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TF 091421

Financing Agreement

(Second Critical Ecosystem Partnership Fund)

between

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT
(acting as an Implementing Agency of the Global Environment Facility)**

and

CONSERVATION INTERNATIONAL FOUNDATION

Dated January 11, 2008

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FINANCING AGREEMENT

This Financing Agreement (the “**Agreement**”) dated January 11, 2008, is entered into by and between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (“**IBRD**”), acting as an Implementing Agency of the Global Environment Facility (GEF) and CONSERVATION INTERNATIONAL FOUNDATION (“**CI**”) (collectively, the “**Parties**” and individually, a “**Party**”).

Whereas IBRD, the GEF through IBRD, and CI signed a Financing Agreement, dated December 14, 2000, establishing the first phase of a Strategic Partnership for Critical Ecosystems; and also signed a Memorandum of Understanding, of even date therewith, expressing their commitment to form a strategic partnership (the “**CEPF**”), in which they and other organizations committed to funding biodiversity conservation have been invited to take part in order to initiate a global program to address those critical ecosystems of the world which are the most biologically rich and under greatest threat;

Whereas the Parties wish to maintain and also revise, as necessary, certain administrative mechanisms and procedures for the financing of projects and activities under a common fund, comprised of matching contributions of the Parties together with other donors (the “**Fund**”);

Whereas CI has committed to make available a contribution of twenty-five million United States Dollars (US\$ 25,000,000) into the Fund over five years for the second phase of CEPF;

Whereas the GEF Council has approved a work program which includes support for the objectives of the Fund, in the form of a matching contribution of twenty million United States Dollars (US\$ 20,000,000) to the Fund over five years for the second phase of CEPF (the “**GEF Grant**”, as this term is further defined in Section 17.01(t));

Whereas the John D. and Catherine T. MacArthur Foundation has decided to make available a contribution of twelve million United States Dollars (US\$ 12,000,000) into the Fund over three years for the second phase of CEPF;

Whereas the *Agence Française de Développement* plans to mobilize resources in the amount of nineteen million five hundred thousand Euro (€19,500,000) into the Fund over five years for the second phase, and has concluded a financing agreement with CI to that effect, dated February 2007;

Now THEREFORE the Parties hereto agree as follows:

ARTICLE I

The Fund

Section 1.01 *Objective of the Fund*

The objective of the Fund is to continue to provide strategic assistance to non-governmental and private sector organizations for the protection of vital ecosystems listed in Schedule I, in IBRD member countries that have ratified the Convention on Biological Diversity. The Parties hereby declare their commitment to such objective and agree to cooperate towards the achievement of such objective within the context of the mechanisms and procedures set forth in this Agreement.

Section 1.02 *Administration of the Fund*

For the furtherance of the objective set forth in Section 1.01, CI shall maintain and administer the Fund in accordance with the provisions of this Agreement, with due diligence and efficiency, and the same degree of care it uses in the administration of its own funds, having due regard to the need to uphold the highest standards of integrity in the administration of public funds.

Section 1.03 *Activities under the Fund*

(a) CI shall, as the Party responsible for the execution of the Fund, continue to carry out and finance activities under the Fund for the accomplishment of the objective set forth in Section 1.01. CI shall ensure that the activities under the Fund are financed and carried out in compliance with:

- (i) the approval and guidance of the Donor Council;
- (ii) the provisions of the Operational Manual;
- (iii) the applicable policies of the GEF; and
- (iv) the IBRD Safeguard Policies.

(b) In addition to the provisions of Section 1.03 (a) above, CI expressly warrants that no activities resulting in physical relocation of people shall be undertaken and/or financed.

ARTICLE II

The Donor Council

Section 2.01 *Membership and Chairperson*

(a) The Fund shall remain under the supervision of a Donor Council with a membership consisting of:

- (i) The President of the IBRD or his designee;

- (ii) The CEO and Chair of the GEF, or his designee;
- (iii) The CEO and Chair of CI, or his designee;
- (iv) A senior IBRD manager appointed by the President of the IBRD;
- (v) A senior representative of the Government of Japan;
- (vi) A senior representative of the *Agence Française de Développement*;
- (vii) The President of the John D. and Catherine T. MacArthur Foundation; and
- (viii) One representative of each additional Donor that shall have been granted membership in accordance with Section 2.02 (g).

(b) The Donor Council shall elect any one of its members to serve as chairperson until such time as such member ceases to be a member of the Donor Council or such member's successor as chairperson has been elected; CI, as Party responsible for the execution of the Fund, has agreed that it shall recuse itself from providing the chairperson. The President of the IBRD, or his designee shall act as chairperson of the Donor Council until otherwise determined by the Donor Council.

Section 2.02 Powers and Duties of Donor Council

The powers and duties of the Donor Council shall include:

- (a) Providing general guidance to CI on the operations of the Fund;
- (b) Reviewing and where they deem appropriate approving each Annual Spending Plan of the Fund, proposed in accordance with Section 6.01, and any amendments thereof;
- (c) Reviewing and where they deem appropriate approving a priority list proposed in accordance with Section 7.01, of Ecosystems Profiles to be prepared, and any amendments thereof;
- (d) Reviewing and where they deem appropriate approving each Ecosystem Profile proposed in accordance with Section 7.02, and any amendments thereto;
- (e) Reviewing and where they deem appropriate approving amendments to the Operational Manual;
- (f) Reviewing and where they deem appropriate, approving the procedures for procurement of goods and services above the threshold amounts set forth in the Operational Manual;
- (g) Reviewing and where they deem appropriate, approving the conditions under which new donors may be invited to take part in the Fund and approving additional members of the Donor Council;
- (h) Reviewing and where they deem appropriate approving the fund-raising strategy referred to in Section 5.01;

- (i) Electing the chairperson of the Donor Council;
- (j) Reviewing and where they deem appropriate approving the selection of each Regional Implementation Team in accordance with the procedure established in the Operational Manual. In the event CI, its branch offices or affiliates, applies to become a RIT, the CI representative referred to in Section 2.01 (a) (iii) shall recuse himself or herself from such selection process;
- (k) Reviewing and where they deem appropriate approving all applications by CI for Subprojects to be financed by Ecosystem Grants under each approved Ecosystem Profile, if and when such application for an Ecosystem Grant exceeds a total cost of \$20,000. In such cases, the CI representative referred to in Section 2.01(a) (iii) shall recuse himself or herself from the review and approval process;
- (l) Reviewing and where they deem appropriate approving the terms of reference of the CEPF External Audit, the CEPF Program Audit and the midterm independent evaluation referred to in Articles XI and XII of this Agreement, as well as any subsequent material changes thereto; and
- (m) Reviewing and where they deem appropriate approving the terms of reference of the Working Group, as well as, whenever they deem necessary, delegating specific powers and duties to the Working Group.

Section 2.03 *Meetings and Decisions of the Donor Council*

- (a) Meetings of the Donor Council may be convened by the chairperson, at least annually, at such date and time, and in such place as the chairperson shall determine. The chairperson shall provide each member of the Donor Council with written notice of the meeting not less than thirty (30) days before the date of the meeting, unless such notice has been waived by the intended recipient. Any documents for review or discussion by Donor Council shall be made available to the chairperson and other members of the Donor Council no later than thirty (30) days before the meeting at which such documents are to be discussed or reviewed.
- (b) Any decision or action within the competence of the Donor Council under Section 2.02 shall be decided by unanimous consent of the members present and voting.
- (c) Any decision required or permitted to be taken at a meeting of the Donor Council may be taken without a meeting if consent in writing, setting forth the decision to be so taken, has been circulated to all of the members of the Donor Council and approved in writing by all members.

ARTICLE III

Institutional Arrangements

Section 3.01 Working Group

- (a) A Working Group shall be established with a membership consisting of:
 - (i) One representative from the IBRD;
 - (ii) One representative from the GEF;
 - (iii) One representative from CI;
 - (iv) One representative from the Government of Japan;
 - (v) One representative from the *Agence Française de Développement*;
 - (vi) One representative from the John D. and Catherine T. MacArthur Foundation; and
 - (vii) One representative from each additional Donor that shall have been granted membership in accordance with Section 2.02 (g).
- (b) Within the framework of the terms of reference approved by the Donor Council, the Working Group shall:
 - (i) Provide guidance to CI on strategy development, monitoring and other aspects of CEPF implementation;
 - (ii) Advise the member of the Donor Council from their respective Party on CEPF implementation;
 - (iii) Select Regional Implementation Teams (“**RITs**”), to be approved by the Donor Council, in accordance with the procedure established in the Operational Manual. In the event CI, its branch offices or affiliates, applies to become a RIT, the CI representative on the Working Group shall recuse himself or herself from such selection process;
 - (iv) Review those applications for Subprojects to be carried out by CI, its branch offices or affiliates, that need Donor Council approval, and which are to be financed by Ecosystem Grants under each approved Ecosystem Profile, if and when such application for an Ecosystem Grants exceeds a total cost of \$20,000, in accordance with the procedure established in the Operational Manual. In the event CI, its branch offices or affiliates, applies for such Ecosystem Grant, the CI representative on the Working Group shall recuse himself or herself from such selection process.

Section 3.02 Regional Implementation Teams

- (a) A RIT shall be established for each Biodiversity Hotspot. Each RIT shall be a civil society group in the respective Biodiversity Hotspot, to be selected by the Working Group, and to be approved by the Donor Council, in accordance with the competitive procedure and criteria established in the Operational Manual.

(b) CI shall enter into an agreement with each RIT, in accordance with the approved terms of reference and as established in the Operational Manual. Within ninety days of its establishment, each RIT shall receive training by CI on the operating policies and procedures of CEPF as established in the Operational Manual, and in accordance with terms of reference acceptable to IBRD.

(c) Each RIT shall:

- (i) Implement the Ecosystem Profile in the respective Biodiversity Hotspot;
- (ii) Provide support for the preparation of applications for RIT Subprojects and Subprojects by third parties and build capacity in the respective Biodiversity Hotspot;
- (iii) In accordance with the provisions of Article VIII below, review applications, make recommendations for funding, enter into RIT Subproject Agreements and provide supervision under the respective Ecosystem Profile in the respective Biodiversity Hotspot, in accordance with the provisions of the Operational Manual; and
- (iv) Build a broad constituency of civil society groups, in order to work across institutional and geographic boundaries toward achieving shared conservation goals.

(d) CI shall exercise its rights and comply with its obligations under the agreements pursuant to Section 3.02 (b) above in such manner as to protect the interests of the Fund and the Donors and, except as the Parties shall agree, CI shall not amend, suspend, assign, abrogate, waive or fail to enforce such agreement, or any provision thereof.

ARTICLE IV

The Fund Account

Section 4.01 *Maintenance of the Fund Account, Withdrawal of the GEF Grant*

(a) CI shall, for the purposes of the Fund, maintain in United States Dollars a special deposit account (the “**Fund Account**”) in a commercial bank, on terms and conditions satisfactory to the Parties, including appropriate protection against set-off, seizure and attachment; and

(b) any withdrawal of the GEF Grant from the Fund Account shall be in accordance with the provisions of Schedule III to this Agreement.

Section 4.02 *Size of Initial and Subsequent Contributions*

Each Party shall make a contribution of US\$ 2,500,000 to the Fund for Fiscal Year 2008, to be made available in accordance with Section 4.03. The Donor Council shall, no later than April 30 of each year, review the financial management, administrative arrangements and operational performance of the activities financed under the Fund, based on the reports referred to in Articles XI and XII, on the basis of which the Donor Council shall make a recommendation as to the level of subsequent contributions by the Donors. The amount of subsequent contributions shall be subject to final approval in accordance with the respective approval processes of each Donor.

Section 4.03 *Payment of Additional Contributions into the Fund Account*

Contributions of the Parties shall be made available as follows:

(a) Not later than sixty days after this Agreement has been declared effective, and the amount of US \$ 2,500,000 has been transferred to the Fund Account by CI, representing its contribution for Fiscal Year 2008, the GEF initial allocation in the amount of US \$ 2,500,000 shall be transferred to the Fund Account.

(b) Thereafter, further allocations of the matching contributions of each Party for each year of the Fund shall be based on the approved Annual Spending Plan and submission by CI of a satisfactory quarterly unaudited Interim Financial Report, accompanied by a request from CI for funding in a specific amount, on the basis of the quarterly unaudited Interim Financial Report. The amount of such further allocations shall be determined as the lesser of: (i) the amount necessary to be deposited by each Party, in order to finance Eligible Expenditures expected to be incurred during the six-month period following the date of such report, taking into account the amount indicated by said Interim Financial Report to be remaining in the Fund Account; and (ii) the amount to be deposited to reach the upper limit of the approved contributions of the Parties, as referred to in the Preamble to this Agreement. Such further allocations of the contributions from the GEF Grant shall be transferred to the Fund Account by the IBRD

after the IBRD has received such GEF contributions and evidence satisfactory to it showing the deposit of CI's matching contribution to the Fund Account.

Section 4.04 *Pre-payment of Contributions*

Each Party may pre-pay any amount of any allocation of its contribution into the Fund Account, before the date at which such allocation is due in accordance with Section 4.02, provided that, when such pre-payment is made, the other Parties shall not be required to make a payment in a matching amount, until the due date of that allocation.

Section 4.05 *Interest*

Any interest accrued on the funds deposited in the Fund Account shall be used for the same objective as set forth in Section 1.01.

Section 4.06 *Funds Remaining Uncommitted*

In the event any portion of the GEF Grant remains uncommitted by the Closing Date, such funds shall be returned to IBRD or used in accordance with prior written agreement of IBRD, and any contribution amount not yet transferred to the Fund Account shall be cancelled, unless otherwise agreed by IBRD.

ARTICLE V

Increasing the Size of the Fund

Section 5.01 *Fund-raising Strategy*

(a) After consultation with the other Parties, CI shall present to the Donor Council for its approval an updated fund-raising strategy aiming to raise at least US\$ 18,000,000 from additional donors over a projected five-year period. After approval by the Donor Council, CI shall coordinate the joint implementation by the Parties and other Donors of the strategy.

(b) CI and the Donor Council shall regularly consult in respect of the implementation of the fund-raising strategy and propose amendments as appropriate.

ARTICLE VI

Annual Spending Plans

Section 6.01 *Preparation and Approval*

No later than April 30 of each year, CI shall prepare an annual budget (the "Annual Spending Plan") for review and approval by the Donor Council, describing *inter alia* the funding levels of the proposed spending categories for the Fund during the next Fiscal Year.

Section 6.02 *Spending Categories*

The Annual Spending Plan shall include the following categories:

- (a) the funding levels for each approved Ecosystem Profile, together with a description of the types of Subprojects and activities to be financed at the programmatic level, based on the funding strategy in the Ecosystem Profile, and including a budget for RITs;
- (b) a Preparation Budget for new Ecosystem Profiles to be prepared during the period of the Annual Spending Plan;
- (c) the Operational Budget; and
- (d) a management fee for the categories referred to in (c) above calculated on the basis of CI's audited annual rates (indirect costs) for the previous year.

ARTICLE VII

Ecosystem Profiles

Section 7.01 *Priorities*

CI shall submit for consideration by the Donor Council a list for the preparation of new Ecosystem Profiles, including corresponding justification indicating the priority for each ecosystem.

Section 7.02 *Preparation of Ecosystem Profiles*

In accordance with the decision resulting from the submission referred to in Section 7.01 above, CI shall present for comments by the Donor Council, at least forty-five (45) days before the meeting of the Donor Council, a proposed Ecosystem Profile for selected ecosystems within the Biodiversity Hotspots in accordance with the requirements indicated in Schedule II.

Section 7.03 *Endorsement and Approval of Ecosystem Profiles*

CI shall seek endorsement of each Ecosystem Profile by the relevant national GEF operational focal points, in the manner set forth in the Operational Manual. CI shall submit the proposed Ecosystem Profile for approval to the Donor Council, together with any prior endorsements. Any endorsements incurring thereafter shall be submitted no later than the next Donor Council meeting after receipt of such endorsement or endorsements, as the case may be. No funds shall be disbursed for any activities in a country until the GEF operational focal point for that country has endorsed the Ecosystem Profile.

ARTICLE VIII

RIT Subprojects and Subprojects within Approved Ecosystem Profiles

Section 8.01 *RIT Subproject and Subproject Selection*

(a) The RIT in each Biodiversity Hotspot shall be responsible for the selection, approval and supervision of RIT Subprojects to be financed by Ecosystem Grants under each approved Ecosystem Profile, if and when such application for an Ecosystem Grant does not exceed a total cost of \$20,000, as set forth herein as well as in the Operational Manual.

(b) Subject to the provisions of Section 8.01 (d) below, CI shall be responsible for the selection, approval and supervision of Subprojects to be financed by Ecosystem Grants under each approved Ecosystem Profile, if and when such application for an Ecosystem Grant exceeds a total cost of \$20,000, as set forth herein as well as in the Operational Manual.

(c) Any entity selected to be a RIT, including CI, shall not be eligible to apply for or carry out RIT Subprojects or other Subprojects in that respective Biodiversity Hotspot.

(d) In the event CI, its branch offices or affiliates, applies to undertake a Subproject to be financed by an Ecosystem Grant under an Ecosystem Profile for which the total cost exceeds \$20,000, such application shall be reviewed by the Working Group and approved by the Donor Council. Such review and approval process shall not include CI's representative.

(e) If and when the cost of a Subproject exceeds \$250,000, the application for such a Subproject shall be subject to additional external review, in accordance with the Operational Manual.

Section 8.02 *Implementation by Third Parties; RIT Subproject Agreements; Subproject Agreements*

(a) For each RIT Subproject to be carried out by third parties with the financing of an Ecosystem Grant not exceeding a total cost of \$20,000, CI shall cause the respective RIT to enter into an agreement with the relevant recipient (the "RIT Subproject Agreement"), in accordance with the relevant provisions of the Operational Manual.

(b) For each Subproject to be carried out by third parties with the financing of an Ecosystem Grant exceeding a total cost of \$20,000, CI shall enter into an agreement with the relevant recipient (the "Subproject Agreement"), in accordance with the Operational Manual.

(c) CI shall exercise its rights and comply with its obligations under Subproject Agreements in such manner as to protect the interests of the Fund and the Donors and, except as the Parties shall agree, CI shall not amend, suspend, assign,

abrogate, waive or fail to enforce any such Subproject Agreement, or any provision thereof.

ARTICLE IX

Privileges and Immunities; Legal Status

Section 9.01 *Privileges and Immunities*

The IBRD (also whenever acting on its own behalf) shall incur no responsibility or liability to any third party for RIT Subprojects, Subprojects and activities administered by CI pursuant to this Agreement. Nothing in this Agreement or subsequent RIT Subproject Agreements or Subproject Agreements shall be considered to be a waiver of any privileges and immunities of the IBRD or its respective officers, employees or agents under the Articles of Agreement of IBRD or any applicable law, all of which are expressly reserved. Every written obligation, contract, instrument, certificate or undertaking made or issued by CI under the auspices of the Fund shall recite that the obligations of CI under any such instrument are not binding on IBRD in its own right, or on IBRD in its capacities as implementing agency or trustee of the GEF, but shall bind only CI.

Section 9.02 *Relationship of Parties*

This Agreement is not intended to create a legal partnership. Nothing in this Agreement shall constitute or be deemed to constitute any Party as the legal representative or agent of the other, nor shall any Party have the right or authority to assume, create, or incur any liability or obligation of any kind, expressed or implied, in the name or on behalf of any of the other Parties, their agents or assignees.

ARTICLE X

Withdrawals from the Fund Account; Refunds; Events of Default

Section 10.01 *Eligible Expenditures*

CI shall be entitled to withdraw amounts from the Fund Account in accordance with the provisions of Schedule III.

Section 10.02 *Refunds*

If the IBRD shall have determined at any time that a payment was made from the Fund Account for expenditures not eligible in accordance with the provisions of this Agreement or the Operational Manual, CI shall, upon notice from the IBRD, promptly refund or cause to be refunded, to the Fund Account, an amount equal to the amount so used or the portion thereof as shall be specified by the IBRD.

Section 10.03 *Events of Default*

CI shall, upon notice from the IBRD, refund to the IBRD the remaining balance of the GEF contributions to the Fund and any uncommitted interest accrued thereon, if any of the following events occur during the life of the Fund:

(a) CI's articles of incorporation have been amended, suspended, abrogated, repealed or waived in a manner which, in the opinion of the IBRD, would materially and adversely affect the operation of the Fund or the attainment of its objective;

(b) The Fund has been dissolved or its operations have been suspended; or

(c) As a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable that CI will be able to perform its obligations as set forth herein.

ARTICLE XI

Financial Covenants

Section 11.01 *Records and Financial Management*

CI shall maintain or cause to be maintained a financial management system, including records and accounts, and prepare financial statements in a format acceptable to the IBRD adequate to reflect its operations, resources and expenditures, including those in respect of the Fund.

Section 11.02 *Auditing and Financial Statements*

CI shall:

(a) have an external audit of its records, accounts and financial statements (statements of financial position, statement of activities, statement of cash-flow and related statements) ("**CI External Audit**"), including those for the Fund ("**CEPF External Audit**"), for each Fiscal Year, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the IBRD;

(b) adopt terms of reference for the CEPF External Audit satisfactory to the IBRD, not later than 120 days after this Agreement has become effective;

(c) furnish to the IBRD, as soon as available, but in any case not later than five (5) months after the end of such Fiscal Year: (i) certified copies of its financial statements for such year as so audited; and (ii) the report of such audit by said auditors, of such scope and in such detail as the IBRD shall have reasonably requested, and shall include a separate opinion by said auditors on the Fund Account and on whether the quarterly unaudited Interim Financial Reports submitted during the Fiscal Year, together

with procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals;

(d) furnish to the IBRD such other information concerning said records, accounts and financial statements as well as the audit thereof, as the IBRD shall from time to time reasonably request;

(e) maintain an internal audit function with staffing, resources and functions under terms of reference satisfactory to IBRD;

(f) adopt terms of reference, satisfactory to the IBRD, for an audit of CEPF (“**CEPF Program Audit**”) by said internal auditors, or consultants satisfactory to the IBRD, no later than twelve (12) months after this Agreement has become effective;

(g) complete said CEPF Program Audit no later than twenty-four (24) months after this Agreement has become effective; and

(h) ensure that unaudited Interim Financial Reports (IFRs) for the Fund are prepared and furnished to IBRD not later than forty-five (45) days after the end of each calendar quarter, covering the quarter, with the exception of each report for the second quarter (ending June 30) which shall be furnished to IBRD no later than every September 15, in form and substance satisfactory to the IBRD.

ARTICLE XII

Records and Reports

Section 12.01 *Records and Procedures*

CI shall maintain or cause to be maintained records and procedures adequate to record and monitor implementation of the Annual Spending Plan and the RIT Subprojects, Subprojects and activities thereunder (including costs and the benefits derived therefrom), and to identify the goods and services financed under the Fund.

Section 12.02 *Annual Reports*

CI shall furnish to the Donor Council annual progress reports on the operations of the Fund; the implementation of Annual Spending Plans; approved Ecosystem Profiles, and the RIT Subproject and Subproject portfolio, which reports shall be of such scope and in such detail as the Donor Council may reasonably request.

Section 12.03 *Final Report*

Within six months after the Closing Date, or such later date as IBRD may determine, CI shall prepare and furnish to IBRD a report of such scope and in such detail as IBRD shall reasonably request.

Section 12.04 *Midterm Independent Evaluation*

A midterm independent evaluation of the performance of the Fund and of the RIT Subprojects, Subprojects and activities thereunder, costs and benefits derived and to be derived therefrom, the performance by CI, and the accomplishment of the objective of the Fund, shall be conducted, under terms and conditions acceptable to the Donor Council, no later than three years after the first disbursement of the Fund.

ARTICLE XIII

Consultation and Exchange of Information

Section 13.01 *Exchange of Information*

In addition to the information that the Parties are obligated to make available pursuant to this Agreement and their applicable policies, the Parties shall also make every reasonable effort to exchange information pertinent to the Fund and any lessons learned during the course of Fund operations, and shall consult from time to time, at the request of any Party, on all matters arising out of this Agreement, including the application of IBRD Safeguard Policies. In order to promote a regular exchange of information CI shall consult with the IBRD and GEF prior to each Donor Council meeting.

Section 13.02 *Visits and Examinations*

CI shall enable IBRD and GEF representatives to visit facilities and sites included in the RIT Subprojects, Subprojects and activities and to examine the goods financed out of the Fund and any installations, sites, works, records and documents relevant to the operations financed under the Fund.

Section 13.03 *Disclosure; Intellectual Property*

(a) The Parties agree that any non-proprietary information developed as part of the RIT Subprojects, Subprojects and activities financed under the Fund will be made publicly available.

(b) The creative work of CI called for pursuant to this Agreement, including all written, graphic, audio, visual and any other materials, contributions, applicable work product and production elements contained therein, whether on paper, disk, tape, digital file or any other media (the "Creative Work"), shall remain the intellectual property of CI, provided however that CI hereby irrevocably grants to the GEF and the IBRD (and to all members of the World Bank Group), the non-exclusive right to copy, distribute, use, and prepare derivative works from the Creative Work for any purpose, in any media, and in any territory. It is understood that the goal of the Parties is to achieve the widest possible dissemination of the Creative Work, and to that end, CI will provide the Creative Work to the public without restriction on further personal, non-commercial use.

Section 13.04 *Publicity*

Unless otherwise agreed in writing, a Party shall not use or make reference to the name or logo of the other Party in any advertising or solicitation. The Parties shall consult with one another on any press release, advertisement or any other public announcement concerning their collaboration in the frame of the Fund.

ARTICLE XIV

Notices and Communication

Section 14.01 Any notice, communication, request or correspondence required or permitted under the terms of this Agreement shall be in writing, in the English language (it being understood that any such communication in a language other than English shall be of no force and effect), and shall be delivered personally, or via courier, mail, or facsimile to the address and telecopier numbers provided below.

For CI:

Senior Vice President/Executive Director
Conservation International
2011 Crystal Drive, Suite 500
Arlington, VA 22202
USA
Telefax: (703) 553 0958

For IBRD:

Director Environment (ENV)
International Bank for Reconstruction and Development
1818 H Street NW
Washington DC 20433
USA
Telefax: (202) 477 0565

With copy to:

Biodiversity Team Leader
GEF Secretariat
1818 H Street NW
Washington DC 20433
USA
Telefax: (202) 522 3240

ARTICLE XV

Dispute Settlement

Section 15.01 *Arbitration*

Any dispute arising out of or relating to this Agreement which is not settled by agreement of the parties shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

ARTICLE XVI

Effective Date; Expiration; Termination; Amendment

Section 16.01 *Conditions Precedent to Effectiveness of this Agreement*

This Agreement shall become effective on the date that evidence in form and substance satisfactory to the IBRD shall have been furnished to the IBRD demonstrating that:

- (a) the Donor Council has approved the fund-raising strategy referred to in Section 5.01 of this Agreement;
- (b) the Donor Council has approved an indicative list of Biodiversity Hotspots selected for investment under the Fund;
- (c) the Donor Council has approved the revised Operational Manual;
- (d) CI has established an internal audit function, with staffing, resources and functions based on terms of reference satisfactory to IBRD; and
- (e) Execution and delivery of this Agreement on behalf of CI has been duly authorized by all necessary corporate actions and, upon execution and delivery, this Agreement shall constitute the legal, valid, binding and enforceable obligation of each Party hereto.

Section 16.02 *Effective Date; Expiration*

This Agreement shall enter into effect on the date upon which the IBRD delivers to CI notice of its acceptance of the evidence required by Section 16.01, and, unless otherwise earlier terminated in accordance with the provisions hereof, shall continue in full force and effect until 30 days after the delivery of the report referred to in Section 12.03.

Section 16.03 *Termination of this Agreement for Failure to Become Effective*

If this Agreement shall not have entered into effect by ninety (90) days after the date of this Agreement, this Agreement and all obligations of the Parties hereunder shall terminate, unless the Parties, by written agreement, shall jointly establish a later date for the purposes of this Section.

Section 16.04 *Amendment*

This Agreement may not be amended except by a written agreement between the Parties hereto.

ARTICLE XVII

Definitions, Headings, Schedules

Section 17.01 *Definitions*

Unless the context otherwise requires, the several terms defined in the Preamble to this Agreement have the respective meanings therein set forth, and the following capitalized terms shall have the following meanings wherever used in this Agreement:

- (a) "Agreement" means this Financing Agreement, as the same may be amended from time to time;
- (b) "Annual Spending Plan" shall have the meaning ascribed thereto in Section 6.01;
- (c) "Biodiversity Hotspots" means those areas listed in Schedule I;
- (d) "Dollars", and "US\$" each means the lawful currency of the United States of America;
- (e) "Donor Council" means the body referred to in Section 2.01;
- (f) "Donor" means any entity or individual contributing directly to the Fund;
- (g) "Ecosystem Profile" means, for any ecosystem in Schedule I, the document prepared by CI and endorsed by the national GEF focal points and approved by the Donor Council pursuant to the provisions of Sections 6.02 and 6.03, including any additions or amendments thereto;
- (h) "Subproject Agreement" means an agreement for funding of a Subproject, concluded between CI and any recipient of an Ecosystem Grant exceeding the cost of \$20,000, pursuant to the provisions of the Operational Manual;

- (i) "Taxes" includes imposts, levies, fees and duties of any nature, whether in effect at the date of this Agreement or thereafter imposed;
- (j) "CEPF External Audit" means an audit performed by external auditors of the records, accounts and financial statements of the Fund as referred to in Section 11.02;
- (k) "CEPF Program Audit" means an audit performed by internal auditors, or consultants acceptable to IBRD, of the economy, efficiency and effectiveness in relation to achieving the objectives of the Fund, as referred to in Section 11.02;
- (l) "CI External Audit" means an audit performed by external auditors of the records, accounts and financial statements of CI as referred to in Section 11.02;
- (m) "Closing Date" means December 31, 2012, or such later date as IBRD shall establish by notice to CI;
- (n) "Conservation International Foundation" or "CI" means Conservation International Foundation, a nonprofit public benefit corporation organized and in good standing under the laws of the State of California;
- (o) "Ecosystem Grant" means a grant to be made out of the proceeds of the GEF Grant for the purposes of financing a RIT Subproject or a Subproject (except financing of RIT operating, monitoring and knowledge-sharing costs), pursuant to the provisions of Article VIII of this Agreement and of the Operational Manual;
- (p) "Eligible Expenditures" shall include both expenditures made in accordance with the Operational Manual and Schedule III and sums committed under RIT Subproject or Subproject Agreements within the frame of approved Ecosystem Profiles;
- (q) "Euro" and "€" each means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union;
- (r) "Fiscal Year" means July 1 to June 30;
- (s) "Fund Account" means the special deposit account maintained by CI pursuant to the provisions of Section 4.01;
- (t) "GEF Grant" means the contribution of twenty million United States Dollars (US\$20,000,000) to be made available by GEF to the Fund over five years for the second phase of CEPF, in accordance with the terms and conditions set forth in this Agreement;

- (u) “IBRD Safeguard Policies” means the following policies of the IBRD, as may be amended from time to time by the IBRD, and any other safeguard policy area which may hereafter be designated by the IBRD: Environmental Assessment (OP/BP 4.01, revised through March 2007), Natural Habitats (OP/BP 4.04, revised through August 2004), Forests (OP/BP 4.36, revised through August 2004), Pest Management (OP/BP 4.09, revised through August 2004), Involuntary Resettlement (OP/BP 4.12, revised through April 2004), Indigenous Peoples (OP/BP 4.10, July 2005), Physical Cultural Resources (OP/BP 4.11, revised through March 2007), Safety of Dams (OP/BP 4.37, October 2001), Projects on International Waterways (OP/BP 7.50, as revised August 2004), Projects in Disputed Areas (OP/BP 7.60, as revised August 2004), and Disclosure of Information (as revised January 2003);
- (v) “IBRD” means International Bank for Reconstruction and Development, which, unless expressly agreed by all Parties to be otherwise, shall be acting, for the purposes of this Agreement as Implementing Agency of the Global Environment Facility;
- (w) “Interim Financial Report” or “IFR” means a report prepared in the format provided for in the Operational Manual in accordance with guidelines acceptable to the IBRD not later than forty-five (45) days after the end of each calendar quarter, with the exception of each report for the second quarter (ending June 30) which shall be furnished to IBRD no later than every September 15;
- (x) “Operational Budget” means the estimate of costs necessary to be incurred for, *inter alia*, business development, RIT Subproject and Subproject implementation, administration, monitoring and evaluation, information system and knowledge management, financial auditing, or as may otherwise be approved by the Donor Council in the Annual Spending Plan;
- (y) “Operational Manual” means the manual approved by the Donors and acceptable to IBRD, containing, *inter alia*, the operating policies and procedures for the execution of the CEPF, including the IBRD Safeguard Policies; decision making procedures; criteria for eligibility of RIT Subprojects, Subprojects and activities and Ecosystem Grants; criteria for eligibility of expenditures and the use of funds from the Fund Account in the financing of RIT Subprojects, Subprojects and activities; indicators to monitor the progress of implementation of the RIT Subprojects, Subprojects and activities; the model form of country endorsement, and the model form of RIT Subproject Agreement and Subproject Agreement, as such manual may be amended from time to time by the Donor Council;
- (z) “Preparation Budget” means the estimate of costs necessary to be incurred for, *inter alia*, the preparation of Ecosystem Profiles during the

period of the Annual Spending Plan, priority setting, consensus building, capacity building and consultation of local stakeholders;

- (aa) “Regional Implementation Team” or “RIT” means a civil society group referred to in Section 3.02, selected competitively through a process as defined in the Operational Manual for each Biodiversity Hotspot, and responsible for the strategic implementation of the respective Ecosystem Profile;
- (bb) “RIT Subproject Agreement” means an agreement for funding of a RIT Subproject, concluded between a RIT and any recipient of an Ecosystem Grant not exceeding a total cost of \$20,000, pursuant to the provisions of the Operational Manual;
- (cc) “RIT Subproject” means any of the projects which has been selected, pursuant to the provisions of Article VIII of this Agreement, the Operational Manual and an approved Ecosystem Profile, for financing by an Ecosystem Grant not exceeding a total cost of \$20,000, including projects for conservation planning, for management of indigenous peoples’ reserves, for community-based natural resource management, and for piloting payments for ecosystem services;
- (dd) “Subproject” means any of the projects and activities which has been selected, pursuant to the provisions of Article VIII of this Agreement, the Operational Manual and an approved Ecosystem Profile, for financing by an Ecosystem Grant exceeding the cost of \$20,000, including projects for conservation planning, for management of indigenous peoples’ reserves, for community-based natural resource management, and for piloting payments for ecosystem services; and
- (ee) “Working Group” means the body referred to in Section 3.01.

Section 17.02 *Headings and Schedules*

- (a) The headings of the Articles and Sections are inserted for convenience of reference only and shall be ignored in construing this Agreement.
- (b) The Schedules to this Agreement are an integral part hereof.

Schedule I

List of Biodiversity Hotspots

1. Atlantic Forest
2. California Floristic Province *
3. Cape Floristic Region
4. Caribbean Islands *
5. Caucasus
6. Cerrado
7. Chilean Winter Rainfall-Valdivian Forests
8. Coastal Forests of Eastern Africa
9. Eastern Afromontane
10. East Melanesian Islands
11. Guinean Forests of West Africa
12. Himalayas
13. Horn of Africa
14. Indo-Burma
15. Irano-Anatolian
16. Japan *
17. Madagascar and Indian Ocean Islands *
18. Madrean Pine-Oak Woodlands *
19. Maputoland-Pondoland-Albany
20. Mediterranean Basin *
21. Mesoamerica
22. Mountains of Central Asia
23. Mountains of Southwest China
24. New Caledonia *
25. New Zealand *
26. Philippines
27. Polynesia-Micronesia *
28. Southwest Australia *
29. Succulent Karoo
30. Sundaland
31. Tropical Andes
32. Tumbes-Chocó-Magdalena
33. Wallacea
34. Western Ghats and Sri Lanka

Source: *“Hotspots Revisited, Earth’s biologically richest and most endangered terrestrial ecoregions”*
Mittermeier et. al. 2004.

* These areas include countries not eligible for CEPF funding. However, the CEPF Donor Council may choose to establish funding windows outside the eligibility criteria to accommodate the strategic interests of specific donors. The Council may also choose to include marine ecosystems within targeted hotspots.

Schedule II

Information Requirements for Ecosystem Profiles

Each Ecosystem Profile shall include the following information, in such an order and with such emphasis as may be necessary within each ecosystem:

1. Description of the Biodiversity Hotspot and the ecosystem or ecosystems proposed to be funded by the CEPF, including its size, location, climate, threatened species and habitats, geography, indigenous peoples and other characteristics, as relevant, and it shall explain the importance of the biodiversity housed in the area, and why the ecosystem has priority.
2. Information confirming the eligibility of the area for funding by the CEPF.
3. Information related to the conservation targets that have been defined for the region. These outcomes represent the quantifiable set of species and land areas that are indispensable to conserving biodiversity. Priority areas necessary to maintain ecological and evolutionary processes at the landscape scale will also be identified.
4. Analysis of the socioeconomic, policy, and civil society context of the area to assist in developing a comprehensive understanding of development priorities (including poverty reduction impacts), threats, and opportunities.
5. Assessment of the threats, and root causes of these threats, to the ecosystem's integrity, including, as relevant, a brief historic overview thereof. Description of the kind of solutions that can be designed to overcome or at least mitigate the root causes of these threats.
6. Identification of the primary actors involved and how these should change to support biodiversity conservation in the area (both threat actors and opportunity actors).
7. Description of major efforts that have been or are being undertaken for biodiversity conservation in the area by national and international, bilateral, public and private sector actors, as relevant, including levels of funding already provided by those actors, and why existing activities and investments are deemed to be insufficient, or ineffective to provide for biodiversity conservation in the area.
8. Strategy for biodiversity conservation in the ecosystem and its region; such strategy to be based on existing information and known priorities, or a new synthesis, as appropriate.
9. Description of external conditions considered necessary for biodiversity conservation in the ecosystem including political, legal, social, economic, cultural and biological elements, as appropriate.

10. Description of the legal status of the area concerned, and of state and federal or other agencies responsible for the establishment and management of protected areas.
11. Identification of gaps or niches in which the CEPF could particularly add value or complement existing investments in biodiversity conservation.
12. Recommendation for priorities for funding from the CEPF, taking into account the strategy for biodiversity conservation in the ecosystem and its region.
13. Identification of stakeholders who may be able to work in alliances to more effectively combat threats to the ecosystem's integrity or to increase the overall effectiveness of existing conservation activities, and a description of intended approaches for their involvement and for involvement of the local population. Such a description shall also address means of raising awareness of the general public, as appropriate.
14. Motivated recommendation of the types of activities for which grant funding would be provided under the Ecosystem Profile and a classification of these types of activities based on their anticipated size of the grant funding involved.
15. Description of types of entities that are expected to be recipients of grants.
16. A log-frame that lists broad indicators that can be used to evaluate and determine whether or not the strategic funding directions put forward through the Ecosystem Profile have been successful.
17. Conclusions

Schedule III

Withdrawal and Use of the Funds

1. The funds in the Fund Account shall be used as provided in the Operational Manual and within the limits set for each category in the relevant Annual Spending Plan. Reallocation of up to 15 percent within spending categories (a) through (c) of Section 6.02, and between categories (a) and (c) of Section 6.02, can be made at the discretion of CI, without prior approval of the Donor Council.

2. Without prejudice to the reallocation provisions of paragraph 2 of this Schedule, CI shall ensure that commitments for projects and activities to be financed out of category (a) for a given Annual Spending Plan do not exceed the applicable funding level specified in such Annual Spending Plan.

3. The following sets forth the categories of items to be financed out of the funds:

(a) Goods, works and services financed under Ecosystem Grants;

(b) Goods and services for Ecosystem Profile preparation; and

(c) Incremental operating expenditures for management fees, project implementation and administration, office supplies, business development, monitoring and evaluation, information system and knowledge management, finance auditing or as may otherwise be approved by the Donor Council in the Annual Spending Plan.

4. CI may withdraw the proceeds of the GEF Grant in accordance with the provisions of: (a) paragraphs 4 and 5 of this Schedule III; and (b) such additional instructions as the IBRD may specify by notice to CI, to finance Eligible Expenditures as set forth in the table in paragraph 5 below.

5. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of GEF Grant ("Category"), the allocations of the amounts of GEF Grant to each Category, and the percentage of Ecosystem Grants to be financed for Eligible Expenditures in each Category:

Category	Amount of the GEF Grant Allocated (expressed in USD)	Percentage of Ecosystem Grants to be Financed
(1) Ecosystem Grants	\$20,000,000	26.3%
TOTAL AMOUNT	\$20,000,000	

6. Disbursement of GEF Grant funds shall be made on the basis of un-audited Interim Financial Reports in a format acceptable to IBRD, pursuant to Section 11.02 (h).

Such reports shall provide information on the use of the advances deposited into the Fund Account.

7. If any taxes are payable on any item financed out of the Fund, CI shall use its best efforts to minimize the financing of such taxes out of the Fund. If, despite such efforts, CI determines that Fund resources are required to be used in part for the payment of taxes, CI shall ensure that no more than 20 percent of Fund funds shall be used to finance payment of any taxes levied by the Government in the territory of any recipients on goods or services or on the importation, manufacture, procurement or supply thereof. This percentage may be changed by decision of the Donor Council to proportionally reflect contributions from additional donors.

8. No withdrawals shall be made in respect of payments due for expenses incurred prior to the date of this Agreement.

9. No expenditures shall be made for land acquisition, and no expenditures shall be made for projects and activities resulting in physical relocation of people.

10. No expenditures shall be made: (i) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, (ii) for penalties on late payments imposed by suppliers except if such penalties were incurred in connection with a disputed payment which was under arbitration, or (iii) self insurance and premium.

11. Procurement of goods and services financed by Ecosystem Grants shall be carried out in accordance with Guidelines: Procurement under IBRD Loans and IDA Credits, May 2004, as revised October 2006 (the "Guidelines").

12. Consultants' services financed by Ecosystem Grants shall be selected in accordance with the Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004, as revised October 2006 (the "Consultant Guidelines").

13. The Fund shall not be used for payment under any RIT Subproject Agreement or Subproject Agreement of management fees in excess of 13 percent of total RIT Subproject or Subproject costs. This percentage may be amended by decision of the Donor Council.

14. Amounts within the approved Annual Spending Plans which are payable to CI during any year on account of activities performed by CI under the spending categories for Ecosystem Profiles (pursuant to Section 6.02 (a)); Preparation Budget (pursuant to Section 6.02 (b)); Operational Budget (pursuant to Section 6.02 (c)); and management fees (pursuant to Section 6.02(d)), may be transferred by CI into its operating account.