



ADAPTATION FUND

AFB/B.33.b/inf.2
22 June 2019

Adaptation Fund Board
Additional meeting (33.b)
Bonn, Germany, 28-29 June 2019

**AMENDED AND RESTATED TERMS AND CONDITIONS OF SERVICES TO BE
PROVIDED BY THE INTERNATIONAL BANK FOR RECONSTRUCTION AND
DEVELOPMENT AS TRUSTEE FOR THE ADAPTATION FUND (2017-2020)**

Annex I

[English only]

Amended and restated terms and conditions of services to be provided by the International Bank for Reconstruction and Development as trustee for the Adaptation Fund

I. Recitals

(a) A clean development mechanism (CDM) was established under Article 12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the Convention) (the Kyoto Protocol).

(b) The Conference of the Parties decided in its decision 10/CP.7 that an adaptation fund (the Adaptation Fund) shall be established to finance concrete adaptation projects and programmes in developing country Parties that are Parties to the Kyoto Protocol, as well as activities identified in decision 5/CP.7, paragraph 8.

(c) The decision was further endorsed by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) through its decision 28/CMP.1.

(d) In decision 1/CMP.3, the CMP decided that the Adaptation Fund shall finance concrete adaptation projects and programmes that are country driven and are based on the needs, views and priorities of eligible Parties, and that the Adaptation Fund Board shall be established as the operating entity of the Adaptation Fund.

(e) The CMP, in its decision 1/CMP.3, invited the International Bank for Reconstruction and Development (the World Bank) to serve as the trustee for the Adaptation Fund (the World Bank in such capacity, the Trustee) on an interim basis, and requested the Adaptation Fund Board to present the necessary legal arrangements to be concluded between the CMP and the trustee, for adoption by the CMP at its fourth session.

(f) The CMP and the World Bank concluded the legal arrangements necessary for the World Bank to serve as Trustee on an interim basis by way of adopting and accepting the terms and conditions of services to be provided by the International Bank for Reconstruction and Development as trustee for the Adaptation Fund (the Terms and Conditions) as contained in the appendix to annex III to decision 1/CMP.4.

(g) The Terms and Conditions were amended twice to extend the term of the Trustee's services thereunder on an interim basis, as set out in decision 5/CMP.6, paragraph 1, and decision 1/CMP.9, paragraph 1.

(h) The CMP, in its decision 1/CMP.9, requested the Adaptation Fund Board to develop and approve the legal arrangements with the trustee regarding the services for the 2 per cent share of proceeds levied in accordance with decision 1/CMP.8, paragraph 21, for approval by the CMP.

(i) The Adaptation Fund Board has developed and approved the legal arrangements with the Trustee for approval by the CMP, which are proposed to be concluded between the CMP and the Trustee by amending and restating the Terms and Conditions.

(j) The CMP and the World Bank wish to amend and restate the Terms and Conditions as follows.

II. Terms and conditions

A. Role and responsibilities of the Trustee

1. The World Bank shall act as the Trustee on an interim basis in accordance with the Terms and Conditions set forth herein.
2. The Trustee shall comply with the principles and modalities for operations stipulated in the relevant decisions of the CMP and decisions of the Adaptation Fund Board. The Trustee shall be closely consulted in the development of decisions, taken by the CMP or the Adaptation Fund Board after the effective date of the Terms and Conditions, which relate in any way to the functions of the Trustee performed or to be performed, and the Terms and Conditions stipulated below shall be applicable. The Trustee shall perform its functions under the Terms and Conditions in accordance with the applicable provisions of the World Bank's Articles of Agreement, by-laws, policies and procedures.
3. The CMP hereby: (1) confirms its designation, under its decision 1/CMP.3, of the Adaptation Fund Board as its designee and delegatee in respect of the Adaptation Fund, acting under the authority and guidance of the CMP; and (2) imbues the Adaptation Fund Board with the capacity, power and authority to render decisions and provide instructions, directions and guidance to the Trustee hereunder and to cause to be effectuated the sale or disposal, for the purpose of monetization (Sale), of certified emission reductions (CERs), assigned amount units (AAUs) or emission reduction units (ERUs) collected as the share of proceeds for the Adaptation Fund (any such CERs, AAUs or ERUs, hereinafter referred to individually or collectively as the Share of Proceeds), pursuant to paragraphs 24, 25, 26, 27 and 28 below.
4. The Trustee, in the performance of its functions under the Terms and Conditions, shall be accountable to the Adaptation Fund Board.
5. Without prejudice to any other provisions of the Terms and Conditions, the Trustee shall, in performing its functions under the Terms and Conditions, act upon decisions, instructions, directions or guidance of the CMP or the Adaptation Fund Board (or such other person designated in writing by the Adaptation Fund Board for that purpose (Authorized Designee)) only if such decisions, instructions, directions or guidance are provided to the Trustee in writing. The Trustee shall not be responsible for inquiring or investigating if any decisions, instructions, directions or guidance of the Adaptation Fund Board or, as the case may be, any Authorized Designees, do not contravene an existing decision or act of the CMP, and shall have no liability for relying in good faith on any written decision, instruction, direction or guidance of the CMP, Adaptation Fund Board or any Authorized Designees, without further inquiry or investigation on its part or otherwise for any actions taken, or omitted to be taken, in good faith.
6. The CMP acknowledges that the Trustee may disclose information obtained by it in connection with its functions under the Terms and Conditions, if such disclosure is required or otherwise necessary in carrying out the services and activities set out herein, in accordance with the World Bank's policies and procedures.
7. The Trustee shall establish a trust fund for the Adaptation Fund (the Trust Fund), and shall hold in trust, as a legal owner, and administer the funds, assets and receipts, which constitute the Trust Fund, on behalf of the Adaptation Fund supervised and managed by the Adaptation Fund Board.
8. For the purpose of the monetization of the Share of Proceeds for the Adaptation Fund, the Trustee, in its capacity as agent of the CMP, is hereby authorized by the CMP to administer Sales of the Share of Proceeds under the instructions, direction and guidance

of the Adaptation Fund Board consistent with its responsibility for the monetization of the Share of Proceeds, pursuant to paragraphs 24, 25, 26, 27 and 28 below.

9. The Trustee shall be responsible only for performing those duties and responsibilities specifically and expressly set forth in the Terms and Conditions and shall not be subject to any other duties or responsibilities (express or implied), including, without limitation, any duties or obligations that might otherwise apply to a fiduciary or trustee under general principles of equity, trust or fiduciary obligations and/or any other legal or equitable principles. To the extent that Sales of the Share of Proceeds are conducted by the Trustee pursuant to paragraphs 24, 25, 26, 27 and 28 below, the Trustee shall not be responsible for the legality, validity or enforceability of any such Sales of the Share of Proceeds, the value obtained from such Sales of the Share of Proceeds (including any reduction in the value of the CERs, AAUs or the ERUs from the time they are credited to the CDM Account (as defined in paragraph 24 below) to the time such Sales are consummated) or any expenses or liabilities incurred in connection with such Sales.

10. The Trustee shall not be liable for any failure to carry out its obligations under the Terms and Conditions where such failure is a result of a Force Majeure Event and, for so long as such circumstances continue, shall be relieved of its obligations under the Terms and Conditions which it has been prevented from fulfilling as a result of that Force Majeure Event without liability; provided that the Trustee shall, notwithstanding that it is relieved from its obligations hereunder, take all reasonable and practical steps to minimize any loss and/or disruption resulting from any such Force Majeure Event. For the purpose of this paragraph, "Force Majeure Event" means any event beyond the reasonable control of the person affected including, without limitation, labor dispute, act of God, war, act or circumstance of terrorism, riot, civil commotion, malicious damage, accident, breakdown of essential computer software, hardware or system failure, fire, flood and/or storm and other unforeseen circumstances materially and adversely affecting the performance of the functions of the Trustee under the Terms and Conditions.

11. The CMP acknowledges that the World Bank shall have the right to engage in any of the types of activities described in the Terms and Conditions for its own account or for the account of clients other than the Adaptation Fund whether acting as trustee, adviser or in any other capacity vis-à-vis such clients. The CMP agrees that the World Bank, in carrying out such activities for its own account or for the account of others, may decide to adopt approaches and courses of actions, which differ from the approaches and courses of action that the Trustee decides to take in performing the services for the Adaptation Fund described in the Terms and Conditions. In engaging in such activities for its own account or for the account of others, the World Bank will put in place measures designed to avoid or mitigate conflicts of interest arising from its functions under the Terms and Conditions relating to the Sale of the Share of Proceeds for the Adaptation Fund.

12. If a decision by the CMP or the Adaptation Fund Board after the effective date of the Terms and Conditions relates to the functions of the Trustee performed or to be performed under the Terms and Conditions, such a decision shall be developed in close consultation with the Trustee. In the absence of such consultation with and the agreement of the Trustee, the Trustee shall not be bound by any decision of the CMP or the Adaptation Fund Board, to the extent that such a decision relates to the functions of the Trustee performed or to be performed under the Terms and Conditions.

13. The CMP agrees that the Trustee shall be fully indemnified, out of the assets held for the Adaptation Fund, including the Trust Fund resources, for any liabilities, claims, losses, costs and expenses, including attorneys' fees and expenses, incurred by the Trustee in connection with or in any way arising out of its activities as Trustee, including but not limited to any activities of the Trustee in connection with the Sale or the facilitation of the Sale of the Share of Proceeds. Such indemnity shall not include any liabilities, claims,

losses, costs or expenses incurred by the Trustee as a direct result of its own gross negligence or willful misconduct.

14. The privileges and immunities accorded to the World Bank shall apply to the property, assets, archives, operations and transactions of the Trust Fund. Nothing in the Terms and Conditions shall be considered a waiver of any privileges or immunities of the World Bank under its Articles of Agreement or any applicable law, all of which are expressly reserved.

15. The CMP agrees that the Trustee shall be reimbursed annually from the assets held for the Adaptation Fund, including the Trust Fund resources, for the fees, costs and expenses incurred by it in connection with performing its functions under the Terms and Conditions, including, without limitation, the costs and expenses incurred in connection with the establishment and administration of the Trust Fund, the Sale of the Share of Proceeds, and any and all services provided hereunder, including attorneys' fees and expenses and external auditors' costs, costs of insurance policies and relevant service providers' fees. For this purpose, the Trustee shall submit to the Adaptation Fund Board a proposal for mutual agreement for the services and activities to be provided by the Trustee and estimated fees, costs and expenses to carry out such services and activities for the initial and/or upcoming fiscal year, as applicable. Upon approval by the Adaptation Fund Board of such a proposal, the Trustee shall deduct and transfer the amount of the estimated fees, costs and expenses to its own account from the Trust Fund resources or such other assets held for the Adaptation Fund; provided that the amount of the fees, costs and expenses transferred may be subject to an end of year adjustment based on actual costs and expenses incurred, as such an arrangement may be agreed between the Adaptation Fund Board and the Trustee in connection with the aforementioned proposal.

16. In order to enable the Trustee to carry out its functions enumerated in the Terms and Conditions, the Trustee shall be entitled to attend any meetings of the Adaptation Fund Board and, as an observer, any meetings of the CMP which may concern the operations and activities of the Adaptation Fund. Further, the CMP hereby requests the secretariat servicing the Adaptation Fund Board in accordance with decision 1/CMP.3, and the secretariat of the Convention (the UNFCCC secretariat), to cooperate fully with the Trustee.

B. Administration of the Trust Fund

17. The Trustee shall receive and hold in the Trust Fund any proceeds from the Sale of the Share of Proceeds conducted pursuant to paragraphs 24, 25, 26, 27 and 28 below. If requested by the Adaptation Fund Board, the Trustee may accept, on terms mutually agreed between the Trustee and the Adaptation Fund Board, contributions from donors to support the operations of the Adaptation Fund. For the avoidance of doubt, no Share of Proceeds shall be held in the Trust Fund.

18. Subject to paragraphs 2 and 12 above, the Trustee shall administer the funds, assets and receipts of the Trust Fund only for the purpose of, and in accordance with, the Terms and Conditions and the relevant decisions of the CMP and the Adaptation Fund Board.

19. In accordance with decision 1/CMP.3, paragraph 21, and in conformity with the administrative and investment arrangements of the Trustee, the Trustee shall hold the funds, assets and receipts that constitute the Trust Fund separate and apart from the funds of the World Bank. The Trustee shall establish and maintain separate records and accounts to identify the resources of the Trust Fund, the commitments financed out of the Trust Fund, and the receipts and transfers of funds in the Trust Fund.

20. The Trustee shall invest the funds held in the Trust Fund, pending their transfer under paragraphs 15 above and 22 below, in accordance with the Trustee's policies and

procedures for the investment of trust funds administered by the World Bank, including commingling of the resources of the Trust Fund for administrative and investment purposes with other trust fund assets maintained by the World Bank. The commingling of Trust Fund resources for administrative and investment purposes should not affect the amount of resources from proceeds of monetization of the Share of Proceeds available in the Trust Fund for transfer of funds for Adaptation Fund operations, activities, projects and programmes. The Trustee shall credit all income from such investment to the Trust Fund to be used for the same purposes as other funds held in the Trust Fund. The CMP acknowledges that no warranty is given by the Trustee as to the performance or profitability of the investment of the funds held in the Trust Fund.

21. The funds held in the Trust Fund may be freely exchanged by the Trustee into other currencies as may facilitate their administration and transfer.

22. The Trustee shall, subject to the availability of resources held in the Trust Fund, record commitments and make transfers of funds from the Trust Fund in the manner agreed between the Trustee and the Adaptation Fund Board, and only at, and in accordance with, the written direction provided to the Trustee by the Adaptation Fund Board or any Authorized Designee. Upon the transfer of funds, the Trustee shall not have any responsibility for the use of the Trust Fund funds transferred and activities carried out therewith, including but not limited to any responsibility with respect to supervising, monitoring, reporting on or verifying activities carried out with the Trust Fund funds transferred by the Trustee herein.

23. The Trustee shall prepare and furnish the Adaptation Fund Board with financial reports of the Trust Fund annually (or at any other such frequency agreed between the Trustee and the Adaptation Fund Board), and provide records and accounts of the Trust Fund for audit by its external auditors annually (or at any other such frequency agreed between the Trustee and the Adaptation Fund Board), in accordance with the policies and procedures of the Trustee. Furthermore, the Trustee shall prepare and furnish the Adaptation Fund Board with reports on the Sale of the Share of Proceeds for the Adaptation Fund and on the status of commitments and transfers of Trust Fund funds annually (or at any other such frequency agreed between the Trustee and the Adaptation Fund Board).

C. Sales of Share of Proceeds

24. The CMP hereby authorizes the Sale of the Share of Proceeds from the account established and maintained at the CDM registry for the Adaptation Fund to hold and transfer the Share of Proceeds to assist in meeting the costs of adaptation in accordance with Article 12, paragraph 8, of the Kyoto Protocol (the CDM Account) in the manner set forth hereunder.

25. The Sale of the Share of Proceeds from the CDM Account shall be administered under the instructions, direction and guidance of the Adaptation Fund Board consistent with its responsibility to supervise and manage the Adaptation Fund and for the monetization of the Share of Proceeds.

26. Pursuant to the authority provided under paragraph 3 above, the Adaptation Fund Board may cause to be entered into any and all contracts necessary for the Sale of the Share of Proceeds from the CDM Account by granting to the Trustee any necessary power of attorney on behalf of the CMP, so that the Trustee may execute contracts of Sale with the relevant third-party Share of Proceeds purchasers and such other contracts necessary in connection with the Sale or the facilitation of the Sale of the Share of Proceeds, at the direction of the Adaptation Fund Board pursuant to paragraph 28 below.

27. Pursuant to the authority provided under paragraph 8 above, and in furtherance of paragraphs 24, 25 and 26 above, the Trustee may, at the direction of the Adaptation Fund Board pursuant to paragraph 28 below: (1) cause the transfer of the title to the Share of Proceeds to the relevant third-party purchasers, or the cancellation of the Share of Proceeds, upon receipt of payment in respect of the transfer or cancellation; (2) enter into arrangements with the CDM Registry Administrator to effectuate such transfers or cancellations of the Share of Proceeds; (3) engage with relevant service providers for the purposes of execution, clearance, settlement and other logistic matters in connection with the Sale or the facilitation of the Sale of the Share of Proceeds; and (4) take other such actions as necessary to effectuate the Sale of the Share of Proceeds for the benefit of the Adaptation Fund.

28. Sale of the Share of Proceeds and transfer of title or cancellation of the Share of Proceeds in respect of such Sale pursuant to paragraphs 24, 25, 26 and 27 above shall be effected by the Trustee only in accordance with the guidelines agreed in writing between the Trustee and the Adaptation Fund Board.

D. Dispute resolution: notices

29. The CMP and the Trustee shall, to the extent possible, strive to resolve promptly and amicably questions of interpretation and application of the Terms and Conditions and settle any disputes, controversy or claim arising out of or relating to the Terms and Conditions.

30. Any dispute, controversy or claim arising out of or relating to the Terms and Conditions, which has not been settled by agreement between the CMP and the Trustee, shall be submitted to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) in force on the effective date of the Terms and Conditions, and the following provisions: (1) the appointing authority shall be the Secretary-General of the Permanent Court of Arbitration; and (2) the language of the arbitral proceedings shall be English.

31. Any arbitral award under paragraph 30 above shall be final and binding upon the CMP and the Trustee. The provisions set forth in paragraphs 29 and 30 above shall be in lieu of any other procedure for the settlement of disputes between the CMP and the Trustee.

32. Any notice or request required or permitted to be given or made under the Terms and Conditions and any other agreement between any of the parties contemplated by the Terms and Conditions shall be in writing. Any such notice or request shall be deemed to have been duly given or made once it has been delivered by hand, mail, facsimile or, if so designated by the parties, by other electronic means, to the World Bank or the UNFCCC secretariat, in the case of the CMP, to which it is required or permitted to be given or made at such party's address designated by notice to the World Bank or in the case of the CMP, the UNFCCC Secretariat, giving such notice or making such a request. Deliveries made by facsimile or other electronic means shall also be confirmed by mail.

E. Amendment and termination

33. Any amendment to the Terms and Conditions shall become effective only upon approval and acceptance by the CMP and the World Bank.

34. The Trustee's role as trustee servicing the Adaptation Fund under the Terms and Conditions shall be automatically terminated on 30 May 2020, unless the CMP and the Trustee affirmatively agree in writing to extend beyond this date the term of the Trustee's services under the Terms and Conditions.

35. Notwithstanding paragraph 34 above, the CMP may at any time terminate the appointment of the Trustee as trustee servicing the Adaptation Fund under the Terms and Conditions. The Trustee's role as trustee servicing the Adaptation Fund shall be terminated three months after receipt by the Trustee of the notice in writing of the termination of the appointment.

36. Notwithstanding paragraph 34 above, the Trustee may at any time terminate its role as trustee servicing the Adaptation Fund by giving the CMP notice in writing no less than three months prior to any session of the CMP. The Trustee's role as trustee servicing the Adaptation Fund shall be terminated immediately after the session of the CMP which immediately follows the notice by the Trustee. In the event that no session of the CMP is held within 12 months of the Trustee giving notice, however, the Trustee's role shall be terminated 12 months after the Trustee has given notice.

37. Following termination of the Trustee's role as trustee servicing the Adaptation Fund pursuant to paragraphs 34, 35 or 36 above, the Trustee shall carry on no business for the Adaptation Fund except for the purpose of winding up its affairs. The Trustee shall take all necessary action for winding up its affairs in an expeditious manner, and for meeting the commitments already made by the Trustee and the transfer of any remaining funds, assets and receipts in the Trust Fund, as directed by the Adaptation Fund Board. The CMP hereby mandates that in such circumstances the Adaptation Fund Board shall provide such direction to the Trustee without undue delay. All of the powers and rights of the Trustee under the Terms and Conditions, including the right to be reimbursed for the fees, costs and expenses incurred under paragraph 15 above, shall continue until the affairs of the Trustee shall have been wound up.

F. Effectiveness

38. The Terms and Conditions or any amendments to the same shall become effective and constitute an agreement between the CMP and the World Bank upon decisions by the CMP and the World Bank to approve and accept the Terms and Conditions or any amendments to the same.

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