

**Annex XXIV: Amended and restated interim Green Climate Fund
Trust Fund agreement**

MTO No. 069022

AMENDED AND RESTATED AGREEMENT

on

**the Terms and Conditions for the Administration of the Green Climate Fund
Trust Fund**

between

GREEN CLIMATE FUND

and

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT,
SERVING AS THE INTERIM TRUSTEE OF THE GREEN CLIMATE FUND TRUST FUND**

Dated 2014

MTO No. 069022

AGREEMENT

This AMENDED AND RESTATED AGREEMENT on the Terms and Conditions for the Administration of the Green Climate Fund Trust Fund (“Agreement”), dated 2014, is entered into between the GREEN CLIMATE FUND (“Fund”), acting through its Board (“Board”), and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (“Bank”), serving as the interim trustee (“Trustee”) of the Green Climate Fund Trust Fund (MTO No. 069022) (“Trust Fund”). The Fund and the Trustee shall be collectively referred to as the “Parties” and each a “Party”.

PREAMBLE:

WHEREAS the Fund has been established following the decision of the Conference of the Parties (“COP”) to the United Nations Framework Convention on Climate Change (“UNFCCC”) at its sixteenth session (decision 1/CP.16);

WHEREAS the COP in decision 1/CP.16 invited the Bank to serve as the interim trustee for the Fund, subject to a review three years after the operationalization of the Fund;

WHEREAS in serving as the interim trustee of the Fund, the Trustee has established the Trust Fund to receive contributions from contributors to the Trust Fund (“Contributors”) and has been administering the Trust Fund in accordance with the terms of the contribution agreements entered into with the Contributors, which include the Standard Provisions Applicable to the Green Climate Fund Trust Fund (“Initial Standard Provisions”), approved by the Board in its decision B.02-12/05 (a);

WHEREAS under the “Agreement between the Republic of Korea and the Green Climate Fund concerning the Headquarters of the Green Climate Fund”, entered into force on 27 August 2013, and the “Act for Supporting Operation of the Green Climate Fund” of 30 July 2013, the Fund possesses juridical personality and as such, has the ability to enter into agreements with States and international organizations;

WHEREAS pursuant to paragraph 18 (o) of the Governing Instrument for the Green Climate Fund, as approved by the COP at its seventeenth session (decision 3/CP.17) (“Governing Instrument”), which stipulates that the Board will enter into legal and administrative arrangements with the trustee, the Parties entered into the Agreement on the Terms and Conditions for the Administration of the Green Climate Fund Trust Fund dated 15 October 2013 (the “Original Agreement”) to establish the terms and conditions for the administration of the Trust Fund by the Trustee to replace the terms and conditions of the Initial Standard Provisions; and

WHEREAS following the approval by the Board, in its decision B.08/13, of the policies for contributions, the Parties wish to amend and restate the Original Agreement to reflect

the terms and conditions for the administration of the Trust Fund by the Trustee as prescribed in such policies.

NOW THEREFORE, the Parties hereto agree as follows:

1. Establishment of the Trust Fund

1.1. The Trustee shall establish the Trust Fund to receive contributions (the aggregate of all contributions from the Contributors, the "Contributions") from the Contributors and shall hold in trust, as legal owner, and administer the funds, assets and receipts that constitute the Trust Fund, to support the activities of the Fund in accordance with the terms of this Agreement, including all Annexes and Attachments attached hereto, which constitute an integral part hereof.

1.2. Without prejudice to the generality of the foregoing, and except as otherwise provided herein, the Trustee shall administer the funds, assets and receipts that constitute the Trust Fund only for the purpose of, and in accordance with, the relevant decisions of the Board or other person(s) designated in writing by the Board for that purpose ("Authorized Designee"), when such decisions are provided to the Trustee in writing. The Trustee shall be closely consulted in the development of decisions taken by the Board or the Authorized Designee which relate in any way to the functions of the Trustee performed or to be performed under this Agreement. In the absence of such consultation with and the agreement of the Trustee, the Trustee shall not be bound by any decision of the Board or the Authorized Designee, to the extent that such a decision relates to the functions of the Trustee performed or to be performed under this Agreement.

1.3. The Trustee shall be responsible neither: (a) for inquiring or investigating whether any decisions of the Board or Authorized Designee or Written Instruction (as defined below) provided to the Trustee contravene any existing decisions of the Board or Authorized Designee; nor (b) for making any inquiry or investigation into the facts or matters stated in any such decisions or Written Instructions, and shall have no liability for relying in good faith on any such decisions or Written Instructions, without further inquiry or investigation on its part or otherwise for any actions taken, or omitted to be taken, in good faith.

2. Administration of the Trust Fund

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

2.2. The Fund agrees that the Trustee shall be fully indemnified, out of the assets of the 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 under this Agreement. 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.

3. Contributions and Contribution Agreements

3.1. The Trustee may accept Contributions from Contributors who are parties that have ratified the UNFCCC ("Parties to the UNFCCC"), in accordance with the provisions of this Agreement and pursuant to contribution agreements/arrangements concluded as tripartite agreements/arrangements among the Fund, the Trustee and the Contributors (the "Contribution Agreement"). The Trustee may accept, on terms agreed with the Trustee and approved by the Board or the Authorized Designee, Contributions from Contributors who are not Parties to the UNFCCC in accordance with the provisions of this Agreement and pursuant to the Contribution Agreements.

3.2. Standard provisions applicable to the Contributions to the Trust Fund are set out in Annex I (Standard Provisions Applicable to the Contributions to the Green Climate Fund Trust Fund) of this Agreement.

3.3. The Fund and the Trustee shall enter into a Contribution Agreement with each Contributor. The Contribution Agreement shall provide, among other things, that the Contribution from the Contributor shall be administered by the Trustee in accordance with the terms of this Agreement. Each Contribution Agreement shall be in form and substance acceptable to the secretariat of the Fund (the "Secretariat") and the Trustee. For the avoidance of doubt, the Contribution Agreements shall include any loan agreements entered into among the Fund, a Contributor and the Trustee (a "Loan Agreement"), if, subject to the terms of this Agreement, any such agreement is entered into to receive a Contribution to the Trust Fund in the form of a loan contribution.

4. Commingling, Exchange and Investment of the Contributions

4.1. The Contributions shall be accounted for as a single trust fund and shall be kept separate and apart from the funds of the Bank. For administrative and investment purposes, the Contributions may be commingled with other trust fund assets maintained by the Bank.

4.2. The Contributions may be freely exchanged by the Trustee into other currencies as may facilitate their administration as provided herein.

4.3. The Trustee shall invest and reinvest the Contributions pending their transfer in accordance with the Bank's policies and procedures for the investment of trust funds administered by the Bank. The Trustee shall credit all income from such investment to the Trust Fund to be used for any purposes provided for under this Agreement.

4.4. The Trust Fund shall be maintained by the Trustee in the currency(ies) set forth in Annex II (Holding Currencies) attached hereto (a "Holding Currency"), as the same may be amended from time to time in accordance with paragraph 8.2 below.

5. Transfer of Trust Fund Resources

5.1. Except as provided in paragraph 5.4 below, the Trustee shall, subject to the terms of this Agreement, transfer Trust Fund resources in the manner and pursuant to procedures agreed between the Secretariat and the Trustee; and only at, and in accordance with, a written instruction of the Fund, provided to the Trustee by the Authorized Designee of the Fund in a form and manner agreed between the Trustee and the Secretariat (the "Written Instruction").

5.2. The Secretariat shall provide the Trustee with the necessary information for the Trustee to effect any transfer of Trust Fund resources under paragraph 5.1 above.

5.3. Upon the transfer of Trust Fund resources by the Trustee under paragraph 5.1 above, the Trustee shall have no responsibility for the use of the Trust Fund resources so transferred, and each entity to whom the Trust Fund resources are transferred by the Trustee shall be responsible to the Fund for the use of the Trust Fund resources so transferred and the activities carried out therewith.

5.4. For the purpose of financing the administrative costs of the Trustee, the Trustee shall submit to the Board a proposal for administrative budget to cover the full costs of services to be provided by the Trustee in the upcoming budget period (and/or the services provided prior to the execution of this Agreement) in connection with the performance of its functions under this Agreement, which shall be paid from the Trust Fund resources. Upon approval by the Board of such a proposal, the Trustee shall transfer the amount to its own account from the Trust Fund resources; provided that the amount of the resources transferred may be subject to an end of budget period adjustment on the basis of full cost recovery for the services provided during the budget period, as such arrangement may be agreed between the Board and the Trustee in connection with the aforementioned proposal.

5.5. Subject to paragraph 5.6 below, the Secretariat and the Trustee shall agree to the manner and procedures by which the Trustee may receive any return or reflow of funds from any of the entities in receipt of the Trust Fund resources transferred by the Trustee pursuant to this Agreement. To the extent that the Trustee has received any such return or reflow of funds from any such entities, the Trustee shall credit to the Trust Fund such amount received, which shall become available for further transfer of funds under and pursuant to this Agreement.

5.6. The Trustee shall not be involved in any action seeking to enforce the return of any Trust Fund resources, including any misused funds or reflow of funds, from any of the entities in receipt of the Trust Fund resources transferred under this Agreement.

6. Accounting and Financial Reporting

6.1. The Trustee shall maintain separate records and ledger accounts in respect of the Contributions deposited in the Trust Fund account and transfers made therefrom.

6.2. The Trustee shall furnish to the Board quarterly (or at any other frequency agreed between the Board and the Trustee) financial reports of the Trust Fund.

6.3. Unless otherwise agreed by the Board and the Trustee, the Trustee shall provide to the Board, within six (6) months following the end of each Bank fiscal year, an annual single audit report, comprising: (a) a management assertion together with an attestation from the Bank's external auditors concerning the adequacy of internal control over cash-based financial reporting for all cash-based trust funds as a whole; and (b) a combined financial statement for all cash-based trust funds together with the Bank's external auditor's opinion thereon. The cost of the single audit shall be borne by the Bank.

6.4. The Fund or a Contributor may request, on an exceptional basis, a financial statement audit by the Bank's external auditors of the Trust Fund; provided that the costs of any such audit, including the internal costs of the Bank with respect to the audit, shall be paid by the Trust Fund if the audit was requested by the Fund or paid by the requesting Contributor if the audit was requested by the Contributor.

6.5. The Trustee shall furnish the Secretariat, in the manner and frequency agreed between the Secretariat and the Trustee, with information on: (a) the amounts and types of Contributions received in the Trust Fund; (b) the amounts of resources transferred from the Trust Fund by the Trustee; (c) the amounts of resources returned to the Trust Fund by the entities to whom the Trust Fund resources were transferred by the Trustee; and (d) any such other information as may be agreed in writing between the Secretariat and the Trustee from time to time.

7. Authorization and Enforceability

7.1. Each Party hereby represents and warrants that:

(a) it has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement;

(b) its execution, delivery and performance of this Agreement and its consummation of the transactions contemplated by this Agreement have been duly authorized by all requisite internal action; and

(c) this Agreement has been duly executed and delivered by the Party and is a valid and binding obligation of the Party, enforceable against it in accordance with its terms.

8. Amendment, Effectiveness and Termination

8.1. This Agreement shall become effective upon the signatures of both Parties.

8.2. This Agreement may be amended only with the agreement of the Fund and the Trustee in writing, except that Annex I (Standard Provisions Applicable to the Contributions to the Green Climate Fund Trust Fund), including any attachment thereto, may only be amended in accordance with its terms.

8.3. The Fund may terminate the Bank's role as the interim trustee of the Trust Fund at any time upon six (6) months' prior written notice to the Bank.

8.4. It is envisaged that the Bank will serve as the interim trustee of the Trust Fund, subject to a review by the Board three (3) years after the operationalization of the Fund. Unless otherwise agreed between the Board and the Bank, the Bank's role as the interim trustee of the Trust Fund shall terminate on 30 April 2015/30 April 2018¹, except as set forth in paragraph 8.5 below.

8.5. Notwithstanding paragraph 8.4 above, the Bank may terminate its role as the interim trustee of the Trust Fund at any time upon six (6) months' prior written notice to the Board.

8.6. Following termination of the Bank's role as the interim trustee of the Trust Fund pursuant to paragraph 8.3, 8.4 or 8.5 above, the Bank shall carry on no business for the Trust Fund as the interim trustee except to the extent needed to avoid discontinuity in trustee services. The Bank shall, in consultation with the Secretariat to the extent possible, take all necessary action for winding up its affairs in an expeditious manner, including for the transferring of Trust Fund assets to the successor as directed by the Secretariat in writing without undue delay, and for meeting outstanding commitments. All of the powers and rights of the Trustee under this Agreement, including the right to be reimbursed for fees, costs and expenses incurred under this Agreement, shall continue until the affairs of the Trustee have been wound up. The Fund agrees to make all reasonable efforts to assist the Trustee with the winding up under this paragraph.

9. Notices

9.1. Unless otherwise specified in this Agreement, any communication, notice or request required or permitted to be given or made under this Agreement shall be executed in writing by the authorized person set forth below (or other authorized person as may be notified in writing by one Party to the other from time to time) and delivered to the address set forth below, or other contact details as may be notified in writing by one Party to the other from time to time.

¹ Subject to acceptance by the World Bank of the invitation to continue serving as the Interim Trustee as per decision B.08/22.

For the Fund:

Executive Director
Green Climate Fund

Green Climate Fund Secretariat
G-Tower, 175 Art Center-daero
Yeonsu, Incheon, Republic of Korea

Telephone: + 82 32 458 6059
Facsimile: + 82 32 458 6094
E-mail: secretariat@gcfund.org

For the Trustee:

Director
Trust Funds and Partnerships
The World Bank
1818 H Street, N.W.
Washington, DC 20433
U.S.A.

Telephone: +1 (202) 458-0019
Facsimile: +1 (202) 614-0249
E-mail: gcfitrustee@worldbank.org

10. Dispute Resolution

10.1. The Fund and the Trustee shall, to the extent possible, strive to resolve promptly and amicably questions of interpretation and application of this Agreement and settle any disputes, controversy or claims arising out of or relating to this Agreement.

10.2. Any dispute, controversy or claim arising out of or relating to this Agreement, which has not been settled by the agreement between the Parties, 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 this Agreement, and the following provisions: (a) the appointing authority shall be the Secretary-General of the Permanent Court of Arbitration; and (b) the language of the arbitral proceedings shall be English.

10.3. Any arbitral award under paragraph 10.2 above shall be final and binding upon the Parties. The provisions set forth in paragraphs 10.1 and 10.2 above shall be in lieu of any other procedure for the settlement of disputes between the Parties.

11. Disclosure

11.1. The Trustee and the Fund will disclose this Agreement and related information on the Trust Fund that are provided to them pursuant to this Agreement (excluding any information provided by the Parties in confidence) in accordance with their respective policies and procedures with respect to the disclosure of

information, in effect at the time of such disclosure. By entering into this Agreement, the Parties consent to disclosure of this Agreement and such related information on the Trust Fund in accordance with such policies and procedures.

12. Execution in Counterpart

12.1. This Agreement may be simultaneously executed in several copies, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on its behalf by its duly authorized officer, as of the date first above written.

GREEN CLIMATE FUND

By: _____

Name:

Title:

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT,
SERVING AS THE INTERIM TRUSTEE OF THE GREEN CLIMATE FUND TRUST FUND**

By: _____

Name:

Title:

ANNEX I

Standard Provisions Applicable to the Contributions to the Green Climate Fund Trust Fund

This Annex (“Standard Provisions”) shall be applicable to and form an integral part of the GCF Trust Fund Agreement (as hereinafter defined) and all contribution agreements/arrangements, including the Loan Agreements (as hereinafter defined) (collectively, the “Contribution Agreements”), entered into among (a) the Green Climate Fund (the “Fund”), (b) the International Bank for Reconstruction and Development (the “Bank”), serving as interim trustee (the “Trustee”) of the Green Climate Fund Trust Fund (the “Trust Fund”), and (c) the contributors (each, a “Contributor”, and collectively, the “Contributors”) that provide contributions (the aggregate of all contributions in the form of Grant Contributions, Capital Contributions, Loan Contributions and Cushions (each as hereinafter defined), the “Contributions”) to be administered by the Trustee for the Trust Fund.

The Attachment to these Standard Provisions is an integral part of these Standard Provisions, and except to the extent the context otherwise requires, references to these Standard Provisions shall include references to both these Standard Provisions and the Attachment.

(insert standard terms and conditions applicable to Contributions to the Trust Fund.)

Attachment

Conditions for Use of Contributions

A. The following conditions shall apply to the Contributions, for which the Contribution Agreements are entered into during the initial resource mobilization period of the Fund, as defined in decision B.08/13 (the “IRM Period”).

(insert additional terms and conditions applicable to Contributions to the Trust Fund during the IRM Period.)

ANNEX II

Holding Currencies

United States dollars

(insert any other with agreement of the Trustee.)