

AFD AGREEMENT N° CEC1046 01A

CREDIT FACILITY AGREEMENT

dated as of November 26, 2025

between

AGENCE FRANÇAISE DE DEVELOPPEMENT

The Lender

and

**EMPRESA MUNICIPAL DE AGUA POTABLE Y DE ALCANTARILLADO DE
GUAYAQUIL, EP EMAPAG EP**

The Borrower



SUBSECRETARÍA DE FINANCIAMIENTO PÚBLICO

REGISTRO N°: 800

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REGISTRO DE LA DEUDA PÚBLICA

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TABLE DES MATIERES

1.	DEFINITIONS AND INTERPRETATION	7
1.1	Definitions	7
1.2	Interpretation	7
2.	FACILITY, PURPOSE AND CONDITIONS OF UTILISATION.....	7
2.1	Facility	7
2.2	Purpose	7
2.3	Monitoring.....	7
2.4	Conditions precedent	7
3.	DRAWDOWN OF FUNDS	8
3.1	Drawdown amounts	8
3.2	Drawdown request	8
3.3	Payment completion	9
3.4	Payment mechanics	9
3.5	Deadline for the first Drawdown	11
3.6	Deadline for Drawdown of the Funds	11
4.	INTEREST	11
4.1	Interest Rate	11
4.2	Calculation and payment of interest	13
4.3	Late payment and default interest for amounts due and unpaid	13
4.4	Communication of Interest Rates	14
4.5	Effective Global Rate (<i>taux effectif global</i>).....	14
5.	CHANGE TO THE CALCULATION OF INTEREST	14
5.1	Impossibility to fix the fixed Interest Rate on a Rate Setting Date	14
5.2	Unavailability of Screen Rate on a Quotation Day and temporary replacement of Screen Rate ..	15
5.3	Permanent Replacement of Screen Rate.....	15
6.	FEES.....	17
6.1	Commitment Fees.....	17
6.2	Appraisal Fee.....	18
7.	REPAYMENT	18
8.	PREPAYMENT AND CANCELLATION	18
8.1	Voluntary prepayment	18
8.2	Mandatory prepayment.....	18
8.3	Cancellation by the Borrower.....	19
8.4	Cancellation by the Lender.....	19
8.5	Restrictions	20
9.	ADDITIONAL PAYMENT OBLIGATIONS.....	20
9.1	Costs and expenses	20
9.2	Cancellation Indemnity.....	20
9.3	Prepayment Indemnity.....	21

9.4	Taxes and duties	21
9.5	Additional Costs	21
9.6	Currency indemnity	22
9.7	Due dates	22
10.	REPRESENTATIONS AND WARRANTIES	22
10.1	Status	23
10.2	Ownership of assets	23
10.3	Power and authority	23
10.4	Validity and admissibility in evidence	23
10.5	No filing or stamp taxes	23
10.6	Binding obligations	23
10.7	Free transfer of funds	23
10.8	No conflict with other obligations	24
10.9	Governing law and enforcement	24
10.10	No default	24
10.11	No misleading information	24
10.12	Financial Statements and Financial Forecasts	24
10.13	Financial indebtedness	24
10.14	Project Documents	25
10.15	Project Authorisations	25
10.16	Insurance	25
10.17	Procurement	25
10.18	Pari passu ranking	25
10.19	Security	25
10.20	Taxes	25
10.21	No proceedings pending or threatened	26
10.22	Insolvency proceedings	26
10.23	Origin of funds and Prohibited Practices	26
10.24	Financial Sanctions Lists	26
10.25	No Material Adverse Effect	26
11.	UNDERTAKINGS	26
11.1	Corporate existence	26
11.2	Compliance with laws and regulations	27
11.3	Authorisations	27
11.4	Project Documents	27
11.5	Activities of the Borrower	27
11.6	Preservation of assets	28
11.7	Insurances	28
11.8	Procurement	28
11.9	Environmental and social responsibility	30
11.10	Disposals and investments	31
11.11	Financial Indebtedness	31
11.12	Financial ratios	31
11.13	Dividends	31
11.14	Additional Financing	31
11.15	Financial year and Auditors	32
11.16	Pari passu ranking	32
11.17	Security	32
11.18	Assignment	32
11.19	Project Accounts	32
11.20	Inspections	32
11.21	Project evaluation	33

11.22	Financial Sanctions Lists and Embargo.....	33
11.23	Origin of funds, absence Prohibited Practices	33
11.24	Investigations.....	34
11.25	Visibility and Communication.....	34
11.26	Completion of projects	34
11.27	Project implementation.....	34
11.28	Financing Plan.....	35
12.	INFORMATION UNDERTAKINGS	35
12.1	Financial Statements, budget and Financial Forecasts	35
12.2	Financial ratios	35
12.3	Progress report.....	36
12.4	Co-Financing.....	36
12.5	Project Accounts.....	36
12.6	Information – miscellaneous	36
13.	EVENTS OF DEFAULTS.....	37
13.1	Events of Default.....	37
13.2	Acceleration.....	40
13.3	Notification of an Event of Default	40
14.	ADMINISTRATION OF THE FACILITY.....	40
14.1	Payments.....	40
14.2	Set-off.....	41
14.3	Business Days.....	41
14.4	Currency of payment	41
14.5	Day count convention.....	41
14.6	Place of payment	41
14.7	Payment Systems Disruption.....	42
15.	MISCELLANEOUS	42
15.1	Language	42
15.2	Certifications and determinations.....	43
15.3	Partial invalidity	43
15.4	No Waiver	43
15.5	Assignment.....	43
15.6	Legal effect.....	43
15.7	Entire agreement.....	43
15.8	Amendments	44
15.9	Confidentiality – Disclosure of information.....	44
15.10	Limitation	44
15.11	Hardship	44
16.	NOTICES.....	44
16.1	In writing and addresses	44
16.2	Delivery	45
16.3	Electronic communications	45
17.	GOVERNING LAW, ENFORCEMENT AND SERVICE OF PROCESS.....	46
17.1	Governing Law.....	46
17.2	Arbitration	46
17.3	Service of process	46

18.	DURATION.....	46
19.	ELECTRONIC SIGNATURE.....	47
	SCHEDULE 1A – DEFINITIONS.....	49
	SCHEDULE 1B - CONSTRUCTION	65
	SCHEDULE 2 - PROJECT DESCRIPTION	66
	SCHEDULE 3 - FINANCING PLAN.....	68
	SCHEDULE 4 - CONDITIONS PRECEDENT	70
	SCHEDULE 5A - FORM OF DRAWDOWN REQUEST	76
	SCHEDULE 5B - FORM OF CONFIRMATION OF DRAWDOWN AND RATE.....	78
	SCHEDULE 5C - FORM OF RATE CONVERSION REQUEST.....	80
	SCHEDULE 5D - FORM OF RATE CONVERSION CONFIRMATION	81
	SCHEDULE 5E - FORM OF LETTER TO THE AUDITORS.....	82
	SCHEDULE 5F - FORM OF RATIO CERTIFICATE.....	83
	SCHEDULE 6 - EXISTING LOANS ON SIGNING DATE.....	85
	SCHEDULE 7 - EXISTING SECURITY ON SIGNING DATE	86
	SCHEDULE 8 - ENVIRONMENTAL AND SOCIAL COMMITMENT PLAN.....	87
	SCHEDULE 9 – FORM OF FOLLOW-UP REPORT OF THE PROJECT’ INDICATORS	
	94	
	SCHEDULE 10 - INFORMATION THAT THE LENDER IS AUTHORIZED EXPRESSLY TO DISCLOSE ON THE LENDER’S WEBSITE (IN PARTICULAR ON ITS OPEN DATA PLATFORM).....	99
	SCHEDULE 10-1 TRANSACTION INFORMATION NOTICE.....	100
	SCHEDULE 11 - SOFR TERMS.....	102
	SCHEDULE 12- NON-EXHAUSTIVE LIST OF ENVIRONMENTAL AND SOCIAL DOCUMENTS WHICH THE BORROWER PERMITS TO BE DISCLOSED IN CONNECTION WITH ES COMPLAINTS-MANAGEMENT MECHANISM’S RULES OF PROCEDURE.....	107
	SCHEDULE 13 – GUARANTEE AGREEMENT BETWEEN THE REPUBLIC OF ECUADOR ACTING THROUGH THE MINISTRY OF ECONOMY AND FINANCE AND AFD	108
	SCHEDULE 14 – STATEMENT OF INTEGRITY	118

CREDIT FACILITY AGREEMENT

BETWEEN:

- (1) **Empresa Municipal de Agua Potable y Alcantarillado de Guayaquil, EP EMAPAG EP**, a public company incorporated under the laws of Ecuador with registered office at Edificio Las Camaras, Avenida Francisco de Orellana y Miguel H. Alcivar, Guayaquil - Ecuador, and represented by David Hernan Ortiz Luzuriaga, in his capacity as General Manager, who is duly authorised to sign this Agreement,

("EMAPAG" or the "Borrower");

AND

- (2) **AGENCE FRANCAISE DE DEVELOPPEMENT**, a French public entity (*établissement public*) governed by French law, with registered office at 5, Rue Roland Barthes, 75598 Paris Cedex 12, France, registered with the Trade and Companies Register of Paris under number 775 665 599, represented by Priscille de Coninck, in her capacity as Director of AFD office in Ecuador, who is duly authorised to sign this Agreement,

("AFD" or the "Lender");

(hereinafter jointly referred to as the "Parties" and each a "Party");

WHEREAS:

- (A) The Borrower intends to finance the water and sanitation program of the city of Guayaquil (the "**Project**"), as described further in Schedule 2 (*Project Description*).
- (B) The Borrower has requested that the Lender and the Co-Financier make a facility available for the purpose of financing the Project in part.
- (C) In order to secure the financing, the Republic of Ecuador, represented by its Ministry of Economy and Finance, has approved the granting of a sovereign guarantee in relation to the Borrower's obligations under the present Agreement, pursuant to Schedule 13.
- (D) Pursuant to a resolution n° C20240497 from the AFD's Foreign State Committee (*Comité des États Étrangers*) dated July 10, 2024, the Lender has agreed to make the Facility available to the Borrower pursuant to the terms and conditions of this Agreement.
- (E) The Agencia Española de Cooperación para el Desarrollo ("AECID"), as Co-financier, intends to make available to the Borrower a financing in a maximum aggregate amount of twenty million US Dollars (USD 20,000,000).
- (F) According to the co-financing agreement to be entered into between the Lender and AECID, "**the Joint Co-Financing Agreement**", the AECID has agreed to delegate certain tasks/services to the AFD, in connection with the implementation of the Project.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalised words and expressions used in this Agreement (including those appearing in the recitals above and in the Schedules) shall have the meaning given to them in Schedule 1A (*Definitions*), except as otherwise provided in this Agreement.

1.2 Interpretation

Words and expressions used in this Agreement shall be construed pursuant to the provisions of Schedule 1B (*Construction*), unless the contrary intention appears.

2. FACILITY, PURPOSE AND CONDITIONS OF UTILISATION

2.1 Facility

Subject to the terms of the Financing Documents, the Lender makes available to the Borrower a Facility in a maximum aggregate amount of forty million US Dollars (USD 40,000,000).

2.2 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility exclusively towards financing and/or refinancing Eligible Expenses, excluding Taxes, in accordance with the Project's description as set out in Schedule 2 (*Project Description*) and the Financing Plan set out in Schedule 3 (*Financing Plan*).

2.3 Monitoring

The Lender cannot be held responsible for the use of any amount borrowed which is not in accordance with the provisions of this Agreement.

2.4 Conditions precedent

- (a) No later than the Signing Date, the Borrower shall provide to the Lender all of the documents set out in Part I of Schedule 4 (*Conditions Precedent*).
- (b) A Drawdown Request may not be delivered to the Lender unless:
 - (i) in the case of the first Drawdown, the Lender has received all of the documents as listed in Part II of Schedule 4 (*Conditions Precedent*) in form and substance satisfactory to the Lender and has notified the Borrower upon being so satisfied;
 - (ii) in the case of any subsequent Drawdown, the Lender has received all of the documents set out in Part III of Schedule 4 (*Conditions Precedent*) in form and substance satisfactory to the Lender and has notified the Borrower upon being so satisfied; and
 - (iii) on the date of the Drawdown Request and on the proposed Drawdown Date for the relevant Drawdown, no Payment Systems Disruption Event has occurred and the conditions set out in this Agreement have been fulfilled, including:
 - 1) no Event of Default is continuing or would result from the proposed Drawdown;

- 2) no Co-Financier has suspended its payments in relation to the Project;
- 3) the Borrower is up-to-date with all its payment obligations, including fees and commissions due under the Agreement;
- 4) the Drawdown Request has been made in accordance with the terms of Clause 3.2 (*Drawdown request*);
- 5) each representation given by the Borrower in relation to Clause 10 (*Representations and warranties*) is true; and
- 6) any previous Advance was used in accordance with this Agreement.

3. DRAWDOWN OF FUNDS

3.1 Drawdown amounts

The Facility will be made available to the Borrower during the Availability Period, in one or several Drawdowns, provided that the amount of such Drawdown(s) does not exceed the Available Facility and the number of Drawdowns does not exceed eight (8).

The amount of the proposed Drawdown shall be a minimum of five million US Dollars (USD 5,000,000) or an amount equal to the Available Facility if such amount is less than five million US Dollars (USD 5,000,000).

3.2 Drawdown request

Provided that the conditions set out in Clause 2.4 (*Conditions precedent*) are satisfied, the Borrower may draw on the Facility by delivery to the Lender of a duly completed Drawdown Request. Each Drawdown Request shall be delivered by the Borrower to the AFD Agency Director at the address specified in Clause 16.1 (*In writing and addresses*).

Each Drawdown Request is irrevocable and will be regarded as having been duly completed if:

- (a) the Drawdown Request is substantially in the form set out in Schedule 5A (*Form of Drawdown Request*);
- (b) the Drawdown Request is received by the Lender at the latest fifteen (15) Business Days prior to the Deadline for Drawdown of Funds;
- (c) the Drawdown Date is a Business Day falling within the Availability Period;
- (d) the amount of the Drawdown complies with Clause 3.1 (*Drawdown amounts*); and
- (e) all of the documents set out in Part III of Schedule 4 (*Conditions Precedent*) for the purposes of the Drawdown are attached to the Drawdown Request, comply with the abovementioned Schedule and with the requirements of Clause 3.4 (*Payment mechanics*), and are in form and substance satisfactory to the Lender.

Any documentary evidence, such as bills or paid invoices, shall include the reference number and date of the relevant payment order. The Borrower undertakes to keep possession of the original documentary evidence, to make such evidence available to the Lender at any time and to provide the Lender with Certified copies or duplicates of such evidence as the Lender may request.

3.3 Payment completion

Subject to Clause 14.7 (*Payment Systems Disruption*), if each of the conditions set out in Clause (b) (*Conditions precedent*) of this Agreement has been met, the Lender shall make a requested Drawdown available to the Borrower not later than the Drawdown Date.

The Lender shall provide the Borrower with a letter of Drawdown confirmation substantially in the form set out in Schedule 5B (*Form of confirmation of drawdown and rate*).

3.4 Payment mechanics

Each Drawdown shall be made available by the Lender in the form of advances ("**Advance(s)**") paid into the Eligible Expenses Financing Account of the Project (as defined below).

In respect of each Drawdown, the funds shall be made available in accordance with one of the following terms:

3.4.1 Opening of the Eligible Expenses Financing Account

The Borrower shall open and maintain an account in the name of the Project the Eligible Expenses Financing Account, in an Acceptable Bank (the "**Account Bank**"), for the sole purpose of (i) receipt of the proceeds of a Drawdown; and (ii) payment of the Eligible Expenses.

The Borrower hereby undertakes to waive, and procure that the Account Bank waives, any right of set-off such party may have in respect of the Eligible Expenses Financing Account and any other account opened in the name of the Borrower at the Account Bank, or against any other debt of the Borrower.

In the event that the Account Bank ceases to be an Acceptable Bank, the Lender may instruct the Borrower to replace the Account Bank with an Acceptable Bank. The Borrower hereby undertakes to replace the Account Bank promptly at its own cost immediately upon the Lender's first demand.

3.4.2 Initial Advance

Provided that the conditions set out in Clause 2.4 (*Conditions precedent*) have been satisfied, the Lender shall pay an initial Advance to the Eligible Expenses Financing Account.

The Parties agree that the Borrower shall be entitled to use part of the funds of the first Advance to refinance Eligible Expenses incurred by the Borrower prior to the Drawdown of the first Advance and after July 10, 2024.

3.4.3 Additional Advances

Additional Advances will be paid to the Eligible Expenses Financing Account subject to the applicable conditions set out in Clause 2.4 (*Conditions precedent*) being satisfied.

3.4.4 Final Advance

Unless the Lender agrees otherwise, the final Advance shall be paid in accordance with the same conditions as the other Advances and, if applicable, shall take into account any change in the financing plan of the Project, as agreed between the Parties.

3.4.5 Justification for use of Advances

The Borrower agrees to deliver to the Lender:

- (i) no later than the Deadline for Use of Funds, a certificate signed by an authorised signatory of the Borrower certifying that one hundred per cent. (100%) of both the penultimate Advance and the final Advance have been used and providing a detailed breakdown of the sums paid in respect of the Eligible Expenses for the Project in the relevant period; and
- (ii) no later than three (3) months from the date of delivery of the certificate referred to in subparagraph (i) above, a final audit report of the Eligible Expenses Financing Account (the "Final Audit Report"), carried out by an independent and reputable auditing firm which has been appointed by the Borrower, subject to the Lender's no-objection on the terms of reference of the audit mission and the appointment of the auditing firm selected by the Borrower. All audit costs shall be paid by the Borrower. The appointed auditing firm shall verify that all amounts drawn under the Facility and paid into the Eligible Expenses Financing Account have been used in accordance with the terms and conditions of this Agreement.

3.4.6 Applicable exchange rate

If any Eligible Expenses are denominated in a currency other than US Dollar, the Borrower shall convert the invoice amount into the equivalent amount in US Dollars using the exchange rate for the relevant currency applied by the central bank of the country of the relevant currency on the payment date of the relevant invoice.

3.4.7 Deadline for Use of Funds

The Borrower agrees that all funds paid in the form of Advances shall be used in respect of Eligible Expenses in full no later than the Deadline for Use of Funds.

3.4.8 Control – audit

The Borrower agrees that, during the Drawdown Period, the Eligible Expenses Financing Account shall be audited on an annual basis. These audits shall be carried out by an independent and reputable auditing firm, appointed by the Borrower, subject to the Lender's no-objection on the terms of reference of the audit mission and the appointed auditing firm. All audit costs shall be paid by the Borrower. The auditing firm shall verify that all amounts drawn under the Facility and paid into the Eligible Expenses Financing Account of the Project have been used in accordance with the terms of this Agreement.

Audit reports shall be made available no later than three (3) months following the end of each fiscal year.

During the Drawdown Period, the Lender may carry out, or procure that a third party carries out on its behalf and at the cost of the Borrower, random inspections rather than systematic control of documentary evidence.

3.4.9 Failure to justify the use of Advances

The Lender may request that the Borrower repays:

- (i) all amounts in respect of which utilisation has not been duly or sufficiently justified, as Eligible Expenses, together with
- (ii) all other outstanding sums to the credit of the Eligible Expenses Financing Account on the Deadline for Use of Funds.

The Borrower shall repay such amounts to the Lender within twenty (20) calendar days of receipt of such notification from the Lender. Any repayment by the Borrower under this Clause shall be

treated as a mandatory prepayment in accordance with the provisions of Clause 8.2 (*Mandatory prepayment*).

3.4.10 Retention of documents

Documentary evidence and other documents in connection with the Eligible Expenses Financing Account and utilisation of the Advances shall be retained by the Borrower for a period of ten (10) years from the Drawdown Date of the final Advance.

The Borrower undertakes to deliver such documentary evidence and other documents to the Lender or to any auditing firm appointed by the Lender, upon the Lender's request.

3.5 Deadline for the first Drawdown

The first Drawdown shall occur at the latest on the Deadline for the First Drawdown.

If the first Drawdown does not occur in the above-mentioned period, the Lender may cancel the Facility in accordance with Clause (b) (*Cancellation by the Lender*).

The Deadline for the First Drawdown may not be postponed without the prior consent of the Lender.

Any postponement of the Deadline for the First Drawdown will be (i) subject to fees and/or new financial conditions applicable to Drawdowns and (ii) formalized in writing between the Parties.

3.6 Deadline for Drawdown of the Funds

The full drawdown of the Facility shall occur at the latest on the Deadline for Drawdown of Funds.

If the full drawdown does not occur by the above-mentioned date, the Lender may cancel the Available Facility in accordance with Clause 8.4 (*Cancellation by the Lender*).

The Deadline for Drawdown of Funds may not be postponed without the prior consent of the Lender.

Any postponement of the Deadline for Drawdown of Funds will be (i) subject to fees and/or new financial and (ii) formalized in writing between the Parties.

4. **INTEREST**

4.1 Interest Rate

4.1.1 Selection of Interest Rate

For each Drawdown, the Borrower may select a fixed Interest Rate or a floating Interest Rate, which shall apply to relevant requested Drawdown, by stating the selected Interest Rate, i.e., fixed or floating, in the Drawdown Request delivered to the Lender substantially in the form set out in Schedule 5A (*Form of Rate Conversion Request*), subject to the following conditions:

(a) Floating Interest Rate

The Borrower may select a floating Interest Rate, which shall be the percentage rate per annum, being the aggregate of:

- six-month Term SOFR as determined on the relevant Quotation Day, or, as applicable, the Replacement Benchmark plus any Replacement Benchmark

Adjustment Margin, as determined in accordance with the provisions of Clause 5 (*Change to the calculation of interest*) of the Agreement; and

- the Margin.

Notwithstanding the above, for each Drawdown and in the case where the first Interest Period is less than one hundred and thirty-five (135) days, the applicable reference rate shall be:

- one-month Term SOFR as determined on the relevant Quotation Day, or, as applicable, the Replacement Benchmark plus any Replacement Benchmark Adjustment Margin, as determined in accordance with the provisions of Clause 5 (*Change to the calculation of interest*) of the Agreement, if the first Interest Period is less than sixty (60) days; or
- three-month Term SOFR as determined on the relevant Quotation Day, or, as applicable, the Replacement Benchmark plus any Replacement Benchmark Adjustment Margin, as determined in accordance with the provisions of Clause 5 (*Change to the calculation of interest*) of the Agreement if the first Interest Period is between sixty (60) days and one hundred and thirty-five (135) days.

(b) Fixed Interest Rate

Provided that the amount of a requested Drawdown is equal to or greater than five million US Dollars (USD 5,000,000), the Borrower may select a fixed Interest Rate for such requested Drawdown. The fixed Interest Rate shall be calculated on the Rate Setting Date as the sum of the Fixed Reference Rate for the relevant Drawdown plus the Margin.

The Borrower may specify in the Drawdown Request a maximum amount for fixed Interest Rate. If the fixed Interest Rate as calculated on the Rate Setting Date exceeds the maximum amount for fixed Interest Rate specified in the relevant Drawdown Request, such Drawdown Request shall be cancelled and the Drawdown amount specified in the cancelled Drawdown Request shall be credited to the Available Facility.

4.1.2 Minimum Interest Rate

The minimum Interest Rate determined in accordance with Clause 4.1.1 (*Selection of Interest Rate*), regardless the selected option, shall not be less than zero point twenty-five per cent (0.25%) per annum, notwithstanding any decline in the interest rates.

4.1.3 Conversion from a floating Interest Rate to a fixed Interest Rate

(a) Rate Conversion upon the Borrower's request

The Borrower may request at any time that the Lender converts the floating Interest Rate applicable to a Drawdown or several Drawdowns to a fixed Interest Rate, provided that the amount of such Drawdown or aggregate amount of Drawdowns, as the case may be, is equal to or higher than five million US Dollars (USD 5,000,000).

To this effect, the Borrower shall send to the Lender a Rate Conversion Request substantially in the form set out in Schedule 5C (*Form of Rate Conversion Request*). The Borrower may specify a maximum amount for the fixed Interest Rate in the Rate Conversion Request. If the fixed Interest Rate exceeds the maximum amount specified by the Borrower in the Rate Conversion Request, such Rate Conversion Request will be automatically cancelled.

The fixed Interest Rate will be effective two (2) Business Days after the Rate Setting Date.

(b) Rate Conversion Mechanics

The fixed Interest Rate applicable to the relevant Drawdown(s) shall be determined in accordance with the provisions of Clause 4.1.1 (*Selection of Interest Rate*), above on the first Rate Setting Date referred to in subparagraph (i) above.

The Lender shall send to the Borrower a letter of confirmation of the Rate Conversion substantially in the form set out in Schedule 5D (*Form of Rate Conversion Confirmation*).

The Rate Conversion is final and effected without costs.

4.2 Calculation and payment of interest

The Borrower shall pay accrued interest on each Payment Date.

The amount of interest payable by the Borrower on a relevant Payment Date and for a relevant Interest Period shall be equal to the sum of any interest owed by the Borrower on the amount of the Outstanding Principal in respect of each Drawdown. Interest owed by the Borrower in respect of each Drawdown shall be calculated on the basis of:

- (a) the Outstanding Principal owed by the Borrower in respect of the relevant Drawdown as at the immediately preceding Payment Date or, in the case of the first Interest Period, on the corresponding Drawdown Date;
- (b) the exact number of days which have accrued during the relevant Interest Period on the basis of a three hundred and sixty (360) day year; and
- (c) the applicable Interest Rate determined in accordance with the provisions of Clause 4.1 (*Interest Rate*).

4.3 Late payment and default interest for amounts due and unpaid

- (a) Late payment and default interest on all amounts due and unpaid (except for interest)

If the Borrower fails to pay any amount payable by it to the Lender under the Financing Documents (whether a payment of principal, a Prepayment Indemnity, any fees or incidental expenses of any kind except for any unpaid overdue interest) on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after an arbitral award, if any) at the Interest Rate applicable to the current Interest Period (default interest) increased by three point five per cent. (3.5%) (late-payment interest). No formal prior notice from the Lender shall be necessary.

- (b) No anatocism

In compliance with Ecuadorian law which expressly prohibits compound interest (*anatocism*) and as long as it is so prohibited, interest which has not been paid on its due date shall not bear interest (default interest, late payment interest or any other form of interest or charge).

- (c) Payment of late payment interest

The Borrower shall pay any outstanding interest under this Clause 4.3 (Late payment and default interest) immediately on demand by the Lender or on each Payment Date following the due date for the outstanding payment.

Receipt of any payment of late payment interest or default interest by the Lender shall neither imply the grant of any payment extension to the Borrower, nor operate as a waiver of any of the Lender's rights hereunder.

4.4 Communication of Interest Rates

The Lender shall promptly notify the Borrower of the determination of each Interest Rate in accordance with this Agreement.

4.5 Effective Global Rate (*taux effectif global*)

In order to comply with Articles L. 314-1 to L.314-5 and R.314-1 *et seq.* of the French Consumer Code and L. 313-4 of the French Monetary and Financial Code, the Lender represents to the Borrower, and the Borrower acknowledges, that the effective global rate (*taux effectif global*) applicable to the Facility may be valued at an annual rate of seven point thirty-seven per cent (7.37 %) on the basis of a three hundred and sixty-five (365) day year, for an Interest Period of six (6) months, at a period rate of three point sixty-two per cent (3.62 %) subject to the following:

- (a) the above rates are given for information purposes only;
- (b) the above rate is calculated on the basis that:
 - (i) drawdown of the Facility in full at fixed rate on the Signing Date;
 - (ii) the fixed rate for the duration of the Facility should be equal to seven point zero seven per cent. (7.07 %);
- (c) the above rate takes into account the commissions and costs payable by the Borrower under this Agreement, assuming that such commissions and costs will remain fixed and will apply until the expiry of the term of this Agreement.

These rates have been calculated at the dates indicated above, on the basis of the assumptions listed therewith and will not bind, for the future, the parties to this Agreement.

5. **CHANGE TO THE CALCULATION OF INTEREST**

5.1 Impossibility to fix the fixed Interest Rate on a Rate Setting Date

If, in respect of a fixed Interest Rate or the conversion from a floating Interest Rate to a fixed Interest Rate, the curve of reference rates or, following the replacement of Term SOFR by a Replacement Benchmark, the curve of that Replacement Benchmark forward rates, is not available on the relevant Rate Setting Date and it is impossible to determine the fixed Interest Rate applicable to a Drawdown or resulting from the conversion, the Lender shall inform the Borrower and offer the Borrower either to:

- (a) postpone the Rate Setting Date and, as the case may be, the Drawdown Date or conversion date; or
- (b) confirm that the fixed Interest Rate shall be determined by the Lender on the original Rate Setting Date, in which case the fixed Interest Rate will be determined by the Lender as the sum of:
 - (i) the Margin; and
 - (ii) the percentage rate per annum corresponding to the cost to the Lender of funding the relevant Drawdown from whatever source it may reasonably select,

which rate shall be notified to the Borrower as soon as possible, and in any event prior to the first (or, in the case of a conversion, the following) Payment Date under such Drawdown.

5.2 Unavailability of Screen Rate on a Quotation Day and temporary replacement of Screen Rate

If, in respect of a floating Interest Rate, Term SOFR is not available at close of business in Paris on the relevant Quotation Day or, following the replacement of Term SOFR by a Replacement Benchmark that is a term rate, the Replacement Benchmark is not available at close of business in Paris on the relevant Quotation Day, and it is impossible to determine the applicable Term SOFR (or, as applicable, Replacement Benchmark) for the relevant Interest Period, the Lender shall inform the Borrower.

The applicable Interest Rate for the relevant Interest Period will be the Sum of (1) the Margin and (2):

- (a) the most recent Term SOFR or, following the replacement of Term SOFR by a Replacement Benchmark that is a term rate, the Replacement Benchmark, as published for a period equal in length to the Interest Period on a day not more than five (5) US Government Securities Business Days prior to the Quotation Day;
- (b) if there was no publication of Term SOFR or, as applicable, the relevant Replacement Benchmark during the five (5) US Government Securities Business Days preceding the Quotation Day, the percentage rate per annum which is the aggregate of:
 - (i) the US Fed Rate; and
 - (ii) the applicable US Fed Rate Adjustment, rounded to five (5) decimal places, with 0.00005 being rounded upwards decimal places; or
- (c) if there was no publication of the US Fed Rate on the corresponding Quotation Day, the percentage rate per annum corresponding to the cost to the Lender of funding the relevant Drawdown from whatever source it may reasonably select, which rate shall be notified to the Borrower as soon as possible, and in any event prior to the following Payment Date under such Drawdown.

5.3 Permanent Replacement of Screen Rate

5.3.1 Definitions

"EU Benchmark Regulations" means EU Regulation 2016/1011, as supplemented by EU Regulation 2019/2089 of 27 November 2019 and EU Regulation 2021/168 of 10 February 2021.

"Relevant Nominating Body" means the European Commission, any central bank, regulator, supervisor or working group or committee sponsored or chaired by, or constituted at the request of any of them.

"Screen Rate Replacement Event" means any of the following events or series of events:

- (a) the definition, methodology, formula or means of determining the Screen Rate has materially changed;
- (b) a law or regulation is enacted which prohibits the use of the Screen Rate, it being specified, for the avoidance of doubt, that the occurrence of this event shall not constitute a mandatory prepayment event;

- (c) the administrator of the Screen Rate or its supervisor publicly announces:
 - (i) that it has ceased or will cease to provide the Screen Rate permanently or indefinitely, and, at that time, no successor administrator has been publicly nominated to continue to provide that Screen Rate;
 - (ii) that the Screen Rate has ceased or will cease to be published permanently or indefinitely; or
 - (iii) that the Screen Rate may no longer be used (whether now or in the future);
- (d) the supervisor or the administrator of that Screen Rate publicly announces that the relevant Screen Rate is no longer, or as of a specified future date will no longer be, representative of the underlying market or the economic reality that it is intended to measure and that such representativeness will not be restored (and such official statement expresses awareness that any such announcement or publication will engage certain contractual triggers that are activated by pre-cessation or cessation announcements or publications);
- (e) a public announcement is made about the bankruptcy of the administrator of that Screen Rate or any other insolvency proceedings against it, and, at that time, no successor administrator has been publicly nominated to continue to provide that Screen Rate;
- (f) in the opinion of the Lender, the Screen Rate has ceased to be used in a series of comparable financing transactions; or
- (g) in relation to Term SOFR only, any of the following events:
 - (i) the administrator of Term SOFR or its supervisor or any other competent authority has publicly announced that Term SOFR does not comply with the EU Benchmark Regulations or any other regulation applicable to benchmarks; or
 - (ii) the administrator of Term SOFR determines that Term SOFR should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and the circumstances or events leading to such determination are not (in the opinion of the Lender) temporary or Term SOFR is calculated in accordance with any such policy or arrangement for a minimum period of thirty (30) Business Days.

"Screen Rate" means Term SOFR or, following the replacement of this rate by a Replacement Benchmark, the Replacement Benchmark.

"Screen Rate Replacement Longstop Date" means:

- (a) with respect to the events referred to in items (a), (e) and (f) of the above definition of Screen Rate Replacement Event, the date on which the Lender has knowledge of the occurrence of such event,
- (b) with respect to the events referred to in items (b), (c) and (g)(i) of the above definition of Screen Rate Replacement Event, the date beyond which the use of the Screen Rate will be prohibited or the date on which the administrator of the Screen Rate permanently or indefinitely ceases to provide the Screen Rate or the date beyond which the Screen Rate may no longer be used,
- (c) with regards to the event referred to in item (d) of the above definition of Screen Rate Replacement Event, the date upon which the Screen Rate ceases to be representative of the underlying market or the economic reality that it is intended to measure (as determined by the supervisor or the administrator of such Screen Rate, or any other relevant authority), and

- (d) with regards to the event referred to in item (g)(ii) of the above definition of Screen Rate Replacement Event, the date notified by the Lender to the Borrower.

- 5.3.2 Each Party acknowledges and agrees for the benefit of the other Party that if a Screen Rate Replacement Event occurs and in order to preserve the economic balance of the Agreement, the Lender may replace the Screen Rate with another rate (the "**Replacement Benchmark**") which may include an adjustment margin in order to avoid any transfer of economic value between the Parties (if any) (the "**Replacement Benchmark Adjustment Margin**") and the Lender will determine the date from which the Replacement Benchmark and, if any, the Replacement Benchmark Adjustment Margin shall replace the Screen Rate and any other amendments to the Agreement required as a result of the replacement of the Screen Rate by the Replacement Benchmark.
- 5.3.3 The determination of the Replacement Benchmark and the necessary amendments will be made in good faith by the Lender and taking into account, (i) the recommendations of any Relevant Nominating Body, or (ii) the recommendations of the administrator of the Screen Rate, or (iii) the industry solution recommended by professional associations in the banking sector or, (iv) the market practice observed in a series of comparable financing transactions on the replacement date.
- 5.3.4 In case of replacement of the Screen Rate, the Lender will promptly notify the Borrower of the replacement terms and conditions to replace the Screen Rate with the Replacement Benchmark that will apply to Drawdowns, or as the case may be, to Interest Periods starting at least two US Government Securities Business Days after the Screen Rate Replacement Longstop Date.
- 5.3.4 Notwithstanding the above, the provisions of Schedule 11 (*SOFR Terms*) shall apply to the determination of the Replacement Benchmark, Replacement Benchmark Adjustment Margin (if any) and other relevant amendments to Clauses 4 (*Interest*) to 5 (*Change to the calculation of interest*) of this Agreement if a Screen Rate Replacement Event occurs in relation to Term SOFR or any Replacement Benchmark thereof as set out in Schedule 11 (*SOFR Terms*).

6. FEES

6.1 Commitment Fees

From the Signing Date onwards, the Borrower shall pay to the Lender a commitment fee of zero point five per cent (0.50%) per annum.

The commitment fee shall be computed at the rate specified above on the amount of the Available Facility pro-rated for the actual number of days elapsed increased by the amount of any Drawdowns to be made available by the Lender in accordance with any pending Drawdown Requests.

The first commitment fee shall be calculated for the period from (i) the Signing Date (excluded) up to (ii) the immediately following Payment Date (included). Subsequent commitment fees shall be calculated for periods commencing on the day immediately following (included) a Payment Date and ending on the next Payment Date (included).

The accrued commitment fee shall be payable (i) on each Payment Date as long as the Available Facility is higher than zero; (ii) on the Payment Date following the last day of the Drawdown Period; and (iii) in the event the Available Facility is cancelled in full, on the Payment Date following the effective date of such cancellation.

6.2 Appraisal Fee

No later than thirty (30) days after the Signing Date, the Borrower shall pay to the Lender an appraisal fee of zero point five per cent (0.50%) calculated on the principal amount of the Facility.

7. **REPAYMENT**

Following expiry of the Grace Period, the Borrower shall repay the Lender the principal amount of the Facility in twenty-six (26) equal semi-annual instalments, due and payable on each Payment Date.

The first instalment shall be due and payable on March 31, 2033 and the last instalment shall be due and payable on September 30, 2045.

At the end of the Drawdown Period, the Lender shall deliver to the Borrower an amortisation schedule in respect of the Facility taking into account, if applicable, any potential cancellation of the Facility pursuant to Clauses 8.3 (*Cancellation by the Borrower*) and/or 8.4 (*Cancellation by the Lender*).

8. **PREPAYMENT AND CANCELLATION**

8.1 Voluntary prepayment

The Borrower shall not be entitled to prepay the whole or any part of the Facility prior to the expiration of the Grace Period. As from the date following the expiration of the Grace Period, the Borrower may prepay the whole or any part of the Facility, subject to the following conditions:

- (a) the Borrower shall notify the Lender of its intention to prepay by not less than thirty (30) Business Days' written and irrevocable notice prior to the contemplated prepayment date;
- (b) the amount to be prepaid shall be equal to one or several instalment(s) in principal;
- (c) the contemplated prepayment date shall be a Payment Date;
- (d) all prepayments shall be made together with the payment of accrued interest, any fees, indemnities and related costs in connection with the prepaid amount as provided under this Agreement;
- (e) there is no overdue outstanding amount; and
- (f) in case of a partial prepayment, the Borrower shall have given evidence, satisfactory to the Lender, that it has sufficient committed funding available to it for the purpose of financing the Project as determined in the Financing Plan.

No later than the Payment Date on which the prepayment is made, the Borrower shall pay the full amount of the Prepayment Indemnities due and payable pursuant to Clause 9.3 (*Prepayment Indemnity*).

8.2 Mandatory prepayment

The Borrower shall immediately prepay the whole or part of the Facility upon receipt of a notice from the Lender informing the Borrower of any of the following events:

- (a) Illegality: it becomes unlawful for the Lender pursuant to its applicable law to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Facility;

- (b) Additional Costs: the amount of any Additional Costs referred to in Clause 9.5 (*Additional Costs*) is significant and the Borrower has refused to pay such Additional Costs;
- (c) Change of Control: a change of Control of the Borrower occurs;
- (d) Change in share capital: The Borrower's organizational structure has changed in the manner that is not satisfactory to the lender on the grounds that any new holder of voting rights or any other rights is linked to (i) Money Laundering, (ii) terrorism, (iii) any Prohibited Practice or (iv) lawsuits or a sentence against a holder of voting rights or any other rights in relation to a crime that is not subject to a statute of limitations under international law;
- (e) Default: the Lender declares an Event of Default in accordance with Clause 13 (*Events of Defaults*);
- (f) Failure to justify use of funds: the Borrower fails to justify in a manner satisfactory to the Lender the use of the Advances by the Deadline for Use of Funds
- (g) Prepayment to a Co-Financier: the Borrower prepays whole or part of any amounts owed to a Co-Financier, in which case the Lender shall be entitled to request that the Borrower prepays, as the case may be, the Facility or an amount of the outstanding Facility in proportion with the amount prepaid to the Co-Financier;
- (h) Prepayment in the event of damage/loss:
 - (i) subject to paragraph (ii) below if the Borrower receives insurance proceeds under the Insurance Policies for any damage/loss sustained in connection with the Project, the Borrower shall apply such insurance proceeds in prepayment of an equivalent amount of the Facility;
 - (ii) the Borrower shall not be obliged to prepay the Facility pursuant to paragraph (i) above if the Lender approves the reinstatement plan submitted by the Borrower to the Lender pursuant to Clause 11.7 (*Insurances*); and
 - (iii) the prepayment date shall be the Payment Date immediately following receipt by the Borrower of the insurance proceeds referred to in paragraph (i) above.

In the case of each of the events specified in paragraphs (a), (b) and (c) above, the Lender reserves the right, after having notified the Borrower in writing, to exercise its rights as a creditor in the manner specified in Clause 13.2 (*Acceleration*).

8.3 Cancellation by the Borrower

Prior to the Deadline for Drawdown of Funds, the Borrower may cancel the whole or any part of the Available Facility by giving the Lender a three (3) Business Days' prior notice.

Upon receipt of such notice of cancellation, the Lender shall cancel the amount notified by the Borrower, provided that the Eligible Expenses, as specified in the Financing Plan, are covered in a manner satisfactory to the Lender, except in the event that the Project is abandoned by the Borrower.

8.4 Cancellation by the Lender

The Available Facility shall be immediately cancelled upon delivery of a notice to the Borrower which shall be immediately effective, if:

- (a) the Available Facility is not equal to zero on the Deadline for Drawdown of Funds;

- (b) the first Drawdown has not occurred on the Deadline for the First Drawdown; or
- (c) an Event of Default has occurred and is continuing; or
- (d) an event referred to in Clause 8.2 (*Mandatory prepayment*) has occurred.

8.5 Restrictions

- (a) Any notice of prepayment or cancellation given by a Party pursuant to this Clause 8 (*Prepayment and Cancellation*) shall be irrevocable, and, unless otherwise provided in this Agreement, any such notice shall specify the date or dates on which the relevant prepayment or cancellation is to be made and the amount of that prepayment or cancellation.
- (b) The Borrower shall not prepay or cancel all or any part of the Facility except at the times and in the manner expressly provided for in this Agreement.
- (c) Any prepayment under this Agreement shall be made together with payment of (i) accrued interest on the prepaid amount, (ii) outstanding fees, and (iii) the Prepayment Indemnity referred to in Clause 9.3 (*Prepayment Indemnity*) below.
- (d) Any prepayment amount will be applied against the remaining instalments in inverse order of maturity.
- (e) The Borrower may not re-borrow the whole or any part of the Facility which has been prepaid or cancelled.

9. **ADDITIONAL PAYMENT OBLIGATIONS**

9.1 Costs and expenses

- 9.1.1 The Borrower shall pay directly or, if applicable, shall reimburse the Lender in case of advance made by the Lender, the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the negotiation, preparation and signing of: (i) any of the Financing Documents or any other documents referred to in this Agreement (including any legal opinion); and (ii) any other Financing Documents executed after the Signing Date.
- 9.1.2 If an amendment to any of the Financing Documents is required, the Borrower shall reimburse to the Lender all costs (including legal fees) reasonably incurred in responding to, evaluating, negotiating or complying with that requirement.
- 9.1.3 The Borrower shall reimburse to the Lender all costs and expenses (including legal fees) incurred by it in connection with the enforcement or preservation of any of its rights under any of the Financing Documents.
- 9.1.4 The Borrower shall pay directly or, if applicable, reimburse the Lender in case of an advance made by the Lender, the amount of all costs and expenses in connection with the transfer of funds to, or for the account of, the Borrower from Paris to any other place agreed with the Lender, as well as any transfer fees and expenses in connection with the payment of all sums due under the Facility.

9.2 Cancellation Indemnity

If the Facility is cancelled in full or in part in accordance with the terms of Clauses 8.3 (*Cancellation by the Borrower*) and/or 8.4 (*Cancellation by the Lender*) paragraphs (a), (b) and

(c), the Borrower shall pay a cancellation indemnity computed at two point five per cent (2.5%) on the cancelled amount of the Facility.

Each cancellation indemnity shall be due and payable on the Payment Date immediately following a cancellation of all or part of the Facility.

Notwithstanding any of the above, no cancellation indemnity shall be due on the first fifteen million dollars (USD 15,000,000) cancelled.

9.3 Prepayment Indemnity

On account of any losses suffered by the Lender as a result of the prepayment of the whole or any part of the Facility in accordance with Clauses 8.1 (*Voluntary prepayment*) or 8.2 (*Mandatory prepayment*) the Borrower shall pay to the Lender an indemnity equal to the aggregate amount of:

- the Prepayment Compensatory Indemnity; and
- any costs arising out of the break of any hedging swap transactions put in place by the Lender in connection with the amount prepaid.

9.4 Taxes and duties

9.4.1 Registration costs

The Borrower shall pay directly or, if applicable, reimburse the Lender in case of an advance made by the Lender, the costs of all stamp duty, registration and other similar taxes payable in respect of any Financing Document and any potential amendment to the Financing Documents.

9.4.2 Withholding Tax

The Borrower undertakes that all payments made to the Lender under this Agreement shall be free of any Withholding Tax.

If a Withholding Tax is required by law, the Borrower undertakes to gross-up the amount of any such payment to such amount which leaves the Lender with an amount equal to the payment which would have been due if no payment of Withholding Tax had been required.

The Borrower shall reimburse to the Lender all expenses and/or Taxes for the Borrower's account which have been paid by the Lender (if applicable), with the exception of any Taxes due in France.

9.5 Additional Costs

The Borrower shall pay to the Lender, within five (5) Business Days of the Lender's request, all Additional Costs incurred by the Lender as a result of: (i) the coming into force of any new law or regulation, or any amendment to, or any change in the interpretation or application of any existing law or regulation; or (ii) compliance with any law or regulation made after the Signing Date.

In this Clause, "Additional Costs" means:

- (a) any cost arising after the Signing Date out of an event referred to in the first paragraph of this Clause and not taken into account by the Lender to compute the financial conditions of the Facility; or
- (b) any reduction of any amount due and payable under any Financing Document,

which is incurred or suffered by the Lender as a result of (i) making the Facility available to the Borrower or (ii) entering into or performing its obligations under the Agreement.

9.6 Currency indemnity

If any sum due by the Borrower under the Financing Documents, or any order, judgment or award given or made in relation to such a sum, has to be converted from the currency in which that sum is payable into another currency, for the purpose of:

- (a) making or filing a claim or proof against the Borrower; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall indemnify the Lender against and, within three (3) Business Days of the Lender's request and as permitted by law, pay to the Lender, the amount of any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between: (A) the exchange rate used to convert the relevant sum from the first currency to the second currency; and (B) the exchange rate or rate(s) available to the Lender at the time of its receipt of that sum. This obligation to indemnify the Lender is independent of any other obligation of the Borrower under the Financing Documents.

The Borrower waives any right it may have in any jurisdiction to pay any amount due under the Financing Documents in a currency or currency unit other than that in which it is expressed to be payable.

9.7 Due dates

Any indemnity or reimbursement payable by the Borrower to the Lender under this Clause 9 (*Additional Payment Obligations*) is due and payable on the Payment Date immediately following the circumstances which have given rise to the relevant indemnity or reimbursement.

Notwithstanding the above, any indemnity to be paid in connection with a prepayment pursuant to Clause 9.3 (*Prepayment Indemnity*) is due and payable on the date of the relevant prepayment.

10. **REPRESENTATIONS AND WARRANTIES**

All the representations and warranties set out in this Clause 10 (*Representations and warranties*) are made by the Borrower for the benefit of the Lender on the Signing Date. All the representations and warranties in this Clause 10 (*Representations and warranties*) are also deemed to be made by the Borrower on the date on which all of the conditions precedent listed in Part II of Schedule 4 (*Conditions Precedent*) are satisfied, on the date of each Drawdown Request, on each Drawdown Date and on each Payment Date, except that:

- (a) the repeating representations contained in Clause 10.11 (*No misleading information*) are deemed to be made by the Borrower in relation to the information provided by the Borrower since the date on which the representation was last made; and
- (b) the repeating representations contained in Clause 10.12 (*Financial Statements and Financial Forecasts*) are deemed to be made on the basis of the latest annual financial statements and forecasts provided to the Lender under Clause 12.1 (*Financial Statements, budgets and Financial Forecasts*).

10.1 Status

The Borrower is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

The Borrower has the power to own its assets and carry on its business as it is being conducted. The constitutional documents of the Borrower are in compliance with all applicable laws and regulations.

10.2 Ownership of assets

The Borrower has good title to, and the right to use under any applicable laws, its assets (including intellectual property rights, trademarks, licences and patents) necessary to carry on its present and future business activities.

10.3 Power and authority

The Borrower has the power to enter into, perform and deliver the Financing Documents and the Project Documents and to perform all contemplated obligations. The Borrower has taken all necessary action to authorise its entry into, performance and delivery of the Financing Documents and Project Documents and the transactions contemplated by those Financing Documents and Project Documents.

10.4 Validity and admissibility in evidence

All Authorisations required:

- (a) to enable the Borrower to lawfully enter into, and exercise its rights and comply with its obligations under, the Financing Documents and Project Documents; and
- (b) to make the Financing Documents and the Project Documents admissible in evidence in the courts of the jurisdiction of incorporation of the Borrower or in arbitration proceedings,

have been obtained and are in full force and effect and no circumstances exist which could result in the revocation, non-renewal or modification, in whole or in part, of any such Authorisations.

10.5 No filing or stamp taxes

Under the laws of the jurisdiction of incorporation of the Borrower, it is not necessary that the Financing Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar taxes or fees be paid on or in relation to the Financing Documents or the transactions contemplated therein.

10.6 Binding obligations

The obligations undertaken by the Borrower under each of the Financing Documents and the Project Documents comply with all laws and regulations applicable to the Borrower in its jurisdiction of incorporation and are legal, valid, binding and enforceable obligations which are effective in accordance with their written terms.

10.7 Free transfer of funds

All amounts due by the Borrower to the Lender under the Financing Documents are freely transferable and convertible.

10.8 No conflict with other obligations

The entry into, and performance by the Borrower of, and the transactions contemplated by, the Financing Documents and the Project Documents do not conflict with any domestic or foreign law or regulation applicable to it, its constitutional documents (or any similar documents) or any agreement or instrument binding upon the Borrower or affecting any of its assets.

10.9 Governing law and enforcement

- (a) The choice of French law as the governing law of this Agreement will be recognised and enforced by the courts and arbitration tribunals in the jurisdiction of incorporation of the Borrower.
- (b) Any judgment obtained in relation to this Agreement in a French court or any award by an arbitration tribunal will be recognised and enforced in the jurisdiction of incorporation of the Borrower.

10.10 No default

No Event of Default is continuing or is reasonably likely to occur.

No breach of the Borrower is continuing in relation to any other agreement binding upon it, or affecting any of its assets, which has, or is reasonably likely to have, a Material Adverse Effect.

10.11 No misleading information

All information and documents supplied by the Borrower to the Lender were true, accurate and up-to-date as at the date they were provided or, if appropriate, as at the date at which they are stated to be given and have not been varied, revoked, cancelled or renewed on revised terms, and are not misleading in any material respect as a result of an omission, the occurrence of new circumstances or the disclosure or non-disclosure of any information.

10.12 Financial Statements and Financial Forecasts

The Borrower's Initial Financial Statements were prepared in accordance with the Applicable Accounting Principles and give a true and fair view of the Borrower's financial condition and results of operations for the relevant financial year.

In relation to the Initial Financial Statements, there has been no Material Adverse Effect since December 31, 2024.

The Financial Forecasts were prepared by the Borrower in accordance with the Applicable Accounting Principles and give a true and fair view of the Borrower's projected financial condition and projected results of operations.

10.13 Financial indebtedness

All the Borrower's Medium to Long Term Financial Indebtedness as at the Signing Date is listed in Schedule 6 (*Existing Loans on Signing Date*).

The Borrower has no Financial Indebtedness outstanding other than the Permitted Financial Indebtedness.

10.14 Project Documents

The Project Documents represent the entire agreement relating to the Project on the Signing Date and are valid, binding and enforceable against third parties. The Project Documents have not been amended, terminated or suspended without the prior approval of the Lender since the date on which they were delivered to the Lender and there is no current dispute in connection with the validity of the Project Documents.

10.15 Project Authorisations

All Project Authorisations have been obtained or effected and are in full force and effect and there are no circumstances which may result in any Project Authorisation being revoked, cancelled, not renewed or varied in whole or in part.

10.16 Insurance

The Borrower represents and warrants:

- (a) the Borrower has entered into and shall maintain in full force and effect, on and in relation with its business, assets, the Project and the existing infrastructure on the Project site(s), all Insurance Policies necessary for the continuity of its operations and for the implementation of the Project;
- (b) the Insurance Policies mentioned in the above paragraph are compliant with Ecuadorian laws and regulation and are consistent with prudent market practice; and
- (c) the Borrower is up-to-date with the payment of all insurance premiums related to the above-mentioned Insurance Policies.

10.17 Procurement

The Borrower hereby declares that it (i) has received a copy of the Procurement Guidelines and (ii) understands the provisions of the Procurement Guidelines, in particular, those provisions relating to any actions which the Lender may take in the case of a breach of the Procurement Guidelines by the Borrower.

The Borrower is contractually bound by the Procurement Guidelines as if such Procurement Guidelines were incorporated by reference into this Agreement.

The Borrower confirms that the procurement, allocation and performance of all contracts entered into for the purposes of implementing the Project or any part thereof, comply with the Procurement Guidelines, including such contracts entered into, and/or for which the procurement process has started, prior to the Signing Date and that are retroactively financed by AFD.

10.18 Pari passu ranking

The Borrower's payment obligations under the Financing Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors.

10.19 Security

No Security exists over all or any of the assets of the Borrower other than the Permitted Security.

10.20 Taxes

The Borrower represents and warrants that:

- (a) there is no overdue payment of any amount in respect of Tax and there is not overdue in the filing of any Tax returns;
- (b) it has not been notified of any claim or investigation by the tax authorities against it in respect of any failure to pay an amount in respect of Tax which is not capable of being contested in good faith by the Borrower, and
- (c) it complies with all applicable laws regarding publication of information encouraging tax transparency.

10.21 No proceedings pending or threatened

Save for any threatened or pending claims expressly disclosed by the Borrower on the Signing Date, no litigation, arbitration or administrative proceedings of, or before, any court, arbitral body or other authority which, if adversely determined, are reasonably likely to have a Material Adverse Effect, have, to the best of the Borrower's knowledge and belief, been started or threatened against it or any of its assets.

10.22 Insolvency proceedings

No corporate action, legal proceeding or other similar procedure or step has been taken in relation to the Borrower's winding-up, dissolution, liquidation, merge, split-off or reorganization.

10.23 Origin of funds and Prohibited Practices

The Borrower represents and warrants that:

- (a) the Borrower's equity and the funds invested in the Project are not of an Illicit Origin; and
- (b) the Project (in particular, the negotiation, entry into and performance of any contracts funded out of the Facility) has not given rise to any Prohibited Practice; and
- (c) it has not committed or participated in any act contrary to any anti-Money Laundering and counter-Terrorist Financing applicable law.

10.24 Financial Sanctions Lists

The Borrower represents and warrants that neither it nor any of its directors, managers or its controlling entity appear on any Financial Sanctions List.

10.25 No Material Adverse Effect

The Borrower represents and warrants that no event or circumstance which is likely to have a Material Adverse Effect has occurred or is likely to occur.

11. **UNDERTAKINGS**

The undertakings in this Clause 11 (*Undertakings*) take effect on the Signing Date and remain in full force and effect for as long as any amount is outstanding under the Financing Documents.

11.1 Corporate existence

The Borrower shall:

- (a) maintain its corporate existence and the general nature of its business and shall not amend or alter its corporate existence, its registered office, its corporate objectives or the nature of its business without the prior consent of the Lender;
- (b) not amend or alter its articles of association (or any equivalent constitutional documents) after the Signing Date in a manner which is likely to adversely affect the interests or rights of the Lender; and
- (c) not enter into any amalgamation, merger, demerger, consolidation or other similar corporate reconstruction without the prior written consent of the Lender.

11.2 Compliance with laws and regulations

The Borrower shall:

- (a) comply in all respects with all laws and regulations to which it and/or the Project is subject, particularly in relation to publication of information encouraging tax transparency, as well as all applicable environmental protection, safety and labour laws as further described in Article 11.9 (*Environmental and social responsibility*) and prevention and fight against Prohibited Practices; and
- (b) comply with all of its obligations under the Project Documents;
- (c) file all of its tax returns and pay and discharge all Taxes within the time period allowed, unless and only to the extent that such payment is being contested by the Borrower in good faith and provision is made and maintained for those Taxes and is disclosed in the Borrower's Financial Statements; and
- (d) obtain, maintain in full force and effect and comply in all material respects with, all provisions, conditions and restrictions (if any) set out in any agreement, authorisation, approval or decision of any administration, public authority or tribunal, and do all that is necessary under any applicable law or regulation to ensure that it performs its obligations pursuant to any such agreement, authorisation, approval or decision.

11.3 Authorisations

The Borrower shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any applicable law or regulation to enable it to perform its obligations under the Financing Documents and the Project Documents and to ensure the legality, validity, enforceability and admissibility in evidence of any Financing Document or Project Document.

11.4 Project Documents

The Borrower shall provide the Lender, for no-objection or information, as the case may be, with a copy of any Project Documents or amendment thereto and shall not (and shall not agree to) make any material amendment to any Project Document without obtaining the Lender's prior no-objection.

11.5 Activities of the Borrower

The Borrower shall implement the Project in accordance with the generally accepted principles as far as care and business practices are concerned and in accordance with the technical standards in force. The Borrower must diligently exercise its rights and undertake its responsibilities under any Project Document.

The Borrower shall ensure that no substantial change is made to the general nature of its business activities as at the Signing Date.

11.6 Preservation of assets

Without prejudice to the Borrower's rights under Clause 11.10 (*Disposals and investments*), the Borrower shall, and shall procure that the Concessionary shall (i) maintain in good operating and maintenance conditions its assets and the Project assets in accordance with all applicable laws and regulations; and (ii) use such assets in compliance with their purpose and all applicable laws and regulations.

11.7 Insurances

11.7.1 The Borrower shall, and shall procure that the Contractors and the Concessionary shall:

- (a) take out Insurance Policies with reputable insurance companies, acceptable to the Lender, maintain such policies in full force and effect for a period which is at least equal to the term of the Facility, or with respect to the Contractors the required delay in accordance with the relevant Project Document, pay the premiums on the due dates and not amend or alter the Insurance Policies without the prior consent of the Lender;
- (b) upon request, supply the Lender with copies of the Insurance Policies, any amendments thereto and evidence of payment of premiums;

11.7.2 Moreover, the Borrower undertakes and procures that the Concessionary shall:

- (a) subject to Clause 8.2(h) (*Mandatory prepayment*), allocate promptly any sums received under an Insurance Policy up to an amount of one million US Dollars (USD 1,000,000) following any damage/loss affecting the Project for replacement, repair or re-instatement of the Project;
- (b) if the sums received under an Insurance Policy following any damage/loss are greater than one million US Dollars (USD 1,000,000), to provide the Lender with a re-instatement plan as soon as possible. If the Lender does not approve the reinstatement plan, the Lender may notify the Borrower, within ten (10) Business Days following receipt of the reinstatement plan, that the mandatory prepayment provision has been triggered in accordance with Clause 8.2(h) (*Mandatory prepayment*); and
- (c) to take all actions and steps set out in the re-instatement plan which has been approved by the Lender and carry out all necessary works within the timeframe indicated in such re-instatement plan.

11.8 Procurement

In relation to the procurement, award and performance of contracts entered into for the purposes of implementing the Project or any part thereof, and financed by the Facility, the Borrower shall comply with, and implement, the provisions of the Procurement Guidelines.

The Borrower shall take all actions and steps deemed necessary for the effective implementation of the provisions of the Procurement Guidelines.

In the event the Borrower did not comply with the Procurement Guidelines, the Lender may declare the related costs ineligible under this Agreement and request the return of the funds from the Facility used to pay such ineligible costs.

Notwithstanding the laws and regulations applicable to the Borrower, the Borrower further undertakes to comply with, and implement, the following provisions:

- not to indicate the estimated amounts of contracts financed by the Lender under this Agreement, in the Procurement Plan which it publishes publicly;
- not to use the Ecuadorian public procurement portal¹ for the submission of bids and proposals, except with the Lender's prior consent;
- submit reasons for suspension from the Single Register of Contractors² and cases of potential conflicts of interest linked to incompatible missions and unfair competitive advantages, where appropriate, to the Lender for a decision as to their application in the context of contracts financed by the Lender under this Agreement;
- not to use draw processes, reverse auctions, reserved contracts and contracts designed to favour small and medium-sized companies, which will not be eligible for the Lender's financing;
- not to apply the provisions relating to domestic preference as per the applicable laws and regulations, particularly with regard to margins of preference;
- not to request the reports or statements required under Ecuadorian laws prior the initiation of procurement processes, including but not limited to the relevance report³;
- not to apply the provisions relating to amendments as per the applicable laws and regulations, and to use only those of the Procurement Guidelines;
- seek confirmation of the availability and interest of qualified candidates before placing them on a shortlist, where appropriate;
- solicit requests for proposals or quotations for consultancies from a limited number of consultants;
- for International Procurement Competitions as defined in the Procurement Guidelines:
 - o not to require from bidders to be registered in the Single Register of Contractors and/or established in Ecuador in order to participate in a procurement process, which implies in particular that their qualification will be determined outside of the register, and only the successful bidder will be required to register and establish in Ecuador;
 - o mandatorily use the Lender's standard procurement documents, available on the Lender's Website;
 - o not to resort to market studies or national production audits as defined in the laws and regulations applicable to the Borrower;
 - o use for consultancies a prior Request for Expressions of Interest, as defined in the Procurement Guidelines.

¹ Refers to <https://portal.compraspublicas.gob.ec/sercop/> or any website replacing it.

² Refers to the Registro Único de Proveedores (RUP), which is the database of suppliers of works, goods, consultancies and services authorised to participate in procurement processes in accordance with the laws and regulations applicable to the Borrower.

³ Refers to the Informe de Pertinencia with the Contraloría General del Estado.

In accordance with the Procurement Guidelines, AFD's Statement of Integrity is replaced by the Statement of Integrity set out in Schedule 14.

The procurement documents prepared by the Borrower shall (i) specify, as a condition to contract awarding, that the Borrower's proposed choice of contractor must be acceptable to all Co-Financiers, (ii) always specify that the Borrower intends to secure funding from the Parties (to be named in the tender documents) to finance the underlying contract and (iii) contain provisions for the Co-Financiers to be able to review and take copies of the books and records of the contractors, suppliers and/or consultants (and their agents/intermediaries and sub-contractors) in connection with the tendering, negotiations leading to contract award, implementation and invoicing/disbursement of the contract.

For contracts subject to international competition, the notices published by the Borrower shall indicate all Co-Financiers and that procurement is conducted following the AFD Procurement Guidelines.

11.9 Environmental and social responsibility

11.9.1 Implementation of environmental and social measures

In order to promote sustainable development, the Parties agree that it is necessary to promote compliance with internationally recognised environmental and labour standards, including conventions of the International Labour Organization ("ILO") and the international environmental conventions with respect to environmental protection. For such purpose, the Borrower shall:

- with respects to its business activities:
 - (a) comply with international standards for the protection of the environment, safety and labour laws, including the fundamental conventions of the ILO and the international environmental conventions which are not contradictory to the applicable laws and regulations of the relevant country.
- with respect to the Project:
 - (b) include in the procurement contract(s), and, as the case may be, in the bidding documents, a clause whereby the contracting parties will agree, and procure that their sub-contractors (if any) will agree, to comply with such international standards in accordance with the applicable laws and regulations of the country where the Project is being implemented. The Lender will be entitled to request that the Borrower deliver a report on environmental and social conditions of implementation of the Project;
 - (c) put in place appropriate mitigation measures specific to the Project as defined within the context of the environmental and social risk management policy of the Project and describe in the ESCP attached as Schedule 8 (*Environmental and Social Commitment Plan*);
 - (d) require that the Contractors appointed for implementation of the Project apply the mitigation measures, procure that their subcontractors (if any) comply with all such measures, and take all appropriate steps in the event of a failure to put in place such mitigation measures; and
 - (e) provide the Lender with half-yearly follow-up reports in relation to the ESCP.