

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of September 2, 2015 by and between Chevron Corporation, a Delaware corporation (“Chevron”), and H5, a California corporation (“H5”). Chevron and H5 are referred to collectively as the “Parties,” or each, a “Party.”

Recitals

WHEREAS, a suit styled *Maria Aguinda y Otros v. Chevron Corporation*, Case No. 002-2003 (“Lago Agrio Litigation”), was filed against Chevron in the Provincial Court of Justice of Sucumbios, Ecuador on May 7, 2003, alleging that Chevron was liable for purported environmental harms due to oil production activities conducted in Ecuador;

WHEREAS, the Lago Agrio Litigation resulted in a judgment against Chevron in Ecuador, later modified on appeal (“Lago Agrio Judgment”);

WHEREAS, beginning on or about December 18, 2009, Chevron filed multiple actions in various district courts around the United States pursuant to 28 U.S.C. § 1782 seeking discovery in aid of the Lago Agrio Litigation and other foreign proceedings against persons and entities with knowledge relevant to the Lago Agrio Litigation and other actions (“1782 Actions”);

WHEREAS, on or about February 1, 2011, Chevron filed the action styled *Chevron Corporation v. Donziger et al.*, 11-Civ-0691 (LAK), in the United States District Court for the Southern District of New York, alleging claims pursuant to the Racketeer Influenced & Corrupt Organizations Act (“RICO”), §§ 1961 – 1968, and state law claims, including fraud, tortious interference, and unjust enrichment, against the plaintiffs in the Lago Agrio Litigation (the “Lago Agrio Plaintiffs”), Steven Donziger, Pablo Fajardo, Luis Yanza, Stratus Consulting, Inc., and others (“RICO Action”);

WHEREAS, from 2009 to 2013, H5 was retained to and did provide electronic discovery and advisory services to the Lago Agrio Plaintiffs in the Lago Agrio Litigation, the RICO Action, and the 1782 Actions in connection with which it has entered into several agreements, including an agreement dated February 24, 2011 (“Advisory Agreement”), pursuant to which H5 agreed to provide services in exchange for compensation, including a “Services Fee” equal to 1.25% of “Plaintiff Collection Monies,” as defined in the Advisory Agreement (“Judgment Interest”);

WHEREAS, on or about October 31, 2010, H5 entered into an agreement (the “Intercreditor Agreement”) among the Lago Agrio Plaintiffs and other persons and entities claiming to have an interest in the Lago Agrio Judgment or the proceeds of the Lago Agrio Judgment, which agreement had the purpose of determining the order in which the relevant parties (including H5) would be paid any proceeds from the Lago Agrio Judgment;

WHEREAS, H5 last performed services for the Lago Agrio Plaintiffs in or around 2013 and may also be owed money for services already performed pursuant to the Advisory Agreement or other agreements;

WHEREAS, H5 retains the Judgment Interest;

WHEREAS, on or about March 4, 2014, the United States District Court for the Southern District of New York entered judgment in favor of Chevron in the RICO Action, finding, among other things, that the Lago Agrio Judgment was procured by fraud and that Donziger and other defendants engaged in extortion, money laundering, wire fraud, violations of the Foreign Corrupt Practices Act, witness tampering, and obstruction of justice (the "S.D.N.Y. Decision");

WHEREAS, on or about March 18, 2014, Donziger and the Lago Agrio Plaintiffs filed Notices of Appeal to the United States Court of Appeals for the Second Circuit for the S.D.N.Y. Decision, and the appeals are sub-judice before the Second Circuit;

WHEREAS, Chevron maintains that it has potential claims for damages and other relief against H5;

WHEREAS, H5 denies any wrongdoing or liability and denies that Chevron has any legitimate claims;

WHEREAS, Chevron and H5 have agreed to settle, release, and waive any and all claims arising between or among them upon the terms set forth herein, including claims arising from H5's work related to the Lago Agrio Litigation, or H5's interest in the proceeds of the Lago Agrio Judgment, including, in each case, any and all disputes and claims or potential disputes or claims thereto, except for any action necessary to enforce the terms of this Agreement; and

WHEREAS, for the avoidance of doubt, Chevron does not waive or compromise its claims against any other person or entity not named as one of the "H5 Releasees" as defined in Paragraph 6(a)(ii) of this Agreement and nothing in this Agreement shall be construed as a release, limitation, waiver, or compromise of those claims or any part thereof as to any other person or entity.

Agreement

NOW, THEREFORE, the Parties hereto hereby incorporate the foregoing Recitals as part of this Agreement and further agree as follows:

1. **Agreement to Refrain from Future Involvement in the Lago Agrio Litigation.** H5, and its employees, officers, directors, legal and beneficial shareholders, and any of the H5 Releasees (as defined below), do not anticipate being asked to provide and will forthwith irrevocably and forever refrain from providing future services or providing any assistance (including monetary assistance), directly or indirectly, to the Lago Agrio Plaintiffs, Steven

Donziger, Luis Yanza, Pablo Fajardo, Julio Prieto, Juan Pablo Saenz, Graham Erion, Aaron Page, and all other representatives and consultants (legal or otherwise) thereof in connection with the Lago Agrio Litigation, the Lago Agrio Judgment, or any current or future related legal proceedings in any jurisdiction, whether in a court of law or an arbitration, in any stage including appeals, including, but not limited to, the RICO Action, the arbitration currently pending in the Permanent Court of Arbitration, the Hague, Netherlands, under U.S.-Ecuador Bilateral Investment Treaty, PCA Case No. 2009-23, the claim in the Supreme Court of Gibraltar entitled “In the Supreme Court of Gibraltar 2012-c-232 Between: Chevron Corporation, Claimant and (1) James Russell DeLeon and (2) Torvia Limited, Defendants,” for money damages and equitable relief, including an injunction, the claim in the Supreme Court of Gibraltar entitled “In the Supreme Court of Gibraltar 2014-c-110 Between: Chevron Corporation, Claimant and (1) Amazonia Recovery Limited, (2) Woodsford Litigation Funding Limited, (3) Pablo Estenio Fajardo Mendoza, (4) Luis Francisco Yanza Angamarca, (5) Ermel Gabriel Chavez Parra, and (6) Julian Ross Jarvis,” the actions to enforce the Lago Agrio Judgment in Canada, Argentina, and Brazil, and any action pursuant to 28 U.S.C. § 1782 (“Related Actions”). In the event that H5 is required by law to provide any evidence, disclosure, or assistance to any party or tribunal in relation to any Related Action, such evidence, disclosure or assistance will not be deemed to constitute a breach of this Paragraph or any other term of this Agreement. Compliance by the H5 Releasees with their obligations to the Lago Agrio Plaintiffs, as former clients, under applicable law and the Rules of Professional Conduct, with respect to transitional matters such as turning over its file(s) concerning services rendered to the Lago Agrio Plaintiffs, or a copy thereof to counsel designated by the Lago Agrio Plaintiffs or their representatives, and communicating with the Lago Agrio Plaintiffs and their designated counsel concerning the transition, shall not constitute a breach of this Agreement.

2. **Relinquishment of Interest.** H5 hereby irrevocably assigns to Chevron any and all right, claim, title, and interest in or to any payment which H5 now has or in the future may have in, or directly relating to, the Lago Agrio Judgment, including but not limited to the Judgment Interest, whether paid or payable to H5 pursuant to the Advisory Agreement, the Intercreditor Agreement or otherwise, and Chevron hereby assumes any and all such right, claim, title, and interest in, or directly relating to, the Lago Agrio Judgment, including but not limited to the Judgment Interest. H5 may not renounce, assign, transfer, sell, or otherwise alienate to any other entity or person any right, claim, title, or interest in the Lago Agrio Judgment or any right, claim, title, or interest in any proceeds of the Lago Agrio Judgment, otherwise than to Chevron and as provided herein. In the event that any third party asserts that the assignment made through this Agreement is ineffective, based on the terms of the Intercreditor Agreement or otherwise, H5 shall promptly inform Chevron of such assertion. In any event, H5 shall promptly pay over to Chevron (or any party designated by Chevron) any and all payments H5 receives directly relating to the Lago Agrio Judgment. For the avoidance of doubt, under no circumstances shall H5 or its current or former principals or employees retain any proceeds directly relating to the Lago Agrio Judgment.

3. **Timing of This Agreement Becoming Effective.** Immediately after the Parties execute this Agreement, on the same day, the Parties are required to release the public statements set forth in Paragraph 7, beginning, first, with H5's release of its public statement and, then, after H5's release of its public statement, with Chevron's release of its public statement. Once H5 timely performs and fulfills all of the conditions required of it under these Paragraphs 3 and 7 of this Agreement, this Agreement shall become effective and enforceable.

4. **Insurance.** H5 shall not seek reimbursement from insurance for the renunciation and relinquishment of its Judgment Interest or any amounts it claims it is owed as a result of any work performed for or on behalf of the Lago Agrio Plaintiffs or any of their lawyers, agents, or representatives.

5. **Representations and Warranties.**

- a. **By H5.** H5 hereby represents and warrants to Chevron as follows:
- i. The execution, delivery, and performance by H5 of this Agreement and all obligations and releases given under this Agreement are within its powers and are duly authorized. This Agreement is the legal, valid, and binding obligation of H5, and enforceable against H5 in accordance with its terms.
 - ii. H5 is duly organized, validly existing, and in good standing under the laws of the relevant jurisdiction of H5's incorporation or organization.
 - iii. There are no actions, suits, proceedings (including arbitration proceedings), orders, investigations or claims, pending or threatened, against or affecting H5 (A) that seek to restrain or prohibit H5 from entering into and performing the transactions contemplated by this Agreement or (B) that question the validity of this Agreement, the transactions contemplated hereby, or the ownership of the Judgment Interest.
 - iv. H5 retains the Judgment Interest and has the power to relinquish it. No H5 Releasee separately holds any rights to the Lago Agrio Judgment.
 - v. H5 has not entered into any employment relationship or other agreement with any individual or entity, including but not limited to any principal, partner, officer, director, supervisor, employee, representative, insurer, attorney, heir, executor, or administrator,

for the purpose, in whole or in part, of qualifying for coverage of the release in this Agreement.

b. By Chevron. Chevron hereby represents and warrants to H5 as follows:

- i. The execution, delivery, and performance by Chevron of this Agreement and all obligations and releases given under this Agreement are within Chevron's powers and have been duly authorized by Chevron. This Agreement is the legal, valid, and binding obligation of Chevron, enforceable against Chevron in accordance with its respective terms.
- ii. Chevron is a corporation duly organized, validly existing, and in good standing under the laws of the state of Delaware.

6. **Mutual Releases.**

a. Defined Terms.

- i. "Chevron Releasees" shall refer to Chevron, and to all of its past and present, direct and indirect, parents, subsidiaries, and affiliates; the predecessors, successors and assigns of Chevron; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing.
- ii. "H5 Releasees" shall refer to and be restricted to H5, and to all of its past and present, direct and indirect, parents, subsidiaries, and affiliates; the predecessors, successors and assigns of H5; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing, and, notwithstanding the foregoing, the Parties agree that "H5 Releasees" shall not include any individual or entity identified in the Caption or Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18(a), 18(b), 18(c), 18(d), 18(e), 18(f), 18(g), 18(h), 18(i), 18(j), 18(k), 18(l), 18(m), 18(n), 18(o), 18(p), 18(q), 18(r), 18(s), or 18(t) of the Amended Complaint filed on April 20, 2011 in the RICO Action, or any of the following individuals and entities: Andres Snaider, Juan Pablo Navas, Nextant LLC, Graham Erion, Aaron Page, Amazonia Recovery Limited, Ermel Gabriel Chavez Parra, Marco Simons, Mitch Anderson, Christopher Gowen,

Donald Rafael Moncayo Jimenez, Alejandro Ponce-Villacis, and Humberto Piaguaje.

iii. “Released Parties” shall mean and refer to the Chevron Releasees, and the H5 Releasees.

b. With the execution and delivery of this Agreement, the Chevron Releasees and H5 Releasees do hereby forever mutually release, discharge, and acquit any claims, demands, obligations, suits, causes of action or liabilities against each other that arose from the beginning of time to the date this Agreement is fully executed, whether or not they have been asserted, that related in any way to any agreements with the Lago Agrio Plaintiffs or their counsel, the Lago Agrio Litigation, the Related Actions, or pollution or environmental damage in Ecuador. The Chevron Releasees and H5 Releasees irrevocably covenant and agree never to institute, assist or cause to be instituted, or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against the other Released Parties, by reason of or in connection with any released claims, demands, obligations, suits, causes of action, or liabilities.

c. The Chevron Releasees and H5 Releasees expressly waive all rights they have or may claim to have that any claim, demand, obligation and/or cause of action has through ignorance, oversight or error been omitted from the terms of Paragraph 6(b), and hereby expressly waive all rights they may have or claim to have under the provisions of California Civil Code Section 1542 or under equivalent statutory or decisional authority or law. Civil Code Section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

d. The release shall not include any claims, demands, obligations, suits, and causes of action or liabilities of any of the Released Parties arising from any breach of this Agreement.

e. It is hereby further understood and agreed that this Agreement and the acceptance of delivery of this Agreement by the Released Parties shall not

be deemed or construed as an admission of wrongdoing or liability by any Released Party.

- f. It is hereby further understood and agreed that nothing in the acceptance of this Agreement shall prevent Chevron from maintaining legal action or seeking damages against any other party involved in, or related to, the Lago Agrio Litigation or any of the Related Actions, except for the H5 Releasees, and that Chevron is not by this Agreement expressly or impliedly releasing or waiving any claims against any individual or entity except for the H5 Releasees.

7. **Public Statement.** Simultaneously with the execution of this Agreement, H5 will issue the following statement:

Today's agreement with Chevron resolves all outstanding issues relating to H5 in the Lago Agrio matter. Beginning in 2009, H5 proceeded in good faith to provide a variety of electronic discovery and advisory services in relation to the Lago Agrio case in Ecuador. In this as in other matters, H5 was called on because of our expertise in complex litigation and investigations globally. Last year, Chevron obtained a ruling in its favor from U.S. District Judge Lewis A. Kaplan in New York. Although H5 was not a party to that lawsuit, H5 has reviewed Judge Kaplan's extensive findings. In view of those findings, among other reasons, H5 has decided it does not want to profit from the Ecuadorian Judgment and is therefore relinquishing any interest in the judgment.

Simultaneously with the execution of this Agreement, but following H5's release of the statement listed above, Chevron will issue a press release entitled: H5 Settles with Chevron Over Ecuadorian Lawsuit, containing the following statement. The press release may also contain accurate statements regarding H5's role and these and related proceedings:

Chevron is pleased that H5 has ended its association with this scheme. Chevron is also pleased that H5 has taken the further action of disclaiming any interest in the Ecuadorian judgment and relinquishing its interest to Chevron. It remains Chevron's intent to hold accountable those responsible for what a federal judge found to be a fraud.

8. **Non-Disparagement.** Unless compelled by law, or as required to correct any falsehood that may cause them damage (provided that any such statement will be consistent with the statements above and will not disparage the opposing Party), no further public statement in relation to these proceedings or the Lago Agrio Litigation will be made by the H5 Releasees, and no further public statement in relation to these proceedings will be made by the Chevron Releasees concerning H5, except that nothing in this Agreement shall be construed as constraining Chevron's ability to make factual statements regarding any matters relating to the Lago Agrio Litigation or any related proceeding.

9. **Compliance with Process.** H5 agrees that, through December 31, 2019, if served with process by Chevron from any Related Action requiring (i) H5's current CEO to give testimony at a trial or similar proceeding or (ii) H5 or H5's current CEO to produce documents that post-date this Agreement, H5 will assert no jurisdictional objections, provided that Chevron agrees to advance to H5 the reasonable costs for H5's current CEO to travel and to give testimony at any such trial if called by Chevron. Regarding any facts that pre-date this Agreement, other than for the testimony noted above, Chevron shall make no further demand or request by subpoena or process or otherwise to any H5 Releasee in the H5 1782 Action or any other proceeding in connection with the Lago Agrio Litigation or Related Actions.

10. **Notices.** H5 shall, within three business days of receiving any notices, documents, or other information from any counterparty to the Advisory Agreement or the Intercreditor Agreement, notify Chevron of the nature of such information or other document received.

11. **Successors in Interest.** The Parties agree that this Agreement shall be binding upon the Parties and, as applicable, to the extent they are under the Parties' control, their heirs, executors, administrators, dependents, predecessors, successors, subsidiaries, divisions, alter egos, affiliated corporations, and related entities, and their present officers, directors, partners, employees, attorneys, assigns, agents, representatives, and any or all of them, and any past officers, directors, partners, employees, attorneys, assigns, agents, or representatives.

12. **No Assignment.** Each Party warrants and represents that it has not assigned or transferred to any other person any of the claims, causes of action, or other matters that are released by this Agreement.

13. **Advice of Counsel.** Each Party represents that it has been represented, or has had the opportunity to be represented, by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement and that it has executed this Agreement with the consent and upon the advice of such counsel, or that it has had the opportunity to seek such consent and advice. Each Party acknowledges that it has read this Agreement and assents to all the terms and conditions contained in this Agreement without any reservations and that it has had, or has had the opportunity to have had, the same explained to it by its own counsel, who have answered any and all questions which have been asked of them, or which could have been asked of them, with regard to the meaning of any of the provisions of this Agreement.

14. **No Admissions.** By entering into this Agreement, no Party intends to make, nor shall be deemed to have made, any admission of liability of any kind. For the avoidance of doubt, H5 denies any and all liability or wrongdoing, and asserts that all of its actions were undertaken lawfully, appropriately, and in good faith at all times. The Parties agree that they are entering into this Agreement to avoid the costs of further litigation and to settle potential disputes

between the Parties. This Agreement is the product of informed negotiations and compromises of previously stated legal positions. Nothing contained in this Agreement shall be construed as an admission by any Party as to the merit or lack of merit of any particular claim or defense. Any statements made in the course of negotiations have been and shall be without prejudice to the rights of the Parties in any disputes or transactions with any other person or entity not party to this Agreement.

15. **Governing Law.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the internal laws of the State of New York.

16. **Exclusive Jurisdiction.** All Parties hereby stipulate and agree that exclusive jurisdiction and venue as to any and all disputes concerning this Agreement, including disputes concerning the interpretation and enforcement of this Agreement, shall rest with any federal or state court of competent jurisdiction located in New York County, New York. Each of the Parties to this Agreement agrees to consent to the exercise of personal jurisdiction by a federal or state court located in New York County, New York, with respect to any action brought based on any dispute concerning this Agreement.

17. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original as against any Party who signed it, and all of which shall constitute one and the same document.

18. **Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter of the Agreement between the Parties, and supersedes and replaces all prior negotiations, and proposed settlement agreements, written or oral. Each of the Parties to this Agreement acknowledges that no other Party to this Agreement, nor any agent or attorney of any such Party, has made any promise, representation or warranty, express or implied, not contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect, except by a writing duly executed by the Parties, their successors or assigns in interest, or their authorized representatives.

19. **Construction.** The headings of the Paragraphs of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. It is understood and acknowledged that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its counsel has participated in the drafting of this Agreement.

20. **Severability of Agreement.** If this Agreement fails because any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable for

any reason, the Parties agree to negotiate, in good faith, to agree on a permitted replacement part that reflects their original intent.

21. **Amendment and Waiver.** Neither this Agreement, nor any of the provisions hereof, may be changed, waived, discharged, or terminated, except by a writing duly executed by the Parties, their successors or assigns in interest, or their authorized representatives.

22. **Attorneys' Fees, Costs, and Expenses.** Each Party shall bear its own attorneys' fees, costs, and expenses incurred in connection with this Agreement, including any future costs associated with compliance with this Agreement, other than the costs and expenses provided for by Paragraph 9.

23. **No Third Party Beneficiaries.** Nothing contained in this Agreement, express or implied, is intended to confer upon any person or entity other than the Parties hereto any benefits, rights, or remedies, except that the Released Parties may enforce any benefit conferred upon them by this Agreement.

24. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given either (a) upon actual receipt or three (3) days after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested; (b) upon actual receipt if sent via reputable overnight courier; or (c) upon actual confirmation of receipt, if by email. All notices shall be addressed as follows:

If to Chevron or the Chevron Releasees:

Randy M. Mastro
Andrea E. Neuman
Anne Champion
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
rmastro@gibsondunn.com
aneuman@gibsondunn.com
achampion@gibsondunn.com

If to H5 or the H5 Releasees:

Frederick R. Kessler
Adam M. Bialek
Wollmuth Maher & Deutsch LLP
500 5th Avenue
New York, NY 10110
fkessler@wmd-law.com
abialek@wmd-law.com

Gregory Little
White & Case LLP

1155 Avenue of the Americas
New York, NY 10036
glittle@whitecase.com

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

CHEVRON CORPORATION

By:



Name: Kari H. Endries

Title: Assistant Secretary

H5

By:

Name:


Title:

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

CHEVRON CORPORATION

By: _____
Name:
Title:

H5

By: 
Name: R. E. WHOMMS
Title: CEO