

CREDIT FACILITY AGREEMENT

dated as of March the 11th 2025

between

AGENCE FRANÇAISE DE DEVELOPPEMENT

the Lender

and

EMPRESA PÚBLICA MUNICIPAL DE ASEO DE CUENCA

the Borrower

	
SUBSECRETARÍA DE FINANCIAMIENTO PÚBLICO	
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CREDIT FACILITY AGREEMENT

BETWEEN:

- (1) **EMPRESA PÚBLICA MUNICIPAL DE ASEO DE CUENCA**, a public company incorporated under the laws of Ecuador with registered office at Av. Tres de Noviembre 21-176 y Juan Pablo I. Cuenca, Ecuador, registered under number 0160047900001 at the *Registro Unico de Contribuyentes*, and represented by María Caridad Vázquez, in her capacity as general manager, who is duly authorised to sign this Agreement,

("EMAC" 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 Olivier Jacques, in his capacity as AFD deputy country director for 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 improvement of the solid waste management of Cuenca (the "Project"), as described further in Schedule 2 (*Project Description*) and has requested that the Lender makes a facility available for the purposes of financing the Project.
- (B) In order to ensure the implementation of the Project, the Lender has included the Project in the EFSD+ *Guarantee* "Fastcities Agreement".
- (C) The Gobierno Autónomo Descentralizado de Cuenca (the "Municipality of Cuenca" or the "Underwriter") has accepted to grant the Project Security in favour of the Lender, guaranteeing exclusively the capital actually delivered and unpaid, as well as interest derived from unpaid principal, up to a maximum amount of twenty-nine million US dollars (USD 29,000,000).
- (D) The Borrower, the Lender and the Underwriter will sign the Underwriting Agreement in accordance with the model established in Schedule 14 (Underwriting Agreement Template). For all purposes related to the Underwriting Agreement, only the provisions of said instrument will be applicable. The Underwriter will fully and unrestrictedly enjoy the rights of excussion, division and order, in accordance with the Underwriting Agreement and the applicable Ecuadorian regulations. These benefits may not be restricted, limited, altered or conditioned in any way, neither by interpretation, application or execution of this Agreement (AFD AGREEMENT No. CEC 1072 01 Z). For the avoidance of doubt, any other provision that does not expressly mention a representation or commitment of the Underwriter will not be applicable, and the Underwriter will not incur any debt under this Facility under the terms of this Agreement.
- (E) Pursuant to a resolution No. C20240546, dated July 9, 2024 and signed by the Andean Countries Regional Office Director, under the delegation from the AFD's Chief Executive Officer, the Lender has agreed to make the Facility available to the Borrower pursuant to the terms and conditions of this Agreement.

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.

No provision of this Agreement may be interpreted restrictively or limit the exercise of the rights and benefits of exculpation, subrogation and division that correspond to the Municipality of Cuenca (the *Underwriter*) under the Underwriting Agreement.

In this sense, any statement made by the Parties or by the Underwriter as a witness in this Agreement must be understood in a way that does not adversely affect any of the rights granted to the Autonomous Decentralized Municipal Government of Cuenca in its capacity as Underwriter.

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 twenty-six million seven hundred twenty-six thousand and five hundred US Dollars (USD 26,726,500).

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 all of the documents set out in Part I of Schedule 4 (*Conditions Precedent*) to the Lender.

(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 or mandatory prepayment event is continuing or would result from the proposed Drawdown;
 - 2) the Borrower is up-to-date with all its payment obligations, including fees and commissions due under the Agreement;
 - 3) the Drawdown Request has been made in accordance with the terms of Clause 3.2 (*Drawdown request*);
 - 4) each representation given by the Borrower in relation to Clause 10 (*Representations and warranties*) is true; and
 - 5) 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 four (4).

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;
- (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 2.4(b) (*Conditions precedent*) of this Agreement has been met, the Lender shall make a requested Drawdown available to the Borrower no 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

The Facility shall be made available in accordance with one of the following terms:

3.4.1 Refinancing of expenses paid by the Borrower

The funds shall be paid directly to the Borrower in accordance with the terms and conditions of this Agreement provided that evidence of payment of the Eligible Expenses by the Borrower has been delivered to the Lender in form and substance satisfactory to the Lender. The Borrower shall attach to each Drawdown Request the documents set out in Part II and/or Part III of Schedule 4 (*Conditions Precedent*), as the case may be.

If the Borrower requests repayment of any Eligible Expenses which it has paid in a currency other than US Dollar, the Borrower shall convert the amount of such Eligible Expenses into an equivalent amount in US Dollars by applying the exchange rate for the relevant currency applied by the central bank of the country of the relevant currency as at the date of the Drawdown Request.

The Lender may request that the Borrower provides such other evidence showing that works or services corresponding to the relevant Eligible Expenses have been implemented.

3.4.2 Advances

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

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

(a) Opening of the Project Account

The Borrower shall open and maintain an account in the name of the Project (the "**Project 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 Parties hereby undertake to waive any right of set-off such party may have in with the other party for the management of the Project Account.

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.

(b) Initial Advance

Provided that the conditions set out in Clause 2.4 (*Conditions precedent*) have been satisfied, the Lender shall pay an initial Advance of five million eighty three thousand nine hundred US Dollars (USD 5,083,900) to the Project Account.

(c) Additional Advances

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

(d) 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.

(e) 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 or engaged 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 Project 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 Project Account have been used in accordance with the terms and conditions of this Agreement.

(f) 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.

(g) 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.

(h) Control and audit

The Borrower agrees that, during the Drawdown Period, the Project 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 Project Account 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.

- (i) Failure to justify the use of Advances

The Lender may request that the Borrower repays:

- (a) all amounts in respect of which utilisation has not been duly or sufficiently justified, as Eligible Expenses, together with
- (b) all other outstanding sums to the credit of the Project 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*).

3.4.3 Retention of documents

Documentary evidence and other documents in connection with the Project Account and utilisation of the Advances shall be retained by the Borrower for a period of five (5) 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. Failing that, the Lender may cancel the Facility in accordance with Clause 8.4 (*Cancellation by the Lender*).

The Parties may agree to postpone the Deadline for the First Drawdown, which 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

The full Drawdown of the Facility shall occur at the latest on the Deadline for Drawdown. Failing that, the Lender may cancel the Available Facility in accordance with Clause 8.4 (*Cancellation by the Lender*).

The Parties may agree to postpone the Deadline for Drawdown, which will be (i) subject to fees and/or new financial conditions 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 Rate Setting Date referred to in subparagraph (a) 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

- (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.

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(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).

In all circumstances, it is expressly stated that the Underwriter's liability under this Agreement will be strictly limited to the outstanding capital and interest related to the capital actually disbursed and remaining unpaid. This includes only the interest accruing on that unpaid capital. The Underwriter's liability of the amounts due under this Agreement will be governed by the terms and conditions to be established in the Underwriting Agreement, which will exclusively regulate its responsibility.

(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 informs 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 forty-four per cent (7.44%) 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-five per cent (3.65%) subject to the following:

- (a) the above rates are given for information purposes only;
- (b) the above rates are 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 twelve per cent per annum, (7.12%);
- (c) the above rates take 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.

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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, and,
- (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 (0.5%) 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 forty five (45) days after the Signing Date and in any case prior to the first Drawdown, the Borrower shall pay to the Lender an appraisal fee of zero point five per cent (0.5%) calculated on the maximum 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 fourteen (14) equal semi-annual instalments, due and payable on each Payment Date.

The first instalment shall be due and payable on May 15th 2030 and the last instalment shall be due and payable on November 15th 2036.

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;


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- (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) Illegality of EFDS + Guarantee Fastcities Agreement: the EFDS + Guarantee Fastcities Agreement becomes unlawful pursuant to its applicable law.

Should the EFDS + Guarantee Fastcities Agreement becomes unlawful, this mandatory prepayment event shall not be applicable if the Parties, pursuant to a two (2) months consultations period, arrive to:

- (i) determine an alternative securities structure in order to secure this Facility; or
 - (ii) consider that, pursuant to their joint financial analysis, the EFDS + Guarantee Fastcities Agreement is no longer required, considering the credit behaviour of the Borrower and of the Underwriting Agreement; or
 - (iii) the Parties agree to new financial conditions of the Facility where the EFDS + Guarantee Fastcities Agreement is no longer considered in the financial structure; or
 - (iv) the Parties agree on a refinancing plan of the Facility, considering the need to keep the public service furnished by the Borrower.
- (c) 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.
 - (d) Change of Control: a change of Control of the Borrower occurs.
 - (e) Change in voting rights: the Borrower's shareholding 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.
 - (f) Default: the Lender declares an Event of Default in accordance with Clause 13 (*Events of Defaults*).

- (g) 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.

In the case of each of the events specified 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, 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;
- (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.
- (f) It is clarified that, in the event of a Mandatory Prepayment Event, Voluntary Prepayment or an Event of Default, the Lender will prima facie request payment of all amounts due directly to the Borrower and will pursue payment in its assets.

The request for payment of any outstanding amount of capital or interest to the Guarantor will only be made on a subsidiary basis, in the event of the Borrower's inability to pay, and will be limited exclusively to the amounts due and actually

delivered of capital and interest related to this Agreement, up to a maximum amount of twenty-nine million US dollars (USD 29,000,000).

Additionally, a payment request to the Underwriter must comply with the terms and notification mechanisms established in the Underwriting Agreement. The Municipality of Cuenca (the Underwriter) will fully and unrestrictedly enjoy the rights of excussion, division and order in accordance with the Underwriting Agreement celebrated with the Underwriter and the applicable Ecuadorian regulations. In no case may these benefits be restricted, limited, altered or conditioned in any way, not by interpretation, application or execution of this Agreement (AFD AGREEMENT No. CEC 1072 01 Z).

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); (ii) the Security Documents or any other documents referred to therein; and (iii) any other Financing Documents executed after the Signing Date. The Parties agree to cap this amount in a maximum of six thousand US Dollars (USD 6,000).
- 9.1.2 If an amendment to any of the Financing Documents is required, the party which has requested the amendment to be performed shall bear all costs (including legal fees) reasonably incurred in responding to, evaluating, negotiating or complying with that requirement.
- 9.1.3 In an event of lack of compliance of the Borrower to the undertakings set out in this Agreement, 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*), the Borrower shall pay a cancellation indemnity computed at two per cent (2%) 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.

It is clarified that the Underwriting Agreement will not cover the amount of the Cancellation Indemnity, as it only covers the principal actually disbursed and outstanding, meaning amounts not yet recovered through the enforcement of the Borrower's assets, as well as the interest accrued on such outstanding principal, in relation to this Agreement.

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,

this aggregate amount shall be defined as the "**Prepayment Indemnity**".

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 affecting the validity or enforceability of the Facility

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 Ecuadorian 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 Ecuadorian law or regulation that affects the validity or enforceability of the Facility 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 public 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.

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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.
- (c) It is clarified that the Underwriting Agreement will be subject to Ecuadorian Law and shall, in no event be subject to French Law.

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, 2023.

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
- (c) all insurance premiums related to the above mentioned Insurance Policies are up to date.

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 the Lender.

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.

Furthermore, the underwriting granted by the Underwriter will be governed exclusively by the terms and conditions of the Underwriting Agreement, since it is the only agreement that regulates this underwriting.

10.20 Project Security

The Borrower represents that the Project Security granted to the Lender is valid and binding Security, duly enforceable.

In any event, it is clarified that the enforcement of the Underwriting Agreement shall be strictly subject to the enforcement mechanisms set out therein and to no others. The Underwriting Agreement shall operate as a subsidiary underwriting, exclusively

covering overdue and unpaid principal and the interest accrued on such overdue and unpaid principal, meaning amounts not yet recovered through the enforcement of the borrower's assets, all in strict accordance with the terms and conditions of the Underwriting Agreement.

The Lender and the Borrower acknowledges and agrees that the Municipality of Cuenca shall fully and unrestrictedly enjoy the rights of excussion, division, and order. These rights shall remain inviolable and may not be waived, restricted, limited, altered, or conditioned under any circumstances, whether directly, indirectly, or by interpretation, application, or enforcement of this Agreement (AFD Agreement No. CEC 1072 01 Z).

10.21 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.

10.22 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.

10.23 Insolvency proceedings

No corporate action, legal proceedings or other similar procedure or step has been taken in relation to the Borrower regarding the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or a composition, compromise, assignment or arrangement with any creditor of the Borrower.

10.24 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;
- (b) the Borrower shall ensure that the Project or this Agreement does not give rise to any Prohibited Practices;
- (c) 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;
- (d) it has not committed or participated in any act contrary to any anti-Money Laundering and counter-Terrorist Financing applicable law; and
- (e) to use its best knowledge, that it has not provided direct or indirect material support or other resources to any person or entity that commits, attempts to commit,

advocates, facilitates or takes part in Acts of Terrorism, or has committed, attempted to commit, advocated, facilitated or taken part in Acts of Terrorism.

10.25 Financial Sanctions Lists

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

10.26 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.

10.27 Directive (EU) 2015/849 and Directive (EU) 2013/36 (Non-subjection to EU Directives in relation to Money Laundering and Terrorism Financing and capital rules for financial entities)

The Borrower represents and warrants that:

- (a) it is not subject to Directive (EU) 2015/849 and if so, it confirms that it has complied with the disclosure of beneficial ownership information in accordance with Article 30 of Directive (EU) 2015/849;
- (b) it is not subject to Directive (EU) 2013/36 and if so, it has complied with the obligation of publication of country-by-country reporting in accordance with Article 89(1) of Directive (EU) 2013/36.

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.

The Borrower acknowledges and agrees that information and documents made available to the Lender pursuant to this Clause 11 may be shared by the Lender with the European Commission and other EU institutions subject to and in accordance with the terms of the EPSD+ Guarantee Facilities Agreement and applicable laws and regulations.

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 with 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 11.11 (*Disposals and investments*), the Borrower 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 procure that the Contractors shall:

- (a) take out Insurance Policies required by Ecuadorian law with reputable insurance companies, maintain such policies in full force and effect, 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 required by Ecuadorian Law, any amendments thereto and evidence of payment of premiums;

11.7.2 Moreover the Borrower undertakes:

- (a) subject to Clause 8.2 (*Mandatory prepayment*), to promptly allocate 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 (*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 of non-compliance by the Borrower of the Procurement Guidelines, the Lender may declare the related costs ineligible under this Agreement, for such specific event. The Borrower shall return to the Lender the funds from the Facility used to pay such ineligible costs.

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 human rights, 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.



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- (b) implement the Agreement in accordance with international human rights law and in accordance with the following documents, as long as they are compatible with Ecuadorian law:
1. Principles for Responsible Investment;
 2. UN Guiding Principles on Business and Human Rights;
 3. OECD Guidelines for Multinational Enterprises;
 4. UN Food and Agriculture Organization's Principles for Responsible Investment in Agriculture and Food Systems; and
 5. International Labour Organization conventions.
- with respect to the Project:
- (c) 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 and the documents listed in paragraph (b) above. The Lender will be entitled to request that the Borrower deliver a report on environmental and social conditions of implementation of the Project;
- (d) 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;
- (e) 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
- (f) provide the Lender with annual follow-up reports in relation to the ESCP.

11.9.2 Environmental and social (ES) complaints-management

- (a) The Borrower (i) confirms that it has received a copy of the ES Complaints-Management Mechanism's Rules of Procedure and has acknowledged its terms, in particular with respect to actions that may be taken by the Lender in the event that a third party lodges a complaint, and (ii) acknowledges that these ES Complaints-Management Mechanism's Rules of Procedure have, as between the Borrower and the Lender, the same contractually binding effect as this Agreement.
- (b) The Borrower expressly authorises the Lender to disclose to the Experts (as defined in the ES Complaints-Management Mechanism's Rules of Procedure) and to parties involved in the compliance review and/or conciliation processes, the Project documents concerning environmental and social matters necessary for processing the environmental and social complaint, including, without limitation, those listed in Schedule 12 (*Non-exhaustive list of environmental and social documents which can be disclosed in connection with ES complaints-management mechanism's rules of procedure*).

11.9.3 Biodiversity Data Sharing

In order to promote biodiversity data sharing and in accordance with international targets related to biodiversity data knowledge and sharing, the Borrower undertakes to share, or

procure that its third party contractors share, the biodiversity data (raw or processed) generated in relation with the Project with the Global Biodiversity Information Facility (GBIF) worldwide database, in order to enable its publication.

For this purpose, the Borrower undertakes to take all appropriate measures towards its third party contractors so that they allow the sharing on the GBIF worldwide database of the processed biodiversity data on which they may have intellectual property rights, regardless of the medium.

The data sharing on the GBIF database shall be carried out in accordance with the terms and conditions set out in Schedule 13 - *Biodiversity data sharing*).

The Lender shall be mentioned as "Project Funder" in the metadata section.

11.10 Climate co-benefits

The Parties shall procure that at least 50% of the Facility is to be applied towards Climate co-benefits

11.11 Disposals and investments

The Borrower shall not:

- enter into a single transaction or in a series of transactions, whether voluntary or involuntary, to sell, lease, transfer or otherwise dispose of any of its assets except for any sale, lease, transfer or other disposal which is a Permitted Disposal; and
- make any investment except for any investment which is a Permitted Investment.

11.12 Financial Indebtedness

The Borrower shall not incur or permit to be outstanding any Financial Indebtedness other than the Permitted Financial Indebtedness.

The Borrower shall promptly notify the Lender if it incurs any additional Permitted Financial Indebtedness.

11.13 Financial ratios

The Borrower shall at all times ensure that:

- the EBITDA to Debt Service Ratio is not less than one (1.0x);
- the Financial Indebtedness to EBITDA Ratio does not exceed five (5.0x); and
- the Current Ratio is not less than one (1.0 x).

11.14 Dividends

The Borrower must not distribute dividends or any part of its results to its controlling entity or any other third party without the Lender's prior approval.

11.15 Additional Financing

The Borrower shall not amend or alter the Financing Plan without obtaining the Lender's prior written consent and shall finance any additional costs not anticipated in the Financing Plan on terms which ensure that the Facility will be repaid in accordance with the Permitted Financial Indebtedness described in Clause 11.12 (*Financial Indebtedness*) and the ratios set out in Clause 11.13 (*Financial ratios*).

11.16 Financial year and Auditors

The Borrower shall not change its financial year end date without the prior approval of the Lender.

If there is a change of Auditors, the Borrower shall appoint as its Auditors a reputable auditing firm with the necessary experience to fulfil their duties as auditors.

The Borrower shall inform the Lender before changing its Auditors or alternate Auditors.

11.17 Pari passu ranking

Without prejudice to the rights of the Lender under the Security Documents, the Borrower undertakes to ensure that its payment obligations under this Agreement rank at all times at least *pari passu* with its other current and future unsecured and unsubordinated payment obligations.

11.18 Security

The Borrower shall not grant or allow to exist, for any reason whatsoever, any Security over any of its assets or income streams other than a Permitted Security.

11.19 Underwriting Agreement

The Borrower, as the debtor under this Agreement, will carry out all the necessary steps so that the Underwriting Agreement remains in full force and effect, limited by its own terms. The Parties clarify that the Underwriting Agreement signed will exclusively cover the capital actually delivered and unpaid, as well as the interests derived from that pending capital payment, in relation to this Agreement and up to a maximum amount of twenty-nine million US dollars (USD 29,000,000), preserving the rights of the Lender and the benefits of the Municipal Decentralized Autonomous Government of Cuenca (Underwriter) under said contract.

11.20 Recognition of the benefits of excussion, division and order of the Underwriter.

The Lender and the Borrower recognize and accept that the Municipality of Cuenca (the Underwriter) will fully and without restrictions enjoy the benefits of excussion, division and order, in accordance with the Underwriting Agreement, that will be celebrated with the Underwriter and the applicable Ecuadorian regulations. In no case may these benefits may be restricted, limited, altered or conditioned, either directly or indirectly; even less so by interpretation, application or execution of this Agreement (AFD AGREEMENT No. CEC 1072 01 Z).

11.21 Project Account and Debt Service Account

The Borrower shall open, maintain and fund the Project Account and the Debt Service Account in accordance with the terms and conditions of this Agreement and the Security Documents.

11.22 Inspections

The Borrower hereby authorizes the Lender and its representatives to carry out inspections, the purpose of which will be to assess the implementation and operations of the Project and the accounting and financial position of the Borrower and shall retain the records of the Borrower, its employees and sub-contractors in relation to the Project for inspection by the Lender.

The Borrower shall (i) co-operate and provide all reasonable assistance and information to the Lender and its representatives when carrying out such inspections, the timing and format of which shall be determined by the Lender following consultation with the Borrower; and (ii) provide the Lender and its representatives with access to its financial records and its employees.

The Borrower shall retain, and make available for inspection by the Lender, all documents relating to the Eligible Expenses for a period of ten (10) years from the Deadline for Drawdown.

11.23 Project evaluation

The Borrower acknowledges that the Lender may carry out, or procure that a third party carries out on its behalf, an evaluation of the Project. Feedback from this evaluation will be used to produce a summary containing information on the Project, such as: total amount and duration of the funding, objectives of the Project, expected and achieved quantified outputs of the Project, assessment of the relevance, effectiveness, impact and viability/sustainability of the Project, main conclusions and recommendations.

The main objective of the evaluation will be the articulation of credible and independent judgement on the key issues of relevance, implementation (efficiency) and effects (effectiveness, impact and sustainability).

Evaluators will need to take into account in a balanced way the different legitimate points of view that may be expressed and conduct the evaluation impartially.

The Borrower will be involved as closely as possible in the evaluation, from the drafting of the terms of reference to the delivery of the final report.

The Borrower agrees to the publication of this summary, in particular on the Lender's Website.

Such project evaluations, if applicable, shall be at no costs for the Borrower.

11.24 Financial Sanctions Lists and Embargo

The Borrower shall ensure:

- (a) that no funds or economic resources are made available, directly or indirectly, to or for the benefit of persons, groups or entities listed on any Financial Sanctions List; and
- (b) not to finance, acquire or provide any supplies or services and/or intervene in sectors which are subject to an Embargo by the United Nations, the European Union or France or not to exercise an activity in one of those sectors.

11.25 Origin of funds, absence Prohibited Practices

The Borrower shall:

- (a) comply with applicable regulation in relation to anti-bribery, anticorruption, anti-money laundering and antiterrorism matters;
- (b) use the funds of the Facility in accordance with the Lender Group's policy to prevent and combat Prohibited Practices as available on its Website;
- (c) ensure that the funds invested in the Project are not of an Illicit Origin;
- (d) use its best efforts not to provide direct or indirect material support or other resources to any person or entity that commits, attempts to commit, advocates, facilitates or takes part in Acts of Terrorism, or has committed, attempted to commit, advocated, facilitated or taken part in Acts of Terrorism;
- (e) comply with applicable regulation in relation to Prohibited Practices and ensure that the Project does not give rise to any Prohibited Practice;

- (f) as soon as it becomes aware of or suspects any Prohibited Practice, immediately inform the Lender;
- (g) in the event referred to in paragraph (e) or at the Lender's request if the Lender suspects that the acts or practices referred to in paragraph (d) have occurred, take all necessary actions to remedy the situation in a manner satisfactory to the Lender and within the time period requested by the Lender;
- (h) promptly notify the Lender if it becomes aware of any information which may raise a suspicion that its own funds or any funds invested in the Project are of an Illicit Origin; and
- (i) inform the Lender of any change required to be disclosed under any applicable law or any transaction which would result in a change of Control.

11.26 Investigations

The Borrower shall undertake to allow the Lender or any third party mandated by the Lender, to carry out an investigation in the event of an allegation of Prohibited Practice at no costs for the Borrower. To this end, the Lender or any third party mandated by it is authorized to:

- (a) interview anyone who may have information about an alleged Prohibited Practice;
- (b) conduct audits and controls, both documentary and on-site, as the Lender may deem appropriate, including access to the accounting books and records or any other documentation relating to the Project held by the Borrower or any person or entity connected with the Project;
- (c) carry out visits of the sites, facilities and works related to the Project; and
- (d) achieve all the steps and actions necessary for these investigations.

The Borrower shall ensure that the tender documents, contracts and sub-contracts financed through the Facility allow the implementation of this Clause.

Non-compliance with this Clause by the Borrower could, at the discretion of the Lender, constitute a Non-Cooperative Practice.

11.27 Visibility and Communication


The Borrower shall implement visibility and communication actions related to the implementation of the Project in accordance with the terms of the Visibility and Communication Guide, and acknowledges having fully read and understood the aforementioned guide. According to the Visibility and Communication Guide, the Project is subject to communication and visibility obligations of Level 1.

11.28 Document Retention – OLAF

The Borrower undertakes to keep and make available all relevant and accessible financial and technical information (originals or copies and in physical or in electronic format (PDF, EXCEL or other widely available format) related to this Agreement for a period of 30 (thirty) years and in any case, until any investigation by OLAF if notified to the Borrower.

11.29 Access and financial checks

The Borrower shall allow the Commission and/or the European Court of Auditors (and any Representatives of either of the foregoing) to conduct desk reviews, on-the-spot


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checks and interviews regarding any operations supported by this Agreement, on the basis of supporting documents and any other documents related to the financing of the Project.

The Borrower agrees that OLAF and the EPPO may carry out investigations, including on-the-spot-checks and interviews in accordance with the provisions laid down by the law of the EU for the protection of the financial interests of the EU against Fraud, Act of Corruption, Money Laundering, Terrorism Financing and other illegal activities, and where applicable, any administrative cooperation arrangements concluded between OLAF and the Lender's anti-fraud body.

The Borrower agrees that notwithstanding Clause 15.9 (*Confidentiality and disclosure of information*) OLAF, the European Court of Auditors, the Commission and/or the EPPO may transmit any information obtained in the course of its investigations in accordance with the legal framework governing such investigations. Any confidential information shared with and processed by OLAF shall be subject to professional secrecy pursuant to Article 10 of Regulation (EU, Euratom) No 883/2013 and to the EU's data protection legislation.

The Borrower agrees that the execution of this Agreement may be subject to scrutiny by the European Court of Auditors when the European Court of Auditors audits the Commission's implementation of EU expenditure. In such case, the Borrower shall provide to the European Court of Auditors access to the information that is required for the European Court of Auditors to perform its duties.

The Borrower shall provide officials of the Commission, OLAF, the EPPO and/or the European Court of Auditors (and any authorized agents of any of the foregoing) upon request, information and access to any documents and computerized data concerning the technical and financial management of operations under this Agreement, as well as grant them access to sites and premises at which such operations are carried out. The Borrower shall take all necessary measures to facilitate these checks in accordance with its regulations and rules. The documents and computerized data may include information which the Borrower considers confidential in accordance with its own established policies and procedures or as governed by contractual agreement. Such information once provided to the European Commission, OLAF, the EPPO and/or the European Court of Auditors (and/or any authorized agents of any of the foregoing) shall be treated in accordance with EU confidentiality rules and legislation. Documents must be accessible and filed in a manner permitting checks, the Borrower being bound to inform the Commission, OLAF, the EPPO or the European Court of Auditors, as relevant, of the exact location at which they are kept. Where appropriate, the Parties may agree to send copies of such documents for a desk review.

The Borrower shall exercise a high-level of due diligence to ensure the protection of the Project.

For the performance of the duties set out in this Clause, the relevant parties shall enter into a non-disclosure agreement.

11.30 Detection of illegal activity

If the Borrower becomes aware of, or reasonably suspects any fraud, corruption, money laundering, terrorism financing or any other illegal activity by any person in connection with the Project, the Borrower shall :

- without undue delay notify the Lender unless it was notified by the Lender;
- reasonably consult with the Lender, (and upon request of the Lender, the Commission and OLAF);
- subject to consultation with the Lender (and upon request of the Lender, OLAF), conduct a diligent investigation into the issue;
- use reasonable efforts to mitigate any financial loss to the Lender and/or the Commission) resulting from that event; and

- provide to the Lender (and upon request, the Commission and OLAF) all information accessible to the Borrower which is needed for the Commission or OLAF to carry out a full and thorough investigation.

11.31 Anti Money Laundering and Non Cooperative Jurisdiction

The Borrower shall:

- (i) comply with applicable EU legislation and agreed international and EU standards on the prevention of Money Laundering, the fight against Acts of Terrorism, Tax Avoidance Practices, Fraud and Tax Evasion or ensure compliance with rules equivalent to applicable EU standards and therefore shall;
- (ii) not support projects that contribute to Money Laundering, Terrorist financing, Tax Avoidance Practices, Fraud and Tax Evasion;
- (iii) not enter into new or renewed operations with entities incorporated or established in jurisdiction that either:
 - o are listed in the EU list of non-cooperative jurisdictions for tax purposes set out in the notice from the Council of the EU in respect of "The EU list of non-cooperative jurisdictions for tax purposes, as regularly updated and published in the Official Journal of the EU (latest update by OJ C.2024/1804 of 26 February 2024), as well as on the dedicated Council website: <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/> or any successor website (the "NCJ List");
 - o are identified as high-risk third countries pursuant to Article 9.2 of the Directive (EU) No 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amended through Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 and as listed in Delegated Regulation 1675/2016, as regularly updated and published in the Official Journal of the EU (latest update by OJ L, 2024/163, 18.1.2024), as well as on the dedicated Commission website: https://finance.ec.europa.eu/financial-crime/anti-money-laundering-and-counteracting-financing-terrorism-international-level_en or any successor website (the "AML List").
- (iv) report on its observance of the requirements set out in (i), (ii) and (iii) above under the form of Schedule 15 (*Fast cities guarantee obligations*) no later than three (3) months following the end of each fiscal year.

The Borrower may derogate to paragraph (iii) above only if the relevant operation is physically implemented in a NCJ List or AML List's jurisdiction and provided that it does not present any indication that the relevant operation contributes to Money laundering, Terrorist Financing, Tax Avoidance Practices, Fraud and Tax Evasion.

The Borrower shall provide AFD upon request with any information regarding the identity of its ultimate beneficial owner.

11.32 Reallocation of the Available Credit in relation to the transfer of the lands for the construction of the Complejo Verde

The Parties agree that, in the occurrence of an external event, independent of the Borrower's will, actions or omissions (such as the refusal by the Cuenca city council) resulting in the impossibility for the Borrower to obtain from Underwriter the transfer of the Cuartel Cayambe land, necessary for the construction of the Green Complex, the Parties shall enter into negotiations to agree on a modification of Schedule 3 (*Financing*

Plan), in order to allow the reallocation of the funds of the Facility within the scope of Schedule 2 (*Project Description*).

It is clarified that the Underwriter, under the Underwriting Agreement, would only be liable towards the Lender as a conditional and subsidiary debtor, and only for the principal and interest due by the Borrower in relation to this Agreement, exclusively for the amounts of capital that have been disbursed and remain unpaid, as well as interest derived from unpaid principal. The Underwriter's liability is limited to a total amount of up to twenty-nine million US Dollars (USD 29,000,000), and is subject to the terms and conditions of the Underwriting Agreement, including but not limited to the benefits inherent to said Agreement, such as the rights of excussion, order and division. In no event will the Underwriter be considered responsible for the transfer of any land necessary for the construction of the Green Complex.

11.33 Operational Manual

The Parties shall agree on the final text of the Operational Manual of the Project within the six (6) months pursuant to the execution of this Agreement and in any event prior to the performance of any procurement.

12. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 12 (*Information Undertakings*) take effect on the Signing Date and remain in full force and until the later of the Long Stop Date and the date by which any amount is outstanding under this Agreement.

12.1 Financial Statements, budget and Financial Forecasts

The Borrower shall supply to the Lender:

- (a) as soon as they are available and in any event within 210 calendar days after the end of each financial year, provided that the Borrower shall make its best efforts for 180 calendar days, its audited Financial Statements (including a balance sheet, income statement and any schedules thereto) prepared in accordance with the Applicable Accounting Principles accompanied by a letter from the Auditors, addressed to the directors of the Borrower in relation to the Financial Statements for that financial year;
- (b) as soon as it is available and in any event by the end of the current financial year, a budget in respect of the next successive financial year;
- (c) as soon as they are available and in any event within 180 calendar days after the end of each financial year, the revised Financial Forecasts; and
- (d) as soon as they are available and in any event within 60 calendar days after the end of the relevant financial semester, its half-year unaudited financial statements (including a balance sheet, income statement and any schedules thereto) for the relevant semester.

The Financial Statements, budget and Financial Forecasts provided by the Borrower in accordance with this Clause 12.1 (*Financial Statements, budget and Financial Forecasts*) must be accompanied by a certificate signed by a duly authorised representative of the Borrower, confirming that such Financial Statements, budget and Financial Forecasts fairly represent the Borrower's financial situation as at the date on which they were prepared.

The Borrower shall ensure that all of the financial statements provided in accordance with this Clause 12.1 (*Financial Statements, budget and Financial Forecasts*) are prepared in accordance with the Applicable Accounting Principles.

The Borrower irrevocably authorises the Auditors to communicate directly with the Lender if the Lender makes such a request in the form set out in Schedule 5 (*Form of Letter to the Auditors*).

12.2 Financial ratios

The Borrower shall supply to the Lender a Ratio Certificate signed by both the Auditors and a duly authorised representative of the Borrower setting out each financial ratio with the details of the calculation specified in Clause 11.13 (*Financial ratios*) at the same time as it supplies the financial statements to the Lender in accordance with Clause 12.1 (*Financial Statements, budget and Financial Forecasts*).

12.3 Progress report

- (a) Until the Technical Completion Date, the Borrower shall provide to the Lender on a half-yearly basis a technical and financial progress report in relation to the implementation of the Project and an annual follow-up report of the Project' indicators in the form set out in Schedule 9 (*Form of follow-up report of the Project' Indicators*).
- (b) Within three (3) months after the Technical Completion Date, the Borrower shall supply to the Lender a general progress report including a follow-up report with respect to the Project' indicators in the form set out in Schedule 9 (*Form of follow-up report of the Project' Indicators*).

12.4 Project Accounts and Debt Service Account

The Borrower shall supply to the Lender within fifteen (15) Business Days after the end of each half year, a copy of the bank statements in relation to the Project Account and the Debt Service Account.

12.5 Information and miscellaneous

The Borrower shall supply to the Lender:

- (a) immediately upon becoming aware of them, details of any event or circumstance which is or may be an Event of Default or which has or may have a Material Adverse Effect, the nature of such an event and all the actions taken or to be taken to remedy it (if any);
- (b) promptly upon becoming aware of them, detailed information regarding any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, details of any incident or accident directly related to the implementation of the Project which might have a significant impact on the Project site, the working conditions of its employees or any Contractors' employees, the nature of such incident or accident, together with details of any action taken or proposed to be taken, as applicable, by the Borrower to remedy it;
- (d) promptly, details of any decision or event which might affect the organisation, completion or operation of the Project ;
- (e) and any difficulty faced in the implementation of this Agreement or the Project, together with any remedial measure undertaken
- (f) copies of any amendment to its constitutional documents which is required to be made by law;

- (g) details of any change required to be disclosed under any applicable law or any transaction which would result/has resulted in a change of ownership of the share capital of the Borrower or in a direct or indirect change of Control of the Borrower;
- (h) promptly but in any event within five (5) Business Days after becoming aware of them, details of any notification of default, termination, dispute or material claim made against it under a Project Document or affecting the Project, together with details of any action taken or proposed to be taken by the Borrower to remedy it;
- (i) during the completion of services (including but not limited to services related to studies and monitoring where the Project involves the provision of such services), the interim and final reports drafted by any service provider, and after full completion of such services an overall execution report;
- (j) at the Lender's request, the documents distributed to its creditors at the same time as such documents are sent to the creditors;
- (k) promptly, any further information regarding its financial condition, assets and operations or any documents or other communications given or received by it under any Project Document that the Lender may reasonably request; and
- (l) as soon as possible, throughout the duration of the business relationship, provide the Lender with any document or information about the Borrower that the Lender may request, to enable the Lender to fulfill its know-your-customer ("KYC") obligations under anti money laundering and anti-terrorist regulations, in particular for the purpose of updating its KYC information on the Borrower; and
- (m) as soon as practicable, any information and/or documentation that the Lender may reasonably request, in particular in accordance with Clause 12.6.;
- (n) the Borrower shall keep and make available all relevant financial information (originals or copies and in physical or in electronic format (PDF, EXCEL or other widely available format) related to the Agreement and the Project for a period of five (5) years after the date on which any liability under this Agreement ends and in any case until any ongoing audit, verification, appeal, litigation or pursuit of claim or investigation by OLAF, if notified to the Borrower, has been closed.;

12.6 Information under the EFSD+ Guarantee Facilities Agreement

(a) Additional reporting requirements

In order to allow the Lender to meet its reporting obligations towards the European Commission pursuant to the EFSD+ Guarantee Agreement whereby the Lender shall deliver to the European Commission notably, a semi-annual report, an annual progress report and annual financial statements (the "EFSD+ Reporting Obligations"), the Borrower shall make available to the Lender within 30 days or such shorter period as directed by the Lender, all the relevant information and documents if so requested by the Lender in relation to the Borrower, the Project and generally as required for the purposes of complying with such EFSD+ Reporting Obligations.

(b) Additional Information, Communication and Visibility

- (i) The Borrower hereby authorises the Lender to use any information relating to his Agreement and the Project for the purposes of complying with the Lender's information, communication and visibility obligations under the EFSD+ Guarantee Agreement (including as to the publication by the Lender on its websites of information regarding this Agreement, and the manner in

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which it contributes to the achievement of the objectives and requirements as set out in the NDICI-GE Regulation).

- (ii) The Borrower shall maintain public information on its websites regarding receipt of funding and support from the EU in compliance with Article 46(1) of the NDICI-GE Regulation.
- (iii) The Borrower shall ensure there is visibility of the EU's contribution under the EFSD+ in relevant documents, press releases and other publications (including the use of appropriate EU logo's) and cooperate with and take reasonable instructions from the Lender in order to promote the visibility of the EU, the EFSD+ in general.
- (iv) Where security issues or political sensitivities may make it preferable or necessary to limit communication and visibility activities during certain periods, the target audience and the visibility tools, products and channels to be used in promoting a given action shall be determined on a case-by-case basis, in consultation and agreement between the Parties.

13. EVENTS OF DEFAULTS

13.1 Events of Default

Each of the events or circumstances set out in this Clause 13.1 (*Events of Default*) is an Event of Default.

(a) Payment Default

The Borrower does not pay on the due date any amount payable by it under this Agreement in the manner required under this Agreement. However, without prejudice to Clause 4.3 (*Late Payment and Default Interest*), no Event of Default will occur under this paragraph (a) if such payment is made in full by the Borrower within ten (10) Business Days of the due date.



(b) Financing Documents and Project Documents

Any Project Document, or any of the rights and obligations set out therein, ceases to be in full force and effect, is subject to a notice of termination or its validity, legality or enforceability is challenged.

No Event of Default will occur pursuant to this paragraph (b) if (i) the challenge or notice of termination is withdrawn within thirty (30) calendar days after the date on which the Lender informed the Borrower of such challenge or notice or the Borrower became aware of such challenge or notice; and (ii), according to the opinion of the Lender, such dispute or request has not had a Material Adverse Effect during such thirty (30) day period.

(c) Undertakings and Obligations

The Borrower does not comply with any term of the Financing Documents, material information, including, without limitation, any of the undertakings it has given pursuant to Clause 11 (*Undertakings*) and Clause 12 (*Information Undertakings*). It being specified that any obligation of the Borrower, the breach of which would have for consequence that the Lender is not able to comply with any of its own obligations under the EFSD+ Guarantee Facilities Agreement, will be deemed to be a material obligation.

 
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Save for the undertakings given pursuant to Clauses 11.24 (*Financial Sanctions Lists and Embargo Financial Sanctions Lists and Embargo*), 11.25 (*Origin of funds, absence Prohibited Practices*) and Clause 11.9 (*Environmental and social responsibility*) in respect of which no grace period is permitted, no Event of Default will occur under this paragraph (c) if the non-compliance is capable of remedy and is remedied within five (5) Business Days of the earlier of (A) the date of the Lender's notice of failure to the Borrower; and (B) the Borrower becoming aware of the breach or within the time limit specified by the Lender in the case of breach referred to in subparagraph (g) of Clause 11.25 (*Origin of funds, absence Prohibited Practices*).

(d) Misrepresentation

A representation or warranty made by the Borrower in the Financing Documents, including under Clause 10 (*Representations and warranties*), or in any document delivered by or on behalf of the Borrower under or in relation to the Financing Documents, is untrue, inaccurate, incorrect or misleading when made or deemed to be made.

(e) Cross default

- (i) Any Financial Indebtedness of the Borrower is not paid on its due date or, if applicable, within any grace period granted pursuant to the relevant documentation.
- (ii) A creditor has cancelled or suspended its commitment towards the Borrower pursuant to any Financial Indebtedness, or has declared the Financial Indebtedness due and payable prior to its specified maturity, or requested prepayment in full of the Financial Indebtedness, in each case, as a result of an event of default or any provision having a similar effect (howsoever described) pursuant to the relevant documentation.

(f) Insolvency

The Borrower is unable, or admits its inability, to pay its debts as they fall due, suspends making payments of any of its debts or, by reason of actual or anticipated financial difficulties, begins negotiations with one or more of its creditors for the rescheduling or restructuring of any of its indebtedness.

(g) Insolvency proceedings

A resolution of a meeting of the Municipality, directors or other officers of the Borrower is passed, judicial proceedings are commenced or any other analogous step or procedure is taken regarding the suspension of payments, a moratorium with any creditors or the liquidation, dissolution, administration, reorganisation or the restructuring in relation to financial difficulties of the Borrower or any similar procedure or arrangement. This Event of Default shall not be applicable if, after a joint analysis, the Parties consider that the reorganisation or restructuring of the Borrower does not have a negative effect on its ability to respect its Financial Indebtedness.

(h) Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under this Agreement.

(i) Material adverse change

Any event or any measure which is likely, according to the Lender's opinion, to have a Material Adverse Effect occurs or is likely to occur.

(j) Withdrawal or suspension of the Project

Any of the following occurs:

- the implementation of the Project is suspended or postponed for a period exceeding six (6) months; or
- the Project has not been completed in full by the Technical Completion Date; or
- the Borrower withdraws from, or ceases to participate in, the Project.

(k) Intervention by an Authority

An Authority:

- decides to close, seize or expropriate all or part of the Project facilities or one or several of the Borrower's assets which are required to continue its activities; or
- takes possession or control of all or part of the Project's facilities or any of the Borrower's assets which are required to continue its activities; or
- takes any measure with a view to the liquidation, winding-up, administration, reorganisation or restructuring of the Borrower; or
- takes any other measure that would prevent the Borrower from continuing all or part of its activities or operations.

(l) Authorisations

Any Authorisation required for the Borrower in order to perform or comply with its obligations under the Financing Documents or its other material obligations under any Project Documents or required in the ordinary course of the Project is not obtained within the required timeframe or is cancelled or becomes invalid or otherwise ceases to be in full force and effect.

(m) Security Documents

Any provision of a Security Document is terminated, materially amended, ceases to be in full force and effect or does not create the security interest it purports to create, the validity or enforceability of a Security Document is disputed or the value or enforceability of the Security (in particular, the Project Security) granted to the Lender under the Security Documents is diminished or threatened to be diminished.

(n) Judgments, rulings or decisions having a Material Adverse Effect

Any judgment or arbitral award or any judicial or administrative decision affecting the Borrower has or is reasonably likely to have a Material Adverse Effect or one or more steps or proceedings is/are commenced which has/have or is/are reasonably likely, according to the opinion of the Lender, to have a Material Adverse Effect or makes/make it unlikely that the Borrower will be able to perform any of its obligations under any Financing Document or Project Document.

(o) Audit

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The Auditors refuse to certify or issue a qualified opinion regarding the Financial Statements of the Borrower.

(p) **Prohibited Practices**

There has been a Prohibited Practice in relation to the Project or this Agreement, or funds advanced under this Agreement have been made available directly or indirectly to, or for the benefit of, persons or activities listed in Clause 12.24

(q) **The EFSD+ Guarantee Fastcities Agreement**

The EFSD+ Guarantee Fastcities Agreement is terminated, cancelled or otherwise no longer in full force and effect for whatsoever reason so that the AFD is no longer entitled to make a claim to the European Commission or receive a claim payment from the European Commission in relation to this Agreement that the Borrower may make under this Agreement, considering the provisions set out in Clause 11.31 (Reallocation of the Funds)

13.2 Acceleration

On and at any time after the occurrence of an Event of Default, the Lender may, without providing any formal demand or commencing any judicial or extra-judicial proceedings, by written notice to the Borrower:

- (a) cancel the Available Facility which shall immediately be cancelled; and/or
- (b) declare that all or part of the Facility, together with any accrued or outstanding interest and all other amounts outstanding under this Agreement, are immediately due and payable.

Without prejudice to the above, in the event that an Event of Default occurs as set out in Clause 13.1 (*Events of Default*), the Lender reserves the right, upon written notice to the Borrower, to (i) suspend or postpone any Drawdowns under the Facility; and/or (ii) suspend the finalisation of any agreements relating to other possible financial offers which have been notified by the Lender to the Borrower; and/or (iii) suspend or postpone any drawdown under any loan agreement entered into between the Borrower and the Lender.

It is clarified that if an Event of Default occurs, the Lender shall request prima facie the settlement of all due amounts directly to the Borrower and pursue payments in its assets. The Underwriter will be required only on a conditional and subsidiary basis in the event of the Borrower's inability to pay, and will be limited to the amounts due and actually delivered of principal and interest related to this Agreement, up to a maximum amount of twenty-nine million US dollars (USD 29,000,000).

The Municipality of Cuenca (Underwriter) will fully and unrestrictedly enjoy the rights of excussion, division and order, in accordance with the Underwriting Agreement celebrated with the Underwriter and the applicable Ecuadorian regulations. In no case may these benefits be restricted, limited, altered or conditioned, either directly or indirectly, or by interpretation, application or execution of this Agreement (AFD AGREEMENT No. CEC 1072 01 Z).

13.3 Notification of an Event of Default

In accordance with Clause 12.5 (*Information and miscellaneous*), the Borrower shall promptly notify the Lender upon becoming aware of any event which is or is likely to be an Event of Default and inform the Lender of all the measures contemplated by the Borrower to remedy it.

14. ADMINISTRATION OF THE FACILITY

14.1 Payments

All payments received by the Lender under this Agreement shall be applied towards the payment of expenses, fees, interest, principal amounts or any other sum due under this Agreement in the following order:

- (a) incidental costs and expenses;
- (b) fees;
- (c) late-payment interest and default interest;
- (d) accrued interest;
- (e) principal repayments.

Any payments received from the Borrower shall be applied first in or towards payment of any sums due and payable under the Facility or under other loans extended by the Lender to the Borrower, should it be in the Lender's interest to apply these sums to such other loans, in the order set out above.

14.2 Set-off

Without prior approval of the Borrower, the Lender may, at any time, set-off due and payable obligations owed by the Borrower against any amounts held by the Lender on behalf of the Borrower or any due and payable obligations owed by the Lender to the Borrower. If the obligations are in different currencies, the Lender may convert either obligation at the prevailing currency exchange rate for the purpose of the set-off.

All payments made by the Borrower under the Financing Documents shall be calculated and made without set-off. The Borrower is prohibited from making any set-off.

14.3 Business Days

Without prejudice to the calculation of the Interest Period which will remain unchanged, if a payment is due on a day which is not a Business Day, the due date for that payment shall be the next Business Day if the next Business Day is in the same calendar month or the preceding Business Day if the next Business Day is not in the same calendar month.

14.4 Currency of payment

The currency of each amount payable under this Agreement is US Dollar, except as provided in Clause 14.6 (*Place of payment*).

14.5 Day count convention

Any interest, fee or expense accruing under this Agreement will be calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days.

14.6 Place of payment

- (a) Any funds to be transferred by the Lender to the Borrower under the Facility will be paid to the bank account specifically designated for such purpose by the Borrower, provided that the Lender has given its prior consent on the selected bank.

The Borrower may request that the funds are transferred in: (i) US Dollars to a bank account denominated in US Dollars; or (ii) the currency of legal tender in the

jurisdiction of incorporation of the Borrower, in the equivalent amount of the Drawdown at a market rate of exchange on the day of the Drawdown and to a bank account denominated in that currency; provided such currency is convertible and transferable, or (iii) any other convertible and transferable currency, in an equivalent amount of the Drawdown on the day of the Drawdown and to a bank account denominated in such currency.

- (b) Any payment to be made by the Borrower to the Lender shall be paid on the due date by no later than 11:00 am (Paris time) to the following bank account:

Name A/C: Agence Française de Développement

RIB Code : 31489 00010 00226560281 47

IBAN Code: FR76 3148 9000 1000 2265 6028 147

Crédit Agricole CIB SWIFT code (BIC): BSUIFRPP

opened by the Lender with Crédit Agricole CIB in Paris, or to any other account notified by the Lender to the Borrower.

The correspondent bank is:

JP MORGAN CHASE BANK NEW YORK

BIC Swift: CHASUS33XXX

Address: 4 New York Plaza – Floor 15th

New York NY 10004

ABA Number: 021000021

Account number: 786419036

- (c) The Borrower shall request from the bank responsible for transferring any amounts to the Lender that it provides the following information in any wire transfer messages in a comprehensive manner and in the order set out below:
- Principal: name, address, bank account number (field 50 of the SWIFT message)
 - Principal's bank: name and address (field 52 of the SWIFT message)
 - Reference: name of the Borrower, name of the Project, reference number of the Agreement (field 70 of the SWIFT message)
- (d) Applicable exchanges rates will be the exchange rates obtained by the Lender through a Reference Financial Institution on the date of the Drawdown.
- (e) All payments made by the Borrower shall comply with this Clause 14.6 (*Place of payment*) in order for the relevant payment obligation to be deemed as discharged in full.

14.7 Payment Systems Disruption

If the Lender determines that a Payment Systems Disruption Event has occurred or the Borrower notifies the Lender that a Payment Systems Disruption Event has occurred, the Lender:

- (a) may, and shall if requested by the Borrower, enter into discussions with the Borrower with a view to agreeing any changes to the operation and administration of the Facility as the Lender may deem necessary in the circumstances, without no obligation for the Lender to agree to such changes;
- (b) shall not be liable for any cost, loss or liability arising as a result of its taking, or failing to take, any actions pursuant to this Clause 14.7 (*Payment Systems Disruption*).

15. MISCELLANEOUS

15.1 Language

The language of this Agreement is English. If this Agreement is translated into another language, the English version shall prevail in the event of any conflicting interpretation or in the event of a dispute between the Parties.

All notices given or documents provided under, or in connection with, this Agreement shall be in English.

The Lender may request that a notice or document provided under, or in connection with, this Agreement which is not in English or in Spanish is accompanied by a certified English or Spanish translation, in which case, the certified translation shall prevail unless the document is a statutory document of a company, legal text or other official document.

The Lender may request, if it has an obligation to provide, under the guarantee granted by the European Commission, a document, certificate or notice in English, that such document, certificate or notice which is not in English is accompanied by a certified English translation. In this event, the Parties shall take in consideration the necessary timeframe for the production of the translation into English by the Borrower.

The Financial Statements and certificates provided by the Borrower shall be drafted either in English, in Spanish or in any other language agreed by the Parties. Should this not be the case, it shall be translated by the Borrower.

15.2 Certifications and determinations

In any litigation or arbitration arising out of or in connection with any Financing Document, entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

Any certification or determination by the Lender of a rate or amount under this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

15.3 Partial invalidity

If, at any time, a term of this Agreement is or becomes illegal, invalid or unenforceable, neither the validity, legality nor enforceability of the remaining provisions of this Agreement will in any way be affected or impaired.

15.4 No Waiver

Failure to exercise or a delay in exercising, on the part of the Lender, of any right under the Agreement shall not operate as a waiver of that right.

Partial exercise of any right shall not prevent any further exercise of such right or the exercise of any other right or remedy under the applicable law.

The rights and remedies of the Lender under this Agreement are cumulative and not exclusive of any rights and remedies under the applicable law.

15.5 Assignment

The Borrower may not assign or transfer, in any manner whatsoever, all or any of its rights and obligations under this Agreement without the prior written consent of the Lender.

The Lender may assign or transfer any of its rights or obligations under this Agreement to any other third party and may enter into any sub-participation agreement relating thereto.

15.6 Legal effect

The Schedules annexed hereto, the Procurement Guidelines and the recitals hereof form part of this Agreement and have the same legal effect.

It is clarified that Schedule 14 (*Template of the Underwriting Agreement*) is only a template, and is independent to the Underwriting Agreement that will be entered into by the Borrower, Lender and Underwriter as a condition precedent for the first Drawdown once this Agreement is entered into among the Lender and the Borrower.

15.7 Entire agreement

As of the Signing Date, this Agreement represents the entire agreement between the Parties in relation to the matters set out herein, and supersedes and replaces all previous documents, agreements or understandings which may have been exchanged or communicated as part of the negotiations in connection with this Agreement.

15.8 Amendments

No amendment may be done to this Agreement unless expressly agreed in writing between the Lender and the Borrower.

For the avoidance of doubt, any amendment that does not modify the financial indebtedness of the Borrower under this Agreement shall not require the agreement of the Underwriter.

In the case of amendments that imply modifications to the financial debt of the Borrower under this Agreement, the Borrower undertakes to obtain prior written consent from the Autonomous Decentralized Municipal Government of Cuenca (Underwriter) before proceeding with the amendments.

15.9 Confidentiality and disclosure of information

- (a) Each Party shall not disclose the content of the Financing Documents to any third party without the prior consent of the Lender except to:
 - (i) its shareholders, auditors and legal advisers;
 - (ii) any other person to whom it has a disclosure obligation under any applicable law, regulation or judicial ruling; and
 - (iii) its subsidiary Proparco.
- (b) Furthermore, the Lender may disclose any information or documents in relation to the Project to: (i) its auditors, experts, rating agencies, legal advisers or supervisory bodies such as the European Commission, the European Court of Auditors, the European Parliament, the Council, other EU institutions and OLAF ; ; (ii) any

person or entity to whom the Lender may assign or transfer all or part of its rights or obligations under the Financing Documents; (iii) the French State, and any subdivision thereof, and in particular the ministries to which the Lender reports, for the purposes of the Lender's activity; (iv) any person or entity for the purpose of taking any protective measures or preserving the rights of the Lender under the Financing Documents.

- (c) Furthermore, the Borrower hereby expressly authorizes the Lender to communicate and to disclose on the Lender's Website information relating to the Project and its financing as listed in Schedule 10 (*Information that the Lender is expressly authorized to disclose on the Lender's Website*).

15.10 Limitation

The statute of limitations of any claims under this Agreement or the Financing Documents shall be ten (10) years, except for any claim of interest due under this Agreement.

15.11 Hardship

Each Party hereby acknowledges that the provisions of article 1195 of the French Code civil shall not apply to it with respect to its obligations under the Agreement and it shall be not entitled to make any claim under article 1195 of the French Code civil.

16. NOTICES

16.1 In writing and addresses

Any notice, request or other communication to be given or made under or in connection with this Agreement shall be given or made in writing and, unless otherwise stated, may be given or made by fax or by letter to the address and number of the relevant Party set out below:

For the Borrower:

EMPRESA PÚBLICA MUNICIPAL DE ASEO DE CUENCA

Address: Av. Tres de Noviembre 21-176 y Juan Pablo I. Cuenca, Ecuador

Telephone: +59 7 4131 801

E-mail: info@emac.gob.ec

Attention: General Manager

For the Lender:

AFD, QUITO OFFICE

Address: Av. Orellana E12-12 y San Ignacio
Edificio Latina Seguros
Quito, Ecuador

Telephone: +593 2 60 171 60/61/62

Correo electrónico: afdquito@afd.fr

Attention: AFD Director

With a copy to:

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AFD, PARIS HEAD OFFICE

Address: 5, rue Roland Barthes – 75598 Paris Cedex 12, France

Telephone: +33 1 53 44 31 31

Correo electrónico: bourzaimp@afd.fr

Attention: Director of Latin America Department

or such other address, fax number, department or officer as one Party notifies to the other Party.

16.2 Delivery

Any notice, request or communication given or made or any document sent by a Party to the other Party in connection with this Agreement will only be effective if by letter, when delivered to the correct address, and, where a particular person or a department is specified as part of the address details provided under Clause 16.1 (*In writing and addresses*), if such notice, request or communication has been addressed to that person or department.

16.3 Electronic communications

(a) Any communication made by one person to another under or in connection with this Agreement may be made by electronic mail or other electronic means if the Parties:

- agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- notify each other of any change to their address or any other such information supplied by them.

(b) Any electronic communication made between the Parties will be effective only when actually received in a readable form.

17. GOVERNING LAW, ENFORCEMENT AND SERVICE OF PROCESS

17.1 Governing Law

This Agreement is governed by French law.

17.2 Arbitration

Any dispute arising out of or in connection with this Agreement shall be referred to and finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce applicable on the Signing Date (the “ICC Rules”).

There will be three arbitrators to be appointed in accordance with the ICC Rules. The provisions in the ICC Rules regarding the emergency arbitrator and the expedited procedure shall not apply.

The seat of arbitration shall be Paris and the language of arbitration shall be English.



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This arbitration clause shall remain in full force and effect if this Agreement is declared void or is terminated or cancelled and following expiry of this Agreement. The Parties' contractual obligations under this Agreement are not suspended if a Party initiates legal proceedings against the other Party.

The Parties expressly agree that, by signing this Agreement, the Borrower irrevocably waives all rights of immunity in respect of jurisdiction or performance on which it could otherwise rely.

17.3 Service of process

Without prejudice to any applicable law, the Borrower irrevocably chooses its registered office as at the date of this Agreement at the address set out in Clause 16 (*Notices*) for service of process and the Lender chooses the address set out in Clause 16 (*Notices*) for service of process.

In the event of arbitration proceedings, service of process upon the Borrower must additionally be made to the Office of the Attorney General of the Ecuadorian State as specified below:

ATTORNEY GENERAL OF THE REPUBLIC OF ECUADOR

Address: Procuraduría General del Estado,
Av. Amazonas N39-123 y Arizaga
Quito, Ecuador
Email: secretaria_general@pge.gob.ec
Attention: Secretaria General Procuraduría General del Estado

The Lender chooses the address indicated for "AFD HEAD OFFICE" set out in Clause 16 (*Notices*) for service of process.

18. **DURATION**

This Agreement comes into force on the Signing Date and remains in full force and effect for so long as any amount is outstanding under the Financing Documents.

Notwithstanding the above, the obligations under Clauses 12.5(k) (*Information and miscellaneous*) and 15.9 (*Confidentiality and disclosure of information*) will remain in full force and effect for a period of five (5) years after the last Payment Date; the provisions of Clause 11.9.2 (*Environmental and social (ES) complaints-management*) shall continue to have effect whilst any complaint lodged under the ES Complaints-Management Mechanism's Rules of Procedure is still being processed or monitored.

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Executed in three (3) originals, in Cuenca, on the 11th of March 2025.

BORROWER
EMPRESA PÚBLICA MUNICIPAL DE ASEO DE CUENCA



Represented by:
Name: María Caridad Vázquez
Capacity: General Manager

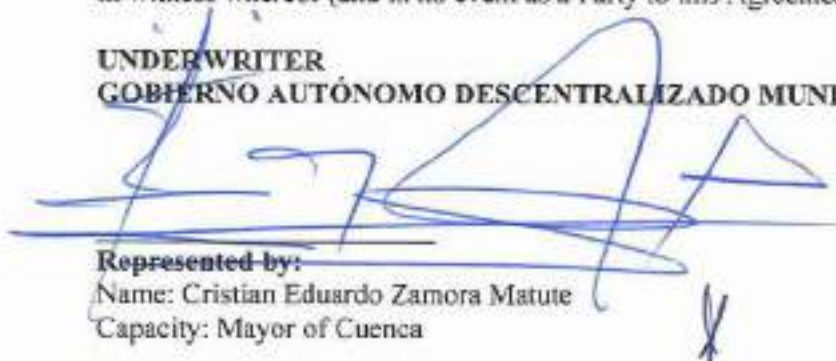
LENDER
AGENCE FRANCAISE DE DEVELOPPEMENT



Represented by:
Name: Olivier Jacques
Capacity: AFD country deputy director for Ecuador

in witness whereof (and in no event as a Party to this Agreement)

UNDERWRITER
GOBIERNO AUTÓNOMO DESCENTRALIZADO MUNICIPAL DE CUENCA



Represented by:
Name: Cristian Eduardo Zamora Matute
Capacity: Mayor of Cuenca

	
SUBSECRETARÍA DE FINANCIAMIENTO PÚBLICO	
REGISTRO:	783
FECHA:	25 de marzo de 2025
PÁGINA:	000000046
REGISTRO DE LA DEUDA PÚBLICA	