

EXECUTION VERSION

FACILITY AGREEMENT

DATED 31 July 2013

US\$298,880,591.93

CREDIT FACILITY

FOR

THE REPUBLIC OF ECUADOR

represented by

THE MINISTRY OF FINANCE OF THE GOVERNMENT OF THE REPUBLIC OF ECUADOR

ARRANGED BY

BANK OF CHINA LIMITED, BEIJING BRANCH

AND

DEUTSCHE BANK (CHINA) CO., LTD, BEIJING BRANCH

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THIS AGREEMENT is dated 31 July 2013 and is made BETWEEN:

- (1) THE REPUBLIC OF ECUADOR represented by THE MINISTRY OF FINANCE OF THE GOVERNMENT OF THE REPUBLIC OF ECUADOR (the **Borrower**);
- (2) BANK OF CHINA LIMITED, BEIJING BRANCH as mandated lead arranger (in this capacity the **Mandated Lead Arranger**) and DEUTSCHE BANK (CHINA) CO., LTD, BEIJING BRANCH as lead arranger (in this capacity the **Lead Arranger** and, together with the Mandated Lead Arranger, the **Arrangers**);
- (3) THE FINANCIAL INSTITUTIONS listed in Schedule 1 (Original Parties) as original lenders (the **Original Lenders**); and
- (4) BANK OF CHINA LIMITED, PANAMA BRANCH as facility agent (in this capacity the **Facility Agent**).

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

Account Bank means Bank of China Limited, Panama Branch or any other account bank approved by the Facility Agent (acting on the instructions of all the Lenders).

Administrative Party means each Arranger or the Facility Agent.

Affiliate means a Subsidiary or a Holding Company of a person or any other Subsidiary of that Holding Company.

Availability Period means the period from and including the date of this Agreement to and including the date falling forty-eight (48) months after the date of this Agreement.

Break Costs means the amount (if any) which a Lender is entitled to receive under Subclause 21.2 (Break Costs).

Business Day means a day (other than a Saturday or a Sunday) on which banks are open for general business in Beijing, Hong Kong, Quito and (in relation to any day for payment or purchase of US Dollars) New York City.

Central Bank means the Central Bank of the Republic of Ecuador.

China means the People's Republic of China, excluding, for the purposes of this Agreement, the Hong Kong Special Administrative Region, the Macau Special Administrative Region and Taiwan Province.

Code means the US Internal Revenue Code of 1986.

Commitment means:

- (a) for an Original Lender, the amount set opposite its name in Schedule 1 (Original Parties) under the heading **Commitments** and the amount of any other Commitment it acquires; and

- (b) for any other Lender, the amount of any Commitment it acquires,
to the extent not cancelled, transferred or reduced in accordance with this Agreement.

Commercial Contract means:

- (a) the contract between the Project Company and the EPC Contractor dated 8 August 2012 (contract number 2012-061) in relation to *CONSTRUCCIÓN DEL SISTEMA DE CONTROL DE INUNDACIONES NARANJAL*; or
- (b) the contract between the Project Company and the EPC Contractor dated 9 August 2012 (contract number 2012-062) in relation to *CONSTRUCCIÓN DEL SISTEMA DE CONTROL DE INUNDACIONES CAÑAR*,

and Commercial Contracts means both of them.

Commercial Contract Amount means the total amount payable by the Project Company to the EPC Contractor under the Commercial Contracts, which in aggregate is US\$351,624,225.80.

Default means:

- (a) an Event of Default; or
- (b) an event or circumstance which would be (with the expiry of a grace period, the giving of notice or the making of any determination under the Finance Documents or any combination of them) an Event of Default.

Disbursement Account means an account opened by the Central Bank with the Account Bank for the purpose of receiving disbursements of the proceeds of the Loans under this Agreement.

Ecuador means the Republic of Ecuador.

EPC Contractor means China International Water & Electric Corporation (中国水利电力对外公司).

EPC Contractor Account means an account opened by the EPC Contractor with the Facility Agent or a bank approved by the Facility Agent, which account is designated by the EPC Contractor for the purpose of receiving payments under or in connection with the Commercial Contracts.

Event of Default means an event or circumstance specified as such in Clause 17 (Default).

External Indebtedness means any indebtedness which is:

- (a) by its terms repayable more than one (1) year from the date incurred; and
- (b) payable to a person domiciled, resident or having its head office or principal place of business outside Ecuador.

Facility means the credit facility denominated in US Dollars made available under this Agreement.

Facility Office means the office(s) notified by a Lender to the Facility Agent on or before the date it becomes a Lender, or such other office that a Lender may designate from time to time as the office(s) through which it will perform its obligations under this Agreement by not less than five (5) Business Days' notice to the Facility Agent.

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

FATCA Deduction means a deduction or withholding from a payment under a Finance Document required by FATCA.

FATCA Exempt Party means a Party that is entitled to receive payments free from any FATCA Deduction.

FATCA FFI means a foreign financial institution as defined in section 1471(d)(4) of the Code which, if any Finance Party is not a FATCA Exempt Party, could be required to make a FATCA Deduction.

Fee Letter means a letter entered into by reference to this Agreement between an Administrative Party and the Borrower setting out the amount of the arrangement fee referred to in this Agreement in a form agreed between the relevant Administrative Party and the Borrower prior to the date of this Agreement.

Final Maturity Date means the date falling one hundred and sixty-eight (168) months after the date of this Agreement.

Finance Document means:

- (a) this Agreement;
- (b) a Fee Letter;
- (c) a Transfer Certificate; or
- (d) any other document designated as such by the Facility Agent and the Borrower (and in relation to which the Borrower shall only make such designation if the execution of such document shall have been approved in accordance with applicable law).

Finance Party means a Lender or an Administrative Party.

Holding Company of any other person, means a person in respect of which that other person is a Subsidiary.

Increased Cost means:

- (a) an additional or increased cost;
- (b) a reduction in the rate of return from a Facility or on a Finance Party's overall capital; or
- (c) a reduction of an amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party but only to the extent attributable to that Finance Party having entered into any Finance Document or funding or performing its obligations under any Finance Document.

Insurance Agreement means the insurance agreement entered into or to be entered into by and between the Facility Agent and the Insurance Company.

Insurance Company means China Export & Credit Insurance Corporation.

Insurance Policy means the Export Credit Insurance Policy (together with all corresponding endorsements, if any) issued or to be issued by the Insurance Company to cover certain of the Borrower's payment obligations under this Agreement, with the Facility Agent as beneficiary and loss payee for and on behalf of the Lenders, which is in form and substance acceptable to the Lenders.

Interest Period means each period determined under this Agreement by reference to which interest on a Loan or an overdue amount is calculated, as determined in accordance with Clause 9 (Interest Periods) and Clause 8.3(b) (Interest on overdue amounts).

Lender means:

- (a) an Original Lender; or
- (b) any person which becomes a Party in accordance with Clause 24.2 (Assignments and transfers by Lenders).

LIBOR means for an Interest Period of any Loan or overdue amount:

- (a) the applicable Screen Rate; or
- (b) if no Screen Rate is available for the relevant currency or Interest Period of that Loan or overdue amount, the arithmetic mean (rounded upward to four decimal places) of the rates, as supplied to the Facility Agent at its request, quoted by the Reference Banks to leading banks in the London interbank market,

as of 11.00 a.m. (London time) on the Rate Fixing Day for the offering of deposits in the currency of that Loan or overdue amount for a period comparable to that Interest Period.

Loan means, unless otherwise stated in this Agreement, the principal amount of each borrowing under this Agreement or the principal amount outstanding of that borrowing.

London Business Day means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.

Majority Lenders means, at any time, Lenders:

- (a) whose share in the outstanding Loans and whose undrawn Commitments then aggregate $66\frac{2}{3}$ per cent. or more of the aggregate of all the outstanding Loans and the undrawn Commitments of all the Lenders;
- (b) if there is no Loan then outstanding, whose undrawn Commitments then aggregate $66\frac{2}{3}$ per cent. or more of the Total Commitments; or
- (c) if there is no Loan then outstanding and the Total Commitments have been reduced to zero, whose Commitments aggregated $66\frac{2}{3}$ per cent. or more of the Total Commitments immediately before the reduction.

Margin means 3.50% per annum.

Material Adverse Effect means a material adverse effect on:

- (a) the assets, operations or financial or other conditions of the Borrower;
- (b) the ability of the Borrower to perform its obligations under any Finance Document;
- (c) the validity or enforceability of any Finance Document; or
- (d) any right or remedy of a Finance Party in respect of a Finance Document.

Party means a party to this Agreement.

Pro Rata Share means:

- (a) for the purpose of determining a Lender's share in a utilisation of the Facility, the proportion which its Commitment bears to the Total Commitments; and
- (b) for any other purpose on a particular date:
 - (i) the proportion which a Lender's share of the Loans (if any) bears to all the Loans;
 - (ii) if there is no Loan outstanding on that date, the proportion which its Commitment bears to the Total Commitments on that date; or
 - (iii) if the Total Commitments have been cancelled, the proportion which its Commitment bore to the Total Commitments immediately before being cancelled.

Project means, collectively, CONSTRUCCIÓN DEL SISTEMA DE CONTROL DE INUNDACIONES NARANJAL and CONSTRUCCIÓN DEL SISTEMA DE CONTROL DE INUNDACIONES CAÑAR.

Project Company means Secretaria Nacional del Agua, SENAGUA.

Project Financing means any financing of all or part of the costs of the acquisition, construction or development of any properties in connection with a project if the person or persons providing such financing expressly agree to look to the properties financed and the revenues to be generated by the operation of, or loss of or damage to, such properties as the principal source of repayment for the moneys advanced.

Qualified Chinese Financial Institution means a bank or other financial institution that:

- (a) is duly established in China; and
- (b) holds all of the requisite licenses, permits and approvals from the China Banking Regulatory Commission or any other governmental authorities which are necessary for the conduct of its business and performance of its obligations under this Agreement.

Qualified Foreign Financial Institution means a bank or other financial institution that:

- (a) is duly established in a jurisdiction other than China; and
- (b) holds all of the requisite licenses, permits and approvals from governmental authorities in its jurisdiction of establishment which are necessary for the conduct of its business and performance of its obligations under this Agreement.

Rate Fixing Day means the second London Business Day before the first day of an Interest Period.

Reference Banks means the principal London offices of the Facility Agent, Deutsche Bank, Citibank, N.A. and HSBC Bank plc and any other bank or financial institution with a foreign long term credit rating from Standard & Poor's equal to or better than "A", appointed as such by the Facility Agent in accordance with this Agreement.

Relevant Indebtedness means the indebtedness of the Borrower

- (a) under the Borrower's 12 per cent. US Dollar denominated global bonds due 2012; and
- (b) under the Borrower's US Dollar denominated step-up global bonds due 2030,

in each case, as disclosed to the Mandated Lead Arranger on or before the date of this Agreement.

Repayment Commencement Date means the date falling forty-eight (48) months after the date of this Agreement.

Repayment Date means each date on which a Repayment Instalment is due under this Agreement.

Repayment Instalment means each scheduled instalment for repayment of the Loans.

Repeating Representations means at any time the representations and warranties which are then made or deemed to be repeated under Clause 14.15 (Times for making representations and warranties).

Request means a request for a Loan, substantially in the form of Schedule 3 (Form of Request).

Screen Rate means the British Bankers Association Interest Settlement Rate for US Dollars and the relevant Interest Period displayed on the appropriate page of the Reuters screen selected by the Facility Agent. If:

- (a) the British Banks Association Interest Settlement Rate is no longer displayed on the relevant page, the Facility Agent may specify a replacement rate (including one provided by a different sponsor); and
- (b) the relevant page is replaced or the service ceases to be available, the Facility Agent may specify another page or service displaying the appropriate rate,

in each case, after consultation with the Borrower and the Lenders.

Security Interest means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect.

Subsidiary means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest).

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

Tax Payment means a payment made by the Borrower to a Finance Party in any way relating to a Tax Deduction or under any indemnity given by the Borrower in respect of Tax under any Finance Document.

Total Commitments means the aggregate of the Commitments of all the Lenders, which is US\$298,888,591.93, being equal to eighty-five per cent. (85%) of the Commercial Contract Amount.

Transfer Certificate means a certificate, substantially in the form of Schedule 4 (Form of Transfer Certificate), with such amendments as the Facility Agent may approve or reasonably require or any other form agreed between the Facility Agent and the Borrower.

US\$ or US Dollars means the lawful currency for the time being of the United States of America.

US Dollar Equivalent means the equivalent in US Dollars of an amount in another currency, calculated using the rate of exchange published by Bloomberg (or any other replacement institution agreed between the Facility Agent and the Borrower) on the date on which the obligation to pay such amounts is incurred.

US Tax Obligor means a person:

- (a) which is resident for tax purposes in the United States of America; or
- (b) some or all of whose payments under the Finance Documents are from sources within the United States for US federal income tax purposes.

Utilisation Date means each date on which the Facility is utilised.

1.2 Construction

- (a) In this Agreement, unless the contrary intention appears, a reference to:
 - (i) an **amendment** includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and **amended** will be construed accordingly;
 - (ii) **assets** includes present and future properties, revenues and rights of every description;
 - (iii) an **authorisation** includes an authorisation, consent, approval, resolution, permit, licence, exemption, filing, registration or notarisation;
 - (iv) **disposal** means a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and **dispose** will be construed accordingly;
 - (v) **indebtedness** includes any obligation (whether incurred as principal or as surety and whether present or future, actual or contingent) for the payment or repayment of money;
 - (vi) **customer due diligence requirements** are to the identification checks that a Finance Party requests in order to meet its obligations under any applicable law or regulation to identify a person who is (or is to become) its customer;

- (vii) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
 - (viii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (ix) a currency is a reference to the lawful currency for the time being of the relevant country;
 - (x) a Default being **outstanding** means that it has not been remedied or waived;
 - (xi) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
 - (xii) a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Agreement;
 - (xiii) a Party, the EPC Contractor, the Project Company or any other person includes its successors in title, permitted assigns and permitted transferees;
 - (xiv) a Finance Document, a Commercial Contract or other document or security includes (without prejudice to any prohibition on amendments) any amendment to that Finance Document or other document or security, including any change in the purpose of, any extension for or any increase in the amount of a facility or any additional facility; and
 - (xv) a time of day is a reference to Beijing time, unless otherwise specified.
- (b) Unless the contrary intention appears, a reference to a **month** or **months** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
- (i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
 - (ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and
 - (iii) notwithstanding subparagraph (i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.
- (c) Unless expressly provided to the contrary in a Finance Document, a person who is not a party to a Finance Document may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and, notwithstanding any term of any Finance

Document, no consent of any third party is required for any amendment (including any release or compromise of any liability) or termination of any Finance Document.

(d) Unless the contrary intention appears:

- (i) a reference to a Party will not include that Party if it has ceased to be a Party under this Agreement;
- (ii) a word or expression used in any other Finance Document or in any notice given in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement; and
- (iii) any obligation of the Borrower under the Finance Documents which is not a payment obligation remains in force for so long as any payment obligation of the Borrower is, may be or is capable of becoming outstanding under the Finance Documents.

(e) The headings in this Agreement do not affect its interpretation.

2. FACILITY

2.1 Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility in an aggregate amount equal to the Total Commitments.

2.2 Nature of a Finance Party's rights and obligations

Unless all the Finance Parties agree otherwise:

- (a) the obligations of a Finance Party under the Finance Documents are several;
- (b) failure by a Finance Party to perform its obligations does not affect the obligations of any other Finance Party under the Finance Documents;
- (c) no Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents;
- (d) the rights of a Finance Party under the Finance Documents are separate and independent rights;
- (e) a Finance Party may, except as otherwise stated in the Finance Documents, separately enforce those rights; and
- (f) a debt arising under the Finance Documents to a Finance Party is a separate and independent debt.

2.3 The Borrower and the Commercial Contracts

- (a) The Borrower's obligations (including, without limitation, its payment obligations) under any Finance Document are not:
 - (i) subject to or dependent upon the execution or performance by the EPC Contractor or any other person of its obligations under any Commercial Contract; or

(ii) affected by the following:

- (A) any dispute under any Commercial Contract or any claim which the Project Company, the Borrower or the EPC Contractor or any other person may have against, or consider that it has against, any person under any Commercial Contract;
- (B) the insolvency or dissolution of the EPC Contractor;
- (C) the EPC Contractor being subject to an amalgamation, demerger, merger or reconstruction;
- (D) any unenforceability, illegality or invalidity of any obligation of any person under any Commercial Contract or any documents or agreements relating to any Commercial Contract; or
- (E) the breach, frustration or non-fulfilment of any provision of any Commercial Contract or any documents or agreements related thereto,

and the Borrower acknowledges that the foregoing is an essential condition of each Lender's entry into this Agreement, and accordingly, by advancing the full amount of its Commitment (subject to and in accordance with the terms and conditions of this Agreement) each Lender shall have fulfilled its funding obligations under this Agreement.

- (b) Without prejudice to the generality of paragraph (a) above, the Borrower agrees that it will not claim to be relieved of the performance of any of its obligations under any Finance Document by reason of any failure, delay or default whatsoever on the part of the EPC Contractor or the Project Company in the performance of its obligations under any Commercial Contract.

3. PURPOSE

3.1 Loans

Each Loan may only be used for the payment of eighty-five per cent. (85%) of the Commercial Contract Amount.

3.2 No obligation to monitor

No Finance Party is bound to monitor or verify the utilisation of the Facility.

4. CONDITIONS PRECEDENT

4.1 Conditions precedent documents

- (a) A Request may not be given until the Facility Agent has notified the Borrower and the Lenders that it has received (or waived receipt of) all of the documents and evidence set out in Schedule 2 (Conditions precedent documents) in form and substance satisfactory to the Facility Agent.
- (b) The Facility Agent must give this notification to the Borrower and the Lenders promptly upon being so satisfied.

4.2 Further conditions precedent

The obligations of each Lender to participate in any Loan are subject to the further conditions precedent that on both the date of the Request and the Utilisation Date for that Loan:

- (a) the Repeating Representations are correct in all material respects; and
- (b) no Default is outstanding or would result from the Loan.

5. UTILISATION

5.1 Giving of Requests

- (a) The Borrower may borrow a Loan by giving to the Facility Agent a duly completed Request.
- (b) Unless the Facility Agent otherwise agrees, the latest time for receipt by the Facility Agent of a duly completed Request is 11.00 a.m. three (3) Business Days before the Rate Fixing Day for the proposed borrowing.
- (c) Each Request is irrevocable.

5.2 Completion of Requests

A Request for a Loan will not be regarded as having been duly completed unless:

- (a) the Utilisation Date is a Business Day falling within the Availability Period;
- (b) the amount of the Loan requested is:
 - (i) a minimum of US\$1,000,000 and an integral multiple of US\$1,000,000;
 - (ii) the maximum undrawn amount available under the Facility on the proposed Utilisation Date; or
 - (iii) such other amount as the Facility Agent may agree; and
 - (iv) is no more than the amount payable by the Project Company and documented in the invoice(s) referred to in paragraph (f) below;
- (c) it specifies the Disbursement Account as the account into which the proceeds of the Loan are to be paid;
- (d) it attaches an instruction by the Central Bank to the Account Bank to transfer the proceeds of the Loan into the EPC Contractor Account in accordance with Clause 5.4 (d);
- (e) it attaches a copy of an invoice in respect of the amounts due and payable under a Commercial Contract to be funded by the Loan.

Only one Loan may be requested in a Request.

5.3 Advance of Loan

- (a) The Facility Agent must promptly notify each Lender of the details of the requested Loan and the amount of its share in that Loan.
- (b) The amount of each Lender's share of the requested Loan will be its Pro Rata Share on the proposed Utilisation Date.
- (c) No Lender is obliged to participate in a Loan if, as a result:
 - (i) its share in the Loans would exceed its Commitment; or
 - (ii) the Loans would exceed the Total Commitments.
- (d) If the conditions precedent set out in Clause 4 (Conditions Precedent) and the utilisation requirements set out in this Clause 5 have been satisfied, each Lender must make its share in the requested Loan available to the Facility Agent for the Borrower through its Facility Office on the Utilisation Date.

5.4 Disbursement Account

- (a) The Borrower shall cause the Disbursement Account opened in the name of the Central Bank with the Account Bank and the Borrower shall be the sole beneficial owner of the Disbursement Account and all amounts standing to the credit of the Disbursement Account.
- (b) The Borrower shall not, and shall procure the Central Bank shall not, unless approved by the Facility Agent (acting on the instructions of all the Lenders), close the Disbursement Account or change the account to another bank or financial institution. If at any time after the end of the Disbursement Period the Disbursement Account has a zero balance, the parties agree that the Disbursement Account shall be promptly closed by the Borrower or the Central Bank without prior approval by the Facility Agent.
- (c) The Borrower shall not, and shall procure the Central Bank shall not, make any withdrawals from the Disbursement Account other than to make payments to the EPC Contractor Account in accordance with Clause 3.1 (Loans).
- (d) The Borrower shall procure that the Central Bank instructs the Account Bank to transfer the proceeds of each Loan to the EPC Contractor Account no later than the next Business Day after the disbursement into the Disbursement Account and to provide all documentation required in connection with the transfer.
- (e) Neither the ability of the Borrower or the Central Bank to make any withdrawal from the Disbursement Account in accordance with this Agreement nor any such withdrawal will be construed as a waiver by any Lender of any right over or in the proceeds of the disbursement Account after giving effect to such withdrawal.

6. REPAYMENT

- (a) The Borrower must repay the Loans in full by twenty (20) approximately equal semi-annual instalments.
- (b) The first Repayment Instalment must be repaid on the date falling six (6) months after the Repayment Commencement Date, and subsequent Repayment Instalments must

be repaid at six-monthly intervals from that date. The final Repayment Instalment must be repaid on the Final Maturity Date.

7. PREPAYMENT AND CANCELLATION

7.1 Mandatory prepayment – illegality

- (a) A Lender must notify the Facility Agent and the Borrower promptly if it becomes aware that it is unlawful in any applicable jurisdiction for that Lender to perform any of its obligations under a Finance Document or to fund or maintain its share in any Loan.
- (b) After notification under paragraph (a) above the Facility Agent must notify the Borrower promptly that:
 - (i) the Borrower must repay or prepay the share of that Lender in each Loan on the date specified in paragraph (c) below; and
 - (ii) the Commitment of that Lender will be immediately cancelled.
- (c) The date for repayment or prepayment of a Lender's share in a Loan will be:
 - (i) the last day of the current Interest Period of that Loan; or
 - (ii) if earlier, the date specified by the Lender in the notification under paragraph (a) above and which must not be earlier than the last day of any applicable grace period allowed by law.
- (d) The relevant Lender and the Borrower shall, in consultation with each other, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, this Clause 7.1. This paragraph (d) does not in any way limit the obligations of the Borrower under this Agreement.

7.2 Voluntary prepayment

- (a) The Borrower may, by giving not less than ten (10) Business Days' prior notice to the Facility Agent, prepay any Loan at any time after the Repayment Commencement Date in whole or in part.
- (b) A prepayment of part of a Loan must be in a minimum amount of US\$5,000,000 and an integral multiple of US\$1,000,000.
- (c) Any prepayment under this Agreement shall reduce the amount of repayment instalments of the Loans in inverse order of maturity.

7.3 Automatic cancellation

The Commitment of each Lender will be automatically cancelled at the close of business on the last day of the Availability Period.

7.4 Voluntary cancellation

- (a) The Borrower may, by giving not less than five (5) Business Days' prior notice to the Facility Agent, cancel the unutilised amount of the Total Commitments in whole or in part.
- (b) Partial cancellation of the Total Commitments must be in a minimum amount of US\$5,000,000 and an integral multiple of US\$1,000,000.
- (c) Any cancellation in part will be applied against the Commitment of each Lender pro rata.

7.5 Right of repayment and cancellation of a single Lender

- (a) If the Borrower is, or will be, required to pay to a Lender:
 - (i) a Tax Payment; or
 - (ii) an Increased Cost,

the Borrower may, while the requirement continues, give notice to the Facility Agent requesting prepayment and cancellation in respect of that Lender.
- (b) After notification under paragraph (a) above:
 - (i) the Borrower must repay or prepay that Lender's share in each Loan on the date specified in paragraph (c) below; and
 - (ii) the Commitment of that Lender will be immediately cancelled.
- (c) The date for repayment or prepayment of a Lender's share in a Loan will be:
 - (i) the last day of the current Interest Period for that Loan; or
 - (ii) if earlier, the date specified by the Borrower in its notification.

7.6 Partial prepayment of Loans

- (a) Except where this Clause expressly provides otherwise, any partial prepayment of a Loan will be applied against the remaining Repayment Instalments in inverse order of maturity.
- (b) Any voluntary prepayment of a Loan under Clause 7.2 (Voluntary prepayment) will be applied against the remaining Repayment Instalments in inverse order of maturity.
- (c) No amount of a Loan prepaid under this Agreement may subsequently be re-borrowed.

7.7 Miscellaneous provisions

- (a) Any notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date(s) and the affected Loans and Commitments. The Facility Agent must notify the Lenders promptly of receipt of any such notice.
- (b) All prepayments under this Agreement must be made with accrued interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment except for Break Costs.

- (c) The Majority Lenders may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.
- (d) No prepayment or cancellation is allowed except in accordance with the express terms of this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may subsequently be reinstated.

8. INTEREST

8.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum equal to the aggregate of the applicable:

- (a) Margin; and
- (b) LIBOR.

8.2 Payment of interest

Except where it is provided to the contrary in this Agreement, the Borrower must pay accrued interest on each Loan on the last day of each Interest Period.

8.3 Interest on overdue amounts

- (a) If the Borrower fails to pay any amount payable by it under the Finance Documents (excluding, to the extent not permissible under Ecuadorian law or regulation, any interest accrued on the Loan), it must immediately on demand by the Facility Agent pay interest on the overdue amount from its due date up to the date of actual payment, both before, on and after judgment.
- (b) Interest on an overdue amount is payable at a rate determined by the Facility Agent to be three per cent. (3.00%) per annum above the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount. For this purpose, the Facility Agent may (acting reasonably) determine the appropriate Rate Fixing Day for that Interest Period.
- (c) Interest on an overdue amount shall accrue from day to day, shall be calculated on the basis of the actual number of days elapsed and a 360 day year and shall be payable immediately on demand by the Lender.

8.4 Notification of rates of interest

The Facility Agent must promptly notify each relevant Party of the determination of a rate of interest under this Agreement.

9. INTEREST PERIODS

9.1 Duration

- (a) Each Loan has successive Interest Periods.

- (b) Subject to the following provisions of this Clause, each Interest Period for a Loan will be six (6) months or any other period agreed by the Borrower and all the Lenders.

9.2 Consolidation

An Interest Period for a Loan will end on the same day as the current Interest Period for any other Loan. On the last day of those Interest Periods, those Loans will be consolidated and treated as one Loan.

9.3 No overrunning the Final Maturity Date

- (a) If an Interest Period would otherwise overrun a Repayment Date, it will be shortened so that it ends on that Repayment Date.
- (b) If an Interest Period would otherwise overrun the Final Maturity Date, it will be shortened so that it ends on the Final Maturity Date.

9.4 Other adjustments

The Facility Agent and the Borrower may enter into such other arrangements as they may agree for the adjustment of Interest Periods and the consolidation and/or splitting of Loans.

9.5 Notification

The Facility Agent must notify each relevant Party of the duration of each Interest Period promptly after ascertaining its duration.

10. MARKET DISRUPTION

10.1 Bank to supply a rate

If LIBOR is to be calculated by reference to the Reference Banks but a Reference Bank does not supply a rate by 12.00 noon (London time) on a Rate Fixing Day, the applicable LIBOR will, subject as provided below, be calculated on the basis of the rates of the remaining Reference Banks.

10.2 Market disruption

- (a) In this Clause, each of the following events is a **market disruption event**:
 - (i) LIBOR is to be calculated by reference to the Reference Banks but no, or (where there is more than one Reference Bank) only one, Reference Bank supplies a rate by 12.00 noon (London time) on the Rate Fixing Day; or
 - (ii) the Facility Agent receives by close of business on the Rate Fixing Day notification from Lenders whose shares in the relevant Loan exceed 30 per cent. of that Loan that the cost to them of obtaining matching deposits in the relevant interbank market is in excess of LIBOR for the relevant Interest Period.
- (b) The Facility Agent must promptly notify the Borrower and the Lenders of a market disruption event.

- (c) After notification under paragraph (b) above, the rate of interest on each Lender's share in the affected Loan for the relevant Interest Period will be the aggregate of the applicable:
 - (i) Margin; and
 - (ii) rate notified to the Facility Agent by that Lender as soon as practicable, and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its share in that Loan from whatever source it may reasonably select.

10.3 Alternative basis of interest or funding

- (a) If a market disruption event occurs and the Facility Agent or the Borrower so requires, the Borrower and the Facility Agent must enter into negotiations for a period of not more than thirty (30) days with a view to agreeing an alternative basis for determining the rate of interest and/or funding for the affected Loan.
- (b) Any alternative basis agreed will be, with the prior consent of all the Lenders, binding on all the Parties.

11. TAXES

11.1 Tax gross-up

- (a) The Borrower must make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) If the Borrower or a Lender is aware that the Borrower must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), it must promptly notify the Facility Agent. The Facility Agent must then promptly notify the affected Parties.
- (c) If a Tax Deduction is required by law to be made by the Borrower or the Facility Agent, the amount of the payment due from the Borrower will be increased to an amount which (after making the Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, it must make the minimum Tax Deduction allowed by law and must make any payment required in connection with that Tax Deduction within the time allowed by law.
- (e) Within thirty (30) days of making either a Tax Deduction or a payment required in connection with a Tax Deduction, the Borrower must deliver to the Facility Agent for the relevant Finance Party evidence satisfactory to that Finance Party (acting reasonably) that the Tax Deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.

11.2 Tax indemnity

- (a) Except as provided below, the Borrower must indemnify a Finance Party against any loss or liability or cost which that Finance Party determines that it has or will be required to make any payment for or on account of Tax in relation to a payment received or receivable (or any payment deemed to be received or receivable) under a Finance Document.
- (b) Paragraph (a) above does not apply with respect to any FATCA Deduction or any Tax assessed on a Finance Party under the laws of the jurisdiction in which:
 - (i) that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (ii) that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
 if that Tax is imposed on or calculated by reference to the net income received or receivable by that Finance Party. However, any payment deemed to be received or receivable, including any amount treated as income but not actually received by the Finance Party, such as a Tax Deduction, will not be treated as net income received or receivable for this purpose.
- (c) Paragraph (a) above does not apply to the extent a loss, liability or cost:
 - (i) is compensated for by an increased payment under Clause 11.1 (Tax gross-up); or
 - (ii) would have been compensated for by an increased payment under Clause 11.1 (Tax gross-up) but was not compensated solely because one of the exclusions in that Clause applied.
- (d) A Finance Party making, or intending to make, a claim under paragraph (a) above must promptly notify the Borrower of the event which will give, or has given, rise to the claim.
- (e) A Finance Party must, on receiving a payment from the Borrower under this Clause notify the Facility Agent.

11.3 Stamp taxes

The Borrower must pay and indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration or other similar Tax payable in connection with the entry into, performance or enforcement of any Finance Document, except for any such Tax payable in connection with the entry into of a Transfer Certificate.

12. INCREASED COSTS

12.1 Increased Costs

Except as provided below in this Clause, the Borrower must pay to a Finance Party the amount of any Increased Cost incurred by that Finance Party as a result of:

- (a) the introduction of, or any change in, or any change in the interpretation, administration or application of, any law or regulation; or
- (b) compliance with any law or regulation made after the date of this Agreement.

12.2 Exceptions

The Borrower need not make any payment for an Increased Cost to the extent that the Increased Cost is:

- (a) compensated for under another Clause or would have been but for an exception to that Clause;
- (b) attributable to a FATCA Deduction; or
- (c) attributable to a Finance Party or its Affiliate wilfully failing to comply with any law or regulation.

12.3 Claims

- (a) A Finance Party intending to make a claim for an Increased Cost must notify the Facility Agent of the circumstances giving rise to and the amount of the claim, following which the Facility Agent will promptly notify the Borrower.
- (b) Each Finance Party must, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Cost.

12.4 Minimization of costs

- (a) Each Lender agrees that, on the occurrence of any event giving rise to the operation of Clause 12.1 (Increased Costs) with respect to such Lender in relation to any circumstances which arise following the date of this Agreement, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another of its Affiliates or Facility Offices as Lender for any Loans affected by such event, with the object of avoiding the consequence of the event giving rise to the operation of such Clause 12.1.
- (b) A Lender is not obliged to take any step under paragraph (a) above if, in the opinion of that Lender (acting reasonably), to do so might be prejudicial to it. Prior to taking any mitigating action described in paragraph (a) above, the affected Lender shall notify the Borrower of any fees, costs, expenses or losses which would be incurred by such Lender in taking such mitigating action (the "**Mitigation Costs**") and, upon the Borrower's written notice to such Lender requesting that such Lender take such mitigating actions, the Lender shall take such actions and the Borrower shall promptly reimburse the affected Lender for such Mitigation Costs.
- (c) Nothing in this Clause 12.4(a) shall affect or postpone any of the obligations of the Borrower or the right of any Lender under this Clause 12.

13. PAYMENTS

13.1 Place

Unless a Finance Document specifies that payments under it are to be made in another manner, all payments by a Party (other than the Facility Agent) under the Finance Documents must be made to the Facility Agent to the account of the Facility Agent with the Account Bank (account number 01002207) or its account at such office or bank as it may notify to that Party for this purpose by not less than thirty (30) days' prior notice.

13.2 Funds

Payments under the Finance Documents to the Facility Agent must be made in US Dollars for value in same date funds no later than 11.00 a.m. New York time on the relevant due date or at such other times as the Facility Agent may specify to the Party concerned as being customary at the time for the settlement of transactions in US Dollars in the place for payment.

13.3 Distribution

- (a) Each payment received by the Facility Agent under the Finance Documents for another Party must, except as provided below, be made available by the Facility Agent to that Party by payment (as soon as practicable after receipt) to its account with such office or bank in New York City as it may notify to the Facility Agent for this purpose by not less than five (5) Business Days' prior notice.
- (b) The Facility Agent may apply any amount received by it for the Borrower in or towards payment (as soon as practicable after receipt) of any amount due from the Borrower under the Finance Documents or in or towards the purchase of any amount of any currency to be so applied.
- (c) Where a sum is paid to the Facility Agent under this Agreement for another Party, the Facility Agent is not obliged to pay that sum to that Party until the Facility Agent has established actual receipt of such sum. However, the Facility Agent may assume that the sum has been paid to it, and, in reliance on that assumption, make available to that Party a corresponding amount. If it transpires that the sum has not been received by the Facility Agent, that Party must immediately on demand by the Facility Agent refund any corresponding amount made available to it together with interest on that amount from the date of payment to the date of receipt by the Facility Agent at a rate calculated by the Facility Agent to reflect its cost of funds.

13.4 Currency

- (a) Unless a Finance Document specifies that payments under it are to be made in a different manner, the currency of each amount payable under the Finance Documents is determined under this Subclause.
- (b) Amounts payable in respect of Taxes, fees, costs and expenses incurred in currencies other than US Dollars shall be payable in US Dollars, by calculating the US Dollar Equivalent of such amounts.
- (c) Each other amount payable under the Finance Documents is payable in US Dollars.

13.5 No set-off or counterclaim

All payments made by the Borrower under the Finance Documents must be calculated and made without (and free and clear of any deduction for) set-off or counterclaim.

13.6 Business Days

- (a) If a payment under the Finance Documents is due on a day which is not a Business Day, the due date for that payment will instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal under this Agreement interest is payable on that principal at the rate payable on the original due date.

13.7 Partial payments

- (a) If the Facility Agent receives a payment insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Facility Agent must apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
 - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Administrative Parties under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest or fee due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any principal amount due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent must, if so directed by the Lenders, vary the order set out in subparagraphs (a)(i) to (iv) above.
- (c) This Subclause will override any appropriation made by the Borrower.

13.8 Timing of payments

If a Finance Document does not provide for when a particular payment is due, that payment will be due within three (3) Business Days of demand by the relevant Finance Party.

14. REPRESENTATIONS AND WARRANTIES

14.1 Representations and warranties

The representations and warranties set out in this Clause are made by the Borrower to each Finance Party.

14.2 Status

The Borrower is not a FATCA FFI or a US Tax Obligor.

14.3 Powers and authority

The Borrower has the power to enter into and perform, and has taken all necessary action to authorise the Borrower's entry into and performance of its obligations under the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

14.4 Legal validity

- (a) Each Finance Document is legally binding, valid and enforceable against the Borrower.
- (b) Each Finance Document is in the proper form for its enforcement against the Borrower in accordance with its terms and conditions.

14.5 Non-conflict

The entry into and performance by the Borrower of, and the transactions contemplated by, the Finance Documents do not conflict with:

- (a) any provisions of any agreements or other instruments to which the Borrower is a party;
- (b) any treaty, law, regulation, judgment or order applicable to the Borrower; or
- (c) the constitutional documents of the Borrower.

14.6 No default

No Default is outstanding or will result from the entry into of, or the performance of any transaction contemplated by, any Finance Document.

14.7 Authorisations

All authorisations required by the Borrower in connection with (i) the Borrower's entry into, performance, validity and enforceability of, and the transactions contemplated by, the Finance Documents, (ii) the borrowing of the Facility or (iii) the payment by the Borrower of all sums in US Dollars, have been obtained or effected (as appropriate) and are in full force and effect.

14.8 No registration

It is not necessary in order to ensure the legality, validity, enforceability and admissibility in evidence in proceedings in Ecuador of the Finance Documents that it or any other document or agreement be filed, recorded or registered with any court, authority, public office or any other authority of Ecuador, except that this Agreement shall be translated into Spanish and registered with the Ministry of Finance of Ecuador (*Ministerio de Finanzas*).

14.9 Information provided

- (a) All written information supplied to the Finance Parties by or on behalf of the Borrower is true and accurate in all material respects at the time of provision and all forecasts and projections contained therein were arrived at after due and careful consideration on the part of the Borrower and were, in its considered opinion, fair and reasonable when made; and

- (b) the Borrower is not aware of any material fact which has not been disclosed in writing to the Finance Parties necessary to make any statement in any written information supplied to the Finance Parties by or on behalf of the Borrower, in light of the circumstances in which it was made, not misleading.

14.10 Taxes on payments

Under the laws of Ecuador, there is no Tax imposed (whether by withholding or otherwise) on or by virtue of the execution and delivery of the Finance Documents or any document or instrument to be executed and delivered under the Finance Documents, the performance hereof or thereof or the admissibility in evidence or enforcement hereof or thereof, or on any payment required to be made hereunder or thereunder.

14.11 Commercial Activity

The entry into by the Borrower of each Finance Document constitutes, and the exercise by the Borrower of its rights and performance of its obligations under each Finance Document will constitute, acts of commercial credit done and performed under the laws of Ecuador.

14.12 Proceedings of enforcement

In any proceedings in Ecuador to enforce any Finance Document, the choice of English law as the governing law of the relevant Finance Documents will be recognised and such law will be applied. The irrevocable agreement by the Borrower to arbitration under the relevant Finance Documents is legal, valid, binding and enforceable and any award obtained in arbitration will be, if introduced, evidence for enforcement in any proceedings against the Borrower and its assets in Ecuador.

14.13 Proper form

Each Finance Document is in proper legal form under the laws of Ecuador and based on being governed by English law is capable of enforcement in the courts of Ecuador.

14.14 No Security Interest

No Security Interest exists over all or any part of the property, assets or revenues of the Ministry of Finance of Ecuador, which will have a Material Adverse Effect on the Borrower's performance of its repayment obligations under this Agreement except as arising by operation of law or as previously disclosed in writing to and agreed by the Lenders.

14.15 Times for making representations and warranties

- (a) The representations and warranties set out in this Clause are made by the Borrower on the date of this Agreement.
- (b) Each representation and warranty set out in Subclauses 14.2, 14.4, 14.5, 14.6, 14.7, 14.8, 14.11, 14.12 and 14.14 is deemed to be repeated by the Borrower on the date of each Request and the first day of each Interest Period.
- (c) When the representation and warranty in Clause 14.6 (No default) is repeated on the first day of an Interest Period for a Loan (other than the first Interest Period for that Loan), the reference to a Default will be construed as a reference to an Event of Default.

- (d) When a representation and warranty is repeated, it is applied to the circumstances existing at the time of repetition.

15. INFORMATION COVENANTS

15.1 Information

The Borrower must supply to the Facility Agent copies of the following documents:

- (a) within ten (10) Business Days of the end of each calendar year, an annual report on the actual utilisation of the disbursed Loan(s) and the utilisation plan or drawdown plan in relation to the Facility for the next year;
- (b) within ten (10) Business Days of the end of each fiscal year of the Borrower, the annual budget for the next fiscal year of the Borrower prepared in accordance with Clause 16.7 (Annual Budget); and
- (c) promptly on request, such information material to the interests of the Finance Parties under the Finance Documents as any Finance Party through the Facility Agent may reasonably request.

15.2 Notification

The Borrower must, promptly upon becoming aware of its occurrence, notify the Facility Agent of:

- (a) any Default (and the steps, if any, being taken to remedy it);
- (b) the imposition of any law, decree or regulation materially and adversely affecting the Borrower's ability to perform its obligations under the Finance Documents; and
- (c) any situation or event which would prevent or interfere with the performance by the Borrower of its obligations under the Finance Documents.

15.3 Change of Evidence of Authority

- (a) The Borrower must, promptly upon any change in the matters referred to in the documentary evidence provided under item 1 of Schedule 2, notify the Facility Agent of such change, and furnish to the Facility Agent documentary evidence in respect of such change and, in relation to any replacement or additional authorised person, the authenticated specimen signatures of and certificates of incumbency and powers of attorney or any instrument whereby authority is delegated to such person.
- (b) The Borrower agrees that the Finance Parties may rely upon and refer to the documentary evidence, authenticated specimen signatures, certificates of incumbency and powers of attorney or any instrument whereby authority is delegated previously received by the Facility Agent until such time as the Facility Agent receives notice from the Borrower of such change and the documentary evidence delivered by the Borrower in accordance with paragraph (a) above.

16. GENERAL COVENANTS

16.1 General

The Borrower agrees to be bound by the covenants set out in this Clause.

16.2 Authorisations

The Borrower must promptly:

- (a) obtain, maintain and comply with the terms; and
- (b) supply certified copies to the Facility Agent,

of any authorisation required under any law or regulation to enable it to perform its obligations under, or for the validity or enforceability of, any Finance Document.

16.3 Compliance with laws

The Borrower must comply in all respects with all laws to which it is subject where failure to do so has or is reasonably likely to have a Material Adverse Effect.

16.4 Pari passu ranking

The Borrower must ensure that its payment obligations under the Finance Documents at all times rank at least pari passu with all its other present and future unsecured and unsubordinated External Indebtedness (both actual and contingent).

16.5 Negative pledge

- (a) The Borrower has agreed that as long as all or any part of the Loans remain outstanding, the Borrower will not create or suffer to exist, any Security Interest, upon any of its assets or revenues to secure the payment of any External Indebtedness of the Borrower unless, when such Security Interest is created, the obligations of the Borrower under this Agreement are secured equally and ratably with such External Indebtedness.
- (b) Notwithstanding sub-clause 16.5(a) above, the Borrower may create or permit to subsist:
 - (i) any Security Interest on property to secure External Indebtedness arising in the ordinary course of business to finance export, import or other trade transactions, which matures (after giving effect to renewals and refinancing) no more than one year after it was originally incurred;
 - (ii) any Security Interest 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;
 - (iii) any Security Interest on property arising by operation of law (or pursuant to any agreement establishing a Security Interest equivalent to one which would otherwise exist under relevant local law), including 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;
 - (iv) any Security Interest existing on such property at the time of its acquisition;
 - (v) any Security Interest in existence as of the Execution Date;

- (vi) any Security Interest securing External Indebtedness issued upon surrender or cancellation of the principal amount of such indebtedness to the extent the Security Interest is created to secure the External Indebtedness;
- (vii) any Security Interest created in connection with any Project Financing provided that the properties to which any such Security Interest applies are solely with respect to:
 - (A) properties which are the subject of such Project Financing; or
 - (B) revenues or claims which arise from the operation, failure to meet specifications, failure to complete, exploitation, sale or loss of, or damage to, such properties;
- (viii) additional Security Interests created in any calendar year upon assets, revenues or receivables of the Borrower having, when encumbered, a fair market value not exceeding an aggregate amount equal to US\$50,000,000 (or the equivalent in other currencies) to collateralize, or to purchase collateral, guarantees or other credit support in respect of new borrowings by the Borrower, provided that, to the extent that in any calendar year US\$50,000,000 (or the equivalent in other currencies) exceeds such aggregate fair market value of the assets, revenues or receivables so encumbered during that year, the aggregate fair market value of assets, revenues or receivables which may be encumbered in subsequent calendar years shall be increased by the amount of such excess; provided, however, that the fair market value of assets, revenue or receivables so encumbered in any calendar year will in no event exceed US\$150,000,000 (or equivalent in other currencies); and
- (ix) any renewal or extension of any of the Security Interests described above, provided that no renewal or extension of any permitted Security Interest shall:
 - (A) extend to or cover any property other than the property then subject to the Security Interest being extended or renewed; or
 - (B) increase the amount of financing secured by that Security Interest.
- (c) Sub-paragraph 16.5(a) does not apply to:
 - (i) any lien arising by operation of law;
 - (ii) any Security Interest previously disclosed to and agreed by the Facility Agent; or
 - (iii) any Security Interest securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security Interest given by the Borrower other than any permitted under sub-paragraphs (i) and (ii) above does not exceed US\$50,000,000 (or its equivalent in another currency or currencies).

16.6 Further Documents

The Borrower must execute such documents in favour of the Facility Agent and do all such necessary assurances, acts and things as the Facility Agent may reasonably require to secure all obligations and liabilities covenanted by the Borrower under the Finance Documents to be paid or performed and also give all notices and directions which the Facility Agent may reasonably require.

16.7 Annual Budget

The Borrower must include all amounts due and payable, or to fall due and payable, to the Finance Parties under the Finance Documents, in each case within the relevant fiscal year in each of its annual budgets during each fiscal year. Any failure to so include shall not diminish or discharge the Borrower's obligations under the Finance Documents.

16.8 Utilisation of Loan Proceeds

The Borrower shall procure that the proceeds of the Loans, once paid into the Disbursement Account are used for the purpose stipulated in Clause 3.1 (Loans).

17. DEFAULT

17.1 Events of Default

Each of the events or circumstances set out in this Clause (other than Clause 17.10 (Acceleration)) is an Event of Default.

17.2 Non-payment

The Borrower does not pay any amount payable by it under the Finance Documents when due in the manner required under the Finance Documents, unless the non-payment is remedied within five (5) Business Days of the due date.

17.3 Breach of other obligations

(a) The Borrower does not comply with any term of Clause 5 (Utilisation) or Clause 16 (General covenants), unless the non-compliance:

(i) is capable of remedy; and

(ii) is remedied within fifteen (15) days of the earlier of the Facility Agent giving notice of the failure to comply to the Borrower and the Borrower becoming aware of the non-compliance.

(b) the Borrower does not comply with any provision of the Finance Documents (other than any term referred to in Clause 17.2 (Non-payment) or in paragraph (a) above), unless the non-compliance:

(i) is capable of remedy; and

(ii) is remedied within thirty (30) days of the earlier of the Facility Agent giving notice of the failure to comply to the Borrower and the Borrower becoming aware of the non-compliance.

17.4 Misrepresentation

A representation or warranty made or deemed to be repeated by the Borrower in any Finance Document or in any document delivered by or on behalf of the Borrower under any Finance Document is incorrect or misleading in any material respect when made or deemed to be repeated, unless the circumstances giving rise to the misrepresentation or breach of warranty:

- (a) are capable of remedy; and
- (b) are remedied within ten (10) Business Days of the earlier of the Facility Agent giving notice of the misrepresentation or breach of warranty to the Borrower and the Borrower becoming aware of the misrepresentation or breach of warranty.

17.5 Cross-default

Any of the following occurs in respect of the Borrower:

- (a) any of its External Indebtedness (other than the Relevant Indebtedness) of the Borrower is not paid when due (after the expiry of any originally applicable grace period);
- (b) as a result of an event of default or any provision having a similar effect (howsoever described), any External Indebtedness (other than the Relevant Indebtedness) of the Borrower becomes prematurely due and payable or is placed on demand; or
- (c) any commitment for External Indebtedness (other than the Relevant Indebtedness) of the Borrower is cancelled or suspended as a result of an event of default or any provision having a similar effect (howsoever described).
- (d) No Event of Default will occur under this Clause 17.5 if the aggregate amount of External Indebtedness (other than the Relevant Indebtedness) or commitment of External Indebtedness (other than the Relevant Indebtedness) falling within paragraphs (a) to (c) above is less than US\$300,000,000 or its equivalent in any other currency or currencies.

17.6 Insolvency

Any of the following occurs in respect of the Borrower:

- (a) it is unable to pay any of its External Indebtedness (other than the Relevant Indebtedness) as such amounts fall due;
- (b) it admits its inability to pay any of its External Indebtedness (other than the Relevant Indebtedness) as such amounts fall due; or
- (c) it declares a moratorium, standstill or similar suspension of payments of any of its External Indebtedness (other than the Relevant Indebtedness).

17.7 Effectiveness of Finance Documents

- (a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.
- (b) Any Finance Document is not effective in accordance with its terms or is alleged by the Borrower to be ineffective in accordance with its terms for any reason.

- (c) The Borrower repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

17.8 Insurance Policy

The Insurance Policy is cancelled, revoked, repudiated, suspended, materially restricted, terminated or otherwise ceases to be in full force and effect.

17.9 Material adverse change

Any event or series of events occurs which, the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect.

17.10 Acceleration

If an Event of Default is outstanding, the Facility Agent may, and must if so instructed by the Majority Lenders, by notice to the Borrower:

- (a) cancel all or any part of the Total Commitments; and/or
- (b) declare that all or part of any amounts outstanding under the Finance Documents are:
 - (i) immediately due and payable; and/or
 - (ii) payable on demand by the Facility Agent acting on the instructions of the Majority Lenders.

Any notice given under this Subclause will take effect in accordance with its terms.

18. THE ADMINISTRATIVE PARTIES

18.1 Appointment and duties of the Facility Agent

- (a) Each Finance Party (other than the Facility Agent) irrevocably appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each Finance Party irrevocably authorises the Facility Agent to:
 - (i) perform the duties and to exercise the rights, powers and discretions that are specifically given to it under the Finance Documents, together with any other incidental rights, powers and discretions; and
 - (ii) enter into and deliver each Finance Document expressed to be entered into by the Facility Agent.
- (c) The Facility Agent has only those duties which are expressly specified in the Finance Documents. Those duties are solely of a mechanical and administrative nature.

18.2 Role of the Arrangers

Except as specifically provided in the Finance Documents, the Arrangers have no obligations of any kind to any other Party in connection with any Finance Document.

18.3 No fiduciary duties

- (a) Nothing in the Finance Documents makes an Administrative Party a trustee or fiduciary for any other Party or any other person; and
- (b) no Administrative Party need hold in trust any moneys paid to it or recovered by it for a Party in connection with the Finance Documents or be liable to account for interest on those moneys.

18.4 Individual position of an Administrative Party

- (a) If it is also a Lender, each Administrative Party has the same rights and powers under the Finance Documents as any other Lender and may exercise those rights and powers as though it were not an Administrative Party.
- (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) The person(s) appointing a successor Facility Agent must, if practicable, consult with the Borrower prior to the appointment.
- (e) 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.

- (f) 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.
- (g) 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.
- (h) 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 (g) above, it will have no further obligations under any Finance Document.
- (i) 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 the Mandated Lead Arranger for its own account 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 its 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 the Arrangers 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 Mandated Lead Arranger and the Borrower.

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.

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:

Address: Av. 10 de Agosto 1661 y Bolivia
Fax number: +593 2 569 386
Attention: Minister of Finance

- (c) 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: 00507-2635522
Attention: Cheng Dong
E-mail: Email.dcheng@pa.bocusa.com

- (d) 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.

- (e) 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 non-contractual obligations arising out of or in connection with it are governed by English law.

34. ENFORCEMENT

34.1 Submission to Arbitration

- (a) Any dispute, claim, difference or controversy of any nature whatsoever arising out of, relating to or having any connection with 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 Immuned 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 Immuned 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 "**Immuned 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, Beijing Branch | USD209,216,414.351 |
| Bank of China Limited, Panama Branch | USD50,809,700.6281 |
| Bank of China Limited, Total Commitments | USD260,026,114.98 |
| Deutsche Bank A.G. Hong Kong Branch | USD38,854,476.95 |
| 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.: 0190231050 | |
| Total Commitments | <hr/> US\$298,880,591.93 <hr/> |

SCHEDULE 2

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 Lender and the Borrower:
 - (a) this Agreement; and
 - (b) each Fee Letter;
3. A certified true copy of each Commercial Contract duly executed by the Project Company 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 (i) the US\$52,743,663.87 down payment (being approximately fifteen per cent (15%) of the Commercial Contract Amount) under each Commercial Contract 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 (*Secretaría 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 Letters;
6. Certified true copies of all filing, registration and record 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*);

7. Certified true copies of any and all documents which evidence that all fees and expenses then due and payable have been paid by the Borrower to the Lender in accordance with Clause 20 (Fees) and Clause 22 (Expenses);
8. A legal opinion of the General Legal Coordinator (*Coordinador General Juridico*) of the Ministry of Finance in the form set forth in Schedule 5;
9. A legal opinion of Allen & Overy LLP, legal advisers in England and Wales to the Arrangers and the Facility Agent, addressed to the Finance Parties;
10. The original Insurance Agreement duly executed by the Insurance Company and the Facility Agent or the Insurance Policy duly issued by the Insurance Company in favour of and acceptable to the Facility Agent which has come into effect, and a written notice given by the Insurance Company to the Facility Agent, stating that the insurance obligations of the Insurance Company under the Insurance Agreement/Policy have become enforceable;
11. Certified true copies of any and all documents which evidence that the total of the premium then due and payable under the Insurance Policy has been paid in full;
12. A certificate issued by the Ministry of Finance showing that total public debt is not higher than 40% of the GDP for purposes of article 124 of the Organic Code of Planning and Public Finance (*Código Organico de Planificación y Finanzas Públicas*);
13. Such other documents relating to any of the matters contemplated herein as the Facility Agent may reasonably request; and
14. Any other governmental approval as may be required under the laws of Ecuador.

SCHEDULE 3

FORM OF REQUEST

To: BANK OF CHINA LIMITED, PANAMA BRANCH as Facility Agent

From: []

Date: []

**THE REPUBLIC OF ECUADOR REPRESENTED BY THE MINISTRY OF FINANCE OF
THE GOVERNMENT OF THE REPUBLIC OF ECUADOR - US\$ 298,880,591.93 Credit**

Agreement
dated [], 2013 (the Agreement)

1. We refer to the Agreement. This is a Request.
2. We wish to borrow a Loan on the following terms:
 - (a) Utilisation Date: [];
 - (b) Amount/currency: [];
 - (c) Interest Period: [].
3. Our payment instructions are: [].
4. We confirm that each condition precedent under the Agreement which must be satisfied on the date of this Request is so satisfied.
5. This Request is irrevocable.

By:

[]

SCHEDULE 4

FORM OF TRANSFER CERTIFICATE

To: BANK OF CHINA LIMITED, PANAMA BRANCH as Facility Agent

From: [EXISTING LENDER] (the **Existing Lender**) and [NEW LENDER] (the **New Lender**)

Date: []

**THE REPUBLIC OF ECUADOR REPRESENTED BY THE MINISTRY OF FINANCE OF
THE GOVERNMENT OF THE REPUBLIC OF ECUADOR - US\$ 298,880,591.93 Credit
Agreement
dated [], 2013 (the Agreement)**

We refer to the Agreement. This is a Transfer Certificate.

1. The Existing Lender transfers by novation to the New Lender the Existing Lender's rights and obligations referred to in the Schedule below in accordance with the terms of the Agreement.
2. The proposed Transfer Date is [].
3. The administrative details of the New Lender for the purposes of the Agreement are set out in the Schedule.
4. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations in respect of this Transfer Certificate contained in the Agreement.
5. This Transfer Certificate 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 Transfer Certificate.
6. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

THE SCHEDULE

Rights and obligations to be transferred by novation

[insert relevant details, including applicable Commitment (or part)]

Administrative details of the New Lender

[insert details of Facility Office, address for notices and payment details etc.]

[EXISTING LENDER]

[NEW LENDER]

By:

By:

The Transfer Date is confirmed by the Facility Agent as [].

[AGENT]

By:

Note: The New Lender must decide which form of Transfer Certificate to use. It is likely to be better to use the Transfer Certificate in Part 1 of this Schedule because that may make it easier for the New Lender to obtain the benefit of security granted by an obligor incorporated in or subject to the laws of a civil law jurisdiction. The New Lender is alone responsible for checking whether any further formalities should be complied with. An assignment may give rise to a stamp duty or transfer tax issues. There will be no liability to stamp duty or SDRT in the UK if the loan capital exemption is available.

SCHEDULE 5

FORM OF LEGAL OPINION OF GENERAL LEGAL COORDINATOR OF THE REPUBLIC OF ECUADOR

General Legal Coordinator (*Coordinador General Jurídico*)

Bank of China Limited, Beijing Branch

[•]

Beijing, 100031

P.R.C.

Dear Sirs:

I am General Legal Coordinator of the Ministry of Finance of the Government of the Republic of Ecuador, and submit this legal opinion in connection with the Facility Agreement dated _____, 2013 (hereinafter referred to as the "**Facility Agreement**") between the Republic of Ecuador represented by the Ministry of Finance of the Government of the Republic of Ecuador (hereinafter referred to as the "**Borrower**"), Bank of China Limited, Beijing Branch as mandated lead arranger (in this capacity hereinafter referred to as the "**Arranger**"), the financial institutions listed in Schedule 1 of the Facility Agreement (the "**Original Lenders**"), and Bank of China Limited, Panama Branch as facility agent (in this capacity hereinafter referred to as the "**Facility Agent**").

Unless otherwise defined herein, terms defined in the Facility Agreement shall have the same meanings when used in this opinion.

We have considered and examined all such laws and regulations of Ecuador as are relevant to the Facility Agreement and all such documents, as we have considered necessary or desirable for the opinions hereinafter expressed including, without limitation, the following documents:

- (a) the executed Facility Agreement;
- (b) declaration of priority of the Project by the National Secretariat on Planning and Development of Ecuador (*Secretaría Nacional de Planificación y Desarrollo*), SENPLADES;
- (c) approval by the General Attorney's Office of Ecuador (*Procuraduría General del Estado*) for the Borrower's entering into the Facility Agreement and the submission to the arbitration under the Rules;
- (d) 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, the Facility Agreement;
- (e) registration of the Facility Agreement with the Ministry of Finance of Ecuador (*Ministerio de Finanzas*);
- (f) the legal documentation whereby Mr. Fausto Herrera has been appointed Minister of Finance of the Republic of Ecuador and that as such he has full authority to delegate

the power to execute the Facility Agreement on behalf of the Borrower and any other documents presenting all the specimen signatures of the Ministry of Finance or any other officer of the Government of the Republic of Ecuador; and

- (g) other documents we deem necessary for the issuance of our legal opinion.

In giving this opinion, we have assumed and this opinion is given on the basis that:

- (a) all documents listed above other than the Facility Agreement have been duly authorized, executed and delivered by or on behalf of each of the parties thereto other than the Borrower;
- (b) all signatures, seals and chops are genuine and that all the documents submitted to us as copies conform to its originals; and
- (c) this legal opinion is confined to and given on the basis of the laws of Ecuador to the date hereof. We have not investigated, and we do not express or imply any opinion on, the laws of any other jurisdiction, and we have assumed that no other laws would affect the opinion expressed below.

This legal opinion is based upon the documents listed above as at the date thereof and we have assumed for the purpose hereof that such documents have not been amended, modified as of the date hereof. Based upon the foregoing, we are of the opinion that:

- (1) the Borrower has full power, authority and legal right to enter into and perform its obligations under the Facility Agreement and has taken all necessary action to authorize the execution, delivery and performance of the Facility Agreement;
- (2) the Facility Agreement has been duly executed and delivered, for and on behalf of the Borrower, by Mr. William Ricardo Vásquez Rubio, who as Undersecretary of Public Finance, with delegated authority from the Minister of Finance, Mr. Fausto Herrera, has the power and authority to do so;
- (3) the Facility Agreement constitutes legal, valid and binding obligations of the Borrower enforceable in accordance with its terms;
- (4) the execution, delivery and performance of the Facility Agreement by the Borrower does not and will not violate or conflict with or result in any breach of any provision of any law or regulation of Ecuador and any provisions of any contract or agreement to which the Borrower is a party;
- (5) all governmental authorizations, approvals, consents and licenses required by the laws of Ecuador for signing, delivery and performance of the Facility Agreement have been duly acquired, effected and completed and are in full force and effect;
- (6) it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Facility Agreement that it or any other instrument be recorded, registered or enrolled in any court, public office or elsewhere within Ecuador, other than registration of the Facility Agreement with the Ministry of Finance (which have been duly effected as per the document listed in items (e) of the list of the documents we have reviewed);
- (7) there is no withholding or other tax to be deducted from the payments of principal sums due to be made by the Borrower under the Facility Agreement save that withholding or similar

taxes are generally payable or charged in Ecuador on all payments of interest made from Ecuador;

- (8) with the understanding that the Arranger is a state-owned financial institution, wholly owned and controlled by the People's Republic of China, the Borrower is allowed to make payments of principal and interest and other sums due under the Facility Agreement grossed up to include tax deductions or withholdings, if any, and no authorization or approval is required for the Borrower to remit such payments in U.S. dollars out of Ecuador;
- (9) no stamp duty, registration, documentary or similar tax is payable by the Borrower in respect of the Facility Agreement;
- (10) the payment obligations of the Borrower under the Facility Agreement are and will be direct, unconditional and general obligations of the Borrower and rank at least *pari passu* with all its other unsecured and unsubordinated External Indebtedness;
- (11) the execution and performance of the Facility Agreement by the Borrower constitute acts of commercial credit done and performed under the laws of Ecuador, and the Borrower and the Borrower's other assets which do not constitute Immuned Property (as defined in the Facility Agreement) are subject to and available for, the Proceedings (as defined in the Facility Agreement), to the maximum extent permitted under the laws of Ecuador;
- (12) the choice of English laws to govern the Facility Agreement is a valid choice of law;
- (13) the submission of any dispute arising out of or in connection with the Facility Agreement by the Borrower to the arbitration under the Rules does not contravene any law of Ecuador, provided that the authorization of the Attorney General's Office (*Procuraduría General del Estado*) has been obtained, as has been granted for this transaction;
- (14) any valid arbitration award given against the Borrower in any such legal actions would be recognized and enforced by the courts of Ecuador; and
- (15) the Lender is not and will not be deemed to be resident, domicile or having an establishment in Ecuador by reason only of the execution, delivery, performance and/or enforcement of the Facility Agreement.

I assume no obligation to advise you of any changes in the foregoing subsequent to the delivery of this opinion letter. This opinion letter has been prepared solely for your use in connection with the closing under the Facility Agreement on the date hereof.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand on this _____ day of _____, 2013.

Very truly yours,

Name:

Title: General Legal Coordinator of the Ministry of Finance of the Republic of Ecuador

SIGNATORIES

Borrower

THE REPUBLIC OF ECUADOR
REPRESENTED BY
THE MINISTRY OF FINANCE OF THE GOVERNMENT OF THE REPUBLIC OF ECUADOR

By: 

Mandated Lead Arranger

BANK OF CHINA LIMITED, BEIJING BRANCH

By:

Lead Arranger

DEUTSCHE BANK (CHINA) CO., LTD, BEIJING BRANCH

By:

SIGNATORIES

Borrower

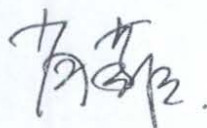
THE REPUBLIC OF ECUADOR
REPRESENTED BY
THE MINISTRY OF FINANCE OF THE GOVERNMENT OF THE REPUBLIC OF ECUADOR

By:

Mandated Lead Arranger

BANK OF CHINA LIMITED, BEIJING BRANCH

By:



尚菲
Deputy General Manager
Corporate Banking Department

Lead Arranger

DEUTSCHE BANK (CHINA) CO., LTD, BEIJING BRANCH

By:

SIGNATORIES

Borrower

THE REPUBLIC OF ECUADOR
REPRESENTED BY
THE MINISTRY OF FINANCE OF THE GOVERNMENT OF THE REPUBLIC OF ECUADOR

By:

Mandated Lead Arranger

BANK OF CHINA LIMITED, BEIJING BRANCH

By:

Lead Arranger

DEUTSCHE BANK (CHINA) CO., LTD, BEIJING BRANCH

By:



SONG Qing

Head of Structured Trade
& Export Finance China



WU Jing

Structured Trade &
Export Finance China