

FRAMEWORK ARRANGEMENT

ON

COOPERATION

BETWEEN

**UNITED STATES INTERNATIONAL
DEVELOPMENT FINANCE CORPORATION**

AND

**MINISTRY OF ECONOMY AND FINANCE
OF THE REPUBLIC OF ECUADOR**

Dated January 14, 2021

This **FRAMEWORK ARRANGEMENT** (the “*Arrangement*”) dated as of January 14, 2021, is made

BETWEEN:

- (1) The Ministry of Economy and Finance as representative for and on behalf of the Republic of Ecuador (the “*MEF*”); and
- (2) The United States International Development Finance Corporation, an agency of the United States of America (“*DFC*”).

MEF and DFC are hereinafter collectively referred to as the “*Participants*”, and each individually referred to as a “*Participant*”.

WHEREAS:

- (A) DFC is intent on supporting investments that address critical development challenges throughout Latin America and the Caribbean, including Ecuador.
- (B) The Participants desire to establish a long-term cooperative relationship for financing of projects and programs in the Republic of Ecuador (“*Ecuador*”), in order to generate significant social and economic benefits in various sectors.
- (C) The Participants intend to enter into this Arrangement to record certain of their understandings in relation to DFC making a series of loans in an aggregate amount of 80% of up to Three Billion Five Hundred Million U.S. Dollars (US\$3,500,000,000) to be granted by DFC to bankruptcy-remote special purpose vehicles established pursuant to the Facility Agreement, or a state-owned or other appropriate enterprise in a key sector or an entity otherwise approved by both Ecuador and DFC involving private investment and operating or developing projects, directly or through subsidiaries, for the purposes provided herein.

THE PARTICIPANTS HAVE REACHED THE FOLLOWING UNDERSTANDINGS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

The following terms have the following meanings:

“*Arrangement*” has the meaning provided in the preamble hereto.

“*Borrower*” has the meaning provided in Section 2.2.2.

“*Business Days*” means any day that is not a Saturday or Sunday, and that is not a day on which banking or trust institutions are authorized generally or obligated by law, regulation, or executive order to close in New York City, United States of America, or Quito, Ecuador.

“*Credit Facility*” has the meaning provided in Section 2.1.1.

“Commitment” means a commitment in an amount anticipated to be up to the Potential DFC Commitment, as further provided in the Facility Agreement.

“Commitment Period” means the period commencing on the date of execution of the Facility Agreement and ending on the earliest of (a) the first date on which the Commitment equals zero, (b) the first anniversary of the date of execution of the Facility Agreement, and (c) the date on which DFC has provided written notice of termination thereof in accordance with the terms of the Facility Agreement.

“Designated Bank Loan” means a loan from a bank to the MEF that has been proposed to, and approved by, DFC to be prepaid by a Refinancing Loan.

“Designated Borrower” means a borrower in Ecuador approved by the Parties.

“DFC” has the meaning provided in the preamble hereto.

“DFC Loan” means each (i) loan made by DFC to the Borrower, whose proceeds are to be on-lent by the Borrower to make Refinancing Loans to Designated Borrowers, or (ii) loan participation in a Refinancing Loan acquired by DFC.

“Ecuador” has the meaning provided in recital (B) hereto.

“Excluded Indebtedness” means the following series of securities issued by Ecuador:

- (i) the twelve per cent (12%) U.S. dollar Denominated Global Bonds due 2012;
- (ii) the U.S. dollar Denominated Step-up Global Bonds due 2030; and
- (iii) any existing bonds and the related existing indentures.

“External Indebtedness” means all Indebtedness of Ecuador that is not (i) issued pursuant to agreements or evidenced by instruments that expressly submit the resolution of all disputes to the exclusive jurisdiction of the courts of Ecuador or (ii) governed by Ecuadorian law.

“Facility Agreement” means the credit facility support agreement to be entered into among Ecuador (acting through the MEF), DFC and the Borrower in relation to the provision of each of the DFC Loans in accordance with this Arrangement.

“Government” means the Government of Ecuador.

“Indebtedness” means for any person (a) all indebtedness of or guaranteed by such person for or in connection with borrowed money, and (b) all obligations of or guaranteed by such person (other than those specified in sub-paragraph (a) above) evidenced by debt securities, debentures or other similar instruments; provided that Indebtedness does not include commercial agreements not having the commercial effect of a borrowing.

“Immune Property”, in accordance with the provisions of the law of Ecuador, means:

- (i) any property that is used or designated for use in the performance of the functions of the diplomatic mission of Ecuador or its consular posts
- (ii) aircraft, naval vessels and other property of a military character or used or designated for use in the performance of military functions;
- (iii) property forming part of the cultural heritage of Ecuador or part of its archives;
- (iv) unexploited natural non-renewable resources in Ecuador;
- (v) funds managed in the national Treasury Account;
- (vi) assets and resources comprising available monetary reserves of Ecuador;
- (vii) public domain assets used for providing public services in Ecuador;
- (viii) national assets located in the territory of Ecuador and belonging to Ecuador, such as streets, bridges, roads, squares, beaches, sea and land located over 4,500 meters above sea level;
- (ix) accounts of the Banco Central del Ecuador, whether they are held abroad or locally; and
- (x) public entities' deposits with the Banco Central del Ecuador, whether they are maintained abroad or locally.

“**MEF**” has the meaning provided in the preamble hereto.

“**Monetization Transactions**” has the meaning provided in Section 2.8.1.

“**New York Convention**” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

“**Participant**” and “**Participants**” have the meanings provided in the preamble hereto.

“**Potential DFC Commitment**” has the meaning provided in Section 2.1.1.

“**Public External Indebtedness**” means any External Indebtedness of Ecuador that (i) is publicly offered or privately placed in securities markets, (ii) is in the form of, or represented by, bonds, notes or other securities or any guarantees thereof and (iii) is, or was intended at the time of issue to be, quoted, listed or traded on any stock exchange, automated trading system or over-the-counter securities market (including securities eligible for sale pursuant to Regulation S or Rule 144A under the Securities Act of 1993, as amended, or any successor law or regulation of similar effect).

“**Refinancing Loan**” means a loan made by the Borrower to a Designated Borrower, whose proceeds are to be applied to prepay in full one or more outstanding Designated Bank Loans.

“Transaction Documents” means the Facility Agreement and any other financing documents so designated by the Participants.

1.2 Interpretation

Any reference in this Arrangement to:

- (i) Sections, Sub-sections and Schedules are references to sections, sub-sections, and schedules, respectively, of this Arrangement;
- (ii) the singular includes references in the plural and vice versa;
- (iii) the words “include” and “including” are to be construed as without limitation;
- (iv) a “person” includes any person, firm, company, corporation, government, state or agency of a state, or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (v) a document or any other agreement or instrument (including this Arrangement), or to a section contained in any of these, is a reference to it as amended, modified, novated, supplemented, extended, restated, renewed or replaced;
- (vi) Section, Sub-section, and Schedule headings are for ease of reference; and
- (vii) phrases such as “satisfactory to DFC”, “approved by DFC”, “determined by DFC”, “to DFC’s satisfaction”, “acceptable to DFC” and phrases of similar import permit DFC to approve, disapprove, act or decline to act in its sole discretion.

2. DFC LOAN

2.1 DFC Plan

- 2.1.1 Subject to the terms and conditions of the Facility Agreement, DFC is willing to provide a credit facility in an aggregate principal amount of up to Two Billion Eight Hundred Million U.S. Dollars (US\$2,800,000,000) (the **“Potential DFC Commitment”**), to be applied to fund DFC Loans to Designated Borrowers (the **“Credit Facility”**). The Potential DFC Commitment represents 80% of Three Billion Five Hundred Million U.S. Dollars (US\$3,500,000,000), with the 20% remainder to be funded with loans from private sector lenders
- 2.1.2 By executing this Arrangement, Ecuador confirms that it is willing to enter into the arrangements contemplated in this Arrangement to support a series of DFC Loans.
- 2.1.3 This Arrangement does not constitute a binding commitment on the part of either DFC or Ecuador. This Arrangement is not legally binding and does not create any enforceable rights or obligations.

2.2 Participants

2.2.1 The lender of each DFC Loan is intended to be DFC.

2.2.2 The borrower of each DFC Loan (including as issuer of participations in Refinancing Loans) is intended to be an entity satisfactory to DFC in its sole discretion, which may include one or more bankruptcy-remote special purpose vehicles established pursuant to the Facility Agreement, or a state-owned or other appropriate enterprise in a key sector (such as electricity generation, distribution and transmission, hydrocarbons (upstream and downstream), transportation and telecommunications) or an entity otherwise approved by both Ecuador and DFC for participation in the refinancing program established pursuant to the Facility Agreement (collectively, the "**Borrower**"), subject to further due diligence by, and discussion between, DFC and the MEF.

2.3 Amount, term and interest rate

2.3.1 The amount, term and interest rate of each DFC Loan is to be proposed by the MEF and determined by DFC in accordance with any requirements of the Facility Agreement.

2.3.2 The amount, interest rates, fees, term, repayment schedule and other terms of the DFC Loans are to be the subject of further negotiation and mutual agreement between the Participants and approvals by the Debt and Finance Committee of Ecuador and DFC.

2.4 Purpose and use of proceeds

2.4.1 The proceeds of each disbursement of each DFC Loan should be applied to funding a Refinancing Loan or for the development of projects with private investment in Ecuador.

2.4.2 The Participants intend to cooperate to identify and determine Designated Borrowers that would be appropriate to receive Refinancing Loans and the assets that would provide adequate credit support for repayment of those loans in accordance with applicable law and any relevant contractual obligations of the MEF. Additional credit support for repayment of the DFC Loans is expected and should be subject to due diligence based on the particular circumstances of each Refinancing Loan. Repayment of each DFC Loan should also be guaranteed by the MEF in accordance with applicable law.

2.5 Disbursement of DFC Loans

2.5.1 Subject to the terms of the Facility Agreement, during the Commitment Period, the Borrower is eligible to draw a disbursement of a DFC Loan (each a "**Disbursement**") in accordance with the following:

- (A) No Disbursement is to be made until the applicable conditions precedent to disbursement specified in the Facility Agreement have been satisfied (or waived) in DFC's sole discretion;
- (B) DFC is expected to make each Disbursement within ten (10) Business Days following the date on which the relevant conditions precedent to disbursement have been satisfied;
- (C) No Disbursement is to be made until:
 - (1) satisfactory arrangements have been made for the Borrower to lend the proceeds of that Disbursement to the relevant Designated Borrower and for that entity to apply the proceeds of that loan to the prompt prepayment of the relevant Designated Bank Loan(s);
 - (2) a detailed plan for completion of the relevant Monetization Transactions has been presented to, and are in compliance with the policies of, DFC; and
 - (3) the aggregate amount of all Disbursements is not to exceed the Commitment; and
 - (4) all financed operations are expected to comply with DFC's social performance and human and worker rights requirements.

2.6 **Payment of Interest**

- 2.6.1 Interest accrued on the outstanding principal balance of the DFC Loans should be paid in arrears quarterly as provided in the Facility Agreement.
- 2.6.2 If the Borrower fails to pay when due any amount due to DFC under the Facility Agreement, the Borrower should pay to DFC post-default interest, to the extent permitted by applicable law, at the rate of 2% *per annum* over and above the interest rate determined pursuant to the Facility Agreement.

2.7 **DFC Loan repayment**

Each DFC Loan should be repaid in approximately equal quarterly installments, commencing on, and continuing until, the dates determined pursuant to the Facility Agreement.

2.8 **Mandatory prepayment**

- 2.8.1 Ecuador believes that, subject to Ecuadorian legal requirements and limitations, each prospective Designated Borrower should have assets that are suitable for monetization. It is contemplated that the monetization of assets of the Designated Borrowers (the "***Monetization Transactions***") will result, within the term of the Refinancing Loans, in extraordinary income in an amount sufficient to allow the Designated Borrower to cause the Refinancing Loans to be prepaid in full from the

general revenues of Ecuador, whereupon the Borrower is expected promptly to prepay the associated DFC Loan to the extent of the prepayment received on each such Refinancing Loan.

- 2.8.2 Promptly following the occurrence of a mandatory prepayment event, an amount (to be determined) of the associated Refinancing Loan(s) and DFC Loan(s) should be prepaid.

2.9 Voluntary prepayment

The Borrower may prepay all or any portion of the DFC Loans on any scheduled payment date without premium, and on any other date subject to payment of applicable breakage costs. Any amount prepaid is to be cancelled and may not be re-drawn.

2.10 DFC Loans

- 2.10.1 As a matter of DFC authority and policy, each DFC Loan is to be associated with the mobilization of complementary private sector investment in the relevant enterprise.
- 2.10.2 DFC should be satisfied from a credit and policy perspective with all material project parties, such as operators, investors, offtakers and remarketers.
- 2.10.3 Prior to entering into the Facility Agreement, DFC intends to confirm:
- (i) the absence of any moratorium on payment of External Indebtedness;
 - (ii) compliance of each proposed DFC Loan with DFC's governing statute, all relevant resolutions of its Board of Directors, management policies, environmental and social policies (including a standard environmental indemnity), and credit and technical requirements (including but not limited to: independent engineer evaluations, insurance evaluations, reserve evaluations);
 - (iii) that withholding tax in Ecuador does not apply on any amounts payable to DFC;
 - (iv) DFC's receipt of all information sought from each relevant party and completion of its related know-your-customer reviews; and
 - (v) other conditions to be determined in connection with preparation of the Facility Agreement.
- 2.10.4 Prior to making any DFC Loan pursuant to the Facility Agreement, DFC intends to confirm:
- (i) each disbursement of a DFC Loan is accompanied by loan disbursement funded by a private sector source acceptable to DFC identified prior to

disbursement such that the DFC Loan disbursement does not exceed 80% of the total amount disbursed;

- (ii) any asset to be monetized will need to be supported by a full legal and financial diligence package, including: review of cash flows for the asset that have been verified by a third party acceptable to DFC (at the Borrower's cost) and supported by satisfactory operational and financial data; technical review(s) performed by a third party acceptable to DFC (at the Borrower's cost); and satisfactory reviews of management, ownership, and all required permits and other consents;
- (iii) the relevant Designated Borrower intends to provide adequate support for projected cash flows for selected assets (backed by both operational and financial data);
- (iv) a third party report from an entity to which DFC determines the environmental baseline for each site;
- (v) availability and allocation of adequate credit subsidy cost by DFC for the Commitment and the applicable DFC Loan;
- (vi) completion of any condition to execution of the Facility Agreement that was waived or is no longer satisfied; and
- (vii) other conditions to be determined in connection with preparation of the Facility Agreement or the terms of a particular DFC Loan.

2.10.5 Each Designated Borrower is expected to act in a manner consistent with applicable DFC policies and applicable laws, including trusted telecom provisions under the United States National Defense Authorization Act.

2.10.6 Prior to entering into the Facility Agreement, DFC is expected to confirm that its participation in the transaction is consistent with its position as an agency of the United States of America, the laws, regulations and policies applicable to DFC, and the foreign policy and national security interests of the government of the United States of America.

2.11 **Negative Pledge**

The Facility Agreement is to include a negative pledge provision substantially in the form included in Schedule A (*Negative Pledge*) hereto.

3. **REFINANCING TRANSACTIONS**

3.1 **Participants**

3.1.1 The lender of each Refinancing Loan is to be the Borrower.

3.1.2 The borrower of each Refinancing Loan is to be a Designated Borrower.

3.2 **Amount, term and interest rate**

The amount of each Refinancing Loan is the outstanding principal amount of the corresponding Designated Bank Loan being refinanced. Subject to final terms under the Facility Agreement, the indicative term of each Refinancing Loan should be up to eight (8) years and the indicative interest rate should be three-month LIBOR, or an equivalent rate based on U.S. Treasury rates, plus a margin of 2.25%.

3.3 **Purpose and use of proceeds**

3.3.1 The proceeds of each Refinancing Loan should be applied to prepay in full one or more existing Designated Bank Loans.

3.3.2 Each Designated Borrower is expected to act in a manner consistent with applicable DFC policies, with respect to the use of proceeds of each DFC Loan, including, *inter alia*, regarding the environment, health and safety and human and workers' rights.

3.3.3 Ecuador and DFC plan to analyse how to link DFC Loans or the Refinancing Loans to support for developmental projects in Ecuador.

3.4 **Prior to Making Refinancing Loans**

3.4.1 DFC intends to complete to its satisfaction its due diligence investigations of Designated Bank Loan(s) proposed to be refinanced with the proceeds of any DFC Loans including but not limited to receipt and review of (i) copies of all legal agreements related to the Designated Bank Loan(s) and (ii) their respective commercial terms and conditions;

3.4.2 DFC expects to be satisfied that it is fully indemnified for any and all liabilities (including environmental liabilities) arising from or relating to the use of DFC Loan proceeds to refinance any Designated Bank Loan.

3.4.3 Following the completion (to DFC's satisfaction) of the due diligence detailed above, DFC, the MEF and the Borrower are expected to have determined the proposed refinancing transaction(s) to be undertaken with the proceeds of the DFC Loans.

4. **MONETIZATION TRANSACTIONS**

4.1 **Structures to Monetize**

4.1.1 Ecuador has identified certain legal structures that, subject to further analysis and compliance with applicable Ecuadorian laws, could be used for the purposes of monetizing assets of the relevant Ecuadorian state-owned companies (potentially

including private companies operating public infrastructure). Structures that have been used in the past or that are under analysis include:

- (A) long term concession and operating and maintenance agreements with up-front payment, including a re-transfer of assets to the relevant company at the end of the concession term;
- (B) creation of joint ventures (*empresas mixtas*) with up to forty-nine percent (49%) equity interest held by private investors, combined with a long-term operating and maintenance agreement giving an investor effective control during the term of the operating and maintenance agreement (JV structure);
- (C) initial public offerings of up to forty-nine percent (49%) equity interests in certain state-owned companies or joint ventures (*empresas mixtas*);
- (D) sale of identified assets that do not constitute sale of enterprise and that are not Immune Property under Ecuadorian law; and
- (E) monetization of customer receivables with lockbox arrangement.

4.1.2 Each Monetization Transaction is to be subject to DFC's legal and commercial diligence review (including, without limitation, regarding operational control and risk issues (given Ecuador's majority ownership of the relevant enterprises), offtake and other material contracts, technical and business matters, concessions, transference of ownership and control of assets, and a detailed plan, including timeline, for completion of the proposed transaction.

4.2 Legal Terms

4.2.1 Each Monetization Transaction is to be subject to a prior legal analysis for consistency with applicable legal requirements under Ecuadorian laws.

4.2.2 Ecuadorian laws and contractual obligations of Ecuador also impose certain negative pledge limitations on use of assets as credit support in connection with External Indebtedness.

5. REPRESENTATIONS AND WARRANTIES

5.1 The Facility Agreement is to contain standard representations and warranties from Ecuador and the Borrower such as those related to due authority, no conflicts, and all necessary government approvals.

6. EVENTS OF DEFAULT AND DISPUTES

6.1 Events of Default

6.1.1 The Facility Agreement is expected to contain events of default of the Borrower, based on specified actions or inactions of the Borrower or its agencies, affiliates or

instrumentalities, as well as rights and remedies of DFC contingent upon the occurrence of such events of default.

- 6.1.2 The Facility Agreement is expected to also include provisions relating to events of default consistent with other External Indebtedness of Ecuador, including a cross default if Ecuador proposes or commences any rescheduling, reorganization or conversion of all or any part of its obligations pursuant to the Facility Agreement, any DFC Loan or other External Indebtedness. Any proposal or commencement of any consent solicitation, exchange offer, rescheduling, reorganization or conversion of all or part of its Public External Indebtedness that is made in compliance with the provisions contained in the respective contracts governing such Public External Indebtedness is not an event of default.

6.2 **Immunity**

The Facility Agreement is expected to include an immunity provision substantially in the form included in Schedule B (*Immunity*) hereto.

6.3 **Governing Law and Dispute Resolution**

The Facility Agreement is expected to include governing law and dispute resolution provisions substantially in the form included in Schedule C (*Governing Law and Dispute Resolution*) hereto.

7. **ADDITIONAL TERMS**

- 7.1 The Participants should endeavor to reach an understanding in relation to the finalizing terms of the Facility Agreement and to obtain all necessary governmental authorizations and internal approvals necessary to finalize and execute the Facility Agreement among the MEF, DFC and the Borrower as soon as practicable.
- 7.2 The MEF should use all commercially reasonable efforts to procure the issuance of relevant governmental approvals necessary to ensure that each Refinancing Loan and the transactions contemplated thereunder or in relation thereto (including, without limitation, mandatory prepayment of each such Refinancing Loan and any related DFC Loan promptly following receipt of extraordinary income, provisions regarding immunity and governing law and dispute resolution mechanisms under all of the finance documents relating to each such Refinancing Loan) are legal, valid, binding and enforceable under all relevant laws and regulations in Ecuador.
- 7.3 The MEF acknowledges that DFC's obligations under the Facility Agreement are to be subject to DFC's determination that there have been no adverse changes to the legal and regulatory framework in Ecuador necessary for making the DFC Loans and their prepayment following completion of the contemplated Monetization Transactions.

8. CO-OPERATION

To further strengthen the cooperation between the United States of America and Ecuador, DFC and the MEF intend to continue to investigate possibilities for mutual cooperation.

9. DOCUMENTATION

9.1 The Participants confirm that all Transaction Documents are to be prepared in the English language and, to the extent that any Transaction Documents are translated into a language other than English, the Participants understand that the English version is to prevail.

9.2 The number of copies of each Transaction Document to be signed should be at least equal to the number of parties to that Transaction Document, and each party to a Transaction Document should receive a signed original of that Transaction Document once it is signed by all the parties thereto.

10. DURATION AND EFFECT OF THE ARRANGEMENT

10.1 This Arrangement is intended to commence on the date of signature and may be discontinued at any time by either Participant. A participant should endeavour to provide advance notice of its intent to discontinue the Arrangement.

11. NOTICES

11.1 Any communication to be made under or in connection with this Arrangement should be made in writing and may be made by (a) fax, (b) email or (c) international courier.

11.2 The address, fax number and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Participant for any communication or document to be made or delivered under or in connection with this Arrangement are as follows:

11.2.1 in case of the MEF:

Address: Av. Amazonas entre Pereira y Unión Nacional de Periodistas,
Plataforma Gubernamental Financiera, pisos 10 y 11, 170507
Quito, Ecuador

Attn: Undersecretary of Public Finance (*Subsecretaría de
Financiamiento Público*)

Email: jhidalgo@finanzas.gob.ec

11.2.2 in case of DFC:

Address: United States International Development Finance Corporation
1100 New York Avenue, N.W.
Washington, D.C. 20527
United States of America

Attn.: Vice President, Structured Finance & Insurance;
Re: Ecuador Framework

E-mail: Tracey.Webb@dfc.gov; Alexander.Evans@dfc.gov

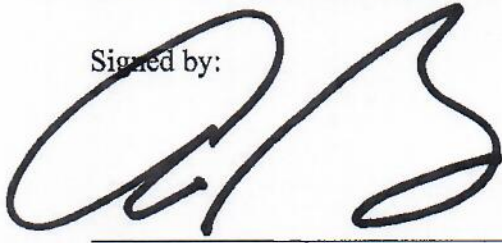
or any substitute address, fax number, and email address or department or officer as the Participant may notify to the other Participant by not less than five (5) Business Days' notice.

12. **GENERAL**

- 12.1 This Arrangement may be modified in writing as determined jointly by the Participants.
- 12.2 The Participants should use reasonable efforts to complete negotiation of the Facility Agreement and other definitive documentation, as soon as possible after the date hereof. In this regard, the Borrower should assist DFC and its counsel in their due diligence with respect to the Credit Facility, by promptly providing to DFC on an on-going basis all information material to DFC's consideration of the Project and the Credit Facility, and such other information as DFC may reasonably request. Extension of the term of this Arrangement should be at DFC's sole discretion and subject to modification of the terms hereof. Disbursement of a DFC Loan should not occur after the date that is eight (8) years from the date of the Facility Agreement (DFC's statutory limit).
- 12.3 This Arrangement expresses the aspirations of the Participants with respect to the matters provided herein and does not give rise to any rights or obligations under international law.
- 12.4 This Arrangement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of the Arrangement.

IN WITNESS WHEREOF, the undersigned, being the duly authorized representatives of the Parties have signed this Agreement in two originals in the English language.

Signed by:



Date:

14/1/21

Name: Adam Boehler

Title: Chief Executive Officer

On behalf of:

**U.S. INTERNATIONAL
DEVELOPMENT FINANCE
CORPORATION**

IN WITNESS WHEREOF, the undersigned, being the duly authorized representatives of the Parties have signed this Agreement in two originals in the English language.

Signed by:

Date:

14/1/21



Name: Mauricio Pozo Crespo

Title: Minister of Finance

On behalf of:

**MINISTRY OF ECONOMY FINANCE
OF THE REPUBLIC OF ECUADOR**

SCHEDULE A:

NEGATIVE PLEDGE

Certain Covenants of Republic:

So long as any Loan shall remain outstanding or any amount payable by Ecuador under the Facility Agreement shall remain unpaid, Ecuador agrees that it shall not create or suffer to exist, or permit the Banco Central de Ecuador to create or suffer to exist, any Lien upon any of its present or future assets or revenues to secure or otherwise provide for the payment of any External Indebtedness of Ecuador or the Banco Central of Ecuador unless, on or prior to the date such Lien is created or comes into existence, the obligations of Ecuador under the DFC Loans and the Facility Agreement are secured equally and ratably with such External Indebtedness.

“*Lien*” means any lien, pledge, mortgage, security interest, deed of trust, charge or other encumbrance or preferential arrangement that has the practical effect of constituting a security interest with respect to the payment of any obligations with or from the proceeds of any assets or revenues of any kind.

Notwithstanding the above, Ecuador may, however, create or permit to subsist the following Liens (“*Permitted Liens*”):

- (a) any Lien on property to secure External Indebtedness arising in the ordinary course of business to finance export, import or other trade transactions that matures (after giving effect to renewals and refinancings) no more than one year after it was originally incurred;
- (b) any Lien upon property to secure the purchase price of such property or to secure any External Indebtedness incurred solely for the purpose of financing the acquisition of such property;
- (c) any Lien on property arising by operation of law (or pursuant to any agreement establishing a Lien equivalent to one that would otherwise exist under relevant local law), including without limitation any right of set-off with respect to demand or time deposits with financial institutions and bankers' liens with respect to property held by financial institutions (in each case deposited with or delivered to such financial institutions in the ordinary course of the depositor's activities);
- (d) any Lien existing on such property at the time of its acquisition;
- (e) any Lien in existence as of the date of this Facility Agreement;
- (f) any Lien securing External Indebtedness issued upon surrender or cancellation of the principal amount of any of the Excluded Indebtedness, as defined below, to the extent the Lien is created to secure the External Indebtedness;
- (g) any Lien created in connection with any Project Financing, as defined below, provided that the properties to which any such Lien applies are solely with respect to (A) properties that are the subject of such Project Financing or (B)

revenues or claims that arise from the operation, failure to meet specifications, failure to complete, exploitation, sale or loss of, or damage to, such properties;

(h) additional Liens created in any calendar year upon assets, revenues or receivables of Ecuador having, when encumbered, a fair market value not exceeding an aggregate amount equal to US\$50,000,000 (or its equivalent in any other currency or currencies) to collateralize, or to purchase collateral, guarantees or other credit support in respect of, new borrowings by Ecuador, provided that, to the extent US\$50,000,000 (or its equivalent in any other currency or currencies) exceeds such aggregate fair market value of such assets, revenues or receivables so encumbered in such calendar year, the aggregate fair market value of such assets, revenues and receivables permitted to be encumbered hereby in subsequent calendar years shall be increased by such excess amount; provided, however, that in no event shall the fair market value of such assets, revenues or receivables so encumbered in any calendar year exceed an aggregate amount equal to US\$150,000,000 (or its equivalent in any other currency or currencies); and

(i) any renewal or extension of any of the Liens described above; provided that no renewal or extension of any permitted Lien shall (A) extend to or cover any property other than the property then subject to the Lien being extended or renewed or (B) increase the amount of financing secured by that Lien.

SCHEDULE B:

IMMUNITY

The execution and delivery of the Facility Agreement by Ecuador constitutes, and Ecuador's performance of and compliance with its obligations shall constitute an act of commercial public credit as provided under the laws of Ecuador. To the extent permitted by law, Ecuador irrevocably and unconditionally agrees that:

- (a) Ecuador submits to the jurisdiction of any Ecuadorian court and to any legal process in Ecuador's courts (other than attachment proceedings prior to recognition or enforcement of an arbitral award), in connection with the enforcement of an arbitral award obtained in accordance with Section [], except with respect to the Immune Property, which shall be entitled to immunity from enforcement in accordance with mandatory provisions of the laws of Ecuador;
- (b) Ecuador submits to the jurisdiction of any court outside Ecuador and to any legal process, orders or other measures in courts outside Ecuador, whether through service or notice, attachment in aid of execution, execution against property of any sort, actions in rem or the grant of injunctions or specific performance, in connection with the enforcement of an arbitral award obtained in accordance with Section [], except with respect to the Immune Property, which shall be immune to the fullest extent;
- (c) Ecuador undertakes not to invoke any defence on the basis of any kind of immunity, for itself and/or its assets that do not constitute Immune Property in respect of any of the foregoing legal actions or proceedings; and
- (d) Ecuador submits to the jurisdiction of the English courts in connection with any proceedings invoking the supervisory jurisdiction of those courts in relation to an arbitration conducted pursuant to Section [].

The levy of execution on assets of Ecuador within the territory of Ecuador shall be carried out in accordance with and under the laws of Ecuador.

Ecuador irrevocably waives, to the fullest extent permitted by law, any requirement or provision of law that requires the posting of a bond or other security as a condition to the institution, prosecution or completion of any action or proceeding.

An arbitral award obtained in accordance with Section [] shall be conclusive and may be enforced in any jurisdiction in accordance with the New York Convention or in any other manner provided for by law.

The provisions of the above section (a) have been negotiated and agreed solely with respect to the transactions described in this Facility Agreement. In no event shall the definition or scope of Immune Property described in this Agreement be relied upon, utilized, admitted as evidence in any proceeding or construed by any third party (including any court, arbitrator or arbitral tribunal)

to interpret any analogous provisions of any other agreement or instrument unrelated to the transactions contemplated in this or relating to any other indebtedness of Ecuador.

SCHEDULE C:

GOVERNING LAW AND DISPUTE RESOLUTION¹

(a) This Facility Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

(b) Resolution of Disputes:

(i) Any dispute, controversy or claim of any nature arising out of, relating to or having any connection with this Facility Agreement, including any dispute as to the existence, validity, interpretation, performance, breach, termination or consequences of the nullity of this Facility Agreement (a “*Dispute*”), where Ecuador is either a party, claimant, respondent or otherwise is necessary thereto, shall not be referred to a court of any jurisdiction and shall instead be referred to and finally resolved by arbitration conducted by the International Dispute Resolution Center (the “*Center*”) in accordance with its international rules, as at present in force as modified below in this section (b) (the “*Rules*”), which Rules are deemed to be incorporated by reference into this section (b). Any notice or other communication hereunder in connection with a Dispute to be sent to Ecuador shall be sent to the Ministry of Economy and Finance in accordance with Section [] (*Notices*), with a copy, which shall not constitute notice, to the Procuraduría General del Estado, Edificio Amazonas Plaza, Ac. Amazonas N39-123 y Arízaga, Quito, Ecuador (Attention: *Procurador General del Estado*). Notwithstanding the foregoing, this agreement to arbitrate Disputes shall not include the arbitration of any Excluded Claims, which may be brought by Ecuador against DFC in the Federal District Court for the District of Columbia in Washington, D.C. In particular:

(ii) There shall be three arbitrators.

(iii) Each arbitrator shall be a New York qualified lawyer of at least fifteen (15) years' standing with experience in relation to international banking or capital markets disputes.

(iv) If there are two parties to the Dispute, each party shall be entitled to nominate one arbitrator. If there are multiple claimants and/or multiple respondents, all claimants and/or all respondents shall attempt to agree upon their respective nomination(s) such that the claimants shall together be entitled to nominate one arbitrator and the respondents shall together be entitled to nominate one arbitrator. If any such party or multiple parties fail to nominate an arbitrator within thirty (30) days from and including the date of receipt of the relevant request for arbitration, an arbitrator shall be appointed on their behalf by the Center in accordance with the Rules and applying the criteria at sub-paragraph 2 above. In such circumstances, any existing nomination or confirmation of the arbitrator chosen by the party or parties on the other side of the proposed

¹ Note: As indicated in Section 6.3 of this Agreement, the Governing Law and Dispute Resolution section of the Facility Agreement is subject to prior authorization by the Procurator General of Ecuador (*Procuraduría General del Estado*) and the applicable maximum authority of each Ecuadorian party in accordance with the laws of Ecuador.

arbitration shall be unaffected, and the remaining arbitrator(s) shall be appointed on their behalf at the request of any of the Arbitration Parties by [*an appointing authority to be agreed*] in accordance with the Rules and applying the criteria at sub-paragraph (b)(iii) above

(v) The third arbitrator and chairman of the arbitral tribunal shall be nominated by mutual agreement of each of the Arbitration Parties, or, if such nomination does not occur within [30] days following appointment of the first two arbitrators, then by nomination by the two arbitrators already appointed by the Arbitration Parties, in accordance with the Rules and applying the criteria at sub-paragraph (ii) above. If the Arbitration Parties, or the two arbitrators appointed by them, fail to nominate the third arbitrator and chairman of the arbitral tribunal, the third arbitrator and chairman shall be appointed on their behalf, at the request of any of the Arbitration Parties, by the Center in accordance with the Rules and applying the criteria at sub-paragraph (b)(iii) above.

(vi) The seat, or legal place, of arbitration shall be New York, New York.

(vii) Without prejudice to any other mode of service allowed by law, Ecuador appoints Law Debenture Corporate Services Limited ("**Authorized Agent**") as its agent under this Facility Agreement for service of process in relation to any proceedings before New York courts in relation to any arbitration contemplated by this Section [] or in relation to recognition or enforcement of any such arbitral award obtained in accordance with this Section [].

(viii) If the Authorized Agent is unable to act for any reason as Ecuador's agent under this Facility Agreement for the service of process, Ecuador must immediately (and in any event within ten (10) days of the event taking place) appoint another agent (a "**Replacement Agent**") on terms acceptable to DFC.

(ix) Failure by the Process Agent or, as applicable, a Replacement Agent, to notify Ecuador of the process shall not invalidate the proceedings concerned.

(x) [Arbitration pursuant to this Section [] is not a waiver of and shall not impair the enforcement rights of DFC with respect to any Lien or the right of DFC to exercise any other similar remedy under this Agreement or any other Financing Document to which a Borrower Party is a party, pursuant to Section [] or otherwise, and such enforcement by DFC shall not be deemed to be inconsistent with or a violation of the arbitration provisions of this Section [].]

(xi) Any awards issued by the Arbitral Tribunal shall be final and binding on the Arbitration Parties; any orders so issued shall be binding on the Arbitration Parties. Judgment upon any award issued by the Arbitral Tribunal may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Arbitration Party or its assets. Each Borrower Party hereby submits to the jurisdiction of the United States District Court for the Southern District of New York for the limited purpose of enforcing this agreement to arbitrate.

(xii) The Arbitral Tribunal shall have no jurisdiction to grant any interim measure that limits or prevents, or seeks to limit or prevent, DFC from exercising any enforcement right with respect to any Lien or enforcing any similar remedy under this Agreement or any other Financing

Document to which a [Borrower Party] is a party. Ecuador covenants and agrees not to seek any such interim measure, either in any arbitration pursuant to this Section [] or otherwise.

(xiii) EACH [BORROWER PARTY] AND DFC EACH IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN THEM ESTABLISHED BY ANY FINANCING DOCUMENT.