



# BESF

BARBADOS ENVIRONMENTAL  
SUSTAINABILITY FUND



# OBSERVER POLICY

Approved June 2023

**OBSERVER POLICY - BOARD MEETINGS**  
*for the*  
BARBADOS ENVIRONMENTAL SUSTAINABILITY FUND (“BESF”)

The Barbados Environmental Sustainability Fund Inc. (“BESF”) is a fully incorporated not-for-profit company under the Companies Act, Cap 308 of the Laws of Barbados. BESF’s mission is to promote the maintenance and growth of Barbados’ natural capital by making grants to other non-profit organisations, community-based organisations, government agencies and the private sector for relevant environmental and sustainable projects and programmes that support Barbados’ sustainable development aspirations.

The Board of the BESF (“Board”) is committed to leading by example in terms of transparent decision making and will proactively seek the valuable input and perspectives of key stakeholders.

The Directors of the BESF have a fiduciary duty of care and are required to operate in good faith with a view to the best interests of the company, and to exercise the care, diligence and skill that a reasonably prudent person would exercise in these circumstances.

This Observer Policy - Board Meetings (“Observer Policy”) seeks to establish the procedures and guidelines for observers attending Board meetings, as well as the criteria for observer status. Observer status may be opened for organisations providing core support to the BESF, as agreed by the Board, or support covering strategic priorities identified in the BESF Strategic Plan, and the organization has made an application to the Board for Observer status.

Organisations that have been granted Observer status by the Board may nominate one (1) representative to attend meetings of the Board on behalf of the organization (the “Observer”). Observers are individuals who are granted the privilege by the Board to attend, observe and participate in Board meetings. Observer status will only be granted by the Board after satisfaction of the criteria set out below and may be revoked at any time at the discretion of the Board. Where an organization has provided significant funding support to the BESF, or has established a strategic partnership with the BESF, and that organization has been granted Observer status in accordance with this Observer Policy, the Observer will immediately lose their Observer status upon termination of funding support from their organisation to the BESF, or upon termination of the strategic partnership between the organisation and the BESF. Observers will also lose their Observer status if their status is revoked by the Board.

## **DEFINITIONS**

**"Ad - Hoc Observer"**- An organisation who, following the approval process contained herein, has been invited to attend meetings of the Board from time to time to address specific agenda items.

**"Permanent Observer"** - An organisation which has been designated as such by the Board to attend, observe and participate in meetings of the Board.

The use of the term “Observer” or "Observers" in this Observer Policy shall refer to both Permanent and Ad-Hoc Observers and may also comprise of Government and Non-Government members of BESF as defined in the Articles of Incorporation and the By-Laws of the BESF.

The Observer may attend meetings (including telephonic or videoconference meetings) of the Board in a non-voting, observer capacity. The Observer, on the invitation of the Chairperson of the Board, may participate fully in discussions of matters brought to the Board for consideration, but in no event shall the Observer (i) be deemed to be a member of the Board; (ii) have the right or authority to propose or offer any motions or resolutions to the Board; (iii) have the right to vote with respect to any motions or resolutions proposed or offered to the Board; or (iv) have the authority to enter into any agreements on behalf of the BESF. The presence of the Observer shall not be taken into account or required for the purposes of establishing a quorum. The BESF may provide to the Observer copies of all notices, minutes, consents, and other materials that it provides to Board members (collectively, “Board Materials”), at the same time and in the same manner as such information is delivered to the Board members.

The BESF may exclude the Observer from access to any Board Materials, meeting, or portion thereof if the Board concludes that (i) such Board Materials or discussion relates to the BESF's relationship with the organization or any actual or potential transactions between or involving the BESF and the organization; (ii) such exclusion is necessary to avoid a conflict of interest or disclosure that is restricted by any agreement to which the BESF is a party or otherwise bound; or (iii) such exclusion is necessary to protect confidential or sensitive information of the BESF or any of its stakeholders. The Board may also exclude Observer from access to Board Materials, or from any meeting of the Board, for any reason, in its sole discretion.

## **CRITERIA**

In order to qualify for Observer status, one or more of the following criteria may be met:

- Observers represent an organisation which has provided significant funding support to the BESF, as defined by the Board, and has requested Observer status in accordance with this Observer Policy;
- Observers represent a significant BESF stakeholder group, as defined by the Board, where attendance at the specific Board meeting would be necessary to ensure further collaboration with these stakeholders; or
- Observers represent an organisation, BESF stakeholder group, or other party, who has been invited by the Board to attend a meeting of the Board for specific Board discussion / agenda items.

## **LIMITATIONS**

- The maximum number of Observers invited and permitted to simultaneously attend a full Board meeting will be five (5). In exceptional circumstances, the Board may permit more than five (5) Observers to simultaneously attend a full meeting of the Board.
- The Board may permit Ad-hoc Observers to attend a meeting of the Board for specific agenda items. These Ad-hoc Observers are required to leave the meeting once the specific agenda items have been discussed.
- No organisation will be given Permanent Observer status at Board meetings for a period

exceeding one (1) year, however this Observer status may be renewed on a yearly basis by the Board and confirmation of the renewal of Permanent Observer status will be communicated to the organisation.

## **APPROVAL PROCESS**

- Requests for the attendance of Observers shall be made to the Chairperson of the Board no later than one (1) week prior to the scheduled Board meeting, to allow a decision to be made by the Board on whether to extend the invitation, and, if agreed, for which item(s), in the case of Ad-hoc Observers, and the period of the Observer status, in the case of Permanent Observers.
- Applications for Ad-hoc Observers will be assessed meeting by meeting on the proposed agenda for the meeting.
- Board Members, the CEO and key BESF stakeholder groups or organisations, as defined by the Board, may put forward requests for Observers and should include which of the stated criteria the application meets.
- Key BESF stakeholder groups or organisations will be informed of the proposed attendance of their Observers at meetings of the Board by the BESF Secretariat and these stakeholder groups or organisations will have the opportunity to raise any issues with the Chairperson of the Board in advance of the meeting.
- The decision of the Board is final with respect to the status of the application for Observer status.
- The Board may revoke the status of any Observer at any time and for any reason.
- An organization or stakeholder group which has been granted Permanent Observer status by the Board shall be required to enter into a Board Observer Agreement with the BESF, a copy of which is included as **Appendix A** to this Observer Policy.

## **TERMINATION**

- The Board reserves the right to terminate the status of an Observer at any time, with or without cause.
- Termination of Observer status may occur if an Observer fails to comply with the provisions of this Observer Policy, engages in misconduct, or breaches any applicable legal or regulatory requirements.
- Upon termination of Observer status, the Observer shall promptly return any documents, materials, or information of the BESF provided to them during their appointment.

## **OBSERVER CONDUCT**

- Observers may be invited by the Chairperson to contribute to the discussions at Board meetings. The Board may also specifically ask for the input or views of Observers under the specific agenda items.
- Observers are granted the privilege to attend Board meetings as non-voting participants.
- Observers are expected to maintain the confidentiality of all information discussed during Board meetings and shall refrain from disclosing or discussing any confidential or sensitive information obtained during Board meetings with any unauthorized individuals or

entities.

- Observers shall not have the authority to vote on any matters or participate in decision-making processes of the Board.
- Observers should conduct themselves professionally, adhering to the BESF's code of conduct and ethics, and/or any other applicable policies and regulations and treating all Board members, executives, and staff with respect and courtesy.
- Observers may request clarification or ask questions related to the discussions, but their inquiries should not disrupt the flow or efficiency of the meeting.
- Unless otherwise permitted or explicitly provided by the Board, Observers shall not have access to Board Materials
- Observers may be requested to provide reports or summaries of Board meetings to the appointing organisation. These reports should be factual, objective, and focus on the matters discussed rather than expressing personal opinions. The Board may request a copy of the report prepared by the Observer for the organization.
- Should Observers wish to raise sensitive issues that cannot be discussed in an open forum, they should approach the Chairperson of the Board who will decide how the matter should be handled.
- The Chairperson of the Board may, at any time, request a Board meeting to move into a closed session and request Observers to leave the meeting until such time as they are invited to return.

## **LIMITATIONS**

- Observers do not have the right to vote during Board meetings or any decision-making processes.
- Observers should refrain from actively participating in discussions unless specifically invited by the Chairperson or designated Board members.
- Observers are not entitled to receive Board Material which the Board has determined to be confidential, sensitive or proprietary, unless otherwise specified by the Board.

## **COSTS AND LOGISTICS**

- Observers are expected to cover their own costs (including flights, accommodation, ground transportation and per diems) when attending Board meetings which are held physically.

## **RESPONSIBILITIES**

- The Secretariat of the BESF is responsible for the organisation of the Board meetings. Where applicable, the BESF's Secretariat will send out the invitations to Observers within a reasonable timeframe prior to the Board meeting and set up the technical facilities to enable Observers to participate virtually if necessary. Invited Observers should notify the BESF about their intention to participate in the Board meeting at least 48 hours before the meeting takes place. This should include information on the form of participation (physical or virtual).

## **IMPLEMENTATION**

- This Observer Policy will come into effect on 1<sup>st</sup> August 2023. It will be reviewed when necessary.

#### **REVIEW AND AMENDMENTS**

- This Observer Policy will be reviewed by the Board on an annual basis to ensure its effectiveness and relevance to the needs of the BESF and revised or amended if necessary.
- Any amendments or changes to this Observer Policy should be approved by the Board and documented accordingly.

Approved June 30, 2023

## APPENDIX A

### Board Observer Agreement

#### BOARD OBSERVER AGREEMENT

This agreement (“Agreement”) is entered into between the BARBADOS ENVIRONMENTAL SUSTAINABILITY FUND INC., a non-profit company incorporated under the laws of Barbados with its registered office at Chancery House, High Street, Saint Michael, Barbados (the “BESF”), and [NAME OF ENTITY] (the “Organisation”) effective as of (the “Effective Date”).

WHEREAS, the BESF desires to provide the Organisation with certain observation rights regarding the BESF’s board of directors (the “Board”) as further described, and subject to the terms and conditions set forth, herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein, the BESF and the Organisation agree as follows:

1. **Term:** The term of this Agreement shall commence on the Effective Date and shall continue until [End Date]. Either party may terminate this Agreement by providing written notice to the other party.

**2. Observer Rights.**

2.1. The BESF grants to the Organisation the option and right to appoint a representative reasonably acceptable to the BESF (the “Observer”) to attend Board meetings of the Board in a non-voting, observer capacity; provided that any such representative shall have executed and delivered to the BESF a copy of the Acknowledgement and Agreement to be bound in the form attached hereto as **Exhibit A** (the “Acknowledgement”). In no event shall the Observer (i) be deemed to be a member of the Board; (ii) without limitation of the obligations expressly set forth in this Agreement or the Acknowledgement, have or be deemed to have, or otherwise be subject to, any duties (fiduciary or otherwise) to the BESF (aside from those set forth herein); (iii) have the right or authority to propose or offer any motions or resolutions to the Board; (iv) have the authority to represent or enter into any agreements on behalf of the BESF at any time. The presence of the Observer shall not be required for purposes of establishing a quorum. The Observer is permitted to attend any Board meeting of the BESF as a representative of the Organisation were advance written notice has been provided to the BESF.

2.2. The BESF may provide to the Observer copies of all notices, minutes, consents and other materials (including, for the avoidance of doubt, correspondence) that it provides to Board members (collectively, “Board Materials”), including any draft versions, any written resolutions, and all exhibits and annexes to any such

materials, at the same time and in the same manner as such information is delivered to the Board members. For the avoidance of doubt, any failure to (i) provide notice of any meetings of the Board, or (ii) provide Board Materials to the Observer, shall not invalidate any proceedings or actions taken by the Board, such matters being governed by the By-Laws of the BESF and the laws of Barbados. The BESF makes no express or implied warranty or representation concerning its Board Materials, Confidential Information (as defined in Section 4.2) or other information supplied to the Observer, including but not limited to the accuracy or completeness of such information.

2.3. Notwithstanding anything herein to the contrary, the BESF may exclude the Observer from access to any Board Materials, meeting or portion thereof if the Board concludes, acting in good faith, that (i) such exclusion is reasonably necessary to preserve the attorney-client or work product privilege between the BESF and its counsel (provided, however, that any such exclusion shall only apply to such portion of such material or meeting which would be required to preserve such privilege); (ii) such Board Materials or discussion relates to the BESF's relationship, contractual or otherwise, with the Organisation or its affiliates or any actual or potential transactions between or involving the BESF and the Organisation or its affiliates; or (iii) such exclusion is necessary to avoid a conflict of interest or disclosure that is restricted by any agreement to which the BESF is a party or otherwise bound. In addition, if the Observer has knowledge of a conflict of interest, or a potential conflict of interest, between the Organisation or the Observer or their affiliates and the BESF, he shall inform the Chairperson of the Board or Secretary of the BESF, as appropriate, prior to any Board discussion of such matter on becoming aware of such conflict or potential conflict.

3. **No compensation or expenses.** The BESF shall not reimburse the Organisation or the Observer for any expenses incurred in connection with the Observer's attendance at Board meetings. For the avoidance of doubt, the BESF shall not compensate the Organisation or the Observer for that Observer's role.

4. **Compliance with Policies.** Unless otherwise set forth herein, the Organisation agrees that the Observer shall be subject to the requirements of all BESF policies applicable to directors and which are capable of applying to the Observer in his role as such, as if the Observer were a director of the BESF.

5. **Confidential Information.**

5.1. To the extent that any information obtained by the Observer is Confidential Information (as defined below), the Organisation shall, and shall cause the Observer to, treat any such Confidential Information as confidential in accordance with the terms and conditions set out in this Section 5.



- 5.2. As used in this Agreement, “Confidential Information” means any and all information or data relating to or in connection with the respective businesses and affairs of the BESF, whether in verbal, visual, written, electronic or other form (including all Board Material that is non-public information), together with all information discerned from, based on or relating to any of the foregoing which may be prepared or created by the Observer, the Organisation or any of its affiliates, or any of their respective directors, officers, employees, agents or advisors (each, a “Representative”); provided, however, that “Confidential Information” shall not include information that: (a) is or becomes generally available to the public other than as a result of disclosure of such information by the Organisation, any of its affiliates, any of their Representatives, or the Observer; (b) is independently developed by the Organisation, any of its affiliates, any of their Representatives, or the Observer without use of Confidential Information provided by the BESF or by any Representative thereof; (c) becomes available to the recipient of such information at any time on a non-confidential basis from a third party that is not prohibited from disclosing such information to the Organisation or any of its affiliates, any of their respective Representatives, or the Observer by any contractual, legal or fiduciary obligation to the BESF; or (d) was known by the Organisation, any of its affiliates, or the Observer prior to receipt from the BESF or from any Representative thereof, other than to the extent such information became known as a result of a breach of any contractual (including this Agreement), legal or fiduciary obligation to the BESF or to any third party.
- 5.3. The Organisation shall, and shall cause the Observer to (a) retain all Confidential Information in strict confidence; (b) not release or disclose Confidential Information in any manner to any other person (other than disclosures to the Organisation, its affiliates or to any of its or their Representatives who (i) have a need to know such information; and (ii) are informed of its confidential nature); and (c) use the Confidential Information solely in connection with the Organisation’s and Observer’s rights hereunder; provided, however, that the foregoing shall not apply to the extent the Organisation, its affiliates, any of its or their Representatives or the Observer is compelled to disclose Confidential Information by judicial or administrative process, pursuant to the advice of its counsel, or by requirements of law; provided, further, however, that, if legally permissible, prior written notice of such disclosure shall be given to the BESF as soon as reasonably practicable so that the BESF may take action, at its expense, to prevent such disclosure and any such disclosure is limited only to that portion of the Confidential Information which such person is compelled to disclose.
- 5.4. The Organisation, on behalf of itself and the Observer, acknowledges that the Confidential Information is proprietary to the BESF and may include trade secrets

or other business information the disclosure of which could harm the BESF. None of the Organisation, any of its affiliates, their Representatives or the Observer shall, by virtue of the BESF's disclosure of, or such person's use of any Confidential Information, acquire any rights with respect thereto, all of which rights (including intellectual property rights) shall remain exclusively with the BESF. The Organisation shall be responsible for any breach of this Section 5 by the Observer, any of its affiliates, or its or their Representatives.

- 5.5. The Organisation agrees that, upon the request of the BESF, it will (and will cause the Observer, its affiliates and its and their Representatives to) promptly (a) return or destroy, at the BESF's option, all physical materials containing or consisting of Confidential Information and all hard copies thereof in their possession or control; and (b) destroy all electronically stored Confidential Information in their possession or control; provided, however, that each of the Organisation, its affiliates, and its and their Representatives may retain, subject to prior written notice to the BESF, any electronic or written copies of Confidential Information as may be (i) stored on its electronic records or storage system resulting from automated back-up systems; (ii) required by law, other regulatory requirements, or internal document retention policies; or (iii) contained in board presentations or minutes of board meetings of the Organisation or its affiliates; provided, further, however, that any such retained Confidential Information shall remain subject to this Section 5.

## 6. Notices.

- 6.1. Notices are to be delivered in writing, in the case of the BESF, to:

and in the case of the Organisation, to:

or to such other address as may be given by each party from time to time under this Section

- 6.2. Notices shall be deemed properly given upon personal delivery or the day following deposit by overnight carrier or at the time of transmission if sent by email.

## 7. Miscellaneous Provisions.

- 7.1. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties, and supersedes any and all previous agreements and

understandings, whether oral or written, between the parties regarding the matters set out in this Agreement.

- 7.2. **Amendment.** No provision of this Agreement may be amended, modified or waived, except in a written agreement signed by the parties hereto.
- 7.3. **Waiver.** Any waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist on strict adherence to any term of this Agreement on one or more occasions shall not be construed as a waiver or deprive such party of the right to thereafter insist on strict adherence to that term or any other term of this Agreement.
- 7.4. **Assignment.** This Agreement may not be assigned by the Organisation.
- 7.5. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, and if any restriction in this Agreement is found by a court to be unreasonable or unenforceable, then such court may amend or modify the restriction so it can be enforced to the fullest extent permitted by law.
- 7.6. **Headings.** The section headings in this Agreement have been inserted as a matter of convenience only and are not to serve as a basis for interpretation or construction, and shall not constitute a part, of this Agreement.
- 7.7. **Counterparts.** This Agreement may be executed in any number of counterparts (including electronically), each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.
8. **Governing law and jurisdiction.** This Agreement is governed by and shall be construed in accordance with the laws of Barbados.
9. **Dispute Resolution.** In the event of a dispute, controversy or claim arising out of, relating to, or in connection with this Agreement, including with respect to the formation, applicability, breach, termination, validity or enforceability thereof, the BESF and the Organisation shall seek settlement of that dispute by mediation before having recourse to arbitration or litigation. The mediation should be conducted in accordance with the Arbitration and Mediation Court of the Caribbean ("AMCC") Mediation Rules operating at the time the matter is referred to the AMCC. The AMCC Mediation Rules are deemed to be incorporated by reference into this Agreement.).

10. **Termination.** This Agreement may be terminated by mutual agreement of the Parties or upon written notice by either party or in the event of a breach of Section 4 of this Agreement; provided, that Sections 3, 5, and 8 shall survive any such termination or expiration. In the event of termination, the Observer's right to attend and observe board meetings shall cease immediately.

[SIGNATURE PAGE FOLLOWS]

**EXHIBIT A**  
**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

This Acknowledgement and Agreement to be Bound (“Acknowledgement”) is given on by the undersigned as a representative designated by [NAME OR ORGANISATION] (the “Organisation”) to act as the Observer pursuant to that certain Board Observer Agreement by and between the BARBADOS ENVIRONMENTAL SUSTAINABILITY FUND INC. (the “BESF”) and the Organisation dated XXXXXXXX XX, 2023 (the “Agreement”).

Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Agreement.

1. By his execution of this Acknowledgement, the undersigned acknowledges and agrees:
  - 1.1. That he has received and reviewed a copy of the Agreement and that his execution of this Acknowledgement is a condition precedent to his appointment as the Observer under the Agreement.
  - 1.2. That he shall be subject to the requirements of all BESF policies applicable to directors and which are capable of applying to the Observer in his role as such.
  - 1.3. To treat any Confidential Information obtained by him or his affiliates from the BESF (or any Representative thereof) in accordance with Section 5 of the Agreement.
  - 1.4. That if he has knowledge of a conflict of interest, or a potential conflict of interest, between the Organisation or their affiliates, or the Observer and the BESF, he shall inform the Chairperson of the Board or Secretary of the BESF, as appropriate, prior to any Board discussion of such matter on becoming aware of such conflict or potential conflict.
  - 1.5. That either the Organisation or the undersigned may terminate the undersigned's appointment as the Observer at any time, with or without cause. If the undersigned ceases to serve as the Observer or loses his status as an Observer, he shall (a) no longer be entitled to exercise any rights afforded to the Observer under Section 2 of the Agreement; and (b) as promptly as practicable deliver all physical materials containing or consisting of Confidential Information in his possession or control to the Organisation, or, in the event that the BESF makes such request, to the BESF.
2. Upon the written request of the BESF or the Organisation, the undersigned will promptly execute and deliver any and all further instruments and documents and take such further action as such requesting party, acting reasonably, deems necessary to effect the purposes of this Acknowledgement.

3. No provision of this Acknowledgement may be amended, modified or waived, except in writing signed by the undersigned, the BESF, and the Organisation. The invalidity or unenforceability of any provision of this Acknowledgement shall not affect the validity or enforceability of any other provision. This Acknowledgement may be executed in any number of counterparts (including electronically), each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.
4. Section 8 (Governing law and jurisdiction) and Section 9 (Dispute Resolution) of the Agreement shall be applicable to this Acknowledgement, and the undersigned hereby agrees to be bound thereby, as if set forth herein.
5. If any notice, request, demand or other communication is given to the undersigned under this Acknowledgement, it shall be given to him at the address provided in writing to the BESF and the Organisation in accordance with Section 6 of the Agreement.

Please sign and return a copy of this Acknowledgement to indicate your acceptance of the terms and conditions set forth herein.

Thank you for your willingness to serve as a Board Observer. We look forward to your valuable contributions.

Sincerely,  
[Your Name]  
[Your Title]  
[Your Organization Name]

Agreed and accepted:

\_\_\_\_\_  
[Board Observer Name]

Date: \_\_\_\_\_