

Date: __ June 2013

**THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA
represented by
PRESIDENT DANIEL ORTEGA SAAVEDRA,**

THE NICARAGUA CANAL AND DEVELOPMENT PROJECT COMMISSION,

THE NICARAGUAN INTEROCEANIC GRAND CANAL AUTHORITY,

HK NICARAGUA CANAL DEVELOPMENT INVESTMENT CO., LIMITED,

and

THE INVESTORS

**MASTER CONCESSION AND IMPLEMENTATION AGREEMENT
in respect of the
NICARAGUA CANAL AND DEVELOPMENT PROJECT**

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THIS MASTER CONCESSION AND IMPLEMENTATION AGREEMENT is made on __ June 2013 by and among:

- (1) **THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA** (the "**Government**"), represented by President Daniel Ortega Saavedra;
- (2) **THE NICARAGUA CANAL AND DEVELOPMENT PROJECT COMMISSION**, an authority of the Government established and subsisting under Law Number [●] ("*Ley Especial para el Desarrollo e Infraestructura de Transporte Nicaragüense*"), which was passed by the National Assembly of Nicaragua on __ June 2013 and published in the Gazette, Official Government of the Republic of Nicaragua Publication No. [●] of __ June 2013 (the "**Commission**");
- (3) **THE NICARAGUAN INTEROCEANIC GRAND CANAL AUTHORITY**, an authority of the Government established and subsisting under Law Number 800 ("*Ley del Gran Canal Interoceánico de Nicaragua y Régimen Jurídico y en la creación de la Autoridad del Gran Canal Interoceánico de Nicaragua*"), which was passed by the National Assembly of Nicaragua on 3 July 2012 and published in the Gazette, Official Government of the Republic of Nicaragua Publication No. 128 of 9 July 2012 (the "**Authority**");
- (4) **HK NICARAGUA CANAL DEVELOPMENT INVESTMENT CO., LIMITED**, a limited liability company incorporated in Hong Kong and having its registered office at Suites 1801-1807, 18th Floor, Two International Finance Centre, 8 Finance Street, Central, Hong Kong Special Administrative Region of the People's Republic of China ("**HKC**"); and
- (5) **THE PERSONS** whose names and addresses are set out in columns 1 and 2 of Schedule 1 (*Schedule of Investors*) (as such schedule may be updated from time to time in accordance with the provisions of this Agreement) (together the "**Investors**", and each an "**Investor**").

WHEREAS:

- (A) The Authority and HKC entered into (i) a memorandum of understanding dated 5 September 2012 (the "**MoU**"), and (ii) a Deed of Cooperation dated 31 October 2012 (the "**Deed of Cooperation**"), in each case to provide for the arrangements to be made, and the actions to be undertaken, with respect to the development and operation of an interoceanic canal and certain other infrastructure projects;
- (B) The parties to the Deed of Cooperation agreed *inter alia* that, subject to the terms and conditions of the Deed of Cooperation, HKC shall have the exclusive right to (directly or indirectly) procure and manage the design, development, engineering, arrangement of financing and construction (the "**Development**") and the ownership, possession, operation, maintenance and management (the "**Operation**") of:

- (a) a traditional waterway for ships and a dry canal railroad for freight, in each case linking deep water ports on the Caribbean and Pacific seaboards of Nicaragua;
 - (b) free-trade zones to be established where the Wet Canal (as defined below) meets the Caribbean and Pacific seaboards of Nicaragua (as defined below); and
 - (c) an international airport in one such free trade zone (or, alternatively, the expansion of a currently existing airport in, or in the vicinity of, one such free trade zone to handle both domestic and international air traffic);
- (C) The Deed of Cooperation envisions the formation of a special purpose vehicle ("**HoldCo**") to serve as the holding vehicle through which any equity investors shall control (directly or indirectly) the Development and Operation of certain infrastructure projects, including those infrastructure projects referenced in Recital (B) (together with the Development and Operation of all other infrastructure projects envisioned by this Agreement, the "**Project**");
- (D) HKND Group Holdings Limited ("**HKND**"), an exempted company with limited liability, was incorporated by HKC in the Cayman Islands on 7 November 2012 to be the HoldCo contemplated by the Deed of Cooperation;
- (E) Empresa Desarrolladora de Grandes Infraestructuras S.A., a corporation incorporated under the laws of Nicaragua ("**EDGI**"), was acquired by subsidiary undertakings of HKND on 12 April 2013 for the purpose of promoting the implementation of the Project and entering into this Agreement as the Original Sponsor (as defined below);
- (F) Each of the Authority, the Commission, the Government, HKC and each Investor intends that the Original Sponsor (as defined below) and its designees shall have all of the rights, benefits and obligations with respect to the Project that have been allocated to HKC under the Deed of Cooperation; and
- (G) To promote the Development and Operation of the Project by the Original Sponsor and any other Sponsors, and in exchange for the representations and agreements of the Investors contained herein, the Government has agreed to provide certain undertakings to the Investors in relation to the Project, subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Parties from this Agreement, and the mutual representations and warranties, conditions and promises herein contained, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS, INTERPRETATION AND LANGUAGE

1.1 Definitions

In this Agreement, unless expressly stated otherwise, the capitalised terms set out below have the following meanings:

"**Actual Expropriation Costs**" means, with respect to any Sub Project, the costs that have been and will be actually incurred by any Key Entity in connection with the expropriation of any property in connection with the Development and Operation of such Sub Project;

"**Adherence Agreement**" means an agreement substantially in the form set out in Schedule 5 (*Form of Adherence Agreement*);

"**Affiliate**" means, in relation to any person, any other person (i) Controlled (directly or indirectly) by such first person, (ii) who or which Controls (directly or indirectly) such first person, or (iii) with which such first person (directly or indirectly) is under the common Control of another; provided that each Government Entity shall be deemed to be an Affiliate of each other Government Entity for purposes of this Agreement;

"**Agent**" has the meaning set forth in Schedule 4 (*Principles of Direct Agreement*);

"**Agreement**" means this Master Concession and Implementation Agreement, including the Recitals and the Schedules as amended, restated, varied, supplemented or otherwise modified by the Parties in accordance with the provisions of this Agreement from time to time;

"**Airport**" means an international airport in, or in the vicinity of, the Free Trade Zone of either Caribbean Free Trade Zone Project or the Pacific Free Trade Zone Project (or, alternatively, the expansion of a current airport in, or in the vicinity of, one of such Free Trade Zones to handle both domestic and international air traffic);

"**Airport Project**" means the Development and Operation of the Airport;

"**Alternative Proposal**" has the meaning set forth in Clause 18.1(b);

"**Approval Notice**" means, with respect to any Sub Project Development Plan, a notice delivered by the Commission to the relevant Sponsor pursuant to Clause 7.4(c) setting out the Commission's approval of the Development (and subsequent Operation) of the relevant Sub Project by such Sponsor and any other relevant Sub Project Parties in a manner materially in accordance with, and without material qualifications or restrictions to, such Sub Project Development Plan;

"**Associated Infrastructure**" means any infrastructure which does not otherwise form part of a Sub Project and which the Original Sponsor determines is necessary or desirable for the Development and Operation of one or more Sub Projects (other than the Associated Infrastructure Project);

"**Associated Infrastructure Project**" means the Development and Operation of the Associated Infrastructure;

"**Attorney General**" means the Procurador General de la Republica de Nicaragua as established by Law Number 411 ("*Ley Orgánica de la Procuraduría General de la República*"), which was passed by the National Assembly of Nicaragua on 04 December 2001 and published in the Gazette, Official Government of the Republic of Nicaragua Publication No. 244 on 24 December 2001;

"**Authority**" has the meaning set forth in the preamble to this Agreement;

"**Business Day**" means any day, other than a Saturday, Sunday or public holiday, on which banking institutions in the Cayman Islands and Hong Kong are ordinarily open for business; provided that any day which is a public holiday in Nicaragua as of the date of this Agreement shall not be a Business Day;

"**Cadastral Value**" means, with respect to any property as of any date of determination, an amount equal to the value of such property for the purpose of the payment of income taxes as determined by the relevant Tax Cadastre in the manner, and in accordance with the requirements, set out in the Laws;

"**Caribbean Free Trade Zone Project**" means the Development and Operation of one or more Free Trade Zones on the Caribbean seaboard of Nicaragua (in areas to be set out in the Sub Project Development Plan for the Caribbean Free Trade Zone Project);

"**Caribbean Port**" means a port, together with any associated harbours, terminals and other related infrastructure, on the Caribbean seaboard of Nicaragua (in areas to be set out in the Sub Project Development Plan for the Caribbean Port Project);

"**Caribbean Port Project**" means the Development and Operation of the Caribbean Port;

"**Change in Law**" means, in respect of a Sub Project, any of the following events occurring after the date of this Agreement:

- (a) repeal, in whole or in part or a modification or amendment of all or any portion of the Legal Norm affecting, directly or indirectly, such Sub Project or any relevant Key Entity or the validity or enforceability of any term of any Primary Document;
- (b) enactment, adoption, promulgation, bringing into effect or making of a new Law or requirement for a Consent affecting, directly or indirectly,

such Sub Project or any relevant Key Entity or the validity or enforceability of any term of any Primary Document;

- (c) creation or expansion of restrictions on the possession or holding of foreign exchange or foreign exchange transactions, including remittance restrictions or creation of any new reserve requirements;
- (d) modification or amendment of, or the imposition of any qualification, condition, or restriction to, any relevant Sub Project Consent after it is granted;
- (e) cancellation or non-renewal of, or an adverse change in the qualifications, conditions or restrictions (if any) applicable to any Sub Project Consent granted to any relevant Key Entity or the issuance, renewal or modification thereof (including the imposition of any increased cost for the issuance, renewal, modification or maintenance of any Sub Project Consent and any requirement which increases the cost of retaining or complying with any provisions of any Sub Project Consent), in each case, in relation to such Sub Project or any relevant Sub Project Assets;
- (f) imposition at any time after the Effective Date of a requirement for any Key Entity to obtain, maintain or otherwise have any Consent in order to sanction, permit or otherwise facilitate any act (or omission) by such Key Entity which may be necessary or desirable in connection with the Development or Operation of such Sub Project; or
- (g) change in the manner in which any relevant Sub Project Consent or Law is applied or enforced or (if applicable) interpreted by any Government Entity having authority for the interpretation, application or enforcement of such Sub Project Consent or Law;

"Class A Founder Shares" means those shares of HKND designated as Class A Founder Shares in the memorandum and articles of association of HKND and having the rights and being subject to the restrictions as set out in the memorandum and articles of association of HKND and the Securityholders' Agreement;

"Commercial Operations Date" means, in respect of a Sub Project (other than the Associated Infrastructure Project and the Umbrella Project), the date on which the relevant Sponsor confirms in writing to the Government that appropriate operational tests conducted in accordance with Good Industry Practice have been successfully completed;

"Commission" has the meaning set forth in the preamble to this Agreement;

"Compensation Amount" has the meaning set forth in Clause 13.1(a)(viii)(A);

"Concession" has the meaning set forth in Clause 5.1;

"**Concession Period**" has the meaning set forth in Clause 5.2(d);

"**Confidential Information**" has the meaning set forth in Clause 19.1(a);

"**Consent**" means any consent, licence, approval, registration, permit, sanction, filing or registration with, or other authorisation or action of any nature;

"**Constitution**" means the Political Constitution of Nicaragua;

"**Control**" (including the terms "**Controlled**" and "**Controlling**") means:

- (a) in the case of a company, the right to exercise more than fifty percent (50%) of the votes exercisable at any meeting of that company, together with the right to appoint more than half of its directors or director(s) holding the right to exercise more than fifty percent (50%) of the votes that could be cast at any meeting of the board of directors (or similar governing body);
- (b) in the case of a partnership or limited partnership, the right to exercise more than fifty percent (50%) of the votes exercisable at any meeting of partners of that partnership or limited partnership (and in the case of a limited partnership, of each of its general partners);
- (c) in the case of a fund, account or investment portfolio, the right to be the manager or adviser of that fund, account or investment portfolio; and
- (d) in the case of any other person (other than an individual), the power to direct or cause the direction or the management or policies of such person,

whether by virtue of provisions contained in its memorandum or articles of association or, as the case may be, certificate of incorporation or by-laws, statutes or other constitutional documents or any contract or arrangement with any other persons;

"**Convention**" has the meaning set forth in Clause 22.3(a)(i);

"**Customs Duties**" means all import or export duties, taxes, charges, financial imposts, or any other fee of any kind or nature, including import fees imposed on the import of moveable plant, equipment or materials whether or not such movable plant, equipment or materials has or will become fixed assets, imposed by any Government Entity (including any customs authority of the Government or any other Government Entity) which are payable under any Law;

"**Debt Payment Amount**" means, with respect to any Sub Project Early Handback, an amount (calculated as of the relevant Transfer Date and without double counting) equal to:

$$(A + B) - (C + D)$$

where:

"A" equals all amounts outstanding from the relevant Sponsor or any Affiliate thereof to the relevant Sub Project Finance Parties under the relevant Sub Project Finance Documents (including all outstanding principal amounts together with any accrued but unpaid interest and all other amounts accrued but unpaid or otherwise outstanding under the relevant Sub Project Finance Documents);

"B" equals all amounts (including all payments due or arising upon the early termination of any Hedging Agreement) payable by the relevant Sponsor or its Affiliates to the relevant Sub Project Finance Parties as a result of or otherwise in connection with any of the following that is a result of or otherwise in connection with the occurrence of such Sub Project Early Handback:

- (a) any event of default or default (howsoever described in the relevant Sub Project Finance Document) or any prepayment or other early payment under or in connection with; and
- (b) any early termination of any relevant Sub Project Finance Document(s);

"C" equals all credit balances on any bank accounts held by or on behalf of the relevant Sponsor or its Affiliates that have been pledged in favour of the relevant Sub Project Finance Parties; and

"D" equals all payments received by the relevant Sponsor or its Affiliates from the relevant Sub Project Finance Parties as a result of or otherwise in connection with any early termination of any Hedging Agreement that is a result of or otherwise in connection with the occurrence of such Sub Project Early Handback;

"Debt Termination Payment Amount" means, with respect to any Sub Project Early Handback, an amount (calculated as of the relevant Transfer Date) equal to (i) the relevant Debt Payment Amount, plus (ii) the relevant Handback Expenses;

"Deed of Cooperation" has the meaning set forth in Recital (A);

"Default Rate" means, with respect to any amount owed to any Party by any other Party under the provisions of this Agreement, a rate per annum equal to the cost (without proof or evidence of actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus one percent (1%) per annum (compounded quarterly);

"Destabilising Event" means any of the following:

- (a) Political Force Majeure;

- (b) Change in Law;
- (c) any Government Entity's withdrawal or termination of, change to, refusal to issue or renew, delay in issuing, or failure to give effect to, any Sub Project Consent, except as permitted under this Agreement;
- (d) repudiation, withdrawal, termination or suspension of any relevant Primary Document by any Government Entity, except as permitted under this Agreement;
- (e) any Sub Project Party incurs any Losses in connection with obtaining, retaining or complying with any Sub Project Consent (including any Consent required in connection with any items or services imported or exported pursuant to Clause 10.2 or Clause 10.3);
- (f) breach by any Government Entity of its obligations under a relevant Primary Document or failure of any Government Entity to act in a manner consistent with the provisions of any relevant Primary Document (whether or not the Government Entity is a party to such Primary Document) or any Law;

"Destabilising Event Situation" has the meaning set forth in Clause 13.1(a);

"Development" has the meaning set forth in Recital (B) and **"Develop"** shall be construed accordingly;

"Direct Agreement" has the meaning set forth in Clause 11.4;

"Dispute" means any dispute, disagreement, difference, controversy or claim arising under, out of, or in connection with this Agreement or the transactions contemplated thereby (including, for the avoidance of doubt, any dispute, disagreement, difference, controversy or claim under any applicable treaty, convention or other instrument in connection therewith), and including any dispute, difference, controversy or claim concerning the existence, legality, validity, or enforceability of this Agreement or any provision hereof or the performance of a Party under any provision hereof;

"Dry Canal" means a dry canal railroad for freight linking areas on the Caribbean and Pacific seaboards of Nicaragua (in areas, and on a route, to be set out in the Sub Project Development Plan for the Dry Canal Project);

"Dry Canal Project" means the Development and Operation of the Dry Canal;

"EDGI" has the meaning set forth in Recital (E);

"Effective Date" means the date of this Agreement;

"Election Period" has the meaning set forth in Clause 17.2;

"Enterprise Termination Payment Amount" means, with respect to any Sub Project Early Handback, an amount (calculated as of the relevant Transfer Date) equal to (i) the relevant Debt Termination Payment Amount, plus (ii) the relevant Sub Project Equity Value, plus (iii) the relevant Handback Expenses;

"Excess Receipt" has the meaning set forth in Clause 18.2(b);

"Exclusivity" has the meaning set forth in Clause 18.1(b);

"Exclusivity Period" has the meaning set forth in Clause 18.1(a);

"Existing Local Employment Taxes" means any payroll, employment, occupation, withholding, national insurance, social security (or similar), unemployment and disability taxes required to be paid or withheld in connection with (i) the employment for any term and on whatever basis of any Nicaraguan citizen, or (ii) the employment for any term and whatever basis of any person by any employer that is a Nicaraguan citizen or a legal entity (whether a partnership, company or otherwise) that (x) was established in Nicaragua, or (y) is registered in Nicaragua for the purpose of carrying on commercial activities, in each case to the extent that such Taxes and Duties existed on the same terms (including with respect to the tax rate, assessable basis and timing of payment) as of the date of this Agreement;

"Expatriate Employee" means any natural person who is not a citizen of Nicaragua and who is engaged (directly or indirectly) by any Key Entity or any other Sub Project Party in connection with the Development and Operation of any Sub Project;

"Expropriation" means, in respect of a Sub Project, the expropriation, compulsory acquisition, requisition, appropriation, seizure, confiscation, nationalisation, or interference in the quiet use, Development, Operation, holding, custody or control of all or any portion of any relevant Sub Project Asset, any ownership interest in any relevant Key Entity or of any other tangible or intangible asset or right of the relevant Sponsor or any other relevant Key Entity, in each case, in respect of such Sub Project, and in each case any measures which when taken alone or together have equivalent effect, and **"Expropriate"** shall be construed accordingly;

"Expropriation Value" means, with respect to any property, the lesser of (x) the Cadastral Value of such property (if any) as of the date of this Agreement, and (y) the price at which such property would transfer in an arms' length sale between unaffiliated parties in an open market on the date of this Agreement; in each case calculated without reference to, and no value ascribed to, (a) any improvement undertaken or immovable objects added (if applicable) after the date of this Agreement, or (b) any change in value occurring because the expropriatory action had become known prior to the date of this Agreement; provided that the Expropriation Value for any property owned, occupied, possessed or otherwise

Controlled by any Government Entity on or after the date of this Agreement shall be zero;

"Fee Adjustment Amount" means, as of any Relevant Key Date, an amount equal to any increase during the twelve (12) months immediately preceding such Relevant Key Date in the maximum amount of aggregate distributions that may be paid by HKND to the holders of the Host Country Shares on or after the Effective Date pursuant to the provisions of the Securityholders' Agreement (regardless of whether or not any payments or other distributions were made or declared with respect to any such Host Country Shares on or prior to such Relevant Key Date);

"Final Commercial Operations Date" means the first Business Day upon which the Commercial Operations Dates for all Sub Projects (excluding any Sub Project for which the relevant Concession has been terminated, the Associated Infrastructure Project and the Umbrella Project) have occurred (whether on that date or previously);

"Follow-on Concession Period" has the meaning set forth in Clause 5.2(c);

"Follow-on Option" has the meaning set forth in Clause 5.2(c);

"Force Majeure Event" has the meaning set forth in Clause 14.1;

"Free Trade Zone" means a designated area:

- (a) into which all goods including capital goods, machinery, equipment, spare parts, construction material and any other finished or unfinished goods of any description (other than goods the possession of which would be prohibited by any Laws throughout the territory of Nicaragua) ("**Lawful Goods**") may be imported;
- (b) within which:
 - (i) any person may engage in industrial or commercial activity (other than any activity which would be unlawful throughout the territory of Nicaragua under any Laws);
 - (ii) Lawful Goods may be manufactured, processed, serviced, stored, sold, exhibited, broken up, packaged, repacked, assembled, distributed, sorted, graded, cleaned, mixed or otherwise manipulated; and
 - (iii) all persons may be employed or otherwise engaged to provide any services (other than any service the provisions of which would be prohibited by any Laws throughout the territory of Nicaragua); and
- (c) from which:

- (i) Lawful Goods may be exported; and
- (ii) capital, income and profits may be transferred within Nicaragua or repatriated abroad,

in each case without:

- (A) having to obtain any Consent from any Government Entity in respect thereof other than to the extent reasonably necessary to ensure compliance with the Constitution or any international treaty to which Nicaragua is a party; or
- (B) any obligation to pay, withhold or otherwise bear the burden of any amount in respect of any Taxes and Duties;

"Golden Shares" means those shares of HKND designated as Golden Shares in the memorandum and articles of association of HKND and having the rights and being subject to the restrictions as set out in the memorandum and articles of association of HKND and the Securityholders' Agreement;

"Good Industry Practice" means, with respect to any Sub Project, the exercise of that degree of skill, diligence, efficiency, reliability and prudence and those practices, methods, specifications and standards of equipment, safety, services and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced international operator/contractor engaged in the Development or Operation of an infrastructure project similar to such Sub Project;

"Government Entity" means the Government or any governmental agency or any national, state, regional, provincial, local, county, city, town, village, municipal or other instrumentality, authority, department, ministry, commission, board, bureau agency, inspectorate, or any political subdivision of any thereof, including any person exercising statutory authority or legislative, judicial, taxing, regulatory or administrative functions of or pertaining to any of the foregoing entities, including any minister, official, court, tribunal, central bank or public or statutory body (whether autonomous or not), of Nicaragua (including, for the avoidance of doubt, any licensing authority, taxing authority or public registry) and including any agent or representative acting on behalf of any of the foregoing entities; provided that, for the avoidance of doubt, each of the Authority and the Commission shall be deemed a Government Entity;

"Government Event of Default" means, with respect to any Sub Project:

- (a) the breach by any Government Entity (unless such breach results from a Natural Force Majeure Event affecting that Government Entity or is otherwise referenced in Clauses (b) to (h) of this definition) of any payment obligation or any other material obligation under any Primary Document which (where capable of remedy) is not remedied within thirty

- (30) days in respect of such breach (or, with respect to any breach related to any payment obligation, five (5) days) after delivery of a notice by any Sponsor that such a breach has occurred, identifying the breach in question in reasonable detail and demanding remedy thereof;
- (b) any representation or warranty set out in Clauses 2.1 or 8.2(a) proves to be false or misleading in any material respect at any other time or the Authority, the Commission and the Government has not disclosed any material fact which renders any such representation or warranty materially misleading;
 - (c) the receipt by any Government Entity (or any designee thereof) of any Excess Receipt that is connected to such Sub Project or any new, comparable or similar project or any portion thereof;
 - (d) it is or it becomes at any time illegal, void, voidable, invalid, materially restricted or unenforceable for any person or otherwise causes a material delay for any person:
 - (i) to make or receive payments in the currency and in the manner required by any Sub Project Consent, the Securityholders' Agreement or any Sub Project Document;
 - (ii) to make payments (including the repayment of loans, the payment of interest and of any other amounts owing under any loan agreement and the payment of distributions or any other return of, or return on, capital) to any Sub Project Party or any other investor in any Sub Project; and
 - (iii) to enter into, perform obligations or enjoy rights and benefits under, any Primary Document or any Sub Project Document;
 - (e) the occurrence of a Change in Law that results in a Destabilising Event Situation;
 - (f) the failure by the Commission to deliver either an Approval Notice or a Non-Compliance Notice to the relevant Sponsor on or before the relevant Notice Deadline Date in respect of a Sub Project Development Plan for such Sub Project submitted to the Commission by such Sponsor in accordance with the provisions of Clause 7.3;
 - (g) the delivery by the Commission to the relevant Sponsor of a Non-Compliance Notice in respect of a Sub Project Development Plan for such Sub Project submitted to the Commission by such Sponsor in accordance with the provisions of Clause 7.3 in circumstances where the relevant Sub Project Development Plan complies in all material respects with the Sovereign Principles; and

(h) the occurrence of an Expropriation;

"Handback Expenses" means, with respect to any Sub Project in connection with a relevant Sub Project Early Handback, an amount (calculated as of the relevant Transfer Date and without double counting) equal to:

- (a) the aggregate of any redundancy payments for employees, consultants, contractors, advisors and agents of the relevant Sponsor and its Affiliates that have been or will be reasonably incurred by the relevant Sponsor and its Affiliates as a direct result of such Sub Project Early Handback; plus
- (b) any Losses that have been or will be reasonably and properly incurred by the relevant Sponsor and its Affiliates as a result of or otherwise in connection with such Sub Project Early Handback, but only to the extent:
 - (i) such Losses are incurred in connection with such Sub Project;
 - (ii) such Losses are incurred under commercially reasonable arrangements or agreements that are consistent with terms that have been entered into in the ordinary course of business;
 - (iii) the Sponsor and its Affiliates have used reasonable endeavours to mitigate such Losses; and
 - (iv) such Losses shall exclude any equity investment or other contribution (whether by way of capital contribution, contribution in-kind, Shareholder Loan or otherwise) made by the relevant Shareholder(s) with respect to the relevant Sub Project;

"Hedging Agreement" means, in respect of a Sub Project, any Sub Project Financing Agreement entered into for the principal purposes of hedging any interest rate, exchange rate or other variable price risk associated with such Sub Project (including the relevant Sub Project Financing);

"HKC" has the meaning set forth in the preamble to this Agreement;

"HKND" has the meaning set forth in Recital (D);

"Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China;

"Host Country Shares" means the Class A Founder Shares and the Golden Shares;

"ICC" has the meaning set forth in Clause 22.3(a)(ii);

"Initial Concession Period" has the meaning set forth in Clause 5.2(b);

"Insurance Proceeds Amount" means, with respect to any Sub Project Handback that is connected to a Natural Force Majeure Event, any insurance proceeds received by the relevant Sponsor or any of its Affiliates with respect to any material damage policies (but excluding, for the avoidance of doubt, any insurance proceeds received with respect to any business interruption insurance policy or any third party liability insurance policy) directly as a result of the occurrence of such Natural Force Majeure Event that have not been spent or budgeted by such Sponsor or its Affiliates on the repair and restoration of any damage caused by such Natural Force Majeure Event;

"Investments" means all Sub Project Assets and every other kind of asset and more particularly, though not exclusively:

- (a) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (b) shares in and stock and debentures of a company and any other form of participation in a company;
- (c) claims to money or to any performance under contract having a financial value;
- (d) intellectual property rights, goodwill, technical processes and know-how; and
- (e) business concessions conferred by law or under this Agreement or under any other contract, including concessions to search for, cultivate, extract or exploit natural resources;

"Investors" has the meaning set forth in the preamble to this Agreement;

"Invoice" has the meaning set forth in Clause 23.2;

"Joint Planning Committee" has the meaning set forth in Clause 4.1(a);

"Key Date" means each anniversary of (i) the commercial operations date of the Wet Canal, or (ii) if the Concession for the Wet Canal is terminated prior to the Commercial Operations Date for the Wet Canal, the Final Commercial Operations Date;

"Key Entity" means, in respect of a Sub Project, each of (i) the Original Sponsor or its Affiliates and, if different, the relevant Sponsor and its Affiliates, and (ii) each Sub Project EPC Contractor, each Sub Project O&M Contractor and any of their respective sub-contractors and any other service provider engaged in connection with such Sub Project;

"Law" means any constitutional regulation, resolution, law, by-law, statute, act, ordinance, rule, judgment, executive order or action, decree, code or direction,

decision (including any conditions attached thereto), directive guideline, requirement or other restriction (to the extent having the force of law or with which it is usual or customary to comply), order, treaty, code, rule or regulation (including any of the foregoing relating to health or safety matters or any environmental law or social law, and any standards or technical rules capable of being enforced by any Government Entity) or any interpretation of the foregoing, as enacted, instituted or promulgated by any Government Entity;

"**Lawful Goods**" has the meaning set forth in the definition of Free Trade Zone;

"**Legal Norm**" means all Laws effective as at the date of this Agreement, as amended, varied and supplemented after the date hereof to the extent required by the provisions of this Agreement;

"**Linked Agreement**" means each Primary Document other than this Agreement;

"**Losses**" means all direct, indirect, incidental and consequential losses (including any lost profits or savings), costs, damages, penalties, fines, fees, expenses, obligations and liabilities of any kind (whether secured or unsecured, absolute or contingent, disputed or undisputed or otherwise and including any Taxes and Duties (or any similar fees or charges) in any jurisdiction and any legal or other professional costs and expenses);

"**MoU**" has the meaning set forth in Recital (A);

"**National Security Laws**" means Law Number 750 ("*Ley de Seguridad Democrática de la República de Nicaragua*"), which was passed by the National Assembly of Nicaragua on 13 December 2010 and published in the Gazette, Official Government of the Republic of Nicaragua Publication No. 24 on 23 December 2010 and any other Laws enacted primarily for the purpose of and necessary for regulating the preservation of sovereignty, independence, territorial integrity, defense of the State from an international aggression or confrontation with international drug trafficking or organised crime;

"**Natural Force Majeure Events**" means the Force Majeure Events specified in Clause 14.2(a);

"**Netherlands BIT**" means the agreement on encouragement and reciprocal protection of investments between Nicaragua and the Kingdom of the Netherlands, which entered into force on 1 January 2003;

"**Nicaragua**" means the Republic of Nicaragua and any successor state;

"**Nicaraguan Currency**" means the Nicaraguan Córdoba or any other lawful currency of Nicaragua from time to time;

"**Non-Compliance Notice**" means, with respect to any Sub Project Development Plan, a notice delivered by the Commission to the relevant Sponsor pursuant to

Clause 7.4(c) providing reasonable details of non-compliance of such Sub Project Development Plan with the Sovereign Principles;

"**Non-Financial Development Services**" means, with respect to any Sub Project, the provision of services in connection with the Development of the relevant Sub Project Infrastructure or the Development of any improvements or alterations to the relevant Sub Project Site (other than the arrangement of any financing except vendor financing);

"**Normal Business Hours**" has the meaning set forth in Clause 21.14;

"**Notice Deadline Date**" has the meaning set forth in Clause 7.4(c);

"**Offer Notice**" has the meaning set forth in Clause 17.2;

"**Operation**" has the meaning set forth in Recital (B) and "**Operate**" shall be construed accordingly;

"**Original Sponsor**" means EDGI;

"**Pacific Free Trade Zone Project**" means the Development and Operation of one or more Free Trade Zones on the Pacific seaboard of Nicaragua (in areas to be set out in the Sub Project Development Plan for the Pacific Free Trade Zone Project);

"**Pacific Port**" means a port, together with any associated harbours, terminals and other related infrastructure, on the Pacific seaboard of Nicaragua (in areas to be set out in the Sub Project Development Plan for the Pacific Port Project);

"**Pacific Port Project**" means the Development and Operation of the Pacific Port;

"**Pipeline**" means a pipeline linking areas on the Caribbean and Pacific seaboard of Nicaragua (in areas, and on a route, to be set out in the Sub Project Development Plan for the Pipeline Project);

"**Pipeline Project**" means the Development and Operation of the Pipeline;

"**Political Force Majeure Event**" means the Force Majeure Events specified in Clause 14.2(b);

"**Pre-Contractual Statements**" has the meaning set forth in Clause 21.13(b)(ii);

"**Primary Document**" means, in respect of a Sub Project, any of (and "**Primary Documents**" shall mean all of) the following:

- (a) this Agreement;
- (b) the Deed of Cooperation;

- (c) the relevant Sub Project Concession and Implementation Agreement;
- (d) any relevant Direct Agreement;
- (e) the Securityholders' Agreement;
- (f) any other documents relevant to such Sub Project to be entered into by a Government Entity granting rights with respect to such Sub Project; and
- (g) any other document agreed between the Parties to be a Primary Document;

"Project" has the meaning set forth in Recital (C);

"Project Services" has the meaning set forth in Clause 10.3(a);

"Relevant Financing Date" means (i) with respect to the Wet Canal Project, the date of the Sub Project Financial Closing for the Wet Canal Project, and (ii) with respect to any other Sub Project, the later to occur of (x) the date of the Sub Project Financial Closing for the Wet Canal Project, and (y) the date of the Sub Project Financial Closing for such Sub Project;

"Relevant Key Date" means each anniversary of the Commercial Operations Date for the Wet Canal occurring on or before the tenth (10th) anniversary of such Commercial Operations Date; provided that the Concession with respect to the Wet Canal is effective as of such date and no Termination Notice has been delivered in connection with such Concession on or prior to such date;

"Relevant Percentage" means, with respect to the shares of HKND as of any date of determination, the relevant percentage set forth below next to the then most recent historical date below:

Date	Percentage
Prior to the 11th Key Date:	1%
On and after the 11th Key Date but prior to the 21st Key Date:	10%
On and after the 21st Key Date but prior to the 31st Key Date:	20%
On and after the 31st Key Date but prior to the 41st Key Date:	30%
On and after the 41st Key Date but prior to the 51st Key Date:	40%
On and after the 51st Key Date but prior to the 61st Key Date:	50%
On and after the 61st Key Date but prior to the 71st Key Date:	60%
On and after the 71st Key Date but prior to the 81st Key Date:	70%
On and after the 81st Key Date but prior to the 91st Key Date:	80%
On and after the 91st Key Date but prior to the 101st Key Date:	90%
On and after the 101st Key Date:	99%

"**Relevant Right**" has the meaning set forth in Schedule 4 (*Principles of Direct Agreement*);

"**Rules**" has the meaning set forth in Clause 22.3(a)(ii);

"**Securityholders' Agreement**" means the securityholders' agreement relating to HKND and entered into by and among HKND and the Securityholders (as defined therein) and dated on or about the date hereof;

"**Security Interest**" means any mortgage, deed of trust, charge, pledge, lien, assignment, hypothecation, restriction or any other security interest or encumbrance of any nature or other agreement or arrangement having a similar effect;

"**Service Provider**" has the meaning set forth in Clause 10.3(a);

"**Shareholder**" means any holder of any ownership interest in HKND or any Sponsor or any of their respective Affiliates;

"**Shareholder Loan**" means any loan or advance from any Shareholder to HKND or to any Sponsor or their respective Affiliates;

"**Shares**" means the shares of HKND of whatever class or type (including any Class A Founder Shares, Golden Shares, Hope Shares and Class B Founder Shares and whether voting or non-voting) and having the rights set out in the

memorandum and articles of association of HKND and the Securityholders' Agreement;

"Sovereign Immunity Waiver" means a binding waiver of sovereign immunity with respect to any claims that may be made or enforced pursuant to this Agreement or the Securityholders' Agreement (as applicable) in the form set out in the relevant waiver attached hereto as Schedule 6 (*Sovereign Immunity Waiver*);

"Sovereign Principles" means the principles set out in Schedule 7 (*Sovereign Principles*);

"Sponsor" means, in respect of a Sub Project, (i) the Original Sponsor, or (ii) any other person designated by the Original Sponsor from time to time to be the Sponsor of such Sub Project for purposes of this Agreement as set out in Schedule 2 (*Schedule of Sponsors*);

"Sponsor Event of Default" means, with respect to any Sub Project, any breach by the relevant Sponsor of any material obligation under this Agreement with respect to such Sub Project (unless such breach results from a Government Event of Default, a Force Majeure Event or a Destabilising Event), which (where capable of remedy) is not remedied within thirty (30) days after a notice from the Government stating that such a breach has occurred, identifying the breach in question in reasonable detail and demanding remedy thereof; provided that, if the Sponsor has diligently and as promptly as possible commenced the remedial action necessary but is unable to complete it within thirty (30) days after the date of such notice, it shall be allowed such further period as may be reasonable for completing the remedial action not exceeding another sixty (60) days from the expiry of the thirty (30) day period referred to above;

"Sponsor Party" has the meaning set forth in Schedule 4 (*Principles of Direct Agreement*);

"Sub Project" means any of the following:

- (a) the Airport Project;
- (b) any Associated Infrastructure Project;
- (c) the Caribbean Free Trade Zone Project;
- (d) the Caribbean Port Project;
- (e) the Dry Canal Project;
- (f) the Pacific Free Trade Zone Project;
- (g) the Pacific Port Project;

- (h) the Pipeline Project;
- (i) the Wet Canal Project; and
- (j) the Umbrella Project;

"Sub Project Assets" means, in respect of a Sub Project, the Sub Project Site and the Sub Project Infrastructure of such Sub Project;

"Sub Project Collateral" means, in respect of a Sub Project, any ownership interests in the relevant Sponsor and the Original Sponsor (if different), the Sub Project Site, the Sub Project Infrastructure and any other tangible and intangible assets of the relevant Sponsor including the Sub Project itself, the benefit of all relevant Sub Project Documents, and all accounts receivable, insurances, inventory, equipment, general intangibles, investment property, intellectual property, real property, cash, commercial tort claims, letter of credit rights, intercompany loans or notes, contract rights, rights and claims against any Government Entity (if any) and proceeds of the foregoing;

"Sub Project Concession and Implementation Agreement" means, in respect of a Sub Project, one or more agreements between the relevant Sponsor and the Commission and any other relevant Government Entities *inter alia* granting the principal rights necessary or desirable for the Development and Operation of such Sub Project; provided that any such agreement that grants or sets out the terms and conditions of any Concession shall be in the Spanish language and governed by the Laws of Nicaragua;

"Sub Project Consents" means, in respect of a Sub Project, any Consent granted by any Government Entity which may be necessary or desirable for any reason at any time during the relevant Concession Period, whether required by Law or otherwise to enable (a) any relevant Sub Project Party to perform its obligations and fully enjoy its rights under this Agreement with respect to such Sub Project, or to enable such Sub Project Party to perform its obligations and fully enjoy its rights under the relevant Sub Project Concession and Implementation Agreement, (b) any Sub Project Party to perform its obligations and fully enjoy its rights under any Sub Project Document to which it is a party in respect of such Sub Project, or (c) any Sponsor to Develop and Operate any relevant Sub Project;

"Sub Project Construction Documents" means, in respect of a Sub Project:

- (a) a Sub Project EPC Contract;
- (b) any other contract(s) reasonably required by the relevant Sponsor for the construction of the relevant Sub Project Infrastructure; and
- (c) any other document relevant to such Sub Project agreed between the Parties to be a Sub Project Construction Document;

"Sub Project Development Plan" has the meaning set forth in Clause 7.1;

"Sub Project Documents" means, in respect of a Sub Project:

- (a) this Agreement;
- (b) the relevant Sub Project Concession and Implementation Agreement;
- (c) any relevant Direct Agreement;
- (d) any relevant Sub Project Construction Documents;
- (e) the relevant Sub Project O&M Documents;
- (f) the relevant Sub Project Finance Documents;
- (g) any other agreements which grant rights to any Sub Project Party with respect to such Sub Project; and
- (h) any other document agreed between the Parties to be a Sub Project Document;

"Sub Project Early Handback" means, with respect to any Sub Project, the transfer of the Sub Project Assets of such Sub Project to the Government (or its designee(s)) in accordance with the provisions of Clause 16.1 and Schedule 3 (*Early Handback Procedures*);

"Sub Project EPC Contract" means, in respect of a Sub Project, the engineering, procurement, construction and any other contract(s) pursuant to which any relevant Sub Project EPC Contractor provides Non-Financial Development Services to the relevant Sponsor or any Affiliate thereof;

"Sub Project EPC Contractor" means, in respect of a Sub Project, any contractor, sub-contractor, agent or other service provider engaged by any relevant Key Entity in connection with the provision of any Non-Financial Development Services;

"Sub Project Equity Value" means, with respect to any Sub Project Early Handback, an amount, calculated as of the relevant Transfer Date and without double counting, equal to the greater of (i) the relevant Sub Project Investment Return Amount; and (ii) the relevant Sub Project IRR Amount;

"Sub Project Finance Documents" means, in respect of a Sub Project, the loan agreements, notes, indentures, security agreements, guarantees and other agreements, documents and instruments relating to the relevant Sub Project Financing;

"Sub Project Finance Parties" means, in respect of a Sub Project, the parties to that Sub Project's Sub Project Finance Documents (excluding any Government Entity and any person Controlled by a Government Entity);

"Sub Project Financial Closing" means, in respect of a Sub Project, the first date on which (i) debt financing has been committed pursuant to the Sub Project Finance Documents in an amount that is sufficient to meet (together with any projected equity contributions and Shareholder Loans) the financing requirements of such Sub Project, and (ii) the conditions precedent to first draw down under the Sub Project Finance Documents for that Sub Project are satisfied in full or waived in accordance with the provisions of such Sub Project Finance Documents;

"Sub Project Financing" means, in respect of a Sub Project, all debt financing from any lending source(s) (excluding Shareholder Loans) and in any form (including debt securities issued in the international capital markets) incurred for the purpose of financing or refinancing such Sub Project;

"Sub Project Infrastructure" means, in respect of a Sub Project, the physical buildings, equipment and other infrastructure which form part of such Sub Project (including roads, access ways, electricity and data transmission and distribution lines, water storage infrastructure, water supply, drainage and sewage pipes, conduits for any and all other services and any other infrastructure that may be necessary or desirable for the Development and Operation of such Sub Project);

"Sub Project Investment Amount" means, with respect to any Sub Project as of any date of determination and without double counting, an amount equal to (i) the aggregate value of all equity investment and other contributions (whether by way of capital contribution, contribution in-kind, Shareholder Loans or otherwise) made by the relevant Shareholder(s) with respect to such Sub Project (as calculated in each case in US Dollars on the date of such investment or contribution), plus (ii) the amount of all other costs and expenses incurred by the relevant Shareholder(s) in connection with the Development and Operation of such Sub Project (including, for the avoidance of doubt, all costs relating to any feasibility studies commissioned by such Sponsor or its Affiliates, the preparation of the applicable Sub Project Development Plan and the fees of any relevant advisers);

"Sub Project Investment Return Amount" means, with respect to any Sub Project as of any date of determination, an amount equal to (i) the product of (x) one and one-half (1.5), multiplied by (y) the Sub Project Investment Amount, minus (ii) the aggregate amount (without double counting in each case) of capital distributed or otherwise returned by any Sponsor or any Affiliate thereof with respect to the relevant Sub Project Assets and received by the relevant Shareholder(s) on or prior to such date of determination with respect to the investments and other contributions reflected in the relevant Sub Project Investment Amount;

"Sub Project IRR Amount" means, with respect to any Sub Project as of any date of determination, an amount which, when taken together with the aggregate amount of proceeds generated by the relevant Sub Project Assets and received (without double counting) by the relevant Shareholder(s) on or prior to such date of determination with respect to the investments and other contributions reflected in the relevant Sub Project Investment Amount (taking account of the actual timing of all such payments) gives a real internal rate of return on the investments and other contributions reflected in the relevant Sub Project Investment Amount (taking account of the actual timing of all such investments and contributions) equal to thirty percent (30%);

"Sub Project O&M Contractor" means, in respect of a Sub Project, any contractor, sub-contractor, agent or other service provider engaged by any relevant Key Entity in connection with the Operation of such Sub Project;

"Sub Project O&M Documents" means, in respect of a Sub Project, any operation and management contract(s) (or similar agreement(s)) pursuant to which any relevant Sub Project O&M Contractor operates or maintains the relevant Sub Project Infrastructure on behalf of the relevant Sponsor or any Affiliate thereof, and any other documents relating to such Sub Project agreed with the Sub Project O&M Contractor;

"Sub Project Party" means, in respect of a Sub Project, each of the relevant Key Entities and Sub Project Finance Parties and any other person (other than any Government Entity or any person Controlled by a Government Entity) which is a party to any relevant Sub Project Document;

"Sub Project Site" means, in respect of a Sub Project, the location(s) on which the Sub Project Infrastructure is, or is to be, constructed, operated and maintained, as identified in the relevant Sub Project Development Plan and includes all land (including where relevant land under water), spaces (including air and subsoil), roads and any surface or volume (whether of water, air or otherwise) required for the relevant Sub Project Infrastructure;

"Subrogated Party" has the meaning set forth in Clause 9.9(a);

"Tag-Along Option" has the meaning set forth in Clause 15.6;

"Tax Cadastre" means the Tax Cadastre (*Catastro Fiscal*) as regulated under Law Number 509 ("*Ley General de Catastro Nacional*"), which was passed by the National Assembly of Nicaragua on 11 November 2004 and published in the Gazette, Official Government of the Republic of Nicaragua Publication No. 11 of 17 January 2005 (the "**Authority**");

"Taxes and Duties" means any and all present and future taxes (howsoever described), including income, gross receipts, licence, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs, tariffs or special tariffs, capital gains, capital stock, franchise, profits,

withholding, national insurance, social security (or similar), unemployment, disability, property, sales, use, consumption, transfer, registration, value added, alternative or add-on minimum, estimated and documentary stamp taxes, and other taxes, charges, withholdings, duties, assessments, or fees of any kind whatsoever, however imposed, withheld, levied or assessed by any Government Entity (whether directly or indirectly), including any interest, penalty, or addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the tax liability of any other person; provided that no Existing Local Employment Taxes shall be deemed Taxes and Duties for purposes of this Agreement;

"Termination Date" means, with respect to the early termination of any Concession Period pursuant to the provisions of this Agreement, the earlier to occur of (i) one hundred twenty (120) days following the delivery of the relevant Termination Notice, and (ii) the relevant Transfer Date;

"Termination Notice" means, with respect to any Sub Project, any notice delivered by the Government or any Sponsor (as applicable) in accordance with Clause 15.1, 15.2, 15.3, 15.4(a), 15.4(b), 15.5 or 15.6, as the case may be, for terminating the Concession for such Sub Project and all rights, benefits and obligations under this Agreement with respect to such Sub Project;

"Termination Payment Amount" means, in connection with any Sub Project Early Handback arising as a result of an event listed under "Termination Event" in the table set out below, an amount calculated as of the relevant Transfer Date in accordance with the provision set out under "Termination Payment Amount" opposite the relevant event:

Termination Event	Termination Payment Amount
Non-Viable Sub Project: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of Clause 15.1:	zero
Failure to Achieve Sub Project Financial Closing: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of Clause 15.2:	A
Failure to Achieve Commercial Operations Date: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of Clause 15.3:	A
Government Event of Default: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of	B

Termination Event	Termination Payment Amount
Clause 15.4(a):	
Sponsor Event of Default: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of Clause 15.4(b):	A
Prolonged Natural Force Majeure: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of Clause 15.5 in respect of a prolonged Natural Force Majeure Event:	A <u>minus</u> C
Prolonged Political Force Majeure: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of Clause 15.5 in respect of a prolonged Political Force Majeure Event:	B
Tag-Along, Government Event of Default: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of Clause 15.6, where the relevant Tag-Along Option arose under Clause 15.6 as a result of a Trigger Notice delivered in accordance with the provisions of Clause 15.4(a):	B
Tag-Along, Sponsor Event of Default: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of Clause 15.6, where the relevant Tag-Along Option arose under Clause 15.6 as a result of a Trigger Notice delivered in accordance with the provisions of Clause 15.4(b):	A
Tag-Along, Prolonged Natural Force Majeure: Sub Project Early Handback in connection with the delivery of a Termination Notice in accordance with the provisions of Clause 15.6, where the relevant Tag-Along Option arose under Clause 15.6 as a result of a Trigger Notice delivered in accordance with the provisions of Clause 15.5 in respect of a prolonged Natural Force Majeure Event:	A <u>minus</u> C
Tag-Along, Prolonged Political Force Majeure: Sub Project Early Handback in connection with the delivery	B

Termination Event	Termination Payment Amount
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of a Termination Notice in accordance with the provisions of Clause 15.6, where the relevant Tag-Along Option arose under Clause 15.6 as a result of a Trigger Notice delivered in accordance with the provisions of Clause 15.5 in respect of a prolonged Political Force Majeure Event:

Any Other Termination: Termination for any reason other than the causes set out above (except termination upon the expiry of the full term of the Concession Period):

A

where

A = Debt Termination Payment Amount;

B = Enterprise Termination Payment Amount; and

C = Insurance Proceeds Amount,

provided in each case that:

- (a) if a Government Event of Default or Political Force Majeure Event occurs at any time prior to the relevant Transfer Date in connection with:
 - (i) a Sub Project which is the subject of a Sub Project Early Handback; or
 - (ii) a Sub Project in respect of which a Trigger Notice is delivered, giving rise to a Tag-Along Option under Clause 15.6 and a subsequent Sub Project Early Handback upon exercise of that Tag-Along Option,

the Termination Payment Amount for any Sub Project in the case of sub-clause (a)(i) of this definition or any Subject Project in respect of which a Trigger Notice is delivered or a Tag-Along Option is exercised in the case of sub-clause (a)(ii) of this definition shall equal the Enterprise Termination Payment Amount; and

- (b) the Termination Payment Amount shall not be less than zero;

"Third Party Beneficiary" has the meaning set forth in Clause 21.12(b);

"Third Party Offeree" has the meaning set forth in Clause 17.2;

"**Title Insurance**" has the meaning set forth in Clause 8.1(a);

"**Transfer Date**" means (i) with respect to any Sub Project Early Handback, 11:59 a.m. on the first Business Day that is at least one hundred twenty (120) days following the delivery of the relevant Termination Notice, and (ii) with respect to any exercise of a Tag-Along Option, 11:59 a.m. on the Transfer Date applicable to the Sub Project Early Handback associated with the relevant Trigger Notice, or in each case such earlier date as may be agreed between the Government and the relevant Sponsor;

"**Trigger Notice**" has the meaning set forth in Clause 15.6;

"**Umbrella Project**" means an over-arching project to ensure integration and coordination of all Sub Projects other than the Umbrella Project;

"**US Dollars**" and "**USD**" means the official currency of the United States of America;

"**Wet Canal**" means a traditional waterway for ships that begins in the Caribbean Sea at the edge of Nicaragua's territorial waters in the Caribbean Sea and ends in the North Pacific Ocean at the edge of Nicaragua's territorial waters in the North Pacific Ocean (in areas, and on a route, to be set out in the Sub Project Development Plan for the Wet Canal Project); and

"**Wet Canal Project**" means the Development and Operation of the Wet Canal.

1.2 Rules of Interpretation

- (a) Headings to Clauses and Schedules and the table of contents are included for ease of reference only, and are not to affect the interpretation of this Agreement.
- (b) In this Agreement, unless expressly stated otherwise:
 - (i) the words "**include**" or "**including**" (or any similar term) are not to be construed as implying any limitation;
 - (ii) general words shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things;
 - (iii) words indicating gender shall be treated as referring to the masculine, feminine or neuter as appropriate;
 - (iv) the word "**or**" is not exclusive;
 - (v) any reference to any document other than this Agreement is a reference to that other document as amended, restated, varied,

supplemented, novated or otherwise modified (in each case, other than in breach of the provisions of this Agreement) at any time;

- (vi) any reference to the time of day is a reference to Managua time and any reference to a "**day**" (including within the defined term Business Day) shall mean a period of twenty-four (24) hours running from midnight to midnight;
- (vii) any reference to something being "**in writing**" or "**written**" includes any mode of representing or reproducing words in visible form that is capable of reproduction in hard copy form, including words transmitted by facsimile or e-mail but excluding any other form of electronic or digital communication;
- (viii) any reference to a document or communication being "**signed**" by or on behalf of any person means signature in manuscript by that person or its authorised agent or attorney (which manuscript signature may be affixed or transmitted by facsimile or e-mail) and not by any other method of signature;
- (ix) any reference to a "**person**" includes any individual, body corporate, trust, company, partnership, joint venture, unincorporated association or governmental, quasi-governmental, judicial or regulatory entity (or any department, agency or political sub-division of any such entity), in each case whether or not having a separate legal personality;
- (x) any references to the "**Parties**" are to the parties to this Agreement, and each is a "**Party**";
- (xi) any reference to an "**asset**" includes any assets, properties, rights, claims, contracts, interests and privileges of any type and description, real, personal or mixed, whether tangible or intangible, including intellectual property;
- (xii) any references to a "**company**" shall be construed so as to include any company, corporation or other body corporate or other similar legal entity, wherever and however incorporated or established;
- (xiii) any reference a "**contract**" includes any lease, licence, mortgage, indenture, note, bond, agreement, understanding, arrangement or other instrument, whether written or oral;
- (xiv) any reference to a "**governmental body**" includes any governmental, administrative, quasi-governmental or regulatory body or authority (including any securities exchange) or any instrumentality, agency, department, political sub-division or

- bureau of any such entity, or any court, tribunal, arbitrator, or other legislative or judicial body;
- (xv) any reference to a "**proceeding**" includes any litigation, arbitration or proceeding, whether civil, criminal, investigative or administrative;
 - (xvi) any references to a Party include references to a person:
 - (A) who is the legal personal representative of a Party who is an individual;
 - (B) who for the time being is entitled (by assignment, novation or otherwise) to that Party's rights under this Agreement (or any interest in those rights);
 - (C) who, as administrator, liquidator or otherwise, is entitled to exercise those rights; and
 - (D) to whom any rights under this Agreement (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that Party;
 - (xvii) where provision is made for the giving of any agreement, notice, certificate, determination, election, consent, waiver, request or approval by any person, that notice, certificate, determination, election, consent or approval shall be in writing and the words "**agree**", "**notify**", "**determine**", "**elect**", "**consent**", "**waive**", "**request**" or "**approve**" (and, in each case, any other verb or noun form thereof) shall be construed accordingly;
 - (xviii) any references to "**Clauses**" are to the clauses of this Agreement;
 - (xix) any references to the "**Recitals**" and the "**Schedules**" are to the recitals and schedules to this Agreement, and the Recitals and the Schedules shall each form part of this Agreement and have the same force and effect as if set out in the body of this Agreement;
 - (xx) where any capitalised term is defined within a particular Clause in the body of this Agreement as opposed to this Clause 1, that term shall bear the meaning ascribed to it in that Clause wherever it is used in this Agreement; and
 - (xxi) any reference to any Nicaraguan legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than Nicaragua, be deemed to include what most

nearly approximates in that jurisdiction to the Nicaraguan legal term.

1.3 Language

The language of negotiation of this Agreement has been English. This Agreement is executed in English and Spanish and the two language texts shall have equal validity and legal effect; provided that, in the event of a conflict between the two versions, the intention of the Parties shall prevail for all purposes of interpreting any provisions and in any construction of this Agreement.

2 REPRESENTATIONS AND WARRANTIES

2.1 Government, Authority and Commission Representations and Warranties

Each of the Authority, the Commission and the Government represents and warrants to the Original Sponsor and each other Investor that the following is true as of the date hereof and shall remain true at all times during the term of this Agreement:

- (a) it has full power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement has been duly authorised, executed and delivered by it, and constitutes its legal, valid and binding obligation, enforceable against it according to its provisions;
- (c) no suit, action or arbitration or legal, administrative or other proceeding is pending against it that would affect the validity or enforceability of this Agreement or its ability to fulfil its obligations under this Agreement;
- (d) the execution, delivery and performance of its obligations under this Agreement have been duly authorised by all necessary action, and do not and will not:
 - (i) require any Consent other than any Consent which has been obtained and is in full force and effect;
 - (ii) violate any Law or any other applicable law, writ, injunction, determination, or award currently in effect having applicability to it or violate any provision in any of its regulations;
 - (iii) violate, or result in a breach of, or constitute a default under any indenture or loan or credit agreement, or any other agreement (including any concession or similar contract), lease, or instrument to which it or any Affiliate thereof is a party or by which such person's properties or assets may be bound or affected, the violation, breach or default of which could reasonably be expected

to have a material adverse effect on such person's ability to perform its obligations under this Agreement; or

- (iv) result in, or require the creation or imposition of any Security Interest (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties now owned or hereafter acquired by it or any Affiliate thereof, the creation or imposition of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (e) the Authority, the Commission and the Government are each not entitled to or, if otherwise entitled to, the Authority, the Commission and the Government have each irrevocably waived (whether pursuant to the provisions of this Agreement or otherwise), immunity from legal process or jurisdiction on grounds of sovereignty or otherwise.

2.2 HKC and Investor Representations and Warranties

Each of HKC and each Investor represents and warrants to the Authority, the Commission and the Government that:

- (a) it is duly incorporated and organised under the Laws of Nicaragua (or, with respect to HKC, Hong Kong) and has full power and authority, corporate or otherwise, to enter into and perform its obligations under this Agreement and to conduct its business as presently or as proposed to be conducted;
- (b) this Agreement (or Adherence Agreement, as applicable) has been duly authorised, executed and delivered by it, and constitutes its legal, valid and binding obligation, enforceable against it according to its provisions; and
- (c) no suit, action or arbitration or legal, administrative or other proceeding is pending against it that would affect the validity or enforceability of this Agreement (or Adherence Agreement, as applicable) or its ability to fulfil its obligations under this Agreement (or Adherence Agreement, as applicable).

3 VALIDITY OF THE DEED OF COOPERATION

Each of the Authority and HKC confirms and acknowledges that (i) the Deed of Cooperation shall continue in full force and effect, and (ii) nothing in this Agreement shall prejudice, modify or affect any right, benefit or obligation of the Authority or HKC under the Deed of Cooperation or the MoU; provided that, to the extent that any such right, benefit or obligation is a right, benefit or obligation of any Party under this Agreement or any party to the Securityholders' Agreement, then such right, benefit or obligation shall continue to subsist under this Agreement and shall be deemed to have been terminated and no longer

enforceable under the Deed of Cooperation or the MoU (as applicable) regardless of whether the terms and conditions associated with such right, benefit or obligation are different under this Agreement or the Securityholders' Agreement (as applicable).

4 JOINT PLANNING COMMITTEE

4.1 Establishment of the Joint Planning Committee

- (a) Without prejudice to any rights of the Parties set out in this Agreement, the responsibilities set out in Clause 4.4 shall be vested in a joint planning committee (the "**Joint Planning Committee**") composed of a maximum of five (5) members and shall be composed as follows:
 - (i) up to three (3) members who may be appointed at all times by, and may be dismissed and replaced at any time by, the Original Sponsor; and
 - (ii) up two (2) members who may be appointed at all times by, and may be dismissed and replaced at any time by, the Commission.
- (b) The Original Sponsor and the Commission may each appoint, remove or replace any of their respective designees on the Joint Planning Committee at any time upon no less than seven (7) days' notice to the other Parties.
- (c) The initial Joint Planning Committee consists as of the Effective Date of
 - (i) the Original Sponsor and HKC as nominees of the Original Sponsor, and
 - (iii) the Authority as a nominee of the Commission.

4.2 Costs of Joint Planning Committee

The Original Sponsor and the Commission shall each bear the costs of their respective representation on the Joint Planning Committee; provided that the Original Sponsor shall accept responsibility for the administration of the Joint Planning Committee, including the provision of office facilities, preparation and keeping of minutes and any other secretarial matters.

4.3 Terms of Reference

- (a) Each member of the Joint Planning Committee shall have one vote with respect to each matter voted upon by the Joint Planning Committee.
- (b) The Joint Planning Committee shall take any decision by the affirmative vote or consent of a majority of the members of the Joint Planning Committee; provided that such majority must include at least two (2) members appointed by the Original Sponsor.

- (c) The Joint Planning Committee shall agree, by majority vote (with such majority to include the affirmative vote of at least two (2) members appointed by the Original Sponsor) to such other rules and procedures as shall apply to the meetings and operation of the Joint Planning Committee from time to time.

4.4 Responsibilities

The Joint Planning Committee shall have the following developmental, review, and approval responsibilities:

- (a) initial discussions in relation to, and evaluation of, each Sub Project Development Plan; and
- (b) review each Sub Project Development Plan prior to submission to the Commission for approval.

4.5 Exculpation

Each Party agrees that no member of the Joint Planning Committee shall be liable to any Party or any Affiliate thereof for any Losses suffered by any such person as a result of any act or omission of any member of the Joint Planning Committee done (or omitted to be done) in that member's capacity as a member of the Joint Planning Committee.

5 CONCESSION AND CONCESSION PERIOD

5.1 Grant of Concession

In respect of each Sub Project, the Commission hereby irrevocably grants to the relevant Sponsor, and such Sponsor accepts, the exclusive right, authority and authorisation to (directly or indirectly):

- (a) Develop and Operate such Sub Project;
- (b) use and receive any and all benefits (whether economic or otherwise) arising from such Sub Project, including from such Sub Project's Sub Project Assets;
- (c) set (subject to the Laws) and collect (for its own account) tolls, tariffs, fees, rents and any other charges from any person utilising all or any portion of the relevant Sub Project Assets or the capacity thereof, or in respect of any vessel, railway locomotive, railway rolling stock, any other railway equipment, aircraft, helicopters, cars, vans, trucks, plant and any other type of machinery or equipment which enters upon or otherwise utilises such Sub Project Assets or the capacity thereof; and

- (d) raise from domestic and any foreign sources Sub Project Financing for such Sub Project, as well as equity and quasi-equity investments from any domestic and foreign public, private and governmental sources, into such Sponsor or any Affiliate thereof or directly into any Sub Project or any Sub Project Assets,

in each case during such Sub Project's Concession Period and on the terms and conditions contained in this Agreement (together, a "**Concession**").

5.2 Concession Period

- (a) Each Concession shall commence on the Effective Date and shall remain in full force and effect until the second immediately prior to midnight on the last day of the relevant Concession Period.
- (b) With respect to each Concession, the "**Initial Concession Period**" is the period which:
 - (i) commences on the Effective Date; and
 - (ii) ends on the date which falls fifty (50) years (plus any extension arising by operation of Clause 5.2(d)) after the occurrence of the earlier to occur of (x) the Commercial Operations Date for the Wet Canal Project, and (y) the Final Commercial Operations Date.
- (c) With respect to each Concession:
 - (i) the Commission hereby grants to the relevant Sponsor the option, exercisable in the absolute discretion of such Sponsor, to extend the Initial Concession Period by a further fifty (50) year period (such option, a "**Follow-on Option**"; such period, and any extension arising by operation of Clause 5.2(d), a "**Follow-on Concession Period**");
 - (ii) such Sponsor may exercise such Follow-on Option by delivering notice to the Commission no later than six (6) months prior to the last day of the Initial Concession Period of its election to exercise such Follow-on Option;
 - (iii) upon the exercise of a Follow-on Option in relation to a Sub Project:
 - (A) the Follow-on Concession Period for such Sub Project shall commence immediately upon the expiry of the Initial Concession Period (and without any interruption between the Initial Concession Period and the Follow-on Concession Period); and

- (B) such exercise of a Follow-on Option, expiry of the Initial Concession Period, and commencement of a Follow-on Concession Period, shall in each case occur without requiring the payment of any further consideration by any Key Entity to or for the benefit of any Government Entity (or any designee(s) thereof); and neither such exercise, expiry nor commencement shall of itself cause any additional cost or charge to be incurred by or on behalf of any Key Entity.
- (d) With respect to each Concession, the "**Concession Period**" shall mean:
 - (i) the Initial Concession Period;
 - (ii) if the Sponsor exercises the Follow-on Option in accordance with the provisions of Clause 5.2(c)(ii) above, the Follow-on Concession Period; and
 - (iii) any further extension to the Follow-on Concession Period agreed by the relevant Sponsor and the Commission,

provided that the Concession Period shall terminate immediately upon the termination of such Concession in accordance with the provisions of this Agreement or the relevant Sub Project Concession and Implementation Agreement.

- (e) Without prejudice to any other consequence which may ensue under or pursuant to this Agreement as a result of the occurrence or continuation of a Force Majeure Event, Government Event of Default or Destabilising Event, the Initial Concession Period for each Sub Project and (if the relevant Sponsor exercises the Follow-on Option with respect to the relevant Concession in accordance with the provisions of Clause 5.2(c)(ii) above) the Follow-on Concession Period for such Sub Project shall be extended on a day-for-day basis for any day on which the Development and Operation of such Sub Project is delayed or otherwise curtailed as a consequence of any Force Majeure Event, Government Event of Default or Destabilising Event which occurs during such Initial Concession Period or Follow-on Concession Period as the case may be.

5.3 Concession Fees

As consideration for the Authority, the Commission and the Government procuring the grant of the Concessions and performing their other respective obligations under this Agreement, the Original Sponsor shall, on behalf of each Sponsor, procure that:

- (a) one hundred percent (100%) of the Class A Founder Shares of HKND have been issued or transferred to the Authority on or around the date hereof;
- (b) the Authority shall be issued or transferred for no additional consideration such number of shares of HKND (to be designated as, or converted to, Golden Shares) as shall be necessary from time to time to ensure that the Authority holds, together with all other persons Controlled by any Government Entity and their respective transferees, the Relevant Percentage of the Shares of HKND at all times (to the extent practicable) prior to the termination of this Agreement; and
- (c) the Government shall be paid on each Relevant Key Date an amount equal to (x) USD 10 million, minus (y) the relevant Fee Adjustment Amount,

and each Party agrees and acknowledges that (i) such Host Country Shares and payments are sufficient consideration for, and shall serve as full and final compensation for, the granting of such Concessions, and (ii) such Host Country Shares are subject to the terms and conditions of the Securityholders' Agreement.

5.4 Set-Off

Each Party agrees and acknowledges that the Original Sponsor may at any time set off any liability of any Government Entity to any Sponsor (a "**Government Liability**") against any amounts otherwise payable to the Government by the Original Sponsor under Clause 5.3(c), whether the Government Liability is present or future, secured or unsecured, absolute or contingent, disputed or undisputed or otherwise and whether or not the Government Liability arises under this Agreement or otherwise. If the Government Liability to be set off is not expressed in US Dollars, the Original Sponsor may convert the Government Liability at a market rate of exchange for the purpose of set-off. Any exercise by the Original Sponsor of its rights under this Clause 5.4 shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

5.5 Insurance

Each Sponsor shall use reasonable endeavours to purchase and maintain (or procure that an Affiliate thereof purchases and maintains) such insurance as is commercially prudent and available on commercially reasonable terms with respect to each Sub Project for which it is the Sponsor, including insurance in respect of:

- (a) loss, damage or destruction of the relevant Sub Project Assets, at replacement value;
- (b) such Sponsor's general liability arising out of such Sub Project;

- (c) any other insurance that may be prudent for the protection of the Key Entities and their respective employees and the relevant Sub Project Assets against Losses, destruction, business interruption or loss of profit (including insurance against all Natural Force Majeure Events that are insurable),

provided that the Government shall procure that the providers of such insurance need not be approved by or receive any Consent from any Government Entity (excluding courts and tribunals) to provide such insurance. Each Sponsor shall, from time to time, provide the Government with copies of any insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by such Sponsor in accordance with this Clause 5.5.

6 EARLY DEVELOPMENT PHASE

6.1 Legal Opinion

No later than thirty (30) days following the Effective Date, the Government shall deliver to the Original Sponsor a legal opinion issued by the Attorney General in a form and substance satisfactory to the Original Sponsor confirming that each of the representations and warranties of the Authority, the Commission and the Government set out in Clause 2.1 are true as of the date of such legal opinion.

6.2 Sub Project Concession and Implementation Agreements

- (a) The Commission undertakes to meet and negotiate in good faith with any Sponsor within seven (7) days of delivery of request from such Sponsor for such a meeting with a view to the Government entering into one or more Sub Project Concession and Implementation Agreement(s) (or an amendment thereto, as applicable) with such Sponsor as soon as is reasonably practicable (and in any event within thirty (30) days of the delivery of such request) and on such terms and conditions and in such form as such Sponsor may reasonably request (provided that such terms and conditions and form are consistent with the provisions of this Agreement).
- (b) Without prejudice to the generality of Clause 6.2(a) above, the Government:
 - (i) undertakes to grant to each Sponsor in each Sub Project Concession and Implementation Agreement in respect of each Sub Project of which it is the Sponsor, all rights, remedies, privileges and protections which are no less favourable to such Sponsor than are the rights, remedies and protections of such Sponsor under this Agreement; and
 - (ii) shall undertake in each Sub Project Concession and Implementation Agreement to enforce its rights, remedies,

privileges and protections under each other Sub Project Concession and Implementation Agreement forthwith upon request from the relevant Sponsor.

6.3 Actions Prior to Sub Project Financial Closing

For each Sub Project, following delivery of the legal opinion referenced in Clause 6.1 and the completion and review by the relevant Sponsor of an initial feasibility study of such Sub Project to the satisfaction of such Sponsor:

- (a) such Sponsor shall carry out such additional feasibility studies, centre line surveys (if applicable), technical due diligence, environmental risk assessments, market reports and other studies, surveys, diligence, assessments or reports that such Sponsor deems necessary or desirable from time to time in order to evaluate such Sub Project; and
- (b) such Sponsor, the Authority, the Commission and the Government shall each use reasonable endeavours to ensure that such Sub Project progresses and subsequently achieves its Commercial Operations Date (if applicable) in an expeditious and economically desirable manner (including, with respect to the Government, by providing reasonable access to each Key Entity and its advisors and representatives to such sites and persons as may be necessary or advisable for completing the tasks referenced in Clause 6.3(a)), taking into account *inter alia* the progress of all other Sub Projects and any imperative that may exist for certain Sub Projects to achieve their respective Commercial Operations Date either concurrently with or otherwise before the Commercial Operations Date of one or more other Sub Projects, including cooperating in good faith to ensure that the following occurs as soon as reasonably practicable:
 - (i) the agreement, execution and bringing into effect of a Sub Project Concession and Implementation Agreement for such Sub Project;
 - (ii) the agreement, execution and bringing into effect on commercially reasonable terms of all Sub Project Finance Documents for such Sub Project;
 - (iii) the agreement, execution and bringing into effect of all other Sub Project Documents for such Sub Project;
 - (iv) the agreement, execution and bringing into effect of all other documents which such Sponsor and the Government agree to be necessary or desirable for the Development and Operation of the Sub Project; and
 - (v) with respect to the Commission, the granting of all Sub Project Consents (or the giving of assurance satisfactory to the relevant Sponsor (taking into account the view(s) of any Sub Project

Finance Parties) that such Sub Project Consents shall be forthcoming in due course).

7 SUB PROJECT DEVELOPMENT PLANS

7.1 Responsibility for Sub Project Development Plans

For each Sub Project, following delivery of the legal opinion referenced in Clause 6.1 and the completion and review of an initial feasibility study of such Sub Project to the satisfaction of the relevant Sponsor, the relevant Sponsor shall, prior to the relevant Sub Project Financial Closing (if any), prepare a development plan (a "**Sub Project Development Plan**") that sets out the material specifications, sequencing and standards that shall apply to the Development of, and the guidelines for the Operation of, such Sub Project, including, to the extent deemed relevant by such Sponsor in its sole discretion, details addressing all or some of the matters set out in Clause 7.2.

7.2 Preparation of Sub Project Development Plans

In preparing the Sub Project Development Plan for each Sub Project, the relevant Sponsor shall consider the following factors in consultation with the Joint Committee:

- (a) the feasibility of such Sub Project based upon (i) the commercial and technical strengths and weaknesses of such Sub Project, (ii) the proposed structure of such Sub Project, (iii) the opportunities for, and threats to, such Sub Project presented by the environment and by any other pre-existing conditions or potential risk factors, (iv) the resources required to Develop and Operate such Sub Project, (v) an acceptable return (in the Sponsor's opinion) on the Sponsor's investment that is projected to be generated from such Sub Project, and (vi) the ability of such Sponsor and its Affiliates to finance such Sub Project on a limited recourse basis and on such other terms and conditions that are acceptable to such Sponsor;
- (b) the importance of such Sub Project in the context of the local and national development of Nicaragua, and the Sponsor's strategies to encourage industrial growth and employment opportunities in Nicaragua;
- (c) the optimal routes, design and location(s) (as applicable) for such Sub Project from an economic, environmental and social perspective;
- (d) the anticipated traffic volumes and categories and volumes considered achievable throughout the Concession Period for such Sub Project (as applicable), and how this may impact the proposed design, centre lines and location thereof;

- (e) the optimal size, location, buildings, services, mix of tenants and any other functional criteria and any other matters of material importance to such Sub Project (as applicable);
- (f) the potential environmental and social impact of such Sub Project, including the need for compulsory land acquisition or resettlement of any affected communities, taking into account in particular the proposed locations and other aspects referred to at Clause 7.2(c) above;
- (g) the status of other infrastructure (including roads, electricity supply, rail or water supply) which may be necessary for the Development and Operation of such Sub Project, including any potential capacity constraints and investment needs (if any) related to such other infrastructure; and
- (h) the existing legal and regulatory environment in Nicaragua, including any new Laws and amendments to existing Laws that may be necessary or desirable to enable the Development and Operation of such Sub Project in accordance with the provisions of this Agreement.

7.3 Review by the Joint Planning Committee

- (a) Each Sponsor shall submit each relevant Sub Project Development Plan to the Joint Planning Committee for review as soon as reasonably practicable after the drafting of such Sub Project Development Plan is satisfactory to such Sponsor.
- (b) As soon as practicable after delivery of any Sub Project Development Plan (but in any event, within seven (7) days after such receipt), the Joint Planning Committee shall meet to review such Sub Project Development Plan.
- (c) If no member of the Joint Planning Committee delivers any written objections to the relevant Sponsor with respect to any Sub Project Development Plan submitted to the Joint Planning Committee within ten (10) days from the date of such submission:
 - (i) it shall be deemed that the Joint Planning Committee has no objections with respect to such Sub Project Development Plan and shall be deemed approved by the Joint Planning Committee; and
 - (ii) the relevant Sponsor shall be entitled to submit such Sub Project Development Plan to the Commission in accordance with Clause 7.4.
- (d) If any member of the Joint Planning Committee delivers any written objection to such Sponsor with respect to any Sub Project Development Plan submitted to the Joint Planning Committee by the relevant Sponsor

within ten (10) days from the receipt of such Sub Project Development Plan:

- (i) as soon as practicable after delivery of such objection(s) (but in any event within seven (7) days of such delivery), the Joint Planning Committee shall promptly meet to discuss the grounds for, and substance of, such objections with a view to agreeing possible solutions to any issues raised;
- (ii) as soon as is practicable following such discussion, the Joint Planning Committee shall request that the relevant Sponsor resubmit such Sub Project Development Plan to the Joint Planning Committee after considering any specific concerns identified by the Joint Planning Committee to such Sponsor in connection with such objections;
- (iii) as soon as practicable following any such request, such Sponsor shall resubmit the Sub Project Development Plan to the Joint Planning Committee;
- (iv) as soon as reasonably practicable after delivery of such resubmitted Sub Project Development Plan (and within seven (7) days of such delivery), the Joint Planning Committee shall meet to review such Sub Project Development Plan;
- (v) if the Joint Planning Committee approves such Sub Project Development Plan at the meeting referenced in Clause 7.3(d)(iv), the relevant Sponsor shall be entitled to submit such Sub Project Development Plan to the Commission in accordance with Clause 7.4; and
- (vi) if the Joint Planning Committee does not approve such resubmitted Sub Project Development Plan at the meeting referenced in Clause 7.3(d)(iv), the provisions of Clause 7.3(c) above and this Clause 7.3(d) shall apply *mutatis mutandis* to such resubmitted Sub Project Development Plan.

7.4 Review by the Commission

- (a) Each Sponsor shall submit the relevant Sub Project Development Plan to the Commission for review as soon as reasonably practicable after such Sub Project Development Plan has been approved (or deemed approved) by the Joint Planning Committee in accordance with Clause 7.3 (but in any event, prior to the relevant Commercial Operations Date).
- (b) As soon as practicable after delivery of any Sub Project Development Plan (but in any event, within seven (7) days after such receipt), the Commission shall meet to review such Sub Project Development Plan.

- (c) The Commission shall deliver either an Approval Notice or a Non-Compliance Notice to the relevant Sponsor within twenty-one (21) days from the date of receipt by the Commission of a Sub Project Development Plan (the "**Notice Deadline Date**").
- (d) If the Commission gives an Approval Notice with respect to any Sub Project Development Plan, the relevant Sponsor shall be entitled as a consequence thereof to proceed with the Development (and subsequent Operation) of the relevant Sub Project materially in accordance with such Sub Project Development Plan.
- (e) If the Commission delivers a Non-Compliance Notice to the relevant Sponsor with respect to any Sub Project Development Plan on or before the relevant Notice Deadline Date:
 - (i) the Sponsor shall revise and resubmit such Sub Project Development Plan to the Commission as soon as is reasonably practicable;
 - (ii) the provisions of Clauses 7.4(b) to 7.4(d) (inclusive) shall apply *mutatis mutandis* to any resubmission of such resubmitted Sub Project Development Plan,

provided that the Commission may only deliver a Non-Compliance Notice with respect to any Sub Project Development Plan if such Sub Project Development Plan does not comply in all material respects with the Sovereign Principles.

7.5 Subsequent Approvals

- (a) No Sponsor shall Develop or Operate a Sub Project in a manner that is materially inconsistent with the Sub Project Development Plan relating to such Sub Project approved by the Commission pursuant to Clause 7.3 without the prior approval of the Commission.
- (b) The Sponsor shall not materially alter any Sub Project Development Plan in respect of which the Commission has given an Approval Notice without submitting such revised Sub Project Development Plan to the Commission, in which case the provisions of Clauses 7.4(b) to 7.4(e) (inclusive) shall apply *mutatis mutandis* to the submission of the revised Sub Project Development Plan.
- (c) if any amendment to a Sub Project Development Plan is approved by the Commission, the Government and the Authority (as applicable) shall each agree to such amendments to the relevant Sub Project Concession and Implementation Agreement as the relevant Sponsor may reasonably request to the extent that such amendments to such Sub Project Concession and Implementation Agreement are necessary or desirable to

ensure consistency with the amended Sub Project Development Plan; provided that such amendments to such Sub Project Concession and Implementation Agreement are consistent with the provisions of this Agreement and with such amended Sub Project Development Plan.

8 LAND RIGHTS

8.1 Generally

In respect of a Sub Project, the Commission shall procure the provision, prior to the relevant Sub Project Financial Closing and thereafter as applicable at all times throughout the relevant Concession Period, to the relevant Sponsor, for no additional consideration from or costs to any Key Entity other than as set out in Clause 8.3, the following:

- (a) legal title of ownership to (or, if required under any Law or otherwise agreed between the Commission and such Sponsor, an equivalent right of use and possession under the Laws (including with respect to exclusivity, unconditionality and transferability) that is agreed between the Government and such Sponsor) together with the exclusive (transferable) right to possess, occupy, use or perform any activities upon all government-owned and privately owned real property which may be reasonably necessary or desirable to Develop and Operate such Sub Project, free and clear of all Security Interests as evidenced by title registration, documentation and insurance ("**Title Insurance**") in form and content reasonably acceptable to such Sponsor;
- (b) the unfettered right to use for the purpose of the Development and Operation of the relevant Sub Project, land, air and maritime space (other than that referred to in Clause 8.1(a) above) where construction works related to such Sub Project will be performed;
- (c) unfettered rights for the duration of the relevant Concession Period to extract, store and use for the purpose of the Development and Operation of the relevant Sub Project water and all other relevant natural resources in accordance with any Laws; and
- (d) any other rights reasonably necessary or desirable to vest in such Sponsor title free and clear of all Security Interests to all real and personal property to be transferred by or on behalf of the Government to such Sponsor (or any relevant Key Entity) in connection with such Sub Project,

in each case, with effect from such date as such Sponsor shall elect in its sole discretion in accordance with the Laws; provided that (i) such date must be on or before the later to occur of (x) the relevant Sub Project Financial Closing, and (y) the second (2nd) anniversary of the delivery of the notice to the Commission from such Sponsor requesting such items, and (ii) the Government's prior consent shall

be required if such date is prior to the six (6) month anniversary of the delivery of the notice to the Commission from such Sponsor requesting such title or rights.

8.2 Peaceful Possession

- (a) Each of the Authority, the Commission and the Government will procure that:
 - (i) all property and rights referenced in Clause 8.1 either (A) belong to, or (B) if acquired or to be acquired, have been or will be acquired (as applicable) through the due process of law by, and in each case is (or are or will be, as applicable) vested in, the Government (or another Government Entity, as applicable), and the Government (or another Government Entity, as applicable) has (or will have where required by this Agreement) full legal power to hold, dispose of and deal with the such property and rights consistent, *inter alia*, with the provisions of this Agreement; and
 - (ii) each Sponsor (and its designee(s), if applicable) shall, subject to materially complying with the terms and conditions of this Agreement and the relevant Sub Project Finance Documents, remain in peaceful possession and enjoyment of the relevant Sub Project Asset(s) during the relevant Concession Period.
- (b) If any Sponsor is obstructed by any person claiming any right, title or interest in or over any relevant Sub Project Asset or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any person claiming to have any interest in (or charge on) such Sub Project Site or any part thereof (except where the foregoing has occurred under or pursuant to the relevant Sub Project Finance Documents), the Government shall, if called upon by such Sponsor, defend such claims and proceedings, take all other steps necessary to provide the Sponsor with unencumbered use of such Sub Project Asset and also keep such Sponsor (and its designee(s), if applicable) indemnified against all Losses which such Sponsor (and its designee(s), if applicable) may suffer, on account of any such right, title, interest, charge or enforcement action.

8.3 Compensation

- (a) Each Sponsor shall be responsible for any compensation required by any Law to be paid to the owners of any private property transferred to such Sponsor or its Affiliates (or, as applicable, to any Government Entity which provides or procures the granting of the relevant right of use to such Sponsor in accordance with the provisions of this Agreement) at the request of such Sponsor in connection with any Sub Project.

- (b) For the avoidance of doubt, to the extent that any real property to be transferred to a Sponsor pursuant to Clauses 8.1 and 8.2 was owned by any Government Entity as of the date of this Agreement, such real property shall be transferred to such Sponsor for no consideration.
- (c) Except as set out in Clause 8.3(a) above, the Government shall procure that no Key Entity shall, and shall use its best endeavours to ensure that no Government Entity shall, in respect of any Sub Project Assets, have any obligation to any person in connection with the relocation and resettlement of any people or communities currently situated in areas to be utilised by or in connection with the relevant Sub Project (including any obligation in respect of the restoration of the economic or social position of any such people or communities).

9 FACILITATION

9.1 Legislation

- (a) Without limiting any other obligations of the Government, the Authority or the Commission under this Agreement, the Government shall use its best endeavours (including by proposing any Laws to the National Assembly of Nicaragua from time to time) to ensure that each Law including, where relevant, amendments to existing Laws (whether with respect to company law, real property law, security law, environmental law, social law, taxation law, natural resources regulation, executive branch organisation, planning law or otherwise), that is necessary or desirable:
 - (i) to effect the transactions contemplated by, and the rights conferred under, this Agreement including the grant of rights to each Sponsor to enable such Sponsor to Develop and Operate each relevant Sub Project (and enjoy all rights and benefits of the Concession pursuant to Clause 5.1 in respect of each relevant Sub Project) in accordance with the provisions of this Agreement and each relevant Primary Document (including, for the avoidance of doubt, the matters set out in Clause 10);
 - (ii) with respect to each Key Entity to be established in Nicaragua, for the establishment thereof in Nicaragua and, where relevant, to provide services of a public nature;
 - (iii) with respect to each Key Entity that is established outside of Nicaragua, for such Key Entity to provide services of a public nature in Nicaragua without registering in Nicaragua;
 - (iv) for the successful Sub Project Financing of each Sub Project on terms and conditions acceptable to the relevant Sponsor acting reasonably, including to give legal effect to:

- (A) the agreements and undertakings made by the Government, the Commission, the Authority and by any other Government Entity under or pursuant to each Primary Document; and
- (B) any other agreement or undertaking which any Government Entity may enter into in connection with any Sub Project including in connection with any Sub Project Financing; and
- (v) as may otherwise be necessary or desirable to facilitate the success (economic or otherwise) of each Sub Project,

shall, on an expedited basis, be validly passed, enacted, published and gain the full force of a statute from time to time and shall thereafter be maintained, enforced and abided by each Government Entity.

- (b) As soon as reasonably practicable upon such action being permitted under the Laws (including the Constitution) (but in any event within thirty (30) days of such action first being permitted under the Laws), the Government shall procure that:
 - (i) the Sponsor shall have the right to determine in its sole discretion the rate of any tolls, tariffs, fees, rents or any other charges to be paid by any person utilising (directly or indirectly) all or any portion of any Sub Project Asset or the capacity thereof; and
 - (ii) the Central Bank of Nicaragua validly executes and delivers to the parties to this Agreement and the parties to the Securityholders' Agreement a Sovereign Immunity Waiver with respect to each of this Agreement and the Securityholders' Agreement,

and the provisions of Clauses 9.1(b)(i) and 9.1(b)(ii) shall prevail over any other conflicting provision of this Agreement as soon as the obligation to procure such matters constitutes a legal, valid, binding and enforceable obligation of the Government under the Laws.

- (c) It is the intention of the Parties that an amendment to the Political Constitution and any other legislation as shall be necessary to ensure that the obligation to procure the matters set out in Clauses 9.1(b)(i) and 9.1(b)(ii) constitutes a legal, valid, binding and enforceable obligation of the Government under the Laws, is presented to the National Assembly of Nicaragua and proposed to be validly passed, enacted, published and gain the full force of a statute as soon as practicable (but in any event within eighteen (18) months of the Effective Date); provided that such changes to the Laws shall, for the avoidance of doubt, be deemed a favourable Change in Law pursuant to Clause 12.3.

9.2 Consents

- (a) The Government shall use its best endeavours to ensure the timely grant and renewal by each relevant Government Entity (excluding courts and tribunals) of all Sub Project Consents of whatever kind and nature to be obtained or renewed by each Sub Project Party at no cost or expense to such Sub Project Party.
- (b) The Government shall not revoke or abrogate, and shall use its best endeavours to ensure that no other Government Entity (excluding courts and tribunals) revokes or abrogates, any Consent granted to any Key Entity or cause any such Consent to be made subject, upon initial grant, renewal or otherwise, to any terms or conditions that materially and adversely affect such Sub Project Party's ability to Develop, Operate or finance any Sub Project.

9.3 Security

- (a) In respect of a Sub Project, the Government shall take all steps as may be reasonably requested by the relevant Sponsor to ensure the safe Development and Operation of such Sub Project and the full physical security and protection of all Sub Project Assets, any other tangible or intangible asset or right of each Key Entity and of each Expatriate Employee engaged in the Development and Operation of such Sub Project.
- (b) Without prejudice to Clause 9.3(a) above and subject to consistency with all Laws and the sovereignty of Nicaragua, each Sponsor may take all reasonable measures which it deems, in its sole discretion, is necessary or desirable to ensure the full physical security and protection of the relevant Sub Project, Sub Project Assets, any other tangible or intangible asset or right of each Key Entity and of each Expatriate Employee engaged in the Development and Operation of such Sub Project and the Authority, the Commission and the Government shall cause any Consents in form and substance which may be necessary or desirable for such Sponsor to take such measures to be granted and (where applicable) renewed on a timely basis.

9.4 Additional Government Undertakings

Subject to Clause 8.3 but without prejudice to any other obligation of the Government pursuant to Clauses 8.1 or 8.2, the Government shall provide, and procure that any other relevant Government Entity (excluding courts and tribunals) shall provide, to each Sponsor and to each other Key Entity (and, in each case, its designee(s), if applicable) with respect to each relevant Sub Project, for no consideration from or costs to such Sponsor or other Key Entity, the following:

- (a) to the extent reasonably deemed necessary or desirable for such Sub Project by such Sponsor, the rights of use, easements or superficies rights over community lands or ownership of privately owned plots in a form the benefit of which may be insured through Title Insurance issued to such Sponsor (or its designee(s), if applicable);
- (b) to the extent reasonably necessary or desirable for such Sub Project, access easements and navigation rights on rivers, lakes, oceans, seas and other bodies of water within Nicaragua and the waters thereof, and the right to extend, expand, dredge, divert or curtail such water bodies thereof, as necessary for such Sub Project in a form the benefit of which may be insured through Title Insurance issued to such Sponsor (or its designee(s), if applicable);
- (c) to the extent reasonably necessary or desirable for such Sub Project, water resources, subject to conservation protection;
- (d) maintenance of currently existing waterways and other infrastructure now providing transportation and related services in Nicaragua, including those that will serve as a means of access to (or form part of) such Sub Project (or any part thereof); and
- (e) all permits related to any construction works connected to such Sub Project, including employment permits (including any visas and work permits) for all Expatriate Workers employed or retained by any Sub Project Party in connection with such Sub Project.

9.5 Fair and Equitable Treatment

- (a) Without prejudice to any other provision of this Agreement, the Government shall procure the fair and equitable treatment of the Investments of each Sub Project Party in Nicaragua and shall not, and shall use its best endeavours to ensure that no other Government Entity shall, impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal of any such Investments by any Sub Project Party.
- (b) Subject to compliance with the National Security Laws, the Government shall procure that each Sponsor shall be entitled to Operate the relevant Sub Project during the applicable Concession Period (i) on a common user basis, open to any and all potential customers as such Sub Project may suitably handle, and (ii) in a manner that refrains from and does not permit any unfair or discriminatory practices against persons wishing to avail themselves of the services offered in connection with the relevant Sub Project Assets.
- (c) The Government shall procure that (i) the location of all Sub Project Infrastructure is identified as a priority service area for the supply of

electricity and water; (ii) each Key Entity may elect to generate or operate its own utilities, including water, water waste treatment plants, electricity generation and any other of this kind; (iii) no Key Entity is treated in an unfair or negatively discriminatory manner by any utility provider in Nicaragua, and (iv) each Key Entity receives "most favoured customer" status in its arrangements with each utility provider in Nicaragua.

9.6 Non-Discrimination

The Government shall not, and shall use its best endeavours to ensure that no other Government Entity (excluding courts and tribunals) shall, take, or omit to take, in relation to or in respect of any Sub Project Party or any Sub Project Collateral any action or combination of actions (which shall include the imposition of obligations, conditions or standards), which, in comparison to other Nicaraguan or foreign entities engaged in any similar activities in Nicaragua, is discriminatory against any Sub Project Party or against any Sub Project Collateral.

9.7 Foreign Equity Shares

Except as necessary to comply with any international treaties to which Nicaragua is a party, the Government shall not, and shall use its best endeavours to ensure that no other Government Entity shall, proscribe or restrict any foreign person from holding an interest in any Sub Project Party or in or over any Sub Project Assets or other Investments related thereto.

9.8 Foreign Currency Accounts and Repatriation

The Government shall procure that:

- (a) each Sub Project Party will have the right to open, maintain, make and receive payments and repatriate any foreign currency from or operating foreign currency accounts in or outside Nicaragua, at all times and without undue delay, in connection with the relevant Sub Project;
- (b) neither the Government nor any other Government Entity shall impose any limitation on (or increase any burden for) any Sub Project Party in opening, maintaining, repatriating any foreign currency from or operating foreign currency accounts in or outside Nicaragua for the purposes of any Sub Project, including:
 - (i) the financing of any Sub Project (including any repayments of principal and interest and other financing costs);
 - (ii) to meet any Sub Project Party's obligations associated with any Sub Project;

- (iii) the repatriation by any Sub Project Party of any payments, repayments or other distributions to any other person or to any account whether in or outside of Nicaragua; and
- (iv) the repatriation of salaries of any Expatriate Employees;
- (c) each Sub Project Party will be able, without restriction (including without the imposition of any fees, or any obligation to pay, withhold or otherwise bear the burden of any amount in respect of any Taxes and Duties or any reserve requirements), to purchase foreign currency (at arms' length, market rates) in Nicaragua with Nicaraguan Currency through commercial entities for the purposes of any Sub Project (including the financing of any Sub Project and any payment obligation in relation to any such financing);
- (d) there is an availability of foreign currency to the Sub Project Parties for conversion to the extent required for the purposes described in Clause 9.8(c);
- (e) each Sub Project Party incorporated in Nicaragua shall be permitted to import and export foreign currency to and from Nicaragua for the purposes of any Sub Project (including the financing of any Sub Project and any payment obligation in relation to any such financing) and to repatriate any proceeds from any Sub Project; and
- (f) neither the Government nor any other Government Entity shall prevent any Sub Project Entity from remitting or receiving, from within or outside of Nicaragua, funds necessary for any Sub Project.

9.9 Recognition of Subrogation

- (a) If any insurer, re-insurer or agency (including of any government or governmental body) (each a "**Subrogated Party**") makes a payment under any contract of insurance, contract of re-insurance or indemnity given in respect of one or more Investments of a Sub Project Party in Nicaragua, then the Government shall, and shall procure that each Government Entity shall, recognise:
 - (i) the assignment to the Subrogated Party by law or by legal transaction of any and all of the rights and claims of the Sub Project Party in respect of its Investment(s) in Nicaragua; and
 - (ii) that the Subrogated Party is entitled to exercise such rights and enforce such claims by virtue of subrogation to the same extent as the relevant Sub Project Party would have been but for the occurrence of the relevant assignment or subrogation.
- (b) In the circumstances described in Clause 9.9(a), the Subrogated Party shall be entitled in all circumstances to the same treatment in respect of:

- (i) the rights and claims acquired by it by virtue of the assignment, and
- (ii) any payments received in pursuance of those rights and claims,

as the relevant Sub Project Party is (or was) entitled to receive by virtue of this Agreement or by virtue of any Sub Project Document to which the relevant Sub Project Party is (or was) a party in respect of the Investment concerned and its related returns.

10 INVESTMENT INCENTIVES

10.1 Taxation

Without limiting the generality of Clause 9.1, the Government shall:

- (a) procure that each Key Entity, whether resident or non-resident in Nicaragua, shall enjoy exemption from any and all requirements which would exist but for this Clause 10.1 to pay, withhold or otherwise bear the burden of any amount in respect of any Taxes and Duties (and all other similar taxes and duties), including any tax on capital gains or value-added tax (or similar tax or fee), imposed by any Governmental Entity (including any public registries or any other taxing authority but excluding any Existing Local Employment Taxes) and any state, municipal, provincial or local taxing authority, in Nicaragua;
- (b) procure that each Sub Project Party and each Affiliate thereof (and any other person providing debt or equity financing to, or holding debt or equity securities of, a Sub Project Party in connection with the Development or Operation of any Sub Project), whether resident or non-resident in Nicaragua, shall be exempt from all charges, fees, withholdings and assessments and requirement to pay, withhold or otherwise bear the burden of any amount in respect of any other Taxes and Duties (including on equipment, raw materials and components of construction and operation, and any revenue or profits generated thereof) which may otherwise be incurred, assessed or owing in connection with:
 - (i) the Development or Operation of any Sub Project (including in respect of equipment, raw materials, components of construction and operation, services, intellectual property and technical "know-how") or the provision of any debt or equity financing to, or holding of any debt or equity securities of, any Sub Project Party; or
 - (ii) any dividend or other distributions, profit sharing, payment of interest, transfer of equity, repayment of principal or other payment to or by any Sub Project Party or any of their respective equity and debt financing sources or holders;

- (c) use its best endeavours to ensure that the exemptions described in Clauses 10.1(a) and 10.1(b) shall be implemented into Law no later than the Effective Date; and
- (d) use its best endeavours to ensure that a Law (or Laws) committing the Government and all other relevant Government Entities to not amend the applicable tax regime relating to each Key Entity is enacted and passed into Law no later than the Effective Date.

10.2 Import of Materials

- (a) At all times during the Concession Period applicable to the relevant Sub Project, each Key Entity shall have the right to import any Lawful Goods into Nicaragua free of Taxes and Duties (including Customs Duties), any plant, machinery, equipment, spare parts, two-wheel and four-wheel drive cars, trucks and vans, railway locomotives, railway rolling stock, any other railway equipment, aircraft, fuel, energy, computers, materials, consumable supply items, moveable property and any other type of asset, machinery or equipment for the purpose of undertaking any Sub Project.
- (b) Any items imported into Nicaragua under Clause 10.2(a) may be exported from Nicaragua at any time without any Taxes and Duties (including Customs Duties) being levied.
- (c) Any items imported into Nicaragua under Clause 10.2(a) may be sold within Nicaragua provided that the seller pays the applicable Customs Duties. Customs Duties upon such sale shall be calculated on the basis of the value of the item(s) sold as at the time of the sale. The obligation to pay Customs Duties shall not arise if such materials, equipment or goods are sold to the Government or any Governmental Entity or to the extent that any third party purchaser enjoys exemptions in respect of the items to be sold equivalent to those set out in Clause 10.2(a).

10.3 Import of Services

Each Key Entity shall be entitled to:

- (a) engage any Nicaraguan or any non-Nicaraguan person (a "**Service Provider**") to act as Sub Project EPC Contractor, Sub Project O&M Contractor or provide any and all services, technical "know-how" or intellectual property which such Key Entity may require in connection with effectuating any Sub Project (together "**Project Services**"); and
- (b) pay any Service Provider (including making payment to non-Nicaraguan Service Providers outside of Nicaragua) for Project Services received on any basis including making royalty payments without incurring any Taxes and Duties in respect of or in connection with the receipt of such Project Services or the payment for such Project Services.

10.4 Expatriate Employees

The Government shall procure that:

- (a) each Expatriate Employee shall have the right to import free from all Taxes and Duties (including Customs Duties) and without the requirement to obtain any Consent, household goods, personal computers and related equipment and accessories, items and personal effects and, with respect to any Expatriate Employee who is a senior manager (or holds a similar position within any Key Entity), one motor vehicle; in each case provided that such items are for personal use and have not been imported for the purpose of resale;
- (b) all things imported into Nicaragua pursuant to Clause 10.4(a) may be exported free from all Taxes and Duties (including Customs Duties) or any requirement to obtain any Consent at the end of an Expatriate Employee's assignment in Nicaragua unless sold or otherwise disposed of in Nicaragua in accordance with the Laws;
- (c) all things imported into Nicaragua pursuant to Clause 10.4(a) may be sold within Nicaragua provided that the purchaser shall pay any applicable Taxes and Duties (including Customs Duties), unless such sale or disposal is to any Government Entity or to a purchaser which enjoys exemptions in respect of the items to be sold or disposed equivalent to those of such Expatriate Employee set out in Clause 10.4(a);
- (d) each Expatriate Employee shall be entitled to receive, and each Key Entity which engages an Expatriate Employee shall be entitled to pay, the whole or any part of such Expatriate Employee's remuneration in the country where the Expatriate Employee is ordinarily resident or in Nicaragua, in any currency agreed between the relevant Key Entity and such Expatriate Employee, without any obligation to pay, withhold or otherwise bear the burden of any amount in respect of any Taxes and Duties;
- (e) no Laws related to labour or employment shall apply to any Expatriate Employee with respect to their employment by any Key Entity that is a Nicaraguan citizen or a legal entity (whether a partnership, company or otherwise) that (x) was established in Nicaragua, or (y) is registered in Nicaragua for the purpose of carrying on commercial activities;
- (f) the Director of Migration and Foreign Affairs (and any successor or similar Government Entity) shall grant to each Expatriate Employee the work or residency permit(s) for the duration of such Expatriate Employee's assignment in Nicaragua in connection with a Sub Project, in each case free of any Taxes and Duties and any other payment to, on behalf of or at the instruction of any Government Entity (excluding courts and tribunals); and

- (g) all investment incentives and other benefits accorded to the Key Entities and Expatriate Employees set out in the Clause 10.4 shall be coordinated by the Commission.

11 FINANCING

11.1 Fund Raising

Subject to the completion and review of due diligence to the satisfaction of the Original Sponsor, the execution by the relevant parties of a Sub Project Concession and Implementation Agreement(s) in respect of each Sub Project (other than the Associated Infrastructure Project and the Umbrella Project) and the satisfaction by the Government of its obligations under Clauses 9.1(a) and 8.1, the Original Sponsor shall (or shall procure that one or more Sponsors shall) use reasonable endeavours to raise sufficient debt and equity financing to complete the Sub Projects (excluding any Sub Project for which the relevant Concession has been terminated), with the aggregate cost for all of the Sub Projects (including amounts to be funded through all Sub Project Finance Documents) estimated as of the date of this Agreement to be no less than forty billion US Dollars (USD 40,000,000.000).

11.2 Creating an Enabling Environment

Each of the Government (on behalf of itself and each Government Entity (excluding courts and tribunals)), the Commission, the Authority and each Investor hereby agrees to take, or cause to be taken, and to cooperate with respect to, all actions and to do, or cause to be done, all things necessary or desirable to provide an enabling environment for the Development and Operation of each Sub Project and for the arrangement of each Sub Project Financing on terms and conditions reasonably acceptable to the relevant Sponsor(s), including:

- (a) granting Security Interests in respect of any ownership interest (or any other economic interest) that it may hold in any Sub Project Collateral in accordance with Clause 11.3;
- (b) entering into share retention and other undertakings in favour of any Sub Project Finance Party;
- (c) meeting, engaging with, cooperating with, sharing information with and negotiating in good faith with any potential equity and debt investors in any Sub Project or any Key Entity;
- (d) taking such other actions as shall be necessary or desirable to make each Sub Project financeable on terms that are customary for infrastructure projects of a similar nature; and

- (e) entering into, and procuring that any relevant Affiliates thereof enter into, Sub Project Finance Documents in respect of each relevant Sub Project as may be required by any Sub Project Finance Party,

provided that no Investor shall have any obligations under this Clause 11.2 with respect to any Sub Project unless it is the Sponsor for such Sub Project.

11.3 Security

The Parties agree that the Sub Project Financing for each Sub Project may be secured in favour of the relevant Sub Project Finance Parties by first (and lower order) priority Security Interests in the Sub Project Collateral, including the following:

- (a) perfected first (and lower order) priority Security Interests in, and over, substantially all tangible and intangible assets of each Sponsor (including each Sub Project, any Sub Project Assets, all Sub Project Documents and, to the extent held by any Sponsor, accounts receivable, insurances, inventory, equipment, general intangibles, investment property, intellectual property, real property, cash, commercial tort claims, letter of credit rights, intercompany loans or notes, contract rights, rights and claims against the Government (if any) and proceeds of the foregoing); and
- (b) perfected first (and lower order) priority Security Interests of all ownership interests in each Sponsor granted by the holders of such interests.

11.4 Direct Agreements

To facilitate compliance with this Clause 11, the Commission and the Government shall each enter into (as applicable), and the Commission and the Government shall raise no objection to, any direct agreements (or similar contracts) that may be required by Sub Project Finance Parties in respect of any Sub Project Financing (each a "**Direct Agreement**"); provided that the provisions of any such Direct Agreement shall be consistent with the principles set out in Schedule 4 (*Principles of Direct Agreement*).

12 STABILITY OF LAW

12.1 Nature of Legal Framework

The Parties agree that the provisions of (i) the Primary Documents, and (ii) the Legal Norms, constitute essential elements to:

- (a) induce each Key Entity to participate in the Development, Operation or financing of the relevant Sub Project(s), the Sub Project Finance Parties to lend each Sub Project Financing, each Shareholder and its Affiliates to

fund the Shareholder Loans or equity contributions made or to be made by it and, more generally, the Sub Project Parties to enter into each Sub Project Documents;

- (b) permit the Sub Project Parties to perform their obligations and benefit from their rights under the Sub Project Documents; and
- (c) enable each Sub Project to be implemented in accordance with each Sub Project Document and the reasonable expectations of the parties to such documents.

12.2 Stability

- (a) Recognising that the Government Entities and other persons may take actions from time to time during the term of this Agreement that could result in a Change in Law, but in order to give effect to the agreement of the Parties regarding the essential nature of the existing legal framework as set forth in Clause 12.1, unless each Party expressly agrees otherwise, the Government will procure that any Change in Law does not result in, cause or constitute a Destabilising Event Situation.
- (b) Without prejudice to the generality of Clauses 12.2(a), 12.3 and 13, unless each Party expressly agrees otherwise, the Government shall procure that no change in Law (including, for the avoidance of doubt, any Law applicable by virtue of any treaty, convention, or other instrument binding on Nicaragua, or any other Law applicable to this Agreement or to any Dispute arising out of or in connection therewith) adversely affects:
 - (i) any Party's rights under the dispute resolution mechanism applicable to this Agreement (including specifically Clauses 22 and 25) or any person's rights under the dispute resolution mechanism applicable to the Securityholders' Agreement; and
 - (ii) any Party's rights under any applicable treaty, convention, or other instrument binding on Nicaragua (including, for the avoidance of doubt, the Netherlands BIT and the Convention).

12.3 Favourable Change in Law

If any Sponsor determines that a Change in Law may be favourable to such Sponsor or any Affiliate thereof generally or favourable to any Sub Project Party, or in each case favourable to any of their respective rights, benefits and obligations whether under any Sub Project Document, at law or otherwise, then notwithstanding the provisions of Clause 12.2:

- (a) such Sponsor may notify the Commission that such Change in Law should apply to such Sub Project Parties as may be affected by such Change in Law and which are identified (by name or class) in such notice; and

- (b) upon receipt of such notice, the Commission will procure that such Change in Law so applies.

13 DESTABILISING EVENTS

13.1 Destabilising Events and Compensation Amounts

- (a) If a Destabilising Event directly or indirectly results in, causes or constitutes, as the case may be:
 - (i) a failure or delay by any Sub Project Party to comply with any obligation or other term or condition incumbent upon it in connection with any Sub Project Document or any Sub Project Consent;
 - (ii) an event giving rise to the termination of, or the right of any Sponsor to terminate, any Concession before its stated term;
 - (iii) a default (however defined) under any Sub Project Finance Document;
 - (iv) any suspension of the rights, benefits or obligations of a Sub Project Party in connection with, or an event of *force majeure* (however described in such Sub Project Document) under, a Sub Project Document;
 - (v) a change to any right, benefit or obligation of any Sub Project Party in connection with any Sub Project Document or any Sub Party Consent (as the case may be);
 - (vi) a change to the ability of any Sub Project Party to exercise or benefit from any right or perform any obligation in connection with any Sub Project Document, the Securityholders' Agreement or any Sub Party Consent;
 - (vii) unlawfulness, unenforceability, or invalidity of any Sub Project Document, the Securityholders' Agreement or any Sub Party Consent or any Government Entity's or Sub Project Party's performance of any obligation or the exercise or benefit of any right under any Sub Project Document, the Securityholders' Agreement or any Sub Party Consent; or
 - (viii) any costs to, expenditures by, a loss in revenue of, an imposition of Taxes and Duties upon or otherwise payable by, damage to, a liability or obligation of, or any other Losses of, any Sub Project Party directly or indirectly in connection with one or more Sub Projects,

(each of the foregoing, a "**Destabilising Event Situation**"), then, in addition to any other remedy under this Agreement (including under Clause 12.2 and Clause 14.6), the Government will, promptly upon the demand (and, in all cases, within seven (7) days of such demand) of any affected Sub Project Party of any Sub Project:

- (A) indemnify and keep indemnified each such affected Sub Project Party and hold it harmless from and against such Destabilising Event Situation or its effects;
 - (B) pay to each such affected Sub Project Party an amount (or amounts in summation) equal to all Losses incurred, suffered or paid by each such affected Sub Project Party (directly or indirectly, but without double counting) in relation to or as a result of such Destabilising Event Situation or its effect (the sum of such amount(s), a "**Compensation Amount**"); and
 - (C) take all other actions necessary to put such affected Sub Project Party in the same position in which it would have been in had such Destabilising Event not occurred.
- (b) Compensation Amounts shall be paid in the currency in which the underlying Losses were incurred, suffered or paid (directly or indirectly) by each relevant Sub Project Party or, at the election of such Sub Project Party, US Dollars.

13.2 Procedure

If a Destabilising Event occurs and either the Government or any Sponsor believes that such Destabilising Event, directly or indirectly, has resulted in or caused, or may result in or cause, any Destabilising Event Situation, then:

- (a) the Government or the relevant Sponsor, as the case may be, will use its reasonable endeavours to give prompt notice to each other Party that such Destabilising Event has occurred, specifying in the reasonable detail available to it such Destabilising Event and the related Destabilising Event Situation;
- (b) when such notice is given by a Sponsor, such notice will include its good faith estimate of any Compensation Amount that it has incurred, suffered or paid or reasonably foresees to incur, suffer or pay;
- (c) the Government and any Sponsor may, from time to time, give further notices to each other concerning such Destabilising Event and Destabilising Event Situation; and
- (d) promptly upon the request of the Government or any Sponsor, the Government and each affected Sponsor will consult with a view to each

such Party using its reasonable endeavours to mitigate the effect of such Destabilising Event or the Losses resulting to the relevant Sub Project Parties therefrom.

13.3 No Effect on Indemnity Obligation

Without prejudice to the obligations of the Parties under Clause 13.2:

- (a) a failure of any Sponsor to satisfy any obligation under Clause 13.2 will not increase or reduce, and will not otherwise affect, the obligations of the Government under Clause 13.1; and
- (b) satisfaction of any Sponsor's obligations under Clause 13.2 is not a condition to indemnification under Clause 13.1.

14 FORCE MAJEURE

14.1 Force Majeure Events

For the purpose of this Agreement, a "**Force Majeure Event**," with respect to any Party, means any event, effect, development or circumstance or combination of events, effects, developments or circumstances beyond the reasonable control of such Party, but only if and to the extent that such event(s), effect(s), development(s) or circumstance(s) (directly or indirectly) materially and adversely affect the ability of such Party to perform its obligations or exercise or otherwise enjoy its rights under this Agreement in respect of a Sub Project; provided that, with respect to any Sub Project (other than the Associated Infrastructure Project and the Umbrella Project) any event, effect, development or circumstance beyond the reasonable control of any Sponsor that results in (i) a failure of the Sub Project Financial Closing for such Sub Project to occur within seventy-two (72) months from the Effective Date or (ii) a failure of the Commercial Operations Date for such Sub Project to occur within ten (10) years from the Relevant Financing Date, shall be deemed to be a Force Majeure Event in respect of the Sponsor of such Sub Project.

14.2 Instances of Force Majeure

For the purposes of this Agreement, Force Majeure Events shall include Natural Force Majeure Events and Political Force Majeure Events, in each case, only to the extent that they satisfy the above requirements in Clause 14.1:

- (a) "**Natural Force Majeure Events**" shall include each of the following:
 - (i) earthquakes, mudslides, lightning, cyclones, hurricanes, floods, tsunamis, droughts or such other extreme weather or environmental conditions, unanticipated geological or ground conditions, epidemic, famine, plague, other natural calamities and acts of God;

- (ii) fire, radioactive contamination, ionising radiation, explosion, accident, breakage of property, plant or equipment, structural collapse, or chemical contamination (other than resulting from an act of war, terrorism or sabotage), in each case, caused by a person not being the affected Party or one of its contractors or subcontractors or any of their respective Affiliates, employees or agents;
 - (iii) acts of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy or act of terrorism, blockade, embargo, riot, public disorder, violent demonstrations, insurrection, rebellion, civil commotion and sabotage to the extent that they do not directly involve Nicaragua, any Government Entity and take place outside Nicaragua;
 - (iv) strikes, lockouts, work stoppage, labour disputes, and such other industrial action by workers related to or in response to the terms and conditions of employment of those workers or others with whom they are affiliated other than, in relation to any Sponsor, when such event is directly related to, or in direct response to any employment policy or practice (with respect to wages or otherwise) of such Sponsor; and
 - (v) in relation to any Sponsor or other Key Entity, non-performance by a party to any contract relating to any Sub Project by reason of an event, effect, development or circumstance specified above in this Clause 14.2(a), as applied to such party; and
- (b) **"Political Force Majeure Events"** shall include each of the following:
- (i) to the extent they take place in Nicaragua or otherwise directly involve Nicaragua or any Government Entity, any act of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy or acts of terrorism, blockade, embargo, riot, public disorder, violent demonstrations, insurrection, rebellion, civil commotion and sabotage;
 - (ii) declaration of a state of national emergency (or any measure having substantially similar effect) in Nicaragua;
 - (iii) blockage, embargo, or any other restrictions on exports to or imports from Nicaragua imposed by other countries or international bodies, or import or export restrictions imposed by any Government Entity;
 - (iv) sanctions imposed by other countries or international bodies against persons who:

- (A) import or export or otherwise deal or trade in or possess goods emanating from or which have transited via Nicaragua;
 - (B) deal with persons who have carried out the conduct referred to in paragraph (A) above;
 - (C) deal with the proceeds of any conduct referred to in paragraph (A) above; or
 - (D) make use of or otherwise provide services or assistance to vessels which have been or are being used for the trade or carriage of goods emanating from or transiting via Nicaragua;
- (v) failure or inability of any Key Entity to obtain or renew or have reissued any Sub Project Consent on a cost-free basis for any reason on or prior to such time as is necessary to Develop and Operate the relevant Sub Project in the manner determined by the relevant Sponsor (in its sole discretion but subject to conformity with the requirements of the relevant Sub Project Development Plan);
 - (vi) the rate of any tolls, tariffs, fees, rents or any other charges to be paid by any other person utilising all or any portion of any Sub Project Asset are established by the Commission in an amount or in a manner that does not comply with all Laws effective as of the Effective Date;
 - (vii) the amount of Actual Expropriation Costs for any Sub Project exceeds (or is reasonably expected to exceed) the aggregate Expropriation Value for all property expropriated for such Sub Project;
 - (viii) strikes, lockouts, work stoppage, labour disputes, and such other industrial action by workers that is (x) not directly related to, or in direct response to any particular employment policy or practice (with respect to wages or otherwise) of any Sponsor, and (y) is (1) part of an industry wide action in response to the coming into force, modification, repeal, or change in the interpretation of application of any Law after the date of this Agreement, (2) by the employees of any Government Entity in response to the coming into force, modification, repeal or change in the interpretation of any Law after the date of this Agreement, or (3) caused by a Political Force Majeure Event; provided that, such events included in this Clause 14.2(b)(viii) shall not constitute a Natural Force Majeure under Clause 14.2(a)(iv).

- (ix) the issuance or making of any Law, order, injunction or declaration by any Government Entity (including, for the avoidance of doubt, any courts or tribunals) in respect of archaeological or paleontological items or remains discovered on, in or under any Sub Project Site;
- (x) any action or inaction of any Government Entity (including, for the avoidance of doubt, any courts or tribunals) or any prohibition, restriction or other requirement imposed by any Government Entity (including, for the avoidance of doubt, any courts or tribunals) or resulting from any Change in Law, in each case having the effect of prohibiting, delaying or otherwise materially restricting any Sponsor or other Key Entity from Developing or Operating any Sub Project;
- (xi) any non-performance by a party to any contract relating to any Sub Project by reason of an event, affect, development or circumstance specified above in this Clause 14.2(b), as applied to such party;
- (xii) the failure by the Government or the Commission to procure any action (including the granting of any Consent) or omission that the Government or the Commission (as applicable) is obligated pursuant to the provisions of this Agreement to procure or ensure or otherwise to use its best endeavours to procure or ensure;
- (xiii) the failure by any Government Entity to grant any Sub Project Consent, any condition or qualification to any Sub Project Consent, or any other act or omission of any Government Entity, which alone or when taken together has (or have) the effect of restricting, impeding, delaying or reducing the transfer of any amounts yielded by such Sub Project including by way of the distribution of capital, profit or capital gains, the repayment of loans, or the payment of interest, dividends, royalties and fees, including by way of any Taxes and Duties;
- (xiv) the Sponsor of any Sub Project not having the unfettered right as a matter of Law (including in compliance with the Constitution) to determine in its sole discretion the rate of any tolls, tariffs, fees, rents or any other charges to be paid by any person utilising (directly or indirectly) all or any portion of such Sub Project's Sub Project Assets or the capacity thereof at any time following the eighteen (18) month anniversary of the Effective Date;
- (xv) a Sovereign Immunity Waiver with respect to this Agreement or the Securityholders' Agreement not constituting a legal, valid, binding and enforceable obligation and waiver of the Central Bank of Nicaragua in accordance with the provisions thereof at any time

following the eighteen (18) month anniversary of the Effective Date; and

- (xvi) any Destabilising Event Situation which does not otherwise fall within this Clause 14.2(b),

provided that any delay in a counterparty's performance or breakdown of property, plant or equipment (unless it itself is caused by a Force Majeure Event), or unavailability of funds, shall not constitute a Force Majeure Event.

14.3 Consequences of Force Majeure

Except as provided in Clause 14.4 and subject to compliance with Clause 14.5:

- (a) a Party shall be excused from performance and shall not be in default in respect of any obligation hereunder in respect of a Sub Project to the extent that the failure to perform such obligation is due to a Force Majeure Event; and
- (b) any time limits and deadlines for the performance by the affected Party of its obligations hereunder in respect of a Sub Project, including the time for achieving the relevant Sub Project Financial Closing and Commercial Operations Date, which are affected by such Force Majeure Event shall be extended by the period for which such Force Majeure Event shall subsist.

14.4 Exceptions from Force Majeure

Notwithstanding that a Force Majeure Event exists:

- (a) the provisions of this Clause 14 shall not excuse any obligation of the Government, the Authority or the Commission to pay (or procure the payment of) monies under this Agreement; and
- (b) the occurrence of a Political Force Majeure shall not excuse, or extend the time for performing, any obligation of the Government, the Commission or the Authority.

14.5 Notice of Force Majeure

- (a) A Party shall, subject to Clauses 14.3 and 14.4, as soon as is reasonably and practicably possible after it becomes aware or ought to have been aware of the occurrence of a Force Majeure Event, notify each other Party of the nature and expected duration of such Force Majeure Event and shall thereafter keep each other Party informed until such time as it is able to perform its obligations (if applicable).
- (b) The Parties shall use their reasonable endeavours to mitigate the effect of any Force Majeure Event; provided that (i) no Sponsor shall be obliged to

settle any strike, lock out, work stoppage, labour dispute or such other industrial action by any Key Entity's employees, and (ii) no Investor shall be obliged to take any actions with respect to any Sub Project if such Investor is not the Sponsor of such Sub Project.

14.6 Payments During Political Force Majeure

Upon the occurrence of a Political Force Majeure Event in respect of a Sub Project, the Government shall, during the Concession Period for such Sub Project, procure the prompt payment to the Sponsor of an amount necessary to cover all fixed costs of each Key Entity (net of any relevant Insurance Proceeds Amounts) associated with or reasonably allocable to such Sub Project (including any financing costs) for the period during which such Sub Project is unable to be (or otherwise is materially restricted or impeded from being) Developed or Operated in a manner consistent with the detailed operating budget and past practice of that Key Entity.

14.7 Prolonged Force Majeure

- (a) If a Natural Force Majeure Event continues for a continuous period exceeding twelve (12) months or an aggregate of three hundred sixty (360) days or more in a period of twenty-four (24) months in respect of the Government or any Sponsor with respect to any Sub Project, either the Government or such Sponsor may terminate the relevant Concession in accordance with Clause 15.5.
- (b) If a Political Force Majeure Event continues for a continuous period exceeding sixty (60) days or an aggregate of ninety (90) days or more in a period of one hundred twenty (120) days in respect of any Sponsor with respect to any Sub Project, such Sponsor may terminate the relevant Concession in accordance with Clause 15.5.

15 TERMINATION

15.1 Non-Viable Sub Project

If, in respect of a Sub Project, at any time prior to the Sub Project Financial Closing for such Sub Project, the relevant Sponsor determines in its sole discretion that the Sub Project is not viable (whether for commercial, technical, legal, political or any other reasons) or that such Sub Project should not be Developed or Operated, then such Sponsor shall have the right to terminate the Concession for that Sub Project and all rights, benefits and obligations under this Agreement in respect of such Sub Project with effect from the Termination Date by delivering a Termination Notice to each other Party (with such Termination Notice to include a short overview of the Sponsor's views regarding the viability of such Sub Project).

15.2 Failure to Achieve Sub Project Financial Closing

If, in respect of a Sub Project (other than the Associated Infrastructure Project and the Umbrella Project), the Sub Project Financial Closing for that Sub Project has not occurred within seventy-two (72) months from the Effective Date, such period to be extended by one day for each day that such Sub Project Financial Closing is prevented from occurring due to a Force Majeure Event, Government Event of Default or Destabilising Event Situation, or prior to such later date as the Government and the relevant Sponsor may agree, then the Government or the relevant Sponsor shall have the right to terminate the Concession for that Sub Project and all rights, benefits and obligations under this Agreement in respect of such Sub Project with effect from the Termination Date by delivering a Termination Notice to each other Party; provided that such Termination Notice must be delivered within ninety (90) days of the expiration of the time set out in this Clause 15.2 for the occurrence of such Sub Project Financial Closing.

15.3 Failure to Achieve Commercial Operations Date

If, in respect of a Sub Project (other than the Associated Infrastructure Project and the Umbrella Project), the Commercial Operations Date for that Sub Project has not occurred within ten (10) years from the Relevant Financing Date, such period to be extended by one day for each day that the Commercial Operations Date for such Sub Project is prevented from occurring due to a Force Majeure Event, Government Event of Default or Destabilising Event Situation, or prior to such later date as the Parties may agree, then the Government or the relevant Sponsor shall have the right to terminate the Concession for that Sub Project and all rights, benefits and obligations under this Agreement in respect of such Sub Project with effect from the Termination Date by delivering a Termination Notice to each other Party; provided that such Termination Notice must be delivered within ninety (90) days of the expiration of the time set out in this Clause 15.3 for the occurrence of such Commercial Operations Date.

15.4 Termination Due to an Event of Default

- (a) If a Government Event of Default occurs with respect to a Sub Project, the relevant Sponsor shall have the right to terminate the relevant Concession and any other rights of such Sponsor under this Agreement that are associated with the relevant Sub Project with effect from the relevant Termination Date by delivering a Termination Notice to each other Party; provided that such Termination Notice must be delivered (i) within ninety (90) days of such Sponsor becoming aware of the occurrence of such Government Event of Default, or (ii) with respect to any Government Event of Default that is related to a breach by any Government Entity of any payment obligation, at any time so long as such Government Event of Default is continuing.

- (b) If a Sponsor Event of Default occurs with respect to a Sub Project, the Government shall have the right to terminate the relevant Concession and any other rights of the relevant Sponsor under this Agreement that are associated with the relevant Sub Project with effect from the relevant Termination Date by delivering a Termination Notice; provided that such Termination Notice must be delivered within ninety (90) days of the Government becoming aware of the occurrence of such Sponsor Event of Default; provided, further that, in any such instance, the Government shall deliver a copy of such Termination Notice to the relevant Sub Project Finance Parties' representative(s) in accordance with the relevant Direct Agreement.
- (c) Notwithstanding anything to the contrary in this Clause 15, the rights of the Government under this Agreement and under any applicable Consent following a Sponsor Event of Default are subject to the rights of such Sub Project Finance Parties as set out in such Direct Agreement (including (i) to remedy any default by such Sponsor within any applicable cure period, and (ii) to assume the rights, benefits and obligations of such Sponsor under this Agreement or any applicable Consents, in part or in whole, during the period required for exercise of such rights as provided in such Direct Agreement).
- (d) No termination of any Concession by the Government shall be valid or binding on any Sub Project Finance Parties until the expiration of any cure period or any extended cure period set out in the relevant Direct Agreement.

15.5 Termination Due to Force Majeure

If Clause 14.7 applies in respect of the Government or any Sponsor with respect to any Sub Project, the relevant Party or Parties (as determined in accordance with the provisions of Clause 14.7) shall have the right to terminate the relevant Concession and any other rights, benefits and obligations associated with such Sub Project pursuant to this Agreement with effect from the Termination Date by delivering a Termination Notice to each other Party; provided that such Force Majeure Event must be continuing as of the date of the delivery of such Termination Notice.

15.6 Tag-Along Option

If the Government or the relevant Sponsor delivers a Termination Notice with respect to any Sub Project (excluding any such Termination Notice delivered pursuant to Clause 15.1) (a "**Trigger Notice**"), each Investor shall have the right (but not the obligation) (the "**Tag-Along Option**") to terminate the Concession(s) and any other rights, benefits and obligations associated with any or all of the other Sub Projects for which such Investor is the Sponsor with effect from the Termination Date by delivering a Termination Notice to each other Party with

respect to each such Sub Project within thirty (30) days of delivery of such Trigger Notice.

15.7 Automatic Termination

This Agreement shall terminate automatically, without the need for any Party to take any action, on the first date that every Concession has expired or has otherwise been terminated in accordance with the provisions of this Agreement.

15.8 Termination Generally

- (a) The Parties shall continue to perform their respective obligations under this Agreement with respect to the relevant Sub Project pending the final resolution in accordance with the provisions of this Agreement of any Dispute raised by the receiving and challenging Party of a Termination Notice delivered in accordance with the provisions of this Agreement.
- (b) Subject to Clause 15.9, on termination of this Agreement, no Party shall have any liability to the other person for any Losses under this Agreement, save in respect of rights accrued to it under this Agreement prior to its termination.
- (c) Clauses 15.1 to 15.3 (inclusive), Clause 16 and Schedule 3 (*Early Handback Procedures*) set out all of the rights and remedies of one Party against any other Party by reason of any Concession and related rights, benefits and obligations being terminated in respect of a Sub Project for such Sub Project's failure to be viable or to achieve the Sub Project Financial Closing or the occurrence of the Commercial Operations Date for that Sub Project in a timely manner.
- (d) If any Sponsor delivers a Termination Notice pursuant to Clause 15.4(a) or 15.5 (in respect of a Political Force Majeure Event), the Government hereby undertakes to indemnify (and keep indemnified) and hold each Sponsor harmless from and against all Losses suffered by any Sponsor and any Affiliate thereof (i) in connection with the relevant Government Event of Default or Political Force Majeure Event, and (ii) as a result of the occurrence of the relevant Sub Project Early Handback and the termination of the relevant Concession Period.
- (e) The delivery of a Termination Notice by a Sponsor in accordance with the provisions of this Agreement, and the payment of the relevant Termination Payment Amount(s) by or on behalf of the Government, shall not limit or affect any other rights or remedies available to any Party under this Agreement or otherwise.
- (f) The events specified in this Clause 15 shall be the sole grounds on which this Agreement may be terminated.

15.9 Survival

This Clause 15.9 and Clauses 1.2, 17.2, 17.3, 17.4, 18.2 and 19 to 25 (inclusive) and Schedule 3 (*Early Handback Procedures*) shall survive the termination of this Agreement without restriction as to the duration of the period of survival unless otherwise specified in this Agreement.

16 RIGHTS, BENEFITS AND OBLIGATIONS UPON TERMINATION

16.1 Early Handback Procedures

If a Termination Notice is validly delivered by the Government or the relevant Sponsor with respect to any Sub Project, the Sub Project Assets of the relevant Sub Project shall be transferred from such Sponsor to the Government (or its designee(s)) in accordance with the provisions of Schedule 3 (*Early Handback Procedures*).

16.2 Obligations Following Issuance of a Termination Notice

Upon the delivery of a Termination Notice with respect to any Sub Project:

- (a) the Concession for such Sub Project shall continue in full force and effect until the Termination Date for such Sub Project;
- (b) the Government shall (and shall use its best endeavours to ensure that each other relevant Government Entity shall):
 - (i) continue to perform its obligations under this Agreement with respect to such Sub Project until the relevant Transfer Date for such Sub Project; and
 - (ii) not take any action to prejudice the rights of the Sponsor of such Sub Project with respect to such Sub Project other than in connection with any Dispute; and
- (c) the Sponsor of such Sub Project shall:
 - (i) continue to occupy the Sub Project Site and shall continue to Develop and Operate (as applicable) the relevant Sub Project Assets in accordance with the Sponsor's prior course of ordinary operations (without obligation to provide any funding) and otherwise perform its obligations under this Agreement with respect to such Sub Project until the relevant Termination Date (and shall have the right, in its sole discretion, to do so until the relevant Transfer Date); and

- (ii) not take any action to prejudice the rights of any Government Entity with respect to such Sub Project other than in connection with any Dispute.

17 POST-CONCESSION OBLIGATIONS

17.1 Handback

- (a) Except as otherwise set out herein (including, for the avoidance of doubt, Clause 16 and Schedule 3 (*Early Handback Procedures*), at the end of the Concession Period for each Sub Project, the relevant Sponsor shall, for no consideration:
 - (i) transfer all relevant Sub Project Assets (free of all encumbrances) to the Government (or its designee(s)) in good operational and well-maintained condition (ordinary wear and tear excepted); and
 - (ii) deliver to the Government or its designee all documents, manuals and records maintained by such Sponsor or any Affiliate thereof which are necessary to carry out the transfer of the relevant Sub Project Assets to the Government (or its designee(s)) and to enable the Government (or its designee(s)) to Operate such Sub Project.
- (b) The Government shall not be required to make any payment to the Sponsor in respect of the transfer referenced in Clause 17.1(a); provided that (i) each Party shall pay its own expenses, including legal fees, incurred in connection with the transfer referenced in Clause 17.1(a); and (ii) the Government shall, at its own cost, obtain or effect all Consents which are necessary to carry out the transfer referenced in Clause 17.1(a) and the Government shall bear all Taxes and Duties incurred in connection with such transfer (if any).
- (c) Each Sponsor shall remove, and the Government shall ensure that each Sponsor has access to the Sub Project Site in order to remove, all of its objects and possessions (excluding, for the avoidance of doubt, any movable Sub Project Infrastructure) from each relevant Sub Project Site as soon as reasonably practicable following the completion of the transfer referenced in Clause 17.1(a); provided that any objects and possessions not removed within six (6) months of such transfer shall become property of the Government.

17.2 Right of First Refusal

In respect of any Sub Project, at any time following the termination of the Concession Period applicable to such Sub Project (other than in connection with any Sponsor Event of Default), no less than forty-five (45) days prior to permitting any person (other than a person Controlled by any Government Entity, the Original Sponsor or the Sponsor of such Sub Project) (the "**Third Party**")

Offeree") to, or entering into any contract with any Third Party Offeree granting such Third Party Offeree the right to, control or participate in the Operation, rebuilding or expansion of such Sub Project (or any other project similar to such Sub Project or any portion thereof), the Government shall give notice (an "**Offer Notice**") to the Original Sponsor. The Offer Notice shall disclose in reasonable detail the identity, background and (if applicable) ownership of the Third Party Offeree and the terms and conditions upon which the Government or any other Government Entity would permit or grant the right to the Third Party Offeree to control or participate in the Operation, rebuilding or expansion of such Sub Project, and the Offer Notice shall constitute a binding offer to permit the Original Sponsor or its designee to control or participate in the Operation, rebuilding or expansion on the terms and conditions provided in such Offer Notice. The Original Sponsor may elect (on behalf of itself or its designee) to control or participate in the Operation, rebuilding or expansion of such Sub Project upon the same terms and conditions as those set forth in the Offer Notice by giving notice of such election to the Government within forty-five (45) days after the Offer Notice has been given to the Original Sponsor (such forty-five (45) day period, the "**Election Period**"). If within the Election Period the Original Sponsor has not so elected (on behalf of itself or its designee) to accept the terms set forth in the Offer Notice, any Government Entity may enter into a binding agreement with the Third Party Offeree allowing the Third Party Offeree to control or participate in the Operation, rebuilding or expansion of such Sub Project on terms no more favourable, in any respect, to the Third Party Offeree than the terms specified in the Offer Notice during the sixty (60) day period immediately following the Election Period; provided that, following such sixty (60) day period, neither the Government nor any other Government Entity may enter into any such agreement with any Third Party unless the Government complies with the requirements of this Clause 17.2. If the Original Sponsor has elected (on behalf of itself or its designee) to control or participate in the Operation, rebuilding or expansion of such Sub Project on the terms set forth in the Offer Notice, the Government (or any other relevant Government Entity) and the Original Sponsor (or its designee(s)) shall enter into a definitive agreement as soon as practicable after such election has been given to the Government, but in any event within thirty (30) days after the expiration of the Election Period. For purposes of this Clause 17.2, any Sub Project shall include any other any new or existing infrastructure projects that are comparable or similar to such Sub Project or any portion of such Sub Project or other comparable or similar project.

17.3 Neutrality

The Government undertakes in favour of each Sponsor that the Government shall procure that, following the termination of the relevant Concession Period, each Sub Project shall, subject to compliance with the National Security Laws, be Operated (i) on a common user basis, open to any and all potential customers as such Sub Project may suitably handle, and (ii) in a manner that refrains from and does not permit any unfair or discriminatory practices against persons wishing to

avail themselves of the services offered in connection with the relevant Sub Project Assets.

17.4 Hope Shares Entitlement

Following the termination of the Concession Period for any Sub Project, the Government shall procure that the Original Sponsor (or its designee(s)) shall receive on 31 December of each year an amount (net of all Taxes and Duties) equal to one percent (1%) of the net income for the previous twelve months of each person Operating one or more relevant Sub Project Assets to the extent that such net income is attributable to such Sub Project Asset(s) (excluding any such time that occurred prior to the termination of such Concession Period); provided that the Original Sponsor (and its designee(s), if any) must use any net proceeds received pursuant to this Clause 17.4 solely for philanthropic purposes in order to support social and economic development (i) in Nicaragua or (ii) in the name of the citizens of Nicaragua throughout the world, as determined in each case by the Original Sponsor in its sole and absolute discretion.

18 EXCLUSIVITY

18.1 Project Exclusivity

- (a) The Government hereby grants each Sponsor exclusivity (i) with respect to the Wet Canal Project and Dry Canal Project and any new, comparable or similar infrastructure projects within Nicaragua, and (ii) with respect to each other Sub Project and any new, comparable or similar infrastructure projects (including any other ports, airports, pipelines or free trade zones, as applicable) within Nicaragua that could be reasonably expected to materially compete with such Sub Project or any portion of such Sub Project, in each case for the period of time beginning on the Effective Date and ending on the date when the Concession for the relevant Sub Project expires or is terminated pursuant to the provisions of this Agreement (the "**Exclusivity Period**"). For the purposes of this Clause 18.1(a), it will be considered that a new project could be reasonably expected to materially compete with a Sub Project or any portion of any Sub Project if its purpose is to provide services that support international global trade or the Development, Operation or utilisation of any Sub Project.
- (b) For purposes of this Clause 18.1, "**exclusivity**" means that neither the Government nor any other Government Entity (including the Commission and the Authority), nor any person acting on their behalf, shall: (i) solicit, initiate, respond to or encourage the submission of any proposal or offer from any other person or entity relating to any Sub Project or any new, comparable or similar project or any portion thereof, (ii) permit the Development or Operation of any infrastructure or other project or enterprise that could be reasonably expected to materially compete with any Sub Project, (iii) institute, pursue, or engage in any discussions,

negotiations, or agreements with any person or entity concerning any of the foregoing, or (iv) furnish any information with respect to or otherwise support any effort or attempt by any other person or entity to do any of the foregoing. To the extent that the Government, the Authority or the Commission is or becomes aware of any unsolicited offer or other inquiry (whether from a previously interested party or otherwise) regarding any Sub Project or any new, comparable or similar project or any portion thereof (an "**Alternative Proposal**"), the Government, the Authority or the Commission (as applicable) shall notify the relevant Sponsor of the existence, identity of the proposed counter-party(ies) and the terms of such Alternative Proposal within twenty-four (24) hours of becoming aware of such Alternative Proposal.

- (c) Each of the Authority, the Commission and the Government represents that neither it nor any Government Entity is a party to or bound by any contract with respect to any Sub Project or any new, comparable or similar project or any portion thereof other than the Deed of Cooperation, the MoU and any other agreement with HKC.

18.2 Payment Right Exclusivity

- (a) The Government undertakes that neither it nor any other Government Entity shall receive, or direct that any other person should receive, any payment or other consideration (including any Taxes and Duties or Existing Local Employment Taxes) (whether directly, indirectly, in-kind, by means of set-off or waiver or otherwise) with respect to any Sub Project or any new, comparable or similar project or any portion thereof (excluding any infrastructure asset existing in Nicaragua as of the Effective Date that has not materially improved or expanded thereafter) other than from any Sponsor (or any Affiliate thereof) pursuant to the provisions of this Agreement and any other agreement envisioned by this Agreement.
- (b) To the extent that any Government Entity receives, or directs that any other person should receive, any payment or other consideration (including any Taxes and Duties or Existing Local Employment Taxes) in violation of Clause 18.2(a) (an "**Excess Receipt**") from time to time, the Government shall pay to the Sponsor of the relevant Sub Project an amount equal to such Excess Receipt within five (5) days of the receipt of such Excess Receipt by any person.
- (c) The obligations contained in this Clause 18 shall continue to apply to the Government for fifty (50) years with respect to each Sub Project, with such fifty (50) year period renewable for an additional fifty (50) year period at the sole discretion of the Original Sponsor; provided that, if this Agreement or the relevant Concession is terminated earlier in accordance with the provisions of this Agreement, such obligations shall cease to

apply as of such date of termination but without prejudice to any obligations which have accrued prior to such date.

19 CONFIDENTIALITY

19.1 Generally

Subject to the provisions of Clauses 19.2 and 19.3, each Party:

- (a) shall treat as strictly confidential all documents, materials and other information, whether technical, commercial or otherwise, obtained or received by it from any other Party (or any Affiliate thereof) as a result of negotiating and entering into or performing its obligations under this Agreement or any other agreement contemplated by this Agreement (including the identity of each other Party or any Shareholder or any of their respective Affiliates and any of their respective other direct and indirect equity holders and the representatives and advisors of each such person) ("**Confidential Information**");
- (b) shall not publish or otherwise disclose to any person any Confidential Information;
- (c) shall not use Confidential Information other than for the purpose of managing or monitoring its rights, benefits and obligations under this Agreement or the enforcement of its rights under any Primary Document; and
- (d) shall procure that any person to whom Confidential Information is disclosed by such Party pursuant to Clause 19.3 complies with the restrictions set out in this Clause 19 as if such disclosee were a party to this Agreement, and shall be liable for any failure of such person to act fully in compliance with this Clause 19.

19.2 Permitted Disclosure

Except as set forth in Clause 19.3, a Party may only disclose Confidential Information if and only to the extent that:

- (a) such disclosure is required by applicable law, regulation, stock exchange rule or any subpoena, court, arbitration or other legal process;
- (b) such disclosure has been approved by each Party;
- (c) such disclosure is required by the rules of any governmental body to which that Party (or any Affiliate thereof) is subject, wherever situated, and whether or not the requirement has the force of law;

- (d) such disclosure is necessary to support a claim or defense in any litigation or arbitration or similar judicial or administrative proceeding involving such Party or any Affiliate thereof;
- (e) such Confidential Information was lawfully in its possession (and not subject to any duty of confidentiality prior to its receipt of such information in its capacity as a Party (as evidenced by written records) and was not obtained from any other Party (or any Affiliate thereof)); or
- (f) such Confidential Information has come into the public domain other than through its or any of its Affiliates' fault or the fault of any person to whom it or any of its Affiliates has disclosed such Confidential Information pursuant to Clause 19.3,

provided that, to the extent reasonably practicable and permitted under applicable law, any disclosure permitted by sub-clauses (a) or (c) of this Clause 19.2 shall only be made following consultation with the Party from whom such Confidential Information was obtained.

19.3 Permitted Disclosees

Each Party may disclose Confidential Information to the following persons or any of them on a "need to know" basis:

- (a) the National Assembly of Nicaragua to the extent reasonably necessary to facilitate the approval of any legislation that is necessary or desirable to effect the transactions contemplated by, and the rights conferred under, this Agreement;
- (b) the comptroller office of Nicaragua;
- (c) any Affiliate of such Party;
- (d) any Shareholder or any Affiliate thereof;
- (e) any Sub Project Party;
- (f) its and its Affiliates respective professional and investment advisers, auditors, bankers and insurers, acting as such;
- (g) subject to any such person entering into an appropriate legally binding confidentiality undertaking, a person to whom any debt or equity securities of HKND, any Sponsor or any Shareholder or any of their respective Affiliates is *bona fide* proposed to be transferred or any person who otherwise *bona fide* proposes to enter into any agreement with that Party under which that person will participate economically in the return on any debt or equity securities of HKND, any Sponsor or any Shareholder or any of their respective Affiliates; and

- (h) any of its or its Affiliates' respective partners, directors, officers and senior employees whose duties include the management or monitoring of all or any portion of the Project and who need to know such information in order to discharge their respective duties.

19.4 Return of Materials

All records, papers, documents and data (in whatever form they may exist) in the possession, custody or control of, or kept by or on behalf of, any Party relating to any Sub Project and all rights in such records, papers, documents and data shall (to the extent they so relate) be deemed to be the property of the relevant Sponsor and all such items shall (to the extent they so relate) be promptly delivered to the relevant Sponsor upon the request of such Sponsor.

19.5 Survival

The restrictions contained in this Clause 19 shall continue to apply to each Party without limit in time.

20 ANNOUNCEMENTS

20.1 Generally

Except as required by applicable law or the rules of any securities exchange or regulatory or governmental body (excluding, with respect to the Authority, the Commission and the Government and any of their respective disclosees, any Government Entity) to which the Party making such announcement is subject, no announcement concerning this Agreement, any Sub Project or any Sub Project Assets shall be made by any Party without the prior approval of each other Party.

20.2 Survival

The restriction contained in this Clause 20 shall continue to apply to each Party without limit in time.

21 GENERAL PROVISIONS

21.1 Cost

Except as may otherwise be agreed between the Parties, each Party shall bear its own costs and expenses in relation to the negotiation, preparation, execution and implementation of this Agreement; provided that this Clause 21 shall not prejudice any Party's right to seek to recover costs in any litigation or other dispute resolution procedure arising in connection with this Agreement.

21.2 Assignment and Transfers

Except as expressly set out in this Agreement, no Party may assign, hold on trust, transfer, sub-contract, delegate, charge or otherwise deal with all or any part of its rights, benefits or obligations under this Agreement without the prior consent of each other Party; provided that:

- (a) the Original Sponsor may assign the whole or any part of its accrued rights under this Agreement to any Affiliate of such Original Sponsor; and
- (b) the Original Sponsor and each other Sponsor may, without the consent of any other Party, assign or create a Security Interest over its rights and interests under this Agreement in favour of any Sub Project Finance Parties.

Furthermore, the Government shall procure that each Shareholder and each of such Shareholder's direct and indirect equity holders may freely transfer, assign or encumber any direct or indirect equity interests in any Sponsor and any Affiliate thereof without any Consent.

21.3 No Partnership or Fiduciary Duties

Nothing in this Agreement is intended to or shall be construed as establishing or implying an association, partnership or joint venture of any kind between the Parties or any of them, or to authorise any Party to act as agent for any other, and (save as otherwise provided in this Agreement) no Party shall have authority to act in the name or on behalf of or otherwise to bind any other Party in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). Furthermore, this Agreement is not intended to, and does not, create or impose any fiduciary duty on any of the Parties or their respective Affiliates.

21.4 Remedies

The rights and remedies conferred on any person by, or pursuant to, this Agreement are cumulative and, except as expressly provided in this Agreement, are in addition to, and not exclusive of, any other legal rights and remedies available to such Party in any jurisdiction including, for the avoidance of doubt, before any arbitral tribunal.

21.5 Specific Performance

Each Party agrees that monetary damages may not be a sufficient remedy for any breach or threatened breach of this Agreement, and that the other Parties shall be entitled to seek equitable relief, including specific performance, in the event of any such breach or threatened breach without the necessity of posting any bond or other security or proving that monetary damages would be difficult to calculate or be an inadequate remedy.

21.6 Several Liability

- (a) All obligations of the Authority, the Commission and the Government under this Agreement shall be joint and several.
- (b) Except as otherwise set forth in Clause 21.6(a), all obligations, covenants, warranties, representations and undertakings expressed herein to be assumed or given by two or more persons shall in each case be construed as if expressed to be given severally and not jointly and severally.

21.7 No Strict Construction

This Agreement was negotiated and prepared by the Parties with advice of their own separate counsel to the extent deemed necessary by each Party. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party, and this Agreement shall be interpreted without regard to any presumption or rule requiring construction or interpretation against the Party drafting or causing any instrument to be drafted.

21.8 Waivers

- (a) Any waiver of any term or condition of this Agreement, waiver of any breach of any term or condition of this Agreement or waiver of, or election whether or not to enforce, any right or remedy arising under this Agreement or at law must be in writing and signed by or on behalf of the person granting the waiver, and no waiver or election shall be inferred from any person's conduct.
- (b) Any waiver of a breach of any term or condition of this Agreement shall not be, or be deemed to be, a waiver of any subsequent breach.
- (c) Failure to enforce any provision of this Agreement at any time or for any period shall not waive that or any other provision or the right subsequently to enforce all provisions of this Agreement.
- (d) Failure to exercise, or delay in exercising, any right or remedy shall not operate as a waiver or be treated as an election not to exercise such right or remedy, and single or partial exercise or waiver of any right or remedy shall not preclude its further exercise or the exercise of any other right or remedy.

21.9 Severability

If any provision of this Agreement is held to be invalid or unenforceable by any judicial or other competent authority, (i) all other provisions of this Agreement will remain in full force and effect and will not in any way be impaired, and (ii) if such provision of this Agreement would be valid or enforceable if some part of

the provision were deleted or amended, the provision in question will apply with the minimum modifications necessary to make it valid and enforceable provided that such modification achieves the original commercial intention of the Parties.

21.10 Counterparts

This Agreement may be executed in any number of counterparts each of which when executed and delivered is an original, and all the counterparts together constitute one and the same agreement.

21.11 Conflicts

- (a) In the event of any conflict between the provisions of the Deed of Cooperation on the one hand, and this Agreement on the other hand, each Party shall, if requested to do so by any other Party, cooperate to effectuate the provisions of this Agreement in accordance with the provisions set out herein, including taking all such actions as shall be reasonably necessary to amend, restate, supplement, novate or otherwise modify the Deed of Cooperation to cure such conflict.
- (b) In the event of any conflict, in relation to any Sub Project, between the provisions of the relevant Sub Project Concession and Implementation Agreement on the one hand, and this Agreement on the other hand, the provisions of the relevant Sub Project Concession and Implementation Agreement will prevail.

21.12 Rights of Third Parties

- (a) Except as set out in Clause 21.12(b) and subject to the provisions of any Direct Agreement, this Agreement does not confer any rights on any person other than the Parties.
- (b) To the extent permitted under applicable law, each Key Entity, Sub Project Party and Expatriate Employee (each that is not a Party, a "**Third Party Beneficiary**") shall be entitled to enforce all the rights and benefits accorded to a Key Entity, Sub Project Party and Expatriate Employee, respectively, by this Agreement at all times as if such person were a party to this Agreement.
- (c) The Parties may rescind, vary or terminate this Agreement in accordance with its provisions without the consent of any Third Party Beneficiary.
- (d) No Third Party Beneficiary may bring any action to enforce, nor assign in whole or in part, its rights under this Agreement without the prior consent of the Original Sponsor.

21.13 Entire Agreement

- (a) This Agreement, the Securityholders' Agreement, the MoU, the Deed of Cooperation, the articles of association and any other constitutive documents of HKND and any transfer or subscription documentation related to the Authority's acquisition of shares of HKND together constitute the whole agreement between the Parties relating to the subject matter of this Agreement to the exclusion of any provisions implied in law that may be excluded by contract. It supersedes and extinguishes any and all prior discussions, correspondence, negotiations, drafts, arrangements, understandings or agreements relating to the subject matter of this Agreement (including, for the avoidance of doubt, the MoU).
- (b) Each Party agrees and acknowledges that:
 - (i) it is entering into this Agreement in reliance solely on the statements made or incorporated herein; and
 - (ii) it is not relying on any other statement, representation, warranty, assurance or undertaking made or given by any person, in writing or otherwise, at any time prior to the date of this Agreement ("**Pre-Contractual Statement**").
- (c) No Party shall have any liability whatsoever for any Pre-Contractual Statement, whether in contract, in tort or otherwise.
- (d) It is agreed that the only liability of any Party in respect of those statements, representations, warranties, assurances and undertakings made or given by it and set out or incorporated in this Agreement shall be for breach of contract.
- (e) This Clause 21.13 does not limit or exclude any liability for fraud.

21.14 Adhering Investors and Former Investors

Each Party agrees and acknowledges that:

- (a) with respect to any person that is not already a Party, each Party agrees that such person may, by virtue of validly executing and delivering an Adherence Agreement to each other Party and subject to the prior consent of the Original Sponsor, agree to be bound by this Agreement as an Investor hereunder, and directly enforce and enjoy all rights, remedies, privileges and protections of an Investor and as a Sponsor with respect to the relevant Sub Project(s) and shall, subject to Clause 21.14(c), be deemed a Party thereafter;
- (b) the Original Sponsor may assign, novate or otherwise transfer all or some of its rights, benefits and obligations under this Agreement (including in

its capacity as the Original Sponsor) to any other person that is an Affiliate of the Original Sponsor, and each other Party hereby (A) agrees that such assignment, novation or transfer shall be effective when made, and (B) undertakes to promptly execute all documents and take all actions as may be necessary to give effect to any such assignment, novation or other transfer; and

- (c) when any Investor (excluding the Original Sponsor) ceases to be a Sponsor with respect to any Sub Project, that person shall cease to be an Investor and such Party and shall no longer have any rights or be bound by any obligations under this Agreement except with respect to those matters set out in Clause 15.9 that survive the termination of this Agreement and any rights that may have accrued up to the time of such termination.

21.15 Amendment and Waiver

Any amendment to this Agreement must be effected (i) with the prior consent of each Party, or (ii) with respect to the parties to any Sub Project Concession and Implementation Agreement, as set out in such Sub Project Concession and Implementation Agreement; provided that the Original Sponsor is hereby authorised, and shall be obligated, to:

- (a) promptly amend and update Schedule 1 (*Schedule of Investors*), with such amended and updated Schedule 1 (*Schedule of Investors*) to form a part of this Agreement, to reflect (i) the admission of any new Investor following the execution and delivery of an Adherence Agreement thereby, (ii) the termination of this Agreement in respect of any Investor who or which ceases to be an Investor pursuant to Clause 21.14(c), or (iii) any change in any Investor's name, physical address, or facsimile number as notified by such Investor to the other Parties from time to time; and
- (b) promptly amend and update Schedule 2 (*Schedule of Sponsors*), with such amended and updated Schedule 2 (*Schedule of Sponsors*) to form a part of this Agreement, to reflect any change of the identity of the person designated by the Original Sponsor to be the Sponsor with respect to any Sub Project from time to time.

21.16 Notices

- (a) Except as expressly set forth herein, any notice to be given under this Agreement must be in English and Spanish and in writing, and may be served by hand or sent by first class post, airmail or internationally recognised overnight courier service (pre-paid and signed for in each case) or by facsimile to the address or facsimile number (as applicable) given below or on Schedule 1 (*Schedule of Investors*), or to such other address or facsimile number as may have been notified by any Party to the other Parties for this purpose (which shall supersede the previous address or

facsimile number (as applicable) from the date on which notice of the new address or facsimile number is deemed to be served under this Clause 21.14).

If to the Authority:

La Autoridad del Gran Canal Interoceanico de Nicaragua
Bolonia, Del EPN 10 vrs. al oeste 1 c. al norte
Managua, Nicaragua
Facsimile: +505 2228 2802
Attn: Manuel Coronel Kautz (*Ministro – Presidente*)

If to the Commission:

La Comisión del Proyecto de Desarrollo del Canal de Nicaragua
Bolonia, Del EPN 10 vrs. al oeste 1 c. al norte
Managua, Nicaragua
Facsimile: +505 2228 2802
Attn: Manuel Coronel Kautz (*Presidente*)

If to the Government:

El Gobierno de la Republica de Nicaragua
Avenida Bolivar
Costado Sur Asamblea Nacional, 3er Piso,
Managua, Nicaragua
Facsimile: +505 2228 2802
Attn: Daniel Ortega Saavedra (*Presidente de la Republica de Nicaragua*)

If to Original Sponsor:

Empresa Desarrolladora de Grandes Infraestructuras S.A.
Del Hospital Militar
1 cuadra al norte
Managua, Nicaragua
Facsimile: +505 2254 - 5295
Attn: Board of Directors

with a copy (such copy not constituting notice) to:

HK Nicaragua Canal Development Investment Co., Limited
Suites 1801-1807, 18th Floor
Two International Finance Centre
8 Finance Street
Central, Hong Kong
People's Republic of China
Facsimile: +852 3153 4990
Attn: Board of Directors

If to HKC:

HK Nicaragua Canal Development Investment Co., Limited
Suites 1801-1807, 18th Floor
Two International Finance Centre
8 Finance Street
Central, Hong Kong
People's Republic of China
Facsimile: +852 3153 4990
Attn: Board of Directors

- (b) Any notice served in accordance with this Clause 21.16 shall be deemed to have been received:
- (i) if delivered by hand, at the time of delivery;
 - (ii) if sent by an internationally recognised overnight courier service, at 9.30 a.m. on the second day after (and excluding) the date of posting;
 - (iii) if sent by any other form of airmail or first class post, at 9.30 a.m. on the fifth day after (and excluding) the date of posting; or
 - (iv) if sent by facsimile, at the time of transmission by the sender,
- provided that if a notice would otherwise be deemed to have been received outside Normal Business Hours, it shall instead be deemed to have been received at the recommencement of such Normal Business Hours.
- (c) For the purposes of Clause 21.16(b), "**Normal Business Hours**" means 9.00 a.m. to 5.30 p.m. local time in the place of receipt on any day which is not a Business Day. In the case of service on any Party by facsimile, the place of receipt shall be deemed to be the address specified for service on that Party by post.
- (d) In proving receipt of any notice served in accordance with this Clause 21.16, it shall be sufficient to show that the envelope containing the notice was properly addressed and either delivered to the relevant address by hand or posted by first class post, airmail or internationally recognised overnight courier service or that the facsimile was sent to the correct number and a confirmatory transmission report was received.
- (e) If any time period for giving notice or taking action hereunder expires on a day which is not a Business Day, such time period shall automatically be extended to the first Business Day following such day.
- (f) This Clause 21.14 shall not apply to the service of any proceedings or other documents in any legal action.

21.17 Good Faith

Each Party undertakes to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary or desirable for the realisation of its objectives.

21.18 Further Assurance

Each Party agrees to promptly execute and deliver all such further instruments and documents and do and perform all such further reasonable acts and things as shall be necessary or desirable for the carrying out of the provisions of this Agreement, including, for the avoidance of doubt, counter-signing any Adherence Agreement validly executed and delivered to any Party by any relevant person.

22 GOVERNING LAW; DISPUTE RESOLUTION

22.1 Governing Law

This Agreement and any Dispute arising out of or in connection therewith, whether contractual or non-contractual, shall be governed by and determined in accordance with the Laws of Nicaragua and such rules of international law as may be applicable.

22.2 Informal Dispute Resolution

If any Dispute arises between any of the Parties, the Party wishing to declare a Dispute shall deliver to each other Party a notice identifying the disputed issue in reasonable detail and each Party involved in the Dispute shall, in good faith and to the extent possible without prejudicing such Party's rights or causing such Party to incur any Losses, endeavour to settle such Dispute for a period no less than thirty (30) days by discussions among such Parties prior to submitting the Dispute to arbitration in accordance with Clause 22.3.

22.3 Formal Dispute Resolution

- (a) Subject to Clause 22.2, the Parties agree and consent that all Disputes arising out of or in connection with this Agreement shall be exclusively submitted to international arbitration. The Party initiating the arbitration may, at its option, choose to submit the Dispute for resolution to either:
 - (i) the International Centre for Settlement of Investment Disputes for final settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "**Convention**") or, if the International Centre for Settlement of Investment Disputes does not have jurisdiction, the ICSID Additional Facility Rules, in which case (A) the number of arbitrators shall be three (3), (B) the seat of arbitration shall be London, England, (C) the language of the arbitration shall be

English, and (D) the Parties further agree that a legal person which is a party to this Agreement or any Linked Agreement which is a national of Nicaragua but is owned or Controlled (directly and indirectly) by a national of another state shall be treated as a national of such state for purposes of the Convention (irrespective of whether such national is itself Controlled by the national of another state); or

- (ii) the International Court of Arbitration of the International Chamber of Commerce (the "**ICC**") for final settlement by arbitration pursuant to the Rules of Arbitration of the ICC (the "**Rules**") by three arbitrators appointed in accordance with the Rules, with the Rules to be deemed to be incorporated by reference into this Agreement.
- (b) With respect to any arbitral proceedings commenced pursuant to Clause 22.3(a)(ii):
- (i) if there are only two parties to such arbitral proceedings,
 - (A) each party shall appoint one arbitrator in accordance with the Rules;
 - (B) the third arbitrator, who shall act as president of the arbitral tribunal for such arbitral proceedings, shall be jointly nominated by the other two arbitrators within thirty (30) days of the confirmation of the second arbitrator; and
 - (C) if the president of the arbitral tribunal is not nominated within this time period, the ICC shall appoint such arbitrator;
 - (ii) if are more than two parties to such arbitral proceedings,
 - (A) the parties shall endeavour to agree as soon as reasonably practicable, for the purposes of Article 12(6) of the Rules, that the disputant parties represent two separate sides for the formation of the relevant arbitral tribunal as "Claimant(s)" and "Respondent(s)" respectively;
 - (B) the Claimant(s) shall be entitled to jointly nominate one arbitrator and the Respondent(s) shall be entitled to jointly nominate one arbitrator; if the Claimant(s) or the Respondent(s) fail to nominate an arbitrator within thirty (30) days after the commencement of the arbitration proceedings, then the ICC shall nominate an arbitrator for such party pursuant to Article 12(8) of the Rules;

- (C) the third arbitrator, who shall act as president of the arbitral tribunal, shall be jointly nominated by the other two arbitrators within thirty (30) days of the confirmation of the second arbitrator; and
 - (D) if the president of the arbitral tribunal is not nominated within this time period, the ICC shall appoint such arbitrator;
- (iii) the seat of the arbitration shall be London although the parties to any arbitral proceedings pursuant to this Clause 22.3 may agree that all or some of the relevant hearings are held in alternative locations. The language of the arbitration shall be English;
 - (iv) the existence of any arbitration, arbitral proceedings, submissions made by the Parties and decisions made by the arbitral tribunal, including its awards, shall be deemed Confidential Information for purposes of this Agreement; and
 - (v) the arbitral award shall be final and binding upon the parties and may be entered and enforced in any court of competent jurisdiction.

22.4 Claims under Applicable Bilateral Investment Treaties

- (a) The provisions of Clause 22.3 shall be without prejudice to any rights or remedies that may be available to any Party under any applicable bilateral investment treaty (including, for the avoidance of doubt, the Netherlands BIT) or other international instrument, and shall not prevent any Party from seeking to enforce such rights or remedies at any time.
- (b) Each Party hereby irrevocably and unconditionally consents that all disputes arising out of or in connection with any applicable bilateral investment treaty (including, for the avoidance of doubt, the Netherlands BIT) or similar instrument shall be submitted to international arbitration. The Party initiating the arbitration may, at its option, choose to submit the dispute for resolution to either:
 - (i) the International Centre for Settlement of Investment Disputes for final settlement by arbitration pursuant to the Convention or, if the International Centre for Settlement of Investment Disputes does not have jurisdiction, the ICSID Additional Facility Rules, in which case (A) the number of arbitrators shall be three (3), (B) the seat of arbitration shall be London, England, (C) the language of the arbitration shall be English, and (D) the Parties further agree that a legal person which is a party to this Agreement or any Linked Agreement which is a national of Nicaragua but is owned or Controlled (directly and indirectly) by a national of another state

shall be treated as a national of such state for purposes of the Convention (irrespective of whether such national is itself Controlled by the national of another state); or

- (ii) international arbitration in accordance with the UNCITRAL Arbitration Rules, in which case (A) the appointing authority shall be the London Court of International Arbitration, (B) the number of arbitrators shall be three (3), (C) the seat of arbitration shall be London, England, and (D) the language of the arbitration shall be English.
- (c) The irrevocable and unconditional consent to arbitrate set out in Clause 22.4(b) shall be effective irrespective of any other agreement to the contrary (whether contained in the applicable bilateral investment treaty, similar instrument or otherwise applicable conventions, treaties, rules or regulations), and irrespective of any denunciation or termination of, or withdrawal from, the Convention or any applicable bilateral investment treaty (including, for the avoidance of doubt, the Netherlands BIT) or similar instrument by Nicaragua.
- (d) The Government hereby irrevocably and unconditionally undertakes to afford each of the other Parties to this Agreement the protections afforded by Nicaragua to nationals of the Kingdom of the Netherlands and their respective investments under the Netherlands BIT (in the version in force as at the date of this Agreement).

22.5 Separability of Arbitration Agreement

The agreement to arbitrate in this Clause 22 which forms or was intended to form part of this Agreement shall not be regarded as invalid, non-existent or ineffective if this Agreement is or becomes invalid, or is deemed not to have come into existence or has otherwise become ineffective, and it shall for that purpose be treated as a separate and distinct agreement.

22.6 Recognition and Enforcement of Foreign Arbitral Awards

Any award rendered pursuant to arbitration hereunder shall constitute a "foreign award" within the meaning of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (ratified by Nicaragua on 24 September 2003).

22.7 Joinder and Consolidation

- (a) Each Party agrees that:
 - (i) for the purposes of the Rules and the Convention, the arbitration agreement set out in this Clause 22 and the arbitration agreement contained in each Linked Agreement shall together be deemed to

be an arbitration agreement that binds each Party and any other party to each Linked Agreement;

- (ii) any party to this Agreement or any Linked Agreement may, in accordance with the Rules or for the purposes of the Convention, be joined to any arbitration commenced under this Agreement or any Linked Agreement; and
 - (iii) in accordance with the Rules or for the purposes of the Convention, Disputes may be resolved in a single arbitration together with Disputes (as defined in any Linked Agreement) arising out of any such Linked Agreement.
- (b) Pursuant to Article 10(a) of the Rules or for the purposes of the Convention, the parties agree to the consolidation of any two or more arbitrations commenced pursuant to this Clause 22 or the arbitration agreement contained in any Linked Agreement into a single arbitration, as provided for in the Rules.
- (c) Each Party waives any objection, on the basis that a Dispute has been resolved in a manner contemplated at Clause 22.7(a) or Clause 22.7(b), to the validity or enforcement of any arbitral award made by an arbitral tribunal following the Dispute being resolved in that manner.

23 CURRENCY, DUE DATE OF PAYMENT AND DELAYED PAYMENTS

23.1 Currency of Payments

Except as otherwise expressly set out in this Agreement, all payments under this Agreement shall be calculated and due in US Dollars.

23.2 Invoice

Any Party entitled to payment under this Agreement shall issue an invoice (an "**Invoice**") to the relevant other Party accompanied by supporting calculations of the amounts claimed and, where the sending Party relies on the data and documents maintained by it, such data and documents shall be made available for inspection by the receiving Party on reasonable prior notice.

23.3 Payment Date

Unless otherwise specified in this Agreement, any amount payable by one Party to another Party pursuant to an Invoice shall be paid within thirty (30) days from the date such Invoice is delivered; provided that, if all or any part of the Invoice is disputed, when such disputed amount is finally agreed or determined in accordance herewith with respect to such disputed amount.

23.4 Interest Payable on Disputed Amounts

When making payment of a disputed sum, the Party liable to make payment shall pay interest at the Default Rate, with such interest accruing from the due date for payment of the relevant Invoice until the date of payment (inclusive).

24 ADDITIONAL UNDERTAKINGS AND ACKNOWLEDGEMENTS

24.1 Government, Authority and Commission Undertakings and Acknowledgements

- (a) Where the performance of any obligation expressed to be an obligation of the Government under or pursuant to this Agreement is an obligation which the Commission is capable of performing under the authority validly granted to it (whether pursuant to any Law, by any other Government Entity or otherwise), the Commission undertakes to perform each such obligation in accordance with the provisions of this Agreement as if such obligation were expressed in this Agreement to be an obligation of the Commission.
- (b) Each of the Authority, the Commission and the Government undertakes that it shall not, and shall procure that no other Government Entity (excluding courts and tribunals) shall, challenge the validity or enforceability of any provision of this Agreement in connection with, or on the basis of, any claim that any illicit act or payment has been undertaken or paid (as applicable) by any person for the purpose of procuring the execution of this Agreement by any Party.
- (c) Where the Government, the Authority or the Commission is required to undertake any action pursuant to this Agreement or any other Primary Documents and the Government, the Authority or the Commission (as applicable) does not have the capacity or authority to undertake such action under the Laws, (i) the Government shall procure that such actions are effectuated by one or more persons in a manner that is materially equivalent to how such actions would have been effectuated if the Government, the Authority or the Commission (as applicable) had effectuated such actions directly; and (ii) the Government shall be liable for any failure to procure such actions.
- (d) The Government shall procure that the Authority, the Commission and each other Government Entity undertakes all actions required or envisioned to be taken by such Government Entity under the provisions of this Agreement and the Government shall be liable for any failure to procure such actions in the manner contemplated herein.
- (e) The Government shall not, and shall use its best endeavours to ensure that no other Government Entity (excluding courts and tribunals) shall, take any action that is inconsistent with the provisions of any Primary

Document or which any Government Entity is prohibited from taking pursuant to the provisions of any Primary Document.

24.2 All Parties Undertakings and Acknowledgements

- (a) Each Party undertakes that it shall not challenge the validity or enforceability of any provision of this Agreement either as a matter of Nicaraguan law or otherwise.
- (b) If any claim or challenge brought by any Party in violation of Clause 24.2(a), such Party shall indemnify (and keep indemnified) and hold each other Party harmless from and against all Losses which such other Party incurs arising out of or in connection with such challenge (including all Losses reasonably incurred as a result of settling or defending such challenge).
- (c) Each Party agrees and acknowledges that the Commission shall, to the extent permitted by the Laws, be entitled to perform any obligation or exercise any right of the Government under this Agreement on behalf of the Government and each Sponsor may rely upon and shall not be liable for acting upon any notice, document, instruction or request furnished to it by the Commission as if such notice or information had been provided by the Government.

25 SOVEREIGN IMMUNITY

- (a) Each Party hereby irrevocably and unconditionally:
 - (i) submits to the jurisdiction of the relevant arbitral tribunal or any courts in which any award rendered by an arbitral tribunal constituted pursuant to this Agreement may lawfully be reviewed, recognised or enforced; and
 - (ii) waives to the fullest possible extent any right of sovereign immunity that it may have (and agrees not to invoke any such immunity in any proceedings), whether before an arbitral tribunal or otherwise from service of process, suit, jurisdiction, adjudication, or enforcement, including waiving any right of sovereign immunity as to itself (including, where applicable, its relevant ministries, departments, agencies, instrumentalities and separate entities performing governmental functions), and any of the property of itself or any such body, regardless of the commercial or non-commercial nature, purpose or function of such property. Such property shall include any bank account belonging to the Party (including, where applicable, any body as aforesaid) whether held in the name of a diplomatic mission or otherwise, and

- (b) For the avoidance of doubt, (i) the irrevocable and unconditional waiver in this Clause 25 includes a waiver of any right of or claim to sovereign immunity in relation to the recognition, enforcement, or execution of any judgment, order or arbitral award, whether interim or final, and (ii) this waiver applies equally to any orders for the granting of interim or protective relief.

* * * * *

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

GOVERNMENT

THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA

By: Daniel Ortega Saavedra
Its: President

COMMISSION

THE NICARAGUA CANAL AND DEVELOPMENT PROJECT COMMISSION

By: Manuel Coronel Kautz
Its: President

AUTHORITY

THE NICARAGUAN INTEROCEANIC GRAND CANAL AUTHORITY

By: Manuel Coronel Kautz
Its: President

HKC

HK NICARAGUA CANAL DEVELOPMENT INVESTMENT CO., LIMITED

By: Wang Jing
Its: Director

INVESTOR

EMPRESA DESARROLLADORA DE GRANDES INFRAESTRUCTURAS S.A.

By: Wang Jing
Its: Authorised Representative

**SCHEDULE 1
SCHEDULE OF INVESTORS**

Investor	Notice Details	Original Sponsor
<p>Empresa Desarrolladora de Grandes Infraestructuras S.A.</p>	<p>Empresa Desarrolladora de Grandes Infraestructuras S.A. Del Hospital Militar 1 cuadra al norte Managua, Nicaragua Facsimile: +505 2254 - 5295 Attn: Mr. Wang Jing</p> <p><i>with a copy (such copy not constituting notice) to:</i></p> <p>HK Nicaragua Canal Development Investment Co., Limited Suites 1801-1807, 18th Floor Two International Finance Centre 8 Finance Street Central, Hong Kong People's Republic of China Facsimile: +852 3153 4990 Attn: Mr. Wang Jing</p>	<p>Yes</p>

**SCHEDULE 2
SCHEDULE OF SPONSORS**

Sub Project	Sponsor
The Airport Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.
The Associated Infrastructure Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.
The Caribbean Free Trade Zone Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.
The Caribbean Port Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.
The Dry Canal Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.
The Pacific Free Trade Zone Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.
The Pacific Port Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.
The Pipeline Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.
The Wet Canal Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.
The Umbrella Project	Empresa Desarrolladora de Grandes Infraestructuras S.A.

**SCHEDULE 3
EARLY HANDBACK PROCEDURES**

1 Applicability

The procedures and requirements set out in this Schedule 3 (*Early Handback Procedures*) shall apply to the Government and the relevant Sponsor with respect to the transfer of the Sub Project Assets of any Sub Project in connection with a Sub Project Early Handback.

2 Terms and Conditions of Sale

- (a) No warranties (express or implied) as to the condition of the Sub Project Assets shall be given at the Transfer Date.
- (b) The Government shall procure that no Taxes and Duties shall be imposed on or withheld from any payments to be made hereunder by or on behalf of the Government to the Sponsor or any other Key Entity in connection with a Sub Project Early Handback.
- (c) The Parties shall use reasonable endeavours to effectuate any Sub Project Early Handback so as to minimise the transaction costs, including by effectuating such Sub Project Early Handback through the transfer of the equity interests of the Sponsor or one or more of the relevant Affiliates thereof to the extent elected by the Sponsor in its sole discretion.

3 Apportionment of Liabilities

- (a) Save as otherwise provided in this Agreement, the Government will be responsible for all liabilities and obligations in relation to the Development and Operation of the Sub Project at all times on or after the Transfer Date (or, if earlier, the Termination Date if so elected by the Sponsor in its sole discretion).
- (b) Following the Transfer Date (or, if earlier, the Termination Date if so elected by the Sponsor in its sole discretion), the Government shall indemnify (and keep indemnified) and hold the Sponsor harmless from and against all Losses arising as a result of all such liabilities and obligations which are its respective responsibility under paragraph 3(a).

4 Calculation and Verification of Termination Payment Amount

- (a) If the Sponsor delivers a Termination Notice in accordance with the provisions of this Agreement, the Sponsor shall include in such Termination Notice a statement setting out the Termination Payment Amount.

- (b) If the Government delivers a Termination Notice in accordance with the provisions of this Agreement, the Sponsor shall submit to the Government a statement setting out the Termination Payment Amount within thirty (30) days of the receipt of the relevant Termination Notice.
- (c) Each Party shall be entitled to rely on any certificate(s) delivered by the third-party agent(s) for the relevant Sub Project Financing as conclusive as to the amount of the relevant portion(s) of the Debt Payment Amount outstanding as of the time set out in such certificate with respect to the Sub Project. Such a certificate is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

5 Completion

Completion of the transfers contemplated by this Schedule 3 (*Early Handback Procedures*) shall take place on the Transfer Date at such place in Nicaragua and at such time as the Government may reasonably notify the Sponsor, such notice to be given at least five (5) Business Days prior to the Transfer Date.

6 Deliveries

On the Transfer Date, the Sponsor shall deliver or make available to the Government (or its designee(s)):

- (a) such conveyances, transfers, notarial deeds, assignments, novations and other documents together with the related documents of title and vest in the Government (or its designee(s)) the full benefit of the Sub Project Assets;
- (b) all books, records and other documents relating exclusively to the Sub Project Assets or the employees of the Sponsor as the Government may reasonably require; and
- (c) vacant possession of the Sub Project Site(s).

7 Payment of Termination Payment Amount

On the Transfer Date, the Government shall cause the Termination Payment Amount to be paid in US Dollars to a bank account nominated by the Sponsor at least three (3) Business Days prior to the Transfer Date.

8 Conditions Precedent

The obligations of the Sponsor pursuant to paragraph 6 shall be subject to (i) the full performance by the Government of its obligations under paragraph 7, and (ii) the full payment of any amounts owed to any Sponsor or any Affiliate thereof by the Government (including, for the avoidance of doubt, with respect to any other Termination Notice delivered prior to such Transfer Date); provided that the

Sponsor may waive all or any portion of the conditions set out in this paragraph 8 in its sole discretion.

9 Removal Other Assets

The Sponsor shall remove, and the Government shall ensure that the Sponsor has access to the Sub Project Site in order to remove, all of its objects and possessions (excluding, for the avoidance of doubt, any Sub Project Infrastructure) from the Sub Project Site as soon as reasonably practicable following the Transfer Date; provided that any objects and possessions not removed within six (6) months shall become property of the Government.

SCHEDULE 4
PRINCIPLES OF DIRECT AGREEMENT

1 Parties

The parties to any Direct Agreement will be (i) the Government (on behalf of itself and any relevant Government Entities other than the Commission), (ii) the Commission, (iii) the relevant Sponsor and any Affiliates thereof who are a party to any relevant Sub Project Consent (the "**Sponsor Parties**"), (iv) the Sub Project Finance Parties, and (v) any agent active on behalf of such Sub Project Finance Parties (the "**Agent**"; provided that, if no such agent is active on behalf of such Sub Project Finance Parties, all references to the Agent herein shall be construed as referring to such Sub Project Finance Parties collectively).

2 Outline of Step-In Provisions

2.1 Security over Relevant Right

Each of the parties to the Direct Agreement will acknowledge, and consent to, the grant of Security Interests over the rights of the Sponsor Parties under any relevant Sub Project Consents and any Primary Document (excluding such Direct Agreement) (collectively, the "**Relevant Right**") or the relevant Sub Project Assets being given by the Sponsor Parties in favour of the Sub Project Finance Parties.

2.2 Notification of Defaults

- (a) The Agent will be required to notify the Government of any default by any Sponsor Party pursuant to the financing agreements which entitle the Sub Project Finance Parties to accelerate their debt or enforce their security over the Relevant Right or the relevant Sub Project Assets and to step-in.
- (b) The Government will be required to agree to deliver to the Agent a copy of any notice to any Sponsor Party of any default by such Sponsor Party under the Relevant Right which entitles any Government Entity to terminate all or any portion of the Relevant Right.

2.3 Suspension of Termination Right

The Government will agree that, so long as the Agent (1) gives a suspension notice to the Government within an agreed time period following the receipt of a notice of default from the Government under paragraph 2.2(b) of this Schedule 4 (*Principles of Direct Agreement*) and (2) "steps in" to the Relevant Right in accordance with paragraph 2.4 below, the Government will not take any action, and will procure that no other Government Entity will take any action, to terminate all or any portion of the Relevant Right as a result of such default for an

agreed period of time from the date the Government notified the Agent of the relevant default.

2.4 Step-in

- (a) Within an agreed period after the occurrence of an event described in either paragraph 2.2(a) or 2.2(b), the Agent may (but will not be obliged to) by notice to the Government step in, or cause a nominee to step in, to all or any portion of the Relevant Right (jointly and severally with the relevant Sponsor Parties) or the relevant Sub Project Assets with a view to taking over all rights, benefits and obligations of such Sponsor Parties under all or any portion of the Relevant Right or such Sub Project Assets.
- (b) Before such step-in becomes effective, the Sub Project Finance Parties (or their nominee) must undertake to pay to the Government any and all amounts outstanding under the Relevant Right.
- (c) The Sub Project Finance Parties will also be given an additional right of step-in or transfer at any time when an event of default under any Sponsor Party's financing agreements with the Sub Project Finance Parties is subsisting, which gives the Sub Project Finance Parties the right to terminate the financing arrangements.

2.5 Transfer to a Third Party

As an alternative to step-in or following a step-in, the Sub Project Finance Parties will have the option (but not the obligation) of transferring the Relevant Right (and any other Relevant Rights) or the relevant Sub Project Assets (as applicable) to a third party who will take on the obligations of the relevant Sponsor. Any such third party must be approved by the Government, such approval not to be unreasonably withheld, conditioned or delayed. It will be unreasonable for the Government to withhold its consent where such party is able to demonstrate to the Government that it has the technical and financial resources available to it to perform such Sponsor's obligations under the Relevant Right.

2.6 Step Out

The Sub Project Finance Parties will have the right to step-out at any time on the earlier of (x) a date specified by the Agent with no less than thirty (30) days' notice to the Government, and (y) the expiry of the step-in period.

2.7 No Amendments and Payment Direct to Agent

The Government will undertake to (and will procure that each other relevant Government Entity shall):

- (a) not make or agree to any material amendments to the Relevant Right which would adversely affect the interests of the Sub Project Parties without the prior consent of the Agent; and
- (b) upon an event of default by any Sponsor Party under the Sub Project Finance Documents and, following instructions from the Agent, make a payment in an amount equal to all sums due to such Sponsor Parties under the Relevant Right (including termination payments) directly to the Agent or in accordance with its directions.

SCHEDULE 5
FORM OF ADHERENCE AGREEMENT

THIS ADHERENCE AGREEMENT (this "**Adherence Agreement**") is made on ___
_____ 2 ___ between:

- (1) [●], a [●], having its registered office at [●] (the "**Original Sponsor**"); and
- (2) [●] (the "**Adhering Investor**").

WHEREAS:

- (A) The Original Sponsor is, among others, party to a Master Concession and Implementation Agreement, dated __ June 2013, concerning the arrangements to be made, and the actions to be undertaken, with respect to the development and operation of an interoceanic canal and certain other infrastructure projects (as may be amended, restated, varied, supplemented, novated or otherwise modified from time to time, the "**MCA**");
- (B) The Adhering Investor is, or will be as of the date of this Adherence Agreement, a Sponsor of one or more Sub Projects and wishes to become a Party so as to directly enforce and exercise its rights as a Sponsor under the MCA; and
- (C) This Adherence Agreement is entered into by the Original Sponsor and the Adhering Investor in compliance with the provisions of Clause 21.14 of the MCA.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. The Adhering Investor hereby acknowledges that it has been provided with and has read a copy of the MCA and hereby covenants with the Original Sponsor and each past, present and future Party that with effect on and from the date hereof the Adhering Investor shall be bound by the MCA as a Sponsor thereunder as if the Adhering Investor had originally been party thereto (and bound thereby) in such capacity, and that it shall perform all of the undertakings and agreements set out in the MCA and that it shall be entitled to all of the benefits of an Investor thereunder.
2. This Adherence Agreement is made for the benefit of (a) the parties to the MCA; and (b) any other person or persons who may after the date of the MCA (and whether or not prior to or after the date hereof) assume any rights, benefits or obligations under the MCA and be permitted to do so by the provisions thereof, and this Adherence Agreement shall be irrevocable for so long as the MCA is effective.
3. This Adherence Agreement may be amended, restated, varied, supplemented, novated or otherwise modified only by a written instrument executed by each of

the Original Sponsor and the Adhering Investor.

4. The address and facsimile number designated by the Adhering Investor for the purposes of Clause 21.16 (Notices) and Schedule 1 (*Schedule of Investors*) of the MCA are:

Address: [●]

Facsimile Number: [●]

For the attention of: [●]

5. Any term used herein but not otherwise defined shall have the meaning set forth in the MCA. Clauses 1.2 (Interpretation), 1.3 (Language), 19 (Confidentiality), 20 (Announcements), 21 (General Provisions), 22 (Governing Law; Dispute Resolution) and 25 (Sovereign Immunity) of the MCA shall apply (*mutatis mutandis*) to this Adherence Agreement as if expressly set out herein.

* * * * *

IN WITNESS WHEREOF, the Parties have caused this Adherence Agreement to be executed as of the date first written above.

ORIGINAL SPONSOR

[•]

By:
Its:

ADHERING INVESTOR

[•]

By:
Its:

**SCHEDULE 6
SOVEREIGN IMMUNITY WAIVER**

Part 1 - MCA Sovereign Immunity Waiver

[To be printed on headed paper of Banco Central de Nicaragua]

Date: __ _____ 20__

Dear Sirs,

Central Bank Waiver of Sovereign Immunity in connection with the Nicaragua Canal and Development Project

Reference is made to the Master Concession and Implementation Agreement in respect of the Nicaragua Interoceanic Grand Canal and Related Projects dated __ June 2013 (the "MCA"), entered into between (i) the Government of the Republic of Nicaragua, (ii) the Nicaragua Canal and Development Project Commission, (iii) the Nicaraguan Interoceanic Grand Canal *Authority*, (iv) HK Nicaragua Canal Development Investment Co., Limited, and (v) the Investors (as defined in the MCA).

In consideration of the mutual benefits to be derived by the parties from the MCA, the Nicaragua Interoceanic Grand Canal, related projects and by this letter agreement, and intending to be legally bound hereby, Banco Central de Nicaragua (the "Central Bank") hereby irrevocably and unconditionally agrees, on behalf of itself and any successors in title, to waive any rights of sovereign immunity that it may have, and agrees not to invoke any such immunity in any proceedings in relation to any dispute arising out of or in connection with the MCA or this letter agreement.

For the avoidance of doubt, by the waiver of sovereign immunity, the Central Bank irrevocably and unconditionally:

- (a) submits to the jurisdiction of any competent court or tribunal in relation to any dispute arising out of or in connection with this letter agreement;
- (b) submits to the jurisdiction of the relevant arbitral tribunal or any courts in which any award rendered by an arbitral tribunal constituted pursuant to the MCA may lawfully be reviewed, recognised or enforced;
- (c) waives to the fullest possible extent any right of sovereign immunity that it may have whether before such arbitral tribunal, court or otherwise from suit, jurisdiction or adjudication;

- (d) waives any right of sovereign immunity in respect of any pre-judgment protective or interim relief; and
- (e) waives any right of or claim to sovereign immunity in relation to the recognition, enforcement or execution of any judgment, order or arbitral award, whether interim or final, including but in no way limited to waiving any right of immunity from attachment of, or execution against, any of its property, regardless of the commercial or non-commercial nature of this property (including any of its bank accounts, whether held in its name or otherwise) and wheresoever such property may be located.

The Central Bank hereby confirms that it has sought, secured and obtained all necessary government or other permissions, clearances and approvals to execute this letter agreement and that the individual(s) executing this letter agreement are duly authorized to do so on its behalf.

Yours faithfully,

BANCO CENTRAL DE NICARAGUA

By:
Its:

Agreed and accepted:

THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA

By:
Its:

THE NICARAGUA CANAL AND DEVELOPMENT PROJECT COMMISSION

By:
Its:

THE NICARAGUAN INTEROCEANIC GRAND CANAL AUTHORITY

By:
Its:

HK NICARAGUA CANAL DEVELOPMENT INVESTMENT CO., LIMITED

By:
Its:

[INVESTOR NAME]

By:
Its:

SCHEDULE 6
SOVEREIGN IMMUNITY WAIVER

Part 2 - SHA Sovereign Immunity Waiver

[To be printed on headed paper of Banco Central de Nicaragua]

Date: __ _____ 20__

Dear Sirs,

Central Bank Waiver of Sovereign Immunity in connection with the Nicaragua Canal and Development Project

Reference is made to the Securityholders' Agreement (the "**SHA**") in respect of HKND Group Holdings Limited dated __ June 2013 entered into between (i) HKND Group Holdings Limited, and (ii) the Securityholders (as defined in the SHA).

In consideration of the mutual benefits to be derived by the parties from the SHA, the Nicaragua Interoceanic Grand Canal, related projects and by this letter agreement, and intending to be legally bound hereby, Banco Central de Nicaragua (the "**Central Bank**") hereby irrevocably and unconditionally agrees, on behalf of itself and any successors in title, to waive any rights of sovereign immunity that it may have, and agrees not to invoke any such immunity in any proceedings in relation to any dispute arising out of or in connection with the SHA or this letter agreement.

For the avoidance of doubt, by the waiver of sovereign immunity, the Central Bank irrevocably and unconditionally:

- (a) submits to the jurisdiction of any competent court or tribunal in relation to any dispute arising out of or in connection with this letter agreement;
- (b) submits to the jurisdiction of the relevant arbitral tribunal or any courts in which any award rendered by an arbitral tribunal constituted pursuant to the SHA may lawfully be reviewed, recognised or enforced;
- (c) waives to the fullest possible extent any right of sovereign immunity that it may have whether before such arbitral tribunal, court or otherwise from suit, jurisdiction or adjudication;
- (d) waives any right of sovereign immunity in respect of any pre-judgment protective or interim relief; and

- (e) waives any right of or claim to sovereign immunity in relation to the recognition, enforcement or execution of any judgment, order or arbitral award, whether interim or final, including but in no way limited to waiving any right of immunity from attachment of, or execution against, any of its property, regardless of the commercial or non-commercial nature of this property (including any of its bank accounts, whether held in its name or otherwise) and wheresoever such property may be located.

The Central Bank hereby confirms that it has sought, secured and obtained all necessary government or other permissions, clearances and approvals to execute this letter agreement and that the individual(s) executing this letter agreement are duly authorized to do so on its behalf.

Yours faithfully,

BANCO CENTRAL DE NICARAGUA

By:
Its:

Agreed and accepted:

HKND GROUP HOLDINGS LIMITED

By:
Its:

[SECURITYHOLDER NAME]

By:
Its:

SCHEDULE 7 SOVEREIGN PRINCIPLES

In connection with any Compliance Notice or Non-Compliance Notice, the "**Sovereign Principles**" means the principles set out below, in each case as of the date of the delivery of such Compliance Notice or Non-Compliance Notice (as applicable).

1. **Nicaraguan Sovereignty:** All real property under, over or comprised within each Sub Project Site together with all real property under, over or within any Sub Project Infrastructure shall at all times remain within the sovereign territory and under the sovereignty of Nicaragua.
2. **Flag:** All territory comprised within each Sub Project Site or within any Sub Project Infrastructure shall be under the flag of Nicaragua. Consequently when two or more flags are flown on or from any Sub Project Site or from any Sub Project Infrastructure the flag of Nicaragua shall at all times occupy the position of honour.
3. **International Treaties and International Law:** The proposed Development and Operation of the relevant Sub Project is consistent with all material requirements of all international treaties entered into by Nicaragua on or before, and as constituted on, the Effective Date and international law applicable within the sovereign territory of Nicaragua as of the Effective Date.
4. **Domestic Law:** The proposed Development and Operation of the relevant Sub Project is consistent with the all material requirement of the Legal Norm.
5. **Environmental and Social Risks:** The proposed Development and Operation of the relevant Sub Project reflects current international environmental and social standards relevant to the Sub Project in issue and envisions mitigating any identified environmental and social risks in a manner that is consistent with Good Industry Practice.
6. **Domestic Employment:** The proposed Development and Operation of the relevant Sub Project should create employment and training opportunities for nationals of Nicaragua.
7. **Non-Intervention:** Each person engaged (whether as an employee, contractor or otherwise) by the relevant Sponsor or any Affiliate thereof, together with each such person's dependents, shall abstain from any political activity in Nicaragua as well as from intervention in the internal affairs of Nicaragua other than the advocacy, promotion or protection of any right under this Agreement.