

**AFRICAN DEVELOPMENT
BANK GROUP**

AGREEMENT ESTABLISHING THE NIGERIA TRUST FUND

AND

TECHNICAL COOPERATION AGREEMENT BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA

AND

THE AFRICAN DEVELOPMENT BANK

AND

THE AFRICAN DEVELOPMENT FUND

NIGERIA TRUST FUND

**AGREEMENT BETWEEN THE
FEDERAL REPUBLIC OF NIGERIA
AND THE
AFRICAN DEVELOPMENT BANK
FOR THE
ESTABLISHMENT OF THE NIGERIA TRUST FUND**

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AGREEMENT
between
THE FEDERAL REPUBLIC OF NIGERIA
and
THE AFRICAN DEVELOPMENT BANK

WHEREAS:

1. Nigeria is a signatory to the African Declaration on Co-operation, Development and Economic Independence adopted by the African Heads of State and Government of the Organisation of African Unity in Addis Ababa on 25 May, 1973.
2. The Signatories to the said Declaration are concerned with:
 - (a) the deteriorating economic and social position of the developing countries in relation to the developed countries;
 - (b) the ineffectiveness of the measures adopted during the past decade to combat underdevelopment, and the inability of the international community to create conditions for the development of Africa.
3. A rapid transformation of the African economies and the achievement of a reasonable rise in the peoples' standard of living can be fostered by an effective mobilisation of the vast natural resources of the continent facilitated by economic co-operation and regional integration.
4. The Bank was established to contribute to the economic development and social progress of its members, individually and jointly, and to strengthen African solidarity by means of economic co-operation between African States.
5. Nigeria is a member of the Bank.
6. Nigeria has expressed its desire to contribute to the strengthening of African solidarity and economic independence.
7. Nigeria in a letter dated 18th June, 1975, expressed its desire to channel assistance to the less favoured African countries through the facilities of the Bank and, to this end, has proposed the establishment within the Bank of a Special Fund to be known as the "Nigeria Trust Fund".
8. The Board of Directors of the Bank has authorized the President of the Bank to sign the agreement on behalf of the Bank, subject to the approval by the Bank's Board of Governors.*

NOW, THEREFORE, the Parties hereto agree as follows:¹

* The Board of Governors of the Bank by Resolution 03-76, adopted by postal ballot on 25 April 1976, approved the Agreement Establishing the Nigeria Trust Fund. In 2003, the Board of Governors by Resolution B/BG/2003/11, adopted by postal ballot on 3 June 2003, approved certain proposals to vary as well as amend the terms of the Agreement, in order to enhance the operational effectiveness of the Fund. The proposals, as approved, entered into effect on 22 September 2003, upon the signature on the same date, by Dr. (Mrs) Ngozi Okonjo-Iweala, Hon. Minister of Finance of Nigeria, and Mr. Omar Kabbaj, President of the Bank, of the Protocol Agreement between the Federal Government of Nigeria and the Bank, Regarding Certain Terms and Provisions of the Agreement Establishing the Nigeria Trust Fund.

¹ References in this Agreement to a particular gender shall be applicable to the other gender.

ARTICLE I

Establishment and Purpose of the Fund

Section 1.1 There is hereby established a Special Fund under Article 8 of the Agreement Establishing the Bank to be known as Nigeria Trust Fund (hereinafter called the "Fund"), which shall be constituted with resources transferred by Nigeria to the Bank, to be administered in accordance with the provisions of this Agreement and the Agreement Establishing the Bank.

Section 1.2 The purpose of the Fund shall be to enable Nigeria to make an increasingly effective contribution to the economic development and social progress of Africa, especially of those member countries of the Bank which are relatively less developed or are most seriously affected by unpredictable catastrophies, including adverse international economic events, through the financing of projects which will further economic and social development in their territories.

Section 1.3 The resources of the Fund shall be devoted primarily to long-term project financing in the fields of agriculture including livestock, fishery and forestry, health, transport, water supply and any other project as may be agreed between the parties. Financial assistance may also be provided from the resources of the Fund for engineering studies where these are vital for project financing.

Section 1.4 In administering the Fund, the Bank shall pay particular attention to projects which benefit two or more member countries, and which strengthen intra-African economic co-operation and regional integration. The Fund's operations shall take due account of the economic and social development plans of the borrowers.

ARTICLE II

Utilization of Resources

Section 2.1 To achieve its purposes, the resources of the Fund shall be used to provide financing for projects of national or regional importance which further economic and social development in the territories of member countries of the Bank whose economic and social conditions and prospects require financing on non-conventional terms.

Section 2.2 The Bank shall make a reasonable distribution of the resources of the Fund, taking into account, for this purpose, the economic and social circumstances of the applicant country, the financing received from the other resources of the Bank and the African Development Fund and any other source known to the Bank. Except as may otherwise be agreed between the Bank and Nigeria, the Bank may not use the resources of the Fund to finance more than 60% of the total estimated cost of any single project, its foreign exchange component or a total sum of five million naira whichever is the lower.

Section 2.3 The Bank shall invest such resources of the Fund that are not immediately required for operations in term deposits and other marketable investment instruments as the Bank may deem appropriate. In so doing, the Bank, using applicable guidelines, shall be guided by the same principles of security and profitability as apply to the investment of its ordinary resources.²

ARTICLE III

Administration of the Fund

Section 3.1 The Bank shall manage the Fund through its own organisation, services, facilities, officers, staff and such other experts and consultants as may be necessary. In the management of the Fund, the Bank shall consult regularly with Nigeria's Governor for the Bank and obtain his agreement on the pipeline of projects. Wherever practicable, the Bank shall also utilise the services of Nigerian consultants for the purpose of carrying out studies and similar activities connected with the project to be financed from the proceeds of the Fund.

Section 3.2 Each loan or other form of financing granted out of the resources of the Fund shall be approved by the Board of Directors of the Bank, in accordance with the voting rules set forth in the Agreement Establishing the African Development Bank in respect of its ordinary capital operations.

Section 3.3 The Bank shall in no event delegate its responsibility for the administration of the Fund.

ARTICLE IV

Operating Principles

Section 4.1 In the administration of the Fund, the Bank shall apply the same principles and criteria that are applicable to loans and investments made from its own ordinary resources, particularly those contained in Article 17 of the Agreement Establishing the African Development Bank.

² Section 2.3 was amended, to read as provided herein, by Protocol Agreement between Nigeria and the Bank, dated 22nd September, 2003.

Section 4.2 In the operations of the Fund, the Bank shall require the same guarantees as are applicable to loans out of its ordinary resources.

Section 4.3 Procurement shall be on the basis of international competition among eligible suppliers except in cases where the Board of Directors of the Bank determines that such international competition would not be justified. Appropriate preference shall be given to goods produced in and services furnished from the member countries of the Bank.

Section 4.4 Supervision of the operations carried out with the resources of the Fund shall be the exclusive responsibility of the Bank.

Section 4.5 The loans granted by the Bank from the resources of the Fund shall be denominated in convertible currencies available to the Fund. Interest and other charges shall be made in the currencies disbursed or in any other convertible currencies acceptable to the Bank.

ARTICLE V

Resources of the Fund

Section 5.1 The initial amount of the Fund constituted under this Agreement shall be equivalent to fifty million naira (N. 50,000,000) and shall be payable, in freely convertible currency/currencies in two equal instalments, the first to be paid within 30 days after the coming into force of this Agreement and the second within 60 days thereafter. The equivalent of such currency/currencies in terms of Naira shall be as determined by the Central Bank of Nigeria as of the dates of such payments.

Section 5.2 Whenever it shall be necessary under this Agreement to determine the value of any currency in terms of another currency or currencies or of the Unit of Account, such valuation shall be reasonably made by the Bank, after consultation with the International Monetary Fund.

Section 5.3 All sums received: (a) in the form of additional resources from Nigeria, (b) in repayment for financing made out of the Fund, or (c) which accrue to the Fund by way of interest, dividends, fees, sales of assets or from other sources, shall be added to the Fund for use by the Bank as part of the Fund.³

³ A variation of the terms of Section 5.3 was agreed by Nigeria and the Bank by Protocol Agreement dated 22nd September, 2003. Specifically, both parties agreed that on an exceptional basis, and solely for the purpose of contributions of the Fund to the Heavily Indebted Poor Countries Initiative Trust Fund (the "HIPC Trust Fund"), ten per cent (10%) of the annual net income of the Fund, commencing with the net income of the year 2002, may be allocated as the Fund's contribution to the HIPC Trust Fund.

ARTICLE VI

Terms of Financing

Section 6.1 The loans made from the resources of the Fund shall be subject to the following terms:

Period of amortization: up to 25 years including grace periods of up to 5 years.

Commitment fee: 3/4 of 1% per annum, payable on undisbursed balance commencing 120 days after the signature of the relevant loan agreement.

Interest: 4 per cent per annum on disbursed outstanding balances.⁴

ARTICLE VII

Separation of Resources

Section 7.1 The resources of the Fund shall at all times be held, utilized, committed, invested or in any other way disposed of, completely independently of the resources of the Bank itself, or of any other resources entrusted to the Bank for administration.

Section 7.2 The Bank shall keep separate accounts and records of the resources and operations of the Fund in such a way as to permit the identification of the assets, liabilities, income, costs and expenses pertaining to the Fund and a financial unit independent of all other operations of the Bank.

Section 7.3 The accounts of the Fund shall be kept in Units of Account as defined in Article 5, Section 1 (a) of the Agreement Establishing the African Development Bank, and as determined pursuant to Section 5.2 of this Agreement.

ARTICLE VIII

Consultation and Information

Section 8.1 Nigeria and the Bank shall co-operate fully to assure that the purposes of the Fund will be accomplished. To this end, the Federal Government of Nigeria and the Bank shall, from time to time, at the request of either party:

⁴ A variation of the terms of loans made from the resources of the Fund, as provided in Section 6.1 herein, was agreed by Nigeria and the Bank by Protocol Agreement dated 22nd September, 2003. Specifically, both parties agreed that the applicable interest rate for loans would be a range of 2-4 per cent per annum. The rates will be applied for specific projects on the basis of operational guidelines developed by the Bank, in consultation with the Government of Nigeria.

- (a) Exchange views through their representatives with regard to the administration of the Fund, and other matters relating to the purposes thereto, and
- (b) Furnish to the other all such information as it shall reasonably request with regard to the general status of the Fund.

Section 8.2 As long as this Agreement shall remain in force the Bank shall present the following information each year to the Federal Government of Nigeria within one hundred and twenty (120) days after the close of the Bank's financial year, a statement of assets and liabilities of the Fund, a statement of cumulative receipts and expenditure, and a statement of the use of resources of the Fund, with such explanatory notes as may be pertinent. These statements shall be received together with the opinion issued by the External Auditors of the Bank.

Section 8.3 The comments which Nigeria may consider appropriate to make in respect of the statements and information referred to in Section 8.2 shall be presented as soon as possible and in any case within ninety (90) days following receipt of the respective reports.

ARTICLE IX

Expenses of Administering the Fund

Section 9.1 The Fund shall pay the Bank the expenses incurred in the management of the Fund as follows:

- (i) Separately identifiable costs incurred by the Bank for the Fund;
- (ii) Indirect costs incurred by the Bank in the management of the Fund.

Section 9.2 However, the annual payment for the aforementioned expenses of the Bank shall not exceed the total of 20% of the gross income of the Fund during the course of each year.

Section 9.3 The expenses of the Fund shall be paid quarterly in arrears.

Section 9.4 The formula set out in Section 9.1 and 9.2 of this Article may be reviewed from time to time by mutual agreement.

ARTICLE X

Financial Year

Section **10.1** The financial year of the Fund shall be the calendar year.

ARTICLE XI

Notice and Requests

Section **11.1** Notices or requests given by one Party hereunder to the other shall be in writing and shall be delivered at the following respective addresses or such other addresses as shall be notified by one Party to the other.

For Nigeria: The Permanent Secretary
Federal Ministry of Finance
P.M.B. 12591
Mosaic House
Tinubu Square, Lagos
Cable : Permfin, Lagos

For Bank: The African Development Bank
01 B.P. 1387
Abidjan 01
Ivory Coast
Telex AFDEV Abidjan

ARTICLE XII

Amendments or Additions to the Agreement

Section **12.1** Amendments or additions may be made to this Agreement by the written agreement of the Parties.

ARTICLE XIII

Termination of the Fund

Section **13.1** The Fund established by this Agreement shall be in effect for 30 years, which period may be extended by mutual agreement of the Parties. However, this Agreement may be terminated earlier by:

- (i) agreement between the Parties;
- (ii) occurrence of the event contemplated in Article 47, Section 1 of the Agreement Establishing the African Development Bank.

Section 13.2 On the date of termination the Bank shall cease all activities relating to the resources of the Fund, except those incidental to their orderly realization, conservation and preservation and settlement of the direct or contingent obligations to which they may be subject.

Section 13.3 On the date agreed by the Parties, the Bank shall present a list of all operations in progress and such operations shall continue to be processed until the respective processing is concluded.

Section 13.4 The Bank shall within a reasonable period after the termination of the Fund transfer to Nigeria such of the resources of the Fund 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.

Section 13.5 Nigeria shall pay the Bank during the period of liquidation of the Fund, such fee as may be mutually agreed between the Parties.

ARTICLE XIV

General Provisions

Section 14.1 Loan Agreements signed by the Bank obligating the resources of the Fund shall indicate clearly the origin of such resources and be in a form agreed with Nigeria.

Section 14.2 The loans granted by the Bank under this Agreement shall not involve any financial obligation on its part, and except as otherwise provided for in this Agreement, the Bank shall not derive any financial benefits from the Fund.

ARTICLE XV

Immunities, Exemptions and Privileges

Section 15.1 Before any financing out of the Fund's resources is made available to or for the benefit of a member or for a project in the territory of a member, the Bank shall be satisfied that such member has taken all such administrative and legislative measures as are necessary to give effect to the provisions of Chapter VII of the Agreement Establishing the African Development Bank.

ARTICLE XVI

Settlement of Disputes

Section 16.1 In the event of a dispute between Nigeria and the Bank, 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 Nigeria, another by the Bank and the two Parties shall appoint the third arbitrator, who shall be the Chairman. If, within forty-five 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 arbitrators, the third arbitrator has not been appointed either party may request the Administrative Secretary-General of the Organisation of African Unity 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.

Section 16.2 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 Party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the Parties to this Agreement. Each Party shall abide by and comply with any such award rendered by the Tribunal in accordance with the provisions of this Section.

Section 16.3 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. Either Party to this Agreement shall defray its own expenses in the arbitration proceedings. The cost of the Tribunal shall be divided between, and borne equally by, Nigeria on one side and the Bank on the other side. 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.

ARTICLE XVII

Entry into Force

Section **17.1** This Agreement shall come into force, and the Fund shall be established, on the date when the Board of Governors of the Bank shall approve this Agreement.

IN WITNESS WHEREOF, the Federal Republic of Nigeria and the African Development Bank, each acting through its authorized representatives have signed this Agreement in two equally,

Authentic copies in Lagos, Nigeria, this .26th day of February 1976

FOR THE FEDERAL REPUBLIC OF NIGERIA

/s/ ASUMOH ETE EKUKINAM

Federal Commissioner for Finance

FOR THE AFRICAN DEVELOPMENT BANK

/s/ ABDELWAHAB LABIDI

President