

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT is made as of the 31st day of October, 2010

B E T W E E N:

TRECA FINANCIAL SOLUTIONS, a company incorporated under the laws of the Cayman Islands (the “**Major Funder**”);

TORVIA LIMITED, a company incorporated under the laws of Gibraltar (“**Torvia**”);

PATTON BOGGS LLP, a Washington, D.C. limited liability partnership (the “**Nominated Lawyers**”);

DONZIGER & ASSOCIATES, PLLC, a New York professional limited liability company (“**Donziger**”);

EMERY, CELLI, BRINCKERHOFF & ABADY LLP, a New York limited liability partnership (“**ECBA**”);

PABLO ESTENIO FAJARDO MENDOZA, ESQ., an individual residing in Ecuador (the “**Ecuador Attorney**”);

ERIK T. MOE, an individual (“**Moe**”);

H5, a California corporation (“**H5**” and, collectively with Moe, the “**Advisors**”); and

EL FRENTE DE DEFENSA DE LA AMAZONIA (“**FDA**”).

For purposes of this Agreement, the Major Funder, Torvia, the Nominated Lawyers, Donziger, ECBA, the Ecuador Attorney, Moe, H5 and FDA each hereinafter may be referred to individually as a “**Party**” and collectively as the “**Parties**” and references thereto shall include any Person who from time to time becomes a party hereto. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Clause 1.

RECITALS:

- A. Two or more of the Parties wish to enter into this Agreement on the terms set forth below.
- B. Some or all of the Claimants may assign their interests in the Claim to a trust company established under the laws of Ecuador (“**Trustee No. 1**”) to be held in trust pursuant to a trust established under Ecuadorian law, as described in the Major Funder Funding Agreement. Trustee No.1 shall hold each Award and any proceeds of each Award in trust for distribution in accordance with this Agreement or, if the Second Trust (as defined in the Major Funder Funding Agreement) is established, for payment or delivery to a trustee of such Second Trust to be held in trust for distribution in accordance with

this Agreement, acting upon the advice and direction of the Claimants' Representatives and the Nominated Lawyers.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereto agree as follows:

1. **INTERPRETATION**

In this Agreement, the following terms have the following meanings:

1.1 “**1782 Actions**” means actions relating to the Claim that have been brought by or against Chevron Corporation or its consultants or advisors by or against Claimants or their lawyers, advisors, experts, consultants, representatives or others pursuant to 28 USC § 1782, including appeals.

1.2 “**Active Lawyer Engagement Agreement**” means, as to any Active Lawyer, the engagement agreement between the Claimants and such Active Lawyer pursuant to which the Claimants have engaged such Active Lawyer and that sets out, among other things, the terms and conditions (including compensation) for such engagement, as supplemented, amended or restated from time to time.

1.3 “**Active Lawyers**” means, the lawyers conducting the Claim on behalf of the Claimants, namely, as of the date hereof, (i) Patton Boggs LLP, (ii) ECBA, (iii) Donziger and (iv) the Ecuador Attorney (and includes, for the avoidance of doubt, any successor(s) thereto engaged by the Claimants and any additional lawyers and/or law firms who or which become Active Lawyers, provided that such additional lawyers and/or law firms has executed an accession agreement stating that it agrees to be bound by this Agreement in accordance with Clause 12 of this Agreement).

1.4 “**Advisor**” means each Person who or which has been engaged by or is hereafter engaged by the Claimants, other than in an attorney/client relationship, to provide services or advice to the Claimants in connection with the Claim.

1.5 “**Advisor Engagement Agreement**” means, as to any Advisor, the engagement agreement between the Claimants and such Advisor pursuant to which the Claimants have engaged such Advisor and that sets out, among other things, the terms and conditions (including compensation) for such engagement, as supplemented, amended or restated from time to time.

1.6 “**Affiliate**” shall mean an associate within the meaning of section 435 of the *Insolvency Act 1986*.

1.7 “**Agreement**” means this Intercreditor Agreement, as supplemented, amended or restated from time to time.

1.8 “**Award**” shall mean (A) any and all gross, monetary awards, damages,

recoveries, judgments or other property or value awarded, paid or otherwise recovered or reduced to a debt owed on account or as a result, by virtue (directly or indirectly) of, or in any other way related to, the Claim, whether by negotiation, arbitration, mediation, diplomatic efforts, lawsuit, settlement, or otherwise, and includes legal and/or equitable rights, title and interest in and/or to any of the foregoing, whether in the nature of ownership, lien, security interest or otherwise, plus (B) any recovered interest, penalties, attorneys' fees and costs in connection with any of the foregoing, plus (C) any consequential, actual, punitive, exemplary or treble damages awarded or recovered on account thereof, plus (D) any interest awarded or later accruing on any of the foregoing, plus (E) any recoveries against attorneys, accountants, experts or officers in connection with any of the foregoing or the pursuit of the Claim, whether any of (A) through (E) are received (i) from the Defendants; or (ii) from any third party, including, but not limited to, the Republic of Ecuador on a basis that is equivalent to or a substitute for receipt of such amounts from the Defendant (as proven by the Funder) and net of costs incurred in relation to enforcement proceedings in respect of the Claim (other than fees of the Active Lawyers incurred in connection with the enforcement proceedings or any amounts previously paid which were funded from the Capital Commitment (as defined in the Major Funder Funding Agreement), by the Minority Funders or any third party funders). For the avoidance of doubt, "Award" shall include amounts on account of any Tax (as defined in the Major Funder Funding Agreement) to the extent required in accordance with the Major Funder Funding Agreement. For the avoidance of doubt, "Award" shall not include the amount by which the gross amount awarded by the courts of the Republic of Ecuador is reduced by final order of a court having jurisdiction by setoff or equivalent means as a result of a counterclaim in respect of the Claim or the BIT Arbitration. For the avoidance of doubt, "Award" shall include (without limitation) cash, real estate, negotiable instruments, choses in action, contract rights, membership rights, subrogation rights, annuities, claims, refunds, and any other rights to payment of cash and/or transfer(s) of things of value or other property (including property substituted therefor), whether delivered or to be delivered in a lump sum or in installments, in relation to any claim or negotiation with any person in relation to the Claim, and shall include any award of rescissionary, punitive, consequential, treble or exemplary damages or penalties assessed against any adverse party from time to time. For the avoidance of doubt, "Award" shall include (without limitation) any cash or non-cash value or benefit conveyed to, or any cash or non-cash obligation imposed on or accepted by, any person or entity in connection with the Claim or the resolution or termination thereof, including (without limitation) the value of, or any obligation to perform or conduct, any investigation or other assessment (including (without limitation) to assess risk to any human or the environment), clean-up, remediation, or mitigation or prevention or measures arising from or relating to the Claim (including (without limitation) any adverse impacts underlying the Claim). For the avoidance of doubt, "Award" shall include any of (A) through (E) above awarded by the courts of the Republic of Ecuador otherwise than to the Claimants as a result of the application of Section 43, paragraph third of the Republic of Ecuador's *Environmental Management Act*, Law No. 37, RO/245 of July 30, 1999 (the "Act") and any award in favour of any of the Claimants in respect of Section 43, paragraph second of the Act. For the avoidance of doubt, proceeds of the Award includes all of the above.

1.9 “**BIT Arbitration**” means any arbitral proceeding arising out of the Notice of Arbitration filed by the Defendants on September 23, 2009 alleging that the Republic of Ecuador is in violation of the U.S. Ecuador Bilateral Investment Treaty.

1.10 “**Business Day**” means any day other than a Saturday, a Sunday, or a holiday on which commercial banks in the State of New York or London, England or Quito, Ecuador are authorized or required by applicable law to close.

1.11 “**Claim**” means all anticipated and unanticipated activities related to the Maria Aguinda y Otros v. Chevron Corporation proceeding, any appeals from the judgement of the Superior Court of Nueva Loja, Ecuador, enforcement proceedings, settlement initiatives and related matters, counterclaims or claims (including the 1782 Actions) by or against the Claimants, their lawyers, experts, advisors, consultants or Representatives, and shall include, but not by way of limitation:

- (i) any and all court or arbitral proceedings or processes in or connection with the Claim, including defending actions that may be brought by or at the direction of the Defendant against the Claimants or any of their advisors and any and all threats to the Claim;
- (ii) all appellate, annulment or similar proceedings and proceedings on remand, as well as enforcement, ancillary, parallel or alternative dispute resolution proceedings and processes arising out of or related to the acts or occurrences alleged in the Claim (including arbitration, conciliation or mediation);
- (iii) re-filings or parallel filings of the Claim and any other legal, diplomatic or administrative proceedings or processes founded on the underlying facts giving rise to or forming a basis for the Claim and involving one or more adverse parties, in which any Defendant or any Defendants’ successor(s) in interest or assigns or Affiliates is a party;
- (iv) ancillary or enforcement proceedings related to the facts or claims alleged from time to time or that could have been alleged in the Claim at any time; and
- (v) all arrangements, settlements, negotiations, or compromises made between the Claimants and any adverse party having the effect of resolving any the Claimants’ claims against any adverse party that are or could be or could have been brought in the Claim.

1.12 “**Claimants**” means the Claimants whose names are set out in Schedule 1 attached hereto.

1.13 “**Claimants’ Representatives**” means the Claimants’ U.S. Representative, Ecuador Attorney and Yanza, and includes any successor(s) appointed by the Claimants.

1.14 “**Claimants’ U.S. Representative**” means Steven R. Donziger, Esq., and includes

any successor appointed by the Claimants.

1.15 “**Defendants**” means individually and collectively, the parties listed as defendants in the *Aguinda v. ChevronTexaco* proceeding including their Affiliates, successors and assigns, and any other Person added or joined to such proceeding from time to time as a defendant or indemnitor or against whom proceedings are asserted or threatened even if such Person is not named or served.

1.16 “**Donziger**” has the meaning given to such term in the forepart of this Agreement.

1.17 “**ECBA**” has the meaning given to such term in the forepart of this Agreement.

1.18 “**Ecuador Attorney**” has the meaning given to such term in the forepart of this Agreement.

1.19 “**Engagement Agreement**” means (i) as to each Active Lawyer, his or its Active Lawyer Engagement Agreement; and (ii) as to each Advisor, his or its Advisor Engagement Agreement.

1.20 “**Escrow Account**” means an escrow account (whether a bank account, securities account or other similar account) in the sole control (other than control for the purposes of perfection under the laws of the United States) of the Nominated Lawyers or a trustee in a common law jurisdiction (excluding the United States) selected by the Claimants with the approval of the Major Funder and Torvia, such approval not to be unreasonably withheld (“**Trustee No. 2**”), and established by the Nominated Lawyers or Trustee No. 2, and used solely to hold in trust the proceeds of an Award for distribution in accordance with this Agreement.

1.21 “**FDA**” has the meaning given to such term in the forepart of this Agreement.

1.22 “**Funders**” means, collectively, the Major Funder and the Minority Funders.

1.23 “**Funding Agreements**” means, collectively, the Major Funder Funding Agreement and the Minority Funders Funding Agreement.

1.24 “**Governmental Authority**” means any international, multinational, federal, state or other governmental department, agency, institution, authority, regulatory body, court or tribunal, foreign or domestic, and includes arbitration bodies, whether governmental, private or otherwise.

1.25 “**H5**” has the meaning given to such term in the forepart of this Agreement.

1.26 “**Major Funder**” has the meaning given to such term in the forepart of this Agreement.

1.27 “**Major Funder Funding Agreement**” means that certain Funding Agreement of even date herewith between the Major Funder and the Claimants, pursuant to which the

Major Funder has agreed, among other things, to provide funding to the Claimants for the pursuit and defense of the Claim (including, without limitation, in defense of any and all threats to the Claim) and the enforcement and settlement of any Award, as supplemented, amended or restated from time to time.

1.28 “**Minority Funders**” means, Torvia and any other Person who or which from time to time funds Expenses or other expenses related to the Claim other than the Major Funder, and “**Minority Funder**” means any one of them.

1.29 “**Minority Funders Funding Agreement**” means each funding agreement between the Claimants and a Minority Funder (including the Torvia Funding Agreement), whether now existing or hereafter entered into, pursuant to which such Minority Funder agrees or has agreed to, among other things, provide funding to the Claimants for the pursuit and defense of the Claim (including, without limitation, in defense of any and all threats to the Claim) and the enforcement and settlement of any Award, as supplemented, amended or restated from time to time.

1.30 “**Moe**” has the meaning given to such term in the forepart of this Agreement.

1.31 “**Net Funder Payments**” has the meaning given to such term in Clause 3.2.

1.32 “**Nominated Lawyers**” has the meaning given to such term in the forepart of this Agreement, and includes any successor(s) appointed by the Claimants.

1.33 “**Nominated Lawyers Representative**” means James E. Tyrrell, Jr., in his capacity as representative of the Nominated Lawyers, however if James E. Tyrrell, Jr. ceases to act in such capacity, then another lawyer prominently and actively involved in the Claim selected by the Claimants with the Major Funder’s approval (which shall not be unreasonably withheld).

1.34 “**notices**” has the meaning given to such term in Clause 8.1.

1.35 “**Party**” has the meaning given to such term in the forepart of this Agreement, and shall include any other Person who executes a joinder to this Agreement after the date hereof.

1.36 “**Person**” means any natural person, corporation, partnership, limited liability company, joint stock company, joint venture, association, company, estate, trust or other organization whether or not a legal entity, custodian, trustee-executor, administrator, nominee or entity in a representative capacity and any government or agency or political subdivision thereof.

1.37 “**Representatives**” means, with respect to any Person (other than an individual) such Person’s directors, officers, managers, members, partners, principals, employees, shareholders, Affiliates, related entities, agents, reinsurers, lawyers, accountants, consultants, advisors and independent contractors.

1.38 “**Torvia**” has the meaning given to such term in the forepart of this Agreement.

1.39 “**Torvia Funding Agreement**” means the Confidential Investment Agreement for Chevron/Ecuador Project between the Claimants and Torvia executed on October 31, 2010 with effect from August 17, 2010.

1.40 “**Trustee**” means either of Trustee No. 1, Trustee No. 2, or both Trustee No. 1 and Trustee No. 2, as applicable.

1.41 “**Trustee No. 1**” has the meaning to such term in the Recitals to this Agreement.

1.42 “**Trustee No. 2**” has the meaning given to such term in the definition of Escrow Account.

1.43 “**Yanza**” means Luis Francisco Yanza Angamraca.

2. **PAYMENT OR DELIVERY OF PROCEEDS TO ESCROW ACCOUNT**

2.1 **Proceeds to be Paid to Nominated Lawyers or Trustee.** Each Party acknowledges that the Claimants have agreed to use their best efforts to cause all proceeds of the Award to be paid or delivered to the Nominated Lawyers or Trustee, in either case in trust for deposit into the Escrow Account for distribution in accordance with this Agreement and in accordance with applicable law. Each Party further acknowledges and agrees that, following the receipt by such Party of the amounts due to it under the terms of this Agreement and its respective Funding Agreement or Engagement Agreement, the Claimants shall have no further obligations to pay any amounts (including, without limitation, any portion of the Award) to such Party.

2.2 **Hold Proceeds in Trust and Pay to Nominated Lawyers or Trustee.** If any Party or any of its Representatives receives all or any part of the proceeds of the Award, that Party will hold those proceeds in trust (or the local law equivalent in Ecuador or elsewhere in the world where those proceeds are received) to be paid or delivered to the Nominated Lawyers or Trustee, in either case in trust for deposit into the Escrow Account and distribution in accordance with this Agreement; and each Party will instruct its Representative to hold all proceeds received by that Representative in trust and to make that payment or delivery to the Nominated Lawyers or Trustee, in either case in trust for deposit to the Escrow Account and distribution in accordance with this Agreement.

2.3 **Direction to Nominated Lawyers and Trustee.** Without limiting Clause 2.1, each Party hereby irrevocably directs the Nominated Lawyers and the Trustee to take all steps necessary to ensure that any and all proceeds of the Award are paid or delivered into the Escrow Account in trust for distribution in accordance with this Agreement.

2.4 **Power of Attorney.** Each Party hereby grants to the Nominated Lawyers and the Trustee a full power of attorney (or local law equivalent in Ecuador or elsewhere in the world where any proceeds of the Award are received) to cause and allow any and all

Award proceeds to be paid or delivered forthwith as set out above.

3. **PAYMENT FROM ESCROW ACCOUNT**

3.1 **Notice of Receipt of Proceeds and Amount of Claims.** Upon receipt of any proceeds of an Award by the Nominated Lawyers or the Trustee, the Nominated Lawyers Representative or the Trustee, as applicable, will confer with the Claimants' U.S. Representative and thereafter shall deliver written notice to the Parties (a) informing the Parties of such Award and specifying the amount of such proceeds actually received by the Claimants, the Nominated Lawyers or the Trustee and (b) setting forth in reasonable detail (including back-up and calculations) the amount of such proceeds that the Nominated Lawyers Representative or the Trustee believes each Party is entitled to receive pursuant to the terms of its Funding Agreement or Engagement Agreement, as applicable (each, an "**Award Notice**"). Each Party shall have the right, to be exercised, if at all, no later than 5:00 p.m. (New York time) on the 10th Business Day following delivery of each Award Notice, to deliver written notice to the Claimants' U.S. Representative, the Nominated Lawyers Representative and the Trustee, if existing, stating that (i) such Party disagrees with the calculations in such Award Notice; and (ii) setting forth in reasonable detail (including back-up and calculations) the amount of such proceeds that such Party believes it is entitled to receive pursuant to the terms of its Funding Agreement or Engagement Agreement, as applicable (each, an "**Objection Notice**"). If a Party fails to deliver an Objection Notice to the Claimants' U.S. Representative, the Nominated Lawyers Representative and the Trustee, if existing, prior to 5:00 p.m. (New York time) on the 10th Business Day following delivery of the underlying Award Notice, then such Party shall be irrevocably deemed to have agreed that the calculations in such Award Notice are correct. If one or more Parties deliver an Objection Notice to the Claimants' U.S. Representative, the Nominated Lawyers Representative and the Trustee, if existing, prior to 5:00 p.m. (New York time) on the 10th Business Day following delivery of the underlying Award Notice, then the Parties who or which are adversely affected (or reasonably could be anticipated to be adversely affected) thereby, the Claimants' U.S. Representative, the Nominated Lawyers Representative and the Trustee, if existing, (collectively, the "**Affected Parties**") thereafter shall attempt, in good faith, for a period of at least 10 Business Days, to resolve any and all disagreements reflected in such Objection Notices to the mutual satisfaction of all such Affected Parties. If the Affected Parties are unable to resolve all disagreements reflected in such Objection Notices to the mutual satisfaction of all such Affected Parties on or before such 10th Business Day, then any Affected Party thereafter shall have the right to initiate an arbitration proceeding in accordance with Clause 10 below. The Nominated Lawyers or the Trustee (as applicable) shall release any such proceeds that are not the subject of such a dispute from the Escrow Account and promptly pay the same in accordance with Clause 3.2 below. The Nominated Lawyers or the Trustee shall retain the higher of any such proceeds that are the subject of such a dispute in the Escrow Account, and shall release and pay the same in accordance with Clause 3.2 below upon the earlier of the mutual resolution of such dispute by all Affected Parties or as directed by the arbitration panel. For the avoidance of doubt, (x) in the event of any such dispute over the distribution of any portion of the proceeds of any

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Award, the higher of the disputed portion of the proceeds will remain in the Escrow Account pending the mutual resolution of such dispute by all Affected Parties as aforesaid or outcome of any arbitration proceeding, and (y) such dispute will not affect the payment of other amounts not in dispute. The Parties acknowledge and agree that the Claimants shall have no obligation to pay any amount to the Parties if there is no Award.

3.2 **Distribution Waterfall.** As soon as practicable following the receipt of any proceeds (but subject in any event to the provisions of Clause 3.1 above), the proceeds related to an Award Notice that have been deposited in the Escrow Account shall be distributed by the Nominated Lawyers or the Trustee, if existing, to the Parties in the following order of priority:

3.2.1 first, such proceeds shall be applied by the Nominated Lawyers in satisfaction of any taxes or similar government claims ranking in priority to the claims of the Parties hereto;

3.2.2 second, any remaining proceeds, in payment of the reasonable expenses of the Nominated Lawyers, Trustee No. 1 and Trustee No. 2 in carrying out their obligations under this Agreement, excluding any expenses relating to the payment of contingent fees or other similar fees of any Person;

3.2.3 third, any remaining proceeds up to an aggregate amount equal to US\$2,360,000 shall be paid to Torvia, and US\$140,000 shall be paid to Torvia or other Minority Funders (as directed by the Claimants) pursuant to the terms of the Minority Funder Funding Agreements;

3.2.4 fourth, any remaining proceeds shall be paid to the Major Funder in satisfaction of the amounts that are due to the Major Funder pursuant to the terms of the Major Funder Funding Agreement;

3.2.5 fifth, any remaining proceeds shall be paid to the Minority Funders in satisfaction of the amounts that are due to the Minority Funders pursuant to the terms of the Minority Funders Funding Agreements;

3.2.6 sixth, any remaining proceeds shall be paid to the Active Lawyers and Advisors in satisfaction of the unreimbursed fees and expenses (not including any contingency-based fees) of the Active Lawyers and Advisors earned or incurred pursuant to their respective Engagement Agreements and unpaid at the time of the payments hereunder;

3.2.7 seventh, any remaining proceeds shall be paid to the Active Lawyers and the Advisors (pari passu, and pro rata based upon the amount to which such Active Lawyers and the Advisor is entitled) in satisfaction of the amounts that are due to the Active Lawyers and the Advisors pursuant to the terms of their respective Engagement Agreements and any other agreements among themselves governing the distribution of such proceeds;

3.2.8 eighth, any remaining proceeds shall be paid to any successor(s) of an Active Lawyer and any additional lawyers and/or law firms engaged by the Claimants but who or which has not executed this Agreement, to the extent the Claimants' Representative, the Nominated Lawyers Representative and the Trustee No. 2, if existing, have received sufficient details about those claims and no applicable law or court order requires those claims to be paid equally with the claims of the Parties described in Clause 3.2.7; and

3.2.9 last, the balance (if any) shall be paid to the Claimants or as otherwise required by applicable law.

For the avoidance of doubt, if the proceeds of the Award remaining after payments of amounts required to be paid under Clause 3.2.2 above (such amounts, the "**Net Funder Payments**") are less than US\$1,000,000,000, then the payments to the Major Funder under Clause 3.2.4 above and the payments to the Minority Funders under Clauses 3.2.3 and 3.2.5 above shall be made as follows:

- (a) each dollar of the Net Funder Payments shall be paid to the Minority Funders until Torvia has received US\$2,360,000 of such Net Funder Payments and Torvia and the other Minority Funders (as directed by the Claimants) have received up to US\$140,000 of such Net Funder Payments, in accordance with the terms of the Minority Funders Funding Agreements; and
- (b) thereafter, each dollar of the Net Funder Payments shall be paid to the Major Funder under section 3.2.4 and to the Minority Funders under 3.2.5, *pari passu* in the following ratios: (i) 98.25% to the Majority Funder, and (ii) 1.75% to Torvia, until such time as the Major Funder has received the total amount of capital actually funded by the Major Funder in accordance with the Major Funder Funding Agreement; and
- (c) thereafter, each dollar of the Net Funder Payments shall be paid to the Major Funder under section 3.2.4 and to the Minority Funders under 3.2.5, *pari passu* in the following ratios: (i) 78.25% to the Majority Funder, and (ii) up to 21.75% in accordance with the terms of the Minority Funders Funding Agreements, until such time as the Major Funder has received the Recovery Amount (as defined in the Major Funder Funding Agreement); and
- (d) thereafter, each dollar of the Net Funder Payments shall be paid to the Minority Funders under 3.2.5, until each Minority Funder shall have received all amounts owing to such Minority Funder pursuant to the terms of its respective Minority Funders Funding Agreement.

3.3 **Waterfall Prevails Over Other Priorities; Negative Pledge.** The claims

described in Clause 3.2 will be paid in the priority described in Clause 3.2 regardless of the security or other interests held by, or any other rights and remedies available to, the Parties by contract, applicable law or otherwise. Except as described in the Major Funder Funding Agreement or with the prior written consent of the Major Funder, no Party or its Representative, and neither of Trustee No. 1 and Trustee No. 2, may hold any mortgage, pledge, lien, charge, hypothecation, right of set-off, counterclaim, security interest, trust (other than a trust for the distribution of any Award and the proceeds of any Award in accordance with this Agreement) or other encumbrance of any kind, or any rights under any subordination agreement, priority agreement or arrangement of any kind having have a similar or analogous nature or effect to any of the foregoing, in respect of the Claimant's interest in the Claim, any Award and the proceeds of the Claim and any Award (including for greater certainty its interest in the Escrow Account and any proceeds of the Escrow Account), other than the rights created under this Agreement or the security interests contemplated to secure any indebtedness, liabilities or other obligations to the Major Funder. Except as described in the Major Funder Funding Agreement or with the prior written consent of the Major Funder, each of the Claimants, FDA, Trustee No. 1 and Trustee No. 2 shall not create, or permit to exist, any mortgage, pledge, lien, charge, hypothecation, right of set-off or security interest, trust or other encumbrance of any kind, or any subordination agreement, priority agreement or arrangement of any kind having a similar effect to any of the foregoing, in respect of the Claim, any Award, any proceedings to enforce the Award, and the proceeds (including, without limitation, the Escrow Account) of any of the foregoing; provided, the foregoing negative pledge shall not prohibit, preclude, restrict or impair in any manner or to any extent the right or ability of the Claimants, FDA, Trustee No. 1 or Trustee No. 2 to grant any contingent interests in, or grant any right to payment determined by reference to, the Award or the proceeds thereof, ranking subordinate in all respects to the interests of the Major Funder under this Agreement.

3.4 **Other Persons Who Provide Funding.** Subject only to Clause 3.2, all amounts now or hereafter payable to the Major Funder in relation to the proceeds of any Award will be paid in priority to any amounts now or hereafter payable to any other Person (whether or not a Party) who or which has provided, or may hereafter provide, any funding to the Claimants to obtain, pursue or enforce any Award.

3.5 **Disputes About Proceeds.** In the event of a dispute over the distribution of any portion of the proceeds of any Award, the higher of the disputed portion of the proceeds will remain in the Escrow Account pending outcome of the arbitration proceedings provided for herein. For greater certainty, that dispute will not affect the payment of other amounts not in dispute. The Parties agree (i) to be bound by any award made by a tribunal appointed in accordance with the arbitration provisions of this Agreement to resolve a dispute over the distribution of any portion of the proceeds of the Award; and (ii) that the Claimants shall be entitled to participate in any dispute over the distribution of the proceeds of the Award exclusively through the Claimants' Representatives, forthwith after the Claimants' Representatives have been given notice of the dispute, by causing the Claimants' Representatives to make an application to that tribunal.

4. **NOMINATED LAWYERS AND TRUSTEE**

The Nominated Lawyers and the Trustee, if existing, shall perform the duties set forth in this Agreement. If the Nominated Lawyers or the Trustee, if existing, are unable or unwilling to act, they shall transfer the Escrow Account to such law firm or trustee as the Major Funder and a majority (determined on the basis of the amounts payable by one or more Claimants to it) of the other Parties hereto (other than the Nominated Lawyers and the Trustee, if existing) consider acceptable; provided, that such law firm has accepted the obligations of the Nominated Lawyers or the Trustee, as applicable, hereunder and in the case of the Nominated Lawyers, under the Major Funder Funding Agreement. Subject to Clause 3.1, the Trustee shall be entitled to act upon the advice and direction of the Nominated Lawyers.

5. REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants to each of the other Parties hereto that, to the best of its knowledge, the Claimants have no material creditors (including without limitation each law firm) other than (i) those creditors which are Parties to this Agreement; and (ii) as otherwise has been previously disclosed to the other Parties hereto.

6. INDEMNITY IN FAVOUR OF NOMINATED LAWYERS

Each Party hereto (other than the Nominated Lawyers and the Trustee, if existing) severally (and not jointly and severally) agrees to indemnify the Nominated Lawyers and the Trustee, if existing, and hold them harmless against:

6.1 Any losses suffered by the Nominated Lawyers and the Trustee, if existing, in performing its obligations under this Agreement which were caused by that Party failing to provide accurate information as to the amount of its claims or otherwise in relation to its rights under this Agreement.

6.2 To the extent that Party receives payments under the waterfall in Clause 3.2 which are contrary to the priority established by applicable law, any losses suffered by the Nominated Lawyers and the Trustee, if existing, as a result of payments made according to the waterfall set forth in Clause 3.2 being contrary to applicable law. For greater certainty, the liability of each Party under this Clause 6.2 is limited to the amounts received by it under Clause 3.2 which it ought not to have received under applicable law.

6.3 Its pro rata share (determined on the basis of the amounts payable by one or more Claimants to it) of any losses suffered by the Nominated Lawyers and the Trustee, if existing, in performing its obligations under this Agreement which are not recovered under Clause 6.1 and Clause 6.2, to the extent not caused by the gross negligence or intentional misconduct of the Nominated Lawyers or the Trustee as applicable.

7. FDA

FDA will not take any action to cause or allow any payment of the Award or any proceeds thereof other than in accordance with this Agreement, and FDA will use its commercially reasonable efforts to cause or influence others to act consistently with this

Agreement.

8. NOTICES

8.1 **Form of Notices.** All notices, reports, legal service and other communications (“**notices**”) required or permitted under this Agreement shall be in writing. Notices shall be delivered by hand or sent by internationally recognized courier, fax, email or other reliable means of electronic communication to (i) the Parties, at their respective addresses set out in the attached Schedule 2, (ii) the Claimants, at the address of the Claimants’ U.S. Representative set out in the attached Schedule 2, (iii) the Trustee at such address as it, or failing notice from it, as the Nominated Lawyers, may specify to the other Parties by a notice sent in accordance with this Clause 8.1, or (iv) at such other address as may be specified hereafter by a Party to the other Parties by a notice sent in accordance with this Clause 8.1.

8.2 **Deemed Receipt.** Any notice hereunder will be deemed to have been delivered and received (i) on the date delivered, if delivered personally by hand or sent by courier; (ii) on the date sent if sent by fax, email or other form of electronic communication; and (iii) 5 Business Days after mailing, if placed in the sender’s country’s official postal service by registered or certified mail, first class (airmail) postage prepaid, with a request for a confirmation of delivery.

8.3 **Confirmation.** Any notice sent under this Clause 8.3 that is sent by fax, email or other electronic communication must be confirmed by sending a hard paper copy thereof to the recipient by hand delivery, by courier or by registered or certified air mail, postage prepaid, with a request for a confirmation of delivery, provided, the effective date of such notice will be as specified in Clause 8.2(ii) above. If the recipient actually received the fax, email or other electronic form of a notice, then the notice will be deemed to have been given and delivered even if recipient never receives a hard copy as called for in this clause.

9. MISCELLANEOUS

9.1 **Entire Agreement; Binding Effect; Assignment.** This Agreement constitutes the entire agreement between the Parties with respect the subject matter hereof, and supersedes all prior agreements, understandings and negotiations between the Parties with respect the subject matter hereof. It is understood and agreed that each Party hereto has entered into one or more separate agreements with the Claimants regarding its interest in the Claim, any Award and the proceeds of the Claim and any Award (including for greater certainty its interest in the Escrow Account and any proceeds of the Escrow Account), which such other agreements shall remain in full force and effect in accordance with their terms except to the extent of a conflict with this Agreement (in which case the terms of this Agreement shall prevail with respect to such conflict). This Agreement will inure to the benefit of, and will be binding upon, the Parties hereto and their respective successors, assigns, and legal representatives. All representations, warranties, covenants and indemnities made herein will survive the execution and delivery of this Agreement. Neither this Agreement, nor any rights, interests, obligations and duties arising

hereunder, may be assigned or otherwise conveyed (a) by any Party (other than the Major Funder) except as expressly provided herein without the express consent in writing of the other Parties or (b) by the Major Funder except as expressly provided herein or in the Major Funder Funding Agreement without the express consent in writing of the other Parties; provided, that the Major Funder may (i) assign its rights and obligations under this Agreement to an Affiliate without the express consent of the other Parties and (ii) provide participations in or to all or a portion of its rights and obligations under this Agreement.

9.2 **Amendments; Waivers.** Any amendment or modification of any provision of this Agreement must be in writing and bear the signature of a duly authorized representative of each Party. No term or provision of this Agreement may be waived except in a written instrument that bears the signature of a duly authorized representative of each Party. No delay on the part of any Party in exercising any right, power or remedy under this Agreement will operate as a waiver thereof, and no single or partial exercise of any right, power or remedy by any Party hereunder will preclude any further exercise thereof.

9.3 **Severability.** If any term, provision, covenant or condition of this Agreement, or the application thereof to any Person, place or circumstance, is held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other Persons, places and circumstances will remain in full force and effect.

9.4 **Further Assurances.** The Parties hereto will forthwith, and from time to time, execute and do all deeds, documents and things which may be necessary or advisable to give full effect to the intent of this Agreement. Without limiting the foregoing, this may include making or supporting an application to court in any jurisdiction that a portion of any Award, or any order in connection with proceedings to enforce any Award, or any proceeds thereof, be paid directly to the Nominated Lawyers in trust for deposit into the Escrow Account. Each Party will ensure that its arrangements with each Claimant are consistent with this Agreement

9.5 **No Third Party Beneficiaries.** This Agreement does not create any rights in favour of, and is not enforceable by or on behalf of, anyone who is not a Party to this Agreement or who has not executed and delivered this Agreement.

9.6 **Spanish Translation.** The Parties will execute English and Spanish versions of this Agreement. In the event of a conflict between the English version of this Agreement and the Spanish version, the English version shall control.

10. **GOVERNING LAW AND ARBITRATION**

10.1 This Agreement is governed by and shall be construed in accordance with the laws of England without giving effect to its conflict of laws rules.

10.2 Any dispute, controversy or claim arising out of or in connection with this

Agreement, including any question regarding its formation, existence, validity, interpretation, performance, breach or termination and including any dispute about the value of the Award, shall (to the exclusion of any other forum) be referred to and finally resolved by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules, if such parties have been unable to resolve the dispute through negotiation, mediation or otherwise within thirty (30) days after one party has received written notice of a dispute from the other party in accordance with Clause 8.

10.3 The arbitration shall be conducted before a panel of three arbitrators, each of whom shall be a fluent speaker and reader of both English and Spanish.

10.4 Despite any other provision of this Clause 10, if a dispute is with respect to the value of a non-cash Award and the Parties have been unable to resolve such dispute within fifteen (15) days after one Party has received written notice of the dispute from another Party, the arbitration shall be conducted by one arbitrator agreed to by the Parties, acting reasonably, who is an accountant at an internationally recognized accounting firm or a professional valuator, or, failing agreement, an accountant chosen by the International Centre for Dispute Resolution at an internationally recognized accounting firm (other than Ernst & Young) or a professional valuator chosen by the International Centre for Dispute Resolution. The arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules, except that the arbitrator shall conduct the arbitration in an expedited manner and render a decision within 90 days after the arbitrator is appointed.

10.5 The seat, or legal place, of arbitration shall be London, England, but the arbitration proceedings shall physically occur in George Town, Cayman Islands.

10.6 Each Party to this Agreement shall, upon the written request of the other Party, promptly provide the other Party with copies of all documents on which the producing Party may rely in support of or in opposition to any claim or defense and a report of any expert whom the producing Party may call as a witness in the arbitration hearing. At the request of a party to this Agreement, and upon the showing of good cause, the arbitrators shall have the discretion to order production by any other Party or by a third party of other documents relevant to any claim or defense. Each Party shall be entitled to depose a maximum of three witnesses (which number may not be increased by the arbitral tribunal), plus all experts designated to be witnesses at the arbitration. The depositions shall be held within thirty (30) days of the making of a request and shall be limited to a maximum of six hours per deposition. All objections are reserved for the arbitration hearing, except for objections based on privilege and proprietary or confidential information.

10.7 In addition to the requirement to arbitrate set forth above as the Parties' exclusive remedy for disputes, the Parties expressly agree and covenant not to take the position that any Party is subject to personal jurisdiction or venue in the United States.

10.8 Any attempt by any Party to seek relief or remedies in any other forum shall

constitute a breach of this Agreement and entitle the other Parties to damages, equitable relief and full indemnification against all costs and expenses incurred in connection therewith.

11. COUNTERPARTS

This Agreement may be executed in counterparts, each of which will be deemed to be an original, and all of which, taken together, will constitute one agreement binding on all Parties who have executed this Agreement. Copies of executed counterparts may be exchanged by facsimile, email or other electronic transmission, and such an exchange will constitute effective delivery by the Parties of their respective executed counterparts. Once this Agreement has been executed by the Major Funder, the Nominated Lawyers and at least one other Party, this Agreement is enforceable by and against each Party that has executed this Agreement despite any failure of any other Person named as party to execute this Agreement; but this Agreement will be enforceable by and against each of those other Persons upon execution of this Agreement by it.

12. ADDITIONAL PARTIES

Any Person not named above as a Party may become bound by, and entitled to enforce, this Agreement by executing a written accession agreement stating that it agrees to be bound by this Agreement and delivering it to the Parties hereto; provided, that unless otherwise agreed, such accession shall require the prior written consent of each Party adversely affected by the addition of such new party to this Agreement. For the avoidance of doubt, the priority of that Person's claims will, if a Minority Funder, rank equally with the claims set forth in Clause 3.2.5 or, if an Active Lawyer or Advisor, rank equally with the claims set forth in Clause 3.2.7.

[signatures on following pages]

IN WITNESS WHEREOF, the Parties hereto have executed this agreement.

MAJOR FUNDER:

TRECA FINANCIAL SOLUTIONS

By: 

Name: DARRYL WILLIS

Title: AUTHORIZED SIGNATORY

[Intercreditor Agreement]

MINORITY FUNDERS:

TORVIA LIMITED

By: S. Marsden
Name: S. MARSDEN
Title: DIRECTOR

[Intercreditor Agreement]

NOMINATED LAWYERS:

PATTON BOGGS LLP

By: _____

Name: _____

Title: _____

James S. Tyrrell, Jr.
James E. Tyrrell, Jr.
Regional Managing Partner
New York and New Jersey Offices

DONZIGER:

DONZIGER & ASSOCIATES, LLC

By: _____

Name: _____

Title: _____

ECBA:

EMERY, CELLI, BRINCKERHOFF &
ABADY, LLP

By: _____

Name: _____

Title: _____

[Intercreditor Agreement]

NOMINATED LAWYERS:

PATTON BOGGS LLP

By: _____

Name:

Title:

DONZIGER:

DONZIGER & ASSOCIATES, PLLC

By:  _____

Name:

Title:

ECBA:

**EMERY, CELLI, BRINCKERHOFF &
ABADY, LLP**

By: _____

Name:

Title:

[Intercreditor Agreement]

NOMINATED LAWYERS:

PATTON BOGGS LLP

By: _____

Name:

Title:

DONZIGER:

DONZIGER & ASSOCIATES, PLLC

By: _____

Name:

Title:

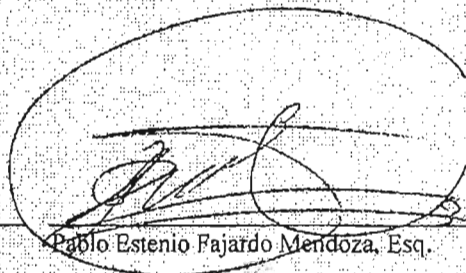
ECBA:

**EMERY, CELLI, BRINCKERHOFF &
ABADY, LLP**

By: *Jonathan S. Abady*
Name: JONATHAN S. ABADY
Title: PARTNER

[Intercreditor Agreement]

ECUADOR ATTORNEY:

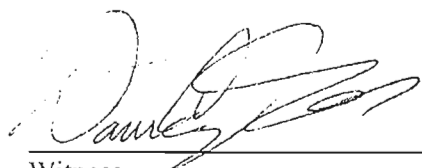


21-10-10

Witness:

Pablo Estenio Fajardo Mendoza, Esq.

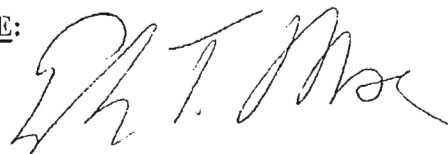
[Intercreditor Agreement]



Witness:

Daniel Tobias

MOE:



Erik T. Moe

|Intercreditor Agreement|

H5:

H5

By:



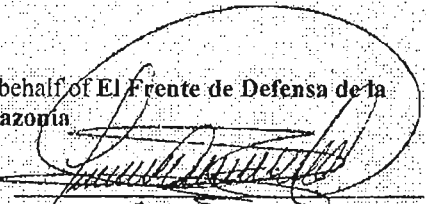
Name: Nicolas Economou

Title: CEO

[Intercreditor Agreement]

On behalf of El Frente de Defensa de la
Amazonia

By:



Name: ERODIO CHAVEZ
Title: PRESIDENTE - FDA

[Intercreditor Agreement]

SCHEDULE 1

CLAIMANTS

<p>Frente de Defensa de la Amazonia (the "<u>Amazon Defense Coalition</u>")</p>	<p><u>Claimants:</u></p> <p>Daniel Carlos Lusitande Yaiguaje; Venancio Freddy Chimbo Grefa; Miguel Mario Payaguaje Payaguaje; Teodoro Gonzalo Piaguaje Payaguaje; Simón Lusitande Yaiguaje; Armando Wilmer Piaguaje Payaguaje; Javier Piaguaje Payaguaje; Fermín Piaguaje; Luis Agustín Payaguaje Piaguaje; Emilio Martin Lusitande Yaiguaje; Reinaldo Lusitande Yaiguaje; María Victoria Aguinda Salazar; Carlos Grega Huatatoca; Catalina Antonia Aguinda Salazar; Lidia Alexandra Aguinda Aguinda; Clide Ramiro Aguinda Aguinda; Luis Armando Chimbo Yumbo; Beatriz Mercedes Grefa Tanguila; Lucio Enrique Grefa Tanguila; Patricio Wilson Aguinda Aguinda; Patricio Alberto Chimbo Yumbo; Segundo Ángel Amanta Milán; Francisco Matías Alvarado Yumbo; Olga Gloria Grefa Cerda; Narcisa Tanguila Narváez; Bertha Yumbo Tanguila; Lucrecia Tanguila Grefa; Francisco Víctor Tanguila Grefa; Rosa Teresa Chimbo Tanguila; María Clelia Reascos Revelo; Heleodoro Pataron Guaraca; María Viveros Cusangua; Lorenzo José Alvarado Yumbo; Francisco Alvarado Yumbo; José Gabriel Revelo Llore; Luisa Delia Tanguila Narváez; and José Miguel Ipiales Chicaiza.</p>
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SCHEDULE 2

NOTICE ADDRESSES

A. Notice address for the Major Funder:

4th Floor, Century Yard,
Cricket Square, Elgin Avenue
P.O. Box 32322
Grand Cayman KY1-1209
Cayman Islands
Facsimile: _____
Email: _____

B. Notice address for Torvia:

PO Box 1300
Leisure Island Business Centre
23 Ocean Village Promenade, Suite 2-1C,
Ocean Village, Gibraltar Attn: Steve Marsden
Facsimile: _____
Email: _____

C. Notice address for the Nominated Lawyers:

Patton Boggs LLP
1185 Avenue of the Americas, 30th Floor,
New York, New York 10036
Facsimile: (646) 557-5101
Email: jtyrrell@pattonboggs.com

D. Notice address for Donziger and for the Claimants' U.S. Representative:

c/o 245 West 104th Street, #7D
New York, New York 10025
Facsimile: (212) 409-8628
Email: sdonziger@donzigerandassociates.com

E. Notice address for ECBA:

c/o 75 Rockefeller Plaza
20th Floor, New York, NY 10019
Attn: Ilann M. Maazel, Esq.
Facsimile: (212) 763-5001
Email: imaazel@ecbalaw.com

F. Notice address for the Ecuador Attorney:

Pablo Estenio Fajardo Mendoza, Esq.

Facsimile: _____

Email: _____

G. Notice address for Moe:

572 1st Street
Brooklyn, New York 11215
Email: eriktmoe66@yahoo.com

H. Notice address for H5

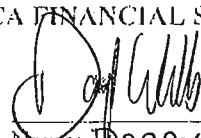
340 Madison Avenue, Suite 12B
New York, New York 10173
Attn: Nicolas Economou, Chief Executive Officer and Julia Brickell, General
Counsel
Facsimile: (212) 818-1604
Email: neconomou@h5.com and jbrickell@h5.com

IN WITNESS whereof the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

FUNDER

TRECA FINANCIAL SOLUTIONS

By:



Name: DARRYL WILLIS

Title: AUTHORIZED SIGNATORY

CLAIMANTS

On behalf of El Frente de Defensa de la Amazonia

By:

Name: ERNEY CHAVEZ
Title: PRESIDENTE - FDA

Witness: _____

Witness: _____

Steven R. Donziger, in his capacity as Claimants' U.S. Representative

31-10-10


Pablo Estenio Fajardo Mendoza, Esq., in his capacity as lead Ecuador Counsel for, and legal representative of, the Claimants

Witness: _____

CLAIMANTS

On behalf of El Frente de Defensa de la Amazonia

Witness:

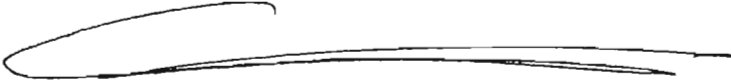


Witness: *Eric BEIRWE*

By: _____

Name: _____

Title: _____



Steven R. Donziger, in his capacity as Claimants' U.S. Representative

Witness:

Pablo Estenio Fajardo Mendoza, Esq., in his capacity as lead Ecuador counsel for, and legal representative of, the Claimants

On behalf of the Asamblea de Afectados por
Texaco

By:  21-10-2010

Name: Luis Yanza, under the POA
Title: Special attorney under the POA

Witness:

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Private and Confidential

EXECUTION VERSION

TRECA FINANCIAL SOLUTIONS
(as the Funder)

and

CLAIMANTS

FUNDING AGREEMENT

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