials, government franchises, customers or otherwise ("**Other Ventures**"), or a Participant, Partner or Donor or its respective affiliate or employee which has another interest in a Program being submitted to the Facility, shall fully disclose such involvement or interest to the Facility Coordinator.
- (b) If the Facility Coordinator determines that the involvement or interest described in Section 16.1(a) above is such that the Participant's representative should not participate in any deliberations on a Program subject to this conflict or potential conflict of interest, it shall advise the disclosing Participant to recuse itself from the deliberations with respect to that Program or any discussions or decisions related to such involvement or interest. If the Participant disagrees with the Facility Coordinator's determination, it shall advise the Partnership Committee of the conflict or potential conflict, and the Partnership Committee (excluding the disclosing Participant) will decide whether such Participant's representative should be permitted to participate in the deliberations on the Program concerned. The failure of a Participant to disclose such involvement or interest in an underlying Program or Other Venture in a timely manner will constitute a breach of this Instrument by such Participant, and the Facility Coordinator shall determine what remedies to exercise after consultation with the other Participants.
- (c) A Seller Participant which is a member of the Partnership Committee shall recuse himself or herself from taking part in any deliberations related to its own activities undertaken pursuant to relevant provisions of this Instrument.

Section 16.2 Non-Competition by Participants, Donors and Partners

The Participants, Donors and Partners agree that, following the provision of information on a proposed Program of the CPF to them, they will not, together or individually and as

far as the amount of Emission Reductions is concerned that is to be generated by the Program and to be sold to the Trustee of the Carbon Fund in accordance with the Seller Participation Agreement, commence any discussions or negotiations with the relevant Program Entity or any shareholder of the Program Entity regarding the purchase of such amount of Emission Reductions and will not enter into an agreement with any other person regarding the dealing in or sale of such amount of Emission Reductions as a result of any such discussions or negotiations until the expiration of the exclusivity period agreed upon in the Seller Participation Agreement between the Trustee of the Carbon Fund and the Program Entity, except with the Trustee's prior written consent

CHAPTER VIII

REPORTING AND EVALUATION

Article 17 Reporting

Section 17.1 Annual Progress Reports

No later than fourteen (14) days prior to each Annual Meeting, the Facility Coordinator will provide annual progress reports to Participants, Donors and Partners regarding the activities of the Facility for the previous Fiscal Year.

Section 17.2 Other Documentation

Subject to compliance with the Bank's Policy on Disclosure of Information, the Facility Coordinator shall make the following documents available to the Participants, Donors and Partners and to the public:

- (a) Grant Agreements, reports on implementation of Grant Agreements and any other information submitted by Seller Participants;
- (b) Reports and conclusions of the Partnership Committee, including, subject to the consent of the Partnership Committee, the Pricing Approach;
- (c) Information on Programs;
- (d) Findings and advice from any ad hoc advisory committee established under the Facility;
- (e) Information on good practices and lessons of experience learned through operation of the Facility; and
- (f) Any other information as deemed appropriate by the Facility Coordinator.

CHAPTER IX

FINANCIAL MATTERS

Article 18 Currency, Financial Statements and Costs and Expenses

Section 18.1 Currency

- (a) The Carbon Asset Development Fund shall be denominated in United States Dollars and the First Tranche of the Carbon Fund and the Prepaid Contribution Fund shall be denominated in Euro (€) (“**Holding Currency**”).
- (b) Notwithstanding the foregoing, the Trustees may, at its discretion, establish accounts under the Funds denominated in a currency other than the Holding Currency.
- (c) The Trustees shall decide the Holding Currency for every new Tranche prior to the opening of a new Tranche.

Section 18.2 Financial Statements

- (a) The Trustee shall maintain separate record and ledger accounts in respect of the Carbon Asset Development Fund and each tranche of the Carbon Fund.
- (b) The financial information relating to receipts, disbursements and fund balance in the holding currency of the Fund shall be made available by the Trustee to the Participants via the World Bank’s Trust Funds Donor Center secure website.
- (c) The Trustee shall provide to the Participants, within six (6) months following the end of each Bank fiscal year, the annual single audit, comprising (i) a management assertion together with an attestation from the World Bank’s external auditors concerning the adequacy of internal control over cash-based financial reporting for trust funds as a whole; and (ii) a combined financial statement for all trust funds together with the World Bank’s external auditor’s opinion thereon. The cost of the single audit shall be borne by the World Bank.
- (d) If one or more Participant(s) wish(es) to request, on an exceptional basis, a financial statement audit by the World Bank’s external auditors of the Fund, the Participant(s) and the Trustee shall first consult as to whether such an external audit is necessary, because the Trustee has observed that in some instances, the Participants’ concerns may best be addressed by undertaking other types of reviews (e.g., testing of specific transactions, limited detailed compliance testing) which may not necessarily be covered as part of a financial statement audit. In addition, the purpose of such consultation is to ensure that the costs of any such audits or other reviews are minimized while achieving the desired objectives, as the costs of any such audits / reviews, including the internal costs

of the Trustee with respect to such audit, shall be paid for by the requesting Participant(s). The Trustee will arrange for a financial statement audit / review once the requesting Participant(s) and Trustee have reached agreement upon its scope and such Participant(s) has (have) accepted to pay for such costs.

Section 18.3 Costs and Expenses

- (a) The Trustee of the CADF may use CADF property to pay or reimburse itself or any other person for costs and expenses incurred in the development, implementation and supervision of Programs and the general administration of the Facility, including but not limited to:
 - (i) management of the Facility including Program portfolio, ERPA's, expenses associated with demands for payment; accounting and reporting; external audits; costs of ongoing Program supervision and Emission Reduction verification or accounting for carbon assets received and distributed,
 - (ii) costs of office space and facilities, office moves, equipment and supplies and services, including, without limitation, the cost of utility services;
 - (iii) communication expenses, including, without limitation, mailing, telephone, video conferences, couriers, diplomatic pouch, and facsimile expenses salaries, benefits, travel, accommodation and subsistence, representation and hospitality expenses of all personnel performing services in respect of the Facility;
 - (iv) costs in connection to application of the Bank's relevant Operational Policies and Procedures; expenses for documentary and other relevant requirements, including fees relating to the UNFCCC regime or any other regime, and any verification or other processes; any payments required by the UNFCCC regime or any other regulatory bodies; any compensation and expenses of any consultant, agent, adviser, intermediary, contractor or subcontractor engaged by the Trustee;
 - (v) costs of any insurance policies, financial transactions and any other financial and risk management instruments, obtained in connection with, or on behalf of, the Facility, Participants or other persons; costs of legal, accounting, treasury, auditing and other professional services including support services provided by the Bank;

- (vi) costs associated with public relations and representation costs; cost of contract printing, publishing costs, internet web site development and maintenance, printing supplies, publication distribution, press conferences, trade shows and expositions, all Facility meeting expenses including facility and equipment hire, interpretation and translation expense, costs associated with communication with the media, including education and training of the media, cost of advertising, publicity and cost of marketing CPF to future tranche Participants and others; and
 - (vii) expenses incurred or arising from any other activities not mentioned above, which the Trustee deems are in furtherance of the goals and objectives of the Carbon Partnership Facility.
- (b) In order to minimize administration expenses and simplify recovery of costs and expenses that are considered 'overhead' in nature, the Trustee of the CADF shall utilize standardized overhead cost recovery rates based on a suitable cost driver as determined by the Trustee from time to time. Wherever possible the Trustee of the CADF shall use the standard Bank cost recovery methodologies, recovery rates and cost allocation systems and chargeback mechanisms to simplify and assure efficiency in cost recovery processes.
- (c) The Trustees may use the Funds' Property to pay or reimburse themselves or any other person for costs and expenses incurred or arising from any action, suit, proceeding, dispute, claim or demand or any default or potential default by any party under the ERPAs or in any way relating to any ERPAs.

CHAPTER X

INDEMNIFICATION

Article 19 Indemnification

Section 19.1 Indemnification of Facility Coordinator, Trustees and Bank

- (a) The privileges and immunities accorded to the Bank shall apply to the Funds Property, archives, operations and transactions of the Facility. Nothing in this Instrument shall be considered to be a waiver of any privileges and immunities of the Facility Coordinator, the Trustees, 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 Facility Coordinator, the Bank, and any person who is, or has been, an officer, employee or agent of the Bank or the Facility Coordinator (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 (or in respect of any act or omission of a delegate or agent of the Facility Coordinator, the Bank or the Facility) arising out of or in connection with the Facility’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 Buyer Participants Emission Reductions), except as may result from the Indemnified Party’s gross negligence or willful misconduct.
- (c) Section 19.1(b) shall apply to the respective Trustees except indemnification of each Trustee is limited to the Fund Property of the respective Fund.
- (d) This indemnity is in addition to any indemnity permitted by law.

Section 19.2 No Personal Liability

- (a) Neither the Trustees, the Bank, the Buyer Participants nor the Donors nor any of their officers, employees or agents shall be subject to any personal liability whatsoever to any third party in connection with the activities of the Funds, and all such third parties shall look solely to the Fund Property for satisfaction of claims of any nature arising in connection with Funds’ activities.
- (b) Every written obligation, contract, instrument, certificate or undertaking made or issued by either Trustee shall state that it is executed or made by the Trustee not personally or in its individual capacity, but as Trustee of the relevant Fund under this Instrument, and that the obligations of the Trustee under any such instrument are not binding upon the Bank, or any of the Participants, personally or in their

respective individual capacities, but bind only the relevant Fund and may contain any further recital which the Trustee may deem appropriate. The omission of any recital in any obligation, contract, instrument, certificate or undertaking, shall not affect the validity of that obligation, contract, instrument, certificate or undertaking, and neither such recital nor such omission shall operate to bind or obligate the IBRD, the Buyer Participants or the Donors personally or in their respective individual capacities.

- (c) The liability of the Facility Coordinator and the Bank is limited to the Trustees' ability to be indemnified from the Fund Property.
- (d) The liability of a Donor or a Buyer Participant, as the case may be, is limited to the amount, if any, which remains unpaid in relation to the relevant Administration Agreement or Buyer Participation Agreement, respectively.

Section 19.3 No Duty of Investigation

No individual or person dealing with the Facility Coordinator, Trustees or any officer, employee or agent of the Facility Coordinator, Trustees or the Facility shall be bound to make any inquiry concerning the validity of any transaction purported to be made by the Facility Coordinator, the relevant 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 Facility Coordinator, Trustees 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 Facility, 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 Trustees or the Facility.

Section 19.4 Reliance on Experts

The Facility Coordinator, Trustees and each officer and employee of the Trustees or the Facility (together "**Relevant Bank Staff**") 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 Facility, upon an opinion of counsel, or upon reports made to the Facility by any of its officers or employees or by any accountant, auditor, appraiser or other expert or consultant selected with reasonable care by the Relevant Bank Staff.

CHAPTER XI

DISTRIBUTION AND APPROVAL

Article 20 Distribution, Approval and Authorization

Section 20.1. Adaptability to the Requirements of the International Rules

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

Section 20.2. Statements of Accounts

- a) The Trustee of the Carbon Fund shall produce periodic statements of account confirming the Emission Reductions to which a Buyer Participant is entitled.
- b) Any statement provided under Section 20.2(a) will reflect the Trustee of the Carbon Fund's records indicating the total Emission Reductions to which the Buyer Participants are entitled and the Buyer Participant's pro rata share thereof.

Section 20.3 Distributions from Tranches

Buyer Participants in a Tranche shall only be entitled to receive distributions of Emission Reductions purchased using the Contributions allocated to that Tranche. The Trustee of the Carbon Fund shall maintain a separate account of the Emission Reductions accruing to the Buyer Participants.

CHAPTER XII

AMENDMENT, DURATION AND TERMINATION

Article 21 Amendment

Section 21.1 Amendment Procedure

- (a) Subject to Section 21.1(b) below, this Instrument may only be amended by the Bank with the prior unanimous consent of the Buyer Participants and Seller Participants.
- (b) Notwithstanding subparagraph (a) above, the Bank may amend this Instrument:
 - (i) without prior notice to or consent from any Participant if such amendment is to supply any omission, or cure, correct or supplement any manifest error or ambiguous, defective or inconsistent provision hereof; or
 - (ii) if, for any other purpose, such amendment does not adversely affect the rights of any Participant;

provided in any case that all Participants are notified of any such amendment within fifteen (15) Business Days after the effective date of such amendment.

Article 22 Termination

Section 22.1 Dates of Termination of the Tranches of the Carbon Fund, the Funds and the Facility

- (a) Subject to Sections 22.2 and 22.3, the Carbon Asset Development Fund and the Carbon Fund, respectively, shall be terminated on December 31, 2038, and the Facility shall be terminated upon termination of both Funds, unless otherwise decided by the Buyer Participants, Donors and those Seller Participants that have entered into ERPAs with the Trustee of the Carbon Fund, subject to consent of the Bank.
- (b) Each Tranche of the Carbon Fund shall terminate after the final date for the full disbursement of Tranche Property established by the Trustee in accordance with Section 4.2(c). The final date for the disbursement of the First Tranche's Property is the date set out under Section 4.2(a).

Section 22.2 Early Termination of the Facility

Notwithstanding the provisions of Section 22.1, the Facility shall terminate upon the early termination of the Funds.

Section 22.3 Early Termination of the Carbon Asset Development Fund

Notwithstanding anything in Section 22.1 and 22.2, the Carbon Asset Development Fund shall terminate upon the occurrence of one or more of the following, whichever shall be the earliest:

- (a) By termination of the Carbon Fund;
- (b) By unanimous vote of all the Donors, all Buyer Participants and those Seller Participants that have entered into ERPAs with the Trustee of the Carbon Fund; or
- (c) Resignation of the Bank as the Trustee of the Carbon Asset Development Fund, unless a successor Trustee has been appointed and accepted its appointment in accordance with Section 25.2.

Section 22.4 Early Termination of the Carbon Fund

Notwithstanding anything in Section 22.1 and 22.2, the Carbon Fund shall terminate upon the occurrence of one or more of the following, whichever shall be the earliest:

- (a) By termination of the Carbon Asset Development Fund;
- (b) By unanimous vote of all the Buyer Participants; or
- (c) Resignation of the Bank as the Trustee of the Carbon Fund, unless a successor Trustee has been appointed and accepted its appointment in accordance with Section 25.2.

Section 22.5 Effect of Early Termination of a Fund

In the event of termination of the Funds, pursuant to Section 22.3 or Section 22.4, Article 24 will apply to the winding up and management of the Funds Property.

Article 23 Extension of Term

Section 23.1 Extension of Term for the Facility

On or before termination of the Facility, the Participants may decide to continue the business of the Facility by unanimous vote of all the Participants, provided that, the Trustee will continue to serve as Trustee of the Carbon Asset Development Fund and/or the Carbon Fund, as the case maybe, only if the Bank has expressly agreed to the extension and to the terms of such extension.

Section 23.2 Extension of Term for the Carbon Asset Development Fund and Carbon Fund

- (a) Notwithstanding Section 23.1, the Donors, the Buyer Participants and the Seller Participants, by unanimous consensus of those members, may decide to continue

the business of the Carbon Asset Development Fund and the Carbon Fund, in which case this Instrument shall be amended by unanimous consent of these members.

- (b) Provided that the Bank will continue to serve as Trustee of the Carbon Asset Development Fund and the Carbon Fund only if the Bank has expressly agreed to the extension and to the terms of such extension.

Article 24 Post-Termination

- (a) Following the termination of the Facility or one of the Tranches of the Carbon Fund or one of the Funds in the Facility under Article 22:
 - (i) the Trustee for the respective Fund shall carry on no business for the Tranche or the Fund except for the purpose of winding up its affairs;
 - (ii) the Trustee shall proceed to wind up the affairs of the respective Tranche or 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) in the case of the Carbon Asset Development Fund, the Trustee of the Carbon Asset Development Fund shall, upon termination of the Fund, return to the Donors and to the Buyer Participants respectively, on a pro rata basis any remaining balance of the Contributions of the Donors and of the CADF Charges that is not committed by the Trustee of the Carbon Asset Development Fund or the Bank, including without limitation, with respect to approved Programs, executed Emission Reduction Purchase Agreements, Grant Agreements, incurred, committed and estimated costs and expenses in accordance with Section 18.3 and/or any agreement with any consultant or other third parties.
 - (iv) any Grant Agreement that is effective at the time of the termination of the Carbon Asset Development Fund shall continue to be effective in accordance with the provisions of such Grant Agreement, the Administration Agreements and the World Bank Standard Conditions for Grants Made by the World Bank Out of Various Funds.
 - (v) in the case of the Carbon Fund or of one of the Tranches, after paying or adequately providing for the payment of all liabilities under ERPA's, and upon receipt of such releases by the Program Entity, indemnities and refunding agreements as it may deem necessary for its own protection, the Trustee of the Carbon Fund shall distribute the remaining Fund or Tranche Property in cash or in kind, or a combination of both, among the relevant Buyer Participants on a pro rata basis; and

- (vi) notwithstanding subparagraph (v) above, in the event the remaining Fund Property includes the right to purchase Emission Reductions to be generated after the termination date of the Carbon Fund, the Trustee of the Carbon Fund shall, subject to any applicable restrictions under international law, national law or otherwise, including the International Rules, endeavor to make such arrangements as are necessary to effect a transfer of those rights to or to the order of the Buyer Participants entitled to them, including Withdrawing Buyer Participants, but shall not have any liability to the Buyer Participants if it is unable to do so.
- (b) Any rights, interests or entitlements to be transferred under Section 24(a) may be assigned in writing by the Donor or the Buyer Participant as the case may be, 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 relevant Participant or Donor entitled to them, but will not be liable to these Participants or Donors if it is unable to do so.

Article 25 Novation and Resignation by the Trustees

Section 25.1. Novation

A Buyer Participant may novate all, but not part, of its interest in the Carbon Fund or any of its rights under the Buyer Participation Agreement or this Instrument to a third Eligible Buyer Participant (“**New Party**”) with the prior written consent of the Trustee of the Carbon Fund, such consent not to be unreasonably withheld, provided that the New Party agrees, in form and substance acceptable to the Trustee of the Carbon Fund, to be bound by:

- (a) The terms of this Instrument; and
- (b) The Buyer Participation Agreement entered into between the Trustee of the Carbon Fund and the New Party.

Section 25.2. Resignation by the Trustees

The World Bank may resign as Trustee of the Carbon Fund, as Trustee of the CADF or both at any given time at its own discretion and such resignation shall become effective thirty (30) days after notice in writing by the Trustee to the Members of the Facility. The Buyer Participants may unanimously decide to appoint a third party that shall become a successor trustee for the Carbon Fund and the Buyer Participants and the Donors may unanimously decide to appoint a third party that shall become a successor trustee for the CADF upon acceptance of such appointment. Every successor trustee appointed hereunder shall execute, acknowledge and deliver to the Members of the Facility and to the Trustees of the Funds an instrument accepting such appointment and thereupon such successor trustee shall become vested with all the rights, powers, trusts and duties of the retiring Trustee or Trustees.

CHAPTER XIII

DISPUTES, DELAYS AND DISCLOSURE

Article 26 Disputes and Claims

Section 26.1 Trustee Withdrawal from Dispute or Claim

- (a) In order to avoid any potential conflict of interest between the Bank and the Trustee of the Carbon Fund or any Seller Participant, and notwithstanding any other provision of this Instrument, the Trustee of the Carbon Fund 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 any party under ERPAs (collectively a “**Dispute**”) in any way relating to any ERPA.
- (b) If the Trustee of the Carbon Fund determines that it will refrain from taking any such action, the Trustee shall so notify the Buyer Participants, and the Trustee of the Carbon Fund 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 of the Carbon Fund’s rights and obligations under the relevant ERPA to the Buyer Participant, or to a third party acting on their behalf.
- (c) The Trustee of the Carbon Fund shall have no liability to the Buyer Participants as a result of the Trustee of the Carbon Fund’s determination to refrain from taking any such action in respect of a dispute or as a result of the failure of the Trustee of the Carbon Fund and the Buyer Participants to reach such satisfactory arrangements in a timely manner or otherwise.
- (d) In the case of a Dispute, the Bank, in its role as Trustee for the Carbon Asset Development Fund and the Carbon Fund, may transfer the rights and obligations under any legal agreements signed by the Trustee in relation to the carbon asset to a third party acting on behalf of Buyer Participants and/or Seller Participants in the Facility

Article 27 Arbitration

Section 27.1 Arbitration

- (a) Any dispute between the relevant Trustee of one or both Funds 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 27.2 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 relevant 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.

Article 28 Disclosure

Section 28.1 Disclosure of Agreements

The Trustees of the Funds may disclose this Instrument, any Participation Agreement, any other agreements entered into by the Bank as Trustee of the relevant Fund and information with respect to the Funds in accordance with the Bank's Policy on the Disclosure of Information.

SCHEDULE 1

First Tranche Portfolio and Program Selection Criteria

A. Portfolio Criteria

When selecting Programs, the Trustee of the Carbon Fund shall apply the following Portfolio Criteria:

- Trustee will strive for a technologically diverse portfolio of programs
- Trustee will strive for a geographically diverse portfolio of programs
- No more than 20% of funds of the First Tranche would be committed to any one Program
- No funds of the First Tranche would be committed to purchase of AAUs unless otherwise agreed by the Trustee with the Buyer Participants
- No more than 25% of the aggregate ERPA value in the Portfolio would be committed to advance payments.

B. Program Selection Criteria

The Trustee shall select Programs that:

- a) are consistent with UNFCCC and/or the Kyoto Protocol, and/or any future agreement under the UNFCCC, and/or any other regime as deemed appropriate by the Trustee in consultation with the Participants;
- b) have manageable technological risk; technology or technologies to be used in a Program should be commercially available or demonstrated or at an advanced stage of development;
- c) have projected Emission Reductions over the life of the Program that are predictable and involve an acceptable level of uncertainty.
- d) fit one or more of the following categories:
 - (i) energy generation, transmission and distribution, including but not limited to renewable sources (including biomass, biogas, wind, geothermal, photovoltaic and solar thermal), fuel switch, and coalmine/coal-bed methane;
 - (ii) energy efficiency measures, including but not limited to industrial processes (e.g. steel, cement), buildings and lighting, district heating, refrigeration/air conditioning, rehabilitation/re-powering of power plants, efficient gas and coal technologies, and

optimization of energy systems, e.g. using optimization models and management techniques

- (iii) management and treatment of municipal, industrial and agricultural wastes, including but not limited to landfill gas recovery/utilization, composting, recycling, biodigestors, wastewater management
- (iv) activities in the oil and gas sector that promote efficient production and use of oil and gas, including but not limited to flared gas reduction, reduction of technical losses in transmission and distribution systems, improved efficiency in distillation processes
- (v) transportation activities, including and not limited to fuel switch, modal switch and improved transportation infrastructure
- (vi) cross-sectoral and other thematic programs, including but not limited to urban development (e.g., a city wide program), rural development, and integrated industrial development programs (e.g. industrial zones/parks)
- (vii) other types of activities based on consultations the Trustee would conduct with the First Tranche Buyer Participants prior to approving the relevant Program Idea Note.

For the avoidance of doubt, given the current specific treatment of hydro power CDM and JI project activities in the EU ETS, and taking into account any evolution in the treatment of such activities in the EU ETS or under other regulations, the Trustee shall only review Program Idea Notes on a hydro power Program further to consultations with the Buyer Participants in the relevant Tranche.