

- (b) Each Administrative Party may:
- (i) carry on any business with the Borrower or its related entities (including acting as an agent or a trustee for any other financing); and
 - (ii) retain any profits or remuneration it receives under the Finance Documents or in relation to any other business it carries on with the Borrower or its related entities.

18.5 Reliance

The Facility Agent may:

- (a) rely on any notice or document believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;
- (b) rely on any statement made by any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify;
- (c) engage, pay for and rely on professional advisers selected by it (including those representing a Party other than the Facility Agent); and
- (d) act under the Finance Documents through its personnel and agents.

18.6 Majority Lenders' instructions

- (a) The Facility Agent is fully protected if it acts on the instructions of the Majority Lenders in the exercise of any right, power or discretion or any matter not expressly provided for in the Finance Documents. Any such instructions given by the Majority Lenders will be binding on all the Lenders. In the absence of instructions, the Facility Agent may act as it considers to be in the best interests of all the Lenders.
- (b) The Facility Agent may assume that unless it has received notice to the contrary, any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised.
- (c) The Facility Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received security satisfactory to it, whether by way of payment in advance or otherwise, against any liability or loss which it may incur in complying with the instructions.
- (d) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings in connection with any Finance Document.

18.7 Responsibility

- (a) No Administrative Party is responsible for the adequacy, accuracy or completeness of any statement or information (whether written or oral) made in or supplied in connection with any Finance Document.
- (b) No Administrative Party is responsible for the legality, validity, effectiveness, adequacy, completeness or enforceability of any Finance Document or any other document.

- (c) Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms that it:
 - (i) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Finance Documents (including the financial condition and affairs of the Borrower and its related entities and the nature and extent of any recourse against any Party or its assets); and
 - (ii) has not relied exclusively on any information provided to it by any Administrative Party in connection with any Finance Document or agreement entered into in anticipation of or in connection with any Finance Document.

18.8 Exclusion of liability

- (a) No Administrative Party is liable or responsible to any other Finance Party for any action taken or not taken by it in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party (other than the relevant Administrative Party) may take any proceedings against any officers, employees or agents of an Administrative Party in respect of any claim it might have against that Administrative Party or in respect of any act or omission of any kind by that officer, employee or agent in connection with any Finance Document. Any officer, employee or agent of an Administrative Party may rely on this Subclause and enforce its terms under the Contracts (Rights of Third Parties) Act 1999.
- (c) The Facility Agent is not liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d)
 - (i) Nothing in this Agreement will oblige any Administrative Party to satisfy any customer due diligence requirement in relation to the identity of any person on behalf of any Finance Party.
 - (ii) Each Finance Party confirms to each Administrative Party that it is solely responsible for any customer due diligence requirements it is required to carry out and that it may not rely on any statement in relation to those requirements made by any other person.

18.9 Default

- (a) The Facility Agent is not obliged to monitor or enquire whether a Default has occurred. The Facility Agent is not deemed to have knowledge of the occurrence of a Default.
- (b) If the Facility Agent:
 - (i) receives notice from a Party referring to this Agreement, describing a Default and stating that the event is a Default; or
 - (ii) is aware of the non-payment of any principal, interest or fee payable to a Finance Party (other than the Facility Agent or an Arranger) under this Agreement,
 it must promptly notify the other Finance Parties.

18.10 Information

- (a) The Facility Agent must promptly forward to the person concerned the original or a copy of any document which is delivered to the Facility Agent by a Party for that person.
- (b) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) Except as provided above, the Facility Agent has no duty:
 - (i) either initially or on a continuing basis to provide any Lender with any credit or other information concerning the risks arising under or in connection with the Finance Documents (including any information relating to the financial condition or affairs of the Borrower or its related entities or the nature or extent of recourse against any Party or its assets) whether coming into its possession before, on or after the date of this Agreement; or
 - (ii) unless specifically requested to do so by a Lender in accordance with a Finance Document, to request any certificate or other document from the Borrower.
- (d) In acting as the Facility Agent, the Facility Agent will be regarded as acting through its agency division which will be treated as a separate entity from its other divisions and departments. Any information acquired by the Facility Agent which, in its opinion, is acquired by another division or department or otherwise than in its capacity as the Facility Agent may be treated as confidential by the Facility Agent and will not be treated as information possessed by the Facility Agent in its capacity as such.
- (e) The Facility Agent is not obliged to disclose to any person any confidential information supplied to it by or on behalf the Borrower solely for the purpose of evaluating whether any waiver or amendment is required in respect of any term of the Finance Documents.
- (f) The Borrower irrevocably authorises the Facility Agent to disclose to the other Finance Parties any information which, in its opinion, is received by it in its capacity as the Facility Agent.

18.11 Indemnities

- (a) Without limiting the liability of the Borrower under the Finance Documents, each Lender must indemnify the Facility Agent for that Lender's Pro Rata Share of any loss or liability incurred by the Facility Agent in acting as the Facility Agent (unless the Facility Agent has been reimbursed by the Borrower under a Finance Document), except to the extent that the loss or liability is caused by the Facility Agent's gross negligence or wilful misconduct.
- (b) If a Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party:
 - (i) deduct from any amount received by it for that Party any amount due to the Facility Agent from that Party under a Finance Document but unpaid; and
 - (ii) apply that amount in or towards satisfaction of the owed amount.

That Party will be regarded as having received the amount so deducted.

18.12 Compliance

Each Administrative Party may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation or be otherwise actionable at the suit of any person, and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

18.13 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint any of its Affiliates as successor Facility Agent by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively, the Facility Agent may resign by giving notice to the Finance Parties and the Borrower, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If no successor Facility Agent has been appointed under paragraph (b) above within thirty (30) days after notice of resignation was given, the Facility Agent may appoint a successor Facility Agent.
- (d) After consultation with the Borrower, all the Lenders may, by notifying the Facility Agent and the other Parties, replace the Facility Agent with effect on and from the date specified in the notice by appointing a successor Facility Agent on or after the date which is three months before the relevant FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, if either:
 - (i) the Facility Agent fails to respond to a request under Clause 11.4 (FATCA Information) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Facility Agent pursuant to Clause 11.4 (FATCA Information) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Facility Agent notifies the Borrower and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and, in each case, the Lenders reasonably believe that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and the Lenders, by notice to the Facility Agent, requires it to resign.

- (e) The person(s) appointing a successor Facility Agent must, if practicable, consult with the Borrower prior to the appointment.
- (f) The resignation of the Facility Agent and the appointment of any successor Facility Agent will both become effective only when the successor Facility Agent notifies all the Parties that it accepts its appointment.
- (g) On giving the notification the successor Facility Agent will succeed to the position of the Facility Agent and the term **Facility Agent** will mean the successor Facility Agent.
- (h) The retiring Facility Agent must, at its own cost:

- (i) make available to the successor Facility Agent those documents and records and provide any assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as the Facility Agent under the Finance Documents; and
 - (ii) enter into and deliver to the successor Facility Agent those documents and effect any registrations as may be required for the transfer or assignment of all of its rights and benefits under the Finance Documents to the successor Facility Agent.
- (i) Upon its resignation becoming effective, this Clause will continue to benefit the retiring Facility Agent in respect of any action taken or not taken by it in connection with the Finance Documents while it was the Facility Agent, and, subject to paragraph (h) above, it will have no further obligations under any Finance Document.
 - (j) The Majority Lenders may, by notice to the Facility Agent, require it to resign under paragraph (b) above.

18.14 Relationship with Lenders

- (a) The Facility Agent may treat each Lender as a Lender, entitled to payments under this Agreement and as acting through its Facility Office(s) until it has received not less than five Business Days' prior notice from that Lender to the contrary.
- (b) The Facility Agent may at any time, and must if requested to do so by the Majority Lenders, convene a meeting of the Lenders.
- (c) The Facility Agent must keep a record of all the Parties and supply any other Party with a copy of the record on request. The record will include each Lender's Facility Office(s) and contact details for the purposes of this Agreement.

18.15 Notice period

Where this Agreement specifies a minimum period of notice to be given to the Facility Agent, the Facility Agent may, at its discretion, accept a shorter notice period.

19. EVIDENCE AND CALCULATIONS

19.1 Accounts

Accounts maintained by a Finance Party in connection with this Agreement are prima facie evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

19.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under the Finance Documents will be, in the absence of manifest error, prima facie evidence of the matters to which it relates.

19.3 Calculations

Any interest or fee accruing under this Agreement accrues from day to day and is calculated on the basis of the actual number of days elapsed, a month of 30 days and a year of 360 days.

20. FEES

20.1 Arrangement fee

The Borrower must pay to Bank of China Limited, Panama Branch for the account of each Arranger an arrangement fee in the amount and manner agreed in the relevant Fee Letter.

20.2 Agency fee

The Borrower must pay to the Facility Agent for its own account an agency fee in the amount and manner agreed in the relevant Fee Letter.

20.3 Commitment fee

- (a) The Borrower must pay to the Facility Agent for each Lender a commitment fee computed at the rate of zero point seventy five per cent. (0.75%) per annum on the undrawn, uncanceled amount of each Lender's Commitment.
- (b) Accrued commitment fee is payable every six months in arrears, with the first commitment fee payment being due and payable on the date falling six months after the date of this Agreement. The accrued commitment fee is also payable to the Facility Agent for a Lender on the date such Lender's Commitment is cancelled in full.

21. INDEMNITIES AND BREAK COSTS

21.1 Indemnities

- (a) The Borrower must indemnify each Finance Party against any costs, expenses, losses or liabilities which that Finance Party incurs as a consequence of:
 - (i) the occurrence of any Event of Default; or
 - (ii) (other than by reason of fraud, negligence or default by that Finance Party) a Loan not being made after a Request has been delivered for that Loan; or
 - (iii) a Loan (or part of a Loan) not being prepaid in accordance with this Agreement.
- (b) The Borrower must indemnify the Facility Agent against any loss or liability incurred by the Facility Agent as a result of investigating any event which the Facility Agent reasonably believes to be a Default, provided that such losses or liabilities are incurred in good faith.
- (c) The relevant Finance Party shall supply to the Borrower copies of invoices or other documentary evidence showing such losses or liabilities in paragraphs (a) or (b) above.

21.2 Break Costs

- (a) The Borrower must pay to each Lender its Break Costs if a Loan or an overdue amount is repaid or prepaid otherwise than on the last day of any Interest Period applicable to it.
- (b) Break Costs are the amount (if any) determined by the relevant Lender by which:
 - (i) the interest which that Lender would have received for the period from the date of receipt of any part of its share in a Loan or an overdue amount to the last day of the applicable Interest Period for that Loan or overdue amount if the principal or overdue amount received had been paid on the last day of that Interest Period;

exceeds

- (ii) the amount which that Lender would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the appropriate interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Interest Period.
- (c) Each Lender must supply to the Facility Agent for the Borrower details of the amount of any Break Costs claimed by it under this Subclause.

22. EXPENSES

22.1 Initial costs

The Borrower must pay to each Arranger and the Facility Agent the amount of all costs and expenses (including legal fees) incurred by it in connection with the negotiation, preparation, printing, and entry into of the Finance Documents.

22.2 Subsequent costs

The Borrower must pay to the Facility Agent the amount of all costs and expenses (including legal fees) incurred by it in connection with:

- (a) the negotiation, preparation, printing and entry into of any Finance Document (other than a Transfer Certificate) entered into after the date of this Agreement; and
- (b) any amendment, waiver or consent requested by or on behalf of the Borrower or specifically allowed by a Finance Document.

22.3 Enforcement costs

The Borrower must pay to each Finance Party the amount of all costs and expenses (including legal fees) properly incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document within fifteen (15) Business Days of receipt of written notice from the Facility Agent, acting on behalf of such Finance Party or Finance Parties, setting forth the amount of such costs with supporting documentation.

23. AMENDMENTS AND WAIVERS

23.1 Procedure

- (a) Except as provided in this Clause, any term of the Finance Documents may be amended or waived with the agreement of the Borrower and the Majority Lenders. The Facility Agent may effect, on behalf of any Finance Party, an amendment or waiver allowed under this Clause.
- (b) The Facility Agent must promptly notify the other Parties of any amendment or waiver effected by it under paragraph (a) above. Any such amendment or waiver is binding on all the Parties.

23.2 Exceptions

- (a) An amendment or waiver which relates to:
 - (i) the definition of **Majority Lenders** in Clause 1.1 (Definitions);

- (ii) an extension of the date of payment of any amount to a Lender under the Finance Documents;
- (iii) a reduction in the Margin or a reduction in the amount of any payment or change in currency of principal, interest, fee or other amount payable to a Lender under the Finance Documents;
- (iv) an increase in, or an extension of, a Commitment or the Total Commitments;
- (v) a term of a Finance Document which expressly requires the consent of each Lender;
- (vi) the right of a Lender to assign or transfer its rights or obligations under the Finance Documents;
- (vii) any provision which would affect the extent, validity or enforceability of the Insurance Policy; or
- (viii) this Clause,

may only be made with the consent of all the Lenders.

- (b) An amendment or waiver which relates to the rights or obligations of an Administrative Party may only be made with the consent of that Administrative Party.
- (c) A Fee Letter may be amended or waived with the agreement of the relevant parties to it.

23.3 Change of currency

If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognised at the same time as the lawful currency of a country), the Finance Documents will be amended to the extent the Facility Agent (acting reasonably and after consultation with the Borrower) determines is necessary to reflect the change.

23.4 Waivers and remedies cumulative

The rights of each Finance Party under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

24. CHANGES TO THE PARTIES

24.1 Assignments and transfers by the Borrower

The Borrower may not assign or transfer any of its rights and obligations under the Finance Documents without the prior consent of all the Lenders.

24.2 Assignments and transfers by Lenders

Subject to the following provisions of this Clause, a Lender (the **Existing Lender**) may, at its own expense, at any time:

- (a) assign any of its rights; or
- (b) transfer by way of novation any of its rights or obligations under this Agreement,

to any other bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the **New Lender**), provided that such New Lender is either a Qualified Chinese Financial Institution or a Qualified Foreign Financial Institution.

24.3 Other conditions to assignment or transfer

- (a) The Facility Agent is not obliged to enter into a Transfer Certificate or otherwise give effect to an assignment or transfer until it has completed all customer due diligence requirements to its satisfaction. The Facility Agent must promptly notify the Existing Lender and the New Lender if there are any such requirements.
- (b) Unless the Facility Agent otherwise agrees, the New Lender must pay to the Facility Agent for its own account, on or before the date any assignment or transfer occurs, a fee of US\$3,000.
- (c) Any reference in this Agreement to a Lender includes a New Lender but excludes a Lender if no amount is or may be owed to or by it under this Agreement.

24.4 Procedure for assignment of rights

An assignment of rights will only be effective on receipt by the Facility Agent of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will, in relation to the assigned rights, assume obligations to the other Finance Parties equivalent to those it would have been under if it had been an Original Lender.

24.5 Procedure for transfer using a Transfer Certificate

- (a) In this Subclause:

Transfer Date means, in relation to a transfer, the later of:

- (i) the proposed Transfer Date specified in that Transfer Certificate; and
- (ii) the date on which the Facility Agent enters into that Transfer Certificate.

- (b) A transfer of rights or obligations using a Transfer Certificate will be effective if:

- (i) the Existing Lender and the New Lender deliver to the Facility Agent a duly completed Transfer Certificate; and
- (ii) the Facility Agent enters into it.

- (c) On the Transfer Date:

- (i) the New Lender will assume the rights and obligations of the Existing Lender expressed to be the subject of the novation in the Transfer Certificate in substitution for the Existing Lender;
 - (ii) the Existing Lender will be released from those obligations and cease to have those rights; and
 - (iii) the New Lender will become a Lender under this Agreement and be bound by the terms of this Agreement as Lender.
- (d) The Facility Agent must enter into a Transfer Certificate delivered to it and which appears on its face to be in order as soon as reasonably practicable and, as soon as reasonably practicable after it has entered into a Transfer Certificate, send a copy of that Transfer Certificate to the Borrower.
- (e) Each Party (other than the Existing Lender and the New Lender) irrevocably authorises the Facility Agent to enter into and deliver any duly completed Transfer Certificate on its behalf.

24.6 Limitation of responsibility of Existing Lender

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the financial condition of the Borrower; or
 - (ii) the legality, validity, effectiveness, enforceability, adequacy, accuracy, completeness or performance of:
 - (A) any Finance Document or any other document;
 - (B) any statement or information (whether written or oral) made in or supplied in connection with any Finance Document, or
 - (C) any observance by the Borrower of its obligations under any Finance Document or other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
- (i) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Finance Documents (including the financial condition and affairs of the Borrower and its related entities and the nature and extent of any recourse against any Party or its assets) in connection with its participation in this Agreement; and
 - (ii) has not relied exclusively on any information supplied to it by the Existing Lender in connection with any Finance Document.
- (c) Nothing in any Finance Document requires an Existing Lender to:
- (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause; or

- (ii) support any losses incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under any Finance Document or otherwise.

24.7 Costs resulting from change of Lender or Facility Office

If:

- (a) a Lender assigns or transfers any of its rights and obligations under the Finance Documents or changes its Facility Office; and
- (b) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower would be obliged to pay a Tax Payment or an Increased Cost, then unless the assignment or transfer is made at the request of the Borrower,

the Borrower need only pay that Tax Payment or Increased Cost to the same extent that it would have been obliged to if no assignment, transfer or change had occurred.

25. DISCLOSURE OF INFORMATION

- (a) Each Finance Party must keep confidential any information supplied to it by or on behalf of the Borrower in connection with the Finance Documents. However, a Finance Party is entitled to disclose information:
 - (i) which is publicly available, other than as a result of a breach by that Finance Party of this Clause;
 - (ii) in connection with any legal or arbitration proceedings;
 - (iii) if required to do so under any law or regulation;
 - (iv) to a governmental, banking, taxation or other regulatory authority;
 - (v) to its professional advisers;
 - (vi) to any rating agency;
 - (vii) to the extent allowed under paragraph (b) below; or
 - (viii) with the agreement of the Borrower.
- (b) A Finance Party may disclose to an Affiliate or any person (a **third party**) with (or through) whom that Finance Party enters into (or may enter into) any kind of transfer, participation or hedge agreement in relation to this Agreement or any other transaction under which payments are to be made by reference to this Agreement or the Borrower:
 - (i) a copy of any Finance Document; and
 - (ii) any information which that Finance Party has acquired under or in connection with any Finance Document.

However, before a third party may receive any confidential information, it must agree with the relevant Finance Party to keep that information confidential on the terms of paragraph (a) above as if it were a Finance Party.

- (c) This Clause supersedes any previous confidentiality undertaking given by a Finance Party in connection with this Agreement prior to it becoming a Party.

26. SET-OFF

A Finance Party may set off any matured obligation owed to it by the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation (whether or not matured) owed by that Finance Party to the Borrower, other than obligations of that Finance Party pursuant to this Agreement, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

27. PRO RATA SHARING

27.1 Redistribution

If a Finance Party (the **recovering Finance Party**) receives or recovers any amount from the Borrower other than in accordance with this Agreement (a **recovery**) and applies that amount to a payment due under a Finance Document, then:

- (a) the recovering Finance Party must, within three (3) Business Days, supply details of the recovery to the Facility Agent;
- (b) the Facility Agent must calculate whether the recovery is in excess of the amount which the recovering Finance Party would have received if the recovery had been received and distributed by the Facility Agent in accordance with this Agreement without taking account of any Tax which would be imposed on the Facility Agent in relation to a recovery or distribution; and
- (c) the recovering Finance Party must pay to the Facility Agent an amount equal to the excess (the **redistribution**).

27.2 Effect of redistribution

- (a) The Facility Agent must treat a redistribution as if it were a payment by the Borrower under this Agreement and distribute it among the Finance Parties, other than the recovering Finance Party, accordingly.
- (b) When the Facility Agent makes a distribution under paragraph (a) above, the recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in that redistribution.
- (c) If and to the extent that the recovering Finance Party is not able to rely on any rights of subrogation under paragraph (b) above, the Borrower will owe the recovering Finance Party a debt which is equal to the redistribution, immediately payable and of the type originally discharged.
- (d) If:
 - (i) a recovering Finance Party must subsequently return a recovery, or an amount measured by reference to a recovery, to the Borrower; and
 - (ii) the recovering Finance Party has paid a redistribution in relation to that recovery,

each Finance Party, on the request of the Facility Agent, must reimburse the recovering Finance Party all or the appropriate portion of the redistribution paid to that Finance Party, together with interest for the period while it held the redistribution. In this event, the subrogation in paragraph (b) above will operate in reverse to the extent of the reimbursement.

27.3 Exceptions

Notwithstanding any other provision of this Clause, a recovering Finance Party need not pay a redistribution to the extent that:

- (a) it would not, after the payment, have a valid claim against the Borrower in the amount of the redistribution; or
- (b) it would be sharing with another Finance Party any amount which the recovering Finance Party has received or recovered as a result of legal or arbitration proceedings, where:
 - (i) the recovering Finance Party notified the Facility Agent of those proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those proceedings but did not do so or did not take separate legal or arbitration proceedings as soon as reasonably practicable after receiving notice of them.

28. INSURANCES

The Borrower acknowledges that, according to the requirement of the Chinese Government, the Facility shall be covered by an export credit insurance policy to be issued by the Insurance Company and that pursuant to the Insurance Policy, the Insurance Company will have a right of subrogation against the Borrower to the extent of its payment of any claim under the Insurance Policy. Without prejudice to the Borrower's obligations otherwise under the Finance Documents (including, without limitation, the Borrower's payment obligations), the Borrower shall have the obligation to pay the premium and any other amounts required to be paid to the Insurance Company under the Insurance Policy in respect of the issuance of the Insurance Policy. The Borrower and the Lenders shall use their best efforts to cooperate to apply for and obtain the Insurance Policy.

29. SEVERABILITY

If a term of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of the Finance Documents; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of the Finance Documents.

30. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

31. NOTICES

31.1 In writing

- (a) Any communication in connection with a Finance Document must be in writing and, unless otherwise stated, may be given in person, by registered post or fax.
- (b) Any consent or agreement required under a Finance Document must be given in writing and in accordance with this Clause 31.

31.2 Contact details

- (a) Except as provided below, the contact details of each Party for all communications in connection with the Finance Documents are those notified by that Party for this purpose to the Facility Agent on or before the date it becomes a Party.
- (b) The contact details of the Borrower for this purpose are:
- (c) Address: Av. 10 de Agosto 1661 y Bolivia
- (d) Attention: Minister of Finance
- (e) The contact details of the Facility Agent for this purpose are:
 - Address: P.O. BOX 0823-01030
Panama 7, Panama
Calle Manuel M. Icaza No 14
Panama, Rep. of Panama
 - Tel: +507 2635522
 - Attention: Cheng Dong
 - E-mail: Email.dcheng@pa.bocusa.com
- (f) Any Party may change its contact details by giving five (5) Business Days' notice to the Facility Agent or (in the case of the Facility Agent) to the other Parties.
- (g) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

31.3 Effectiveness

- (a) Except as provided below, any communication in connection with a Finance Document will be deemed to be given as follows:
 - (i) if delivered in person, at the time of delivery;
 - (ii) if posted, ten (10) Business Days after being deposited in the post, postage prepaid, in a correctly addressed envelope; and
 - (iii) if by fax, when received in legible form.
- (b) A communication given under paragraph (a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

31.4 The Borrower

All formal communication under the Finance Documents to or from the Borrower must be sent through the Facility Agent.

32. LANGUAGE

- (a) Any notice given in connection with a Finance Document must be in English.
- (b) Any other document provided in connection with a Finance Document must be:
 - (i) in English; or
 - (ii) (unless the Facility Agent otherwise agrees) accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other official document.

33. GOVERNING LAW

This Agreement and any contractual obligations arising out of it are governed by English law.

34. ENFORCEMENT

34.1 Submission to Arbitration

- (a) Any contractual dispute, claim, difference or controversy of any nature whatsoever arising out of this Agreement or any other Finance Documents, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity (a “**Dispute**”), shall be referred to and finally resolved by arbitration by the London Court of International Arbitration (the “**LCIA**”) under the LCIA Arbitration Rules (the “**Rules**”). The Parties expressly agree not to commence legal proceedings in any court in respect of a matter which, under the arbitration agreement contained in this Clause 34, is to be referred to arbitration
- (b) The Rules are incorporated by reference into this Clause and capitalised terms used in this Clause which are not otherwise defined in this Agreement have the meaning given to them in the Rules.
- (c) The number of arbitrators shall be three (3). In relation to any Dispute to which the Borrower is a party, the Borrower and the Facility Agent shall each nominate one arbitrator for appointment by the LCIA, and the LCIA shall appoint the third arbitrator who shall act as chairman. In relation to any Dispute to which the Borrower is not a party, the claimants shall collectively nominate one arbitrator for appointment by the LCIA, and the respondents shall collectively nominate one arbitrator for appointment by the LCIA, and the LCIA shall appoint the third arbitrator who shall act as chairman.
- (d) The seat or legal place of arbitration shall be London.
- (e) The language used in the arbitral proceedings shall be English.

34.2 Immunity

- (a) The Borrower agrees that the Borrower and the Borrower's other assets which do not constitute Immune Property (as defined below) are subject to, and available for, the

Proceedings (as defined below) and the Borrower undertakes not to invoke any defense on the basis of sovereign immunity, for itself and/or its other assets which do not constitute Immune Property with regard to any Proceedings. In addition, the Borrower expressly acknowledges and agrees that this Agreement and each other Finance Document constitutes external public debt of Ecuador and that therefore in accordance with Article 130 of the Organic Code of Planning and Public Finance (*Código Orgánico de Planificación y Finanzas Públicas*) (and/or such other successor provision of Ecuadorian law as it may be titled from time to time), all revenues of Ecuador back the obligations of the Borrower.

- (b) Notwithstanding paragraph (a) above or the representation of the Borrower in Clause 14.11 (Commercial Activity), the following assets of the Borrower, wherever located (the "**Immune Property**"), shall be entitled to immunity, whether characterized as sovereign immunity, immunity from enforcement or relief pursuant to section 13(2) of the State Immunity Act 1978 or other similar provisions or analogous legislation or otherwise, from any execution on judgment, enforcement of arbitral award, set-off, attachment prior to judgment, attachment in aid of execution to which the Borrower or its assets may be entitled in any legal action or proceedings or arbitral proceedings with respect to this Agreement or any other Finance Document or any of the transactions contemplated by this Agreement or any other Finance Document (the foregoing, together with any suit, jurisdiction of any arbitration institution or arbitral tribunal, judgment, arbitral award, service of process upon the Borrower or any agent of the Borrower with respect to this Agreement or any other Finance Document or any of the transactions contemplated by this Agreement or any other Finance Document, are collectively the "**Proceedings**"):
- (i) property, including any bank account, which is used or designated for use in the performance of the functions of the diplomatic mission of Ecuador or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;
 - (ii) aircraft, naval vessels and other property of a military character or used or designated for use in the performance of military functions;
 - (iii) unexploited natural resources in Ecuador;
 - (iv) property forming part of the cultural heritage of Ecuador or part of its archives; or
 - (v) any other asset of Ecuador to the maximum extent protected under the laws of Ecuador in effect on the date hereof.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
ORIGINAL PARTIES

Name of Original Lender	Commitments
Bank of China Limited, Panama Branch	USD218,375,103.63
Deutsche Bank AG, Hong Kong Branch	USD93,589,330.00

Payment instructions:

Corr. Bank: Deutsche Bank Trust Company
Americas, New York

SWIFT: BKTRUS33/ABA: 021001033

Beneficiary Bank: Deutsche Bank AG, Hong
Kong (SWIFT: DEUTHKHH)

Beneficiary Bank A/C No.: 04411245

A/C Name: WORKING A/C – RE: LOAN
●OPERATIONS

A/C No.: ●190231●5●

Total Commitments

US\$311,964,433.63

SCHEDULE 2
COMMERCIAL CONTRACTS

Project Name	Date of Commercial Contract	Amount of Commercial Contract
Reconstruction of the Tonchigue-Galera-Bunche Highway with a length of approximately 54 kilometres, including inventory evaluation of existing bridges located in the canton of Muisne in Esmeraldas province	July 2, 2014	US\$15,577,217.48
Widening, rectification and improvement of the 8 kilometre Highway (Bahia) and 20 kilometre Highway (La Margarita)	July 2, 2014	US\$46,673,690.32
Rehabilitation and maintenance of the Chone-Canuto-Calaceta-Junin-Pimpiguan Highway, including the lateral segment of Junin and bridges	July 2, 2014	US\$32,740,738.38
Geometric correction of traffic distributor and augmentation of progress outline marker	July 2, 2014	US\$3,175,103.57
Rehabilitation and widening of the 8 kilometre San Vicente-Macul, Long road, including bridges located in the canton of Balzar in Guayas province	July 2, 2014	US\$4,125,154.59
Construction of the San Carlos-La Joya-Abdon Calderon Highway located in the canton of Balao in Guayas province	July 2, 2014	US\$3,612,262.48
Maintenance and improvement of the Cuenca-Giron-Passage of Los Tramos Elsalado-Lentag and San Francisco Passage Highway	July 2, 2014	US\$31,262,479.89
Construction of the Sigsig-Matanga-Chiguinda-Gualaquiza Highway (including lateral passage)	July 2, 2014	US\$65,472,913.25
Reconstruction and maintenance of the Catamayo-Gonzanama-Caramanga-Sozoranga-Macara Highway	July 2, 2014	US\$151,573,949.15
Reconstruction of the Ceuca-Cruzpamba-“Y” of Death Highway	July 2, 2014	US\$12,803,471.63

	Total	US\$367,016,980.74
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SCHEDULE 3

CONDITIONS PRECEDENT DOCUMENTS

1. Certified true copies of documentary evidence of the authority of each person who (i) has signed each Finance Document on behalf of the Borrower and (ii) will sign the statements, financial reports, account certificates in relation to the Disbursement Account and other documents required by any Finance Document on behalf of the Borrower or the Central Bank and will otherwise act as a representative of the Borrower or the Central Bank in relation to the implementation of the Finance Documents (such documentary evidence to be satisfied through the authenticated specimen signature of and certificate of incumbency and power of attorney or any instrument whereby authority is delegated in respect of each person described above);
2. Each of the following Finance Documents duly executed by the parties to it:
 - (a) this Agreement; and
 - (b) each Fee Letter;
3. A certified true copy of each Commercial Contract duly executed by the Project Owner and the EPC Contractor, and evidence that each Commercial Contract has come into effect, and certified true copies of any other documents in connection with any Commercial Contract as may be reasonably required by the Lender from time to time;
4. All documents evidencing that the US\$55,052,547.11 of down payments (being fifteen per cent (15%) of the Commercial Contract Amount) under the Commercial Contracts has been paid to the EPC Contractor;
5. Certified true copies of all approvals, consents and authorisation by the governmental authorities of Ecuador which are required under the laws and regulations of Ecuador approving the borrowing by the Borrower under this Agreement or in respect of the execution, delivery and the performance of the Finance Documents, including:
 - (a) declaration of priority of the Project by the National Secretariat on Planning and Development of Ecuador (*Secretaria Nacional de Planificación y Desarrollo*), SENPLADES;
 - (b) approval by the General Attorney's Office of Ecuador (*Procuraduría General del Estado*) in respect of the submission to arbitration by the LCIA under the Rules; and
 - (c) resolution whereby the Financing and Debt Committee of Ecuador (*Comité de Deuda y Financiamiento*) authorizes the Borrower to incur the indebtedness under and to enter into, this Agreement and the Fee Letter(s) to which the Borrower is a party;
6. Certified true copies of all filing, registration and recording of this Agreement and any other documents with any governmental agency, court, public office or other authority required under the laws and regulations of Ecuador to ensure the validity, legality and enforceability of such documents, including registration of this Agreement with the Ministry of Finance of Ecuador (*Ministerio de Finanzas*);