

**VERTICAL AGREEMENT**

**between**

**THE CARIBBEAN BIODIVERSITY FUND**

**and**

**[COUNTRY] [PROTECTED AREAS/CONSERVATION] TRUST FUND**

**[Date]**

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## VERTICAL AGREEMENT

**VERTICAL AGREEMENT** (the “Vertical Agreement”) dated as of the \_\_\_\_\_ day of \_\_\_\_\_ 201[5], between the Caribbean Biodiversity Fund (hereinafter called the “Charity”), a company duly registered under the Companies Act 2006 of the United Kingdom and having its registered office at c/o Oakwood Corporate Secretary Limited, 3<sup>rd</sup> Floor, 1 Ashley Road, Altrincham, Cheshire WA14 2DT and whose principal place of business is located at [Nassau, Bahamas], and the [Country] [Protected Areas/Conservation] Trust Fund (hereinafter called the “NPATF”), a [statutory body under the laws/corporate fund/company established under the companies act legislation] of [Country], having its registered office at [NPATF OFFICE].

WHEREAS the Donors (as defined in Section 1.03) and the Charity desire that this Vertical Agreement set forth the terms and conditions on which the Charity makes disbursements of monies (and the income and gains thereon) contributed to the Charity by the Donors;

WHEREAS the NPATF has been established by its Constitutional Instruments (as defined in Section 1.03) for the purposes described therein;

WHEREAS the parties desire that the terms and conditions of this Vertical Agreement apply to all payments by the Charity to the NPATF in whatever amount and whenever made;

WHEREAS the parties agree that the NPATF has no ownership interest in the Charity or the assets of the Charity or any status with regards thereto not explicitly set forth in this Vertical Agreement;

AND WHEREAS the Charity and NPATF desire that this Vertical Agreement shall constitute the entire agreement of the parties and no other agreements, understandings, rules or regulations are incorporated hereto unless otherwise stated.

NOW THEREFORE, the Charity and the NPATF accept the following arrangements:

### ARTICLE I

#### General Provisions, Interpretation, Definitions

Section 1.01. **General Provisions.** Unless otherwise stated, this Vertical Agreement, including any of the exhibits hereto, constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Section 1.02. **Interpretation.** Unless otherwise stated, references to Sections are to Sections of this Vertical Agreement, and references to Schedules and Exhibits are to the Schedules 1 and 2 and to the Exhibits A, B and C respectively attached to this Vertical Agreement.

Section 1.03. **Definitions.** Wherever used in this Vertical Agreement, unless the context otherwise requires, the following terms have the following meanings:

- (i) “Administration Agreement” means any agreement by which the Charity outsources to a third party the duties described in Section 7.01 of this Vertical Agreement;
- (ii) “Administrative Agent” means the Charity’s counterparty to the Administration Agreement;
- (iii) “NPATF Board” means the board of directors of the NPATF;
- (iv) “Budget” means the budget for the annual Workplan of the NPATF, set out in Schedule 2;
- (v) “CBF Board” means the board of directors of the Charity;
- (vi) “CBF Director” has the meaning set forth in Section 6.01.
- (vii) “Charity” has the meaning set forth in the Preamble;
- (viii) “Charity’s Eligibility Approval Procedures” means the CBF’s Eligibility Approval Procedures set out as Exhibit C hereto;
- (ix) “Charity’s Objects” means the Charity’s objects as set out and defined in its Articles being to promote for the benefit of the public the conservation, protection, management and expansion of the national protected areas systems of the Participating Countries by providing a sustainable flow of funds to support, without limitation, enforcement, infrastructure, monitoring needs and other activities that contribute substantially to the conservation, protection and maintenance of biodiversity within those national protected areas systems or any other area of environmental significance of the Participating Countries;
- (x) “Civil Society Members” means members of the NPATF Board not affiliated with the Government of [Country] who are representative of civil society, including, but not limited to, representatives of non-government organizations and private sector, academia, research and scientific organizations;
- (xi) “Constitutional Instruments” means, as applicable, the legislation passed by the government of [Country] establishing the NPATF and/or any articles of association, articles or memorandum of incorporation, by-laws and any other governing documents of the NPATF, whether or not in effect on the date of this Vertical Agreement, and any amendments thereto;
- (xii) “Country” means [country];

- (xiii) “Direct Project Implementation Costs” means costs that are additional to existing government budgets and incurred directly from activities associated with projects aimed at the NPATF’s objects, and the implementation thereof, including, but not limited to management plans, workshops, sustainable livelihood activities, and other specific project activities;
- (xiv) “Donor(s)” has the meaning set forth in the Charity’s Articles of Association;
- (xv) “Effective Date” means the second(2<sup>nd</sup>) anniversary of the date of this Vertical Agreement;
- (xvi) “Executive Director” has the meaning given to it in the Constitutional Instruments and includes any person serving as or in lieu of the Executive Director in accordance with the Constitutional Instruments;
- (xvii) “Fiscal Year” means January 1 to December 31, except that in the current calendar year such Fiscal Year shall mean the period from the date of this Vertical Agreement to December 31;
- (xviii) “General Purpose” has the meaning given to it in the Constitutional Instruments;
- (xix) “Indirect Project Implementation Costs” means costs incurred indirectly from activities associated with projects aimed at the NPATF’s objects, and the implementation thereof, including, but not limited to project accounting costs, and other indirect costs;
- (xx) “Members” means a subscriber to the memorandum of association of the Charity admitted to membership in accordance with the articles of association of the Charity and entered as such in the Charity’s register of members;
- (xxi) “Monitoring and Evaluation Requirements” means internal checks and balances of the NPATF to carefully monitor and evaluate the use of Payments for the General Purpose and the conservational and environmental impact of projects funded by Payments towards achieving the General Purpose and the Charity’s Objects in each case to be included in the Workplan;
- (xxii) “Participating Countries” means such Caribbean countries and other Caribbean territories in each case as the Charity’s Board may decide to include in accordance with its Articles of Association and “Participating Country” means any one of them;
- (xxiii) “Participating Country Sub-Account” means with respect to the Participating Country that sub-account managed by the Administrative

Agent in accordance with the Administration Agreement, which includes that portion of the assets of the Charity allocated by the Donors (and by any future donors to the Charity) to the Participating Country and any income, gains and losses thereon;

- (xxiv) “Payment” has the meaning set forth in Section 2.04;
- (xxv) “Payment Date” has the meaning set forth in Section 2.04;
- (xxvi) “Payment Procedures” means the Charity’s Payments and Transfers Policy and Procedures as attached as Exhibit B of this Vertical Agreement and as updated by the Charity and notified to the NPATF from time to time;
- (xxvii) “Procurement Guidelines” means the guidelines for the procurement of consultant services set out as Exhibit A hereto;
- (xxviii) “Reference Endowment Value” means the monthly average of the value of the Charity’s endowment over the preceding thirty six (36) months (or such number of months as are available for the calculation), calculated by reference to the monthly figures which are notified to the Charity by its investment manager;
- (xxix) “USD” or “United States dollars” means dollars in the currency of the United States of America; and
- (xxx) “Workplan” means the annual workplan of the NPATF that has been approved by the NPATF Board and submitted to the Charity, including without limitation:
  - (A) the procurement plan adopted in accordance with the Procurement Guidelines; and
  - (B) the proposed and currently implemented Monitoring and Evaluation Requirements.

References to the singular shall include the plural and vice versa unless the context otherwise requires. Any reference to the Charity in respect of an action required or permitted to be taken by the Charity under this Vertical Agreement shall for the sake of clarity include action by the Administrative Agent or any other agent of the Charity on behalf of the Charity as if it were the Charity itself taking such action. Likewise, in respect of any obligation of the Charity to take any action under this Vertical Agreement, the Charity shall be deemed to have fulfilled such obligation by causing the Administrative Agent or any other agent of the Charity to take such action on its behalf.

## **ARTICLE II Payments and Purpose**

Section 2.01. **Amount of Payment**. The Charity agrees to make available on an annual basis to the NPATF on behalf of the Charity by way of periodic payments an amount up to five percent (5%) of the Reference Endowment Value (the “Maximum Payment Percentage”) to be transferred to the NPATF in proportion to its allocation of the total contributions from the Donors as set out in the schedule of Donor contributions and country allocations produced pursuant to the Charity’s operational manual from time to time.

Section 2.02. **Purpose of Payments**. The Payments are made as an advance on account of expenditures to assist the NPATF in achieving its General Purpose and shall in no way be applied or disbursed by the NPATF for use as capital or income in respect of any endowment of the NPATF nor otherwise be treated as assets or other revenue of the Government of [Country].

Section 2.03. **Rights to Payments, accounts and assets**. Neither the NPATF nor the Government of [Country] has any rights to ownership or otherwise over the Participating Country Sub-Account or assets of the Charity under any of the provisions of this Vertical Agreement or the exercise of them.

Section 2.04. **Payments**. The Charity shall, subject to Sections 3.01 and 3.02, calculate, approve and make transfer of a payment not exceeding the Maximum Payment Percentage on the dates (each a “Payment Date”) and in the manner specified in the Payment Procedures (a “Payment”).

## **ARTICLE III Conditions Precedent to Payment**

Section 3.01. **NPATF Eligibility**<sup>1</sup>. The Charity shall not make any Payment pursuant to Section 2.04 unless the NPATF has been approved by the Charity and is continually established and acts in accordance with the Charity’s Eligibility Approval Procedures, including, without limitation, that:

- (i) the NPATF has a General Purpose at all times consistent and aligned with the Charity’s Objects;
- (ii) the majority of the NPATF Board must be comprised of Civil Society Members not affiliated with, appointed by, or otherwise controlled by the Government of [Country] and there shall be no single majority interest group representative on the NPATF Board;
- (iii) Civil Society Members shall not be solely comprised of those appointed to the NPATF Board by persons, entities or organizations in any way affiliated with or otherwise controlled by the Government of [Country];

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<sup>1</sup> Additional and/or amended requirements of the Charity and/or the NPATF to be discussed and confirmed on a case by case basis



- (iv) the NPATF maintains well-designed and independent asset control and annual external audit requirements; and
- (v) the NPATF has demonstrated to the Charity its ability to make grants to both government and civil society entities and to comply with the Matching Requirement.

Section 3.02. **Annual Certification**. The Charity shall not make any Payment pursuant to Section 2.04 unless the Charity has received the following deliverables and statements in compliance with the Payment Procedures:

- (i) a written request for payment, provided that the NPATF shall make the first written request for Payment no earlier than \_\_\_\_\_, 201[5] and no later than \_\_\_\_\_, 201[6];
- (ii) a written statement that the NPATF's Executive Director has been appointed in accordance with the Constitutional Instruments; and
- (iii) following the second (2<sup>nd</sup>) anniversary of the date of this Vertical Agreement, a written acknowledgement from the NPATF's Executive Director that the NPATF has deposited an amount in satisfaction of the Matching Requirement, as set out and defined in paragraph (i) of Section 4.01, in a bank or financial institution on terms acceptable to the Charity (the "Matching Contribution"):
  - (A) incorporating a statement that the new sustainable finance mechanisms set out in the Constitutional Instruments or any other similar or ancillary documents relating thereto have been set up; and
  - (B) which the Charity shall review in order to verify that the Matching Contribution has been met.
- (iv) Where the NPATF has failed to satisfy any of the conditions precedent set out in this Section 3.01 the Charity may provide that any subsequent Payment shall include amounts which would have been paid but for that failure.

Section 3.03. **NPATF Use of Funds**. The NPATF:

- (i) agrees to use any funds transferred by the Charity to pay only for:
  - (A) government agencies beneficiaries' Direct Project Implementation Costs;
  - (B) civil society beneficiaries' Direct and Indirect Project Implementation Costs; and

- (C) projects that are consistent with internationally recognized environmental and social safeguards;
- (ii) agrees not to use any funds transferred by the Charity to pay, directly or indirectly, for:
  - (A) activities relating to the extraction of non-renewable natural resources; or
  - (B) any other use not consistent with the Charity's Articles; and
- (iii) shall use any such funds provided from the Charity in accordance with any other criteria, priorities and procedures that may hereafter be established by the CBF Board.

#### **ARTICLE IV**

##### **Matching Requirement and use of Matching Contribution**

Section 4.01. **Matching Requirement**. Commencing on the Effective Date, the NPATF shall be required to generate, receive and apply new and additional funding, through sustainable finance mechanisms, on an annual basis for supporting the NPATF's General Purpose.

- (i) This new and additional funding must be of an amount not less than the annual disbursements made by the Charity to the NPATF in each applicable disbursement period, as determined by the Charity in the Payment Procedures (which amount is hereafter referred to as the "Matching Requirement").
- (ii) If the NPATF fails in any year after the Effective Date to generate, receive and apply its annual Matching Requirement in its entirety, then the amount of the NPATF's pro-rata share of the Reference Endowment Value that would otherwise be transferred to it shall be reduced by the amount of the shortfall between the Matching Requirement and the amount that is actually generated that year by the NPATF.
- (iii) Where deemed commercially prudent by the Charity, any amount not transferred by it shall be held by the Charity in the Participating Country Sub-Account until such time as the NPATF is able to generate the Matching Requirement in its entirety for that year, without effect on any prior or subsequent periods for which the NPATF is required to meet the Matching Requirement. Any amount held in a Participating Country Sub-Account and not transferred to the NPATF within that year will be reinvested on behalf of it.
- (iv) The parties hereby acknowledge that any funding mechanisms in effect prior to the date of the establishment or incorporation of the NPATF shall not be applied in satisfaction of the Matching Requirement.

- (v) The Charity will provide the NPATF with reasonable prior notice of the relevant amount representing the Matching Requirement.

Section 4.02. **Administration relating to Matching Contribution.** The NPATF:

- (i) shall use the amount of the Matching Contribution to carry out the activities pursuant to achieving its General Purpose, including awarding Sub-grants for carrying out such activities;
- (ii) shall not spend more than fifteen percent (15%) of the combined amount of the Payments and the Matching Contribution in any Fiscal Year for the administrative and operating costs of the NPATF; and
- (iii) with the intention of notifying the Charity of the proposed use of Payments and the Matching Contribution shall provide the Charity with a list of grantees and grant amounts awarded no less than fifteen (15) days before formal submission of the same in accordance with Section 7.03(iii).

## **ARTICLE V**

### **Termination, Suspension and Refund**

Section 5.01. **Right of NPATF to Refuse Payment.** Without effect on the Matching Contribution, the NPATF may by thirty (30) days written notice prior to the next closest Payment Date to the Charity elect not to receive a Payment which the NPATF has not been paid prior to the giving of such notice. For the sake of clarity, if the NPATF elects not to receive a payment in accordance with this Section 5.01, the Charity shall ensure that the Participating Country Sub-Account reflects that such Payment was not made to the NPATF.

Section 5.02. **Suspension of NPATF Payments.**

- (i)
  - (A) Notwithstanding Section 3.02 of this Vertical Agreement, the Charity may suspend Payments to the NPATF, in whole or in part, as the case may be, immediately by written notice to the NPATF (a “**Suspension Notice**”) on the occurrence of a material breach by the NPATF of the terms of this Vertical Agreement, including, without limitation, any failure by the NPATF to comply with Sections 2.02, 3, 4.01(iv), 4.02, 7.03, 7.04, 7.06 and/or 7.07, (a “**Default**”).
  - (B) Any such suspension by the Charity shall apply until the event or events which gave rise to the Default shall have ceased to exist to the reasonable satisfaction of the Charity (“**Remedied**”) or until the CBF has served written notice on the NPATF that the Payments shall be restored (a “**Restoration Notice**”), whichever is earlier.

- (ii) In the case of any Restoration Notice, the Payments shall be restored only to the extent and subject to the conditions specified in the Restoration Notice, and no such Restoration Notice shall affect or impair any right, power or remedy of the Charity in respect of any other or subsequent Default.
- (iii) In the case of any suspension under this Section 5.02, any subsequent Payment shall include amounts which would have been paid but for any such suspension.

Section 5.03. **Termination by the Charity of Vertical Agreement.** Upon the occurrence of a Default which is not Remedied within 90 days of service of a Suspension Notice, the Charity may by notice in writing to the NPATF terminate this Vertical Agreement (a “**Termination Notice**”) with automatic and immediate effect.

Section 5.04. **Default resolution.** Without prejudice to Sections 5.02 and 5.03, following the occurrence of a Default the relevant matter shall be referred by each of the NPATF and the Charity to the NPATF Board and the CBF Board respectively who will each attempt in good faith to resolve the matter through bona fide discussion and negotiation.

Section 5.05. **Effectiveness of Provisions after Termination or Suspension.** Notwithstanding any termination or suspension, the provisions of the Vertical Agreement shall continue in full force and effect except as specifically provided in this Article V, save that on a termination or suspension any and all CBF Directors shall cease to be CBF Directors (a) if the right to receive Payments has been suspended in accordance with Section 5.02, until the relevant Default has been Remedied or the NPATF has received a Restoration Notice, or (b) if this Vertical Agreement is terminated in accordance with Section 5.03, indefinitely.

Section 5.06. **Refunds.**

- (i) In the event of a suspension under Section 5.02, the Charity may require the NPATF to (i) refund to the Charity all or any portion of a Payment within forty-five (45) days after receipt of a request therefore or (ii) deduct such amount from any subsequent disbursements under the Vertical Agreement. In any such case the Participating Country Sub-Account shall be reduced by that amount. Notwithstanding any other provision of this Vertical Agreement, at such time as the refund or deduction above is made, the Charity shall, upon receipt of such refund, credit that amount to the Participating Country Sub-Account. The right to require a refund of a disbursement will continue for five (5) years from the date of the last Payment by the Charity.
- (ii) Notwithstanding paragraph (i) above, in the event of the commencement of proceedings or steps for any dissolution, striking off, liquidation, or any other insolvency event of the NPATF any and all amounts of Payments made by the Charity which have not been irrevocably disbursed or applied by the NPATF shall be returned to the Charity forthwith.

**ARTICLE VI**  
**CBF Board**

Section 6.01. **CBF Director; Vacancy.**

- (i) At a meeting of the NPATF Board following the Effective Date, and for so long as Payments have not been suspended or terminated for any reason, the NPATF shall have the right to nominate one (1) representative from the NPATF Board, to be chosen from its Civil Society Members (unless otherwise approved by the Charity), to serve on the CBF Board (the “CBF Director”) by way of written notice to the CBF Board which shall include the name and relevant institution of the CBF Director and which the Charity may approve and appoint at its discretion in accordance with this Section 6.01.
- (ii) The Charity shall consider the nomination and request for approval taking into account compliance with its Articles of Association and the overall composition of the CBF Board and shall confirm its decision in writing to the NPATF Board as soon as reasonably practicable following receipt of notification pursuant to Section 6.01(i).
- (iii) If the Charity notifies the NPATF Board of its decision not to approve a CBF Director the NPATF shall have the right to nominate an alternative CBF Director in compliance with this Section 6.01 at the next NPATF Board meeting following receipt of that notification, provided that it shall make no more than two such nominations in any one calendar year.
- (iv) The rights granted to the NPATF in this Section 6.01 include the right to request the removal of a CBF Director by the Members at any time and for any reason provided that the NPATF nominates a replacement CBF Director in accordance with this Section 6.01 at the next NPATF Board meeting thereafter.

**ARTICLE VII**

**Duties and rights of the Charity and NPATF; Indemnification**

Section 7.01. **Duties of the Charity.** In addition to the obligations of the Charity detailed elsewhere in this Vertical Agreement, the Charity shall

- (i) maintain a Participating Country Sub-Account allocated to the relevant Participating Country in accordance with the financing agreements entered into with each donor relevant to it and owned and managed by the Charity at its discretion;
- (ii) furnish to the NPATF, within three (3) months after June 30 and December 31 in each year, current financial information relating to receipts, disbursements and fund balances in United States Dollars with respect to the Participating Country Sub-Account;

- (iii) conduct an annual audit;
- (iv) provide the audit report to the NPATF within nine (9) months after the Charity's fiscal year end; and
- (v) provide the Donors with copies of any financial statements and auditors' reports received by the Charity from the NPATF pursuant to this Vertical Agreement.

Section 7.02. **Liability.** To the maximum extent permitted by law, neither the Charity nor the Donors nor any director, officer, general counsel, partner, member, stockholder, controlling person or employee of the Charity, Donors nor any person serving at the request of the Charity as a director, officer, employee, partner, member, trustee or independent contractor of another partnership, limited liability company, corporation, joint venture, trust or other enterprise shall be liable to the NPATF for any act or omission suffered or taken by it or him.

Section 7.03. **General Duties of the NPATF.** In addition to the obligations of the NPATF detailed elsewhere in this Vertical Agreement, the NPATF shall:

- (i) prepare or cause to be prepared pro forma financial statements and technical reports and regularly update and develop its Monitoring and Evaluation Requirements, in each case in accordance with the Payments Procedures;
- (ii) deliver to the Charity such reports, statements, terms of reference, lists and other documents and information in the timeframes and the manner specified in the Payment Procedures;
- (iii) deliver to the Charity such information as is reasonably necessary for the Charity to review performance of the NPATF's operations and grant-making programme;
- (iv) appoint an independent external auditor of internationally recognized standing and suitable competence and experience to audit the financial accounts of the NPATF on an annual basis in accordance with generally accepted accounting principles in the US or other relevant competent jurisdiction and provide the completed annual report produced by it to the Charity within six (6) months of the first day of each of the NPATF's Fiscal Years;
- (v) in all publications, announcements or other communications, products or services and/or any measures implementing projects relating to use of Payments or other resources of the Charity the NPATF shall use the logo of the Charity which exists from time to time unless otherwise approved by the Charity (such approval not to be unreasonably withheld); and
- (vi) maintain a day-to-day commercial bank account approved by the NPATF Board (such approval not to be unreasonably withheld) in accordance with

its Constitutional Instruments and approved by the Charity and deposit any Payments and amounts in respect of Matching Contributions into that account.

Section 7.04. **Annual Delivery**. . The NPATF shall:

- (i) deliver the Workplan and Budget and reports, statements, terms of reference, lists and other documents to the Charity; and
- (ii) facilitate, whether by teleconference, in-country meeting, or otherwise, Payment monitoring meetings,

in each case in accordance with the requirements specified in the Payment Procedures.

Section 7.05. **Charity Information and Observer Rights**. The Charity:

- (i) may make reasonable requests at reasonable intervals for information relating to the Workplan, Budget and any NPATF Payments and the NPATF shall deliver such information no later than thirty (30) days following any such request; and
- (ii) shall upon reasonable request have the right to appoint members of the CBF Board or its secretariat as its representatives to observe at any meeting of the NPATF Board, provided that the NPATF Board shall have no obligations to such representatives other than to grant the request if received within a reasonable time in advance of such meeting.

Section 7.06. **NPATF Governance Undertakings**. In addition to the obligations of the NPATF detailed elsewhere in this Vertical Agreement, the NPATF shall:

- (i) promptly notify the CBF Board in writing of any amendments or other variations to its Constitutional Instruments and provide the CBF Board with all associated documentation and further information reasonably required by the CBF Board to review the same, including, without limitation, analysing the ongoing eligibility of the NPATF in accordance with the Charity's Eligibility Approval Procedures; and
- (ii) ensure that it maintains at all times its exemption from the payment of income tax, capital gains tax and any property tax and any other tax or fee notwithstanding any other laws now or hereafter enacted and further that all property of, and all instruments executed by or on behalf of, the NPATF are at all times exempt from stamp duty or any other duty now or hereafter enacted.

Section 7.07. **NPATF Reserved Matters**. The NPATF may not make any decision or take any action in connection with the following matters other than by way of special resolution

of the directors of the NPATF Board carrying not less than seventy five per cent (75%) of the votes eligible at the relevant NPATF Board meeting:

- (i) the awarding of grants to apply or otherwise use funds forming part of the Payments or the Matching Contribution; and
- (ii) the appointment, replacement or removal of the NPATF's auditors, accountants or other financial advisors.

## **ARTICLE VIII Miscellaneous**

Section 8.01. **Enforceability.** The rights and obligations of the Charity and the NPATF under this Vertical Agreement shall be valid and enforceable in accordance with its terms. Neither the Charity nor the NPATF shall be entitled in any proceeding under this Vertical Agreement to assert any claim that any provision of the Vertical Agreement is invalid or unenforceable because of any provision of the Laws of the Country.

No failure or delay on the part of the NPATF or the Charity to exercise any right, power or privilege under this Vertical Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Vertical Agreement preclude any other or further exercise thereof or the exercise of any right, power or privilege.

Section 8.02. **Term.** This Vertical Agreement shall commence on the \_\_\_\_\_ day of \_\_\_\_\_ 201[5] and shall continue until the date which is the [fifth (5<sup>th</sup>)] anniversary of the date of this Vertical Agreement. Thereafter it may be:

- (i) terminated by either party giving the other not less than [six (6)] months' notice in writing; or
- (ii) otherwise renewed and extended by signed written agreement of the NPATF and the Charity which shall be endorsed in writing on this Vertical Agreement on the effective date thereof.

Section 8.03. **Assignment.** The NPATF shall not assign, in whole or in part, by operation of law or otherwise, this Vertical Agreement nor any of the rights, interests or obligations hereunder without the prior written consent of the Charity. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and Charity's successors and permitted assigns. Any purported assignment not permitted under this Section 8.02 shall be null and void.

Section 8.04. **Waiver.** Any party may (a) without effect to any other condition waive any of the conditions contained herein, (b) extend the time for the performance of any of the obligations or acts of any other party hereto or (c) waive compliance by the other party with any of the agreements contained herein or, except as otherwise provided herein, waive any of such party's conditions. Notwithstanding the foregoing, no failure or delay by the Charity in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right



hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 8.05. **Counterparts.** This Vertical Agreement may be executed in counterparts (each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement) and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 8.06. **Variation and amendment.** This Vertical Agreement shall not be varied or amended in any way other than by way of written agreement of the CBF Board and the NPATF Board.

Section 8.07. **Dispute Resolution.**

(a) All dispute proceedings arising out of or in connection with this Vertical Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.

(b) This Vertical Agreement is exclusively governed by the laws of England and Wales.

(c) The arbitration shall take place in [ ] and the language of the arbitration will be English.

(d) Any question relating to procedure raised in the course of this arbitration will be resolved by decision of the arbitration tribunal which shall apply the Rules of Arbitration of the International Chamber of Commerce in force as of January 1, 1998, or, in the silence of the latter, by the rules which the Parties, or failing them the arbitration tribunal, shall determine after referring to the laws of [ ] applicable to arbitration.

Section 8.08. **Addresses for Service.** All notices and other communications under this Vertical Agreement shall be given in writing and shall be addressed to the appropriate party at the address set forth below or at such other place as such party may designate in writing. Any such notice or other communication shall be deemed to have been duly given or made when delivered by hand or mail or by telegram, cable, telex, telefax or radiogram to the party to which it is required or permitted to be given or made at such party's address specified in this Vertical Agreement or at such other address as such party may have designated by notice to the party giving such notice or making such communication:

**For the Charity:**

**For the NPATF:**

\_\_\_\_\_ Protected Areas Trust  
Fund

Telefax No.:

**IN WITNESS WHEREOF** this Vertical Agreement has been signed in two (2) equally valid copies at [ ], respectively on behalf of the Charity and the NPATF by their respective duly authorised representatives and shall be deemed to be in force as of the day and year first hereinabove written.

**THE CARIBBEAN BIODIVERSITY  
FUND**

**[COUNTRY] [PROTECTED  
AREAS/CONSERVATION] TRUST FUND**

\_\_\_\_\_

\_\_\_\_\_

Witnessed by:

\_\_\_\_\_

Date: [ ]

**SCHEDULE 1**  
**Budget**

**SCHEDULE 2**  
**Workplan**

**Exhibit A**  
**[Procurement Guidelines]**

**Exhibit B**  
**Charity Payment Procedures**

**Exhibit C**  
**CBF's Eligibility Approval Procedures**