

EXECUTION VERSION

- Strictly Private and Confidential -

DATED 31 OCTOBER 2012

(1) THE AUTHORITY OF THE NICARAGUA INTEROCEANIC GRAND CANAL

and

(2) HK NICARAGUA CANAL DEVELOPMENT INVESTMENT CO., LIMITED

DEED OF COOPERATION

I. Introduction

On 3 July 2012, the National Assembly of the Republic of Nicaragua approved Law Number 800 (*Legal Regime for the Nicaraguan Interoceanic Grand Canal Creation Law*) (the "**Legislation**"), and on 7 July 2012 President Daniel Ortega signed the Legislation into law. The Legislation authorises the formation of the Authority of the Nicaragua Interoceanic Grand Canal (the "**Authority**"), and authorises the Authority to promote, coordinate and monitor the construction and operation of an interoceanic canal. The Legislation establishes that the Authority has full capacity to acquire rights and obligations and execute and perform all acts (including with respect to any commercial contracts) necessary, incidental or conducive to achieve its objectives.

Reference is made to the memorandum of understanding dated 5 September 2012 (the "**MoU**") between (i) the Authority, and (ii) the HK Nicaragua Canal Development Investment Co., Limited (the "**Sponsor**" and, together with the Authority, the "**Parties**" and each a "**Party**"), which sets out the terms for a proposed interoceanic canal to be constructed in the Republic of Nicaragua. The Parties agree and acknowledge that, pursuant to the MoU:

- (a) the Authority, as the representative of the government of the Republic of Nicaragua ("**Nicaragua**"), granted the Sponsor the exclusive right to structure and manage the project financing of an interoceanic canal, and to promote partnerships with other financing sources for the execution of such interoceanic canal project;
- (b) the Authority authorised the Sponsor to undertake the construction, operation and administration of such interoceanic canal; and
- (c) the Authority and the Sponsor agreed to effectuate such interoceanic canal project in a manner that is consistent with, and does not impair, the sovereignty of the Republic of Nicaragua.

The Authority (on behalf of itself and Nicaragua) and the Sponsor hereby enter into this Deed of Cooperation (this "**Deed**") dated 31 October 2012 to provide for the arrangements to be made, and the actions to be undertaken, with respect to the Project (as defined below) upon the terms and conditions set forth herein. The Parties intend that this Deed create legal relations between them and be legally binding and enforceable in accordance with its terms.

II. The Project

Overview and Structure

The Parties agree that, subject to the terms and conditions of this Deed, the Sponsor shall have the exclusive right to (directly or indirectly) procure and manage the design, development, engineering, arrangement of financing and construction (the "**Development**") and operation, maintenance and management (the "**Operation**") of (a) a traditional waterway for ships and a dry canal railroad for freight (collectively, the "**Canal**"), in each case linking deep water ports on the Caribbean and Pacific coasts of the Republic of Nicaragua, (b) free-trade zones to be established where the Canal meets the Caribbean and Pacific coasts (in areas to be determined by the Sponsor following consultation with the Authority) (the "**Free Trade Zones**"), and (c) an international airport in one of the Free Trade Zones (or, alternatively, the expansion of a current airport in one of the Free Trade Zones into an international airport if so determined by the Sponsor following consultation with the Authority) (together with the Free Trade Zones, the "**Associated Infrastructure**" and, together with the Canal and the Free Trade Zones, the "**Project**").

The Sponsor and the Authority shall each procure that, within one month of the date hereof, a special purpose vehicle or vehicles ("**ProjectCo**") will be formed under the laws of the Republic of Nicaragua (or under any other jurisdiction acceptable to the Sponsor and the Authority) and controlled (directly or indirectly) by the Sponsor. ProjectCo will (i) design, develop, engineer, arrange financing for and construct ("**Develop**") (or procure the Development of), (ii) operate, maintain and manage ("**Operate**") (or procure the Operation of), and (iii) own (directly or indirectly) the Project.

The Sponsor shall procure that, within one month of the date hereof, the entire share capital of ProjectCo will be held by a newly formed holding company or companies ("**HoldCo**" and, together with ProjectCo, the "**NewCos**"), and the Sponsor shall procure that HoldCo shall be incorporated in such form and in such jurisdiction as the Sponsor may deem beneficial on the basis of any applicable tax, commercial and governance considerations.

Cooperation and Procurement

The Parties hereby agree to cooperate and take all commercially reasonable actions necessary to promote and secure the Development and Operation of the Project, including in connection with:

- (a) the carrying out of all feasibility studies, technical due diligence, environmental risk assessments, market reports and all other diligence to be carried out by the Sponsor and/or any NewCo in connection with the Project;
- (b) the negotiation and execution of definitive documentation (the "**Financing Documentation**") in relation to the Financing (as defined below) as soon as reasonably practicable taking into account progress on the other items set out in (a) above; and
- (c) the construction of the Project, with such construction to commence as soon as practicable following the availability of sufficient Financing.

The Authority shall procure that Nicaragua (or any other applicable authorised authority or agency of Nicaragua, as applicable) executes each document, and undertakes each action, that this Deed envisages Nicaragua executing or performing (as applicable) in connection with the Project. The Sponsor shall procure that each of HoldCo and ProjectCo executes or performs each document, and undertakes each action, that this Deed envisages such NewCo executing or performing (as applicable) in connection with the Project.

Development and Financing

Each of the Authority and Nicaragua shall use its best endeavours to provide an enabling environment for the Development and Operation of the Project and in particular in relation to the arranging of any financing to be raised in connection therewith. In connection with such financing, the Parties agree and acknowledge that the NewCos may raise debt financing, in the form of senior or mezzanine finance from one or more commercial banks, multilateral, development, infrastructure and other banks, lending and financial institutions, governmental authorities

(including any states or sovereigns) and institutional investors (including sovereign funds and other investment funds) and/or in the form of debt securities issued in the international capital markets (together, the "**Financing**" and the providers of such Financing being the "**Lenders**").

Each of the Authority (on behalf of itself and Nicaragua and any other applicable authority or agency thereof) and the Sponsor agree, and the Sponsor shall procure that each of ProjectCo and HoldCo will agree:

- (a) 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, proper or advisable to provide an enabling environment for the Development and Operation of the Project and for the arrangement of the Financing on terms and conditions reasonably acceptable to the Sponsor, including, without limitation, pledging any ownership interest in any NewCo, giving share retention and other undertakings in favour of the Lenders and taking such other actions as shall be necessary or desirable to make the Project financeable on terms that are customary for an infrastructure project of this nature; and
- (b) to procure that each NewCo (and to the extent necessary or desirable, the Authority or the Sponsor) shall enter into the relevant Financing Documentation.

The Parties agree that the Financing may be secured in favour of the Lenders by first-priority security interests in substantially all the assets of, and equity interests in (including those held by the Parties), the NewCos (the "**Collateral**"), including, without limitation, the following:

- (a) perfected first-priority security interests in, and mortgages over, substantially all tangible and intangible assets of each NewCo (including, but not limited to, the Project, the project documents, accounts receivable, inventory, equipment, general intangibles, investment property, intellectual property, real property, cash, commercial tort claims, letter of credit rights, intercompany loans and/or notes, contract rights, rights and claims against the Authority and Nicaragua (if any) and proceeds of the foregoing); and
- (b) perfected first priority pledge(s) of all ownership interests in each NewCo granted by the holders of such interests.

Each Party acknowledges, and shall enter into (as applicable) and raise no objection to, any direct agreements that will be required with counterparties to material project agreements (including agreements entered into between the Sponsor, HoldCo and/or ProjectCo on one hand and the Authority, Nicaragua and/or any other applicable authority or agency of Nicaragua on the other) and the Financing Documentation; provided that, notwithstanding anything to the contrary herein, neither the Authority nor Nicaragua shall be obligated to guarantee, underwrite or fund any portion of the Financing except as otherwise agreed in writing by the Authority and/or Nicaragua (as applicable).

Subject to the completion and review of technical due diligence to the

satisfaction of the Sponsor, HoldCo shall use commercially reasonable efforts to raise sufficient debt and equity financing to complete the Project, with the aggregate cost (including amounts to be funded through the Financing) currently estimated to be approximately USD 40 billion.

The Authority shall, and the Authority shall procure that Nicaragua shall, provide to ProjectCo, for no additional consideration from or costs to the NewCos or the Sponsor, the following assets or take the following actions (as applicable):

- (a) legal title of ownership (or the equivalent under applicable law) to all government-owned real property that is free and clear of all liens and other encumbrances and restrictions as evidenced by title registration, documentation and insurance ("**Title Insurance**") in form and content reasonably acceptable to ProjectCo ("**Proof of Title**");
- (b) 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 ProjectCo;
- (c) access easements and navigation rights on rivers, lakes and seas, as necessary for the Canal in a form the benefit of which may be insured through Title Insurance issued to ProjectCo or its affiliates;
- (d) water resources, subject to conservation protection;
- (e) maintenance of currently existing waterways and other infrastructure now providing transportation and related services in the Republic of Nicaragua, as well as those that will serve as a means of access to the Canal;
- (f) land, air and maritime space where construction works for the Project will be performed, as well as all relevant natural resources;
- (g) all permits related to construction works, including but not limited to employment permits for all foreign workers employed or retained in relation to the Project;
- (h) pass any relevant laws (whether with respect to company law, real property law, security law or otherwise);
- (i) relocation and resettlement of any people and/or communities currently situated in areas to be utilised by or in connection with the Project; and
- (j) any other similar actions and/or materials necessary or appropriate to vest in ProjectCo title to all real and personal property to be transferred to the Authority by or on behalf of Nicaragua free and clear of all liens or other encumbrances or restrictions,

in each case to the extent necessary or desirable for the Development of the Project, the effectuation of the terms of this Deed and the Operation of the Project.

III. Key Terms

Concession

The Parties hereby agree, and shall undertake all reasonable actions necessary to ensure, that (i) ProjectCo will be able to Develop, Operate and own the Canal and the Associated Infrastructure, and (ii) Nicaragua, represented by the Authority and/or any other applicable authorised governmental authority of Nicaragua, shall grant ProjectCo the right to use and receive any and all economic benefits arising from the Canal and the Associated Infrastructure (including without limitation the exclusive right to collect tolls, tariffs and fees from the shipping and freight utilising the Canal and any party utilising the Associated Infrastructure) for the period starting upon the date hereof and ending on the date which is fifty (50) years after the commencement of operation of the Canal (the "**Initial Concession Period**"), which initial term shall be automatically, and without any additional consideration from or costs to the NewCos or the Sponsor, extended thereafter for an additional fifty (50) year period in the event that ProjectCo provides a written notice to the Authority at least six (6) months prior to the expiration of the Initial Concession Period electing in its sole discretion to require such extension (the "**Follow-On Concession Period**"). The "**Concession Period**" shall refer to the Initial Concession Period and, to the extent elected by ProjectCo, the Follow-On Concession Period. In the event that the Concession (as defined below) is terminated, withdrawn or impaired or otherwise amended or modified at any time prior to the expiration of the Concession Period, the Authority shall indemnify the Sponsor and each NewCo for any losses (including, without limitation, any lost profits and indirect damages) related to such occurrence; provided that, for the avoidance of doubt, the Authority has no right to (and shall procure that Nicaragua shall take no steps that would) terminate, withdraw or impair or otherwise amend or modify the Concession prior to the expiration of the Concession Period.

The Parties hereby agree as follows:

- (a) **Grant of rights** – The Authority hereby grants, on behalf of Nicaragua, and Nicaragua itself shall grant, to ProjectCo on an exclusive basis during the Concession Period, (i) all rights and privileges necessary for ProjectCo's investigation, Development, procurement, Operation and commercial exploitation of the Canal and Associated Infrastructure (the "**Concession**"), and (ii) all required land and real property rights including Proof of Title, rights of way, vacant possession and an undertaking to deliver private lands without any additional costs to the Sponsor or any NewCo including those required for compensating private landholders;
- (b) **Concession Fee** – In order to allow Nicaragua to receive economic benefits from the Canal immediately upon the commencement of operation of the Canal (the "**Operation Date**"), ProjectCo shall pay to the Authority an annual concession fee at the end of each twelve (12) month period during the ten years following the Operation Date in an amount equal to (x) USD 10 million, minus (y) any payment rights with respect to the Golden Share that have accrued during the the relevant twelve (12) month period; provided that, for the

- avoidance of doubt, no such concession fee shall be due thereafter);
- (c) **Setting of tariff/user charges by ProjectCo** – ProjectCo shall have the right to set all tariff/user charges in its sole discretion during the Concession Period;
 - (d) **Change in law protection** – The Authority and Nicaragua shall grant protections and safeguards to each of the Sponsor, HoldCo and ProjectCo against any changes in law (including, without limitation, tax, corporate and real estate laws of the Republic of Nicaragua), law enforcement, environmental standards, consents, decrees, policy and regulations and any court orders, decrees and judgments that relate to or affect (i) the Project during the Concession Period, or (ii) the rights and obligations of any Party under this Deed at any time;
 - (e) **Permits** – The Authority and Nicaragua shall each procure and assist in the receipt by the NewCos of all permits, licences, consents and authorisations required in order for the NewCos to Develop and Operate the Project;
 - (f) **Handback provisions** – The Project shall be transferred to Nicaragua (or its designee) at the end of the Concession Period (the "**Handback**") and the Authority and Nicaragua shall each guarantee neutrality of passage of users of the Canal and Associated Infrastructure at all times after the Handback; furthermore, HoldCo shall have a right of first refusal with respect to any offer to operate, maintain, manage and/or rebuild or expand all or any portion of the Project in the event that Nicaragua (or any affiliate, including the Authority) invites one or more third parties to bid on the right to control or participate in such activities after the end of the Concession Period; and
 - (g) **Affiliate transactions** – Each party to the Concession Agreement shall acknowledge and agree that HoldCo and/or ProjectCo may enter into certain transactions and other contractual arrangements with the Sponsor and/or its affiliates from time to time.

Support

The Parties hereby agree that Nicaragua shall be required to give political, legal and financial support to the Project as follows:

- (a) **Political support** – Nicaragua (including the President and the National Assembly of Nicaragua) shall confirm its political support to the Project and support of the Authority's obligations under this Deed and all associated agreements;
- (b) **Legislation/Legal Support** – Nicaragua shall adopt and promulgate new laws and amend its existing laws as required or advisable to Develop, finance and Operate the Project as envisaged under this Deed;
- (c) **Financial support** – Nicaragua shall guarantee the Authority's financial obligations under this Deed and all associated agreements relating to the Project under which the Authority is liable for obligations, financial or otherwise, owing to the Sponsors or the

NewCos;

- (d) **Permits** – Nicaragua shall procure the issuance of such permits, licences, consents and authorisations to the relevant person(s) as required or advisable to Develop and Operate the Project;
- (e) **Tax** – Nicaragua shall procure that the Sponsor and each NewCo shall each enjoy exemption from Nicaraguan corporate and income taxes and an exemption for themselves, their affiliates and financing sources and the Project from all charges, fees, withholdings and assessments and any other taxes and duties (including, without limitation, on equipment, raw materials and components of construction and Operation (and any revenue generated thereof) of the Project, and any dividend distributions, payment of interest and repayment of principal by the ProjectCo and its affiliates) with such exemptions to be implemented into the applicable law(s) of various free enterprise zones and/or Nicaragua and a statute that commits Nicaragua to not amend the applicable tax regime relating to the Project; and
- (f) **Investment protection** – Nicaragua (including where necessary by reference to existing foreign investment protection acts and any existing bilateral investment treaties) shall provide protection in the event of the occurrence of "political events" (such as nationalisation, expropriation, war/insurrection, inconvertibility of currency, etc.), including the payment of compensation to ProjectCo upon the occurrence of any such event and/or on termination of the Concession. Nicaragua shall accord each NewCo and the Sponsor fair and equitable treatment, and in no case shall such treatment be less favourable to the NewCos and the Sponsor than that required under international law, and constant protection and security in respect of the Project.

Equity Terms

The Parties hereby agree to, and undertake to take all reasonable actions necessary to effectuate, the following:

- (a) **Capital Structure** – HoldCo shall issue three classes of ordinary shares (the "Shares"):
 - (i) "Class A Shares" (collectively, the "**Golden Share**") representing 1% of the Shares to be initially issued, with such Golden Share to be issued to the Authority in recognition of the sovereignty of the Republic of Nicaragua and its contribution to the Project;
 - (ii) "Class B Shares" (collectively, the "**Hope Share**") representing 1% of the Shares to be initially issued, with such Hope Share to be issued to the Sponsor; as a demonstration of the Sponsor's commitment and support to the interests of the Nicaraguan people, all proceeds paid with respect to the Hope Share shall be used solely for philanthropic purposes in order to support social and economic development (A) in Nicaragua, and/or (B) in the name of the citizens of the

Republic of Nicaragua, throughout the world; and

- (iii) "**Class C Shares**" representing 98% of the Shares to be initially issued, with such Class C Shares to be issued to the Sponsor in exchange for the funding to be provided by the Sponsor for the Project; provided that, for purposes of this Deed, references to Class C Shares may include other shareholder debt and equity securities of HoldCo as applicable.

For purposes of this Deed, "**Primary Shares**" shall mean (i) prior to the expiration of the Concession Period, the Class C Shares, and (ii) at all other times, the Golden Share.

At the discretion of the HoldCo Board (defined below), HoldCo may issue other debt and equity securities (including non-voting Shares, preference Shares and convertible securities).

Each holder of debt and equity securities of HoldCo shall be required to pledge such instruments in favour of the Lenders if requested to do so by the HoldCo Board in connection with the Financing.

ProjectCo shall not issue any debt or equity securities other than (i) to HoldCo, or (ii) pursuant to the Financing.

- (b) **Distributions** – All net income (as calculated in accordance with generally accepted international accounting standards) of HoldCo attributable to the Canal (as determined by the HoldCo Board in good faith) shall be distributed by HoldCo to the holders of the Shares with such distributions to be allocated among the classes of Shares during the Initial Concession Period as follows (with such allocation to be distributed to the holders of such class of Shares pro rata on the basis of the number of such Shares held thereby or as otherwise agreed among such holders):

INITIAL CONCESSION PERIOD			
Net Income Period	% of Distribution by Class		
	Golden Share	Hope Share	Class C
Prior to the 11th Key Date	1%	1%	98%
On and after the 11th Key Date but prior to the 21st Key Date	10%	1%	89%
On and after the 21st Key Date but prior to the 31st Key Date	20%	1%	79%
On and after the 31st Key Date but prior to the 41st Key Date	30%	1%	69%
On and after the 41st Key Date but prior to the 51st Key Date	40%	1%	59%

provided that such allocation shall be as follows during the Follow-On Concession Period (if elected by the Sponsor):

FOLLOW-ON CONCESSION PERIOD

Net Income Period	% of Distribution by Class		
	Golden Share	Hope Share	Class C
After the 51st Key Date but prior to the 61st Key Date	50%	1%	49%
On and after the 61st Key Date but prior to the 71st Key Date	60%	1%	39%
On and after the 71st Key Date but prior to the 81st Key Date	70%	1%	29%
On and after the 81st Key Date but prior to the 91st Key Date	80%	1%	19%
On and after the 91st Key Date but prior to the 101st Key Date	90%	1%	9%
On and after the 101st Key Date	99%	1%	0%

provided further that such allocation shall be as follows after the termination of the Concession Period:

POST-CONCESSION PERIOD			
Net Income Period	% of Distribution by Class		
	Golden Share	Hope Share	Class C
On and after the 101st Key Date	99%	1%	0%

where, in each case, "**Key Date**" shall mean each anniversary of the commencement of operations of the Canal. All other distributions made by HoldCo with respect to the Shares shall be allocated to the holders of the Class C Shares pro rata on the basis of the number of Class C Shares held thereby or as otherwise agreed among such holders. For the avoidance of doubt, all such distributions shall be made at such time and in such manner as shall be determined by the HoldCo Board in its sole discretion; provided that no such distribution shall be made other than to the extent permitted by (i) applicable law (including, without limitation, the corporate law of the jurisdiction of HoldCo's incorporation), and (ii) the Financing Documentation.

The Authority shall undertake to HoldCo and ProjectCo that ProjectCo shall at all times be able to distribute proceeds to HoldCo (without being subject to any taxes, charges, approvals or limitations) at such times and in such amounts as the HoldCo Board shall determine from time to time.

- (c) **Governance** – In respect of any matter which is subject to a vote of the holders of Shares, each such holder will be entitled to one vote per each Primary Share held thereby.

All matters to be approved by the general meeting of HoldCo shall require approval by persons holding greater than 50% of the Primary Shares present (or representing) and voting at such

general meeting.

To the greatest extent permitted by applicable law, all material decisions will be delegated by the holders of the Shares to the board of directors of HoldCo (the "**HoldCo Board**") in HoldCo's constitutive and equity documents (e.g., articles, securityholders' agreements, etc.).

Persons present holding (or representing) at least 50% of the Primary Shares (or such lower percentage of the Primary Shares as a majority of the Primary Shares may agree from time to time) will constitute a quorum for a general meeting of HoldCo, subject to customary following meeting thresholds if a quorum is not reached upon the first call.

- (d) **New Issuances** – Each holder of Shares that does not hold Primary Shares shall be required to waive all preemption rights (whether statutory, contractual or otherwise) with respect to any issuance of shareholder debt and/or equity securities (including warrants, convertibles and similar instruments) by HoldCo or any subsidiary thereof.
- (e) **Transfers** – For so long as the Golden Share is not a Primary Share, neither the Golden Share nor any rights thereunder may be transferred (directly or indirectly, including by means of proxy or otherwise) to any person that is not wholly owned and controlled by Nicaragua.

At no time shall the Hope Share, or any rights thereunder, be transferred (directly or indirectly, including by means of proxy or otherwise) to any person without the prior approval of the holder of the Golden Share and the holders of at least 50% of the Class C Shares.

- (f) **Board of Directors** – The HoldCo Board will consist of such number of directors appointed by the holders of the Primary Shares as the holders of the Primary Shares shall determine in their sole discretion from time to time.

Each member of the HoldCo Board and the board of directors of ProjectCo (the "**ProjectCo Board**") will have one vote with respect to each matter voted upon by the HoldCo Board and the ProjectCo Board (as applicable). All matters will be decided by the affirmative vote or consent of a majority of the directors present or represented and voting at a meeting of the relevant board.

- (g) **Fiduciary Waiver** – Each holder of Shares (excluding the holders of the Primary Shares from time to time) shall waive all fiduciary duties owed to it to the maximum extent permitted under applicable law. Furthermore, the holders of the Shares shall enter into customary exculpation and indemnification undertakings in favour of the members of the HoldCo Board and the ProjectCo

Board.

IV. Covenants

Exclusivity

The Authority, on behalf of itself and Nicaragua, hereby grants the Sponsor exclusivity with respect to the Project and any similar project or any portion thereof and the negotiation of the Key Documents (as defined below) in accordance with the provisions of this Deed for the period beginning upon the signing of this Deed and ending on the date falling five (5) years thereafter (the "Exclusivity Period").

Exclusivity means that neither the Authority nor Nicaragua, 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 the Project or any similar project or any portion thereof, (ii) institute, pursue, or engage in any discussions, negotiations, or agreements with any person or entity concerning any of the foregoing, or (iii) 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 Authority or Nicaragua is or becomes aware of any unsolicited offer or other inquiry (whether from a previously interested party or otherwise) regarding the Project or any similar project or any portion thereof (an "Alternative Proposal"), the Authority shall notify the Sponsor of the existence, identity of the proposed sponsor(s) and the terms of such Alternative Proposal within twenty-four (24) hours of becoming aware of such Alternative Proposal.

The Authority represents that neither it nor Nicaragua is a party to or bound by any agreement, arrangement, or understanding with respect to the Project or any similar project or any portion thereof other than the MoU and this Deed.

The Parties shall, acting reasonably, discuss the extension of the Exclusivity Period if they have progressed with the negotiation of the final Key Documents to such an extent that they believe, acting reasonably, that there is a good chance that the negotiations will be completed in a further reasonable timeframe and the Exclusivity Period shall be automatically extended for a period of six (6) months if, at the time it would otherwise expire, the only reason that any Key Document has not been signed is as a result of a political process in connection with the approval of such Key Document by the Authority, Nicaragua or any other applicable authority or agency of Nicaragua.

Additional Agreements

The Parties hereby agree to execute, as soon as practicable, all documents, instruments, undertakings, agreements and other documentation necessary or desirable to effectuate the Project; accordingly, the Parties shall execute (and in the case of the Authority, shall also procure that Nicaragua and/or any other applicable authority or agency of Nicaragua executes, as applicable) within thirty (30) days of the date hereof each of the following:

- (a) a concession agreement containing such terms and conditions as are customary for a concession agreement for a project of this size

and nature (including, without limitation and for the avoidance of doubt, customary early termination events (e.g. default by Nicaragua and/or the Authority, ProjectCo default, prolonged *force majeure*, defined political events), with customary compensation requirements to apply in the event that there is such an early termination);

- (b) an implementation agreement containing such terms and conditions as are customary for an implementation agreement for a project of this size and nature;
- (c) a securityholders' agreement in a form customary for an equity arrangement of the nature agreed in this Deed; and
- (d) such other long form legal documentation necessary to implement the Project,

provided in each case that each such document shall incorporate the relevant terms contained in this Deed and the other terms and conditions of such documents shall be consistent with the terms and conditions of this Deed (collectively, the "**Key Documents**"). Customary *force majeure* provisions shall apply to each relevant obligation of the parties under the Key Documents and they will otherwise be in a form customary for similar infrastructure projects. The Key Documents and other long form documentation (i) will be in English or accompanied by an English translation, and (ii) will be governed by English law and subject to arbitration before the International Court of Arbitration of the International Chamber of Commerce (the "**ICC**"), other than where the use of local law and the courts are deemed appropriate by the Parties.

Confidentiality

From the date hereof until the second (2nd) anniversary of the termination of the Exclusivity Period, (i) all information relating directly or indirectly to this Deed (including the proposed terms of the Project), (ii) all discussions and negotiations between the Sponsor and the Authority and their respective affiliates and representatives with respect to the Project, and (iii) all non-public information relating to any Party (or any affiliate or subsidiary thereof) disclosed by or on behalf of such Party (or representative or affiliate thereof) to the other Party (or representative or affiliate thereof) shall, for so long as such information is not publicly known or otherwise disclosed to recipient (or representative or affiliate thereof) by a third party other than in violation of any applicable duty of confidentiality, be kept confidential and will not be disclosed by such recipient (or any representative or affiliate thereof) to any third party (excluding any affiliate of such Party) except (A) as required by law or securities exchange regulations, (B) as necessary to support a claim or defense in litigation involving one of the Parties (or any affiliate thereof), (C) on a need-to-know basis to advisors of either such party or the sources of third-party debt financing to such Party (or any affiliate thereof) (each a "**Confidential Party**"), provided that the recipient will procure that such Confidential Party observes the confidentiality terms of this Deed, or (D) with the prior written consent of both Parties.

No Party (or affiliate thereof) will issue any press release or make any

public announcement to the news media or financial markets regarding the negotiation and execution of, and/or the contents of, this Deed without the prior written consent of the other Party.

V. Other Provisions

Representations and Warranties

Each Party hereby represents and warrants to each other Party that as at the date hereof:

- (a) such Party has full legal capacity, power and authority to execute and deliver this Deed and to perform such Party's obligations hereunder, and this Deed has been duly executed and delivered by such Party;
- (b) the execution, delivery, and performance of this Deed by such Party have been made freely and with the intent to enter into this Deed by such Party; and
- (c) the execution, delivery, and performance of this Deed by such Party does not and shall not conflict with, breach, violate, or cause a default under any law, regulation, contract, agreement, instrument, order, judgment, or decree to which such Party is a party or by which it is bound, and upon the execution and delivery of this Deed by the other Party, this Deed shall be the legal, valid and binding obligation of such Party, enforceable in accordance with its terms; provided that the Sponsor's obligations hereunder shall be subject to the completion and review of technical due diligence to the satisfaction of the Sponsor and the absence of prolonged *force majeure*.

Costs and Expenses

Each Party will pay its own costs and expenses in connection with (i) this Deed, (ii) the Key Documents, and (iii) in the case of the Sponsor, the formation of, and investment (directly or indirectly) in, each NewCo, including legal and advisory fees; provided that, for the avoidance of doubt, HoldCo and ProjectCo shall each be responsible for their own costs and expenses with respect to the Key Documents.

Waiver

Any waiver of any term or condition of this Deed, waiver of any breach of any term or condition of this Deed, or waiver of, or election whether or not to enforce, any right or remedy arising under this Deed 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 a Party's conduct.

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.

Further Assurances

Each Party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Deed. For the avoidance of doubt and without prejudice to any rights or obligations of any Party under this Deed, to the

extent that the Authority and/or Nicaragua are required to take action to implement a change in the laws of the Republic of Nicaragua to give effect to and/or comply with their respective obligations under this Deed, then such action shall be taken in a manner that is in accordance with Nicaraguan law.

Severability

Whenever possible, each provision of this Deed shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Deed is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision of this Deed in such jurisdiction or affect the validity, legality or enforceability of any provision in any other jurisdiction, but this Deed shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Counterparts

This Deed 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.

Assignment

No Party may assign, hold on trust, transfer, sub-contract, delegate, charge or otherwise deal with all or any part of its rights or obligations under this Deed; provided that the Sponsor may assign the whole or any part of its rights and obligations under this Deed (i) to any direct or indirect subsidiary or any other affiliate thereof, and/or (ii) to any Lender (with full step-in rights) by way of security for the Financing.

Rights of Third Parties

Except as expressly stated in this Deed, this Deed does not confer any rights on any person or party under the Contracts (Rights of Third Parties) Act 1999. The Parties may rescind, vary or terminate this Deed in accordance with its terms without the consent of any Third Party Beneficiary. No Third Party Beneficiary may bring any action to enforce, nor assign in whole or in part, its rights under this Deed without the prior written consent of each Party.

Entire Agreement

This Deed constitutes the whole agreement between the Parties relating to the subject matter of this Deed to the exclusion of any terms 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 Deed (including, for the avoidance of doubt, the MoU).

Amendment

Any amendment to this Deed must be effected with the written consent of each Party.

Governing Law

This Deed and any dispute between the Parties or claim by any Party arising out of or in connection with it (including non-contractual disputes or claims), including any dispute regarding its existence or validity, shall be governed by and construed in accordance with the laws of England and Wales.

Remedies

Without prejudice to any other rights or remedies that either Party may have, each Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the obligations contained in this Deed by the other Party. Accordingly, the non-defaulting Party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this Deed.

Dispute Resolution

All disputes arising out of or in connection with this Deed, including any question regarding its existence, performance, breach, termination or invalidity, shall be submitted to the ICC and shall be finally settled under the Rules of Arbitration of the ICC (the "**Rules**") by three arbitrators appointed in accordance with the Rules. The Rules are deemed to be incorporated by reference into this Deed.

Each Party shall appoint one arbitrator in accordance with the Rules. The third arbitrator, who shall act as president of the arbitral tribunal, shall be jointly nominated by the other two arbitrators within 30 days of the confirmation of the second arbitrator. If the president of the arbitral tribunal is not nominated within this time period, the ICC shall appoint such arbitrator.

The seat of the arbitration shall be London although the parties may agree that hearings are held in alternative locations. The language of the arbitration shall be English.

The Parties agree to keep confidential the existence of the arbitration, the arbitral proceedings, the submissions made by the Parties and the decisions made by the arbitral tribunal, including its awards, except as required by applicable law and to the extent not already lawfully in the public domain.

The arbitral award shall be final and binding upon the parties and may be entered and enforced in any court of competent jurisdiction.

The agreement to arbitrate shall be governed by and construed in accordance with the laws of England and Wales.

*Waiver of
Sovereign
Immunity*

Each Party hereby irrevocably and unconditionally:

- (a) agrees that the execution, delivery and performance by it of this Deed and all other agreements, contracts, documents and writings relating to this Deed constitute private and commercial acts and not public or governmental acts;
- (b) waives to the fullest extent permitted by law any right of sovereign immunity that it may have whether before the arbitral tribunal or otherwise from suit and/or jurisdiction and/or adjudication including but in no way limited to waiving any right of sovereign immunity as to it and any of its property, regardless of the commercial or non-commercial nature of this property;
- (c) agrees that should any proceedings be brought against it or its assets in relation to this Deed or any transaction contemplated by this Deed, no immunity, sovereign or otherwise, from such proceedings, executions, attachment or other legal process shall be claimed by or

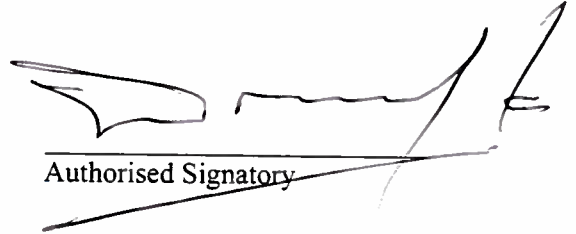
- on behalf of itself or with respect to any of its assets; and
- (d) consents generally in respect of the enforcement of any judgment or arbitral award against it in any proceedings in any jurisdiction to the giving of any relief, including pre-judgment interim relief, or the issue of any process in connection with such proceedings including without limitation the making, enforcement or execution against or in respect of any property irrespective of its use or intended use.

* * * * *

IN WITNESS WHEREOF, this Deed of Cooperation is entered into by the Parties as a deed, and is delivered and takes effect at the day and year first written above.

AUTHORITY

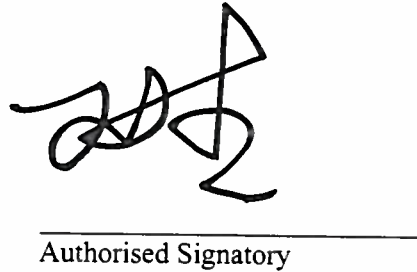
EXECUTED as a DEED by)
The Authority of Nicaragua Interoceanic Grand Canal)
acting by)
Manuel Coronel Kautz, President of the Authority of)
the Nicaraguan Interoceanic Grand Canal,)
being a person who, in accordance with the laws of)
Nicaragua, is acting under the authority of the Authority)



Authorized Signatory

SPONSOR

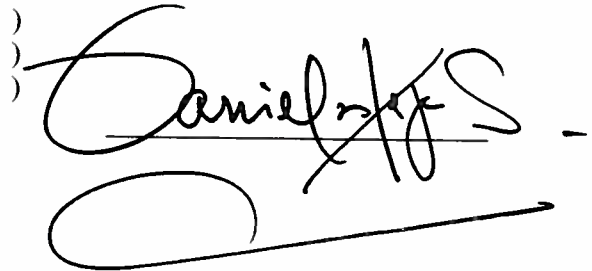
EXECUTED as a DEED by)
HK Nicaragua Canal Investment Co., Limited)
acting by)
Wang Jing)
being a person who, in accordance with the laws of the)
territory in which the Sponsor is incorporated, is)
acting under the authority of the Sponsor)



Authorized Signatory

WITNESS OF HONOR

Daniel Ortega Saavedra
President of the Republic
Republic of Nicaragua



Authorized Signatory

Signature Page to the Deed of Cooperation