



A Carbon Finance Product of the World Bank

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**International Bank for  
Reconstruction and  
Development**

**Instrument Establishing**

**The Community  
Development Carbon Fund**

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# INSTRUMENT ESTABLISHING THE COMMUNITY DEVELOPMENT CARBON FUND

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**WHEREAS:**

- (A) The International Bank for Reconstruction and Development (the “**Bank**”) desires to promote Small-Scale Projects that will improve the welfare of Local Communities in Developing Countries including in particular, the Least Developed Countries while providing a global environmental benefit.
- (B) In furtherance of that objective, the Bank desires to establish the Community Development Carbon Fund (the “**Fund**”), through which Participants will provide resources to Projects which are intended to deliver measurable benefits to communities and their local environments as well as generate greenhouse gas emission reductions likely to be recognized under the United Nations Framework Convention on Climate Change and its Kyoto Protocol.
- (C) The Greenhouse Gas Emission Reductions generated by a Project will be transferred to the Participants, thereby assisting them in satisfying their obligations under the United Nations Framework Convention on Climate Change, the Kyoto Protocol, related international agreements and domestic legislation.
- (D) The Bank has three strategic objectives in establishing the Fund:
  - i) To provide funding through emission reduction transactions in order to facilitate the generation of Greenhouse Gas Emission Reductions from Small-Scale Projects which reduce poverty and improve the quality of life of Local Communities in Developing Countries including in particular, the Least Developed Countries, and which are likely to be recognized under the Clean Development Mechanism established under Article 12 of the Kyoto Protocol as well as other emerging mandatory and voluntary greenhouse gas market mechanisms;
  - ii) To stimulate private capital flows for sustainable development in accordance with the Plan of Implementation concluded at the Johannesburg World Summit for Sustainable Development, and in doing so, to help build a market for the Emission Reductions generated and expand the reach of carbon finance and the Clean Development Mechanism to Developing Countries which would otherwise be potentially excluded from the benefits of the emerging carbon market; and
  - iii) To disseminate broadly the knowledge gained by the Trustee in the development of the Fund and the implementation of Projects;
- (E) The Bank is prepared to establish and administer the Community Development Carbon Fund on the terms and conditions set out below.

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

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## ARTICLE I

# DEFINITIONS

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### Section 1.1. Definitions

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

- 1) “**Additional Contributions**” means contributions elected to be made by a Participant pursuant to Section 5.1(c);
- 2) “**Additional Participant**” means a Participant who signs a Participation Agreement to participate in a Tranche after the Operational Date of that Tranche;
- 3) “**Advisory Group**” means the committee established pursuant to Article VIII;
- 4) “**Advisory Group Observer**” means a person nominated as an observer to the Participants’ Meetings by the Advisory Group pursuant to Section 8.1(b)(ii);
- 5) “**Allocation Phase**” means the process of allocating the capital of a Tranche to Projects pursuant to the terms of this Instrument and the Project Selection and Project Portfolio criteria for that Tranche;
- 6) “**Annex I**” means Annex I of the UNFCCC;
- 7) “**Annex I Countries**” means the countries listed in Annex I of the UNFCCC and, when appropriate, in Annex B of the Kyoto Protocol;
- 8) “**Annual Meeting**” means a meeting of Participants held pursuant to Section 6.1;
- 9) “**Annual Progress Report**” means a written report issued by the Trustee to the Participants pursuant to Section 11.1;
- 10) “**Annual Review**” means a document of that name issued by the Advisory Group pursuant to Section 8.1(b)(i) and publicly available;
- 11) “**Association**” means the International Development Association, a member of the World Bank Group;
- 12) “**Baseline**” means the scenario that reasonably presents the anthropogenic emissions by sources or anthropogenic removals by sinks of greenhouse gases that would occur in the absence of the proposed Project;
- 13) “**Board**” means the Bank’s Board of Executive Directors;
- 14) “**Borrowing Member Country**” means a country currently eligible to borrow money from the IBRD;

- 15) “**Carbon Finance Unit**” means the unit of that name established by the IBRD for the purposes of managing the Fund or other similar funds, or its successor;
- 16) “**Catch-Up Payment**” means an amount payable under Section 5.3;
- 17) “**CDM Executive Board**” means the committee of that name established pursuant to the Kyoto Protocol to the UNFCCC to supervise and monitor the implementation of Article 12 of the Kyoto Protocol, or its successor;
- 18) “**CDM Project**” means a Project developed in compliance with the international rules, regulations and procedures governing Article 12 of the Kyoto Protocol;
- 19) “**Certification**” means, in relation to:
  - (i) Emission Reductions – the written assurance by an Independent Third Party or Operational Entity that, during a specific time period, a Project achieved the anthropogenic reductions in emissions by sources or the anthropogenic removals of greenhouse gases by sinks as certified; and
  - (ii) Local Community Benefits – the written assurance by an Independent Third Party or Operational Entity that the Local Community Benefits identified in the Project Agreement were achieved in accordance with the terms of that agreement;
- 20) “**Clean Development Mechanism**” or “**CDM**” means the mechanism defined in Article 12 of the Kyoto Protocol that provides for the transfer of Certified Emission Reductions from non-Annex I Countries to Annex I Countries;
- 21) “**Closing Date**” of a Tranche means the date declared by the Trustee to be the last date on which it will receive Participation Agreements for that Tranche;
- 22) “**Contribution**” for any Participant means the Minimum Contribution plus any Additional Contributions;
- 23) “**COP/MOP**” means the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol;
- 24) “**Developing Countries**” means those Borrowing Member Countries not listed in Annex I of the UNFCCC;
- 25) “**Eligible Private Sector Participant**” means any person, other than an Eligible Public Sector Participant, organized in a country Party to the UNFCCC and whose participation in the Fund has been approved by the Trustee;
- 26) “**Eligible Public Sector Participant**” means any government, agency, ministry or other official entity of a country Party to the UNFCCC and whose participation in the Fund has been approved by the Trustee;
- 27) “**Emission Reductions**” means the GHG Reductions achieved by a Project and verified by an Independent Third Party or an Operational Entity as meeting a set of

standards consistent with those contained in the regulatory framework of the UNFCCC and/or the Kyoto Protocol;

- 28) “**Emission Reduction Purchase Agreement**” means an agreement between the IBRD as Trustee for the Fund, and a Project Entity governing the purchase and sale of Emission Reductions;
- 29) “**Fiscal Year**” means the fiscal year of the IBRD;
- 30) “**Fund Manager**” means the IBRD staff member selected by the President of the IBRD to head the Carbon Finance Unit;
- 31) “**Fund Property**” means all of the property contributed to all of the Tranches of the Fund, including all Tranche Property;
- 32) “**GHG Reductions**” means the reduction or removal of GHG emissions which are additional to the Baseline determined for a Project;
- 33) “**Greenhouse Gases**” or “**GHG**” means the gases listed in Annex A of the Kyoto Protocol;
- 34) “**Host Country**” means a Borrowing Member Country in which a Project is located;
- 35) “**Host Country Agreement**” means an agreement entered into between the Trustee and a Host Country;
- 36) “**Host Country Committee**” means the committee known as the Carbon Finance Host Country Committee established by the IBRD for the purposes of facilitating interaction between the Host Countries and the IBRD in relation to the development and operation of CDM projects, or its successor;
- 37) “**Host Country Observer**” means a member of the Host Country Committee who is elected to serve as a non-voting observer at a Participants’ Meeting or a Participants’ Committee Meeting;
- 38) “**Independent Third Party**” means a properly qualified entity, such as an environmental auditing company, which is independent from the Trustee, the Host Country, and the Project Entity, and was not previously employed on Project related activities;
- 39) “**Instrument**” means this Instrument establishing the Community Development Carbon Fund;
- 40) “**International Emissions Trading Association**” or “**IETA**” means the organization of that name or its successor;
- 41) “**Johannesburg Plan of Implementation**” means the plan adopted at the World Summit for Sustainable Development in Johannesburg, South Africa on September 4 2002;

- 42) “**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;
- 43) “**Least Developed Countries**” means a country eligible to receive funding from the Association;
- 44) “**Local Community**” means the group of people in a Least Developed Country or the poorer areas of a Developing Country who are identified by the Trustee and the Project Entity as in the vicinity of, or affected by the Project;
- 45) “**Local Community Benefits**” means identifiable and quantifiable improvements in the quality of life of Local Communities;
- 46) “**Minimum Contribution**” means the minimum amount specified by the Trustee on the opening of a Tranche to be payable by a Participant wishing to participate in that Tranche;
- 47) “**Monitoring**” means activities pursuant to which the Project Entity or another person collects and records data which assess the GHG Reductions resulting from a Project pursuant to the terms of the monitoring plan for that Project;
- 48) “**NGO Community**” means any one or more non governmental organizations accredited by the UNFCCC as official non governmental organizations for the purposes of observing the COP/MOPs;
- 49) “**Opening Date**” of a Tranche means the date declared by the Trustee to be the first date on which Participants may submit Participation Agreements for that Tranche;
- 50) “**Operational Date**” of a Tranche means the date declared by the Trustee to be the date on which that Tranche commences operation;
- 51) “**Operational Entity**” means an organization accredited as such by the CDM Executive Board;
- 52) “**Organizational Meeting**” for any Tranche means a meeting of the Participants in that Tranche held pursuant to Section 6.2;
- 53) “**Participant**” means any Eligible Private Sector Participant or Eligible Public Sector Participant that has signed a Participation Agreement, or any assignee thereof pursuant to the terms of this Instrument;
- 54) “**Participant Observer**” means a Participant elected pursuant to 6.1(b)(iv)(B) and to Section 6.2(d);
- 55) “**Participants’ Committee**” means a committee described in Article VII of this Instrument;

- 56) **“Participants’ Meeting”** means any one or more of the meetings convened pursuant to Article VI;
- 57) **“Participation Agreement”** means an agreement between a Participant and the Trustee with respect to the Participant’s contribution to, and participation in, the Fund;
- 58) **“Person”** means and includes individuals, corporations, partnerships, trusts, unincorporated associations, unincorporated organizations, joint ventures and other entities, and governments and agencies and political subdivisions thereof;
- 59) **“Private Sector”** means any business, company or organization other than those categorized as Public Sector, organized in a country Party to the UNFCCC;
- 60) **“Private Sector Participant”** means a Participant that is a person, other than a Public Sector Participant, organized in a country Party to the UNFCCC;
- 61) **“Project”** means an activity for which the Trustee has agreed to or intends to agree to provide resources, in the form of the purchase of Emission Reductions, to Recipients under an Emission Reduction Purchase Agreement;
- 62) **“Project Agreement(s)”** means a Host Country Agreement and/or an Emission Reduction Purchase Agreement;
- 63) **“Project Entity”** means one or more persons with which the Trustee has entered into or intends to enter into an Emission Reduction Purchase Agreement;
- 64) **“Project Portfolio”** for a Tranche means the series of Projects to which that Tranche is contributing capital;
- 65) **“Project Portfolio Criteria”** for a Tranche means the criteria specified by the Trustee as the basis for the overall allocation of resources of that Tranche, including at a minimum, the criteria set out in Schedule 1;
- 66) **“Project Selection Criteria”** for a Tranche means the criteria specified by the Trustee as the basis for selecting Projects for the possible allocation of resources from that Tranche, including at a minimum, the criteria set out in Schedule 1;
- 67) **“Public Sector”** means any government, agency, ministry or other official entity of a country Party to the UNFCCC;
- 68) **“Public Sector Participant”** means a Participant that is a government, agency, ministry or other official entity of a country Party to the UNFCCC;
- 69) **“Recipient(s)”** means a Host Country, a Local Community or a Host Country and a Project Entity;
- 70) **“Resolution Date”** means the date of the resolution of the Board of Executive Directors of the IBRD approving the establishment of the Fund;

- 71) “**Semi-Annual Progress Report**” means a report of that name issued by the Trustee to the Participants pursuant to Section 11.2(a);
- 72) “**Small-Scale Project**” means a project which is compatible with the definition of “small-scale CDM project activities” set out in decision 17/CP.7. of the Conference of Parties to the UNFCCC;
- 73) “**Special Meeting**” means a meeting convened pursuant to Section 6.3;
- 74) “**Successor**” means the leading international representative organization on emissions trading as determined by the Trustee for so long as the Trustee determines that one such organization exists;
- 75) “**Technical Assistance Fund**” means a fund or funds established in parallel to the Fund and which provide technical and other support to the Fund;
- 76) “**Tranche**” means a tranche pursuant to Article IV into which Participants pay their contributions, with the first Tranche representing contributions received by Participants between the first Opening Date and the first Closing Date;
- 77) “**Tranche Property**” means any property contributed to a Tranche of the Fund and all other assets, receipts and interests of any Tranche of the Fund;
- 78) “**Trustee**” means the IBRD acting not in its individual or personal capacity but solely in its capacity as trustee of the Fund;
- 79) “**UNCITRAL**” means the United Nations Commission on International Trade Law;
- 80) “**United Nations Framework Convention on Climate Change**” or “**UNFCCC**” means the United Nations Framework Convention on Climate Change adopted in New York on May 9, 1992;
- 81) “**Validation**” means the assessment by an Independent Third Party or Operational Entity of a Project design, including its Baseline, before the Project’s implementation;
- 82) “**Verification**” means the periodic independent review and ex post determination by an Independent Third Party or Operational Entity of:
  - a) the monitored Emission Reductions that have occurred as a result of a registered CDM project activity during the verification period; and/or
  - b) the Local Community Benefits that have occurred during the relevant verification period;
- 83) “**World Bank**” or “**Bank**” or “**IBRD**” means the International Bank for Reconstruction and Development;
- 84) “**World Bank Group**” means the IBRD, the International Finance Corporation, the Association and the Multilateral Investment Guarantee Agency; and

- 85) **“World Bank Operational Policies and Procedures”** means the environmental and social operational policies and procedures of the institution of the World Bank Group which conducts the environmental and social review of the Project and which are referred to by that name and are in effect at the time of such review, as well as other World Bank Group operational policies and procedures, when applicable.

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## ARTICLE II

# ESTABLISHMENT

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### Section 2.1. Establishment

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

### Section 2.2. Trust Only

- a) It is the intention of the parties to this Instrument to create only the relationship of trustee and beneficiary between the Trustee and each Participant and not to create a general partnership, limited partnership, joint stock association, corporation, bailment or any form of legal relationship other than a trust.
- b) 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. Authority to Enter into Participation Agreements

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

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## ARTICLE III

# OPERATIONAL PRINCIPLES

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### Section 3.1. Operational Principles

The operational principles of the Fund are:

- a) to provide resources for Small-Scale Projects which are intended to:
  - (i) generate Emission Reductions; and
  - (ii) reduce poverty and improve the quality of life of Local Communities in the poorer areas of Developing Countries including in particular, the Least Developed Countries;
- b) to expand the reach of carbon finance and CDM Projects to the poorer areas of Developing Countries including in particular, the Least Developed Countries in accordance with the relevant provisions of the Johannesburg Plan of Implementation;
- c) to endeavor to effect an equitable sharing between the Participants, the Host Countries and the Local Communities of any benefits, including any Emission Reductions, arising from the Projects; and
- d) to disseminate broadly the knowledge gained by the Trustee in the development of the Fund and the implementation of Projects.

### Section 3.2. Operations of the Fund

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

### Section 3.3. Compliance with World Bank Operational Policies and Procedures

The operations of the Fund shall comply with the World Bank Operational Policies and Procedures, except to the extent that such operational policies and procedures may be inconsistent with the guidelines, modalities and procedures adopted by the Parties to the UNFCCC and the Kyoto Protocol, in which case the latter two shall prevail.

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## ARTICLE IV

# ORGANIZATION AND PORTFOLIOS

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### Section 4.1. Tranches

- a) The Fund will be organized in a series of Tranches, with the First Tranche commencing on a date determined by the Trustee, but not before the Resolution Date.
- b) Each Tranche will operate on the basis set out in this Instrument, and will have:
  - (i) an Opening Date determined by the Trustee to be the date on which the Trustee may commence entering into Participation Agreements with the Participants in that Tranche of the Fund;
  - (ii) an Operational Date determined by the Trustee as the date on which that Tranche of the Fund has received sufficient Contributions to commence operations; and
  - (iii) a Closing Date determined by the Trustee as being the last date on which the Trustee will enter into Participation Agreements for that Tranche of the Fund.
- c) If at any time, the total Fund size meets or exceeds US\$500Million, the Fund Manager must seek Board approval prior to either:
  - (i) accepting Contributions from Participants who have not already signed a Participation Agreement; or
  - (ii) declaring any Opening Dates for any further Tranches.

### Section 4.2. Project Portfolio Criteria

- a) Each Tranche of the Fund will have separate Project Selection Criteria and Project Portfolio Criteria determined in advance of the relevant Opening Date and managed by the Trustee in accordance with the provisions of this Instrument.
- b) For each Tranche of the Fund, the Trustee shall select Projects in accordance with the Project Selection Criteria for that Tranche, with the intent, over the term of the Fund, of meeting the Project Portfolio Criteria specified for each Tranche.
- c) Material changes to the Project Selection Criteria or Project Portfolio Criteria for any Tranche may be made only if:
  - (i) there is prior consent at a Participants' Meeting of Participants holding not less than two-thirds of the votes of that Tranche; and

- (ii) in the opinion of the Trustee the proposed changes are consistent with World Bank Operational Policies and Procedures and are otherwise acceptable to the Trustee.
- d) The Project Selection Criteria and Project Portfolio Criteria for each Tranche must include the criteria set out in Schedule 1.

#### **Section 4.3. Contributions to a Project from Multiple Tranches**

Where a proposed Project meets the Project Selection Criteria and Portfolio Criteria of more than one Tranche in its Allocation Phase, the Trustee shall utilize the capital of each of the eligible Tranches on a pro rata basis to purchase the Emission Reductions from the Project.

#### **Section 4.4. Accounting for each Tranche**

- a) All Fund Property must be allocated to a Tranche and each Tranche separately accounted for in accordance with Section 11.3.
- b) Each Tranche must maintain:
  - (i) Separate accounts of:
    - A. Project income and expenditure; and
    - B. The Emission Reductions and Local Community Benefits accruing to the Participants in that Tranche; and
  - (ii) Separate budgets for reporting purposes.

## ARTICLE V

# CONTRIBUTIONS FROM PARTICIPANTS

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### Section 5.1. Contributions

- a) Each Participant in the Fund will be required to make a Minimum Contribution to a Tranche of the Fund.
- b) The Minimum Contribution, of not less than US\$1Million, will be determined at the sole discretion of the Trustee, and notified in writing to potential participants in each Tranche of the Fund on or before the Opening Date for that Tranche.
- c) Any Participant may elect to increase its Minimum Contribution payable under Section 5.1(a) by making additional commitments to contribute in increments determined in writing by the Trustee.
- d) Participants may elect to contribute to more than one Tranche.

### Section 5.2. Payment of Contributions

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

### Section 5.3. Catch-Up Payment

- a) Any Additional Participants in a Tranche shall be required to make a Catch-Up Payment in addition to their Contribution.
- b) Catch-up Payments will be:

- (i) Calculated by the Trustee based upon:
  - A. The costs and expenses associated with seeking any Contributions for that Tranche of the Fund after the Tranches Operational Date; and
  - B. Any fees associated with late entry into the Tranche determined by the Trustee in consultation with the Participants' Committee of that Tranche;
- (ii) Payable on the same terms as the Contribution; and
- (iii) Excluded from calculations of the relevant Participant's interests in the Fund or the Tranche, or the size of the Fund or Tranche.

#### **Section 5.4. Prepayment**

Any amount or the whole of the Contribution which is paid by Participants in advance of any demand for payment by the Trustee will be invested by the Trustee in accordance with the terms of this Instrument, and the income will be utilized by the Trustee to support the Fund's activities, as the Trustee in its sole discretion, deems appropriate, including investing in trusts, funds, co-operatives or other funds or structures designed to:

- a) provide technical assistance and support to Developing Countries and Least Developed Countries which have or may have projects eligible to receive support from the Fund;
- b) develop local capacities including training and collaborating with local intermediaries (such as regional or local development banks, private banks, social or trust funds, members of the NGO Community and small and micro-credit agencies) in Developing Countries and Least Developed Countries to bundle and deliver Small-Scale Projects; or
- c) undertake research, policy analysis, training, awareness raising and capacity-building in support of the Fund.

## ARTICLE VI

# PARTICIPANTS' MEETINGS

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### Section 6.1. Annual Meetings

- a) Each Tranche shall hold an Annual Meeting of the Participants in that Tranche, at such date and time and in such place as shall be determined by the Trustee.
- b) The role of the Participants at each Annual Meeting will include:
  - (i) Reviewing the operations of the Tranche in which they are participating, and providing the Trustee with general policy and strategic guidance on the overall operation and management of that Tranche;
  - (ii) Reviewing and approving the business plan and annual budget for the next Fiscal Year for the Tranche in which they are participating;
  - (iii) Providing general guidance to the Trustee on the selection of Projects for the Tranche in which they are participating, including where relevant, proposing changes to that Tranche's Project Selection Criteria and Project Portfolio Criteria;
  - (iv) Commencing with the second Annual Meeting for each Tranche:
    - A. Electing the members of the Participants' Committee for that Tranche to serve until that Tranche's next Annual Meeting; and
    - B. While that Tranche is still in its Allocation Phase, electing one Participant Observer to the Advisory Group, unless:
      - 1) only one Tranche is in its Allocation Phase at the time of the election, in which case that Tranche shall elect two Participant Observers to the Advisory Group; or
      - 2) no Tranches are in their Allocation Phase, in which case each Tranche shall be entitled to elect one Participant Observer to the Advisory Group;
  - (v) At the first Annual Meeting following the Closing Date for their Tranche, review and authorize the payment to the IBRD of any development costs not presented at the Organizational Meeting and which relate to the development of the Fund or of their Tranche of the Fund; and
  - (vi) Take any other action that may be taken by the Participants under this Instrument.

## **Section 6.2. Organizational Meeting**

- a) Within 30 days of the Operational Date of each Tranche, the Trustee shall convene an Organizational Meeting of the Participants in that Tranche.
- b) The date, time and place of the Organizational Meeting shall be determined by the Trustee.
- c) At the Organizational Meeting for each Tranche, the Participants in that Tranche shall have the following powers and duties:
  - (i) Reviewing and approving the business plan and budget for that Tranche of the Fund for the period from the Operational Date to the last day of the Fiscal Year in which that Tranche's Organizational Meeting is held;
  - (ii) Electing, to serve for a term running from the date of that Tranche's Organizational Meeting until the second Annual Meeting following the Tranche's Organizational Meeting, the members of that Tranche's Participants' Committee; and
  - (iii) Reviewing and authorizing the payment to the IBRD of the development costs related to the establishment of that Tranche of the Fund.
- d) At the Organizational Meeting of the first Tranche of the Fund, the Participants will elect two Observers from that Tranche to the Advisory Group in accordance with Section 8.2(a)(vii)(B), to serve until the second Annual Meeting.

## **Section 6.3. Special Meetings**

- a) The Trustee may call Special Meetings of Participants in one or more Tranches of the Fund at any time for any purpose consistent with this Instrument.
- b) Participants may, if all of the other Participants eligible to vote at the Special Meeting consent, participate in Special Meetings either:
  - (i) By telephone or other communications facilities which permit all Participants participating in the Special Meeting to hear each other; or
  - (ii) By other electronic means,and a Participant participating in a Special Meeting by such means is deemed for the purposes of this Instrument to be present at that meeting.
- c) Participants in a Special Meeting may only vote:
  - (i) On matters affecting the management or operation of the Tranche in which they are a Participant; and
  - (ii) On issues relating to the management of one or more Projects by the Tranche in which they are a Participant.

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

- a) Unless otherwise waived by the intended recipient, at least 30 days prior to the date of each Participants Meeting, the Trustee will provide each Participant and each Host Country Observer and Advisory Group Observer eligible to attend that Participants Meeting with written notice of the forthcoming Participants' Meeting stating the place, date and time of the meeting and, in the case of a Special Meeting, the purpose or purposes for which the Special Meeting is called.
- b) Notwithstanding this Section:
  - (i) Written notice of the Organizational Meeting for a particular Tranche shall be given to the Participants in that Tranche and the Host Country Observer and Advisory Group Observer on the Operational Date; and
  - (ii) Written notice of a Special Meeting affecting one or more, but not all of the Tranches shall only be given to those Participants in the Tranche or Tranches for which the meeting is called.
- c) For the purposes of this Section 6.4, references to written notices include electronic notices such as email, facsimile and other forms of electronic notification which are commonly in use.

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

- a) Each Participant shall be entitled to one vote for every US\$100,000 of its Contribution to a Tranche (exclusive of any Catch-Up Payment) on each matter submitted to a vote at a Participants' Meeting for their Tranche.
- b) Except as otherwise provided, every matter submitted to a Participants' Meeting shall be decided by the majority of the votes cast by the Participants represented at that meeting.
- c) The following observers may attend Participants Meetings but are not entitled to vote:
  - (i) One Advisory Group Observer nominated pursuant to Section 8.1(b)(ii); and
  - (ii) One Host Country Committee Observer elected by the Host Country Committee at the time of the Participants' Annual Meeting.

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

Participants represented:

- a) at a Participants' Meeting for a Tranche holding a majority of all the votes of that Tranche shall constitute a quorum for the transaction of business at a Participants' Meeting for that Tranche; and

- b) at a Special Meeting holding a majority of all the votes of the Tranche or Tranches for which the meeting was called, shall constitute a quorum for the transaction of business at that meeting.

#### **Section 6.7. Action Without Meeting**

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

- a) a consent in writing, setting out the action intended to be taken, has been circulated to all of the Participants for which the meeting was called; and
- b) the consent under Section 6.7 (a) has been signed in one or more counterparts by all Participants in the Tranche or Tranches for which the meeting was called.

#### **Section 6.8. Proxies**

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

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

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

## ARTICLE VII

# PARTICIPANTS' COMMITTEE

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### Section 7.1. Role of Participants' Committee

- a) The Trustee will establish a Participants' Committee for each Tranche of the Fund.
- b) Each Participants' Committee will be responsible for:
  - (i) Providing general advice to the Trustee on issues regarding the operation of the Fund;
  - (ii) Reviewing the operations of its Tranche of the Fund and providing feedback to the Trustee on that Tranche's Project Agreements negotiated and to be entered into by the Trustee; and
  - (iii) Reviewing the proposed annual budget and business plan for its Tranche for the forthcoming Fiscal Year prior to its Annual Meeting.

### Section 7.2. Membership of the Participants' Committee

- a) The Participants' Committee of each Tranche shall, unless determined otherwise by a unanimous vote of the Participants in that Tranche, comprise six members elected by the Participants in that Tranche:
  - (i) For the first Participants' Committee in each Tranche, at their Organizational Meeting; and
  - (ii) subsequently, commencing at the second Annual Meeting following that Tranche's Organizational Meeting, at each Annual Meeting thereafter.
- b) Unless otherwise determined unanimously by the Participants in a Tranche, the six members of each Tranche's Participants' Committee to be elected under Section 7.2(a) shall be drawn from the Participants in that Tranche as follows:
  - (i) Four from the Private Sector Participants; and
  - (ii) Two from the Public Sector Participants.
- c) Elected members of the Participants' Committee shall be officers, directors, employees or officials of Participants in the relevant Tranche, provided, that not more than one member shall be a representative of the same Participant. Elected members of the Participants' Committee who cease to be officers, directors, employees or officials of the Participant which nominated them will no longer be eligible for membership of the Participants' Committee and will be replaced in accordance with Section 7.2(e).
- d) With the exception of the first members of each Participants' Committee elected at the Organizational Meeting whose term will expire at the second Annual Meeting

following the Organizational Meeting, membership of each Participants' Committee will run from the date of the Annual Meeting at which they were elected, until the following Annual Meeting, unless the member otherwise retires, resigns or is removed in accordance with Section 7.2(c).

- e) Following the retirement, resignation or removal of a member of a Participants' Committee, the Participant which nominated that member may appoint another of its officers, directors, employees or officials to fill that vacancy in the relevant Participants' Committee. Should that Participant fail to make an alternative nomination within 30 days of the notice of vacancy, the vacancy on that Participants' Committee shall be filled by an affirmative vote of a majority of the remaining members of the Participants' Committee, provided that the membership requirements set out in Section 7.2(b) continue to be met. A member elected to fill a vacancy on a Participants' Committee shall be elected for the unexpired term of the member's predecessor in office.
- f) At any time, any member of a Participants' Committee may be removed by the Participant for which such member is a representative and replaced with another representative of that Participant.
- g) Each Participants' Committee shall elect one of its members to serve as chairperson until the next Annual Meeting or until such time as that member has ceased to be a member of that Participants' Committee or until that member's successor as chairperson has been elected.
- h) The Participants in a Tranche may, by unanimous decision at a Special Meeting called for that purpose, change the size and composition of the Participants' Committee set out in Section 7.2(b).

### **Section 7.3. Meetings of the Participants' Committee**

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

and a member of a Participants' Committee participating by such means is deemed for the purposes of this Instrument to be present at that meeting.

- d) No member of any of the Participants' Committees shall receive any compensation from the Fund for its services as such, nor shall any member of any of the Participants' Committees be entitled to payment or reimbursement from the Fund or Trustee for travel or other costs incurred in attending Participants' Committee meetings.

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

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

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

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

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## ARTICLE VIII

# ADVISORY GROUP

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### Section 8.1. Role of the Advisory Group

The Trustee will appoint nine internationally recognized experts to serve as an Advisory Group to the Fund and to:

- a) Provide advice to the Trustee on:
  - (i) The implementation of the Fund;
  - (ii) The effectiveness of each Tranche in meeting its Project Portfolio Criteria and Project Selection Criteria;
  - (iii) The procedures for Certification and Verification of the Local Community Benefits pursuant to Section 9.4, and whether they are sufficient, effective and adequate to meet the needs of the Fund and the Tranches;
  - (iv) Proposed budgets and business plans for the forthcoming Fiscal Year for both the Fund and the individual Tranches, prior to submission to the Participants at their Annual Meeting; and
  - (v) Existing and proposed Project Selection Criteria and Project Portfolio Criteria, including suggesting methods to enhance the effectiveness of the Fund or the Tranches in meeting their relevant objectives.
- b) Independently review and advise on measures to ensure the Fund and its Tranches meet the community development objectives set out in this Instrument. This will include:
  - (i) Providing a written Annual Review to the Trustee, to the Participants and to the public at large on the matters listed under Section 8.1(a) of this Instrument; and
  - (ii) Nominating an Advisory Group Observer to Participants' Meetings.

### Section 8.2. Membership of the Advisory Group

- a) Membership of the Advisory Group will consist of:
  - (i) A Chair appointed by the Trustee;
  - (ii) 2 members drawn from the Private Sector;
  - (iii) 2 members drawn from the Public Sector;
  - (iv) 3 members drawn from the NGO Community;

- (v) 1 drawn at the discretion of the Trustee;
  - (vi) 1 drawn from the Technical Assistance Fund; and
  - (vii) The following ex officio members:
    - A. President or Executive Officer of the International Emissions Trading Association or its Successor;
    - B. 2 Participant Observers elected in accordance with Section 6.1(b)(iv)(B) from Tranches in their Allocation Phase at the time of the election, unless no Tranches are in their Allocation Phase, in which case one Participant Observer elected from each Tranche; and
    - C. 1 Host Country Observer nominated by the Host Country Committee.
- b) Members serving on the Advisory Group:
- (i) Serve on the Advisory Group in their individual capacity;
  - (ii) May not also serve on any of the Participants' Committees; and
  - (iii) Serve for periods of two years (subject to reappointment), with the exception of the first members appointed to the Advisory Group whose term of membership will run from the Operational Date of the first Tranche and conclude:
    - A. For the first member appointed from each of the Public Sector, Private Sector and NGO Community, and the two Participants elected pursuant to Section 6.2(d) at the second Annual Meeting following the Operational Date of the first Tranche; and
    - B. For all other members, at the third Annual Meeting following the Operational Date of the first Tranche.
- c) With the exception of the elected Participant Observers, the Trustee retains the right to remove a member of the Advisory Group either:
- (i) At the request of two-thirds of the voting members of the Advisory Group present at a properly constituted meeting called for that purpose; or
  - (ii) If, in the reasonable opinion of the Trustee, the member of the Advisory Group is no longer able or willing to meet the requirements of the position (this includes, but is not limited to, failure to attend without reasonable explanation, two consecutive meetings of the Advisory Group).

In the event of the resignation or removal of a member of the Advisory Group other than at the end of their appointed term, the Trustee will appoint a replacement from the same group from which that member was drawn to serve the remainder of that term.

- d) The Trustee may alter the number or composition of the Advisory Group with the consent of a two-thirds majority of Participants.
- e) For the purposes of this Section 8.2, references to the Trustee mean the Trustee acting through the President of the IBRD.

### **Section 8.3. Meetings of the Advisory Group**

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

### **Section 8.4. Notice**

The Trustee shall provide each member of the Advisory Group with written notice of an Advisory Group meeting not less than 30 days before the date of the meeting unless such notice has been waived by the intended recipient. Such notice shall state the place, date and time of the meeting.

### **Section 8.5. Reporting**

The Advisory Group will provide:

- a) Either verbal or written reports and input to the Trustee on request; and
- b) An Annual Review in writing in accordance with Section 8.1(b)(i), provided that the Participant Observers on the Advisory Group:
  - (i) Shall not participate or be involved in any way in the drafting of the Advisory Group's Annual Review; and
  - (ii) Shall provide a written declaration that they have not been involved in, or contributed to, the Advisory Group's Annual Review, such declaration to be annexed to each report.

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## ARTICLE IX

# ADMINISTRATION

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### **Section 9.1. Role of the Trustee**

The role of the Trustee shall include:

- a) Supervising and monitoring the operations of the Fund;
- b) Managing Fund Property in accordance with the terms of this Instrument;
- c) Facilitating the interaction between the Participants, the Participants' Committee, the Advisory Group and the Host Country Committee of the World Bank;
- d) Selecting and managing the Projects of each Tranche of the Fund in accordance with Section 4.2 and with the relevant Project Portfolio and Selection Criteria;
- e) Providing copies of the Semi-Annual and Annual Progress Report to the Executive Board of the Trustee;
- f) Monitoring the provision of Validation, Certification and Verification services for both the GHG Reductions and Local Community Benefits generated by a Project;
- g) Monitoring the delivery of an agreed amount of any Emission Reductions achieved by each Project from the Recipient to the Participants, on a pro rata basis in accordance with the provisions of this Instrument; and
- h) Monitoring the provision and certification of any Local Community Benefits achieved by a Project, including the transfer of any of those benefits from the Recipient to the Participants in accordance with the terms of this Instrument.

### **Section 9.2. Duties of the Trustee**

The Trustee shall:

- a) Hold all Fund Property in trust in accordance with this Instrument for the benefit of the Participants in the Tranche to which the Fund Property is allocated;
- b) Manage and use Fund Property only for the purposes of, and in accordance with, the provisions of this Instrument; and
- c) Exercise the same care in the discharge of its functions under this Instrument as the IBRD exercises with respect to its own affairs.

### **Section 9.3. Powers of the Trustee**

- a) The Trustee is authorized to enter into Participation Agreements and accept contributions in the required amount from Participants at any time after a date to be determined by the Trustee, but not earlier than the Resolution Date.

- b) The Trustee is authorized to perform all acts and enter into all contracts and arrangements as it shall deem necessary or desirable to accomplish the purposes of the Fund, including, without limitation, Project Agreements, agreements with intermediaries and agreements with third party purchasers.
- c) Provided that all of the income from its investments is credited to, and used exclusively for the purposes of the Fund, the Trustee is authorized to invest the Fund Property and any other funds held by the Fund pending disbursement in such manner as it may decide, including:
  - (i) Investing in such securities, instruments and other obligations as are authorized investments for other trust fund assets maintained by the World Bank Group;
  - (ii) Retaining Fund assets in cash;
  - (iii) Co-mingling the Fund Property and other funds held by the Fund prior to disbursement, with other trust fund assets maintained by the IBRD, the IFC or the Association; and
  - (iv) Exchanging any funds received from a Participant or any other Fund Property for one or more other currencies in order to facilitate the administration of the Fund.
- d) The Trustee is authorized to exercise any and all rights, powers and privileges of ownership or interest in respect of any and all investments made in accordance with Section 9.3(c), including the right to consent and otherwise act in relation to those investments, and to designate one or more individuals, firms, associations or corporations to exercise any of the Trustee's rights, powers and privileges in respect of the relevant instruments. The Trustee shall not be limited to investing in obligations maturing before the possible termination of the Fund, nor shall the Trustee be limited by any law limiting the investments which may be made by fiduciaries.
- e) To ensure the efficient operation of the Fund's cash management and investment transactions, the Trustee shall have the power to borrow from commercial banks and other financial institutions, for periods of up to thirty days, in any currency or currency unit.
- f) The Trustee is authorized to incur and pay any costs or expenses which in its opinion are necessary or desirable to carry out any of the purposes of the Fund, including to make payments from the Fund Property to itself as Trustee for the purpose of performing its duties as outlined in this Instrument.
- g) The Trustee shall have the power to collect all property due to the Fund and to pay all claims against Fund Property.
- h) The Trustee shall have the power to:
  - (i) Engage in and to prosecute, defend, compromise, abandon, or adjust, by arbitration, or otherwise, any actions, suits, proceedings, disputes, claims,

and demands relating to the Fund, including without limitation those relating to Project Agreements; and

- (ii) Out of the Property of the Fund to pay or to satisfy any debts, claims or expenses incurred in connection with the Project Agreements, including those of litigation.

The power granted to the Trustee under this Section 9.3(h) shall include the power to dismiss any action, suit, proceeding, dispute, claim, or demand, derivative or otherwise, brought by any person, including a Participant in its own name or in the name of the Fund, whether or not the Fund or the Trustee is named individually or the subject matter arises by reason of business for or on behalf of the Fund.

- i) The Trustee shall have the power to:
  - (i) Employ or contract with such individuals or persons as it may deem desirable to conduct the business of the Fund;
  - (ii) Enter into joint ventures, partnerships and any other combinations or associations;
  - (iii) Subject to the terms of this Instrument, elect and remove such officers and appoint and terminate such agents or employees of the Fund as it considers appropriate;
  - (iv) Purchase and pay for out of Fund Property, to the extent available on commercially reasonable terms, such insurance as the Trustee deems desirable to protect it, the IBRD, the Participants and any other individual or person entitled to indemnification by the Fund; and
  - (v) Make amendments to the Project Selection Criteria or Project Portfolio Criteria that in its opinion are merely technical in nature.
- j) The Trustee may from time to time appoint or otherwise engage one or more banks or trust companies or other financial institutions to serve as escrow agent(s) on behalf of the Fund in respect of Fund Property that may be deposited into an escrow account pending disbursement.
- k) Except as otherwise provided in this Instrument, the Trustee shall have the exclusive power to conduct the business of the Fund and carry on its operations wheresoever the Trustee deems necessary, proper or desirable in order to promote the interests of the Fund. Any determination made by the Trustee in good faith as to what is in the interests of the Fund shall be conclusive.
- l) In construing the provisions of this Instrument, the presumption shall be in favor of a grant of power to the Trustee.
- m) The enumeration of any specific power in this Instrument shall not be construed as limiting that power. Such powers of the Trustee may be exercised without order of or resort to any court or other authority.

- n) Nothing in this Instrument shall preclude the IBRD from acting for its own account and from entering into or being interested in any contract or transaction with any person, including, but not limited to, any Participant, Host Country or Project Entity, with the same rights as it would have had if it were not acting as the Trustee, and the IBRD need not account for any profit therefrom.
- o) Any power, duty or discretion to be exercised by the Trustee pursuant to the terms of this Instrument shall, unless otherwise provided:
  - A. Be exercised by the Trustee in its sole discretion; and
  - B. Be delegated by instrument in writing to a third party or entity, providing that such delegation does not remove or affect the fiduciary duty owed by the Trustee to the Participants.

#### **Section 9.4. Validation, Verification and Certification**

- a) The Trustee will report to the Advisory Group on the Validation of the Project, and the Verification and Certification of GHG Reductions and Local Community Benefits achieved by a Project.
- b) For the purposes of Section 9.4(a), the Trustee may from time to time enter, or supervise the entry into one or more contracts with persons for such services, and on such terms and conditions, as the Trustee shall consider appropriate with respect to Project Validation, as well as for Verification and Certification of GHG Reductions and Local Community Benefits.
- c) The services referred to in Section 9.4(b) may include:
  - (i) Validation of the Project's design on the basis of relevant documentation prepared during the Projects development;
  - (ii) Verification of:
    - A. GHG Reductions and Local Community Benefits arising from the Project; and
    - B. The Project's compliance with relevant requirements agreed with the Project Entity; and
  - (iii) Certification of GHG Reductions and Local Community Benefits.

#### **Section 9.5. 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 9.5(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 9.5(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.

**Section 9.6. Fund Manager**

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

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

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## ARTICLE X

# DEFAULT AND REMOVAL OF PARTICIPANTS

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### Section 10.1. Default in Paying Installment

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

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

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

### Section 10.2. Notice of Default

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

### Section 10.3. Notice of Purchase

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

### Section 10.4. Purchase of Interest

If, following a notice issued under Section 10.3:

- a) only one Participant notifies the Trustee, the Trustee shall notify that Participant that it may purchase the Defaulting Participant’s interest in the Fund by making payment:
  - (i) to the Defaulting Participant of an amount equal to 50 percent of the fair market value (as determined by an independent third party selected by the Trustee) of the Defaulting Participant’s pro rata interest in the relevant Tranche of the Fund (the “Purchase Price”), less any expenses incurred by the Trustee or the Fund in connection with the sale; and
  - (ii) to the Trustee of the amount of the unpaid installment due to the Tranche from the Defaulting Participant.
- b) more than one Participant notifies the Trustee, then:
  - (i) the Trustee shall notify each such Participant that elects to purchase a portion of the Defaulting Participant’s interest in the relevant Tranche; and

- (ii) each such Participant may purchase that portion of the Defaulting Participant's interest that corresponds to the electing Participant's proportion of the interest of all the electing Participants' interests in the Tranche.
- c) no Participants notify the Trustee, the Trustee shall issue a Notice of Default to all of the Participants in the Fund in accordance with Section 10.2, and proceed to dispose of the Defaulting Participants' interest in the fund to the other Participants in accordance with the procedures set out in Sections 10.3 and 10.4; and
- d) no Participant expresses interest in purchasing the Defaulting Participants' interest in the Fund following the procedure provided in Section 10.4(c), the Trustee may arrange for a private sale of that interest to a person acceptable to the Trustee.

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

- a) The Defaulting Participant shall receive from the proceeds of the sale an amount equal to the lesser of the sale proceeds or the Purchase Price, less any expenses incurred by the Trustee or the Fund in connection with the sale.
- b) Upon disposition of the Defaulting Participant's interest under Section 10.5(a), the Defaulting Participant shall be deemed to have transferred to the purchaser(s) all of its rights and interest in the Fund, including without limitation, any further distributions of Fund Property which it is entitled to receive, and the Trustee shall consent to such transfer.

#### **Section 10.6. No Sale**

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

## ARTICLE XI

# RECORDS AND PROGRESS REPORTS

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

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

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

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

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

### **Section 11.3. Financial Statements**

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

#### **Section 11.4. Other Documentation**

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

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

## ARTICLE XII

# EXPENSES AND FEES

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### Section 12.1. Expenses

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

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

### Section 12.2. Fund Development Costs

- a) Upon presentation of an itemized statement to the Participants in the relevant Tranche at the Organizational Meeting for that Tranche, or at a subsequent Annual Meeting or Special Meeting of the Participants in that Tranche, the Trustee may use Fund Property to:
  - (i) Reimburse the IBRD for all costs and expenses incurred by the IBRD prior to the Closing Date of the First Tranche of the Fund in relation to the development of the Fund, including:

- A. The salaries and benefits of personnel of the IBRD;
  - B. The travel, accommodation and subsistence expenses of personnel of the IBRD;
  - C. Compensation and expenses of any consultant, adviser, contractor, subcontractor, or auditor retained by the IBRD, including, without limitation, legal advisers, and
  - D. Costs and expenses associated with the preparation of all legal documentation in respect to the formation and operation of the Fund.
- (ii) Reimburse the IBRD and/or the first Tranche for all costs and expenses incurred by the IBRD prior to the Closing Date of each Tranche of the Fund in relation to the development of the Fund and that Tranche, including all of the items listed under Section 12.2(a)(i).
  - (iii) Reimburse the IBRD for all costs and expenses incurred by the IBRD prior to the Closing Date of each Tranche of the Fund in relation to the identification, preparation and appraisal of proposed Projects.
  - (iv) Reimburse a portion of the costs incurred by a prior Tranche or Tranches in reimbursing the IBRD all costs and expenses incurred pursuant to Section 12.2(a)(i), (ii) and (iii), such portion to be determined by the Trustee based upon the size of the Tranche relative to the total size of the Fund.
- b) Any costs and expenses reimbursed pursuant to Section 12.2(a) will be recovered by the Trustee as follows:
- (i) Up to \$1 Million in the first payment demand following the meeting at which the payment of those expenses was approved pursuant to Section 12.2(a); and
  - (ii) Any balance remaining equally distributed in the two payment demands following the demand issued under Section 12.2(b)(i).

## ARTICLE XIII

# INDEMNIFICATION

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### **Section 13.1. Indemnification of Trustee and IBRD**

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

### **Section 13.2. Indemnification of Participants**

The Trustee will indemnify, out of Tranche Property only, each of the Participants in that Tranche 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 that Participant may incur or which may be made against that Participant arising out of or in connection with that Tranche’s activities, except as may result from its gross negligence or willful misconduct.

### **Section 13.3. Indemnification of Advisory Group**

The Trustee will indemnify, out of Tranche Property only, each of the members of the Advisory Group 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 those members may incur or which may be made against those members arising out of or in connection with that Tranche’s activities, except as may result from its gross negligence or willful misconduct.

### **Section 13.4. No Waiver of Privileges and Immunities**

Nothing in this Instrument shall be considered to be a waiver of any privileges and immunities of the Trustee, the IBRD, or where applicable, the Participants or their respective officers, employees or agents, under the Articles of Agreement of the IBRD or any applicable law, all of which are expressly reserved.

### **Section 13.5. No Personal Liability**

- a) Neither the Trustee, the IBRD and the Participants 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 Fund or of any Tranche of the Fund, and

all such third parties shall look solely to the relevant Tranche Property for satisfaction of claims of any nature arising in connection with relevant Tranche activities.

- b) Every written obligation, contract, instrument, certificate or undertaking made or issued by the Trustee shall recite that the same is executed or made by it not personally or in its individual capacity, but as Trustee of the Fund under this Instrument, and that the obligations of the Fund under any such instrument are not binding upon the Trustee or any of the Participants, personally or in their respective individual capacities, but bind only the Fund, and may contain any further recital which the Trustee may deem appropriate, but the omission of such recital shall not affect the validity of such obligation, contract, instrument, certificate or undertaking and shall not operate to bind or obligate the Trustee or the Participants personally or in their respective individual capacities.

### **Section 13.6. No Duty of Investigation**

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

### **Section 13.7. Reliance on Experts**

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

## ARTICLE XIV

# DISTRIBUTIONS TO PARTICIPANTS

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

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

### **Section 14.2. Statements of Accounts**

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

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

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

**Section 14.4. Withdrawal**

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

ARTICLE XV

# ASSIGNMENT OF PARTICIPANTS' INTERESTS

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**Section 15.1. Assignment of Participants' Interests**

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

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

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## ARTICLE XVI

# **DURATION; TERMINATION; AMENDMENT**

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### **Section 16.1. Extension of Term**

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

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

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

### **Section 16.2. Termination**

- a) Subject to a vote by the Participants to extend the period of operation of the Fund, the Fund will be terminated on December 31, 2020, or the occurrence of one or more of the following, whichever shall be the earliest:
  - (i) Failure at the Closing Date of the first Tranche to have signed Participation Agreements representing a sum deemed viable by the Trustee in its absolute discretion;
  - (ii) By resolution of a 2/3 majority vote of Participants at a meeting specially called for that purpose;
  - (iii) The unanimous written consent of all Participants; or
  - (iv) Resignation of the IBRD as Trustee for the Fund.
- b) Notwithstanding anything in this Article 16, the Participants in a Tranche may, by a unanimous vote, decide to terminate their Tranche of the Fund, in which case Section 16.3 applies to the winding up and management of the Tranche Property.

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

- a) Following the termination of the Fund under Section 16.2:
  - (i) the Trustee shall carry on no business for the Fund except for the purpose of winding up its affairs;
  - (ii) the Trustee shall proceed to wind up the affairs of the Fund, and all of the powers of the Trustee under this Instrument shall continue until the affairs of the Fund shall have been wound up;
  - (iii) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements as it may

deem necessary for its own protection, the Trustee shall distribute the remaining Tranche and Fund Property in cash or in kind, or a combination of both, among the Participants according to their respective rights; and

- (iv) notwithstanding Section 16.2(a)(iii), in the event the remaining Fund Property includes the right to purchase Emission Reductions to be generated after the termination date of the Fund, the Trustee shall, subject to any applicable restrictions under international law, national law or otherwise, including regulations under the UNFCCC and/or the Kyoto Protocol, endeavor to make such arrangements as are necessary to effect a transfer of those rights to or to the order of the Participants in the relevant Tranche entitled to them, but shall not have any liability to the Participants if it is unable to do so.
- b) Any rights, interests or entitlements to be transferred under Section 16.2(a) may be assigned in writing by the Participant entitled to receive them to a third party, in which case the Trustee will endeavor to transfer those interests, rights or entitlements to that third party at the cost of the Participant entitled to them, but will not be liable to the Participant if it is unable to do so.

#### **Section 16.4. Amendment Procedures**

- a) Subject to Section 16.4(b), this Instrument may only be amended by the Executive Directors of the IBRD with the prior unanimous consent of Participants.
- b) Notwithstanding Section 16.4(a), the Trustee may amend this instrument without prior notice to or consent from any Participant if such amendment is
  - (i) to supply any omission, or cure, correct or supplement any manifest error or ambiguous, defective or inconsistent provision hereof; or
  - (ii) for any other purpose which does not adversely affect the rights of any Participant;

provided in either case that all Participants are notified of any such amendment within 15 days after the effective date of such amendment.

#### **Section 16.5. Further Assurances**

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

## ARTICLE XVII

# APPROVAL AND AUTHORIZATION

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### **Section 17.1. Approval**

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

### **Section 17.2. Authorization**

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

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## ARTICLE XVIII

# CONFLICTS OF INTEREST

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### Section 18.1. Trustee Withdrawal from Dispute or Claim

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

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## ARTICLE XIX

# ARBITRATION; EXERCISE OF REMEDIES

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### Section 19.1. Validity

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

### Section 19.2. Arbitration

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

### Section 19.3. Delays

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

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## SCHEDULE 1 TO INSTRUMENT

# PROJECT SELECTION CRITERIA and PROJECT PORTFOLIO CRITERIA

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### Project Selection Criteria

The Project Selection Criteria developed for each Tranche shall include:

- a) Consistency with the UNFCCC and/or the Kyoto Protocol. The Trustee shall ensure that Projects comply with all current guidelines, modalities and procedures adopted by the Parties to the UNFCCC and/or the Kyoto Protocol, as well as all future guidelines, modalities and procedures when adopted, in particular those pertaining to sustainable development and additionality.
- b) Consistency with Relevant National Criteria. The Trustee shall seek to ensure that the Projects' designs are compatible with and supportive of the national environment and development priorities of the Host Countries. In addition, the Projects and the delivery/issuance of Emission Reductions should be consistent with the rules and criteria adopted by Host Countries regarding Article 12 Projects.
- c) Consistency with the IBRD's Country Assistance Strategy. The Trustee will seek to ensure that Projects are designed to be consistent with, and supportive of, the then current Country Assistance Strategy of the IBRD for the Host Country and the Host Country's own development objectives.
- d) Achievement of National and Local Environmental Benefits. The Trustee shall seek to ensure that Projects provide at least the same level of national and local environmental benefits as the Underlying Projects.
- e) Consistency with the Fund's Operating Principles. The Trustee shall seek to select Projects with a view to achieving the strategic objectives and operational principles of the Fund as set forth in the Instrument.
- f) Consistency with the General Guidance Provided by Participants. The Trustee shall seek to ensure that Projects comply with the general guidance provided by Participants at their meetings.
- g) Improve the Quality of Life of the Poor. The Trustee shall seek to ensure that Projects provide measurable and certifiable benefits on local livelihoods.
- h) Characteristics of Projects. The Trustee shall seek to ensure that Projects are selected to mitigate various types of risk. Projects should generally entail manageable technical risk. The technology to be used in a Project should be commercially available, have been demonstrated in a commercial context, and be

subject to customary commercial performance guarantees. The technical competence in the Host Country to manage this technology should be established in the course of Project appraisal. Projected Emission Reductions over the life of the Project should be predictable and should involve an acceptable level of uncertainty. GHG Reductions should also be amenable to standardized Validation and Verification processes with existing methodologies.

### **Project Portfolio Criteria**

The Project Portfolio Criteria developed for each Tranche shall include the following:

- a) Projects will be located exclusively in Developing Countries which are Parties to the UNFCCC and are not included in its Annex I (non-Annex I Parties). The Fund will not support Projects in Annex I Parties;
- b) The Fund may support Small-Scale Projects in countries other than the Least Developed Countries and poor areas of developing countries, provided these Projects provide direct independently certifiable Local Community Benefits; and
- c) Preference will be given to Small-Scale Projects.