

SCHEDULE 14. GUARANTEE AGREEMENT

between

**THE REPUBLIC OF ECUADOR ACTING THROUGH THE MINISTRY OF ECONOMY
AND FINANCES**

the Guarantor

and

AGENCE FRANÇAISE DE DEVELOPPEMENT

the Beneficiary

12 00

SCHEDULE 13. FORM OF FINANCIAL COMPLIANCE CERTIFICATE

[on the Borrower's letterhead]

From: [●]

To: Agence Française de Développement

Agence of [insert name of the AFD agency as set out in Clause 17.1 (Notices)]

[insert address of the AFD agency as set out in Clause 17.1 (Notices)]

To the attention of the Director of the Agency

[insert the date]

[Name of the Borrower] – Credit Facility Agreement No. [●]

Subject: Form of financial compliance certificate No. [●]

Dear Madam or Sir,

We are referring to the Facility Agreement No. [●] entered into between [●] and the Agence Française de Développement, dated [●] (the "Agreement")

1. Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.

2. This document is a Financial Compliance Certificate.

3. We confirm that on the date of this Financial Compliance Certificate [the Borrower] is in compliance with the ratios as set out in Clause 12.12 (*Financial Covenants*) of the Agreement, i.e:

(a) Regulatory Ratios: [●]

(b) Non-Performing Loan Ratio: [●] (less than 5%)

(a) Liquidity Ratio for each time band monitored : [●] (less than 100% for the Contractual Scenario and less than 85% for the Expected Scenario)

[Note: these ratios must be adapted in accordance with Clause 12.12 (*Financial Covenants*)]

4. We attach to this certificate a document signed by the Auditors of the Borrower, providing a description of the calculation details of the above mentioned ratios.

5. We confirm that no Event of Default is continuing.

[Note: If this confirmation cannot be provided, the certificate shall identify the Event of Default that is continuing and, if required, the steps taken to remedy it].

Yours sincerely,

Authorised signatory of Borrower

THIS GUARANTEE AGREEMENT ("GUARANTEE AGREEMENT") IS DATED DECEMBER 3rd, AND GRANTED BY:

- (1) The **REPUBLIC OF ECUADOR, REPRESENTED BY THE MINISTRY OF ECONOMY AND FINANCE OF THE REPUBLIC OF ECUADOR**, represented by Juan Carlos Vega Malo, in his capacity as Minister of Economy and Finance, who is duly authorized to sign this Agreement, ("**Ecuador**" or the "**Guarantor**");

in favour of

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

(here in after jointly referred to as the "**Parties**" and each a "**Party**");

in connection with the credit facility agreement (the "**Facility Agreement**") dated December 3rd, and entered into among **BANCO DE DESARROLLO DEL ECUADOR B.P. (BDE)**, as the borrower (the "**Borrower**"), and AFD as the lender (the "**Lender**");

WHEREAS

- (A) Pursuant to the Facility Agreement (as defined below), the Lender has agreed to extend to the Borrower a credit facility in a maximum aggregate amount of eighty million US Dollars (USD 80,000,000) for the purposes therein specified upon the terms and subject to the conditions therein contained.
- (B) The Guarantor has agreed to enter into this Guarantee Agreement for the purpose of providing a personal and several guarantee to the Beneficiary, for the Borrower's payment obligations and certain other obligations under the Facility Agreement, in accordance with Articles 2288 and seq. of the French Civil Code and as detailed more fully herein (the "**Guarantee**").

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions in this Guarantee Agreement

Unless otherwise defined in this Guarantee Agreement or a contrary indication appears, the capitalized terms used in this Guarantee Agreement shall have the meaning ascribed to them in the Facility Agreement;

"**Facility Agreement**" has the meaning given to that term in the preamble of this Guarantee Agreement;

"**Guaranteed Obligations**" has the meaning set forth in Clause 4.1 of this Guarantee Agreement;

"**Party**" means a party to this Guarantee Agreement;

"**Signing Date**" means the date of execution of this Guarantee Agreement by all the Parties.

1.2 Interpretation

The rules of interpretation set out in Schedule 1B of the Facility Agreement shall apply to this Guarantee Agreement *mutatis mutandis*.

1.3 Inconsistency

In the event of any inconsistency or conflict between the Facility Agreement and this Guarantee Agreement, the terms of this Guarantee Agreement shall prevail.

1.4 Clauses

Any reference in this Guarantee Agreement to a Clause is, unless otherwise stated, to a clause hereof.

1.5 Headings

Headings and sub-headings are for ease of reference only and shall not affect the construction of this Guarantee Agreement.

1.6 Legislation

Any reference in this Guarantee Agreement to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been, or may from time to time be, amended or re-enacted.

2. CONDITIONS PRECEDENT

No later than the Signing Date, the Guarantor shall provide to the Beneficiary all of the documents set out in Schedule 4 (*Conditions Precedent*) of the Facility Agreement.

3. REPRESENTATIONS AND WARRANTIES

3.1 Power and authority

The Guarantor represents and warrants that it has the power to enter into, perform and deliver the Guarantee Agreement and to perform all contemplated obligations. The Guarantor further represents and warrants that it has taken all necessary action to authorise its entry into, performance and delivery of the Guarantee Agreement.

3.2 Facility Agreement

The Guarantor represents to know perfectly and accept, and expressly ratifies the conditions, clauses, annexes and modalities of the Facility Agreement signed between the Borrower and the Beneficiary, a copy of which it has received.

4. GUARANTEE

4.1 Guarantee and Indemnity

The Guarantor irrevocably and unconditionally:

- (i) guarantees, as primary obligor and not as surety merely, to the Beneficiary the due and punctual observance and performance by the Borrower of the Borrower's payment obligations under the Facility Agreement, as amended from time to time, when due and

payable (whether at stated maturity or upon prepayment, acceleration or otherwise), including, without limitation, principal and interests, as well as any fees, prepayment or cancellation and other indemnities, late payment or default interests or additional expenses pertaining to the aforementioned obligations (collectively, the “**Guaranteed Obligations**”);

- (ii) undertakes that, whenever the Borrower does not pay any Guaranteed Obligation when due and payable (or expressed to be so due and payable), the Guarantor shall pay to the Beneficiary the due amounts, in the currency prescribed in the Facility Agreement, as if it were the primary obligor, within thirty (30) calendar days of receipt of written demand therefor by the Beneficiary;
- (iii) undertakes that he shall pay or cause to be paid all taxes on or in connection with the payment of any and all amounts due under this Guarantee Agreement that are now or in the future levied or imposed by any authority or any jurisdiction through or out of which a payment is made;
- (iv) guarantees that all payments of principal, interest, fees and other amounts due under this Guarantee Agreement shall be made without deduction for or on account of any taxes, including any withholding tax. If a withholding tax is required by law or otherwise, the Guarantor undertakes to gross-up the amount of any such payment made pursuant to this Guarantee Agreement, to such amount which leaves the Beneficiary with an amount equal to the payment which would have been due and would have received if no payment of withholding tax had been required.
- (v) Guarantees that all payments which the Guarantor is required to make under this Guarantee Agreement shall be made without any set-off, counterclaim or condition.

4.2 **Waiver of Notices, Claims and Prior Action**

The Guarantor hereby waives to the fullest extent permitted by any applicable law:

- (i) notice of acceptance of the Guarantee Agreement;
- (ii) notice of the creation, extension or accrual of any of the Guaranteed Obligations;
- (iii) notice of presentment, demand, dishonour, non-payment, protest, or other default with respect to any of the Guaranteed Obligations;
- (iv) except as otherwise specified herein, notice of any other nature whatsoever to any person; and
- (v) any requirement that the Beneficiary take any action or claim whatsoever against the Borrower or any other person.

4.3 **Consent**

The Guarantor hereby irrevocably consents that from time to time, and without further notice to or consent of the Guarantor, the Beneficiary may take any or all of the following actions without affecting or impairing the Guarantee Agreement or any of the Guarantor's obligations under the Guarantee Agreement:

- (i) extend, renew, modify, amend, compromise, settle or release the Guaranteed Obligations, or agree to any composition, forbearance or concession in respect thereof;

Doc

- (ii) release or compromise any liability of any person or persons with respect to the Guaranteed Obligations;
- (iii) exercise or refrain from exercising any of its rights or remedies under this Guarantee Agreement, the Facility Agreement or under law or equity; and
- (iv) act or fail to act in any manner which may deprive the Guarantor of its right to subrogation against the Borrower or its right to contribution against any party.

4.4 **Absolute Guarantee**

The Guarantee under this Guarantee Agreement is absolute and unconditional and will not be affected or impaired by:

- (i) any failure of the Borrower or the Guarantor to comply with any requirement of any law, regulation or order;
- (ii) any purported or actual assignment of contractual position, rights and/or obligations, or sale of a participation, under the Facility Agreement or any part thereof by the Beneficiary to any other person;
- (iii) the Facility Agreement or any of the Guaranteed Obligations being in whole or in part illegal, void, voidable, avoided, invalid, unenforceable or otherwise of limited force and effect; or
- (iv) any other circumstance or occurrence whatsoever that might otherwise constitute a defense available to, or discharge of, the Guarantor or any other guarantor or surety.

The Beneficiary shall be entitled to sue the Guarantor for all present and future goods, furniture and property in its possession in order to obtain execution of its obligations by the Guarantor as set forth in Clause 4.1 of this Guarantee Agreement.

5. **WAIVERS BY THE GUARANTOR**

- 5.1 The Guarantor irrevocably and expressly waives any benefits of discussion and division as provided for in Articles 2298 and 2303 of the French Civil Code.

The Beneficiary shall be entitled to execute this Guarantee Agreement without introducing any prior claim or action against the Borrower or claiming the benefit of any other property or personal securities that the Beneficiary might own or obtain or claiming any right of set-off it might have.

- 5.2 The Guarantor waives its rights as provided for in Article 2309 the French Civil Code.

The Guarantor undertakes not to initiate any claim or action against the Borrower, until full payment of all monies owed to the Beneficiary under the Guaranteed Obligations, in case of an extension or postponement of any payment date pertaining to any amount due or payable to the Beneficiary pursuant to the Facility Agreement, and consequently waives, until full payment of the Guaranteed Obligations, its rights as provided for in Article 2316 of the French Civil Code.

- 5.3 The Guarantor irrevocably and expressly waives any right of set-off it might have pursuant to Article 1294 of the French Civil Code, until full payment of the Guaranteed Obligations (whether due and payable or not).

- 5.4 The Guarantor undertakes not to claim, at any moment, the benefit of any lenient treatment, payment discharge, whether in whole or in part, or of any other measure imposed as part of any

collective insolvency proceedings or any other similar procedure to any creditor of the Borrower to the extent permitted by Law.

- 5.5 As long as all monies owed to the Beneficiary under the Guaranteed Obligations will not have been paid in full, the Guarantor waives its right to initiate any action against the Borrower pursuant to Article 2305 of the French Civil Code and to benefit from any subrogation in the rights of the Beneficiary towards the Borrower and undertakes not to initiate any claim or action that would result in competing claims from the Guarantor and the Beneficiary, notwithstanding the fact that the Guarantor has been released in whole or in part of its obligations hereby, as the case may be.

6. INFORMATION

- 6.1 The Guarantor acknowledges having sufficient information to assess the situation of the Borrower. The Guarantor hereby declares that it has not made the financial and legal situation of the Borrower or the existence and maintenance of other guarantees the determining condition of its consent under the present Guarantee Agreement.
- 6.2 The Guarantor shall immediately inform the Beneficiary of any event or circumstance that entails or might entail the early repayment of any credit, loan or other financial obligation binding upon the Guarantor, or when it is required to proceed with the aforementioned early repayment. The Guarantor will notify without delay to the Beneficiary, any modification in the legislation that governs its activity and any fact or event that could compromise the fulfilment of its obligations under this Guarantee Agreement.

7. PARTICULAR OBLIGATIONS

- 7.1 The Guarantor shall not take or permit to be taken any action which would prevent or interfere with the execution of the Project or the performance of the obligations of the Borrower under the Facility Agreement.
- 7.2 The Guarantor undertakes to take all necessary measures within the scope of its power and authority so that the Project financed under the Facility Agreement is carried out under the terms and the conditions foreseen in the Facility Agreement as well as the execution of all monetary obligations which are under the responsibility of the Borrower by virtue of the aforementioned contract.
- 7.3 ***Pari passu ranking***

The Guarantor undertakes (i) that the payment obligations assumed under this Guarantee Agreement shall at all times bear at least the same rank in order of priority of payment (*pari passu*) with the claims of all its other present unsecured and unsubordinated creditors or third party creditors guaranteed by the Guarantor and (ii) not to grant prior ranking or guarantees to any other lenders except if the same ranking or guarantees are granted by the Guarantor in favour of the Beneficiary, if so requested by the Beneficiary.

8. TERMINATION

Unless all monies owed by the Borrower under the Facility Agreement have been irrevocably and unconditionally paid in full to the Beneficiary, or unless with the prior written consent of the Beneficiary, this Guarantee Agreement shall not be terminated at any time.

9. **NOTICES**

9.1 **Giving of Notice**

Any notice or other communication given to a Party under or in connection with this Guarantee Agreement shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service, or by fax; and
- (c) sent to:
 - (i) the Guarantor at:

MINISTERIO DE ECONOMIA Y FINANZAS, REPÚBLICA DEL ECUADOR

Address: Av. Amazonas entre Pereira y Unión Nacional de Periodistas.
Plataforma Gubernamental de Gestión Financiera. Pisos 10 y 11

Attention: Subsecretario de Financiamiento Público

With a copy to:

GENERAL ATTORNEY (Procuraduría General del Estado, República del Ecuador)

Address: Av. Amazonas N39-123 y Arizaga, Edificio Amazonas Plaza

Attention: Procurador General del Estado

- (ii) the Beneficiary at:

AFD OFFICE FOR ECUADOR

Address: Av. Francisco de Orellana E12-12 y San Ignacio esquina, Edificio Seguros Latina, Torre San Ignacio, piso 3, Quito, Ecuador

Telephone: + (593 2) 601 7160

Attention: AFD Director for Ecuador

With a copy to:

AFD HEAD OFFICE

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

Telephone : + 33 1 53 44 31 31

Attention : Director of Latin America Department

or to any other address as is notified in writing by one Party to the other from time to time.

9.2 Delivery

Any notice, request or communication given or made or any document sent by a Party to the other Party in connection with this Agreement will only be effective:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the fifth (5th) Business Day after posting.

and, where a particular person or a department is specified as part of the address details provided under Clause 9.1 (*In writing and addresses*), if such notice, request or communication has been addressed to that person or department.

A notice or other communication given as described in Clause 9.1 or on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

9.3 Service of Documents

The provisions of Clause 9.2 (*Delivery*) above do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9.4 Electronic communications

- a) Any communication made by one person to another under or in connection with this Guarantee Agreement may be made by electronic mail or other electronic means if the Parties:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- b) Any electronic communication made between the Parties will be effective only when actually received in a readable form.

10. GOVERNING LAW

This Guarantee Agreement is governed by French law.

11. DISPUTE RESOLUTION

Any dispute arising out of or in connection with this Guarantee Agreement shall be referred to and finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce applicable on the Signing Date (the "ICC Rules"), by one or more arbitrators to be appointed in accordance with such ICC Rules. The provisions in the ICC Rules regarding the emergency arbitrator shall not apply.

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

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

12. IMMUNITY

12.1 Scope of Immunity

The execution and delivery of this Guarantee Agreement by the Guarantor constitutes, and the Guarantor's performance of and compliance with its obligations under this Guarantee Agreement will constitute, a commercial transaction, being acts of commercial public credit (as provided under the laws of the Republic of Ecuador). The Guarantor agrees that it and its other assets which do not constitute Immune Property (as defined below) are subject to, and available for, the Proceedings (as defined below) and the Guarantor irrevocably and unconditionally waives any right which it has now or may subsequently acquire to assert any state immunity from or in any Proceedings in relation to the transactions described in this Agreement against it or its assets, or the assets of any state entity other than Immune Property and undertakes not to invoke any defense on the basis of any kind of immunity, for itself and/or its other assets which do not constitute Immune Property, with regard to any Proceedings.

12.2 Immune Property

Notwithstanding any term in this Guarantee Agreement, the following and only the following assets of the Guarantor, wherever located (the "**Immune Property**"), shall be entitled to immunity from enforcement or relief pursuant to any provision or legislation in any applicable jurisdiction, from any Proceedings:

- (e) any property which is used or designated for use in the performance of the functions of the diplomatic mission of the Republic of Ecuador or its consular posts;
- (f) property of a military character or used or designated for use in the performance of military functions;
- (g) property forming part of the cultural heritage of the Republic of Ecuador or part of its archives;
- (h) unexploited non-extracted natural resources in the Republic of Ecuador;
- (i) funds managed in the national Treasury Account;
- (j) assets and resources included in the external assets of the Central Bank of Ecuador and available international monetary reserves held by the Central Bank of Ecuador;
- (k) public domain assets used in providing public services in Ecuador;
- (l) national assets located in the territory of Ecuador and belonging to the Republic such as streets, bridges, roads, squares, beaches, sea and land located over 4,500 meters above sea level;
- (m) accounts of the Central Bank, whether they are held abroad or locally; and
- (n) public entities' deposits with the Central Bank, whether they are maintained abroad or locally.

In this Clause 12.3, "**Proceedings**" means:

- 1) any execution on judgment, enforcement of arbitral award, set-off, deduction, attachment prior to judgment, attachment in aid of execution to which the Guarantor or their respective assets may be entitled in any legal action or proceedings or arbitral proceedings;
- 2) any suit, jurisdiction of any arbitration institution or arbitral tribunal, judgment, arbitral award, pre-judgment, interim relief, execution or other enforcement of any award, relief or judgment; and
- 3) service of process upon the Guarantor or any agent of the Guarantor with respect to this Guarantee Agreement or any of the transactions contemplated hereby.

12.3 Scope

The provisions of this Clause 12 (*Immunity*) have been negotiated and agreed solely with respect to the transactions described in this Guarantee Agreement. In no event shall the definition or scope of Immune Property described in this Clause 12 (*Immunity*) be relied upon, utilized, admitted as evidence in any proceeding or construed by any third party (including any court, arbitrator or arbitral tribunal) to interpret any analogous provisions of any other agreement or instrument unrelated to the transactions contemplated in this Guarantee Agreement or relating to any other indebtedness of the Guarantor or the Republic of Ecuador.

Executed in three (3) originals, in Quito, on December 3rd 2024

GUARANTOR

REPUBLIC OF ECUADOR REPRESENTED BY THE MINISTRY OF ECONOMY AND FINANCE OF THE REPUBLIC OF ECUADOR



Represented by: Juan Carlos Vega Malo
in his capacity as: Minister of Economy and Finance


LENDER

AGENCE FRANÇAISE DE DÉVELOPPEMENT



Represented by: Priscille de Coninck
in her capacity as: Director of AFD Ecuador



	
REPÚBLICA DEL ECUADOR	
MINISTERIO DE ECONOMÍA Y FINANZAS	
Subsecretaría de Fianamiento Público	
REGISTRO No.	778
FECHA	01 diciembre 2024
PAGINA No.	000000045
Registro de la Deuda Pública	