

CLIMATE FOR DEVELOPMENT IN AFRICA

INSTRUMENT

FOR THE ESTABLISHMENT OF THE

CLIMDEV-AFRICA SPECIAL FUND

(ADMINISTERED BY THE AFRICAN DEVELOPMENT BANK)

TABLE OF CONTENTS

Instrument for the Establishment of the ClimDev-Africa Special Fund

	Page
PREAMBLE	
CHAPTER I OBJECTIVE AND PURPOSES	2
CHAPTER II ADMINISTRATION	3
CHAPTER III GOVERNANCE AND STRUCTURE	4
CHAPTER IV FINANCIAL ARRANGEMENTS	6
CHAPTER V OPERATIONS	7
CHAPTER VI GENERAL PROVISIONS	8

**INSTRUMENT FOR THE ESTABLISHMENT
OF THE CLIM-DEV AFRICA SPECIAL FUND
(ADMINISTERED BY THE AFRICAN DEVELOPMENT BANK)**

PREAMBLE

WHEREAS:

1. In January 2007, the Africa Union Eighth Ordinary Session endorsed the April 2006 “Action Plan for Africa”, and requested “*the Commission, the Economic Commission for Africa, and the African Development Bank to develop and implement the Plan on Climate Change and Development in Africa and to report on progress biannually*”.
2. At the Conference of African Ministers of Finance, Planning and Economic Development in April 2007 it was noted that: “*the Economic Commission for Africa, African Union Commission and African Development Bank within the framework of the joint secretariat, and in collaboration with the development partners, are currently developing the “Climate Information for Development in Africa (ClimDev-Africa) adaptation programme to be implemented by the relevant African and regional institutions*”;
3. The First Joint Annual Meeting of the African Union Conference of Ministers on the Economy and Finance and the Conference of African Ministers of Finance, Planning and Economic Development of the UN Economic Commission for Africa held in Addis Ababa in April 2008, requested: “*the Economic Commission for Africa, in collaboration with the African Union Commission and the African Development Bank to take the necessary measures for the effective implementation of CLIM-DEV Africa through relevant national, sub-regional and regional institutions*”;
4. In June 2008, the 12th Session of the African Ministerial Conference on the Environment specifically supported “*the process of developing the CLIMDEV Africa programme*” and requested “*the African Union Commission, Economic Commission for Africa and the African Development Bank to accelerate the finalization of the programme document and the dissemination of this information to ensure the participation of the African Ministerial Conference on the Environment in the Climate for Development in Africa programme*”.

5. The African Development Bank (the "Bank") is a significant and committed contributor to development in Africa and in particular was established by its members comprising all of the countries of Africa as well as certain non-African countries, for the purpose of contributing to the sustainable economic development and social progress of its African member states, and in this regard, the Bank has accepted the request to establish the ClimDev-Africa Special Fund and to administer its resources;
6. In accordance with Article 8 of the Agreement establishing the Bank (the "Bank Agreement"), the Bank may establish or be entrusted with the administration of Special Funds which are designed to serve the purpose of the Bank and come within its functions;
7. The Board of Directors of the Bank has approved this Instrument, subject to the approval of the Board of Governors of the Bank;

It is hereby resolved as follows:

CHAPTER I OBJECTIVES AND PURPOSES

Section 1.1 Establishment. There is hereby established a Special Fund under Article 8 of the Agreement Establishing the Bank to be known as the ClimDev-Africa Special Fund (hereinafter called the "CDSF" or the "Fund"), which shall be constituted with resources mobilized from donors, to be administered in accordance with the provisions of this Instrument and, when applicable, the Agreement Establishing the Bank.

Section 1.2 Purpose. The purpose of the CDSF shall be to pool the resources mobilized from donors to finance climate-resilient development programs that mainstream climate change information at all levels in Africa.

Section 1.3 Areas of Intervention. The resources of the CDSF shall be devoted primarily to:

- (a) the generation and wide dissemination of reliable and high quality climate information in Africa;
- (b) capacity enhancement of policy makers and policy support institutions to integrate climate change information into development programs; and
- (c) implementation of pilot adaptation practices that demonstrate the value of mainstreaming climate information into development.

CHAPTER II ADMINISTRATION

Section 2.1 Administration. The Bank shall be the Trustee for the CDSF, and in this capacity shall, as legal owner, hold in trust the funds, assets and receipts which constitute the resources of the CDSF, and manage and apply them for the purpose of, and in accordance with, the provisions of this Instrument. The Bank shall keep the resources of the CDSF separate and apart from all other accounts and assets of, or administered by, the Bank.

Section 2.2 Use of the Bank's Facilities. Except as otherwise provided herein, the Bank shall administer the CDSF through its own organisation, services, facilities, officers, staff and such other experts and consultants as may be necessary. The Bank shall in no event delegate responsibility for the administration of the CDSF.

Section 2.3 Expenses of Administering the CDSF. The Bank shall keep an account of the expenses incurred in the administration of the CDSF, as follows:

- (i) Direct costs incurred by the Bank for the CDSF;
- (ii) Indirect costs incurred by the Bank in the administration of the CDSF.

Section 2.4 Payment of Administrative Costs. To meet the costs and expenses of administering the CDSF, the Bank shall charge an administrative fee set at a minimum of five percent (5%) of the resources held by the Fund.

Section 2.5 Commitments. The Bank shall adopt measures to avoid commitments in excess of the available resources of the CDSF, and shall seek to keep administrative costs of the CDSF at a minimum.

Section 2.6 Privileges and Immunities. The privileges and immunities accorded to the Bank under its Articles of Agreement shall apply to the property, assets, archives, income, operations and transactions of the CDSF.

Section 2.7 Reporting. (a) The Bank shall present to the Governing Council an Annual Report on the activities of the CDSF. The Annual Report shall contain a brief description of the activities of the CDSF during the preceding financial year, including all the operations financed from resources of the CDSF, and the outcomes of such operations. The Annual Report shall also include a statement of assets and liabilities of the CDSF, a statement of cumulative receipts and expenditure, and a

statement of the use of resources of the CDSF, with such explanatory notes as may be pertinent.

(b) The comments which the members of the Governing Council may consider appropriate to make in respect of the statements and information referred to in paragraph (a) of this Section, shall be presented as soon as possible and in any case within thirty (30) days following the receipt of the respective reports.

Section 2.8 Audit. The CDSF shall be subject to the internal and external audit procedures of the Bank, including an annual audit to be conducted by the external auditors of the Bank. Upon the written request of the Governing Council, the Bank shall cause the account and records of any specific activity financed with the resources of the CDSF to be audited by its external auditors. Notwithstanding Section 2.4 of this Agreement, the costs of such special audit shall be charged to the resources of the CDSF.

CHAPTER III STRUCTURE AND GOVERNANCE

Section 3.1 Structure. The CDSF shall have a Governing Council, as well as a Coordinator and other staff considered necessary to carry out the objectives of the Fund.

Section 3.2 Participation. Any member country of the Bank, any country which is eligible to become a member of the Bank, and any organization acceptable to the Bank, may become a participant in the CDSF. Participation in the CDSF shall be effected by submitting an Instrument of Participation, and acceding to the terms of this Instrument. Participation in the CDSF shall be a prerequisite for representation in the decision-making organ of the Fund.

Section 3.3 Governing Council: Composition. The Governing Council shall have nine (9) members comprising: one (1) representative each from the Bank, the UN Economic Commission for Africa (“UNECA”) and the African Union Commission (“AUC”), one (1) representative from the World Meteorological Organization, one (1) representative from the Global Climate Observation System, one (1) member appointed by Donors to the CDSF who are not otherwise represented on the Governing Council, two (2) stakeholder representatives who may be selected from civil society organisations by agreement between the Principal Partners (AUC, UNECA and the Bank), and the Coordinator, who shall be an *ex-officio* member.

Section 3.4 Governing Council: Functions. The Governing Council shall be responsible for determining the general policy direction of the CDSF. In particular, the Governing Council shall:

- (a) Set strategic direction of and exercise financial oversight over the CDSF
- (b) Be responsible for the approval and control of annual work plans and CDSF budgets;
- (c) Endorse proposals for funding; and
- (d) Review the annual report of activities financed from the resources of the CDSF.

The Bank shall consult regularly with the Governing Council.

Section 3.5 Governing Council: Chairperson. The representative of the AUC shall serve as Chairperson of the Governing Council.

Section 3.6 Governing Council: Procedure. The Governing Council shall adopt its Rules of Procedure at its inaugural meeting. The Coordinator of the Africa Climate Policy Centre shall serve as Secretary for the Governing Council.

Section 3.7 Governing Council: Meetings. The Chairperson of the Governing Council, in close consultation with the Bank and the Secretary of the Council, may convene meetings at such places and at such times as may be required. Decisions of the Governing Council also may be taken by correspondence.

Section 3.8 Decision-Making. Decisions of the Governing Council shall be taken by consensus. Where a consensus appears unattainable, a decision may be taken by the vote of a simple majority of the members of the Governing Council. Each member of the Governing Council shall have one (1) vote, except the Coordinator of the CDSF, who shall not be assigned a vote. The Chairperson shall however have a casting vote in the event of an equal division.

Section 3.9 The Coordinator. The Bank shall recruit a person to serve as Coordinator of the CDSF, as well as an operational and administrative team to assist the Coordinator. The Bank shall also provide adequate office facilities to the Coordinator and the team.

Section 3.10 The Coordinator: Appointment and Functions. The Coordinator of the CDSF shall be a person with considerable senior management experience in the management of climate change and related funds. The Coordinator shall be appointed by the President of the Bank and shall be accountable to the President or other officer of the Bank designated by the President. The Coordinator shall serve as the administrative head of the CDSF within the organisational structure of the Bank and shall perform such related functions as may be assigned by the Bank.

CHAPTER IV FINANCIAL ARRANGEMENTS

Section 4.1 Resources (a) The resources of the CDSF shall consist of contributions obtained from donor countries or organizations (the "Donor(s)"). Contributions may be made in kind, to the extent acceptable by the Bank, taking into consideration the relevance and ease of valuation of the contribution.

(b) All sums received: (i) in the form of additional resources from Donors, (ii) in connection with the operations financed out of the resources of the CDSF, or (iii) which accrue to the CDSF by way of interest, dividends, fees, sale of assets or from other sources, shall be added to the *corpus* of the CDSF for use by the Bank as part of the CDSF.

Section 4.2 Contributions. A member country of the Bank, or any country eligible to be a member country, as well as an organization acceptable to the Bank, may make contributions to the CDSF to be utilized for achieving its purpose. The Bank will receive contributions for use in accordance with the terms of this Instrument. Contributions will be effected by a deposit of an Instrument of Commitment, stating the specific amount of the contribution, and the payment schedule agreed with the Bank.

Section 4.3 Denomination and Payment. (a) Contributions shall be paid in any one of the lending currencies of the Bank.

(b) The financial statements and accounts of the CDSF shall be denominated in one of the lending currencies of the Bank, as determined by the Governing Council.

Section 4.4 Separation of Resources. (a) The Bank shall at all times hold, utilise, commit, invest or in any other manner dispose of the resources of the CDSF, independently of the resources of the Bank itself, or of any other resources entrusted to the Bank for administration.

(b) The Bank shall keep separate accounts and records of the resources and operations of the CDSF in such a way as to permit the identification of the assets, liabilities, income, costs and expenses pertaining to the CDSF.

Section 4.5 Replenishment. The resources of the CDSF may be replenished from time to time. The Bank, however, shall inform the Governing Council, and initiate discussions for a general replenishment of the resources of the CDSF, when it so determines, taking into consideration the commitment capacity and rate of utilization of the resources of the Fund.

CHAPTER V OPERATIONS

Section 5.1 Recipients. Regional member countries of the Bank or any organization, institution, agency and other undertaking in the territory of a regional member country shall be eligible to receive financing or other assistance from the resources of the CDSF.

Section 5.2 Approval. Financing or other form of assistance provided from the resources of the CDSF shall be approved, individually, or as part of a group of projects, by the Board of Directors of the Bank, in accordance with the general voting rules set forth in the Agreement Establishing the Bank. The Bank, in consultation with the Governing Council, shall adopt operational procedures for operations financed with the resources of the CDSF, which shall in particular, be designed to ensure a fast-track process for the review, approval and implementation of operations financed with the resources of the CDSF.

Section 5.3 Operational Principles. Except as otherwise provided herein, or in operational procedures adopted by the Bank for purposes of the CDSF, the Bank, in its administration of the CDSF, shall apply the same principles and criteria that are applicable to financing provided from its own ordinary resources, particularly those contained in Article 17 of the Agreement establishing the Bank.

Section 5.4 Recipient's Contribution. In considering applications for financing from the resources of the CDSF, the Bank shall give due regard to the relevant self-help measures being taken by the recipient and, where the recipient is not a member country of the Bank, by both the recipient and the member or members intended to benefit from the proposed financing.

Section 5.5 Procurement. Procurement of goods, works and services using the resources of the CDSF shall be carried out in accordance with the Rules of the Bank. Procurement shall be limited to member countries of the Bank as well as those Donor States that are non-members of the Bank.

Section 5.6 Supervision. Supervision of the operations carried out with the resources of the CDSF shall be the responsibility of the Bank.

Section 5.7 Currencies. Financing out of the resources of the CDSF shall be denominated and disbursed in the lending currency of the Bank in which the account(s) of the CDSF is denominated. Any reimbursements or, related charges, whenever applicable, shall be made in the currency of disbursement.

Section 5.8 Financing Agreements. Financing agreements concluded by the Bank obligating the resources of the CDSF shall indicate clearly that the financing has been provided by the CDSF.

Section 5.9 Non-obligation of the Bank. Financing granted by the Bank under this Instrument shall not involve any financial obligation on part of the Bank, and except as otherwise provided for in this Instrument, the Bank shall not derive any financial benefits from the CDSF.

CHAPTER VI GENERAL PROVISIONS

Section 6.1 Establishment and Effectiveness. (a) The CDSF shall be established as of the date of adoption of this Instrument by the Board of Governors of the Bank, in accordance with Article 8 of the Agreement establishing the Bank.

(b) This Instrument shall become effective and the CDSF operational on the date when the Bank shall have Instruments of Commitment pledging contributions in an aggregate amount equivalent to 20 million Units of Account (UA 20,000,000), as defined in the Agreement establishing the Bank; provided, however, that such date shall not be later than 31 December 2010 or such later date as may be determined by the Bank.

Section 6.2 Consultation and Information. Participants in the CDSF shall cooperate fully to assure that the purposes of the CDSF are accomplished.

Section 6.3 Financial Year. The financial year of the CDSF shall be the calendar year.

Section 6.4 Notices and Requests. (a) Notices or requests to the CDSF shall be in writing and shall be delivered at the address below, or such other address as may be notified by the Bank:

The ClimDev-Africa Special Fund
*(a Special Fund Administered by the
African Development Bank)*
01 B.P. 1387
Abidjan 01
Ivory Coast
Telephone: (+225) 20 20 44 44
Telefax: (+225) 20 20 49 59

E-mail: climdev@afdb.org
 Telex AFDEV Abidjan
 Attention: The Coordinator

During the period of the Temporary
 Relocation of Operations of the Bank:

The ClimDev-Africa Special Fund
*(a Special Fund Administered by the
 African Development Bank)*
 Agence Temporaire de Relocalisation

15 Avenue du Ghana, Angle Rues Hedi Nouria

& Pierre de Coubertin
 B.P. 323 Tunis
 1002 Tunis Belvedere, Tunisia
 Tel: (+216) 71 10 2468
 Fax: (+216) 71 10 3721
 E-mail: climdev@afdb.org
 Attention: The Coordinator

(b) Notices and requests to the Bank or any other participants in the CDSF shall be in writing and shall be delivered to the address provided in the respective Instruments of Participation or any other address as shall be notified in writing by such participant.

Section 6.5 Settlement of Disputes. (a) In the event of a dispute concerning the interpretation or implementation of the terms of this Instrument, such dispute shall be submitted by notification in writing to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Bank, another by the other disputing party, and the two (2) parties shall appoint the third arbitrator, who shall be the Chairperson. If, within forty-five (45) days of receipt of the request for arbitration, either party has not appointed an arbitrator, or if, within thirty days of the appointment of the two (2) arbitrators, the third arbitrator has not been appointed either party may request the Chairperson of the African Union Commission to appoint the arbitrator not yet appointed. The procedure of arbitration shall be fixed by the arbitrators, but the third arbitrator shall have full power to settle all questions of procedure in any case of disagreement with respect thereto.

(b) The Tribunal shall afford to all parties a fair hearing and shall render its award in writing, such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each of the disputing parties. Any such award rendered in accordance with the provisions of this Section shall be final

and binding upon such parties, and the participants Donors and recipients. Each of the disputing parties shall abide by and comply with any such award rendered by the Tribunal in accordance with the provisions of this Section.

(c) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Tribunal shall convene, the Tribunal shall fix such amount as shall be reasonable under the circumstances. Each of the disputing parties shall defray its own expenses in the arbitration proceedings. The cost of the Tribunal shall be divided between, and borne equally by the parties. Any question concerning the division of the expenses of the Tribunal or the procedure for payment of such expenses shall be determined by the Tribunal.

Section 6.6 Withdrawal from Participation. Any participant may, however, withdraw from participation in the CDSF by written notice to the Facility. The withdrawal shall become effective six (6) months after the date of receipt of the notice. The participant shall, however, remain liable for the payment of any portion of the amount of its commitment, on the basis of which the CDSF has made commitments to recipients.

Section 6.7 Amendments and Termination. (a) Amendments or additions may be made to this Instrument by a decision of the Bank and the Governing Council.

(b) This Instrument shall be in effect for twelve (12) years, provided however that this period may be extended or shortened by a decision of the Board of Governors of the Bank, upon the recommendation of the Board of Directors acting in consultation with the Governing Council. The effectiveness of this Instrument will also terminate upon the occurrence of the event contemplated in Article 47, Section 1 of the Bank Agreement.

(c) On the date of expiration or the date of termination (each hereinafter referred to as the "Termination Date"), the Bank shall cease all activities relating to the resources of the CDSF, except those incidental to their orderly realisation, conservation and preservation and settlement of the direct or contingent obligations to which they may be subject.

(d) The Bank shall also present to the Governing Council a list of all operations in progress, as of the Termination Date, and such operations shall continue to be processed until the respective processing is concluded.

(e) The Bank shall within a reasonable period after the termination of the CDSF transfer to the donors such of the resources of the CDSF as are in possession of the Bank and are not required for the purpose of settlement of any outstanding

obligations, and shall thereafter, transfer the balance of such resources as and when received by the Bank.

(f) In the event of termination, the Bank shall, prior to transferring funds in its control to the relevant donors, withhold such portion of the funds as shall correspond *pro rata* to the administrative fee agreed by the Governing Council, to be paid to the Bank during the period of liquidation of the CDSF.

AFRICAN DEVELOPMENT BANK

BOARD OF GOVERNORS

Resolution B/BG/2010/[]

**Adopted at the [] Sitting of the Forty-Fifth Annual Meeting
of the African Development Bank, on [] May 2010**

Establishment of the ClimDev-Africa Special Fund

THE BOARD OF GOVERNORS,

HAVING REGARD to: (i) the Agreement Establishing the African Development Bank (the "Bank"), in particular Articles 2 (Functions), 8 (Special Funds), 10 (Special Resources), 11 (Separation of Resources), 17 (Operational Principles), 29 (Board of Governors: Powers) and 32 (Board of Directors: Powers); (ii) the Financial Regulations of the Bank, in particular Regulations 3.2 (The Separation Principle) and 3.3 (Financial Administration of Special Funds);

HAVING CONSIDERED:

- (i) Document ADB/BG/WP/2009/[] of the Board of Directors, entitled "Framework Document for the Establishment of the ClimDev-Africa Special Fund", and the recommendation therein for this Board to establish the ClimDev-Africa Special Fund for resources mobilized from donors for purposes of financing climate-resilient development programs that mainstream climate change information at all levels in Africa; and
- (ii) The proposed Instrument for the Establishment of the ClimDev-Africa Special Fund (the "Instrument");

HEREBY:

- (i) Establishes the ClimDev-Africa Special Fund, on the terms and conditions contained in the Instrument attached hereto as Annex I; and
- (ii) Authorizes the Board of Directors and the President to take such administrative measures as may be necessary or expedient for the implementation of this Resolution, having regard to the functions and powers of the Board of Directors and the President, as set out in the Agreement establishing the Bank, the General Regulations, and other subsidiary instruments of the Bank.